RAPE AND INFANTICIDE IN MARYLAND, 1634-1689: GENDER AND CLASS IN THE COURTROOM CONTESTATION OF PATRIARCHY ON THE EDGE OF THE ENGLISH ATLANTIC

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A Dissertation

Submitted to the Graduate College of Bowling Green State University in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

August 2008

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Seventeenth-century elite male Marylanders feared women and non-elites usurping elite power. Elite behavior suggesting this fear is visible in nineteen legal proceedings stemming from incidents identified as involving either alleged coerced sex or the supposed killing of a newborn by its single mother in Maryland from 1634-1689. Rape and infanticide cases were chosen for examination because they represent the universe of violent felony gendered crimes of which sex was an integral part. This study employs a microhistorical approach to each incident based on court documents, wills, church records, and transportation records.

Seventeenth-century Marylanders espoused various understandings of both crimes. Rape victim testimony emphasized non-consent, force, and penile penetration. When combined with judicial action, this is essentially the definition of “rape” employed herein. “Coerced sex” in this dissertation indicates forced sex that failed to result in a rape trial. Justices and juries understood the trials as an opportunity to strengthen the gendered power structure. Generally, the Provincial court dismissed these cases, downgraded the charge, or pardoned the accused. “Infanticide” in this study is defined as a single woman giving birth in secret to a child later found dead. Infanticide verdicts depended on the presence and class of the woman’s patriarch. Women without patriarchal figures appearing for them were condemned.

This dissertation’s findings about colonial Maryland have broad implications for considering the following themes in early America. In early Maryland fear of social upheaval motivated a host of legal decisions that while based on English common law took different forms to meet new world concerns. To secure elite male hegemony, Maryland elites were willing to
accommodate subordinates with varying degrees of authority and control. Throughout early America colonists questioned the limits and characteristics of patriarchal privileges, the responsibilities elites held, and the responses to subordinates desirous of increased agency. Therefore, this dissertation’s findings suggest that through a process of resistance and accommodation elite men and subordinates worked out the nuances of gender and class privileges. These privileges operated separately, but jointly defined how much power an individual commanded.
To My Mom, Rosemary Jakub Urquiza,

A True Tour De Force and My Biggest Cheer Leader

“You. Can. DO IT!”

Thanks, Mom.
ACKNOWLEDGMENTS

I would like to thank my advisor, Dr. Andrew Schocket, for his countless questions, comments, concerns, and encouragements. Thank you for challenging me to think broadly about early America, and for helping me get over my resistance to revision. The balance between constructive criticism and positive feedback was just right. Thanks.

Next, I would like to thank the members of my committee, Dr. Ruth Herndon, Dr. Leigh Ann Wheeler, and Dr. Thomas Chibucos for your thoughtful suggestions both with this copy and for my future work. Each of you added a unique dimension to the discussion and the overall shape of this dissertation. While any errors are mine alone, this work certainly benefitted from your insights.

To the graduate students who work in the Bowling Green State University History Department computer lab, I owe you my thanks as well. Your humor, insights, and collegial atmosphere helped more than you can ever know. From being willing to read “just this section, I promise,” to driving me the airport, to the good natured humor that permeated the room, thank you for helping me keep my wits through the construction of such a large project.

For the encouragement over the years offered by my parents, grandparents, and my sister, Candace Marie Urquiza, thanks—with special recognitions to my sister, thanks for making me have fun and take time off. Our trips to D.C., the Cathedral, Otakon, Annapolis, and others (especially the moose cake ritual at Gary’s Grill) still make me smile.

Lastly, to Francis Noll, to you especially, my debt is large. Thank you for all the little ways you helped me—from dinner, to coffee, to kittens, to fixing my car, to helping me move, to... you know the rest—I will always be grateful.
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INTRODUCTION

This dissertation regards the relationship between the elites, their subordinates, and patriarchal power in the province of Maryland from 1634-1689. In seventeenth-century colonial Maryland women were vulnerable to unwanted sexual advances without regard to class, religion, economic status, or parentage. Both men and women were directly and indirectly involved in the court process as litigants, witnesses, and (for men) as justices, jurors, and guardians. Rape and infanticide were discussed publicly, before the Council of Maryland and in the courtrooms of the county and Provincial courts, and privately among neighbors—both through discussion as a source of gossip (or community entertainment) and as a means of alerting the community of a real threat and thus a need for surveillance. I chose to investigate both crimes because while sex may have not been a part of the crime, per se, it was central to the crime. At the heart of rape was violence and forced sex on a woman and at the core of infanticide was a baby—the result of sex—and violence by a woman. Thus the two types of crimes constitute the universe of violent gendered felony crimes involving women’s bodies as recorded by the English court clerk in Maryland prior to Lord Baltimore’s loss of control of the colony. Moreover, the dual approach provides one way to view male attempts to limit female agency (which is my term to describe the independence and self-determination that their behavior suggests many Marylanders desired). These cases also provide a valuable lens to explore the variety of ways women resisted male control.

In the seventeenth century, “rape” meant a variety of things to different people. Though she may not have articulated the attack as follows, a female victim of rape understood the incident as one in which (and emphasizing repeatedly her lack of consent) a man forced her to engage in sexual intercourse and penile penetration occurred, and though she cried for help no
one came to stop the man. For the purposes of this study, this is essentially the interpretation I
use, albeit with one modification—these women told someone of the attack but judicial action
was not necessarily taken against the man. And, if it was, the charge was generally redefined as a
lesser crime—making the crime not one of “rape”, but as adultery, fornication, or breach of
contract. Hence, while a woman may have viewed the incident with her attacker as felonious sex,
the lack of judicial action indicates that elites did not legally recognize the altercation as such. In
this study, I use “coerced sex” to indicate incidents of forced sex (which may have in fact met all
of the victim’s criteria of rape) but did not result in judicial action as rape. Thus while forced sex
may have occurred, the court worked to downgrade the offense to a crime in which capital
punishment was not the end result, if possible—such as fornication, adultery, or breach of
contract. If a woman’s patriarchal head was a powerful, respected member of the elite, the
matter might advance to a jury, for the benefit of the woman’s patriarch. In this cases that went
to trial the accused man received a pardon. To a jury, who heard a woman accuse a man of rape,
they understood the trial as an opportunity to strengthen the gendered power structure. No man
accused of rape was ever executed as such—either the case was dismissed, recast as another
crime, or the court awarded the man a pardon.

In the Maryland provincial judicial records for the seventeenth century, though
Marylanders did not use the term “infanticide” specifically, justices and jury members gave
elaborate descriptions of this crime. When speaking in reference to the murder of children (other
than newborns), servants, and all others—except that of masters by their servants, which was
referred to as “petty treason”—the judicial documents records the prosecution of the accused
simply as murder and do not reference the victim as a specifically father-less child. “Infanticide”
serves as my term to describe contemporary Marylanders’ conceptions of this specific kind of
murder—only the murder of newborn babies, and only when maliciously murdered by a woman who was unmarried and gave birth alone and in secret. 1 Through infanticide cases, the court functioned in ways to demonstrate that rebellious women who resisted her patriarch’s control were not tolerated. Generally, the verdict of the case depended on the presence and rank of her patriarchal head. Married women and women whose husbands, masters, or fathers interceded for them were released. Women who had no patriarchal figure appear on their behalf were condemned; making the real point of the court session for elites, an attempt to address breaches in the social hierarchy and threats made to social order.

Both types of alleged crimes were the only kinds of felony crimes which centered on illicit sex and contained explicit violence. In these crimes, various women and non-elite men resisted elite hegemony and found ways to exercise independence and prerogative. Justices and jurors sought to use both kinds of trials to demonstrate the danger of subordinates infringing on elite rights. However, even as elites sought to curb subordinates’ illicit independence, they simultaneously legitimated the influence of specific women and non-elite men. Juries interpreted privileges of gender and class on a case-by-case basis and made decisions in keeping with a consistent desire to uphold elite authority. While simultaneously engaging women, and non-elite men in a complicated process of resistance and accommodation (which together helped to define the extent of elite male power), elite men responded to perceived challenges to their authority by interpreting privileges of gender and class on a continuum.

1 For an example of an infanticide charge, see the account concerning Isabella Yausely which read as follows: “Isabella Yausely . . . did labor with Childde and did bring forth a certain male Childde borne alive secretly and without the Company of any other women, and that afterwards the said Isabella by force and arms and of her malice before thought . . . [regarding] . . . the said male childe so borne alive, and in a Natural being did make an assault and then and there feloniously did Kill so the said Isabella afore said the said male Childde of her malice fore thought feloniously and voluntarily did murder contrary to the peace of the Lord Proprietary his Rule and Dignity.” Archives of Maryland Online, Proceedings of the Provincial Court, 1666-1670, volume 65, page 9, http://aomol.net/megafm/msa/speccol/sc2900/sc2908/000001/000065/html/am65--9.html, (accessed on January 31, 2008).
Throughout the English empire in the seventeenth-century, jurisprudence was designed to accomplish several purposes. The first step in understanding rape and infanticide cases is to frame them in the context of other criminal proceedings and investigate the purpose of the law. Ultimately, seventeenth-century men used the law to punish law-breakers. It was not designed to re-educate or re-habilitate misbehaving members of society. Lawbreakers were not seen as the disenfranchised poor who if given opportunity and an education could pull themselves out of their situation and find advancement. Punishment or the threat thereof was to be so odious that one dared not be a repeat offender. For gentlemen this entailed a fine. But for poor men and women, punishment was painfully less expensive: they were beaten, branded, or hung; all were easy on the pocketbook but hard on the flesh.

Second, in Maryland as elsewhere within the empire, the law was designed to reinforce the social order. This order placed elite wealthy men in positions of respectability and deserving of deference while poor men and women, who performed the necessary labor of the elite, did so in blithe obedience. As Susan Dwyer Amussen comments in her writing about English law, punishment as a public demonstration was meant to underscore the social hierarchy and reassert the authority of those in control—ultimately it reinforced the ruler’s ability to exercise authority over his subjects.² It must also be remembered that early Chesapeake colonists, as historians like Warren Billings have argued, like other Englishmen elsewhere in the empire linked crime to sin. Thus breaking a law was tantamount to being a man fallen from grace into sin who needed to be chastised in order to correct his aberrant behavior and to halt God’s wrath from being imposed

on the rest of the community.\(^3\) Wrongdoers were supposed to find the humiliation, ridicule, and pain associated with whipping as a lasting reminder to deter them from other offenses.

Third, punishment, as alluded to above, was designed to be a public deterrent. Corporal punishment of lawbreakers was to disincline all of society and any potential lawbreakers from committing a similar crime. Punishment was designed to be a public spectacle. It was to be painfully harsh not solely to prohibit the offender from repeating the crime but also to discourage potential offenders from repeating the crime. Institutionalized hanging was by no means inexpensive. Far more than just the executioner profited. The gallows had to be constructed, which meant materials had to be gathered, the men who did the work needed to be fed and refreshed and the prisoner had to be transported to the place of execution. All in all, a number of people were involved in the business of execution.\(^4\) The cheapest means of execution simply entailed a rope and any obliging tree without pomp or circumstance. The relative cost associated with institutionalized hanging indicates that enforcers believed it held significant social value. It provided men of authority—the rising planters—the opportunity to demonstrate their ability to enforce and make the law. Public punishment remains useful to the historian as a barometer of social fears and particular groups of individuals who inspired those fears.

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\(^4\) Burford and Shulman, *Of Bridles and Burnings* (New York: St. Martin’s Press, 1992), 108. Burford and Shulman suggest that “Institutionalized hanging was not a cheap business, providing industry for more than the executioner. From Hastings borough chamberlain’s accounts of 1664 come these detailed expenses in connection with the hanging of a woman:

- timber for ye gallows $3\text{s }\text{Od}$
- 2 days work about ye gallows $4\text{s }10\text{d}$
- To Isaac and his son for setting up $8\text{s }\text{Od}$
- For carrying ladder to execution of ye woman and bringing it here again $12\text{d}$
- For ye lather $18\text{d}$
- For four men that guarded ye sessions $2\text{s }\text{od}$
- For bread and beer for them that loaded ye gallows timbre $8\text{d}$
- To ye executioner for executing ye woman $10\text{s }\text{odT}$
The privilege of the male elite was in a precarious position. An elite group only remains elite so long as those who are subordinate recognize and submit to the authority of the privileged group. In Maryland, men-on-the-make probably feared women becoming more powerful because their increase in authority allowed for the possibility of a social leveling. The more powerful women became, the more on par they came with men. So women who failed to adhere to social norms that privileged male authority and male rule presented themselves as possible types for other malcontents. And malcontents certainly abounded in this period. Thus the elite of Maryland probably felt an urgent need to conceptualize province as a respectable and integral extension of England—in much the same way that Kent was part of the empire—and not a barren frontier with little significance. If one of the prime motivators for individuals coming to Maryland was to amass a fortune, then men-on-the-make did so desirous of not only the material trappings of wealth but also the status and respectability that came with it as well. Maryland men found it in their best interests to mirror the host of English legal institutions, governmental structures, and laws not simply because these were the institutions most familiar to them and most easily recreated but because doing so was an integral part of the motivation for emigrating. The quest for fortune and for respectability was one and the same.

In effort to understand the cultural context and the society in which incidents of violence developed—and the larger ramifications—I have elected to employ a case study approach with Maryland as my focal point. At center, this study is about Maryland, from its founding as a

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5 In 1675 Nathaniel Bacon, a member of the junior elite, incited a rebellion against the Virginia government which, according to Edmund Morgan, created a significant societal shift. Morgan suggests that Bacon’s rebellion sparked a ripple effect whereby white elite men conceived of privileging race over class because privileging male whiteness across class lines was less threatening to the established patriarchal social order than allowing the insurgents to continue and possibly align with other marginalized people. Edmund Morgan, *American Slavery; American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 250-270.
colony to 1689. Consequently, the research contained within the pages of this dissertation concentrates on a particular location, characterized by specific struggles, for roughly 50 years. One of the goals of this work is to give the reader a sound understanding of what one facet of early Maryland life was like. The other goal of this work is to use early Maryland in order to explore larger themes regarding early America. Some of the individual details characteristic of early Maryland life were distinct even among Chesapeake colonies; however, other colonies also wrestled with questions of patriarchy, legality, labor and the like. Therefore, the research contained in this study also touches on larger issues regarding the nature of sexual crimes, the conduct of the court in response, and the ways the elite and those the elite wished to control negotiated the limits of patriarchal authority in the British colonies during the seventeenth-century. Various colonies may have worked out solutions to these questions differently, but the fact remains that the various colonies of Anglo America did wrestle with them. This case study methodology of using one representative study as society writ large allows the opportunity to analyze the various connections between people, and understand the individual effects of larger policy decisions.

However, though the case study approach is extremely helpful in discussing themes in terms of broad strokes, the reader should be aware that limitations exist—namely, that it cannot account for the particularities of other regions during the same time period. Thus, while this study uses Maryland as a springboard and is about Maryland and the Chesapeake colonies, and is also about gender dynamics and the struggle over agency that took place throughout early America, it is not about the specific ways other regions worked out the answers to these issues or the precise characteristics of those societies.
This study considers the universe of violent gendered felony crimes involving sex in the Province of Maryland from the founding of the colony in 1634 to 1689. Several dramatic changes make 1689 a logical choice for an end point. After 1689, Maryland changed from a Proprietary colony to a Crown colony. The social tenor changed dramatically as well. For example, the dwindling supply of free labor and the availability of permanent workers (slaves) eventually drove planters to slavery at the end of the seventeenth century. Geographically the research in this study is centered only on the province of Maryland, which in the seventeenth century meant the area adjacent to the bay as settlement depended on access to surrounding waterways. Even though much of the existing literature on the colonial Chesapeake simply incorporates Maryland into Virginia, seventeenth-century Maryland and Virginia were two distinct colonies with different religious goals, different evolving political structures, and (at times) different ideas about where the boundary between them lay. In contrast to Virginia, which had only a handful of uprisings, Maryland’s social, religious, and political instability appeared almost continuous. Maryland seems to have functioned more as a battleground where repeated contests for power—political, religious and social—played out.

In other ways, the two colonies are similar and warrant study as “the Chesapeake.” Chesapeake qualities shared by Maryland and Virginia include an endemic labor shortage and the ensuing additional leverage afforded women increased agency in the colonies, particularly as

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8 John Kukla suggests that seventeenth-century Virginia was not a “profoundly unstable world.” See Jon Kukla’s “Order and Chaos in Early America: Political and Social Stability in Pre-Restoration Virginia,” *The American Historical Review*, Vol. 90, No. 2 (1985), 275. Kukla remarks that Maryland was plagued by disorder during the “plundering time” of the 1640s and 1650s.
the ratio of men to women revealed the ratio of men to women to be heavily dominated by men. For example, historians of Virginia, such as Kathleen M. Brown, have argued that labor-short and women-deprived Virginia witnessed a burgeoning of economic power for white women particularly as some white women outlived their husbands and could therefore bring property of their own into a subsequent marriage. The relevant scholarship on both Chesapeake history and Maryland history informs my study, while at the same time this work is distinctly situated as Maryland history. Additionally, I examine the identity and social context of the fledgling Maryland colony at a time when its inhabitants considered themselves first and foremost members of the empire. They conceived themselves not as Marylanders, but as Englishmen and women with all of the rights, privileges and obligations due English subjects.

The social and cultural landscape of Maryland underwent a massive evolution over the course of the seventeenth-century. By 1690 Maryland tobacco planters were rapidly switching from white indentured servant labor to black labor. Contract labor dominated most of the seventeenth-century, while 1690 marked the beginning of slave labor. However, the shift in preference from temporarily bound white-male laborers to permanently bound black laborers did not occur immediately. In the 1660s, planters turned to white women as a labor force as the availability of white men to work as indentured servants diminished. Women became a valuable commodity, not just as wives, but also for the agricultural labor they could perform. Until about 1680 the ratio between men and women in the colony was 3 to 1. Because there were fewer women in the colony, they also had more social freedom and faced far better marriage prospects.

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than did their counterparts in England. Lois Green Carr and Lorena S. Walsh, who together studied the experience of white women in seventeenth-century Maryland, argued that the “majority of women who reached Virginia and Maryland arrived as unmarried servants... half of them either bore bastard children or were pregnant at marriage, but these rates fall dramatically for their native born daughters.”\textsuperscript{12} By 1680 the population of Maryland began to grow due to childbirth, more than by immigration, increasing the number of women in the colony.\textsuperscript{13} Moreover, Paul Clemens also demonstrated that the period prior to 1689 deserves special study. From settlement to the 1680s, farmers prospered due to an expanding demand for tobacco. Overall, however, after the 1680s the Chesapeake economy declined because of falling international tobacco prices. Hence, the 1680s were a pivotal point in Maryland’s history.\textsuperscript{14}

Because the number of men far outpaced the number of women present in the colony, some households were entirely comprised of men. With no women present to perform traditional chores such as housekeeping, cooking, and laundry among others, men in these households were forced to absorb these responsibilities—which possibly complicated notions of gender boundaries. If male identity in Europe and what eventually became the United States was defined by the adherence to particular responsibilities, as some scholars such as R. W. Connell have

\textsuperscript{13} Lois Green Carr writes in the \textit{Journal of Economic History}, vol. 52, No. 2 (June 1992): 271 an article entitled “Emigration and the Standard of Living: The Seventeenth-Century Chesapeake,” in which she writes that “seventeenth-century English immigrants experienced a trade off. They died early and raised few children who survived to adulthood, most worked harder than in England at more boring tasks, and, except for food, their standard of living was vastly inferior to what the mother country could offer.” On average people ate 4,000 calories/day, found ample employment, and opportunities for advancement (278). Throughout the period under study, the women and men tended to live shorter lives and have fewer children. In terms of material culture and standard of living they lived a far meaner life than if they had remained in England. And they experienced an immigrant consciousness; they thought of themselves not as Marylanders, but as Englishmen.
\textsuperscript{14} Paul E. Clemens, \textit{The Atlantic Economy and Colonial Maryland’s Eastern Shore: From Tobacco to Grain}, (Ithaca: Cornell University Press, 1980), esp. 32-35. For more on the relationship of tobacco to settlement patterns in Maryland, see Carville Earle’s, \textit{The evolution of a Tidewater Settlement System: All Hallow’s Parish, Maryland 1650-1783}, Chicago: University of Chicago, 1975, esp. 14-37. Earle argues that colonial Chesapeake was not a haphazard settlement system: it developed along a boom-and-bust tobacco cycle and in tandem with population growth.
argued, then the very concept of male identity was grounded on difference between male and female gender roles. Connell argues that “masculinity” does not exist except in contrast with “femininity.” He writes, “a culture which does not treat men and women as bearers of polarized character types, at least in principle, does not have a concept of masculinity in the sense of modern European/American culture.” In Connell’s view the ideology of masculinity date from 1450 to 1650 and were due to the intersection of four factors: the emergence of renaissance secular culture with its emphasis on marital heterosexuality and individualism, the creation of gendered overseas empires, the growth of commercial capitalism, and the onset of large-scale European civil war that involved the emergence of a strong centralized state and an increased emphasis of military power and performance. The nascent elite of Maryland emerged at the end of the two hundred year span that Connell sites as the beginning of gentry masculinity with its focus on patriarchal power.

The nascent elite’s creation of difference in colonial Maryland promised to safeguard male prerogative as it placed official privilege beyond the reach of women. Masculinity (which, though contemporaries did not use the term but hinted at, I use to mean things, attitudes, values, and qualities society implicitly and explicitly subscribes as being characteristic of men) and patriarchy (herein defined as rule by men) ran hand-in-hand. The gentry founded masculinity on innate characteristics that were both directly and/or indirectly related to male bodies. Connell further comments:

True masculinity is almost always thought to proceed from men’s bodies—to be inherent in a male body or to express something about a male body. Either the body drives and directs action (e.g., men are naturally more aggressive than women; rape results from uncontrollable lust or an innate urge to violence), or the body sets limits to action (e.g.,

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men naturally do not take care of infants; homosexuality is unnatural and therefore confined to a perverse minority).  

Where these boundaries blurred—in individual homes and in society at large—fear of social unrest naturally followed. Combined with the fact that though indentured servants constituted a solid majority of households and their residence within the household was only temporary, family instability made strict adherence to common law more important. In a society where notions of male supremacy were grounded on notions that male authority was both ordained by God and demonstrated in the body, thwarting this order was tantamount to an attack on a variety of hierarchies and generally resulted in increased violence within the home in effort to correct this infringement on male authority. Ensuring that women did not usurp elite male privilege (which was personified in the jury) took on even greater importance as necessity already forced some blurring of gender norms.

In order to understand the motivations leading to the trial process that enveloped the lives of women accused of infanticide and men accused of rape, one must first understand the background of the individuals involved. In regard to women in England, modern scholars E.J. Burford and Sandra Shulman argue that some elite men feared women because (like non-elite men) they believed women could unite with those without power, overthrow the government, and invert the social order that placed elite men in positions of authority vastly superior to women. Because of this fear and in order to safeguard their privileged positions, elite men with power made oppressive laws designed to restrict women’s access to government while at the same time increasing their contact with it albeit as defendants. How much more then did some of the nascent elite of colonial Maryland fear the women of the province aligning with others the

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elites sought to control—while at the same time ever conscious that the male-to-female ratio was
decidedly in favor of women. Many men lived in all male households and some never wed. For
many, obtaining an indentured servant woman was tantamount to obtaining a wife—provided
that she agreed to have him as her husband, and occasionally even if she did not. As seventeenth-
century Marylanders tended to be newly arrived immigrants, this fear continued to influence
gender relations in the new colony as they possibly brought this fear along with them. The
settlement patterns of Maryland which were influenced by the importance of planting tobacco as
a cash-crop must have done nothing to allay these fears. Maryland immigrants tended to be
young aspiring men whose fortunes at least in theory could be made until the middle of the
century from sweat equity and the ability to survive the climate.

   On the whole, these men-on-the-make were not ultra-wealthy planters. With the
exception of those leaving for religious reasons such as the Catholics and the Quakers among
others, ultra-wealthy men had no incentive to risk their lives and their fortunes in a new colony
when they had already achieved the material goods which signified their wealth and status. In
short, men of great fortune or women from families who could arrange profitable marriages to
men of great fortune did not risk everything to amass a fortune that they already had unless they
were seeking a place to worship freely; this was the case for a few. However, while some men in
the colony craved a haven for their religious expression, based on settlement patterns in
Maryland and the kinds of laws and issues that many elites were concerned with, the plantation
economy wooed a sizeable portion of men much more interested in working towards a fortune
rather than working towards redemption.

   Thus the plantation economy appealed to a variety of second and third sons guaranteed of
little inheritance and first sons with little to inherit--particularly so in the first years of the colony

19 Burford and Shulman, Of Bridles and Burnings, 12-29.
when it was still possible for a man who could not afford passage to indenture himself, work for several years upon arrival as an indentured servant, and die as a wealthy planter. Though this period of rags-to-riches possibility did not last long, it lasted long enough to fuel the hopes of some aspiring men. Anthony Salerno, in “The Social Background of Seventeenth-Century Emigration to America” suggested that the typical immigrant to the provinces was male, young, unmarried and ambitious. Young men immigrated to the provinces for a variety of reasons including: increased population growth at home, immigration into the regions from which they came, and loosening of feudal ties. Moreover, they came to Maryland in search of more favorable economic opportunities, such as the ability to own land. Thus the possibility of social mobility in Maryland presented a real enticement for young middling men to settle in the fledgling colony.

The ultra-poor were also mostly absent from Maryland’s labor force. The people at the very lowest on the social ladder tended to stay where they were, i.e., in the parish and with the people they knew rather than leave to try their luck elsewhere. While they may have been impoverished, the poor valued their social networks and support systems more than trying their luck in an unknown, remote place. They also experienced some power over their situations as, for example, women who worked as servants in various households could leave dissatisfying employment and find work elsewhere. The ability to vote with one’s feet and find work elsewhere while holding fast to friends and family was a powerful motivator for the very poorest


to stay where they were. In addition, it is entirely possible that some stayed where they were because doing so enabled them to receive parish relief.22

Moreover, servants in England had a much better work experience than did their Maryland counterparts. Servants in England worked and then were paid for their labor. They could leave their employment if they so chose. So if conditions were intolerable, or a woman wanted to leave to marry, or if the mistress or master was abusive, the servant could simply choose not to return. Indentured servants in Maryland were paid first, at least in terms of their passage, and then worked for an agreed upon number of years. This system did not allow for the servants to have freedom of movement or the ability to leave if they found that conditions proved to be deplorable. In England servants held agency over their situations—which translated into better treatment than many received in colonial Maryland.23 Conditions for many proved to be abusive because in the young province agency was not equally shared between masters and servants. The men and women who came to Maryland in the seventeenth-century were, on the whole, individuals who had some experience with wealth and who held to the hope of moving up the social ladder. But these were people who were in a precarious situation, they could move up as well as down the social ladder. Hence in all likelihood, Maryland men were consumed with a need to stabilize their finances.

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22 This paragraph regarding the poorest of the poor is informed by Mildred Campbell’s “Social Origins of Some Early Americans,” in James Morton Smith, ed., Seventeenth-Century America: Essays in Colonial History (Chapel Hill, N.C., 1959). However, as Russell Menard poignantly states regarding more recent scholarship on the social origins of Maryland colonist, “it is clear that many, perhaps the majority, who came, both with indentures and without, lived near the margin of British society.” (127). Thus this dissertation takes the viewpoint that Maryland society was neither populated by the ultra rich, nor the ultra poor. Maryland society was composed of a cross-section of various groups between these polar ends. Russell Menard, “British Migration to the Chesapeake Colonies in the 17th Century “ in Colonial Chesapeake Society, ed. L. G. Carr, P. D. Morgan and J.B. Russo (Chapel Hill, NC, 1966.), 127.

23 For an example of master-servant relations in Virginia, which in this respect was very similar to Maryland, see Edmund S. Morgan, “The First American Boom: Virginia 1618-1630,” MWQ, 3 Ser., XXVIII (1971), 195-198.
At center, this study examines the intersection of gender, class, and legitimate authority. According to the Oxford English Dictionary, the word “class” was in use in the seventeenth-century and referred to “an order or distribution of people according to their several degrees.”

Though the court records give no indication of early Marylanders employing the term, per se, the documents do reveal them evincing behaviors and sentiments in keeping with the privileging of wealth. Therefore, I use the term to reference one’s position on the hierarchy of wealth, respectability, and legal privileges. Moreover, class variations also reflected distinct views on personal conduct, responsibility, and deference. Where possible, I have endeavored to provide as much insight into a person’s identity and background as possible. When I denoted someone as a member of the “elite,” corresponding official documents (either in the specific case referenced or elsewhere) mention him or her as such. For example, a title such as “Mr.” or “Esquire”, or a designation such as “Planter” or the like, indicated elite status and sizeable land holdings. If the records failed to indicate whether a daughter or wife was a member of the elite, but her father held one of the mentioned criteria then she too was considered a member of the elite. A reference to someone as a servant of someone else, combined with the presence (or absence) of freedom dues and the transportation records helped to identify servant and indentured servant status. For a man, the absence of either a title of planter or indication that a man belonged in someone else’s household combined with few property holdings denoted middling status. A woman’s status depended on that of her husband, master, or father--whether she was a daughter, a wife, or a woman alone in the province. Class status alone, however, was not enough to ensure

24 According to the Oxford English Dictionary, “class” further meant “A division or order of society according to status; a rank or grade of society,” http://dictionary.oed.com/cgi/entry/50040921?query_type=word&queryword=class&first=1&max_to_show=10&sort_type=alpha&result_place=1&search_id=f6wl-Tic2du-5013&hilite=50040921, (accessed on April 17, 2008).

25 This paragraph has been partly informed by the introduction to Class Matters: Early North America and the Atlantic World, edited by Simon Middleton and Billy G. Smith (Philadelphia: University of Pennsylvania Press, 2008), 1-15.
someone a privileged position in society. Buttressing the authority of the elite and giving primacy to elite male status was treated with premier importance. To achieve this goal the elite were willing to sacrifice specific and legally recognized uses of its authority—but only to a point. In felony sex crimes, gender and class privilege operated on a continuum where elite men wrestled women and non-elite men over the limits of patriarchal authority. However, they were not entirely successful, for women and non-elite men forwarded their own interests through the judiciary and created moments when these subgroups forced the elite to act in response.

In Maryland, the divisions of class intersected the privileges of men and created a dynamic hierarchy of sorts. Elite men, of whom there were only a few in the young colony, were at the top of the social strata. Moreover, as they held sufficient property, these men served as jurors and justices in the Provincial Court. They decided capital crimes and settled disagreements regarding another man’s fortune. Prosperous men of sizeable wealth, respect, land, servants, and material goods, the male elite had an obligation to control the members of their households. So doing served the dual purposes of the male elite and the Provincial government: tightly controlling the members of a man’s household stabilized society and proved to make the planter even more prosperous. In theory, when the planter’s servants were behaving, they labored to make him more money.

Middling men, aspiring men who could go up or down the social ladder, filled the gap between the elite and the people at the bottom of the social latter—bound and unbound servants. Like the elite, middling men too were concerned with the acquisition of land and wealth—though they had far less of both than the former. In consequence, they were less powerful and less protected legally. These were men hoping to gain land, move into the ranks of the elite, and leave their offspring an inheritance on which they could build. Some of them were successful;
but others, particularly after 1660, were not. Next lowest were unbound servants. They owned no land and therefore served on no juries and had few legal privileges. Although, their proximity in the household allowed them the ability to offer witness testimony and indirectly exert power over the lives of other community members (including their masters), their social position placed them only above indentured servants and (later toward the end of the seventeenth century) slaves. These servants worked in another man’s house, were privy to his secrets and were paid a wage for their services. They had obtained their freedom dues and were mobile. At the bottom of the social ladder were indentured servants. Effectively, they had sold themselves into a temporary form of slavery. In exchange for their journey across the Atlantic, they had “bound” themselves to their master and owed him a set number of years of work in return based on their age and the presence of a contract. Entirely at the mercy of their masters, they were whipped, scolded, starved, and neglected. The actions of more than a few masters suggested they believed that it was cheaper to buy and wear-out a new servant than to provide for one already purchased.26 Whenever possible the justices and jury members chose to privilege elite men in social, legal, and economic standing first and foremost.

Whether the defendant was male or female, from accusation to execution of judgment the judicial process tended to be very quick. This was certainly the case in the trial of women in Maryland accused of infanticide. If the grand jury found enough evidence to warrant an indictment, the case proceeded to trial. Jurymen were called and once twelve men were found to whom the prisoner did not object, they decided the fate of the accused. Liza Picard comments on the selection process and the responsibility of the jury, stating that men could challenge potential jurors and reject “35 jurymen whom he did not like the look of, and more if he could ‘show

cause’. While the prisoner had some say in the jury selection, the record does not indicate that any woman ever challenged any of the jurors in the colony. While it is certainly possible that women did challenge jury members, it is far more likely that because of the dearth of eligible jury members colonists simply did not exercise this function.

When J. M. Beattie described the formation of and procedures for London juries, the same directions probably applied to Marylanders. This was certainly true for the demographic make-up of Maryland juries. Beattie wrote that “the late seventeenth-century juries rarely included large numbers of the truly rich, and never the truly poor, they were drawn from men well within the upper third of the population, men with a strong interest in both their property and the existing social order.”

Because the ultra wealthy tended to not immigrate anyway, the men who comprised Maryland juries seemed to follow Beattie’s pattern: Maryland juries tended to be comprised of the local elite and prosperous self-made men. The implication is striking: elite men, and men who were working to further secure their foothold into elite status were the individuals who had a vested interest in ensuring social order because their fortunes depended on a stable society. A society based on human labor, in the form of servants in slaves, tended not to be highly profitable when its workers were involved in social unrest.

In part, the relatively quick pace of the trial was due to the fact that many juries formed an opinion about the culpability of the accused before the trial even began. The idea that judgment regarding one’s guilt or innocence had to be suspended until all the evidence was in was a concept wholly foreign to Englishmen. Modern conceptions of the admissibility of evidence were also foreign. Hearsay, which in modern jurisprudence is inadmissible, held a place

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of prominence—and was an important part of the legal process. At least in part, juries formed opinions regarding the innocence of the accused based on the views and opinions of the defendant’s neighbors and had decided the defendant’s guilt or innocence even before discussing the trial with the other jurors.\textsuperscript{29}

Beattie also cited other reasons seventeenth-century jury trials were so quick. For one, the jury may or may not have even removed from the courtroom to deliberate. And, the deliberating process was swift, in part because juries that had several difficult cases to decide had no rest, food, or drink until they reached a verdict, “and if in the judge’s view it was the wrong one, he could send them back, still without food or drink, until they saw reason.”\textsuperscript{30} Then they had to remember which case corresponded with each defendant. Jury members in England in the seventeenth century did not necessarily sit together if they heard few cases and they may have deliberated right in the courtroom.\textsuperscript{31} Maryland juries, like the English counterparts that colonists sought to emulate, probably received strict directions from judges and probably also followed the similar pattern of removal for a number of cases to deliberate but remaining in the courtroom if they only deliberated for a few cases.

Juries determined the verdict of a body crime (a violent crime against a person) and specifically those committed by a woman (as with infanticide) or on a woman (as with rape), by the rank and presence of the men to whom she was connected: her attacker and/or her patriarchal head. Because Anglo colonization in Maryland began in the seventeenth century, this century also witnessed the emergence of elite men as a cohesive class. These same men constituted Provincial Court juries and decided the fate of people accused of committing heinous crimes, including women charged with infanticide and men accused of rape. These men, whom I refer to

\textsuperscript{29} Ibid, 275.
as the “nascent elite” or “elite,” based many of their decisions upon the status of the men who were legally responsible for accused women. In every instance of coerced sex, the economic and social status of a woman’s male legal guardian and the status of the accused helped to determine the specific charge leveled against the man, as well as the verdict, thereby establishing differences in legal outcomes according to a man’s position within the patriarchy. The real concern the judiciary addressed was that of women and non-elite men infringing on elite male privilege. Even with the judicial system stacked so heavily against them, non-elite white men and white women exercised moments of independence and agency, both in, and outside of, the courtroom. White women and to a greater extent non-elite white men had some ability to resist the absolute prerogative of the judiciary, forcing the judiciary make the cases part of public record. In some circumstances, the testimony of non-elite men and white women carried tremendous weight, forcing the judiciary to accommodate them with the creation of legal space.

The supporting documents, immigration records, wills, and church records served to reveal the relationship and identities of the people involved. The Provincial court and county court records provided the major scaffolding for understanding incidents of coerced sex and infanticide. As many of these court records are available online, and the likelihood that the reader might use the internet to follow-up on these documents is far greater than travelling to Annapolis to do so, I have cited the location of all available electronic documents in footnotes. Using the electronic copy available through archives of Maryland online, I read through all extant records available from the period.\textsuperscript{32} Though the electronic copy helped considerably with

\textsuperscript{31} Beattie, \textit{Policing and Punishment in London}, 271.

\textsuperscript{32} I read through every page of the following volumes: Archives of Maryland volume 4 (Provincial Court records for 1637-1650), volume 10 (Provincial Court records for 1649/50-1657), volume 41 (Provincial Court records for 1658-1662), volume 49 (Provincial Court records for 1663-1666), volume 57 (Provincial Court records for 1666-1670), volume 65 (Provincial Court records for 1670/1-1675), volume 66 (Provincial Court records for 1675-1677), volume 67 (Provincial Court records for 1677-1678), volume 68 (Provincial Court records for 1678-1679), volume 69 (Provincial Court records for 1679-1680/1) volume 70 (Provincial Court records for 1681-1683), volume 53
legibility issues, the historian is still left with a considerable amount of heavy lifting in terms of interpreting the material the court recorder chose to write down and understanding where on the page he chose to do so. The online volumes are stored by number of the volume, and then by page. Thus what appears on one page of the online version parallels that contained on one page of the hard copy version—no more, no less. Searching these documents for words and phrases like, “ravenously”, “forced”, “used me in an inhumanely manner”, “made use of my body”, canrally knew me,” etc., to denote rape, and combinations of “bastard”, “felonious”, “murder”, “destroy”, “kill” etc. to indicate infanticide, I began compiling my list of cases.

Moreover, though I physically visited the Maryland State archives in Annapolis and made use of original copies of wills, church records, land records, immigration records and miscellaneous documents stored there, my conclusions were largely based on these transcripted copies of court records available online. However, utmost care was made in verifying the accuracy of these records. Traveling to Annapolis to compare the electronic version with the hard-copy ledger and using the Gary/Harwood/Sharpe incident explored in chapter 1 as my test case, I found that the two kinds of documents—my transcripted copies and the ledger pages containing official court documents from the seventeenth century—matched word for word, though the original copy was incredibly difficult to read, due to age, deterioration, the penmanship of the recorder, un-standardized spelling, and what the recorder chose to write down (and where he chose to do so) on the page. I concluded that for the purposes of this dissertation, and with the care given to the accuracy of the transcripted court documents by the state of Maryland, because doing so made possible my attempt to search for specific kinds of cases and

(Charles County court proceedings June 1658-1662), volume 60 (Charles County 1666-1674), and volume 54 (Kent County proceedings, 1658-1676, Talbot County proceedings 1662-1674, and Somerset County proceedings 1665-1668). I searched for incidents that hinted at gendered violence—either violence done by women or on women to create my initial expansive list of cases.
moreover, to follow the connections between various individuals and issues. Additionally, in places where I have quoted the text I have standardized the spelling to make it easier and clearer for the reader. In all other respects, the text is the same as it appears in the records originally penned by the various court recorders.

Nineteen incidents comprise the universe of court recorded occurrences of forced sex and infanticide in Maryland before 1689. This number is probably smaller than the actual number of incidents that went before the bar, as not all of the records survive. For example, many of the St. Mary’s county records burned in a fire. While the Provincial Court records are mostly complete for the period under study, only the Cecil, Charles, Kent, Talbot, and Anne Arundel County Court records survive—of these, some (like the records from Kent County) are deeply fractured. Though both rape and infanticide were capital crimes and heard before the Provincial Court, evidence contained in county court records is incomplete as only part of the records indicating cases dismissed at the county level remain. Moreover, as anyone working with early colonial documents is well aware, the level of completeness from one case to the next varied greatly on the court recorder. So, while some testimony is complete and quite detailed, other cases simply list the individuals involved, the charge, and (hopefully) the verdict. And, as early seventeenth-century court records were in no way standardized and the writing of others are wholly illegible. Due to bugs, moisture, and the like, some of the details have been lost. During the time from the founding of the colony in 1634 through 1689 when Lord Baltimore lost control of the colony to the Crown, court records reveal eight incidents of alleged forced sex. Yet the judiciary only officially investigated and charged four of the assailants with rape. It redefined the other four cases as other crimes. The same court records also reveal ten incidents of infanticide. Together,
these nineteen cases provide case studies that reveal the role that the judiciary played in the reinforcement of elite male privilege.\textsuperscript{33}

\textsuperscript{33} However, four incidents of possible newborn child murder I do not investigate in this dissertation. One incident which appeared before the Provincial court in 1659 that the justices initially investigated for infanticide I do not include in this study. This was an usual case, though the child was a bastard, kept secret and later died, it was well cared for. The full shift from suspicion of felonious murder to natural death occurred when a male witness with whom the woman lived, testified that she actively cared for the child—returning home he found her nursing the baby and upon finishing, she continued to care for it by bathing and dressing it. Moreover, the clothes she placed on the baby, while she tried to hide it from other housemates, gives credibility to her claim that it died of natural causes. As these acts neither indicated neglect, nor maliciousness resulting in death, the justices did not pursue further investigation. As a result no statement of any kind was offered in respect to the infanticide suspicion. She was neither condemned, nor cleared. Instead, the court sentenced her to be lashed twenty times upon the bare back, which was the common punishment for fornication and in so doing communicated their intent to treat the matter as fornication and nothing else. As the behavior of the justices suggest, this case failed to meet contemporary legal understandings of infanticide and, thus, is not included in this study. Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1658-1662}, volume 41, page 329, http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000041/html/am41--329.html, (accessed on February 8, 2008).

Two incidents of possible neonatal murder were also not explored in this dissertation. Captain William Mitchell was indicted for what today is considered aborting a child he conceived with Susan Warren. This aspect of the case proceeded only as an investigation into the cover-up of adultery. But, in none of the concluding remarks in which the verdict was pronounced was Warren or Mitchell addressed as murdering any infant. When combined with other charges—such as the murder of his wife while at sea, professing atheism, fornicating with a pretended spouse—Mitchell was saddled with a 5000 pound fine. Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657}, volume 10, page 184-5 http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--184.html and http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--185.html, (accessed on January 31, 2008).

The second incident involved William Brook. He allegedly hit his wife with a pair of tongues believing that the child she carried was not his. When she delivered a dead fetus, he claimed (and she supported the notion) that she had fallen out of a peach tree. As with this aspect of the Mitchell case, no action was taken and the judiciary dismissed the matter. Future research will consider abortion more closely, however, if the reader is interested in forced abortion, he or she should consider and the chapter considering Jacob Lumbrozo and Elizabeth Wilde in which I have given brief attention to this topic. Future research will include far closer examination on abortion and will attempt to address the host of complexities surrounding early modern abortion. Neither of these two cases met the definition of infanticide—a child born in secret, alive, and later found dead. As this study does not investigate abortion per se, these two cases are really beyond the scope of this project. Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657}, volume 10, page 464-5, http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--464.html and http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--465.html. See also Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court,1649/50-1657}, volume 10 page 488, http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--488.html (accessed on June 17, 2008).

The last possible incident omitted from this investigation is of Elizabeth Robins. She allegedly drank savin to rid her body of worms not knowing she was pregnant. As a result, she believed she carried a dead child that was fathered by her husband Robert Robins. Her husband claimed the child was not his and she deliberately purged it to avoid being exposed as an adulteress. The real issue to the court—and possibly to Robert—was the possible adultery. In the end, the child was born alive. The court decided that if Robert could prove that the child now in her arms was not his, he did not need to see to her, or her child’s, maintenance. Otherwise, he needed to “band to the said Elizabeth his wife . . . again, and provide for her and her children.” The outcome is unknown. However, as no child was actually murdered, I have omitted this case from the dissertation as well. Archives of Maryland Online, \textit{Proceedings of the County Court of Charles County, 1658-1666}, volume 53, page 4,
The court cases heretofore mentioned also shape the structure of this scholarship. Each of the chapters examining coerced sex describe how the Maryland elite chose to cast the sex. The first four chapters include “Coerced Sex as Courtship,” “Coerced Sex as “Adultery,” “Coerced Sex as Breach of Contract,” and “Coerced Sex as Marital Sex.” Additionally, as each of these first four chapters involved a member of the nascent elite, the judges responded by lessening their crimes. The fifth chapter, “Coerced Sex as Felonious Rape,” investigates four incidents of rape for which the men involved were investigated. One man was acquitted, one case never went to trial, one jury declared its verdict as “ignoramus” literally we do not know, and one man was pardoned (though only the pardon, not the case, exists for this incident). When a perpetrator was a member of the elite, the court evidenced a readiness to redefine the crime as something other than rape. Regardless, even in the few cases which went to trial as rape, the court never imposed capital punishment. Thus, the status of the man involved defined how the court proceeded and allowed the justices to further underscore legal difference between men and women—in that they worked to release men accused of rape and castigate women the elite perceived as rebellious.

Even when the Provincial authority was legally obligated to act on a woman’s behalf (because she had no male relative to stand for her) the elite failed to do so. However, in some cases the women themselves forced cases to advance in the legal process and found their own redress. That the grievances of at least some women were addressed and the court acted to censure their attackers (to some degree) shows that the judiciary accommodated some women with an amount of legal redress. Neither the judges, the jury, nor the men directly involved were able to act with complete abandon.

The section on infanticide is structured according to outcome of each case. The first chapter in this section, Chapter 6, investigates infanticide and jurisdiction; the court acquitted one woman who was accused by an unnamed servant man for infanticide while at sea. Chapter 7 focuses on infanticide and married status; no woman married at the time of the trial was ever condemned. Infanticide and the presence of a patriarch follow in the next chapter; no single woman was condemned so long as her patriarchal head appeared on her behalf at the time of the trial. All four women were acquitted. And, the last chapter considers infanticide and single-hood; all four women accused of infanticide who stood alone without fathers or masters to appear on their behalf were condemned.

This research builds on the work of others from a variety of overlapping fields, while touching on such topics as gender and class, agency, and the law. In 1993 Terry L. Snyder wrote “Legal History of the Colonial South: Assessment and Suggestions” in which she argued that while the literature to date emphasized the “law . . . as an instrument of social control, oppression, and hegemony” we need to “consider the nature of historical agency.” In recent years, historians have examined the law as a means of stabilizing colonial societies, but examining individual resistance and reaction still needs to be addressed. In response to Snyder, I argue that the emerging elite used incidents of infanticide and rape to underscore the privilege of elite men and the legitimacy of their authority. They did so because the elite, the very same men who functioned as the judiciary, were responding to female appropriation of elite male privilege. Men were not executed for rape even as women were hanged for the capital crime of infanticide. Moreover, the judges failed to charge elite men with rape, or execute men found guilty. Thus judges and jurymen made a distinction between elite men and non-elite men, as well as women.

34 Snyder, “Legal History of the Colonial South”, 27.
A woman accused of infanticide effectively misappropriated ultimate male authority, surpassing even her master’s prerogative in challenging the prerogative of the judiciary in determining life and death. In response to this challenge, juries consistently returned verdicts which reaffirmed patriarchal social control. If a woman’s master, husband, or father appeared in the court either virtually, by reputation, or actually, by physically interceding on her behalf, the woman was acquitted. If her patriarchal head did not appear in this capacity the social order had not been righted, her offense had not been addressed, and the jury pronounced death in order to do both.

Christine Daniels’ 2001 work on female servants in seventeenth-century Maryland attempted to address historical agency. Though her research extends further than the time span of this research, her insights regarding early Maryland have provided an invaluable foundation. Based on court records of servant-master disputes, in her essay, “Liberty to Complaine’: Servant Petitions in Maryland, 1652-1789” Daniels argued that the court system functioned to protect servants from abusive masters and thus defined the limits of patriarchal power. She suggested that servants thus helped to shape the function of the judiciary and their interpretation of legal policies. Instead, I argue that the court was a resistant and wholly unwilling participant in the modification of Anglo-American jurisprudence. Elites generally to uphold patriarchal privilege and stabilize the frontier society. They sought to curb individual masters who stepped beyond their rights as masters and infringed on the authority of the Provincial government not because they were willing to help servants, but because they were unwilling to relinquish any of their authority.

In 2001, Snyder also sought to answer her own call for more investigation into agency and the law in her essay, “Sexual Consent and Sexual Coercion in Seventeenth-Century Virginia,” in *Sex Without Consent: Rape and Sexual Coercion in America*, where she argued that some women used their experience of rape or coerced sex to regain their honor. By forcing the matter forward through official legal channels or gossip networks telling their story gave them a cultural agency that otherwise they would not have possessed. In short, some women forced the incident to be aired in the courtroom or through community gossip and in so doing placed their own interpretations onto the events. This allowed them to define sexual consent and coercion in their own terms. While the woman may have still received official censure, the ability to define the incident in her own terms may have helped her regain her honor by wounding the reputation of the attacker. I concur with Snyder that to some degree women in Maryland also understood and exercised considerable agency throughout different parts of the legal proceedings regarding rape and infanticide incidents. Some women were certainly willing to use gossip networks to hurt their attacker’s reputation (and thus incidents of coerced sex went before the judiciary as cases of slander) when the man suspected of rape charged the victim with defamation. Snyder also demonstrates that most occurrences of rape went unrecorded, undetected, and un-pursued by the justice system as many accusations never made it to trial. However, in addition to various women exercising moments of agency through the investigation and consequent trial rape, other women also carved out agency through infanticide—by deciding whether their children would live or die. The court responded to agency these women exerted through the trial process, and the verdicts of the elite reveal a response to female agency already

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present in colonial society. The judicial process did not just create a venue for female agency to be expressed, it also allowed for men to address agency already exhibited.

Furthermore, In Snyder’s 1999 essay, “As If There Was Not Master Or Woman In The Land: Gender, Dependency, and Household Violence in Virginia, 1646-1720,” in *Over the Threshold: Intimate Violence in Early America*, she also stated that the court processes allowed men to respond to individuals who challenged the limits of legitimate violence. She wrote that the colonial leaders believed that if they “supported an unjustified and illicit use of masters’ authority, it might undermine the legitimacy of household relations on which political authority was based. Allowing masters politically unauthorized and illicit power threatened the authority of the law.”37 Snyder’s concept can be aptly applied to the Maryland judiciary. The judiciary acted to safeguard its own legitimate prerogatives in Maryland by punishing those who transgressed the limits of patriarchal authority. Although, Snyder also stated that the court’s chief objective was “confined to establishing standards of evidence and righting the transgressions of social hierarchies that household violence represented.”38 The court documents indicate that there were differences in how Maryland men chose to punish lawbreakers based on the sex and status of both the perpetrator and the victim. So while courts were intent on supporting a social hierarchy that privileged the judiciary above all others, they did so with respect to class and gender.

Also in response to Snyder’s call for greater focus on women’s agency in the American colonies was Sharon Block in her work, *Rape and Sexual Power in Early America*. Block argued that rape marked the distortion of patriarchy, in that rape was perceived by elites as the violation of another man’s property rights. Men committed and women suffered acts of sexual

37 Terry Snyder, “As If There Was Not Master Or Woman In The Land: Gender, Dependency, and Household Violence in Virginia, 1646-1720,” in *Over the Threshold: Intimate Violence in Early America*, 229.
coercion according to a woman’s social position. Economically dependent and racially marginalized women were particularly vulnerable to a wide range of coercive tactics. On the other hand, elite wives and daughters were somewhat protected from outsiders because of their associations to powerful men. Differences of status and race were reinforced through the act of sexual coercion. Similarly, avenues for legal remedy were based on the woman’s social position. Women could use community gossip to try their cases in the community even before entering the courtroom. The outcome was often determined even before the trial began; the community’s opinion of the woman, and her culpability, often influenced the verdict. Block also intimates that contemporaries believed men were supposed to be sexually aggressive. Consensual sex could contain violence without being classified as rape. The line between forced sex and consensual sex was blurry.39 Like Block in *Rape and Sexual Power in Early America*, I found that the Maryland nascent elite recognized class differences, decided how the trial proceeded accordingly, and underscored status and gender distinctions. Maryland judges and juries were somewhat more interested in the class of the attacker than the attacked. They consistently acted to safeguard the interests of the men involved, whether attacker or guardian of the woman. Of seven incidents in Maryland where the details of the case survive, the status of the victim appears relatively irrelevant.

One of the foundational pieces for understanding the colonial world and family dynamics, particularly in Maryland, is Mary Beth Norton’s *Founding Mothers and Fathers: Gendered Power and the Forming of an American Society* in which she compared colonial gender practices in New England and the Chesapeake. She argued that men in Maryland and Virginia practiced a Filmerian theory of unified authority. In other words, most Chesapeake men

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38 Ibid., 220.
and women believed that God directed the governance of a stable society to be based on dyadic
relationships. For example, masters ruled servants, husbands ruled wives, and fathers ruled
children. Strong family heads who imposed order on their households formed the foundation of
societal stability. Thus, the judiciary was justified in addressing misbehaving family members. If
individual patriarchs were unable or unwilling to manage their households, judges and juries
(acting as supreme patriarchal heads) acted instead. Moreover, drawing on the authority of their
immediate patriarchal heads, women could speak publicly as deputized agents when acting on
their behalf in business dealings.40 I acknowledge this dyadic relationship and use Norton’s
findings as a springboard to examine court proceedings involving challenges to the hegemony of
the planter elite.

A host of legal and Chesapeake historians have examined how the elite utilized the law to
buttress their position in society against non elite challenges. They maintain that the law
functioned to stabilize a society in disarray. In American Slavery, American Freedom, Edmund
Morgan describes Virginia as a violent, tumultuous place where planters by 1675 and the onset
of Bacon’s Rebellion feared losing their authority and status in the region to poor whites, whom
they feared might unify.41 Morgan demonstrated that planters used the law to craft difference
between poor whites and blacks: blackness became legally equated with slavery through a series
of laws. Morgan’s planters used the law to construct racial superiority, and preserve elite white
authority. I claim that even from the 1650s elite white men in Maryland used the judiciary to
underscore elite white male superiority based on class and gender. Hence, this work sides more
heavily with and has similarly been more informed by the more recent work of Kathleen M.

39 Sharon Block, Rape and Sexual Power in Early America, (Chapel Hill: University of North Carolina Press, 2006),
126-162.
40 Mary Beth Norton, Founding Mothers and Fathers: Gendered Power and the forming of American Society (New
York, Alfred A. Knopf, 1996), see page 4 for an explanation of the Filmerian system.
Brown. In *Good Wives, Nasty Wenches, and Anxious Patriarchs* Brown argued that the Virginia gentry formed their identity through gender bias and then through race-based difference. The planter elite fashioned their distinctiveness through anti-types which made the continued subordination of both women and African Americans all the more important. The judicial records also suggest that in Maryland men tried to use the law to strengthen their hold on society but were only partially successful. This essay advances Brown’s argument by showing how women and non-elite men resisted the hegemony of the planter elite and carved out measures of independence for themselves.

