

WE WILL ALL COME TOGETHER:
WOMEN IN THE NINETEENTH CENTURY STARK COUNTY COURT IN OHIO

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Dissertation

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ABSTRACT

“We Will all Come Together: Women in the Nineteenth Century Stark County Court in Ohio.”

Historians who view the past through the lens of gender have told us that women during the nineteenth century were not expected to function well in the public sphere. They were disenfranchised, “one” with their husbands, virtual non-entities in the sight of the law; and excluded from the vibrant economic development that marked the nineteenth century. As true as that might have been for many women, it is not the whole story. As women were brought more and more into the public sphere through the courts, usually as part of a legal suit to settle debts incurred by or owed to their husbands, or to settle matters concerning dower, they came to understand the role of the court in the everyday lives of citizens, and the women came to see the court as an appropriate venue for demanding more control over their own lives. After a discussion of the historiography of gender and the law in the new republic, a brief look at the legal system as it developed from the colonial era through the nineteenth century, and a brief history of Ohio and Stark County, using the Appearance Dockets of the Stark County Court from 1817 until 1892, this study examines how women were brought into the public sphere or entered it of their own volition. The study will show that even as the courts demanded their presence, mostly to settle land and contractual issues, the women of Stark County, Ohio, used the local court to gain control over their homes and

their bodies, to find economic stability, and to demand protection for themselves and their children.

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CHAPTER I

INTRODUCTION

Early in 1817, Paul Beard promised to marry Catherine Covinger. When her belly swelled but the wedding never came to pass, she tried to sue him for \$1,000 damages, but the court in rural Stark County, Ohio found in Beard's favor.¹ Catherine then shocked her friends and relatives by moving out of her family's home to take up housekeeping with Beard. Her father was rightfully upset; in addition to his previously untrustworthy behavior with Catherine, Beard had been involved in a paternity suit thinly disguised as a civil action over "debt and damages" by another young woman in the community.² But Catherine not only moved in with Paul, she became pregnant by him again, still without the benefits of a legal ceremony. Almost two years later she tried to leave Paul, but she was unable to take her children with her, having been coerced into leaving the children with Paul by his father, George. It took a lawsuit, actually a "case for rescue," by

¹ Docket C, #120 (page 102,) 13 December 1817. Some women sued for "debt and damages" to avoid suing for "breach of promise" or "bastardy," which exposed them to the community as either foolish or immoral.

² Docket C, #34 (page 30) 14 May 1816. Catherine Stoker v. Paul Beard. Debt and damages. Although married women in the early republic could not bring suit in their own names, being legal non-entities, and so had to bring suit with the help of a man, who acted as her legal self, and was recorded in the dockets as her "next friend," unmarried women could sue in their own names, as did Catherine Stoker.

Catherine's own father acting as her "next friend" against George Beard, to extricate her children from the house.³ She also sued Paul for slander, using her brother Joseph as her "next friend".⁴ It seems that when Beard found out about the impending legal action he told several friends that Catherine was free to leave but that the children should stay, and that she had lived with him "for a price," implying that she was either a servant or a prostitute.⁵ The rescue was left "to reason," which implied that the court would rather the two families work out the custody issue, and within a short time Catherine regained her children and went home to live with her father. The Covingers later dismissed the slander suit, hoping, perhaps, to avoid further confrontations with the Beards or closer scrutiny by the public.⁶

This court case has multiple aspects to it that reveal much about the workings of the Stark County courthouse in nineteenth-century Ohio and women's varied experiences there—the subject of this dissertation. My research of court cases appearing before the Stark County court illustrates the degree to which women with seeming little to no official standing in the court's eyes—women who according to the standard narrative of U.S. women's history should have avoided public scrutiny at all

³ Docket C, #308 (page 286,) 21 March 1819

⁴ Although as a single woman Catherine could have sued in her own name, living back in the home of her father may have made it more proper for her to use the men in her family to represent her.

⁵ Docket C, #315 (page 293,) 21 March 1819. Case discontinued 8 August 1820.

⁶ The court was a public venue and the area newspapers published the cases pending. However, no details of the cases, beyond the names of those bringing suit and the purpose of the suit was listed. Although sensational trials were often fodder for the newspapers, the less sensational actions of the common person were not.

costs—were able to bring domestic problems and conflicts as well as property disputes to the court’s sympathetic attention. As the Covinger case demonstrates, these cases were not straightforward or uncomplicated and I do not argue that women always benefitted from court involvement in their lives. But even the outcome of the Covinger case exemplifies the court’s willingness to intervene between men and women in ways that did not always benefit or support masculine power and prerogative.

Indeed, the story of Catherine and Paul continued beyond Catherine’s regaining of her children and returned to her father’s home albeit without a husband or means of support. After the legal battles over her “rescue” it would have been generally well known that the younger Beard was the father. Acting for Catherine, the State of Ohio charged Paul with bastardy and demanded child support. The Beards had been treated well by the courts in the past; in addition to the previous suits by Catherine and the other young lady, Paul and his father had successfully defended themselves in several lawsuits. Paul, however, was unwilling to chance a jury trial and the rather high payments that juries were granting unwed mothers. Paul admitted his paternity and settled with Catherine before the trial began.⁷

By the time Paul had settled his business with Catherine, he had married. His new wife, Mary, was appalled at the way Catherine kept the gossip going around town. Using Perdue Beard, Paul’s younger brother, as her “next friend,” she sued Catherine for

⁷ The first case of bastardy was brought 6 April 1819. Docket C, #341 (page 319.) Beard “recognized his paternity and settled a total of \$500.00 on Catherine.” As the court was regularly granting \$500.00 per child, this could have meant a substantial savings for Beard. The topic will be discussed in more detail in chapter three.

\$1,000 in damages. Although the jury found that Catherine's words did, indeed constitute slander, it did not consider Mary's wounded pride and the Beard family's reputation to have quite the high value that Mary had put on them; the jury awarded her ninety-six dollars.⁸ Paul must have been upset at the outcome of the trial, or perhaps by something said to him in the streets afterward; he was charged with assaulting George Covinger the next afternoon, although the court declined to prosecute.⁹ Finally, a year later, Catherine went back to the court, complaining about Paul's failure to pay her the sum that had been agreed upon. The State of Ohio brought charges of bastardy against Beard once more. This time no settlements were made. As the court record made clear in its charge, it would not allow Catherine and her children to become a burden on society. The jury found Paul to be the father and in breach of the previous contract he had made with Catherine. She was awarded \$500.00 per child, which the sheriff eventually collected "without division."¹⁰

⁸ Docket C, #400 (page 378,) 17 August 1819. The actual charge was "Trespass on the ----- [unreadable due to damage to the paper] for woman," but comments made it clear that the real purpose for the case was to redress damages due to Catherine's gossip about town. \$96.00 was not that much considering that the court had awarded as much as \$800.00 for the damages caused by slander in the past. It is not clear why Mary appealed to Perdue as her next friend, instead of her husband. Perhaps Paul was unwilling to enter the court at that time as he had not made good on his promise to settle funds for child support on Catherine. Paul Beard was charged with assault and battery 18 August 1819, but the case was later dismissed.

⁹ The court made no record of the reason it declined to prosecute. The record notes only "Nolle Prosequi."

¹⁰ Docket C, 467 (page 445,) 29 November 1819. This case was actually brought first by Wayne County, where Beard had apparently moved, but was transferred back to Stark County as both the home of the Covingers and the "place of the actions," in November. The entire amount due was "received by the Sheriff without division" on 6 October 1820. "Without division" indicates that Beard paid the amount in full, rather than in installments.

Catherine's actions as an obviously sexually active, unmarried woman, and Paul's as a man unwilling to take responsibility for his issue were not in keeping with the high standards of masculine responsibility or feminine virtue considered normal in early nineteenth century America. Yet the way that the Covingers and the Beards utilized or attempted to use the court for their own ends, does reflect the degree to which actual legal practices and community conflicts complicated women's relationship to the public sphere and in ways unanticipated by feminist scholarship of a generation ago that presumed the rhetoric of "true womanhood" and legal principles such as "femme coverture" reflected actual legal practices.¹¹

This dissertation considers the records from the appearance dockets of the Stark County, Ohio court from 1817 through 1893, the entire span of records that are extant.¹² The material contained within provide evidence that convey my primary argument concerning the rural court of Stark County, Ohio in the nineteenth century: women were propelled into the public sphere through the court system in fairly large numbers, mostly because of the community's need to maintain peace, clear up confusion concerning land-ownership, make clear what is available for debt-collection, and prevent undue economic hardship brought on by women unable to care for

¹¹ The term "True womanhood" appears throughout the nineteenth century in private as well as public writings and refers to the idea that women properly belong to the domestic sphere. It was most memorably outlined by Barbara Welter ("The Cult of True Womanhood, 1820-1860" *American Quarterly* (Summer 1966), 151-74) but has been discussed and nuanced by numerous scholars since most helpfully and recently in a review essay by Mary Louise Roberts, "True Womanhood Revisited" *Journal of Women's History* 14:1 (Spring 2002), 150-55

¹² The records for Appearance Dockets A and B, as well as those from 63 to 66 (Civil Cases from 1893 through the end of the century,) and Criminal Docket 2 (criminal cases from 1893 through the end of the century) were destroyed when the basement the records are kept in flooded.

themselves or their children. Legal complexities, particularly around the economic issues of support and property disputes, drew women into the public space of the courtroom to resolve issues of land, dower and inheritance, debt, and illicit behavior, while women used the public means available to them to resolve private issues concerning lost innocence, unhappy marriages, and child custody.

In truth women were not, practically speaking, separated out from the public sphere. Single women often sought waged work and some women owned land and businesses. Women also chose to expose themselves to public view as activists and members of reform movements and benevolent societies, which are credited with teaching them how to organize, promote their needs or demands, and fund their activities. These topics have been well documented and are not a focus of this dissertation, except as part of the introduction which discusses how women entered into spaces normally thought of as masculine and often reserved for men. Scholars have examined married women's property and divorce reform efforts and other legal activism on the part of women. Most of these studies adhere to a specific portion of the century, either the early, formative years covering the development of the nation to provide a starting place for future studies, the period that covers certain developments, such as the married women's property acts, or the last few decades, when the reform movements swing back into gear after the Civil War. Taken together, the work of gender historians shows how compromised the ideology of separate spheres was by the acts of women who appeared in public especially in the context of the courts. This dissertation supports previous studies which claim that the courts used their authority not only to

protect the community from undue hardship, maintain the peace, and prosecute criminals, but also to defend the boundaries that defined appropriate gender roles with uneven results for women. The records contained within this study show that the women of the county, through the actions of the legal system and the court, were propelled into the public sphere in numbers even greater than those who entered public spaces demanding social reforms, as the reform movements tended to be populated by women of the middle and upper class, while the women who entered the court came from all socio-economic levels. Examining these records over the course of most of the century will expose the court's hand in maintaining traditional gender roles, but will also show the ways in which women in particular became accustomed to the public space in which the court was contained and how especially family matters became secular, civil, public and often guided by the women rather than sacred, domestic, private and entirely in the hands of the family patriarch. It extends the previous studies of the first half of the century to show how changes in married women's property laws and divorce played out for the rest of the century. By looking at the status of women in society in general and specifically in the family, at the development of the legal system of the state and then how the Stark County Court functioned within state context, this study will show how the private was made public and how women came out of the home and into the courthouse in greater and greater numbers, expanding their sphere, until the overlap between them would be sufficiently large enough to allow the legal and political changes that came in the next century. In truth, the courts did bring women and men

together, at least technically, to share the same space of the courtroom more often than the scholarship imagines.

That women occupied a specific place in the social geography of their communities is an issue that women's historians have been dealing with for the past several decades. Mary Ryan put it well in one of her earliest works when she said that woman's role as child bearer put her at the center of her segregated sphere and tended to "confine her to a social space that is more domestic than social, more sedentary than nomadic, more private than public."¹³ The system that was slowly evolving to put women on an equitable level with men in the early nineteenth century had at its core a pattern of male dominance and female nurturing. That system of inequity dealt with matters of power and gave to men a superior ability to control others.¹⁴ This system of control radiated out from the home into the community; male dominated homes functioned in male dominated communities which appealed to male dominated courts that functioned under laws created by a male dominated polity.

In the early colonies the strict patriarchal system of England found itself under attack. It was not that society denied the rights of men to rule. Indeed, studies of violence against women and especially of rape, show that an undercurrent of patriarchy still flowed strongly through society. For example, Sharon Block's study of rape in early America shows that "white and elite men could use the power of their position to

¹³ Ryan, Mary P. *Womanhood in America: From Colonial Times to the Present*. 3rd ed. (New York: Franklin Watts, Inc., 1983,) 4. (Hereafter *Womanhood*.)

¹⁴ *Womanhood*, 5.

redefine coercion into consent.”¹⁵ White men of position still held so much power over women that they could redefine an act of rape, which is sexual contact “by force and against her will,” to an act of consensual sex with a little rough play, taking away a woman’s ability to define for herself what counted as an unwilling act.¹⁶

The breakdown or diminishment of patriarchy did not occur because colonial women made demands for equality but because survival depended on women putting in effort equal to that of the men.¹⁷ Ryan calls the equality found in the early colonies a system of cooperation and “casual equality” between the “patriarch and his helpmeet” that developed out of necessity.¹⁸ However, no matter how equal the partnership seemed, colonial women owed her mate “reverent subjection” and was “obliged to submit to his superior judgment in all things.”¹⁹ That change to the patterns of paternalism began soon after the colonies were formed is shown in the work of Cornelia Hughes Dayton, for example, who noted that an almost casual atmosphere developed in the courts of New Haven, because “simplified rules and a ban on lawyers,” as well as a court made up of men from the “middling ranks” led women to a court with a less rigid paternalism “than that exemplified by the unmediated power of the seventeenth

¹⁵ Block, Sharon. *Rape and Sexual Power in Early America*. (Chapel Hill: University of North Carolina Press, 2006,) 12.

¹⁶ Block, 40.

¹⁷ *Womanhood*, 20.

¹⁸ *Womanhood*, 21.

¹⁹ *Womanhood*, 35.

century magistrate.”²⁰ Her study also shows the expansion of this private sphere, noting that “one-third of those waiting to plead or give testimony were women.”²¹

As the outcome of the American Revolution blended a married woman’s legal and political identity with that of her husband’s under coverture, making her virtually disappear in the public sphere, historians have claimed that the separate spheres gave women a higher status in society than they had held prior to the war. The argument, articulated by Hendrik Hartog, is that:

Although coverture maintained a power structure that favored husbands, it did not erase wives’ legal identities and rights. Rather, coverture created a particular identity for women, vested with legally specific duties and privileges.²²

Hartog provides a very broad definition of “privileges,” as most territories and states in the early 1800s, including Ohio, legally defined the relationship between the man and woman in a marriage, considering the husband as the head of the household, and having complete control of all property, real or otherwise, in the relationship.²³ Some provisions were made for married women who came to the relationship with property, allowing them to own and control the property in their own names, if their marriage settlement so stated, and with their husband’s consent. Their duties too were rather

²⁰ Hughes-Dayton, Cornelia. *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639 – 1789*. (Chapel Hill: University of North Carolina Press, 199,) 4-5.

²¹ Hughes-Dayton, 1.

²² Sievens, 6. Hartog, Hendrik. *Man and Wife in America: A History*. (Cambridge: Harvard University Press, 2000,) 93-135.

²³ Warbasse, *passim*. Chase, 101-126.

broadly defined: a wife owed her husband obedience, was subordinate to his will, and subject to chastisement should she break out of her role.

Over the course of the nineteenth-century the already diminished system of patriarchy came under attack in a pattern that can best be described as fluctuating. Westward movement contributed to a rugged demeanor and a sense of independence that further weakened the power of the patriarchy while buttressing paternalism.²⁴ When people moved into less populated area, they have a smaller, more widely spread community from which to garner emotional and physical support. Furthermore, the distance between families and the centers of government meant that men and women would come to rely on themselves more and more and the polity less and less. The need to survive forced women to act in more independent ways than they might have if they were surrounded by other women from their family, neighborhood or church. Men might be gone from the home for the entire day, clearing land or for weeks, hunting, scouting out the resources, or helping distant neighbors prepare their land, knowing that they could then expect reciprocity when they themselves needed assistance. This left women in charge of all of the activities that ran a household, managed food resources and provided for the basic needs of herself and her children, such as gathering wood and brining in water. It might also mean providing the protection from animals and natives that would normally have been provided by the man of the family. While

²⁴ Erickson, Leslie. *Westward Bound: Sex, Violence, the Law, and the Making of a Settler Society*. (Vancouver: UBC Press, 2001.) Erickson provides an excellent study of the relationship between movement into the frontier, affirmation of the family, sexual misbehavior and violence against women in westward movement in Canada.

the wildness of the frontier and the distance from help may have strengthened men's roles as the family protector and bolstered paternalism, the actions of the man serving as head of the household and protector, the day-to-day activities of frontier women, some of which would have been considered man's work in more settled territories, also weakened the strict patriarchal hierarchy.

Westward expansion, changing demographic patterns and economic conditions, and new technologies combined with an evangelical movement in the early to mid-nineteenth century strengthened paternalism, a move needed to justify the use and expansion of slavery in the South and women working in northern factories. At the same, the anti-authoritarian message contained in the Great Awakening had an unexpected consequence, a questioning of the system that compelled women and blacks to subject themselves to the authority of a husband or overlord. And those questions helped create a women's rights movement and a "weakening of paternal authority."²⁵

The economic development and expansion of democracy also led to an age of reform where "every vestige of inequality was subject to a new criticism" and a "revolution of choices" overthrew "traditional hierarchies in government, the economy, religion, and the family, and confronted individuals with the prospect that they could aspire to be whatever they wanted."²⁶ The benevolent societies that formed in the early

²⁵ Howe, Daniel Walker. *What God Hath Wrought: The Transformation of America, 1815-1848*. (New York: Oxford University Press, 2007,) 849.

²⁶ Perry, Lewis. *Boats Against the Current: American Culture Between the Revolution and Modernity, 1820-1860*. (New York: Oxford University Press, 1993,) 6-7.

1800s, saw women extending their activities beyond the home in order to better the lives of women at home, granting “some women more personal authority than they might otherwise have.”²⁷ These women considered their actions as “Christian, their means as fundamentally moral, and their mandate as uniquely female.”²⁸ Although by linking their actions to their proper role as wives and mothers, and joining organizations that were mostly formed and led by men, these women gained more authority “even as they accede to their social subordination to men.”²⁹

Mary Ryan discusses this dichotomy of women stepping into the public sphere while maintaining that they were only working as women should to protect the private sphere in the 1800s. She claims that “contrary to common assumptions . . . it is not difficult to locate Victorian women in the public arena.”³⁰ Although the four ways that “ladies laid claim to the public” made it seem as if they were still being very domestic and subservient, they acted so because the society of the nineteenth century still expected that divide (between the public and private) to stand.³¹ Using these techniques, women entered the public space to bring a strong “current of influence into

²⁷ Ginzberg, Lori. *Women and the Work of Benevolence: Morality, Politics, and Class in the Nineteenth Century United States*. (New Haven, Conn.: Yale University Press, 1990,) 8.

²⁸ Ginzberg, 1.

²⁹ Ginzberg, 8.

³⁰ Ryan, Mary P. *Women in Public: Between Banners and Ballots, 1825-1880*. (Baltimore: John Hopkins University Press, 1990,) 3. (Hereafter *Women*.)

³¹ *Women*, 5. Ryan notes that the way women took part in public meetings and protests was to behave according to the accepted code of public conduct, “presenting themselves as ladies outside the home,” occupy a public space, “aim” their efforts at “controlling the behavior of one sex,” and act as the “central actors in public discourse about the most consequential issues.”

the public domain” but in such a way that their actions could still be interpreted as appropriate for their gender, such as “socializing children, keeping boarders, silently inflating the GNP . . .or providing for social welfare through a ladies’ relief association.”³²

Wars also contributed to the back and forth process by propelling women into male places as they replaced men as laborers in fields and factories and learned how to maneuver in the public sphere.³³ Although the activities of many of the reform and benevolence movements were put on hold during the war, women did not shirk their duties as wives and mothers and concerned citizens.³⁴ They served as nurses, and spies, provided needed goods, and sometimes even took up arms. Indeed, many of the women saw the war as an avenue to needed change, especially as to ending slavery and expanding democracy. It also expanded the job market for some women, creating positions in infirmaries for women and children, and other organizations of benevolence, such as the New York Women’s Central Association of Relief.³⁵

But the changes in patterns of patriarchy and paternalism in these activities were perhaps mostly unintentional byproducts of the economic development of the nation and its attempts to achieve its manifest destiny. While women may have been propelled into the public sphere to support the war effort, afterwards there was an

³² *Women*, 5-6.

³³ Giesberg, Judith. *Army at Home: Women and the Civil War on the Northern Home Front*. (Chapel Hill: University of North Carolina Press, 2009.)

³⁴ *Ibid*, 4-5.

³⁵ *Ibid*, 140-141. See also Drew Faust, *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: University of North Carolina Press, 2004).

undercurrent at work to put them back into their proper place. However, the legislative changes made to the legal system and the way that the courts adopted and adapted the law pushed women into the public sphere by compelling their presence in this very public domain to address familial, economic, and criminal issues. Not long after the war, benevolence and reform efforts were reinvigorated, and in the late 1860s and 1870s, “women took clearer, if more various stands in the public arena . . . at the same time, women brought their own concerns closer to the seats of power.”³⁶

The early 1800s also saw a shift from production to consumption which initially led to a strengthening of the line between private and public by sending men out of the home to work, leaving women behind to tend to the home and children. As some men went out to work for a wage, many women were expected to remain in the home, where their daily activities still contributed to the family’s economy through their efforts at keeping house, but where they were no longer expected to “actively” participate in public activities such as wage labor.³⁷ This recognition of the separate spheres, centered around a wage-earning economy, may have given women a higher status in the family, but some scholars, such as Mary Beth Stevens, argues that women’s economic roles, “reoriented towards consumer activities,” which buttressed “the notion that married women’s most important task was in caring for and training their children,” and that the “restrictive nature of women’s domestic sphere and devaluation of women’s household

³⁶ *Women*, 174.

³⁷ See Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1994). Mary P. Ryan makes a similar point in her work, see *Womanhood*, 12.

labors were a result of heightened importance attached to men's wage earning activities and women's role as mothers."³⁸

This buttressing of women's role as wife and mother does not mean that women were not practically confined to their homes; women were always active in their churches and neighborhoods, and between 1800 and 1830 benevolent societies were organized that allowed women "to perform some of their traditional social-welfare functions" outside the home. This also allowed them to practice at "commercial economy" as they collected money, organized and chaired meetings, and "cultivated far-reaching organizational networks" for charities and churches.³⁹ In the 1830s and 40s, the women involved in these benevolent societies were "inundating legislatures with a tide of papers" demanding an end to slavery, control of alcohol and reforms to outlaw seduction.⁴⁰

Even though early movements for political reform were usually led by men, some women had learned to step out on their own even before the reform movements of the 1870s through the 1890s. For example, the meetings held in Salem, Ohio in April of 1850, which called for "securing equal rights and political privilege for women," was controlled by women. Men were allowed to attend but were not allowed to

³⁸ Sievens, Mary Beth. *Stray Wives: Marital Conflict in Early National New England*. (New York: New York University Press, 2005,) 5.

³⁹ *Womanhood*, 106. See also Rosalind Rosenberg, *Beyond Separate Spheres: Intellectual Roots of Modern Feminism* (New Haven: Yale University Press, 1983).

⁴⁰ *Womanhood*, 133.

participate.⁴¹ While this is not sufficient evidence to claim that paternalism was gone from society, it does point to a further diminishment of it in that the women who held these meetings were confident that they did not need the advice or control of men to move towards their goal of equal rights and the vote.

Many of these benevolent societies found their work pushed aside during the Civil War, so that energies and resources could be turned to ending the violence between the states. However, by the 1870s, new movements into the public sphere for reform of everything from alcohol use and prostitution to labor conditions and political inequities developed.

The fact is that the concept of separate spheres could not be absolute in an economy dependent upon constant expansion of industry and the need for consumption. By the 1830s, cloth, soap, candles and sometimes ready-made clothing could be bought in town and it became impractical for these things to be made at home. The shift from the rural environs to the cities also changed what could be done to support the family economy from the home. Families became less able to sustain themselves without resort to the marketplace, especially among the poor, landless and working class. Many women were forced by economic conditions to move into the workforce, and the 1860 census reported that fifteen percent of adult women were gainfully employed outside the home.⁴² In Ohio, 55,261 women were reported as

⁴¹ Booth, Stephanie Elise. *Buckeye Women: The History of Ohio's Daughters*. (Athens: Ohio University Press, 2001,) 59-60.

⁴² *Womanhood*, 117. The figure from the census bureau is 13.5 %.

employed.⁴³ Between 1880 and 1910 the numbers went up significantly, from fifteen percent to nearly twenty-five percent. These figures were even higher when race is taken into account. “Black females of northern cities always lived on the margins of women’s spheres,” as even in the black middle class women often had to earn a wage.⁴⁴ Most African American women would work as domestics and in manufacturing, at least until the 1900s, when white immigrants replaced black women in the factories.⁴⁵ Class and race came to have more influence over the place a woman occupied than her gender alone could. By the mid-nineteenth-century there was an “elasticity of the boundaries of women’s spheres.”⁴⁶ Many women worked before marriage, took part in benevolent societies, and some even agitated for the vote.

Court records have proven very useful to historians in their studies of women and their place in society. This is an appropriate approach to women’s history of the early era even though women did not make the laws, sit on the bench, or act as lawyers, because women appeared in the records when they did not appear in much else left from the times under review. Court records allow us to get at the issues that ordinary people considered important to their lives and one historian notes that “matters with legal implications saturated everyday activities” and that “people’s lives were woven

⁴³ *Historical Statistics of the United States*. Millennial Edition Online. Table Ba162, Ohio.

⁴⁴ *Womanhood*, 158.

⁴⁵ *Womanhood*, 170-171.

⁴⁶ *Womanhood*, 119.

together through them.”⁴⁷ Before many women began to leave records of their own lives in the form of diaries, before women were counted in the work lists or the voting lists, historians have been using court records to uncover the women in society. These records have helped to further define and explain the spaces that women occupied throughout the development of the United States. These records show how the law was used by the people to protect them and “stabilize their lives and reinforce their belief systems,” but also show the ebb and flow of patriarchal power and erosion of the barriers that defined men’s and women’s spaces as separate spheres.⁴⁸

Development of American Legal System

As this dissertation is not about the development of the American or Ohio legal system, or even about the law itself, but rather how the law and the legal system propelled women into public spaces despite the rhetoric implying otherwise, a lengthy discussion of the development of the laws is not in order. However, understanding something of this development may enhance our understanding of how and why some of the laws pertinent to this study changed, and so a brief examination is appropriate. The development of the law will be looked at in a general way, then the historiography of those laws and conventions that most contribute to this study will be examined in more detail from the Colonial Era to the end of the nineteenth century. Ohio law will be included in this section through the early part of statehood. Changes in Ohio legislation

⁴⁷ Crane, Elaine Forman. *Witches, Wife Beaters and Whores: Common Law and Common Folk in Early America*. (Ithaca and London: Cornell University Press, 2011,) 2.

⁴⁸ Crane, 5.

and court developments will then be examined more closely in the chapters appropriate to those changes.

Since English common law adhered to precedent and judges interpretations of what the law was and what it intended to do, and may have required some public support (say in the form of taxes needed to carry out the law), as the colonies developed each appealed to the law in ways which best suited that particular colony. For example, the high death rate among men in the southern colonies quickly led to changes in how the courts interpreted property laws concerning women, allowing them to hold land in their name and partake of the privileges that owning land provided, in order to prevent the economic losses that came when land changed hands frequently. Meanwhile, the New England colonies moved away from the old English tradition of primogeniture, ultimately providing for each child in inheritance law rather than trusting that the eldest male child would somehow help provide for younger siblings.⁴⁹ Although women could be tried for egregious crimes, such as murder, and those in the political

⁴⁹ Salmon, Mary. *Women and the Law of Property in Early America*. (Chapel Hill: University of North Carolina Press, 1986.) This excellent study compares the legal practices of the colonies and states of Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, and South Carolina as to women's property rights, because "it seemed impossible to compare English and American legal practice... because they distort our understanding" of how the rules from England were practiced in the Americas, and because there was so much blending and borrowing from one in the creation of the other. (xiv) Wills allowed that privately owned land and goods could be distributed as the writer saw fit, as long as explanations were provided when the will deviated too greatly from accepted custom. However, many men died intestate and the church and the court determined the execution of the estate. Primogeniture allowed that the land went to the eldest child and was controlled by common law and the courts. Other possessions were covered by church law and the courts. Church courts divided money and goods in equal shares to all of the children. The English interpretation of inheritance law allowed that women who inherited their husband's estates could exert some control over the estates until such time as she remarried. In order to circumvent loss of control in order to protect her children from the first marriage, women in the colonies who were about to remarry could write trusts and put their property in the hands of a man not their future husbands. They could write the trusts so specifically as to ensure sufficient financial protection for their children until adulthood, in many cases then turning over the remains of the trust to the adult child/children. Friedman, 24-28.

realm encountered the courts when they or their husbands were seen as a threat to the stability of the system, as during the reign of Henry VIII, women were often ignored by the magistrates and court officials as incompetents or at least as not responsible for their own behavior.⁵⁰

If women were ignored, invisible or absent in the eyes of the law, they were not unvalued by society. Their roles as child bearers, hearth-tenders, and helpmeets as well as political or economic pawns made them valuable to social and sometimes political stability in old Europe. Their value was certainly recognized in the early colonial settlements. The southern colonies of Virginia started out with such an inequity in gender ratios that women would be recruited from England to come as tobacco brides, intended for the landowning men of the colony. New England, on the other hand, was not settled by single men looking to make a quick fortune and return home, as some of the earlier and more southern colonies were. Instead it was settled by families, many coming to escape religious persecution, and many others to benefit from the resources available in the new world. Women and children anchored the men to a specific place and encouraged quick settlement to ensure the survival of the family, which in turn encouraged economic growth.

Women have usually made up about half of the population in any given area, although fluctuations in migration patterns and deaths in war have often temporarily affected this proportion. But in certain times and places, such as the American South

⁵⁰ For a lucid comparison between the New England and Chesapeake colonies on this point see Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Founding of American Society* (Vintage, 1997).

during the early colonial period, their numbers were considerably less than that of men.⁵¹ This numerically skewed condition was considered inappropriate to the establishment of permanent, socially stable settlements and efforts were made to bring more women into the colonies.⁵² Women were seen as important to stable family life and were also a vital part of the family economy; the carding, weaving and sewing that kept the family in clothes and often supplemented the family income was, for the most part, women's work. Women literally kept the home fires burning and were frequently responsible for bring water into the home on a daily basis. They were the most important factor in dietary variety and hearty eating as they were the ones who tended the family herb beds and gardens, raised the chickens needed for egg production and meat, and, at least until the children were old enough to be set to the task, gathered mushrooms, wild fruits and nuts.

During the colonial era women entered the court for many of the same reasons they enter it in the nineteenth century: they sued or were sued for debt or slander, they petitioned for divorce, they were charged with sexual transgressions, and they charged others with crimes such as assault and rape. Persons of various standings, including women, were able to bring criminal behavior to the attention of the Stark County court.

⁵¹ Various studies have shown that the ratio of men to women in the early periods of Virginia and Maryland may have been as much as seven to one, and Eric Foner reports a ration of five to two for colonial Virginia in the mid-1600s. *Give Me Liberty: A History of the United States*. Vol. 1 (New York: W.W. Norton and Company, 2010,) 87. Dylan Schaffer reports that the figure at near the beginning of the colonial era was that over ¾ of the population was male. (www.scibd.com/doc/47059629/AP-US-Hsitory-Colonial-Comparison-Chart. 28 September 2009.)

⁵² For an original argument regarding recruiting women to migrate to the western territories, see Julie Roy Jeffrey's *Frontier Women: The Trans-Mississippi West, 1840-1880*. (New York: Hill & Wang, 1979). For more recent discussion, see Lesley Erickson's *Westward Bound: Sex, Violence, the Law, and the Making of a Settler Society* (Toronto: UBC Press, 2011).

It may be that, as the population grew and communities were made up of strangers who worshiped in different churches or practiced different occupations, people increasingly turned to the courts to resolve their problems. Regardless of the cause, it is clear, due to the number of what might be viewed as “domestic” issues, that parish and neighborhood arbitration even of civil matters increasingly failed to suffice. Early in the century, as Laura F. Edwards documents, in local situations everyone in a community participated in “the identification of offenses, the resolution of conflicts” and to some degree the definition of the law.⁵³ Cornelius Hughes-Dayton concurs with this view even for an earlier period. In the seventeenth and eighteenth centuries, she notes, “the legal system could function only with the cooperation of ordinary men and women.”⁵⁴ This does not mean religious elites did not hold special power to participate in the governance of behavior especially during the colonial period. Such power was shared between the court system and the religious leaders of the communities. Indeed, the two were often linked, sometimes quite intimately, as in the late 1600s witchcraft trials, when the courts that heard the testimony of accuser and accused was made up of both religious leaders and theologians and civil authorities, lawyers and justices. However, even in this period and in both circumstances, that is regarding church governance and civil court resolutions, Dayton reports that women operated informally and behind the scenes except in those cases where they found themselves in the docks.⁵⁵

⁵³ Edwards, Laura F. *The People and Their Peace: Legal Culture and the Transformation of Inequity in the Post Revolutionary South*. (Chapel Hill: University of North Carolina Press, 2009,) 7.

