The English Execution Narrative, 1200–1700

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BY

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THE ENGLISH EXECUTION NARRATIVE, 1200–1700

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INTRODUCTION: SETTING UP THE SCAFFOLD IN LATE MEDIEVAL AND EARLY MODERN ENGLAND

The disembowelled, hanged, castrated, burned, beheaded and dismembered body of the executed criminal in late medieval and early modern England has shocked, intrigued and fascinated historians, who for the last thirty years have primarily viewed the execution ritual as a manifestation of a specific technology of power, an important step in the state's long march to a monopoly of violence and a symbol of what makes medieval man 'the other'. Yet the violence of these events has so overwhelmed their interpretation that it has often crowded out all other considerations and left many historians so distracted by what was done to the body on the scaffold that they have often failed to look closely at the history of the ritual. What has frequently been missed is that there was no single interpretation of a ritual that lasted for over five hundred years. The ceremonies described in this book were read in different ways across the centuries of their history, for as David Garland has argued, punishment is a social artefact that is not wholly explicable in terms of its purpose – it has a cultural style, a historical tradition and a dependence on discursive conditions – all of which change with time.[1] Punishment is also the product of the political exigencies that shape its purpose. Thus, a ritual that began in England in the thirteenth century and ended in the eighteenth century cannot be expected to have a single interpretation.

The English Execution Narrative is a new look at the descriptions of an old ritual: the execution of traitors, heretics and common criminals from the thirteenth century through to the seventeenth century. The thirteenth century is chosen as the entry point because it was the century in which these rituals of punishment were first formalized in England. This book ends in the seventeenth century as the viability of the public execution as an exemplary strategy that served the interests of the state began to be called into question. Using contemporary accounts of these events, this work explores more than what happened to the body of the condemned. It examines the many ways the body on the scaffold conveyed meaning, for that body was more than just the object of a technology

of power. In a series of chapters on the descriptions of dismembered traitors; the role of blood as a representational device; the changing relationship between death, time and descriptions of the body on the scaffold; the role of clothing in the construction of identity in the execution narrative; and the history of the relationship between body and the last dying speech in the pamphlet literature, this book explores how over the course of five centuries the role of the body on the scaffold shifted as the message of the execution ritual was swept up in rapidly moving currents of political and religious change. These topics are woven together to argue that the conceptual resources that first formed the execution ritual in the thirteenth century were challenged by a series of cultural shifts and political crises that led this ceremony to be reported in a series of different ways from late medieval to early modern England.

As Renato Rosaldo has reminded us, rituals are often a busy intersection where a number of distinct social processes traverse.[2] Although what was done to the body of the condemned remained essentially the same in England across the five centuries covered in this book, the ritual itself was a crossroads where multiple cultural forces came in contact.[3] The same was true for the narratives that described these events. Therefore, any analysis of these texts cannot be divorced from political exigencies, cultural change or religious conflict. However, the contingent nature of both these executions and the narratives that described them have often been ignored, as all eyes have focused on the brutality of the pre-modern ritual. For example, Michel Foucault revels in the violence on the scaffold. It forms the centrepiece of his riveting description of the execution of Damiens in the introduction to *Discipline and Punish*.[4] However, Foucault is like an audience who comes in during the second act of a play, having missed the first part of the story, for Damiens was executed in 1757, which was fairly late in the history of theatrical justice.[5] The spectacles of suffering analysed by Foucault and historians such as Richard van Dülem and Richard Evans were primarily from the early modern period by which time spectacular justice was already several centuries old.[6] And, as Esther Cohen has pointed out, in France penal practice actually became more brutal with time which complicates the broader application of Foucault's analysis to the longer history of the ritual.[7] So the centuries-long history of these rituals has been largely overlooked in much of the scholarship on capital punishment which frequently starts the story, as does Foucault, in the age of the absolutist state.[8]

