Certain Other Countries

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Homicides—Procedures, Perceptions, and Statistics

FORTUNATE AND UNFORTUNATE MURDERS. It is difficult to account for the differences in the amount of interest displayed with regard to murders. The body of a murdered person is found one day stabbed to the heart, and all England is convulsed by the intelligence; latest particulars are given by the papers and eagerly devoured by the public, a large reward is offered by Government for the discovery of the murderer and all Scotland-Yard is on the alert. The body of another murdered person is found the next day with the skull fractured and little or no notice is taken of the circumstances the jury returning an open verdict, no reward is offered by Government the body is perhaps never identified but is buried in a nameless grave and there is an end of the matter. (*Pall Mall Gazette*, 1871)°

The question of which homicides are significant and which are not is one that has plagued both contemporaries and historians of Victorian Britain. All too often the social history of homicides has focused on cases that inspired a fascination inversely proportional to their representativeness. But relying on quantitative evidence is equally problematic. Despite how difficult it might seem to ignore a dead body, a homicide victim does not exist in the official records simply because one person has killed another. A number of assumptions, decisions, and actions have to be taken by policemen, government officials, and even family members before a death is recorded as a homicide. Consequently homicide statistics are always suspect. The Victorians were aware of the discrepancy. In 1876 in an article examining the official judicial statistics, the *Times* insisted: “The absolute number of [recorded] murders tells us nothing. It only says how many murderers have been brought to justice.”°
In a suspicious death in England, Ireland, or Wales, the initial decision about whether the death was to be treated as a homicide lay with the coroner’s inquest—an ancient proceeding which was subject to considerable human error. Nineteenth-century coroners were not required to possess any medical or legal expertise. In addition to simple ignorance, they might also be influenced by external pressures. Homicide investigations were expensive and officials might be reluctant to spend public funds to investigate the deaths of unimportant persons. For example, authorities in Kent were pleased when a stranger found with two stab wounds to the back was conveniently ruled a suicide. In 1882 the Times complained that during a five-year period coroner’s juries had returned a simple verdict of “found drowned” in nearly six hundred cases in which corpses had been found in the Thames. “Unhappily our careless English way of dealing with the bodies and effects of persons found drowned renders it improbable that the mystery which surrounds these deaths will ever be cleared up. . . . It is not a pleasant thing to reflect that there may be many ruffians prowling about London who have already committed riverside outrages with impunity.” But while the Times found the coroner’s juries lax, some judges found them overly zealous. English coroner’s juries regularly reported twice as many murders as did the police. One judge complained that “the members of the coroner’s jury were very often led away by sympathy or some surrounding incident to return a verdict or to express censure without real justification.”

In addition to the coroner’s jury, magistrates heard homicide charges. Even if the coroner’s jury failed to indict, the magistrates could send the accused before a grand jury for indictment. The redundancy could be an additional source of confusion and annoyance. In 1875 the Carmarthen Weekly Reporter noted that “the inhabitants of Carmarthen have happily but little knowledge of the official method of procedure in cases of manslaughter or murder.” But, the editorial continued, “to their unsophisticated minds” it seemed strange that after a coroner’s jury ruled a death accidental “the magistrates should then take up the same case and send the men for trial.” When the men were acquitted the newspaper complained that “[t]he law—that curious admixture of contradictions and absurdities, that emanation of the accumulated judicial wisdom of the past has insisted on a trial for no other reason that we can see except to increase the amount of the county rates.” But others complained that magistrates were too intimidated by ratepayers’ concern. The Spectator complained that magistrates in Northern England had been demoralized “by a false theory of social necessities that the few among them who think that murder by torture should at least be sent before tribunals empowered to give heavy sentences are censured by other magistrates for want of judgment, for-
getfulness of local circumstances and indifference to the permanent interests of the taxpayer.” After 1879 the newly instituted office of the public prosecutor could also begin homicide proceedings. Again the proponents of efficiency and economy were not necessarily pleased. When informed that “[t]he Public Prosecutor said he felt it to be his duty to take up any case in which a life had been lost,” one judge warned that “[i]f the Public Prosecutor does what you state, all I can say is that it will very soon become a public nuisance.”

But however expensive and redundant the proceedings of magistrates and coroner’s juries in England, Ireland, and Wales might be, they were public. In Scotland suspected homicides were investigated privately by the procurator fiscal of each county who decided whether or not to bring charges. As a Scottish judge pointed out to the House of Lords, “If the investigation did not result in a trial, then the whole evidence was kept secret. The number of such cases in which no trial took place was naturally very large, and of the merits of such cases or why they were not pushed to trial, the public always remains ignorant.” The system preserved privacy, but the Scotsman suggested, “Many retain that conviction that [the Scottish criminal justice system’s] benefits would be enhanced by increased publicity in the proceedings connected with its operation.”

In addition to coroner’s juries and magistrates, homicides in Ireland were also reported in the Outrage papers prepared for the chief secretary by the police of each Irish county. These reports were predicated on the assumption that Irish homicides represented a level of sedition that was unknown in England and Wales. The Irish press often complained that the Outrage figures were exaggerated in order to justify coercive policies by the government. But by the late nineteenth century the figures were also indicative of a lack of clear instructions. The Outrage Papers included the name of the victim and the killer (if known) and a brief summary of the circumstances for every homicide the police deemed an outrage. However, there was no clear definition of “outrage.” In some counties the police reported every nonnatural death as an outrage, including cart accidents. Others reported only what they considered truly “outrageous conduct” and even failed to include domestic homicides. Unlike the Scottish records, which only reported cases if someone was formally charged with homicide, and the English and Welsh ones that depended on the decisions of coroners and magistrates, the Irish records included all violent deaths the local police deemed outrageous.

Given the vagaries involved in the official homicide records, it seems safer to base statistical comparison among the nations on the outcome of homicide trials rather than the number of reported homicides. Obviously the
number of homicide trials will vary according to the efficiency of the police, the willingness of authorities to spend money on investigations, and the willingness of coroner’s juries and magistrates or procurator fiscals to indict. But the statistics relating to trial outcomes are more likely to be an accurate reflection of what they purport to record than are estimates of the actual number of homicides. The rate of homicide trials per 100,000 population varied significantly among the nations and was changing over time. In the late 1860s, England and Wales had the highest rate of homicide trials per population, but that rate had fallen by 36 percent by 1892. The Irish had the lowest rate in the UK for the late 1860s, but their rate rose by 20 percent during the period so that by 1892, Ireland had the highest rate in the UK. Scotland was in the middle in 1867, but saw the steepest decline over the period. The Scottish rate dropped over 40 percent so that by 1892, its rate was the lowest in the UK, a full 20 percent lower than that of England and Wales.

In addition to the fact that the numbers are more reliable, jury trials provide at least some indication of public opinion. Though juries were limited to male property owners, the very premise of the jury trial assumes that they will represent community standards. Sentencing patterns reveal the views and concerns of authorities. Often capital sentences were carried out not so much because of the heinousness of a particular crime as because there was a sense that a particular type of offense was happening more frequently and the Home Office believed an example needed to be set. Public reactions to sentences as reflected in the press and sometimes in the streets are also particularly illuminating.

When a verdict failed to meet public expectations, the reaction was usually vocal. Applause or hisses within the courtroom often infuriated judges. When an acquittal was met with applause in an Edinburgh courtroom, the judge angrily announced, “We don’t sit here for marks of approbation or disapprobation.” But the vehemence inspired by unpopular verdicts indicates that on the whole the courts were expected to reflect the views of the larger community. After a case in Liverpool the Times reported, “[A]lthough his Lordship concurred with this verdict, there is no question that it is not in accord with general opinion. It was received with hissing, an unmistakable signal of disapprobation when it was delivered in court . . . the verdict was generally condemned.”

Comparing trial outcomes among the four nations presents a number of challenges. In England, Ireland, and Wales juries consisted of twelve men who were impaneled to reach a unanimous verdict. One dissenting voice meant no conviction. But, under the terms of the 1707 Act of Union, Scotland had maintained its own distinct legal system. Criminal trials in
Scotland were heard by a fifteen-member jury with the verdict determined by a simple majority. A vote of eight to seven could and did decide the fate of persons accused of capital murder. Scottish juries were not required to reveal their vote but in the majority of homicide cases between 1867 and 1892 the vote was recorded. In 41 percent of the cases in which a Scottish jury convicted the accused of some form of homicide, the verdict was not unanimous. Scottish juries also had three possible verdicts—guilty, not proven, and not guilty. While both of the latter two led to the liberation of the accused, juries clearly felt the distinction was significant. In crimes in which more than one defendant was involved, the same jury might find one of the parties not guilty while the verdict for another was not proven. The not-proven verdict provided a means of avoiding an unacceptable conviction without fully exonerating the accused.

