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Fig. 1: The arrest of William Mawry at Moniash, Derbyshire, 1620; STAC 8/81/20. Staged 3 June 2024. Photograph by author.

Arrests as Performance: Opening the Practice of Early Modern English State Authority to Scrutiny with Practice-as-Research

by *Lucy J.S. Clarke*

The state in early modern England can be conceptualized as a network of magistracies carrying out delegated authority, where magisterial authority was constantly being negotiated between officers and those they attempted to govern.¹ In the extensive historiography of this aspect of state formation, social historians have often relied on the word ‘performance’ to gesture at the active representational work a magistrate had to do to appear legitimate, without considering what constituted this ‘performance’.² In particular, historians of crowd control have tended to focus on ‘persuasion’ – meaning rhetoric rather than the performative aspects of handling a riot or rebellion.³ Intellectual historians, meanwhile, have instead focussed on the *idea* of the state, noting the development of constitutional ideas in the late Elizabethan era, where an idea of the state as a ‘positive legal and constitutional order capable of action in its own interests’ emerged.⁴ This

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state was *separate* from the monarch's person, and jurists like Edward Coke and Thomas Egerton debated the exact relationship between the law and the monarch. These ideas had key ramifications for the legitimization of magistrates in practice: was a magistrate a representative of the monarch, or of the law?⁵

However, while such perspectives offer potential for examining how the daily functioning of law and government related to the jurisprudential developments taking place, the historiographies of the *concept* of the state, and of magistrates at work, have largely remained disjunct. Mike Braddick's work hints at a connection by articulating the experience of the state as 'crystallisations', where the actions of magistrates were central to the formation of understanding of the state, while recent scholarship on magistrates at work has linked the quotidian practice of authority to the concept of the state: Jonathan Healey argues that the state was a 'performative concept' 'acted out' in moments of encounter, and Jonah Miller identifies the development of policing across the seventeenth and eighteenth centuries as part of a broader separation of state from society taking place in this period. Notably, both draw attention to the 'performative' or 'theatrical' nature of enacting state authority.⁶ Healey's microstudy of Randall, an official intervening in a 1536 fight in Weymouth quite correctly argues that the constable's use of the phrase 'keep the king's peace' 'was supposed to raise his actions above those of a petty vigilante, or – worse – someone settling scores, and to make them actions of state'.⁷ Miller, meanwhile, draws attention to the use of staves and invocations of the monarch's name: 'without such performances, any use of force by officers would be unauthorised, no different to violence carried out by anyone else. Here... authority depended upon separating official actions from the individual who carried them out'.⁸

What both these analyses rest upon is thus the implication that *recognition* was the central concern for a magistrate attempting to enact his will:

in our world, those in authority can often easily be distinguished by their clothes: uniforms are common, as – more recently – is high visibility clothing. In the sixteenth century this was not always possible, so agents of the state had to identify themselves in different ways. Randall did this by invocation.⁹

This is to imply a kind of naturalized authority, where simple identification of oneself as an authorized magistrate was enough to compel obedience. However, as I will demonstrate, recognition was frequently insufficient to ensure that a magistrate could enact his will. Crucially, in basing their arguments upon the principle of identification, neither Miller nor Healey interrogates what *constituted* the performance of authority, nor do they consider one central component of performance: reception by an audience. This leaves fertile ground for inquiry: what did such performances mean for the state itself, whether they succeeded or failed? And what can they tell us about the nitty-gritty of how an arrest was made? As I will show, using performance as a category of analysis offers new insights into how state authority was deployed by magistrates, and demonstrates

that state authority was far more contingent and friable than current scholarship might suggest.

In this article I am specifically concerned with examining how a magistrate enacted his authority, what challenges he might face, and what impact these performances, whether failed or successful, had on the state. My methodology hinges upon close analysis of legal cases that involve the performance of state authority – encounters between magistrate and those they attempted to govern. I therefore focus upon the Court of Star Chamber, the prime location for the trial of those who stood accused of disrespecting, derogating or disobeying authority. Both private litigants and the Crown brought such cases, rendering the Court a vital source for examining how ideas about the state were disseminated, challenged and appropriated by the Court's personnel and litigants. The court's archive is rich, with English-language bills and pleadings that often offer detailed depictions of how magisterial authority was carried out, and how it was received. Beyond simply establishing 'what happened', paying close attention to the versions of events that plaintiffs, defendants and witnesses offer, and to the questions asked on behalf of both plaintiff and defendant reveals much about the conceptions and expectations of authority they held. Indeed, Star Chamber is a valuable locus for investigating Crown attitudes to and concerns over the performance of magisterial authority, thanks to several collections of legal reports and notes made by the Elizabethan and Jacobean regimes' top jurists. Engaging with both common and elite conceptions of magisterial authority thus provides a more holistic account of the early modern English state.

However, to examine how authority was performed in this period, I go beyond the textual accounts to explore what physically staging these moments of encounter reveals about the practice of the state. To do so, I select a number of Star Chamber cases with a large amount of detail, which also raise difficult practical questions relating to the exact course of events. These issues cannot be easily grasped simply through textual analysis. Instead, in order to gain insight into the dynamics of the encounter, I turn them into scripts for student actors to perform in practice-as-research (PAR) workshops.¹⁰ The physical reenactment of these historical encounters between magistrate and ordinary person brings to light specific questions about authority, and reveals much about the practice of, and challenges to, the early modern English state. As I will demonstrate, using this kind of PAR allows me to anatomize the state as it was experienced, offering insights that cannot be achieved through more traditional methodologies, and raising questions that merely examining textual records of the encounters cannot. Crucially, however, these questions often cannot be answered by PAR alone, and thus demand a return to the archive to resolve them. This article is thus a methodological provocation for the historical value of PAR as part of a multimodal research agenda.

The article begins by examining contemporary perceptions of the practice of magisterial authority, focussing on Elizabethan and Jacobean Star Chamber cases of 'rescue', where an arrest was interrupted, prevented or otherwise tampered with. I draw these cases together with contemporary legal reports to establish the

broad contours of how arrests were performed, demonstrating that while both magistrates and regime desired that state authority be automatically obeyed, this was far from the reality. Indeed, by highlighting the variety of ways that arresting officers were resisted, I show that these cases evince a tension between the *ideal* of state authority, and its inherent contingency. I pay particular attention to how this tension sparked concerns among the regime's jurists and Star Chamber litigants, arguing that the performance of state authority – and its efficacy – were live issues in this period. In particular, I argue that the jurisprudence of this period reveals a persistent desire to *prevent* resistance to state authority, a piecemeal process I refer to as the naturalization of state authority. I then offer a new approach to studying the state: conceptualizing the state as an inherently performed concept, I explore some specific issues in the performance of arrests which are revealed through this performance-centric method, drawing on a wide survey of 'rescue' cases. This survey includes arrests made as part of private cases – such as summoning a defendant to court, or demanding payment of a debt – as well as felony arrests and those made on behalf of a public prosecution. I argue that an arrest was a performance that lay open to challenge and failure well after the formulaic legal process had apparently concluded, and that the state's fragility in such moments was both apprehensible and of great concern to local and national authorities. Instead of simply using 'performance' as shorthand, I take it as a category of analysis, breaking down what *constituted* the performance of an arrest, and considering the effects of such performances on the state itself. By unpacking these performances, I demonstrate how contingent and non-naturalized state authority was in the late Tudor and early Stuart period.

NATURALIZATION VS. CONTINGENCY

There were evident issues with the performance of arrests in early modern England, revealing a tension between the ideal of how authority ought to be performed and immediately accepted, and the rather less straightforward reality. Bills of complaint charging defendants with rescue evince a preoccupation with the recognition of officials. The formulation 'sworne and knowne' is used frequently to assert the legitimacy of magistrates' arrests: one set of interrogatories from 1600 refers to the arresting official as 'a knowne and sworne baylie', while a 1612 bill articulates the legitimacy of an arrest by noting that the official was 'knowne Baylife of the hundred of Salford and knowne to be a Baylif generally used and imployed by the said sherife upon such occasons'.¹¹ This insistence that the magistrates who had been disrespected and disobeyed were known in the communities in which they attempted to enforce their authority demonstrates a desire that recognition of the officer be enough: the implication is that knowing someone is an officer ought to lead to their being obeyed. Regardless of whether this was actually true, it is telling that this formulation was used to craft a bill that would presumably be heard favourably by the Court's judges. Similarly, early Caroline Star Chamber rulings demonstrate the centrality of recognition: the Serjeant noted on behalf of one set of defendants 'that the plaintiff was sworn justice of peace only the day before

that, and the defendants had not notice of it'.¹² Evidently, both Star Chamber plaintiffs and judges emphasized the recognition of an official as central to the practice of magisterial authority.

