

## Reports of Execution: Bolstering and Dismantling Justice

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*WRITER'S COMMENT: As an English major, I took a late interest in History after discovering that – aside from my horrid inability to retain names and dates – I find History papers just as fun as literary analyses. You can get so much information out of so little data by pulling it apart and piecing it together just right. This is not only what I most enjoy, it's also where I get to use my major best. This assignment more than allowed for both. While the class was about Early Modern crimes and punishments, this essay focused more on what happened after: how people used these particular elements to understand the society in which they lived. You can tell a lot about a society based on how its members manipulate the information they have and how the writing matches their intentions – successfully or not. This resulted in hours of scouring original texts for these signs, pulling out phrases that seemed relevant, and finding trends that often changed the direction of the essay. The trends I found sometimes made it impossible to work with secondary sources because it would take too long to debate with them, so I had to seek even more obscure sources. Enjoyment in the process had me working on it constantly to make it right and resulted in an essay of which I am proud.*

*INSTRUCTOR'S COMMENT: I first met Kristen in Spring 2013 when she and her twin sister Amanda, both Freshmen, enrolled in History 4B, my lower-division lecture course on early modern Europe. In this class we do a trans-historical, Star Trek-inspired reenactment of the Galileo trial. Kristen and Amanda, dressed in billowing togas, played the roles of Plato and Aristotle with substance and flair, sharing first prize for their portrayal. And so I was thrilled to see Kristen again in Winter 2015 in my History 132 on "Crime & Punishment in Early Modern Europe." In this class I ask students to grapple with the raw material of history, to get their hands dirty. Students read seventeenth- and eighteenth-century broadsides and pamphlets about infanticide, sodomy and a number of other capital crimes. They analyze particular criminal trials and place them in their historical context. Students find this quite a challenge: they have to familiarize themselves with poorly preserved texts with odd typeset ("s" looks like "f") and spelling*

*("murther" = "murder"), and then master the relevant secondary literature to contextualize their cases. Kristen showed herself to be an assiduous researcher and engaged with the characters she encountered – an infanticidal mother; a counterfeiter; a kidnapper – with historical empathy. It makes for a suspenseful read!*

– Kathy Stuart, Department of History

Execution pamphlets of the Early Modern era were a remarkable method of sharing large amounts of information in a relatively small space. Written during the trial or after a criminal had publicly admitted wrongdoing and faced the penalty, they were printed and sold cheaply to the public for moral education or entertainment.<sup>1</sup> As a result, individuals far from execution sites could read about crimes and subsequent executions. While the transcriptions of crime, penance, means of execution, and audience response to the display were informational, these reports also conveyed moral lessons and validated the judicial system itself. This is apparent in the following reports of crimes punished in Tyburn, England from 1680 to 1700 – reports on infanticide, clipping (trimming precious metals off coins), and kidnapping. Analysis of these reports of execution demonstrates not-so-subtle attempts to bolster judicial validity through highly fictionalized stories of crime and punishment. At the same time, by allowing for oblique criticism by the reporter and even the criminal, these pamphlets encouraged subtle resistance of judicial authority. As a result, the execution pamphlets both encouraged and provided means of resisting judicial power.

On September 17, 1690, Mary Bucknall was executed for the murder of her bastard child. The document presents a story in which Bucknall gave birth and then hid the child between her mat and her bed – neither of which her housemate witnessed. Despite her claims that the infant was stillborn, lack of evidence led to her condemnation and to a death sentence. The account then records her penitence and her warnings to others against sharing her fate. There is no account of the execution itself, as is generally included, nor is there a description of the audience's reaction to witnessing the execution.

