



University
of Glasgow

Farmer, L. (2012) *W.E. Vaughan, 'Murder Trials in Ireland, 1836-1914'; Eleanor Gordon and Gwyneth Nair, 'Murder and Morality in Victorian Britain: the Story of Madeleine Smith': Reviews.* Edinburgh Law Review, 16 (1). pp. 143-145. ISSN 1364-9809

<http://eprints.gla.ac.uk/60036/>

Deposited on: 01 January 2013

EdinLR Vol 16 pp 143-145
DOI: 10.3366/elr.2012.0099

W E Vaughan, MURDER TRIALS IN IRELAND, 1836-1914

Dublin: Four Courts Press in association with the Irish Legal History Society (www.fourcourtspress.ie), vol 19, 2009. x + 450 pp. ISBN 9781846821585. £50.

Eleanor Gordon & Gwyneth Nair, MURDER AND MORALITY IN VICTORIAN BRITAIN. THE STORY OF MADELEINE SMITH

Manchester: Manchester University Press (www.manchesteruniversitypress.co.uk), 2009. vii + 204 pp. ISBN 9780719080692. £16.99 (pb).

The crime of murder has come to exercise a particular fascination over the legal and social imagination, even if contemporary legal discussion of the crime tends to be confined to a rather narrow set of questions about its scope and definition. Recent historical work, though, is demonstrating the ways in which study of the crime of murder can open up fascinating perspectives on a wide range of issues from the prosecution and punishment of crime, to changing social patterns of violence and civility, and even the connections between the origins of forensic science, the media and the rise of detective fiction. The centrality and seriousness of the crime of murder thus offers a unique vantage point from which to understand relations between the criminal justice system and the wider social context in which it operates. Generally speaking, because of the seriousness of the crime, there are available excellent records of the trials themselves, which may open a window on the operations of the criminal justice system and the development of criminal law and procedure in periods where the records of lesser crimes tried in minor courts have been lost. At the same time, the rich documentation around trial records, and in particular newspaper reports and other forms of journalistic and literary comment, mean that these trials offer a rich resource for historians interested in reconstructing a particular social milieu at a particular moment in history. The books under review offer excellent examples of two different ways in which historians can use murder trial records.

In the first book W E Vaughan has undertaken a comprehensive analysis of all murder trials in Ireland between 1836 and 1914, and uses this to present a detailed analysis of how serious crime was dealt with by the criminal justice system in this period. The book is organised according to the different stages of the criminal process, from apprehension of the suspect through to trial, verdict and execution. Each chapter then offers a detailed account of the process at each stage, noting changes to legal procedure over the period illustrated with examples from the cases studied. The chapter on verdicts, for example, provides a wealth of information on practices, such as the “carting” or confinement of juries which, in the early part of the period were used to force a jury to reach a verdict, and how such practices gradually fell into disuse. This is then followed by an account of the liquid evening enjoyed by one particular jury in a capital case in 1882 (273-275), to illustrate standards of accommodation offered to juries, before concluding with a detailed discussion of the nature of the verdicts returned in murder trials. There is also fascinating detail about such phenomena as “agrarian homicide” which, Vaughan suggests, was “one of Ireland’s most characteristic crimes” (16). This was not a legal category of homicide as such but was a term used to refer to a broad category of homicides arising from disputes over land, particularly those between landlords and tenant farmers. Here, as Vaughan shows, the importance of the category lay less in its content than in the legal consequences of its invocation, as it empowered the Lord Lieutenant of the County to invoke special emergency powers and judges to empanel special juries for the trial of these crimes (16-19).