However, Star Chamber cases demonstrate that recognition was frequently insufficient to compel obedience. In Market Weighton, Yorkshire, in 1604, Robert Webster's rescuers allegedly repeatedly referred to Giles Bateson by his office, calling him a 'knave Bailiffe'; three years later, Thomas Salkeld was apparently perfectly willing to acknowledge that Sir Christopher Pickering was Sheriff of Cumberland, but stated that he would hold on to the writ for his arrest 'in despit of him and his Aucthorytie'.¹³ In 1602, a Kentish defendant was accused of declaring that 'he cared not for never an officer the Queene had', while in 1592 one Essex woman had apparently said that she

cared not for the Cunstable or headboroughe, nor justice, or any other in England, and that she would not depart her self nor offer her said company to depart at the comaundement of any whatsoever nor not at the comaundement or handwriting of the Queenes majesty, unless she came in person, or that she heard her Majesty from her owne mouth to Commaunde her to avoid thence.¹⁴

In these cases, then, the mere fact of office had not been enough to achieve compliance. These refusals to accept orders from a magistrate demonstrate a breakdown in the very concept of delegated authority, putting paid to the claim that a magistrate was acting as a direct stand-in for the monarch, or indeed the rather more basic claim that an official was authorized to act.¹⁵

Indeed, when magistrates brought cases against those who had impugned their magisterial authority, they too placed emphasis on their office. The bill accusing a JP Meyricke of malfeasance in 1594 noted the 'lewd' speeches used to insult another JP, Lloyd, 'as he was in the said service of your highnes', emphasizing that the insult was *while* Lloyd was acting as a magistrate.¹⁶ The insult was not to the man, but the official. Similarly, the bailiff Watkins accused those who attacked him in 1588 of doing so 'in further disgrace of your said subject and of his just and true dealinge for your majesty in the said office or function of Bayliffe'.¹⁷ In a telling inversion, the defendants in a rescue case admitted that they refused to obey a JP's order to keep the peace, and told him 'he might blushe to execute the office of a Justice of peace in his own privat Cause'.¹⁸ Here we see the slippery relationship between a magistrate and his authority: in the first case, the magistrate subordinates his private identity to his office, while in the second, alleged challengers of magisterial authority *deny* the transformation of a private man into a public man, thus sanctioning their refusal to obey him. Once again, the tension between legal process as written and the inherent contingency of authority 'on the ground' comes into view.

Such resistance to officials was clearly of concern to the late Elizabethan and Jacobean regimes. Miller notes that the 1610 'Act for ease in pleading against troublesome and contentious suits' made it easier for officials to defend

themselves against charges of ‘wrongful’ arrest, and helped to define officials as specifically holding authority beyond their own persons.¹⁹ I would go further, and argue that jurists and judges in Star Chamber were increasingly attempting to criminalize resistance to magisterial authority. An anonymous collection of reports of Star Chamber demonstrates the profusion of cases stemming from disrespect to and disobedience of magisterial authority. The volume shows the Court’s interest in punishing those who impugned authority: the reports are arranged in chronological order, and appear to be vaguely thematically organized, with the densest patch of cases of disrespecting or disobeying magisterial authority falling during the years 1593–1596. In 1595 Hersey and his servants were jailed after the servants rescued him from an arrest, while Griffith was fined £40 a year later for beating a commissioner of rebellion who had attempted to arrest Wood. In 1593/4 Dicconson was committed for beating a process server, Bentenson, and in 1594 Bowyer Worsley was committed ‘for abusing and rescuing himself from the bailiff that arrested him upon attachment’.²⁰ Notably, Bentenson is the only one of the victims that the reporter refers to by his name: all the others are identified only by their office – commissioner, bailiff, and so on. In presenting the crimes as being specifically against *officials*, distinct from assaults upon individuals, the reporter thus appears to be setting a precedent for the prosecution of those who attacked magistrates. Moreover, several Attorneys General were responsible for bringing *pro rege* (‘on behalf of the king’) proceedings against those accused of rescue and other contempts of authority, indicating the perceived importance of such cases.²¹ Read in comparison with the Star Chamber cases that assert recognition as the prime necessity for the successful practice of magisterial authority, they indicate the efforts of multiple individuals to demand that obedience to state authority be automatic, by criminalizing resistance to authority.

A similar move can be seen in the writings of Edward Coke and Thomas Egerton, which both demonstrate concern over the misuse of the law to resist authority. As Paul Griffiths notes, law was not simply an arm of the state in early modern England, and the weaponization of ideas of legality was a common tactic of resistance.²² Indeed, as multiple rescue cases and the Harley reports demonstrate, the law was frequently deployed to resist authority.²³ Those charged with rescue were often accused of having denied the legality of officials, their actions and their warrants, such as declaring ‘the said arrest was unlawfull and unjust and that by the law it might be resisted without daunger’, or claiming officials had made arrests ‘without any lawful warrant’.²⁴ Evidently, the law could be a tool of resistance to arrest. This was clearly of some concern: the interrogatories for witnesses to the rescue of Samuel Farebancke specifically asked if they had heard the rescuers denying the legality of the arrest, while other defendants to the charge of rescue would commonly deny that they had ever impugned the arrest’s legality.²⁵ This state of affairs – where the law could be something of a football, passed around by those denying state authority – sheds particular light upon the interest both Coke and Egerton had in punishing those who insulted the law or the courts, despite their being at odds politically. Forty per

cent of all the slander cases in *Harley 2143* relate to justice or the Court of Star Chamber itself, with the majority being taken from the late Elizabethan period: they include punishments for one Booth and Kirton ‘slandering the sentence of the court’ in 1593, a prosecution led by Coke, and for one Prewett for ‘discrediting of an order of this court in saying that ... the same was against law’ in 1586.²⁶ Both Egerton and the *Harley* reporter note the punishment of one who called Chief Justice Dyer ‘the corruptest Judge in all England’, while Egerton also records the pillorying of Benjamin Bull for his ‘slaundersous Reportes of the Lord Popham that he had so terrified a wittnes in the examinacon of a murther That he deposed untruely’.²⁷ Among notes on rulings that emphasized the courts’ legality, Egerton also annotated the failure of a Star Chamber order to be entered into the Court’s records:

Her majestie defeated.
The Court abused.
*The plaintiff undone.*²⁸

In this case, the defendant had been found guilty, but as the order (verdict and ordered punishment) had not been entered, the fine due to the Queen and damages to the successful plaintiff were not collected. It is striking that our reporter collocates these material losses with the ‘abuse’ of the Court’s ability to make legal rulings. These notes demonstrate a clear preoccupation with punishing those who denied the legality of the courts, and with setting precedent to prevent others from doing the same. While this certainly underlines the royal courts’ general interest in inculcating their own authority in the period, the increased interest in contempt also represents a desire to make resistance to authority and the law more difficult. Indeed, we can understand this as an effort to make the law solely the purview of the state, in order to remove a key threat to magisterial authority in practice.

I identify these jurisprudential moves as part of a piecemeal process of naturalizing state authority – that is, the process of inculcating state authority towards the point where obedience to state officials was automatic. This could also be understood as bureaucratization, where the simple fact that a man held magisterial authority would be sufficient to ensure the obedience of those he attempted to govern. Several of the regime’s top judges, despite being at odds politically, were actively pushing for the naturalization of state authority; this judicial priority is reflected in Star Chamber’s procedural formulae, and in the ways plaintiffs and defendants sought a favourable hearing through the language of naturalized authority. This is not to say that Coke and Ellesmere were specifically interested in creating a bureaucratized state: the push towards naturalization was the product of their own specific legal and constitutional concerns, rather than any unified process of reform. Though Braddick has noted that all authority tends towards its own naturalization, historians have yet to use the concept to investigate the processes of early modern English state formation.²⁹ However, examining the push-pull between attempts at naturalization and the

inherent contingency of state authority provides a vital context for examining *how* authority was performed in early modern England, and sheds light upon the ramifications of individual encounters between magistrate and local upon the state.