Though Bucknall's attempts to hide the child were haphazard in a

<sup>1</sup> Sarah N. Redmond, "Staging Executions: The Theater of Punishment in Early Modern England," Florida State University: Electronic Theses, Treatises and Dissertations, Paper 1916 (2007): vi, <http://diginole.lib.fsu.edu/cgi/viewcontent.cgi?article=4400&context=etd>

way that suggests no plausible forethought, the description of the crime clearly intends to stabilize faith in the judicial system by suggesting a sinister intent. The record emphasizes Bucknall's continual secrecy: the other woman "perceived not, as she swore," nor did she notice the infant hidden under the mattress.<sup>2</sup> Though the record demonstrates knowledge of the events, there is no indication of how others knew this information. The author states that the child "was afterwards found," but the passive voice bears no indication of who found it or of relevant context.<sup>3</sup> The discovery is only important enough to merit a passing mention, secondary to discussion of Bucknall's intentions and secrecy. The lack of any substantiation of these claims suggests that these details are simply embellishment to the more significant focus: her evil nature. The record thus emphasizes the perceived deviousness of the woman who "dyed her hands in her own Infants Blood" and underlines the role of the judicial system in both discovering the crime and overcoming its evil.<sup>4</sup> What Malcolm Gaskill describes as an "essentially amateur, informal and haphazard system of secular law enforcement" therein proves its own worth by punishing crimes that might otherwise have gone unnoticed.<sup>5</sup>

This report also denotes a distinctive alteration to expectations of the criminal justice system. It remarks that Bucknall "seemed sorry during the intervene . . . that she should become Murtheress of the Infant of her Wombs."<sup>6</sup> Aside from her early claims of stillbirth, the document marks no other denial of the crime. Instead, it leads the reader to assume that Bucknall accepted the crime and her fate. Although she "seemed

2 Anon, "The last dying speeches and confession of the six prisoners who were executed at Tyburn this 17th of September, 1680 With the account [sic] of their behaviour in Newgate, and at the place of execution. With many remarkable passages worthy to be observed. The names of the executed persons are as followeth, viz. George Cole, Tho. Sutton, alias Browne, Tibia Hog, Mary Bucknall, Edward Willis, Edmund Dubber. With the account of their crimes for which they suffered," London : printed for T. Davies (1680): 2, [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99896510](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99896510).

3 Anon, "The last dying speeches and confession," 3.

4 Anon, "The last dying speeches and confession," 3.

5 Malcolm Gaskill, "Reporting Murder: Fiction in the Archives in Early Modern England," *Social History* 23, no. 1 (1998): 5, <http://www.jstor.org/stable/4286466>.

6 Anon, "The last dying speeches and confession," 3.

sorry" demonstrates penitence, the wording calls that into doubt, as there are no explicit cries for forgiveness, only an assumption based on her demeanor. On the other hand, the document implies that she gave herself the title of "Murtheress of the Infant of her Wombs" and that she willingly supplied gruesome imagery of her child's death (dyeing her hands in blood), implying overwhelming guilt and self-damnation. However, from their dramatic connotation these descriptions seem more part of judicial discourse than personal denunciation. In fact, the intensity of this description raises Bucknall to the level of a theatrical character who would readily be recognized as the villain or, to the more sympathetic, a fallen woman. Her situation, then, shifts into the simplified framework of the plays with which Early Modern audiences were familiar. In fact, according to Garthine Walker, these reports thematically and structurally matched the closure of the "didactic and narrative structure of ballads and pamphlets whose themes were sin, divine providence, and redemption."<sup>7</sup> While Bucknall is portrayed as a great evildoer, she nevertheless showed sorrow and regret in a way that might allow for redemption according to this mix of judicial discourse and fiction. The portrayal of criminals, then, might not have derived from their own words or have been true to the facts but instead provided a narrative in which evil was brought to justice, reinforcing morals and demonstrating the strength of the English judicial system. Embellishment created both what people expected and what the judicial system needed to increase its power.

These expectations were openly worded within the report – a reminder to those who might not understand (or needed reminders) of the rules of society. Bucknall's final words include a warning that "all Women and Maids [beware] how they are tempted to lustful deeds, and unlawful desires, that may be instrumental to bring the shame and ignominy not only on them, but on their own posterity."<sup>8</sup> Combined with the report of her execution, these words resonate as a moral reminder that directly connects her "lustful deeds" to infamy and death: the failure to adhere to the moral standard resulted in severe punishment. Bucknall thus became one of the "central participants in a theatre of punishment, which offered not merely a spectacle, but also a reinforcement of certain

7 Garthine Walker, *Crime, Gender and Social Order in Early Modern England*. (New York: Cambridge University Press, 2003), 117. Ebook.