Of the major monographs on capital punishment, only Petrus Spierenburg, Esther Cohen and Paul Friedland have taken the history of this ritual back to when spectacular justice was born in the late Middle Ages. Primarily interested in the intersection between legal history and popular culture, Cohen argues that punishment in late medieval France was steeped in long-standing extra-judicial

popular practices that were then employed by authorities to draw boundaries and enunciate norms, both old and new.[9] As a result, a dialectic emerged in the thirteenth century between customary and written law. Her conceptualization of the multivalent nature of late medieval law is important to understanding the execution ritual on both sides of the Channel, but Cohen is primarily interested in the broader picture and does not explore in detail the specific political exigencies that led the authorities in France to draw particular boundaries. Neither does Petrus Spierenburg, who links the rise of theatrical justice writ large to the emergence of stronger rulers in the twelfth century.[10] His Whiggish take on the history of the execution ritual is problematic when applied to England, for weak kings were periodically a problem for the English state, which removed three of them from power between the thirteenth and fifteenth centuries, killed one on the battlefield in the fifteenth century and formally executed another in the seventeenth.[11] As the first chapter will demonstrate, there was no long steady march to a monopoly of violence in England. Instead, advances were often followed by retreats. Therefore, the practice of theatrical justice in England was influenced by a series of crises that sometimes challenged, and at other times empowered, the English state.

Paul Friedland's work on capital punishment in France is the most chronologically comprehensive of this scholarship, for he, alone among these historians, explores the early medieval history of capital punishment. Primarily interested in the intersection between theory and practice, Friedland does not examine the influence of specific events on the practice of punishment but rather concentrates on the gradual layering of penal traditions that led to the advent of spectacular justice in late medieval France.[12] Because he works in the *longue durée*, Friedland identifies a series of changes in the reception of the execution ritual in France, some of which parallel what was happening in England, such as the impact of the Reformation on the behaviour of the condemned and the eventual development of sensibility among the elite regarding the spectatorship at these events. So there were certainly cultural forces that influenced attitudes toward punishment that were European wide. That said, political crises, which were often regionally, if not nationally, specific, also had an impact on the history of the ritual. However, like many historians of capital punishment in pre-modern Europe, Friedland is primarily concerned with the larger picture and is less interested in context.

Although spectacular justice was the product of cultural currents that were common to both England and the Continent, one of the problems with the application of much of this Continental scholarship to England is that most of the work on the pre-modern execution ritual has been filtered through the prism of the inquisitional legal system. However, after the Fourth Lateran Council abolished trial by ordeal in 1215, the legal systems of England and the Continent diverged.[13] On the Continent, Roman standards of proof made confession, often obtained through torture, the centrepiece of criminal jurisprudence.

England, on the other hand, developed a jury system which allowed circumstantial evidence and so never officially employed torture in the search for truth. Although torture was used sporadically in England, especially in the sixteenth century, it was never an officially recognized part of the judicial system.[14] So even though Anne Askew had been tortured in 1546, in 1565 Thomas Smith wrote proudly in *De Republica Anglorum*,

> torment or question which is used by the order of the civil lawe and custome of other countries to put a malefactor to excessive paine, to make him confesse himselfe, or of his fellowes or accomplices, is not used in England as it is taken for servile.[15]

Although there has been a debate about how much Roman law influenced the English legal system after the twelfth century, the English did follow a different procedural path and with their jury trails and open court proceedings, had no need for a ceremony that Foucault argues was necessary in order to publicly affirm a verdict passed in secret by the court.[16] Therefore, English legal exceptionalism complicates the broader application of some of the Continental scholarship to England.

The English also never used the wheel, flayed their criminals or burned their flesh with hot pincers, as their repertoire of official punishments was more limited than that found on the Continent. On the local level, they could be inventive, burying people alive or tying them to docks at low tide, but these were borough customs; whereas the punishments of the Crown were staid by Continental standards.[17] So the more operatic depictions of executions found in Lionel Puppi's *Torment in Art* are from the Continent and not England.[18] For example, the Venetian ambassador's description of the execution of the assassin of Henry IV, Ravillac, reports that:

> At eight that morning they began the torture of the rogue, and then they continued on Wednesday and Thursday ... and he being in poor condition because of the loss of blood, he was condemned to have, that same day, which was Thursday, his hand burned with lead, sulphur and other things, to be given eighteen strokes with red hot things, then quartered by four horses, his body burned and his ashes scattered.[19]