An awareness of this context, moreover, illuminates the penetration of ideas about state authority among ordinary litigants. There is a striking trend in late Elizabethan Star Chamber bills to include claims of ‘contempt of your majesties process’, rather than simply making the formulaic statement that the crimes complained of were against her majesty’s laws.³⁰ Accusations of ‘wilful resistance of your majesties process’ or attempts to ‘resist the due execucon of your highnes said process’ increasingly appear, while other bills emphasize that rescuers were ‘nott regardinge that the sayd Bailies came to execute your majesties process’.³¹ Litigants bidding for a favourable hearing may well have been aware of the court’s preoccupation with punishing those who claimed the courts, their officers, or magistrates more broadly were acting illegally: it was perhaps smart to emphasize the insult done to legal process. What we should also note, however, is the implication of these formulations: that legal process *ought* to have been enough to ensure authority was successfully meted out. However, as Robert Mawry’s rescuers told Stephen Jackson, ‘We care not for that. It (meaning your highnes said writt of capias uttleгатum) is but a ba[u]ble, and feareth none but fooles’: legal process was sometimes insufficient to frighten people into obedience, viewed as a mere trifle or ornament.³² Here we see the clear tension between the desire for naturalized authority – a situation where the law and state would be coterminous with one another – and the persistent weaponizing of the law to resist the state.

It is evident that there was a considerable gulf between the ideal practice of state authority and the messy reality in early modern England, a gulf that was apprehensible to both the Crown’s jurists and ordinary members of society. In order to understand, then, *how* the early modern state came into being in individual interactions between officials and those they attempted to govern – and if it did – we must examine the gap between the attempt to enact authority and its success: rather than simply cleaving to the assertion that ‘people obeyed because they were told they must’, or merely citing performance without anatomizing *what* that performance consisted of, we must open this gap to scrutiny.³³ As I will now demonstrate, considering state formation through performance offers the perfect tool for this work.

USING PERFORMANCE AS A CATEGORY OF ANALYSIS

‘Performance’ was often understood in early modern England as embodied enactment leading to a secondary level of representation; it was also the language used by both government and law to refer to the process of bringing something into reality.³⁴ It is therefore not simply that magistrates needed to perform their own legitimacy – a man taking hold of another becomes a magistrate arresting a criminal – but that their actions, if successful, *performed the state*. If a magistrate successfully arrested a man, he concretized the reality where he had been imbued with authority to act as a public man: such

performances brought the delegated state into being in the minds of those witnessing.³⁵ The writ for the arrest and the commission for the magistrate thus became material by their success. The state, therefore, was a *praxis*: a physical, embodied action which created meaning beyond itself. However, to properly engage with the state-as-performed, we must engage with performance's central condition: risk. Performance, as Robin Chapman Stacey writes, is

an inherently paradoxical venture, an occasion of both power and vulnerability, since a performer displaying his mastery of his art inevitably opens himself to the assessment of others. 'Did he perform poorly, did he perform well?' When the performance in question has legal as well as artistic implications, these are questions of more than passing interest.³⁶

As shown in the preceding section, we cannot assume that a magistrate need merely utter his legitimating words or present his warrant to be obeyed. I am thus interested in what kind of performance happened when a magistrate presented a warrant for someone's arrest, what opportunities for failure existed, and what it meant *for the state* if such a performance failed.³⁷ State formation was an accretionary process, formed of quotidian interactions between magistrates and those they attempted to govern; but to understand that process we must reckon with moments when these performances could and did fail.

Furthermore, as state formation is an inherently embodied process, which worked upon the imagination, one must engage with it in a similar modality to that in which it was originally experienced: through bodies in motion which were witnessed by 'ordinary' members of society. This demands we ask what actions constituted a magistrate's 'performance' of authority: how did he utter the words of the legal process he attempted to carry out? What gestures and props might have been used? We must also consider the relationship between the magistrate and those he attempted to govern: rather than merely gesturing at some kind of performer-audience relationship by describing the enactment of authority as a performance, my aim is to interrogate the ways that magistrates' performances of the state affected (and were affected by) their audiences.³⁸ By 'audience' I specifically refer to the bystanders who were present when a magistrate attempted to enact his authority, and the individuals whose behaviour he attempted to control. In borrowing techniques more usually associated with performing arts and English literature, then, my aim is to explore the relationship between performer and audience in these encounters, and to anatomize magistrates' enactments of authority. My practice centres on practice-as-research workshops where I ask students to stage and reenact moments taken from Star Chamber cases, drawing up scripts from the case materials, and investigating what issues and challenges magistrates might face in attempting to assert authority, what performative techniques might be at the magistrate's disposal, and crucially seeing what versions of the state were (or were not) created in the minds of witnesses to such encounters.

My use of PAR is about investigation rather than reconstruction, and produces questions as much as it does 'evidence'. Recent historical work emphasizes that

practice is a process of investigation, not production.³⁹ As Richard Fitch, manager of Historic Kitchens at Hampton Court Palace writes,

One should be clear that the intention over this quarter of a century of public presentation has never been to present these recreated recipes as being examples of what food tasted like, or indeed looked like in the past, but rather as the end products in the investigation of the processes that would have been gone through by the cooks of Henry VIII's Court and their counterparts through history.⁴⁰

Similarly, the Experience of Worship project at Bangor University (2009–2013), which sought to investigate the experience of medieval liturgies by staging them, emphasized that there was 'no way in which this experience was definitively historical', but that it 'raised important historical questions through engagement'.⁴¹ For both, the intention was not to reconstruct, but to investigate.

Crucially, PAR is about viewpoint, and the questions raised by looking from a different one. The Experience of Worship project leaders describe their research as imaginative work where 'the intellectual extended to the physical'. Catherine Fletcher articulates the relationship between physical practice and experience and historical interest:

I've almost always made a point of travelling to see the locations I write about and have lived for extended periods in the places that I study. That perhaps reflects – and has perhaps created – an interest in material culture, in households, in topography and travel.⁴²

David Gange, meanwhile, identifies his use of practice in his history of Britain's Atlantic sea coast as once again offering the opportunity to look *differently* at the past: by kayaking around the coast, Gange was able to consider a perspective that moved from the sea to the land, not the other way around. His research focussed on the questions that could only arise from being in a small boat on a turbulent sea, which previously had not been asked.⁴³ PAR offers the ability to imagine aspects of the past in new modalities, and hence derive new questions.

This is why I turned to PAR to research the early modern state. Firstly, staging moments from the Star Chamber record drew new questions and problems into view: I was forced to confront the practicalities of performing authority. Seeing bodies in action, and how both words and embodied actions functioned between different persons, provided a new level of understanding of how authority might have been performed: the relations between magistrate and audience, and the difficulty for a magistrate of holding the attention of multiple people, became tangible, as well as something that could be dissected more fully. Alongside these insights into the nature of magisterial performance, PAR offers the opportunity to examine how the state was constituted 'on the ground'. The state was bodies in motion and conversation, and so to fully understand the accretionary process of

state formation we must consider the daily experience of the state in a manner that engages with its fundamental modality.

In such contexts, I argue, PAR has specific utility for historians as part of a multimodal research methodology. What follows is an example of a such an approach. My analysis of arrests derives from the insights and questions that emerged during a series of practice-as-research workshops carried out as part of my postdoctoral research project: one private four-hour workshop with eight student actors in March 2020 at Jesus College, Oxford; three private five-hour workshops with ten student actors in May–June 2024 at the University of Sheffield; and one public two-hour workshop held at Sheffield in June 2024, as part of a one-day conference on experiencing law, government and politics. These workshops all focussed specifically on arrests, and sought to explore both how an arrest worked in practice, and how performing an arrest affected the performance of the state. The workshops involved armed stage combat to simulate the violence involved in many of the staged incidents. I also draw on a more informal public hour-long workshop held at the Sheffield Centre for Early Modern Studies in September 2022, where participants collaborated in turning records of arrests into something that could be ‘walked through’ rather than fully staged. I will refer to contemporary bystanders in the incidents as ‘audiences’, and those who attended public workshops to watch as ‘participants’. The actors in all these workshops were predominantly undergraduate English and History students who volunteered to take part in this extracurricular activity; at Sheffield, I specifically chose those with prior acting or combat experience.