⁵⁴ Dayton, 4.

⁵⁵ Dayton, 5.

Edwards clarifies that as the eighteenth century turned to the nineteenth, courts increasingly moved to the center of efforts to advance personal interests and to protect the community and its peace.⁵⁶ From the beginning of the colonial period, she reports we find that colonials felt the need to create explicit codes, mostly to clarify what was and was not criminal behavior, and also to address situations that were unique to colonization. As to colonial women, while laws concerning murder and breach of contract, fornication and theft applied equally to them as they did to the men, the courts often considered the extenuating circumstances of women in the prosecution or punishment of women more so than they did for men. Status was often the real test of how men and women were handled by the courts.⁵⁷ Indentured servants were, at least before the law, servants first and people second, although they did have some legal protection. Men and women were protected by their contracts, which usually spelled out very clearly what responsibilities the masters' had and what liberties they could or could not take. Complaints by servants about undeserved beating, inadequate shelter, nakedness and bad food went before the local courts and often brought redress of the issue at hand. Servant women's lives were particularly circumscribed. Their work and close proximity to masters often put them at the mercy of their master's sexual

⁵⁶ Edwards' *The People and their Peace: Legal Culture and the Transformation of Inequity in the Post-Revolutionary South* is an excellent examination of the fundamental development of the law and governance in the late eighteenth and early nineteenth century which considers the court as an intermediary step to the even more public forum of politics, putting "ordinary people at the center of law and governance," 7.

⁵⁷ Block, Sharon. *Rape and Sexual Power in Early America*. (Chapel Hill, University of North Carolina Press, 2006.) 12. Block states that "white, elite men could use the power of their position to redefine coercion into consent."

advances and the court might turn a blind eye to charges that a master raped his servant, assuming that a low moral compass was indicated by the woman's low social status.⁵⁸ Rather than contradicting the court's general mandate to prosecute crimes as injurious to the community, the low status and tarnished reputation of a servant woman could easily alter the perception that injury to her was not a prerogative of the master or had been brought on justifiably by her own acts. Indeed, the courts believed that a woman could not conceive if she was not desirous of the act that impregnated her, and so a servant who became pregnant found it difficult to complain of rape and, as Hughes-Dayton notes, could be turned out of the house as a temptress and fornicator.⁵⁹

The same paternalism that suggested servants were under their master's protection as well as subject to their whims in the colonial era is also apparent in the way that society viewed the poor. Not everyone succeeded in the colonies, and many a servant who had served his or her time never became landowners, able to provide for themselves and their families. How widows and children of the landless or less successful would be supported became an issue almost immediately in the colonies. Laws were created that explained who was responsible for the poor and how they were to be treated. According to Edward Held, one of the authors of *A Brief History of Stark County*, the community could step in as the head of the household and provide for these less fortunate people. Eventually some communities constructed poor houses or

⁵⁸ Friedman, Lawrence M. *A History of American Law*. 3rd edition. (New York: Simon and Shuster, 2005.) Friedman writes about this at length, 45. But also see Dayton, 169-171, for the way she discusses the differences between treatment of a master and his servant in terms of adultery before the court.

⁵⁹ Dayton, 178.

workhouses. There inhabitants earned their keep and may have even learned a new trade or skill, as did the residents at the workhouse built in Stark County in the late 1800s, thus relieving the public of some of the burden.⁶⁰ Townships held themselves to the limits of support provided by law interpreted very strictly. For example, in 1671 Plymouth had a definition of township liability that said that any town that received or entertained a person became responsible for that person if he or she later became destitute unless “warned out” by the sheriff.⁶¹ If “warned out,” the person’s former place of residence became liable for his or her upkeep, and towns often sued the last place a pauper lived for his or her support. This idea of community as “father” also comes out in bastardy legislation, as no village or town wanted to be burdened with the care of bastard children if a father could be found and held accountable.⁶²

While commercial activities and the English government tended to pull the law “in the direction of English sources,” by the 1700s, as Friedman notes, a developing sense of nationalism strengthened “the local element” of law in the colonies.⁶³ Other scholars, such as Anthony Pagden, argue that although the colonies started out under

⁶⁰ The residents in the Stark County workhouse made rat traps and other wire specialties and cultivated the land around the workhouse, which sold its excess produce to help support the house. *Stark*, 738.

⁶¹ According to Friedman warning out did not expel a person from the township but did announce that the town would not be responsible for the newcomer’s condition. Friedman reports that some towns “warned out” nearly every new arrival (50). For more nuanced discussion, see also Kunal M. Parker, “From Poor Law to Immigration Law: Changing Visions of Territorial Community in Antebellum Massachusetts” *Historical Geography* 28 (2000), 61-85.

⁶² Hughes, 205-213 for a discussion on the responsibility and maintenance of bastard children in Connecticut. See also Elaine Crane’s *Witches*, throughout for a discussion on bastardy and the differing treatment of women and men, as well as their financial responsibilities, especially 23-28.

⁶³ *Ibid.*

British law, “in America de facto self-government resulted in a great deal of autonomous legislation.”⁶⁴ He also notes that starting fresh in the writing of state constitutions turned out to be a harder and more complicated task than was first thought and slowly but surely the most useful parts of British common law found its way into the American system. This blending of English Common Law, borrowing from other colonies and states, and creating new laws from (nearly) scratch can be seen in the laws that governed Ohio, first as a territory and then as a state. Ohio’s laws on bastardy were “Adopted from the code of the state of Virginia, which adopts the statutes of Great Britain down to the fourth James I.”⁶⁵ The laws concerning divorce were first “Adopted from the statutes of the state of Massachusetts,” and the laws concerning alcohol were written afresh for the Ohio, due to the need to address the sale of alcohol to Native Americans.⁶⁶ Ohio, while it allowed appeal to common law in equity and other civil cases, “severely restricted” the use of common law in criminal cases by mid-century, instead writing and codifying criminal law to create a system that was available and understandable to the masses. There would be no criminal cases decided purely upon precedence and the various interpretations of common law in this state.⁶⁷ We can look

⁶⁴ Anthony Pagden, “Law, Colonization, Legitimation, and the European Background” in Volume I of *The Cambridge History of Law in America* (NY: Cambridge University Press, 2007), 13. For an expanded discussion of this issue, see also William B. Stoebuck’s “Reception of English Common Law in the American Colonies” *William and Mary Law Review* 10:2 (1968), 393-426.

⁶⁵ Chase, Salmon. *Statues of Ohio and the Western Territory from 1788 to 1833, Inclusive*. (Cincinnati, Ohio: Cory and Fairbanks, Publishers, 1833,) 292-293.

⁶⁶ Chase, 192 and 103 respectively.

⁶⁷ Novak, William J. *The People’s Welfare: Law and Regulation in Nineteenth-Century America*. (Chapel Hill: University of North Carolina Press, 1996,) 310-11 (n. 34.)

to the Stark County appearance dockets to see this division between civil and criminal cases in Ohio. Early civil cases were sometimes decided by juries, even those of partition or dowry and especially those such as bastardy. Unless the defendant waved his or her right to a jury trial, all criminal cases were decided by the jury. By the late 1850s, most civil cases were decided by the judge, as they were in a court of equity. And, no matter the determining body, all cases were registered in the same appearance dockets until 1873, when civil and criminal cases were completely separated. Civil cases were then contained in the dockets labeled with the letters of the alphabet or numbers that represented the next alpha-numeric sequence and criminal cases in dockets designated by numbers starting with "one." Juries disappeared in the civil appearance dockets; all civil cases were determined by the magistrate, judge or justice.⁶⁸

Although the common and statute laws and criminal codes changed in fits and starts throughout the 1800s, criminal codes and civil laws became more clearly defined and separated by the mid-century. First the distinction between civil and criminal behavior had to be worked out. Is breaking a contract a crime? What about shoddy workmanship? Is cutting timber a property crime or does it do injury to a person by causing financial hardship? Once these distinctions were worked out the court had to decide how best to apply the codes. Some criminal codes were applied universally, as the crimes they covered could be committed by either gender with similar degrees of "wrongness," if you will; theft was theft, illegal sale of alcohol was illegal be you man or

⁶⁸ The Dockets were A through Z then A-2 through Z-2, then from #53 up. 26 letters in the alphabet times two is 52, so 53 would be the number used instead of going to A-3 and on.

woman, and murder produced an equally dead party no matter the gender of the murderer. The laws in Ohio were written to reflect this gender-inclusivity. They often included language such as “If any person . . .,” “The person or persons . . .,” “He, she or they so offending . . .”⁶⁹

The working out of civil versus criminal behavior is also visible in the various editions that document Ohio law. The first complete compilation of Ohio territorial and state law, written by Salmon P. Chase, and published in 1833, was organized in a general manner, with divisions of the territorial and state government laid out, for example, explaining how legislators and judges would be chosen and the duties that their offices brought, and then a definition and discussion of the laws, how breaches of the laws would be handled, and what penalties could be imposed if a defendant is found guilty. However, within the definitions and discussions of the law, there is little logical organization, with, for example, “killing wolves” coming right before “dower.”⁷⁰ By the 1860 version, *Revised Statutes of the State of Ohio of a General Nature*, published in 1869, the organization separates the structure of the government, the election or appointment of its officials, the way to make or change legislation, and civil and criminal codes. Each section is then sub-divided, for example, the section on criminal code is broken down into “Crimes” and “Misdemeanors” in Part I, beginning with chapter 33, while Part II- “Civil” begins with a definition of “Husband and Wife” in Title I, chapter 1,

⁶⁹ Chase, 97 and 98, for example, discuss how people are charged, who can bring the charges, and begins a discussion on the appropriate punishment for those found guilty.

⁷⁰ Chase, 513 and 515.

and Dower under “Property” in Title IV, chapter 3. Part III applies to “Civil Procedure,” and covers things like divorce, alimony and bastardy.⁷¹ By the final revision by Clement Bates, *The Annotated Revised Statutes of the State of Ohio, Including all Laws of a General Nature in Force January 1, 1898*, the organization is more refined, with Parts, Titles, Divisions, Chapters, and Sections. All terms are defined on first use, except those that may have been considered “obvious,” but even much of the “obvious” is not left to chance misinterpretation: a bastard is the child of an “unmarried woman.”⁷²

While it is true that most laws were written to apply to either gender, some were aimed at one or the other. A charge of bastardy was an admission by the woman that sex took place without the benefit of marriage, and yet women in nineteenth-century Stark County, Ohio were rarely charged with cohabitation, fornication or adultery, even when making the case public, as they did when they brought it before the court. Rape, incest, and abortion were singularly male crimes, at least until the 1900s in Stark County. Prostitution was “by legal definition a sexual vice peculiar to women,” even though the majority of those procuring a prostitute were men, and both men and women could be charged with its promotion or with keeping the bawdy house.⁷³

⁷¹ Swan, Joseph A. and Leander Critchfield. *Revised Statutes of the State of Ohio of a General Nature, all in force August 1, 1860*. (Cinn.: Robert Clarke and Company, 1969.) passim

⁷² Bates, Clement. *The Annotated Revised Statutes of the State of Ohio, Including all Laws of a General Nature in Force January 1, 1898*. (Cinn.: W. H. Anderson and Company, 1897 (vol. 1) and 1902 (vol. 2), passim on the organization, p. 2931 as to definition of a bastard.

⁷³ Novak, 166.

A word on abortion must be included here, although abortion was not necessarily prosecuted because of the death of the unborn child, even though the life of the child was an important factor.⁷⁴ Abortionists were rarely charged unless the woman died or was seriously or permanently damaged by the procedure.⁷⁵ The charge of “Abortion” was most frequently applied to the person who procured, or attempted to procure the procedure.⁷⁶

The punishment of murderers required a little more thought than the definitions of the crimes and defenses. There was a movement to “humanize” punishment and make it less barbaric, even as lynch mobs and callous policemen with nightsticks acted with indifference to the pain and suffering of others. Capital and corporal punishment had long been practiced in England and the early colonies, with hanging the most common form of capital punishment and a wide variety of corporal punishments that ranged from time in the stocks to public whippings. But as the republic was working out the kinks in its legal system, “jurists, penal experts and respectable citizens” were moving to soften the treatment of criminals. Some states, such as Wisconsin, came into the Union without capital punishment, and others, such as Michigan, abolished it by the

⁷⁴ Klepp, Susan E. *Revolutionary Conceptions: Women, Fertility, and Family Limitations in America, 1760-1820*. (Chapel Hill: University of North Carolina Press, 2009,) 185. It was illegal to have an abortion almost everywhere after “quickening,” that moment when the movement of the fetus proved it lived.

⁷⁵ Ibid, 230. See also, *The Crimes of Womanhood: Defining Femininity in a Court of Law* by A. Cheree Carlson, pages 111-135, for an examination of a specific case of abortion and a general discussion of the topic as a national issue.

⁷⁶ Carlson, A. Cheree. *The Crimes of Womanhood: Defining Femininity in a Court of Law.* (Chicago: University of Illinois Press, 2009.) In the chapter “Bodies at the Crossroads,” Carlson carries on discussion of a female abortionist.

end of the century, except for treason. Ohio, as a territory and during early statehood, allowed whipping and use of the stocks or pillory, as well as fines and imprisonment in either the local “gaol” or the penitentiary, depending on the nature and severity of the crime.⁷⁷ As to corporal punishment, flogging and whipping were “almost extinct” except for prisoners in all states by 1900.⁷⁸ Stark County took the “softer” approach; although state law allowed it until 1805 or 1824, depending on the crime, none of the people punished in the cases examined for this study were whipped or flogged; a fair number of those found guilty were fined and the harshest of punishments for non-capital crimes were prison terms that included a specific length of time “at hard labor” on a diet of bread and water, which the prisoner also paid for with his or her labor.⁷⁹ Ohio allowed capital punishment for murder, but at least in Stark County, it was used sparingly in the nineteenth-century; only one person found guilty of his crime was executed.

Rape and incest were also considered heinous crimes and the perpetrators of these actions were treated harshly, when convicted. Ohio law allowed that in cases of rape those “deemed guilty . . . shall suffer death.”⁸⁰ However, the all-male legislators, juries and jurists, although sympathetic to those proven to be victims of these crimes, were not always receptive to the cries of the women bringing the charges. The American

⁷⁷ Chase, 99.

⁷⁸ Friedman, 453.

⁷⁹ Only one person was hung at the behest of the Stark County Court in the 1800s, although several were sentenced to life in prison. Murder and rape were the crimes that brought these punishments.

⁸⁰ Chase, 438.

system required that the prosecution prove the guilt of the rapist, but, even as it was in England, the real proof of rape was applied to the woman. Ohio's original rape law was written thus:

Carnally knowing any woman, with force and against her consent, or any woman child under the age of ten years with or without her consent . . . who is deemed guilty . . . shall suffer death.⁸¹

Women were expected to resist, with all effort and there had better be evidence of the resistance. The more physically damaged a woman was the more likely her attacker was convicted; since Americans expected "respectable women to resist all illicit sex, men could substitute their own judgment for women's consent."⁸² If the damage to the woman was not severe enough, the perpetrator could make the claim that the victim did not resist "enough" and was therefore not denying consent. Furthermore, the reputation of the victim was also on trial; a woman who had "stepped out" with any man might find her tale of rape dismissed. Even worse, the victim could find herself before the bench as a defendant, accused of "rudeness" or "encouraging sexual relations."⁸³

It took the purity campaigns of the 1860s and 1870s before the most significant changes in laws concerning sexual assault were made; the age of consent, commonly ten, went up. Any sexual intercourse with an under-aged female was rape, even if she

⁸¹ Chase, 439.

⁸² Block, 12.

⁸³ Ibid, 106.

was willing. Reformers of the late 1800s were trying to get sexual behavior under control. "In 1885, no state had an age of consent above twelve," many states still considered ten appropriate, and in one state it was seven!⁸⁴ By the early 1900s, no state except Georgia had an age of consent under sixteen and twenty states had raised it to eighteen.⁸⁵

Incest was considered the most horrible of all sexual crimes, and there was no age of consent test for it. The test of resistance did not apply in the same way that it did for a woman in her majority, because it was noted that a father could use his patriarchal authority as force.⁸⁶ Juries were careful to extract enough information out of the child to determine whether the charge had been fabricated by a dissatisfied or disaffected mother attempting to get rid of her husband. In Ohio, the definitions of rape expanded from "Carnally knowing any woman, with force and against her consent, or any woman child under the age of ten years with or without her consent" in 1804, to an eight part definition of the victim which ranged from the aforementioned "Carnally knowing any woman, with force and against her consent," to "Rape upon a daughter or sister" in section four, "Rape upon other female child under ten," in section five, "Carnally knowing an insane woman," in section 6 and "Incest," in section eight.⁸⁷ In all states,

⁸⁴ Friedman, 446.

⁸⁵ Ibid. Georgia's age of consent was fourteen.

⁸⁶ Block, 75.

⁸⁷ Chase, 434 and Swan, 399-404. The incest section allowed for any sexual contact, and did not require "the full act of sex," in other words, penetration.

men convicted of this crime were given the harshest punishment available; in some, as in Ohio, this meant death until the 1850s, when the sentences were reduced to “life at hard labor.”

Fornication and adultery, as indeed any sexual deviance from the normal man/woman relationship, were also sexual crimes.⁸⁸ The interpretation of who was guilty of these crimes and the frequency of prosecution ebbed and flowed more than perhaps any other category of crime over the development of the nation, as did the punishment for these crimes. For instance, Hughes notes that in colonial Connecticut, judges “proved willing to overlook the sexual transgressions of abandoned spouses.”⁸⁹

Over time, fewer people were whipped and more were fined for their sexual transgressions. Persecution of theft became more common while those for fornication and other sexual crimes became less common. By the 1800s, one study showed that 40 percent of the cases prosecuted were for theft and only 7 percent for fornication.⁹⁰ It was not that the law was no longer concerned about the moral behavior of the people; it was just more concerned with the financial and economic costs involved.

Of course, prostitution was a morals crime but it was also an economic activity, making it one of the most contentious social and criminal issues of the 1800s besides

⁸⁸ Crane, 49. Crane notes that men were hanged for having sex with a heifer in Bermuda in the early part of colonization.

⁸⁹ Hughes, 119.

⁹⁰ Ibid. The study of seven Massachusetts counties conducted by William Nelson also showed a marked increase in economic crimes and a drastic reduction in sexual crimes throughout the late 1600 right through the 1800s. “Emerging notions of Modern Criminal Law in the Revolutionary Era: An Historical Perspective.” 42 N.Y.U.L. Rev. 450, 1967.

alcohol.⁹¹ There is even contention among legal historians concerning this area of moral control.⁹² Prostitution as a means to supplement an insufficient income increased as young women entered the workplaces in urban centers⁹³ There were few codes on the books concerning prostitution itself. Most codes referred instead to the place where the act occurred: the “bawdy house” or in the case of Stark County, the “house of ill repute, or ill fame” that Ohio law, stemming the changes in the 1850 state constitution, defined as “A building or place generally reputed . . . to be a place where persons of the opposite sex meet for the purpose of prostitution.”⁹⁴ The criminal codes concerning bawdy houses were applied to women and men equally and with little concern to extenuating circumstances. Well-governed households were at the heart of a “well-ordered society,” and a well-ordered society “regulated the roles of men and women,” especially their sexuality.⁹⁵ The house of ill repute was the antithesis of the well-run household, and women who ran brothels could not fall back on any of the arguments that worked for them in other types of criminal activity. Women came under fire with as much vigor as men when charged with keeping a bawdy house. It was expected that women understood their importance to maintaining the moral fabric of society; they

⁹¹ See, for example, Lucie Cheng’s article “Chinese Immigrant Women in Nineteenth Century California.” In Kathryn Kish Sklar and Thomas Dublin’s *Women and Power in American History*. (Englewood Cliff: New Jersey: Prentice Hall, 1991,) 246, for a discussion of the lucrative nature of prostitution.

⁹² For example, Friedman makes the case that economic activities trumped moral behavior as the new republic developed in the 1800s, while Novak maintains that the moral fiber of society was under constant vigilance in the nineteenth century.

⁹³ Booth, 23.

⁹⁴ Bates, 209.

⁹⁵ Novak, 162.

could not successfully argue that ignorance or economic hardship overwhelmed their moral knowledge. Covertures did not protect them, as it could in other crimes, where it might be assumed that they acted at the behest or in conjunction with their husbands. Virtuous women should have found a way to turn their husbands from such immoral activities, and would not agree to participate in them.⁹⁶

When considered against the state's desire to protect economic activities, it should come as no surprise to find that prostitution was a thriving business for the courts. If women and men were equally culpable in keeping a bawdy house, they could be equally punished when found guilty. Although not unknown, a term in jail was not the common punishment for the madam or master of a bawdy house; fines however, were liberally applied. Stark County, Ohio, applied the laws against keeping houses of ill repute much more frequently than it did any laws against prostitution or vagrancy. No woman was charged with prostitution or vagrancy by the county in the entire period of this study, even though there was a thriving "red light district" in the city of Canton by

⁹⁶ On the other hand, prostitution was a lucrative business and municipalities could make a fair amount off of the fines and court costs associated with the prosecution of the owners of houses of ill repute. The lucrative nature of prostitution can be found in such works as Richard Selcer's *Hell's Half-Acre: The Life and Legend of a Red Light District*, Charles Winick and Paul Kinsie's *The Lively Commerce: Prostitution in the United States*, and Thomas Mackey's *Red Lights Out: A Legal History of Prostitution, Disorderly Houses, and Vice Districts, 1870-1917*. Selcer, Richard. *Hell's Half-Acre: The Life and Legend of a Red Light District*. (Forth Worth: Texas Christian University Press, 1999.) Winick, Charles and Paul Kinsie. *The Lively Commerce: Prostitution in the United States*. (Quadrangle Books, Inc., 1971. Mackey, Thomas. *Red Lights Out: A Legal History of Prostitution, Disorderly Houses, and Vice Districts, 1870-1917*. (New York: Garland Press, 1987.) Friedman agrees with Novak that those sins made public were the more likely to be prosecuted, but he calls the nineteenth century a "dead point, a lull in the war against vice."

1906, which did not spring from the gutters suddenly, but developed over a period of time.⁹⁷

Although society saw the assault on its morals as harmful to the fabric of society, and many a parent or spouse lamented the loss of innocence and waste of money, prostitution was in many systems defined as a “victimless” crime.⁹⁸ This may have helped the courts decide that fines were more appropriate than jail terms, especially as the courts made money on fines but lost money when the defendant was incarcerated. Cities such as New Orleans defined the boundaries of the red light districts and fined anyone operating outside the district. In many cities, the police did not always interfere with bawdy houses; they preferred to collect protection fees or outright bribes. In other places, licenses were granted in the form of a monthly fine, such as that in Sioux City, Iowa, where “owners and prostitutes alike paid the fee in exchange for an unspoken promise by the authorities not to shut them down.”⁹⁹

The purity campaigns of the late-1800s also highlight the divergent opinions of society concerning sex and sexuality, what Helen L. Horowitz calls the “fault lines rumbling beneath the surface of America’s sexual culture.”¹⁰⁰ Reformers demanded laws that could “return” American society to what they thought of as a more moral past,

⁹⁷ See Elizabeth Jane Greiner’s thesis: *Saxton Street: The Reconstruction of a Red Light Community, 1906 – 1913*. Columbus: Ohio State University Press, 1987.

⁹⁸ Friedman, 444.

⁹⁹ Friedman, 445.

¹⁰⁰ Horowitz, Helen Lefkowitz. “Victoria Woodhull, Anthony Comstock, and Conflict over Sex in the United States in the 1870s.” *Journal of American History*. (September, 2000. Vol. 87, #2. Pgs 403-434,) 403.

or at least a past governed by mostly white, upper-class Anglo-American men and women. According to Helen Lefkowitz Horowitz, included among the central ways that Americans viewed sexuality by the 1870s were trends in thought that put women in the vanguard of guarding or redefining social mores.¹⁰¹ For many nineteenth-century women at the heart of many vices, including sexual vices, was alcohol. Alcohol led to lack of self-control and could lead even the usually “sober and industrious into habits of idleness and vice.”¹⁰² Resorting to prostitutes and gambling might not occur if the mind is not dulled by the beer and gin that was consumed in great quantities. Wife-beating and disturbances of the public peace could be drastically reduced in numbers if the “demon rum” was under control. But again, there was a real connection between alcohol and economic development and serious concerns about the effects that alcohol legislation might have on the economy. If alcohol consumption often led to un-peaceful or immoral behavior, its control was problematic. To control the use of alcohol through licensing at one end, or complete prohibition at the other, was to restrain trade. Entrepreneurs claimed that to control or prohibit the sale and use of alcohol hurt not only the tavern keeper or the brewer, but all trades associated with its sale and use: inns and restaurant owners, teamsters, dock workers, and farmers would also suffer. Reformers countered that the use of alcohol loosened self-control and led to other vices and the downfall of families. Furthermore, to license alcohol added to the problem by

¹⁰¹ Horowitz, 404. The author calls the four ways of understanding sexuality “evangelical Christianity . . . a centuries-old popular culture based on the humeral theory . . . new notions of the body and mind . . . and an emerging sensibility that placed sex at the center of life.”

¹⁰² Novak, 160. Novak equates the use of alcohol to a resort to gambling which “promoted laziness.”

“bartering away the peace and morals of society.”¹⁰³ Many businessmen were caught in the middle; they recognized that alcohol use lessened the productivity of their workers and sometimes disrupted the peace in their factories, but they also enjoyed a libation now and again and resented any laws that might intrude on their own private affairs.

Alcohol had long been recognized as responsible for some of society’s ills. English laws to control its use began in 1552 with the Licensing Act, which intended to control through the use of license “inns and taverns which were known as the meeting places and forums for public discourse” and as “breeding grounds for sedition.”¹⁰⁴ Licensing followed the colonists to America and remained part of the system in the new republic. Licensing was not a free pass to disturb the peace, allow immorality or encourage misbehavior in any way. Licensing gave the public “three potent regulatory tools: selection, condition, and withdrawal.”¹⁰⁵ Public officials, usually justices of the peace, determined who got the license, under what conditions it could be kept, and when it was taken back. They also decided how many licenses should be given in any particular geographic boundary, usually determined by the population and the usual number of visitors to the area. Inn and tavern owners were expected to be sober men of good repute, in other words, respectable people.¹⁰⁶ The Ohio laws on the sale and distribution of alcohol would be refined over the course of the 1800s, clarifying the

¹⁰³ Friedman, 447.

¹⁰⁴ Novak, 172.

¹⁰⁵ Ibid

¹⁰⁶ Novak, 173.

meaning of “tavern” and limiting the sale to those who were of legal age, in their right mind, and not known to be a drunkard.¹⁰⁷ Licensing remained the main method of control until Prohibition, although there was a smattering of communities that tried prohibitive measures before the 1900s. These were not very successful. By the 1800s, there was a “stunning degree of diversity, experimentation and discretion in dealing with threats to a community’s moral standards,” especially when it came to alcohol.¹⁰⁸

By 1830, county commissioners had replaced justices of the peace as grantors of licenses, and many elections saw commissioners selected “almost exclusively on the liquor issue.”¹⁰⁹ Although commerce and the expansion of the free enterprise system seemed sacrosanct, liquor licensing laws were still justified as necessary to ensure the “safety and tranquility” of the individuals. The regulation of alcohol was therefore part of the responsibilities of the governing bodies.¹¹⁰ Even the Supreme Court, concerned with the struggle to protect private property and commerce when deliberating the issue

¹⁰⁷ By 1804, the sale of alcohol required a license which could be purchased from a justice or other government official, which restricted the place of sales and the amount, and forbid the sale or trade in alcohol to any Native American or soldier, “except by surgeon or hospital if needful.” The fines could be substantial: forfeiture “of all his or her goods and chattels,” six to eighteen months in jail and a fine not to exceed \$500.00. (Chase, 103-104.) In the 1860s, the laws were further refined, set the fees for a license to “not more than \$50.00 and not less than \$5.00,” renewed annually, and allowed a wife to sue a tavern owner if he or she sold to a husband who was a known drunk. The fines went down some, to between \$5.00 and \$50.00 for a first offence and jail terms of between ten and fifty days. (Swan, 668.) By the end of the century, licensing was strictly under control of the county, alcohol could not be sold to any minor, insane person, or drunkard, and those who claim to be injured parties due to the illegal sale of alcohol had expanded to include “wives, children, or any injured party, allowing employers, pastors and others in the community to bring suit against tavern owners who failed to monitor the actions of their clients or those who sold alcohol without a license. (Bates, 2407.)

¹⁰⁸ Novak, 155.

¹⁰⁹ Novak, 173.

¹¹⁰ Novak, 176.

of slavery agreed that liquor licensing was “an appropriate exercise of state policing powers.”¹¹¹ When licensing laws were ignored, the product could even be seized and destroyed as a public nuisance, much as a “dog chasing sheep could be shot.”¹¹²

However, the control of alcohol also caused the people’s peace to be disrupted. Across the nation temperance campaigns led to clashes between those segments of society that wanted alcohol eliminated and those who made a profit from it. These campaigns were sometimes heated affairs, with women marching down the streets with signs of protest, and others crashing into taverns, screaming at customers and otherwise causing a great disturbance. These protests strengthened as the century progressed and class entered into the debate. At the center was not so much that people drank but that some official policy towards alcohol control be legislated, creating an “official standard of morality.”¹¹³ As the debate over control got more heated the courts were nearly overwhelmed by the number of alcohol-related cases being brought. Many cases were recorded as the crusaders made complaints about illegal sales, immoral behavior and abuses, but nearly as many were made by proprietors whose businesses were interrupted by the crusaders and by common folk disturbed in the streets by protests. In Stark County the problems caused by crusaders became so great that the Canton City Council passed an ordinance prohibiting crusading in 1874.¹¹⁴ The

¹¹¹ Novak, 177.

¹¹² Novak, 182.

¹¹³ Friedman, 447.

¹¹⁴ *Brief*, 57.

ordinance may have prevented further large-scale protests, but it did nothing to stop the furor over alcohol, as the Women's Christian Temperance Union of Canton was formed the same year.¹¹⁵

Another vice which had a bifurcated place in society was gambling. In early Ohio, gaming was defined by the collection of money for any activity the outcome of which was uncertain. The law prohibited "any gaming for money, property," and you could not "set up, permit or suffer or cause or procure . . . any species of gaming, play or pastime whatsoever, whereby money or other property shall be betted on, won or lost."¹¹⁶ This explained why several gentlemen in Stark County were charged with "baseball." It was not so much that they played a game of ball, but that the game served as a source for placing wagers.

Gaming and gambling were seen as something that created a public nuisance, and yet was often used by the state and county institutions themselves to raise money. And, although women were not considered the most likely of the genders to gamble, they were expected to help regulate it from the home, not encourage it in the home. In Stark County, women were charged with "allowing gambling" three times as often as they were with "gaming."

There is also some evidence of class distinctions in the prosecution of specific forms of gambling. Reformers saw the drain that gambling on things like lotteries had on

¹¹⁵ Ibid

¹¹⁶ Chase, 104.

working class households and moved to have all forms of gambling made illegal, but, as with alcohol reform, were not entirely successful. The private poker party in the home of a community leader might be attended by the sheriff and justice of the peace. But gambling houses and back-alley dice games were considered a public nuisance and were regulated, as were “cockfighting, fisticuffs” and other less-savory activities.¹¹⁷ Gambling reformers often had the benefit of support from temperance reformers and the well-to-do citizens who held back-room poker games and owned the local manufacturing plants. “Nascent capitalism” benefited from “an effort to instill habits of restraint, self-control, temperance, industry and order in the working classes.”¹¹⁸ People could work harder and produce more if they were sober, moral and self-controlled, and they would have more money to spend on the goods they produced if they were not wasting it on dice and lotteries.

Civil law, as opposed to criminal, brought women in the courts under very different circumstances. Marriage laws defined the family and laid out the duties of both the husband and the wife. Women’s legal historian, Marylynn Salmon, who conducted an extensive comparison of the property laws in seven colonies as they transitioned into states, concluded that “the law of separate estates indicated the degree of independence lawmakers were willing to allow propertied women,” reflecting the place that women held in society.¹¹⁹ By examining the formal rules of law we can

¹¹⁷ Novak, 160-161.

¹¹⁸ Novak, 162.

¹¹⁹ Salmon, Marylynn. *Women and the Law of Property in Early America*. (Chapel Hill: University of North Carolina Press, 1986,) xii.

see that the courts came to recognize at least married women's capacity to act in the market place. Dower and inheritance laws show both community concern for the welfare of women left to fend for themselves and a the community's preference to have that welfare come from another's pockets. And, looking at the evolution of divorce laws shows both the loosening of the paternal grip on the family and the way that women, still behaving as proper women, could expand their authority and taking a greater place in the public by regaining control of herself, her children and her property.