Another legal historian writing in the early 1980s and influenced by Morgan, David Konig’s, “‘Dale’s Laws’ and the Non-Common Law Origins of Criminal Justice in Virginia” showed that the criminal justice system was intended to support the absolute control and privileged position of the nascent elite on society. I agree with this conclusion and it informs part of the basis of this investigation. However, the findings of Konig disagreed with other writers such as Douglas Greenberg and Donna Spindel who wrote that only in the eighteenth century were planters effective in achieving social control through the law. Greenberg and Spindel showed the criminal justice system only prosecuted a small number of the accused, though as some cases never reached the courts (and some accused persons fled), this does not mean the criminal justice system was unable to communicate elite privilege, patriarchal superiority, or the benefits to an accused person of seeming to concede to this hierarchy.

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Further examining the legal structure of the Chesapeake, scholars such as Cornelia Dayton reasoned that courts functioned as arenas where non-elite men and women lawbreakers contested elite male authority. In the 1990s, in *Women Before the Bar*, Dayton maintained that women in Connecticut lost standing in the courtroom from the mid-seventeenth century to the eve of the Revolution as the Puritans lost control of the courts and women were relegated to playing bit roles as defendants. Albeit Dayton wrote about a very different locality with particular struggles and a distinctive socio-political context, the idea of the court being more than an arena and more of stage where the judiciary controlled the messages being communicated and took steps to brook no attack on its authority is an important paradigm for understanding the courtroom of colonial Maryland. Like Dayton in her study, I maintain that alleged offenders challenged judicial authority, the embodiment of ultimate elite male prerogative, both implicitly and explicitly. Also, through a series of performances, the male controlled judiciary took steps to address this attack. Though my research concentrates on the seventeenth century, like Dayton I found the presence of difference in the legal system in the treatment and inclusion of women from the seventeenth to the eighteenth century. However, the difference that she attributes to the loss of Puritan influence I attribute in Maryland to a more rigid legal structure and to a skewed gender ratio.

Regarding the limits on legalized patriarchal authority, Andrew Fede wrote “Legitimized Violent Slave Abuse in the American South, 1619-1865,” in 1985. He contended that “white power was absolute because the scope of legalized white slave mistreatment was limited when it conflicted with the interest of other whites that southern lawmakers perceived to be of superior

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import and therefore deserving the law’s protection.”46 Fede implied that there were limits to a patriarch’s authority. The control of a patriarch was complete insofar as it did not encroach on the prerogatives of a more powerful elite man. The analysis contained in this dissertation extends Fede’s argument regarding limits to patriarchal authority to the judiciary: a patriarch’s authority was absolute insofar as he did not infringe on another planter’s prerogative or exceed the limits of his authority and violate the judiciary’s.

Other authors such as A.G. Roeber, who also investigated the Virginia Tidewater from 1720 to 1750, proposed that non-elites used to their advantage the judiciary’s inclination to jealously guard their authority. Subordinates cited instances of what they believed to be excessive punishment as their master overstepping legitimate authority. Roeber argued that non-elites believed the judiciary would not allow someone other than the servant’s master to discipline a servant. Likewise, the judiciary prevented masters from using excessive punishment because the prerogatives of which corporal punishment was a part formed the foundation of legitimate authority. In addition, Roeber argued that outrageous punishment exceeded the boundaries of legitimate authority. This knowledge provided non-elites with a measure of redress in incidents where their masters used flagrantly abusive punishment by prompting the court to act on their behalf.47 The criminal records of early Maryland suggest that non-elites used the agenda of the judiciary to their advantage. Non-elites and women of all sorts used the judiciary’s jealous protection of its own authority to carve out power for themselves.

For all that the existing scholarship explains (and all that it leaves out), this study is significant in that it advances understandings of gender and legal dynamics in early America. It

explains how some Maryland men used the judiciary to publicly demonstrate, and reinforce, elite
male power. Equally important, this research focuses on the resistance and accommodation
between the court and a portion of those the court wished to control—in particular non-elite men
and women. Most significantly, it reveals that the nascent elite never achieved absolute
dominance because a segment of Maryland women and non-elite men forced the judiciary to
accommodate them by recognizing their legal presence. These women and non-elite men
initiated suits themselves, offered specialized testimony in court, and mounted a legal defense in
cases against them, when in many instances the nascent elite would have probably preferred to
dismiss these cases entirely.
The English statutes influencing the Maryland judiciary, stemmed from laws passed several hundred years earlier. The foundation of the realm’s understanding of rape crimes began with a law passed in 1275, in the third year of King Edward I, at Westminster. In that year the King prohibited, by force of law, that “none do ravish, nor take away by force, any Maiden within age, neither by her own consent, nor without; nor any wife nor maiden of full age, or any other Woman, against her will.” Hence, King Edward I, defined rape as an attack on a virgin under age, ravished by force regardless of whether she offered her consent or not. Furthermore, the law also served to guard against kidnapping a girl a man desired as his wife. Rape law, after magna carta, had a double entente in one sense it spoke of a man carrying-away a woman, and slowly the term began to take on sexual overtones. Clearly then, the law did not recognize the ability of a girl to exert great choice in the matter, and acted in an entirely protective role.

Furthermore, any wife or virgin of full age, or any other woman, who refused her consent and was forced to have sex was also considered the victim of rape. Under this 1275 law the man who was responsible for her could sue her attacker within 40 days, and the King vowed to “do common right” but if no one appeared for her, the King vowed to sue for her and would be fined at the King’s discretion. Furthermore, in addition to a heavy fine a guilty rapist would have to serve as penalty, two years imprisonment—though the duration of imprisonment could be lengthened if the man could not pay the fine. Thus, the 1275 law acknowledged the presence of force, in a case of rape, and implicitly acknowledged an adult woman’s ability to offer or withhold her consent. It also established that if a man was not able, or perhaps willing, to appear in court on behalf of a rape victim, the King or those who functioned in his stead should function as the woman’s patriarchal head. Hence, if a man could not or would not perform his duty to a
woman in his charge, the responsibility would default to the patriarch from whom all legitimate male authority came.

Ten years later, in 1285 the law was revised. Again, the issue of consent was one of the significant points of the law. The new law began, “It is provided that if a man from henceforth do Ravish a woman, married, maid, or other, where she did not consent, neither before nor after, he shall have judgment of Life and Member.” This new law acknowledged that a woman of any age could consent to adultery, after the fact and so retroactively legitimize the abduction. Thus, the guilt of a man hinged on whether she had ever given her consent. Had a victim not consented, neither prior to nor after the fact, the penalty under the 1285 law was far harsher than the law passed earlier in the reign of Edward I. Whereas before if a man was found guilty he was fined and imprisoned, under the new law if a man was found guilty rape the man suffered execution.

The new law also stipulated that “where a man ravish a woman, married Lady, Damsel or other, with Force, although she consent after, he shall have such judgment as before is said, if he be attained at the King’s suit.” A woman ravished with force, thus implying an act of sexual violation even if she consented after the fact and tried to deny the act altogether, the King or those who exercised his authority would prosecute to the fullest extent of the law. This 1285 law also acknowledged that a woman “carried away with the goods of their husbands” could have been a willing accomplice. In this case, where the husband was clearly abandoned, the King—not the husband—prosecuted. Obviously, the attack on patriarchal government, by a member of the household who chose to buck the administration of the household, and thus the administration of the state, could only be righted by state, the culmination of patriarchal

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48 3 Edward I. c. 13, Statutes of the Realm.
49 2 13 Edward I. c. 34, Statutes of the Realm.
government, addressing the grievance. The penalty for a complicit woman read: “if a wife willingly leave her husband, and go away, and continue her adultery, she shall be barred forever of action to demand her dower. . .”.

For a woman to be found guilty meant she lost all claim to her dower, which deprived her of the portion of her husband’s estate to be used to provide for her when he died. Thus her penalty, though different than the male perpetrator, was just as stringent: should she be found guilty the penalty struck at the core of the woman’s existence. As she had rejected her husband, and thus the provision he gave her through marriage, she would receive no help from him after he died. Hence, both the rapist and an adulteress were to receive a punishment that threatened their very existence, according to the 1285 law.

In 1382 rape law was once again revisited. In the sixth year of Richard II’s reign, Westminster passed a law stipulating that after a rape, even if the woman had offered her consent, both parties would be unable to have her inheritance, dower or jointure of her husband and ancestors. Secondly, this law also gave her next of kin, or husband, the ability to prosecute for life and member, even if the woman had given her consent. And, this revision notably stipulated that a defendant could not wage battle against the plaintiffs in retaliation. It also gave all property and thus forfeiture of the assailant’s estate to the King, and possibly other Lords of the realm, if convicted.

However, from 1285 two possibilities for a reprieve existed. For a woman found to be an adulteress she could regain both her husband and her dower only if her husband agreed “without coercion of the church, [to] reconcile her and suffer her to dwell with him, in which case she shall be restored from her action.” This placed a woman back in the charge of her husband, and reasserted his dominion over the home. She would be restored and her future secure only if her

50 2 13 Edward I. c. 34, Statutes of the Realm.
51 2 13 Edward I. c. 34, Statutes of the Realm.
husband, whose patriarchal authority she had tried to thwart exercised this authority to grant her
clemency. Moreover, the husband, by law, was not to be compelled to grant this extreme mercy
through any kind of coercion by the church. The state then, gave him the power to execute
ultimate temporal justice without fear of condemning his soul. If the woman’s rapist was a
member of the clergy, he was eligible for benefit of clergy—and thus exempt from secular
authority and could only be tried by an ecclesiastical court—provided he could prove that he was
a legitimate member of clergy. Eventually, this came to be extended to all men who could prove
literacy and was an effective means of avoiding the noose, until 1575. In this year, during the
reign of Elizabeth I, rape was no longer a clergyable offense.53

Furthermore, the 1575 law stipulated that “any person shall unlawfully and carnally know
and abuse any woman child under the age of 10 . . . shall be felony and the offender thereof
being duly convicted shall suffer as a felon without benefit of clergy.”54 The 1575 law
established two new caveats. First, offenders of rapes of women, maids, wives and damsels were
no longer clergyable offenses. Secondly, the new law defined a girl as a minor and as a person
who could be sexually violated, even as a girl of ten was probably not yet menstruating. The law
also stipulated that the violation of any woman, regardless of age, and not dependant on her
ability to menstruate, was a felony without benefit of clergy.

Thus, according to English law, in seventeenth-century Maryland a man accused of rape
may have understood such an accusation to have the following implications:

1. Raping a woman meant using force to commit penile penetration.

2. Her consent was irrelevant but if she could prove she did not offer it, her lack of
   consent would help her prove she was not an adulteress but a victim.

52 13 Edward I. c. 34, Statutes of the Realm.
53 18 Elizabeth c. 6, Statutes of the Realm.
3. Under the most recent statute rape was a capital offense without benefit of clergy.

4. Her next of kin or husband could prosecute the perpetrator.

5. The woman would need to prove her innocence so that she could not be accused of being an accomplice.

54 18 Elizabeth c. 6. Statutes of the Realm.
CHAPTER 1: COERCED SEX AS COURTSHIP

The Story

Nervous, confused, and embarrassed, Elizabeth Gary sat beside her friend and told her that another young member of the rising elite took sexual liberties with her. And, he had been her betrothed—Robert Harwood. She had been on her way to the garden, to gather a salad, when he forced her to lay with him. As her friend tried to console her, Gary looked up and swore that she would not be comforted for she would not have him for a husband, and could not have anyone else. Rumors spread among the community of Gary’s ordeal and Harwood’s bad behavior. The matter came before the Provincial Court because Gary’s stepfather, Peter Sharpe, a wealthy and politically powerful member of the Maryland elite pursued the matter in court—Sharpe alleged that Harwood’s actions reflected badly on his entire family. Harwood countersued swearing that he, in fact, was the victim because Gary had slandered his name. She had taken great liberties with the truth. With the court’s approval, Sharpe and Harwood reached a creative settlement: within 15 days Harwood was to take Gary away for 6 weeks, entirely at his expense, and entice her to agree to be his bride. Harwood’s success in the courtroom depended entirely on his success at wooing her. And if he could not, he would never bother Sharpe, Gary, or any member of Sharpe’s family, ever again.

Introduction

This chapter seeks to examine a case that appeared before the Provincial Court in 1658 and centered on an incident of coerced sex. While the word rape never appeared in the court documents, witness and victim testimony making ample inferences and subtle hints to non-consensual appear in the records. The woman’s family sued for “slander and brute actions” while the man in turn counter-sued asking the court to enforce the woman’s previous vow to marry. Absent from the account is the Maryland judiciary as a dominant presence, even though the events occurred in the courtroom. Instead, quite remarkably as rape was considered a felony, the judiciary appears in the background. The judiciary’s presence was seen in the account only insofar as it served to legitimate the settlement reached between the alleged rapist and the woman’s male head. The justices did not appear to call the sheriff, need the use of the jail, direct a jury, or in any way conduct the trial as a criminal proceeding.
Instead, this trial proceeded more as a disagreement between a lover and his betrothed. In this case, an over-zealous lover understood his beloved’s protests as simply an expected part of courtship practice—as empty ritual. Hence, though she said “no, no” he understood her to mean “yes, yes.” On the other hand, though she had already consented to marry her future husband, the woman did not believe she had consented to commit fornication. She understood her refusals to be sincere and his failure to stop as rape. Possibly because both parties expressed that the incident occurred after both declared their intention to marry the other, the Maryland judiciary was content to allow the litigants to reach their own settlements. In general, the Maryland judiciary sought to operate in ways that supported the nascent elite and thus interpreted the case in much the same way as did the man in question. By opting to view the matter not as rape, but as a case of slander and courtship gone awry, the court allowed the litigants to reach their own creative compromise rather than imposing a court directed verdict.

Sharon Block’s, *Rape and Sexual Power in Early America*, examined how rape functioned as a distortion of patriarchy and the various justifications used to condone such acts. Though her study spans from the beginning of the eighteenth century to 1820, many of the cultural norms from the seventeenth century continued into the next—making her study one of incredible importance for understanding the social climate of early America. She concluded that sexual coercion was a gendered act of power but was never divorced from other hierarchies. Men committed and women suffered acts of sexual coercion according to their social positions. Either as a wife or as a daughter, a woman of rank was more protected from manipulations; in contrast, economically dependent and marginalized women were particularly vulnerable. A man who raped the daughter of an elite man could expect to be challenged in the courtroom if the father’s
social position was an insufficient deterrent from taking sexual liberties with the daughter. Furthermore, on the one hand rape was a means of challenging one man’s property rights. Women’s bodies effectively belonged to their male head and a man who raped a woman usurped the prerogative and any economic or political gains which he may have enjoyed through brokering the marriage of his daughter to another man. For a variety of reasons beyond seeking restitution for his daughter, a man might have pursued prosecution.

Block argued (and this case reveals) that to some degree, sexual aggression was an accepted part of the courting process where women were expected to feign chastity and resist sexual advances. Men were to give chase and push sexual boundaries. However, this chapter also contends that in early Maryland a woman’s association to a powerful man may have been insufficient to protect her from coerced sex, particularly when she was betrothed. Disagreements existed regarding the definition of marriage and when (and to what) rights and privileges a man was entitled. While this chapter dovetails nicely with Block’s assessment of force and non-consent in early America and the challenge made to the social order, it diverges in terms of the degree to which a man’s rank absolutely protected his daughter from forced sex. This chapter also claims that in the seventeenth-century, when the British criminal justice system had yet to become rigidly formalized. The justices were content to allow the elite male litigants to decide the outcome for themselves probably due to the fact that a rape trial involved more than just an investigation into a man’s attack on a woman. An incident of coerced sex could involve a variety of challenges to a variety of hierarchies and in the seventeenth century the primary concern in a rape trial was not obtaining justice for an aggrieved woman; it was buttressing the patriarchal systems that stabilized society.

55 Block, Rape and Sexual Power in Early America, 53-87.
The seventeenth-century Maryland courtroom was a battleground where a variety of contests played out over authority between men of varying ranks, ages, and ambitions, where women wrestled men over the limits of patriarchal privilege, and where the burgeoning elite with those they sought to control negotiated the parameters of the legal systems of Anglo-America. In the courtroom the resistance and accommodation of both the nascent elite and those they wished to control came to a head, resulting in the absolute control of neither. The following 1657 case between Elizabeth Gary and Robert Harwood also presents a lens to view the relationship between the way the court functioned in early Maryland, notions of equity, and what life was like for those involved once the trial had ended. Was the creative compromise expansive enough to allow for reconciliation between possible family members? Did those involved with the dispute experience residual resentment once the trial ended? Despite the fact that the agency of women involved in court proceedings in Maryland was significantly truncated when compared with men, women were able to exert some expressions of agency in the outcome of the proceedings and in life following the trial.

The People Involved

On 14 May 1657 Elizabeth Gary, Mr. Peter Sharpe, and Robert Harwood stood before the Provincial Court, where Mr. Richard Preston, Mr. Philip Morgan, Mr. Michael Brookes, Mr. William Pratt, and Mr. John Hatch officiated as justices. The men of the court were men with great authority in the province. Preston, for example, was authorized in 1654 to “treat with the Indian emperor” as he and the other members of the committee that Preston organized saw fit.

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And, if any of the committee members failed to appear he was authorized to replace them.\textsuperscript{57} Not only was Preston authorized to meet with the man whom his contemporaries considered the chief Indian in the region, and function as an official dignitary in ways that would reflect on the province as a whole, but he was in a position to trump other men. Moreover, he sat as an officiating judge in felony cases in the same year, was a burgess for Calvert County, and within the next five years approved policies that significantly shaped the lives of indentured servants. For example, he approved legislation that determined who would pay to recompense the master if a servant woman became pregnant.\textsuperscript{58}

In the same year Sharpe appeared as a member of the General Assembly, so did Hatch and Morgan. Sharpe was a wealthy physician and planter in the region and a man of considerable authority. He was also a Quaker.\textsuperscript{59} When John Gary died (Gary’s father), her mother married his colleague and friend Sharpe.\textsuperscript{60} Thus, these members who held lawful authority in the court were peers and powerful friends of Sharpe. By contrast, Harwood appeared as a juror on a few court cases along with Sharpe.\textsuperscript{61} Roughly 29 years old, Harwood was similarly desirous of increased authority and wealth. In 1659 he acquired 200 acres in Anne Arundel County when he then sold the following year. Moreover, the court records both men as coming from Patuxent County.\textsuperscript{62}


\textsuperscript{59} In this essay references to “Quaker”, “society of Friends” and “Friends” are used interchangeably; Gust Skordas, \textit{The Early Settlers of Maryland: An Index to Names of Immigrants Compiled from Records of Land Patents, 1633-1680, in the Hall of Records, Annapolis Maryland} (Genealogical Publishing Company, Inc., 1968), 413.


\textsuperscript{62} Skordas, \textit{The Early Settlers of Maryland}, 14.
Thus, the men involved in this case were all men of wealth and aspiring responsibility, though Sharpe held more of both. To the elite men involved in this case, their reputations and honor mattered not solely to them as individuals but also reflected on the province as a whole because of their status. And, as is common with men of large estates, the conduct of those within their household (especially their women and children) reflected on their currency of honor as well.63

The Trial

To Gary, the case was one of an over-anxious suitor who abused her trust and raped her. To Harwood the case was one of broken marriage promises and courtship. To Sharpe, Elizabeth Gary’s step-father, the case was one of slander and breach of trust.

According to Elizabeth Gary, 25, for three years Robert Harwood had courted her. In her own words, from when he “began his first pretended love towards me and ever since, through his suggestions and delusions, had followed me till he followed me to the garden, where my mother sent me to gather a salad, and forced me to yield to lay with him.”64 Gary’s words capture the feelings of a woman who felt her would-be suitor had overstepped his bounds and had assumed liberties with her that she was not willing to give. According to her, once he had raped her in the garden and “obtained his filthy desire and lust upon me,” he said that “now [she] should [not] nor could not have any other man but him, . . . [though she] told him several times [she] would not have him, were it not for discovering that filthy act he committed with [her].”65 Once Gary rejected him after the forced sex she explained Harwood’s reply to the court. He said that it was the only way he had to make her his wife. At this point in her testimony, Gary turned to the

63 See for example, Laura Gowing, *Domestic Dangers*, 59-111.
officials and vowed to them to never have Harwood as a husband. To underscore the gravity of her statement she said she would rather die first.66

Gary’s friend Sarah Benson, one year her senior, testified to the court about a conversation she had with Gary in which she tried to console her friend. Last August, said Benson, she sat at Mr. Sharp’s landing with Gary and spoke of Robert Harwood.67 When Benson asked Gary when she was to be married to Harwood, Gary replied “never, if her mother could help it.”68 Benson said Harwood would be leaving Gary’s house and that she would forget him. But, looking ahead to the future, Gary replied that she would not because “she should not, for she would not any other man for her husband, and that she was very capable of what she did.”69

Outside of the courtroom, Peter Sharpe and Robert Harwood reached a creative settlement. Evidently, the two men decided the best course of action in both of their particular situations was to allow Gary to decide how best to proceed. On 24 September 1657 the two men reappeared in the courtroom with articles of agreement in hand. Peter Sharpe originally asked for reparations for slander and brute actions taken by Robert Harwood that injured his family. 70 And for his part, Robert Harwood sought “for his own vindication, doth much insist upon a former promise of marriage grounded upon a mutual declared affection between him . . . and the said

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66 Ibid.
Elizabeth Gary, obtained after a long familiarity and solicitation.\textsuperscript{71} The articles of agreement however, were as follows: Peter Sharpe and Robert Harwood both agreed that Robert Harwood would transport Elizabeth Gary, within 15 days, to Thomas Davis’ house at the Cliffs, where she would remain for 6 weeks. Harwood agreed to pay all associated costs and to ensure that a chaperone was always present. This entitled him to the ability to use all legal avenues within his power to woo her to agree to marry. If she said yes, within the 6 weeks, Sharpe was to allow the marriage without interference and he was to pay all associated court costs.\textsuperscript{72} For his part, Harwood also agreed, that if Gary consented to marry him while at the Cliffs he would not any bitterness toward Gary, or act in such a way as to impose some sort of punishment on her. If he breached this agreement and treated her badly because of what had already transpired between them, he would lose the ability to command her estate.\textsuperscript{73} If Harwood could not obtain Gary’s consent during this time, he agreed to never bother her or her family ever again, and pay all associated court costs.\textsuperscript{74} The end result of this agreement benefited both men: Gary married Harwood.\textsuperscript{75}

The Context: Courtship

\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid.
\textsuperscript{75} However, neither Gary nor her mother disappeared from court involvement. Both Quakers, they drew the ire of the court when they refused to swear to their testimony. In 1664, Elizabeth Harwood appeared with her mother Judith as a witness in a case of infanticide. However, both women were fined by the court for refusing to give oaths testifying to the veracity of their statements. Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1663-1666}, volume 49, page 231, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000049/html/am49--231.html}, (accessed on January 31, 2008). Reveals both Elizabeth and Judith were Quakers.
This case sparks a variety of questions regarding how those involved in the case understood the context of the incident and the actions of the other participants. First, Harwood appeared to have believed that he and Gary were courting. Sufficient evidence from a variety of witnesses exists to support this assumption. Harwood and Gary had (at some point) declared to each other their mutual intention to marry. Hence, there was an understanding between them of an impending marriage. However, both Gary and Harwood had very different ideas about what this meant.

Given that Chesapeake contemporaries disagreed about what constituted a marriage, the conflicting perspectives are entirely understandable. Starting in 1640, decrees on legal marriages were issued and reissued. Despite officials’ best attempts, a formal ceremony was unnecessary for early Marylanders to consider themselves as married. In 1640 the provincial council officially stated that the intention of the couple to marry had to be published two days prior, in a public place and the couple had to register with the county court. Registering at the county court ensured that neither was an indentured servant, an apprentice, or next of kin. But, this statute was insufficient to stop the continuation of unofficial marriages. In 1658 a stiff penalty became associated with failure to adhere to the 1640 statute. Failure to publish the bans in a courthouse, meeting place, or chapel near where the couple dwelled (when the building was expected to be full) resulted in a fine of 1000 pounds tobacco. Furthermore, the modern vows to be said by the

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officiate were not formally mandated as part of the marriage ceremony in Maryland until 1676.\(^79\)

The repeat issuance and the increase in penalties associated with breaking the law indicates that the legislation was not being followed. And, the act formalizing the vows as part of the marriage ceremony in 1676 indicates that diverse ideas existed about what actually constituted a legal marriage. Some contemporaries believed that as long as a couple declared their intention to each other and published the intention to marry they satisfied the law.\(^80\) Richard Godbeer, writing on the sexual revolution in early America, supports the idea that colonists disagreed about what constituted a marriage. Godbeer convincingly argues that many couples were recorded as engaging in sex prior to marriage, not because early colonists were particularly licentious, but did so because they believed that the declaration of the intention to marry was tantamount to a declaration of vows—necessarily so because of the dearth of available clergymen.\(^81\)

Unfortunately, the record fails to indicate conclusively when exactly Gary became betrothed to Harwood. In her testimony, Gary said that she assented to marry him only because he forced her to lay with him. However, Harwood indicated that they had a long courtship and were both mutually attracted to each other.\(^82\) Moreover, Sarah Benson’s testimony reveals that

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\(^79\) Archives of Maryland Online, *Proceedings and Acts of the General Assembly, April 1666-June 1676*, volume 2, page 523, [http://www.msa.md.gov/megafile/msa/specoll/sc2900/sc2908/000001/000002/html/am2--523.html](http://www.msa.md.gov/megafile/msa/specoll/sc2900/sc2908/000001/000002/html/am2--523.html), (accessed on January 31, 2008). “Be it further enacted by the authority aforesaid that all priests ministers, pastors and magistrates who according to the law of this province do usually join people in marriage shall join them in the manner and using the words following:

the man taking the woman by the right hand shall say I A:B do take the C:D to be my wedded wife to have and to hold from this day forward for better for worse for richer or for poor in sickness and in health till death do us depart. And there too I plight thee my troth which he being finished he shall let her hand go and then the woman taking the man by the right hand shall say I C:D: take thee A:B: to my wedded husband to have and to hold from this day forward for better for worse for rich or for poor in sickness and in heath till death us depart and thereto I plight thee my troth.” Officiate receives the sum of 100 pounds tobacco.


other members of the community acknowledged Gary and Harwood to be a couple, and from their behavior expected them to marry. We do know, however, that at the very least, after they had the contested sex she promised to marry him. Regardless, Harwood prior believed that he had sufficient encouragement from Gary to warrant his assumption that they would marry. To Harwood, whether implicitly or explicitly stated before their interaction in the garden the promise of marriage legitimated sex with Gary because it initiated the marriage process.

Furthermore, in the ritual of seventeenth-century courtship a woman was supposed to refuse the attention of her suitor and the man was to be the avid aggressor. A woman’s polite refusal was expected and even welcomed. In a way, it normalized the courtship process by adhering to the expectation. She was supposed to vocally refuse his advances— but not truly mean “no,” and he was supposed to continue pushing the sexual boundaries of their relationship. According to Gary, she had repeatedly refused Harwood’s advances until he had finally “obtained his filthy desire and lust.” However, to Harwood, as evidenced in his interaction with the court, his involvement with Gary in the garden was not rape; it was simply part of the process of courtship and marriage.

The Context: Sex and Marriage Eligibility

Gary painted a far different picture of the sex than did her suitor. Her version was one of rape and scandal. She presented herself as the innocent victim of a man who refused to leave her alone. Though she previously welcomed his attention, at this juncture she felt he crossed the line. She described the unwanted, unsought experience as one who had just been morally sullied. The language she used to the court and to her friend in confidence characterized her as a cornered

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83 See for example, Block, Rape and Sexual Power in Early America, 12-28.
victim. Harwood achieved his aims “upon” her.\textsuperscript{85} She lacked any agency in a situation in which she was powerless to resist him. Moreover, because of what happened between them, she believed she had no choice and “now . . . should nor could not have any other man but him, though [she] told him several times [she] would not have him, were it not for discovering the filthy act he committed with me.”\textsuperscript{86} This statement, more than hints at the forced sexual encounter, and suggests that she believed her trust had been abused.\textsuperscript{87} According to Gary, Harwood’s interest in securing a wife compelled him to destroy her honor. In her eyes, he raped her so she could have no one else. Evidently, Gary believed that the destruction of her honor resulted in a complete loss of all other eligible marriage partners.

However, according to historians Lois Green Carr and Lorena Walsh, a woman who had sex in the early Chesapeake whether consensual or coerced was highly likely to marry given the huge demographic advantage women wielded. Together, Carr and Walsh contend that over the course of the seventeenth century the ratio of men to women improved somewhat but nonetheless remained heavily in favor of women. In 1634 men outnumbered women 6:1.\textsuperscript{88} From the 1650s until the 1680s the ratio improved to 3:1.\textsuperscript{89} Carr and Walsh also reveal that roughly half of all Maryland brides went to the altar pregnant with their betrothed’s child. Partly, this high pre-marital pregnancy rate was due to another demographic peculiarity of Chesapeake: immigration patterns. Many young men and women immigrated apart from family groups. Because they were alone, the role of the community came to occupy a place of increased importance. However, because many of the women who were indentured servants did not have their fathers to provide parental supervision, pregnancy rates were higher. The male to female

\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} Carr and Walsh, “The Planters Wife,” 186.
ratio generated a situation in which women wielded power in the household and greater sexual freedom than experienced by women in England. Carr and Walsh demonstrate that a woman’s marriage prospects in early Maryland were far better than in England. In addition to the independence and agency this allowed women, the court records examined in this study also suggest that skewed gender ratio prompted a back-lash of sorts. While a woman could marry with greater ease, because she had far better odds at

Moreover, not only her gender but her social status made Gary highly desirable. She was free to marry, she was not an indentured servant, and she had no pre-contracted demands made on her time. Furthermore, her newly remarried mother was recorded as being present in the trial. The man Gary’s mother had recently married was very wealthy planter in the region. This man, Gary’s step-father, also performed the role of her lawyer. Gary, therefore, had a sizeable dowry (courtesy of her father and step-father) that she brought into her new marriage. Marriage to Gary presented sizable, strategic advantages. She had the purse which could effectively finance the aspirations of an upcoming member of the young Maryland elite. It is highly likely that Harwood’s courtship of Gary was a calculated move by a man who wished to gain both wealth and her family connections. Her association to Sharpe, an established landowner, must have been particularly appealing to an aspiring planter.

89 Ibid.
finding a husband in Maryland than she did in England, the gender ratio did not create any
lessening of patriarchal restraint. Instead of a radical departure from the nervousness men
exhibited towards women in England, elite men in Maryland revealed a heightened sense of this
nervousness due at least in part to women’s ability to be selective in marriage. It augmented the
anxiety of the planter elite and resulted in an increase in prosecution against women and a
dercrease in prosecution against men in felony sex crimes.

Deciding Articles of Agreement

Peter Sharpe, acting as Gary’s guardian, must have believed that some affection existed between
her and Harwood. If she was utterly repulsed by him it is unlikely that Sharpe would have placed
her in a position, under the rules of agreement, in which she would be subject to his company for
six weeks. He may have been trying to simply get rid of her. However, as a whole, his conduct
and beliefs as a Quaker and his subsequent care for her in his will suggest otherwise. And, if he
believed she had been raped and was in danger of being raped again, presumably he would have
prevented her departure—despite the caveat that ensured the presence of at least one chaperone
at all times. And, if he believed she had been raped and was in danger of being raped again,
presumably he would have prevented her departure—despite the caveat that ensured the presence
of at least one chaperone at all times. Sharpe’s conduct suggests that he believed Harwood had
acted as an overanxious lover and it was at least possible that Gary consented at some point to
marry him.

Sharpe’s concession to allow Gary to decide how best to proceed was probably a decision
made on the basis of several factors. First, the arrangement held a sizeable bargaining chip for
Sharpe in that it enabled him to demand that Harwood make reparations for slander and “brute
actions” taken which “injured his family.” The injury to which Sharpe referred may not have been solely restricted to his stepdaughter’s marriage prospects. Sharpe may have perceived Harwood’s actions (the subsequent gossip and Harwood’s slanderous rebuttals) as damaging the reputation of the entire household. According to Laura Gowing, in Domestic Dangers: Women, Words, and Sex in Early Modern London, a man was responsible for the conduct of his mother, his sisters, and his daughters. Thus, their behavior (or misbehavior) directly reflected upon his leadership as household head. If implicated in scandalous activity, one can only surmise that such behavior had negative effects on his reputation as well. And, as a man’s reputation translated into economic power, Sharpe probably felt compelled to seek restitution for the slander—for his fortune as well as for his stepdaughter’s interests.

Moreover, Sharpe must have at least entertained the thought that during this long period of courting/pestering, Gary had grown attached to Harwood. Perhaps Harwood suspected that at some point Gary had genuinely felt affection for him, and believed that despite whatever falling out had happened between them in the garden the affection was still present. Harwood’s assertion that he had obtained a promise of marriage from Gary after courting her for a long time placed him as a significant fixture in her life. In his version, according to the witnesses, at some point he had declared his love for her and she reciprocated with a promise of marriage. But, Gary recanted. One can only speculate that an injured Harwood sought vindication for what he viewed as slanderous gossip. According to Harwood, Gary slandered his name by going among the neighbors and casting the incident as one of rape. Sharpe responded by charging Harwood for slander for telling the neighbors that Gary’s charges were unfounded and corrupt. Upon reaching

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94 Gowing, Domestic Dangers, 59-111.
the courtroom, Harwood counter-sued by insisting that Gary make good on a former promise of marriage. If there was no indication that he could win her over, Harwood would never have consented to finance her lodging in addition to being unable to attend to his business dealing for six weeks. Had her answer been a resolute “no,” the compromise would have been absurd. On Harwood’s part, he must have believed that if she was removed from the influence of her mother and Sharpe, he could win her affection. As Gary’s mother had vowed to never allow the marriage between Harwood and Gary to happen, this possibly factored into Harwood’s decision to pay for her removal from her parent’s influence.

Also fairly evident from the articles of agreement was that Harwood believed that Sharpe may have only consented to the agreement in order to ensure that Harwood would fail and never again bother Sharpe and his family. This also may have been additional motivation for Sharp’s support of the settlement. He may have genuinely believed that settling in a way that could potentially favor the defendant was the only way to ensure Harwood left the Sharpe family reputation alone. It also certainly explains one reason why Harwood placed a caveat in the agreement whereby Sharpe had to agree “to not use any means to obstruct Robert Harwood and Elizabeth Gary from marrying each other within the time mentioned, nor from marriage after the said time be expired, if the said Elizabeth Gary shall within the said time fully consent thereunto.” Therefore, it appears that Harwood arranged it so that Sharpe’s ability to influence Gary was limited under contract. With her step-father’s input silenced fifteen days from the agreement, she lost a significant source of legal imput.

Equally important as to how this creative agreement occurred was exactly how much liberty Gary actually held in the matter. Harwood was given access to Gary, but only to a point.
His liberty was to be checked by the presence of a chaperone. First, this was to make certain that he made no further sexual advances on her. And, secondly, this was to insure that her honor—and by extension the honor of her family was in no way injured further. Harwood’s ability to influence Gary was restricted to talk and “all fair and lawful endeavors with her,” as laws existed prohibiting sex until after marriage, Harwood’s actions of forcing Gary to have sex so that she would feel compelled to marry him was pointedly prohibited by this clause. Like Sharpe, Harwood’s counsel was also not the deciding influence in Gary’s choice. In effect, the two men countermanded the influence of the other and limited all male input in Gary’s decision.

Equally important was why Gary had so much liberty in the matter. The religious background of Sharpe and his family probably had much to do with the final creation of the settlement and the intentional freedom allowed to Gary. Sharpe and his new family were all fairly outspoken Quakers. According to historian Debra Meyers, the kind of Christianity expressed by most early Marylanders can be classified under two kinds of religious groupings. Predestinarians were composed of Baptists, Presbyterians, and Puritans, while she labels Arminian Anglicans, Quakers, and Roman Catholics as “Free-Will Christians.” The former advocated adhering to a patriarchal hierarchy, which resulted in a far more rigid social control than employed by Free-Will Christians. Moreover, Predestinarians viewed women as treacherous

96 Ibid. In April 1650 and October 1654, for example, in keeping with English law, the Council of Maryland passed the following pronouncement outlawing fornication: “everyone found, or proved by confession to have committed Adultery, or fornication (by either party) such as offender or offenders shall be punished- not extending to life or member, as the court thinks best fit.” Archives of Maryland Online, Proceedings and Acts of the General Assembly January 1637/8-September 1664, volume 1, page 286, http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000001/html/am1–286.html, (accessed on January 31, 2008).
97 In the 1670s Judith and Peter Sharpe donated land to a prominent Quaker. Both Elizabeth Gary and her mother appeared as witnesses in an infanticide trial several years later. And both women were fined by the court for refusing to give oaths in that case. Archives of Maryland Online, Proceedings of the Provincial Court, 1663-1666, volume
because they were weak and could be tempted to sin. Thus, to Predestinarians women were
dangerous to society because not only would an individual woman be tempted to sin, but she
would tempt her husband and her children as well. Using the story of Adam and Eve as
justification, women were viewed as a possible corrupting influence that had dangerous
possibilities for the community. Predestinarian men were very controlling of their women and
placed them in subservient, dependent positions to minimize the threat they posed to their
families and to society. Free-Will Christians, by contrast, supported a more egalitarian social
structure and more economic freedom than Predestinarians. Meyers argues that in Maryland
Free-Will Christian women were the social norm in the seventeenth century. These women had
expectations of being partners to their husbands in work, risk, and duties. Free-Will women acted
as lawyers, as business women, and in a variety of roles wielded great power and authority over
their children and dependants. Socially, Free-Will Christians expected women to function as
partners to their husbands in all things. Women like Gary held far more freedom and extended
their husband’s authority by acting as deputies in the home and in society.98

The settlement between Sharpe, Harwood and Gary which hinged on Gary having the
final say must be understood in the religious context that valued a woman’s counsel. Her mother
probably shaped Sharpe’s perception of Harwood. We know that Judith wanted to prevent
marriage of her daughter to Harwood and that Sharpe may have harbored concerns of his own.
However, despite these concerns, he agreed to let Gary decide for herself. That Sharpe was
willing to make this concession--when he represented not only her interests but those of the
family---reveals that his behavior was shaped by the belief that women were to exercise their free

(accessed on January 31, 2008).
98 Debra Meyers, Common Whores, Virtuous Women, and Loving Wives: Free Will Christian Women in Colonial
will and could make calculated decisions, just as men did, that would reap benefits not only for themselves but also for their community.

Afterwards

Sharpe, Gary’s stepfather, died fifteen years after the case, in 1672 with a sizeable estate. On numerous occasions the Provincial Court referred to Sharpe as “Mr. Peter Sharpe”, thus indicating his status as a gentleman. He was a wealthy, respected, and notably—an outspoken Quaker. His will reflected a desire to care not only for his biological children, but the children of Judith’s first husband as well. Sharpe was a man with many friends and sizeable holdings and he was able to include a large number of people in his will while providing amply for his own family.

Sharpe’s will is also significant in what it reveals about his respect for his immediate and extended family members and other community members. He gave Judith’s son, John Gary, a manservant, and his wife, 400 acres of land, and 4000 pounds tobacco. To John Gary’s wife specifically, Sharpe bequeathed his silver cup. To Gary, Sharpe left a maidservant. To every one of Gary’s young children still in their father’s home, he left 1000 pounds of tobacco a piece. Yet, instead of specifically leaving a manservant to Robert Harwood, Sharpe’s will records the use of the manservant as being left to “Robert Harwood and Elizabeth and Children.”99 The difference between the bequests to John Gary and Harwood are striking. While John Gary received a manservant for his personal use, the manservant given to the Harwoods was in the name of Robert, Elizabeth, and all the children. Perhaps, this was merely an odd slip of the pen, more likely, however, Sharpe was mandating the use of the servant for the benefit of the entire family.

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99 Will of Mr. Peter Sharpe, Folio 494, Liber 1, Probate Records, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.
Further in the will, in respect to the 1000 pounds left to each child still at home in the Harwood house. Sharpe specifically mandated that Robert Harwood husband the resources carefully. Not only did Sharpe charge Harwood with the safe keeping of his gift to them, but he also imposed stipulations on Harwood mandating how the gift was reinvested. Obviously, if Sharpe was so detailed in his instructions to Harwood regarding the management of his investment to the young children, Sharpe must have entertained the idea that Harwood needed to be so instructed. Hence, Sharpe seems to have lacked confidence in Harwood’s ability to care for those in his household and his actions may have been an indication that he believed Harwood to be a poor manager who would only use the bequest to help his family if so ordered.

Sharpe’s lack of confidence in Harwood was reinforced many times. Perhaps it stemmed from residual resentment left over from the circumstances surrounding the trial and was further due to mistrust laid long before Gary called attention to Harwood’s misbehavior. According to the testimony of the witnesses mentioned earlier, Gary’s mother Judith disliked Harwood and would have stopped any wedding between them if she could have done so. Or, perhaps Harwood’s lack of generosity sparked Sharpe’s concern. While Sharpe was generous with his fortune, probably endeavoring to live out Quaker conceptions of good Christian charity, Harwood was not. Sharpe appeared numerous times in the Quaker meeting minutes on committees helping those in need as a group member and he also appeared in other records as an individual prone to charity. For example, in 1667 Sharpe as a physician, offered uncompensated aid and ministrations to a man “in a languishing condition.” The Provincial Court recorded the incident because another physician, whom the court had previously ordered to treat the patient, charged Sharpe with unlawfully keeping and detaining the sick man. Sharpe said (and the court agreed) that he had acted justly—the man had come to him begging for aid and would have not
done so unless the plaintiff sought his help. Ultimately, Sharpe had helped the man because the other physician had failed to do anything.\textsuperscript{100} Sharpe’s values as evinced by his own behavior appeared at odds with those of Harwood. While both men were interested in securing their fortunes, Sharpe appears in the record offering gifts and aid to those around him. It is perhaps this difference, in addition to the incident between Gary and Harwood, which shaped the regard in which Sharpe held Harwood.

While Harwood struggled to be as prosperous and respected as Sharpe, he never quite attained the same level of gentrification as his father-in-law. Both men possessed considerable holdings over the course of their lives. They each were serious planters—and successfully amassed a fortune—at least partially based on tobacco. Both Sharpe and Harwood obtained the original land patents for thousands of acres. Just in these holdings alone, land originally patented by Sharpe (and not purchased from someone else), he amassed 3250 acres—with one of these patents encompassing 1000 acres of land in Talbot County alone.\textsuperscript{101} Robert Harwood by contrast had 2150 acres patented with his largest single patent being Harwood Reserve purchased in 1665 and covering 700 acres.\textsuperscript{102} Although Harwood was successful, by comparison Sharpe held more land, affluence, and ultimately respect.


\textsuperscript{101} Peter Sharpe’s Patent Holdings in Maryland: King’s Quarter in Dorchester county, 1664, 100 acres; Sharp’s Point in Dorchester County 1664, 200 acres; Teveryton in Dorchester County 1664, 250 acres; Horse Path in Calvert County 200 acres; Sharpe’s Outlet in Calvert County 1666, 200; Teveryton in Dorchester County 1666, 400 acres; Ending of Controversie 1667, 150 acres; Sharpe’s Desire Dorchester County 1670, 50 acres; Sharpe’s Outlet 1670, 50 acres, Fishing Creek Point in Dorchester County 1664, 150 acres; Head Fresh Spring in Talbot County 1664, 500 acres; Chestnut Bay in Talbot County 1665, 1000 acres, Patent Index, (MSA S 1496), Maryland Indexes, Maryland State Archives, Maryland State Archives, Annapolis Maryland.

\textsuperscript{102} Robert Harwood’s Patent Holdings in Maryland: in Anne Arundel County 1651, 100 acres; Cold Spring in Dorchester County 1665, 200 acres; Harwood’s Desire in Dorchester County 1665, 300 acres; Harwood Reserve in
In the Provincial Court Proceedings of 1657, the same year in which the court heard of the incident between Gary and Harwood, Harwood and Sharpe were listed as serving on a jury together. Still, while Sharpe was referred to as “Mr. Peter Sharpe” Harwood was not recorded as bearing this title. While Harwood was referred to as a planter, he was not referred to—at least not by the court recorder—as Mr. Robert Harwood. At the time of the incident between Gary and Harwood, Sharpe occupied and maintained a higher social position than did Harwood. This may have also been an incentive for Harwood to try and secure marriage to Gary—even if the agreement on Gary’s part was obtained with some difficulty. Coming from a wealthy family most likely meant that Gary would bring additional resources into Harwood’s home. Moreover, she may have been able to draw on additional inheritance resources provided by her father, John Gary.

Sharpe’s intention to manage the way in which Harwood handled his children’s inheritance (a distinctly patriarchal privilege) does more than question Harwood’s ability as a father; implicitly Sharpe challenged Harwood’s manhood. Seemingly minor offenses were of real concern to those individuals who held power in early modern societies and had to be addressed, lest they challenge the hierarchies of authority upon which power was derived. According to some of the more recent literature on struggles for power in early modern societies such as is suggested in the introduction to Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland edited by Braddick and Walter, even seemingly minor acts, like failing to remove one’s hat in court, challenged authority and

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Dorchester County 1665, 700 acres; Rich Farms in Talbot County 1673; Rich Farm Addition in Talbot County, 400 acres, Patent Index, (MSA S 1496), Maryland Index, Maryland State Archives, Annapolis Maryland.

threatened the underpinnings of social control. The hierarchies of authority were somewhat unstable and could have been undermined by behavior that ran against conceptions of appropriate behavior for each subset of society. If one section of society stopped performing the rituals that identified its station, implicitly the stability of the other steps of the social ladder were also called into question. Every act that failed to support the social hierarchy had to be addressed—no matter how large or small and regardless of whether the act was deliberately performed or wholly unintentional.

Moreover, also according to Braddick and Walter, it is far too simplistic to view early modern hierarchical challenges as that between a powerful elite and a monolithic group called “the masses.” Instead, they demonstrated that many different groups—with different agendas and compositions—challenged those who exercised authority in the early modern world. A huge variety of challenges to the social hierarchy were made based on gender, class, status, and age, to name a few. Moreover, the groups, which struggled against those in power were wholly disjointed. Instead of a single mob consciousness, Braddick and Walter describe a society in which individuals and small groups contested both each other as well as authorities.

When Harwood had sex with Gary, he began a struggle over authority and power with Sharpe that probably lasted until Sharpe’s death. Harwood’s challenge to Sharpe occurred in two ways: in respect to age and status. Harwood was younger than Sharpe and not as wealthy. When Harwood had sex with a woman in Sharpe’s charge, without her or Sharpe’s explicit consent, he challenged Sharpe’s ability to govern and protect those within his household. In consequence, Harwood increased his personal authority and honor by usurping Sharpe’s. Regarding the

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105 Ibid., 13.
106 Ibid., 8.
legitimization of power, Braddick and Walter comment that “personal and moral qualities, as much as family and lineage determined the reception and ranking of gentility.” Sharpe held the respect and admiration of his neighbors and colleagues. He held land. Moreover, given the frontier-like nature of early provinces he was among the most affluent of early Maryland families—both in terms of land and movable property. While Harwood held some land and was a wealthy planter in his own right, he was neither as highly respected, nor managed as large an estate as Sharpe. When Harwood attacked and successfully wooed Gary to marry him, Harwood drew on Sharpe’s resources to establish his own legitimacy—but implicitly formed an attack on his age, his fortune, and his daughter. Harwood’s behavior challenged Sharpe’s standing in the community, while increasing his own.

According to some historians like Alexandra Shepard, who wrote *Meanings of Manhood in Early Modern England*, the boldest resistance to patriarchal concepts of order was performed by young men. She argues that accepted concepts of manhood and patriarchy did not necessarily equate as one and the same in early modern England. By examining a range of historical materials she concluded that competing notions of manhood ran diametrically opposed to official codes of religion and law. In particular, she points to early modern medical treaties as revealing a sense of the distance between the ideal man and reality—particularly among young men given to certain excesses, such as aggression, sex, and alcohol. Thus, as the relationship between Sharp and Harwood suggests, early Maryland also witnessed both a contestation in concepts of patriarchal authority and in notions of manhood. Similarly, as in England, one of the biggest challengers to patriarchal stability in Maryland was by young men—in particular those men trying to secure a wife by all means possible.

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107 Ibid., 29.
Harwood’s behavior (interpreted either as rape or as imprudent affection) had no such negative effect on his own reputation. Braddick and Walter also comment that “recent work has argued that in contrast to whatever was the case for young unmarried men, sexual reputation was a more important source of credit for married male heads of household’s.”\(^{109}\) Thus, Harwood’s actions toward Gary—first the sex, and then the consequent courtship did no damage to his reputation. Moreover, his consequent actions—of courtship and seeking council through his religious congregation—may have actually enhanced his reputation. Gary was unmarried at the time of attack and so his sexual exploits did nothing to impugn his credit. Moreover, the results of the ordeal allowed him to recast Gary as a waffling lover who was fearful of marriage and had he not “helped” would never have married.

The interaction between Robert Harwood and Peter Sharpe is interesting in its own right as it sheds light on family dynamics, and even speaks to the factors at play in the very creation of family alliances. It also serves to illustrate a broader picture of the challenges made to patriarchal authority. Challenges were made in terms of age, status, financial security, and even in terms of the ability to govern one’s household. And, marrying into a family that was already well-respected could boost the reputation of a young man hoping to secure his own prosperity.

Seventeenth-century Maryland did not experience a single unified challenge to the nascent elite. Instead, individuals from a variety of backgrounds challenged not only the authority and ability of Maryland gentlemen, but also the very composition of the planter elite. Instead of a unified rabble making a challenge on the elite, the elite themselves were not unified and found challenges even from within.


When Robert Harwood died shortly after Sharpe in 1675, he left behind specifics on both the division of his land and his moveable property—an indication that by the end of his life he had successfully assembled a profitable estate. To each of his children he bequeathed a featherbed and related furniture (among other things), and then divided the estate equally between his wife and children. His debts were to be paid by selling his land at King’s Creek. His wife was to have the plantation that had been their home, with the provision that it should “be at my wife’s disposing as long as she lives.”\footnote{Will of Robert Harwood, Box H, Folder 49, Probate Records, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.} In effect, Harwood’s death provided Gary with a measure of financial independence. This financial independence, in turn, provided her with considerable choices. She could choose to remarry if she found a man she deemed worthy of her affections, or she could remain single.

Rather than remaining a femme sole, Gary married Winlock Christison, a man that her step-father greatly esteemed during his lifetime. In his will Sharpe bequeathed his land, “Ending of Controversie,” to Winlock Christison and his first wife.\footnote{Will of Peter Sharpe, Liber 2, Folder 354, Probate Records, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.} Both Christison and Harwood were Quakers and both were businessmen. But something about Christison registered with Sharpe in ways that Harwood did not—as Sharpe felt no such compulsion to bequeath any land to Robert Harwood. When Harwood died in 1675, Gary quickly married Christison within a few months.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court 1681-1683}, volume 70, page 485, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000070/html/am70--485.html}, (accessed on January 31, 2008).} Perhaps she felt the need to remarry quickly because without her step-father or husband she was uncomfortable making decisions. The hasty marriage could have been due in part because she was uneasy being the administrator of an estate, particularly as she was responsible for small children and servants. Furthermore, it is entirely possible that she loved
Winlock Christison and consented to marry him because he was vocal about his Quaker faith in a way that Harwood had not been—after all another man she had respected, her stepfather, had found him to be an honorable and respectable man.

By contrast, Gary had quite possibly consented to marry Harwood both due to feeling pressured and out of a sense of obligation. They had courted. She believed he had raped her, but he had successfully persuaded others that it was consensual which was the expectation for a betrothed couple. Maybe she was eventually persuaded that the sex was consensual. Regardless, Harwood successfully persuaded her during the weeks at Calvert Cliffs that the next logical step for them was to marry. As an added bonus, the consequent marriage between the two legitimated the sex they had already experienced and granted them virtual immunity from being charged with committing fornication. The court punished people differently according to social status. As members of the elite, Gary and Harwood could have received possible fines for committing fornication. Non-elites suffered corporal punishment. Gary’s concern about her reputation was not due to her concern in finding any husband. She was concerned about finding the right kind of man and with her background, she desired a wealthy Quaker. Moreover, as they were betrothed, Gary may have chosen to marry Harwood because it legitimated the sex that some viewed as consensual to the Society of Friends. Even during her marriage to Harwood, Gary continued to evince behavior that dovetailed with the beliefs and norms of the Quaker community to which she belonged.\(^\text{113}\)

Gary’s later life indicates that she was uncomfortable and unprepared to make financial decisions as an estate administrator. This suggests that she was most comfortable in her

dependent state. As a daughter and as a wife of a wealthy Quaker she made considerable
decisions, but always among pre-approved options determined by her father or husband. She
was not simply a passive voice, without opinions, rights, or obligations. She had distinct
household responsibilities and thus held some degree of empowerment. This is not to say that
women of the Third Haven community (the Quaker community to which Sharpe, Harwood, Gary
belonged) exercised authority with abandon or if they did, that every woman was comfortable
making and executing major decisions. In the instance of coerced sex and the consequent
inquiry, Gary had someone she trusted, her step-father, to help her wade through the process of
rectifying her honor and calling attention to the treatment she had received at the hands of

Gary’s behavior as a widow suggests that she was uncomfortable with the responsibilities of estate management
and remarried quickly to escape these responsibilities. Most likely, Gary—who had been a dependant in her step-
father’s household and under his direction, and then who had simply transferred her dependant state to her
husband—was simply not prepared to handle all the aspects of running an estate. In accordance, when her second
husband Christison died and named her as an administrator of his estate Gary married William Dixon within several
months. (Archives of Maryland Online, Proceedings of the Provincial Court 1681-1683, volume 70, page 254,
http://www.msa.md.gov/megafile/msa/specoll/sc290/sc2908/000001/000070/html/am70--254.html, accessed on
January 31, 2008). On 20 May 1679 Christison died and by the February 1680 meeting of the Third Haven Friends,
Gary and her final husband, William Dixon, announced their intention to marry (Third Haven Monthly Meeting
Minutes 1676-1746, Quarterly Minutes 1676-1720, page 24, Microfilm number M 283, Special Collections number
2394, Maryland State Archives, Annapolis Maryland.) Throughout her life, Elizabeth Gary Harwood Christison
Dixon deferred to the choices of whichever man happened to be her patriarchal leader at the moment. Moreover,
when she was placed in the position of femme sole, she was highly uncomfortable with the role and used marriage
as a successful means of escaping the tasks associated with estate governance—such as account keeping, paying
debts, overseeing that her laborers did not cheat the estate, provision of her laborers, buying and selling land, and a
host of other similarly related to everyday concerns.