For the series of workshops, I created scripts from Star Chamber accounts of both successful and disputed arrests. I would try to create the most accurate version of events from accounts in bills of complaint and witness statements, often finding more questions than answers as I translated textual accounts into something that could be physically staged.⁴⁴ In workshops I worked with the actors and fight director to stage each incident, noting where uncertainties arose while trying to carry out the actions described, such as whether a magistrate should read out his warrant’s full text. Such questions often demanded I return to archival sources and legal reports to resolve these uncertainties, as the scripting and acting phases of the PAR generated questions that otherwise I would not have considered. Throughout the workshops, I focussed on both what issues and challenges I saw coming to the fore, and what visions of the state were produced by the actors’ performing the arrests, as well as on what the actors themselves experienced as magistrates and audiences. We would often repeat incidents in multiple different ways, based on questions raised by the actors, or when the original account raised ambiguity about what ‘actually’ happened. I continually engaged in discussion with the actors and fight director, much of which produced insights and questions requiring follow-up by more conventional historical methods.

The public workshop in June 2024 set out to examine the relationship between audiences and magistrates in further detail. I specifically wished to have a group of early modernists who had never seen the arrests we staged before in order to

have a ‘cold’ reading that was not influenced by knowing their details, and thus to provide an insight into how ‘ordinary’ early modern English people might have experienced the state when they witnessed arrests taking place. In particular, I was interested in what the effect of being bystanders would be for these participants: thus the second half of this workshop invited fifteen participants to come ‘onstage’, to simulate the experience of being an audience with no foreknowledge of the arrests we were staging. This workshop was extremely useful in testing what someone with a good knowledge of early modern English society might understand of the state through witnessing various successful and unsuccessful arrests: it offered at the very least an analogue for a crowd of real early modern Englishmen and women.

My analysis of any encounter between magistrate and community does not focus on reconstruction, but uses PAR as one of several investigative tools. This article reflects this multimodal methodology: my discussion will move fluidly between analysis of the legal documentation of arrests, the practice as research workshops and the broader contexts. I will draw on both my experiences of the workshops, and the insights and questions offered by actors and participants. By approaching arrests as performances, it becomes clear that as much as Star Chamber plaintiffs claiming their authority had been impugned presented arrests as *faits accomplis*, the arrests themselves were far more contingent than they – and the regime’s jurists – would be willing to accept.

THE MOMENT OF ARREST

By law, an arrest was the taking hold of a man’s (or woman’s) body.⁴⁵ Rescue bills usually explicitly state that the rescued party had been in the magistrate’s custody: in 1606, Angell Turner was ‘then and there in his Custody as his prisoner as is aforesaid by vertue of the said writt of Capias and warrant thereupon’, while a year earlier Robert Mawe had apparently been ‘quietlie’ in the custody of the arresting officers.⁴⁶ This emphasis on the *body* of the prisoner and its possession by the magistrate asserts a clear temporalization: once the body was in the magistrate’s hands, the arrest had happened. This demarcation is also asserted by the common interrogatories, which ask those accused of rescue if they were aware of the arrest that had been carried out.⁴⁷ Those asked such questions tended to deny any knowledge whatsoever of an arrest: in 1606, John Smith claimed,

he doth not knowe that Richard Worseley and John Whittaker mencioned in this Interrogatory did the second day of September aforesaid repaire unto Ripponden aforesaid and that they or one of them did by virtue of a warrant attache or arrest the said Samuell Farebancke, Neither can this defendant say by what meanes or by whome the said Samuell Farebancke, (if he were arrested) which is more then this defendant doth knowe, was delivered from the said sheriff.⁴⁸

His denial that he knew about the arrest demonstrates the way that arrests were treated as fixed points in time. Superficially, this suggests perfectly naturalized authority. According to the law, and to Star Chamber litigants, once the arrest was made, the magistrate's control of the body of the arrested acted as record of the event: it concretized the performance of the magistrate's authority, confirming that his authority had been able to make reality. Here, then, an arrest appears to be a split-second transition, a single moment of change of a free man into an arrested one.

However, if an arrest was legally defined as taking hold of the body, how did that physical process map onto the fixed-point model of an arrest? Crucially, how did the person being arrested respond? An arrest could succeed if the arrested person complied, and some bills of complaint use the compliance of the arrested party to emphasize that the arrest was legitimate and in place: one set of plaintiffs asserted in 1599/1600 that the arrest of Walter Loveden had to have taken place because he 'did quietly submitt himself being shewed the warrant he was arrested upon' by the bailiffs of Berkshire.⁴⁹ Star Chamber bills characteristically include often outlandish but formulaic accusations of violence offered to arresting officials: townsfolk are claimed to have been armed to the teeth with daggers, pikestaves, pitchforks, swords ... However, this is usually accompanied with a claim that such violence was offered *while the arrest was still in place*: in 1620, the magistrate Stephen Jackson had apparently advised the men who were beating him as he attempted to make an arrest 'in friendly and courteous manner' to desist, and that he had the 'due forme' [proper manner of carrying out] of the arrest, even as he was apparently bleeding out in the street of Moniash, Derbyshire.⁵⁰ In such a case, then, the arrest was felt to hold even if the magistrate was not physically holding the prisoner.⁵¹ What we are left with is an arrest as a kind of metaphysical state, where even as a magistrate is beaten to the ground, the arrest is still in place. Star Chamber judges ruled in 1627

that it is not necessary to an arrest that an officer should lay his hands on the party arrested or to be arrested. But if the officer show the warrant to him, and say I require you to obey this Warrant and goe along with me, this is an arrest, a lawful arrest.⁵²

This version of events, then, indicates a view of naturalized authority, where the arrest is done when the magistrate says it is, and cannot be challenged.

However, staging rescues raises a key question: when did the arrest *actually* happen? To have something to stage for my first workshops, I needed to establish what the actors would be doing, and hit the fundamental problem of uncertainty over how the person being arrested responded. Did they resist? At what point? And how? To keep the actors safe, moreover, I needed to be clear on what kind of violence might be enacted by those resisting, and how officers might respond. In the end, these questions were not fully answerable, but they revealed that we cannot simply take prescriptive accounts of what constituted an arrest at their word. As we tried different ways of staging the arrest of Robert Webster in March

2020, both I and my fight director noted that the moment at which the arrest was *completed* – unchallengeable – shifted depending on the level of compliance by ‘Webster’. Was it the point where the writ was read, when the suspect agreed to come quietly, or when the body of the suspect was restrained? When did the state stop simply happening, and become real? Staging this arrest revealed that there was no simple answer to the question.

This uncertainty over the moment of arrest becomes apparent in staging multiple rescues from arrest. In the September 2022 workshop, I presented participants with a selection of rescues, asking them to try acting out these incidents and to voice any questions raised by this activity. Participants examining the rescue of Thomas Howlett in Staffordshire noted independently that it was extremely unclear *when* the arrest took place: was it as the magistrate identified himself, when he declared Howlett to be under arrest, or when Howlett was physically restrained?⁵³ Indeed, rescue cases indicate that a magistrate having hold of the body of the arrested party was not the end of the performance: custody was not enough to prevent rescuers interfering with the arrest ‘after the fact’.⁵⁴ Upon staging multiple arrests in the private workshops in May 2024, the actors disagreed amongst themselves about when an arrest was ‘done’, with some arguing that it was finished after the arrestee was in custody, while others suggested that the arrest was *only* finished once the prisoner had been conveyed away. Despite what legal formulae would imply, arrests were not a single, cleanly delineated moment where authority was manifested. Instead, they were extended performances that lay open to the risk of resistance long after the bills of complaint would admit.

AUDIENCES

The staging of arrest records brings to life the bystanders and neighbours who often remain silent in the textual record until they appear in violent resistance to the magistrate, and reveals that these contemporary audiences of bystanders were key to the arrest’s success. In my workshops, their presence in the performance space is hard to ignore. Actors announcing their intention to arrest someone in the monarch’s name often instinctively raised their voices: walking into a space with bystanders inclines the actors to address those present, implicitly recognizing their importance. The power of bystanders to intervene in articulations of state power has developed particular significance in the context of police violence in Britain and America in the early 2020s, with ‘active bystander’ training increasingly being advocated to prevent abuses of power, and it was a particularly live issue in discussion with actors in 2024.⁵⁵ This training, crucially, teaches bystanders to *stop* being an audience, and intervene instead of simply witnessing: in this model, merely witnessing is being complicit.