Courts in Ireland and Wales operated under the rules of the English Common Law, but not always happily. For centuries English law had been used to coerce the Irish people, to confiscate their land, and to maintain religious discrimination. Even though de jure discrimination in Ireland had ended by the late nineteenth century, a legacy of bitterness and mistrust remained. The judges and jurors were Irish but the law was still English. In 1872 an Irish judge assured the Tyrone Grand jury: “I shall continue as I have done heretofore faithfully and fearlessly to administer and expand the laws of England [italics mine] and no other.” Irish defense attorneys regularly played on jurors’ fears that the system discriminated against the Irish. The need for jury unanimity meant that only one juror had to be persuaded that the accused was a victim of English law. In about 7 percent of homicide trials in Ireland, authorities eventually chose to release the accused rather than go to the expense and trouble of retrying a case in which a jury had failed to agree. Crown authorities chose not to prosecute at all in another 12 percent of cases in which an indictment had been brought when they felt it was unlikely that any Irish jury would convict. The central government also routinely moved trials from one district of Ireland to another in the hopes “persons who commit outrages can no longer rely upon the certainty of absolute impunity when they are tried in a place where neither intimidation nor favor can have any effect on the minds of the jury.”

Technically, there was no difference between English and Welsh procedures. In fact, Welsh and English cases were often heard at the same assize, and even when separate assizes were heard for Welsh districts, the judges were English. However, the Welsh faith in English justice was in some instances as limited as that of the Irish. The leading scholars on Welsh justice have concluded that in nineteenth-century Wales “two concepts of order, the official...
and the popular” were in effect. Though homicides are less amenable to popular justice than lesser offenses, there is ample evidence that Welsh communities often believed in extralegal solutions. In addition to the question of homicides that were deliberately kept from official scrutiny, trials in Wales also faced serious language problems. Perhaps one of the most chilling lines from reports of Welsh trials is: “The sentence of death was then translated into Welsh for the information of the prisoner.” The issue of bilingualism in Welsh courts came to the forefront in 1874, when a county magistrate in Carmarthenshire reduced the local jury list from 164 to 45 names by striking all those who did not speak English. He explained that not speaking English was analogous to being deaf and dumb and it was “impossible to approve of men being left on the lists to try prisoners for their lives and liberties who would not understand what the English speaking witnesses, the council and the judges said to them. Keeping Welsh speakers is no doubt why Welsh juries have been and are spoken of with such contempt as to have become a proverb.” The editor of the *Carmarthen Journal* was quick to respond that “the true and indeed only function of the jury is ‘to give a true verdict according to the evidence’ and the mass of evidence heard in our courts was given in Welsh.”

Given the language problems, it is not surprising that Welsh juries were notorious for giving eccentric verdicts. A Welsh attorney wrote to the *Times* explaining that “of any twelve common jurors in mid-Wales, from one-half to three-fourth are absolutely ignorant for speaking purposes of more English than the monosyllables Yes and No. . . . The foreman, probably has as much knowledge as will enable him if you speak very slowly with a strong Welsh accent, and use none but the commonest words to follow a very brief and very clear statement of facts.” The attorney stressed that the English spoken in Welsh courtrooms was largely lost on the juries. “It is through the evidence of the Welsh-speaking witnesses only that the least glimmering of the matter in hand reaches the mind of the jury. . . . [T]he evidence of English witnesses is not translated at all.” The words of the legal experts were also largely wasted. “The eloquent speeches of counsel delivered in the most refined English accent and filled with technicalities and rhetorical flights are as absolutely unintelligible to the majority, if not to the whole of the jury as similar speeches in Welsh would be to the counsel of the Judge.” After the judge instructed the jury in unintelligible English, “the poor puzzled peasants put their heads together and come to a thoroughly independent decision.”

It is hardly surprising that as the *Carmarthen Weekly Reporter* noted, “Stupid findings are invariably attributed to the Welsh jurymen.” The language difficulties created problems for judges and jurors alike.
1871 the lord chancellor rejected a petition requesting that county court judges in Wales be required to be fluent in Welsh on the grounds that “a Judge selected for his Welsh requirements would become subject to mistrust on the part of an English litigant.” A Welsh MP responded that in mid-Wales four-fifths of the Welsh who appeared in court spoke Welsh as their primary language and probably half of them spoke no English. “I cannot but think that a Welsh litigant would have at least an equal ground for distrusting the decision of a Judge who cannot understand a word of his own language.”

Even the *Times* recognized the problem. The absence of Welsh speakers on the bench “absolutely saps the public confidence in it. . . . The Judge has practically to grope his way as best he can almost in the dark as it were.”

Like most disagreements between the Welsh and the English, the dispute was carried on politely but the miscommunication was serious.

As can be seen in table 1.1, the percentage of trials ending in acquittals did not vary much among the four nations. Between 1867 and 1892 English
juries acquitted in 27 percent of homicide trials, Welsh jurors in 32 percent, and the Irish in 29 percent. Scottish juries found 16 percent of defendants not guilty and the charges not proven in 13 percent of cases. Everywhere but Wales the trend was toward fewer acquittals. In England the percentage acquitted fell from 31 percent in the late 1860s and early 1870s to 26 percent by the early 1890s. Irish juries were also becoming less likely to acquit, with the figures dropping from 35 percent in the late 1860s to 25 percent by the early 1890s. The biggest change was in Scotland where the percentage of homicide defendants receiving verdicts of not guilty or not proven fell from 35 percent to 21 percent. However, which sorts of cases resulted in acquittal varied considerably from nation to nation.

Which types of trials were most likely to lead to acquittals did vary however. Other than in accidents, English juries were most likely to return a not-guilty verdict if the death had occurred while the killer was delivering what the jury perceived as a justified chastisement to a prisoner, an asylum inmate, or an unruly servant, apprentice, or student. Irish and Scottish juries were most likely to acquit when the motive for the homicide had been issues of land or politics. Welsh juries were most likely to excuse homicides that occurred during pranks.

These differences are particularly interesting when compared with which defendants were least likely to be acquitted. In England juries were least likely to acquit if the motive for the killing had been thwarted romance. This is in part because the killer in these cases was likely to use a lethal weapon, but it also points to some interesting assumptions about gender. A man might chastise his wife, his child, or his subordinate but not a woman he was courting. The Irish were hardest on defendants who had killed while seeking revenge. A planned assault based on a grudge did not square with the Irish assumption that homicides were the inadvertent result of uncontrolled passions. The Scots were hardest on poachers whose guilt was compounded by the combination of theft and homicide.

Trial outcomes throughout Britain were also very much affected by the common law tradition which allowed considerable leeway to judge and jurors in determining what the law actually was. Despite efforts at codification of the law and the regularization of procedures, the outcome of any late nineteenth-century homicide trial depended very much on the individual judge and jury. Lord Chief Justice Coleridge explained that he did not like to direct juries to particular verdicts. “It was impossible to devise an intellectual formula which would cover all the varying circumstances of different cases.” In 1884 the Times observed that Baron John Huddleston in advising a jury “had to do what English judges have frequently to do—under the guise of inter-
interpreting the law he had to make it.”30 Baron William Channell even acknowledged that the jurors were also lawmakers when he told a jury, “[T]he law was an abstraction; in reality it meant the verdict of a jury, upon which depended its practical enforcement.”31

DEFINING MURDER

Among the most contentious issues was the distinction between the capital offense of murder and the lesser crimes of manslaughter in Ireland, England, and Wales and culpable homicide in Scotland. The written law left considerable leeway for both judge and jurors in deciding between murder and manslaughter or culpable homicide. Manslaughter was formally defined as “unlawful and felonious killing of another without any malice express or implied.”32 Culpable homicide was defined as “a killing caused by fault falling short of the evil intention required to constitute murder.”33 But *malice* and *evil* were fairly flexible terms in practice, and the judges often disagreed.