Foucault believes that this 'excess of violence' in 'all its glory' was another form of the ordeal – a physical challenge that defined the truth.[20] However, as executions on the Continent became rituals of prolonged torture that sometimes lasted days, the physical punishments of the English ritual remained largely unchanged. John Fisher died in 1535 in much the same way as William Wallace in 1305.[21] They were both drawn, quartered and disembowelled. The English ritual was violent to be sure, but its brutality did not increase in intensity with time.[22] There is also the problem that the *amende honorable*, which has heavily influenced the Continental interpretation of the ritual, was a formalized part of

the ceremony much earlier on that side of the Channel than in England.[23] Such divergences, however, have not been closely examined in the largely Continental scholarship on spectacular justice.

The most explored element of English exceptionalism has been the last dying speech which emerged in the sixteenth century. These speeches have preoccupied English historians who have not given much attention to the rest of the ritual, and have, thus, engaged in very little exploration of the late medieval origins of theatrical justice.[24] And more interested in the end rather than the beginning of the formalized public execution, the major monographs on capital punishment in England have been primarily concerned with the eighteenth century.[25] As a result English historians have largely left the analysis of the early ritual to their Continental counterparts. Outside of my earlier work on reading the execution ritual in late medieval England, only Danielle Westerhof has explored the English ritual prior to the sixteenth century.[26] Although she examines the dismemberment of traitors, her book is primarily about aristocratic identity and ends in the mid-fourteenth century.[27] Therefore, the early history of spectacular justice in England has not drawn much attention in contrast to the much richer scholarship on the Continental ritual.

Although there are problems inherent to the application of work on the Continental ritual to England, including the fact that the English ritual was influenced by the particular politics of the archipelago, spectacular justice on both sides of the Channel was influenced by cultural currents that were European wide. For that reason much of the scholarship on capital punishment has been used by historians to open up a larger text on violence and power; making the historiography of this subject the stepchild of a variety of social theories.[28] Whether its Norbert Elias's civilizing process, Marx's class struggle, Jeremy Bentham's utilitarianism or Emile Durkheim's collective conscience, social theory offers a holistic approach to the explanation of social life which can easily incorporate the interpretation of penal practice.[29] Influenced by Norbert Elias, Richard Evans and Petrus Spierenburg argue that the judicial spectacles in early modern Europe were the product of a relatively weak state that used visible and violent acts of repression in a culture comfortable with cruelty. The more utilitarian perspective is taken by Richard van Dülem who sees theatrical justice as the demonstration of raw power by a state intent on deterring criminal behaviour. Esther Cohen, Danielle Westerhof and Paul Friedland describe a ritual based on a set of shared perceptions and popular symbols. As always, Foucault charted his own course, although one that was also wedded to the story of the rise of the modern state. For Foucault, this was all simply a matter of penal style – the time for torture before the economy of punishment was redirected from the body to the mind.

Fascinated with the role of the body in this process, Foucault has cast a long shadow over more than just the history of capital punishment. His work on the

body set the stage for an outpouring of scholarship on the body over the last three decades.[30] The body emblazoned, embarrassed, dissected, standing on the stage or the scaffold – the body as a cultural construct and representational device has been explored within the context of a variety of topics. Often that body has been portrayed as an object to be controlled, manipulated, managed or read – but it is not frequently presented as an active agent.[31] Foucault led the way toward this conception of the objectified body with his descriptions of the body as passively mutilated by the early modern state and then confined and controlled by institutions of discipline beginning in the eighteenth century. He not only finds this objectified body on the scaffold, in the prison and the school, but also in eighteenth-century medical discourse.[32] His influence has been significant, and so the modern body has often been read as a postmodern and Foucauldian construct: a passive agent which is invaded by modern medicine, manipulated by social forces and controlled by the state.[33] Perhaps because this concept of the body is so familiar to modern historians, the objectified body has been given centre stage in much of the scholarship on capital punishment in pre-modern Europe.