This has clear resonances with how early modern English people understood witnessing something as an act as tantamount to approving it. As John McGavin and Greg Walker write, Sir Thomas More

argued that mere attendance at Anne Boleyn's coronation would be the first step in a gradual process of spiritual deflowering... Evidently, early spectators knew that the act of watching granted implicit permission by giving countenance to an act, which in turn served as a kind of 'bearing witness' to its meaning.⁵⁶

This concept of countenancing by watching without intervening was shared in the law. When arresting William Gryndon to appear in the Court of Exchequer in 1607/8, William Fryth took a witness along 'to see the same subpoena served'.⁵⁷ Egerton notes a Star Chamber case where the audience of a libellous minstrel show in Northamptonshire in 1607 were indicted as 'countenancers of theis shewes', while the Mayor John Hole was indicted for his having 'countenanced and abetted' by not intervening.⁵⁸ The collocation of watching and allowing such 'prophanations' exemplifies the linkage between audience and sanctioning. Similarly, when one Beard was rescued from arrest in 1591 in Haverfield, the rescuers were asked if the town's JPs were 'within viewe of the said affraye', and if so, what order had they taken for the preservation of the Queen's peace; alternatively, 'did thei [the JPs] or either of them stande bie and beholde', clearly classing the officials' non-intervention and witnessing as the same crime.⁵⁹ The clear concern that witnessing without intervening is sanctioning criminal acts is further seen in the interrogatories for a Star Chamber case over a libellous proclamation made against Richard Roupe in Devon in 1605, where defendants were asked 'did the persons then and there assembled geve silence and attencion to the said oyes Cryes or proclamacions?'⁶⁰ To listen to the false proclamation was to accept it as legitimate.

Audiences were also vital to the assertion of legitimacy – or lack thereof – in Star Chamber rescue cases. An audience's response was frequently cited by litigants as evidence of lawful- or unlawfulness: plaintiffs describe the outcry of neighbours against rescuers, or their participation in attempting to aid the arrest, while claims that a magistrate would have been killed had locals not intervened are also common, once again using bystanders as a sanctioning force.⁶¹ The case of John Lovatt's rescue in 1602, however, indicates the importance of bystanders: the bill claims that Lovatt was in custody of the arresting officials 'for and by the space of two or three howers'.⁶² Amid a bill that asserts the arrest's legitimacy, this reference to the time elapsed is striking: the implication is that no one had intervened for those two or three hours, thus indicating that the arrest must have been legitimate. A similar narrative trick is used in the interrogatories for the rescuers of Edmund Bradeley from arrest in Worsley, Staffordshire, in 1591, which ask 'how longe had hee [the arresting official] him in his Custodie'.⁶³ Intervention in an arrest was a sure-fire way to undermine its legality, and magistrates, who might find themselves grossly outnumbered, needed to ensure that no one involved themselves in proceedings. By not intervening, bystanders became audiences, physically sanctioning and reinforcing the arrest's legitimacy; the participants who joined the audience of bystanders in the June 2024 public workshop commented that

they felt that their non-intervention in arrests was the same as ‘agreeing’ with what was taking place. A magistrate thus needed to create a clean boundary between him and those present, ensuring that he was the sole performer. When ‘Bateson’ gestured with the writ in my 2020 workshop, he drew the audience’s attention onto himself, centring the moment on his assertion of office: he was the only one who should be speaking at that moment, and should be heard by those present, to understand his following actions as legitimate.⁶⁴

However, staging rescues reveals that the boundary between “performer” and “audience” was extremely friable. The bill for Robert Webster’s 1604 rescue declares that Thomas Wilberfosse

with great rage and impatience came to the said Richard Russell and William Darrell in whose Custody the said Robert Webster then was in the street or Towne gate of Wighton aforesaid and publiquely in the hearing of the said Inhabitantes used threatening words and revyling speech.⁶⁵

When staging this, the fragility of the magistrates became evident. The intervention of Wilberfosse meant that the common street was no longer the magistrates’ dominion; attention was drawn away from them and onto Wilberfosse. In stating that the arrest was ‘unlawful and unjust’, Wilberfosse challenged the situation, invading the space that previously had been controlled by the actor playing Bateson. His speech externalized a competing interpretation of the situation, one that actively challenged the version presented by the magistrates. During the workshop, an onlooker looked between Bateson and Wilberfosse before running in to rescue Webster, clearly regarding Wilberfosse as the authority: the presiding magistrates no longer held the authority of performance, and their authority was denaturalized by the actions of the crowd. The outbreak of violence that occurred in many rescues also acted as a destruction of the control of space and delimiting of boundaries. The fragile border between magistrate carrying out an unpopular action and barely-acquiescent audience crumbled when a hostile crowd mobbed an arresting officer. In the Webster arrest, the previously watchful and tense crowd moved into the space previously commanded by the arrest, even stage violence strikingly showing the extent to which the state had been overcome. In my 2024 workshops actors and participants agreed that the audience was paramount to the legitimacy of an arrest: one ‘magistrate’ commented that she felt the security of the arrest depended upon the audience present. Evidently, the boundary between a magistrate and his audience was extremely tenuous.

DOCUMENTS

Warrants loom large in many rescue cases: small, hand-written pieces of paper with the details of an arrest’s cause, target, and the authorized personnel given in formulaic phrasing, as well as authorization from the local official (often a sheriff or JP).⁶⁶ In principle, documents were a simple way to authorize a magistrate, given the number of cases which emphasize that an arrest was legitimate because

the warrant was shown or read, or ‘words to that effect’ were said.⁶⁷ The increasing proliferation of legal documents in the assertion of state authority could be understood as a move towards bureaucratization, with magisterial authority being more clearly distinct from personal authority: with a warrant in hand, a man ceases to be a private individual, and becomes a representative of the state.⁶⁸ Indeed, the 1596 proclamation against imposture highlighted the number of people who ‘show a dutiful regard in obeying the said warrants, as they ought to do, supposing them to be good’.⁶⁹ This reveals both the power documents could have, and the clear pressure of naturalization coming from the centre of government: even as the proclamation decries those who forge their credentials, it emphasizes that good subjects *do* automatically obey authoritative documents.

The assertions of Star Chamber plaintiffs would have us believe that we should read warrants as they were expected to function: that if a man were ‘in the warrant named soe aucthorized as aforesaid’, that is how the arrest took place.⁷⁰ But considering how the warrant was actually used in an arrest raises questions that complicate the picture. Rescue proceedings often refer to magistrates ‘shewing’ their authority, and that showing is frequently at the heart of the debate over whether an arrest was legitimate or not: one set of rescuers defended their violent resistance ‘for they did not shew that defendante anie warrant when they did arrest him’.⁷¹ But showing could take multiple forms. Some bills and pleadings describe the warrant being physically shown to the person being arrested, sometimes after they had asked to see it. Others refer to the warrant having been read aloud, or dispute whether it had been read at all, while others suggest that ‘giving [those present] to understand’ the warrant’s contents could be enough.⁷² In *Attorney General vs. Pigeon*, where the defendants tried to prove that their 1597 arrest of Thomas Watts in Matteshall, Norfolk, was legal, witnesses were asked if the arresting officials had ‘read their warrant’, if Watts or his sons did ‘understand of the warrant for the apprehending of him’, if the bailiffs did ‘saye to James Wattes [Thomas’s son] that they had a warrant’, and if the bailiffs did ‘make knowne their warrant to the saide James Wattes, or offered to shewe the same to him’. One of Watts’ daughters-in-law insisted ‘neither did thei reade anie warrant to James Wattes in this deponents hearing neither doth she knowe that the said Thomas Wattes or his sonnes had knowledge of the warrant granting forth before the executing thereof’, while another witness, Roger Elvie, testified that ‘Parker told the said James Watts that he had the Counsells warrant for apprehension of his father’.⁷³ The exact role of the document is suddenly far less clear.

The relationship between document and arrest process is also tricky to pin down. When staging arrests, actors have invariably asked what they should *do* with the warrant, and creating scripts for the workshops has also forced me to consider this question. The exact temporality of when the warrant was presented is also blurry. When John Lovatt was arrested, according to the officers, they

did apprehend take and arreste the Bodye of the said John Lovatt and then and there they the said Frauncis Hollenshed and John Cotton did expresselye

charge and commaunde him the said John Lovett in your maiesties name to obeye and yealde to the said arreste by them made by virtue of the said warrant and Required the said John Lovett in your maiesties name, in quiet and peaceable manner to yealde his Bodye unto them by Reason of the said arreste.⁷⁴

This offers little clarity on the sequence of events. Neither does the bill for Robert Webster's arrest, where the officers

did in lawfull, peaceable and quiett manner arrest and attache the said Robert Webster in the Streete or Towne gate of Wighton aforesaid giving him to understand of their Warrant and lawfull authority in that behalfe.