Marriage and Property, Dower and Divorce

Marriage was defined as a union between a man and a woman, and the laws that governed it were laid out along with laws of contract, criminal activities, and killing wolves. It was necessary to include marriage in the codification of American life because the family was seen as "the primary institution for confronting social and economic change; this codification of domestic life was intended to protect "society's most vital institution."¹²⁰ According to Grossberg, this codification "redirected the governance of the American home" with a "republican approach to domestic relations," that rearranged the balance of power within the home and between family members and the state."¹²¹ A husband was expected to provide for his family, and a wife was to "submit to the laws of the husband."¹²²

¹²⁰ Grossberg, ix-x.

¹²¹ Grossberg, xi.

¹²² Warbasse, 62.

During the colonial era, the family was an active part of the economy, rather than a place of respite from it. The husband's role was to run a well-behaved and well-organized home, and he had the authority of law to do so, with nearly absolute control of the family members, their property and all other family resources. The "family" was more broadly defined than one might think; family included spouses, children, "apprentices, bound-out youths and other dependents . . ." ¹²³ The circumstances inherent in colonization "undermined" the ideal for family, giving women "more economic and social control and freedom," and the very nature of the changing economic form, the availability of land and expansion of industry and commercial "prospects" weakened the family's dependence on "the father's good graces . . . checking paternal authority." ¹²⁴ Furthermore, generational influence was on the wane, family size declined, especially as urban centers and industrialization expanded, companionate marriage became more common, and "motherhood and childhood, became favored status. ¹²⁵ More and more, people were unwilling to set aside their own pursuit of happiness, and a developing middle-class was "less willing to submit to the community" leaving the family to "stand apart" from the public; the first separation of the spheres applied between the family and the public.

Statehood meant the need to inculcate America's citizens with republican virtues and to encourage living the republican idea led to a further breakdown of the

¹²³ Grossberg, 5.

¹²⁴ Grossberg, 5-6.

¹²⁵ Grossberg, 6-7.

patriarchy. "American revolutionary ideology contained a fierce anti-patriarchal strain," which would, over the course of the nineteenth century see male authority "narrowed." Although the removal of "work" from the home intensified the need for male financial support, female "control" of the home also intensified.¹²⁶ Childhood would also change; no longer were children a commodity, future laborers to aid in the family economy.¹²⁷ Rather they became "vulnerable, innocent and needy," but still individuals whose talents and characteristics were more and more shaped by the mother, with the father providing the "example" children could follow. This was especially true for the middle class families, as lower class and poor families still needed their children to participate in the family economy. "The eighteenth century hierarchy and responsibility were replaced with well-defined spheres" and mutual obligations.¹²⁸

As the nineteenth century approached, the consensual marriage overtook the concept of marriage as an economic or political institution, and communal supervision of the daily activities of the family diminished. Marriage became a mutually agreed upon contractual relationship in which "the declared intentions of both parties would govern all bargains . . . and that all parties bargained equally."¹²⁹ This does not mean that the roles of men and women changed dramatically. Although "Victorians conceived of

¹²⁶ Grossberg, 7-9.

¹²⁷ Grossberg, 27. Grossberg discussed the changing nature of the family and the spheres, where although "patriarchy retained its legal primacy . . . the worldly male was separated from the homebound female and a clear demarcation between childhood and adulthood" developed.

¹²⁸ Grossberg, 9.

¹²⁹ Grossberg, 19-20. (Hereafter designated as *Governing*.)

marriage in terms of love and personal choice, spouses roles were defined as compulsory obligations . . . which imposed a set of sex-role specific duties upon husband and wife.”¹³⁰ Even though the family sought the privacy of the home to stand against the public, the law made it necessary for women to become familiar with the courts by making marriage a private contract. As codified by Ohio law first in 1803, every justice of the peace, judge, minister or Quaker meeting was authorized to join together a man and a woman. This union was to be recorded with the court, and the agent of the court was fined if he did not do so. The minimum age for marriage was set, as well as degrees of consanguinity. That marriage was still of public concern was seen in the requirement for posting of the banns six weeks before the ceremony took place.¹³¹ Over time, the ages of marriage with or without parental consent would go up, and the length of time to announce the banns would go down, but not until the changes in married women’s property laws would the duties of the wife and husband change in any substantive way.¹³²

Making marriage a civil contract allowed the state to determine who could marry whom, “what marriages were invalid, what composed marital obligations, how a

¹³⁰ Grossberg, Michael. *A Judgment for Solomon: the d’Hauteville Case and Legal Experience in Antebellum America*. (New York: Cambridge University Press, 1996,) 14. (Hereafter designated as *Solomon*.)

¹³¹ Chase, 101.

¹³² According to Chase, the age of marriage in 1790 with consent was thirteen for girls and sixteen for boys and without consent was 18 for girls and 21 for young men (101.) By 1803, the ages for marriage with consent was fourteen for girls and eighteen for boys, and without consent, eighteen for girls and twenty-one for young men(354.) By 1810, the banns, public notice that a marriage was planned, only required a fifteen day notice in advance of the ceremony (672.) In 1824, that length of time was reduced to “two different days of public worship, the first at least ten days prior to the ceremony (855).”

marriage could be terminated, and the consequences for divorced and widowed partners.”¹³³

As a contract, marriage comes under civil order, which may have encouraged dissatisfied parties to turn to the courts for redress, adding to the sense that women would turn more often to the courts than to the church for solutions to their “contractual difficulties.”¹³⁴ Drunkenness, abuse, and other problems in the marriage would lead many women to seek either a separation or a divorce. Some would leave the home, in essence abandoning their family, simply to show their husbands their worth.¹³⁵ And, the importance of marriage to society means an increasing desire to keep it within “the regulatory reach of the state” allowing the “judiciary” to “mediate disputes.”¹³⁶

Some of the issues that needed to be mediated centered around the dower, and others around what property was available to settle a husband’s debt. These two issues were often intimately entwined. It was the need to address property issues that brought about the most change in a married woman’s status, rights, and privileges. One of these problems attached to married women’s property rights was that even if she came to a marriage well-off in land and possessions, all her land and even her personal belongings

¹³³ Cott, Nancy F. *Public Vows: A History of Marriage and the Nation*. (Cambridge: Harvard University Press, 200,) 27-28.

¹³⁴ *Governing*, 20.

¹³⁵ Sievens, 2.

¹³⁶ Grossberg, 24.

became the property of her husband unless protected by a trust before marriage. “A wife’s property could be sold if both signed the deed and the wife was examined separately by a court official.”¹³⁷ The problem here was that not all “examinations” were done, or done away from the husband’s watch, and not all women were aware of the fine details of the law. So property ownership brought problems to the fore rather rapidly in the new nation. The dower is a widow’s share of her husband’s estate. In England the need for dower provisions was essential. “Since *femes covert*s were denied the right to own property, the law had a strong moral obligation to provide support during widowhood.”¹³⁸ The dower concerned land only; personal property was disposed of in a will, or if no will were written, divided up by the court in what it considered an equitable manner. However, the dower was inviolate: a husband could not dispose of land that was part of his wife’s dower without her express consent¹³⁹ The basic form of dower remained intact as the colonies were settled. The concept was so well ingrained into society that not even the lack of properly recorded marriages in the far-flung reaches of the colonies prevented judges from granting the dower to women who had no legal proof of their union. Grossberg notes that:

Concern for women and their financial security coupled with incomplete or non-existent records of marriage allowed that justices were comfortable

¹³⁷ Basch, 24.

¹³⁸ Salmon, 142. Salmon notes that husbands in England could leave more than the required third and that in a family with only one child, the widow would receive half of the estate. Salmon, 142-143.

¹³⁹ Konig, Davis Thomas. “Regionalism in Early American Law,” in *The Cambridge History of Law in America*, 173.

granting dower to women who could not provide evidence of their marriage beyond the acknowledgements, cohabitations, and reputation of a couple.¹⁴⁰

All it took was knowledge in the community that the man and woman lived as husband and wife for the widow to receive her dower.

The act that covered dower in territorial and early statehood in Ohio read:

The widow of any person dying shall be endowed of one full and equal third part of all the lands, tenements and real estate of which her husband was seized as an estate of inheritance at any time during coverture . . . and that she shall remain in the mansion house of her husband, free of charge, for one year after his death if her dower is not sooner assigned to her.¹⁴¹

There were two flaws in dower; it attached only land and only as a life estate, and it left a quagmire for creditors trying to collect; “the dower could not be used to settle the debts of the husbands.”¹⁴² This would lead to a new avenue from which women could enter the courts. Because a woman had to “relinquish her dower rights” and give her permission before her husband could use all of the land they held to repay a debt, “creditors frequently sued both husband and wife” when he was unable to pay his debts.¹⁴³ The law would have to address this issue in a nation working to promote economic growth and fiscal responsibility, yet it was not until the middle of the nineteenth-century that states would create laws intended to rectify this problem.

¹⁴⁰ *Governing*, 79-80.

¹⁴¹ Chase, 517-518.

¹⁴² Friedman, 322.

¹⁴³ Stowell, Daniel W. *In Tender Consideration: Women, Families, and the Law in Lincoln's Illinois*. ((Chicago: University of Illinois Press, 2002,) 32-33.

States in the South would first address the need for change in property laws as they applied to women in the early 1800s. The change was actually intended to “buttress paternalism by allowing a husband to control his wife’s land but protect it from his debtors.”¹⁴⁴ In 1839, Mississippi would “allow women to own the property they brought to marriage or acquired afterwards by gift or bequest” and although she would still own any slaves brought to the marriage, her husband controlled them and any profit that was a result of their labor.¹⁴⁵

The mid-west, which was rich in land but not much else, grew impatient with the problems inherent with the dower. Michigan would work to resolve the problems by exempting a wife’s property from her husband’s debts in 1844, and in 1845, Massachusetts “required ante-nuptial agreements to keep a wife’s estates separate from her husband’s.”¹⁴⁶ Ohio adopted the dower but allowed the wife a choice between her dower and jointure, defined as:

A woman’s freehold life estate in land, in lieu of dower, enjoyed only after her husband’s death, settlement under which a wife receives such an estate. It must be held by her in her own right and not in trust for her and is in lieu of her entire dower.¹⁴⁷

If a woman took jointure in lieu of her dower:

¹⁴⁴ Warbase, vii.

¹⁴⁵ Basch, 27.

¹⁴⁶ Ibid.

¹⁴⁷ Garner, Brian A., editor in chief. *Black’s Law Dictionary, 9th edition*. (St. Paul, Minn.: West Press, 2004,) 915.

Such conveyance shall bar her right of dower to the lands and tenements which were her husband's . . . but if the jointure is made while she is in infancy, or after marriage, she may wave jointure and demand her dower.¹⁴⁸

By 1860, New York addressed a woman's need to provide for herself and her children by putting the "Earnings Act" into effect. This law not only allowed a woman to keep their own earnings "as part of her separate estate," it allowed her to sue and be sued."¹⁴⁹ Prior to this act, a woman could not sue for anything but divorce in her own name. Even in separation suits, she required a "next friend (prochain ami)" or her husband to bring the suit.¹⁵⁰ Norma Basch also claims that acts such as that passed in New York crossed class lines and made a statement concerning a woman's status in society. Married women's property acts were:

at first to aid those with a lot of land . . . and spoke most clearly to the needs of a growing middle class, but as seen in statutes that deal with wages . . . showed ideas that extended across class interests and to gender interests. In the context of the nineteenth century, the right of wives to own property entailed their right not to be property.¹⁵¹

Laws concerning divorce, alimony and child custody also evolved over the century to address both the needs of all parties involved and the economic stability of the community. After the Revolution, there was a real need to infuse the ideals of republicanism and "equality" into society, if for no other reason than to ensure the

¹⁴⁸ Chase, 518-519. This amendment to the law was enacted 28 January 1823 and went into effect 1 June 1823.

¹⁴⁹ Basch, 28.

¹⁵⁰ Basch, 99.

¹⁵¹ Basch, 38.

survival of the new nation. And this meant that the family had to reflect the ideals of the nation. Nancy Cott noted that:

Revolutionary America used the analogy between familial and governmental authority to reinforce ideals of contractualism and reciprocity as requirements for justice. . . .The metaphor between citizens and state then became marriage- two partners in a union voluntarily adhered to.”¹⁵²

If the marriage was seen as a contract, then it is logical to see a dissatisfactory marriage as a broken contract. “How could consent in a marriage be considered fully voluntary if it could not be withdrawn by an injured partner?”¹⁵³ Divorce would have to become easier to acquire if the contract metaphor was to stand. This does not mean that individual freedoms were being enhanced, or that the idea that marriage was “life-long,” rather it meant that “early divorce statutes aimed to perfect marriage by weeding out the contracts that had been breached.”¹⁵⁴

Pennsylvania allowed divorce as early as 1682 “to a spouse whose partner was convicted of adultery” and later the governor or lieutenant governor could also grant a divorce “on grounds of incest, bigamy or homosexuality.”¹⁵⁵ This legislative divorce was replaced in Pennsylvania by 1785 with a courtroom divorce and many other northern states followed suit within a few years. Ohio’s first divorce laws were “adopted from the statutes of Massachusetts,” and in place by 1795. These laws allowed that the “general

¹⁵² Cott, 15-16.

¹⁵³ Cott, 47.

¹⁵⁴ Cott, 48-49.

¹⁵⁵ Freidman, 142.

courts and circuit courts have the sole control of all divorces,” and that bigamy, impotency or adultery” were grounds for an absolute divorce.¹⁵⁶ The state also allowed divorce from bed and board in cases of extreme cruelty, although this did not allow the partners to remarry, it only sanctioned them living apart.

Courtroom divorces were lawsuits; the offended spouse sued for divorce on legally accepted grounds, which varied from state to state. In New York, only adultery was an acceptable ground, while in Vermont, adultery as well as “impotence, intolerable severity, three years’ willful desertion and long absence with presumption of death” were acceptable grounds.¹⁵⁷ Some states left definition of “grounds” rather ambiguous, such as Rhode Island, which recognized “gross misbehavior and wickedness” and others allowed that the marriage bed was to be honored, so New Hampshire allowed divorce in the case of adultery and if the “offending” spouse joined the Shaker sect.¹⁵⁸ Connecticut would allow that “misconduct that permanently destroyed the happiness of the petitioner” was sufficient grounds and more and more states added the vaguely defined “cruelty” as cause.¹⁵⁹ The divorce rate climbed over the course of the 1800s, and in those states that still granted legislative divorce, the suits took up so much of the time

¹⁵⁶ Chase, 493.

¹⁵⁷ Friedman, 143.

¹⁵⁸ Friedman, 145 & 377. Joining the Shaker sect was an acceptable ground for divorce because it violated the marriage bed in the opposite manner of adultery since the Shakers were celibate.

¹⁵⁹ Friedman, 377.

and resources of the legislature that by the end of the century the only way to a divorce was “through the courtroom.”¹⁶⁰

This does not mean that the road to divorce was particularly easy or that society accepted the climbing rates as appropriate, especially in the 1870s and 80s when the reform movements swept the country.¹⁶¹ Nineteenth century divorce was adversarial; the accused was considered to have “committed a public wrong, “and the plaintiff “usually had to exhibit idea spousal behavior in order to succeed.¹⁶² If marriage was a reflection of the nation, we can understand the reason that influential leaders, like Horace Greeley, disapproved of rising divorce rates. They believed that easy divorce was “evidence of moral rot and the disintegration of the nation’s backbone, the family.”¹⁶³ However, as the century progressed, the grounds around which an injured party could sue expanded. Statutes were “repeatedly revised and enhanced between 1820 and 1860.”¹⁶⁴ Absolute divorce became available for infractions which previously only allowed a separation, such as extreme cruelty, fraud, gross neglect of duty, and drunkenness, and the period of time of “abandonment or desertion” went down, in many places from five to two years.¹⁶⁵ The more means that were available, the more

¹⁶⁰ Friedman 144.

¹⁶¹ Friedman reports divorce rates that rose from 53,574 between 1867 and 1871 to 89,284 between 1877 and 1881, with national averages of 39 per 100,000 in the North Atlantic states and 131 per 100,000 in the western states. 378.

¹⁶² Cott, 49.

¹⁶³ Friedman, 378.

¹⁶⁴ Cott, 50.

¹⁶⁵ Ibid.

people sought divorce, with women leading the charge.¹⁶⁶ And, if the state in which the unhappy couple lived did not accommodate their needs, the injured party could temporarily relocate to a state with more agreeable laws, although if a woman, she opened herself to charges of abandonment.¹⁶⁷

Class also factored into divorce, especially early in the century in the issue of child custody. Originally, in all places, unless gross unfitness could be proven, custody went to the father. As divorce became a concern of the courtroom, well-to-do men were given custody of the children as a matter of course. As the century progressed and divorce “percolated downward” it was more common for the women to file, meaning that she was the “innocent” party and deserving of both alimony and custody of the children, especially those under the age of seven.¹⁶⁸

Intimately tied to both dower and divorce were property laws that specifically addressed women’s rights. If a woman was to be able to care for herself at the end of her marriage, whether through death or divorce, she had to be able to control and care for her own property. English law had allowed that women did not have the capacity to govern either themselves or their property. This belief changed in America but not in

¹⁶⁶ Cott notes that “more wives than husbands sought divorce.” 50.

¹⁶⁷ Cott, 51.

¹⁶⁸ Friedman, 379. The belief had developed during the century that children of “tender years” belonged with their mothers, an idea reflected in divorce laws and in the switch from male to female teachers. Also reflected in the laws concerning marriage and divorce was a developing belief that marriage was a partnership where each partner had certain responsibilities towards the other. According to Friedman this put an additional strain on marriage: “The more demands people put on marriage . . . the more they wanted the other partner to be . . . someone who shared all of the life.” 379-380.

great leaps until the Married Women's Property Acts of the 1840s, by which time the courts came to "recognize a married woman's capacity to act independently on the marketplace."¹⁶⁹

Before 1830, "single women functioned on a legal par" with men in their property rights. However, "no colony or state allowed married women . . . the legal ability to act independently with regards to property."¹⁷⁰ Marriage created a "unity of person" in which the husband assumed all legal and political activity on behalf of both spouses, but the idea of unity of person was dependent on the "perfect marriage" and so created hardships "in marriages that were less than ideal."¹⁷¹ The concept of unity of person came under attack fairly early in the new republic. Since unity of person prevented the law from recognizing married women as anything without their husbands, yet married women could inherit property on their own under the auspices of separate estates and they sometimes committed crimes, it was "illogical to say men and women were one person."¹⁷²

Another small step away from this concept of unity of person was to grant the status of *feme sole trader* to married women who had the written or tacit consent of their husbands to operate a business.¹⁷³ The designation of *feme sole trader* allowed

¹⁶⁹ Salmon, xiii.

¹⁷⁰ Salmon, xv.

¹⁷¹ Salmon, 15.

¹⁷² Salmon, 41.

¹⁷³ Ibid

women to make a contract and sue or be sued without involving their husbands or requiring a “next friend” to represent them in court. As the economy continued to expand throughout the nineteenth-century, more and more women were acting as sole owners of businesses or representing their husband’s business interests when they were absent, as occurred during the Civil War.

It was this increase in economic activity by married women and changes in the laws concerning divorce that led to the need for more specific laws concerning women and their right to control property. A woman who had gotten a “bed and board” separation was still *feme covert* as to contractual law.¹⁷⁴ A woman who had been operating a business with what she considered the tacit consent of her husband could find her business at risk if he decided to publically renounce her right to act in the public venue. By the mid-1800s most states had addressed the need for change with the creation of Married Women’s Property Acts that gave women the right to own and control property in her own name. They now had the right to take themselves into the public spheres surrounding business and the courts.

There are numerous instances of colonials bringing multiple suits over the course of their lifetime, in fact one of the defendants in the Salem witchcraft trials had brought over 20 suits as plaintiff before finding himself a defendant.¹⁷⁵ Indeed, this is one area

¹⁷⁴ Salmon, 68.

¹⁷⁵ Giles Corey, who was pressed to death, had brought numerous civil and criminal suites against his neighbors and had also been charged with criminal actions previous to the witchcraft trials. *The Story of the Salem Witch Trials*. Bryan F. LeBeau. (Upper Saddle River, New Jersey: Prentice Hall, 1998.) An excellent study of both how gender roles were enforced by the courts and how litigious the early colonials were is Mary Beth Norton’s *Founding Mothers and Fathers: Gendered power and the Forming of American Society*. (New York: Random House Publications, 1997.) Another discussion of women and their contact

where the county court and its users reflected the national trends: Stark County residents used the courts to sue their neighbors over the most grievous, and the most trivial, of insults and slights. In 1817, for example, when the population of the entire county was under 12,000, there were 448 civil suits in the county court, alone.¹⁷⁶ This is a fair number when the population was dispersed fairly evenly over the 581 square miles that made up the county and transportation to the legal center was limited to foot- or horsepower, at least until the streetcars began to move between some of the smaller communities and the county seat, and its courthouse, in Canton, later in the century.¹⁷⁷

The Stark County population used its court to bring both civil and criminal cases against their fellow humans. Women sued their children for access to their dower, men sued their neighbors when farm animals escaped into another's fields or when trees along a poorly defined boundary were cut down, students sued schools for return of tuitions, schools sued farmers for intrusion onto school lands, and villages sued men to provide financially for illegitimate children. Charges of slander, trespass, and illegal

with the courts during the colonial era is *Women Before the Bar: Gender, Law, and Society in Connecticut, 11639-1789*, by Cornelia Hughes Dayton. (Chapel Hill: University of North Carolina Press, 1995.)

¹⁷⁶This comes to about 3.7 percent of the entire county's population.

¹⁷⁷ The electric trolley began to provide transportation to those in Northeast Ohio in the 1890s, and many of the smaller communities had horse-drawn trolleys earlier; for example, a trolley ran between the communities that made up Alliance, and Limaville, which had originally vied for the position of county seat until the importance of the Tuscarawas River shifted focus to the area that became Canton. For a discussion on the development and importance of the electric trolley, or street railroad, see George W. Knepper's *Ohio and its People*, (Kent, Ohio: Kent State University Press, 1989.) 300 and 318. For information concerning the debate over the county seat see, for example, *History of Stark County with an Outline Sketch of Ohio*, edited by William Henry Perry. (Chicago: Baskin and Battey, Historical Publishers, 1881.)

alcohol sales were brought by individuals as well as the more common criminal charges of theft and assault and the less common of murder and arson. All charges could be brought by private individuals to the attention of the court via court officials (such as the prosecuting attorney), but also directly by the county's representatives. As the century progressed, the line between civil and criminal acts was clarified, the county's role in the personal lives of the people was delineated, married women had their property rights protected by law and divorce became a civil, rather than a religious, matter. All of these activities brought women into the public sphere; some came propelled by their misbehavior or the need to rectify deeds or settle debts, and others came under their own volition to find security for their children or escape unsatisfactory marriages.

This study begins in 1817 and ends in 1893 and concerns the Stark County court and those residents who appeared before it as either defendants or plaintiffs.¹⁷⁸ The majority of the material has been gleaned from the Appearance Dockets, which records the name of the plaintiff, the defendant and the attorneys for each, the criminal charge or cause for civil suit, the outcome of the case and the various costs incurred by all parties. Depending on the nature and thoroughness of the court's clerk, these records might also contain the name of the judge, the witnesses and the sheriff involved in the case, comments on the case, notes about the individuals and reference to the location of other information about

¹⁷⁸ As previously noted, the records for the beginning and end of the century were destroyed in a flood. The periodization of this dissertation is therefore limited to the years mentioned.

the case.¹⁷⁹ In addition, the national census, court marriage statistics, and local newspapers were used to trace the actions of some of the characters found within this study and to gain a more complete understanding of what the community thought about certain issues, such as women as participants in the more public venue of the courthouse and as business-owners and independent individuals.

The information gathered for this study, while useful for the investigation of many areas, will be limited to exploring the ways in which the authorities of the court and the men and women of Stark County used the court in ways that both reinforced and challenge the gender roles considered “normal” for the nineteenth century by bringing women into the public sphere, often for very private matters. It is not a study in the evolution of Ohio’s legal system, although it will show how the development of the legal system was, in part, responsible for introducing women to the public sphere encompassed by the court, nor is it a comment about the link between economic conditions and gender roles, or about the political development of the area. Because the African-American population was so small, and the Native American population was, at least legally, invisible, this study will not examine race as an underlying factor in the court or the people’s behavior. Indeed, it is impossible to do so, using the Appearance Dockets, as the race of the people before the court was only mentioned once in any of the records, when a clerk noted that a barber who was accused of theft was “a black

¹⁷⁹ For instance, cases after the 1840s often included reference to the journals and dockets that contain the information which tracked payments, property exchanges, and compliance with the court’s orders. These other dockets were not used as the majority were destroyed in the flood that damaged the appearance dockets for the very beginning and end of the century.

man.”¹⁸⁰ What this study is, is a look at the way in which litigations brought to the court, often through change in legislation, drew those in the private sphere into the public space of the courtroom, to enforce or modify the gender roles and the concepts of the appropriate space for women, and how the court and the laws of the state, mostly to settle economic issues, propelled women into the public sphere.

This dissertation contains two major contentions. First, that the men and women of the county used the court to address and adjust the perceived proper roles and spaces of women, taking the private activities of the domestic sphere into the public sphere of the court system, and the public eye of their community, especially in cases of divorce and bastardy. Second, that the legislature, court and men of the county even more responsible for introducing women of all classes to the public sphere, and making them comfortable using the court for redress, as any movement did later in the century.

Chapter two contains a brief history of Ohio and Stark County, for although writing the history of the county is not the goal of this paper, understanding the economic, social and political development of the county set into a state and national context will help make sense of the actions of the court and the people in the county and give the reader an idea of the character of the people who inhabited the county. Chapter three is an examination of how women were introduced to the public sphere as plaintiffs and defendants in cases of civil activity. Appeals for the return of their dower and being named co-defendants in civil suits brought women into the public venue well before the

¹⁸⁰ Appearance Docket 1, 9 November 1872. Ohio v Jordan Shelped. Robbery. Nolle Prosequi. Clerk noted that Shelped was “a black man.”

temperance movements of the later part of the century, long considered the time and circumstance under which women gained experience with, and a modicum of comfort in using the courts to advance their own agendas.¹⁸¹

The fourth chapter will look at the role of the court in the maintenance of the family, the family being the institution where gender roles might be expected to be most influential in the outcome of the cases. This chapter will examine both sides of the relevant issue here: how the court and the people used divorce, child-custody and alimony cases to both enforce and challenge the traditional roles of woman as wife, mother and submissive, and man as provider and head of the household and how a breakdown in the domestic sphere propelled women into the public sphere. The fifth chapter will look at how the most private of human behavior, sex, ended up in the most public venue, the court. The discussion will focus on the way that bastardy charges were used to either force a reluctant groom to the altar or provide for the financial well-being of an illegitimate child while allowing the mother a measure of autonomy, and how the community handled the issue of pre- or extra-marital sex. The concluding chapter will tie all of the previous information together to show how the legal system as interpreted by the county court was used encouraged or forced women to go public with their domestic and therefore private issues and will offer suggestions as to other studies that might come out of this material.

¹⁸¹ See, for example, Richard Chused's article "Courts and Temperance Ladies" for a discussion on how women's participation in the temperance movement of the 1870s gave them experience with the legal system and introduced them to working in the public sphere to make social changes.

CHAPTER II

STARK COUNTY IN OHIO AND NATIONAL HISTORY: THE CONTEXT FOR LEGAL CHANGE AND WOMEN'S STATUS

Ohio's motto is "Ohio: The Heart of it All," and given its geographic, political and economic positions in the 1800s, the motto could have been used even then without charges of misleading advertising. Indeed, much of the premise behind the essays collected in *The Pursuit of Public Power*, edited by Jeffrey Brown and Andrew Cayton is that Ohio's unique position as the first state created from the Northwest Territory put it at the heart of a national experiment in state building.¹⁸²

The French included the Ohio River, *la belle riviere*, in maps by 1674 and used the waterways of Ohio, including Lake Erie, throughout the late 1600 and 1700s.¹⁸³ Moravian missionaries moved into the area by the 1750s, hoping to convert the Shawnees, Delaware and Erie native communities that had moved into the Ohio Valley to escape persecution by the Iroquois, who claimed the Ohio River as a trade route, and had nearly wiped out the Erie when they refused to join the Iroquois Confederation in

¹⁸² Brown, Jeffrey P. and Andrew R.L. Cayton, eds. *The Pursuit of Public Power: Political Culture in Ohio 1787-1861*. (Kent, Ohio: Kent State University Press, 1994.)

¹⁸³ Knepper, 25.

1653.¹⁸⁴ While the French claimed the areas encompassing the Ohio and Mississippi waterways by right of discovery and occupation, the British claimed it under the “sea-to-sea” charters that were written for certain seaboard colonies, including Virginia, Connecticut and Massachusetts¹⁸⁵. When you then consider the claims made by the Native Americans who hunted, trapped and traded there, Ohio became the heart of controversy long before it became the first state created out of the Northwest Ordinance and the seventeenth state of the new republic.¹⁸⁶

The British moved into the Ohio region and by the mid-1700s, an Ohio Company was formed by prominent Virginians, who had received a grant of 200,000 acres from the English crown to build a fort and settle 100 families in the area around the forks of the Ohio. This venture failed, mostly due to a conflict between the members of the Virginia-led Ohio Company and the officials of Pennsylvania, who claimed the forks area for its importance to trade and transportation, but the wave of British settlers was well underway.¹⁸⁷ In 1761, Frederick Post, a Moravian missionary, and his native wife led a group into the north Ohio country, settling for a while in what later became Stark County.¹⁸⁸ By the time of the American Revolution, pockets of settlement appeared

¹⁸⁴ Heald, Edward T. *Brief History of Stark County, Ohio*. (Canton, Ohio: Klingstedt Brothers Co., 1963,) 7.

¹⁸⁵ Knepper, 26.

¹⁸⁶ See any guide to the formation of the nation or lists such as that found in the *New York Public Library Desk Reference*. (New York: Strongsong Press, 1989.) 693. In addition to the original thirteen colonies, only Vermont (1791,) Kentucky (1792,) and Tennessee (1796) achieved statehood before Ohio.

¹⁸⁷ Knepper, 29.

¹⁸⁸ Heald, 9.

throughout the eastern and southern portions of the land, and the citizens of Marlboro Township, in what is now the northeast segment of Stark County, sent a regiment to the war for independence.

In 1786 veterans of the Revolution, including General Rufus Putnam and Dr. Manasseh Cutler, met in the Bunch of Grapes Tavern in Boston to form the Ohio Company of Associates.¹⁸⁹ These men had to wait until the new republic's governing body could determine the right way to handle the lands unexpectedly acquired in the Treaty of Paris before they could purchase land and settle in the territory rich in fertile land, timber, minerals and water resources. Cutler was a voice in Thomas Jefferson's ear as the Northwest Ordinance, the body of laws which provided for the creation of states within the lands north of the Ohio River and west of Pennsylvania to the Mississippi River, was written.¹⁹⁰ Cutler "insisted" that freedom of speech and religion, as well as an exclusion of slavery and provisions for education through the allocation of lands to provide for the funding of schools was included in the document.¹⁹¹ Cutler was successful, but one of the authors of the ordinance was surprised that Article VI, which excluded slavery, was adopted.¹⁹² By the time the Northwest Ordinance was approved by Congress in 1787, three companies were ready to purchase land, gather provisions,

¹⁸⁹ Goulder, Grace. *This is Ohio*. (Cleveland: The World Publishing Company, 1965,) 17. Also see *The Pursuit of Public Power: Political Culture in Ohio, 1787-1861* edited by Jeffrey P. Brown and Andrew R.L. Cayton. (Kent, Ohio: Kent State University Press, 1994.) 18-19.

¹⁹⁰ Goulder, 18.

¹⁹¹ Ibid

¹⁹² Middleton. Stephen. *Black Laws: Race and the Legal Process in Early Ohio*. (Athens: Ohio State University Press, 2005,) 9-10.

brave the natives and move into the territory. The natives were not as much of a problem as settlers expected, and the Treaty of Grenville, signed in 1795, removed several native communities and opened almost two thirds of the Ohio Territory. This, coincidentally, made development of the area around the Tuscarawas River, and so Stark County, much easier, at least as far as conflicts between natives and settlers were concerned.¹⁹³

The Ohio Company Associates joined with the Scioto Company in 1787, allowing the purchase of 1,500,000 acres of land; patents were issued by Congress and signed by George Washington, who noted that “No colony in America was settled under more favorable auspices.”¹⁹⁴ Good, rich soil left behind from the retreat of glaciers during the last ice age, forests full of pelt animals and sturdy trees, and clean sand and minerals in abundance drew people to the territory, and the population swelled rapidly. Ohio became a state in 1803, following the provisions of the Northwest Ordinance.

The early settlers of Ohio in general and Stark County in particular were fairly homogenous in that they were mostly white, Christian and attached to livings made on the land; within those boundaries they were not quite so homogenous. Religiously diverse by the end of the century, when there was a fair number of Catholics and several small communities of Jews within the larger community, the region was originally Protestant and most of the population belonged to one of the many

¹⁹³ Timeline for the Treaty of Grenville, Brown and Cayton, xiv. Lack of conflict between natives and people settling the Stark County area, see Heald, 1-3 and A.T.O.Blue’s *History of Stark County, Ohio from the Age of Prehistoric Man to the Present Day*. (Chicago: The S. J. Clarke Publishing Company, 1928,) 51-53.