8 Anon, "The last dying speeches and confession," 3.

values,” exemplary of the idea penned by J.A. Sharpe.<sup>9</sup> Similar to the progression of fiction, her ultimate fate resulted from a chain of events: lust of a moment, the evils of murder, and finally her capture and condemnation. She became a fictional model to enforce adherence to moral law by making the end result undesirable. Whatever Bucknall’s participation in these didactic methods, the pamphlet enforces morals through the condemnation of an evil perceivably increased in the rendering, a reminder of justice prevailing and of acceptable morals. Despite the strength of this technique, however, there were other ways of discouraging crime.

On Wednesday July 25, 1683, John Mugleston, Roger Mugleston, and John Harris were executed for “Clipping, Filing, and Deminishing the Lawful and Current Coin of England.”<sup>10</sup> The account records the evidence found to prove their guilt (files, stones, melting-pots, sheers, and eyewitnesses). It then lists the lengthy punishment that they were to face before dying. After, it remarks on conversation with those who visited them, generally with comments that describe their regrets, penitence, and prayers, but it lacks commentary on the scene of death or an audience’s response. As with Bucknall, the document emphasizes the men’s penitence for the immense evil of their crimes. They “expressed a more than ordinary sorrow and remorse” for “a Crime that was so prejudicial to the whole Kingdom.”<sup>11</sup> So described, their crime becomes not simply fraud toward a select group of people, but one that expands over the kingdom and all subjects within it. As with the “murtheress,” the extended nature of this crime makes it appear more devious and thus its resolution is a victory for the judicial system. In combining penitence and punishment, the report of execution also reflects fiction more than truth, increasing the potency of the judicial system by making it the “hero” of the story.

Including the penitence also broadens the fiction to meet the audi-

9 J.A. Sharpe, “‘Last Dying Speeches’: Religion, Ideology and Public Execution in Seventeenth-Century England,” *Past & Present* no. 107 (1985): 156, doi: 10.1093/past/107.1.144.

10 Anon, “An account of the execution, and last dying speeches of seaven notorious traytors and highway-men Who were executed at Tyburn, for high-treason, roberies [sic] on the high-way, murders, and felonies, on Wednesday, the 25th. of this instant July, 1683. As also their deportment in Newgate, after their condemnation; and what else remarkable happened” London: Printed for Langley Curtis (1683): 1, [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99827417](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99827417).

11 Anon, “An account of the execution, and last dying speeches,” 2.

ence’s expectations. In the account, the men regretted “that the Devil should have so much power over them” and before death turned “attentive to the Prayers and wholesome advice of such Ministers as came.... to prepare them for another World.”<sup>12</sup> In addition to highlighting the acknowledgment of and regret for their crimes, the account broadens the context of the crime into the spiritual. By introducing the Devil as the source of evil and the Ministers as an effective response, the report transmits this crime into the binary of good and evil. As Gaskill describes it, in the punishment, “events were played out on both natural and supernatural planes” in which “the sinful protagonist was powerless either to resist the Devil’s insinuations or avoid God’s judgment.”<sup>13</sup> As a result, the judicial system aligned itself with the judgment of God as it opposed the crimes of the Devil and thus was validated in its status as the punisher of evils.

The punishment used also demonstrates a distinctive ranking of crime and intensity of punishment based on the ranking and numbers of those offended. Unlike Bucknall’s, their crime went beyond the death of a single innocent, earning its denotation as a crime against King and country. Their punishment was as follows: they should be carried to the place from whence they came, from thence be drawn on Hurdles to the place of Execution, there to be Hanged by the Neck, cut down alive, their Bowels taken out, their privy Members cut off and burnt before their faces, their Heads to be severed from their Bodyes, their Bodyes to be divided into four Quarters, and to be disposed of at the pleasure of the King.<sup>14</sup>

Because they were to be “cut down alive” and the damage done “before their faces,” the emphasis is on inflicting as much pain and misery as possible. The display, brutal and grotesque in its violence, is a result of the number of people such a crime had wronged – at least in the perspective of the courts. As such, according to Susan Amussen, the scale reflects the “severity of the offense and the character of the offender” in that the larger evil deserves worse punishment.<sup>15</sup> In the same way, the view of such punishment (combined with the pain and humiliation) would serve

12 Anon, “An account of the execution, and last dying speeches,” 2.

13 Gaskill, “Reporting Murder,” 6.

14 Anon “An account of the execution, and last dying speeches,” 1.

15 Susan Amussen, “Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England,” *Journal of British Studies* 34, No. 1 (1995): 10, <http://www.jstor.org/stable/175807>.