English Justice George Bramwell seemed to imply that no prior intent was required: “If a man without lawful cause and without circumstances to reduce it to manslaughter inflicted a deadly wound he was guilty of murder although the thought of doing it never entered his mind until the moment he gave it the fatal blow.”34 Justice James Stephen argued that the method was crucial. “The rule he should lay down for their guidance was that if a man kills another by means which in all probability must cause his death, that crime amounted to murder unless there were circumstances which reduced it to manslaughter or justified the act.”35 But his colleague Justice William Brett suggested jurors must consider the killer’s state of mind: “[I]f at the time he had command of his passions so as to have command also of his will and intention he would be guilty of murder; but if he had not much command of his passions, it would be open to the jury to convict him only of manslaughter.”36 However, Justice Huddleston assured a jury that “the fact that the prisoner’s mind was distorted by evil and wicked passions was no defense.”37

Provocation and self-defense were the most obvious mitigating factors. The degree of provocation required was also subject to debate. Justice Lush insisted that “mere quarrel of words did not constitute a provocation nor a single blow but a series of savage blows.”38 Justice Cleasby concurred that “neither opprobrious language nor even a slap in the face would reduce the offence from murder to manslaughter but when a man was kicked and knocked down and blood made to flow it might be otherwise.”39 But Justice
Mellor seems to have believed that the issue was the immediacy of the provocation: “Whether their verdict should be one of manslaughter or murder depended on whether the prisoner’s acts causing death were done in the heat of passion, arising under reasonable provocation, or not until after an interval of time sufficient either in fact or in legal presumption to allow the passion to subside and the control of reason to be resumed.”

Self-defense and the defense of others were also considered mitigation. But even so, prior intent was significant. Chief Justice Coleridge told a jury “if they believed the prisoner went out with the deliberate intention of taking someone’s life it would be murder, no matter whether he himself was attacked or not; but if they believed he had a bona fide belief that his life was in peril, but that such belief was unreasonable it was manslaughter and finally if he had grounds to believe his life was in danger then acquit.” In a case in which a man had killed in defense of his sibling, Justice Field told the jury, “If they believed the deceased did no more than was necessary to prevent the prisoner beating his brother it was not manslaughter; but if he did more than was necessary, looking at the excited state of the prisoner’s mind at the time, than it would be manslaughter.”

Ultimately the issue was malicious intent, which was difficult both to define and to detect. In practice the jury’s assumptions about the killer’s state of mind were frequently based on the relationship between and status of the killer and the victim. When both were working class and the setting was a pub on Saturday night, authorities may have been less willing to assume malice. As the Times reported in one case, “Yesterday Samuel Chipperfield, a laborer, is alleged to have killed another laborer, named Samuel Betts, in a pub in Beersstreet, Norwich on Saturday night but the police have not found that Chipperfield had any ill-will against Betts and under these circumstances it seems probable that the case will resolve itself into one of manslaughter.”

English juries returned for manslaughter rather than murder in nearly half the convictions resulting from murder indictments, in some cases over the strong objections of the judge. In one case Justice Martin told a jury: “I am bound to tell you that your verdict is directly contrary to the evidence.” With only slightly less censure, Justice Denman told a Warwick jury that had returned a manslaughter verdict that ninety-nine out of one hundred juries would have said the crime was murder.” Justice Martin insisted in a charge to a Chelmsford jury: “[I]t is your duty to act upon the law. You do not sit there with discretion to find this man guilty of murder and that man guilty of manslaughter as you may think proper according to your own view of the law. It is your duty to act upon the law as laid down by a judge.” But what law was laid down depended very much on which judge was presiding. In
England 32 percent of homicide convictions were for murder, but among judges who heard over fifty trials the percentage of convictions that were for the full offense ranged from just 10 percent for Justice Gillery Piggott to over 58 percent for Justice Montagu Smith.

In addition to the fact that different judges might offer different opinions, juries always had the option to disregard their instructions. After an English jury acquitted a man who had stabbed a neighbor who interfered when he was beating his wife, Justice Henry Keating told the prisoner: “The jury have found you not guilty on what grounds I am utterly at a loss to conceive but it is their province and not mine to decide. I merely make these observations in order that this verdict may not be an encouragement to you to commit acts of violence.”\(^{47}\) An Irish judge told a Limerick jury: “It was nothing to him if the jury discharged the prisoner, but it was everything to the county.”\(^{48}\) Another Irish judge was unable to show such sangfroid. When a Tipperary jury failed to convict, he shouted: “Take back that verdict. I will not take it. Do you think fracturing a man’s skull is nothing? If you do I’d like to see it tried on yourself.”\(^{49}\) Similarly after the judge explained that there was no way to reach a verdict of culpable homicide, a Glasgow jury promptly returned a verdict of culpable homicide.\(^{50}\)

Despite the variations among judges and juries, English trials were still four times more likely to result in murder convictions than were homicide trials in Ireland and Scotland. Irish juries were so reluctant to return murder convictions that prosecutors often chose to indict only for “very serious manslaughter.”\(^{51}\) With the death sentence out of the equation, presumably it was easier to persuade an Irish jury to convict. Irish courts were also more willing to accept that homicides were the result of either accident or uncontrollable passion.\(^{52}\) An Irish judge explained that “[m]anslaughter was killing another without any malice.”\(^{53}\) According to Irish law books, “[I]n every case of proved homicide the law presumes malice but such presumptions may be rebutted.”\(^{54}\) But Irish courtrooms routinely ignored the presumption.\(^{55}\) Only 5 percent of Irish homicide trials led to murder convictions. Unless the motive was political, the Irish tendency to see homicides as unfortunate accidents meant that punishment should be light. In fact, 65 percent of persons convicted of homicide in Ireland between 1866 and 1892 served less than two years.

Scottish juries rarely returned murder convictions, though the figures are somewhat skewed by the fact that Scottish murder defendants were much more likely to plead guilty than were those of the other nations. Nearly a quarter of those indicted for murder in Scottish courtrooms pled guilty to culpable homicide as compared with fewer than 5 percent of English and
Irish defendants. This may be because the defendants felt that, given the thoroughness of the investigation before the trial, it was foolish to fight the charges. At any rate, when the decision was left to the jury in Scottish murder trials, the jurors returned a conviction for the full offense in 15 percent of cases.

As in England, the judges in Scotland sometimes disagreed on the distinction between murder and culpable homicide. Trials heard by Justice Moncreiff were over twice as likely to end in murder convictions as were those heard by Justices Deas or Young. Scottish jurors also chose to ignore instructions on occasion. For example, after the judge assured a Glasgow jury that he “did not see a single thing in the case that could lead to any other verdict than murder,” the jury returned a unanimous verdict of culpable homicide. In another case a man pled guilty to culpable homicide after he stabbed a man on a footpath. The defendant was drunk and belligerent and simply attacked the first person he saw. The prosecution accepted the plea on the grounds that there could have been no prior malice since “they were complete strangers.” The presiding judge, Lord Young, announced that the attack was “what we are in the habit of calling murder,” but he sentenced the man to only fourteen years. In another case in which a strolling piper had stabbed a man he encountered on the road, the defense attempted to claim that the stabbing was the result of a quarrel, but Lord Ardmillan insisted “there were no degrees of malice in the Scottish law” and insisted on a murder verdict.

Though the numbers were small, the Welsh were more likely to return murder convictions than were the Irish or Scots but less likely than the English. The Carmarthen Weekly Reporter insisted that Welsh juries were reluctant to return murder convictions because of their religious conviction that the death penalty represented a usurpation of God’s sole authority over life and death.

Everywhere a murder conviction carried an automatic death sentence, though the Crown through the Home Office could commute the sentence. Juries gave their recommendations regarding mercy with their verdict and the presiding judge passed them on with his recommendations. In prominent cases, communities often presented petitions as well.

Even though the Home Office in London made the ultimate decision in all capital cases, there was considerable variation among the nations. Between 1867 and 1892 the Home Office allowed 58 percent of English death sentences to be carried out. Though the percentage of English death sentences being carried out remained relatively constant, the percentage of homicide trials in England which led to execution went from 16 percent for
the period 1867–1874 to 27 percent for the period 1885–1892. Death sentences were most likely to be carried out when the murder had been committed in the course of another felony such as robbery or rape or when the killer had been taking revenge on a woman (other than his wife) who had spurned his romantic advances. About half of Welsh murder convictions resulted in executions, but the numbers are so small it is hard to reach many conclusions.

Irish juries were the least likely to return a murder conviction, but the Home Office was also least likely to commute an Irish death sentence. Irish defense attorneys routinely warned against “the foulest of all crimes, namely the bringing about of judicial murder.” In one particularly grisly case in which the accused had broken into a home and hacked a woman to death, two jurors admitted they believed the defendant was guilty but as members of the Anti-capital Punishment Society they would never vote to convict. Only 4 percent of Irish homicide trials ended with murder convictions. But 67 percent of those sentenced to death for murder in Ireland were executed. There is a chicken-and-egg aspect to these figures. Because Irish death penalties were the most likely to be carried out, it would seem wise for Irish juries to be particularly cautious in risking them. On the other hand, given the difficulty in obtaining a murder verdict in Ireland, it might be that those who were convicted were particularly deserving of harsh punishment. In fact, those most likely to be executed in Ireland were convicted of murders in connection with land or politics.