When Christison died and Gary married and became Mrs. William Dixon, she had at least one child to care
for who was still a minor and she was probably pregnant. Christison’s will mentions two children. The first, Mary,
was still a minor and part of Christison’s last wishes was for Elizabeth to use the plantation to maintain the child.
Mary was to receive the plantation as an inheritance upon reaching the age of 19 if the other child, which was yet to
be born, was female. Note: Christison’s will was most likely filed in May 1679 and created in February 1678;
Wenlock Christison Will, in Maryland Calendar of Wills, Volume I, Pages 96-109, Originally Compiled by Jane
Baldwin, Edited and Annotated by USGenNet Patrons Rhoda Fone & Carole Hammett (2001),
+Cristison&hl=en&ct=clnk&cd=3&gl=us&ie=UTF-8, (accessed on February 2, 2008). When Gary decided to
marry she was already pregnant. Her pregnancy gave her an additional incentive to marry Dixon quickly. With an
additional child on the way she was probably nervous about taking on the task of yet another estate and undoubtedly
nervous about her survival. This was at least her fifth child and she was at most 48 years old (she may have been
younger than this given the cursory attention to birth dates). At any rate, she was considerably older than when she
married Harwood. Hence she may have also married to ensure that if she died, someone would care for the child.
Therefore, a woman’s decision to marry was based on a variety of factors partly due (but not limited to) her religion,
class, age, location, and business acumen.
Harwood. Both her attacker and her patriarchal head had first determined what her choices would be but left Gary to make the final decision. While Gary exercised considerable agency in determining major life choices, auspiciously these choices were made with the approval of powerful men.

Given Gary’s staunch Quaker faith, the testimony offered during the hearing, and Gary’s dependence on a man throughout her life to manage the household, it seems probable that when she and Harwood had sex—whether it was consensual or not—Gary believed that she could/would only be intimate with her husband that she needed a man to help her with financial, legal, and estate decisions. Most likely, Gary married Harwood because she believed that the sex made her ineligible for other suitors. And, she needed to marry Harwood because only her husband could secure her future financially and define her identity as a wife and mother. From the choices she made throughout her life, the evidence suggests that while some early Maryland women did amass fortunes as femme soles, Gary probably conducted herself and made choices believing that she was ill-equipped to be the administrator of an estate.115 She could not create a fortune, or even manage the inheritance she received from her father without the assistance of a man. Perhaps she contemplated using her brothers or step-father (which the court referenced as her father-in-law) to help her, but if she did she rightly concluded that basing her fortune on their help would have been a gamble—as a sister or a daughter she was not entitled to the rights of a widow. A man’s wife was entitled to a third of her husband’s estate upon his death—more if perchance he wished to be generous and concluded that he could do so without jeopardizing the inheritance he left to his offspring.

Gary may have decided to marry Harwood, even though she testified that he had raped her, because she was unwilling to risk what she believed (regardless of the reality) to be a very real possibility of not making a good marriage. Based upon her status, the wealth of her family, and her religious background, she would have wanted an unmarried Quaker who could provide financial stability during and after his life. When she said that she would have no other man to be her husband, this was true considering that the pool of men she considered eligible was considerably small. She must have considered her options fairly carefully, both in deciding whether to allow Harwood to court her at Calvert Cliffs following the incident and during the time that Harwood paid for her entertainment.

Furthermore, Harwood sought to marry Gary after the incident in the garden, because he was afraid of losing the respect of the community of Friends. His behavior was inconsistent with that of Gary’s other husbands, who were Quakers and acted in ways that safeguarded their respect by keeping them in good standing among other community members. Harwood probably continued to pursue Gary because not doing so would have caused greater harm for him. Gary’s consent to lay with him was ultimately irrelevant. The fact of the matter was that he had sex with her. Perhaps they had mutually declared their intention to marry. Even if they had no such understanding it was in Harwood’s interest to say that they did because for many early colonists, the intention to marry was itself tantamount to marriage as it confirmed their commitment to marry.

In *Domestic Dangers: Women, Words and Sex in Early Modern London*, Laura Gowing wrote about litigation patterns in London and argued that sex was part of a confrontation process in struggles over reputation and credit. According to Gowing men never brought defamation cases to protect their sexual reputation; their suits were always focused on a failure to control the
sexual behavior of women in their households. Therefore she concluded that men and women in
England had different agendas in coming before the Judiciary due in part to the fact that they
occupied different moral universes. 116 The incident between Harwood and Gary shows that
Maryland men did not directly follow the trends Gowing identified. While the court system was
designed to address failures in the control of women’s sexual behaviors, Harwood’s testimony
indicated that at least some men in Maryland were concerned with defending their sexual
reputations. In Harwood’s case this was possibly due to the different religious climate and the
fact that Sharpe was a powerful businessman. Many of the men with whom Harwood had
business arrangements were well-established Quakers, as was Sharpe. Elite men in Maryland
may have been more inclined to defend their sexual reputations because they could not afford to
allow such accusations to taint their business practices. Thus, Harwood was inclined to mount a
public defense.

Yet, as historian Richard Godbeer argued, colonists disagreed about when marriage
began. Some people believed a couple to be married only when a formal ceremony occurred.
Others believed that the commitment to marry, regardless of formal ceremony, constituted a
marriage and made sex permissible. Many colonists themselves disagreed as to when marriage
began.117 Without a declaration to marry most colonists viewed sex—whether coerced or not—as illicit behavior. To protect his reputation among the Third Haven community, who were not
just the men who held him accountable for moral behavior but were also some of his closest
business associates, Harwood needed to legitimize the sex between him and Gary through
marriage. In so doing, he could cast the experience within the normal boundaries of courtship
and possibly persuade the community, and the judiciary, that Gary was simply a woman who had

116 Gowing, Domestic Dangers, 62-64.
117 Godbeer, Sexual Revolution, 119-128.
already declared her intentions, but was nervous of commitment. Harwood probably concluded that marriage, combined with the fact that the couple had courted for several years and that Gary was 25, effectively removed any hint of impropriety on his part, and thus retained the respect of his faith community, his neighbors and his business associates.

Conclusions

Regardless of the degree of agency women exerted in cases tried before the Maryland judiciary, Maryland men ultimately shaped the judicial process. The men of the judiciary had within their power the ability to completely redefine a charge. As evidenced in the Gary/Harwood/Sharpe trial, the Maryland judiciary consistently influenced the outcome by deciding under what legal rubric different alleged offences were prosecuted. Elite men suspected of inappropriate sexual behavior—however defined—had the crime redefined to a lesser charge. Originally Gary had decried the case as one of rape. But, the men involved--Sharpe and Harwood explicitly and the court by implicit consent—redefined the incident as one of slander and of courtship gone awry. Sufficient evidence exists to conclude that the men of early colonial Maryland made a deliberate attempt to exclude other rising elite men from prosecution for illicit sex.

Particularly when between individuals engaging in the rituals of courtship, the issues surrounding a case of coerced sex presented specific difficulties for contemporary jurors to understand. Was an incident in which the woman swore the sex was forced merely a misunderstanding between lovers? Believing he held certain prerogatives because of their betrothal, did the man transcend the bounds of decency? Or, did the couple mutually assent to fornication because of their impending nuptials, but one of the participants later regretted this decision and sought to rewrite the event? The uncertainly of the answer to these questions, coupled with the existing predilection of the jury to avoiding condemning men for sex,
encouraged the judiciary to allow the litigants to come to their own resolutions. The judiciary’s decision to define the case as something other than rape may have been motivated, at least in part, by the inherent difficulty of placing culpability. The Justices must have found wholly plausible that a betrothed couple could no longer stay the increasing physical attraction and had begun to engage in sexual activity. This interpretation was in all likelihood far more palatable to the judiciary than its alternative: killing a man who believed that he was the victim of a woman changing her mind. For that matter, as many men in Maryland disagreed regarding when marriage actually began and knowing that intentions to marry existed between the couple, the jury was uncomfortable condemning a man to death who some at least believed was already entitled to the body of his wife.

Furthermore, in 1657 the Maryland judiciary was willing to entertain creative settlements in certain cases that placed women in positions of power, in lieu of entertaining possible cases of rape—a capital offense—for rising, junior elite men. In this particular case the male litigants devised a settlement, though the final decision regarding the defendant fell to the woman involved. When presented with two choices, either to allow women increased (though mediated) freedoms, or condemn a man to death for a crime they were not entirely certain he committed, the judiciary chose the former. Women were able to exert some agency over their lives. Allowing the woman involved the ultimate choice in how the court proceeded was not a radical departure from acceptable social norms. Male litigants first negotiated and pre-approved the conditions of the settlement. Gary, for example, choose among acceptable options. So, while the creative settlement allowed for a woman to have more influence in the results of an allegation of rape than would have occurred had the case progressed as a felony charge, the case still proceeded under male guidance and control.
The court ultimately remained in control of the proceedings and simultaneously reinforced the male hierarchy by permitting a woman’s grievances to be addressed by the male litigants: the man who represented her and the man who wronged her. If a woman wished to seek justice for a perceived grievance, she needed to do so through the man to whom she was responsible. Moreover, in the early years of settlement the judiciary was unbounded by a strict regime or series of protocols. Thus there was nothing to force an unwilling jury to act in a particular manner. There was sufficient flexibility in the law and in its interpretation to permit litigants to form agreements that suited their interests, no matter how unorthodox their agreement appeared. As long as the concerned parties were satisfied, even if the agreement necessitated providing women with increased authority, so too were the members of the judiciary. Predicated on redefining rape cases as minor offences, creative settlements allowed the judiciary to still command patriarchal authority while at the same time absolving the responsibility of the jury in discerning the actuality of events.

Equally noteworthy, this case did not proceed as a felony crime in which the Provincial Court was out to punish a guilty rapist. Instead of the Provincial Court exercising tight-fisted control over the proceedings—forcing the litigants to observe a rigid judicial procedure—its conduct in these proceedings revealed the court to have behaved in much the same way as the church courts did in England. The trial proceeded with as little interference from the court as possible and appears to have centered squarely on allowing the litigants to reach their own settlement. Consequently, the intention of the court appears to have been more focused on reconciliation—or at least on allowing the parties the ability to reach their own agreement—than on punitive measures.
As is the norm with most circumstances of compromise none of the parties may have come away from the court proceedings entirely pleased with the results. Regardless of the official outcome of the proceedings, later evidence reveals that Sharpe may have continued throughout his life (and even expressed in his will) to view Harwood as a grasping upstart. For that matter, Sharpe was probably not the only one who viewed Harwood with suspicion. Harwood effectively gained access into Sharpe’s family, but this access did not translate into acceptance or trust within the family once the trial was over. While the desire to protect young men-on-the-make from the gallows may have been part of the motivation for redefining crimes of rape as something else, this did not necessarily equate to universal societal acceptance by community members.

This case reveals that some Maryland men were uncomfortable bringing a case of rape against a wealthy man. In this case, in order to avoid the necessity of a rape trial the court stay out of the proceedings as much as it could: allowing for the redefinition of the case from one of possible rape to slander brought about by a lovers’ quarrel and giving sizable liberty to those involved. Given the religious beliefs of those involved, creative settlements allowed for the extension of male authority and subsequently the actualization of increased female autonomy—at least to a point. While some Maryland men were willing in the early years of the colony to entertain unorthodox decisions, they probably did so in effort to avoid challenges to traditional male rule. In addition, if the court represented the views of the fledgling Maryland government (as many of the same men who were mentioned in the beginning of the record were members of the government) the fledgling government also sought to underscore legitimate male rule in a colony that was significantly influenced by Free-Will religious sects.
CHAPTER 2: COERCED SEX AS FORNICATION

The Story

On a bitterly cold January night when she was without her husband, a man of modest means, Susan Attcheson pleaded with John Nevill, a powerful, propertied man, to deny another neighbor in need of help and stay in her bed to keep her warm. This began a series of events that eventually led to Nevill coercing Attcheson to have sex with him. Had they had sex in January? Had they not? For months the couple had engaged in activity that made several community members suspicious of illicit sexual encounters. Was the sex forced? Were the encounters consensual? Then on a Sunday after Easter a servant discovered Nevill trying to force Attcheson to engage in sex. Frantically, she screamed for him to stop but he did not. Instead, he repeated his actions, multiple times, to spite all those who sought to stop him. In this moment, she appeared an unwilling victim. However, when the same servant testified that he found her with her hand down Nevill’s pants and three women testified they found Nevill and Attcheson together in the woods, the justices believed that at some point she had consented. They reasoned that consent on one occasion validated all incidents retroactively. Thus instead of treating her as a possible victim, the court charged Attcheson as an accomplice who bore the brunt of the censure. She was whipped; he was fined; but some men in the community offered to absorb the cost of his fine. Thus the sex was entirely at her expense.

Introduction

This chapter investigates the role of the community and how members shaped the course, verdict, and effects of the trial. Witness testimony by both men and women was important in helping the judiciary determine where to assign guilt and what crimes specifically had been committed. However, male and female testimony differed both in terms of scope and kinds. Women who functioned as a community of witnesses asked different questions of (and expected answers from) those women they suspected of inappropriate behavior than similarly misbehaving men. The community of women felt at liberty to question other women and expected them to justify and account for their behavior. But, the records reveal no such woman asking similar questions of men—even if both individuals involved in the illicit sex were married. Thus these women held great authority and were important to the judicial process. While still operating within acceptable boundaries of female authority, women who monitored and censured other
women could exert great influence in the male dominated arena of the courtroom. Though they questioned no men directly, they would indirectly effect the outcome of the trial.

Men were more directly important to the judicial process as witnesses and as jurors. And just as jury selection was stratified by wealth—only male land owners could determine guilt or innocence—detection and exposure of illicit acts by men of high rank created more immediate impact than did men of lower status such as indentured servants. In the courtroom, however, the testimony of men regardless of social distinction could help determine the fate of the accused. A man at the bottom of the social ladder could exert great power over men of higher rank, albeit indirectly, by influencing the men of the judiciary.

This chapter examines an incident involving Susan Attcheson (Attcheson), wife of James Attcheson, and John Nevill a married neighbor. Attcheson and Nevill (who was also married) were accused of adulterous, illicit sexual trysts. At least some of his advances, however, appeared to have been un-welcomed. Regardless, whether or not force motivated some of Attcheson’s actions in submitting to Nevill, contemporaries believed she was equally culpable because earlier she appeared to solicit his affections. The resulting case demonstrated the various individuals and groups who exhibited power—both court sanctioned and illicit—and how the court responded to rectify any misappropriation. The conduct of the court in respect to James Attcheson reveals what happened when a man failed to control the members of his household. Though she said he beat her, in order to make her yield to his authority, she refused to be bridled and rejected his authority by exerting her own independence. Presumably the court stepped in and chastised Attcheson, because James’ attempts to exercise authority over her had proved ineffective and because she had broken the law in the process. When her husband lacked the ability to enforce patriarchal control over those in his sphere the court stepped in as another
patriarchal figure in order to enforce control over those within their larger domain, the jurisdiction of the entire province, and corporally punished her.

In all of the instances of coerced sex found in the Maryland judicial records, the judiciary was far more approving of an aggressive man, such as Nevill, who violated the law but exhibited behaviors that reinforced notions of patriarchy. In *Theorizing Patriarchy*, Sylvia Walby describes two different forms of patriarchy. In private patriarchy with its household mode of production women were barred from the public sphere and controlled in a fairly direct way by individual patriarchs. In public patriarchy women had access to both spheres but were subordinated collectively in the public one. Walby reasoned that the shift from private to public patriarchy occurred because of the interaction of first-wave feminism with capitalism, as she was writing specifically about Britain in the nineteenth and twentieth century. However, private patriarchy, with its emphasis on the direct control of women by their male representatives was a characteristic of life in early Maryland. Social stability was maintained by each individual household head ensuring that his dependents were well behaved. In the incident with Susan Attcheson and John Nevill, James Attcheson was ultimately responsible for the actions of his wife. It was his duty to control her and to answer to the judiciary when he failed to do so—either directly, with a reprimand, or indirectly through having to pay his wife’s fine. As he was responsible for her and was the sole owner all of the property, he was to pay her debts. Effectively, the court chastised both Attchesons and made a host of implicit statements regarding the urgency and necessity of controlling subordinates—particularly when the subordinates threatened to invert the social hierarchy.

The response by the community to incidents of sexual impropriety was two-fold. A wife who committed adultery resulted in a man loosing respectability among his neighbors, thus
consequently making her an economic liability—as these acts reflected negatively on her husband’s ability to manage his household. If a man was unable to control his wife, contemporaries believed that by extension he would only be marginally able to manage his financial resources. Accordingly, a woman who was unfaithful to her husband could negatively effect a man’s business ventures. By contrast, a man who cheated on his wife could continue to be well respected and rise in status—even to the point that his neighbors could (and sometimes did) agree to absorb an official fine for him. Economic prosperity and respectability were intimately connected to a man’s display of virility and his ability to control his household.119

The Trial

In 1657, a group of women gathered to watch what they considered to be the suspicious behavior of Susan Attcheson and John Nevill. Three women—Mary Gillford, Susan Barbary, and Johanna Watts—together watched for signals indicating inappropriate behavior. What they observed was to them a clear indication of illicit behavior. Mary Gillford testified before the judiciary that the Sunday prior, while she stood in her house and looked out the front door, she saw John Nevill scaling the fence. Noting the peculiar behavior, she called to Susan Barbary and asked her where she thought he might be headed. Barbary then turned to the court and confirmed that she saw James Attcheson’s wife, Susan, climb over the fence as well. Realizing that such behavior could possibly indicate a secret rendezvous for illicit sex, both women told the court that they sought out another observer, Johanna Watts, to confirm their testimony. But, when the three women arrived at the place where Attcheson and Nevill were last seen, they found that the couple had moved. Continuing the search, the group of three women found Attcheson and Nevill deep in the

thicket. The women demanded that the couple explain their behavior. Attcheson’s reply was less than convincing: she said she was going to a garden, but no garden was in sight.\footnote{Archives of Maryland Online, Judicial and Testamentary Business of the Provincial Court, 1649/50-1657, volume 10, page 507, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10-507.html}, (accessed on January 31, 2008).}

Later, when the women were called to attest to this explanation all three swore that Attcheson must have lied to them. Gillford, Barbary, and Watts related to the court that they had confronted Attcheson with evidence of the lie. Watts, specifically, said that when they were all in the thicket she asked Attcheson two questions. First, “if her garden was this way”—to which Attcheson answered “no.” And, secondly, why she “did not love her husband”—to which Attcheson said because he abused her.\footnote{Ibid.} Watts was only slightly persuaded by the answers given because she had been watching Attcheson’s behavior for quite some time. Evidently, the incident when Attcheson and Nevill jumped the fence was not the first time the community of women found evidence of inappropriate behavior between the couple. After Watts finished testifying to the encounter in the thicket she turned to the court and told them that when James Attcheson was at court his wife called Nevill to come to her bed.\footnote{Ibid.}

Johanna’s husband, Alexander Watts, testified before the court that in January he had requested John Nevill help his wife bring home two stray animals that had wandered over to a neighbor’s property. Alexander Watts quickly added the reason he could not go himself: he was gravely ill. When Nevill received the request he was inside Attcheson’s house. Overhearing the conversation, Attcheson moved to prevent him from going. She said “if he the said Nevill did go, she would let the barrel of beer out, about the house.”\footnote{Archives of Maryland Online, Judicial and Testamentary Business of the Provincial Court, 1649/50-1657, volume 10, page 508, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10-508.html}, (accessed on January 31, 2008).} Once returning the animals, Nevill
returned to Attcheson’s house where she called him to lay beside her in bed so they could share body heat—among other possible reasons.

Not only female community members but men also were among those observing the couple. Household servants were particularly able to testify to intimate affairs because of their proximity within the household. Thomas Plott, probably an indentured servant in the Attcheson’s household, testified that on Sunday after Easter he was going strawberry picking when he saw Attcheson and Nevill in bed together. He heard her repeatedly cry for Nevill to stop molesting her, but Nevill did not stop. He overpowered her, forced himself upon her, and exposed her so that even Plott saw her private parts. When Plott went to pull Nevill from Attcheson, Nevill turned to him angrily and told Plott that he would not be stopped. He “swore that he would swive her . . . before [Plott] . . . should go to the cow pen and back.” 124 Plott told the court that Nevill was right. Even before he could make it to the cow pen, on his way to the strawberry patch, he heard Attcheson cry out for help again. When he returned, Plott once again saw Attcheson and Nevill together in bed, and again told them to stop. Almost as soon as he did so, Nevill threw Attcheson upon the bed and ravished her—roughly as if in defiance of being told he could not have that which he desired. Again, she cried out but neither she nor Nevill moved off the bed. To Plott, this behavior of crying out but failing to move away from the man she claimed was her attacker redefined the event from one of rape to one of illicit courtship in which the woman enjoyed the sex, but had to pretend to protest. He evidently found her failure to act noteworthy enough to include in his description to the jury. 125 Had she fought Nevill continuously, then perhaps Plott would have considered the incident an attack. But, to him, her behavior cast the incident as consensual. Only the threat of detection by Plott’s master forced

124 Ibid.
125 Ibid.
Nevill to stop and only then did Attcheson address Plott. She begged him to say nothing of the incident to anyone, lest she be beaten, presumably by her abusive husband.\textsuperscript{126} If Plott was even remotely inclined to believe she was a victim of rape, that she thwarted his attempts to help her (by charging him to remain quiet about what he had seen and thus stopping him from getting help) persuaded him otherwise.

The court then heard further testimony of incidents of indiscretion between Nevill and Attcheson that left little room for Attcheson to play the part of an unwilling victim. On another morning, a Sabbath day, a similar incident occurred whereby Plott discovered Attcheson and Nevill together in the hay. Plott told the court that Attcheson went to the loft and had sex with Nevill who was there waiting for her. When Plott asked about it, Nevill threatened to beat him to death. As if the additional testimony of Plott were not enough to condemn her, Gilford offered further testimony which removed all doubt: Gillford swore that she saw Attcheson and Nevill together at the last crop when Attcheson had her hand in Nevill’s breeches.\textsuperscript{127} To contemporaries of seventeenth-century colonial Maryland, not only did this behavior signal Attcheson’s willingness to engage in promiscuous sex with Nevill but it painted her as the initiator. The court then announced that “Whereas it appears to this court by several testimonies taken in court that John Nevill and Susanna Attcheson have lived in a notorious and scandalous course of life tending to adultery and fornication, the court orders that Nevill and Susanna shall receive each of them 20 lashes upon the bare back with a whip.”\textsuperscript{128} The court saw this as a case of fornication and adultery and so ordered both Nevill and Attcheson to receive the same corporal punishment,

\textsuperscript{127} Ibid.
with Nevill paying court costs. Thus, regardless of their degree of official authority, individuals who had engaged in community surveillance held enormous power over couples such as these by their ability to influence court decisions through their testimony.

The Community

In this case, a particular community of women wielded considerable power in the court. They initiated community suspicion, they watched for signs of impropriety, and reinforced a moral code and most importantly the court heard their testimony prior to any other witnesses. Their behavior indicates that they were aware of the power they held and of the community’s acceptance of their spying. They never tried to apologize for their conduct or deflect attention from themselves by crediting their actions to men. They were identified by their given names as well as their husband’s surname signifying their importance apart from their husbands. Their identities were not cast simply in terms of their relationship to their husbands. By choosing to include their first names, the court had in fact obscured their marital status except when a husband also appeared as a witness. Men connected with the female witnesses were actually identified in terms of their relationship to these women. In most cases in Maryland, women tended to be referenced indirectly, as “Mrs. Smith” or “Mrs. Jane Smith”. Evidently, in cases like this one, women were able to execute such importance to the community that they defined themselves.

This community of women had distinct expectations as to how men and women were to behave. They must have believed that something was going on between Susan Atcheson and John Nevill long before the day when Gillford and Sanders caught them in the thicket, otherwise the two women would not necessarily have been watching for inappropriate behavior. They believed that it was inappropriate for a man and woman to be alone together, without apparent
business to attend. The community frowned on the behavior that sought to conceal a relationship. Therefore, not only was the couple guilty of fornication, but concealment made them guilty of lying as well. Evidently, the women scorned Attcheson and Nevill’s clandestine behavior and when caught Attcheson blatantly lied about what they were doing. The fact that the women asked for an explanation also indicates that the women believed they had the authority to do so—even if solely as community members who possibly believed that amoral behavior of individuals reflected poorly on the community as a whole. Attcheson and Nevill’s surreptitious rendezvous further shows they were aware they transgressed accepted community norms and did so despite the law and the public censure that accompanied exposure.

Once Watts confronted Attcheson about her behavior with Nevill, Watts made two notable statements. First, Watts did not ask why Attcheson did not obey, respect, or honor her husband—she asked why Attcheson did not love her husband. According to the *Oxford English Dictionary*, in mid-seventeenth century Anglo-America, definitions of love indicate that Watts may have been asking Attcheson why she did not exhibit “a passionate attachment” or “entertain a great affection or regard for, or hold dear” her husband, James. Using this language, Watts expected Attcheson to exhibit both the commitment and passion attached with being married and she expected Susan to safeguard James’ reputation out of affection for him. Without explicitly stating so, these women communicated to the court that they felt Susan’s regard for Nevill actually usurped the “love” that was rightfully due to James.

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130 Ibid.

131 Ibid.

132 According to the Oxford English Dictionary, “love” in this context meant “With personal obj. or one capable of personification: To bear love to; to entertain a great affection or regard for; to hold dear,” [http://dictionary.oed.com/cgi/entry/50136030?query_type=word&queryword=Love&first=1&max_to_show=10&sort_type=alpha&search_id=f9Pz-uLiUrq-9083&result_place=6](http://dictionary.oed.com/cgi/entry/50136030?query_type=word&queryword=Love&first=1&max_to_show=10&sort_type=alpha&search_id=f9Pz-uLiUrq-9083&result_place=6) (accessed on February 9, 2008).
Secondly, Watts implied two things: she believed Attcheson felt justified in not loving her husband James and, the she was at liberty to demand Attcheson explain herself. The fact that Attcheson felt compelled to answer similarly underscores that both she and Watts believed the three women acted appropriately and with considerable authority in expecting Attcheson to respond to their questioning. Her reply to Johanna is telling: Attcheson said that she did not nor “could not” love her husband because “he abused her.” The abuse suffered from her husband must have been severe, even by seventeenth-century standards. Though Attcheson claimed that Nevill raped her, and the evidence indicates that at least some of the interactions were in fact coerced, Attcheson still continued to act as his clandestine lover. Perhaps then, it was the degree—not the mere presence—of abuse to which she objected. Like other Englishmen and women, she may have accepted the correction of her husband as a normal and expected part of her life. That Attcheson rejected her husband who abused his legitimate authority when he beat her, but accepted Nevill despite the abuse of his illegitimate authority when he forced her to have sex, suggests that she accepted a degree of violence within the home but was unwilling to accept its excess.

Regardless, it is notable that though this community of women appeared comfortable questioning the woman they suspected of fornication, none of the testimony offered suggested that they demanded or expected the same level of accountability from the man involved. Instead, their conduct suggested that while they believed they held sufficient authority to directly challenge the woman’s behavior, they could only indirectly address the man’s. Even when confronted by a male indentured servant, the servant felt at liberty to check the man’s behavior but held insufficient authority to stop his actions. Interestingly, this same servant did not express

the same behavior as the community of women. While Plott sought to stop the illicit sex, he did not seek nor expect any sort of justification for their actions. Attcheson and Nevill were not sufficiently frightened by the prospect of Plott revealing their affairs elsewhere, nor that prospective gossip mongers would believe him. In respect to the stratified system of status and respectability, Plott was at the bottom, plantation owners at the top, and the community of women roughly in the middle. While Plott’s testimony contributed significantly to the decision of the judiciary, it did so only after the community of women caught and exposed the couple.

This group of women played a vital role in community surveillance. By operating collectively they provided a number of witnesses who could corroborate testimony and strengthen the weight of their claims. Their collative respectability could trump the testimony of some men and their prerogative as a group of married women made the scope of their involvement vastly different as well. They sought answers to explain another married woman’s seemingly brazen behavior. Their involvement indicated a dimension of purpose wholly absent from the men involved. Hence, they were equally concerned with why the breach in morality occurred as to gathering evidence proving that illicit behavior occurred.

A Victim or a Conspirator?

The first issue that should be raised regarding the relationship between Nevill and Attcheson is was Attcheson’s involvement consensual or coerced? The judiciary evidently believed that both Attcheson and Nevill were complicit lovers. Though Plott’s initial testimony regarding the incident he discovered on his way to gather strawberries might have persuaded the judiciary that Attcheson was an unwilling victim, when compared with the rest of the witness testimony Attcheson was depicted instead as a controlling, defiant woman who initiated and enjoyed promiscuous sex with Nevill. Through consent or coercion, regardless of how their relationship

507.html (accessed on February 8, 2008).
began or of when the possible rape occurred, the fact that she at some point had consented to the
encounter invalidated any refusals to sex made to Nevill. By consenting to promiscuous behavior
once--such as when she put her hand in his breeches--Attcheson gave Nevill unmitigated access
to her body. The judiciary was loath to believe she had refused in one instance if in another she
couraged him.

Plott’s initial testimony suggested the incident was rape; his later testimony suggested
otherwise. He told the jury that her screams had first prompted his search and after investigating
he found Nevill and Attcheson in bed together. Plott described her screams as a desperate
entreaty in which she begged Nevill to stop. Though she begged Nevill to stop, “he would not be
quieted” and “pulled up her clothes so that [Plott] saw her nakedness.”\footnote{ Archives of Maryland Online, Judicial and Testamentary Business of the Provincial Court, 1649/50-1657, volume 10, page 508, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--508.html} (accessed on February 8, 2008).} Believing she was
being attacked, Plott moved to help her and successfully pulled Nevill off of her. However, he
was ultimately less than successful in ending the incident. Though he had intended to cause the
couple to stop, Plott’s actions caused Nevill to become more determined. He swore to Plott that
he would have his way with her in short order.\footnote{Ibid.} According to Plott, Nevill was true to his word:
he came at her again so that by the time Plott reached the cow pen she was screaming, “Help!
For God’s sake, help!”\footnote{Ibid.} Perhaps this was Nevill’s way of rebelling against a man who sought
to keep him from his objective. Or, possibly, as the act was already in motion prior to Plott’s
discovery, Nevill’s use of force was his response to a woman who tried to exercise power she did
not rightfully have. On one occasion, Attcheson appears to have ordered him to come to her bed
and when he incidated he wanted to leave, threatened him with damaging property (which
presumably would alert others about their relationship), if he failed to comply with her demands.
Perhaps by seducing her, he intended to invert the power relationship and place himself on top—the station to which he was the most accustomed as he was a powerful man with property. His lust for her influenced his actions, whether or not she sought to manipulate them. And when another man sought to control him, Nevill reasserted his power—both directly over women and indirectly over men—by ignoring Plott’s warning and committing forced sex. Nevill appeared to resist being told what to do and responded to such attempts of control with a demonstration of force.

When Plott returned from his errand he found the couple in bed again. At this juncture Plott may still have believed Atcheson to be a victim and once more told Nevill to stop with the intention of helping Atcheson. But this second interruption was no different than before. Possibly simply to spite a lowly indentured servant, who had no lawful authority over him, Nevill responded with increased violence. He sexually attacked Atcheson by throwing her on the bed and “swiving” her again—this time right in front of Plott, while Atcheson constantly screamed for Nevill to stop.137 Regardless of her possible earlier consent (or lack thereof), Atcheson’s behavior speaks of a woman fighting a sexual attacker and from her perspective probably recast their relationship as one of rape, force, and control. At this point in Plott’s testimony, one wonders if Atcheson was in shock—that would certainly account for her remaining in bed with him and would dovetail with this portrayal of her as a victim. Nevill resisted being told what to do and demonstrated forcefully that he could do as he pleased.

Notably, Plott admitted that he failed to alert his master to these events because Atcheson asked him not to do so. Perhaps he was uncertain of her participation in the matter; was she truly a victim or simply playing the part of one? If he believed she was trapped he may

136 Ibid.
137 Ibid.
have also believed she would be doubly wronged by being whipped—the punishment awarded to a willing accomplice. However, if she was raped in the early stages of her relationship with Nevill she had not sought help from her husband James who did not appear at her side in this case. Only when both were called before the Provincial Court in a different case concerning their involvement in aiding a woman suspected of committing felony theft did both appear before the Judiciary together.\(^{138}\)

Whatever possibility existed that the incident was one of rape quickly became eclipsed by what contemporaries believed was a far more plausible answer: the sex was consensual. Perhaps the incident Plott described was rape. But, evidently the jury found more evidence that the relationship was better described in terms of consent. The vast majority of the evidence regarding the behavior of Attcheson and Nevill depicted Attcheson as the more sexually aggressive partner. Indeed she was often the initiator. For example, Plott told the court that when Nevill was already in the hay loft Attcheson went to meet him there for sex.\(^{139}\) In another incident Gilford, the same woman who discovered Nevill and Attcheson in the field, said after the last harvest she witnessed Attcheson place her hand inside Nevill’s breeches.\(^{140}\) The witnesses undermined Attcheson’s claim of rape by casting her as the initiator. To the court, the sequence of events suggest her decision to have sex with Nevill was a calculated choice. When interrogated by the three women who discovered them, Attcheson appeared unrepentant and fully knowledgeable of her actions. The jury found her to be a guilty fornicator who had forfeited her claims to rape when she engaged in wanton behavior.


\(^{140}\) Ibid.
Challenges to Authority

The relationship between Attcheson and Nevill highlights significant challenges to authority. The presence of a lover directly calls into question Attcheson’s acceptance of her subordinate status. By asserting her independence through a relationship with a secret lover she transferred the respect and devotion due her husband to another. She also successfully undermined his status as household head and before the community called his ability as a manager into question. On the other hand, Attcheson did not unilaterally transfer her obedience to Nevill. The descriptions and testimony of other witnesses describe her as seeking to control, entice and manipulate Nevill. But, through his displays of aggressive behavior and force, Nevill refused to be controlled by Attcheson.

Interestingly, Susan Attcheson’s husband, James, provided no testimony either to protect her or to condemn her actions. Nor, did he raise cries of alarm over his wife’s behavior with Nevill--the community of women performed the role of community surveillance. The women earlier described in this chapter acted as a moral censure. No one asked James to testify about anything. When he was mentioned, it was more of an afterthought—referred to indirectly, included as a detail used to reference his wife, but never participating directly as a main actor. Perhaps the court assumed that he was unaware of the situation—as for example, one instance of sex occurred when he was away at court and unavailable to watch for inappropriate behavior. Or, perhaps the court may have considered James Attcheson too weak to control his wife and so chose to admonish her in his stead. Thus, the court acted in lieu of an incapable husband. If this was the case, James Attcheson himself might have received public censure through what historians of early modern societies refer to as rough music.141 Rough music was an informal

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141 The Oxford English Dictionary describes “rough music” as a noisy uproar; usually, a din produced by knocking together pots, pans, and other domestic utensils for the purpose of annoying a neighbor. Hence rough-music v., to
process of public censure where the community enforced social norms through public ritual. The legal proceedings fail to indicate if this happened or not, but if this case was consistent with other cases of adultery in the empire, the community may have assembled to dance around the house of a man who was being cuckolded. He could have been asked to ride the rail, dress in women’s garb, or awaken to a parade around his house of clanging pots and pans. In all likelihood, though James Attcheson’s lack of attention may not have invited official public censure, it did likely earn unofficial censure, through the community.

The judiciary did not address James Attcheson as having failed in his ability to control his wife’s assertion of independence. Whether she intended it or not, Susan’s rejection of James was an outright rejection of his authority over her. Perhaps the court accepted that he was involved in legitimate legal affairs which drew him from home and because court appearance was also the duty of household heads, they accepted that his failure to control his wife was because he was away on legitimate business. Possibly, he failed to testify because there was simply nothing he could add. Whatever the reason, the result was the same: Susan Attcheson had rejected and undermined her husband’s authority, in taking Nevill as her lover. In so doing, Attcheson physically demonstrated the transference to Nevill of her subordination—and by extension, any power he gained through her submissive behavior.

Victoria E. Bynum, writing about elite aims in the southern colonies in the eighteenth-century demonstrated that men utilized the subordination of all women in order to support the institution of slavery. She argued that southern authorities were particularly interested in securing control over women whose reproductive capacities neither added to the slave labor

subject (a person) to this form of annoyance, http://0-
dictionary.oed.com.maurice.bgsu.edu/cgi/entry/50209337?query_type=word&queryword=rough+music&first=1&m
ax_to_show=10&sort_type=alpha&result_place=1&search_id=drEM-tsq05V-1295&hilit=5020933, (accessed on June 2, 2008).
force nor produced heirs for well-to-do families. Thus, the rigid code of conduct inflicted on women was derived from the needs of a slave society rather than from any religious, intellectual, or moral beliefs.  

142 Albeit Bynum was describing a very different society, Early Maryland men behaved fairly similarly in the seventeenth century—though for very different purposes. Men in Maryland sought to curb the misbehavior of all single women, and married women who were not successfully controlled by their husbands, masters, or fathers. So doing corrected the transfer of patriarchal power evident when a woman agreed to have sex with a man not her husband. Unlike the men Bynum wrote about, early elite Maryland men sought to subordinate women not to support slavery (which was not yet the major labor system in seventeenth-century), but instead to underscore elite male privilege for the sake of crystallizing their position in the social hierarchy. The result of buttressing elite male power in the seventeenth century was then used by elite men in the south, in the period Bynum studied, to underscore race based slavery. Elite men in Maryland needed to address women who misappropriated the authority of their husbands, masters and fathers, in deciding for themselves with whom they would have sex. In her acceptance of Nevill, Attcheson had rejected the man to whom she was bound and, as her husband was her legal head, she had summarily rejected her governing authority. In rejecting the social norms that tied her to him, Susan implicitly threatened the foundation of patriarchal government.

Furthermore, together, she and Nevill had rejected the social norms and the laws which made the acts they committed criminal offenses. By her compliance, Attcheson rejected the governing provincial authority which both made the law and enforced it. Rather than draw more

142 Victoria E. Bynum, Unruly Women: The Politics of Social and Sexual Control in the Old South, (Chapel Hill: University of North Carolina Press, 1992), 1-14. Discussion on patriarchal of the southern ruling class demanded the subordination of all women in order to protect slavery—particularly interested in securing control over females whose reproductive capacities neither added to the slave labor force nor produced heirs for well-to-do families.
attention to the success she had in temporarily thwarting both her husband and the provincial
government by addressing the challenge she made to government directly, the court chose to
address the crime of “fornication and lewd behavior” with a harsh punishment. Nevill’s role in
the case is of an aggressive man, occasionally swayed by a woman, but who rectified any
question of his manliness with a display of his power. For example, in one incident Attcheson
tried to coerce Nevill to stay with her, rather than perform his duty to help a neighbor in need on
a particularly cold night. When Alexander Watts went to search for a lost cow and calf,
Attcheson responded with what amounted to a tantrum. She said that if Nevill went, “she would
let the barrel of beer out, about the house” ostensibly, because she was very cold. Once he
returned Attcheson called Nevill to take his place once again in bed.\textsuperscript{143} Alexander Watt’s
portrayal of Attcheson was as an aggressive, manipulative, controlling woman who tried to
go coerce a man to bend to her wishes.\textsuperscript{144}

Kathleen Brown, a historian of the upper south, contended that sex, gender, and race were
socially constructed differences and argued that definitions of gender were hotly contested in the
seventeenth century. Disagreements about the extent to which women were able to behave as
men, with all the rights and privileges thereunto, were the norm in the early colonial south.\textsuperscript{145} As
the dynamics among Susan Attcheson, her husband James, and Nevill suggest, definite limits
existed, and men took action against women who transgressed these norms.

\textsuperscript{143} Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657},
volume 10, page 508, \url{http://www.msa.md.gov/megafile/msa/specoll/sc2900/sc2908/000001/000010/html/am10--508.html}
(accessed on February 8, 2008).
\textsuperscript{144} Ibid.
\textsuperscript{145} Kathleen Brown, essay on Virginia, “‘Changed…into the fashion of man’: The Politics of Sexual Difference in
Seventeenth-century Anglo-American Settlement” in Catherine Clinton; Michele Gillespie, \textit{The Devil’s lane: Sex
in the seventeenth century witnessed this struggle over the creation of a new identity, at least in part because the
American bourgeoisie as a class was under construction in the seventeenth century. Thus the cases in this study
occurred at a time when notions of masculinity, patriarchy, and the development of the state were in flux.
Even within the interchange between her and Nevill, to contemporaries, Attcheson was a grasping woman who was a bit too powerful to be operating within the bounds of acceptable behavior. To contemporary Marylanders, she had cuckolded her husband, and was trying to keep her lover under her thumb as well. But Nevill was not eclipsed as was Attcheson’s husband. The evidence which came before the judiciary presented Attcheson as trying to strong-arm Nevill to bend to her desires, but this picture was balanced with Nevill exhibiting moments of extreme violence, where he was literally forcing his will on Attcheson, as in Plott’s description of Nevill “swiving her.” While Attcheson’s behavior, as described in the testimony of the witnesses, regarding the two men reveals some consistencies—namely that she sought to pursue her own desires at their expense, their responses to her were wholly different. Consequently, while Attcheson’s husband reportedly took no action and was typed as a cuckolded husband where agency had been inverted so that the subordinate household member trumped the actions of the dominant patriarch, her seen was cast in a very different light.

Effects of the Trial

The difference in the community’s acceptance of the two men in positions of authority is striking. All available extant evidence reveals that James Attcheson appeared in only one other major case—the one previously mentioned—in which he came before the bar as a possible defendant. The trial was to determine if he and his wife were indictable for helping a neighbor’s former servant commit theft. Ultimately, he lost community standing, while by contrast, Nevill went on to be a respected member of the community. James Attcheson may have had some legal problems prior to this trial, but his wife being found guilty of having an affair

146 He appeared in various cases for debt, as will be described further in this section. But, in all of these cases too he appeared only as a defendant.
with another man, and her disclosure that she cared little what her husband thought, significantly hurt his credibility in the community, and his identity as a man.

Nevill’s behavior showed a virile, aggressive man who may have had occasional legal trouble but on the whole was probably respected and involved in high profile cases both as a witness and as a juror. As property and respectability were both requirements for judicial service one must assume that as his community standing increased, so did his judicial service, and vice versa. For example, in 1661, Nevill and his second wife, Joan—who was already his wife at the time of the affair between him and Attcheson.\footnote{Archives of Maryland Online, \textit{Proceedings of the County Court of Charles County, 1658-1666}, volume 53, page 134, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000053/html/am53--134.html} (accessed on February 8, 2008).} Furthermore, also in 1661, Nevill was a member of a death inquest; he was to determine the cause of an indentured servant’s death.\footnote{Archives of Maryland Online, \textit{Proceedings of the County Court of Charles County, 1658-1666}, volume 53, page 148, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000053/html/am53--134.html}, (accessed on February 8, 2008).} In 1663 Nevill served as a member of the jury deciding whether to indict a prominent doctor accused of raping and impregnating his servant, and then helping her abort the unborn child.\footnote{Archives of Maryland Online, \textit{Proceedings of the County Court of Charles County, 1658-1666}, volume 53, page 387, \url{http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000053/html/am53--387.html}, (accessed on February 8, 2008).} The following year he sat as a grand juror for the Provincial Court, in a murder case where a master was accused of killing his servant.\footnote{Archives of Maryland Online, \textit{Proceedings of the Court of Chancery, 1669-1679}, volume 51, page 234, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000051/html/am51--234.html}, (accessed on February 8, 2008).} Two years later, he may have testified as a witness in a case of infanticide had the defendant not fled the Province.\footnote{Archives of Maryland Online, \textit{Proceedings of the Court of Chancery, 1669-1679}, volume 51, page 234, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000051/html/am51--234.html}, (accessed on February 8, 2008).} Because of his use of force, Nevill reasserted his independence from Attcheson and instead of appearing to be under a woman’s thumb he may have appeared as bold, virile, and aggressive. A man’s relationship to a woman could significantly influence his public perception. Whether we view him as a seducer at
best or as a rapist at worst, Nevill’s stature increased in the colony while his lover’s/victim’s husband shrank from public view and decreased in importance.

James Attcheson struggled financially after the affair and his standing among the community did so as well. And in another case, when saddled with a fine for his own legal trouble, no members of the community assembled to pay his debt for him, as they did with Nevill. Several un-named men offered to pay Nevill’s fine, allegedly if he were unable. Moreover, in Nevill’s case, though he was married by 1657 (at least five years prior to the discovery of the illicit sex), his credibility as a businessman was not hurt by his unfaithfulness to his wife. In fact, his display of manliness may have actually helped his reputation, because on the whole his standing among other men of the colony seems to have increased—even to the point where they were willing to open their pocketbooks for him, something no one was willing to do for a man such as James who failed to repay his debts and unable to control his wife.

After the trial, James Attcheson’s financial trouble increased, hurting both his estate and those of other men. James Attcheson probably died intestate in 1661 because no will survives for him. But, life in the five years after the trial (1657-1661) and before his death brought a series of financial misfortunes. Rather than guiding judicial matters because of his standing as a community member, he found himself in front of the bar with the weight of judicial censure on his shoulders. His dealings with the court prior to his death create a distinct picture of the financial difficulties that he experienced. In 1656/7, roughly the same time that the judiciary investigated the inappropriate behavior of Nevill and Attcheson, James Attcheson was taken to court by Thomas Robinson for failing to satisfy his debt of 500 pounds tobacco and caske. The court found for Robison, ordered James to pay the debt post-haste, and also ordered Attcheson to

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pay the court costs.\footnote{Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657}, volume 10, page 481, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--481.html} (accessed on February 8, 2008).} Perhaps, if this had been the only case of debt in which James defaulted on payment, one might be persuaded to attribute his tardiness in repaying the debt to forgetfulness. However, during the same court session that Robinson sued to collect his debts James and Timothy Gutridge were also indebted to Richard Harris for 2000 pounds of tobacco and caske. And, this was just one of many cases against him. James was called to account for defaulting on multiple loans. Even with official court sanction, Harris had great difficulty collecting his debt from James Attcheson.\footnote{Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657}, volume 10, page 482, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--482.html} (accessed on February 8, 2008).} In the same court session Gutridge sued his partner James for defaulting on a loan. James Attcheson was to have paid Gutridge 304 pounds tobacco and caske on 9 July. Again, the court ordered James Attcheson to pay.\footnote{Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657}, volume 10, page 482, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--482.html} (accessed on February 8, 2008).} Most likely, Gutridge’s financial troubles and the reason he was called into court was because his partner could not repay his part of the debt.

James Attcheson’s financial difficulty was not simply contained to his household affairs. His financial transactions and failing business ventures also combined to hurt his reputation as a manager of his household, while jeopardizing the economic stability of other Maryland men. Some men such as Gutridge were directly affected by his failures and though only indirectly associated, other men such as Gutridge’s creditors were similarly compromised by James Attcheson’s failure. Not only did James’s inability to repay his debts pose a danger to his own household’s financial security, but it made him a liability for other Maryland men who were interconnected with his business transactions. James’s inability to repay his debts no doubt angered and concerned many. If he could not repay his debt to Thomas Robinson, for example,
Robinson in turn could not pass on the tobacco already assigned to Henry Osborne. Hence, the underpinnings of economic security in the young province rested on the stability of these connections.

When James died he left behind a very modest estate that may have been partly due to economic consequences of the injury done to his reputation as a cuckolded husband. From the variety of witnesses and the expansive testimony, the knowledge of Susan Attcheson’s betrayal and James Attcheson’s failure to control his wife was fairly well known. She may have hurt his chances at recouping his losses because her behavior reflected poorly on him as a manager. And, future investors may have paused before further investing in someone they viewed as only marginally trustworthy. While she may not have precipitated the financial crisis, because her actions reflected on her husband’s reputation and a man’s reputation in Maryland translated into economic power, she was a serious contributor to his inability to rebuild financially. When Attcheson died the inventory of his good and chattels was worth 3,640 pounds tobacco. He had a few cows and calves, some kitchenware, and a motley assortment of old clothes.\textsuperscript{155} He sat on no juries, and in general commanded less authority than did his more powerful neighbor, John Nevill. Thus John Attcheson was part of the men-on-the-make who failed.

By contrast, Nevill’s financial story was far more successful than that of the Attchesons. When Nevill’s will was probated in 1664 it revealed a significantly larger estate and a far more successful social climb. From arriving in 1633 as an indentured servant, he had become a powerful plantation owner.\textsuperscript{156} He left to his son William his plantation. His marital situation was

\textsuperscript{154} Ibid.
\textsuperscript{155} James Attcheson Inventory 1662, Liber 1D, folio 11, Inventories and Accounts, Testamentary Proceedings, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.
also far more successful than James Attcheson’s, as there is no evidence of his wife committing adultery. In 1639 he transported his first wife, Bridget Thorsby.\footnote{Skordas, The Early Settlers of Maryland, 333.} He transported Joan Porter, his second wife, in 1651 and married her sometime prior to 29 January 1652.\footnote{Skordas, The Early Settlers of Maryland, 367.} By 1652 Nevill was fairly successful. He owned sizable property and commanded the trust of other prominent Maryland men as he sat on several juries in both the county and the Provincial Court. He acted as a lawyer on multiple occasions. Like other men he was occasionally sued for debt. He went to court in 1657 for failure to satisfy his own debt of 446 pounds tobacco to John Hatch, which the court immediately ordered him to pay, in addition to court charges.

In the case with Attcheson, even though he was ordered to endure a whipping as his punishment, the penalty was commuted to a fine of 500 pounds. However, he was so well respected that male members of the community offered to pay it for him.\footnote{Skordas, The Early Settlers of Maryland, 333.} Thus, Nevill far outweighed James Attcheson in terms of property, wealth, and stature by the time the affair between Nevill and Attcheson became known. The court had additional incentive to view the incident as adultery which earned a fine, rather than rape which carried a punishment of death. Attcheson’s testimony that she had cried out multiple times for help and had underscored the severity of her situation by uttering her plea with an oath, the court was additionally inclined to view the incident as consensual rather than rape.

The court ignored the apparent leverage that Nevill held over either Attcheson. Nevill had more property than James; more real wealth; and more authority. So Nevill’s repeated advances on Attcheson may have enticed her to commit adultery. Or, both Nevill and Attcheson may have understood their relationship differently. Attcheson possibly viewed Nevill’s attentiveness as the
overtones of a helpful neighbor, while Nevill perceived their interactions as a transaction for sex. When finally Attcheson realized what was happening, that Nevill sought to lay with her, no one came to her aid because instead of understanding her cries as true for help they were understood as the expected cries a woman made during sex. And, possibly, Nevill viewed his access to Attcheson as something to which he was entitled by right of his superior economic standing. Nevill was a virile, aggressive, prosperous man and James Attcheson was not. Perhaps, James Attcheson’s economic impotence was part of the reason he failed to appear in the court on Attcheson’s behalf—one of them, if not both of them, believed him unable to effect an outcome in Susan Attcheson’s favor. Or, perhaps James Attcheson found the possibility of seeing Nevill chastised, even if it meant seeing his own wife condemned, too enticing a possibility to overlook. If this was a factor in James Attcheson’s inaction, in the end, Nevill’s avoidance of corporal punishment and the affirmation other Maryland men made through their vow to pay his fine if he could not, ultimately awarded Nevill the high ground. Regardless of his intention, Nevill’s use of Attcheson’s body underscored his superior social and economic position to both Attchesons.

The results of the trial for Attcheson were mixed. Attcheson was punished for Nevill’s use of her body, while he was affirmed by the community as a landed Marylander and suffered no such punishment. After being coerced, she alone was lashed. And, most likely, common gossip practice spread the news of her condemnation as an adulteress far and wide. So, in addition to public censure she also experienced private scorn. When James died in 1661, Attcheson and Patrick Cannell became the executors of his estate and were ordered by the Lord Propriector to make a true and perfect inventory of all his immoveable, goods, and debts and to make satisfaction for the latter. To ensure that she and Cannell did so, Attcheson first paid a

bond of 10,000 pounds tobacco to the Lord Proprietor—where she obtained the necessary funds is unknown. While Attcheson gained her independence and the property left in Attcheson’s estate, she also gained all of his debts. The fact that she appears as his widow is telling. That the Lord Proprietor referred to her as his relic indicates that the Attcheson’s marriage continued. Her experience and the court’s condemnation—which must have shaped how James interpreted his wife’s actions—were not severe enough to entice him to abandon his wife. Moreover, as neither reappears in the court record for abuse, Attcheson’s romp with Nevill failed to cause extreme violence leading to public recognition to erupt in their marriage.

Moreover, neither Susan Attcheson’s experience nor the accompanying condemnation suffered because of the trial prohibited her from eventually asserting some degree of independence. James Attcheson died sometime in 1661 but Susan Attcheson waited to remarry until 1663. While some women lost little time in remarrying, Susan Attcheson saw to executing the estate as well as her personal affairs without a man to whom she would have been directly responsible. She did eventually marry Patrick Cannell, but when she paid the bond of 10,000 pounds tobacco and caske to the Proprietary she did so as Susan Attcheson. Even to the last, Susan Attcheson evinced herself as a strong-willed woman, who could secure another husband despite the effects of the clandestine sex.

Conclusions

From the outset, the case proceeded as one of fornication and adultery between two willing accomplices. Moreover, Attcheson appeared as more than just an accomplice—she was depicted as an aggressive initiator. The only hint of her unwilling participation in the record appeared in the testimony of an indentured servant, Thomas Plott. According to Thomas Plott, Nevill

[560.html](https://example.com/560.html) (accessed on February 8, 2008).
repeatedly forced her. Though she fought him and called out for help, no one successfully
stopped his advances. In the end, she may have given in to his advances because she could do
nothing else. Perhaps she consented because she knew that sex was inevitable but by consenting
she remained in a position to control certain aspects of their relationship. While their relationship
possibly proceeded to one of consensual sex it did not necessarily begin that way. Never did the
court acknowledge the possibility of rape. Instead of seeing Attcheson as a victim, the court
ignored all other implications except those which depicted her as a scheming, powerful woman
who presented a danger to society. The court marked both Nevill and Attcheson as equally
culpable, though Nevill had to pay the court costs. As a man, Nevill was financially able to carry
the bill associated with going to court. Had Attcheson been required to pay court costs, her
cuckolded husband would actually have been the one to pay because her debts were to be
assumed by her husband under coverture.

Furthermore, this case reveals some striking things about the nature of Maryland society
in the seventeenth-century. Elite Marylanders in control of the judiciary and government
appeared far more accepting of and able to respect a man who refused to be manipulated by a
woman and used violence to enable him to engage in illegal sex, than a man who refused to be
controlled by his wife and ineffectively used violence to control her. A man who had sex with an
unwilling woman, committed adultery, and was so physically violent that merely threatening a
servant cowed him into submission, Nevill became a prominent member of society, gaining the
respect of many and appearing on juries where life and limbs were in jeopardy.