“the purpose of deterring others.”<sup>16</sup> The bodily punishment thus served three purposes: it eliminated the criminal, marked the status of the crime as worse than that of murder, and deterred the audience from enacting the same crime. Whereas penitence was the primary focus in Bucknall’s case, here the punishment is described in equal length to the penitence and thus is of equal importance.

The report of the two Mugglestons and Harris continued the trend of placing the crime within a fictional framing: the criminals became archetypal villains with malicious intent whose crimes had widespread effects. It also extends this framing into the spiritual plane, connecting the justice of the judicial system with the justice of God. In the same way, it used punishment both to deter would-be criminals and to rank sin or evil within varying crimes. Just as with the Bucknall case, it enforced expected morality through the manner in which it presented the story.

The preceding cases reflect a desire to strengthen the moral principles of English society and the judicial system by using a fictional lens for the reporting of crime and punishment. But it would be inaccurate to say that all accounts followed this pattern. While both the infanticide and the clipper case were described in a simplistic manner that emphasized the penance and punishment of their crimes, the case of Sir John Johnson was described in a way that demonstrated some resistance to this schema.

On Tuesday, December 23, 1690, Sir John Johnson was taken by mourning-coach to his execution, accompanied by a friend and two “worthy Divines.”<sup>17</sup> His crime: being an accessory to the kidnapping of Mary Wharton. Both the alleged perpetrator (Captain James Campbel) and his associate (Archibald Montgomery) were missing and therefore not available to stand trial. Before the execution, Johnson made an extended speech concerning his ignorance of the law he offended, the fact that it had not been a kidnapping since she was “frank and free,” a commentary on the judicial system that condemned him, a denial of rape charges,

16 Simon Devereaux, “Recasting the Theatre of the Execution: The Abolition of the Tyburn Ritual,” *Past & Present* 202, Issue 1 (2009): 131, doi: 10.1093/pastj/gtn019.

17 Sir John Johnston “An account of the behaviour, confession and last dying speech of Sir John Johnson who was executed at Tyburn, on Tuesday the 23d day of December. anno Dom. 1690. for stealing of Mrs. Mary Wharton, in company of Captain James Campbel and Archibald Montgomery, since fled” *Edinburgh* (1691): 1, [http://gateway.proquest.com/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99896540](http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99896540).

and words on the salvation of his viewers’ souls.<sup>18</sup> When his speech was done, he prayed several times over, put on the cap, and respectfully said his goodbyes to the audience with his commendations in such a way that he was “very exemplary towards all” and drew “great lamentations” at his death.<sup>19</sup>

As in Bucknall’s story, Sir Johnson orated an outline of important events, creating a story that explained every condition that brought him to his present state. Following fictional form, he directly connected certain events and behaviors to the final outcome at the execution. At his story’s end, Sir Johnson also spoke of his penitence and desire that no other man be brought into a similar state. Though his words reflect no particular sin in relationship to the crime (as seen with Bucknall), Sir Johnson’s words pull the framework of the narrative into a broader spiritual plane, remarking that he “left undone those things which I ought to have done; and I have done those things which I ought not to have done” and as such had not “lived so strict to the Rules of Christianity.”<sup>20</sup> By italicizing that particular phrase, Johnston appears to mark it as the moral of this crime – the importance of maintaining good morality and being a good Christian, as one’s death may come unexpectedly, even from a crime he or she did not intentionally or directly commit.

In requesting the audience’s prayers and invoking sympathy and commendation to God, Johnson illustrates that “even the most sinful soul espoused the Protestant belief that Christ’s grace, not good works, determined salvation.”<sup>21</sup> Attempting to remain a good Christian to the end, he espouses his innocence so he might remain in the grace of God despite being found guilty. In essence, he exploits the space for error in which, if wrongly punished, he might yet find solace in the afterlife; inherently, too, he implies no grand wrongdoing on the part of the judicial system. As the afterlife was more important than the mortal one, the innocent criminal could yet have found his justice with the grace of God.