So the body on the scaffold, dismembered, burned or beheaded, is presented as the silent object of the power of the state. Only occasionally do we hear the screams of Damiens, for in much of this scholarship the man on the scaffold is denied agency.[34] Therefore, the condemned man's body has been assigned a single role as the object of a specific technology of power. As such it stands in for greater forces: the power of the state or the brutality of society. This construct of the objectified body has been the foundation of a history of capital punishment that has drawn a stark line between the pre-modern and modern world, making the mutilated body of the condemned a symbol of what made medieval man 'the other' – a blazon of medieval alterity.

This has brought the body of the man on the scaffold into the debate over whether medieval society was monstrously 'other' or has simply been miscast by a modern society that wants to envision itself as more civilized while it hones its weapons of mass destruction and leaves beheaded bodies on the street.[35] This debate, although interdisciplinary, has primarily taken place within the fields of literature and art and has largely concentrated on violence in the torture chamber and on the stage.[36] In these settings violence's power rests in the theatricality of its excess.[37] But perhaps not all violence is the same and maybe it is not always read in the same way in every situation. *The English Execution Narrative* asks the question: what if the violence on the scaffold was not considered excessive – does it then lose its power?

The first hint that this may have been the case comes from the narratives that describe the late medieval executions, for they offer a window into how these events were read by contemporaries. The political songs and chronicles that reported these events in late medieval England reveal that contemporar-

ies did not view the violence on the scaffold in quite the same way as modern historians.[38] However, that is not all these narratives tell us. Equally important, when one reads these accounts across several centuries it becomes clear that there was a transformation in the message of the ritual. Although the ceremony itself retained much of its thirteenth-century character, its interpretation shifted with the sands of political and religious change across the centuries. For example, the late medieval ritual was described by contemporaries as a ceremony that symbolized the severance of the condemned from the community. By the sixteenth century that was no longer true. The narratives that describe the early modern executions present the condemned as redeemed through his repentance on the scaffold and, thus, reintegrated into the community in his final moment. Therefore, the sixteenth century ushered in the Golden Age of the Good Death on the Scaffold in the execution narrative, marking an important shift in the *mentalité* of punishment. The concept of reformative justice, so familiar to the modern world, began to challenge the retributivist discourse of the scaffold in Tudor England. So when read across several centuries these texts tell a story much larger than what happened to the man standing before the executioner.

Of course, they can offer only a limited view of how contemporaries thought about these events, for they only tell us what interested the narrators, which, importantly, changed with time and then later genre. The late medieval authors were primarily concerned with the high-profile executions of traitors and leaders of popular rebellions, and not the thief at York or the infanticide in Bristol. In the sixteenth century the martyrologies brought heretics into the discourse of the scaffold and then later in the century the emergence of the pamphlet further expanded the genres in which these accounts appeared as well as the types of criminals described.[39] As a result there was a democratization of the discourse of the scaffold in early modern England which brought the voice of the common criminal into this story – and that voice has drawn the interest of early modern historians.

Although little has been written about the execution narratives of late medieval England, the literature of the scaffold has been extensively examined for the sixteenth through to the eighteenth centuries. Therefore, this work does not intend to cover ground already well ploughed but rather to explore aspects of the discourse of the scaffold which have not been previously examined.[40] For example, Peter Lake, Michael Questier, Alexandra Walsham and Andrea McKenzie have explored issues of gender, social anxiety, inversion and providentialism in regard to these narratives, so although *The English Execution Narrative* will touch tangentially on these topics, they will not be covered in detail.[41] It will, instead, look at the execution narrative in the *longue durée* and identify shifts in narrative structure that have not been examined in other works.[42] This work is not intended to be a comprehensive study of the literature of the scaffold but

rather a targeted examination of select rhetorical strategies that will be used as a window into how contemporaries thought about these events.[43]