The men involved were not the only ones to exercise authority. Some communities of
women had a powerful role in maintaining social order. They witnessed and testified to the

160 Administration Bond of James Attcheson, Box 1, Folder 5, Probate Records, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.
everyday events of men and women. Watching for signs of impropriety, they enforced a moral code of conduct that fit with their notions of right and wrong. Thus, by altering others and calling attention to the actions of malefactors, the community of witnesses held tremendous power—they testified about the secret affairs of people who would rather not have their activities publicized. Hence witness renditions could shade both meaning and interpretation of events. Yet, the court ultimately overrode the authority of these women by possessing the ultimate trump card. The judiciary decided who would speak and when, what was recorded, and most importantly, whether they wished to condemn the defendant or not. The power and authority exercised in the courtroom was done in a negotiated context whereby different groups and individuals displayed power at various times, but the court held ultimate authority and always decided cases in the interests of preserving order.
CHAPTER 3: COERCED SEX AS BREACH OF CONTRACT

The Story

In the presence of several witnesses, Richard Owens sold Ann Gould, his servant, to Joseph Wickes for 2300 pounds of tobacco. However, before Owens transferred her into Wicks’s household, she claimed that Owens raped her. While in Wickes’ household, Gould’s infection with Owens’s virulent form of syphilis became dire. Though all manner of treatments available were used to help her, soon after her transfer she died. In trying to help her and avoid the spread of the disease to his family members, Wickes suffered great expense for her care. For Gould’s part, she just suffered greatly: she rotted from the inside out from the disease and fared no better from the treatments to cure it—one of which was mercury poisoning. She cried, moaned, bled, sweated, and panicked—all during the rape and then again during the infection. However, the grievance that eventually appeared before the court after her death was not on behalf of the aggrieved woman. The incident was only important to the judiciary because Wickes sued Owens for failure to satisfy the terms of their contract and demanded reimbursement for this and for her medical costs that he bore as a consequence of her care. The court found in favor of Wickes and ordered Owens to pay for a replacement servant, but Wickes received no money for Gould’s care. And, no one was ever prosecuted for Gould’s rape.

Introduction

The case which follows investigates a suit brought before the Maryland judiciary in 1659. The plaintiff, Joseph Wickes, sued Richard Owens for breach of contract. Owens sold a maidservant, Anne Gould to Wickes for 2,300 pounds of tobacco and according to the stipulations of the agreement, Owens was to provide a servant in perfect health. Wickes wanted to take no chances at being stuck with an expensive servant who could do no work and might result in costing him more money in medical expenses. Though Wickes had sought a healthy laborer, the one he received was infected with syphilis prior to the exchange, needed immediate medical care, and died as a direct result of the disease without finishing the terms of the contract. Wickes sought justice in the court system and expected 5,000 pounds tobacco paid in recompense for his losses. Neither the judiciary nor either of the masters seemed concerned that Gould swore her illness.
was a direct result of being raped by Owens after he had sold her and before she had arrived in Wickes’ household.\textsuperscript{161}

Wickes was interested in Gould’s plight not as her father or husband but as her master, and as such he was economically invested in her. In the courtroom drama between Wickes and Owens, the veracity of Gould’s charge of rape held little to no significance. Gould’s cries of injustice were ignored almost entirely by the court. When they did matter, they did so because it bore on the questions of property raised by Wickes. Consequently, in this particular case, Gould was not important as a person but only as a beast of burden—argued over by Wickes and Owens much as they might have argued over a cow. The two men argued over questions of property and entitlement. To what extent was Owens responsible for the health of a servant? Did whatever obligation Owens held end upon delivery, or did his responsibility of providing a commodity of good quality extend after the exchange? Wickes argued that he had never received the promised quality from Owens—right from the beginning of his acquisition, Gould bled his financial resources. Not only did she fail to provide the expected labor, but also as others had to care for her she prohibited others from working and thus making the master money. On top of which her medical costs required payment as well. Wickes reasoned that Owens provided a useless servant no matter where the line of obligation was drawn because from the beginning she was unable to labor for him.\textsuperscript{162} Through a proxy, Owens responded by denying all wrong-doing.\textsuperscript{163}


The men involved and the witnesses who bore testimony only appeared concerned about Anne Gould insofar as she was an economic tool. She was valuable to these men only because of the labor that she afforded and the profit another made in her sale. In fact, Gould’s identity as a person was so irrelevant she was only mentioned by name by two of the witnesses, Elizabeth Lovely and Nicholas Bradaway. Her personhood was irrelevant because her status as a victim of her former master’s behavior was irrelevant. Lost in this trial of property misrepresentation was the heart of Gould’s testimony: she had been forced to engage in sex by Owens, infected with a deadly disease, and sold—so that no one would be the wiser. No one seemed to care about seeking justice for an aggrieved woman—only for her aggrieved master who through her sickness and consequent death lost her labor and ultimately his investment.

Through close analysis, this case allows for an examination of how the judicial process functioned differently for men and women and for members of various classes. The judiciary consistently evinced behavior that sought to buttress male prerogative and safeguard male property. With labor of utmost concern to aspiring planters, Maryland men were concerned about their servants’ ability to be economically productive. But, as this case shows, masters also believed they had unrestricted use of the bodies of their female servants—insofar as this entitlement did not encroach upon another master’s financial gain as happened in this case. Thus at no time did anyone ever condemn Gould’s first master for raping her—not the second master, the judiciary, nor any of the witnesses. They all seemed fairly indifferent to his use of her. What they all did object to was that Owens had sold her and had transported her with a raging disease. They had objected to his failure to fulfill the contract and his attempt at hiding her sickness. The judiciary never examined the woman’s official accusation of coerced sex, leveled at the
county court, nor took any steps at collecting testimony investigating her claims. By failing to investigate the sex, the court communicated that it believed no rape had occurred thus making any issues of consent ultimately irrelevant.

Or, perhaps, redefining the sex as a crime of property had the advantage of contextualizing the offense within the male dominated sphere. Because property was male controlled, leveling an accusation of coerced sex in terms of traditional male rights allowed for the possibility of redress without granting subordinates any undue authority. If the judiciary recognized a servant-woman’s allegations of being raped by her master, implicitly they recognized she must have the power to offer or withhold her consent. It could also emphasize female independence, as a woman exercised her ability to choose her sex partner. Therefore, if a master could be charged with sex as a felony crime, this acknowledged a servant’s sexual agency, independence, and her ability to exert tremendous influence over her master’s very life. Some historians, such as Manon van der Heijden, have shown that English women had to be very careful in the language used to approach justice by the end of the seventeenth-century. Leveling an accusation of sexual coercion in terms of one man’s infringement on another man’s property was safe because it was less threatening to male leaders than rape where women were the victims of force and penetration. Sexual agency and unsanctioned female independence threatened elite male notions of control as those whom the elites wished to control bucked their authority. So acting probably appeared as dangerous to Maryland elites who may have perceived the natural extensions of such behaviors as ending in a social leveling of sorts.\(^{165}\)


\(^{165}\) Manon van der Heijden, “Women as Victims of Sexual And Domestic Violence in Seventeenth-century Holland: Criminal cases of rape, incest, and maltreatment in Rotterdam and delft”, Journal of Social History 33.3 (2000), 623-644. Provides an excellent investigation into sexual and domestic violence in Holland and places these conclusions in comparison with trends occurring in England at the same time.
The Trial

The kinds of symptoms that Gould (and most likely Owens) suffered due to the “French Pox” (or Syphilis) were consistent with a far more virulent form of Syphilis than experienced in the twenty-first century. Alfred Crosby, in *The Columbian Exchange*, argued that the most virulent period in the evolution of syphilis occurred in the late fifteenth and early sixteenth centuries. Crosby wrote that this early period saw the most rapid spread of the disease with its horrible symptoms and early death. According to Crosby, who described the evolution of the disease suggested that the version of the infection that infected individuals in the mid-seventeenth century was far milder than that suffered by earlier victims. Yet Gould’s symptoms, combined with the speed in which the disease spread through her body, placed her in the context of sufferers of the most virulent strains of the disease. Crosby commented that the spread of syphilis and the horrible effects of the malady appeared, “within a short time after the initial infection [with] widespread rashes and ulcers, often extending into the mouth and throat; severe fevers and bone pains; and often early death.” Further, Ulrich von Hutten, writing in 1539, described syphilis in the initial years of its appearance as

boils, sharp, and standing out, having the similitude and quantity of acorns, from which came so foul humors, and so great stench, that who so ever ones smelled it, thought him-self to be infected. The color of these pushes was dark green, and the slight thereof was more grievous unto the patient than the pain itself: and yet their pains were as though they had lain in fire.166

At least some early Marylanders, therefore, battled an infection that appeared as a plague, and for which treatment was not much better.

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Like other patients, Gould’s treatment may have varied from mercury and other chemicals with purging properties, to the wood of a tropical tree, to blood-letting. While there was some familiarity with the diseases, medical knowledge was still limited. Mercury, which was thought to rid the body of ill humors, through sweating or salivating and would rebalance the body’s natural humors, was widely employed in the beginning. Eventually contemporaries found that this cure was more harmful than helpful. According to Beck, “a patient undergoing the treatment was secluded in a hot, stuffy room, and rubbed vigorously with the mercury ointment several times a day. The massaging done near a hot fire, in front of which the sufferer was then left in order to sweat. This process went on for a period of a week to a month or more, and would later be repeated if the disease persisted.” Beck goes on to detail some of the shifts in treatment for syphilis. While mercury and other poisonous salves were used and believed to have positive humeral effects, the treatment was often worse than the cure. Someone infected with syphilis not only grew worse from the initial disease, but suffered additional effects ranging from hair-loss to madness to death. Because Gould was given the entirety of legal treatments available she was also a victim of mercury poisoning. Moreover, because Gould received much of her intended balm from men who had presumably been engaged in the Atlantic community of sailors and ships officers as captains, and thus made aware of the knowledge of treatments of diseases these men employed, she probably also received the wood of a tropical tree, guaiacum. Believed to have healing properties for a variety of sicknesses and lauded in its use as a new-world remedy for new-world diseases, this too was a remedy thought to help battle the illness. For certain, one of the treatments Gould endured was bloodletting by Ward. Contemporaries believed that removing the bad blood from her body could restore her health by correcting what

they believed was a possible source—her humors were imbalanced. In actuality, the broad swath of treatments with their varying degrees of invasiveness probably weakened her immune system and further taxed her body’s ability to defend itself by having to wage against the balm in addition to syphilis.

Various neighbors and witnesses appeared before the court to testify regarding the woman’s health, service, and the terms of the contract. Anne Hinson, a neighbor who was in Wickes’ home when the woman arrived from Owens, testified that from the beginning the servant evinced signs of advanced sickness and complained that she was sore in her bones, head, neck, and all over her body. From the first, the servant laid the blame for her ailment directly on “that rogue” Owens. Moreover, her situation was so severe that all the witnesses concurred: the woman needed immediate medical attention or she “would have rotted away alive.” Repeating the observation of another neighbor, Hinson described the servant’s situation as dire. The servant’s body was riddled with “the biggest pox that could be got for the money.” Hinson then turned to the court and began testifying that the sores she witnessed first-hand grew increasingly worse.

The servant became so sick she was no longer able to walk and had to be carried or brought via a canoe to those who offered her treatment. Hinson told Nicholas Bradaway, another servant and presumably the one who carried the woman around, that the woman was in a very “loathsome and perishing condition” and had yet another man bleed her while administering physic. The girl grew worse and within two or three days after being given Hinson’s ineffective treatments, Hinson, Bradaway, and the servant, sought the help of Capt. William Fuller. Fuller provided the girl with a new kind of medicine and advice on how to address the sores.

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168 Ibid.
169 Ibid.
Unfortunately, this treatment also failed and the servant continued to worsen. As she realized the severity of her situation, that she was beyond help, she constantly cried out against Owens saying how he was responsible for her condition and had infected after Wickes had bought her. Eventually, the woman told Hinson that Owens had raped her “after a very inhumane manner” by forcing “her down upon her face so that she could not help herself.”\textsuperscript{170} Hinson was the first to attest to the severity of the woman’s illness, how she was treated, and the circumstances by which she was infected. Neither Hinson’s testimony nor even the charge ever mentioned the servant by name.

Elizabeth Lovely further underscored that the woman’s disease was detectable from the beginning of her service to Wickes by describing the aid she, her husband, and others had also sought to give the servant because the woman’s plight was so awful. Only in Lovely’s testimony was the name of the servant referenced directly. Lovely testified that the servant, Anne Gould, went to her and her husband Thomas Ward for medical help. Once Lovely saw how advanced her sickness was, however, she told the woman to ask her husband for his help because she was unsure of treatment. Again the servant cursed Owens and swore that prior to her indenture to him and the incident where he raped her, she was in perfect health. Lovely established that every treatment available had been tried and despite their best efforts Gould grew increasingly worse. The development of Gould’s sickness from an initial sore to the most virulent stage of syphilis grounded her claim regarding Wick’s culpability. Lovely also testified about the care Gould received from Wickes: when he found out about her condition, he used all lawful means to care for her, despite the threat Gould made to the health of the entire family. Hence, he accepted responsibly for a member of his household even though the servant lived with him for about six

\textsuperscript{170} Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1658-1662}, volume 41, page 272, \url{http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000041/html/am41--272.html}, (accessed on February
or seven months in a very “loathsome, stinking and perishing condition and was dangerous” to Wickes’ entire household.\textsuperscript{171} Lovely portrayed his behavior as more responsible and honorable than Owens.’ She and others believed that Owens had cheated Wickes, but more importantly, that he had also endangered the welfare of Wickes and his entire family.\textsuperscript{172} Owens was not just a thief but a man as guilty of endangering the welfare of the family as if he had attempted to murder all of them.

Two male witnesses testified to circumstances regarding the creation of the contract and how it had been breached. Nicholas Bradaway and another man both confirmed that roughly two years before at Owens’ house they witnessed Wickes bargain with Owens for a woman servant. Under stipulations of the agreement, the woman was to be in “sound and perfect health.”\textsuperscript{173} Furthermore, Bradaway also testified that Owens delayed the transfer of the servant for several weeks citing special circumstance in that he had “a lame fellow in his house and no one to look after him.”\textsuperscript{174} The implication of Bradaway’s testimony was that Owens stalled to create sufficient opportunity to have sex with Gould and/or for initial signs of illness to possibly clear before the transfer thus hiding the infection. After hearing the testimony of all involved, the court was convinced that Owens was guilty of breach of contract and, finding in favor of Wickes, ordered Owens either to provide another woman-servant who would serve Wickes for four years or pay the cost of one and satisfy the charges in the cost of suit. He was not required to pay the

\textsuperscript{7, 2008).} 
\textsuperscript{172} Ibid. 
\textsuperscript{174} Ibid.
medical costs that Wickes incurred, and he was never charged with the rape or murder of Anne Gould.

Gould never offered testimony in this case. Nor did the court seem to care about the fact that Gould was forced to have sex with her master, or that she was infected by him. Though she was infected with a disease that claimed her life, no one addressed the fact that Owens had possibly raped and infected her. While some individuals were aghast at the threat Owens had created for the welfare of Wickes’ family, the contention that Owen’s actions were tantamount to murder never arose—except possibly by innuendo with regard to Wickes’ family. Perhaps the charge would have been too difficult to prove or perhaps the fact that Gould herself was not able to press the matter made it of little concern. Presumably, by the time this case reached the Provincial Court, Gould was dead. However, she had tried to seek redress. In 1656, two years prior to Owen’s and Wickes’ breach of contract case, Gould testified before the Kent County Court. She swore that the night Owens boat went adrift, he took advantage of an opportunity to rape her as he sent his overseer to retrieve the boat. With no one left in the house, Owens abused her and threw her onto a bed where he accosted her despite the fact that she was menstruating and begged him to stop.175 Gould had tried to alert the proper authorities to the crime her former master committed against her—to no avail. She had formally accused her master of untoward sexual acts. At the very least, because her allegation involved a felony crime, the Provincial Court should have conducted a hearing. Nothing, however, except her testimony was ever recorded by any court. And, her charge was not even referenced in the case between Wickes and Owens as their case involved a loss of property and not a loss of honor. At every level in this

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case, from the judiciary to her masters, men erased any hint of a crime of rape and with it the penalty of death.

Property and Labor

At the center of this case was the question of when Gould became infected. Contemporaries accepted that she was infected with the Pox (or what is today called Syphilis—in none of the records was anyone, not any of the witnesses, or the former master, or even the judges themselves mentioned as questioning whether she was ill. That she was infected with a venereal disease was widely accepted. She was infected with syphilis, and by the time she arrived at Wickes’ the infection raged in her body. As a result, the question at the heart of the case between Wickes and Owens was whether Owens should replace the servant who could do no work for Wickes. No one appeared to be interested in who infected her, or the circumstances surrounding her infection. This case was re-cast as one of property with the men involved concerned over loss of labor—not loss of honor.

That labor would be the primary concern of these Maryland men in the middle of the seventeenth-century is understandable given the demographic distribution of the colonists. Around 1660, according to several Maryland historians, the flow of men coming into the Province was not as strong as it had been previously. Planters began looking to women as a viable labor force to augment the labor traditionally performed by men. As a result, women and women’s immigration took increasing economic importance because indentured servants served as the underpinning of the fledgling economy.176

The prosecution that Wickes mounted, together with his witnesses, all bore testimony to Owen’s failure to fulfill the contract. Wickes’ witnesses’ testimony served several purposes. First, Wickes needed to establish that he had contracted with Owens specifically for a healthy
servant. The testimony of Nicholas Bradaway and William Leeds both serve to establish the parameters of the contract between Wickes and Owens. Bradaway swore that he personally witnessed the bargaining that occurred between the two men for a healthy maidservant and that Wickes suffered Owens request to delay the transfer of the servant for three weeks. To help Wickes, Bradaway needed to testify to the terms of the agreement that he actually heard Wickes tell Owens he wanted a maidservant in perfect health and that Owens assented to these conditions. To remove all traces of doubt and provide irreproachable evidence that Wickes’ interpretation of the contract was indeed what had occurred between the two men, Wickes needed a second witness to concur with Bradaway. The testimony of William Leeds did just this. Leeds swore in open court that the terms of agreement were exactly as Bradaway detailed. He affirmed that Wickes required a servant in perfect health.\textsuperscript{177} The men involved were treating this case as a breach of contract. Wickes sought to show that Owens was under obligation to provide him either a new servant or compensation for one.

Secondly, and this is perhaps why several of the neighbors thought it pertinent to include the servant’s testimony regarding the origin of the sickness, Wickes needed to show that the sickness from which the servant suffered began prior to her transfer from Owens to Wickes and that Owens was aware of it. For example, when Anne Hinson testified regarding her interaction with Wickes servant, she established that only a few days after Wickes brought her to his home, the illness from which the woman suffered was far advanced all over her body. Hinson had witnessed the sores first hand. Hinson described Gould (though not by name) as being so sick with open sores and sore in her bones that she could not even turn herself. Further, Hinson said

\textsuperscript{176} Carr, “Emigration and the Standard of Living,” 542-571, esp. 550 and 553.  
that within just a few days of Gould’s arrival, Mrs. Ward called Hinson to look at “the biggest pox that could be got for money” and the two women agreed that the malady was so advanced an immediate course should be taken, or she would “rot away alive.” Hinson was alluding to the fact that for the malady to be so advanced so early in her employment to the Wickes, the infection must have been raging during her service to Owens. And as all who came into her presence knew of her sickness—the stench and physical signs were hard to ignore, as were her accusations of Owens’ misbehavior. Owens must have at least suspected she was ill.

When contrasted with the behavior of the neighbors, Owens appeared as not only maliciously pawning off “damaged goods” to an unsuspecting neighbor, but also failing to responsibly care for those in his household. A number of times neighbors testified that she was given “physic” (or what is known today as medicine) out of pity and compassion by various people. Elizabeth Lovely, the wife of Thomas Ward, testified that her husband was moved out of pity to give the woman something to ease her pain. When this failed to help, Hinson went with the woman to Capt. William Fullers who gave her medicine and told her how to dress her sores. Finally Lovely testified to the court that Wickes, unlike Owens, behaved responsibly toward the servant in his care, despite the fact that the situation arose out of Owens’ failure to so act.

Redefining Coerced Sex as a Business Transaction Involving Property

One might argue that couching the language of coerced sex in terms of property held a better chance for the victim to achieve some sort of justice than leveling a charge of rape. A rape conviction required an all-male jury to do more than simply fining a man for sex. Redirecting a

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crime from one resulting in the death penalty to a crime where only a man’s pocketbook suffered
took the sting out of judicial censure for the men responsible for determining justice. The men of
the judiciary most likely struggled with the idea of condemning a man to death for sex. As some
men were unable to secure a wife, some had quite probably similarly committed fornication with
a servant in their household. And, as many would have also believed that woman actually invited
sexual encounters, despite their occasional refusals in keeping with notions of modesty—jury
members were most likely additionally hesitant to condemn a man to death for a crime they were
unsure was even committed.

Indentured Maryland women appeared as property, and not as victims of rape, most likely
due to the fact that treating women as such was far less politically threatening to the new colony.
Doing so was consistent with the way England had viewed its female rape victims for several
hundred years. The province’s conduct in these cases is best understood in a reactionary context.
The courts conduct in keeping with English tradition possibly made the colony appear stable.
However, socially the colony was actually embroiled with conflicting notions about the rights
and prerogatives of the nascent elite. By recasting the incident as a crime against property, the
judiciary had in effect stated that no crime against the servant was committed. Though Gould had
leveled a complaint and officially stated her testimony before the judiciary, the court failed to
advance the case and so treated the matter as if it had never occurred. Had the woman not been a
servant and instead been a single woman protected by a father or step-father (as in the
Sharpe/Harwood/Gary case explored in chapter 1), then some redress and acknowledgement of
injury on the woman’s behalf might have occurred. While the servant believed she had the ability
to grant or withhold sexual access to her body, the judiciary ultimately said that she did not. By
ignoring her allegation that her master had forced her to have sex with him without her consent,
the judiciary implicitly transferred the ability to grant or withhold access to her body to her master, giving him the permission to act with impunity in relation to his servants as her protests evidently brought no consequence. Thus, the judiciary removed what agency Gould had and reassigned it to her master. The court only acted when the former master’s use of his servant cheated the second master out of his full use of her.

Coerced Sex as Understood By the Victim

Gould’s denials of offering her consent and her repeated references to Owen’s use of force, offer some indication of her understanding of rape law as it existed at mid seventeenth-century. Repeatedly Gould denied offering her consent. While she may not have known she was specifically referencing the 1285 law, evidently the question of consent was a significant question in her mind. This law stated that a man was guilty of raping a woman if she at no time offered her consent for the act. Yet the 1382 rape law made a woman’s consent irrelevant. Whether she gave her consent or not, a woman’s next of kin or husband (or provincial authority if she had no one to represent her) could prosecute for the death penalty. Perhaps this last caveat that the provincial government had an obligation to seek redress for her, was what drove Gould to testify to the county court. She had no one else to fill in this role for her—as a woman alone whose master had violated his position as patriarch, she turned to the governing officials in their position as supreme patriarch for help.

Moreover, the fact that Gould filed a complaint indicates that Gould believed her grievances would be addressed—she had faith that someone with power would take issue with her former master’s behavior. This belief that the governing officials were obligated to intercede for her, has overtones of being aware of some of the content of English common law regarding rape. The 1275 law explicitly stated that the King vowed to do common right, to stand in for her
husband or next of kin. She expected the judiciary to act in lieu of her master, who had, she believed, transgressed his authority.

Gould also believed that she needed to establish the presence of force in Owen’s violation of her body. Her testimony included descriptions of being pinched, abused, thrown, and forced to engage in sex. Through her testimony, Gould sought to establish the kinds of force employed in an effort to justify her assertion that he forced her to engage in illicit sex. This accounts for the growing severity in her list of grievances against Owen—each aspect of the incident built upon each other until Gould believed that a critical mass of violent behavior existed to make an assertion of force believable. Gould’s establishment of the use of force was also used to deflect any hint of suspicion regarding her complicity with the man. She had to establish that the sex which ensued was not voluntary. She was both unmarried and a servant, and engaging in voluntary sex meant gaining a severe penalty. In 1650, just a few years before the incident occurred, the Maryland legislature passed a law concerning adultery which stated that everyone found in such a state would be punished as the court thought best. In 1654 the legislature renewed the law condemning adultery and fornication and renewed the court’s prerogative to punish. Part of Gould’s testimony sought to establish that while she had sex with her previous master, which could be used to condemn her if the court believed she had willingly participated in fornication, she was entirely a victim of his overpowering her. This explains why she included certain details in her confession to neighbors such as Anne Hinson.

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180 Please see the section 1 introduction for a fuller discussion on the evolution of rape law.
Hinson testified about her conversation with Gould in which she said that Owens “made use of her body after a very inhumane manner and [kept] her down upon her face that she could no way help herself.” Furthermore in her own testimony to the court she declared that had she not been forced, she would not have wanted to engage in sex anyway as she was menstruating. Hinson’s testimony suggests Gould was conscious of needing to not condemn herself while drawing attention to the behavior of her attacker.

Gould’s testimony also suggested that making a formal record of the complaint was time sensitive. The 1275 law stipulated that a woman could seek redress from her attacker and sue him as long as she did so within 40 days. Gould testified to the court in April 1656. Joseph Wickes testified that he had bargained for a maidservant with Owens in February of 1655, though he had to wait three weeks to receive her. Instead of 1655, however, this date should most likely be 1656, as Gould was purported to only have stayed with Wickes for roughly half a year. After which she most likely died, given the condition and speed with which her sickness advanced. Gould was probably bargained for in February 1656, sexually violated sometime during the three weeks following the transaction, and came before the court on 30 April 1656.

By redefining cases of men’s sexual experience as lesser crimes while simultaneously holding women to a different sexual standard, the elite men of colonial Maryland successfully highlighted difference between men and women in the legal system and underscored women’s subordinate position. For women like Gould, the issue of consent was irrelevant as their master’s

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entitlements trumped servants’ prerogatives to give or withhold consent. For still other women, incidents of rape were re-written as consensual and the woman was charged with fornication and summarily beaten for her misbehavior. While indentured women were denied legally recognized agency altogether, free women found their assertions of agency circumvented by a judiciary that sought to corral their notions of independence. Regardless women evinced behavior that reflected independence and a freedom that made the judiciary uneasy. Women like Gould believed that while individual masters might act one way, when acting as the official provincial authority, the same men might act and interpret the law differently.

Sex and Syphilis

Only in her testimony to the county court, where Anne Gould called attention to Owens’ attack, was her voice heard directly by the court. And, only in this deposition taken on April 30, 1656 (roughly three years prior to the trial over contract fulfillment) were her accusations addressed. Neither her direct testimony, nor statement recorded in April 1656 were part of the breach of contract trial between Owens and Wickes. The outcome of the deposition remains unclear from the extant records. The court most probably did little to nothing to address her concerns. No record appears in the Provincial court documents suggesting that Owens was charged with rape or murder. Because rape was a capital crime, this would have been the only court authorized to investigate this crime.

Gould testified that the night Owens’ boat went adrift, he sent his overseer to look after the boat, leaving Owens and Gould alone together in the house. When alone, he seized the opportunity to force her to yield to him sexually. He overpowered her, “pinched and abused her and threw her upon a bed. He also forced [her] and had the use of her body” which Gould found

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186 See the introduction to Section 1 for a further explanation of the evolution of rape law.
especially grievous because she was menstruating.\textsuperscript{187} Her chief complaint was not that she had been raped—which was the foundation of her allegation. Her allusions to force and penetration would have been understood by the court to signify both her lack of consent and his lack of restraint. Instead she went on to claim that his conduct was far more sinister. He yelled at her that he gained nothing from her presence, was no better for having her, and then swore “what the plague do I keep thee for?”\textsuperscript{188} And then Owens infected her with a disease that soon killed her.

His outburst also revealed several factors which may have led him to believe his conduct in raping Gould was justifiable. First, he found her work insufficiently productive and regarded her as a financial liability. This is consistent with Gould’s depiction of Owens as a man who used her roughly. Believing he had gained nothing by purchasing her time, he felt entitled to gain access to her body. It was this understating of entitlement and the different options on which one’s prerogatives ended and another’s began that connected the two cases, despite the fact that the judiciary failed to recognize the commonality. Owens was a violent man with a virulent temper who believed he had unlimited access to his servant’s services. Wickes never challenged Owens’ sense of entitlement or his access to Gould’s body—only that Owens had failed to satisfy the requirements of the transaction between the two. Had Gould not been ill, Owens’ conduct would probably not have been questioned—only perhaps had she become pregnant as she would have drawn on her second master’s financial resources for support and the contract between Owens and Gould been similarly breached. Therefore, the main reason Owens’ sexual conduct towards Gould was of concern was due to the residual negative effect of his encounter on Wickes’ pocketbook. The judicial records reveal none of the nascent elite—not Wickes, the


\textsuperscript{188} Ibid.
judiciary, or Owens himself—as ever officially questioning the master’s belief that he was due some sort of gain from his servant. If she was not as productive as he would like, then service in kind, did just as well.

Perhaps his choice of language at that particular moment in which he mentioned the “plague” was merely coincidental, but in all likelihood Owens knew he was infected. His outburst further reveals that concepts of the plague/pox and its deadliness had reached the shores of Maryland and was part of popular culture. Owens and his neighbors were probably well-familiar with the disease, knew what to look for as symptoms, and were fairly familiar with its deadliness. His particular choice of words at that moment may also have been a slip of the tongue, an indication of sorts that he was thinking about the disease possibly because he suspected he was ill. What is certain is that both Owens and Gould were infected, and that they had sex together prior to her exchange to Wickes.

Before she died, and after her transfer into Wickes’ household, Gould tried to persuade the judiciary to prosecute Owens for knowingly raping her and infecting her with syphilis. In her affidavit, she swore to the county court that she was not ill prior to the sex that occurred while she was in Owen’s household, and that all of her symptoms developed after Owens had infected her and after he sold her to Wickes. Before her attack she bore no signs of infection and was in perfect health. Most likely, Owens knew he was infected—it may have been on his mind when he swore “what the plague do I keep thee for?” (emphasis mine).¹⁸⁹ So he violated her when she was no longer in his employ and her disease would presumably bear him no financial loss. His infection with the disease is one possible reason Owens appeared by proxy at his own trial. While it may have taken him longer to develop the symptoms, he too was probably infected with syphilis. Moreover, Gould swore that he was the only man with whom she had ever had sex.
Therefore, Owens may have sent someone to court in his stead, because appearing at court bearing the same symptoms as Gould could have automatically swayed the court in Wickes’ favor.

Conclusions

This trial reveals insight into an aspect of the nature of male entitlement in seventeenth-century Maryland and specifically how it related to circumstances of unwanted sex. Some masters believed that by contracting for an indentured woman’s labor for an agreed-upon number of years, they had summarily contracted for use of her body as well. Perhaps the proximity to single women, without fathers, husbands, or even brothers to look after them, coupled with the familiarity that was bred by living in the same household and in tight quarters with the master and his family helped give opportunity to express this entitlement. Perhaps frustrated with a servant not as productive as he expected, a master deemed it his right to gain something from his investment. And through judicial silence, many men of colonial Maryland similarly nodded their assent insofar as a master’s use of his servant did not deplete another master of his use of the servant. As she was bound by contract, a master could exercise free use of her labor and her body.

Had the judiciary acted to investigate the claim of rape this may have signified a responsiveness of the nascent elite to root out all cases of criminal action. However, it did not. Instead, the judiciary failed even to investigate the matter. Without the crucial step of investigation, the judiciary redefined the incident ensuring no rape prosecution occurred. Regardless of the fact that testimony confirmed evidence of syphilis and could place opportunity for the exchange to take place, none of the testimony in the breach of contract case happened to include testimony of witnessing the attack occur. Even then one wonders if this evidence would

189 Ibid.
have been sufficient to convict Owens of rape. In all probability the judiciary would not have been quick to convict, as other cases reveal a tendency of the court to recast these incidents as something else—such as a misunderstanding between lovers. And, in cases in which the evidence was strong and an investigation into a formal rape charge warranted, the judiciary preferred to allow the parties involved to craft a creative settlement than to be forced to condemn a man for sex. If witnesses had been present who could testify that they had personally viewed the rape, this may still have been insufficient to convict.

But, again, one must wonder why no attempt at investigating this kind of material was made. Perhaps no such witnesses had happened upon Gould and Owens as they had upon John Nevill and Susan Attcheson as explored in the previous chapter. That was certainly possible as well, but the absence of any investigation makes this assertion problematic. Perhaps witnesses might have been found, but perhaps not. What is significant is that nothing was done with the accusation. Even if Gould’s accusations had been nothing more than the delusions of a diseased mind, the court had an obligation to investigate—and when investigating female defendants for felony sex crimes, evinced behavior consistent with this responsibility. But, as this case indicates, a correlation existed between gender and a failure to investigate male defendants for felony sex crimes.190

Hence, the conduct of the judiciary differed with respect to the nature of the crime and the gender and status of the victim. While the judicial records show the judiciary pursuing felony investigations of a woman accused of murder, or a neighbor committing fornication with another

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190 When a male indentured servant accused a female servant of murder at sea, even though the un-named male servant was dead before the matter came to trial and was suffering a variety of effects from his illness, the judiciary still thoroughly investigated the charges, gathering witness testimony and various evidence. (See chapter 6). Thus, in other cases where the crime carried a penalty of death the judiciary avidly investigated—regardless of whether the allegation was made by someone infected with a disease, who showed significant signs of being compromised by it and was near death—or not.
man’s servant (and as a result possibly depriving the master of the labor due him as he might find his servant in labor and pregnant), and they also show that the judiciary balked at prosecuting men for coerced sex when the charge was unaccompanied by other serious crimes—such as murder. Moreover, that men were not avidly prosecuted for rape but women were prosecuted for sex is consistent with a society that conceived of women’s bodies in terms of property. Most masters prosecuted promiscuous female servants for fornication because the result of such encounters, a pregnancy, might cost a master his money—both immediately through an investigation of the identity of the father in the interim with medical services, and in the long run for the work she was unable to perform. In effect, the same sense of entitlement to a woman’s labor that motivated her master to pursue legal redress when she and another man engaged in forbidden sex also motivated a sense of the prerogatives due him when expectations of labor went unmet—and quite possibly even when they were. The failure of the judiciary to investigate sex crimes against women but did so for crimes committed by women, communicated that men and women were afforded different levels of protection before the law. In instances in which the law instructed the provincial authority to act on behalf of a woman (in place of an absent father), but doing so clashed with the designs of the elite in their desire to privilege men, the judiciary chose not to act. They effectively annulled the offense. This upheld male privilege, and ultimately negated even the possibility of an aggrieved woman achieving redress.

That men rendered nil the question of a woman’s ability to offer or withhold her consent indicated the presence of some degree of male apprehension in regards to the increase in female power. The demographic ratio of men to women (with men significantly outnumbering women) afforded women more chances to exercise freedoms unavailable to women in England. Women in Maryland could appear pregnant at the time of the nuptials without damaging their chances of
marriage. In respect to marriage, Maryland women had an abundance of choices and could afford to be selective in their decision of a mate. As first-generation women often outlived their husbands, upon reaching widowhood a woman might make use of the fortune left to her by her husband and decide not to remarry. A widow could exercise considerable autonomy as a propertied woman without a male head. The judiciary’s response to female agency was perhaps more due to the intersection of male entitlement and female autonomy, which resulted in the arousal of elite alarm than of women unilaterally expressing independent thought. In other words, an indentured woman who sought to exert agency over her body created more cause for alarm than a single woman with wealth and property who did likewise—particularly as her master viewed the rights to her body as his and her actions violated his rights. A servant’s choice to engage in illicit sex would deny her master varying degrees of economic power depending upon if the couple went undetected and possibly undermine his status as the household authority. An unmarried and unbound women who did likewise could either be viewed as implicitly giving her consent to marry, which then would simply acknowledge the women to have slept with a man who would become her husband, or the sex could be understood as an indication that the couple already conceived of themselves as being married--in which case the woman slept with a man who had already become her husband.

Consent held different overtones when offered by a single woman as she was free from satisfying any contract requirements and could be interpreted differently than when an indentured woman engaged in sex. When a man had sex with a single woman, regardless of her consent, this could be viewed as normal courtship practice for people betrothed. When a man had sex with an indentured woman, he infringed on another man’s property rights and had to make appropriate restitution. If the man was unattached to the master by contract, illicit sex

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could result in a fine. However, if the man was bound by a contract such as Owens had been to Wickes, this might mean replacing the unsatisfactory servant with one more fitting the specifications of the agreement. Either way, as with this case, a man who had sex with an indentured woman was effectively prosecuted for having robbed the master. Women who were involved were prosecuted and punished as conspirators.

Maryland jurors interpreted the law differently in respect to men and women and consistently worked in ways that safeguarded property—even when so doing meant that crimes involving female victims went un-addressed. Repeatedly, the courts of seventeenth-century Maryland reinterpreted crimes of sexuality in ways that protected the interests of rising elite men.
CHAPTER 4: COERCED SEX AS MARITAL SEX

The Story

On a warm summer day, Dr. Joseph Lumbrozo’s servant, Elizabeth Wilde, came running out of the house screaming to various neighbors of the horrors she experienced at Lumbrozo’s hand. According to her, Lumbrozo impregnated her against her will and then forced her to drink a poison that killed the fetus. And when the partially formed child emerged from her body, the doctor just threw it out into the street with the rest of the trash. Never did the court make reference to the fact that Lumbrozo had previously sought to force two other women to sleep with him in the same year. Instead of treating her as a coerced victim, the court began to investigate Wilde for her culpability as a licentious fornicator and murderer. In order to stop a process that could have ended with her death, she had only one option: she lied. She recanted her testimony and agreed with Lumbrozo that her accusations were unfounded—the result of sickness—and that she previously consented to become his wife. As his wife she was immune from both charges of illicit sex and infanticide. Thus only Lumbrozo immediately fared well from the resulting court session—ultimately he achieved what he desired: a permanent sex partner and someone to possibly bear him an heir.

Introduction

The following section investigates three court cases all involving the same man, Dr. John Lumbrozo. Recently arrived from Portugal Lumbrozo had recently become a “denizen” of Maryland. Treated with suspicion due to the nature of his religion (he was Jewish) and to the color of his skin (he was so dark other colonists referred to him as a black man), he was regarded as an outsider. The primary trial investigated within this section occurred in June 1663 in Charles County, Maryland. According to his indentured servant-woman, Elizabeth Wilde, Lumbrozo repeatedly raped her, drugged her, and killed the resulting baby. And then, after the judiciary ruled that the woman had acted feloniously in becoming pregnant through illicit sex and possibly murdered her own child, the matter was dropped as the court regarded Wilde and Lumbrozo as already married because of the sex and Lumbrozo’s testimony that he had placed his hand on a book and in the present tense declared Wilde to be his wife. But this was not the first time

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Lumbrozo’s sexual aggression was heard in testimony before the judiciary. Another case occurred just one month prior, on 11 May 1663, in which Lumbrozo stood before the court as a plaintiff. He sued his two indentured servants, Margery and John Gold, for defamation. According to the Golds, Dr. Lumbrozo propositioned the husband to arrange a sexual transaction with Margery Gold. The transaction was to proceed as follows: in exchange for secret sex with Margery, Lumbrozo offered half of his lands. Before the judiciary, however, Lumbrozo sued the couple for having credited him with authorship of this arrangement.193 The third case reviewed in this chapter (which was actually the first occurrence in the sequence but examined last as the primary case is the last incident to occur), happened one year prior to the incident with Lumbrozo and Wilde. In 1662, Lumbrozo and John Hammond were involved in legal proceedings in which Lumbrozo sued Hammond for defaulting on a debt and Hammond countersued for slander. In the resulting trial, witness testimony implicated Lumbrozo as having coerced Mrs. Hammond into a sexual arrangement to satisfy John Hammond’s debt. Lumbrozo was at the center of all of these arrangements trying to manipulate, coerce, or otherwise strong-arm people indebted to him into giving him sexual access to a woman.

The Wilde-Lumbrozo case illustrates the clash of authority within the household and the ways a variety of people successfully usurped power from the rising elite. The authority of these men was partly due to those in subordinate positions acknowledging the superiority of the elite. However, in elite households, proximity allowed both bound and unbound servants access to the most sensitive of information. It also gave them the ability to exert great influence over their masters and at times other important men. Wilde’s response to Lumbrozo also shows that though indentured women were tremendously vulnerable to being overpowered by their masters, both

emotionally and physically, subordinate status did not mean a universal deprivation of agency. As Wilde’s actions demonstrate, she resisted him to the extent of her ability and though he probably believed he succeeded in gaining unrestricted access to sex whenever he wanted by persuading her to acknowledge him as her husband, her denial of providing him with an heir—twice—illustrates that she held some measure of independent action and control.

Moreover, the incident between Elizabeth Wilde and John Lumbrozo is important on several scores as it highlights a variety of important social factors. First, the Wilde/Lumbrozo case suggests that single women who became pregnant as victims of coerced sex had little ability to seek official restitution. Though men who were charged with rape were occasionally prosecuted, conceptions of the body led jurist to believe that women who became pregnant as a result were complicit lovers whose only remorse was that they had been—or were about to be—caught. So, women who were sexually attacked must have felt doubly wronged: by the perpetrator for the violation and by the court for the punishment the women received for their supposed compliancy. Perhaps more importantly, the Wilde/Lumbrozo case also reveals that men and women in colonial Maryland negotiated the limits of agency and authority. The master never held absolute and complete control over his household. In the Wilde/Lumbrozo case, Lumbrozo’s male servant Dorrosell was the catalyst that began this investigation. In many respects Dorrosell exhibited incredible power over his master’s life. Through gossip and the spread of intrigue—which eventually alerted the judiciary to scandal—he successfully eclipsed his master’s authority and in part controlled his fate, without exceeding the bounds of his own station.

These findings dovetail with the scholarship performed by Sharon Block who argued that elite men were not charged with rape because of the privilege of their station—whatever sexual
pressure they exerted was redefined as something else. Block contends that for white women, the
community believed they had consented; for black women, the question of consent and even of
rape was irrelevant. This work complements Block’s in several significant ways and by
examining an earlier period seeks to understand earlier definitions of the consciousness of other.
This study examines the seventeenth century, which contributes to the conclusion that the
consciousness of other that Block attributes to race in the eighteenth century, and suggests that
prior to being defined by race, was attributable to the intersection of gender and class.

The failure to prosecute men as propagators of rape while at the same time condemning
women for their perceived complicity was an integral part of creating a consciousness of elite
male privilege in early America. The difference elite men created justified elite superiority in
governance, socially, and elsewhere. Men made the law; men enforced the law; men interpreted
the law. When on occasion women were part of the judicial process in any sort of official
capacity, such as witnesses or as the jury of women as examined in previous chapters, women
exercised authority only insofar as they did so for the use of the male authority and with their
approval. In other words, women had the ability to exert tremendous influence only when men
recognized them officially. Apart from male authority, female authority carried no official
importance. When used as a tool by men, however, women held a measure of official power in
Maryland society. This power was dependent on women occupying a subordinate position to
men. And, ironically, compliance by women of their subordinate status also served to reinforce
official male superiority. Taken together, the three cases reveal that Lumbrozo, and other elite
men in Maryland, held particular notions about who controlled access to a woman’s body. In
none of the three cases were any of the women identified by the judiciary as having experienced
any offense against them. The cases were always handled as incidents against the men: breach
of contract, slander, or harassment, for example. Though sexual coercion was a distinct part of the sequence of events precipitating the trial, only the repercussions to men were addressed by the court. Thus, the court communicated that the multiple assaults to these different women, never happened.

In conjunction, the three cases suggest a variety of motivations at play. Everything from loneliness, to labor needs, to sex encouraged a man to take a woman—voluntarily if possible, by force if not. From the creation of differences predicated on race, language, appearance, nationality, and the like, some men believed they would never overcome the factors that made them outsiders and unlikely to marry. The markers signifying their status as “other” were noticeable, and made some men who overtly forced or coerced sex appear particularly dangerous to society. Other men were provoked into standing in front of the judiciary as plaintiffs when their wives were attacked and used language couched in terms of rectifying damage done to their own honor, their fortunes, and their social status, not in terms of the damage done to their wives. With consistency, Maryland men involved violent felony sex incidents acted in ways that upheld male prerogative.

This chapter explores household power dynamics and how factors such as gender and religion were crucial defining identities, relationships, and the creation of difference. These court cases are invaluable for understanding fundamental mores of Maryland society, especially women’s positions in the community and within households. Most importantly, this section shows that the judiciary’s failure to prosecute men for crimes of rape and instead classify the infractions as crimes wholly divorced from issues of force or consent constructed the crime as one against a man rather than against a woman. As men cast female victims into willing accomplices and failed to meet the legal obligation to seek justice for women when they had no
one willing or able to so act for them, men sought to create a consciousness of elite male privilege in early America based on differences of gender and class.

The Case

In June 1663, in Charles County, Maryland, an indentured woman named Elizabeth Wilde gave birth to a dead fetus. Holding her on her back was her master and doctor, John Lumbrozo. According to Wilde, he was the same man who had repeatedly raped her and forced her to ingest a drug that killed her fetus. With the fetus and afterbirth in the chamber pot, the doctor threw the contents into the street. And, as neighbors pointed out to her, a further indignity was that any roaming pig could devour it. In her shock and dismay at what had happened, she began telling her neighbors--almost anyone who would listen--of her ordeal.194

Earlier that month, Joseph Dorrosell, an un-bound servant in the house started a rumor suggesting that his master and fellow servant committed fornication fairly regularly and that she was pregnant by her master and lover. The various neighbors and members of the household all swore to the same thing: Wilde told them that shortly following the discovery of Dorrosell’s gossip, the doctor made her drink a concoction which caused her to abort the “swelling” that implicated them both. She had also told them all that the doctor had forced her to have sex with him and repeatedly emphasized that he had done so with force and without her consent.195

Though Wilde attributed the child’s murder to Lumbrozo, in fact, she had actually killed the fetus by taking rat poison. Wilde had administered rat poison to herself once confronted with the news of Dorrosell’s gossip. She probably regretted her actions because she informed Dorrosell, who in turn testified to the court, of what had happened and accepted his help in

195 Ibid.
pursuing the poison from her body. When she later experienced what she referred to as stomach trouble, the doctor gave her a concoction that most likely caused her body to purge the dead fetus. Either she failed to realize that the poison she swallowed earlier had worked and truly believed that the doctor killed her potential baby, or she realized that pinning the murder of the fetus onto Lumbrozo was an expedient defense strategy.\textsuperscript{196} She may have deliberately tried to implicate Lumbrozo so she could be free of an unwanted child that resulted from his actions and hoped he would also receive court-directed punishment. Quite possibly, she may have believed that he deserved any censure he received.

In the testimony of another neighbor, Wilde and Lumbrozo’s tangled relationship became even more complex. The witness testified that Wilde explained how the doctor, before “she could consent to lay with him . . . took a book in his hand and swore many bitter oaths that he would marry [her].”\textsuperscript{197} And then he “brought me to shame which I never did before.”\textsuperscript{198} Though she may have resisted recognizing this act as tantamount to marriage, and even disdained the idea of being united to a man she considered her rapist, contemporary Marylanders understood these two acts constituted de facto betrothal. And, once realizing marriage to Lumbrozo was her means to save her neck from the gallows, she most likely saw fit to invoke her status as his wife.

After the testimony had been taken and the evidence examined, the court agreed that a crime had been committed. And while the details of the case were ghastly, the community must have been only partially surprised given Lumbrozo’s history with the judiciary and his status as an outsider. In 1662, just one year prior to the incident between Lumbrozo and Wilde, Lumbrozo


\textsuperscript{198} Ibid.
approached another couple to satisfy his desire for sex. Lumbrozo felt at liberty to proposition, if not coerce, those in some way indebted to him. Only in the midst of the trial for debt that Lumbrozo precipitated against Mr. Hammond, and in the testimony of witnesses who testified on behalf of the defendants, did Lumbrozo’s misconduct come before the court. In another incident, before the one with Wilde, Lumbrozo similarly tried to engage another couple in a transaction for sex. Just one month earlier Lumbrozo stood before the court as a plaintiff, when he sued his two indentured servants Margery and John Gold for defamation. According to this couple, like the couple in the case for debt, Dr. Lumbrozo propositioned the woman’s husband to arrange sex with his wife, and though the couple ardently refused, the master only stopped because the woman successfully cried out for help.199

After the jury finished deliberating and evaluating the evidence and testimony in the Wilde-Lumbrozo incident, the foreman Daniel Johnson announced the findings of the jury: by Wilde’s own public confession she was pregnant by John Lumbrozo who gave her an abortificient to destroy the unborn child. Therefore, the jury believed sufficient evidence existed to warrant a trial. Accordingly, the case should have gone to trial in which a judgment of guilt or innocence would be determined. Had the case gone before a jury, both Lumbrozo and his maid may have been punished for fornication and murder, for in trying to condemn her attacker Wilde had unwittingly condemned herself, but the case progressed no further. The case was dropped probably because the court considered Lumbrozo and Wilde to be married—and the Maryland justices and jurors considered infanticide to be a single woman’s crime. He had laid his hand on a text and had sworn himself to be her husband, and then they had consummated the marriage.

Contemporaries of colonial Maryland would have understood these actions as resulting in a

binding marriage. Wilde probably never desired marriage to Lumbrozo. Her behavior and earlier conversations with neighbors and fellow servants suggest that that she had resisted marriage to the man who had been her attacker and only towards the end of the hearing did she appear in favor of the idea. Lumbrozo probably persuaded Wilde that the only course for her to avoid prosecution was to acknowledge herself bound to him in marriage. Every time she went among the neighbors to tell them of his actions (probably in the hope that they would do something to help, or possibly simply due to the shock of her experience) she simply created more of a case to damn herself.

Because she was pregnant, 17th-century Marylanders probably believed that the sex had not been forced, but instead the incident was one of seduction and consent—with her as the more culpable and sexually voracious partner. According to seventeenth-century understandings of the body, for conception to happen the woman had to enjoy the sex—which only occurred, they believed, if the sex were consensual. Thus the jurors in Wilde’s trial most likely believed she had sought out the doctor’s help in the destruction of the fetus—not the other way around. Lumbrozo had most likely observed that his escape from prosecution lay in Wilde being his wife. No such thing as marital rape existed. If a couple were married, a man was entitled to the use of his wife’s body. In this case, the judiciary’s belief that Wilde and Lumbrozo had married made even the appearance of coercion a moot point. And, most likely the jury found inconceivable the idea that a woman who was truly raped would marry her attacker. They probably reasoned that her marriage to him was an indication that she in fact welcomed him, and quite possibly was playing the part of a hesitant lover in courtship practices.

In regards to the child being aborted, their status as a married couple significantly altered their position. Lumbrozo had married Wilde and consequently silenced the chief witness against him. She could not bring up prior grievances against her husband—she could not charge him with having earlier raped her. By the same token, she could not claim to have been forced to drink an abortificient given by a malicious doctor. While colonists were aware that unmarried women might try to hide illicit pregnancies by murdering their newborn children, they found it inconceivable that a married woman would try to kill her own offspring, or that the doctor would try to murder his heir.\textsuperscript{201} In casting her as his wife, the doctor had sufficiently silenced the chief witness against him on this score as well.

Authority within the Household

Dorrosell might have been a close neighbor but more likely, with the sequence of events as described in the testimony of the witnesses and his ability to gain intimate knowledge of the affairs of Lumbrozo and Wilde, he probably lived within the household. This proximity gave him both opportunity and time to observe the activities and pass judgments on the nature of the relationship between Lumbrozo and Wilde. George Harris (a neighbor) swore he saw Dorrosell working outside as Harris approached Lumbrozo’s property. When Wilde yelled for Harris to return to the house, most likely Dorrosell was within earshot and heard her as well. Another man, Richard Trew, confirmed Dorrosell’s position in the household when he remarked that once the doctor returned home, Wilde had sent Dorrosell to fetch him and Harris back to the house. Hence, Dorrosell was present and working in and around the plantation even when the doctor was not at home. In all likelihood Dorrosell lived as a member of the household as well.

\textsuperscript{201} Prosecution patterns in England suggest that contemporaries used this law as a club to address social anxieties pertaining to sexual behavior and female familial roles. See for example, Mark Jackson’s, \textit{New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England} (New York: St. Martin’s Press, 1996), 29-51.
Quite striking is the inversion of authority in Lumbrozo’s household made apparent in the interactions and testimony of the witnesses. The drama that enveloped the lives of Dr. Lumbrozo and Wilde began with Joseph Dorrosell. Dorrosell was a trusted partner in Lumbrozo’s daily affairs and witnessed many of Lumbrozo’s legal transactions. Dorrosell conducted business with Lumbrozo and had intimate knowledge of Lumbrozo’s private life. However, even while Lumbrozo depended on Dorrosell to testify on his behalf in legal matters, Dorrosell sued the doctor in February 1663 for failure to pay a debt of 900 pounds of tobacco and three barrels of corn.202 Both privy to and a significant contributor to community gossip, his ability to attest to the private affairs of individuals made Dorrosell a powerful force in the community.

Like Dorrosell, Wilde exercised an authority and a power within the household that contemporaries may have believed transgressed normal bounds. Dorrosell testified that she scolded him.203 At the bottom of the social ladder as an indentured servant woman, but Wilde had raised her voice and possibly her fist, used language filled with venom, and had repeatedly reprimanded him.204 Dorrosell probably resented being addressed in such fashion by one with no legitimate authority over him. He was a man able to exert significant influence over the lives of others. His testimony helped determine court cases, such as when Lumbrozo had to pay Dorrosell one hundred and fifty pounds of tobacco for three days of attending court and testifying on Lumbrozo’s behalf. And Dorrosell probably felt affronted at being admonished by a woman who overstepped her bounds by commanding him about, as if she held the authority of

204 According to the Oxford English Dictionary, “scold” in this context meant “to quarrel noisily, to brawl; to rail at or wrangle with some one; to use violent or unseemly language in vituperation; said chiefly of women,”
the master. The control she expressed was a usurpation of her master’s prerogative when she began rebuking Dorrosell, even as Lumbrozo stood beside her commenting neither on Dorrosell’s behavior nor on Wilde’s. Extending her master’s authority in addressing problems concerning those who worked within the household would have been appropriate had Lumbrozo legitimately deputized her—if he had made her his wife. So, perhaps these glimpses of life within the household and combined with other testimony prompted the court to refer to Lumbrozo and Wilde as already married. Regardless, both Dorrosell and Wilde exercised considerable agency over the lives of household members.

Dorrosell was probably motivated to engage in community surveillance by a variety of factors. He may have believed that he was contributing to a vital part of community activism through his surveillance and had alerted the neighbors that the law had been grievously breached in order to stop lawless behavior. Additionally, he may have found the entertainment of community gossip too great to pass up. With so much of seventeenth-century Maryland life squarely centered on labor and basic necessities, recreation may have been rather limited to gossiping about clandestine affairs by community members—such as fornication. So, community service may have been motivated by a broad range of reasons from altruistic ones to personal gain—not least of which might have been an increase in importance. By verbally attacking him, Wilde implicitly called him a liar, compromising all that he stood to gain and calling all of these motives into question. She attacked both his integrity and his community value—as a source of entertainment (in terms of gossip) and enforcement of law (in terms of surveillance). The rest of


Laurel Thatcher Ulrich in Good Wives Image and Reality in the Lives of Women in Northern New England, 1650-1750 (New York: Vintage Books, 1991), 35-50, argued that wives could function as deputized agents of their husbands. Essentially, the authority and respect that a man wielded in business could similarly cover his wife if he utilized her as his representative by proxy.
Dorrosell’s account may have been tainted by resentment through this additional affront and thus distorted to pursue a personal agenda against Wilde and, by extension against Lombroso as well. Hence he probably resented Wilde’s behavior. Dorrosell’s account must be contrasted to the testimony of the rest of the witnesses because he may have harbored both resentment and an agenda against Wilde and, by extension against Lombroso as well.