Though similar to the other portrayals, this one is distinct in several ways. First, the author is not anonymous: his willingness to be associated with the report makes him accountable for his words. This may result in the fuller recording of the convict’s words, the execution, and

18 Johnston, “An account of the behavior,” 2.

19 Johnston, “An account of the behavior,” 8.

20 Johnston, “An account of the behavior,” 7.

21 Gaskill, “Reporting Murder,” 26.

the response of the audience. Whereas the previous two cases convey the attitudes and actions of the accused before he or she is carried away, here the emphasis is shifted to the scene of the execution itself and not the remarks or observations beforehand. The presentation carries no negativity akin to the descriptors of the “murtheress” or of the clippers’ influence by the Devil, but instead uses direct words from the man himself and a consistent reference to the “free” nature of Mary Wharton. This presentation implies objectivity, but it also may suggest some empathy and an inclination toward the man’s innocence. These changes may also derive from the fact that Sir Johnson was not the main perpetrator of the crime (while Bucknall and the clippers were), and instead was charged as an “Accessory.”<sup>22</sup>

This sympathy thus may be aligned with the criticism of the justice system imbedded in Sir Johnson’s speech. After speaking on the events that led up to his imprisonment and trial, Johnson remarked on the various “hardships” he had to endure under the justice system: his witnesses were imprisoned so that they could not speak for him, the Coachman was acquitted of any accessory charges in exchange for testifying against Johnson, and the “Serjeant” denied his claims of the kidnapped woman’s “free will” due to bias against Johnson’s Scottish heritage.<sup>23</sup> By mentioning these events, Johnson indirectly challenged the fairness of the judicial system, implying that all this predetermined his guilt. He did not, however, directly state such, and instead finishes his remarks with “not that I do (as I told you before) find any Fault or any ways arraign the Constitution of the Law or Justice of the Nation, no I would not do that by any means.”<sup>24</sup> The repetition of the last phrase lends an irony to his statements, particularly in comparison to his complaints. However, as “defiance at the gallows was unlikely to be permitted and even less likely to be reported,” according to Sharpe, the statement ensured that Johnson was not halted from finishing his speech, and also gave some room for the author to record these injustices.<sup>25</sup> In the same way, Johnson’s implied innocence and the sympathy of the author suggest criticism and even mockery of the justice system, a trend in which, as Thomas Laqueur argues, criminals were “far from resigning themselves to their fate and

to the legitimacy of the state’s action against them” and thus mocked the “justice” that condemned them.<sup>26</sup> While the framing of the story reinforced the judicial system’s ability to find evil and punish it – and granted some leeway in unintentionally punishing innocents – the final comments themselves criticize the wholehearted acceptance of improper punishments. The balance between endorsement and resistance allowed the report to continue – and may have led to its being republished a year later as a reminder of these ideas.

These Tyburn executions reflect a distinctive mindset when it came to reporting the final words of criminals and their subsequent executions. These cases were fictionalized, not just to endorse the morals that the criminals had violated but to affirm the power of the English judicial system and its right to deliver justice. In some cases, the system is portrayed as the ultimate good – aligned with the justice of God and capable of seeking out any evil. The right to judge and punish is validated by the presence of immense evils. That does not, however, mean that this position and enforcement went entirely unchallenged. Though the judicial system lent itself some space to err – in which the justice of God would aid those unjustly punished – the same perspective left room for criticism of its systems. Because the pamphlets were intended to support the judicial system, such criticism had to be veiled behind sympathetic portrayals of innocent victims and assurances that no such criticisms were occurring. Execution endorsed judicial power, but the tool that strengthened it also served as a means of publicly dismantling this version of “justice” and questioning the validity of using execution as a means to deter others.

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22 Johnston, “An account of the behavior,” 1.

23 Johnston, “An account of the behavior,” 5-6.

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25 Sharpe, “Last Dying Speeches,” 164.

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