A Northamptonshire defendant claimed he had resisted arrest in 1602 because 'they did not shew that defendant anie warrant when they did arrest him'.⁷⁵ Thomas Salkeld, meanwhile, had only asked to see the writ 'after which arrest so made', once again problematizing the exact relationship between the authorization of the arrest and the warrant.⁷⁶

Considering what constituted 'shewing' raises further questions regarding the warrant itself. If a magistrate read the warrant, how might bystanders parse its legitimacy? A shown warrant might be inscrutable, as they could be written in Latin, in court hand, and thus were presumably inaccessible to many.⁷⁷ On the other hand, some warrants were written in English, and thus would have been comprehensible to the literate.⁷⁸ Walter Loveden's arrest indicates the possible difficulties of parsing a warrant: the rescuers

urged [the officers] to show them the sayd rioters theyr warrantes when the Baylyffes being willinge to have satisfied them fully did draw owt many warrants and other papers lookenge amonge them which was the warrante which the sayd prisoner was arrested uppon when the sayd Rioters forcibly snached away from the sayd Baylyffes iii or iiii warrantes and did teare them to peeces, and then the sayd Riotus persons supposinge they had unfurnished the sayd baylyffes of their warrantes, did presently sende for oane Thomas Stewarde Cunstable, and William Waterhowse the tithingman of the sayd towne of Buscott.⁷⁹

This suggests that warrants looked similar enough that they could be easily mistaken for one another. And indeed, as the proclamation against imposture indicates, looking the part might well be sufficient. When asked whether a warrant had been served for the arrest of Agnes Gryndon, the witness Thomas Daie declared he had seen a 'wrytt with a green waxe seale' pinned on the Gryndons' door, suggesting the role of visual verisimilitude in the exertion of state authority.⁸⁰ So was a warrant merely a prop? In some cases, it seems so, but in the case of the half of the adult male population who had served in office at

some time or another, presumably they were able to parse a warrant to see if it did truly authorize the man attempting to use it.⁸¹

To return to the question of how magisterial authority related to the official himself, it is vital to notice that warrants were *perceived* by many to be the most important part of a successful arrest. Some defendants in rescue cases freely acknowledge they resisted arrest because there was no warrant that they had seen.⁸² That this was felt to be an adequate defence to the charge of rescue indicates the perceived centrality of the warrant to the arrest. Indeed, the number of people accused of stealing, ripping or otherwise destroying warrants indicates that it was a common perception that without a warrant there could be no arrest.⁸³ Hercules Loveden's demand that 'he would see the authorities whereby the said bailiffes had arrested the said Walter Loveden' further suggests that a warrant was viewed as coterminous with authority.⁸⁴ When Thomas Salkeld pocketed the warrant, telling Sir Christopher Pickering 'he had no warrant to arreast him and that he would keepe the wrytt in despit of him and his Aucthorytie', and Thomas Wilberfosse tore out a handful of Giles Bateson's beard, declaring his fistful of hair to be only warrant he had, they presented a version of events where these two sheriffs were *only* able to arrest their quarry by virtue of a document.⁸⁵ This is non-naturalized authority, an authority that only resided in a document, and therefore was absolutely resistible: in the eyes of those who resisted, all they needed to do was get rid of the document, leaving the magistrate with no authority to arrest.

This is, notably, legally incorrect: a felony arrest could take place without a warrant. And a magistrate, by law, did not need to show his warrant, 'for his Office doth after a sort authorise him'.⁸⁶ But regardless of the letter of the law, it is clear that this authority was felt by many to be *detachable* – a prop indeed. Strikingly, in May 2024 one actor commented on how vulnerable they had felt playing a JP, saying 'All I had was this warrant!', suggesting that this felt like their only authorization. This provides an illuminating context for the emphasis in many Star Chamber cases on disrespect to documents themselves, as mentioned earlier. One arrestee declared in 1602 that he would 'wype his tayle' with the warrant, while one of Robert Webster's rescuers said the crowd had 'no reason to believe' the warrants.⁸⁷ Another called a Wiltshire commission of rebellion a 'tale of a roasted horse'.⁸⁸ Even if these accusations are false, it is notable that so many different people used them in their attempts to get a positive hearing in Star Chamber. These moments touched a painful nerve for the early modern state: the documents upon which government and law so relied were inherently open to challenge, damage and destruction.

Evidently, warrants were not as simple as they seemed. They were paradoxically powerful and vulnerable at once: on the one hand, they legitimized officials in their actions (if, that is, they were successful in arresting someone); on the other hand, if power was vested only in the document, to the extent that ripping it into pieces would invalidate the arrest, this reveals the very real contingency of magisterial authority in the eyes of the communities within which they attempted to act.⁸⁹

WITNESSING

The threat that witnessing posed was clearly felt in early modern England. Rescue case bills generally end with a remark that failing to punish the malefactors would encourage other ill-disposed persons to commit similar crimes. Beyond Star Chamber convention, however, the risk that witnessing such incidents posed is more clearly articulated in multiple rescue cases. Giles Bateson noted that the insults offered by Robert Webster's rescuers were 'publicly in the hearing of the said Inhabitanes', highlighting the presence of witnesses to the disrespect of authority as a problem.⁹⁰ Attorney General Henry Hobart indicates similar fears in the bill for Thomas Salkeld's rescue, going beyond the conventional fear of encouragement to articulate specific concerns over disorders taking place close to the Scottish border:

knowing that the people there abowtes being but newly brought to conformytie would upon any tumult or uprore be ready to take any occasion of rebellion against those that are putt in authorytie over them.

Witnessing a rescue, and the disrespect to authority it involved, was clearly felt to pose threats beyond the individual moment. Given the accretionary processes of state formation, this is perhaps unsurprising.

It is even more unsurprising when staging rescues. Participants at the public June 2024 workshop noted that their confidence in the power of the state waned more the longer an arrest took to be completed, their sense of its strength declining for every extra moment of the 'magistrate' struggling to be obeyed. In the workshop in 2020, when the person of 'Webster' was seized by the crowd, it manifested a version of the state in which the magistrates of Market Weighton had been unable to enact authority. Magisterial authority had become fragile: the record of the successful arrest – Webster's body – had been forcibly removed from the magistrates. Indeed, watching the struggle to hold onto 'Webster's' body in the workshop emphasized that the extension of the moment of arrest through resistance concretized a vision of the state where authority was not immediately accepted, and where forceful disobedience was a challenge to the ability of the magistrate to perform authority. As such, witnessing a rescue actually destabilized the performance of the state: it demonstrated that a magistrate might well be unable to enact the law in Market Weighton. In a society where encounters with the law were quotidian, and where legal understanding very often proceeded not simply from reading handbooks but from participating in and witnessing the practice of law, audiences to unsuccessful performances of authority might build a mental precedent of what constituted legitimate and illegitimate magisterial actions, which in turn would affect the reception of state officials in future, and thus the reach of the state in that community.

This fear is clearly articulated in repeated references to the deleterious effects of rescues on the future practice of government. The Webster bill refers to the contempt of the 'dewe execution of justice', while another emphasizes that a rescue 'will tend to the hinderance of justice yf it bee not Speedily redressed',

and a third asserts that rescues are ‘contrary to due course of the lawes’.⁹² Failing to punish those who committed such disrespects was tantamount to denuding the law of its force, presumably because it encouraged further disobedience of legal orders and officers, thus endangering the execution of justice. Rescue bills also emphasize the practical difficulty posed by rescues: William Mawry

hath ever since hidd and kept himselfe so Close that your highnes said Sherriffe cannott fynd [him] to execute the said writt or anie other proces uppon him to the great hinderance of Justice and in Manifest contempt of your highnes lawes and peaceable government ...

The bill makes a clear linkage between the failure to execute process in the localities and the justice and government of the realm.⁹³ Indeed, the effect of rescues upon the practicability of government is vividly demonstrated in assertions that officials will be unable to execute future process, including one bill that claims an assault on officials was ‘hinderance to others to execute any of your graces writtes’.⁹⁴ For these plaintiffs, these incidents were not simply encouragements of disorder, but actively harmed the ability of magistrates to carry out their duties. The significance of these moments, therefore, cannot be understated, as they were construed as threats to the very practicability of state authority. Indeed, they denaturalized state authority, in performing *weak* versions of the state, and therefore perhaps participating in another accretionary process, of setting precedent for the resistance of authority.⁹⁵ With this in mind, contemporary concerns over the effects of witnessing rescues are even more understandable.