A Repeat Offender?: The Second Time

This was not the first time Dorrosell had testified on Lombrozo’s behalf, nor even the first time Dorrosell had testified for Lombrozo on a case involving alleged fornication. Twice before, the doctor tried to coerce a woman into having sex with him—though both of these cases differed from the incident with Wilde in that both of the women involved were married and the doctor had sought to create a financial arrangement with both husbands. In the case most recent to the trial date of Wilde and Lombrozo, just one month earlier, Dorrosell appeared as a witness in a case in which Lombrozo was accused of trying to coerce another woman, also one of his servants, to have sex with him.

On 11 May 1663 Lombrozo sued Margery and John Gold for defamation. Like Wilde, both Golds were Lombrozo’s servants. Dorrosell testified that Margery Gold told him that Dr. Lombrozo propositioned her husband to allow him to have sex with her. In exchange for the sex, Lombrozo proposed trading them half of his plantation and half of his hogs. The doctor, believing the plan was set, returned home and tried to lay with Margery Gold. He “took her and threw her upon the bed and would have forced her and she cried out and thereupon the doctor let

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206 Actually, approaching a married woman may have been a shrewd attempt at Lombrozo keeping the matter secret. If she told people, and drew attention to the arrangement, Lombrozo could threaten her into secrecy by threatening to portray the incident as fully consensual and thus fornication—in all likelihood resulting in a court inflicted punishment for her and damage to her husband’s reputation.
her go."\(^{207}\) This incident, which Gold regarded as an attempt to rape her, never appeared before
the judiciary. There was no penile penetration. The doctor had ceased once she cried out, and
without penetration no crime had been committed. While penetration constituted rape and was
punishable by death, attempted rape was not a criminal offense.\(^{208}\) Gold may have sought
justice by the only means available to her—by trying to warn others and possibly hurt his
reputation.

The possibility that she might successfully achieve these goals (at least in terms of his
reputation) was significant enough to influence Lumbrozo to pursue legal action forcing the
Golds to stop gossiping about the arrangement. He either was afraid of the real damage she could
do, or she had already successfully caused him harm. Lumbrozo sought to prove the Golds acted
unlawfully in this matter by basing his evidence on Dorrosell’s knowledge of community gossip.
That Dorrosell testified for Lombrozo points to the doctor’s trust in his testimony, the
consequent power he wielded over Lumbrozo’s affairs, and vice versa. And Dorrosell held
influence over how the proceedings were understood. According to Dorrosell, when Gold asked
the doctor if he were ashamed of himself, the doctor tried to justify his behavior by citing
scripture supporting the arrangement.\(^{209}\) Dorrosell’s testimony to the court, portrayed a well-
known Jewish man taking deeply antagonistic actions to the English colonists (of which the vast
majority were Christians) by using scripture in support of actions they believed were morally
corrupt.

\(^{207}\) Archives of Maryland Online, *Proceedings of the County Court of Charles County, 1658-1666*, volume 53, page
356, [http://aomol.net/megaf...am53---356.html](http://aomol.net/megaf...am53---356.html), (accessed on February 8, 2008).

\(^{208}\) See the section 1 introduction for a more detailed explanation of who—and what—was covered under existing
rape statutes.

\(^{209}\) Archives of Maryland Online, *Proceedings of the County Court of Charles County, 1658-1666*, volume 53, page
356, [http://aomol.net/megaf...am53---356.html](http://aomol.net/megaf...am53---356.html), (accessed on February 8, 2008).
After her husband finished testifying, Margery Gold took the stand and echoed her husband’s sentiments while emphasizing a few of her own. She swore she had absolutely no desire to fulfill any part of the bargain; she would never be Lumbrozo’s “whore.” Like other victims, she too wrapped her testimony in the language of consent. She was trying to convince the court that she had not consented to be a “whore”, and never would. Lumbrozo had forced himself on her. Whenever her husband was out, the doctor relentlessly pursued her by all means both legal and extra-legal to make her yield to him until he could stand her refusals no more and sought to make her sleep with him. Couched in the language of force, she told the court that “he took me in his arms and threw me upon the bed and there would have the use of my body and I crying out aloud and then he let me go.”

Gold was careful to not allow her testimony to condemn her while drawing attention to the reproachful behavior of the doctor. She remained the dutiful wife, the pure woman, by resisting the advances of a man who sought to use her body even when she and her husband could have made incredible financial gains. Furthermore, it was Margery Gold--not her husband--who appears to have put the final and ultimate halt to the proposal. Her husband informed her about the proposition and it was she who ultimately disdained the proposal—it was she who had to fight off the doctor when Lumbrozo refused to stop pursuing her. But her success in frustrating his attempts to persuade her to yield to him did not ultimately help the Golds situation. Angered and frustrated by being thwarted by his dependents, according to the Golds, the doctor responded with harassment because they refused to acquiesce to his desires. Because he was relentless and misused them, the Golds sought to be released from his service and given their freedom dues.

\footnote{Ibid.}

\footnote{Ibid.}
The Golds made known to the court that they refused to be cowed by Lumbrozo and intended to fight him, even if he insisted on pursuing the case all the way to the Provincial Court. They swore that if Lumbrozo chose to continue the matter further, even if the case be taken to the Provincial Court, they swore they would rather be punished severely for testifying to the truth than receive any kind of satisfaction for the abuse they suffered if it meant having to repair Lumbrozo’s honor. Lumbrozo dropped the charges, and the defendants petitioned the court to declare a non-suit, which was done. The court ordered the doctor to pay all the court charges incurred.212

The Golds presented themselves as expert witnesses regarding Lumbrozo’s character and business practices with first hand experience of his tyranny. They also presented themselves, possibly for strategic reasons, as being forced to act and did so only because he refused to leave them alone. Margery Gold testified that Lumbrozo remained constant in his pursuit of her. She was concerned because though she had successfully stopped his advances by screaming for help, she was not convinced that she would permanently be able to fend him off. As she said, the doctor continued to abuse her and her husband.213 And some description regarding the kind of abuse she incurred is revealed in the record. He had been violent with her. He had thrown her and almost succeeded in forcing her to yield to him--only stopping when she screamed out and doing so drew attention to them. If the doctor showed a history of violence it is probable that she at least feared a repeat performance of this violence—and feared that next time her screams would not stop him.

The Golds mistrust of Lumbrozo probably stemmed from more than just a master overstepping his bounds. Most likely, Margery Gold at least was also wary of the doctor because

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212 Ibid.
213 Ibid.
of his Jewish identity. According to her, when she confronted him Lumbrozo tried to justify his behavior with references to scripture. Perhaps his attempts at arranging sexual transactions would have been less inflammatory to those in attendance in the courtroom during the trial had Lumbrozo been of a faith similar to his fellow colonists, but he was not. He was Jewish, and had been on trial for blasphemy less than five years earlier. And, using his association with a faith that underscored his difference from other colonists (in order to sanction behavior that his servants deemed as aberrant) served to make him appear increasingly dangerous.

Religion, Race, and the Creation of Difference

In 1658 the attorney general for the Province of Maryland charged Lumbrozo with blasphemy. The doctor had recently succeeded in proclaiming his religious beliefs and alienated at least some of the nascent elite. John Fossett, a neighbor, testified on 19 February 1658 that at Mr. Richard Preston’s house, a distinguished gentleman, Fossett and Dr. Lumbrozo spoke regarding the resurrection of Jesus Christ. A devout Christian, Fossett adamantly defended the resurrection of Jesus Christ by saying he was more than a man and his reappearance underscored his divinity thus proving he was God. In response, according to Fossett, Lumbrozo denied the resurrection and instead attributed the vanishing of Jesus’ physical body to his disciples removing it. Then Fossett further stated that all of Jesus’ miracles pointed to his divinity. Possibly irritated with his inquisitor and somewhat flippant, Lumbrozo replied that the miracles could have been performed by necromancy, sorcery or worse as Fossett inferred that Lumbrozo relegated the miracles to trickery at best and demonic activity at worst. To make matters worse, when he asked

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214 Ibid.
216 According to the Oxford English Dictionary, “necromancer” in this context meant “A person who practices necromancy; one who claims to communicate with the dead, esp. in order to predict the future; (more generally) a wizard, magician, conjurer,”
Lumbrozo directly if he intended that implication, Lumbrozo said nothing—but instead laughed. This was more than just an idle conversation. To the men involved with these discussions, the doctor’s behavior probably appeared erratic. Their testimony to the court underscores how appalled they were at Lumbrozo’s beliefs and with how flippantly he supported them. The judiciary concurred with the witness in that Lumbrozo’s behavior was of grave public concern, and responded by charging him with blasphemy.

In a society with as many religious divisions as Maryland, Lumbrozo’s fate was essentially held by whichever political group had governing control. In February 1658, he was charged with blasphemy and forced to place security to ensure his appearance at the next Provincial court. Confirmed under the seal of the Lord Proprietor in August 1650 by Philip Calvert, the General Session of the Assembly held at St. Mary’s passed the 1649 Act Concerning Religion under which Lumbrozo was prosecuted. This act stated that any person who committed blasphemy, either by cursing God, or by denying that the Savior Jesus Christ is the son of God, or anyone denying the existence of the Trinity, would result in death and immediate confiscation of all property. Anyone saying anything reproachful about the Virgin Mary, the mother of the Savior, or the Apostles or Evangelists, was to pay five pounds sterling to the Lord Proprietary for the first offense and for the second would pay ten pounds sterling. A third offense resulted in banishment. Lumbrozo was saved by a decree in March 1658. To celebrate the ascension of Richard Cromwell as Protector of the English Commonwealth upon Oliver Cromwell’s death,
the Lord Proprietary at that moment was Governor Fendal, who pardoned and acquitted all who
stood indicted, convicted, or condemned to die.\textsuperscript{220} Hence, Lumbrozo’s trial for blasphemy was
not prosecuted because the matter was dropped by a gubernatorial decree. As evidenced in the
decision to take the matter to trial and pursue it to the fullest extent of the law, Lumbrozo’s faith
and the fact that this made him different from the other members of the community, made many
members of the colony distrust him.

Further contributing to the creation of difference was Lumbrozo’s nationality. He was
neither from the same country, nor the same ethnic background as most of his fellow colonists.
He was dark skinned; so dark in fact his neighbors refer to him as a black man.\textsuperscript{221} And, he was
from Portugal.\textsuperscript{222} So, presumably, the English he spoke was heavily accented. Everything about
the doctor spoke of difference. So Gold may have initially mistrusted Lumbrozo, at least in part,
because he was so different. In all likelihood, because their cultural references were vastly
different the doctor may have not understood the behaviors, customs, or language of the
members of his household.

Despite all of these barriers between Lumbrozo and the rest of the colonists, his wealth and property enabled him to gain a measure of respect among his neighbors.\textsuperscript{223} He became an English “denizen” of the province of Maryland on 10 September 1663.\textsuperscript{224} In May 1664 the Golds accused Lumbrozo of sexual impropriety. In June the Wilde-Lumbrozo case came before the Maryland Judiciary. And in the same year, roughly three months after the final case in which Lumbrozo was accused of sexual impropriety, the court recorder referred to him as an English subject. Despite repeated attempts at sexual coercion, one of murder, and one of blasphemy, roughly three months later, Maryland men approved Lumbrozo for citizenship. Evidently, the stigma from the multiple cases of sexual impropriety had not permanently impugned the doctor’s reputation. The doctor had successfully diverted attention from his sexual exploits, and they had been re-cast as cases of debt, slander, and spousal privilege. Moreover, in all likelihood, the apparent marriage of the doctor to Wilde not only made the possible charge of rape and abortion vanish but also helped him gain respectability.

Lumbrozo tried to gain access to three different women’s bodies. Manipulation failed him. Bargaining failed him. So he may have believed that the only viable solution left to him was to use overt force. Through the testimony of the neighbors it seems apparent that Lumbrozo desperately wanted a sexual outlet, he had forced his servant woman to lay with him. Perhaps then, the reason that Lumbrozo appeared to have stopped pursuing women was because the need

\textsuperscript{223} For example, in April 1664 Lumbrozo, who avidly participated in business transactions for debt, served as a “Commissioned Appraiser” of Daniel Gordian and was referred to by his title “doctor.” Archives of Maryland Online, \textit{Proceedings of the Council of Maryland, 1658-1666}, volume 53, page 502, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000053/html/am53--502.html}, (accessed on April 24, 2008). Furthermore, Lumbrozo’s reputation as a doctor (and his bill for treatment paid in tobacco and cattle) must have been considerable as the following example demonstrates. Gordian’s widow paid her account for treatment and included: Lumbrozo treated her in his plantation where a cabin was constructed for her use, boarded her and her maid, and fed them from October 20 1663 to October 1664. For his services as a lawyer, doctor, and overseer of the estate Gordian paid a huge bill: 1800 pounds of tobacco. .” Archives of Maryland Online, \textit{Proceedings of the Council of Maryland, 1658-1666}, volume 53, page 503,
that drove him to it had been satisfied. He made no more propositions to women, or their husbands, because he had a wife. And, their later marriage virtually justified their earlier sex. Although Lumbrozo had a history of trying to sexually coerce dependents in his household, he was consistently cleared of any wrong-doing even though incredible differences substantiated him as an outsider.

Sex, Economics, and Another Sexual Attempt

Lumbrozo’s behavior reveals that he believed that the rights to women’s bodies were held by men. In the exchange with the Golds, Lumbrozo approached the husband, John, not Margery Gold who would be the active participant, in his proposed transaction of sex for money. Men controlled property transactions so conceivably the doctor went to John Gold because Lumbrozo considered Margery’s sexuality as property controlled by John. Furthermore, the doctor’s behavior suggests that he conceived of sex as a marketable service to be traded and used in exchange for services rendered or, as in the case of the Hammonds, in exchange for debt.

The incident with the Golds was not the first time Lumbrozo sought to barter for sex with a married woman. In 1662, a year before the incidents with Wilde and Gold, Lumbrozo approached another woman and eventually her husband, to satisfy his desire for sex. Lumbrozo felt at liberty to proposition (if not coerce) those in some way indebted to him in order to force them to acquiesce to his desires. Hammond was indebted to Lumbrozo for roughly 1000 pounds tobacco, for such things as sugar, rum, and two turkeys. Lumbrozo brought a suit against Hammond for failure to pay his debt, but Hammond claimed that Lumbrozo inflated the debt and


224 Ibid.

225 For a good discussion on how women were treated as property and the differences between married women (femme covert) and single women (femme sole) in relation to the law see Linda Kerber’s, Women of the Republic : Intellect and Ideology in Revolutionary America (Chapel Hill, N.C. ; published for the Institute of Early American History and Culture by The University of North Carolina Press, 1980).
so refused to pay. Only in the midst of this trial for debt that Lumbrozo precipitated, and in the testimony of witnesses who testified on behalf of the defendants, did Lumbrozo’s misconduct come before the court.

The terms of the original agreement between Hammond and Lumbrozo and the subsequent disagreement were expressed in the testimony of the various witnesses. In testimony offered by 24 year old William Price in August 1662, Price swore that he witnessed the interchange between Hammond and Lumbrozo in which Hammond agreed to pay for the sugar and rum and Lumbrozo agreed to charge Hammond only the cost of what he paid—and no more. Furthermore, the two turkeys were not part of the original agreement. Lumbrozo brought them to Hammond’s home, and when Price asked Lumbrozo why he did so, the doctor replied that he gave them in “satisfaction” for the services performed by Mrs. Hammond—she made and washed his linen.226

John Hammond testified that he had indeed bought several goods from Lumbrozo and that the two men had agreed that Hammond would repay him at the next crop. According to Hammond, Lumbrozo had been “professing very much kindness and several extraordinary courtesies to him.”227 Perhaps Hammond thought the court would be surprised at the arrangement and needed to give explanation to the extraordinary benefit he was to receive, while Lumbrozo stood to make no profit. Hammond evidently thought the arrangement was one made between friends. But, in his testimony before the court he revealed that he quickly learned Lumbrozo was no friend to him. The doctor repeatedly visited Hammond’s home and overheard

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“some discourse dropped from his wife and the said Lumbrozo” prompting him to bar Lumbrozo from his home.\textsuperscript{228} Perhaps Hammond had overheard Lumbrozo solicit sex from his wife, or possibly Lumbrozo sought an agreement with Hammond directly. Most likely, based on further testimony, either Hammond refused and Lumbrozo overpowered and slept with Hammond’s wife anyway, or Mrs. Hammond told her husband about the repeated efforts of Lumbrozo to gain access to her body. Either way, Hammond banned Lumbrozo’s access to his property.

It appears that Lumbrozo sought to create a dependant relationship in which he gained entitlement to Mrs. Hammond’s body through coercion. His intention seems to have been to make the Hammonds so indebted to him they would agree to the proposed sex transaction. Lumbrozo initially sought to gain their respect and gratitude through a beneficial business deal and by becoming friends. When this failed, Lumbrozo applied economic pressure. Barred from access to Hammond’s property, Lumbrozo began demanding payment sooner than was expected and for more than was agreed upon. Hammond testified that Lumbrozo spread the word among the neighbors that Hammond had defaulted on his debt. Moreover, Hammond further testified that Lumbrozo spread rumors that he offered the doctor his wife’s body to satisfy the debt and “broached the same so confidently and frequently that it became a general discourse and hath so blemished your petitioner that he is become the byword and scoff of many”--severely hurting Hammond’s reputation so that his livelihood was in jeopardy.\textsuperscript{229} Then, because Lumbrozo had taken the matter of their indebtedness to court, Hammond counter-sued by addressing the court and asking them to award him reparation for slander. This may be an indication that Lumbrozo knew that trying to contract for sex was socially unacceptable and risky to his own reputation and community standing. One can only speculate that Lumbrozo was deeply affronted at the

\textsuperscript{228} Ibid.

\textsuperscript{229} Ibid.
Hammonds denials and sought some means of retribution, such as wounding Hammond’s reputation. Though some disagreement existed regarding who proposed the arrangement, the consistency of the witness testimony revealed that contracting for sex with a married woman was socially unacceptable to most seventeenth-century Marylanders and that there were limits to male entitlements. Evidently, a married woman could not be prostituted without the parties involved receiving public scorn.

The testimony of the some of the neighbors is fractured and only partially recorded, but enough of it exists to suggest what happened after repeated offers for sex in lieu of the Hammonds’ financial debt. Mrs. Hammond grew weary of fighting off the unrelenting doctor and finally acquiesced under duress. Witness testimony records Mrs. Hammond as having offered her assent and consented at last. Yet another man, Walter Pakes, testified that he personally heard Dr. Lumbrozo say Hammond offered his wife’s body in satisfaction of a debt. Pakes confronted Hammond on his behavior and received a very different account than he had heard earlier. Altogether, the witness testimony confirmed Hammond’s claim that Lumbrozo had used the forum of community gossip to slander his name. Lumbrozo intimated to neighbors and business associates that Hammond was a risky business associate who had used his wife’s body as a form of payment in lieu of legal tender or pounds tobacco. Lumbrozo made an explicit slur: because Hammond was a poor financial manager and could not pay his creditors, he offered his wife to work off the debt in his stead. Lumbrozo sought to hurt Hammond financially and psychologically—both ends achieved by attacking his identity as a man. Again, one wonders if perhaps the real reason Hammond was upset with Lumbrozo was less due to illicit sexual relations with Hammond’s wife and more due to Lumbrozo significantly hurting his standing among possible creditors.
Lumbrozo fully acknowledged having lain with Hammond’s wife and appeared to harbor no regrets. Before the court, Hammond related that when he asked the doctor why he gave Hammond’s wife an “elle of fine Holland” Lumbrozo replied it was made in payment for the times he had lain with her. Mrs. Hammond had received expensive cloth and two turkeys from the doctor in exchange for multiple sexual encounters. She may have offered her consent. However, as in the case of Margery Gold and his servant/wife Elizabeth Wilde, the doctor’s relentlessness and his proclivity to use force in attaining access to women’s bodies most likely casts this incident as one of coerced sex in which Mrs. Hammond had little choice but to comply. And the payment Lumbrozo made was most likely not an agreed upon, negotiated price made before-hand, but instead was a token offering given by the doctor after he had forced himself upon her. If the price had been agreed upon before the incident Hammond discovered, the fee for this incident would have been included in the reduction of the rum and sugar the Hammond’s already owed. Most likely, Lumbrozo would not have brought the cloth and turkeys as extra payment. After making the discovery, Hammond called Lumbrozo a rogue and a villain and had told him to stay away from his home. Lumbrozo responded by telling him that “if you and I be partners you must not take notice of it.” Lumbrozo realized the leverage his position as a business associate afforded him and tried to strong-arm Hammond to bend to his will. Lumbrozo must have believed that economic power gave him the ability to trump Hammond’s right to deny access to his wife, thus revealing that both men--indeed most if not all of Maryland men--were well familiar with the relationship between respectability, economic power, and agency.

Various witnesses testified that Lumbrozo reported to them that it was Hammond who originated and articulated the idea of using his wife’s sexuality to repay his debt to the doctor,

230 Ibid.
231 Ibid.
thereby assigning authorship of the proposal to the Hammonds. In an effort to keep the matter from going to trial and arousing public scorn, Lumbrozo sought to distort the events and the various parties consent. Unfortunately, it appears that the court recorder was unable to keep pace with the some of the witnesses’ testimonies and gaps exist in the record. Therefore, the contents of certain sections can only be speculated. Despite these limitations, the content of the witness testimony confirmed that Hammond refused any further payment to the doctor. One of the neighbors came before the court and testified he was told by the doctor himself that the doctor had been to Hammond’s home to demand payment and had been told by Hammond that the only payment he would receive was the chance to lay with his wife. According to Lumbrozo, said the witness, if the doctor refused this payment he would receive no other. Lumbrozo was most likely the originator of the proposition. He had tried to have sex with Hammond’s wife and probably viewed this as an exchange of services—she gave him sex, he gave her token consumer goods. Hammond probably did not agree to a repayment of their debt through sex. In all likelihood, once Lumbrozo presumed upon Mrs. Hammond for sex Hammond reciprocated by saying Lumbrozo’s presumption was all the payment he would receive from them. Therefore, the Hammonds had not originated the agreement but felt so aggrieved that they swore to withhold payment of any other kind.

In the end, the court believed Hammond had been wronged and awarded him damages accordingly. Hammond received 5,000 pounds of tobacco from Lumbrozo, in addition to the cost of the trial. Lumbrozo received nothing and actually lost money through the judicial process. Hammond had persuaded the court that his livelihood had been irreparably harmed due to the rumors Lumbrozo spread regarding both his conduct and his wife’s. Lumbrozo made it appear that Hammond could neither control nor protect the members of his household from another

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232 Ibid.
man, and thus called into question Hammond’s manhood and his trustworthiness. Most importantly, the court was persuaded that Lumbrozo attacked and damaged Hammond’s business credit. The court held Lumbrozo responsible for liable because of the effect his behavior had on John Hammond, not on Hammond’s wife. In this trial, as with the investigation involving Wilde, the victimization of the woman had been lost.

After the Trials

Lumbrozo was dead by late 1665, and the contents of his will reveal he created a sizeable fortune and evidence of friction between him and his “wife” Elizabeth Wilde. It seems Lumbrozo had tried to strong-arm Wilde into recognizing his ability to control her, even as he forced her to take control over his estate. Lumbrozo’s will promised to give her everything if she became the “executrix” of his estate, but only her legal thirds if she refused. In that case, the rest of the property reverted to Lumbrozo’s sister in Holland. Thus she would be rewarded with much if she obeyed his wishes, but would only receive her widow’s thirds, her right by law, if she refused. In the end, Wilde complied and served as the executrix of his estate but not before she exerted one last play in the struggle over agency. In May 1666 Wilde formally assumed the administration of Lumbrozo’s estate—but not as Elizabeth Lumbrozo. After Lumbrozo’s death, she married one of the witnesses in the Wilde-Lumbrozo investigation, a man to whom she ran for help when Lumbrozo attacked her over two years earlier. And it was this man, John Browne, not Lumbrozo who claimed Wilde’s child as his son and heir.

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234 Will of John Lumbrozo, Folio 249, Liber 1, Probate Records, Maryland State Archives Reference and Research, Maryland State Archives, Annapolis Maryland.
After the doctor’s death, Wilde had her ultimate revenge: she bore Lumbrozo a child but the identity of this child was wholly divorced from Lumbrozo. Desirous of respectability and wealth, the doctor died believing he left no heir with whom to entrust his estate. The son, John, was born in June 1666. The court later recorded the birth of baby John in June 1666 and noted that he was the son of recently deceased John Lumbrozo. This was the only time John was legally recognized as Lumbrozo’s child. Perhaps, with the speed in which she remarried and the timing of the child’s birth, there was some question about the identity of the child’s father. Whether Wilde initially tried to assign parentage of John to Browne or simply chose to not fight to make Lumbrozo’s name continue, Lumbrozo’s name died with him. Instead of Wilde’s son John acting as John Lumbrozo’s sole namesake, he was John Browne’s. When John Browne died in November, roughly five months after baby John’s birth, the will he left recognized the baby as his son. Browne allotted his wife Elizabeth 100 acres and divided the rest of his extensive lands between his brother Gerard and his young son, with the proviso that in the event his young son die before reaching adulthood, Gerard would inherit the child’s share. While satisfaction may have come long after being raped, and only after she was then victimized again by having little choice but to become the wife of her provocateur, Wilde was able to exert some degree of agency. Lumbrozo may have had the use of her body without her consent, but she determined that he would have no namesake.

Conclusions

Though contemporaries would not have used the term, after the incidents with Mrs. Hammond, Mrs. Gold and Wilde, today Lumbrozo might be considered a serial rapist. He sought a variety of

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237 Ibid.
ways to encourage women to submit to him. He used bribery, trickery, force, and possibly even drugs—each time learning a better means of evincing the outcome he desired—to get a woman to have sex with him. Lumbrozo’s experience with Wilde was not a mistake made by an over-eager lover, nor was he a man who made a momentary lapse in judgment. In light of the experiences of Mrs. Hammond and Mrs. Gold, Lumbrozo appeared desperate and calculating but still wedded to the idea of (at least initially) attempting to gain some sort of permission. Lumbrozo was also resigned to the idea that he would never entice a local woman to sleep with him willingly. Hence, he seemed desperate—never quite able to break through the stigma of him being an outsider by, birth, language, religion, and his treatment as a black “other.” He also appeared, in light of the other attacks, as cold and calculating. In three different incidents, accounts of sexual aggression were indicated in witness testimony heard by the judiciary. And, in each of the incidents the crimes were downgraded to lesser crimes. The first act resulted in Lumbrozo simply paying a fine. The second incident was stopped by both sides agreeing upon a settlement. Lumbrozo successfully stopped prosecution of the third occurrence by marrying the chief witness against him. Each time, Lumbrozo appeared to have gained a little more insight into how best to proceed in protecting himself against prosecution.

Probably through trial and error, Lumbrozo also appears to have gained a better understanding of how to best proceed in order to obtain what he wanted from each of the women: the use of their bodies. In the instance with the first woman, Mrs. Hammond, Lumbrozo approached the couple as a creditor seeking payment. He approached her and her husband, and the matter of sex, from a transactional perspective. He made business deals in exchange for sex; he gave goods or services in kind. Perhaps, at some point, he even suggested that she could work off some of her husband’s debt to him. Whatever his belief about the effectiveness of this
approach, or its acceptability in colonial Maryland, it failed horribly. While he may have had some success in persuading Mrs. Hammond to lay with him, in the end the legal repercussions far outweighed any of the few small gains he may have made.

In the same way that elite Maryland men created difference in these incidents by limiting women’s ability to execute the law, powerful elite men further supported their superior status to women in their different treatment of men and women in incidents of sexual coercion. The practice of failing to prosecute crimes of rape and downgrading them to less serious crimes, or simply ignoring the allegation all together without investigating, was widespread. Even when the attack ignited a sequence of events that lead to another kind of trial, the rape, as far as redress for the injured woman was concerned, never occurred. Instead, cases centered on the ways in which men had been injured. Incidents of sexual coercion came before the judiciary in terms of breach of contract, slander, inability to fulfill a contract, and the like. That women were either held responsible or had their concerns ignored (despite their resistance to the sex), indicates that even when the judiciary was legally obligated to stand as an absolute patriarch in lieu of an absent or unwilling one, in these cases elite men chose to abrogate this responsibility when so doing might jeopardize male superiority. Instead, the judiciary consistently acted in ways that complimented male superiority, underscored social and economic difference, and ultimately propagated the agendas of middling and elite men.

This absolute male privilege was never truly actualized because (though limited) women and subordinate men found ways to express agency. People who appeared to lack any control over their lives, at least officially, actually proved able to exert great control. Wilde had been assaulted, drugged, and virtually forced to marry a man who had behaved abominably toward her. However, women such as Wilde still exhibited tremendous agency. She denied the doctor
two heirs—one she aborted with ratsbane and the other by allowing Lumbrozo’s paternity to be eclipsed by that of her second husband. When Lumbrozo died, his name and all associated wealth died with him. In denying him children with whom he could leave an inheritance, she denied Lumbrozo the ability to fully actualize his patriarchal privilege.

The incident between Wilde and Lumbrozo differed from that between him and the Hammonds and the Golds most importantly in that no physical evidence resulted from the first two encounters to indicate any sexual misconduct. This was not the case in respect to Lumbrozo and Wilde’s sexual interchange. Lumbrozo had forced an unmarried servant-woman to lay with him. She had no husband to respond to her cries of refusal and thus force Lumbrozo to stop. The fact that she became pregnant, with what little contemporaries understood about the nature of pregnancy, was concrete evidence that penile penetration occurred. Nevertheless, as alluded to earlier, pregnancy also immediately transformed Wilde from a victim to a willing accomplice. The pregnancy signaled pleasure and pleasure invalidated an allegation of rape. And, as evidenced in her behavior (probably believing that the only justice she would receive was by her own hand) she aborted her first fetus, implicitly stating that she took no pleasure and desired no child from her encounter with Lumbrozo.

As Wilde’s response shows, men and women were able to exercise some degree of agency over their bodies even when they appeared, at first, to actually possess very little. At first glance Maryland appears to be a two-tiered society: the planter elite who exercised control and the servants who were controlled. But this picture is an oversimplified perversion of the complicated dynamics at play. Not a unilateral struggle over authority, men and women in colonial Maryland lived in a negotiated existence where individuals from a variety of backgrounds and agendas struggled for—and achieved—agency.
CHAPTER 5: COERCED SEX AS FELONY RAPE

The Five Stories

Martin Kirke’s wife, Mary, claimed that a man of good reputation in the community raped her. As a whole, however, this case operated more as a way to address Mary Kirke’s previous bad behavior, than as a way to seek recompense on her behalf. As Martin Kirke was unable to control his wife in other incidents, the court chastised her by giving short shrift to her claim that Marke Phepo had abused her sexually. Only the Kirkes lost money, as they had to pay for court costs.

By contrast, both Frances Billingsley and his wife Ann were well respected members of the community and when she charged William Key with rape, her prior good conduct, and her husband’s reputation forced the judiciary to respond. They could not simply dismiss the charge. However, the court charged Key under an earlier English statute that allowed a means of obtaining a pardon for rape. This means of pardon—proving literacy and then being branded in the thumb—had recently been forbidden in England. In the end, the petty jury found Key not guilty and made this means of escaping capital punishment irrelevant.

The third fellow, Humphrey Jones, appeared before the Provincial Court to answer for a charge of rape against Mary Smith. Jones, a member of the elite, was charged with a crime that supposedly happed more than a year and a half prior to the court proceedings. And though the final verdict was “ignoramus” (literally, we do not know) the real point to these proceedings was to chastise a man who had previously uttered treasonous words against Lord Calvert. Thus the trial was more of a show of the strength of Calvert’s power—and a way to get this wayward planter back in line—than to seek justice for a woman wronged.

Another incident revealed what happened to a man even if he were found guilty. In October 1688 the court recorder only mentioned that Joseph Spernon, who was from Cecil County and recently convicted of rape, was granted a pardon.\(^{238}\) Nothing else, not the reason for the pardon, nor the legal justification permitting the reprieve, were included in the court documents. Spernon was pardoned because he had met the requirements for benefit of clergy—he had proven literacy by taking a book in hand and reading a section aloud. Even when faced with a man that colonial juries believed had raped a woman, as evidenced in the fact that the petty jury convicted him, some Maryland men were still unwilling to sentence a man to death when they were convinced only that he had had illicit sex with a woman. In keeping with this aversion, the Maryland council awarded Spernon a pardon in 1687.

The last incident investigated within this chapter centers on that of Long Thorn, a Pocomoke Indian man, who was accused of raping an un-named white woman directly following a tenuous peace treaty re-establishing trade reached between a group of Nanticoke Indians and the council. As a result, the dynamics created by the treaty influenced the actions of all concerned and probably provided the Pocomoke with an opportunity to portray the man’s involvement with a white woman to the benefit of the Pocomoke.

Introduction

The five incidents outlined in this chapter are the entire body of rape cases that men of the Maryland elite addressed as actual rape cases. In none of the cases was the accused man condemned to death for rape even if, as one instance suggests, he was found guilty. By treating rape as a pardonable offense, the Maryland justices created a legal space in which a woman could accuse a man of rape, the man be found guilty, and he could avoid capital punishment. Doing so allowed prosecution when the accusation the court was not dismissible. After 1668 trying rape cases under the earlier statute (which permitted benefit of clergy) became the norm as it contained an escape clause that virtually all accused men could employ—barring that a man had not previously used this means of obtaining a pardon. In consequence, as these five cases reveal, Maryland juries resisted condemning men to death and the justices were apt to use the cases to address breaches in the social hierarchy. When these two designs conflicted, the justices devised creative ways of interpreting the law.

The first case from this section examines an incident from 1654 involving an alleged rape on Mary Kirke by Markes Phepo. The justices treated the accusers, Mary Kirke and her husband Martin, as the party needing official discipline. In previous cases, Martin Kirke showed himself unable to control his wife and had allowed her to run amok. Through her bawdy and brute behavior, Mary Kirke directly threatened the social hierarchy with her illicit use of force and he indirectly jeopardized the stability of the colony as he permitted her to do so. In the same session which heard her accusation, witnesses confirmed that she recently struck another woman of the same class and threatened bodily harm to two different men. She exhibited a pattern of violence. Moreover, she challenged the social hierarchy by bucking her husband’s right and responsibility in addressing the couple’s legal affairs, and she challenged the judiciary’s ability
to mete out justice by taking into her own hands punitive measures against perceived injustices against her or her family. Once the judiciary heard her allegation of rape, however, the justices and jurymen chose to use the incident to exercise control over a woman who implicitly attacked both her husband and judicial authority. Instead of punishing a landed man for rape, the justices used the opportunity the case provided to underscore the limits of a woman’s power and the expansiveness of male privilege. Though the incident appeared before the judiciary as an investigation into rape, the matter remained un-pursued, the case dismissed, and the alleged victim received judicial censure instead.

The second case in this section concerns a 1668 case in which Ann Billingsley (wife of Francis Billingsley) accused William Key of rape. Like the Kirke/Phepo case, this case was one in which the wife of a member of the planter elite accused another planter of a capital crime. Unlike the Kirke/Phepo case, Frances Billingsley revealed himself to be a man wholly capable of managing his affairs both internally within his household, and externally in his business transactions. Unlike Mary Kirke, Ann Billingsley appeared to yield to the governance of her husband. Billingsley presented herself to the court as an obedient, dutiful wife. She created no threat to society that needed to be addressed, as had Kirke. Consequently, as a result, the charge of rape was not so readily dismissed. A complex problem originated as a result of Billinglsey’s accusation. She had managed to make the incident one of public record, and the reputation of both Billingsleys created an environment in which the justices needed to investigate. Elite men of Maryland were uncomfortable condemning a man to death for rape. Thus the solution of the justices was to adjust the charge. They elected to try Key under the statute of Westminster II, 13 Edward I, from 1285, the first statute regarding rape which made the crime a felony but allowed

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for benefit of clergy.\textsuperscript{240} A clergyable offense was one in which if a man was found guilty, but could read a scripture passage in court, the justices traded execution for branding with the letter “t” on his hand. Benefit of clergy was an escape clause harkening back to medieval times in which the clergy were tried in ecclesiastical courts. In the seventeenth century, this simply meant that if a man could read, or memorize a passage, he could get a free pass—but only once. By not charging him with the more recent statute (passed in 1575) that explicitly removed benefit of clergy the justices had decreased the seriousness of the crime and effectively assured that Key be freed even if the jury felt compelled to find him guilty. In this action the judiciary significantly deviated from the accepted legal practices in England. Regardless, even though the jury did not convict him, Billingsley was able to force the court to accommodate her with some redress.

This creation of legal space supports the interpretation of Warren Billings, who argued in his article “Pleading Procedure, and Practice: The meaning of Due Process of Law in Seventeenth-Century Virginia” that the process of law in seventeenth-century Virginia was a deliberate modification of British custom. He suggests that while colonists did not wholly change the criminal due process, they did alter it somewhat to fit New World experience, thus allowing for the creation of indigenous customs. Billings claims that “examining ideas peculiar to English law therefore shows something of how this part of English culture was transplanted to the Southern Chesapeake, how the settlers there molded it to the region’s requirements, and how their adaptations eventually contributed to the generation of an indigenous culture.” He attributes

the behavior of the Virginians, in respect to their attitudes towards the law to the following: “Crime was much rarer in the colony than the controversies that led to civil actions. Moreover, the content of that civil litigation was, in a sense, more important than the threat posed by the drunkard, the runaway, or the fornicator, for it comprehended the colonists’ valuables.”

This study of Maryland argues that colonists used English common law and similarly to Billings’ findings on Virginia, modified its application and interpretation to best fit their circumstances. However, the research in this study leads to findings at odds with Billings’ as to the reason for the divergence from English forms. Marylanders were deeply concerned by any subversive threat which might jeopardize the patriarchal social hierarchy. And, they took steps, including the creation of policies at odds with those employed elsewhere in the empire, to support the aims of patriarchy.

Another case of rape appeared before the judiciary in 1671 in which Mary Smith cried rape against Humphrey Jones. As the crime had been uninvestigated for roughly a year and a half, and though the trial proceeded as one of rape, the trial was probably an effort to exercise control over a misbehaving planter who had recently and quite vocally uttered treasonous speeches against Charles Calvert, the Lord Proprietor. Rape accusations appear to have offered the justices, of whom Calvert appeared as chief justice, a tool to demonstrate the strength of government and was thus a show of official authority. While the grand jury returned their verdict as “ignoramus” (we do not know) for the alleged rape, the matter of the treasonous words was drawn out for roughly six months. The rape allegation coupled with the sedition charge allowed Calvert to underscore his hold on the government, and display in a very vivid sense that

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Jones’s future depended on Calvert’s good will. As a consequence, the rape trial was less a matter of achieving justice for a woman wronged, and operated more as a movement to reinforce the social hierarchy—while possibly allowing Calvert a moment of personal revenge. Hence while no man was ever executed for rape, the trials of such could afford the justices with a powerful tool for achieving more important socio-political agendas.

The last two incidents of rape in this chapter are included together in the last section. Both occurred in the 1680s and were heard before the Council of Maryland. Joseph Spernon appeared before the Council in October 1688 and was granted a pardon in accordance with the statute of Westminster II, 13 Edward I, from 1285. Spernon had successfully pled benefit of clergy, further showing that Maryland justices and juries involved in incidents of coerced sex were consistently unwilling to hang a man for rape. His case also shows that trying a man accused of rape in accordance with the earlier clergyable statute had become an accepted part of Maryland legal jurisprudence. The other instance involved a Native American accused of raping a white woman. Directly following a meeting with a contingent of Nanticoke Indians that re-established peace and trade with the colonists, a group of Pocomoke Indians pre-empted the prosecution of illicit sex against a native man and brought the incident to the attention of the council. In so doing, the Pocomoke controlled who, when, and how the matter was handled, thus probably intentionally manipulating the outcome of the case. The Pocomoke achieved a measure of accommodation from the English colonists through the outcome of the trial; by finding the accused man guilty of illicit sex, not rape, the council granted the Pocomoke legal parity.

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As these cases suggest, the economic and political status of a woman’s male legal guardian and the status of the accused factored into the specific charge as well as the verdict, thereby establishing differences in the legal system according to a man’s position within the patriarchy. The real concern the Maryland judiciary addressed was that of women and non-elite men infringing on elite male privilege. Even with the judicial system stacked so heavily against them, non-elite men and white women exercised moments of independence and agency, both in, and outside of, the courtroom. White women and non-elite men had some ability to resist the absolute prerogative of the judiciary and even used the prejudices of the judiciary to achieve their own ends.

Blaming the Victim or Falsifying an Accusation: Responses to a Willful Elite Woman

In December 1654 Mary Kirke, wife of Martin Kirke, spread rumors that Markes Phepo had raped her. As a result, on December 5, 1654, in Patuxent, Maryland the Provincial Court proceeded to investigate the rumors and heard the evidence against both Kirke and Phepoe. The justices then declared the following verdict “nonsuit is granted unto Markes Phepo” . . . “in an action of rape with cost of suit”.245 No mention of the grand jury or petty jury trial being summoned appears in the record, as the case never advanced past the initial stages of investigation. The nonsuit verdict indicated that the judges believed the accuser provided insufficient evidence to prove her claim. In essence, the justices ruled the accusation groundless.

At the outset, this appears to be an incident involving a rape on Mary Kirke, wife of Martin Kirke, and committed by Markes Phepo. Phepo and Kirke’s husband were part of the same class of landed men through Phepo was the more affluent and as a result occupied a sphere

of greater respectability and importance. Martin Kirke transported himself and his wife to Maryland from England in 1651 when he was 35 years old. Marke Phepo also similarly transported himself and additionally held the distinction of being a sergeant and had served on a jury earlier in 1654.246 Neither man arrived in the colony as an indentured servant—both had sufficient funds to finance their own passages.247 The accusation levied by Kirke against Phepo was between two landed elite men. Their similar class standing suggests one possible reason why the judiciary failed to advance the case to trial. Nonetheless, the behavior of the justices indicates that they were more willing to believe Phepo had been grieved than Kirke. After delivering the judgment the justices then addressed Martin Kirke, and his wife, and ordered that the two put up security for their appearance at the next court. Evidently, the justices were well familiar with the disruptive behavior of the couple because the justices ordered the Kirkes to place security for their good behavior, “to all people but in special to Mrs. Bonifield.”248 Not only did the justices dismiss the case entirely, but they responded by also investigating the behavior of the Kirkes.

Kirke may well have been raped, because women who used violence in order to legitimate their authority were vulnerable of being attacked with a measure of force greater than the degree they used. As a result of a previous incident in which Kirke reportedly struck Phepoe, he may have raped Kirke as an act of retaliation. Though women could extend the authority of their patriarchal heads they did so with caution, and only successfully in a legal sense when

compromising over disagreements or by having the judiciary work for them. They could not successfully punish a misbehaving servant, or much less a man of rank, without some sort of expected reprisal. Kirke overstepped her bounds in striking Phepoe and was vulnerable to a number of legal and extralegal consequences. Regardless of what Phepoe may or may not have done to her, the witness testimony and the conduct of the judiciary seems to indicate that contemporary Marylanders were more concerned with Kirke’s flagrant disregard for the social order.

Kirke’s actions negatively reflected on Martin Kirke by presenting him as a man who was wholly unable to control his wife. Not only did he need to pay for his own security but for his wife’s as well. In the testimony heard before the court, one of the witnesses testified that Kirke was a vicious brute prone to physically attacking and slandering other men and women. So, she was well-known for striking and slandering both women and men. Rebecca Hall swore that she “saw the marks of the blows which Martin Kirke’s wife gave Mrs. Bonifield,” that the marks were as “broad as your deponents hand” and that Mary Kirke “called Mrs. Bonifield [a] whore.”

Kirke had slandered and struck Bonifield presumably over a disagreement between Bonifield and Kirke’s husband. Two observations can be made from Kirke’s outburst on Bonifield and the subsequent handling by the judiciary. First, as evidenced in her behavior, Kirke believed she had a right to address perceived injustice against Bonifield. Regardless of whether Kirke actually had the legal ability to address Bonifield, her behavior reveals that her sense of

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justice trumped all other standards. By her attack on Bonifield, Kirke revealed that she also believed her husband to be ineffective in his ability to attend to his own legal and financial affairs. If she had confidence in her husband’s ability to satisfy whatever grievance caused the dispute between him and Bonifield, she would not have sought out Bonifield and left bruises on her. By taking the law into her own hands Kirke indicated that she believed that whatever punishment/recompense her husband could gain was insufficient. Moreover, as Mary Kirke’s attack on Bonifield was extra-legal she implicitly called into question the judiciary’s ability to mete out justice. Not only was her husband unable to provide adequate satisfaction, but neither could the judiciary. Thus Kirke’s attack on Bonifield was more than just a physical attack on a neighbor. It was a threat to both her husband’s authority and the male-controlled judicial system’s.

Directly following Hall’s deposition, Christian Bonifield addressed the court herself and stated that when she was at the house of Marke Phepo, Kirke viscerally slandered Potter, another of Kirke’s bordering neighbors. Kirke vowed to “hang that rogue Potter” for the information she had about him was so awful that she would make him desire a hangman, but before she allowed him any reprieve, she “would hang him herself.”251 Regardless of what the disagreement was over, Kirke had brazenly threatened a man. Like the disagreement with Bonifield, this one was over business, in this case specifically involving corn. Potter’s plantation bordered the Kirke’s plantation, and Kirke evidently believed that she had a right to corn they planted, but that grew beneath her neighbor’s fence. Hall testified that Kirke told her that “she followed Potter from her house. . . to his own fence and took up her corn under Potter’s fence.”252 The court, however,

252 Ibid.
saw matters differently and demanded that the Kirkes pay Potter. Kirke’s outburst against Bonifield and even against Potter, in her mind, may have been completely logical—she had been wronged; men had not dealt with it correctly; she acted accordingly. The woman who stood before the judiciary was no stranger to making threats against landed men. And, most likely, the justices and members of the jury were well aware of her actions. Moreover, as all of these incidents of Kirke’s wanton behavior were heard by the judiciary at roughly the same time as the accusation of rape, the justices’ opinion of Kirk must have been significantly shaped by the overwhelming testimony of her misbehavior. Thus the justices must have viewed Kirke as the dangerous social element, not Phepoe.

While the testimony of Bonifield, Hall and Elizabeth Potter all cast doubt on whether Kirke had ever been raped, Potter’s testimony may have been the most damaging to Kirke’s claim. Heard after the testimony depicting her as a violent, uncontrollable woman, another witness cast doubt on the truthfulness of Kirke’s assertion. Potter testified that on an occasion when Mary Kirke came to the house where Henry Potter and Rebecca Hall lived, Kirke began engaging in a wild rant.253 According to Potter, Hall challenged Kirke’s claim that Markes Phepoe came into Kirke’s house where she beat him. Kirke responded by saying “she would do worse [than just beat him] for he came and flung her upon the bed” where she was only able to stop him through the force of her sword. Neither woman was apt to believe her; both women challenged her claims which ultimately resulted in Kirke recanting.254 The women caught her in a lie and then forced her to deny everything. Kirke’s claims of rape were met with doubt from more than just the justices: even the women in her community disbelieved that any unjustified wrongdoing had befallen her.

253 Ibid.
254 Ibid.
This case shows that the judiciary seemed ready to believe testimony discounting Kirke’s claim of rape, despite her social position. Regardless of a woman’s rank, she was bound by the same social norms that placed a woman under the control of a man, whether it was her husband, father, or master. The court might have reached a different outcome had she been both a member of the elite and conformed to contemporary standards of appropriate behavior. Women who challenged male governance were outside of the norms of acceptable behavior. As a result both the judiciary and the community functioned to punish them, through not always through official legal channels. The woman’s behavior, in this case, communicated a desire to act outside of the control of her husband and the judiciary. In response, the justices withheld their protection (in their lack of prosecution of a possible attacker), and the female witnesses recast her as an assailant, possibly guilty of slander. Ergo some women accepted and supported the social stability brought by adhering to the social hierarchy.

Moreover, this case also reveals the ways some women resisted male domination. Some wives of elite men—and therefore themselves members of the elite—could (and did) challenge the authority of their husbands and even the governing elite. Not all women blithely accepted that their husbands, as men, were sound financial managers. Some, like Marke, were ready to use a fist, a sword, or their tongue to get the results they wanted. And, the fact that the accusation was heard before the court is itself an indication of a measure of accommodation in response to her resistance. The justices could have simply elected to ignore the matter completely; but they did not. Regardless of whether or not the rape actually happened, or was even pursued by the court, her accusation had become a matter of public record. And, even if the matter was not pursued by the court, the fact that community women took issue with her assertion reveals that it had become part of the community gossip and was of some importance. As she was never
ordered by the court to publicly apologize, no motions were made to soften the blow that must have consequently effected Phepoe’s reputation. Thus, though she received no legal redress through the court, and was even somewhat castigated for her behavior, she did achieve a measure of satisfaction through extra-legal means.

Whatever other social and legal ramifications may be visible through this case, the outcome reaffirms the pattern of sexual coercion and accusation in early colonial Maryland, as evident in felony sex crimes, heretofore argued. Maryland men revealed a proclivity to not condemn a man to death for sex, particularly as the line between consent and force was, at least to many, often blurry. As whole, elite men accused of rape tended either to have their cases recast as lesser crimes, or as this case shows, dismissed. And, as this chapter suggests, while a woman’s status might afford her greater protection, in that presumably she had a man to represent her interests, it also presented her with significant obligations to yield to his authority. She could thus invalidate the protection of the court and its desire to grant her justice if she did not conduct herself in accordance with the social obligation to acquiesce to her governing head. Hence the judiciary chose to address the greater social disruption --a rebellious elite woman seemed more threatening than a lustful planter.

An Escape Clause for a Guilty Rapist, or a Measure of Accommodation for a Victim?

In 1668, Ann Billingsley, wife of Frances Billingsley, cried rape against William Key, of Selby’s Cliff, Calvert County. The two men were of essentially the same social position; both were propertied men who had paid for their own passage to Maryland and were fairly prosperous.255

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As Frances Billingsley’s wife Ann (hereto referred to as Billingsley) also bore the distinction of a member of the elite—albeit as a woman. She effectively accused another member of the elite of a capital crime. The charge against Key read as follows: on November 26 in Calvert County William Key allegedly stormed into the chamber of Francis Billingsley and by “force and arms ravaged and knew carnally” Billingsley. When she charged Key with rape Billingsley began a sequence of events ultimately forcing a group of elite men to determine the fate of one of their own.

Unfortunately, no analysis can be made of how their testimony shaped the events of the trial or of the findings of the jury. The court recorder captured none of the testimony offered by the witnesses, and only listed their names: John Kinsey, John Christopher, Ann Birdge and Ann Billingsley. Sufficient evidence, however, existed for the grand jury to warrant advancing the case into a petty trial. The justices simply could have thrown out the accusation, and ignored her charge altogether. Or, like other cases described in this section, the justices could have chosen to redraft the accusation as another kind of crime, charging both Billingsley and Key with adultery, but they did not do that either. Key’s charge was one of rape. Billingsley had, in fact, succeeded in gaining a measure of redress. She had made Key’s attack a matter of public record. No matter what the jury decided as the verdict, she had at least succeeded in forcing some of the men of the colony to consider her charge and then reckon with it. In the end, the evidence available persuaded the grand jury to advance the case as they were convinced that something illicit had occurred; what exactly that something was, however, remained to be determined.

Particularly interesting about this case is that while the Maryland judiciary did not redefine the crime as a lesser charge, in an effort to help the accused, the justices tried the crime

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under an earlier and less severe statute. Possibly, the presence of Billingsley’s husband, Francis, and his positive reputation played a part on the court’s treatment of his wife’s accusation. Francis Billingsley was well respected among the community. He was a wealthy planter, who repaid his debts in a timely manner and collected debts due him in turn. Francis Billingsley thus presented himself as a man who balanced both financial acumen and physical prowess. He was strong, bold, and wholly able to manage the affairs and people in his household. On occasion, he even helped control the community’s problem of wolves threatening their lives and livestock by killing some, for which the Assembly rewarded with 200 pounds tobacco. The judiciary may have been inclined to give more credence to Ann Billingsley because Francis Billingsley was a strong patriarch who controlled his affairs and his wife. Blaming the victim to save the assailant may have been an unacceptable solution in this case because the accuser’s association with her husband gave her a measure of protection.

Instead, the judiciary charged Key with rape under the statute of Westminster II, 13 Edward I, from 1285, which made rape a felony with the benefit of clergy, and not the statute passed in 1575 in the reign of Elizabeth I, which supplanted the earlier act making rape a felony crime without “benefit of clergy.” Maryland men were well-familiar with using benefit of clergy as a defense strategy and often employed it in other crimes that appeared before the

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257 For an example of how Billingsley was regarded by his peers, see the following hearing, where Billingsley was addressed as a “planter.” Archives of Maryland Online, *Proceedings of the Provincial Court, 1679-1680/1*, volume 69, page 282, [http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000069/html/am69--282.html](http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000069/html/am69--282.html), (accessed on February 8, 2008); For an example of how Billingsley pursued court action, and the justices consequently awarded judgment in his favor see the following case from 1680: Archives of Maryland Online, *Proceedings of the Provincial Court, 1679-1680/1*, volume 69, page 284, [http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000069/html/am69--284.html](http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000069/html/am69--284.html), (accessed on February 8, 2008).


259 For a full explanation of rape law and its evolution, see the section 1 introduction.
Provincial Court, such as manslaughter.\(^{260}\) A clergeyable offense was one in which a man could prove he could read and thus gain a pardon. A man could only use this means of pardon one time, which marking him by banding in the thumb ensured. The justices understood exactly the implications of trying Key under the 1285 statute: regardless of the outcome of the verdict, they intended Key to go free, with at most suffering branding. Maryland men were wholly uncomfortable with hanging a man for sex with a woman, even when convinced that some sort of illicit behavior had taken place. And, particularly given his status as a planter, the jury was unwilling to convict a man who in other respects had been a sound manager of his financial affairs. Regardless of the legal maneuverings by the justices on behalf of the defendant, the jury did not convict him. Key never needed to use the escape clause the justices finagled, though the grand jury found sufficient evidence to indict him for rape, because the petty jury found him not guilty.

This case is significant because its analysis suggests a number of correlations regarding the social dynamics between members of the same class, and a woman’s access to the bar. While a man had a measure of legal freedom as a member of the elite, he was not guaranteed absolute legal immunity. A man’s standing in the community and his legal authority could be trumped or challenged by a man of equal or superior standing. Also, in this case the justices were not about to allow rape cases to proceed without ensuring that an accused peer not be hung if found guilty. Moreover, Maryland juries appeared unwilling to convict wealthy white men for sex, but had to accommodate a woman’s husband with a certain measure of redress for his wife depending on

\(^{260}\) See for example the 1663 case of Patrick Due in which he was found guilty of killing a man trespassing on his land, and proved benefit of clergy to avoid handing. Archives of Maryland Online, *Proceedings of the Provincial Court, 1663-1666*, volume 49, page 11, [http://aomol.net/megafle/msa/speccol/sc2900/sc2908/000001/000049/html/am49--11.html](http://aomol.net/megafle/msa/speccol/sc2900/sc2908/000001/000049/html/am49--11.html), (accessed on February 8, 2008).
the status of her husband. A relationship existed between how far a woman could achieve redress before the bar and her attachment to a powerful man. How far a woman was able to seek official redress through the law depended significantly on the reputation of her legal representative. If a woman’s husband was well-respected and a sound manager of his investments, and she avoided controversy, she could charge rape, and compel the judiciary to act, at least to a point.