Scottish death sentences were the least likely to be carried out. Only 34 percent of the condemned in Scotland were executed. Given the fact that a murder conviction in Scotland could be based on a majority of one, the need for mercy may have been greater. But over half of the death sentences that were commuted had been based on unanimous verdicts. Further, the jury had been split in over a third of the cases in which the death sentence was carried out. Nor was it simply a matter of the Home Office correcting for overzealous verdicts. Only 2 percent of all persons tried for homicide in Scotland between 1867 and 1892 were executed. Those most at risk of actual execution in Scotland were those convicted of murder while poaching.

The sentences in manslaughter and culpable homicide convictions could range from immediate release to life in prison. As the Scottish Justice Lord Deas explained, culpable homicide “sometimes may be quite properly visited with a few weeks improvement and at other times it is a crime which meets the highest punishment of the law short of death.” Though sentencing in manslaughter cases was at the discretion of the judge, the general sentencing patterns give some indication of the relative weight given to various types of
homicide according to circumstances. The national averages varied. Sentences were lightest in Ireland, where the average sentence was three years (this includes all cases where the initial charge was homicide, though the conviction might have been for assault or a lesser charge). The Scottish average was nearly two years longer than the Irish, and the English and Welsh another year longer than that of the Scots. Of course, within nations judges varied as well.

INSANITY

The other possible outcome was a finding of insanity. The percentage of cases ending in insanity verdicts was remarkably similar among the four nations, all falling between 5 and 8 percent of cases. Everywhere domestic cases were the most likely to result in insanity verdicts, followed by cases involving blighted romances. But all of the complexity, indeterminacy, and ambiguity of the British legal system is clearly evident in the issue of insanity. There was no statutory definition of insanity. The definition given in the M’Naghten Rules that “the accused at the time of committing the act was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong” was often cited in English cases. But in fact the definition of insanity in any given case was very much at the discretion of the judge and jury. The definition most often applied in Scottish courts derived from Hume, who stated that “[t]o serve the purpose of a defense in law, the disorder must amount to an absolute alienation of reason, such a disease as deprives the patient of the knowledge of the true aspect and position of things about him, hinders him from distinguishing friend or foe—and gives him up to the impulse of his own distempered fancy.” But, as in England, the definition was ultimately in the hands of the jury.

The instructions given by English judges indicate a considerable degree of disagreement. As an attorney explained to a Central Criminal Court jury in 1869, “[T]he question of insanity as applied to the criminal law was exceedingly difficult and one with respect to which many learned judges had differed in opinion.” Justice Brett insisted that the mere fact that the accused was insane or delusional did not suffice. While hearing a case in which a man had suddenly killed a coworker with an adze with no apparent motive, Brett told the jury: “No doubt the man was in a sense insane, that is he was probably under the influence of delusion and no doubt the act was sudden and there was no apparent motive for it; . . . but the question was not whether he
was of unsound mind, but whether he was so insane as not to know the nature of the act.” The Maidstone jury returned a verdict of “guilty but not accountable for his acts.” Since this was not a legal verdict, the clerk of the Assize asked, “[T]hat is you acquit him on the grounds of insanity?” When the jury agreed, Justice Brett then asked, “[I]nsanity in the sense I have explained to you?” Once again the jury agreed.69

The confusion over the meaning of the jury’s initial verdict was addressed in the Trial of Lunatics Act of 1883, which changed the procedures so that persons found insane were no longer declared “not guilty on grounds of insanity,” but rather “not responsible.” The change was largely semantic and at least one judge claimed that its impact was minimal. Justice Williams described the act as a “curious illustration of the way things were done in this county. For although it was his duty to go to the court to preside over the trial, it was only by the merest accident that the fact that such an Act had been passed was made known to him and he became aware of that fact by reading it in the newspaper. A copy of the Act was not delivered to him.” Williams went on to add that “he was not aware of the reasons for passing the Act.”70 His comment is particularly significant. All too often the statute books and legal commentary seem to be only minimally connected to the realities of courtrooms.

The Times suspected that English judges and medical experts were too lenient. In 1883 a leading article described the case of a man who had murdered his child as “only too fairly representative of a class of cases frequent in English courts.” After outlining the man’s history of violence, the newspaper noted that “those not uncommon symptoms of lawlessness and ruffianism satisfied one doctor that the defendant was ‘a typical lunatic with dangerous delusions.’” But to the newspaper’s satisfaction, “the jury were not convinced by the familiar argument that a man who does anything particularly wicked must be insane. . . . For years the plain men who sit in jury boxes have been assailed by medical theorists who seek to discredit all the old homespun ideas as to responsibility.”71 Three weeks later, when the sentence was commuted on grounds of insanity, the Times suggested that the Home Office would do well to ignore “theorists who gauge the extent of a criminal’s insanity by the magnitude of his crime.”72 Cases in which the jury rejected an insanity plea but the Home Office intervened after the fact and had the killer transferred to an insane asylum were particularly galling as they seemed to undermine the jury system altogether.73 But in England the trend favored the medical men. Though the actual number of homicide trials ending in insanity verdicts was constant, the percentage of homicide trials resulting in insanity verdicts rose from 7 to 10 percent in the late 1880s.74
One of the main problems many people had with insanity pleas was that they suggested a lack of will and control, two key virtues for the Victorians. When a grocer who had killed his wife and brother-in-law out of unfounded jealousy claimed, “[I]t wasn't me, it was my brain,” his plea exemplified the detachment between self and actions that many found objectionable. Justice Honyman complained that “uncontrollable impulse was ‘the cant of the day.’” Justice Huddleston cautioned a jury against “taking a cowardly refuge” in insanity verdicts. “It was not any idle frantic humour, not any eccentricity or something unanswerable or unexplained which would justify a verdict of insanity.” Justice Bramwell appeared to share this view. When a witness spoke of “homicidal mania,” Justice Bramwell interjected: “[Y]ou mean a morbid appetite to do wrong. If an insane man knew he was committing murder that man was responsible. It was not enough to have a homicidal mania. The object of the law was to guard against mischievous propensities and homicidal impulses. He did not believe in uncontrollable impulse at all.” But, as was often the case, the judge’s rhetoric during the trial did not square with the outcome. The accused was found insane and Justice Bramwell voiced his support of the verdict. “It would have been impossible, gentlemen, for such a man to be executed—too shocking and cruel. It is a very sad case and the man is deeply to be pitied.”

Some scholars have argued that this link between strength of will and insanity had rendered the insanity question a highly gendered one. Gender will be discussed in depth in chapter 3, but regarding insanity the homicide records indicate that the link between insanity and feminine nature may have been overstated. While women homicide defendants were more likely to be found insane than men (16 percent of female killers compared to 6 percent of men), 60 percent of accused killers who were found insane were men. Much has been made of the link between infanticide and insanity verdicts, but in fact the likelihood of an insanity verdict for a defendant accused of killing his or her own child was not highly influenced by gender. Twenty-three percent of English mothers accused of killing children were found insane, but so were 18 percent of English fathers.

The Irish were even less inclined to link insanity with femaleness. Nearly 90 percent of the Irish killers who were found insane were male. The killer most likely to be found insane in Ireland was a man who had killed his lover or an adult relative. Given the presumption that homicide was often the result of uncontrolled passion, it might be expected that the Irish were particularly likely to find insanity verdicts. But that was not the case; instead, Irish courts often saw uncontrollable impulses as a universal problem. Also, since sentences for manslaughter in Ireland were lighter than in other coun-
tries, an insanity plea might have been counterproductive. One judge even recommended that defendants not plead insanity “since it could mean being kept in an asylum for an extended period.”81

Scottish homicide trials were the least likely to end in insanity verdicts. This may have been in part because Scottish courts were willing to find diminished capacity as a mitigating factor in homicide cases. In the Dingwall case in 1867, Lord Deas told a jury that while the defendant could not be found insane, they might return a finding of culpable homicide since his chronic drunkenness indicated diminished responsibility. This precedent was not always followed, however, even by Lord Deas.82 In fact, in 1875 the superintendent of the Glasgow Royal Asylum complained in the Times that “it is a grave defect in our criminal law that it does not recognize degrees of insanity and corresponding degrees of culpability. A jury should have the power not merely to commend a culprit to mercy and so mitigate his punishment, but to declare him entitled to a mitigation of punishment when they are satisfied that there exists mental weakness, although not to the extent of irresponsible insanity.”83 The likelihood of an insanity verdict in a Scottish homicide trial was the same for men and women.