¹⁹⁴ Goulder, 18.

Protestant denominations, with the Lutheran and Methodist Churches dominating. A large number of Quaker and Amish also settled in the area. This means that although heavily Protestant, the region could not have been considered religiously homogenous as nearly every sect of Protestants were represented, with a large number of Lutherans and of Amish, representing the more liberal and more conservative religious points-of-view.

Since the first meeting of the Ohio Company of Associates was held in Boston, it is fair to assume that some of the first settlers in Ohio were from the New England area, as indeed they were. There were also folks with English ancestry who came to Ohio by way of Maryland, Virginia, Connecticut and Pennsylvania; Germans of the “Pennsylvania Dutch” variety; Swedes; and French by way of New York. There were some few freed blacks living in the area but their numbers were not very substantial until after the Civil War. Some slaves had been brought into the Northwest Territory by the French before the land had been ceded to the British. One of the provisions in the treaty that ended the French and Indian War was that the British “would protect the interests of the French settlers, which included slavery.”¹⁹⁵ While African Americans were not, for the most part, excluded, they were a small percentage of the population; only 337 were listed as residents of the entire Northwest Territory at the state’s founding, and most of them lived in Detroit.¹⁹⁶ The population of the state and the county grew rapidly; between 1790 and 1800 the state grew from a few thousand to over 45,000. By 1810

¹⁹⁵ Middleton, 12.

¹⁹⁶ Knepper, 96.

there were over 230,000 and by 1820, over one half million people called the state home. Even though federal land became scarce after 1840, the population continued to grow. By 1850 there were nearly 2 million people living in Ohio.¹⁹⁷

In Stark County, similar growth occurred. Much of Northeast Ohio was settled by farmers and other folk migrating westward out of Pennsylvania, but it was also home to Irish, German, and later Italian and Polish immigrants.¹⁹⁸ Many of the early settlers, families with names like Wells, Folger and Rodman, names well known in the Stark County area even today, were what one historian called “the nucleus of a highly educated cultured community with broad international horizons and English ancestry.”¹⁹⁹ Five families from Alsace on the eastern edge of France came to Ohio from New York in 1826 to settle in what are now Harrisburg, Louisville, Belmont and Maximo.²⁰⁰ The English, German and Scottish also migrated north and west from Kentucky, Tennessee and the western Carolinas looking for healthier living and better land, like some of the first settlers in the Kendal area (the oldest part of Massillon,) who came for the “healthy quality” of life.²⁰¹

The legal and political status of African Americans remained ambiguous until the end of the nineteenth century. Slavery was excluded in the state constitution, and the state

¹⁹⁷ Population statistics can be found throughout Knepper and in various Ohio almanacs and in the national census archives, for example, at Census.org.

¹⁹⁸ Perrin, William Henry. *History of Stark County with an Outline of Ohio*. (Chicago: Baskin and Battey, Historical Publishers, 1881,) 199-211.

¹⁹⁹ Heald, 12.

²⁰⁰ Heald, 22. (Hereafter designated *Brief* in the citations.)

²⁰¹ *Brief*, 2.

and especially Stark County were known for their role in the Underground Railroad, but not wanting slavery was “not the same thing as wanting to ensure the civil rights of African Americans.”²⁰² African Americans were initially forbidden the franchise, although by the narrowest of margins.²⁰³ A few African Americans came to try a hand at farming or to find work in the clay pits and kilns.²⁰⁴ Some escaped the bonds of slavery, and indeed several of the first blacks in the territory came with the Quakers, Amos Holloway and Nathan Gaskill, who founded Lexington Township in 1807, bringing slaves which they freed upon settling.²⁰⁵ Some evidence that the northeast corner of the state was more tolerant of African Americans than may have been common in much of the rest of the country comes from a report concerning Pitney Guest, a Justice of the Peace in East Sparta in 1811, and from the activities of Esther Wileman of Marlboro. “Squire Guest was called upon to marry a Negro named George Foster to a white girl.”²⁰⁶ Foster was the son of Prior Foster, who had settled in Pike Township and was recorded as the first African American to settle in Stark County of his own volition. Prior had married a “white girl,” also. Whether the Justice was amenable to the marriage because Foster was light skinned, because his father was an important miller in the area, or because

²⁰² Middleton, 42.

²⁰³ The initial state constitutional convention split evenly on the franchise for African Americans; the tie was broken by the president of the convention, Edward Tiffin, limiting the franchise to white male taxpayers at least 21 years of age. Knepper, 96.

²⁰⁴ Heald, Edward T. *The Stark County Story, Volume I, Covering the Years 1805 to 1874*. (Canton, Ohio: Stark County Historical Society, 1949,) 651. . (Hereafter designated *Story* in the citations.)

²⁰⁵ *Story*, 29.

²⁰⁶ *Story*, 76.

Guest was just that equitable we cannot know, but the record gives us proof that there was less animosity between the races than there would have been in, say, the Chesapeake, where marriage between the races was illegal by statute. Another example of this tolerance between whites and blacks concerns Esther Wileman, a white woman who taught school in the “New Guinea” community and boarded with a black family when school was in session.²⁰⁷ While it was not uncommon for whites and blacks to live side-by-side in the early and mid-eighteenth-century, by the nineteenth-century the space between the races had been delineated and such arrangements were no longer common.

Although nearby Salem and much of Stark County had many anti-slavery families who supported emancipation, severe federal Fugitive Slave Laws in place by the mid-1850s forced most escaped slaves, using the Underground Railroad, to pass through Ohio on their way to Canada. We know that there was a community of over 200 African Americans in Lexington Township, the largest in the area until the Civil War.²⁰⁸ There was also a thriving African American community in Massillon and at the northeast end of Alliance, called “New Guinea” by the Alliance residents, by the late 1800s; a “negro celebration” was held in Rockhill Park in Alliance in August of 1893, and over 1,200 African Americans from northeast Ohio attended.²⁰⁹

²⁰⁷ Story, 155.

²⁰⁸ Story, 32.

²⁰⁹ Heald, Edward T. *Stark County History, Volume II: The McKinley Era of Stark County, Ohio 1875-1901*. (Canton, Ohio: Stark County Historical Society, 1950.) 585-586. (Hereafter designated *Stark* in the citations.)

Early in the century there were Native American communities in the county, especially in the Beech Creek area. By the end of the century the numbers within that community had dwindled significantly, although there remains a small and disconnected population that claims Native ancestry to this day. The Treaty of Fort Industry, signed in July of that year, had moved the few remaining natives far west of the Tuscarawas River, allowing settlers to take advantage of that well-situated land that had been part of the Great Trail, the native “highway” that extended from the Chesapeake and Delaware Bays to the Ohio River and then north to Detroit, and considered the most important “Indian highway” in the United States.²¹⁰

Native Americans can practically be counted out of the demographics of the state by 1843, when the Wyandot, the last native community still living in Ohio, was herded into boats on the Ohio River to be relocated in what is now Kansas.²¹¹ In 1803, sixty “peaceful natives” lived on land owned by Mr. and Mrs. Joel Owen, and a Mrs. Oviatt, “who spoke Chippewa, Seneca, and Delaware . . . acted as an interpreter and advocate for three natives who were on trial for their lives in Warren.”²¹² The Treaty of Fort Industry had allowed for the purchase of the remaining land held by natives in the county in 1805, although the native presence was still known as late as 1827, when Jacob Mathias, founder of Harrisburg “gave natives a drink of whisky he had brought

²¹⁰ *Brief*, 8.

²¹¹ Knepper has the Wyandot leaving Ohio in 1842, 116. Historian Kevin Kern has the date as July 19, 1843. Kern, 125.

²¹² Booth, 8

from Pennsylvania.”, and the Downing family reported that “a few Indians left in the valley helped them build their cabin” in 1852²¹³

A county population of fewer than 3,000 as reported in 1810 swelled to over 12,000 by the census of 1820. After the Civil War the county had grown to 52,190 and the county seat, Canton, which had only 40 people in 1810 and 507 in 1820, was home to 8660. By the end of the century approximately 95,000 people called the county home.²¹⁴ While many of the people lived on or derived their income from the land well into the early 1900s, cities in the county grew at a greater rate than did the rural population after 1850. Cities developed throughout the early years of settlement, and although no new cities were settled in the county during the era just after the war of 1812, from 1816 to 1826, by 1825, Canton, Massillon, Kendal, Bethlehem, Lexington (later to become Alliance,) Waynesburg, Sparta, Greentown and Uniontown were thriving.²¹⁵ After the war era, urban development picked up and twenty-five new cities were chartered between 1825 and 1850.²¹⁶ Between 1850 and 1870, cities grew an average of 18.3 percent while the rural population growth increased only about three percent. This shift from country to city continued in the later part of the century. Canton’s population increased from 8,660 in 1870 to 26,189 in 1890, a growth of over 200 percent. Similarly, Massillon went from 5,185 to 10,092, an increase of ninety-six

²¹³ *Story*, 187 and 265.

²¹⁴ Census statistics from 1810 and 1820 national census, for Stark County in Ohio.

²¹⁵ *Brief*, 15.

²¹⁶ *Brief*, 21.

percent and the population of Alliance increased eighty-seven percent from 4,063 to 7,607 in the same period of time.²¹⁷ Although much of this growth was due to natural increase, migration from the east and immigration from Europe accounted for a fair amount of growth, especially when the transportation revolution came to Ohio in the form of railroads and canals, which both boosted the economic opportunities of those already here and provided work for new arrivals.

When the state was founded most of the country was agrarian, with only a few large cities, and them mostly to provide a place from which to ship agricultural goods or bring in industrial and luxury items. Ohio land was better for farming than its southern neighbors, slavery had been excluded, and land in Ohio tended to trade for much less than land held in southern states; these attributes made Ohio very attractive to the independent farmers.

The land that became Stark County was some of the richest in both fertile land and mineral content, bringing first farmers and later brick makers and other industrialists to the area. Named for General John Stark, the oldest surviving Revolutionary War general when it was founded, the county was defined in 1808. The land was heavily forested except for barren lands and plains in the area that stretches from what is now downtown Canton west to the city of Massillon and south towards Navarre and Plain Township.²¹⁸ The city of Canton, which was to become the county seat, was founded in

²¹⁷ *Brief*,54.

²¹⁸ *Brief*,1.

1805 by Bezaleel Wells. Wells also founded Steubenville and as a senator from Jefferson City, along with thirty-four others drew up the Ohio State Constitution.²¹⁹

Land sold for two dollars an acre, and men such as Wells purchased large holdings for resale and to use as farm and grazing land. Wells is said to have purchased ten square miles, and Andrew Myers bought 1080 acres.²²⁰ Men of means certainly bought Ohio land for speculation, but under the Harrison Land Act of 1800, those with less means could also hope to own land. A half section, which was 320 acres could be bought at the going rate plus fees on credit, with a \$330 down and the balance due in four annual installments. Even those who had squatted on the land illegally could buy under this system, although there was an additional caveat in that the squatters had to erect a mill on the land they claimed.²²¹ While the land was dark and rich for planting crops, and wheat became Stark County's first cash crop and one of Ohio's most prominent exports, Merino sheep, the first 400 of which were driven by Thomas Rotch's shepherd, Arvine Wales, from Connecticut, also helped build the economic foundation of the county. For a while the wool mills of Massillon and Steubenville made Stark County the "the Merino sheep center in the U.S."²²²

In its second decade, although Ohio was still near the leading edge of the frontier, the northeastern part of the state had transitioned from untamed territory to

²¹⁹ *Brief*, 11.

²²⁰ *Ibid.*

²²¹ Knepper, 89.

²²² *Brief*, 12; Goulder, 89.

comfortably quiet rural acreage.²²³ Farming was the main source of livelihood but industry was also developing to meet the needs of the growing population. Potteries, ironworks and mining became essential parts of the economy, and while the state remained heavily forested into the 1820s, the state and the county soon deforested the area to grow the red-beard wheat that was the heart of cash crops for much of the century. Radishes, onions and celery also moved from the markets in Stark County west as far as the Mississippi River and east to the Atlantic coast.²²⁴ By the 1850s, sixty-five percent of the county's timber had been cleared and sixty percent of the land had been "improved" through cultivation of wheat and through the growth of cattle and horse herds.²²⁵ Wheat soon became the main export of the state and the county, remaining vital to American food production through the end of the century, when Stark County was the state's number one wheat producer and second in corn and oats. While sheep herds diminished over the century, exports of horses, cattle and chickens remained important to the county's economic system.²²⁶

The forests were largely cleared by the 1880s and the period from the 1870s through the 1880s were called the county's "Golden Years" for farmers. Of course, land values went up steadily, as did the price of the crops they grew, except for a brief period

²²³ Knepper, 120-129.

²²⁴ *Brief*, 2.

²²⁵ *Brief*, 21.

²²⁶ *Brief*, 53.

during the War of 1812, when wheat prices dropped to twenty-five cents a bushel.²²⁷ By 1850 land was selling for twenty-six dollars an acre, and by 1870 it had jumped to fifty-eight dollars an acre.²²⁸ While these prices made large tracts of land unavailable to all but the very rich, much of the land was also privately held, which meant that there were no restrictions on the amount of land that could be purchased through private sale. This led Ohio and Stark County away from land-ownership patterns that had developed in the South, where “wealthy patricians . . . wishing to exert economic and political control over the public” sold their land for as much as five times the cost of Ohio land. In Stark County, farms of only a few hundred acres were common, showing the Ohio pattern of resident owners and small land holders.²²⁹

Farming was not the only economic activity going on in the state or the county. Especially early in the settlement, home activities contributed to the family up-keep. Weaving, spinning, and carding wool were important to clothing the family but also to bringing in extra income. Much of that work was done by the women in the family. In addition, the women kept chickens, goats and/or cows, and tended the family’s garden, all of which supplemented the family’s diet, and sometimes its income. Outside the home, gristmills (which ground grain for animal feed,) flour mills, sawmills, and woolen mills sprung up all over the county.²³⁰ Saddle and harness makers and blacksmiths

²²⁷ *Story*, 38.

²²⁸ *Brief*, 30.

²²⁹ Kern, Kevin and Gregory S. Wilson. *Ohio: A History of the Buckeye State*. (West Sussex, UK: Wiley and Sons, Inc., 2014.) Kern claims that by 1815, three-quarters of Ohio land had resident owners.

²³⁰ *Brief*, 15.

flourished, as did machinists and those industries which made finer mechanisms, such as the Deuber-Hampden Watch Works.²³¹ And, of course, when cities develop and people are doing well, someone has to keep track of the money and the contracts; Farmer's Bank opened in 1816 with backers from the area who elected John Shorb as the first president, and James W. Lathrop, a lawyer from Connecticut hung his sign just down the road from the bank.²³²

Once the transportation revolution came to Ohio, the industrial and agricultural sectors benefitted from improved and cheaper transportation. Between 1825 and 1850, stagecoaches provided regular transportation between the cities of northwestern Pennsylvania and northeast Ohio, connecting Pittsburg, Canton, Massillon, and Mansfield. The coaches ran until the railroads' more modern amenities and shorter travel time made coaches obsolete on the heavily traveled routes.

Canals, although short-lived, further opened the state and the county to development and growth. An influx of Irish, English and Scotch provided both the labor to build the canals, and later the railroads, and the impetus to open more commercial businesses needed to support both the transportation industry and those who worked in it. The canals opened Ohio communities that were not right on the rivers to trade and exportation of agricultural goods and receipt of imported goods. Canaulers, those who worked on the canal boats, were said to be a "rough and ready lot" who worked hard

²³¹ *Brief*, 12.

²³² *Brief*, 16. Although not the first bank in the area, it was one of the first funded entirely from local developers. Likewise, Lathrop was not the first attorney in the region, but his move to Stark County was indicative of the economic growth of the area.

and played hard, and that meant that general stores, taverns and inns (and the cider mills that produced the liquid libations,) gambling houses and brothels became sound investments for those living in Stark County.²³³ The first minister in Navarre was also a storekeeper and tavern keeper whose establishment was in close proximity to the Ohio-Erie Canal which opened in July of 1835.²³⁴ Warehouses were also a lucrative investment, as were rolling mills; James Duncan lobbied to have a portion of the canal run close to his land and then built a rolling mill and a warehouse to process and store grain.²³⁵

Once the canals were fully operational and Ohio and the county were more accessible to the rest of the country, the inventive side of the county's residents came out. Joshea Gibb built a foundry and machine shop in Wilmot in 1830 where plows, stoves, farm implements and hollow ware were made. In 1836 he patented the barshare plow.²³⁶ C.M. Russell and Company was making threshing machines by 1842, and Cornelius Aultman and Company opened a machine shop in 1848 that produced threshing machines, reapers, mowers, and plows, all of which sold west to the frontier and east to Pennsylvania.²³⁷ By the mid-1800s, Stark County was the plowshare center

²³³ *Brief*, 19. The term "canaulers" was used to designate those who worked on the boats as opposed to those who worked along the route or at the locks.

²³⁴ *Story*, 31.

²³⁵ *Brief*, 19.

²³⁶ *Brief*, 22.

²³⁷ *Ibid*

of the nation and was providing agricultural equipment that continued to enrich the county's residents and facilitate farming on the frontier.

Business opportunities were not closed to women, either. By 1852, Ohio had five post-mistresses, millinery businesses and hotels were commonly run by women, and some less traditional occupations, such as a gristmill, a sawmill, and a salt manufacturing business were run by women whose husbands had died or abandoned them.²³⁸ Domestic help was the most common occupation outside of housewife, and indentured servitude taught many a young woman how to manage a household. For example, in 1833 Aramintha Grist was indentured to Zadok Street, where :

She was to be instructed in the art, trade and mystery of housewifery; to be trained to habits of obedience, industry, morality; to be taught to read, write and cipher as far as the single rule of three; to be provided for, and be allowed meat, drink, washing and loading and apparel for summer and winter. She was to live with him until she was eighteen years of age, at the expiration of such service, he was to give her a new Bible and at least two suits of common wearing apparel.²³⁹

The railroads came in the 1850s, allowing for even cheaper fares for passengers and goods, and creating more shifts in the demographics and the source of economic success. Before the railroads, the people were described as “very individualistic, thrifty and patriotic,” with most people living on single family farms, growing wheat for export and otherwise very self-sufficient.²⁴⁰ After the arrival of the railroads, the development

²³⁸ Booth, 21.

²³⁹ Booth, 20. From George Hunt's *A History of Salem and its Immediate Vicinity*. (Salem, Ohio: Privately published, 1898.

²⁴⁰ Brief, 26.

and growth of cities picked up and more people came to make their living through corporate ownership, stocks and bonds, and factories. The city of Alliance was laid out by Mathias Hester, founder of the village of Freedom, in July of 1850 in the spot where the Pittsburg and Cleveland Railroads crossed. General William Robinson, Jr. named the town “Alliance” as it was incorporated through an alliance of the villages of Liberty, Freedom and Williamsport at the alliance of the two great rail companies. Alliance became the connection to the west and the trains ran to Chicago by 1865.

Ohio took an active part in the modernization and industrialization that occurred in the nation and the modernization of northeast Ohio was evident as trolley lines and factories dotted the landscape by the 1860s.²⁴¹ The railroads helped keep Stark County on the map by providing an inexpensive way for everything agricultural to get where it was needed or wanted most. And business boomed. When the Aultman and Company Reapers and Mowers factory burnt to the ground in 1858, it was quickly rebuilt; by 1860 it was the largest reaper and mower manufacturer in the world. Competition in the form of the Russell and Company Peerless Mowers and Reapers helped make Canton the mower and reaper center of the country.²⁴² By 1860, the William’s City Directory listed bakeries, blacksmiths, book sellers, boot and shoe makers, coffee houses, cigar and tobacco shops, china, glass and pottery manufacturers and sellers, dry goods, fancy goods, gentile furnishings, groceries, gunsmiths, hardware stores and more as available

²⁴¹ Knepper, 129-136.

²⁴² *Brief*, 27.

in Canton, Massillon and Alliance.²⁴³ Among their listings were Mrs. Cluff, who owned a millinery goods store, and Miss Annie Grant, a hairdresser.²⁴⁴ Although not listed in the directory, Carolyn McCollough Everhard, who was born in Stark County in 1843, became the first woman bank director.²⁴⁵

The money made in these ventures helped develop other businesses. For example, Cornelius Aultman used his manufacturing wealth to found Canton's First National Bank and he donated large sums of money to Mount Union College.²⁴⁶

Although agriculture remained the mainstay of the county and continued to spur growth in the manufacturing sector well into the next century, westward movement and a shift in farm implement manufacturing to Chicago in the 1870s necessitated the diversification of industry in the county. The brick industry, Berger Manufacturing, the Solid Steel Company, Hess Snyder Furnaces, new paper, glass and stove factories and coal mining helped fill the vacuum left when the farm implement industry moved out. Zaide Palmer, a single woman, "opened a quarry near Van Wert in 1875," and to facilitate moving the stone into town, she had a tramway built. She then "received a contract to improve the city's streets."²⁴⁷ And immigrants continued to find the county a lucrative place to come once they made their way to America.

²⁴³ *Brief*, 34.

²⁴⁴ These businesses were listed in the Repository "as seen in *The Directory* on 24 November 1871.

²⁴⁵ Booth, 34-35.

²⁴⁶ *Brief*, 28.

²⁴⁷ Booth, 32.

Thomas R. Morgan is a good example. Morgan was born in Wales and was working in the coal mines by the time he was eight. After moving to America he found employment with a machine shop in Pennsylvania, and opened his own shop in 1868. He moved his Morgan Engineering to Alliance in 1871, manufacturing heavy agricultural machinery and cranes; by the turn of the century Morgan's was making military munitions and armament and its traveling electric cranes were sold world-wide. It eventually became the world's leading maker of electric cranes. The plant became so important to both the military and industry that it was guarded by the War Department during the Spanish-American War.²⁴⁸ Morgan and three others formed the Solid Steel Company in 1882. This eventually became a division of the American Steel Foundries Company. Although much diminished by the shift in the steel industry to overseas, both companies are still open and providing employment to folks in Stark County.

Another example of an immigrant who made good is Karl Diebold, who almost single-handedly brought a large German-speaking population to Canton in the late 1800s. Diebold made his way from Germany to Cincinnati, Ohio in 1859 and moved into Stark County a few years later, where he manufactured safes. When 878 Diebold safes survived the great Chicago fire of 1871, sales of his safes skyrocketed. Diebold became a joint-stock company during the Panic of 1873, but the company did well, employing over 250 people by the mid-1880s.²⁴⁹

²⁴⁸ *Brief*, 27.

²⁴⁹ *Brief*, 41.

Not all migration into the county in the last part of the century came from overseas, and not all manufacturing was cranes and safes. John C. Deuber brought 250 workers from Springfield, Massachusetts to open the Deuber-Hampden Watch Company; at its peak the business employed 2,300 people. J.A. and Wilson Berger opened a very successful pipe and metal roofing company that became the fabricating division of Republic Steel Corporation in the 1900s

Bricks supplanted the implement industry in the Canton and Alliance area, and glass moved into Massillon by the late 1880s. Henry Belden had found shale and clay on his Waco, Ohio farm and he started by making paving bricks, many of which are still serving Stark County roads today.²⁵⁰ Expert brick-maker, Jacob Renkert came to the county in 1889 from Dover, and between Belden and Renkert, Canton became the center of the brick paving industry, followed closely by Alliance.²⁵¹ Glass sands were found around Massillon and between 1880 and 1904 the Massillon Glass Works employed a migrant workforce of over 500. Glass blowers moved to Massillon from New Jersey to work for ten months out of the year, returning home for the two months the plants were inactive.

Since not everyone was riding the rails, carriage and buggy makers thrived in the county, with two manufacturing shops in Massillon and three in Alliance, and by 1880 there were sixteen blacksmith shops tending to wheels and shoes for the horses in

²⁵⁰ Although there are few roads that are still brick, you can see several in Canton, Alliance and in the smaller communities in Stark County. Furthermore, many of the brick roads were not torn up to be replaced by modern asphalt, but were left in place as underlayment.

²⁵¹ *Brief*, 41-42.

Canton alone. Bicycles, and especially the “high wheelers” were very popular; by 1892 there were forty-five businesses in Stark County associated with bicycles and bike riding, although it is interesting to note that while women enjoyed an afternoon’s cycling, and special ties were made to keep the long skirts out of the spokes, “No women rode the high wheelers,” likely due to issues of modesty, as mounting the bikes was not a very “ladylike” activity.²⁵²

All of this manufacturing activity led to further shifts in the population from the country to the cities, and between the 1880 and 1890 census, rural growth was at a rate of about seventeen percent while the city populations were swelling at a rate of about 145 percent. By 1890, 52.1 percent of the county’s population was living in cities and only 47.9 percent were living in the country.²⁵³ Many men and women were still making a living off of the land, but more and more were opening small, family owned businesses and finding work in commercial establishments and manufacturing.

Politics, Society and Culture

By the middle of the century Ohio was an important contributor to the national political scene; the voting populous of the state reflected varying political points-of-view, and Stark County mirrored the shifts in national political viewpoints even more closely than the state.²⁵⁴ Crossing back and forth between Republican, National, Whig, Democrat and Unionist parties, the population of Stark County has shown itself to be

²⁵² *Brief*, 47.

²⁵³ *Brief*, 54.

²⁵⁴ Statistics from Women League of Voters site showing Stark County election results.

politically open to change, which may well reflect its willingness to accept legal and social change. The area's more "liberal" legal attitude is certainly reflected in the early constitution of the state, which was considered by many to be "the most democratic state constitution yet adopted . . . the judiciary . . . a creature of the legislature . . . state and county judges were appointed by the general assembly," this at a time when many states allowed their governors to choose judges.²⁵⁵ Although the general assembly was comprised of men in the upper echelons of society and were usually the social and economic near-equals of the governor, the fact that the assembly choose the judges meant that the legal system evolved guided by many, diverse minds, instead of the single points-of-view of a series of governors. In other words, more of "the people" were involved in the development of the system, which means the system was more in tune with the people. In addition, Ohio has rewritten its constitution repeatedly in order to have a guiding document that was in tune with the times.²⁵⁶ By the last decade of the century, much of the northeast had moved into a more modern era, with a population that supported education, social reform, and industrialization, and men such as William McKinley and John P. Green, and women like Elizabeth Blocher and Nancy Hull Patton left their mark on the intellectual, legal and political development of the region.

²⁵⁵ Knepper, 96.

²⁵⁶ By law, Ohio residents are asked every twenty years if they see a need for a new constitution. The constitution was rewritten in 1852 and seriously amended in 1912. There was an attempt to rewrite the constitution in 1873-74, but controversy over several political and social issues, including the eligibility of women to be elected to serve on school boards, prevented voters from passing the redraft.

Religion remained an important factor in the state and the community throughout the century. Many villages and towns were founded by specific Christian denominations, as was Navarre, first organized by the Swedenborgians.²⁵⁷ Moreover, historian Andrew Cayton makes the point that it was a deep attachment to religion, which included using the rhetoric and organization of especially the Methodists, which helped politically-minded men in the first half of the century make connections with the common man in much of Ohio.²⁵⁸ Moravians, Quakers, Methodists and Lutherans were the most populous during the foundational period of the county, with itinerant clergy riding circuits and the very popular Union Camp meeting place near Myer's Lake providing a larger gathering place until the various denominations built more permanent structures, like the Methodist church built in Canton in 1817.²⁵⁹ Until the last half of the century many of the communities were too small to support a full-time minister, who by the 1830s could earn as much as \$40.00 a month, so circuit riding was still in evidence, many ministers serving five to ten parishes.²⁶⁰ By 1817 John Short had provided funds for the first Catholic Church, St. John's, and the Presbyterians had a building in Canton by 1821.²⁶¹ When the Second Great Awakening made its way into Ohio, the Union Camp

²⁵⁷ *Story*, 19.

²⁵⁸ Cayton, Andrew R.L. "Language gives way to feelings: Rhetoric, Republicanism, and Religion in Jeffersonian Ohio." 31-48. *The Pursuit of Public Power: Political Culture in Ohio 1787-1861*. Jeffrey P. Brown and Andrew R.L. Cayton, eds. Kent, Ohio: Kent State University Press, 1994.

²⁵⁹ The Union Camp meeting place also served as the sight for many revival meetings when the Second Great Awakening made its way into Ohio.

²⁶⁰ *Brief*, 35.

²⁶¹ *Brief*, 13-14.

meeting place also served as a home to the large tent revivals. Ten-day long camp meetings were not uncommon, like that held at Nimisilla Park, where camp organizers provided meals so that people could be kept at day-long preaching and prayer sessions.²⁶² There was even an experimental aspect to some of the religious communities that mirrored the legal and political experiment that was Ohio. There were 21 utopian communities in Ohio during the 1800s, and the Shakers, one of the more idealistic religious organizations, who shared all of the work of the community between all of its members, had five settlements in Ohio.²⁶³

Over sixty churches were founded in Stark County between 1825 and 1860, and in addition to those denominations already mentioned, Evangelicals, Reformed Disciples, Episcopalians, Baptists of several brands and Mennonites were well represented. There was a Jewish Synagogue in Canton by 1869 and the McKinley Avenue Temple dates to September of 1885. Although the small African American community also worshipped, the first formally recognized African American church was the AME Church, organized by Reverend A.W. Hackley in Canton in 1883.²⁶⁴

Much of the money for the church buildings was provided by the upper-class of the area, allowing for a perception that linked economic success to religious devotion. As Cayton has noted, not only were the men of position and wealth building churches, they were often also preaching in them. Governor Edwin Tiffin, Senator John Smith and

²⁶² *Brief*, 55.

²⁶³ Kern, 144-145.

²⁶⁴ *Stark*, 411.

Senator Thomas Worthington, three of Ohio's first elected officials, were ordained ministers. Tiffin was a Methodist minister, Smith was ordained in the Baptist Church, and Worthington, although a Quaker, worshiped as a Methodist with Tiffin, who was also his brother-in-law.²⁶⁵ This link to religious authority was important in the formative stages of Ohio's political and social development as the men who settled in the Ohio territory, while known to the men who served in Washington, were not known to the common man who, under the Ohio Constitution, would be voting for them once statehood was achieved.²⁶⁶ Therefore, Cayton claims that for the leaders in Ohio, "demonstrations of personal piety were at the root of their public persona."²⁶⁷

Religion also provided the impetus for much of the reform that swept the state and the county in the last half of the century and it also provided women with a forum from which to step into the public sphere. The Camp meetings and temperance crusades came to the county between 1874 and 1880. The first temperance meetings in Ohio were attended by large numbers of women who came in groups from their local churches, and by March and April of 1874, the National Women's Temperance Movement had helped form local temperance organizations.²⁶⁸ Women of all ages took part in the move to quell the influence of alcohol on society, and a group of young women in Defiance encouraged young men to abstain by asking them to "pledge

²⁶⁵ Cayton, 35.

²⁶⁶ Cayton, 33.

²⁶⁷ Cayton, 34.

²⁶⁸ *Brief*, 56.

themselves” to the temperance movement. Those men who would not so pledge were “put on the black list and cannot have the pleasure of calling on them (the young ladies.)”²⁶⁹ These temperance organizations remained strong, and occasionally successful, but not everyone was in favor of alcohol control or women acting in a public venue.²⁷⁰ While future president, William McKinley “championed the crusaders,” Louis Schaefer, owner of Schaefer’s Opera House, “denounced the female warfare against the sale of vinous beverages.”²⁷¹ The conflicts between the two groups got so heated that the Canton City Council passed an ordinance prohibiting crusading.²⁷²

Women in Stark County, working to better society by way of their religious affiliation, and using their charge to keep the home pious and healthy and provide future generations of patriotic Americans, also made society aware of the need for reform in education, health care, and maintenance of the poor and poorly behaved. The Women’s Christian Temperance Union of Canton, in addition to its efforts to control the use of alcohol, established a free reading room, free industrial training for orphans and underprivileged children, took religious services to the county infirmary, workhouse and jail, and built a home for girls.²⁷³

²⁶⁹ *Repository*, 10 April 1874.

²⁷⁰ By 1875 over 130 Ohio communities had experienced temperance marches, and several major cities, including Cleveland and Cincinnati had banned marches as a hindrance to traffic. However, several cities in or around Stark County, such as Louisville and Hartville, succeeded in creating “dry” areas that lasted well into the twentieth century.

²⁷¹ *Brief*, 56-57.

²⁷² *Brief*, 57.

²⁷³ *Stark*, 765.

Not all reform was driven by religion; changes in the socio-economic status of some of the county's residents made some reform necessary. In the early days of the county, as in many of the colonies in the 1700s and in frontier regions as the nation moved westward, large numbers of children were left orphaned or in families whose economic success had not been assured. The standard approach to orphans and children of the indigent in the late seventeen and early eighteen hundreds was to put the children in the hands of the village or township, which then found homes for them among the local farmers or other skilled laborers. This ensured that the children were not a burden on society and, at least in theory, provided them with both a loving home and a skill they could use as adults. However, real life did not always appeal to the best theories, and some farm families or those invested in other labor-intensive fields, used the adopted children in place of paid labor, treating them more like servants than like their own children. By 1874 the state recognized the need for a better way to care for orphaned or indigent children under the age of sixteen, and the Fairmont Children's Home was built by 1877 to provide the "physical, mental and moral training" that would produce patriotic and contributing adults.²⁷⁴ The home provided domestic training for the girls and farm or industrial training for the boys. Children attended school for half a day and then worked on the home's adjacent farm or in one of the activities needed to keep the home going. The home, situated on 154 acres just outside of Alliance, was almost self-sufficient due to the work of the children and the masters and matrons who ran it.