Man Charged with Rape as a Political Expedient

In St. Mary’s city, on October 17, 1671 Humphrey Jones appeared before the Provincial Court to answer for a charge of rape against Mary Smith. Jones was an important man and identified as a planter from St. Clements’s hundred. Smith was probably an indentured servant, but as the rape was a secondary issue her identity was of little significance. Though he was accused of raping Smith, truly at issue was an off-cuff remark Jones made against the Governor, Charles Calvert. His excellence, Charles Calvert sat as chief justice and Philip Calvert, chancellor, also appeared. Baker Brookes, and Edward Fitzherbert also appeared as justices. The charge accused Jones that “by force and arms an assault did make, upon the body of Mary Smith, and then and there feloniously did ravish and carnally did know” her at W. Robert Sly’s house. Jones was alleged of raping her on January 7, 1670, more than a year and a half prior to the court proceedings. While several witnesses came forth to testify against him, Sly was not among them as he had died in the interim.

264 Ibid.
265 Ibid.
This case, like the one previously mentioned, unfortunately leaves out many of the details of the trial. Again, the recorder only listed those individuals who appeared to testify, not the content of what they said. While Mary Smith, James Kersha, and John Warne appeared as witnesses, with the exception of Smith it is unclear whether the testimony offered alleviated Jones’s plight, or sought to condemn him. Kersha and Warne could have offered testimony that countered Smith’s. The specific evidence the grand jury heard that influenced their decision to declare “ignoramus” (literally, we do not know) is unavailable for interpretation, as is the originator of the charge. Perhaps Smith herself brought the allegation forward and persuaded the court to investigate. Why the delay in prosecution? Roughly a year and a half separate the incident from the trial. Possibly, Mary Smith was an indentured servant. If so, she probably had to wait to bring the charge before the court until she was freed; perhaps she was afraid of a reprisal from her master if she spoke against another planter. Or, more likely, the court may have acted as it did with another servant, Jane Gould, and simply chosen to ignore the allegation. Why then, had the Provincial Court chosen to act on something the county court had previously ignored? Regardless of the victim’s status, it seems likely that the court simply chose to overlook the allegation until it was socially expedient for the Proprietary government to address the allegation, and once Jones had uttered treasonous speech against Charles Calvert the rape trial became a useful tool to demonstrate the strength of the government.

Certain other cues suggest that this trial was less a trial over rape and more a way to punish a misbehaving planter who disrespected the Lord Proprietary. First, when originally

266 The record is silent on her association, but being that no man appears for her, and the recorder fails to include her association to another man, most likely, none was present to appear for her. And, given the popularity of the name “Mary Smith” and given the number of times in the transportation logs “Mary Smith” was “transported”, it seems likely that she was probably indentured; “Smith, Mary” entries, “Supplement to Early Settlers of Maryland,” a compilation of Gust Skordas' *Early Settlers of Maryland* and Carson Gibb's *Supplement to the Early Settlers of Maryland*. Maryland State Archives, [http://www.msa.md.gov/msa/speccol/sc4300/sc4341/html/search.html](http://www.msa.md.gov/msa/speccol/sc4300/sc4341/html/search.html), accessed on November 12, 2007
charged with the rape of Smith, the rest of the charge reads as follows: “and for speaking words against the Lord Proprietary who being called appears.”

Jones was called before the judiciary to answer for two charges: one of sedition for speaking against the Lord Proprietary, the highest government and judicial official in Maryland, Charles Calvert, and for the rape of Smith. Of the two charges, the one addressing Jones’s words against the Proprietor appears to have been the more significant charge as it was more ardently pursued. When the grand jury returned its verdict regarding the alleged rape, written on the backside of the charge was the word “ignoramus.” The rape charge never progressed beyond the initial stage of prosecution, and the jury for all intents and purposes declined to answer a verdict. Because the rape accusation appeared as more of a show of official authority, Jones was forced to endure the mechanisms of government that did not cost him his life but did cost him part of his fortune, as he had to pay for the expenses incurred by the witnesses, and the cost of court.

In the same October 1671 hearing in which Jones was accused of rape and was released, Jones essentially acknowledged his misbehavior in speaking against the Lord Proprietary and then endured roughly six month of being maneuvered by the court. Jones “acknowledge[d] himself to owe unto the right honorable ye Lord Proprietary the sum of forty pounds Sterling” presumably as recompense for speaking ill of Charles Calvert and as surety that he would indeed appear at the next court session to answer for his seditious speeches. Calvert and the other justices could have dealt with the matter then, but instead they chose to drag out the matter to the next court session, increasing Jones’s bill, and ultimately further inconveniencing him in having

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269 Ibid.
to return a month later. Calvert addressed the sheriff of St. Mary’s county and ordered him to ensure Jones returned in the next Provincial Court session to answer for his attack. But, again, on the nineteenth day of December 1671 no one came to prosecute him and he had to wait for the next court session to stand trial.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 16, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--16.html}, (accessed on February 8, 2008).} Again he gave bond for 20 pounds sterling, with two sureties. When the court finally reconvened in April 1672 this time as well no one appeared to prosecute him and as a result he was finally “acquitted by proclamation.”\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 30, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--30.html}, (accessed on February 8, 2008).}

With Calvert as their head, the justices well-communicated their control over the colony and the people in it. Jones had attacked the governance of the Lord Proprietary and thus undermined the authority of the ultimate patriarch in the colony as Calvert was the head of the provincial government. Through choosing to pursue the rape allegation, combined with the drawn-out nature of the sedition charge, Calvert established that he had the power to use the government as he wished. And, when a planter threatened his hold on the colony, through the possibility of increasing foment and igniting an insurrection, the chief justice was apt to use the government in a display of power. Pursuing the charge of rape against a wayward planter was consistent with the early Maryland agenda of ultimately supporting patriarchy. Had Jones not uttered mutinous words against Calvert, the rape allegation would have probably been ignored. Thus the justices pursued an investigation into the incident not necessarily because they believed a woman had been wronged, but doing so presented them with a useful tool for achieving what they considered a more important socio-political agenda.

Two Inquiries of Rape:
Releasing a Guilty Man and Punishing an Innocent One
The last two cases in this chapter appeared in the 1680s before the Council of Maryland, the appeals court. Clemency could only be granted to a convicted felon by the Council, the Governor, or the King. These two cases which appeared before the council are the only cases of rape available as the Provincial Court documents from 1687 to 1689 do not exist. Surviving documents indicate that two men accused of rape appeared before the council of Maryland: one because he was a Native American accused of raping a white woman, and the other because he sought a pardon. Unfortunately, in both incidents the information recorded is very brief. In both instances the men were freed due to legal technicalities.

In the first case, that of Joseph Spernon, the court recorder in October 1688 only mentioned that Spernon, who was from Cecil County and recently convicted of rape, was granted a pardon. Nothing else, not the reason for the pardon, nor the legal justification permitting the reprieve, were included in the court documents. Very little of Spernon’s identity can be ascertained from the surviving documents. However, the Proceedings and Acts of the General Assembly, dated from the 1720s in which the General Assembly endeavored to give an account of earlier trials and legal precedents, gives some indication of the reason the earlier Assembly pardoned Spernon. In an entry involving an April “1688 indictment against Joseph Aspernen [sic] for a rape” the court decided “contra formam statuti” Essentially, this indicates that the reason Joseph Spernon was pardoned was due to the fact that he was tried, like Key, under the earlier statute, an allusion to the statute of Westminster II, 13 Edward I, from 1285, which made rape a felony with the benefit of clergy, and not the statute passed in 1575 in the reign of

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Elizabeth I which supplanted the earlier act making rape a felony crime without benefit of clergy. Spernon was pardoned because he had taken a book in hand, read a section, and thus successfully pled benefit of clergy. Even when faced with a man that colonial juries believed had raped a woman, as evidenced in the fact that the petty jury convicted him, a sizeable contingent of Maryland men were still unwilling to sentence a man to death when they were only convinced that he had had illicit sex with a woman. In keeping with this aversion, the Maryland council awarded Spernon with a pardon in 1687, thus privileging his gender and class status.  

In the other case, involving a Native American accused of raping a white woman, the sequence of events and the implications are somewhat more complicated than the Spernon case. Long Thorn, a Pocomoke Indian man who was thus a man outside of the English class system, was accused of raping and an un-named white woman directly following a tenuous peace treaty re-establishing trade reached between a group of Nanticoke Indians and the council. As a result, the dynamics created by the treaty influenced the actions of all concerned, which probably helped a variety of Indian groups. For the Pocomoke contingent that brought Long Thorn, the desire for peace probably provided them with an opportunity to shape his involvement with an English woman in their favor.

Held in the city of St. Mary’s on September 14, 1687, the council meeting called for peace and reopened trade as follows: a group of Nanticoke Indians the council considered to be great men presented “themselves before the board in friendly manner,” thus restoring “friendship and amity with the English” and proclaiming “license to the inhabitants of this province for one

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year to trade freely with all Indians in friendship and amity.”275 The Native Americans, at least in the perspective of the English, appeared to place themselves rightly under the dominion of the provincial authority. They “prayed that they might have [a] patent for their land” thus asking for a survey to be done to give them official, legal, English entitlement to the land they already held as a way to defend themselves against colonial poachers.276 While the Naticoke probably viewed appealing to the Council as a logical move to entreat Englishmen to restrict the illegal actions of other Englishmen, the council also used this as a means of asserting their dominance over the Indian emperor. In the meeting with the Nanticoke Indians, the colonial authorities sought to establish several things. First, they achieved a tenuous peaceful relationship opening the lines of trade. Secondly, the colonists believed they succeeded in both having the Indians affirm that while Ohopperoon, who was present and agreeable to the terms of the treaty, was their “Emperor,” the Lord Proprietor was a more powerful sovereign.277 So, while the Native Americans were first under the jurisdiction of the emperor, thus obligating them to obey him as their sovereign, and that the peace treaty was established between them and the Lord Proprietor, who was represented by the council, they were also obligated to adhere to English law. The English were working to maneuver the natives into adhering to norms that placed the Proprietor, the council, and all the colonists in a superior position compared with the Natives.

Immediately following this creation of a tenuous peace and the display of colonial authority, another group of Indians appeared before the council. This group, the Pocomoke, took a pre-emptive stance in regards to colonial prosecution of a Native man when they asked the

276 Ibid.
277 Ibid.
council to explain English rape law.  

Several possibilities exist to explain why the Pocomoke brought the matter of the rape to the attention of the Council as it was not the woman who fled to the council seeking official action, but the Pocomoke Indians themselves directly following the meeting opening trade and creating peace. The Pocomoke may have used the creation of this peace agreement as a convenient moment to address the illicit behavior of Long Thorn in raping an English woman. Perhaps the natives viewed this moment as a convenient way to address the matter while ensuring that Long Thorn would receive little to no punishment. The natives may have believed that the colonists desired peace and trade more than punishing a lawbreaker for sex. Another possibility was that the Native Americans believed this crime was potentially so offensive to the colonists that their response could result in the secession of trade between the two groups, and prompt the colonists to continue to forcibly take native land. They may have wished to clear all previous incidents that could jeopardize the new peace, but if this were the motivation one wonders why no other incidents were mentioned.

Another option remains: the Native Americans may have actually forced the colonists to grant them a measure of legal accommodation. The record never mentions the name of the female victim or anyone to whom she may have been connected, such as a master, father, or husband. No testimony of an unnamed woman coming forward to address the council appears in the record; no witnesses were recorded either. As if she was of little to no significance, the recorder never mentioned the identity of the English woman by name. At least as far as the colonists were concerned, the importance of these proceedings was not to bring legal redress for a specific woman victimized by a man, but instead to showcase government authority. The woman was English, thus making the matter one of colonial concern. Had the woman been

278 Ibid.  
279 Ibid.
Pocomoke, the matter probably would have remained an internal affair among the natives. Most likely, the Pocomoke knew Long Thorn and a female English colonist engaged in illicit sex and inquired about rape law because the Pocomoke wanted to spin the incident as best as possible. By bringing the matter to the attention of the court, they could determine by whom and how the incident was prosecuted.

This was not the first time immediately following the conclusion of negotiations establishing trade and peace between the colonists and the natives that native people brought criminal activity before the council. Roughly ten years before the alleged rape committed by Long Thorn, in 1677, a group of Nanticoke Indians comprised of several great men came to speak to the governor to address the murder of David Williams and his family. In tow were two “Nanticoke Indian Prisoners to be delivered up to the English in satisfaction for the same.” Upon investigation, the council found that neither of the two prisoners whom the Indians had delivered because the “English have made several demands to have the murders delivered up,” had taken any part in the murders. When asked why the natives brought the two Indian prisoners, they answered that “several demands had by the English been made to have the two murders delivered up more, that for their parts they cannot (after all the care have taken) find any such, that they do perceive the English are angry, and do resolve . . . to have peace.” They knowingly brought two innocent people to satisfy the colonists’ desire to punish two more culprits, which then placated the council in that they released the prisoners and stopped pursuing

“two more murderers.” The lesson communicated by the council was as follows: bringing an innocent man to answer for a crime brought not condemnation but would stop further search of others to punish.

Based on the prosecution in other cases, had the council been notified by the colonists it probably would have investigated the matter and either called it one of rape or of illicit fornication. The Native Americans responded defensively to an issue that, if it became public, could have complicated native-colonial relations tremendously and could have ended in the death of a Pocomoke man. So the Pocomoke brought the incident forward controlling who and when the affair was prosecuted. Moreover, as experience from ten year earlier revealed, bringing someone completely guiltless in the matter had positive benefits. Bringing an innocent man before the council resulted in the man being released and the end of the search for a guilty person. Hence, regardless of what the Pocomoke told the council regarding Long Thorn’s innocence, the Pocomoke probably brought Long Thorn knowing that the English would investigate the concern but hesitate to hang him for a variety of reasons—because he was a man, in an effort to keep the peace, and because he was innocent of rape.283

The Pocomoke achieved a measure of accommodation from the English colonists, through the outcome of the trial. The ruling of the council effectively treated long Thorn just like it would have treated a white man, thus implicitly awarding the natives legal parity with the English. The council could have made a statement about racial difference and unilaterally found that all sex with native men, regardless of consent or not was illicit and tantamount to rape. But, they did not. Moreover, the council could have made a statement about the need to punish violent offences against women, and its duty to protect white women, thus reinforcing its control
over white women and implicitly define the boundaries of acceptable sex. But, again, it did not. Instead, the council treated the incident consistently with how it judged white men who had clandestine sex with white women. And they ordered him whipped for fornication.

Regardless of intention, the natives succeeded in securing for themselves legal parity with white colonists in this trial. They had also probably maneuvered to achieve the most acceptable outcome possible. Rather than being unilaterally submissive to the patriarchal designs of the council, the natives appropriated the council’s agendas and used its biases for its own purposes.

Conclusions

Together, all of the cases of rape show that whether as justices or as jury members, the nascent male elite of colonial Maryland used the law in cases of rape to construct legal privileges which reinforced societal privileges, while carefully addressing challenges to legitimate authority. Maryland justices re-interpreted existing laws and created new applications of older ones in an effort to try the accused within the parameters the justices found comfortable, such as excluding hanging as a possible punishment for rape, and for the purpose of buttressing the stability of the social hierarchy. Prior to the implementation of these parameters, when cases such as these went to trial, jury members returned verdicts of “not guilty” or “ignoramus” rather than return a verdict in a trial of rape, that could end in a man’s death. Thus the justices and the jurymen sought in tandem to tighten the elite hold on society in an effort to curb those who veered from a social structure that elevated the elite at the expense of the non-elite.

The judges involved in these cases used incidents involving rape to address breaches in the social hierarchy and responded accordingly. Not always did they wholly support the men accused of rape, though they did actively work to avoid men being hanged as punishment. But,

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the judges and jury members always sought to guard their own privileged positions. They conducted themselves consistently with a desire to stabilize the government and ultimately support absolute notions of patriarchy—even if so doing appeared to seemingly be at odds with an individual patriarch. In instances when the man appeared as the more threatening social element for failing to support the Provincial governance, the justices chose to try the case as one of rape, after manipulating the common law statute so that he was tried under a less harsh, and pardonable, earlier statute. Doing so allowed the justices to re-assert control over a man who threatened the patriarchy in his attack on the Provincial authority. When the woman appeared as the more dangerous social element the justices chose to use the incident to reprimand her, thus pulling her back under the control of her immediate legal guardian, by calling attention to her aberrant behavior rather than addressing her status as a victim.

In cases which went to trial, the jury determined the verdict of a rape in accordance with the rank and presence of the men to whom she was connected: her attacker and/or her patriarchal head. When an elite woman accused an elite man of rape and the woman could be discredited, because she appeared to thwart the control of her husband—thus showing her guardian to be a weak man, who was himself in need of the judiciary’s support in controlling the woman under his protection—the court acted to reprimand both accordingly. If a woman’s charge could not be dismissed, because she appeared to be under the governance of her guardian—and her guardian revealed himself to be a man who promptly paid his debts and was prosperous, the grand jury could return a true bill and the petty jury could convict. Thus the goals of the elite in the creation of elite male privilege trumped the rights of all women in obtaining justice for a sexual assault when doing so threatened to undermine elite aims. But, circumstances did exist in which a
woman or non-elite man could manipulate the nascent elite to act in ways they would probably otherwise have chosen to avoid.

These trials also show that the nascent elite never achieved absolute dominance. Women and non-elite men in the province helped direct the conduct of the judiciary at least to some degree. A woman’s association to a powerful man combined with her good standing and conduct in the community forced the judiciary to do more than simply dismiss her accusation. Her outcry against a man necessitated the creation of a legal space in which a man could be charged for rape and not be executed. Because some women, regardless of class, and non-elite men forced the judiciary to accommodate them by recognizing their legal presence; by initiating suits themselves, by offering specialized testimony in court, or by mounting a legal defense in cases against them, when in many instances the nascent elite would have probably preferred to dismiss these cases entirely, the men-on-the-make were unable to wholly control all aspects of society. And as the incident with the Native Americans shows, the biases of the male elite could be, and were, exploited by other non-elites in an effort to obtain their own agendas. The resistance of particular women and non-elite men forced the powerful elite of Maryland to grant these individuals a measure of accommodation and in some cases set precedents for demands for parity.
SECTION 2 INTRODUCTION: ENGLISH INFANTICIDE LAWS

Some historians of child murder in the British empire have claimed that referring to the murder of infants as “infanticide” is somewhat misleading, as contemporaries conceptions of this specific kind of murder could be used in reference not only to the murder of small children, but to older age children as well.\textsuperscript{284} In the Maryland provincial judicial records for the seventeenth century, though Marylanders did not use the term “infanticide” specifically, justices and jury members gave elaborate descriptions of this crime. When speaking in reference to the murder of children (other than newborns), servants, and all others—except that of masters by their servants, which was referred to as “petty treason”—the judicial documents records the prosecution of the accused simply as murder and do not reference the victim as a specifically father-less child. I use the term infanticide to describe contemporary Marylanders’ conceptions of this specific kind of murder--only the murder of newborn babies, and only when murdered by a woman who was unmarried and gave birth alone and in secret.\textsuperscript{285}

Scholars Peter Hoffer and N. E. H. Hull reveal that the number of mothers who murdered their children in London rose dramatically after 1558 and then fell markedly during the eighteenth century. They attribute this trend to demographic pressures, lean harvest years, the threat of displacement from property holdings, and a cultural shift towards distrust. Hoffer and Hull also suggest that Puritan control of the judiciary and the government significantly influenced the creation and interpretation of English law. This control in combination with the


\textsuperscript{285} For an example of the summons, see the account concerning Mary Marler and Hannah Price which read as follows: “Whereas there is a trial to be had at the next Provincial Court to be held at St Mary’s on the 12th day of June next ensuing on behalf of the Lord Proprietary against Mary Marler and Hannah Price Concerning the murder of a Bastard Child Committed by the said Mary Marler and Hannah Price” Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1666-1670}, volume 57, page 99, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000057/html/am57--99.html}, (accessed on January 31, 2008).
cultural shifts and population demographics worked to make an environment in which the government sought to curtail women’s influence in society. Hoffer and Hull attribute the prosecution of single women in London to a two-fold cause: they were viewed with contempt and became social scapegoats and the Puritan influence on the government created a stronger emphasis on legislating morality. 286

Examining the tensions and controversies within the colony of Maryland is vital to understanding not just North America but the very notion of early modern authority and legitimacy. The contest for power in early Maryland was not a unilateral struggle between patriarchal men and subordinate women, but a far more dynamic struggle both between and among members of different classes, genders, ethnicities, religious backgrounds and ranks. Seventeenth-century colonial Maryland experienced not a single controversy over who controlled authority, but a continuum of controversies. Infanticide cases provide a valuable lens to view and analyze these dynamics. These cases allow the modern historian to again consider questions of agency and the use of power as elite Marylanders sought to control subordinates’ sexuality through the drama of the courtroom.

286 Hoffer and Hull, Murdering Mothers, 20.
CHAPTER 6: SINGLE WOMAN ACCUSED OF INFANTICIDE WHILE ENROUTE

The Story

An un-named male servant, who was gravely ill and possibly delirious, suggested that during the rocky voyage over to Maryland another servant committed a variety of heinous acts—chief among them, infant murder. He accused Judith Catchpole of murdering her newborn child, surreptitiously wounding people so that they might suffer from an incurable blood loss and committing untraceable surgical procedures that similarly resulted in the death of others while on board ship. Whatever motivations drove the servant to suggest she had engaged in such dubious activity, by the time the pronouncement was made (that too little evidence existed to indict her) the un-named servant was dead and virtually forgotten. But the incident allowed the young Maryland elite an opportunity to make statements about who would be controlled and who would not, what they would tolerate in society and what they would not, and what prerogatives absolute patriarchal power afforded them and what it did not. In Catchpole’s case the judiciary pursued the matter because it did not need to demonstrate male authority over women. She was already well-controlled by her master, who was regarded as a strong, respectable figure in the community. Instead, they chose to dismiss the matter and cited lack of evidence as justification.

Introduction

In 1656 Judith Catchpole was brought before the court on suspicion of murdering her newborn child. Unlike other similar cases of the period, Catchpole was accused by an unnamed, sick male servant of murdering the child during the passage across the Atlantic. If the Catchpole case had been an isolated incident of suspected infanticide perhaps modern students of early America could understand the incident and the actors involved as a historical anomaly—as simply the proceedings instigated by the delusions of a madman. But, in fact, 10 other cases of infanticide exist for the period under study.

Once brought before the court and charged with murdering a newborn child, Catchpole was asked to state whether she was guilty or not. In Maryland, this was more of a formality because very few people ever pled guilty—and certainly no woman accused of infanticide did or ever asked for the judgment of God. If a woman acknowledged that she was indeed guilty of
murder—a capital crime punishable in Maryland by hanging—execution was swift. Presumably for a lesser crime, one might have pleaded guilty and hoped for a reduced charge. For Englishmen and women in England, the process was identical. J. M. Beattie, a scholar writing about crime and criminality in London from 1660-1750, in regards to Londoners accused of crimes he suggests that the plea process operated similarly.288

Another reason existed for which one might forego a jury trial. For someone with property, such as a man with a family inheritance, the plea of “judgment of God” condemned him to death but allowed family property to pass to next of kin undisturbed. Thus, an accused murderer received the pronouncement of death, but neither the king in London nor the lord proprietary in Maryland could confiscate the accused’s property. Men who pled not guilty and proceeded with a jury trial ultimately gambled with the provision of family members and the continuation of an honorable family name. A man who had sought to clear his name with a jury trial but was condemned to death ultimately forfeited his estate.289

The women of colonial Maryland, like Catchpole, who were accused of murdering their babies through infanticide or abortion performed after quickening, faced no such crisis of property. They were single, never-married women who held no property and who were either indentured servants and owed their masters their labor or were not identified as having husbands and may have been recently freed. Most likely, the women were either yet to be or had already been bound as indentured servants. Both men and women traveled to Maryland as indentured servants, but women who did so faced a situation quite different from the one they might have experienced in England. They came to Maryland alone without husbands or fathers to protect—

or control--them. And so they presented a challenge to the young province—this group of women without parental or marital heads, but instead with masters to oversee them. The same men-on-the-make who sought to strike it rich in the new world probably saw these women as a threat.

Contemporaries believed that women without men to control them were socially dangerous and sexually insatiable—these women incited men to lust, disrupting the social hierarchy and so threatening the respectability of the young colony. The threat to society that women presented was to be avoided at all cost—even when so doing meant that addressing the social breach implied that the judiciary had to act in lieu of an absent male authority and take on the role of responsible head. The emerging English elite evidently did perceive these women as a threat and were willing to use existing common law to curb the behavior of misbehaving (and potentially misbehaving) women.

Mechanisms of Justice; Purposes; and Social Concerns

The provincial elite probably felt an urgent need to conceptualize Maryland as a respectable and integral extension of England—in much the same way that Kent was part of the empire—and not a barren frontier with little significance. If one of the prime motivators for individuals coming to Maryland was to amass a fortune, then men-on-the-make did so desiring not only the material trappings of wealth but also the status and respectability that came with it. Maryland men found it in their best interests to mirror the host of English legal institutions, governmental structures, and laws not simply because these were the institutions most familiar to them and most easily recreated but because doing so was an integral part of the motivation for

289 Ibid., 234.
emigrating. Adhering to English norms created the potential for social stability and the appearance of respectability. The quest for fortune and for respectability was one and the same. What threat then did women accused of committing one of the most unnatural, heinous crimes—like the one Catchpole was accused of—pose to the nascent elite? Women who were not successfully controlled by men posed a threat to the social order and to the very aspirations that spurred men to risk everything to come to colonial Maryland. A woman charged with murdering her newborn child was called to account before the judiciary which was prepared to control her. Her master had failed to control her and a woman running wild threatened to insight others to ignore the social order.292

The fear of social upheaval by subordinates who failed to honor the patriarchal hierarchy was a long entrenched fear among Englishmen. This is a theme Frances E. Dolan in Dangerous Familiars investigated in relationship to “literary” and “historical” treatments of crime. She argued that the popularity of crime-fiction reflected anxieties generated by the late sixteenth and early seventeenth century “crisis of order.” She showed that contemporaries were deeply concerned with petty treason as they believed it satanically disrupted the natural order of sexual, familial, and hierarchical relationships. Thus the sentiment that Dolan identified as occurring in England in incidents of petty treason around the beginning of the seventeenth century continued in Maryland to a much larger, and longer, extent. The concern Dolan identified as present in official petty treason crimes carried over in a variety of other challenges—particularly in the implicit challenge a woman made when she resisted her master’s authority, became pregnant, hid it from her master, and then decided the child’s fate. The most likely reason for the difference in Maryland and the causes of elite male concern were the following: the disparate gender ratio, the

landless men, and the influx of single women unattached to families. Combined, these fears exacerbated male anxieties.

A woman who had given birth alone and in secret threatened the social order because she had defiantly bucked her master. Under English law, a woman who gave birth alone and in secret without the aid of a midwife or another woman to help and child died was suspected of committing murder. If found guilty, the judiciary executed her. If she had made baby clothes or had taken other preparatory steps to care for the child after its birth, she might be able to argue that while she had intended on calling for help, the birthing process had come upon her unexpectedly and so she simply was unable to call for the midwife or married women. One practical reason for not calling a midwife was that the woman may not have known that she was pregnant and so delivery was made alone in a privy because signs of the coming birth were misinterpreted as stomach pains. 293

In addition, illegitimate births compromised the spiritual status of the woman. Numerous other scholars on early modern life have suggested that the birth of a legitimate child held a special place in society and served to legitimate the mother as well. David Cressy, for example, has described the birthing process and its importance to women in these births in *Birth, Marriage, and Death: Ritual, Relation, and the Life-Cycle in Tudor and Stuart England*. Cressy argues that a woman’s spiritual redemption was brought through the “deliverance” of a legitimate child. As a result of the Fall of Man in the Garden of Eden, contemporary men and women believed that a woman’s pain in childbirth and the gendered social order was part of the curse. A woman felt pain and could even die in childbirth, but the birth and deliverance of a

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293 David Cressy, in *Birth, Marriage, and Death*, offers just such an example of a woman being caught unaware of pregnancy “in the fate of Lady Anne Effingham in 1602, who fell ill while playing shuttlecock and was brought to bed of a child without a midwife, she never suspecting that she had been with child”(41); He goes on to say that
child, was a way to bring a woman spiritual redemption according to contemporary beliefs. Her salvation was manifested through the help Christ offered in childbirth and the cessation of pain.\textsuperscript{294} A bastard-born child presented problems not just to the social order and presented a financial burden to the community, but also compromised the spiritual standing of the woman.

A woman facing a legitimate birth was usually comforted and surrounded by her friends, her “gossips”. These women were gathered by her husband and surrounded her during her lying-in period. They comforted her both physically and mentally as they reminded her of the spiritual significance that the child’s birth held for her. Illegitimate births were accompanied by no such celebration in Maryland. Evidence of centuries-old Catholic-influenced birthing practices must have made their way into this female-dominated ritual. Maryland was still significantly influenced and at times controlled by a Catholic cohort. So, as elsewhere in the empire, relics, holy girdles, and especially the Eucharist were used to pray for help in childbirth.\textsuperscript{295} However, a woman who bore a child alone had no such help available. Indeed, the indentured woman who bore children alone must have suffered both mental and physical anguish.

Women then who were indentured servants and tried to or were suspected of murdering their infant children not only rejected their master and denied him their labor, in effect stealing from him, but also must have been considered a serious threat. They had sex with men wantonly and possibly contaminated them. Furthermore, if women’s unrestricted sexuality was something to be feared and contained through marriage, women who refused to yield to a husband and his governance were even more dangerous. This motivation, at least in part, must have added to the

\textsuperscript{294} Ibid., 16-17.
\textsuperscript{295} Ibid., 22-23.
prosecution of indentured women who were suspected of bearing children and then destroying them.

If rebellious women posed such a great threat, this begs the question: how did they hide undesired pregnancies? Despite the significance and difficulty involved in the process, a woman may have deliberately chosen not to ask for the aid of a midwife—a harrowing experience to be certain as this increased the risk for both mother and child. Two reasons trump all others for not doing so. First, during the moment when the pain was the greatest midwives interrogated unmarried women regarding the identity of the father. If the unmarried woman wanted to keep her secret, she needed to avoid this moment when the midwife was to press her until receiving an answer. This practice ensured that the father then supported the child financially and guaranteed the newborn did not become a drain on public coffers. It was also to ensure that proper punishment was given to one who shared guilt in the crime of fornication. If the woman refused to answer, the midwife threatened to leave at that moment when the young woman needed her most. Most women answered when pressed.

Also, if the woman was an indentured servant—which most women charged with infanticide were—it was against the law for her to bear a child or marry while serving her time. If she called the midwife, everyone in the community would know that she was guilty not only of fornication, the evidence of which was plain to all, but of becoming pregnant while indentured, which in turn earned her a beating and additional time added to her years of servitude. Since a master was supposed to receive all her labor, contemporaries viewed a pregnant woman as not being able to fulfill her bargain. She, in effect, cheated her master out of his rightful labor and any associated profit.
If her pregnancy was known and a midwife was called, the master shouldered additional costs. He paid for the medical and nursing care given by the midwife. He also paid to transport the midwife, to feed and house the midwife and any of her helpers during the birth and necessary recovery period, and then pay her fees. The master was also required to bear the expenses due in caring for the young child—at least until the baby was old enough to indenture which was its fate if born to an indentured woman and if the father remained unnamed.

To make up the financial loss incurred by the master, a servant woman was expected to repay the time and labor lost with additional years. When faced with the prospect of being bound to her master for an extended time and then facing the whipping that a woman received from the Maryland judiciary as public censure for her misbehavior, a woman might have balked at the thought of making her pregnancy known. She may have tried to hide the fact that she was pregnant from the members of her household, and refrained from calling the midwife in order to keep her secret. The problem for the servant woman then arose with what to do with the unborn child. Some women tried to hide the existence of healthy babies while caring for them; however, hiding a child successfully was difficult. Some children were stillborn. Other children were born healthy and were killed by their mothers. The problem, as men all over the empire found, was how to tell the difference between a still-born child who had failed to thrive and a child who was born healthy and then killed. Because distinguishing between the two without the presence of any witnesses was extremely difficult, English common law stipulated that any woman who gave birth alone and in secret should be charged with infanticide.

However, not every woman charged with infanticide actually killed her baby. Indeed, not every woman charged with infanticide had even been pregnant. Simply the accusation, without proof of a pregnancy, was sufficient cause for an investigation. Putting teeth into the law by following through with prosecution afforded the men of colonial Maryland an opportunity to address the breach of authority that may have taken place. It was used to prosecute women who had engaged in sexual activity while unmarried and under contract to another man, but it was probably also intended to function as a vehicle to check the activity of women who were not under the authority of male kin or who were bound but willful. This charge allowed female power and female misappropriation of male authority to be curbed.

The first step in the Catchpole case was for the court to determine, in a case of child murder, whether she had, in fact, recently given birth. So the court ordered a jury of able women to be impaneled to determine whether Catchpole had a child. This jury of women did not officially determine the verdict; that prerogative was reserved to the realm of landed men. But in order to be able to determine a verdict and consequently execute male authority, men had to rely on women’s judgment in a number of cases involving women’s bodies—infanticide being one of them. Men could not search for evidence of a pregnancy on a woman’s body. That right was the sole domain of women.298

Seventeenth-century English society was not unused to seeing exposed breasts. When women were whipped as punishment for other crimes like fornication or having a baby while unmarried, they were stripped from the waist up and lashed on their bare backs by a male officer of the court. When masters whipped female servants for failure to obey or simply out of spite, they did so on exposed flesh—hands, legs, backs, etc. So this was not a society in which the

298 Brown, “Changed…Into the Fashion of Man”, 181.
court was squeamish about looking at a woman’s upper body. Yet, gender boundaries (motivated at least partially by a sense of moral and religious decency) may have made some men hesitant to examine a woman’s lower body for evidence of pregnancy. More likely, the primary reason female juries of women were important, or midwives in some cases, was probably due to the simple fact that many men may not have known what exactly to look for. So they could not examine and gather evidence in this sense because they were limited in prenatal and postnatal female development.

Limited knowledge about women’s bodies left the judiciary dependent for such information on women who had borne children. Still, knowledge about women’s bodies and exactly how much was understood by men and even women themselves was limited. Midwives and women who had given birth knew what to expect because they had experienced it personally or made it their business to know how to care for women. The panel of women involved in the Catchpole trial occupied a very special place in society. The knowledge that they held gave them power. Their significance to the judiciary gave them authority. Ironically, their authority was derived from an extension of male authority but also originated from a breach of male authority. While Catchpole was suspected of having usurped the ultimate power of the judiciary, the ability to determine who lives and who dies, her actions created a situation in which the male elite had to extend their authority and legitimate the power held by another group of women.

300 Anthony Fletcher, Gender, Sex and Subordination in England 1500-1800 (New Haven: Yale, 1995), 30-60.
While the relationship between the court and the power held by women may seem like a chicken-and-an-egg argument, the implications between the two attempts at gaining power are striking. For both the defendant and the jury of women, it was the male-controlled judiciary that controlled legitimacy through its ability to offer and withhold imprimatur. Thus, while the group of married women had power by right of their prerogative as married women and the value of their testimony to the court acknowledged and legitimated their authority, their authority was at the same time partly circumscribed. The court was still controlled by men, and it was these men who took the council of the jury of women as just one portion of evidence. In the search for the rest of the evidence men could be fully engaged.

The testimony of neighbors and housemates was one important source of evidence that men used to determine if a woman had indeed killed her unborn child. The Catchpole case offers a telling example of how testimony was a vital part of evidence. Unlike modern trials, the testimony offered did not even have to be witnessed firsthand. Hearsay was not just an admissible part of court proceedings but an important part as well. Hearsay proved to be an important part of the Catchpole trial. The same unnamed servant who accused Catchpole of murdering her child also accused her of murdering a woman during the voyage to Maryland. This is relevant to the infanticide case because the servant painted Catchpole as a sinister force and a real threat to others—including men. In the list of Catchpole’s victims, the servant listed several men who died not even knowing that she had attacked them. Regarding the death of the maid, another witness, James Jolly, testified before the court that a week before William Brumhall’s man died he was at John Grammer’s house where the servant told him that Judith Catchpole cut the skin off a maid’s throat. But the woman never felt it, and Catchpole had sewed up the wound as surreptitiously as she had made it. Jolly was not testifying to having witnessed
these accounts; he simply repeated evidence that the servant may have offered had he lived to address the court.\textsuperscript{301}

In the Catchpole case, as was common in other cases in colonial Maryland, a number of witnesses were called to verify testimony. Even if offered as hearsay, the multiple sources offered credibility to the evidence. For example, Elizabeth Norton echoed Jolly’s testimony: William Bramhall’s servant said that Catchpole had slit a woman’s throat, removed her skin, killed her, and repaired the wound with a needle and thread all undetected. The account of the woman’s murder as mentioned in all of the testimonies recorded by the court recorder is remarkable for several reasons. First, Catchpole’s life was being challenged due to testimony that originated with a gravely ill man who later died the following week. Hence, he could have been feverish, dehydrated, or delusional. Any number of medically related maladies could have distorted his judgment. And yet, the initial stages of deliberation proceeded by hearing testimony that originated with the servant but no one remarking about the veracity of his testimony.

Moreover, the testimony and evidence offered in this case is consistent with witch-trials of the same period. Carol Karlsen, writing about the witchcraft trials that plagued New England towns in the seventeenth-century in \textit{Devil in the Shape of a Woman}, claims that accusations of sorcery were directed towards women who were independent, powerful women, and economically stable as they had either inherited or were to inherit land. Hence, Karlsen identifies a contest between women who were poised to be powerful independent women and the challenge they made to patriarchy. Karlsen identifies a two-fold challenge to the foundation of the social

structure: male identity was grounded on economic power—which was firmly rooted in land ownership.  

Additionally, Karlsen demonstrates that because women were receiving land, they threatened the continuation of father-to-son inheritance, which jeopardized the continuation of the family and threatened the security of future heirs. According to Karlsen, men feared being unable to provide their future heirs with land and, as a result, their fear was redirected back towards independent and unruly women. Therefore, one aspect of the male response to female prosecution was an attempt to re-establish the male-privileged social order that affirmed male rule. Karlsen’s argument has important applications for understanding the gender dynamic in the colony. Maryland women did not threaten father-to-son inheritance—they posed little threat to the acquisition of land. But the principle that Karlsen highlights, that men feared powerful women because these women usurped male authority and threatened to topple the monopoly of male supremacy, has direct relevance to understanding early America.

The privilege of the male elite teetered precariously. An elite group only remains elite so long as those who are subordinate recognize and submit to its authority. In Maryland, men-on-the-make probably feared women becoming more powerful because their increase in authority allowed for the possibility of social leveling. The more powerful women became, the more on par they became with men. So women who failed to adhere to social norms that privileged male authority and male rule presented themselves as possible types for other malcontents. And malcontents certainly abounded in this period.  

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303 In 1675 Nathaniel Bacon, a member of the junior elite, incited a rebellion against the Virginia government which, according to Edmund Morgan, created a significant societal shift. Morgan suggests that Bacon’s rebellion sparked a ripple effect whereby white elite men conceived of privileging race over class because privileging male whiteness across class lines was less threatening to the established patriarchal social order than allowing the insurgents to
The source of the rumors about Catchpole was William Bramhall’s servant who had made the voyage over with Catchpole and was indentured upon arriving. The servant making the accusations was close to the bottom of the social ladder and one must wonder if the servant was inclined to condemn Catchpole in order to give significance and importance to his own life. In the testimony given by Jolly and Norton, the servant was not even mentioned by name. His importance was superseded by that of his master, William Bramhall. The servant had given up much more than his time and labor; he had given up his identity. His labor was not his own, nor was his clothing, his food, or his place to sleep. The voyage to Maryland had cost him everything, and ultimately his life—even his freedom of movement. It is entirely possible that the man who started the rumors about Catchpole did so simply to wield power over another person.

For the servant’s allegations to be believable, he had to account for several problems. First, if Catchpole had a child, how did she murder it without anyone being alerted of its existence? This is why the detail of the needle and thread in the servant’s testimony becomes so important. The servant testified that Catchpole bore a child and disposed of it secretly. In the murder of the maid, the servant stated that Catchpole had succeeded in cutting her flesh, letting her bleed out, and then stitching the wound. Not even the victim knew she was in danger. That Catchpole could do this, without the woman waking and crying out, speaks of real fear—that undetected, Catchpole could cause bodily harm, even death. Also, the detail about first cutting the woman and then mending the wound with needle and thread is a perversion of female activity. Women were supposed to be caretakers—as mothers, as daughters, as wives, and simply as women. As historians of women in early America have describe at length, though delivery and

care in extreme sickness was a special skill, women of all sorts were expected to know how to care for their households. In short, part of female identity included familiarization with a wide variety of household remedies—from setting an arm, to dealing with croup, to treating a laceration.304

In using her skills as a woman to kill—the right only of the judiciary in felony cases—she had twisted the very notion of womanhood. As she was not a man and did not act as a woman should, she was presented as a dangerous social influence in that she disregarded social norms and legitimate authority. The servant’s inclusion of this story helped orient his assertion that Catchpole had disposed of her murdered child undetected. If she could murder a woman in plain sight without an adult realizing the danger Catchpole presented, and not call for help, then it was in her power to bear a baby, hide all signs of its birth, and murder it without anyone being alerted by its cries. The story of the murdered maid also explains how there were no witnesses when Catchpole supposedly disposed of the baby, because Catchpole was a powerful woman—perhaps even a witch.

The next question that the testimony had to resolve, in order for the servant’s accusation to be believable was that of opportunity, such as when exactly had Catchpole performed her misdeeds. Catchpole acted under cover of night when everyone on board the ship was asleep. Another witness, verifying the servant’s accusations, was Andrew Wilcox. Wilcox said the servant told him Catchpole had murdered the maid when all the people and the seamen were asleep. Not only was Catchpole skilled and powerful, but she was cast in terms of being extremely shrewd. She had performed her deeds in the darkness of night, when everyone else was asleep. Hence, her behavior was different from other unmarried women, and reported to be  

malevolent—why else did she lurk about in the shadows? The servant wanted Wilcox to believe that her acts were sinister and evil—explaining why they were done in secret. Lastly, the servant had to establish credibility. He was, after all, just a servant and the events to which he swore took place several months prior to his accusations. In explaining the events to Wilcox, the servant explained that he was a witness to the events. He was present and had seen them with his own eyes. He had been with Catchpole on the ship, and after the murder of the child, the two had walked the deck together for about 15 minutes.

One question that remained unanswered—at least satisfactorily so—was why the servant had waited so long to voice the accusations. Perhaps the servant truly feared Catchpole as a dangerous woman who could hurt him. Maybe only after he was ill and desirous of revenge, possibly believing his illness was the result of Catchpole’s medical knowledge, did he come forward. Or, it is entirely possible that the servant knew he was ill, believed he was going to die, and saw this as his last chance to redeem himself by confessing his participation. But Wilcox’s testimony only places him near Catchpole. It does not necessarily implicate him as an accomplice. On the other hand, he may have believed that Catchpole had worked her power on him and was the cause of his sickness; if so, his testimony, even though it could implicate him, may have been motivated out of revenge.

After Andrew Wilcox was finished testifying, Elizabeth Norton further told the court what the servant had said. To Norton, the servant increased admittance of his participation in the murders. Not only had the servant come up from the berth with Catchpole, witnessed the murders, and then walked on the deck with her, but he had helped her sharpen the knife she used

as a weapon. And then with this knife, Catchpole murdered more people—this time sailors. The number and scope of her crimes and the sort of people murdered by Catchpole, according to the servant, increased. She had started with her own child, seeking to conceal her acts of fornication. And, as the number of murders increased, so did her expertise in knowing how to kill more efficiently—with less work for herself. However, more murders supposedly also increased more evidence of her work to condemn her. Norton stated to the court that the servant told her Catchpole killed a seaman by pricking him in the back with the knife and either letting him bleed out or by poisoning the tip. Either way, the knife marks and puncture wounds were stopped with grease obtained by the surgeon. All combined, the servant told Norton that Catchpole had killed three or four additional men in this way. In the servant’s telling, what began with one child murdered ended with one woman and four or five men being murdered. As is consistent with other incidents of hysteria, the charges against the woman increased in number and in scope so that by the end of the recorded testimony Catchpole was purported to possess almost super-human abilities. Such reports were consistent with the witch craze phenomena as described by earlier scholars such as those examining the New England trials.

In any regard, though the case of child-murder began to encompass the deaths of others, it remained at its core a case firmly centered on infanticide. If the case of infanticide could be determined, then it supplied credibility to the other accusations. Moreover, as the other supposed murders had occurred several months prior while on board ship, they left no physical evidence.

The only physical evidence that could substantiate the now deceased servant/accomplice’s story was the body of the woman herself.

The impaneled female jury searched Judith Catchpole’s body and looked for signs of a recent pregnancy in her breasts and abdomen. Perhaps the reason a midwife was not present was due to the demographics of the young colony. According to Russell Menard, quite a few men who let inventories in Maryland prior to the middle of the seventeenth century were single at death, and before mid-century the number was even higher. Regardless, these women wielded an incredible amount of power. They played a significant role in the ability to determine life over death. And, interestingly, the women of the female jury were mentioned by the court recorder by name. As expected, on the whole, the recorder identified them by their titles which reflected their married status as well as their class. Like the title of mister, misses denoted elite status. Recorded as Mrs. Brooke or Mrs. Belcher, their identities were defined in relation to their husbands—but this relationship was still a clear identifying marker that pointed to one woman. Only one woman could be the wife of Mr. Brooke. So the relationship which defined her life and her status also marked her place in society. But not once was the servant so named. Evidently, in relation to the court as shown through what the recorder chose to mention, the initial accuser was not as important as the group of married women. While the court had the final say in determining a woman’s guilt or innocence, in this particular case Judith Catchpole’s life balanced on the decision made by this community of women as they were the ones in a position to gather the evidence that condemned or exonerated her. The jury of women determined that Catchpole had

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308 Russell Menard, “Immigrants and their Increase: The Process of Population Growth in Early Colonial Maryland,” in *Law, Society, and Politics in Early Maryland*, edited by A.C. Land, L. G. Carr and E. C. Papenfuse (Baltimore, Maryland: Johns Hopkins University Press, 1977), 95. Menard states “Over 20 percent of the men who left inventories on Maryland’s lower Western Shore between 1658 and 1705 were unmarried at death; a similar proportion of bachelors appears among men who died in Somerset between 1665 and 1700. Earlier in the century the proportion was even higher: more than 60 percent of the men who left wills in Maryland between 1635 and 1650 died unmarried.”
never been pregnant. The court determined that she was not indictable as too little evidence existed to indict her.

Catchpole and the unnamed servant occupied relatively the same social position in the class hierarchy: they were both indentured servants in the same household, and performed the same work. Catchpole herself had been a servant to William Dorrington. When pronouncement was made, her relationship to the man to whom she was most directly responsible had his position of superior authority reaffirmed. For indentured servants who did whatever the master told them, gender differentiation was far less pronounced than for members of the elite. Moreover, while the unnamed servant was a fellow household servant in the same household as Catchpole, he appears to have been relatively insignificant. Their existences must have been on very similar terms as they were bound at the same time, made the voyage together, and shared experiences. One must wonder if the unnamed servant felt suffocated by the leveling force that placed him in a position relatively equal to that of a female servant. Since he died before the proceedings began, one can only speculate about how he would have responded if he had known that the testimony of a group of women trumped his own. Moreover, not only was the servant ultimately forgotten and his testimony eventually regarded as unimportant, but in the end the court decreed his assertions as the creations of an unsound mind.

Lois Green Carr, one of the premier scholars in understanding both material culture and Maryland demographics, wrote about the women who reached Maryland and Virginia in the seventeenth century in “The Planter’s Wife”. Carr argues that the majority of women arrived as unmarried servants. These were women who were not rich, nor were they destitute and without options. They had promised their labor in exchange for their passage across the Atlantic and were now in service to their masters. Roughly everything they had was provided by their master.
And, as servants, their freedoms were extremely limited. If they could survive seasoning—the period of becoming acclimated to the mid-Atlantic climate, work, and sickness—they usually married well. As Carr further points out, half of the women who arrived on Maryland shores either bore bastard children or were pregnant at the time of marriage. Maryland prior to 1680 was socially a different place from either England or New England. In the early modern world, young women who traveled alone without fathers or husbands to broker a marriage might find themselves pregnant.309

However, unlike in England, pregnancy did not necessarily destroy a single woman’s respectability in colonial Maryland. Richard Godbeer has maintained in the Sexual Revolution, that Maryland was not a particularly licentious place, certainly no more so than any other place in the empire. Godbeer argues that part of the reason for the appearance of a large number of pregnancies outside of marriage was due to a disagreement on when the marriage covenant actually began.310 In England, a pregnant woman who bore a child out of wedlock was almost certainly forced by economic pressure and social stigmas into a life of prostitution and crime. 311 Elsewhere in the empire, respectability was tied to notions of proper womanhood in a circular system in which if one was lost so was the other. But in Maryland, if a woman became pregnant she was not automatically reduced to prostitution. Women who might have been deemed unworthy of respect and thus marriage elsewhere were in Maryland legitimated by men who needed them as wives.

In respect to marriage and the vagueness regarding when the covenant began, Marylanders’ differed significantly from that of early modern Londoners. Liza Picard writing in Restoration London, has explored the different ways that people conceived of marriage. She

310 Godbeer, Sexual Revolution in Early America, 119-154.
writes that in London when the Puritans controlled the government, they treated marriage as solely a civil matter between the parties and the Justice of the Peace. But, this avenue did not last long. She writes that though unions made through this particular means were recognized, further civil marriages were declared unlawful after 1660.\textsuperscript{312} However, in the province, colonial Marylanders still continued to practice this means of contracting marriage much to the consternation of many Maryland elites. Moreover, some understood the declaration of a couple’s intention to marry followed by intercourse or even just stating that the couple was married in the present tense as being tantamount to marriage. Regarding social norms in London early in the seventeenth-century, Picard writes that two people simply needed to declare themselves to be married in the present tense. And, if they did so in the future tense, they needed to consummate the marriage before it could be recognized as a valid marriage. Either way, no formal ceremony, words, or presence in a church was required.\textsuperscript{313} An absence of suitable officiates made this an attractive option in Maryland, particularly to Quakers (who refused to take oaths in general) long after the practice had ended in London.\textsuperscript{314}

Conclusions

Prior to 1680 the majority of Maryland women arrived as single, unmarried servants. More than half of this group of first generation immigrants bore bastard children or were pregnant at the time of marriage. Even if a woman was pregnant by a man whom she did not marry, the odds of her successfully marrying were heavily in her favor as men far outnumbered women. Prior to 1660 this imbalance was even greater than the later part of the seventeenth century. So it seems that men and women in the colony committed fornication with impunity as long as they married

\textsuperscript{311} Burford and Shulman, \textit{Of Bridles and Burnings}, 21.
\textsuperscript{312} Picard, \textit{Restoration London}, 227.
\textsuperscript{313} Ibid., 228.
\textsuperscript{314} Ibid., 228-229.
or could argue that their circumstances were tantamount to being married. The women accused of infanticide in addition to having committed fornication were bound to their masters as indentured servants. Indentured servants were not lawfully permitted to engage in sex or marry. So no matter how far one stretched the definition of when marriage began, these women were outside its legitimate boundaries. Under no pretext, could they present themselves as married women—they were ineligible for marriage as indentured servants.

With so much brazen disregard for traditional social norms, a section of Maryland society must have been somewhat displeased. A number of women, of which Catchpole was one, probably felt the brunt of this discontent. So the women accused of murdering their newborn infants probably received the full brunt of this discontent—whether they had actually murdered a child or even had a baby. It was enough that they were suspected of having sex with a man and then trying to hide all evidence of their behavior; they were also convenient scapegoats.

After all, Maryland society was rather unstable. There were no certainties, guarantees, or assurances that the gamble many made with their fortunes and with their lives would pay off either for them or for their possible heirs. The social structure was fluid, the political structure uncertain, and life expectancy was short. Many variables could jeopardize a man’s fortune-- the weather, the crop, his health and that of his servants, etc—that were out of his control. But, women’s mobility and liberty could be checked. So many elite men of colonial Maryland must have viewed female criminals in determining life and death as posing a threat to two kinds of authority—the authority of individual household heads in refusing to be controlled, and the authority of larger government.
CHAPTER 7: MARRIED WOMEN CHARGED WITH INFanticide

The Two Stories

Through a dark and damp wooded area, two men followed James Langworth’s indentured servant Elizabeth to the water’s edge. They were looking for an explanation of her strange behavior. As she hurried through the darkness, she tightly grasped a linen bundle. Her behavior seemed erratic. So when they followed her and found her about to toss the bundle into the water, they demanded she let them view its contents. Alarmed, she threw the package into the water. Immediately the two men responded by fishing it out. Once they opened it, they found inside the linen the face of a dead baby boy. This was the opening scene in a trial that investigated the servant (who married Samuel Harris in the interim between the supposed incident and the hearing) and began an investigation into the conduct of a married woman. The Provincial court investigated, various witnesses testified, and a host of statements were made about a woman’s conduct and place in society. And then she was declared not guilty—most likely a result of the protection afforded her by her good conduct and status as Samuel Harris’ wife.

The other incident in this chapter investigates Mary Marler and her accomplice, Hannah Lee Price. The Maryland Provincial Court charged Mary Marler with infanticide, and her mistress, Hannah Lee Price, as her accomplice. Marler fled and was pronounced an outlaw. Her flight also confirmed her guilt to the court. Officially, she was charged with having aided Marler in murdering her newborn baby boy by laying him outside in the cold and allowing him to die. Marler’s choice to flee the colony and avoid any chance of capital punishment, both reflected badly on Price—who was then presumably guilty by association and already feeling the scorn of the male elite for aiding a member in her household to commit criminal activity—and helped Price as the case could not continue without Marler. As an outlaw, the court ordered Marler to be shot on sight if she sought to return to the Province. Price, however, incurred the real brunt of official displeasure in the form of having to pay for her lengthy incarceration while the Provincial court waited for Marler to return. She never did. Marler remained an outlaw and the court released Price.

Introduction

This chapter investigates two cases of infanticide that both came before the Maryland judiciary. In the first, which occurred in 1660, the judiciary charged Elizabeth Harris (then wife of Samuel Harris) with murdering her newborn child in 1657 when she was a single woman indentured to James Langworth. In the second case, which occurred in 1666, Mary Marler was charged with murdering one of her two newborn twins while indentured to Hannah Lee Price, who was also charged as an accomplice. Though Marler was the woman accused of having an illicit pregnancy, this chapter concentrates more on the story of Price. By contrast, Marler fled thereby escaping
judicial censure and was condemned as an outlaw. In both cases, the woman involved were freed and cleared by proclamation. One of the chief aims of this chapter is to tell the stories of both women: how they came to be charged, how the trial proceeded, and what the jury decided.