**Drink and Responsibility**

In addition to the possible precedent of diminished responsibility, the Dingwall case was also cited as a precedent for accepting drunkenness as a form of mitigation. Everywhere alcohol was a frequent factor in homicides. In England and Wales alcohol was specifically mentioned in about a quarter of homicide cases. But Justice Huddleston told a jury that “[f]ive/sixths of cases in the calendar throughout the country might be traced to intoxication, for which there was no excuse whatsoever.”84 It might well be that Huddleston’s estimate was closer as alcohol may have been so common in homicides that it was not thought worthy of mention. Alcohol was reported as a contributing factor in 28 percent of Irish homicide cases, though, again, in many situations the presence of alcohol was probably deemed too obvious to mention. Parliamentary reports on crime in Ireland concluded that “[t]he great problem indicated by the statistics of Irish crime is how to deal with drunkenness and the crimes connected therewith.”85 The Scots were the most likely to record the presence of drink in homicides. Either the killer, the victim, or both were reported to have been intoxicated in 40 percent of Scottish cases, but even this may be an understatement.

Despite the temperance movements found throughout the British Isles
during the late nineteenth century, drunkenness was still often taken for granted. After hearing a case in which two young men had killed a third during a fight in a pub, English Justice Grove “commented on the frequency of crimes of violence which arose from drunkenness, but he added that this vice was regarded unfortunately in so venial a light by a large class of the more uneducated people, that such an expression of opinion seemed to be wasted on them.” The punishment in the case was also venial—three months each. These circumstances were by no means unique to England. In Crieff, in central Scotland, a stabbing victim bled to death on his own front porch as neighbors and even a policeman passed by, assuming he was drunk. In a case from Glasgow in which a man had killed his wife using a hammer, a poker, an iron bar, and clogs, witnesses explained that both the accused and the victim were addicted to drink, “though otherwise they had borne a respectable character.” The same sorts of comments were heard in Irish courts. In Kilkenny, a man who had murdered his own child was described as “a very good man—with one exception—that he drank.”

Given these views, how much and whether drunkenness mitigated a homicide was always a moot point and judges themselves seemed ambivalent. When a man in Manchester was convicted of killing a friend by kicking him in the stomach, Justice Lopes told the jury the man had acted “while under the influence of drink and not from any feeling of animosity. Still life must be respected.” To show this respect, he sentenced him to three months. But other English judges felt differently. Justice Lush told a jury “if a man were lying in the road dead drunk waving a sword about and he thereby caused death he would not be guilty of murder, but nothing short of that would reduce the crime to manslaughter.” An English defense attorney argued that “while drunkenness is no legal excuse for crime, no man should in my judgment be put to death for murder committed while drunk.” But Justice Bovill staunchly announced the rationale for not accepting that argument: “Drunkenness voluntarily caused by a person was no answer whatever to a charge of murder and it did not reduce what would otherwise be murder to the crime of manslaughter. That was the law of the land and if it were not so, there would be no protection to society.”

But other judges did feel that drunkenness worked against a murder conviction. Justice Day told a jury, “I have ruled that if a man were in such a state of intoxication that he did not know the nature of his act or that his act was wrongful, his act would be excusable.” The prosecuting attorney cited a ruling by Justice Manisty that “disease brought about by a prisoner’s own act, e.g. delirium tremens caused by excessive drinking—was no excuse for committing a crime unless the disease so produced was permanent.” Manisty had
told a Manchester jury that “if the prisoner's insanity was only temporary and produced by his own excesses the law did not excuse him." But Justice Day explicitly rejected the precedent insisting that “the issue was insanity not its cause or whether it was temporary or permanent." Lord Chief Justice Coleridge apparently agreed with Justice Day. In 1886 he told a jury that a “principle of the law was that a man must be taken to intend what was the natural consequences of his act... drunkennes was no excuse for acts done. . . . They must administer the law as they find it and it could not be perverted to meet any feelings of mercy.”

English juries were less likely to acquit drunken killers than sober ones. However, they did seem to find some mitigation in drunkenness as sober killers were more likely to be convicted of the full crime of murder than were drunken ones. However, the Home Office was more likely to let an execution go forward if the killer had been drunk. Welsh juries were slightly more likely to acquit drunken killers than sober ones. They were also nearly twice as likely to convict sober killers of murder as drunken ones. When a Welsh jury acquitted two men who had beaten and kicked a friend to death during a drunken fight, the judge said the verdict was proper but “gave them a severe caution for this mingling themselves up in a drunken row in which a fellow creature was sent unprepared to his great reckoning.” Though English and Welsh juries were less likely to return murder convictions if the killers had been drunk, judges were harsher in sentencing. In manslaughter convictions, the average sentence given to a drunken killer in England and Wales was eighteen months longer than for a sober one. English authorities may have been more concerned about drunken violence than were middle-class jury-men who were rarely threatened by it.

The situation was reversed in Ireland where defendants who had been drunk at the time of the homicide served shorter sentences and were much less likely to be executed. Only one of the fifty-four persons hanged for murder in Ireland during the period was reported to have been drunk at the time of the crime. Irish judges and jurors seemed to accept that drink was a good man's failing. As one Irish judge said, “[I]t was very hard to know what punishment to mete out to a man who was ordinarily quiet and well behaved as long as he was sober but violent and uncontrolled when drunk.” This also follows general trends in which Irish courts were likely to see killers as victims of circumstances who were not fully accountable for their actions.

Despite the Dingwall precedent, the Scots were less tolerant of drink as an excuse for homicide. Killers reported as having been drunk at the time were convicted 82 percent of the time versus only 50 percent of those who had not been reported as drunk. Drunken killers in Scotland were seven times more
likely to hang than sober ones. When convicted of culpable homicide, 24 percent of those who had been drunk were sentenced to more than ten years in prison versus only 4 percent of the sober. Generally then, English, Irish, and Welsh jurors were more likely to see drink as mitigation whereas Scottish juries saw it as worsening the offense. This corresponds with a general trend for Scottish juries to be more likely to stress individual responsibility and the need for atonement.

ACCIDENTAL DEATHS

The focus of this book is on the relationships between killers and victims, but there were two categories of homicide in which there was no relationship. In 1873 an article in the *Daily News* titled “The Annual Massacre in England” noted, “In England and Wales, a population as large as that of the city of Winchester, is every year swept away by violent deaths, accompanied in many cases by mutilation.” The article went on to make some rather striking comparisons. First, it compared the slaughter to that of revolutionary France: “If every inhabitant of the two towns of Margate and of Melton Mowbray had been guillotined or drowned on the first of January 1871 there would have been hardly a larger number of violent deaths than actually occurred in this country during the year in question, while the total sum of suffering and torture endured by the victims would undoubtedly have been considerably smaller.” The next comparison was to the primitive outposts of the empire: “In 1871 an Englishman runs from seven to eight times as great risk of a violent death than an East Indian does from wild animals.” The article then returned to the French as the standard for horror. “The English are being slaughtered, steadily, certainly and remorselessly slain at a rate which every two years sacrifices as many victims as the Massacre of St. Bartholomew.” Clearly few things could be more outrageous than that Englishmen were as much in danger as Frenchmen or Indians.