CONCLUSION

In studying the history of the state it is easy to fall prey to a statist reading, and assume that the documentary traces left by the early modern state indicate that state authority was a settled, established entity. However, this is to ignore the fundamental character of the early modern English state: its dynamism, contingency, and fragility. Instead of cleaving to the simple version of events – that a warrant led to an arrest, that early modern English people obeyed because they were told they must – considering practical questions such as *how* warrants were used reveals a gap between the attempted enactment of authority and its success. To examine how the state was experienced and understood, we must consider it in terms analogous to its original experience: through bodies that moved, talked, and were interpreted. My performance-centric methodology, then, places the gap between enactment and success of authority under scrutiny for the first time. In doing so, new questions are raised: what *was* the moment of arrest? How might a magistrate handle getting the attention of a town square *and* prevent them from interfering when he was outnumbered? Could an ordinary man recognize an illegitimate warrant? These practical issues open new lines of inquiry into how early modern England was governed in practice. PAR used in

dialogue with jurisprudential writings and archival research, therefore, sheds new light on the everyday processes of state formation.

Crucially, anatomizing the performance of arrests emphasizes the fragility of state authority in early modern England. While jurists and Crown officials frequently wished for a naturalized state, with clear distinctions between who could and could not wield authority, in reality this was far from the case. Indeed, the level of negotiation involved in enforcing magisterial authority is all the clearer: a magistrate needed to ensure a clear boundary between himself and his audience, a boundary that was inherently friable. His audience, moreover, often had enough knowledge of the law and the processes of delegation to resist the very tools with which a magistrate might legitimize himself. Indeed, the extent of challenges to the legality of arrest and the clear concerns felt by the Court's personnel over such challenges demonstrate the profound tensions that existed over the state's monopoly of the law. While it is evident that many wished to see the law become coterminous with the state, the practice was far from this. This article, then, has suggested that performances of authority were constantly under threat of failure, and hence that state authority was far more contingent in early modern England than might be assumed. This also gives a new perspective on the view of the sixteenth and seventeenth centuries as a period of movement towards a modern bureaucratized state, where the state is taken as a fixed existence even as it was inchoate. Careful attention to the individual moments that 'crystallized' the state complicates this story, and demonstrates that we must not simply take the state 'as read': indeed, by physically anatomizing the 'state' at work, we can see that state power was not an inevitability.

Practice-based research, as I have demonstrated, offers new perspectives to the historian, which allow us to reassess the prevailing narratives we have about the nature of politics and government in this period. Though the witnesses of authority – 'ordinary' people – in this period so often remain silent in the textual record, staging these encounters forces me to reckon with the place of these witnesses in the daily exertion of state authority, widening my conception of how power was exerted in this period. This was not a Foucauldian spectacle of the scaffold, where the might of the state was enacted as an inevitable fact, a tale of power and those who simply received it: instead, PAR helps to reveal the profound extent to which the state was not omnipotent. If we are to truly understand the 'performances' that suffused early modern articulations of power, status and authority, then, we must consider them *as they were experienced*: through embodied action. This change of perspective offers us the chance to radically reimagine our understanding of the period's power relations, and to challenge our statist readings: sometimes, the state *did not* fully exist, a revelation that throws an exciting new light upon the development of English politics up to and beyond the Civil Wars.

This being said, this performance-based methodology must remain embedded within other more conventional forms of historical research. To fully understand the incidents that this article has focussed upon, further research is needed into the

specific contexts of these arrests that went wrong. PAR opens up the very real possibility of resistance to state authority, but this further raises questions about *why* specific communities or individuals chose to resist, questions which demand a return to the archive. But this is why PAR is so useful to a historian: the craft of history is to ask questions, and find ways to answer them. PAR adds a new lens with which to view the past, asking questions that otherwise one would not conceive. We are not simply historians of written records of events: we are historians of those events. Why not embrace the chance to think of them as they happened and were experienced, especially if it unsettles our previously held assumptions about just how much agency and power ‘ordinary’ people had in the face of their governments?

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NOTES AND REFERENCES

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ABBREVIATIONS

E – records of the Court of Exchequer
 EL MS – Ellesmere Manuscripts, Huntington Library, California
 LP MS – Lambeth Palace Manuscripts
 STAC – records of the Court of Star Chamber
 TNA – The National Archives, Kew

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6 Braddick, *State Formation*, pp. 7–8; Healey, 'Fray on the Meadow', pp. 18–19; Miller, *Gender and Policing*, throughout.

7 Healey, 'Fray on the Meadow', pp. 18–19.

8 Miller, *Gender and Policing*, p. 13.

9 Healey, 'Fray on the Meadow', p. 18.

10 For a brief example see Lucy J.S. Clarke, 'Scriptwriting as Historical Research', History Workshop Online, 21 November 2024, <https://www.historyworkshop.org.uk/practice-history/scriptwriting-as-historical-research> [accessed 6 Jan 2025].

11 The National Archives (TNA), STAC 5/L43/25 (1600), 8/61/5 (1612); see also STAC 8/61/61 (1604), 5/W79/25 (1602), 5/D16/17 (1590/1), 5/P39/4 (1584), 5/L18/31 (1600) 7/31/44 (1602), 8/189/30 (1626).

12 Van vs Morgan (1627), reported in Lambeth Palace MS 1253, ff.138r–140r (transcription courtesy of Dr Ian Williams).

13 STAC 8/61/61 (1604), 8/16/18 (1607/8).

14 STAC 5/D5/19 (1602), 5/B104/3 (1592).

15 See Holger Schott Syme, *Theater and Testimony in Shakespeare's England: A Culture of Mediation*, Cambridge 2012.

16 STAC 5/W28/23 (1594); see also STAC 5/P39/4 (1584).

17 STAC 5/W26/33 (1588).

18 STAC 5/M23/24 (1602).

19 Miller, *Gender and Policing*, p. 69.

20 Krista J. Kesselring, ed., *Star Chamber Reports: BL Harley MS 2143*, Kew, 2018, nos. 202, 242, 487, 506, 507, 589, 664, 751, 788, 916; nos. 916, 944; nos. 891, 877.

21 E.g. STAC 8/4/6 (1605), 5/A1/12 (1593).

22 Paul Griffiths, 'Punishing Words: Insults and Injuries, 1525–1700', in *The Extraordinary and the Everyday in Early Modern England: Essays in Celebration of the Work of Bernard Capp*, ed. Angela McShane and Garthine Walker, London 2010, p. 81. See also Braddick, *State Formation*, p. 39.

23 Lucy J.S. Clarke, "'I say I must for I am the king's shrieve": Magistrates Invoking the King's Name in *1 Henry VI* (1592) and *The Downfall of Robert Earl of Huntingdon* (1598)', *Historical Research* 95, May 2022, pp. 196–212, 200–1.

24 STAC 8/61/61 (1604), 8/296/24 (1606).

25 STAC 8/296/24 (1606).

26 *Star Chamber Reports: Harley 2143*, nos. 676 (1586), 839 (1593); see similar cases, 841 (1592/3), 979 (1595).

27 *Harley*, no. 202; Huntington Library, Ellesmere (EL) MS 2740. See also EL MS 2768, where Egerton notes a series of accusations of illegality against the judges and courts at the York Assizes of 1576.

28 EL MS 2661, 2672, emphasis mine.

29 Braddick, 'Face, légitimité et identité partisane dans la négociation du pouvoir de l'État en Angleterre (1558–1660)', in *Le Pouvoir contourné: infléchir et subvertir l'autorité à l'âge moderne*, ed. H. Hermant, Paris, 2016, pp. 193–221 (read in original English draft from author).

30 E.g. STAC 8/293/13 (1610), 5/R1/17 (1566).

31 STAC 5/T29/28 (1602), 5/W79/25 (1602), 7/5/10 (1558–1603), 5/G27/37 (1602). See also TNA E 134/5Jas1/Mich 22 (1607-8), where arresting officers claim they called for 'witnesses to beare recorde of their disobedience to the kinges processe', perhaps indicating concerns over contempt of process in Exchequer proceedings.