The other purpose of this section is to examine identity and its construction within infanticide cases. Throughout the empire and defined under law, a woman who secretly gave birth to a child later found dead was automatically charged with infanticide. The offense was considered to be a single woman’s crime as it was used to curb unmarried women from engaging in sex, becoming pregnant, and then committing murder to hide past actions. As it turned out, despite the desire of the judiciary in addressing the possible inappropriate behavior of rebellious women, who challenged the authority of the judiciary in their criminal activity, the court was hamstrung by its own notions of female identity. A married woman, unlike a single woman, was ineligible to be tried for infanticide though Maryland men perceived that the threat against them was so great they responded with changing the dynamics of the law.

Both women were married, but were charged with crimes associated with single women. Consequently, the judiciary had to create legal space to bring these women to trial because contemporary Maryland men believed that married women did not commit infanticide. Judicial action against married women proceeded differently than did similar action against single women, partially due to understandings of the law, motives, and purposes for bringing official censure. Any attack on male privilege had to be addressed by the judiciary because failure to obey the laws created by the elite resulted in an attack on their authority and identity. However, men did not unilaterally side with other men, nor did their gender give their particular testimony more weight than that of female witnesses. While the testimony of gentry men held substantial

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315 See for example any number of works examining infanticide in the English empire, such as Hoffer and Hull, *Murdering Mothers*, 20.
weight, the testimony of indentured men could be surpassed by that of indentured women only on such issues related to women’s bodies women of the same household had special insight. Even as the chief end of these proceedings was to safeguard the prerogative of elite men and justices and jurors acted in ways designed to reinforce elite authority, they were simultaneously forced to exercise judicial censure in ways consistent with concepts of female identity resulting in some unintended consequences: such as the ability of some women to have increased authority.

The Elizabeth Harris Case

In 1660 Elizabeth Harris stood before the Maryland Provincial Court charged with having committed infanticide. According to the charge, in 1657, at St. Winifred in St. Clements’ hundred of St. Mary’s County, at Easter time, Elizabeth Harris gave birth alone to a living infant and then threw him outside to die, but, according to the indictment, she threw him with such force that the child died upon impact.316

Several eye witnesses appeared to confirm Harris’ crimes of giving birth while indentured, hiding the pregnancy, murdering her child, and hiding the body. Robert Joyner, who happened to be in pursuit of a stray cow when he encountered Harris, saw her dispose of a bundle of linen and was further concerned by her suspicious behavior when she tried to prevent him from investigating its contents. Joyner then went to find John Gee to help him confirm that the bundle was in fact the body of a small infant. Gee also helped Joyner bury the baby and was to help remember its location so that once they retrieved their master, they might be able to show him their discovery. When the men returned they could find no trace of the linen, the blood, the

baby, or the birth. Most likely, the tide had taken away the evidence the men worked so hard to collect. Though the body of the child was no longer available, the men remained committed to airing before the judiciary their convictions about what they believed they had found. And the case went to trial in St. Mary’s City, in St. Mary’s County, where presumably Harris’ former master( and present husband at the time of the trial) also stood, because the outcome of the courts’ findings could also affect both their lives and their fortunes.

Identity and Prosecution

Unlike the Catchpole case the grand jury evidently found sufficient evidence to proceed with prosecution. Perhaps the charge against Harris was leveled by more credible witnesses, or, more likely, prosecution proceeded because the location of the crime allowed for the investigation and detection of evidence. Catchpole was accused of murdering a child while onboard ship several months prior to the accusation. However, the accusation against Harris was made on Maryland soil, in an established county. At least in part, the difference was due to the location of the suspected crime as it allowed for a thorough investigation and procurement of evidence. The people involved and the location of the alleged crime were still accessible, and could still be investigated. Furthermore, unlike Catchpole, Harris faced prosecution with no possible question regarding jurisdiction. Her crime was reported to have taken place in St. Mary’s county—a county situated squarely within Maryland’s sphere of influence. Hence, another reason Maryland men prosecuted Harris was because legally they could.

The grand jury returned the “billa vera” (literally a “true bill”) based on the testimony already provided and on the physical evidence that might be found during further investigation and consequent court trial.\(^\text{317}\) Or--and this is what accounts for the true bill--the grand jury

\(^\text{317}\) Archives of Maryland Online, *Proceedings of the Provincial Court, 1658-1662*, volume 41, page 430, Maryland State Archives, [http://aomol.net/megafil.../html/am41--430.html](http://aomol.net/megafil.../html/am41--430.html).
allowed for further prosecution because Harris was a servant at the time and had given secret birth alone to a child later found dead. Under law she was to be prosecuted for infanticide because most contemporaries could not conceive that a woman would hide the birth for any other reason than to kill it in order to save herself from the results of an unwanted pregnancy—and the consequences of a pregnancy coming to term for an indentured woman were severe: additional years to serve for the indenture and corporal punishment from her master and/or the colonial courts.\(^{318}\) Unable to distinguish between the crime of fornication (which sometimes resulted in the child being stillborn through no fault of the mother) and the crime of intentional death of a baby, the judiciary had no choice but to proceed in charging both with the same crime.

Throughout the empire, any single woman who secretly delivered a child that was later found dead was charged with infanticide. In England, when a single woman became pregnant and the pregnancy was known, and she worked as an unbound servant, instead of having additional years added to the time of her servitude, she faced dismissal, public censure, and in some cases was only able to find employment as a prostitute—which, given all of the accompanying diseases and problems, for some at least was tantamount to a death sentence. English gentlemen tended to believe that when faced with the possibility of escaping the consequences of an illicit pregnancy a single woman would choose to murder her newborn child.\(^{319}\) In order to ensure no guilty party went unpunished, English men regardless of location in the empire felt compelled to investigate

\(^{318}\) This was the standard pattern for punishment of indentured servants guilty of bastardy in the provinces. In Maryland, the first statute passed stipulating the punishment for a woman found guilty of becoming pregnant while owing time to her master was in April 1658. Archives of Maryland Online, *Proceedings and Acts of the General Assembly January 1637/8-September 1664*, volume 1, page 373, Maryland State Archives, http://www.msa.md.gov/megafile/msa/specoll/sc2900/sc2908/000001/000001/html/am1--373.html, (accessed February 4, 2008).

all allegations no matter how flimsy the evidence. When the possibility existed for any part of
the definition of infanticide to have been met—birth alone, birth kept secret, or the body of a
newborn found dead—the law required that men investigate and at least air the evidence before a
grand jury.

In Maryland, court decisions suggested that juries believed unmarried women who bore
children alone and the children died were guilty of infanticide because they had every incentive
to destroy the babies. On the other hand, even if a married woman gave birth to a child alone,
told no one of the impending pregnancy, made no preparations for its arrival, and the child was
later found dead, she was not similarly suspected of having committed infanticide. According to
Maryland jurors could not conceive of a married woman trying to hide the birth of her own
newborn child because she would bear no guilt in having one. A married woman was to have
many children who presumably would be her future heirs and who would presumably care for
her in her old age.320

Married women, contemporaries believed, presumably found it in their best interests to
adhere to the social roles attached to being a wife—caretaker, helpmeet, mother—and therefore
had no inclination to upset the patriarchal order. A pregnant wife was no dangerous social
element as she did not appear to assume the authority and prerogative of the world of men—that
of being able to judge over life and death—at least in relation to their offspring, because a
woman’s future depended on the survival of her offspring. Patriarchal stability depended on
stable family relationships, but in Maryland family relationships were by no means stable. Early
colonial Maryland was characterized by a fluid family structure because of the kind of

320 See for example Laurel Ulrich’s discussion of Martha Ballard, a Maine midwife’s life experiences in A Midwife’s
Tale. Ulrich writes that in the end years of Ballard’s life, “almost every night, one or more of the grand children
slept at Martha and Ephraim’s house... [to] support the aging couple” (336). While this time period is somewhat
later than the seventeenth century, the expectation of children to care for elderly parents was the same.
immigration it experienced—which was quite different from the New England colonies to the north, which experienced an immigration of family sets.

In localities such as Massachusetts, for example, entire families settled in patterns which reinforced the focus of the community in everyday life in addition to creating new communities, but Maryland witnessed the formation of unusual households. To a small degree, this was also the experience of some of the persecuted religious looking to populate Maryland. Quakers, for example, looking to practice their faith and set up a new community came to Maryland as entire families—and some of the more wealthy of these families came to partake in this toleration after finding Virginia to be less than welcoming. In a small part, early Maryland was comprised of family sets and, to a far greater degree, individuals who immigrated looking to make their fortunes in the new world. The vast majority of these individuals tended to be young, relatively poor, and unmarried. When they reached the Chesapeake, both male and female indentured servants were bought by men hoping to make their fortunes as planters, and it was this arrangement which allowed for the creation of both temporary and unconventional households.

Identifying Infanticide

The court recorder captured the testimony of the first witness, Robert Joiner. He testified that “in Easter time in 1657 at James Langworth’s house he went to help haul a cow out of the mire and returned by the water side where he saw a woman servant, now Elizabeth the wife of Samuel Harris and John Gee.” This seemingly innocuous testimony is notable for several reasons. First, Joyner implicated the presence of John Gee in his testimony and therefore made the court aware of another possible witness (at best) and accomplice (at worst). Secondly, and perhaps

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321 See Chapter 1. For example, the Gary’s who immigrated to Maryland as an entire family, or Peter Sharpe who apparently came from Virginia and traveled north to Md.
more important for understanding the dynamics of seventeenth-century Maryland life and the creation of identity, Joyner identified Elizabeth in relationship to her husband. Three years had passed between the supposed crime and the trial, during which Elizabeth the servant had become Elizabeth Harris. Rather than completely making irrelevant supposed wrongdoing from her past, her new status as a wife together with the delay in prosecution complicated the court process in that a married woman was being charged for a single-woman’s crime.

Harris was being tried for a crime that allegedly occurred during the time of her indenture—when she was under the governance of her master, not her husband. Her married status possibly afforded her greater respectability from the judiciary than if she had stood before the court charged merely as a servant. Her husband’s respectability reflected on her and, in all other respects, she fulfilled social expectations of becoming a well-behaved wife.323 Recording her entire identity was possibly an unconscious nod to the woman’s history while in the province and a useful way to distinguish her—she had been a servant to a particular man and had become the wife of yet another. Whether conscious or not, identifying her as a wife and a former servant tied her to both her former master and her husband. By taking her husband’s name and becoming associated with his estate Elizabeth Harris reflected on his reputation and he on hers.324 Her marriage complicated prosecution in that a married woman was accused of a single-woman’s crime and at the very least probably influenced her jurors even before they assembled to judge her case. However, coverture did not make her immune to the prosecutorial process as the grand jury advanced the case to trial.

323 This is an extension of an argument presented by Ulrich in Good Wives, 35-50, in which she argued that women could function as deputized agents of their husbands.
Most likely, her designation as a former servant (in addition to her new role as wife) was due to the nature of the crime she was accused of committing. Harris was accused of committing infanticide, though she had married in the interim following the crime. However, for reasons mentioned earlier, most men did not believe that married women would kill their offspring. In order to proceed with prosecution it was necessary to distinguish between the Elizabeth (now wife of Samuel Harris) who could not be convicted, from the Elizabeth (then servant to James Langworth) who men believed had every reason to hide an illicit pregnancy through murder. In the court process, the inclusion of both references was most likely an attempt to disassociate Elizabeth Harris’ identity from that of her husband and create a legal space in which men could justify trying her.

This particular trial witnessed a number of conflicts of which creating legal space was just one. Another problem was that in respect to all else Harris’ behavior was beyond reproach. She did not conduct herself as contemporaries believed a typical wanton woman might be expected: as a servant she did not challenge her master’s behavior and as a wife she did not challenge her husband’s. The record shows no evidence of Elizabeth Harris ever standing trial charged with any other crime—neither prior to nor after this incident, though at the trial, no one could know this. In addition to being keenly aware of the problem of charging a married woman with infanticide, the men who heard the case must have been aware that Joiner’s testimony was about a woman who complied with expectations of proper female behavior and was otherwise a model of obedient conduct. The men who listened to Joiner’s testimony were probably conscious that the testimony he offered was about a woman who was now at least auspiciously properly controlled. So, the petty jury was confronted with an old crime which was supposedly committed.

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324 Just as any employee, agent, or other representative’s behavior reflects directly on their superior; a wife’s conduct bore directly on the reputation of her husband. And, as she operated as his deputized representative, his reputation
by a woman who in respect to all else submitted to the rule of her immediate governing authority.

Like other witnesses alleging infanticide, once Joiner began testifying about what he had seen he had to account for what happened to the baby. For there to be infanticide there had to be a body and the absence of one combined with the earlier difficulties must have significantly influenced the jury’s understanding of Harris’s culpability. Joiner faced a two-fold difficulty: he had to establish both that Harris had been pregnant and murdered her newborn infant and do so without using either allegation to prove the other. He first had to confirm that there was a baby. This is probably one reason Joiner places so much emphasis on the details. He stated, “he saw on the landing place a bundle of linen” that she tried to hide from him. Once he wrested the bundle from her, he saw “a man child in it” which she then begged him to hide from everyone else by burying it—both figuratively and literally.\(^{325}\) She had wrapped the infant before she threw it outdoors—in this way trying to conceal its identity as a baby albeit not very well according to Joiner. Regardless, the details Joiner related to the court established him as an eye-witness; increased his importance to the court; and strengthened his credibility. All Joiner had to prove his allegation was his own credibility and Gee’s testimony.

Secondly, to prove infanticide, Joiner needed to verify that Harris had maliciously and intentionally killed the baby. This was also partially accomplished in Joiner’s testimony by suggesting she had hidden the body. If she had the forethought to wrap the baby in linen (thereby hiding it from visible sight regardless of the level of panic at the time), to men such as Joiner it indicated her using dubious means to hide the baby. Joiner further testified that he had looked at

the thing inside the linen—he needed to prove that he had not just assumed it was a baby. To make his testimony credible and more important to the court, he had to state that he had investigated the contents of the bundle. Wrapping the baby in linen complicated a woman’s defense that the child died from problems in birth. Concealment indicated secrecy which indicated guilt. She had prepared no clothing for the baby—which could have indicated her innocence as it meant she had not intended to kill her child. She had instead prepared a burial shroud, an indication of just the opposite. At the core of Joiner’s testimony, and Gee who agreed with him, was this: regardless of whether she had been caught unaware of the pregnancy and then found herself in labor alone and the baby died as a result was irrelevant—the fact that she hid the dead baby and failed to confess to the crime of fornication and the resulting pregnancy implied her intentionality in the infanticide. Rape as a viable explanation for a resulting pregnancy was not even a possibility as then-current medical understandings of the body required female enjoyment for conception and enjoyment precluded rape. Regardless, Joiner’s testimony regarding her guilt played on the very definition of infanticide—birth alone and in secret in which the baby died. When appearances indicated an intention to hide guilt of one crime, it implied intentionality in all associated crimes.

Possibly in anticipation of doubt in the minds of his listeners, Joiner then reminded his hearers that Gee was present and could verify his testimony. Joiner also had to explain why immediate investigation by the master had not occurred—without making his testimony appear malicious and opening himself to a slander counter-suit by Harris’ husband. Both men still had to account for the body of the child. If Joiner had seen the dead child and had witnessed his mother try to dispose of the body, he needed to answer the question most likely foremost in the minds of

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326 Ibid. See for example, the introduction and the case of the woman who made clothes for her “bastard” child, and the child later died.
his listeners: where was the body and why had the men failed to call for further witnesses? He testified that with the master’s house “full of strangers” Joiner and Gee elected to return the body where they found it until the following day. Presumably, they buried the child’s body out of respect and for safekeeping. Gee then testified to the court and confirmed Joiner’s testimony. He said that after Joiner pulled the child from the water there was the blackened face of a dead child. The dark color most likely led the men to conclude that Harris had caused intentional harm, deliberately suffocating the child. The men intended to tell Mr. Langworth about what happened but believed they needed to wait to do so as he was busy entertaining a his house full of guests. Gee and Joiner decided to wait until the next morning to inform their master of what they suspected: that Elizabeth had cheated him of her time and murdered her child in order to keep her act of fornication secret. One must wonder at the variety of motivating factors which led them to delay in relating their discovery to Langworth. Both men were servants and essentially at his mercy. Were they afraid of his reaction to them—afraid that he would beat them for embarrassing him in front of his guests by stating that he did not manage his servants and household well in allowing this act to happen? Or did they want to ensure his undivided attention as they made claims about a fellow servant? Was their real desire to be the center of attention? Did they enjoy causing someone else grief? No matter why they stalled the end result was the same. Because they waited to inform Langworth, the body was gone by the time they returned.

328 For an excellent work on the intersection of medical knowledge and the law see: Legal Medicine in History, edited by Michael Clark and Catherine Crawford (New York: Cambridge University Press, 1994), 25-44. Specifically, the chapter by Helen Brock and Catherine Crawford, “Forensic Medicine in Early Colonial Maryland Clark,” describes that contemporaries believed a blackened face indicated a violent, intentional death.
When Gee, Joiner, and Langworth arrived at “the water side” where Gee had left the child the day before, they found that “the child was taken away.”

Several possibilities exist to explain the surprising disappearance of the body. An animal may have devoured it. Yet none of the witnesses mentioned finding the remains of the linen. With the men’s attention to detail, one would expect that they would have brought the cloth back with them to show Langworth, or would have testified to finding the empty linen at the spot where the child had lain. Yet they did not. The absence of the linen indicates that either they returned to the wrong spot or the current took the linen and its contents away. Most likely, the current swept the child away. The two men had seen Elizabeth behaving suspiciously as they were outside tending to other matters—Gee and Joiner had been in pursuit of a stray cow—and then upon investigation suspected that she was trying to dispose of a child. So they were unprepared to do much more than leave it beside the water, hoping neither the tide nor an animal would take it away, until they could return with the master. They had no tools to bury the body or even mark the site. When they returned the following day, nothing—no body, bundle, or blood—remained on the shore. The tide was probably responsible for the removal of all traces of evidence. Had the child been eaten by a roaming animal, presumably the linen should have still been visible—if not found where they left it, then found elsewhere when the men continued the search for the missing bundle.

Without being able to search the body or even the linen, the second next important source of evidence was the testimony offered by another resident of the household—particularly one who shared the accused woman’s bed. Margaret Marshguy had also been an indentured servant

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330 Ibid.
in the Langworth household when Elizabeth Harris was a servant. Marshguy testified that she had slept, worked, and lived beside Harris, making her privy to the most intimate knowledge about Harris’ actions. But instead of supporting the argument of the other men, Marshguy in fact refuted their accusation. Rather than helping to establish that when Gee and Joiner stumbled upon Harris disposing of something she claimed was “fish guts” it was the body of a baby, Marshguy supported Harris’ claim that it could not have been a baby. She testified that Elizabeth Harris (who recently married Samuel Harris), had never been sick at any time “from the day of their first meeting together at James Langworth until the second summer after their coming into the country.” This was important testimony: it indicated that Harris never gave any reason for those in the closest position to observe her to believe she had ever been pregnant. She could not have tried to kill her baby if she had never been pregnant. Not only was this support offered by a fellow servant who lived in the house, but it was offered by a woman servant. Moreover, the men of the court believed that as a woman, she had intimate knowledge into judging such things—whether Harris was sick, or had evidenced signs of pregnancy, such as lactation. Furthermore, Marshguy swore that she had no reason to ever suspect Harris was pregnant. Nor had she heard anyone else voice such concerns. This too is important testimony because in effect Marshguy established that even if she were wrong about the ability to judge Harris’s condition, no signs of sickness made Marshguy or anyone else conclude Harris was pregnant. Marshguy testified that even if she were wrong about the ability to judge Harris’s condition, Marshguy never knew Harris to be sick- and Harris were pregnant, she would have shown some signs of “illness” (such as labor pains, stomach pains, groaning, blood, and what today is considered morning sickness) around the time of delivery.
Perhaps the most notable source of witness testimony absent from the record was that of the master, James Langworth. He was virtually silent and referenced only in passing. He was not a direct participant in the proceedings and offered no testimony to the court. The incident had supposedly happened in 1657, but the trial occurred in 1660. She had been his servant, and if she had become pregnant he possibly stood to gain more time from her. As more time meant more profit, pursuing her could have had direct implication on his pocketbook. So, why had Langworth not pursued judicial action earlier? The most likely answer to this question probably lay in the fact that Langworth was already dealing with a host of legal problems regarding servants and had very little evidence to pursue the matter regardless. Though Joiner had initially identified the time of the incident as happening around Easter in 1657, the incident actually happened the year before.

In Easter 1657, Langworth’s house was full of company and he was too occupied with other events to pursue prosecution. These factors were consistent with the legal difficulties in which Langworth participated beginning in April 1656. First, in 1656 he stood as an attorney for William Johnson who was involved in a nasty dispute with Capt. Mitchell that lasted for several months. Capt. Mitchell accused Johnson of illegally selling his servant, who had been contracted exclusively to teach his children, and demanded she be returned after Johnson sold her. As Langworth had a gentleman’s house and was Johnson’s attorney, they probably met in his house. This was probably the “house full of strangers” to which Gee and Joiner made

reference. In April of 1656, witness statements were taken and Johnson formally announced that all legal dealings should go through his lawyer.\textsuperscript{333}

Secondly, the very same Captain Mitchell who was the plaintiff in the dispute in which Langworth represented Johnson, also brought a case against Langworth for similar servant problems. Langworth himself was a defendant in a case over one of his servants, John Gee, whom the same Capt. Mitchell also claimed had been illegally detained. Mitchell appeared before the judiciary in September 1656 claiming that Gee was sold to Langworth for one year only or until Mitchell should arrive in the colony, whichever came first.\textsuperscript{334} The court found in Mitchell’s favor and ordered Gee returned to him. Hence, Gee was no longer in Langworth’s household in 1657, making the likelihood that the alleged murder actually happened in 1656 all the more likely. Langworth was already occupied pursuing legal conflicts, some of which he was a defendant and others in which he was an attorney in 1656, and was similarly not in a position to pursue costly prosecution against a servant with which he had very little evidence.

Because no midwife, jury of women, or other knowledgeable experienced authority on health and bodies testified, most likely no one appeared to offer this kind of testimony because no one was called. Contemporaries probably believed that there was nothing to be gained in so doing. The body of the child could not be found, so there was nothing to be gained post-mortem. And, the suspected birth was so long ago, several years in fact, that any evidence to be gained by checking the woman’s body was long since gone. Three years had lapsed between the testimony

\textsuperscript{333} Archives of Maryland Online, \textit{Judicial and Testamentary Business of the Provincial Court, 1649/50-1657} volume 10, page 446, Maryland State Archives, \url{http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000010/html/am10--446.html}, (accessed on February 5, 2008).

taken by the court recorder at the trial and when the incident was supposed to occur. Thus no
evidence of an illicit birth remained. Furthermore, it is entirely possible that she had other
children during this period because she was married. So, in this particular case it appears that the
testimony offered by the fellow servant was wholly significant to the outcome of the case.

In the contest for authority and agency, women were neither inactive nor ineffective. The
testimony of a fellow servant and bedfellow trumped that of two men. While landed men
exercised ultimate power and authority in the judiciary process the court did not behave in ways
that privileged lower class men. In this case, the appearance of equity and fairness for the
judiciary process was more important than exhibiting a sense of male unity. The men of the court
decided in ways that allowed them to keep society stable and that permitted them to proceed with
the mechanisms of government that ultimately reinforced their own legitimacy. Harris’ saving
grace may have been partly due to being married to Samuel Harris. The alleged charge had
occurred several years earlier while she was indentured prior during the time of her indenture.
And, the evidence needed to condemn her may no longer have existed. But, in seventeenth-
century jurisprudence, the jury could still have suspected that she was guilty even before the trial
began and if she failed to explain sufficiently why she was incorrectly implicated, the jury may
have seen fit to condemn her.335

The jury may have found enough satisfaction with the explanations offered to believe that
under the guardianship of Harris’s husband, any threat she might have presented to civil society
as a wanton and dangerous woman was now inconsequential because she was no longer a single
woman without a strong man to control her. They may also have believed that because her
patriarchal head had control over, he would see to delivering her punishment. Had Harris
behaved differently, the trial may have ended differently as well. Harris stood trial, and through
her compliance, acknowledged the authority of the judiciary to determine her guilt or innocence. But she was not without options; she could have sought to flee the colony, refused to enter a plea, or exhibited any number of behaviors designed to thwart a process that could have ended in her death. Other women did just that.

This case reveals the way the judiciary responded to accusations of infanticide and the possible social threat such actions created—no matter how long the delay was in prosecution. In Maryland, the justices went to extreme measures to prosecute women suspected of murdering their children, even if so doing resulted in the creation of new legal policies and required extraordinary and complicated measures (such as trying a married woman for a crime she might have committed as a single woman several years prior).

Alternatives and Resulting Consequences: the Marler/Price Case

On April 6, 1666 Mary Marler stood before the Provincial Court, accused of committing infanticide in Port Tobacco, Charles County, on April 15 of the previous year. Marler was accused of giving birth to two children—one male and one female—and with the help of an accomplice, Hannah Lee (Price) murdering the boy. The record states that Marler had Price take the child outside in the cold and lay him outside to die. So, unlike Harris, Marler was not accused of directly applying force to the child, but eliciting help from another to cause the child’s murder through exposure and neglect. Both Marler and Price were charged with committing infanticide because regardless of the means they had used the result was the same: a child was dead. Yet unlike Harris, for one of the women at least the case never came to trial because she successfully fled the colony. Breaking out of prison, fleeing the colony, and failing to return to stand trial

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336 Archives of Maryland Online, *Proceedings of the Provincial Court, 1666-1670*, Volume 57, page 74, Maryland State Archives
within the time limit set by the judiciary resulted in Marler’s automatic condemnation: she was declared outlaw forever. The Judiciary convicted Marler based on her behavior after the fact, not on the strength of the evidence. To the nascent elite who constituted the judiciary, Marler’s failure to stand before the judiciary was the same as an admission of guilt and deserved to be punished as such.

Enough evidence existed to warrant a hearing before the grand jury. But before the grand jury returned its verdict, Marler broke out of prison and fled, presumably because she believed the men of the grand jury would approve a jury trial, which would in turn find her guilty. Just the possibility of hanging was possibly more than she could bear, and so she fled. Ultimately her choice to flee and its resulting consequences were deeply ironic because the grand jury cited her flight as further justification for proceeding to jury trial. Her flight added additional incentive for the grand jury to refer the case to a criminal trial and summarily confirmed Price’s guilt in the matter.

Several striking things about this charge are noteworthy in that the details reveal some inconsistencies in the treatment of the newborns involved and, equally important, in the treatment of the women. First, this charge is somewhat unusual in that it mentioned the birth of twins and only one was then still alive: the boy was suspected of being murdered but not the girl. If the women were trying to conceal the illicit pregnancy and birth, they would have needed to murder both children. But the girl was delivered to live. The judiciary believed that only because Price had gone to great pains to help keep secret the birth and death of the boy had Marler been able to escape punishment. The jury returned the following verdict written on the bottom of the

indictment: “we also find Hannah Price by her concealment of the murder of the child [for] so many months to be [an] accessory to the said murder.” They seemed to hold Price even more accountable for conceding her knowledge of Marler’s illicit actions and in fact keeping this knowledge from the judiciary.

Price was no stranger to the judiciary. She was in fact quite familiar with the court, the statehouse, and the bar, which may have played a factor in the court’s conduct toward her. The house in which the Provincial Court met served two other purposes: as the jail, and as Price’s home. Hannah Price had sold the house in April 1662 to the General Assembly for 12,000 cask of tobacco. She sold the house under stipulation that she would continue on as the ordinary (or, innkeeper) for the next three years. At roughly the same time Price attempted to help Marler thwart official censure, she worked and lived in direct contact with the members of the court. Price had served as ordinary for 3 years but her contract was over in April 1662. Thus, she had conspired with Marler to hide the pregnancy while still working for the General Assembly. Part of the reason the judiciary proceeded with prosecution, kept her in jail from October 10, 1665 to October 18, 1666 (all the while allowing the bill for her maintenance to increase), and then finally cleared her by proclamation, was due to the fact that as long as she was incarcerated she caused the least embarrassment to the judiciary and could commit no new crimes, and Marler’s absence prevented the judiciary from obtaining evidence necessary to convict Price—

340 Archives of Maryland Online, Proceedings and Acts of the General Assembly January 1637/8-September 1664, Volume 1 page 456, Maryland State Archives,
such as the ability to examine Marler’s body for clear signs of recent pregnancy. Whatever the reasons and suspicions the judiciary may have had to keep her in jail (to begin the prosecutorial process) were enough to advance the case past the grand jury. Regardless, Marler’s flight halted the judiciary and may actually have saved both women from the gallows.

The judiciary may have been adversely disposed towards Price from the beginning for several reasons. Perhaps they viewed her brazen disregard for the law as particularly infectious because Price was Marler’s mistress. In other words, Price exercised more authority, and more responsibility, than if she had been a fellow servant. She was supposed to manage the affairs of her household and ensure that lawlessness did not occur. However, her behavior, instead of prohibiting lawlessness, actually enabled it as Price helped her servant attempt to impede the law. Only because Price helped hide not only the signs of pregnancy—right under the noses of the Assembly men as Marler was in service to Price when Price functioned as the tavern keeper—but also the signs of labor and delivery, had Marler been able to hide her crimes. The judiciary appeared aware of this, as it chose to include details hinting at such: the description of Marler indicated that they believed she was particularly “big with child” because she carried twins, but her mistress helped conceal the pregnancy. To be able to hide both for more than nine months, directly in view of the General Assembly, must have been difficult at best for both

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women, and once Marler and Price were found out, especially embarrassing for the governing elite.

Unlike the Elizabeth Harris case, in which the child and the linen vanished, there was a distinct body of evidence in the Marler/Price case to examine. As the charge mentions the birth of a boy child and a girl child, this indicates that at some point the bodies of the children were visible. This particular and unusual detail is so specific it seems reasonable to believe that witnesses could attest to not just the birth of two children, but also as to their gender as well. Regardless, enough evidence existed to persuade the petty jury to allow the case to progress past the investigative stage, and conclude that the charge warranted a jury trial. This was more than just a demonstrative display of court authority, as the case proceeded beyond the grand jury stage.

The court ordered both Mary Marler and Hannah Price to account for the same evidence. In all likelihood, the absence of the two chief witnesses against the two women helped both of them escape the gallows. The record states that without “Elioner Lindsey and Joan Nevill, who appear not” the case lacked significant evidence. Though Lindsey and Nevill failed to appear to offer their witness testimony, Price’s guilt may have been significantly influenced by Marler’s flight. Flight indicated guilt. The presumption of Price’s guilt was ensured by Marler’s actions: the judges concluded that Marler ran because she was guilty and knew if found out, or ever returned, she would be killed.

Once the court found that Marler failed to appear for her hearing, it decreed that if she failed to appear for the next court she was to be forever outlawed. In fleeing she had sought to

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344 Incidentally, this same Joan Nevill is the wife of John Nevill mentioned in the case with Susan Atcheson. Volume 57, page 74. Archives of Maryland Online, Proceedings of the Provincial Court, 1666-1670, Volume 57 page 74, Maryland State Archives,
save her life, but had also made a clear statement regarding the ruled and the rulers. Her dismissal of the summons was a statement that she would not submit to those who ruled the young province. She would not obey; she would not yield. She had also rejected the court’s authority. The court was supposed to be the greatest manifestation of just authority. Men sat in judgment of other men based on wealth, status, and the ability to command respect. Men were found guilty or innocent based on other men’s best judgment and understanding of the law. Accordingly, the court also stood to signify the lawful order of governance and patriarchy. Evidently, the court granted Marler a choice: return to the court, stand trial and so signify the court’s lawful authority, or suffer banishment. The men of the period must have understood the challenge she made to their authority at least in part because they responded with one of their own. The record states that “Mary Marler, according to an act of the Provincial Court, on April 6, 1666 was by the Sheriff proclaimed to stand indicted of murder and commanded to present or deliver herself up to or be fore ever rendered an person outlawed in this province of Maryland. Never-the-less, she surrendered not herself up nor made her appearance.” If Marler ever tired to re-enter the colony she could be shot on sight and was declared guilty even without a jury trial. Marler had thumbed her nose at them, and the elite men of the Maryland judiciary responded in kind.

The proclamation made by the court was a public statement. Marler had publicly refused their governance; so the judiciary publicly proclaimed her beyond their jurisdiction. She had twice refused to come to court when summoned and by removing her presence from the court

she rebelled against lawful governance. By condemning her misbehavior, the justices reaffirmed the superiority of their rank and class by relating her behavior to where they must have believed it belonged: the wilderness. She was no longer welcome in the province because she had refused to act lawfully within it. In one swift move the court had denounced her behavior, reaffirmed its superiority, and voiced a decree aimed at dissuading any and all from imitating her behavior.

Conclusions

Together, these two cases reveal insights regarding the role of identity and its relationship to defining a crime and the manner in which prosecution proceeded. Given the particular understanding of who was indictable for committing infanticide in the period under study, specifically single women, the justices of colonial Maryland were obligated to create legal space that allowed for prosecution. The creation of legal space was necessary because a woman’s status as a wife complicated prosecution for a crime committed during her singlehood. The judiciary responded by de-emphasizing her association with her husband. As the case with Harris shows, any number of reasons may have prevented immediate prosecution. Delay of a trial could significantly complicate prosecution. It allowed for a woman’s married status (and thus her identity) to change, and for the possibility of evidence being lost. A change in marital status did not nullify the charge, as in some way giving a woman complete immunity for an alleged crime, but it did complicate the process. And, as both these cases further show, married women investigated for committing infanticide, or as accomplices, were never convicted.346 A single woman and a married woman differed in that a married woman was permanently under the control of her husband, whereas an indentured woman could be bought and sold thus changing

masters, or even be master-free, once her period of indenture was over. As elite Maryland men were compelled by law to prosecute, they consistently found in favor of married women, most likely because the threat that a single woman posed to the province had been alleviated.

The Harris and Price cases reveal further insight into how the status of a married woman influenced the actions of the judiciary. Price, like Harris, was married. She was not accused of committing a heinous crime before she was under the governance of her current husband; she was accused of aiding her servant in committing murder while married to him. By no stretch of the understanding of male governance, of which her husband was her immediate governing authority, could the judiciary dismiss her actions believing that her behavior would improve with her new station. In fact, at this point, her identity as a married woman had not prohibited lawlessness, but instead had enabled it. Hannah Lee Price was not a servant; she was a woman who commanded property because her husband had recently died and she sold the plantation to the Assembly, reaping the benefits from the sale.

Moreover, Price had recently remarried; her new status and her relative fortune (at least enough to command servants) were made possible because of her connection to her husband. The men of the judiciary responded in kind. On the one hand, they delayed prosecution, at least in part, because Marler successfully fled and the justices wanted to proceed and, presumably, because they wanted to allow sufficient time for apprehension. On the other hand, a married woman who helped a single woman she was supposed to control attempt to thwart the provincial authority (which as mistress she was to represent) had embarrassed and affronted the nascent elite. As a result Price was punished accordingly. Price was married, so it was doubtful that the judiciary would have condemned her to hang even if Marler had appeared for questioning. Albeit, given this one constraint, the nascent elites responded with particularly harsh measures.
The court kept her in jail for roughly a year and then saddled her with a huge bill for her maintenance. The justices could have chosen to speed along the pardon she eventually received, but, had they chosen to do so, her penalty would have been lessened. Elite Maryland men were constrained to some degree by the limits of the law and their constructions of its meaning, and found creative solutions to executing judgments. Without violating their understanding of the law, they found a way to assert the superiority of the nascent elite and prohibit lawlessness.

Furthermore, witness identity also limited the kind and caliber of evidence that could be offered to the court and the weight the court placed on this evidence. As particularly evidenced in the Harris case, a hierarchy of sorts existed with regard to the testimony offered by the witnesses. While two male servants both offered testimony stating that they had found the body of a dead baby, and though they had described in detail markings of violence, the testimony of the male servants alone could be trumped by that of a female indentured servant. Without concrete evidence in the form of a body, the judiciary was more persuaded that a woman who shared another woman’s bed had access to information regarding a woman’s body than men who had examined the contents of a bundle that could have been the guts of a body, the guts of a fish, or anything else. The testimony of female servants could in some ways supersede unsubstantiated testimony of male servants in cases of infanticide. Evidently, male servants held no more official authority before the judiciary than did female servants.

Hence, the identity of the people involved at least partially determined the conduct of the judiciary. Judicial action against married women proceeded differently than did similar action against single women, partially due to understandings of the law, motives, and purposes for bringing official censure. Other differences in respect to an individual’s identity and his or her participation in infanticide trials were evident particularly in respect to testimony. While the
testimony of gentry men held substantial weight, the testimony of indentured men could be surpassed by that of indentured women because the judiciary believed that with regard to women’s bodies, women of the same household had special insight.
CHAPTER 8: RELEASED SINGLE WOMEN ACCUSED OF INFANTICIDE

The Four Stories

Jane Crisp stood accused before the judiciary of murdering her newborn child and feeding the body to the hogs to hide her crime. After hearing the testimony and evaluating the evidence, the grand jury believed that a petty jury needed to determine if she had indeed committed murder. The case went to trial. In this instance, once the jury deliberated, the twelve men found the defendant not guilty. Crisp was required to pay for the associated court costs—all court fees and 30 pounds of tobacco for her imprisonment.

On a late October day, another elite woman and her father stood trial in a local planter’s home accused of committing infanticide. Her step-father, George Harris, represented her before the court, and spoke for her at length. Having assumed the posture of a well-governed member of a strong patriarch’s household, the charges were dismissed. Hannah Jenkins was ordered cleared by proclamation.

The third woman in this chapter, Patrick Forrest’s servant, Mary Stevens, also stood accused of infanticide. And, like George Harris, Forrest’s presence was also felt in the court proceedings. Steven’s master sat on her trial jury and was present in the courtroom during the investigation. Consistent with that of the Jenkins case, when her patriarchal head assumed a posture of authority over her, the grand jury acquitted. Stevens was cleared by proclamation and released.

Finally, having made a whole day’s travel to appear in St. Mary’s city, Anne Pattison stood trial like all the other women in this chapter accused of infanticide. There is much about her we simply do not know. However, we do know that she was single, white, a woman, and the daughter of an elite man. Her accusers were John and Johanna Taylor—associates of the Pattison family. In the Pattison case, though he did not stand to represent her, her association to her father and her consequent identity as the daughter of a gentleman probably functioned in much the same way as had the physical presence of Jenkins’ stepfather and Steven’s master: with respect to class differences, the court affirmed that the woman in question was under the strong control of her immediate governing head, and ameliorated the need to severely punish her. No well-behaved elite daughter was ever condemned for committing infanticide. Her father’s reputation and conduct protected her.

Introduction

This chapter investigates cases of infanticide in which all of the women were unmarried women and acquitted. A correlation appears to have existed between the appearance of a woman’s patriarch and the outcome of the trial. Of the eleven women investigated for infanticide prior to 1689, six were acquitted. Just as with the women who were married by the time of the trial and were acquitted, every unmarried woman whose father or master appeared in her defense, virtually or in person, was also acquitted.
Specifically, this chapter follows the infanticide trials of four women, Jane Crisp, tried in 1666; Hannah Jenkins, in 1668; Mary Stevens, in 1671; and Ann Pattison in 1672. Jane Crisp was accused of feeding her child to the hogs in effort to hide her illicit fornication and resulting pregnancy.\textsuperscript{347} Hannah Jenkins, whose father stood to represent her, was accused of bearing a daughter and similarly killing the child to cover illicit behavior.\textsuperscript{348} Mary Stevens, whose master appeared on her jury, was accused of bearing a live child and then killing it to avoid punishment.\textsuperscript{349} And Ann Pattison was charged with killing a healthy child born in secret without the help of other women.\textsuperscript{350} All the women were charged with the same crime: bearing a living infant in secret and without the company of any other women, and then killing the child.

This section shows that Maryland’s nascent elite used the courtroom as a stage to demonstrate the privilege of patriarchy. From particular garb designed to show status, to verdicts, the court sought to underscore gender and class difference in order to strengthen their social position. Male power translated to extra-legal influence; the verdict of a woman depended on the presence and identity of a man. Women who appeared outside of the control of a man were condemned, but married women (as the previous chapter indicates) and single women with fathers or masters who interceded for them (implicitly or otherwise) were under male control and no longer a social threat.


On June 19, 1666, the same year in which Hannah Price and Mary Marler were charged with infanticide, Jane Crisp was brought to the Talbot County Court, on Maryland’s eastern shore, in Talbot County. Crisp was initially charged with murdering her newborn child the previous April. As was the norm in the Maryland judicial process concerning felony crimes, the county court first heard her charge and then was instructed to determine if sufficient evidence existed to bring her case before the Provincial Court. The testimony heard before the Provincial Court was somewhat different from that heard before the county court. Once the case appeared before the Provincial Court the chief witness against Crisp, Charles Herbert, was not listed as present. Instead, two men who did not appear in the county court hearing, John Reynolds and Caleb Isgate, an indentured servant, offered testamentary evidence to the Provincial Court.

In this case, as in other Maryland cases of infanticide, men brought the case before the court. Charles Herbert (who was an indentured servant transported by 1666) testified to the county court that roughly two months prior, on 18 April, Jane Crisp had delivered a child “without doors in the plantation and she would not be known that she had a child.” Herbert’s

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353 For transportation information about Charles Herbert see: http://www.msa.md.gov/msa/speccol/sc4300/sc4341/html/search.html

accusation was rather straight-forward. He accused her of intentionally keeping secret her act of fornication, and the resulting pregnancy, by hiding the accompanying labor and delivery. She made no plans to care for the child—prepared neither clothing, nor bedding; nor did she confess her actions so that appropriate measures could be made for its future care or delivery. Herbert suggested that the only plans she made were to kill the child. And then he stated before the county court the evidence he believed confirmed her guilt in the matter, “went and fetched a midwife, and two women more, for to examine her, and she confessed that she had a child and the hogs had eaten it.”355 One must wonder, however, how much evidence existed for the court to examine: no physical evidence remained and no other witnesses, apart from Herbert were recorded as being present to corroborate his testimony.

Neither the midwife nor the two women were recorded as testifying, and, combined with the level of importance of female testimony in a female body crime, it is highly unlikely that the recorder would have chosen to ignore such incriminating details had the evidence been offered. Regardless, Herbert’s testimony persuaded the judiciary to refer the crime to the Provincial Court. The crux of the evidence against Crisp that advanced her case from the county court to the Provincial Court was her supposed confession of guilt before the midwife, the two women, and Herbert. The damning confession Crisp made was not to the court. The testimony that convinced the county court of her involvement in foul-play was actually hearsay. Regardless of to whom the confession was made, the court was convinced that she at some point confessed, and “by her Confession [to various neighbors], and the Examination of the Evidences, that she was Delivered

355 Ibid.
of A Child, and that it was devoured by the hogs the court have bound her over to the Provincial Court.” Effectively then, the court was primarily persuaded by Herbert.

Herbert’s suspicions that Crisp’s actions were less than honorable were partly due to her identity as a “spinster.” She was not married, and yet she displayed particular physical cues that made Herbert suspect she was pregnant. Other witnesses who appeared before the later Provincial Court but not before the hearing in front of the county court noted that she had been “bigg with child.” Herbert suspected that she had given birth alone and in secret so that she could secretly kill her newborn child. He was particularly cued to observing her behavior, noting anomalies. Maybe other behaviors had caused Herbert to suspect she was hiding a secret—or perhaps he exposed her (or lied about her) simply to appear important. Regardless, whatever physical indications did or did not exist that implied a recent delivery, Herbert persuaded other women to examine Crisp. Any number of reasons could explain her apparent gain in weight. For example, her weight-gain may have been due to a greater availability of food, and thus an increase in her caloric intake. According to Lois Green Carr, Marylanders in the seventeenth-century lived a frontier existence that was materially poor but rich in food. Carr explains that colonists tended to eat the same bland food (and complained about it), but that their caloric intake was vastly superior to that which counterparts in England had. Maryland colonists ate roughly 4,000 calories a day—which was necessary considering the hard labor they performed. Whatever the reason, Crisp’s weight-gain incited suspicion of promiscuous


358 Ibid.

behavior. And that more than probably anything else made Herbert suspect her behavior. One must wonder at what he found. Was she away from the house for an extended period of time? Did she moan during labor? Unfortunately, thses details are absent from the record.

But why had she made what appeared to be a sizeable strategic error in talking to these witnesses: admitting to them that she had murdered her child? Perhaps Herbert had lied to the court and Crisp had not confessed; this was a possibility. If that were the case, at least one of the three other women also cited as present at the time would have testified that Crisp made no such statement. As their testimony is absent from the records, and the case was referred to the Provincial Court, one suspects that the women had failed to appear before either the court. So, if Crisp had confessed perhaps she was consumed by the gravity of her actions and confessed to purge herself of her guilt. This too, was a possibility. If so, she later realized that the result of her confession, in the end, would result in her conviction and her death. This may have influenced Crisp to recant her earlier testimony. When she appeared before the Provincial Court, which would determine her fate and decide whether she lived or died, she pled not guilty and denied everything.

Perhaps the judiciary feared the lawlessness her example could encourage by allowing her behavior to remain unchecked. In the details regarding the way Crisp disposed of the unwanted child, Herbert cast her as an unfeeling, unwomanly, dangerous social element. If a true woman was to bear and raise healthy offspring, a woman who mercilessly slaughtered her own young was simply a social pariah. The recorder wrote that Crisp was from Choptanck in Talbot County where being a spinster—a legal term to identify an unmarried woman beyond the usual age when most women married--she was big with child. She had delivered a living baby girl which she placed in the cold causing its death. Conceivably the judiciary found her to be a
dangerous element because of the perversion of womanhood. Instead of caring for her child, she neglected it to cause its death. Crisp was accused of leaving her daughter alone in the cold where the newborn died. Consistent with an unfeeling, unnatural woman without any evidence of remorse, Crisp was alleged to have fed her daughter’s body to the hogs. The judiciary may also have viewed Crisp’s behavior as in keeping with that of a woman who refused to yield to male authority. She was accused of murdering her child—an unnatural act for a woman, and of having intercourse with a man not her husband—an illegal act for a woman.

This case proceeded differently than the earlier case with Elizabeth Harris because Crisp was a single woman who had the opportunity and possibly the motives and means to commit the crime of which she was accused. Hence, left unchecked by the judiciary, she was a dangerous social element. So most likely the men of the Maryland judiciary viewed their position as the final defense against lawlessness because of their unique ability to support patriarchal authority. They could stand in the place of a weak, absent, or in this case non-existent husband. Crisp’s case differed from the Harris case in another important detail: how far the trial proceeded. In the Harris case the first jury found insufficient evidence to warrant a jury trial. Only the grand jury heard the evidence and the trial proceeded no further. However, in the Crisp case a grand jury, after hearing the testimony and evaluating the evidence, believed that a petty jury needed to determine if she had indeed committed infanticide.

In this case, once the jury deliberated, the twelve men found the defendant not guilty. In spite of this, Crisp was still required to pay all court costs and 30 pounds of tobacco for her

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Whether guilty or not an allegation could become a sizeable expense for the defendant. The jury of twelve who decided Crisp’s case found insufficient evidence to condemn her to death. Perhaps they truly believed she was innocent of the charge—no record exists explaining why they found her not guilty. Possibly, enough doubt regarding the evidence coupled with her adamant denials of the crime existed to persuade the jury to acquit.

Unfortunately, as very little of the proceedings of this case remain, a thorough analysis is not possible. For example, location of the household to which she belonged is possible to determine. Though she was transported by 1666, the identity of her master and the length of her service were unrecorded. None of the status markers, nor any identifying markers were recorded in either the county court or the Provincial Court cases. The recorder only noted that the case occurred. The records remain silent regarding the names of those involved, the testimony they offered, the outcome of the trial, and the relationships between all involved. And in the Provincial Proceedings the testimony of the witnesses simply affirmed the charge in the court language of the recorder. It was not in the words of the witnesses and therefore offered no details or particulars apart from the official charge. The limitation in the record prohibits a thorough investigation of the trial as was possible with the other cases included in this chapter.

Despite the limitations of the records, what makes Crisp’s trial significant is what it reveals about the nature of an accusation. The accusation alone—without conviction—was enough to seriously complicate Crisp’s life. She stood for several hearings all relating to the supposed murder, defended herself countless times, and sparked a controversy among her neighbors that

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undoubtedly resulted in gossip and public scorn. So while the court case may have ended without taking her life, she was probably not free of public censure. Moreover, at the end of the trial she was required to pay for the judicial proceedings and all associated costs—not an inexpensive bill, as she had to pay two sheriffs thirty pounds of tobacco for each day she was incarcerated.\textsuperscript{363} Regardless of whether she was convicted, this case communicated a display of male centered pomp and circumstance.

Everything about the court was designed to intimidate the accused and emphasize the distinction between the court and the people. The judges whom Jane Crisp stood before wore special decorations for this purpose. The Lord Proprietor of Maryland, Cecil Calvert, sent instructions to his son Charles, the Lieutenant General, charging him to find a way to make a symbolic distinction through apparel between the officials and the people.\textsuperscript{364} By ordering the judges to wear exceptional decorations, Calvert set them apart as “special.” Charles Calvert ordered “that every judge of the Provincial Court must appear in court at the days appointed ‘for their setting’ with his ribbon and medal under penalty of a fine for every time they failed so to appear.”\textsuperscript{365} By setting the officials apart through the use of ribbons and medals the court officials became identified by these distinctions. In effect, the ribbons and medals came to signify the power and authority of the office these men held. In this sense, the intimidation of the courtroom probably heightened an accused woman’s sense of powerlessness. The distinction was a powerful communication of the provincial hierarchy: not only did others determine her daily


affairs, but also now others would determine her existence as well. Hence, given such attention to demonstrating the authority of the judges through details such as ribbons and honors, it is reasonable to believe that the officials were well aware of the power of symbolic representation.

All women on trial for infanticide were at a distinct disadvantage in the court system. They could hold no public office, had no possibility of being judges, and had no chance of being tried by a true jury of their peers. For a woman involved in a seventeenth-century infanticide case she could not participate as a member of the jury which determined her fate or as a justice who oversaw the proceedings. Ultimately, in this exclusion of women from the judicial offices and the jury, the paternalistic society reinforced itself. Even when women exercised control over their own bodies and those of their children, as demonstrated by the court system, men still held ultimate authority. However, even in this restricted sphere of witness and defendant some women could hold influence in cases involving women’s bodies. Though the final choice of death or freedom for the defendant was ultimately in the hands of the men involved, these women did have a voice. Women did have a circle of power (albeit very different from men)--a domain that was only accessible to midwives and married women. For brief moments throughout trials involving women’s bodies, women exercised positions of authority and control.

The research outlined in this section dovetails nicely with that of other historians examining women’s position in colonial law. Like Cornelia Hughes Dayton who argued in *Women Before the Bar* that the courtroom functioned as a stage through which colonial leaders were able to reinforce the colony’s ideological agendas and boldly assert that the absence of women was a doubly powerful symbol, this essay similarly supports the idea that the diminished presence of women, when compared with that of men, “conveyed the message that the legal...
arena was properly a ground of contest between men. Visually at least, women who entered the field were oddities. 366 On the whole, Maryland men differed from their Connecticut counterparts in that the Maryland judiciary was far more concerned with upholding male authority through the law than upholding a particular religious ideology.

Having the trial progress from the county court through the Provincial Court was an important reinforcement of the social hierarchy and display of power it provided symbolically. Like men who failed to yield to the authority of the Provincial government, in one powerful stroke the presence of a trial warned women about the dangers and possible ramifications that awaited them if they usurped male authority and practiced lawlessness. Regardless of the outcome of the trial, simply the occurrence of being held accountable for transgressing the law promised to stop one woman’s inappropriate behavior from influencing other women to do likewise. Because the trial showed that there were serious consequences for such a lapse in judgment, one would be disinclined to believe that wanton behavior went unchecked. Having to stand before several groups of powerful men and give an account for an accusation demonstrated that a woman’s fate—a married woman, a single woman, a powerful woman, or a rebellious woman who refused to be controlled by a man—was ultimately in the hands of elite men.

The Trial of Hannah Jenkins, and the Role of Her Step-Father

In the middle of October, 1668, Hannah Jenkins stood trial for murder. As with other cases heard by the Provincial Court, until the purchase of a special building for the Assembly and Court the Provincial Court met in a planter’s home because the judiciary needed a building large enough to accommodate a large number of people. The grand jury, the petty jury, the judges, the defendant, all the witnesses, and other interested parties needed to fit into a single room. In such a rural

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outpost as seventeenth-century Maryland few buildings could accommodate these particular needs. As Lois Green Carr has argued, buildings in Maryland during much of the seventeenth-century were built as temporary structures. She contends that colonists built wooden structures that were designed to last roughly fifteen years as a deliberate attempt at ensuring their children received a valuable inheritance: land. The more land early settlers could work and claim, the more of a long-lasting legacy they could leave to their children. Since the focus was on amassing a fortune in land—something difficult to achieve in England—homes were of a utilitarian importance. According to Carr, “the majority of families lived in leaky, framed houses with one-room and a loft covered and sided with rived clapboards. . . Most richer inhabitants’ shelter was little better. These structures deteriorated quickly at both top an bottom as termites ate the posts on the ground and water-soaked roof clapboards and timbers rotted.”

And this was most likely the kind of the house—a small impermanent structure made of wood, that leaked when it rained and, suffered from rotten timbers—Hannah Jenkins stood in when she appeared before the county court of Kent County and offered her plea inside Mr. Richard Blunt’s home. The record indicates that Jenkins was the step daughter to another gentleman whom the court identified as Mr. George Harris. So in all possibility, as the two men were from the same county, and both were referenced with markers indicating their status as gentlemen, Jenkins may have been in the home before for social occasions. She was the daughter of a gentleman, and in all possibility had been entertained as a guest in the same room in which she was now being tried. One can only guess that in addition to being terribly frightened, she may have resented the charge and possibly wondered how it would effect her reputation.

Despite her family’s rank, the judiciary proceeded with the trial in which the court identified the defendant, Hannah Jenkins, through her relationship to a powerful man: her step-

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father. The recorder stated that “information has been given to some of the commissioners of this county that Hannah Jenkins, daughter-in-law to Mr. George Harris of this county, hath been delivered of a man child.” All of the men appear to be mentioned first in the record, and occupied a relatively high social position. Even when introduced to the court and the charge was levied against her, Jenkins’ identity was circumscribed by that of her step-father; he was introduced before she was.368 So if the men of colonial Maryland were afraid of elite women usurping male authority, as they were with women of lesser means, then one explanation of the sequence of events is as follows: once a woman again assumed a submissive pose in respect to her household head, the hierarchy was re-established and the prosecution could stop.

Asking her step-father, George Harris, to be her attorney was a clever and strategic move on her part. By asking the man who was her immediate governing authority—her household head—to represent her in court, Jenkins affirmed his authority over her. So if the court had viewed Jenkins as misappropriating legitimate male authority—through determining with whom she had sex and in determining life and death—acknowledging her stepfather’s authority over her re-instituted the paternal hierarchy. If men-on-the-make feared the misappropriation of power, which was one result of women exhibiting wanton behavior, then curbing the wanton behavior itself was not enough. The nascent elite needed to address the root issue: the usurpation of male privilege. Jenkins implicitly acknowledged the social hierarchy when she explicitly asked her stepfather to represent her before the male-elite. He spoke for her, he counseled her, and for all intents and purposes he ultimately controlled her.