The statistics were shocking: “Every day of the year forty-seven English people are killed with suffering and mutilation of the most excruciating kind.” What is most remarkable for our purposes is how little of this slaughter fell under the heading of homicide. Criminal homicides accounted for only 2.5 percent of the violent deaths in England and Wales. The inspiration for this hysterical rhetoric was the number of deaths in mining and railway accidents and the fact that the authorities seemed to be doing very little to prevent them. “Are the fitful and momentary outbursts of impatience such as are exerted on the occasion of some unusually fatal colliery or railway disab-
ter the only signs of concern we shall ever see in the face of the tragedies occurring every day and everywhere around us?\textsuperscript{99}

For the United Kingdom as a whole, more than 7 percent of deaths reported as criminal homicide trials dealt with accidents, though the distribution varied considerably. While accidents constituted 5, 6, and 8 percent of homicide trials in Ireland, England, and Wales respectively, they made up 14 percent of the criminal homicides tried in Scotland. The Scots were much more likely to use the criminal court to investigate deaths from industrial or railway accidents—tragedies that authorities in the other countries were more likely to see as misadventures rather than crimes. Because there were no coroners’ juries to investigate such deaths, Scottish judges often praised the use of the criminal courts as a scene for public investigation. Juries sometimes acquitted the defendants but passed resolutions condemning the industry for lax practices.\textsuperscript{100} But Scottish courts were also slightly more likely to convict in such cases than were other British courts. Even when there was no malice, the Scots were more likely to hold someone accountable. Scottish courts believed in atonement even when the sin had been unintentional. Lord Young summarized the situation at a Glasgow court: “They were cases of neglect on the part of persons of respectable character, but neglect which had been attended by serious and unexpected consequences.”\textsuperscript{101}

Predictably the number and types of accidental deaths which were treated as criminal varied among the nations. An investigation by the Statistical Society of Great Britain published in 1886 found that the accidental death rate in Scotland, England, and Wales was more than twice that of Ireland.\textsuperscript{102} Since most of the accidents were related to either mining, railway, or construction, the low Irish rates reflect that Ireland was so much less industrialized. Seventy-one percent of the homicide trials resulting from accidents in Ireland involved carts colliding or running over pedestrians. In most cases the driver had been intoxicated. But the Irish courts were very tolerant. Fewer than 20 percent of persons charged with criminal homicides in a traffic accident served any jail time as a result. However, as is often the case, the Irish figures are highly suspect as some county police departments chose to report vehicular homicides in the outrage figures and some did not. Nearly half of the reported cases were in Ulster where vehicular homicides were the subject of more than 6 percent of homicide trials.

Thirty-nine percent of English trials for accidental homicide resulted from road traffic accidents. Justice Bramwell complained to an Old Bailey jury that there was a “mistaken notion which drivers of vehicles too often entertained that the road belonged to them and that they had a sort of right to run over anybody that happened to come in their way.”\textsuperscript{103} When a cabdriver ran over
and killed a woman in 1874, the *Times* reported that “[t]he only fact weighing against the prisoner was that he was intoxicated at the time, but he was driving at a steady, if not slow, pace and the scene was intensely dark.” The jury acquitted him.104 But this jury was more lenient than most. In England 70 percent of cart drivers tried for killing a pedestrian while driving drunk were convicted as opposed to only 25 percent of sober drivers. However, the sentences were always light.

Nor was negligence always considered criminal. English judges were divided over the criminality of negligent homicide. Justice Lindley told a jury hearing a manslaughter case in which an elderly man had died of complications after being run over that it “did not necessarily follow that they ought to convict because the prisoner had been guilty of some degree of negligence.”105 On the other hand, when two brewers were accused of running over an elderly deaf woman, Justice Stephen insisted that it was the “duty of those who drove to take care of the public and not the duty of the public to look out for persons who were driving at an excessive or dangerous pace.” The jury acquitted them, leading Justice Stephen to say that had they been convicted, he would have given them a severe sentence.106 Stephen never got a chance to act on this threat. The accused were acquitted in every accidental homicide case he heard during the period.

Judges were sometimes more condemnatory in their rhetoric than in their sentencing. John Baker, a fish hawker at Grays, drove his cart through a crowd of people, killing a pedestrian. When told he had killed a man, he said, “And a good job too! What business had he to be there?” Justice Hawkins said, “People had a right to walk in the road and were not to be driven over recklessly even if men were lying in the road drunk, anyone deliberately driving over them was guilty of murder.” However, after the jury convicted Baker, Hawkins sentenced him to only three months although he had several prior arrests.107 Two months later, a drunk who had driven over and killed a man while speeding was sentenced to five months. The judge said, “The public highways were open to all her Majesty’s subjects[,] the public had a right to pass along them and if the prisoner drove fast he did it at his own peril.”108

The pronouncement is interesting since it would seem the greater peril was for his victim. In England the average sentence for a homicide involving a horse-drawn vehicle was less than four months, and nearly 20 percent of convictions resulted in no jail time at all.

Only twelve Scots were tried for cart homicides, but half of them were convicted and all of the convicted served jail time. In 1869 at Peebles, Hames McGrath was sentenced to twelve months for running over a deaf and dumb woman in his gig. Two of his passengers were given nine months each as
But in another case, a drunken car driver who had killed a three-year-old child who was standing on a sidewalk won a not-proven verdict by a vote of eight to seven. Cart accidents were more likely to lead to criminal charges, even though trains were far more lethal. The average annual death toll in rail accidents was more than a thousand. In 1869 a Times editorial urged, “A more punctilious reverence for human life must be encouraged. Homicidal negligence must be frowned down by society as well as homicidal anger. Railway companies are guilty as Companies, when they pound to pieces their passengers in one train by the engine of another.” But many English judges felt that carelessness on the railways was not criminal. Justice Cleasby told a jury if an engineer “was attending to his business and carrying out the regulations of the company in the ordinary way, he could not be held criminally liable because he had made a slight error in speed.” The man who had been driving a train at thirty miles per hour when he should have been going fifteen was acquitted. In another case, Justice Bramwell explained: “A man was not liable necessarily because he was unskilled or careless. He was criminally liable if the act was so negligent or careless that his fault could only be properly punished by a criminal conviction.” Of the fifty-three men tried for criminal negligence resulting in deaths on English and Welsh railways, only six served any jail time. The longest sentence—twelve months—went to a stationmaster who had left a teenager in charge. The collision had killed thirteen people, and Justice Hawkins said it had been “inexcusable to leave a fifteen year old boy who was working twelve hour days at 7 shillings, 6 pence a week in charge of the station.”

After a trial for a rail accident resulted in acquittals all around in 1869, the Times complained that the result demonstrated a flaw in the English character: “Foreigners who edify their countrymen with Letters on England may find a rich subject for their comments in a story which came to an end last week. With all our Anglo-Saxon recklessness we are not indifferent to human life, and the sacrifice in this case was so appalling that the whole machinery of our institutions was instantly set in motion for the purpose of detection and retribution.” But the efforts of the system had come to naught. “Nobody is punished for it is nobody’s fault. . . . What a picture of inconsequence, heedlessness and failure. Was there ever a people like these English?” Six months later the circumstances were repeated. After a railway collision at Nottingham was ruled accidental, the Times concluded: “Thus there has been a loss of seven human lives, an enormous amount of terror and suffering and no one is to blame.”

The worst rail accident in England during the period was at Thorpe in
September 1874 when a train collision killed twenty-five. The night manager of the station was convicted and sentenced to eight months. The *Times* was not content. “We do not know whether anybody is satisfied with this result. It has always seemed to us scarcely worth the trouble to hunt down such small game as station masters, engine drivers and telegraph clerks while the system which renders their blundering fatal escapes any effectual criticism.”

The *Scotsman* shared the concern of the *Times*, complaining that the railways were conducted with the “most common and culpable carelessness.” Officials, the editorial complained, played with lives “as a juggler plays with balls.” The *Scotsman* even suggested that the miracle was that more people were not killed. “Every day’s experience show men how much they are dependant for their safety upon the simple exercise of care on the part of other men and the wonder really is that so many people in places of responsibility do exercise the care necessary to avoid danger.” A third of the criminal charges brought for accidental deaths in Scotland stemmed from rail accidents, and Scottish juries often concluded that the problems were systematic. For example, in a case from Edinburgh, the jury acquitted the engineer and added their “disapprobation of the laxness which appears to have existed in the supervision of the working of this particular train.” Another jury passed a resolution “condemning the lax practice that has been proved particularly disregarding the rules of the railway company.” In 1878 an Edinburgh jury found the driver and signalman in a collision guilty, “but recommended them to the leniency of the court in respect the company were to blame in not having enforced the rule as to lighting the lamp at the distant signal post.”

But Scottish judges were also wary of letting individuals off. Justice Deas probably had this case in mind when a week later he heard charges against a stationmaster and a railway point man for a railway collision in Inverness. Justice Deas charged against the accused. “Even supposing the company were to blame for not strictly adhering to their published rules, that would never do away with the blame of the servants in plainly neglecting their duty. He held it would be dangerous to the public to go on encouraging acquittals in cases of this sort where such neglect was clearly proved.” The issue of personal responsibility was also stressed in a case heard by Lord Ardmillan in 1873. After hearing a stoker who had been involved in a collision testify that the engineer had “said someone should go back for the purpose of signaling the passenger trains to stop I considered that it was the brakeman’s duty and not mine to do this,” Lord Ardmillan promptly spoke up: “Allow me to tell you that where there is the slightest chance of danger every man should do what he can to prevent any accident taking place, and if you saw that the
right man was away you would never have been the wrong man to have done it, and you ought to have done it.” The brakeman also told the court, “I have been in the employment of the Railway Company for four years and have never got a rule-book.” Again Justice Ardmillan interrupted: “Allow me to recommend to you first to get a rule-book and then to make yourself master of what it is your duty to do, and just act like a man of sense and do your duty for it is not like a man of sense not to have a rule-book, and still less of those who employed you not to have supplied you with one.” Lord Ardmillan had no opportunity to issue a sentence in the case as the jury acquitted the accused brakeman and the stationmaster. However, Lord Ardmillan’s direction to “act like a man of sense and do your duty” was a frequent theme in Scottish courts.