Of course, a thirteenth-century monk writing a chronicle in a monastery near the border with Scotland, a sixteenth-century Protestant martyrologist, the Ordinary of Newgate in the seventeenth century or the anonymous author of a pamphlet written about the execution of a thief in Restoration England would be expected to describe an execution in very different ways. This analysis does reveal that certain tropes did dominate at specific times. And that dominance was more than just the borrowing that characterized the medieval chronicle, for at specific times there were common tropes that emerged in multiple genres.[44] For example, a political song about the execution of Simon Fraser described this event in much the same way as the account of the execution of William Wallace in *The Chronicle of Lanercost*.[45] And executions in sixteenth-century England were described by Henry Machyn in his diary in ways quite similar to how John Stowe reported them in his chronicle.[46] Similarly, in his martyrology John Foxe repeated tropes found in the *Chronicle of Queen Jane*.[47] So the story of an execution was told in much the same way by contemporaries writing in a variety of genres. However, tropes did change with time. *The English Execution Narrative* identifies important points of departure as authors working in a variety of genres turned to new rhetorical strategies at critical points in the history of the execution narrative. For example, Henry Knighton described executions in a chronicle written in the fourteenth century in a very different way from the author of the sixteenth-century *Chronicle of Queen Jane*.[48] Therefore, this book will argue that select political crises, as well as larger cultural currents, led to shifts in how these events were described.

This makes the changing political landscape of late medieval and early modern England part of this story. A lot happened between the thirteenth and seventeenth centuries, much of which is beyond the scope of this project: the rise of Parliament, multiple depositions and civil wars, changes in the law of treason, the birth of impeachment and attainder, the takeover of the English Church, the very public execution of a king and, finally, the restoration of the monarchy. This political history creates a problem when it comes to the terminology used to describe authority in this work. The term 'state' will be employed frequently but it will be used with necessary qualification, for there can be no one definition of 'state' for a story that begins in the reign of Henry III and ends with William and Mary. So by necessity, 'state' will be used loosely to refer to the governing entity that is exercising what is recognized at the time, albeit not always universally, as legitimate authority. Sometimes it will be employed in reference to the person of the monarch and at other times to a government that is functioning separately from the king. Therefore, 'state' will be used broadly and in an admittedly imprecise manner to refer to the recognized legal authority of the moment.

Although this work touches tangentially on many topics, such as the changing nature of English politics, in essence *The English Execution Narrative* is a history of the execution narrative. It begins this story in the thirteenth century with the advent of descriptions of the public and theatrical dismemberment of traitors. The first chapter examines the history of the descriptions of the dismembered body in space. In England the earliest descriptions of the dismemberment of traitors date from the thirteenth century and this chapter demonstrates that this spectacular justice was just one of several practices in late medieval society that divided the bodies of the elite. Exploring how contemporaries described the placement of severed limbs and heads, it will argue that in England the formalized public dismemberment of a man on the scaffold was not initiated in order to deal with the problem of domestic disorder. Ritualized dismemberment was at first an adaptive response by the Crown to the challenges of the first English empire and so spectacular justice was born in the crucible of war with Scotland and Wales. Because the role of imperial politics in the advent of this ritual has not been previously explored, this chapter challenges the traditional assumption that these events began as part of the state's effort to establish a domestic monopoly of violence. Instead, it argues that these practices were the response of the crown to the failure of traditional feudal accommodations to resolve conflicts in the face of the expansion of English legal authority within the empire.

Through its examination of the descriptions of the geographic distribution of severed body parts this chapter demonstrates how this ritual functioned within the political economy of the first English empire. Following the descriptions of judicial dismemberment in late medieval England over the course of several centuries, it points out that this form of punishment was not consistently employed for a variety of reasons, was not used exclusively by the king, but sometimes by his enemies, and that judicial violence in England was never the state's 'pearl in the crown of repression', as argued by Petrus Spierenburg.[49] Instead, it was often a sign of weakness and was sometimes described in ways that manifest that reality. The central argument of this first chapter is that the dismemberment of traitors was a contingent event that needs to be read within the context of the political exigencies that occasioned its use.

Exploring the reasons for the absence of blood in the late medieval execution narrative, the second chapter examines the punitive aesthetics of the late medieval execution ritual and the significance of the violence directed at the body of the condemned. Engaging the scholarship on the role of blood as a rhetorical device, this chapter explores the reasons why bleeding, which became increasingly central to the narrative of the Passion, was entirely absent from the late medieval execution narrative.[50] This is despite the fact that as the scholarship on the iconography and literature of the Passion has demonstrated, many of the physical aspects of the late medieval execution ritual found their way into the art