While such examples draw attention to specific issues in the governance of Ireland, Vaughan draws a number of more general conclusions in a fascinating conclusion to the book (ch 12). Here some of his general conclusions reinforce claims made in other studies of the history of the criminal trial, conclusions which also generally refute the suggestion which has been made in some quarters that the Irish legal system offered rougher justice than elsewhere. First, he notes that while the period since the passing of the Prisoners' Counsel Act 1836 might appear to be one of continuity, in the absence of major legislative changes, it is in fact a period of rapid transformation of the criminal trial. This he attributes in large part to the role of a centralised police force and the impact of a system of public prosecution which led to increasing numbers of Crown solicitors and a consequent elaboration of the Crown case. Second, he traces the impact of the introduction of counsel on the gradual silencing of the prisoner. Third, and perhaps most interestingly, he contends that the courts were actually able to exercise a degree of control over the new police forces, restricting the abuse of police power in the interrogation of prisoners. Finally, he draws a series of interesting comparisons with the criminal process in Scotland (364-365), suggesting that in the main a prisoner in the Irish system might have enjoyed better legal protection from the abuse of power than their counterpart in Scotland – a conclusion that would run contrary to the self-image of the Scottish system in either the nineteenth-century or the present day.

Overall, then, this approach tells us a great deal not only about homicide (its prosecution, trial and punishment), but also about criminal justice in general. It is not a complete picture, but it is a good picture of the workings of the criminal justice system. It is a monumental achievement, and is an invaluable resource for all historians of criminal justice. The richness of the picture Vaughan presents unfortunately also draws attention to the relative poverty of Scottish histories of criminal justice, where the criminal records are surely ripe for a comparable kind of study.

A different kind of approach is taken in Gordon and Nair's account of the trial of Madeleine Smith in 1857, which focuses on a single, notorious, trial, but then uses this as a means of drawing a detailed picture of social customs and manners in mid-Victorian Scotland. There are few murders that are better known in the history of Scots law. A young girl of respectable background was accused of the poisoning of her lover, Emile L'Angelier. At the trial personal letters were produced as evidence by Crown which implied a sexual relationship between the couple, a fact which both scandalised and fascinated respectable middle class opinion. The focus in the literature on this trial to date has been on the character of Madeleine Smith, on mistakes made by the Crown or the quality of the defence, or the reconstruction of how, if she did it, the fatal deed was carried out. Yet the intense speculation that has swirled around the question of her guilt or innocence – an issue left conveniently unresolved by the verdict of not proven – has if anything stood in the way of developing a more detailed understanding of the legal and social context of the case, and it is refreshing that Gordon and Nair, as accomplished social historians, largely forego speculation on the issue of Smith's innocence or guilt in favour of a more contextual approach.

Gordon and Nair use the case as a starting point for an investigation of middle class manners and mores in mid-nineteenth century Glasgow. Thus, using Smith's letters to L'Angelier as an entry point, they comment on shops and shopping, on the forms of entertainment open to young people, dress and fashion, sexual mores and so on – and along the way they briskly correct the claims or misunderstandings of previous writers about the case, based on their greater depth of knowledge of this social context. In addition, they provide an account of Smith's life after the unlikely not proven verdict, tracing her marriage into the social circle of William Morris in London and subsequent emigration to the United States. And while this part of the

story is not unknown, it seems less unlikely in the light of the more detailed understanding that they offer of her earlier life.

One of the most interesting chapters of the book examines different retellings of the Smith case to see what these reveal about the attitudes of different eras to the Victorian age and its social and moral beliefs. This is where the aim of the book of elaborating the background rather than attempting to establish the “truth” of the case really comes into its own. Thus, Tennyson Jesse’s 1927 account of the trial for the Notable British Trials Series is shown to be characteristic of the interwar representations of the case, which drew heavily on Victorian stereotypes of the strong patriarch and weak mother which went against the evidence of Smith’s family. They are also critical of Jesse’s use of Freudian psychology to suggest that Smith was born before her time and that repressive Victorian gender relations and social mores were really to blame in the case, for they are able to show that there was more freedom in relations between young people than was often assumed to be the case. This, then, is an enormously valuable contribution to literature, showing how new light can be shed on even the most well-known of cases.

These two books, in different ways, show how the historical study of murder can illuminate and broaden our understanding of the crime of homicide, the criminal justice system and social relations more generally. Both make distinctive contributions and point to the need for further and more in-depth studies of the history of Scottish crime and justice.

Lindsay Farmer
University of Glasgow