²⁷⁴ Stark, 740.

In 1890, Reverend Russell Conwell gave his “Acres of Diamonds” lecture to a full house in the Canton YMCA.²⁷⁵ Considering the economic success of many of the county’s citizens, the central idea of his oft-given speech, that one need not look elsewhere for opportunity, achievement, or fortune-that the resources to achieve all good things are present in one’s community- was very nearly “preaching to the choir.” However, not all of Stark County’s citizens found their acre of diamonds. The county built a workhouse intended to house, and work, “minor criminals, tramps and prisoners farmed out from other counties” as well as the “unfortunate poor.”²⁷⁶ The residents of the workhouse built rat traps and wire specialties, and cultivated the land on which the workhouse stood.

As industrialization came to the state and the county, the need for better educated, skilled workmen led to both an increase in emphasis on education, and a migration into the area of highly skilled workmen who “raised the social level of the community.”²⁷⁷ Education was also an important factor to women, who recognized the power of education to both the individual and the larger community. As the county came to terms with the need for female education, reforms in this area served as another way for women to enter the public sphere, as teachers, and even as early voters; in many communities women first gained the right to vote on local school issues.²⁷⁸

²⁷⁵ *Brief*, 49.

²⁷⁶ *Stark*, 738.

²⁷⁷ *Brief*, 43.

²⁷⁸ Kaufman, Polly Welts. *Women Teachers on the Frontier*. (New Haven: Yale University Press, 1984,)xxii. Kaufman notes that by 1870 in the ten northern states she examined, 56% of the teachers were women.

This need for an expansion of education was also driven by religious motives. Emma Wilson sent alumnae from the Troy Female Seminary in New York west and south in the 1820s, starting with Ohio.²⁷⁹ In the 1830s, eighty-eight women from the Zilpah Grants' Female Seminary were sent as teachers to Ohio and Michigan.²⁸⁰ And, when Catherine Beecher founded the National Board of Popular Education she was hoping to expand education into the west, but she also wanted a Protestant influence imprinted on the youth. She was concerned that many of the frontier communities had been "invaded" by nuns who were moving west.²⁸¹ The condition under which she accepted young women as teachers was that they had "embraced evangelical religion through a conversion experience.

Although industrial expansion and a need to train the next generation of preachers were good reasons to promote education, the need for more doctors was also a factor in the increased appeal to higher education. And, women moved into the medical field in such numbers that one newspaper writer was driven to note that "Young lady physicians are multiplying rapidly throughout the country, and consequently young men are decidedly more sickly than they used to be."²⁸² Stark County's first female doctor was Elizabeth Thomas, "who practiced in Alliance with her husband."²⁸³

²⁷⁹ Kaufman, 6.

²⁸⁰ Kaufman, 5.

²⁸¹ Kaufman, 8.

²⁸² Repository, 3 February, 1871.

²⁸³ Booth, 35.

The continuing economic success of the region was also linked to the expansion of education, especially higher education and the ministry. And when the link between economic success and religious devotion and social change is considered from the female point-of-view, we see women stepping into the public sphere with great impact.

²⁸⁴ One of the first vocational training schools in the county was started by the will left by Charity (Rodman) Rotch. The school was originally intended for orphans and the children of the “depraved,” and taught both sexes between the ages of ten and eighteen. It started with fifteen students, and in 1834, the school added a farm so that boys could be taught farming. Once the state had figured out how to provide universal free education, the need for the school diminished and it closed in 1924, although the funds that remained continued to serve the county through the Charity Rotch Sub-Division in Massillon and some welfare programs.²⁸⁵

This is not to indicate that women instituted the idea of public education in the state or the county. The Ohio constitution, following the tenets set forth in the Northwest Ordinance, put aside section 16 in each township to provide support for the school. This support came first by clearing the land and using the lumber to build a schoolhouse, and then by selling the timber or farming the land and using the proceeds from the crops to pay the teacher. At first the availability, frequency and duration of primary education depended a lot on how densely populated the area was and to what kind of economic

²⁸⁴ Kaufman, 47-49. Kaufman showed that many of the women who moved into the western communities as teachers stayed and became community builders, founding new schools and seminaries. Only about one-third of those who went west returned to the east. Kaufman, xx.

²⁸⁵ *Brief*, 12, 33.

activity the area appealed. Frequently the section given over for education could not produce sufficiently to support a school and just as frequently the more rural areas just did not have the density of population needed to justify the expense of building a school and hiring full-time teachers. Initially teachers served in an itinerate fashion, receiving fifty cents per pupil for a three month school session. As communities grew, population density increased and school districts expanded, and more and more women entered the teaching force. This moved women to stand on the line between the private and the public; teaching was an extension of women's work at home, but it also required finding the work, negotiating terms and dealing with the school board.²⁸⁶ The itinerate nature of education changed, and young women found themselves boarding with one of the members of the community, often one of the school board members or a prominent local family.²⁸⁷ What we think of as the public school system did not really get started until near the middle of the century. Navarre founded a permanent public school in 1835, New Berlin in 1835, and Canal Fulton in 1837, and the Union School in Massillon was founded in 1848. One of the first members of the faculty of the Union School was Miss Betsy M. Cowels, who later gained recognition for her activities with the Woman Suffrage and the Anti-Slavery movements and Anna McKinley, sister to William, served as the principal of the Union School for over twenty-five years.²⁸⁸

²⁸⁶ Kaufman, xxii.

²⁸⁷ *Brief*, 15. Kaufman, 16.

²⁸⁸ *Stark*, 378.

By the middle of the century, the one room schoolhouse was mostly defunct, although they remained active in the more rural areas, in some cases into the 1900s.²⁸⁹ The Union School in Massillon offered separate classes, and teachers, for the “high, intermediate, secondary and primary” students, and teachers’ responsibilities focused on education and moral guidance; much of the regular maintenance of the schools was done “by the scholars,” who swept, brought in wood and cleaned the slate chalk boards. By 1855, the school had nine teachers earning from \$140.00 to \$400.00 per year and the superintendant was earning \$800.00. By 1858, the Alliance Union School had 268 pupils, divided up fairly evenly between the four categories of students, and by 1869 the city had erected two more schools to accommodate the large number of children.²⁹⁰ While the students swept the floors, many of the teachers and even members of the school board were busy writing texts. Thomas Wadleigh Harvey, Superintendant of the Massillon schools between 1851 and 1865, wrote *English Grammar*, a book that was used across the nation by high school students until 1905.²⁹¹

Since not all families could afford to send their children to the well-established colleges in the east, the need for colleges in Ohio was quickly apparent and the first college in Ohio came with the chartering of Ohio University.²⁹² Higher education came

²⁸⁹ The one room Science Hill School between Alliance and Marlboro was built in 1870 and graduated its last class in 1956.

²⁹⁰ *Brief*,33.

²⁹¹ *Brief*,32.

²⁹² Kern, 126.

to the county in mid-century with the opening of the Male Seminary in Canton in 1842 and Mount Union College in an old carding mill in 1846. Although Oberlin College was the first to admit women and African Americans, Mount Union graduated its first female in 1848 and its first African American in 1852. It was founded as a place “where men and women could be educated with equal opportunity” with “no distinction due to race, color or sex.”²⁹³ The school added a normal department in 1853 to train teachers. The Alliance College, sponsored by the First Christian Church, and funded by a consortium of local residents, competed with Mount Union for about thirty years, then failed, leaving Elisha Teeters, one of the founders, to pay off the notes signed by other investors. It is said that Teeters never regretted having been in on the founding of the college, and he continued to use the building to promote education in the area: the Alliance High School class of 1874 used the third floor auditorium of the defunct college for its graduating exercises.²⁹⁴

These colleges also expose the ties between social and economic development and religion, as many of the colleges were founded originally as seminaries to educate the people who became the ministers of northeast Ohio. As these schools expanded their curriculum and their demographics, they contributed heavily to the education of the men and women who continued to develop the county and its expanding economic base, and brought culture to the county. For example, Mount Union College housed a

²⁹³ University of Mount Union web page. <http://www.mountunion.edu>.

²⁹⁴ *Brief*, 53.

collection of mounted specimens that made it one of the best natural history museums this side of the Alleghany Mountains.²⁹⁵ Opera houses were built, starting in the 1830s, by the wealthy men of the area, and those built in Massillon and Alliance were funded by men who received their college educations in the county.²⁹⁶

The colleges were also seats of political activity and patriotic fervor. Mount Union contributed 1,060 men to the lists during the Civil War, and Salmon Chase delivered a speech dedicating Chapman Hall of that college in December of 1864, extolling the virtues of both the college and the men who sacrificed themselves in the cause of freedom.²⁹⁷

As to legal and political development, Ohio was certainly at the heart of it all. As part of the national experiment, the territory was watched and guided closely by the men in the nation's seat. The legal development of the state has been discussed in the introduction, and this chapter will not go into any greater detail in the state and county's political development than it has in its economic and social development. However the political and legal development shared the fact that they were part of the grand experiment that was formative Ohio and so some understanding of how politics developed might give insight into the actions of the courts, as the men who led the state and the county wrote the laws that the court was bound to follow.

²⁹⁵ Ibid

²⁹⁶ *Brief*, 34, 46.

²⁹⁷ *Brief*, 37. Heald repeats the story of Chase receiving his appointment to the Supreme Court as he stood on the platform preparing to give his speech.

When Wells and other wrote the first constitution, they were a diverse group of men trying to come to a common goal; an economically successful state that held a high position within the national political structure. Even though the constitution excluded women and blacks from the franchise, the constitution provided an expanded electorate and made most elected positions one-year terms. Article four allowed that all white men over twenty-one who lived in Ohio for one year prior to the election and “who paid or were charged with a state or county tax” could vote. Since most men paid either a state or county tax, whether through the purchase of land or some operating license, most men were eligible to vote. Since most men were also subject to militia duty, article five allowed that they could elect their own captains and subalterns. And article six stated that although the county would elect coroners and sheriffs every two years, towns and township officials’ terms were for one year only. This meant that no one person could be overly influential in local matters, and it also meant that within just a decade or two there were a lot of people who had served in public office or helped with campaigns and many more who followed election news closely. By mid-century there were quite a few people with political experience; some people knew how to protect the state and counties from corruption and as many knew how to get around the safeguards.²⁹⁸ Most political careers were short but for others the frequent turn-over meant that politically ambitious men could gain experience in a variety of offices. It also meant that political rivals were often friendly in the social and economic spaces, and

²⁹⁸ Brown, 2.

newspapers that denigrated a man for his political point-of-view treated him well in social and economic matters.²⁹⁹

As was usual in the colonies before independence, and then in the various states as they formed out of the land the Americans gained from the British, it tended to be the men of wealth, the large land-owners and later the industrialists, of Ohio and Stark County who also came to political power. Bezaleel Wells, the founder of Canton, served on the committee that drew up the Ohio constitution. Nathan Gaskill, served as a Justice of the Peace in Lexington in 1812 as did Henry Hoover. Hoover's brother, John, served as an associate judge in the 1820s. James Lathrop, the lawyer who immigrated to Ohio from Connecticut also served as councilman in the 1820s. G.D. Harter, who married C. Aultman's daughter, Elizabeth, and his brother founded Harter and Brother Bank in 1866. By his death in 1890, G.D. had served as the bank's president, founded Aultman Hospital, served as superintendent of the Trinity Lutheran Seminary School and director of the Canton Y.M.C.A, and had backed several candidates for public office.³⁰⁰ James A. Garfield, although starting as a canauler, through his "studious habits and gentlemanly qualities" completed his college education and served nine consecutive terms as Ohio's 19th district representative to Congress before being elected president of the United States. Although Cayton argues that the early political leaders of the state had to make connections with the common man to gain office because the state itself was isolated

²⁹⁹ Brown, 14.

³⁰⁰ *Brief*, 51.

from the eastern seaboard and so could not take advantage of a national reputation the way that early national leaders could, the state did not remain in isolation long. Ohio lent seven of its native sons and one long-time resident to the highest office in the land; six of them served in the nineteenth century and two of them were instrumental in Stark County's legal and political activities.³⁰¹

In its early years Ohio had "a pronounced regional dimension" but a region divided on how best to encourage capitalism and what direction was best for society.³⁰² The parties that developed used caucuses, conventions and newspapers to gather supporters and explain their platforms. Brown notes that like 1700s New York, 1800s Ohio was "socially heterogeneous, economically diverse and politically divided."³⁰³ All parties agreed that economic development was paramount and that the social problems of the east, city crime, child gangs, and the abuses brought by alcohol, gambling and prostitution, were to be avoided. The division was not so much in the ultimate goals of the state, but in the way to achieve it, and although the two-party system dominated, the closeness of the two major parties meant that third party interference was common; the parties had to organize and compromise to survive. Laws concerning land ownership and race were the two big issues with which the parties had to deal; most

³⁰¹ William Henry Harrison, although born in Virginia, lived most of his life in Ohio, and served as president briefly before his death in 1841. U.S. Grant served from 1869 to '877, R.B. Hayes from 1877 to 1881, J.A. Garfield in 1881, B. Harrison from 1889 to 1893, and W. McKinley from 1897 to 1901.

³⁰² Brown, ix-x.

³⁰³ Brown, xi.

other issues, such as female rights and expanded suffrage were somehow related to these two main issues.

If the political development of Ohio was part of a national experiment, it did not take long for the state to figure out how to mimic the nation: as early as 1810 “sweeping resolutions removed most Ohio office holders and created the Tammany Lodges” putting one in mind of the machinations of the Adams election.³⁰⁴ By 1812 the resolutions were repealed and the lodges were dissolved, but Ohio had shown early in its existence that it could play the political game, and play it well. By 1828, Ohio got a massive land grant from the federal government to help the state help the nation expand the railroads. The Ohio assembly then passed the so-called “Plunder Act,” to facilitate acquisition of land for the railroads.³⁰⁵ The railroads caused a lot of hard feelings between speculators and rail builders and the smaller farmers, who sometimes took out their frustrations over losing prime land to the railroads with acts of destruction. Ohio had to pass laws specifically to protect railroad property, but as a compromise then repealed the “Plunder Laws” and ended state aid to the railroad companies.³⁰⁶ The change in relationship between the state and the railroads did not seem to hamper the railroads; Ohio had over 2,788 miles of track by 1858.³⁰⁷

³⁰⁴ Brown, xviii.

³⁰⁵ Brown, xxii.

³⁰⁶ Brown, xxiii.

³⁰⁷ Brown, xxvii.

Laws made in Washington had influence from Ohio, such as when Thomas Worthington helped modify the Land Acts to allow the purchase of 160 acre parcels of federal land; the original minimum was 640 acres, more than the average man could handle, especially before the transportation revolution allowed easy access to shipping. Although a law in 1820 required that land purchased from the federal government be paid for in cash, giving an advantage to the wealthy and those who speculated in land, being able to buy the smaller parcels put more land in the hands of common men, even if by way of the speculators.³⁰⁸

There was a belief among those who were given, or sought political power that parties were vehicles for achieving public good, and those representing the state found no issue unworthy of its attention and acted to bring reform to the state as the need arose.³⁰⁹ In 1817, twelve turnpike companies were chartered to expand the states roads and make access to the interior easier. The Assembly worked to protect child and female laborers (and incidentally preserve many jobs for men,) care for the mentally ill and control unruly youths. A commercial hospital and lunatic asylum were chartered in 1821; women and child labor laws were enacted by 1852, limiting labor for those under eighteen and a woman working in the manufacturing sector to ten hours per day; and a state juvenile work farm was created through legislative action in 1857 in an attempt to curb juvenile delinquency.

³⁰⁸ Brown, xix.

³⁰⁹ Etcheson, Nicole. "Private Interest and Public Good: Upland Southerners and Antebellum Midwestern Political Culture," 83. In Brown and Cayton's *The Pursuit of Political Power: Political Culture in Ohio, 1787-1861*. (Kent, Ohio: Kent State University Press, 1994.) 83-98.

Although Ohio was “born in a womb constructed and nurtured by the federal government” the infant was not always compliant.³¹⁰ Ohio wrote its own fugitive slave law in 1839, and the Liberty Party, intent on the eradication of slavery, formed in 1840, even as the nation had determined the best way to handle the issue of slavery was to try to ignore it and certainly not talk about it. The Assembly repealed the state’s Fugitive Slave Law in 1843 when the Supreme Court decided in *Prigg v Pennsylvania* that the federal government had sole authority in the areas concerning slavery.³¹¹ Activities intended to help free black men from bondage had long been a tradition in Ohio, and with the repeal of the Ohio Fugitive Slave Laws, the activities of the Underground Railroad increased to an almost fevered pitch. The issue also became an important aspect of the mid-century elections. The national Whig Party had blamed loss of the 1844 elections to desertions of anti-slavery and anti-extensionists to the Liberty Party in New York. Ohio Whigs, who were almost as concerned with moral issues as with economic issues, tried to merge with the Ohio Liberty Party to gain sufficient numbers to guarantee support of the Wilmot Proviso and take the next national election.³¹² Whigs in Ohio were aghast at the nomination of Zachary Taylor, a southern slave-owner, as the Whig’s candidate in 1847. The state’s Whig party was also angered at the national

³¹⁰ Brown, viii.

³¹¹ Brown, xxiv.

³¹² Maizlish, Stephen B. “Ohio and the Rise of Sectional Politics,” 117-143. *The Pursuit of Public Power: Political Culture in Ohio, 1787-1861*. Jeffrey P. Brown and Andrew R.L. Cayton, eds. (Kent, Ohio: Kent State University Press, 1994.) See also Maizlish’s *The Triumph of Sectionalism: The Transformation of Ohio Politics, 1844-1856*. (Kent, Ohio: Kent State University Press, 1983.

party's refusal to take a stand on the question of slavery extension; the national party was trying to placate too many diverse factions.³¹³

The people of the state were willing to let the experiment play out, but only for a while; a request from the assembly for a constitutional convention was turned down by the voters in 1820, but by 1851 they were ready for some changes and a new constitution was written that even gave the assembly the authority to “act against alcohol use,” which showed a willingness to legislate moral behavior.³¹⁴ Furthermore, the Free Soil Party, heavily backed by Salmon Chase, gained strength, absorbing people from both the Whig and the Democratic Parties as the Whig Party continued to refuse to take a stance on the issue of slavery and its extension, and anti-southern Democrats became disaffected by their party.³¹⁵ The Whig Party declined in mid-century with the moral issue of slavery attached to the economic concerns should slavery expand into the state pushing the decline. Political chaos ensued as a power vacuum caused by the decline of the Whigs led to the brief rise of the anti-foreign, anti-Catholic Know-Nothing Party, which gained some power in the early 1850s, picking up the national belief that if only the “aliens could be controlled then . . . order would be restored to their political universe.”³¹⁶ As the Know Nothings failed the Republican Party came to the fore,

³¹³ Maizlish, 127.

³¹⁴ Brown, xxvi.

³¹⁵ Maizlish, 131-133.

³¹⁶ Maizlish, 139.

giving dissatisfied Democrats, abandoned Whigs, and strong anti-slavery proponents the chance to promote a party that allowed Ohio to “assume its leading role in the rise of sectional politics.”³¹⁷

Race became a central issue in elections in Ohio by 1857. Although African Americans could not vote in Ohio until 1870, the state had taken a more liberal interpretation of what constituted a white man, “allowing that men having an admixture of African blood, with a preponderance of white blood to participate” in the elections. This was contrary to the “one drop rule” in place in the South, and allowed any black man who appeared very light to argue that his was a “preponderance” of white blood, as no election rules called for a voter to supply a family tree at the voting booth. A man was more likely to be denied the right to vote based on his party affiliation than on his degree of black- or whiteness.³¹⁸

Since southern congressmen were absent in Congress in the early 1860s, Ohio’s contributions to the House of Representatives made up almost an eighth of the entire body, and the state exercised its strength in numbers. Ohio not only led in the numbers of men sent to support the North’s military actions in the Civil War, including a large number of African Americans to the Massachusetts 54th, it also helped push through legislation creating the Morrill Tariff, the Pacific Railroad Act, and the Morrill Land Grant Act of 1862. John Sherman, born in Lancaster and a long-time resident of Cleveland,

³¹⁷ Maizlish, 143.

³¹⁸ Winkle, Kenneth J. “Ohio’s Informal Polling Place: Nineteenth-Century Suffrage in Theory and Practice,” 169. *The Pursuit of Public Power: Political Culture in Ohio 1787-1861*. Jeffrey P. Brown and Andrew R.L. Cayton, eds. (Kent, Ohio: Kent State University Press, 1994.) 169-184.

served as Chairman of the Committee of Finance and the Committee on Agriculture, and the Joint Committee on the Conduct of War was chaired by Benjamin Wade of Ashtabula. Through suggestions made by Secretary of the Treasury, Salmon Chase, Congress put George McClellan in charge of Ohio's military units. McClellan cleared the western regions of Virginia, making it possible for those counties to secede from the state, allowing for the creation of West Virginia.³¹⁹ The experiment was now helping conduct new experiments.

Ohioans pushed for harsher measures to protect African Americans and bring former Confederates to account for their actions during Radical Reconstruction, but that phase of Reconstruction ended when Ohioan, Rutherford B. Hayes, was elected President. Despite the strong anti-slavery sentiments present in the state, the Fifteenth Amendment passed in Ohio by only one vote in the Senate and two in the House.³²⁰ This weak showing brought back the shade of the original constitution, which denied blacks the franchise by one vote; the divisiveness of Ohio politics did not end with the war or Reconstruction, it simply entered a new phase.

Ohio got caught up in the scandals that surrounded national politics in the 1870s. President U.S. Grant was implicated, although innocent of wrong-doing, in the Gould-Fisk plan to corner the gold market, Ohio Representative (and future President) James Garfield, was named in a bribery scandal and General Orville Babcock, Grant's personal secretary, was implicated in the Whiskey Ring, which attempted to defraud the federal

³¹⁹ Kern, 224.

³²⁰ Kern, 244.

government of tax money. However it was not these scandals that knocked Grant out of office, but the depression of 1873 for which Grant had no viable solutions, that served as his downfall.³²¹

Meanwhile another future President was making his way to that high office by way of Stark County; William McKinley served first as a private lawyer, then as the county's prosecutor, and finally as Ohio's Representative to the House. He served as governor from 1892 until 1896, when he was elected President. Among the events of his administration, he presided over the war with Spain in 1898 and annexed Hawaii in 1898, a move he believed was necessary to complete the nation's "Manifest Destiny." While McKinley proved important to the nation, his efforts as litigator has more importance to this study, and his actions in helping bring women into the public sphere long before he debated the issue of female suffrage will be visited in the following chapters.

³²¹ Kern, 245.

CHAPTER III

COMING TO COURT: WHY WOMEN WENT TO COURT IN THE NINETEENTH CENTURY

In 1821, women were still recovering from the legal, political and economic losses that they had incurred as a result of the Revolutionary War.³²² In the early national period, from the Revolution until about the early 1820s, much of society considered the proper place of women to be found within the boundaries defined by historian Linda Kerber as Republican Motherhood.³²³ This concept allowed that while women in this period might require some education and a certain amount of knowledge about the public sphere in order to raise good citizen-sons, they none-the-less divided their time between home, church and local social gatherings. It was not considered appropriate for women to take an active part in public life, usually defined as the legal, political and economic activities that took place outside of the home. For the first half of the century boundaries defining womanhood further restricted women's participation in the public sphere through the system that historians have come to call the cult of

³²² For a more complete look at the political and legal losses that women encountered after the Revolutionary war, see Linda Kerber's *Women's America: Refocusing the Past*. (New York: Oxford University Press, 1991.) An excellent example of an individual woman and the way that the Revolution and the economic development of the nation impacted her, can be found in *A Midwife's Tale: The Life of Martha Ballard, based on Her Diary, 1785-1812*, by Laura Thatcher Ulrich. (New York: Vintage Books, 1990.)

³²³ Kerber, *passim*

True Womanhood, which emphasized the need for respectable middle-class women to remain entirely invisible in public life in order to protect themselves and their superior moral character from being tainted or diminished by the amorality of the marketplace.³²⁴ Nancy Cott noted that:

because women were assumed to be more pliable and impressionable than men by nature, they were also assumed to acquire polished manners more easily. These manners would be passed to their children, and therefore the character of the nation rested in their hands.³²⁵

Within this view of women's history, courtrooms were places no woman eagerly choose to enter whether as plaintiff or defendant, lest her reputation suffer from the public visibility to which the court exposed her. Yet, this general consensus that women shunned and shrank from appearing in such public venues as courthouses is belied by many recent studies of women in various communities and the public record kept in places like rural Ohio.³²⁶ Historians such as Cornelia Hughes Dayton and Laura Edwards puts the notion of women eschewing the local courts to bed with their studies of the pre-Revolutionary Connecticut and post-Revolutionary South, respectively. Hughes notes female participation as high as twenty percent in the last decade of the 1600s, and Edwards reports that at the local level "everyone participated in the identification

³²⁴ See especially Barbara Welter's discussion of women's sphere in "The Cult of True Womanhood, 1820-1860." *American Quarterly* (Summer, 1966):151-174.

³²⁵ Cott, 20.

³²⁶ Examples of these more recent works bringing women back into the light of the public sphere include Dayton's *Women Before the Bar: Gender, Law and Society in Connecticut, 1639-1789*, Norton's *Founding Mothers and Fathers: Gendered Power and the Forming of an American Society*. For a comparison, see Constance Backhouse's *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*.

of offenses, the resolution of conflicts and the definition of the law.”³²⁷ The research for this dissertation establishes how women staked out their right to public spaces by way of the courts, perhaps the most important institution to the well-organized and peaceful life of the community. As early as 1817, women in rural Stark County, Ohio, were appearing at their local courthouse in a variety of roles.³²⁸ Principally at court to urge the court officials to support them in their assertion of their right to property, custody of their children, and protection from abuse, they clearly saw the space of the court as a venue friendly to their needs and crucial to their assertion of their public selves and community participants.

From the outset of the nineteenth century, the Stark County courthouse could not have been considered a hostile environment for women seeking redress for grievances, or merely even to take part in the public life of their community. A newspaper’s records of a woman’s visit to the court early in the century provide a case in point. In January of 1821, the attention of a local newspaper, the *Ohio Repository*, was turned toward the notable and welcome presence of an elderly female veteran of the Revolutionary War at the local courthouse. The *Repository* ran a short article praising her desire to appear at the courthouse. The article celebrated this woman’s past wartime contribution to the founding of the nation as well as her current propensity to perpetuate that public service by attending court proceedings at the

³²⁷ Hughes, 84. Edwards, 7.

³²⁸ Courts were being held in Stark County area prior to the earliest dates covered by this study, but records of those court sessions do not exist within the materials preserved by the county court system. Earlier court sessions had a more itinerate nature and could have been held in almost any location, including local taverns.

courthouse—making the two contributions seem continuous rather than bemoaning her invasion of male space, as the scholarship supporting the “cult of True Womanhood” might lead us to expect. The article, entitled “Female Pensioner” expresses thankfulness and:

“gratification to learn that during the sitting of the court in this town a woman who had done much service for her country, a Mrs. Gunnett of Sharon, Pennsylvania, who had just presented for renewal her claims for services rendered her country as a *soldier* in the Revolutionary Army, was present.”

After telling of some of her exploits and of her meeting George Washington while he commanded the troops, the article continues in a way that both establishes Mrs. Gunnett as a national “heroine” for her previous service to the nation and expresses appreciation for her willingness to continue to participate in the public life of the local community:

“Now in the sixty-second year of her age; she possesses a clear understanding, and a general knowledge of passing events; fluent in speech and delivers her sentiments in correct language with deliberate and measured accent: easy in her deportment, affable in her manners, robust and masculine in her appearance. . . We often hear of such heroines in other countries but this is an instance in our own country and within the circle of our acquaintances.”³²⁹

When Mrs. Gunnett entered the courthouse that particular Thursday in January, it could be perceived that she was stepping outside of the boundaries delineated by the precepts of True Womanhood; she was entering the public space used to conduct legal business and she was doing so not in a woman’s appropriate capacity as a reluctant participant, or even as an unwilling defendant. She appeared as someone who could

³²⁹ Ohio Repository. Vol. VI, # 37. 18 January 1821.

and did comment on “passing events,” not as a silent observer but as someone who had made “statements” that were considered valuable and admirable. The article credited her with participating in the courts’ regulation of the community and identified her contributions to the court as in accordance with her previous military service, portraying her as someone who distinguished herself not only in her youthful past through her services to her country but also in her aged present by exhibiting a “masculine” robustness of mind, poise, and authoritative presence in the courtroom. Mrs. Gunnett apparently viewed the courthouse as the most relevant venue to present herself to the community. Attending court allowed her to be introduced to its members, familiarized her with the local gossip and placed her in a position to receive invitations to speak and visit, such as the one that she received after attendance at the regular session that January.³³⁰

In fact, although verifiable and pensioned female Revolutionary War veterans, such as Mrs. Gunnett, were rare and their presence in the community worth commenting upon in the local press, the presence of a woman in the Stark County Court was neither shocking nor objectionable to the residents of this growing rural community, even as early as the second decade of the century. Mrs. Gunnett’s presence was most likely noted, not because she was a woman but because she was a stranger with an interesting and venerable past. As a woman, Mrs. Gunnett’s court appearance was no rarity at all. Indeed, Edwards notes that although the courts were more “formal and

³³⁰ The article in the *Repository* noted that Mrs. Gunnett had “graced the writer’s table,” and had accepted invitations to the homes of some of the other members of the community.

more distant” from everyday life, a “wide range of people attended court sessions as participants and observers.”³³¹

Although the period between the end of the Revolution and the 1830s saw the American system of law coalesce in such a way that, as Edwards reports concerning the South “subordinates found it difficult to make themselves heard and their concerns visible within the body of state law . . . because they were excluded from the category of people with rights,” the women of Stark County had been appearing before the court for a variety of reasons from the inception of the county and their appearance increased in the coming decades.³³² Only a few of these women found themselves before the court involuntarily as the defendant being prosecuted by courts. Most women were likely to be in court to secure rights and even gain power over male family members and acquaintances that no other institution—neither church nor family ties—could or would afford them. The state and the county hold a great deal of responsibility for introducing women to the court system and the public sphere that it represents when it was determined that wives must be present when land exchanged hands to protect her interests and that they should be included in civil suits intended to recover damages and repay debts. But many women also availed themselves of the court’s services voluntarily, even eagerly, to address issues ranging from return of their dower and property transference to settling questions of paternity and ending bad marriages. Contrary to the original narrative of women’s legal history, the local court of Stark

³³¹ Edwards, 75.

³³² Edwards, 9.

County Ohio saw women's active participation and rather than repressing women or confining them to their husband's care, the court, following the dictates of the legislators, appeared to adopt the perspective of women and most often chose to serve women's interests—in terms of property rights, marital rights, child custody, and protection from male violence, especially if doing otherwise meant that the women and children would become economically dependent on their local township, village or county. Although the patterns will ebb and flow with changes in economic conditions and other issues of great import, such as the economic crisis of the early and mid-1800s, and the Civil War, available evidence points to the way that this public institution—arguably the single most important local expression of political and formal power in rural areas such as Stark County, Ohio—undercut the prerogatives men asserted over women in the domestic sphere and tempered the generalized rhetoric of True Womanhood that insisted on women's invisibility in the public sphere.

Ohio's 1803 constitution followed the nation's in its definitions of citizenship and guidelines for the political and legal rights and privileges associated with citizenship. However, as early as the inception of the Northwest Territory in 1787, legal notions of citizenship did not serve to restrict Ohio residents' ability to partake of the economic privileges that the developing economy based on agricultural production brought to the farmers of even the most rural parts of the territory. While the provisions of the Northwest Territory allowed that political authority would be held in the hands of "free male inhabitants of full age," it also allowed that the property of those who died intestate should be divided in "deeds and property among all children," not just male

children, and that a widow could always have her dower, allowing that at least one-third of the real estate should be hers “for life,” and that she received “a one-third part of the personal estate.”³³³ The law actually read that “a woman cannot be barred from her dower.”³³⁴ This meant that her husband could not sell off, give, or pass through inheritance her dower without her permission, given during an examination by justices “or three judicious, disinterested men of the vicinity of the county where such lands may be situated,” and who are not related “to either party or be in any way connected to the case, the lands, or any profit from them.”³³⁵ Wills were considered valid when “signed and sealed by him or *her* in whom the estate may be . . . and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the *person*, being full of age, in whom the estate may be.”³³⁶ [Emphasis added.] Again, while political access was limited to white males, economic activities were not so restricted; exchanges of real estate, private property and return of dower were considered the purview of all inhabitants, as long as they had reached “full age.”

Of course, marriage amended some of this activity, as only single women could continue to own and manage real estate in their own names. Once married, women

³³³ Ordinance of the Northwest Territory, 1787, as found in *Constitution of the State of Ohio, Annotated 1948: Also The Ordinance of the Northwest Territory (1787,) The Constitution of the United States and the Declaration of Independence issued by Edward J. Hummel, Secretary of State*. Columbus, Ohio 1948. Sec. 2.