Though rail accidents were more frequent in Britain, the deadliest railway accident of the period occurred in Armagh, Ireland, in 1889. Extra cars had been added to a Sunday school excursion train to carry six hundred extra passengers, but the locomotive was not powerful enough to carry them all up a hill. To correct the problem the engineer had the last ten cars detached so that he could get the front part over the hill. During acceleration, the front part of the train reversed slightly, tapping the back part which then rolled backward down a hill, crashing into an oncoming train. The passengers had no means of escape because the doors of the train cars had been sealed to prevent people entering without paying. Eighty-eight people were killed, many of them children. Four railway officials were tried for manslaughter and the prosecuting attorney urged the jurors to return a guilty verdict as “he was sure that it would be a lesson to other officials in the future. If [they] were found guilty, it would be for the Judge to pronounce punishment, which would be as lenient as possible.” But the Dublin jury acquitted them all. As in the cases from England and Scotland, the point of the trial seemed to be primarily to allow a public investigation of the circumstances rather than to punish those responsible.

**MURDEROUS STRANGERS**

At the other extreme was murder by strangers, including robbers, rapists, serial killers, and lunatics. Such crimes accounted for only 6 percent of homicide trials on the island of Britain and only 4 percent in Ireland. However, since such crimes are often the hardest to solve, the gap between the number of crimes and the numbers of trials is probably higher in this category than others. Certainly the popular image of “murder” conjured up a monstrous
stranger. In describing a tramp who had been arrested and charged with the murder of a family at Denham, the *Times* claimed, “T]he man, seen anywhere and under any circumstances would be judged to be of a particularly brutal type. His head indicating a thoroughly animal organization.”

But the assumption that killers looked different from other people was also challenged by the *Times*. In an article titled “Mild-Looking Murderers,” the newspaper described how surprising it was for observers at a murder trial to see “a mild-looking lad in the place of the ruffian they expected to behold. The disposition to suppose that men guilty of base crimes must necessarily look as brutal as their deeds is so common that novelists, who follow in this respect the temper of mankind, do not venture to portray murderers possessed of a comely countenance.” The *Times* warned that “the human visage is not altogether a trustworthy indication of character; heavy brows do not always stand for foul motives and frank and pleasant countenances are sometimes the masks of viler sorts of men.”

In addition to giving a false impression of how murderers looked, writers were also suspected of inciting further violence through sensationalism. Murder in late Victorian England usually brings to mind Jack the Ripper, perhaps the most famous multiple murderer in history. But the Ripper’s fame has as much to do with the media as with the crimes themselves. As the *Scotsman* pointed out in February 1891 when a woman was murdered at Whitechapel eighteen months after the Ripper cases, “there is, unfortunately nothing abnormal in the occurrence of a murder in a locality like Whitechapel. Or in the fact that the victim was a friendless and almost nameless street waif. Had the report come from any other quarter where crime and vice abounds, it would have attracted only passing notice.” At least sixty-eight women other than the known Ripper victims were found murdered and mutilated in England between 1867 and 1892. In 1873 the *Times* reported the accumulation of female body parts along the Embankment. After the corpse was more or less reassembled, the woman was buried without ever being identified.

Though the crime was not unprecedented, the publicity given the Ripper case did inspire imitators. In fact, over a third of the stranger murders committed in England between 1867 and 1892 happened in the three and a half years after the Ripper cases. Though some of these murders were clearly inspired by the Ripper case, it may also be that reporting became more vigilant. As the literacy rate rose and along with it the availability of the penny press, there were concerns that sensational coverage served to increase crime. When six months after the Ripper murders a young man was convicted of murder after nearly decapitating a ten-year-old girl, Justice Wills said the case
was “mysterious, very unusual and exceptional, an aimless motiveless crime, probably the morbid result of reading the accounts of the horrors which of late have appeared in the newspaper.” In 1892 the Times complained that “for many minds revolting crimes possess an unwholesome fascination, which appear to be irresistible. Their owners positively gloat over stories of cruelty and bloodshed. They crave for the minutest details of such histories and are eager for the ampest information as to the lives, characters and antecedents of the actors and the victims in all sensational crimes.” Nor was such voyeurism limited to the masses: “The prurient curiosity which leads large numbers of respectable people to saturate their minds with every incident they can collect relating to whoever happens to be the most notorious scoundrel of the hour and to hanker for still further knowledge as one of the most striking characteristics of this age.” Of course, the Victorian press was lively before the Ripper case and murder had always made good copy. In 1878 a sailor who had murdered a shipmate explained: “For the last twenty years I have read all kinds of books about all kinds of murders and I always thought I would be hung.” A seventeen-year-old who murdered his landlady in 1870 said he was led to it “by reading of recent murders and that he had long taken a marked interest in perusing narratives of murders.”

The public was also drawn to visit the sites of horrific crimes. After a double murder in London, the Times reported, “The two squares where the murders were perpetrated have been visited by immense crowds, but of course there is nothing to be seen there, the houses being closed up and under the charge of the police.” When a man cut his sweetheart’s throat and then his own in Wolverhampton, “hundreds of people were allowed to view the body, which was laid out in a concert-room adjoining a publichouse.” Fifty thousand people attended the funeral of a murdered boy in Liverpool. After a murder in Kent, “upwards of 20,000 persons visited the scene of the murder on Sunday, the majority coming from London.” In another case “the marked desire to possess some memento of the horrible crime has shown itself very prominently among the visitors to the cottage . . . a fir tree has nearly been stripped and many loose articles abstracted. Buses and pleasure vans provided for the trip.”

But when it came to morbid curiosity, the Times believed the English were superior to other nations. The newspaper offered the public reaction to the execution of a murderer in America as an “illustration of the morbid interest in criminals which has of late years been displayed in this country and in France but which may perhaps claim America as the country of its origin.” Sensationalism could all too easily lead to glorification. “A murderer, after all, is a person of whom a civilized country may reasonably be ashamed but
According to another method of procedure, the commission of a murder is a
direct road to an amount of notoriety which many feeble-minded persons
would rush into crime in order to obtain.”

Among the horrifying aspects of stranger murders was that the victims
were often completely defenseless. Though the Ripper murdered prostitutes,
children were the victims of many of his imitators. Over a third of the vic-
tims of mutilation murders in England were children between the ages of two
and fifteen. An old man who murdered a twelve-year-old boy in Liverpool
confessed to his crime, insisting, “I was impelled to the crime while under the
influence of drink by a fit of murderous mania and a morbid curiosity to
observe the process of dying.” Less than two weeks after the Liverpool
cases, “a murder similar in some respects to those of Whitechapel” was
reported from Leeds where the mutilated body of a five-year-old girl was dis-
covered. A local man was arrested after his mother discovered the child’s body
in their cellar. The autopsy revealed forty to fifty wounds on the child’s
body. Six months later another five-year-old girl was found raped and
strangled in Brighton. A man who had been seen speaking with the child
was arrested. Though his attorney argued that the “[c]rime was so revolting
to humanity, that of itself it indicated insanity,” the jury convicted him after
a six-minute deliberation. Not only were children victims of crimes
inspired by the coverage of the Ripper murders, sometimes children com-
mitted the crimes. At Winchester an eleven-year-old boy was accused of mur-
dering an eight-year-old boy in a deliberate copycat of the Ripper crimes.
The reported rate of child murders by strangers was more than twice as high
in England as it was in Ireland or Scotland. But the judicial responses were
predictable. Everywhere, when an arrest was made, the accused was either
convicted of murder or found insane. In England, when the victim of a
stranger murder was a child, two-thirds of convictions led to execution.
Another 20 percent of the English cases led to insanity verdicts. Three trials
for child murder by strangers were held in Scotland. Two led to murder con-
victions and the third to an insanity verdict. There were two Irish cases: a
man who had raped and murdered a six-year-old was executed and a young
lady who had murdered a little girl was found insane.