The other interesting aspect about this particular case is the inclusion of a jury of women. Unlike the Gary case mentioned in the section on rape, the court convened a jury of twelve women and referred to by their first and last names--instead of being identified by their marital status--to examine the accused. Nonetheless, due to the experience and social mores necessary for the information required, they all needed to be married.369 Mary Vicars, Katherine Osborne, and Dorothy Williams were wives of the judges. The other women--Rebecca Denny, Margaret Jones, Anne Blunt, Christian Ringgold, Elizabeth Winchester, Mary Southern, Elizabeth Coppage, Hannah Dabb, and Katherine Seal--were probably from the same social class as Jenkins and were all married women.370 In order to have access to the information that would indicate the birth of a child, or lack thereof, these women all experienced labor. And, as the defendant was a woman of rank, the jury which tried her case was comprised of similar members. Both Jenkins, from this section, and Gary, from chapter one, came from families in which the father was identified as a member of the gentry and who was present for the trial. The jury of elite women called to examine another elite woman may have been a nod to the prerogatives due her station, while still continuing the judicial process. This is the second time in Maryland during the period under study that a jury of elite women was employed to search another elite woman’s body for evidence of sexual activity. And both times the jury of women appeared, they did so as twelve women. Moreover, it is interesting that a male jury of peers- the one that decided Jenkins’ fate as the petty jury- sat twelve men. This seem to be an indication that a critical mass of people needed to be gathered in order to make an informed decision, not

369 A married woman could, without reproach, have sex with her husband and become pregnant. Thus, as these women had experienced what contemporaries considered the proper sequence of marriage, sex, and childbirth, they had legitimate knowledge of pregnancy, labor, and women’s bodies. Thus married women who had experienced childbirth could testify about the special, legitimate knowledge, to which they were privy.

370 Archives of Maryland Online, Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668), volume 54, page 250 , Maryland State Archives,
just in the Provincial Court, but also on the local level. Directly before the court acknowledged Harris to be Jenkins’ attorney the jury of men heard the women’s findings. The women rendered the following decision: to the best of their knowledge, they announced that Hannah Jenkins was “clear from child bearing and never had a child.”

And then the jury of men stated that “the said Hannah Jenkins . . . be cleared by proclamation and ordered the said sheriff to do it.” Perhaps Jenkins’ stepfather was so persuasive the men of the jury could do nothing less than clear her—this is certainly a possibility, despite the fact that the court recorder fails to record any intervention made by Harris. Or, perhaps it was a lack of available evidence that persuaded the jury to let Jenkins go—although this scenario is most unlikely given that if this were the case and the jury was not persuaded that enough evidence existed to convince the jury would have answered “ignoramus” or, literally, “we do not know.” Probably the jury believed that the recommendation made by the jury of women was sufficient evidence to clear Jenkins. They were the foremost authorities.

Something must have persuaded this jury that either Jenkins was innocent or that the case was not worth pursuing. Most likely, the jury was persuaded by the intersection of two important things: the fact that the jury of women had stated that they believed she had never been pregnant—and thus had no newborn to murder—and, more importantly, that she immediately placed herself under the jurisdiction of her stepfather.

As someone had accused her of murdering her newborn child, at least one of her neighbors had hinted that she was engaged in illicit sex, which led to an unwanted pregnancy. So the community at least had enough suspicion to believe she was capable of promiscuous activity.


371 Ibid.
372 Ibid.
And, if they believed that she was guilty of committing fornication, whether she had murdered her child or not, the men of the jury may have perceived her actions as tantamount to a challenge to the authority of her father. She was a dependent in his household; she was subject to his will. She had bucked the social norms which dictated that women were to be chaste and under the direction of their fathers until such time as their guardianship was transferred to their husbands. So even if the jury believed that she had not murdered a child as the female jury found no evidence of a birth, they might have continued with the trial anyway in effort to underscore her violation of patriarchal authority—or at least the possibility of one.

Because Jenkins had affirmed the position of her father as her legitimate head in addition to the findings of the jury of women, which had declared her to be free of all signs of pregnancy, the trial progressed no further. The court could have opted to continue the demonstration of male privilege in an effort to reassert male authority. The justices could have carried through the court process to the next stage, a trial, and then found Jenkins not guilty. But they did not. Instead, the reason male elites probably chose to begin the initial court process had already been decided. The court corrected the breach in the social hierarchy. The primary purposes for which the trial occurred—to identify if a crime had been committed and to re-establish male authority—were achieved.

This trial shows that at least some women may have understood and employed the symbols to their advantage. Jenkins asked her stepfather to be her lawyer and represent her to the court. Several obvious reasons for doing so immediately come to mind. First, he was a gentleman and as such would have had a rapport with the other gentlemen on the jury and on the bench. Secondly, he was experienced in dealing with both legal and financial matters. In a time just prior to the widespread use of lawyers he most likely even represented his own interests upon
occasion. So as a gentleman and a successful man-on-the-make he most likely had experience representing himself.374 Moreover, as she was represented by her step-father, Jenkins and her family saved the expense of having to pay for representation. So for several practical reasons a woman might ask her father or husband, if he were a gentleman to represent her. But some women must have seen an additional benefit to having their household heads represent them before the Maryland judiciary. If a woman was charged with a crime that indirectly accused her with having usurped the authority of their household head, reaffirming a husband/master’s/father’s status rendered this charge void. If a woman engaged in illicit sex she implicitly suggested that she would not be controlled; she would decide her own affairs and need not conform to the laws of family or the province. Whatever challenge a woman made to her husband/father/master’s authority by reasserting the gendered hierarchy was resolved. So a cunning woman (who was either guilty or afraid of being found so) might have chosen to make herself appear less socially dangerous, and more in line with social norms, by inviting her male guardian to speak for her.

A Master as a Juror and an Infanticide Defendant: the Case of Mary Stevens.

In 1671 Mary Stevens stood before the Maryland Provincial Court accused of murdering her newborn baby on July 25 of the same year.375 Stevens was indentured to Patrick Forrest, who was a self-made man with eyes on expanding his property. A respected landowner, Forrest later served as the executor of a wealthy man’s estate and as a juror in several cases involving capital

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373 Ibid.
374 One example of the court referring to George Harris as a gentleman is found in Archives of Maryland Online, Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668), volume 54, page 276, Maryland State Archives, http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000054/html/am54--276.html, (accessed on January 31, 2008).
Three men--John Coman, Thomas Dent and Henry Hyde--appeared as witnesses in Stevens’ trial, and all swore that she was “great with child of a certain living infant in the county aforesaid [St. Mary’s], by the providence of God did labor with child, and did bring forth one living child, and that afterwards the said Mary Stevens by force and arms and of her malice before thought of, did kill and murder the said child.”. Without a midwife or a jury of women, no testimony was offered by women. In this case, the testimony was restricted to what the male witnesses believed they saw. But, as no death inquest was called and no body was mentioned, the entirety of the evidence rested on the accounts of these three men.

After the grand jury returned its verdict “billa vera” on the back on the indictment, the sheriff led Stevens to stand before the bar where she pled not guilty and asked for a jury trial. Like the Jenkins case discussed earlier, Stevens also had a strong patriarchal figure involved in her trial. When the case was to be heard initially by the petty trial, none of the witnesses appeared to testify. So the court dismissed the “jury of life and death” and deferred until the next session of the Provincial Court when the three men could be summoned. On 19 December 1671 the court reconvened and Coman, Dent, and Hyde all swore to their belief that Stevens had murdered her child. And on the new jury who heard this testimony sat “Charles Botler, foreman, Joshua Gilbert, Henry Cox, William Lawrence, Nicholas Brookes, John Waghob, Peter Roberts,

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379 Ibid.
William Baker, Clement Haly, William Greengo, John Askin, and her master, Patrick Forest.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 19, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--19.html}, (accessed on January 31, 2008).} These men had all sat as a petty jury in deciding a murder case involving Francis Tyler. And, as was common practice, one jury was not called for each case, but instead determined a number of cases. When Mary Stevens stood before the bar and “pleaded not guilty and for her trial put herself upon the county” the jury which decided her fate was comprised of “the last named Jurors being called and sworn.”\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 20, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--20.html}, (accessed on January 31, 2008).} This verdict was consistent with that of the Jenkins case; Stevens was acquitted by proclamation and released.

By appearing on her jury, Steven’s master created a host of conflicts of interest that were of little to no concern for contemporaries. As her master, Forrest had a stake in Steven’s outcome. He was entitled to several years’ worth of her labor. He had invested part of his fortune in her, and his ability to rise through the ranks of the nascent elite depended on her ability to prove profitable for him. It was in his best interest to see her released, if only to strengthen his pocketbook. But other factors may have motivated Forrest to declare her not guilty: he may have genuinely believed her to be innocent. If this were true, then the likelihood that in the private deliberations of the jury Forrest may have worked particularly diligently to see her released significantly increased. If he believed her innocent, not only did he stand to lose the labor she owed him, but also the judiciary was about to make a grave injustice. Perhaps Forrest felt some sense of obligation to act on behalf of his servant. She was in his household, and as her master he was her immediate governing head. He may have believed that it was his responsibility to investigate the matter and then make sure his servant behaved. Or, his appearance on her jury...
may have been completely accidental—the first jury was dismissed after the witnesses failed to appear, and once the court reconvened at the next session, he was in the room to deliberate the fate of a man accused of manslaughter, and the jury stayed to determine her guilt as well. Fortuitous accident for Forrest or not, the fact that he sat on her trial complicated not only his impartiality, but also her verdict as well. Forrest, who was to be an impartial juror and decide her fate, had a stake in the outcome of Steven’s trial: his future, at least in part, depended on her future. Both the Stevens trial and the Jenkins trial suggest that there was a correlation between not guilty verdicts and the appearance of a woman’s patriarchal head. For all infanticide cases in which a single woman at the time of the trial had her master or father participate in the process, she was found not guilty.

The Trial of Anne Pattison and the Implicit Association to Her Father

On April 9, 1672, the sheriff of Anne Arundel County brought Anne Pattison before the Provincial Court, in St. Mary’s City, St. Mary’s County, charged with the infanticide of her bastard child. She stood in front of the most powerful men in the colony. Charles Calvert served as the chief justice with Philip Calvert acting as chancellor. Charles Calvert was the 3rd Lord Baltimore: the Lord Proprietary and highest government official in the Province. Philip Calvert served as the Chancellor, second highest official under his nephew, the governor and second son of the first Lord Baltimore. William Calvert, Baker Brooke, Samuel Chew, and Edward Fitzherbert served as additional justices. These men too, possessed sizeable fortunes and came from the ranks of the elite. William Calvert, for example, was the son of the first governor.

When Pattison stood before these judicial figures, she stood before men who represented the most powerful of the nascent elite.

And then, in another display of the greatness of the authority these men held and how she was at their mercy, the sheriff of St. Mary’s gathered a relatively large grand jury; twenty men met to decide her guilt or innocence and they took one day to determine her guilt along with the other cases heard before the bar.\textsuperscript{384} And the judiciary was quite adamant that all who attended the court session take care to observe the proper respect due those administering justice. When on the day when the grand jury’s findings were to be announced one of the jurors absented himself without approval from the bench, he was summarily summoned and saddled with a hefty fine.\textsuperscript{385} The very same day, with the verdict returned to the justices but a jury member short, the foreman announced the verdict. The grand jury’s findings, consistent with other cases of infanticide cases, were as follows:

being great with Childe of a certain living infant. . . did labor with Childe, and Did bring forth a certain living Childe borne alive secretly and without the Company of any other women, and that afterwards the said Ann by force and Arms and of her malice before thought . . . the said Childe so borne alive, and in a natural being did make an assault and then and there feloniously did Kill so the said Ann aforesaid the said Childe of her malice fore thought feloniously & voluntarily did further, Contrary to the peace of the Lord Proprietary his Rule & Dignity.\textsuperscript{386}

The grand jury, with evidence submitted by John and Johanna Taylor, believed that the matter deserved a formal court hearing, though unfortunately the court recorder failed to write down the content of their testimony. Immediately after the other two verdicts in addition to Patterson’s


were read, the judiciary continued with prosecution. Pattison pled not guilty and announced that she desired a jury trial. No one spoke for her; she had no representation; she was alone before the judiciary.

Unfortunately, many of the details surrounding this case, such as anyone to whom Pattison was connected, are wholly absent from that which was noted by the court recorder. The sheriff of St. Mary’s county was again sent out with orders to find twelve men to convene a petty jury. Once they did so, the recorder denotes that the men gathered in the court, heard the testimony, and then immediately determined judgment: they acquitted and cleared her by proclamation.

The entire process was relatively brief and efficient. Other records from the time give some indication as to the people involved and the outcome of the trial. The identity of the witnesses, John and Johanna Taylor, and their connection to the Pattison family remain somewhat opaque. Still, the most likely relationship is that John Taylor, who was one of the witnesses against Pattison, was a child of Thomas Taylor. The Pattison and Taylor families were connected in various business dealings as Thomas Taylor and Thomas Pattison were recorded in the Chancery documents as appearing as defendants in the suit of John Richardson. Both families were wealthy families owning great tracts of land. Thomas Pattison on one occasion was recorded as being a “planter,” but Taylor was noted as being a “gentleman.” Thus by extension, the families

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388 The following will reference is a possible connection to John Taylor, son of Thomas Taylor. However, though the record is vague, the likelihood that John was Thomas Taylor’s son is quite high, given that Thomas Pattison had business dealings with the gentleman, Thomas Taylor. Thomas Taylor Will, in Maryland Calendar of Wills, Volume I, Pages 96-109, Originally Compiled by Jane Baldwin, Edited and Annotated by USGenNet Patrons Rhoda Fone & Carole Hammemtt (2001), [http://64.233.169.104/search?q=cache:X_nlgiO1V5gJ:www.usgennet.org/usa/md/state/wills/01/001.html+maryland+calendar+wills+%22Thomas+Taylor%22+%22John+Taylor%22&hl=en&ct=clnk&cd=3&gl=us](http://64.233.169.104/search?q=cache:X_nlgiO1V5gJ:www.usgennet.org/usa/md/state/wills/01/001.html+maryland+calendar+wills+%22Thomas+Taylor%22+%22John+Taylor%22&hl=en&ct=clnk&cd=3&gl=us), (accessed on February 2, 2008).

of both carried the designation of the man who represented them. Both men and their respective families had attained the ranks of the nascent elite by the time of the trial.  

Transportation records indicate that the unmarried Ann Pattison migrated to Maryland by 1671 with her siblings, her mother Ann, and her father, Thomas, who paid for her passage. Thus, as her father paid for her passage, Pattison was not bound when she crossed the Atlantic, nor when she stood before the judiciary. As she had neither a master nor a husband, none appeared to plead for her or intercede on her behalf. And though she had a father, he did not stand to represent her. Possibly her association to him and his reputation to the court may have been enough to gain the court’s favor. As suggested in the cases of Jenkins and Stevens, the court showed a tendency to decide infanticide cases in favor of the female defendant when a strong male figure appeared on her behalf. In the Pattison case, though he did not stand to represent her, her association to her father and her consequent identity as the daughter of a gentleman probably functioned in much the same way as had the physical presence of Jenkins’ stepfather and Steven’s master: with respect to class differences, the court affirmed that the woman in question was under the strong control of her immediate governing head, and ameliorated the need to severely punish her.

Moreover, as the daughter of Thomas Pattison, Ann Pattison was a member of the nascent elite with all of the rights afforded a woman of her station. As Debra Meyers argues in Common Whores, Virtuous Women, and Loveing Wives, social station, combined with the particular socio-political culture that was highly influenced by the religious liberties of free will Christian

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women, allowed elite women the ability to experience great freedom before the judiciary.\textsuperscript{392} For example, some well-connected elite Free-Will women like Margaret Brent developed great ability at pleading before the judiciary. Involved in litigation for personal relations and interest, Brent’s activities in Maryland are notable because they place her as the first American woman lawyer and they paint early Maryland society as at least marginally accepting of elite women pleading their causes before the bar.\textsuperscript{393} Women were able to do so because they did not claim their own authority, but rather sought to extend the authority of their patriarch.\textsuperscript{394} Thus, though Pattison stood alone before the judiciary as she spoke for herself, she did not ultimately stand unrepresented. Her father’s reputation and stance in the community reflected on her, as other father’s reputations reflected on elite women: no woman of elite status charged with infanticide in Maryland was convicted. This seems to indicate that the judiciary evidenced a reticence to hang elite women, particularly when there were so few marriageable women of rank in the colony.

Conclusions

Together these cases reveal that a correlation existed between a woman who appeared before the court with a strong male figure, to whom she was directly responsible, and the judgment of acquittal. Just as no married woman was ever convicted, no woman whose patriarch directly influenced the court proceedings in her favor was ever convicted, nor were daughters of the elite whose patriarch indirectly influenced the court proceedings. Moreover, all of the patriarchs of the accused were members of the nascent elite, an indication that the outcome of the trial rested less on the identity of the particular woman involved and far more on that of the man in whose

\textsuperscript{393} See for example see Douglass, “Between Pettifoggers and Professionals”, 365.
household she resided. So the outcome for a woman accused of infanticide depended on who her master or father was and what action he took on her behalf.

These cases also reveal that the court was obligated to initiate investigations into the murder of infants without respect to a woman’s social status. At least in this respect, notions of equity and legality trumped prerogatives of class. Even elite women had to stand before the court and answer for the crimes of which they were accused. The court could have simply dismissed the allegation preventing the case from even going to trial, but it did not. Instead, some elite women appeared before the judiciary charged with infanticide. This is not to say that the male judiciary totally excluded notions of elite privilege. An elite daughter benefitted from her association to a well known and respected landed man, even if her father were not present. She could stand and represent herself due to the respectability of her father whose virtual presence offered her distinct advantages. Though not physically in the room, his good standing and business transaction By comparison, however, an indentured woman could not similarly extend her master’s authority.

One of the aims of the Maryland judiciary was to stop lawlessness and the spread of lawlessness while simultaneously reinforcing male authority. These aims were not challenged by acquitting women who appeared before the judiciary so long as these women were dependent upon a respected elite man and this man took responsibility for controlling them, implicitly or otherwise, and guaranteeing future compliance with the law. Part of the aims of the court was to make a visible demonstration, through pomp and circumstance, of the privilege of the male elite. The trial process showed that the nascent elite tolerated no transgressions of the law; the influence of a woman’s patriarch in the process affirmed that she was then under the control of an elite man was no longer a threat to the social hierarchy.
CHAPTER 9: CONDEMNED SINGLE WOMEN ACCUSED OF INFANTICIDE

The Three Stories

In the middle of May 1664 Elizabeth Green stood in front of the Maryland Governor accused of a number of serious crimes. Unmarried and indentured, she was accused of having illicit sex, rejecting her master’s rights to her full labor (by becoming pregnant) and then amplifying her guilt in an unthinkable way: she may have tried to cover her indiscretions by hiding the birth and then burning the baby while he was still alive. Several women viewed her body for evidence and interrogated her for information. Never did her master, John Gary appear for her and testify on her behalf. He remained silent. The trial jury convicted her and ordered her to be hung the next day. The elite had no mercy on her, for none of them believed she had mercy on her child.

Like Greene, Joan College, was also accused of committing infanticide, condemned and sentenced to hang. And, equally important, also like Greene no man appeared to speak for her. No husband, master, father, or any other male relative appeared to take responsibility for her and thus implicitly state that he would control her future conduct. She was bereft of any male support that could alter her position for the better. However, the judges postponed her execution because a number of women, the very same who collectively worked against her, appeared to testify for a stay of execution. The women probably persuaded the justices to delay the execution to verify possible pregnancy. Doing so delayed execution and could afford College time to be forgotten or escape. As no record of her execution remains, it is entirely possible that she did.

Isabella Yausley is the third woman investigated in this chapter. Like College, she was accused of infanticide, had no male patriarch to intercede for her, and was condemned. She remained a dangerous social element, capable of atrocities and without a man strong enough to control her. Unlike College, however, Yausley could not plead pregnancy as a possible stall tactic as no women appeared on her behalf. Without anyone to mediate for her she pled and died alone.

Introduction

This chapter investigates the trials of three women in St. Mary’s, Maryland: Elizabeth Green (1664), Joan College (1669), and Isabella Yausley (1671), all of whom the justices sentenced to death. None of the women had her legal representative appear before the court on her behalf. Thus each of the women remained as a dangerous social element needing court-directed discipline. Green’s trial centers on a community of men and women who contributed testimony resulting in a guilty verdict. College’s trial shows how a specific community of women

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resisted the judiciary and obtained a stay of execution.\textsuperscript{396} Yausley’s trial suggests that the absence of female voices made obtaining a pardon impossible.\textsuperscript{397} Together, the trials of Greene, College and Yausley reveal what happened to a woman who stood alone before the judiciary. These cases also reveal the aims of the male judiciary and how it used the law to create a distinction between men, who were officially eligible for official pardons, and women, who were not. College’s trial is an example of one way in which women were able to play off of male conceptions regarding a woman’s insight into the female body. In this case, College’s female neighbors were able to delay execution, inadvertently creating a possible escape clause for women. Therefore, while men were successful in creating legal distinctions, some women were able to use these ideas for their own purposes.

A Community Proves a Charge of Infanticide Levied by the Governor

On May 19, 1664 Governor Charles Calvert wrote a charge of infanticide against Elizabeth Greene in which he accused Greene of having been “lately brought to bed and delivered of a child and that she hath feloniously murdered and made away her said child.”\textsuperscript{398} Green, an unmarried indentured servant, was accused of giving birth roughly two weeks earlier, on May 6, delivering a healthy boy and committing infanticide by throwing him into the fire.\textsuperscript{399} Consequently, Governor Calvert ordered that the Provincial Court, under the auspices of Major


\textsuperscript{398} The actual date written in the Provincial Court records lists the date as “May 19, 1663.” However, this is probably misdated as the statement appears in 1664 records, and the subsequent court investigation happened on May 31 in 1664. Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1663-1666}, volume 49, page 212, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000049/html/am49--212.html}, (accessed on January 31, 2008).
Thomas Brooke, Thomas Leithworth, Charles Brookes, and Tobias Norton, or at least a quorum of three of the aforementioned men, examine her for the charge against her. In the meantime he ordered the sheriff of St. Mary’s to incarcerate her until the next Provincial court session at St. Mary’s City.  

In July, a special court session met in which the men of the aforementioned examination committee, with the addition of Hugh Standley, adjudicated at the house of Robert Kingsbury in Patuxent River in Calvert County to investigate the charge against Greene. Several witnesses appeared to testify about the matter, including “Grace Parker, Sarah Waring, Judith Sharpe, Christian Ellinsworth, Martha Carr, Elizabeth Harwood, Sampson Waring and Nicolas Carr.”  

In front of six justices, all well-respected gentlemen planter, the contingent of witnesses, the sheriff, the defendant, and a host of onlookers, Parker swore that when she questioned Greene, the woman initially denied ever having a child but that when pressed, confessed that she had given birth to a child and burned it. But Parker was unconvinced with the initial response. She testified that she further pressed Greene saying that she was “sure that thou hast not burned it, thou hast buried it.” In response, Greene swore she had indeed buried the body in a swamp and promised to show Parker and the others the grave the following day. However, upon venturing out they found no evidence of recent burial. At which point, Greene explained that she had lied and in actuality burned the body of the child. Greene seemed to swear to whatever testimony her inquisitor wanted to hear. When Parker was finished testifying about the location of the body,
just in case the justices began to wonder if there had even been a body to bury, Parker quickly added that to the best of her knowledge Greene had come to term and born a healthy child. 402

Two of the other witnesses, Sarah Waring and Martha Carr, both swore to the accuracy of Parker’s testimony, but the three remaining witnesses refused to testify entirely. Judith Sharpe, Christian Ellinsworth, and Elizabeth Harwood all “say verbatim the same as the other women but refuse[d] to make [an] oath.”403 Both Judith Sharpe and Elizabeth Harwood were outspoken Quakers and as a result refused to make oaths before the court. The reason these women refused to swear to their testimony was not due to lingering doubt about the veracity of their claims, but due instead to their religious principles. And though the three objectors were also summoned in the next session, to be given another chance to give their oaths and testify, none of the women submitted and were fined according to the Act of Assembly.404

Several men also testified to conversations they held with Greene. Sampson Waring testified that Greene told him before Mr. George Peake, one of the justices in attendance, that “she had a child and had burned it.”405 Nicholas Carr confirmed Waring’s testimony but added that during a private meeting in which he and Green walked together he asked her “wherefore she committed so heinous an act to bring herself into ruin,” to which she replied that “a thing came from her like a dog head.”406 So to Carr, Greene tried to spin the matter as one of ignorance, as if she had no idea what had come from her body, but that whatever it was, it was

402 Ibid.
404 Ibid.
405 Ibid.
406 Ibid.
certainly not in the likeness of a baby. William Wheeler, who lived with Greene, told the court that he had not witnessed a birth but that he had heard “something cry like a pig or a child, and . . . going into the room found the said Elizabeth Green lying on the ground.” The court then interrogated Elizabeth Green who swore that “she had burned something that came from her but not so any child nor know what it was and that she had kept it two days.” After listening to the entire body of evidence, and being made aware that two further witnesses who were not available for questioning at that time but had information regarding the matter, the court ordered the High Sherriff to take Greene into his custody and produce her at the next Provincial Court.

On July 5, 1664 the governor and the council examined Greene and several witnesses, some not previously interrogated and some not fully questioned in the earlier interview. Greene testified that she was born five miles from Norwich, was a member of John Gary’s household, and swore that she had a bastard child, but did not murder it, nor was even convinced that it was really a child. The governor then asked her how she could have murdered her own child. She replied she was only “gone but four months.” Her response signaled that she had been pregnant but had miscarried. The governor then pressed her again: “had you a child borne or not?” She again hedged the direct answer and instead offered that she “did not see such a thing but was delivered being put into a fright by some runaways.” The court then examined both William Wheeler, who had previously testified, and Thomas Taylor, who had not. Wheeler, who testified that he lived in the house with Greene swore that he had no idea she was pregnant, but that she

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407 Ibid.
408 Ibid.
was very big and that he heard a baby cry during the time of her sickness.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1663-1666}, volume 49, page 233, Maryland State Archives, http://www.msa.md.gov/megafail/msa/speccol/sc2900/sc2908/000001/000049/html/am49--233.html, (accessed on January 31, 2008).} Taylor swore that when he found Greene laying on the floor of the house “she had milk and water in her breasts.”\footnote{Ibid.} Grace Parker swore that “she was a stranger to the wench and did not see her above once all the time she was with child,” but after the delivery “did search her breast and the wench denied she was [with] child but there was milk in her breasts and it was a going away being hard and curdled.” Parker also added that when she pressed Greene to explain what she had done with the body, Greene replied that she had buried it.\footnote{Ibid.}

At the conclusion of the witness testimony, the justices ordered the sheriff to summon a grand jury to investigate the evidence, which returned its findings “billa vera.” A petty jury comprised of twelve men unassociated with Greene then evaluated the evidence and pronounced her guilty and sentenced her to “be carried to the place from whence you came, from thence to the place of execution, and there be hanged by the neck till you are dead, and so God have mercy upon your soul.” The execution was swift; the sheriff was efficient; and Greene was dead by nine o’clock the next day.\footnote{Ibid.}

Damning Evidence and Lack of Support

A number of reasons may have worked together to convince the men of the Provincial Court of Greene’s guilt. Several important details included in the witness testimony proved particularly damming. The justices’ first obligation was to establish that Greene had indeed given birth to a child. Thus of prime importance was establishing as fact that she had recently been pregnant.

The testimony of William Wheeler, who lived in the same house as Greene, swore that he had no
idea she was pregnant, but that she was very big and that he had heard a baby cry during the time
of her sickness.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1663-1666}, volume 49, page 235, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000049/html/am49--235.html}, (accessed on January 31, 2008).} Wheeler’s testimony may have been offered for several reasons, one of which
was personal gain. First, he absolved himself of any responsibility in announcing he was ignorant
of any pregnancy. Doing so was probably a move on his part to ensure that he would not be
charged with aiding a criminal—he sought to convey to the court that he had not intended to hide
her illicit activity, he was just unaware of the markers necessary to confirm pregnancy. However,
he simultaneously situated himself, to the court, as a man of importance. Without incriminating
himself, he portrayed himself as a man who had intimate knowledge of Greene’s physical
condition and established that she exhibited some physical signs of pregnancy. Furthermore,
Thomas Taylor and Grace Parker separately confirmed the details of pregnancy absent from
believed that only a woman during pregnancy experienced lactation, this was positive evidence
of a child. All of the elements necessary for suspicion of a pregnancy were evident in the witness
testimony.

The testimony which may have sealed the jury’s conviction in Greene’s guilt was her
own. Probably, when confronted with the volume of testimony against her by her neighbors, and
when pressed by the most powerful men of the colony, Green buckled under the pressure and
confessed. A variety of witnesses swore that Greene confessed to giving birth and then disposing
of the child—regardless of burning or burial. More importantly, was the direct testimony that

she provided to the governor and council herself. She admitted that she was with child and was at the very least four months pregnant. And the continuous hedging she exhibited in answering her inquisitors’ questions must have similarly persuaded them of her guilt.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1663-1666}, volume 49, page 232, Maryland State Archives, \url{http://www.msa.md.gov/megaf...32.html}, (accessed on January 31, 2008).} By declaring that she was pregnant and that she had witnessed something expelled from her body, she inadvertently confirmed the details of all the other witnesses. Unmarried and admittedly pregnant, having affirmed the deliverance of an object—which, given the supporting evidence, the men assumed was a baby—and having it die, was tantamount to a confession of infanticide.

Perhaps the case would have progressed differently had her master appeared in support of her, as was the case for another woman on trial for infanticide, Mary Stevens. Had she been a man accused of a felony crime, the outcome of the case would have ended quite differently. In the same court session in which Greene was found guilty, two other men were also convicted of felony crimes, one of which was murder. Pope Aluey was convicted of murdering his servant woman, Alice Sandford, by beating her to death. Just as infanticide carried the punishment of hanging, so did murdering one’s servant, unless one was a man eligible for benefit of clergy. As Greene was neither represented by her master nor a man eligible for clergy, she had nothing to plead except to ask for mercy. She was wholly ineligible for a pardon. Interestingly, for all of the people who testified \textit{against} Greene, this case is notable for those who \textit{failed} to support her. She was unmarried, but neither her father nor her master appeared to represent her. This case, with the absence of a strong patriarch appearing at the trial, supports the correlation heretofore argued: that when a woman was accompanied by her legal head—whether her master, husband, or father—the court viewed this as a positive reinforcement of the social hierarchy in that it
placed an otherwise misbehaving, and therefore dangerous, woman under the control of her patriarch.

“Pleading her Belly” and the Role of Women

On December 17, 1669 Joan College of Mattapenny-Sewall, in Calvert County, stood before the judiciary charged with infanticide. Specifically, she was charged with giving birth to a healthy infant girl on November 8 and then trying to keep secret all evidence of delivery. No one was present to help her through the birth, or prevent her from “feloniously and voluntarily . . . kill[ing] and murder[ing].” Thus the charge held several of the most important elements for a case of infanticide.

The sheriff of St. Mary’s brought College into the courtroom under his custody. When the justices asked how she plead she swore “she was not guilty . . . and put herself upon the country,” a plea of not guilty and asking for a jury trial. Her plea was consistent with every other woman accused of infanticide: no woman accused of such a crime ever pled guilty or failed to ask for a jury trial. She had nothing to gain and everything to lose by pleading guilty. She had no property to protect from government seizure (which could prompt a defendant to adopt a guilty plea) and confessing her guilt in the matter immediately resulted in hanging. The strategy of pleading not guilty and asking for a jury trial was the only viable option.

The testimony in this case must have proceeded much like the Greene case in respect to the kind of testimony presented by the men and women against her and her ability to refute the accusation. The witnesses had most likely affirmed they either suspected she was pregnant or that she evinced signs of pregnancy, such as a protruding belly, sickness, stomach pains, swollen breasts filled with milk, the appearance of blood, or any combination of which in retrospect
confirmed her pregnancy. In College’s case, much like that of Greene’s, the woman’s own testimony did nothing to counter the conviction of the justices in respect to her guilt. Convinced of her malevolence, the jurors found her “guilty of murder in concealing the birth of her child in the said indictment above specified in the manner and form as above against her is supposed.”

After pronouncing judgment, the justices ordered that she be held in the custody of the St. Mary’s County sheriff and returned the next day, December 18, for sentencing.

Throughout the December 17th trial, s with Greene’s, no man appeared to speak for College. No man addressed the court on her behalf—no master, husband, father, or any other male relation appeared to take responsibility for her. Without a man to exert pressure or influence in the proceedings, she remained a dangerous social element, and the court responded accordingly. The jury convicted her and the justices summarily ordered her to “return from the place from whence she came and from thence to the place of execution and there to hang by the neck till she be dead.”

Without intercession from a legal guardian she was vulnerable to legal censure. When asked to provide some reason why the sentence should be altered, she had nothing to say. Similarly to Greene, the only strategy she could employ was to “humbly beg . . . the mercy of the court” in an effort to avoid execution. She could not plead benefit of clergy as she was exempt. There was nothing she could say which could alter her position.

Unlike Greene, however, execution was not swift, as the judges postponed College’s execution because a number of women who appeared to testify against her (most likely her neighbors and friends) also spoke to the justices in effort to help her. They petitioned the court

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419 Ibid.
for a stay of execution. She was unable to plead benefit of clergy, which allowed men a means of gaining a pardon, but the community of women of which she was a part could (and did) persuade the justices that she was pregnant again, in order to delay execution. If the execution could be delayed long enough, and Greene removed from proximity with the justices far enough, she might succeed in avoiding prosecution indefinitely, as the matter might simply be forgotten. And the women involved in College’s case succeeded in persuading the justices to wait, most likely until she had come to term. Though no reference to a pregnancy is evident from the record, it is highly likely that the women employed this particular defense strategy due to the following: the specified length of delay, the reality that one was granted, and the importance of this group’s testimony. The trial occurred in mid-December and her stay of execution was granted until mid-October—just long enough so that if College was pregnant, she could come to full term and give birth. But, more likely, the women cited pregnancy as an excuse, and their position as expert witnesses gave it credibility. In other words, they lied. While a legally-recognized pardon was unavailable for a woman, a community of women could effectively delay execution at least long enough for the woman to carry a child to term. To the judges, justice demanded that the woman be punished for murdering her child, but it also demanded that an unborn child could not be murdered in an effort to accomplish the punishment. Consequently, the justices had to wait to execute punishment if persuaded that the condemned woman was pregnant.

While a woman was ineligible for the legally recognized “benefit of clergy” defense (as it was only open to men during the years of this study), a young (pre-menopausal) woman was eligible for the benefit of “pleading her belly” as the justices could be persuaded of a possible

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420 Ibid.
pregnancy.\footnote{A woman who was no longer menstruating was unable to become pregnant, and thus unable to stay an execution claiming she was with child. See for example, the case of a woman in the Old Bailey, London’s Central Criminal Court, condemned of burglary on September 9, 1674. The record reads “a woman who formerly had been (an old offender in such cases) with another her companion were convicted also of a burglary, but only the former condemned to die, the last pleading her belly, and by a jury of matrons was returned to be with child.” \textit{Old Bailey Proceedings} (www.oldbaileyonline.org, June 2, 2008), September 1674, (t16740909-5).} No man appeared to take responsibility for College, but she was able to have judgment delayed because a community of women rallied to her defense--at least until October 18. By October, she probably either hoped to obtain a pardon from the governor, or to be far enough away from the province that an official pardon was unnecessary.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1666-1670}, volume 57, page 599, Maryland State Archives, http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000057/html/am57--599.html, (accessed on January 31, 2008).} Hence, collectively, women were able to resist the judiciary enough to slow the process leading to execution, and possibly enough to stall hanging altogether. While women were at a legal disadvantage to men, at least in respect to pardonable offenses, a community of women could create the circumstances necessary for a woman to avoid immediate hanging, and possibly execution.

Unfortunately, nothing else remains of what happened to College after this trial. Though the court recorder mentions that she obtained a stay of execution until the governor’s return in October 1670, there is no indication of whether her case was heard by the governor or not. Likewise, nothing remains to signify whether sentencing was carried out. However, the fact that she was not mentioned again in any official documentation after this trial may be an indication that she had successfully disappeared. If so, having a group of women collectively resist her execution made her escape possible.

College’s case reveals that some women were not wholly powerless before the judiciary and that the nascent elites did not command all aspects of the judicial process as they might have wished. Groups of respectable women testifying about a woman’s body could maneuver the judiciary to achieve their aims, thereby challenging the elite stronghold on dispensing legal...
justice. On occasion, some women employed male notions of female prerogative to influence trial proceedings as far as possible within the limitations set by the elite men in charge. If a woman in all other respects was held in high esteem by her neighbors (so that the women with whom she was acquainted were at least inclined to testify on her behalf), they could choose to give her their support and help her avoid imminent death—provided that they were sufficiently persuasive regarding their claim of pregnancy—or conversely withdrawal their support and aid in her conviction. A single woman alone, without a father, husband or master to influence trial proceedings was not at the mercy of the court. But a woman who was additionally without the help of a community of respectable women to stand in support of her was at a distinct disadvantage.

Isabella Yausley: Condemned on the Basis Only of Male Testimony and Wholly without Female Support

Just a year and a half after College’s case, on April 14, 1671 Isabella Yausley appeared before the Provincial Court accused of murdering her infant son on March 3. Presiding over the courtroom drama was the Chancellor, Philip Calvert. Also in attendance were five other elite men who sat as justices: William Calvert, Baker Brooke, Thomas Truman, Samuel Chew and Edward Fitzherbert. As with Greene’s case no master, father, or husband influenced the proceedings on her behalf—she stood alone. However, Yausley’s case also differed from both College and Greene’s case in an important way: no women at all, neither testifying for her or against, appeared as witnesses. When she was condemned to hang, no group of women presented themselves on her behalf to arrange a stay of execution citing pregnancy as a plausible reason for waiting to execute. Ineligible to plead “benefit of clergy” and unable to substantiate “benefit of

belly” when sentenced (as nothing stood to retard or prevent execution), three days after trial she was hanged from a tree from nine in the morning until noon, as punishment for her actions and as a deterrent for all who might contemplate similarly.424

The court session began with the crier making the traditional proclamation and calling “all justices of [the] peace, coroners, stewards of lets and liberties, and [any] other officers that have taken any inquisitions, indictments, or recognizances” to come forth. It is significant that the entire witness list was comprised of three men: Thomas Taylor, coroner William Burges, and Cornelius Howard. It is noteworthy that William Burges was listed as the coroner in this case, particularly because no women were listed as testifying about the defendant’s body and this is the only infanticide case in which a corner testified. The only testimony regarding a female crime involving the woman’s body, and not the body of her child, contained no female voices. Though the content of Burges’s testimony is unknown, it seems evident that his testimony functioned in lieu of that of a group of women. In all likelihood, his testimony centered evidence of an attack on the body of the baby: bruising, physical signs of violence, etc. More than any other factors, this expert’s testimony—his belief in her guilt, and the details he could add surrounding her actions in harming the child—possibly weighed heavily on the juror’s decision.

The court crier then made another proclamation swearing in the sixteen men impaneled as grand jurors. Unfortunately, no testimony offered before the grand jury remains. Perhaps the reason none of the testimony against Yausley remains is due to the fact that it may not have been offered in the presence of the court recorder because “the said grand jury and the said witness withdrew into a private room and the court adjourned for half an hour.”425 The jury had a brief,

424 Ibid.
private discussion with the witnesses.\footnote{Ibid.} Regardless, they found that Yausley, whom they described as a spinster from South River in Anne Arundel County “being great with child gave birth to a living male infant the third day of March . . . did labor with child and did bring forth a certain male child borne alive secretly and without the company of any other women, and that afterwards the said Isabella . . . feloniously did kill” the infant.\footnote{Ibid.} Having been indicted, she “put herself upon the country,” challenged none of the potential jurors, who all quickly pronounced her guilty, and found herself convicted of murder and sentenced to hang, all in the same day.\footnote{Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 9, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--9.html}, (accessed on January 31, 2008) and Archives of Maryland Online, \textit{Proceedings of the Provincial Court, 1670/1-1675}, volume 65, page 10, Maryland State Archives, \url{http://www.msa.md.gov/megafile/msa/speccol/sc2900/sc2908/000001/000065/html/am65--10.html}, (accessed on January 31, 2008).}

Unfortunately for Yausley, all of the necessary tenets for a conviction in an infanticide trial were in place. She was unmarried and her baby was dead. She was suspected of illicit behavior and no one stood to pledge control of her. And, at the time of trial, she was neither pregnant nor had respected women stand up for her and vouch that she might be so. The prosecution had established she was a “spinster” in the opening charge and no father or master stood to take responsibility for her. In consequence, she remained a disruptive, dangerous social element. Moreover, expert testimony suggested the baby to whom she had given live-birth was now dead. The jury members had every reason to believe she had murdered her child in an effort to keep her illicit sex and resulting pregnancy secret. As a result, they convicted. Sentencing being swift, and with no one to intercede for her to mitigate the sentence, the Chancellor
addressed Yausley for the vileness of her offense and ordered the sheriff to hang her from nine in the morning until noon on April 17.\(^{429}\)

Yausley’s trial is important because it reveals the necessity of interceding individuals. Without anyone to appear on her behalf, either male or female, Yausley was completely on her own. While individual women were able to change the course of the judiciary’s actions, they were unable to so significantly alter the judicial proceedings that they could avoid hanging. Thus while the nascent elites sought to underscore their dominance over society, particular groups of those they sought to control could play on the biases of the elite men in charge and carve out a \textit{de facto} pardon.

Conclusions

Together, these three cases indicate that women in Maryland accused of infanticide and not represented by a strong man, who either implicitly or explicitly vouched to control her and any subversive threats that her lawlessness presented to the young province, were condemned to death by the nascent Maryland elite. Hence, the trials of Greene, College and Yausley reveal what happened to a woman who stood alone before the judiciary: the justices allowed the case to proceed and the juries returned guilty verdicts. Green’s trial portrays a community of men and women who contributed testimony which resulted in a guilty verdict. College’s trial shows how a specific community of women resisted the judiciary and obtained a stay of exaction. Yausley’s trial reveals how the absence of female voices made conviction much more likely and delay of execution impossible.

Moreover, while women could not fully prevent the trial from happening, working collectively, some could alter its final course. It is shown that a group of women could delay

execution by working together to persuade the justices that the condemned woman was again pregnant. A stay in execution provided the possibility of obtaining a pardon at best, and the ability to flee at worst. Regardless, this community of women was successful in extending a woman’s life. Conversely, another community of women withheld their support by not acting on a condemned woman’s behalf, and contributed to her execution. While specific individual men—a woman’s master, husband, or father—were able to exert influence over the trial proceedings, to what degree they were able to shape the outcome of the trial depended on their identity, and the number and station of men who corroborated each others’ testimony. While female testimony could also shape the trial outcomes, real change came not from individual women—as wives, mothers or mistresses—but as a collaborative group of respected women who could manipulate the preconceptions of the justices.
CONCLUSIONS

As a whole, this dissertation advances our understandings of gender and legal dynamics in early Maryland and in early America by showing the reciprocal nature of the resistance and accommodation between the court and those the court wished to control—in particular non-elite men and women. As a result of the negotiation, the nascent elite never achieved absolute dominance because women and non-elite men forced the judiciary to accommodate them with varying degrees of agency, which allowed subordinates the ability to challenge the very thing the elite sought to strengthen: the social hierarchy.

In instances of alleged rape, the conduct of the Maryland judiciary sought to support the most respected, elite man involved. If a woman’s husband or father was of great social importance and maintained a well-disciplined household in all other respects, the judiciary allowed the case to advance to a jury trial for his benefit. The accused in these cases were released, received benefit of clergy, or a pardon if condemned. No man was ever executed for rape. In other instances (in which the accused was the elite powerful man) the court recast the incident either as a lesser crime or no crime at all. And, it was possible that the female victim, if she evinced rebellious behavior at other times, could receive the full-brunt of the court’s displeasure by being whipped as an adulterous. Incidents regarding a servant woman might appear before the judiciary and advance to trial only if a man’s actions impacted another man’s livelihood. Even in cases such as these, the grievance against the woman went relatively unaddressed while the business implications for the aggrieved man were pursued in full. However, even as the judiciary sought to communicate that the concerns of individual women were relatively irrelevant compared to those of elite men, women found ways to exercise
increased agency. Women did so inside the courtroom as expert witnesses and litigants who used their husband’s position to their advancement and outside the courtroom in unofficial capacities.

In every case of infanticide for which the Maryland Provincial court had jurisdiction, the verdict depended on the presence of a strong patriarch. Under English Common Law, cases of infanticide were considered crimes committed by single women who sought to hide illicit pregnancies. But, in an effort to address married women who were known for bad behavior—such as cuckolding their husbands or striking other community members—the Provincial authorities tried married women for possible crimes committed during their singlehood. In every one of these cases the main purpose of these trials was to ensure that misbehaving women, particularly those who could not be controlled by their husbands, were back under the control of a powerful patriarchal head. When the husband seemed unable to govern his household, the court stepped in to do so in his stead in the drama of the courtroom. If a single woman’s master appeared in court in support of her, she was not condemned. The social hierarchy had been righted and the dangerous social element (the wanton woman) was again under the dominion of her patriarchal head. It was in a master’s best interests to receive as much labor from his investment as possible, thus it comes as no little surprise that more than a few sought to ensure that his servant survived the gallows. Moreover, if a daughter was represented by her father, virtually or physically depending on his rank, she was similarly released. The court served to affirm her father’s control over her. No woman in the colony whose father, husband, or master appeared on her behalf was ever executed. The reason: a case of infanticide progressed only so far as was necessary to rectify a breach in the social hierarchy. Once the elite displayed their dominance over possible subversives, prosecution could cease; the threat was no more. The message sent by the judges and jury of the Provincial court to women and non-elite men in Maryland was straightforward:
failure to keep to their station and submit to the governance of their respective masters or father s resulted in the Provincial authority exerting increased control.

This research advances our understanding of gender and legal dynamics in early Maryland by showing how Maryland men endeavored to use the judiciary to publicly demonstrate, and reinforce, elite male power. Through their conduct as justices in cases of alleged rape and infanticide, many elite men of Maryland responded to perceived threats to the social hierarchy, their honor, and their pocketbooks through the creation of gendered and class legal differences. At times resulting in seemingly contradictory actions, elites sought to use these created differences to achieve their ultimate goal of securing elite male hegemony. Rather than being a wild-wild-west devoid of coherent legal aims and rife with lawlessness, this dissertation shows that Maryland elites sought to systematically communicate that the power an individual held was dependent on the intersection of privileges of gender and class, with elite men always coming out the victor. It also shows that the subordinates elites men sought to control resisted elite aims both inside and outside of the courtroom. Even as the judiciary soughs to curb illicit authority by women and non-elite men, and its possible effects to social stability, elites simultaneously privileged the prerogative of other subordinates. Thus, the constant resistance and accommodation which played out in the legal system worked to define the scope and caliber of the power elites hoped to attain and subordinates’ behavior suggested they craved for themselves.

These cases nineteen cases of rape and infanticide reveal specific conclusions regarding the evolution of English Common Law in the colony. Established in the 1630s, throughout the seventeenth century Maryland witnessed an increased emphasis on maintaining social stability, prohibiting lawlessness, and under-girding the authority of the elite in an effort to ensure both
objectives—even if so doing came with a high cost: the possibility that a victim might be punished as a perpetrator. Contemporaries evinced behavior suggesting they believed this was a small price to pay if so doing permitted the achievement of more important goals. These goals included: establishing fortunes, stabilizing society, and awarding elite men increased social, legal, and economic privileges—all of which helped to increase an individual’s status. These concerns combined with the particularities of time and place made a rigid adoption of English common law in the colony impossible. Instead Maryland justices adapted the existing statutes to make them applicable in ways that addressed the specific social concerns endemic to Maryland at that time and allowed them the ability to make decisions in keeping with their goal of buttressing elite power.

Furthermore, this examination of alleged rape and infanticide cases in Maryland show that people at the bottom of the social hierarchy had a hand in defining the final manifestation of patriarchal privilege in the colony just as did those at the top during the seventeenth century. As a result of constant resistance by both groups working simultaneously, they defined who had authority and its extent. Albeit elite men desired absolute control, they failed to achieve it because subordinates wrested degrees of agency for themselves. In so doing, this authority translated into social and legal power for both Maryland elites and subordinates. Non-elite men, for example, could serve as important witnesses, who, through the legal system, could hold power over their social betters by offering testimony which the court used to determine the fate of an elite man—or at least help determine how much money the accused man was to pay in fees and fines. Married women, on whom the court relied for expert testimony regarding women’s bodies, held tremendous importance to the legal process in the province—and could use this importance to a certain extent as a form of checks and balances, such as when they obtained a
stay of execution for a condemned woman. Thus, through legal and extra legal means subordinates helped to define the limits of patriarchal authority. While subordinate Marylanders could accept the right of the elite to have a certain degree of power in order to govern, they did not accept its excess.

This research also challenges the conclusion that women in Maryland held great power mainly due to the demographic ratio in the colony. In fact, white Maryland women did gain some agency because of the rule of supply and demand, but they also suffered for it. On the one hand, they were vulnerable to sexual advances and on the other hand they were politically and socially overpowered by the comparatively larger number of men. Equally important, while the courtroom dynamic created an environment in which some women gained in officially recognized stature and authority in the colony as agents of the court, others were entirely at the mercy of the court. The determining fact in a woman’s treatment, authority, and power was due less to the demographic ratio in Maryland, and more to the way the courts used her in the legal process to reinforce the social hierarchy.

This dissertation’s findings about colonial Maryland have broad implications for considering the following themes in early America. In early Maryland fear of social upheaval motivated a host of legal decisions that while based on English common law took different forms to meet new world concerns. To secure elite male hegemony, Maryland elites were willing to accommodate subordinates with varying degrees of authority and control. Throughout early America colonists questioned the limits and characteristics of patriarchal privileges, the responsibilities elites held, and the responses to subordinates desirous of increased agency. While varying localities answered questions of legal and social issues involving social, legal, and economic power differently, they all encountered the same issues. Through a process of
resistance and accommodation elite men and subordinates worked out the nuances of gender and class privileges. These privileges operated separately, but jointly defined how much power an individual commanded.

This study shows that some Englishmen were willing to view privilege, class and gender on a continuum. In some legal proceedings, courts granted some women with considerable authority as they testified as expert witnesses—even when they worked against male witness testimony. As some women and non-elite men resisted elite male authority, elite justices and jurors were forced to accommodate other subordinates by acknowledging their particular expertise and endowing them with special privileges. In other proceedings, a man’s gender saved him from the gallows, though he was of inferior social position to the woman alleging the felony crime. Throughout the English colonies, rights due to an individual because of his or her of class were an important aspect in the creation of difference in early America, but at times privileges of gender took priority. Privileges of gender and class were key to how much power an individual held and occasionally the court exchanged illicit power of one individual for a greater degree of legitimate power for another person when doing so allowed them the ability to work towards ultimately helping elite men.

Furthermore, the conclusions of this dissertation suggest that notions of “rape” and “infanticide” are neither immutable nor consistent, even among contemporaries. During the seventeenth century, English men and women held conflicting beliefs about what these concepts entailed. At times they disagreed as to what the main challenge was, and to whom. For instance, victims tended to conceptualize the act of “rape” from their perspective--as a sexual attack on a woman by a man deserving of court censure. The behavior of elite men, by contrast, suggests that in the drama of the courtroom a woman’s allegation of “rape” prompted the justice’s to help
the “real” injured party—the accused man. Somewhat similar disagreements existed over understandings of infanticide. Elite men tended to conceptualize the *act* of “infanticide”—the murder of a newborn child—as an attack on a child that led to death (and thus implicitly on the court’s authority over life and limb) by a woman deserving of court censure. Some non-elite men held similar understandings of the act, but used the *allegation* to their own advantages—as a source of importance, as a means of gaining authority, etc. Men and women tended to have basic understandings of these crimes based on Common Law, but the various individuals involved appeared to have altered their understandings of these concepts to suit their espoused aims by emphasizing different aspects of the statutes. Thus concepts of rape and infanticide were also malleable to suit a variety of agendas.

This research also holds methodological implications for researching early America. The legal records from the seventeenth century tend not to hold explicit justifications for why justices made the legal decisions they did. To be able to understand the process of resistance and accommodation as it played out in other regions, we should look at courts elsewhere to see what internal logic drove elite deliberations and interpretations of the law. The implicit behaviors of elites and subordinates visible through the court records suggest the fears to which both responded, thus providing clues not to just what elites and non-elites did, but why they did so. Some important questions still need to be addressed in further research. To what extent did external factors—such as environmental factors, demographics, or religion, for example—play a part in fueling and shaping elite fears of social unrest? And, how did these fears shape the manifestations of struggles over social and legal privileges elsewhere? We know that subordinates and non-elites wrestled over the limits and shape of patriarchal authority, but one
can only wonder at how the external particularities of time and place affected the balance of power in various regions.

Furthermore, this dissertation’s findings beg questions regarding rape and infanticide in the twenty-first century. In what ways does the legal system still continue to support “patriarchal” legal and social privileges however loosely defined? What are the characteristics of the group or groups which dominate and define contemporary criminal proceedings, and how do they operate? What statements are individuals involved in alleged rape and infanticide cases seeking to make through the legal process; how have the statements evolved over time? And, how are “misbehaving” women controlled through the law, and what kind of behaviors are these? The issues over which the process of resistance and accommodation are fought have changed over the years, but the answers to these questions remain an important indicator of social mores.

Since the conclusion of this research, on April 16, 2008 the Maryland judiciary widened the definition of rape. According to Kristen Wyatt, she writes that the Maryland high court recently stated that a woman can withdraw her consent at any time during sex. The court’s majority found that a woman can revoke her consent after penetration. Failure to comply with her wishes may constitute the crime of rape.430 Significantly, Maryland rape law still centers on concepts of consent, force, and vaginal intercourse. However, legal understandings of what comprises these ideas are in flux. For instance, until recently, legal concepts considered “intercourse” to be over once the initial “vaginal penetration” was complete. Thus a woman could only offer her consent prior to the act of penetration. Therefore, the answers to “what

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defines rape?” and “what defines infanticide” are far from simple. The definitions of both crimes are still evolving.

While this research is about the legal implications of two kinds of especially heinous felony crimes, one of the chief goals of this work was to understand the variety of accounts and the people involved in each case. Who were the individuals involved? What were the issues at play? And, most importantly, what was life like in early America for the newly arrived immigrants? Much like the layers of an onion, I have sought to layer this dissertation with a variety of viewpoints and tell the multiplicity of stories involved in any one account. This kind of research is important because these perspectives achieve two aims and function to accomplish what makes this kind of detailed work so exciting. In vivid colors the stories describe “the way the people of the past lived”—and, as close as can be attained so long after their deaths—the stories enable the accounts of those involved to be told, even in cases in which the participants may not have been able to do so at the time.
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