³³⁴ Chase, 519.

³³⁵ Chase, 519-523. This is the way the laws read in 1824, and are not substantially different than those in effect when the territorial laws were enacted in 1795.

³³⁶ Hummel, Sec. 2. The italic typeface is mine, intended to draw attention to the language, which was used very precisely in the 1800s. The use of “person” was intentional to indicate that anyone, male or female, was eligible to leave a valid will, age being the limiting factor.

became one with their husbands, and coverture meant that he then controlled everything, down to the clothes on her back. This put married women at the absolute financial control of their husbands, who were required to provide for the family and determine the place of residence, but who were not required to provide for more than he deemed fit and proper. If the woman did not manage the household in a manner that suited the husband, if he disagreed with her concept of “necessities,” if she became terribly dissatisfied with their life together or even feared for her safety and fled, husbands were wont to place an advertisement in the local paper, refusing responsibility for her purchases.

Whereas my wife, Nancy, has left my bed and board without just cause- this is therefore to warn all persons from trying to harbor on my account. I am determined to pay no debts of her contracting after the date herein. John Kid---, Canton Township, September 9, 1818.

Since my wife Bre has left my bed and board without just cause, this is therefore to caution all persons from trusting or harboring her on my account, as I am determined to pay no debts of her contracting from this date. She has also taken out of my pocket book sundry notes & c and particularly a note given by Henry Willard and Isaac Deardorff, for \$215 4 cents. This is to caution all persons from taking assignment of said note as I have forewarned the said parties not to pay same. Jacob Frazee Sugar Creek Tp. December 10, 1818³³⁷

Husbands controlled the purse, and the frequent appearance of such advertisements show that the men used their economic whip when it suited them, perhaps hoping to drive their wives back into the house.

³³⁷ These advertisements appeared in the Ohio Repository on 18 December 1818 and 18 January 1819 respectively. Such notices were frequent until the mid-1820s, and continued to appear until around 1857, coincidentally when the first substantial change in married women’s property law were enacted.

It was the State Constitution's inclusion of such non-gendered language in the area of property ownership and economic activity, an expanding market and the legal activities that accompanied it, and the need for an uncomplicated system of land transference, as discussed previously that helped propelled women, sometimes reluctantly and other times triumphantly into the public spaces of its rural courts. In Stark County women appeared in the court records from its inception, although their numbers were small at the start. They are featured in the first extant Appearance Docket, "C," which covers a time frame from June of 1817 through November of 1819.³³⁸ Of the just under 500 cases heard by the court that year, twenty-three included women as co-defendants or co-plaintiffs in civil suits, and another twelve were brought by or against women alone and in their own names.³³⁹ The majority of the cases that included women were to convey dower, settle debts and sell land, but there were also cases of single women, *feme sole*, approaching the courts to affirm their inheritance or to act as *feme sole traders*, single women conducting business on their own behalf, and women who took their lovers to court to find support for their bastard children and who complained about the behavior of their neighbors.³⁴⁰

³³⁸ See Graph 3.1, on the following page, "Cases Including Women", for the total number of cases, the number that included women, and the number presented by women in their own names.

³³⁹ Statistics from Appearance Docket "C," Stark County Courthouse Records Department.

³⁴⁰ The county nearly always approved the dower. Of the 170 cases brought over the century, all but ten were assigned and returned satisfied or settled out of court to the woman's satisfaction. Of the ten cases that were dismissed by the court, eight were dismissed due to the death of the applicant. The other two cases were dismissed because the women had remarried, and under Ohio law, could not claim the dower from their first marriage if their second husband still lived. After 1873, there were few cases for dower, although those few were settled in favor of the woman. The decrease can be accounted for with an

Although the total number of women involved in court activities for that second decade of the century only account for seven percent of those who came before the bench, the numbers are significant in that many of these women came before the court not under the direction or at the command of the men of the court or community, but in their own names and under their own volition. While the majority of the cases brought by women concerned the recovery of dowry or charges of bastardy and slander, they also brought suits for failure to pay debts, for damages and for child support. The case has been made that, at least in the larger urban areas, women gained much of their experience in the courts as criminal defendants, but there were few female criminals or miscreants in rural northeast Ohio, or at least that made an appearance in the county court. In that second decade of the 1800s, only Rebecca Reeder found herself on the wrong end of a criminal charge, for an assault, which she did “not contest,” and for which the court fined her one dollar and court costs.³⁴¹

appeal to the Married Woman’s Property Act. Once women could inherit and control land the dower was no longer needed. The few cases that appeared were likely due to a husband dying intestate. As per the discussion in the introduction, women were able to take their share of their husband’s property, or their dower, whichever benefitted them most.

³⁴¹ Appearance Docket “C,” #464, 29 November 1819. The docket does not tell us whether the person assaulted was male or female.

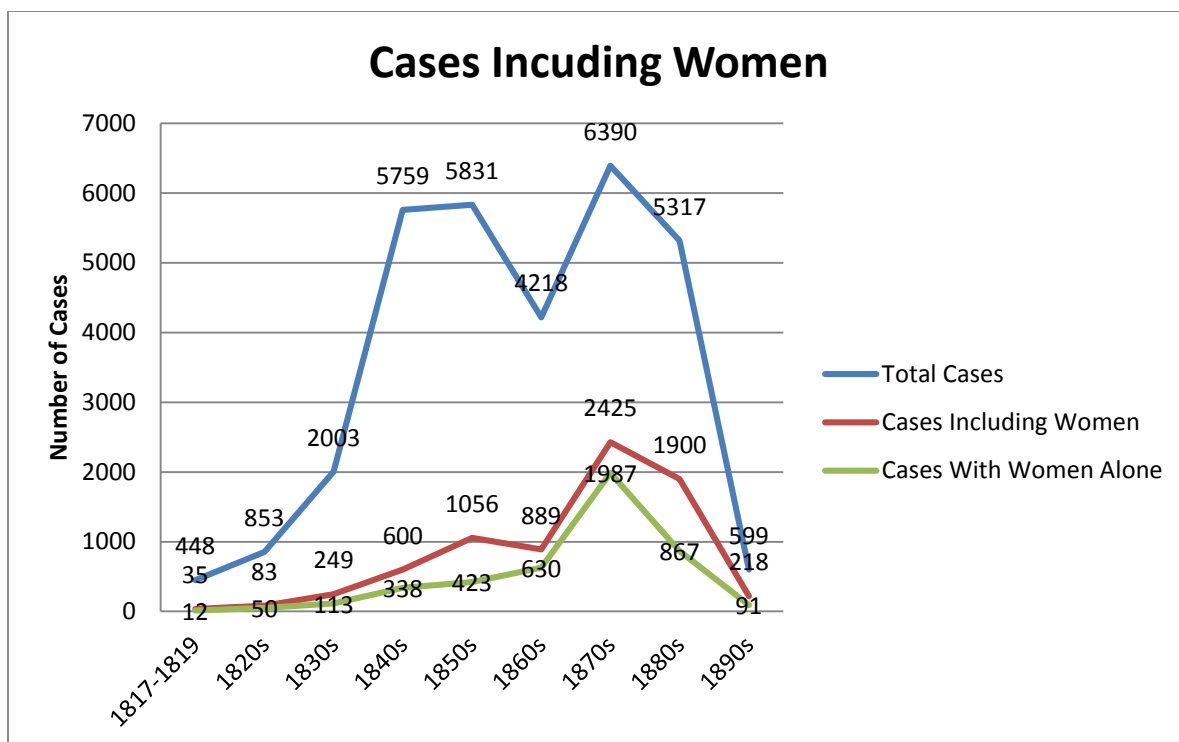


Figure 3.1 Cases Including Women

The number of women that availed themselves of the services of the court rose as the century progressed, as did the number of women brought before the court as defendant or co-defendant in various civil cases. While Stark County remained well below the national average as to female criminal defendants except for one year in the 1870s, that number also rose over the course of the 1800s.³⁴² Indeed the increases began with the 1820s and climbed in small increments every decade until the turn of

³⁴² The national average of female criminal defendants hovered around seventeen percent throughout the colonial and formative era and into the 1900s. N.E.H Hull. *Female Felons: Women and Serious Crime in Colonial Massachusetts*. (Chicago: University of Illinois Press, 1987.) The statistics began to rise with the advent of Prohibition and continues to increase. See especially James Messerschmidt's *Crime as Structured Action: Gender, Race, Class and Crime in the Making*. (Thousand Oaks, California: Sage Publications, 1997.) *Comparing Male and Female Offenders*. Margaret Q. Warren. (Beverly Hills: Sage Publication, 1981. Statistics throughout these two volumes indicate a disparity in male and female criminal activities which allow that at some times men behaved badly at a rate 300% higher than that of women. Criminal cases will be discussed in chapter five; those involving women will be further discussed in chapters six and seven.

the century, increasing not only the number of cases brought by and against women, but also expanding the reasons that women appealed to the courts.³⁴³ By 1896, when Mary Snellbaker, the last woman to appear in the nineteenth-century Stark County court records, took her brother, Frederick Brechbuchler to court over custody of Brechbuchler's son, the court was firmly established as a civil institution women could count on to support their aims with at least as much vigor as it had originally supported the men. By contrast, men, as the nineteenth century progressed, found themselves more and more on the defensive in the court, while women used the Stark County Court in ways that even those women who had availed themselves of the court's services at the beginning of the century would have found remarkable.³⁴⁴

The number of cases brought before the courts in the 1820s totaled 853, an increase of nearly sixty percent over the previous decade. This increase reflects the population growth of the county and the increase in economic activities that required some contact with the court, such as failure to complete contractual work and deed transfers. Eighty-three cases included women as co-plaintiff or co-defendant, and fifty were cases were brought by or against women alone; this represents just over a 100-percent increase in the total number of women before the court, and almost 400-percent increase in the cases brought by or against women standing alone. The majority

³⁴³ The chart makes it appear as if there was a drastic drop in the number of cases brought by all segments of the community in the 1890s. This was not the case. Rather, the records for the rest of the century were destroyed by a flood, and so the decade is not completely represented by the figures.

³⁴⁴ The case is mentioned in *The Repository*. 14 May 1896. A Writ of Habeas Corpus was taken out by Brechbuchler in an attempt to regain custody of his two-year old son, who had been cared for since birth by Brechbuchler's sister, the defendant. The pair reached a compromise that was not explained in the paper.

of the civil cases concerned recovery of the dower, partitioning of land, and recompense for debt, although there was a fair number of slander cases and a proportionately larger number of men charged with bastardy than in the previous decade, a subject that will be discussed in some detail in chapter three. Most cases of bastardy were still being brought by the State at the complaint of the woman wronged, although other civil cases being brought by women were being entered under their names, alone. The civil cases were adjudicated according to the law as per the evidence presented, and there was no difference in the outcome of these cases no matter how they were represented as to gender. As to the cases for recovery of the dower, no case was denied, even when the appointment of the dower caused a hardship for the remaining family. Indeed, in some cases it was necessary to sell the family land to provide the widow with her dower, and though the area was heavily invested in agriculture, and dividing the land reduced its ability to produce, thereby reducing the family income, the court provided for the widow by dividing the land or ordering its sale. When John Webb and his siblings opposed his mother's receipt of her share of the estate because the family farm would have to be sold to provide Sarah her third, the court upheld Sarah's right and ordered the sale.³⁴⁵ And, when Sarah Baker, daughter and only named-heir in John Baker's will, vigorously argued against her mother Elizabeth's right to any of the estate due to a long-time adulterous affair and the fact that Elizabeth had abandoned the family home prior to John's final illness, the court upheld Elizabeth's right to the dower, as defined by the

³⁴⁵ Appearance Docket E. #181, 16 February 1827. Sarah Webb v John Webb et al. Sale and distribution ordered.

laws of the State.³⁴⁶ It could be argued that the court was only upholding state law, but at a time when the court was also considered keeper of the morals and virtues of the community, it is noteworthy that, even with a witness for the prosecution, named only as “A,” the court upheld the widow’s right to dower, an economic move, over its right to guide moral behavior. However, it should not be assumed that this case and others like it show that the court had abandoned its moral authority. Although the distinction between criminal and civil behavior was being more and more clearly defined throughout the nineteenth century, the court still played an important role in the men and women maintaining appropriate gendered behavior. As one example, the State of Ohio, through the Stark County Court, charged Absolom Craig with adultery in August of 1826. Craig pled “guilty,” and was sentenced to ten days in the county dungeon, to be fed on bread and water only, and to pay all court costs.³⁴⁷

By the 1830s, the county was well-defined and the people had discovered their court and its usefulness; 2003 cases were recorded in the dockets over the decade, 319 of which were criminal cases. This represents over a 100 percent increase from the 1820s. 249 civil cases involved women, most concerning the selling or partition of land, and 113 by or against women alone, again, most cases had an economic component,

³⁴⁶ Appearance Docket D. #347, 4 March 1825. Dower was assigned and accepted as noted by Sheriff Augustine, no date noted.

³⁴⁷ Appearance Docket E. # 108, 9 August 1826. Ohio v Absolom Craig, charged with adultery. Court costs \$16.61.5, paid in full 10 October 1826.

and many concerned recovery of the dower.³⁴⁸ The usefulness of the court was not a secret confined to those of legal age; Margaret Cove, a minor who still required an adult to represent her, brought suit against Thomas Worley in September of 1832 for \$2,000.00 in damages by way of her “next friend” (meaning an ally who could serve as her proxy in legal matters,) James Leech. The plaintiff’s attorney had the case dismissed after Cove and Worley reached an agreement in October before their court date.

The young women of the county were also coming to question the right of authority that men had over them; in April of 1834 Eliza Stidger brought her guardian, William Fogle, to court under a citation. The clerk made no further notations to indicate what exactly Eliza wanted, but the “judgment” went “against the defendant,” who was ordered to pay the costs of \$10.48.5.³⁴⁹

That the importance of the court to the economic well-being of women beyond the question of the dower was also becoming more obvious. Early in 1833, Betsy Raynolds’ husband, Jefferson died, leaving her the “surviving partner” of his business. Neither Jacob Buchtel nor William Coningham felt that they were honor-bound to pay the debts that they owed Jefferson to his wife, Betsy. Although the attorneys to the plaintiff talked Raynolds into taking a settlement from Buchtel before their court date, Coningham was judged to owe Raynolds \$181.44 and ordered to pay the court costs of \$7.50. This judgment shows that the court not only upheld the economic needs of its

³⁴⁸ Of the 319 criminal cases, 20 were brought against women, most concerning illegal economic activities, such as selling whiskey without a license or larceny, although there were seven cases of breach of peace and four for assault and battery.

³⁴⁹ Appearance Docket G. #293, 24 April 1834.

constituents and the appropriateness of the law over the perceived appropriate place of women in society, but that it recognized Betsy as legally able to conduct business in her own name. The case was brought (and recognized by the court) not by “Betsy, wife of Jefferson Raynolds, deceased,” as was common when a wife acting as executrix had to bring suit, but as “surviving partner,” putting Betsy into the class of *feme sole trader*.³⁵⁰

Court records from Stark County courthouse in the 1830s also show that women were not just ‘using’ the courts, but that they were becoming accustomed to turning to the court as the institution most likely to address their needs—even if the court did not always award them vindication. In this decade, and for the first time, women began appealing the rare court decision that went against them. Women’s willingness to appear in court for a second time in order to challenge a particular decision, tells us that they were becoming more accustomed to turning to the court and to expecting redress from the court. So, when Nancy Rowland lost her first case against Philip Busard, rather than retreat in defeat, she appealed Justice Taylor’s decision to the county court, which found in her favor.³⁵¹

As the women became more comfortable turning to the court, men attempted to force the court to support their prerogatives as men. For the most part they were unsuccessful in getting the court to reverse judgments that went against them or use the court to disallow women to defy them. There were twenty cases of appeal brought

³⁵⁰ Appearance Docket G. 7 November 1833. # 214, Betsy S. Raynolds, surviving partner of Jefferson Raynolds v Jacob Buchtel, discontinued. #219B, Betsy Raynolds, surviving partner of Jefferson Raynolds v William Coningham, judgment \$181.44 and \$7.50 cost. Paid 3 November 1834.

³⁵¹ Appearance Docket G. #264, 14 April 1834.

by men who had lost against a woman or a group of plaintiffs or defendants that included women, and although some adjustment as made in the settlement amounts in a few cases, none were overturned.³⁵² For example, in 1834, when Rebecca Harman sued Abraham Troxall, for \$1,000.00, she won \$141.00 and Troxall was to pay court costs of \$10.01.5. Troxall appealed the decision but lost and had to pay the costs of the second trial as well.³⁵³ And, when Sarah Thomas in 1835 refused to sign the paper that transferred land that she and her husband, John, owned to Robert Montgomery, John took his wife to court to force her to sign, although Sarah's dower remained protected by the court.³⁵⁴

As the population of the county continued to grow, so did the number of cases brought to the courts. The 1840s saw 5,759 entrants in the Appearance Dockets, of which 5225 were civil cases.³⁵⁵ This is a remarkable number of cases when considering that the population of Canton, the seat of the county court was only 4,041 at the 1860 census.³⁵⁶ Of the over 5,000 civil cases, 600 included women and 338 were brought by or against women alone. The 1840s were also a time of further defining the court's boundaries including its role in caring for the insane and in controlling men and women

³⁵² There were only thirty-two cases of appeal brought altogether in the timeframe of this study.

³⁵³ Appearance Docket G. #278B, 24 April 1834.

³⁵⁴ Appearance Docket G. #317, 21 July 1834. The "deed" was "ordered and dower set aside" by the court in April 1835, so Sarah lost her case and had to sign the land over, but was still protected, should John proceed her in death.

³⁵⁵ Of the 5759 cases, 534 were criminal cases; of those 21 were brought against women, most of which were economic crimes concerning sale or use of alcohol, keeping a house of ill-repute or for the purpose of illegal gaming and larceny.

³⁵⁶ Knepper, George W. *Ohio and its People*. (Kent, Ohio: Kent State University Press, 1989.) p 472.

through the institution of marriage.³⁵⁷ Also, by the 1840s all cases being brought by adult women were brought in their own names; the notation “by her next friend” disappears in all but cases brought by minors or the mentally incompetent. Since the Married Women’s Property Act went into effect in the first half of the decade it is not surprising that many of these cases concerned having deeds put into a woman’s name, not as a life share for her dower but as actual owner of the land. And, while there were still many cases of dower presented, some of the increase is also accounted for by the appearance of divorce for the first time as a civil situation.

The 1850s was an especially litigious decade; in addition to the rapid growth of the economy that was sure to put landowners at odds with manufacturing and urban development, the mid-1850s saw a financial crisis of national proportions due to a collapse of the investment community and an increase in social agitation concerning such issues as abolition. Although the number of total cases seen by the court only increased by seventy-two cases, the number brought by women increased by nearly eighty percent, to 1,056.³⁵⁸ Applications for dower, divorce and bastardy made up the majority of cases brought by women. But the state was in the midst of an economic crisis and collection on debts or for damages also played a prominent role in women’s use of the courts. Indeed there were few cases of debt or damages brought before the court that did not include a woman, even if only as “his wife” to the plaintiff or

³⁵⁷ The first cases of guardianship for insane persons are in Appearance Docket N. There were five cases in just the first three months of 1840. The first divorce and alimony cases also appear in the 1840s, and forty of the 338 brought by or against women were cases for divorce or alimony.

³⁵⁸ The total number of cases for the 1850s was 5,831, with 1056 including women, 423 by women alone, 467 total criminal cases, of which 20 were brought against women.

defendant. As mentioned elsewhere, this was an economic maneuver to ensure that any debts or damages ordered recovered by the courts could not be hidden in the wife's name, and to protect the wife's dower, but even that move served to bring more women before the courts, thereby diminishing their general unfamiliarity with this public space. Comparing the census records to the number of cases brought before the court, it seems there was almost no person in the county who had not been in the court as plaintiff or defendant. By the 1850s the court had become the main recourse for adjudicating differences between people. With the assistance of some astute lawyers who turned the law to their clients' advantage, the women of the county learned from the legal system.

To help the state deal with some of the economic problems, especially those dealing with land, the dower, and debt, the first substantive change to marriage laws in Ohio went into effect in 1857, with the passage of "An Act Securing to married women such personal property as may be exempt from execution, and also enabling them to control their own earnings, and the earnings of their minor children in certain circumstances."³⁵⁹

Some women suing for divorce brought their actions against not only their husbands, but also against anyone who might have control over either their husbands' decision-making or the funds that were needed to support her and/or her children. When Anna Marie Kinzley sued her husband Frederick for divorce in 1856, she included

³⁵⁹ Chase, 693.

his brother, John, in the suit.³⁶⁰ This practice continued throughout the century and included cases of alimony, such as that brought by Mary Ann Miller against not only her husband, Abraham, but also David Jamison, George Shangler, John Shafer, Eli Ramsnyder, and Abraham Colton, her husband's business associates.³⁶¹

The 1860s saw a decrease in civil cases, although criminal cases were at an all time high.³⁶² This can, perhaps be understood, as many men in the first part of the decade were off fighting the Civil War, or otherwise occupied with its prosecution. This meant fewer incidences of neighbors clashing or deals going bad, but it also meant shorter tempers, fewer opportunities for the less-skilled, and fewer men at home to keep order and provide the daily needs of their families. But, although the number of court cases was down, the proportion of women to men bringing cases was at an all-time high. In previous decades, women brought no more than eighteen percent of the cases; in the 1860s, they were responsible for over twenty-one percent of the cases. This can be accounted for by the fact that there were fewer men home to tend to the family's legal business; conversely, it means that more women were tending to the matters that the men in their lives normally handled.

³⁶⁰ Appearance Docket C-2. #367, 22 November 1856. The case was discontinued by agreement of both parties, 27 March 1857.

³⁶¹ Appearance Docket O-2. #181, 6 September 1869. This case was settled out of court, 2 November 1869.

³⁶² The total number of cases brought in the 1860s was 4218, 889 of which were brought by or against women, 630 by women acting alone. There were 667 criminal cases against men, of which sixty-four were for violent acts, and twenty-eight brought against women, of which seven were acts of violence. All remaining cases were economic in nature.

Some evidence that women were stepping more and more into the public sphere is available in one particular case concerning a certain Hiram A. Wise. A Farmer's Union had been formed in the county, perhaps to take advantage of the power in numbers. By the 1860s some very large farms had been formed and corporate farming had begun; the shipping industry, which included the railroads, provided better rates to those who shipped in larger amounts. Across the nation, Granges and Farmer's Unions formed so that the smaller farmers could take advantage of bulk shipping and purchasing.³⁶³ These organizations were overwhelmingly male, but many did not exclude women, and the Farmer's Union of Stark County was one which accepted female members. When Mr. Wise sued the Union, he named seventy-four members of the Union as "partners by the style of Farmers' Union," including two women who were not the wives or daughter of any of the other members.³⁶⁴

Although the women of Stark County approached the national average of seventeen to twenty-one percent of criminal activity being performed by women, females remained fairly well-behaved in the 1870s, accounting for only eighty two of the 514 criminal cases.³⁶⁵ However, in the civil courts they were even more active than in the past; of the 6,390 cases entered in the dockets during the seventies, 2,425 included or were brought by or against women. This is just under thirty-eight percent of

³⁶³ See Lawrence Goodwyn's *The Populist Moment: A Short History of the Agrarian Revolt in America*. (New York: Oxford University Press, 1978.) for a discussion on the development of the granges.

³⁶⁴ Appearance Docket G-2. #493, 25 September 1860. Hiram A. Wise v (seventy-four individuals named) "partners by the Style of 'Farmers' Union." The case was dismissed in October when the "payment was made in full."

³⁶⁵ For national statistics see especially Messerschmidt and Warren.

the cases and represents the highest percentage of women to men coming to court voluntarily.

The increase in court activity by Stark County women may have been spurred by the continued evolution of married women's property rights; by 1873 a redefinition of the duties, obligations and privileges of husbands and wives included:

3108: The husband and wife owe each other mutual respect, fidelity and support.

3109: The husband is the head of the family. He will choose where the family will reside.

3110: The husband will support his wife and children. If he is unable to do so, the wife must assist him in any way she is able.

3111: Neither the husband nor the wife has any interest in the property of the other . . . but neither can be excluded from the other's dwelling.

3112: Either party may make contracts alone or together, which either might if unmarried.

3114: Either may take, hold, and dispose of property, real or personal, the same as if unmarried.

3115: Neither is responsible for the actions of the other.

3116: the husband does not have to care for his wife if she abandons him unless she was justified to leave him by his misconduct.³⁶⁶

Dockets from the 1870s contain evidence that the women of Stark County were not only accustomed to, and comfortable with the court, but that they had come to consider the court one of the institutions to which they could adjudicate even the most personal and private of family issues. In what might be seen as a frivolous use of the courts, sisters Mary and Sarah Manly fought openly over minor insults and injuries to one another's feelings and dignity. The court recorder declined to record the details of cases such as that brought by Mary Manly against her sister, Sarah Ann Manly for a civil

³⁶⁶ Bates, 1776-1777.

tort.³⁶⁷ Although they settled out of court, the fact that Mary was willing to file the charges and pay the court's costs, which brought automatic exposure to the family's activities in the local newspaper, shows that the court had come to take the place of the father or other family member in adjudicating what historians have assumed to be entirely domestic matters between women.

It is noteworthy that the 1870s was also a time when men, like future President of the United States, William McKinley, Jr. began to guide the county's legal, economic and political structure towards a more equitable system that, not necessarily intentionally, addressed the needs of women while still encouraging high moral standards. McKinley within the same year represented women attempting to gain financial security for their illegitimate children, represented the state in prosecuting women for bad behavior, such as keeping rooms of public resort for the sale of intoxicating liquors, and represented women trying to escape bad marriages.³⁶⁸ This is the decade in which a woman first appears as the "next friend" of a male before the court. Elizabeth Hartman served as proxy for her younger brother, Isaac, in a suit for financial redress against John and Isaac Stripe and the City of Canton. The case was divided, and in the first trial, which went against the City of Canton, the jury awarded

³⁶⁷ Appearance Docket R-2. #182, 26 August 1871. Mary Manly v Sarah Ann Manly, Civil Action. The case was settled out of court, 11 November 1871, "each party to pay their own costs."

³⁶⁸ Appearance Docket P-2. #51, 26 February 1870. Maggie Nicholet v Preston Shine, Bastardy. (Shine pled guilty and was ordered to pay \$500.00.) #90, 8 March 1870. The State of Ohio v Bridgete Mangon, Keeping rooms of public resort for the illegal sale of intoxicating liquors. (Mangon pled guilty and was fined \$50.00 and costs.) Appearance Docket P-2. #390, 26 September 1870. Martha Gilbert v James Gilbert, Divorce. (The Gilberts worked out their differences before the case came before the court.) McKinley was elected to the Congress in the 1870s, wrote the McKinley Tariff to protect American workers from losing jobs due to cheap imported goods and to protect American businesses from foreign competition.

the plaintiff \$500.00; at the second trial, another \$1,500.00 was awarded Hartman from the Stripe brothers.³⁶⁹

While Hartman took on a city in the name of her brother, there is other evidence that women were no longer intimidated by the overarching political entities around which their lives were organized. Elizabeth James also sued her home town, the Incorporated Village of Alliance, in 1871.³⁷⁰ In 1872, she was awarded \$1,000.00, but the village appealed the case. Although James only received \$600.00 under the terms of the second trial, the village of Alliance was required to pay all of the court costs for both trials.

By the 1880s, women were a regular feature in court. There were 5,317 total cases filed in the decade, of which 1900 named or were brought by women. This accounts for just under thirty-six percent of all cases filed. The women were, however, maintaining their high standards of good behavior; of the 995 criminal cases filed, only forty-three were brought against women, which is just under five percent of the total. The eighties also saw the first female attorney before the court, when Mary Piero was listed as one of the attorney of record in a bastardy case filed in March of 1881.³⁷¹

³⁶⁹ Appearance Docket R-2. #162, 8 August 1871. Isaac Hartman by his next friend, Elizabeth Hartman v Isaac Stripe, John Stripe and the City of Canton, Civil Action. [Vol. 57, 736; D₂, 145.]

³⁷⁰ Appearance Docket R-2. #273, 29 September 1871. Elizabeth James v the Incorporated Village of Alliance, Civil Action. [Vol. 57, 740; D₂, 145.] No reason for the suit was given.

³⁷¹ Appearance Docket 54. #1625, 3 March 1881. Lizzie Grim v John Trump, Jr., Bastardy. This is the only case where Mary Piero appears as the attorney of record for either a plaintiff or a defendant, and her name has not been found on any Bar Association records for the 1880s. There is a Mary Piero listed as the wife of a William Piero, who was an attorney in Stark County in 1912. The 1881 record notes "Meyer and (Mary) Piero." The case was settled out of court. [M₂, 148.]

The last of the surviving Appearance Dockets, designated Docket 65, covering the time span from December 1891 through November of 1892, registered a total of 599 civil cases, of which 218 included women as defendant, co-defendant, plaintiff or co- plaintiff, and of those ninety-one were brought by women in their own name. This means that by the end of the century, over thirty-five percent of the cases included or specifically concerned women. From that same time span, the Criminal Docket showed eighteen men and one woman were charged with crimes in the county court, keeping female criminal activity at just over one-half of one percent of the crimes committed.

By the 1890s, the women of Stark County were comfortable with their court. They were using it to gain control of their bodies, their children, their property and their financial lives, and to stand as nearly-full citizens in their own right. Most importantly, the court cooperated in helping women to declare themselves capable adults, able to guide a family apart from the directives of the men in their lives.

CHAPTER IV

THE COST OF BEING FAMILY: DIVORCE, CHILD CUSTODY, ALIMONY

“Nothing is so delicate as the reputation of a woman; it is at once the most beautiful and most brittle of all human things.” Fanny Burney –*Eveline*

Two advertisements appeared in the 12 April 1821 issue of the Ohio Repository. The first read: “Notice: The subscriber having been divorced from Hezekiah Burhaus and having got clear of his persecution against me and my friends, I now [do] give notice that I will forever divorce the name Burhaus and assume my former name of Anne Sandom.” The second, further down the page and in a corner read: “To all my friends and customers, let it be known that I am now doing business in the same location under the name Anne Sandom, milliner.”³⁷²

The first advertisement was in itself unusual in that divorce was not yet appearing as a regular item on the court’s dockets. That Anne found it appropriate to announce her change of status as well as her change of name seems to go against what we have long perceived about divorced women in the nineteenth century—that they became pariah in the community, someone to be pitied or scorned. In light of this perception, the second ad is quite shocking; rather than hiding her past she is using it to

³⁷² Ohio Repository # 48, Vol. VL, 12 April 1821.

appeal to the community for patronage. What these two brief articles tell us is that for some divorce was not as stigmatizing as we had been led to believe, and that rather than being seen as a woman on the prowl or of low moral character, her status as a divorced woman might have worked in her favor, garnering sympathy from the community for her plight as an abused, but hard-working wife.

Under the terms of the social contracts in place in the nineteenth century, women were considered helpmeets and partners to their husbands, but the partnership was not an equal one. The family hierarchy resembled that of the state, with the man at the head as *paterfamilias*, having almost absolute control over the children, the finances and the wife. Although Edwards argues that those who had domestic authority held it “at the behest of the peace, not in their own right” the tradition of male dominance in the home was centuries old, rooted in “the European past” with ideas stressing “inequality and collectivity” where the family and the state were analogous institutions.³⁷³ And as the founders of the new republic worked to ensure the nation’s survival, they also moved to eliminate discord wherever possible, so that “legislators, judges, jurors, lawyers and testators . . . collectively manifested an impulse to . . . buttress male authority.”³⁷⁴ While churches were becoming more sympathetic to the plight of women in hapless marriages, there were too many denominations for any one church’s tenets to dominate within the community and the churches, themselves still bastions of male domination, were unlikely to exert themselves against men in favor of

³⁷³ Edwards, 7; Norton, 4.

³⁷⁴ Dayton, 67.

women. The best that the churches could do was to provide spiritual guidance and advice in ways that husbands should moderate their punishment and that the women could better serve their men and keep peace in the family. Short of running away, an almost impossible choice for women with no job prospects and especially for those caring for minor children, women had no way to regulate their family life other than to resort to the courts. And, while men also appealed to the courts as an advocate in favor of male control over the family, women came to use the court in Stark County, and by way of witnesses and juries, the community, more and more to chastise their men, or failing that, to make a better life for themselves and their children by removing the men from their lives, and securing their physical, mental and financial well-being. Thus, despite the stigma attached to divorce or the community dismay at even the appearance of discord within marriage, women often went public with their dissatisfaction to seek out the aid of the courts to compensate for their otherwise helplessness and dependency within marriage.