32 STAC 8/81/20 (1620). A *capias utlagatum* was a type of arrest process.

33 Wall, *Power and Protest*, p. 113.

34 Mary Thomas Crane, 'What Was Performance?', *Criticism* 43: 2, 2001, p. 171. See *Acts of the Privy Council of England Volume 32: 1601–4*, ed. John Roche Dasent, London 1907, pp. 47, 164, for the privy council demanding that magistrates 'perform' their duties; Act for the Enlarging of the Hue and Cry, 39 Eliz. 25, which refers to the ability to 'perform the same Statutes'.

35 Lucy J.S. Clarke, 'Testing the Participatory State in A Yorkshire Tragedy (c. 1605–8)', *Cultural and Social History* 19: 5, 2022, pp. 509–28, 510–11.

36 Robin Chapman Stacey, *Dark Speech: The Performance of Law in Early Ireland*, Philadelphia 2007, p. 4.

37 On failures of the state to be performed into reality, see Clarke, '“I say I must”', pp. 198–200.

38 Both Healey and Miller gesture towards audiences, but primarily focus upon the words uttered by officials rather than methods of performance or their reception.

39 Robin Nelson suggests that PAR is defined by using artistic practice as evidence for a scholarly inquiry; however, this remains disputed among PAR practitioners. Robin Nelson, *Practice as Research in the Arts*, Basingstoke 2013, p. 10.

40 Richard Fitch, 'Cooking the Books: A cautionary tale of material culture and the recreation of historic recipes for public viewing', <https://tudorcook.co.uk/blog/cooking-the-books-a-cautionary-tale-of-material-culture-and-the-recreation-of-historic-recipes-for-public-viewing-2/>.

41 *The Experience of Worship Project*, <https://www.experienceofworship.org.uk/project/introduction-and-overview/>.

42 Catherine Fletcher, 'Not Walking', History Workshop Online, 27 August 2020, <https://www.historyworkshop.org.uk/not-walking/>.

43 David Gange, *The Frayed Atlantic Edge*, London 2019.

44 See Clarke, 'Scriptwriting'.

45 William Lambarde, *Eirenarcha, or of the Offices of the Justices of the Peace, in two Bookes*, London 1582, p. 192; Michael Dalton, *The Countrey Justice*, London 1618, p. 306.

46 STAC 8/165/23 (1606), 8/4/6 (1605); see also 5/G36/3 (1570).

47 E.g. STAC 5/W79/25 (1602).

48 STAC 8/296/24 (1606).

49 STAC 5/L18/31 (1599–1600).

50 STAC 8/81/20 (1620).

51 STAC 8/293/12 (1610); see also 8/201/26 (1615), 5/A26/14 (1602).

52 LP MS 1253, ff.150r-154r.

53 STAC 7/9/25 (1558-1603).

54 E.g. STAC 8/53/21 (1605).

55 Brooke Jarvis, 'When Bystanders Step Between the Police and Black Men', *New York Times*, 8 March 2023 [<https://www.nytimes.com/2023/03/08/magazine/police-black-men-bystanders.html>]; Molly Lipson, 'A year on from Sarah Everard's death, it's clearer than ever that the police are not serving us', *INews.co.uk*, 3 March 2022 [<https://inews.co.uk/opinion/a-year-on-from-sarah-everards-death-its-clearer-than-ever-that-the-police-are-not-serving-us-1493881>].

56 John McGavin and Greg Walker, *Imagining Spectatorship: from the Mysteries to the Shakespearean Stage*, Oxford, 2016, p. 70.

57 TNA E134/5Jas1/Mich 22 (1607-8).

58 EL MS 2728.

59 STAC 5/P39/7 (1591); see also 5/W28/23 (1594), on a JP countenancing an arrest.

60 STAC 8/245/24 (1605), transcription courtesy of Dr Clare Egan.

61 STAC 5/A2/5 (1601), 5/A1/40 (1595-6), 5/A1/36 (1585), 5/A55/33 (1576-7), 5/B104/14 (1597), 5/R1/33 (1599), 7/6/25 (1558-1603).

62 STAC 5/B104/20 (1602).

63 STAC 5/B104/35 (1591); see also STAC 5/B58/9 (1595).

64 Cf. Erika Lin on theatrical authority as defined by holding audience attention, 'Performance Practice and Theatrical Privilege: Rethinking Weimann's Concepts of Locus and Platea', *New Theatre Quarterly* 22: 3, 2006, pp. 283–98, 287, 290.

65 STAC 8/61/61 (1604).

66 Eg. STAC 7/9/27: 'Elizabeth by the grace of god Queene of England Fraunce and Ireland defender of the faythe etc To our trusty and welbeloved the sherif of owre County of Leicester Greetinge, willinge and authoriseinge yowe forthwith uppon the receipte hereof to attache the bodye of william Smythe, Thomas Mytchell, Richard Bryan, John Spreckley thelder, and Gilbert Wetherall Clerke; Comyttinge them to prison under sure Custodye, soe as yowe may have them be and personally appeare before the Masters and Councill of owre Courte of wardes and Lyveries att Westminster [Sunday] next Comeinge then and there to answere to their Contempts in disobeying our proces of Iniunction to them and others directed oute of owre said Courte. And fayle not thaccomplishment hereof uppon paine of C^{li} geeven under the seale of owre said Courte the xiiith day of lune in the xxxvith yere of our raigne.'

67 STAC 8/61/5 (1612), 8/86/9 (1611), 8/296/24 (1606).

68 James Rosenheim, 'Documenting Authority: Texts and Magistracy in Restoration Society', *Albion: A Quarterly Journal Concerned with British Studies* 25: 4, 1993, p. 591–604, p. 604.

69 *Tudor Royal Proclamations: The Later Tudors*, vol II, ed. Paul Hughes and James Larkin, New Haven and London 1969, no. 779, p. 160.

70 STAC 8/61/5 (1612), 5/W35/29.

71 STAC 5/M44/34 (1602); see also e.g. 5/G8/24 (1594–5), 5/A30/27 (1580), 7/14/25 (1602) 5/H17/27 (1597–8).

72 STAC 8/249/27 (1619).

73 STAC 5/A55/37 (1597–8).

74 STAC 5/B104/20 (1602).

75 STAC 5/M44/34 (1602).

76 STAC 8/16/18 (1607/8).

77 TNA, E178/1807 (1568/9), 178/5767 (1635).

78 STAC 7/9/27 (1558–1603).

79 STAC 5/L18/31 (1600).

80 TNA E134/5Jas1/Mich 22.

81 Mark Goldie, 'The Unacknowledged Republic: Officeholding in Early Modern England', in *The Politics of the Excluded, c. 1500–1850*, ed. Tim Harris, Basingstoke 2001, p. 161.

82 STAC 5/M44/34 (1602).

83 STAC 8/57/10 (1616), 8/249/27 (1619).

84 STAC 5/L43/25 (1602).

85 STAC 8/16/18 (1608), 8/61/61 (1604).

86 Lambarde, *Eirenarcha*, p. 98; see also Dalton, *Country Justice*. I intend to publish further on this topic in due course.

87 STAC 5/D5/19 (1602), 8/61/61; see also 5/G21/5 (1602).

88 STAC 5/L18/10 (1593).

89 See my chapter "'You have seen the high shrieve's warrant": Legal Documents as Props in Star Chamber and *Thomas of Woodstock*' in *Reciprocal Realms: Law as Literature, Literature as Law c. 1200–1700*, ed. Clare Egan and Sarah White, forthcoming with Routledge.

90 STAC 8/61/61 (1604).

92 STAC 8/61/61 (1604), 5/L18/31 (1600), 5/G27/37 (1602).

93 STAC 8/81/20 (1620); see similar in 5/L14/17 (1594).

94 STAC 7/6/21 (1558–1603).

95 See Clarke, 'I say I must'.

ABSTRACT

This article offers a new reading of state authority in early modern England by using a performance-centric method to break down what *constituted* the ‘performance’ of an arrest. It draws upon insights and questions drawn from practice-as-research workshops to highlight heretofore unseen challenges for carrying out an arrest, arguing that state authority was far more fragile than has been recognized. This fragility, moreover, was a contemporary concern for both local and national authorities. The article thus provides both a challenge to established narratives of pacified state formation in early modern England, and a methodological provocation for historians to use PAR.

Keywords: State formation, practice-as-research, arrests, performance of authority, legal process