Motiveless murders were (and are) particularly frightening. However
wrong it may be to blame the victim, it is only human to derive comfort from
the notion that the victim demonstrated some behavior or characteristic
which can somehow be avoided by the rest of us. When a gang in Liverpool
beat a respectable working man to death when he refused to give them
money, suggesting that they “might work for their money, the same as he had
to,” the Spectator warned that such crimes were a sign of the end of civiliza-
tion. “The murderer had no grudge against the victim, did not so far as appears attempt to rob him, was not drunk to the point where he could understand nothing, but acted from sheer love of brutality, the pleasure of feeling his own power to kill.” Murder without a rational motive was “the most dangerous, perhaps, if not the wickedest of all crimes. The brave who kills for revenge, or the burglar who kills for booty[,] even the man who kills out of mere temper is easy to deal with, compared with the man who will commit murder almost in sport, out of a wanton desire to realize his own power.”

In England, in cases where no clear motive was discovered in a murder between adult strangers, nearly two-thirds of those convicted were executed. Slightly less than a quarter of those tried were found insane. In Ireland 43 percent of the convicted were executed and 45 percent found insane.

Despite the implication in the English press that murders inspired by greed were preferable to motiveless ones, homicides during robberies also inspired shock and horror. When a middle-aged woman in Oxford was murdered in a public street by a beggar, Justice Brett commented that “it was strange that in this country a respectable woman, void of offense, apparently protected by an advanced civilization and organized police on a high road near her own home should meet her death by murder.” After hearing four cases of violent robberies, Justice Bramwell complained about the needless violence: “Why were they not content with robbery? Why did they hurt them? It was such an unreasonable piece of cruelty; it was such a savage, barbaric thing, it was unendurable.” Ironically, the judge suggested that violence was the best response. “People would be better off if they lived in a place where there was no law at all, and each man defended himself when he was attacked by shooting the person who did it.” In England 49 percent of those convicted of killing during a robbery were executed. For those convicted of manslaughter during a robbery, the average sentence was nearly twice as long as the average for all manslaughters. The Irish courts were also particularly hard on robbery homicides. A third of those convicted were executed, and sentences for robbery manslaughters were nearly two years longer than the average.

But the Scots seemed to have taken a different approach. The Scotsman suggested that expecting killers to have rational motives was unrealistic. “It is curious and a singular instance of the faith in humanity that human nature is unwilling to believe [murder] was committed except at the pressure of some powerful motive. We all find it hard to believe that human blood could ever be shed for the sake of shedding it . . . whether for example there may not be monsters who, when they have tasted blood, are impelled by a purposeless passion
to go on sipping it.” Failure to accept that some killers might “take a delight in their deeds such as a wild beast experiences in slaughter” was naïve. “Why so gratuitously and commonly assume that all murders are traceable to vengeance and a desire of plunder?” Only twelve of the Scottish homicide trials involved cases in which an adult had killed an adult stranger without any explanation. None of the accused were executed and nearly half were found insane. Apparently the beastlike delight rendered them less culpable.

The Scottish courts were also more sympathetic to those who killed for plunder. Only one Scot was executed for killing someone during a robbery compared to seven Irishmen and thirty-four Englishmen. The average sentence given a Scot who killed someone during a robbery was less than half the average for England and only a third of the average for Ireland. For example, in Glasgow a young man had knocked an old woman down to steal her purse. She had died from injuries. He told police, “I am guilty of trying to snatch the old woman’s bag, but not of trying to hurt her in the least.” Though he had clearly acted with violence, the defense argued that she had died “of nervous shock acting on a weak, diseased heart.” The presiding judge said, “[I]t was a dreadful thing that old or infirm persons were not safe walking the streets of Glasgow in broad daylight.” But the young man was sentenced to only eighteen months.

The other major felony that often occurred in connection with a homicide was rape. In England 46 percent of those convicted of killing a woman during a rape were executed. If a weapon was involved, the number rose to 88 percent. On the other hand, when no weapon was involved and the victim died of exposure or from the effects of trauma, a third of those convicted served less than two years. For example, in 1881, when five young laborers raped a drunken widow and then pushed her down the stairs, the murder charges against them were dropped after it was revealed that she had died of peritonitis. One man whom the victim had named before her death served sixteen months, two others were sentenced to six months each for indecent assault, and two were acquitted. However, Justice Hawkins did comment “on the atrocious aspect in which the case presented itself and also upon the unmanly and unfeeling way in which they had behaved.” In another case, a young woman had jumped into the canal to escape a young man who had attempted to rape her. He had made no attempt to rescue her and had watched as she drowned. The grand jury threw out the homicide charges against him but “desired to express the abhorrence which everyone must feel at such infamous conduct.”

The Scottish courts were even less likely to take a hard line in rape homicides. Only one rape homicide in Scotland led to a murder conviction, and
half of the accused were acquitted outright. A master-builder in Edinburgh who raped a deaf-mute woman who was dying of heart and liver disease was initially accused of murder as her death “it is believed was hastened by the injuries she received.” But he was convicted only of assault and sentenced to fifteen months. Another man who confessed to smothering a widow with a pillow after raping her with a brush was allowed to plead guilty to culpable homicide and sentenced to five years. It was explained in mitigation that the man had been “drunk and dissipated since his return from India.” Another man who was charged with raping and killing a young woman in her father’s house was acquitted after it was revealed that her death was “from syncope caused by nervous trepidation.” Five miners were seen going into the home of a single woman in Glasgow; “the woman was not again seen till the following day when a neighbor found that she had received very severe usage from the men, her face and head being badly cut and swollen. She died Monday night.” They were all acquitted of all charges as were two miners charged with murdering a woman by “inserting a tin whistle into her private parts.”

The Irish courts took a much different stance. When a homicide victim had been raped, the accused was more than four times more likely to be convicted of murder and executed in Ireland than in Scotland. The average sentence given to an Irishman convicted of manslaughter during sexual assaults was six times longer than the average sentence in Irish manslaughter cases. Even when no weapon was used, as was true in 90 percent of Irish cases, a quarter of those convicted were executed and the average sentence for manslaughter convictions connected with sexual assaults was over fifteen years.

The number of homicide trials dealing with rapes and robberies is small, which makes drawing larger conclusions from the trial results particularly perilous. However, it does appear that the English and Irish courts were much more likely to accept the premise that such crimes were more heinous than other homicides, whereas the Scots were apt to see deaths that occurred during robberies or rapes as unfortunate accidents unless the presence of a weapon provided proof of intent. The results may represent the fact that the accused in the Scottish cases, though not necessarily acquainted with the victims, were usually local men. Even when a murderer was shown to be a native, he was often presented as a member of a brutal alien subspecies.

Of course, most homicides were not committed by homicidal strangers or robbers or rapists. In fact, most killers had no prior record of criminality. The defendant in most homicide trials was a friend or relative of the victim, and this is what makes the criminal courts such an important source in examining
basic cultural values. How do judges and jurors respond when the killer is not inherently Other but is a local man or woman responding to difficult circumstances? The choices made reveal a great deal about underlying assumptions regarding gender, power, class, and the boundaries between public and personal responsibility.

VERDICTS, SENTENCES, AND NATIONAL CULTURE

The verdicts and sentences in homicide trials were made by a great many different people who were rarely of one mind, but the overall patterns do reveal certain assumptions. The English courts were increasingly willing to use the full extent of the law’s power. The percentage of homicide trials which led to executions rose from 9 percent to 15 percent between 1867 and 1892. By contrast, Irish homicides tended to be seen in two ways—one was as the unfortunate result of a drunken brawl. The sentences in such cases (which made up nearly half of all Irish homicide trials) were very light. More worrying to officials were political assassinations—such crimes were often impossible to prosecute, but when a conviction was obtained, the killer almost invariably hanged. In Scotland the number and types of homicides being tried changed very little during the period. The number of homicide trials remained very low and most involved deaths that were unintentional if not purely accidental. Scottish courts insisted on atonement for the loss of human life, but the sentences on the whole were moderate. The rate of executions per 100,000 population was about two and a half times higher in England, Ireland, and Wales than it was in Scotland where the lower rate of reported homicides may have assured people that harsher measures were not needed.

Within these general trends, the most socially and culturally revealing elements are the respective social status, ethnicity, gender, age, familial ties, provocative behavior, and prior reputation of the killers and victims. The interaction between killer and victim was crucial in determining not only which deaths were considered criminal homicides, but also how judges, jurors, the press, and the public viewed them. However, the same factors that might make execution more likely in one nation might be considered mitigation in another. Despite the Union of Parliaments, the United Kingdom was still a collection of diverse cultures.