While divorce may have been the true goal for some, the threat of such could be used as a tool to bring an absent spouse back to the home or force an errant one into better behavior. Divorce was very difficult to get without extraordinary circumstances. In colonial America, Bills of Divorcement could be obtained in Pennsylvania in the late 1600s, if the spouse was found guilty of “adultery, incest, bigamy or homosexuality.”³⁷⁵ However, there is no evidence that the governor of Pennsylvania ever used this power,

³⁷⁵ Friedman, 142-143.

and in 1770, the Privy Council of England “disallowed legislative divorces in Pennsylvania, New Jersey and New Hampshire.”³⁷⁶ Before the American Revolutionary War it was sometimes possible to get a divorce, which was really a “divorce from bed and board,” the equivalent of a legal separation. However, this type of separation did not allow for remarriage and any children born while the couple lived in these conditions were considered the legal issue of the husband unless he accused his wife of adultery.³⁷⁷

In Ohio, the first laws allowed for absolute divorce only on the grounds of adultery, impotence and bigamy. Those grounds had to be provable and of a horrendous enough nature that the damage done to the family by the divorce was preferable to the damage being done by the guilty party to the innocent one. As a formal family structure became more and more the norm and the family became the center of social organization, reflecting both commercial and political organization, the need for some way to alleviate the “suffocating intimacy, unbearable demands and high expectations” became necessary.³⁷⁸ While much of Europe was becoming more conservative towards the conditions of the family, as evidenced by Napoleon’s treatment of women under his codes, America was recognizing that divorce could serve as a safety valve for society.

³⁷⁶ Friedman, 142.

³⁷⁷ Friedman, 142; Hughes-Dayton, 108.

³⁷⁸ O’Neill, William L. *Divorce in the Progressive Era*. (New Haven: Yale University Press, 1967.)p. 144.

Initially charges of abandonment and adultery were the best ways for men or women to convince a legislature or a jury that divorce was necessary. While a few legislative divorces had been granted in Stark County prior to the 1830s, mostly to defend a woman or her property from an abusive or reckless husband, civil divorce came on the scene with some vigor in the mid-eighteen hundreds.³⁷⁹ In 1833, the divorce laws were amended somewhat. In addition to the previously mentioned grounds for absolute divorce or divorce from bed and board:

If a woman brings suit and no living children, she regains all her lands, tenements and hereditaments and be allowed out of the man's personal estate such alimony as the court may deem reasonable . . . if there are children, the court may do as circumstances may seem to require. . . . If the woman causes the divorce the court decides what she does or does not get back, decides alimony as shall be thought proper and make distribution between the children.³⁸⁰

In 1843, seven men and ten women filed for divorce, and the court of Stark County found itself competing with both the church and the family as the main arbiter between husbands and wives. Ninety nine petitions for divorce were filed in the 1840s alone, a very large number considering the population of the county was under 39,000 and both the Catholic and main Protestant religions were decrying the appropriateness of divorce or even the state's right to address an issue formerly considered the purview of the religious institutions.

³⁷⁹ For an example of a legislative divorce, see *Ohio Repository*, #48, Vol. VL, 12 April 1821, where the divorce of Ann and Hezekiah Burhaus was made public. The first case filed as "divorce" appears in the dockets in 1843. The first case: Appearance Docket N. #205, 4 May 1843. Daniel Risher v Catherine Risher, Divorce. The case was discontinued 4 September 1843.

³⁸⁰ Chase, 509.

Some of these cases may have been instigated due to a woman's understanding of the Women's Rights Movement of the late 1840s. This movement believed that women required better educations and certain rights "so that women might participate in building a strong society through the teaching as well as nurture of future male leaders."³⁸¹ It also promoted political and legal equality and some of its proponents pushed the notion that marriage was attuned to prostitution, exchanging sex and housekeeping for financial security. In any event, for some the movement would provide the impetus to move away from unhappy or abusive marriages.

Women embraced this new role of the court with much more enthusiasm than the men; with the exception of 1850, there were no years in which more men file than women.³⁸² Furthermore the evidence suggests that while men may have occasionally filed for divorce as a way to control their wives, the women used the court and filing for divorce as a way to control themselves: of the 1719 case of divorce brought before the court during the period covered by this study, 454 were brought by men and 1265 were brought by women. However, of those brought by men, 212 were dismissed, a rate of almost forty-seven percent, while only 406 were dismissed by the women, a rate of only thirty-two percent. These figures are even more significant when one considers that the very act of filing was costly financially, socially, and emotionally; not only were plaintiffs charged a fee even if they failed to prosecute the case to the end, but all court cases

³⁸¹ Bynum, 51.

³⁸² It is possible that 1850 was a backlash year, in which men reacted to women's involvement in the Women's Rights Movement by trying to remove participants from their homes or by coming to realize for themselves that divorce might be an acceptable solution to an unhappy home or an uncontrollable wife.

were reported in the local newspaper, including the nature of the case and, once the court began to register “fault,” the reason for the case. This means that the local community knew of the case, its causes and the eventual outcome.

The people, women in particular, became increasingly accustomed to appealing to the court to end unsatisfactory marriages, but until the 1870s, the number of people who file remained relatively small; on average, the 1840s saw fourteen cases per year, as did the 1850s. 1853 was the year that the next change in divorce came to the state. In “An Act Concerning Divorce and Alimony,” enacted in March, the list of grounds for absolute divorce grew to include a spouse being “willfully absent for three years, extreme cruelty, fraudulent contract, gross neglect of duty, habitual drunkenness for three years, and imprisonment.”³⁸³ Parties were informed of the case at least six weeks prior to the hearing, and if one of the parties was no longer in the area, an announcement was posted in a paper in the local to which it was believed the party had moved. If the woman brought the suit, not only were her lands and other belongings returned to her, she could take back her maiden name, and she was eligible for her dower upon the death of her ex-husband, provided she did not remarry. While awaiting the outcome of the hearing, she was entitled to alimony peduite lite “as deemed appropriate by the court.”³⁸⁴ In addition, a revision made in 1873 allowed that divorces granted by a legal authority in another state a binding in the state of Ohio.³⁸⁵

³⁸³ Swan, 509-510.

³⁸⁴ Swan, 511-513.

³⁸⁵ Bates, section 5689.

By the 1860s, the average annual number of divorces was eighteen, with the last years of the Civil War seeing the largest numbers per year, twenty-two for 1864 and twenty-eight for 1865. These higher numbers can be accounted for in part by the hardships that war causes families. While Ohioans supported the war with some vigor and there have been many excellent studies of the way that women stepped up to fill the jobs left undone by the men who went to battle, these studies have also linked women's wartime actions to the development of reform and rights movements later in the century, indicating that women may have also acquired a taste of independence.³⁸⁶ Certainly the women's activities at home contributed to a better understanding of how the public sphere functioned as they "mapped an alternate wartime geography dictated by the material needs of the war rather than the ideological constraints of gender."³⁸⁷ Women found out that they could farm, replace factory workers, and apply for aid, care for the wounded and even "retrieve loved ones from the battlefield."³⁸⁸ Coming to terms with their capabilities put women into places previously denied them and allowed them to reevaluate and even reconstruct "relations of gender and power."³⁸⁹

Conventions began to change in the 1870s, with more women being granted alimony automatically upon being granted the divorce, and by the end of the decade,

³⁸⁶ Giesberg, Judith. *Army at Home: Women and the Civil War on the Northern Home Front*. (Chapel Hill: University of North Carolina Press, 2009,) 12.

³⁸⁷ Giesberg, 10.

³⁸⁸ Giesberg, 9. The author considers the wartime activities of women to have created for them "alternative and unorthodox sites for political engagement."

³⁸⁹ Giesberg, 13.

child custody reverted to the mother automatically unless it could be shown she was unfit. This was a development of the new sociology, which considered women as the more appropriate to raise children because of their nurturing nature.³⁹⁰ An increase in the number of filings reflected these changes; while the 1870s saw an average of thirty-three divorces per year, the 1880s an average of fifty-five, and in only the first four years of the 1890s, an average of ninety-eight, the ratio of women to men filing for divorce went from 2:1 to over 3:1, and the percentage of cases, female to male, carried through to completion, went from sixty-six percent for both genders in the 1840s, to just under seventy percent for women and just under fifty percent for men. See table three for a graph of these statistics. The more likely it was that women got what they needed from the court in the way of child custody and financial redress, the more likely it was that they carried their actions through to the end. Conversely, as men found themselves less likely to regain their authority through the court's actions, and more likely to lose both custody of their children and a fair amount out of their wallets, the less likely they were to see the divorce through to the end.

Before an examination of who filed, why they filed and who was likely to withdraw the suit before the case was heard before the court, it is necessary to note that the court clerks did not necessarily provide the reason(s) for the withdrawal and that we must recognize that there are myriad reasons why such a withdrawal occurred: the

³⁹⁰ Backhouse, 202. Although the laws in Canada changed more slowly than those in the United States, the changes followed many of the same arguments, which included the idea that "The love of a mother was like the bounty of God. See 202-227 for a complete discussion of the changes in child custody and the arguments for those changes used before the Canadian courts. For a discussion of the scientific basis of child custody see: Galatzer-Levy, Robert M and Louis Kraus, eds. *The Scientific Basis of Child Custody Decisions*. (New York: John Wiley and Sons, Inc., 1999.)

plaintiff may have decided that he/she was unable to provide for themselves or their children without the assistance of the spouse, that the problems that brought the actions in the first place had been resolved, that the plaintiff was intimidated by the defendant into withdrawing the claim, perhaps finding someone to clean house and care for the children was more difficult, or expensive, than thought, etc. This dissertation does not claim that every case that was filed and later withdrawn had been brought to “teach the spouse a lesson,” but that some of the cases certainly were will become evident. Filing for divorce cost money and brought public scrutiny, it was a serious decision that had these consequences even if the case was withdrawn. Yet, when divorce became a civil issue, and women and men both begin to file claims, women were more likely to see the case through; men were more likely to withdraw their case. And, as issues like alimony and child custody are worked out in the courts, and especially as women became the parent who was awarded custody, this pattern becomes more obvious.

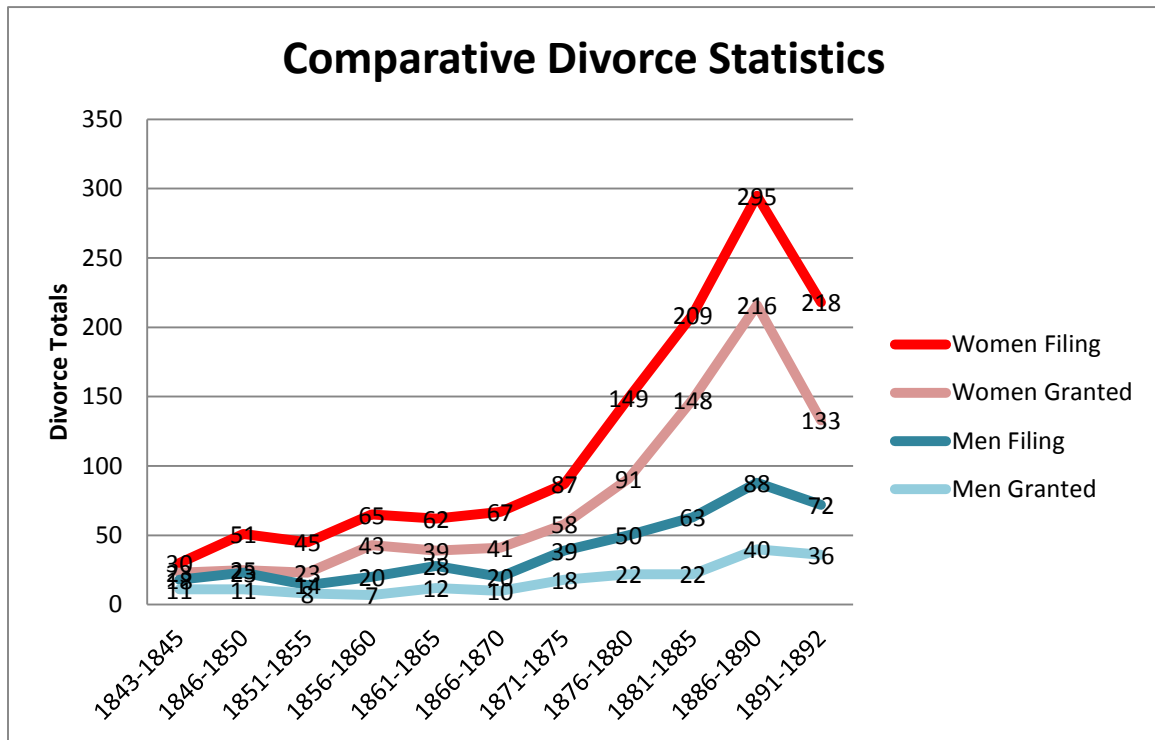


Figure 4.1 Comparative Divorce Statistics

As previously stated, the first cases appear in the dockets in 1843, when seventeen couples came before the court to end unsatisfactory marriages. Two of the seven men who brought suit withdrew their cases, as did two of the ten women. There were no notations as to why three of these cases were withdrawn, but a notation “returned,” tells us something about that fourth case. Matilda Snyder’s husband, Peter, had abandoned her, yet must have remained in the area.³⁹¹ By April of the following year, Matilda discontinued the proceedings and “the couple” was charged with paying the court cost, a somewhat unusual way of putting it, since the notation usually applied

³⁹¹ Appearance Docket N. #222, 19 June 1843. Matilda Snyder v Peter Snyder, divorce (abandonment.) 15 April 1844, “Discontinued at the couple’s cost. Returned.”

cost to either the plaintiff or defendant, but not to both. The clerk made the notation that the cost was paid by “the couple.” “Returned,” seems to tell us that Peter came back to Matilda and that they were acting as a “couple.”

On average, in the first seven years that divorce appeared in these dockets, one-third of the men who applied for divorce dropped their claim, as did just over one-third of the women. However, by the 1850s, the number of women filing and dropping will remain firm at about thirty-four percent, the percentage of men who file and later drop the charges went up to just under 70%.³⁹² These figures fit quite well with national averages, that showed that by the end of the nineteenth century, when women in almost all of the states could act as the plaintiff, and therefore as the innocent party. Women were “plaintiffs in exactly two-thirds of the divorce cases. . .”³⁹³ This may be due to changing economic or familial conditions; as the century progressed, and industry opened its doors to women, and as the extended family structure declined and the nuclear family became more a fixture of the social landscape, the availability of single women able to care for a divorced man’s children might have declined just as the cost of hiring all of a wife’s work done went up.³⁹⁴ But some of this difference could be

³⁹² In the 1840s, thirty-one men brought charges and ten dropped the suits. For women the figures are sixty-eight filed and twenty-six dropped. In the 1850s, thirty-nine cases were filed by men, and twenty-seven were dismissed, while the figures for women were 101 filed and only thirty-seven dropped.

³⁹³ Friedman, 379.

³⁹⁴ Hareven, Tamara K. and Maris Vinouskis, eds. *Family and Population in Nineteenth-Century America*. (Princeton: Princeton University Press, 1978,) 14-15. Hareven and Vinouskis report that the “dominant pattern of household structures appears to have been nuclear,” with seventy-five to eighty percent of families nuclear, twelve to fifteen percent extended, and three to five percent made up of single individuals.

accounted for if men were using the threat of divorce to control misbehaving wives, while women were using divorce as a means of escape.

Moving Out and Moving On

That the community and the court modified their attitudes towards divorce over the course of the 1800s is certainly obvious by the last third of the century. In December of 1879, Mary Caurp left her husband, Philip, and moved in with one of her married sisters. He filed for divorce in February of 1880, charging Mary with gross neglect of duty and willful absence. Imagine Philip's surprise when the court declared it was "granting the defendant a divorce and alimony in the sum of \$1,000.00, and the plaintiff to pay the costs."³⁹⁵ Philip was the head of his household, and as such he thought he had almost absolute authority over everyone in the house. That Mary refused to return to the house when he so ordered her was an almost unthinkable act of disobedience, and that she abandoned her family a certain mark of aberrance. However, Philip's behavior was also under scrutiny by the other men in his community, and that behavior was apparently unacceptable: it seems that Philip was a man with a temper and a love of drink who frequently and publically abused Mary both verbally and physically.³⁹⁶ Such treatment of a woman was not in keeping with nineteenth century expectations

³⁹⁵ Appearance Docket 53. #1205, 6 February 1880. Philip Caurp v Mary Caurp, Divorce-gross neglect of duty and willful absence. 2 June 1880, decree granting **defendant** a divorce and alimony in the sum of \$1,000.00 and plaintiff to pay the cost. (My highlight.) [Vol 77, 247; K₂, 283]

³⁹⁶ Criminal Appearance Docket 1. #259, 9 January 1878. Ohio v Philip Caurp, Assault and Battery. Plead "guilty" to Breach of Peace, fined \$10.00 and ordered to give recognizance and pay cost of \$5.34.

that respectable men moderated their consumptions and treated their charges with justice and compassion.

Of course, one issue that may have had both parties rethinking their decision to divorce was child custody. At the beginning of the century it was assumed that children “belonged” to the father.³⁹⁷ Knowing that she might lose all access to her children was a powerful incentive to rethink divorce proceedings, and could account for a large portion of the cases dismissed by the female plaintiffs early in the century. For a woman to be granted custody before the mid-to late 1800s, she had to apply for custody and prove that her husband was unfit to care for the children.³⁹⁸ By the end of the century, when divorce had become more available even to those outside the upper-class, social thought shifted. As children’s emotional needs for nurturance came to be more and more valued, the mother became the more likely parent to receive custody as women were imagined more able to meet the needs of young children.³⁹⁹

When Mary A Smith left her husband Jacob in December of 1883 he filed for divorce, charging her with willful absence. And, much as was the case for Philip Caurp, Mr. Smith was taken-aback when, in December of 1885, after two years bitter

³⁹⁷ Thatcher-Ulrich, Laurel. *A Midwife’s Tale: The life of Martha Ballard, Based on her Diary, 1785-1812*. (New York: Random House Publications, 1990.) p. 76. Friedman, 379.

³⁹⁸ Leiter, Richard A. *National Survey of State Laws*. 6th edition. (Detroit: Gale Publications, 2008.) p. 429. Further discussion of the issue of child custody can be found in Boyd, Susan B. *Child Custody, Law and Women’s Work*. (Toronto: Oxford University Press, 2003.)

³⁹⁹ This idea became so pervasive that by the late twentieth century, Linda Mayes and Adriana Molitar-Seigl noted that “. . . until recently the prevailing cultural and legal opinion was that the very young children belong in their mother’s care or the care of their closest female relative.” “The impact of Divorce on Infants and Very Young Children.” Galatzer-Levy, Robert M. and Louis Kraus. *The Scientific Basis of Child Custody Decisions*. (New York: John Wiley and Sons, Inc., 1999.) p. 189.

denunciations by both parties, the court granted the divorce and alimony to Mary. But the battle turned truly ugly when the custody of their minor child, Cora Bell, was also granted to Mary. Jacob argued that Mary's willful absence proved her unfit to be a mother and when the court refused to hear an appeal, he, "captured" Cora Bell and refused Mary access to her daughter. Mary was then forced to appeal to the court yet again, filing for a Writ of Habeas Corpus against Jacob for the return of Cora Bell on 12 April of 1886. On the sixteenth of that same month, the child was given over to Mary's care by Sheriff Lee, who removed Cora Bell from Jacob's house. To add insult to injury, defendant Smith was ordered to pay the court costs, \$19.10.⁴⁰⁰

According to our earliest records through the Elizabethan Era and into the nineteenth century, while divorce was difficult if not impossible for women to get, the custody of minor children was automatically given to the father; no additional papers needed to be filed in the case of a husband divorcing his wife- the children followed the father, period. By the time the United States had been founded, an understanding had begun to develop that women were better suited to caring for very young children, those under the age of seven or so. It was not until the end of the nineteenth century that the convention was reversed and, despite the objections of men like Jacob Smith, custody of minor children were given automatically to the mother as long as her

⁴⁰⁰ #2983 Appearance Docket 56. Divorce (willful absence). Jacob Smith v Mary A. Smith. 24 December 1885, divorce, alimony in the amount of \$1,000 and custody of the minor child given to the defendant, Mary A. Smith. Plaintiff to pay costs. #4409, Appearance Docket 58. Application for Writ of Habeas Corpus by Mary A. Smith v Jacob Smith. "Filed. Allowed and issued." [Vol. 96, 410]

behavior otherwise had been appropriate.⁴⁰¹ It is necessary to note that this may not have been the case with African American families, even into the twentieth-century, as women were measured against the “centrality: white, middle-class, heterosexual,” so that authoritarianism in a black woman was not viewed as positively as the same character in a white women. If the paternal grandmother was living in the home, the court was likely to grant custody to the father, who had a “caregiver” living in the home while he worked.⁴⁰² However, the women of Stark County used their new-found-friend, the court, to begin this reversal as early as 1845, when Susan Brumbaugh requested, and was granted, custody of her minor child when she filed for divorce from her husband, John.⁴⁰³ Whether the court granted her request because of John’s propensity towards violence, or because it was in tune with the changing economic conditions of the county, still decidedly rural but with an ever increasing appeal to industry, its decision in her case and those presented over the next twenty years showed that the court had come to realize the importance of a mother to a child’s early development. These cases also showed the increasingly close relationship between the women and the court and highlight the way that the court came to serve the needs of mothers who were no longer wives.

⁴⁰¹ In cases where the wife was charged with drunkenness or adultery as cause for divorce, custody of minor children was given to the father as part of the divorce settlement as late as 1896, the end of this study.

⁴⁰² Boyd, Susan B. *Child Custody, Law and Women’s Work*. (Toronto: Oxford University Press, 2002,) 14-15.

⁴⁰³ #8 Appearance Docket P. Divorce. Susan Brumbaugh v John Brumbaugh. In addition to the divorce filing, an injunction was granted to keep John away from the rest of the family.

Pay me now-Pay me Later

The first record of suit for alimony appeared in November of 1849, when Jane Britton filed for alimony from her husband, Martin.⁴⁰⁴ Her suit was stricken of the dockets in May of 1850, after Martin and his lover were sentenced to the state penitentiary for shooting with the intent to kill, making the collection of alimony impossible.⁴⁰⁵ Despite the outcome of this first case, the state and the juries which represented the people were willing to grant women the money that they needed to live independent of their husbands. Indeed, it was not always necessary to file for alimony; in May of 1851, Salome Raver was granted the divorce she had filed for in October of 1850 and as an added bonus, was awarded \$300.00 in alimony.⁴⁰⁶

Payments were often given in one lump sum, with amounts ranging from the \$300.00 granted Salome to the over \$5,000.00 granted to Christine Willard.⁴⁰⁷ However, it was possible to have the payments spread out over a period of time, paid monthly, semi-annually, or annually, for years, or even for the life of the woman. Mary Babsty received \$7.50 every six months from her ex-husband, Henry, “during the life of said

⁴⁰⁴ Appearance Docket T. #344, 10 November 1849. Jane E. Britton v Martin Britton, Petition for alimony. 6 May 1850, Bill dismissed.

⁴⁰⁵ Appearance Docket T. #314b, 24 October 1849. State of Ohio v Jane Henry and Martin Britton, Shooting with intent to kill. Both parties pled “not guilty,” but were found guilty. Henry was sentenced to one year and Britton to five years in the state penitentiary. Both appealed their case; Britton was again found guilty but the prosecution filed “Nolle Prosequi” as to Henry 5 May 1851.

⁴⁰⁶ Appearance Docket U. #241, 18 October 1850. Salome Raver v Abraham Raver, Divorce. 5 May 1851, decree for complainant and alimony of \$300.00 granted. [T 158]

⁴⁰⁷ Appearance Docket H-2. #76, 2 April 1861. Christine Willard v Jacob Willard. Divorce. 23 November 1861, divorce granted and alimony allowed in the amount of \$5,000.00.

plaintiff.”⁴⁰⁸ Catherine Butz received \$200.00 within thirty days of the divorce decree and \$300.00 more within one year, with six percent interest.⁴⁰⁹

As was the case in several of the divorce actions brought before the court, some women found that the best way to ensure they received the money they wanted for alimony was to sue not only their husbands but anyone who was involved in business ventures with them. Caroline Ohliger named not only her husband, Louis Ohliger, but his partners. The suit read: “Catherine Ohliger v Louis Ohliger, Henry Trump, Partners under the style of Exchange Bank of Trump, Husfrod, Wise and Company.”⁴¹⁰

Not only did the state come to recognize the need for alimony once the divorce was final, it came to understand that women needed a means of support while the case was being decided, especially if it was continued over a period of time beyond the somewhat traditional six months it took from filing to court decision.⁴¹¹ In cases that were continued, especially after 1867, “Alimony Penduite Lite” was granted until the case was resolved.⁴¹² So, when Christine Munk filed suit for alimony against her

⁴⁰⁸ Appearance Docket A-2. #131, 28 December 1855. Mary Babsty v Henry Babsty, Divorce. 28 July 1856, divorce granted plaintiff and alimony awarded in the amount of \$15.00 annually to be paid every six months, and defendant to pay court costs.”

⁴⁰⁹ Appearance Docket I-2. #1, 4 January 1862. Catherine Butz v Andrew Butz, Divorce. 20 June 1862, Decree of divorce and alimony allowed in the amount of \$500.00 and A. Butz to pay costs. Although A. Butz appealed, he lost the appeal. He paid Catherine \$200.00 on 26 June 1862 and \$318.00 on 2 June 1863.

⁴¹⁰ Appearance Docket M-2. #340, 18 January 1868. Caroline Ohliger v Louis Ohliger, Henry Trump, Partners under the style of Exchange Bank of Trump, Husfrod, Wise and Company. 17 February 1868, dismissed, costs to be paid by the defendants.

⁴¹¹ Although I cannot find anything in the law that required a waiting period, the cases, almost without exception, took between five and six months from filing to completion unless continued by one of the parties.

⁴¹² “Penduite Lite” means “pending litigation.”

husband, John, she was granted what amounted to temporary alimony in June of 1869, which continued through February of 1870, when the case was discontinued at the defendant's cost.⁴¹³

Once it was decided that alimony was appropriate, the court moved to ensure its payment, even when the husbands brought the divorce suit, even when ex-husbands appealed in protest, even when there was no money for the payments. Thomas Powell filed for divorce from his wife, Elizabeth in January of 1865, which he was granted in May. In October, Elizabeth filed for alimony, which the court awarded in the amount of \$100.00. Thomas appealed and demanded a jury trial, which found for Elizabeth, who was again awarded \$100.00.⁴¹⁴ In January of 1861, Monica Guillaume filed a suit for alimony against Marcelen Guillaume; Charles L. Guillaume; Julian, Joseph, Elizabeth and Augustus Gaume; Felix Dousot and Eugene Socie. The case was continued through February of 1866, when Monica was awarded \$500.00 and the defendants were ordered to pay court costs of \$57.43. Since Marcelen was unable to pay the amount awarded, the court demanded that real estate belonging to Marcelen was to be sold, which it was in October of that year.⁴¹⁵

⁴¹³ Appearance Docket O-2. #54, 7 May 1869. Christine Munk v John Munk, Alimony. 29 June 1869, Alimony Penduite Lite granted. [Jol. B₂, 632] Continued 23 November 1869. [Jol. C₂] 28 February 1870, discontinued at defendant's cost. [C₂, 140]

⁴¹⁴ Appearance Docket K-2. #41, 9 January 1865. Thomas Powell v Elizabeth Powell, Divorce. 29 May 1869, divorce granted, plaintiff to pay the costs. [Jol. A, 257] 16 October 1865, Trial by jury for alimony for Elizabeth. Jury returned verdict for the plaintiff for \$100.00. Defendant demands second trial-granted. Plaintiff again awarded \$100.00. [Jol. V, 703]

⁴¹⁵ Appearance Docket H-2. # 20, 23 January 1861. Monica Guillaume v Marcelen Guillaume, et al, Alimony. Continued through 12 February 1866. Court decree for plaintiff \$500.00 and defendants to pay cost. 16 June 1866, sale of real estate ordered. 29 October 1866, real estate sale confirmed.

When Christine Willard was granted a divorce from her husband Jacob in 1861, she was also awarded alimony, in the amount of \$5,000.00. Jacob never fulfilled the court's decree, and in 1863, Christine was back in court demanding the money that she had been promised. The Sheriff noted that "no goods or chattel or cash could be found to equal \$5,000 and therefore real estate is ordered sold. Bought for \$507.00 by Christine Willard as best bid." The sale was approved and the land deeded over to Christine in March of 1863, after which she "relieved" Jacob of any further financial responsibilities to her.⁴¹⁶

Although the court was willing to help women sever their ties to abusive, non-supportive, drunken or criminal men, it was not willing to place any additional burden on the county or community-at-large. Alimony became a regular part of divorce proceedings, and by the end of the 1870s it was no longer necessary to file a separate case for alimony. In many cases a lump sum was awarded, although annual payments were common, as was the addition of the phrase: "to be paid throughout her natural life."⁴¹⁷ And, although a man's land was considered his by almost sacred decree-land being the way a man judged both his worth and his degree of independence- the court did not hesitate to take his land away and turn it over to his ex-wife when he was otherwise unable to pay the court-allotted alimony. Furthermore, the women's dower

⁴¹⁶ Appearance Docket H-2. #76, 2 April 1861. Christine Willard v Jacob Willard, Divorce. 23 November 1861, divorce granted, alimony allowed \$5,000.00. "Sale of real estate [to Christine] approved and deed ordered, 10 March 1863.

⁴¹⁷ #181 Appearance Docket X. Divorce. Mary Cerby v John B. Cerby. Decree from the court that "the defendant pay the complainant alimony, \$50.00 in hand and \$18.75 every three months from and after 8 April 1854 during the complainant's natural life. . . "

was protected, given over as part of the settlement long before alimony becomes part of the divorce proceedings. So, even though the court's actions were not always altruistic, it served as a financial negotiator and legal supporter of women, as did the community to varying degrees.

By the end of the 1800s, divorce was much more accessible than it had been at the end of the 1700s and was available to women even if their husbands had not committed adultery or incest or failed to perform their husbandly duties. In addition, alimony became a regular part of the case, and children automatically were awarded to their mothers. Women were able to remain in their communities after divorce, holding their heads up and, at times, taking part in public life through commercial ventures. Divorce, along with singlehood and spinsterhood, were not experienced by women as disastrous. The court frequently supported women's needs as well as their preferences in marriage and even made provision for their sexual desires and independence as the next chapter, focusing on women's sexual life demonstrates.

CHAPTER V

SEX AND THE SINGLE WOMAN: BASTARDY AND FORNICATION

On December 13 of 1817, two unmarried women brought Paul Beard before the court for “debt and damages” totaling \$2,000.00.⁴¹⁸ The record does not specify why this seemingly high amount was requested. In both cases the jury refused to honor these women’s demands. Just two years later one of these women, Catherine Covinger appeared in the records again, represented by a male relative who petitioned a “case for rescue” against George Beard, senior male relative of Paul and patriarch of the Beard family.⁴¹⁹ Once again the court failed to give the female petitioner satisfaction, commenting only that the two parties should “leave (their negotiation) to reason and the good of the rescue”; the court did not see the conflict as falling within its purview to arbitrate. Despite the court’s preference that the two parties work out their differences in private and that the Covingers’ suit against the Beards is settled outside of the public

⁴¹⁸ Appearance Docket C. #101 [pg.120], 13 December 1817. Catherine Stoker v Paul Beard, \$1,000.00 Debt and damages. #102 [pg. 120], 13 December 1817. Catherine Covinger v Paul Beard, \$1,000.00 Debt and damages. In both cases the jury ruled for the defendant Beard.

⁴¹⁹ The person being “rescued” was one of Catherine’s children, Elizabeth, who was by this time three years old. Her other child was a son, Benjamin. Both children carried the Beard sir name.

limelight, the families' business was soon to become very public.⁴²⁰ Catherine sought to hold the court to what she saw as its duty; she was at least partially successful, perhaps because she appealed directly to the state to present her case. The law encouraged women to bring suit in their own names, since by definition the mother of a bastard child was a single woman and therefore able to sue in her own name.⁴²¹ The state did allow for prosecution by its own rights, but considered that "if the suit is carried on in the name of the state, it should appear to be 'on the complaint of' the female; but it is more proper to carry on the suit in the name of the party complaining."⁴²² The following month, the State of Ohio, acting on behalf of Catherine Covinger, sued Paul Beard to hold him responsible for the maintenance of the two illegitimate children that Catherine had borne him. Perhaps recognizing that there was no more escaping responsibility, Beard "recognized his paternity," and settled \$500.00 on Covinger before the case could be heard by a jury.⁴²³ The State of Ohio's intervention on behalf of Catherine Covinger did not put an end to the conflict, however. In the months that followed, Catherine appeared before the court three more times, once as the plaintiff in a case of slander against Paul Beard, once as the defendant in a case of trespass brought against her by a female member of the Beard family, and once as a witness in an assault case against

⁴²⁰ Appearance Docket C. #286 [pg. 308], 21 March 1819. Catherine Covinger by her next friend George Covinger v Paul Beard, case for rescue. Dissent on petition from the court. Leave to reason and the good of the rescue.

⁴²¹ Chase, 176.

⁴²² Ibid

⁴²³ Appearance Docket C. #319, 6 April 1819. State of Ohio for Catherine Covinger v Paul Beard, Bastardy, maintenance of illegitimate children.

Paul Beard. Finally in November of 1819, Catherine Covinger returned to court as a plaintiff, charging Paul with “non-payment of support for illegitimate children.”⁴²⁴

Although it may appear that the local court was reluctant to aid Catherine, or could not enforce the decisions made in her favor, other women close to Catherine may have been emboldened by the fact that the State of Ohio had taken up her cause and had forced the local court to accede to her point of view. A decade later Catherine’s sister, Elizabeth, charged Caleb Miller with bastardy. Fear of either the court’s actions or of public humiliation was sufficient incentive for Caleb to fulfill whatever promises he had made to Elizabeth, as the case was “Settled by marriage.”⁴²⁵ In both cases the sisters had each insisted that the court intervene on their behalf as women rather than accept the local court’s initial wont to absent itself from the negotiations between men and women on this point.

There are two interesting things to consider about these cases and others like them. First, none of the women who went before the court asking for assistance in raising their illegitimate children were charged with fornication or any other crime of sexual misbehavior. And we know that they were charged thus in earlier times.⁴²⁶

⁴²⁴ Appearance Docket C. #293, 21 March 1819. Catherine Covinger by her next friend Joseph Coviinger v Paul Beard, Slander. #378, 17 August 1819. Mary Beard by her next friend Perdue Beard v Catherine Covinger, Trespass on the [] for woman. #388, 18 August 1819. State of Ohio v Paul Beard, Assault and Battery. #445, 29 November 1819. State of Ohio for Catherine Covinger v Paul Beard, Non-payment of support for illegitimate children. Ordered to pay. 6 October 1820, received by sheriff without division.

⁴²⁵ Appearance Docket E. #310, 28 March 1828. State of Ohio for Elizabeth Covinger v Caleb Miller, Bastardy, Maintenance of illegitimate child. “Settled by marriage.”

⁴²⁶ For a discussion on women and sexual misconduct in the late 1600s and throughout the 1700s, see Mary Beth Norton’s *Founding Mothers and Fathers: Gendered Power and the Forming of American Society*. (Vintage Books/Random House: New York, 1997.) For example, see 67-70 for discussions of specific cases concerning fornication.

Second, and most significant, the women were comfortable enough with the court itself to insist that the court see things from their point of view, even when that meant multiple appeals of the local court's decisions. Although the laws governing bastardy required that any woman not able to provide for herself and her children tell the state who the father was, thereby allowing the state to bring charges against the man, Catherine's father was a landowner in western Pennsylvania, and would have been able to provide such care. It has been assumed that women were not comfortable in the very public sphere that the court represented, and, even worse, that the court acted to reinforce the roles they were expected to play.⁴²⁷ In the colonial era, while regional and religious influence and social status determined to a great degree how the courts would act in cases of bastardy, it was not at all uncommon for a woman presenting charges of bastardy to be charged with fornication by the court.⁴²⁸ Yet few women were charged with fornication and many of the women in Stark County who brought charges of bastardy before the court in the end saw success, even when that success came in the form of an out-of-court settlements, either through marriage to the men they charged, or through a financial settlement "agreed upon by both parties."⁴²⁹ When the

⁴²⁷ Norton, 67-75. Norton discussed the frequent whipping and public admonishments endured by couples who had pledged or "contracted" with each other for marriage and then engaged in pre-marital sex in colonial America.

⁴²⁸ Norton notes that in the Chesapeake, where many women were indentured servants, and so unable to marry without their master's permission, half of all sex crimes prosecutions were for bastardy and only one-fifth for fornication. On the other hand, in New England, where the majority of young ladies were the daughter of free households, half of the sex crime prosecutions were for fornication but only ten percent for bastardy. The women in New England were free to marry their lovers, the indentured servants were not. Norton, 336.

⁴²⁹ This is the way that cases dismissed due to private agreement were noted in the records.

requirements attached to a charge of bastardy are considered, it is remarkable that any woman but the most impoverished would appeal to the court, or that any man but one similarly impoverished or absolutely innocent of the charge would fail to make some kind of private arrangement with the woman. The woman made her complaint directly to a justice, and swore an oath as to the name of the father. She was the “examined and questioned in front of the accused, who may question her himself.”⁴³⁰ The accused could then come to terms with the woman in front of the justice, paying the costs of prosecution, and could be required to post a bond of anywhere from \$200.00 to \$500.00 with the “overseer of the poor.”⁴³¹

There may have been evangelical undercurrents at play here. Collective women’s associations in the 1820s and 1830s had “launched campaigns against a legal and ethical system that allowed men to go unpunished for seducing and abandoning young women.”⁴³² Perhaps Ohio lawmakers saw the double standard that had been applied to issues of sexuality and preferred to charge neither party with fornication rather than charge the unwed mother alone. Instead of subjecting women to persecution and ridicule in the community, the court’s involvement seems to have compelled men to want to settle their cases more quickly and quietly even if it meant making serious

⁴³⁰ Chase, 176. These laws governed cases of bastardy from the inception of Ohio as a territory until 1805, when they were amended to add that “the mother of the bastard child shall be admitted as a competent witness unless she has been convicted of any crime which would by law disqualify her from being a witness.” The law was amended in 1824 to decrease the minimum amount of bond to \$100.00.

⁴³¹ Chase, 177.

⁴³² Dayton, 216.

concessions which amounted to admissions of guilt. Given the number of cases initiated by women, being called out in court apparently humiliated men as much, or more, than women.

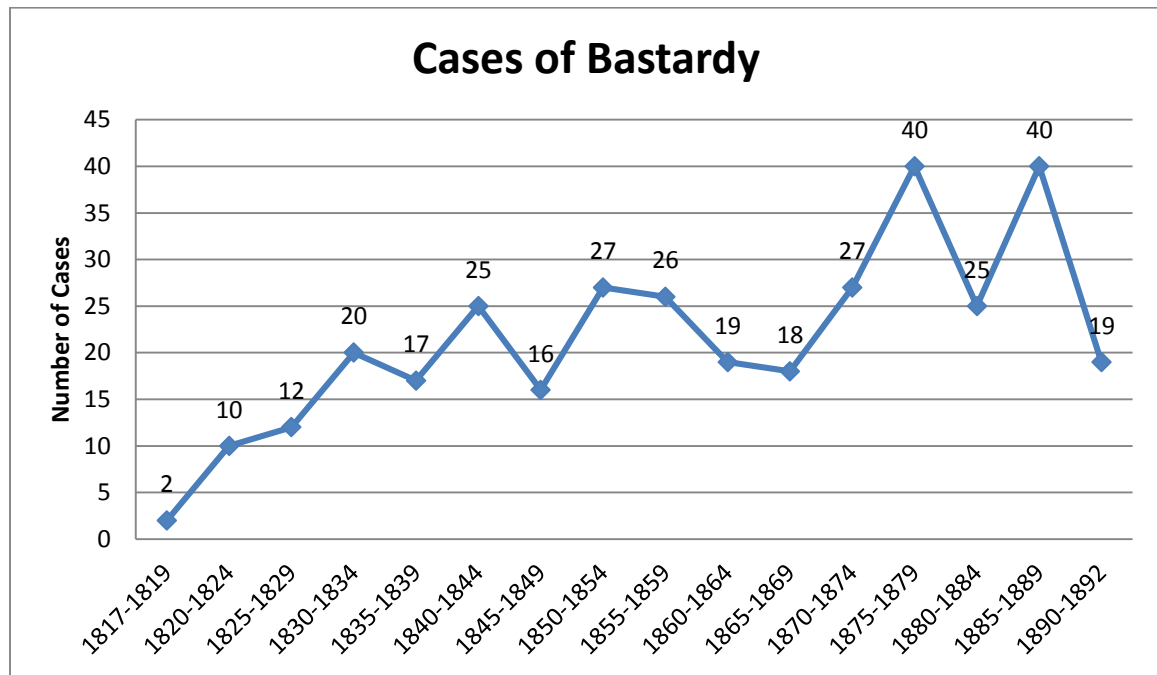


Figure 5.1 Cases of Bastardy

As the century wore on, women's sexual indiscretions were less and less at issue in cases of sexual misconduct that resulted in illegitimate births. See figure 5.2 for a decade by decade tally of the number of cases of bastardy brought before the court, how many were solved by marriage or other arrangements and how many men were found guilty and forced to pay. Even the purity and reform campaigns of the 1870s, which Ohio women embraced, did not seem to have much impact on the morals of the women in Stark County. More women turned the court to their advantage, even when their own behavior was to some degree responsible for their need for protection. The

court was more likely to take action against men who misbehaved sexually than it was against the women. It seems that the court was less concerned about the sexual activities of its constituency than that the results of that activity not become a burden on the community.

That prevention of financial burden on the community was at least one of the considerations in the court's handling of cases of bastardy is evident in the percentage of cases that were won by the plaintiff, by the fact that a man who married a woman pregnant with another man's child was none-the-less considered the child's legal father, and by the fact that the community itself brought charges against the supposed father, should the woman be unable or unwilling to do so.⁴³³ Between 1817 and 1899, 361 cases of bastardy were brought before the court. Ninety-five were settled by marriage, most likely the intended outcome when the women filed suit.⁴³⁴ Another fifty-six were settled by financial arrangements made between the parties before their case came to court, thirty-eight were withdrawn by the plaintiff or "dismissed without prejudice against the plaintiff" when the defendant could not be found by the sheriff to be served, six were dismissed due to miscarriage or death of the child, six cases had no outcomes listed, and thirty-four were settled outside of court with no notation as to the outcome, be it marriage, death of one of the parties, or an outside financial arrangement. Of the

⁴³³ Friedman, 36. Friedman claims that between 1650 and 1760 the "the element of pure punishment for sin declined; the economic point increased." Ohio law declared that "if a woman marries while pregnant or after the birth with her husband knowing the real nature, the man so marrying is conclusively presumed to be the father of the child." Bates, 2931

⁴³⁴ Several of these cases were brought initially as breach of promise. See, for example, Appearance Docket I. #130, 6 May 1837. Elizabeth Nelson v Joseph Shelling, Breach of Promise. 10 July 1837, case dismissed by plaintiff, couple married, child legitimized.

126 cases that made it before a jury, only nine defendants were found “not guilty,” despite the fact that the woman had to provide almost overwhelming proof that the man accused was her only sexual partner and therefore the only man who could be the father of the child or children. All of the remaining 117 cases found for the plaintiff were awarded payments for maintenance of the child or children. The cases that were brought from 1817 until 1819 were brought for the women by their “next friend,” (their closest male relative or guardian). From 1819 until the early 1840s, such cases were brought by the State of Ohio, taking the burden off of the next friends, and to some degree, the women, by putting the burden of filing on the state.

Eliminating burden to the community was also the goal when the city or township of residence of the unwed mother sought financial security for the illegitimate children living within its borders. Such was the case when Marlboro Township brought charges of bastardy against Marinus Hart (the mother was not named in the docket.) This case was settled out of court, although Hart never paid the amount that he had agreed to in the settlement and eventually disappeared before the township could charge him a second time.⁴³⁵ When Holsten Eachus found himself the defendant in a case of Bastardy brought by Perry Township, he decided to make a settlement upon the mother of his illegitimate child rather than take his chances with the court.⁴³⁶

⁴³⁵ Appearance Docket N-2. #200, 6 October 1868. Trustees of Marlboro Township v Marinus Hart, Bastardy. 28 February 1870, settled at defendant’s cost. 26 December 1871, “Returned wholly unsatisfied” by Sheriff Dunbar.

⁴³⁶ Appearance Docket Z. #36, 24 March 1855. Trustees of Perry Township v Holsten Eachus, Bastardy. 29 March 1855, dismissed at plaintiff’s cost, settled with township.

Payments for the care of illegitimate children, while not intended to make life overly easy on the mother, none-the-less reflected an amount appropriate to the day, and was intended to help care for the child for the first five to seven years.⁴³⁷ This allowed time for a woman to marry or develop a marketable skill and find work in or outside of the home. Also by the time a child was seven it may have attended school for at least part of the day during part of the year, and was considered old enough to contribute to its own care. Although the vast majority of payments were given over to the mother, it was clear that the money was intended for the care of the child or children. The State of Ohio represented Katherine Vestrick in a claim of bastardy against Henry Vestrick. Although Henry pled guilty, the money awarded was not given to Katherine, but to “the person having care and maintenance of the child.”⁴³⁸

In some cases a lump sum was settled on the mother, the majority ranging from \$137.00 to \$500.00, although the most common being \$300.00. This amount was payable all at once, annually or quarterly, although the amount was in some way connected with the man’s ability to earn. Melvina Shreaves received \$300.00 from William Kilgor, who pled that \$500.00 was “beyond his means.”⁴³⁹ On occasion a weekly

⁴³⁷ After 1850, all cases that award payments in term were for seven years.

⁴³⁸ Appearance Docket L. #233, 7 November 1840. State of Ohio for Katherine Vestrick v Henry Vestrick, Bastardy. \$200.00 awarded, \$30.00 given at the time to the clerk and \$170.00 balance to be paid in weekly installments to “the person having care and maintenance of the minor child. I was not able to find what the relationship was between Katherine and Henry. They were not wife and husband, but could have been brother and sister, father and daughter or niece and uncle. There were no cases of incest brought with these names, so the mystery remains.

⁴³⁹ Appearance Docket Z. #35, 24 March 1855. Melvina Shreaves v William Kilgor, Bastardy.

allotment was made, as in the case of Molly Williams, who received \$25.50 up front and fifty cents a week for the next seven years from John Kryder.⁴⁴⁰

As the century progressed and the cost of living rose, so did the standard payment amounts allotted the women. In 1826, when the average annual income in the United States was \$239.00, John Black was ordered to pay Sarah Longabaugh \$18.50 within thirty days and \$6.50 every quarter until 1831, for a total payment of \$148.50. By the 1860s the court had no qualms about ordering Hiram Shanafelt to pay Lemma Ann Skusser \$100.00 within sixty days and \$50.00 per year for the next five years, a total of \$350.00.⁴⁴¹ By the end of the century, when the annual income had gone up to an average of \$1233, William Smith settled with Elizabeth Wishman for an amount of \$600.00, which he opted to pay all at once.⁴⁴²

That the child or children's best interests were of concern to the court can be seen especially well in the following case. Anna Dingler, a singularly unhappy unwed mother, sued John Vanskopske for bastardy in February of 1889, by which time women were getting custody of children in divorce automatically. Yet, when John admitted that he was the father of the child and offered an amount to Anna, she turned him down,

⁴⁴⁰ Appearance Docket E. #159, 24 October 1826. Molly Williams v John Kryder, Jr., Bastardy. John pled "guilty."

⁴⁴¹ Appearance Docket E. #133, 13 August 1826. Ohio by the complaint of Sarah Longabaugh v John Black, Bastardy.

⁴⁴² Appearance Docket 64. #7648, 6 May 1891. Elizabeth Wishman v William Smith, Bastardy. 12 November 1892, settled \$600.00 to Elizabeth.

offering him the child, instead. The court approved of John's offer to adopt the child and the paperwork was completed the same day.⁴⁴³

Although it is evident that the main reason the court was so supportive of the women's claims against the men who had impregnated them was economic, it was not entirely without compassion. In March of 1836 Barbara Dell charged James Allman with bastardy. The child died soon after, and although the court clerk noted the case as "Complainant defaulted," he also noted that the court ordered Allman to pay for the funeral.⁴⁴⁴ However, none of these cases show the courts approval for the misbehavior of Stark County's residents. Men and women alike were liable to find themselves on the wrong end of a court action or criminal charge if their actions were too blatant or public to ignore. While more men than women were charged with what were considered crimes of sexual misconduct, women were not immune, and certainly not all of the men who could have been charged, as evidenced by the number of bastardy cases, were.

"Give me chastity and continence-but not yet"⁴⁴⁵

Rachael Burns, Matilda Henry, Anna Dingler and Emma Wise, along with the two Covinger women mentioned earlier in this chapter, all brought charges of bastardy before the court. In 1851, a jury awarded Matilda \$300.00 for child support to be paid

⁴⁴³ Appearance Docket 62. #6256, 25 February 1889. Anna Dingler v John Vanskopske, Bastardy. 8 November 1889, settled at defendant's cost and he adopts the child. [X₂, 396]

⁴⁴⁴ Appearance Docket H. #193, 16 March 1836. Ohio for Barbara Dell v James Allman, Bastardy. Complainant defaulted, child died. Allman ordered to bury." 11 November 1836, "Returned no goods or chattel where on to bury."

⁴⁴⁵ St. Augustine.

quarterly. A different jury in 1856 awarded Rachael money, but the father of her child, Pius Shepard, had no assets except for a parcel of land. The court ordered the land sold and the money given over to Rachel to care for the child. Anna Dingler's child was adopted by its father, John Vanskopske in 1889 under terms "agreed upon by both parties," and that same year, Emma, "a minor under the law," was awarded \$500.00 by the jury which determined that Barney Anderson was indeed the father of her child. Catherine Covenger's case we already know about, and her sister Elizabeth eventually married Caleb Miller, the man she claimed fathered her child.⁴⁴⁶

Studies have found that pre-marital sex was not uncommon among engaged couples even in the Victorian period, although it was not expected between casual acquaintances.⁴⁴⁷ Women became pregnant before they were married, and perhaps most of them simply explained the early arrival of their infants as seven-month babies. However, the relatively large number of cases of bastardy brought in Stark County over the course of the nineteenth century tells us that sex without the benefit of marriage, or even the promise of marriage, was more common than previous studies might have indicated. Some of the women charged their lovers with breach of promise and forced them to marry or suffer the consequences, usually a hefty fine, the majority of which was turned over to the plaintiff. But many women chose to air their dirty laundry in

⁴⁴⁶ #319, Appearance Docket C, State of Ohio for Catherine Covinger v Paul Beard; #310, Appearance Docket E, Elizabeth Covinger v Caleb Miller; # 53, appearance Docket V, Matilda Henry v Benjamin Switzer; #61, Appearance Docket B-2, Rachael Burns v Pius Shepard; #6256, Appearance Docket 62, Anna Dingler v John Vanskopske; #6520, Appearance Docket 62, State of Ohio for Emma Wise, a minor under the law v Barney Anderson.

⁴⁴⁷ See Norton or Bynum for discussions on premarital sex.

public by bringing charges of bastardy against their former lovers, knowing that they would be named in the papers, knowing that the entire community would be aware of their “shame,” knowing that there was a possibility that they would lose their case. So, why did these women, many of whom were not from the lowest economic class, but from land-owning farm families, appeal to the court for help in acquiring the financial assistance they needed to raise their children? Part of the answer is that it was no longer acceptable for “Pa” to march a prospective son-in-law to the altar at the barrel of a shotgun, but another part of the answer is that the court was sympathetic to the plight of these women and aware of the burden that they might be to their families and the community. Again, these cases seem to tell us is that although the court was involved in regulating the family, it was much less interested in what went on behind closed doors than it was in the results of the activity, and that it was more interested in controlling men’s actions than women’s.

“A man, at least, is free; he can explore all passions . . .”⁴⁴⁸

These words, taken from *Madam Bovary*, may have reflected the perceptions of post-Napoleonic Europe as well as much of the United States in the early 1800s, but Absalom Craig likely disagreed with this comment. Craig was convicted of adultery in August of 1826 and was ordered imprisoned in “the dungeon of the county jail for ten days, fed bread and water and to pay the cost of the trial,” which was \$16.61.^{5.449}

⁴⁴⁸ Gustave Flaubert. *Madame Bovary*, 1857.

⁴⁴⁹ #108, Appearance Docket E.

Likewise, Jared Palmer, of Bradford County, would have disagreed with this perception that men were permitted more license than women. His conviction on charges of adultery were published in the Ohio Repository, where his fine of \$100.00 and court costs and his three month prison stay were printed for all of Stark County to see. He was referred to as a “fiend in human shape” who “prostituted the Holy Scriptures” in his “unhallowed purpose by frequently reading passages to her to prove that her intentions were laudable.”⁴⁵⁰ It was not mentioned in the paper why a Bradford County case was exposed in the Stark County paper, and the woman so defiled was not named. Apparently women were not so treated by the press, perhaps because of their supposedly more delicate nature, or the impropriety of denigrating any woman in public. In any case, the only woman to be convicted of adultery by the court in the entire period under study was Cynthia McCaddeu. The jury found her guilty in October of 1877; she was fined \$30.00 and sentenced to five days in the county jail. She filed an appeal and her sentence was suspended until the new trial. In January of 1883, the court decided not to retry Cynthia, and she was released “of all duty” to the court.⁴⁵¹ Cynthia’s case may reflect first the development of the purity and reform campaigns of the 1870s, and then the conflict between reformers around issues of sexuality. IN any event, McCaddeu’s case did not make the paper. As anti-prostitution leagues and temperance movements gained momentum, so too did the women’s rights activists

⁴⁵⁰ Ohio Repository Friday, 18 March 1825.

⁴⁵¹ Appearance Docket 1. #242, 7 September 1877. State of Ohio v Cynthia McCaddeu, Adultery. Found guilty by a jury and sentenced to five days in the county jail, fined \$30.00 and ordered to pay court costs of \$55.93. She filed an appeal, the sentence was suspended until the new trial, and in January of 1883, the prosecutor decided against retrying the case, and entered Nolle Prosequi to the case.

who called for women to have a say in who they had sex with and when such activities were appropriate.

Throughout the nineteenth century men were brought before the court for criminal adultery, and while in most cases the court declined to prosecute, in those cases where the defendant was found guilty, the sentence always included a fairly stiff fine and at least a few days in the county jail. It is not that this sexual misconduct was confined to men; adultery was brought as a civil charge against men and women alike in divorce court, although much more frequently against men than against women. What is interesting is that while the court respected the marriage bed and had little forgiveness for those who violated it (adultery and habitual drunkenness were two charges that caused a woman to lose custody of her children even after the time when the court was giving custody to the mother automatically,) the court did little to control this behavior in women. Except for the unfortunate Mrs. McCaddue, the court turned a blind eye to the misadventures of married women who strayed beyond the confines of their marriage. Technically, every woman who did not contest charges of adultery in divorce court could have been criminally charged with adultery, but the court chose not to bring these charges. Whether to keep the court from becoming embroiled in the sordid affairs of the community or because the missteps were not considered as egregious as we might have thought, the sexual behavior of the women of Stark County was of less concern to the court than was the sexual behavior of the men, and of less concern in general than it had been in the various local courts of the colonies in the 17th

and 18th centuries.⁴⁵² The exception concerned women who ran bawdy houses or brothels, called houses of ill repute or houses used for illicit behavior in Stark County. These cases will be discussed in the chapter on criminal activity.

Perhaps it is with the cases of fornication, cohabitation and seduction that the court's, and the community's, real attitudes about sex outside the sanctity of marriage can be found. Susanna Sweeny was charged with co-habitation by the State of Ohio in November of 1834 but the jury found her "not guilty"; the man she had lived with, Robert Robbins, was charged with fornication in April of 1835. He "could not be found to be served." John Braunbaugh and Rebecca Spidle were charged with "living in a state of fornication" and both pled "guilty." Spidle was given a fine of \$5.00 and put in the county jail for forty-eight hours. Braunbaugh was fined \$50.00 and imprisoned for ten days. George Blank was charged with seduction in 1877 but convinced the jury that his victim had "gone willingly and knowingly into the encounter." William Morgan was charged with seduction in 1878 and tried the same ploy, but in his case the woman had been deemed insane by the court earlier in the decade. The only reason the court decided not to prosecute was because Morgan had been found "already in jail" when the sheriff went to arrest him. Samuel Ryan was charged with "seduction under the promise of marriage" and the case was dismissed only after proof of the promised marriage was provided the court. One of the last cases of criminal adultery recorded in

⁴⁵²To understand how women adulterers had been treated through various eras and regions, see Norton's *Founding Mothers and Fathers* for a discussion of the colonial era; Bynum's *Unruly Women* for the antebellum South, and for an examination of issue from a northern nineteenth-century perspective, see Daniel W. Stowell's *In Tender Consideration: Women, Families, and the Law in Abraham Lincoln's Illinois*. (Urbana and Chicago: University of Illinois Press, 2002.)

the century was Ohio v Mary Alice Brown and Morris Buss. The actual charge was “Cohabiting in a state of adultery”; the court declined to prosecute. And, finally, in 1892, Mina Kairn appeared in the dockets for fornication, but no indictment was brought.⁴⁵³

Prostitution has not been discussed in this chapter. There are two reasons for this. First, although the activities of prostitutes were certainly not seen as acceptable, they were also not yet illegal. Women were charged with adultery, fornication, or cohabitation, but none were charged with prostitution. One way to halt the world’s oldest profession was to charge women caught walking the streets with vagrancy, which meant that the person had no visible means of support. None of the women considered in this study were charged with vagrancy. The women who were brought before the court because they had been caught engaging in illegal sexual activities for a profit were charged with keeping a house of ill fame or ill repute. Prostitution was an economic activity, and there was a fear that legislation that outlawed one kind of economic activity might lead to legislation against other economic activities. It was the late 1800s and early 1900s before most states had written specific legislation against prostitution.⁴⁵⁴ Secondly, with one exception, all of the women charged with keeping a house of ill fame or ill repute were married women.

⁴⁵³ Appearance Docket G, #390, 4 November 1834, Ohio v Sussana Sweeny. Appearance Docket U, #190, 8 August 1850, Ohio v John Braunbaugh and Rebecca Spidle. Criminal Appearance Docket 1, #240A, 28 August 1877, Ohio v George Blance. Criminal Appearance Docket 1, #255, 9 January 1878, Ohio v William Morgan. Criminal Appearance Docket 1, #850, 20 May 1887, Ohio v Samuel Ryan. Criminal Appearance Docket 1, #1139 and 1140, 20 May 1891, Ohio v Mary Alice Brown and Ohio v Morris Buss. Appearance Docket 1, 27 April 1892, Ohio v Mina Kairn.

⁴⁵⁴ Friedman, 444-7.

What these cases can tell us is that although the court had some interest in discouraging couples from living together without the benefit of at least a civil union, and in protecting the sanctity of marriage and, perhaps, the reputation of its women, its concern was only seriously aroused when the transgression was blatant, as with cases of prostitution, when a promise was broken, or when the woman involved was unable to make an informed and mature decision concerning her sexual activities.

CHAPTER VIII

CONCLUSION

Even before Mrs. Gunnett appeared in the Stark County Courtroom in 1821, the courts had become a familiar venue for the women of North America. Much of the courtroom activity that included women helped define their place in society and the behavior that was considered appropriate for a woman; loyalty to husband and hearth, helpmeet not just to their families but also to their communities, and pureness of thought and action. The courts had also been intervening in the family by protecting women's dower and ensuring that married women, although "one" with their husbands, would not become a drain on society if abandoned by their husbands through death or desertion.

The legal necessities of the colonial period had on occasion undermined the traditional prerogatives of patriarchs. Colonialism and life on the frontier often necessitated a certain amount of independent action by all women, and accommodations were made to ensure the economic success of the colonies while attempting to maintain a traditional familial power structure that rested on paternalism, if not quite the firmly defined patriarchy of the Old World. Single women, especially of the lower class, were taught early to move into the public sphere, for example, by being allowed to make contracts and own property, and by being required to bring charges of

bastardy against the father of their illegitimate children. When or if those women later married, they already knew to look to the court as a place of redress.

Inheritance laws would change to allow for a more equitable division of land and property and prevent the economic hardships that were often experienced by the non-inheriting wives and children under the system of primogenitor. With the Revolution, and a shift from mercantilism to nascent capitalism, there was a need to both protect the new nation by integrating its ideologies into the general public's mindset and to expand the economic system into one of national proportions. In order to accomplish this, the legislators would both continue to limit the contact that married women had with the public sphere and aggrandize their role as Republican Mothers, whose most important function was to raise the next generation of good, patriotic capitalists.

Although defining the new nation as a democratic republic, the system was still to a large degree patriarchal, and certainly paternalistic, even towards men of the non-landowning lower, working classes, and certainly for women. So, by the time Mrs. Gunnett entered that courtroom, women were still recovering from the legal, political and economic losses that they had incurred as a result of the Revolutionary War. While much of society still considered the proper place of women to be found within the boundaries defined by Republican Motherhood, doing their part as good citizens by raising sons who would themselves uphold the ideals of the nation, the diverse regional backgrounds of the settlers in the Ohio country and the independent nature they brought with them further picked away at those boundaries. And although studies have shown that those boundaries were no longer firmly enforced, the ideal still said that

being good Republican Mothers meant that women divided their time between home, church and local social gatherings. It was not considered appropriate, especially for married women, to take part in public life in its legal or political aspects except as needed to resolve issues that threatened a stable society and healthy economy, and its economic aspects only as much as necessary as to not be a burden on society.

Many of the problems that attached to the nation, although felt in Ohio, were not as devastating for the residents of Stark County as they were for others, even in other parts of the state of Ohio. For example, there was a national financial crisis that began with the War of 1812, and continued through the 1820s and into the 1830s. As an integral part of the great national experiment in state-building, Ohio was hit by that crisis, but even though the development of new towns came to a halt during this era, Stark County did not suffer unemployment at the same rate as much of the nation. Perhaps the fact that the county remained heavily rural and agricultural throughout the century had some influence on this phenomenon. In any event, the women of Stark County continued their activities in and out of the home, and the court.

Religious reform and economic development went hand-in-hand in the nation and Stark County reflected both with diverse and active church communities. But just as women's groups and national organizations were agitating for the control or abolition of alcohol, the canals were bringing more rough and hardy drinking people to the area. By the time the first women's rights movement had achieved a full head of steam in the late 1840s and early 1850s, Stark County women were gathering in public by the hundreds, attending rallies in Salem and Akron, learning the rules of organization, and of

fund-raising. They also understood that significant change required an appeal to the men as legislators in order to codify the adjustments that the women needed to be made to either further protect their place in the home, or to clarify and expand the definition of republicanism.

At the same time, divorce became a civil issue, which forced more people to appeal to the courts: getting a divorce meant that the innocent party had to sue the guilty party. Although the argument can be made that the new divorce laws were actually intended to strengthen the paternalistic undercurrent that flowed through society by ensuring that even those women who had made a bad choice in providers would be protected from abject poverty, or from becoming a drain on local treasuries, these laws also showed a better understanding of how republicanism was expanding into a wider portion of society. For republicanism to work, the people needed to trust that the voluntary contract that they had with the government, expressed in the election of legislators that the people then expected to act in the public's best interest, would be upheld. When marriage was made a civil action, it became a contract between two parties; as all contracts must be entered into voluntarily to be valid; parties that believed the marriage contract had been violated also needed a way to set the contract aside. By making divorce more easily obtainable, the legislators may have been supporting paternalism or republicanism, but in either case, more readily obtainable divorces propelled the women into the public, both through the court system and the local newspapers, which reported the cases on a regular basis. One more private issue, which previously had been handled by the church authorities or by the civil authorities

on a case-by-case basis, had been forced into the public sphere. In addition, the 1840s saw the Married Women's Property Acts come into play, and whether these acts were written to clarify issues of their husband's debt, protect the women from men who proved unable or unwilling to support them, or to expand the role of all women in the development of the nation, these laws pushed even more women into court.

In the 1850s the Ohio Constitution was rewritten, and one of the changes allowed for tighter control on alcohol. During that same time period stricter Fugitive Slave Laws were written that Ohio tried to circumnavigate with Personal Liberty Laws, which, although struck down by the Supreme Court, reflected that independent nature and an appeal to equity. Women protesters would agitate against alcohol, and abolitionists would lay more lines in the Underground Railroad right through Stark County. The women agitators had men and women alike arrested for the illegal sale of alcohol and violations of the state's liquor licensing, making them the parties which propelled women into the public sphere, but the Stark County Court, acting with the independence that seemed a hallmark of the Ohio people, frequently sent the accused on their way unpunished but with more experience in the public space occupied by the court. Employment opportunities for women continued to expand, and in 1860 the census "shows 9,853 women employed in Ohio," including "1,602 tailors, 7,160 seamstresses, and 1,990 milliners."⁴⁵⁵ In addition, they worked as domestics, and in the

⁴⁵⁵ Booth, 20.

“chewing gum, paper box, laundry and paint industries . . . and paper mills.” They even edited newspapers and wrote articles for them.⁴⁵⁶

In the 1870s, when purity and reform movements swept the nation, and a financial crisis hit that had people in the upper classes moving to control the actions of the immigrants and lower classes, Ohio was still in pretty good shape. Ohio produced upwards of \$700,000,000.00 worth of farm produce, horse and cattle herds, and industrial output. Perhaps it was still that cocky independence supplemented by a feeling of economic self-sufficiency held by Ohioans that prompted the court to dismiss so many of the women brought before the bench, allowing them to wend their way home with nothing less than more experience with the legal system. And, perhaps it was those same feelings that led the Canton legislators to ban not the activities of the female barkeeps, but of the crusaders, who numbered in the hundreds and tended to be of the middle and upper class, putting them at risk of experiencing the judicial system from the perspective of the criminal, rather than from the civil side they may have encountered as wives and property owners.

The women of Stark County appeared before the court for a variety of reasons. Some 507 found themselves before the court involuntarily as defendants in criminal cases, and nearly 350 as plaintiffs in cases of bastardy, which may or may not have been voluntary suits. But over 8,000 women also availed themselves of the court’s services voluntarily, even eagerly, to address issues ranging from financial transactions and property transference to settling questions of broken promises and ending bad

⁴⁵⁶ Booth, 20-21.

marriages. Throughout the nineteenth century both men and women used the county court to enforce gender roles as they were interpreted by society, and women especially used the court to gain agency, to challenge the norms, to exhibit control over their own lives and to obtain some control over the men that they encountered. Though the benevolence societies and reform movements that flourished in Ohio gave hundreds of women of the middle and upper class experience in organizing, collecting and managing money and dealing with the political and legislative elements of society, the courts brought thousands of women of all socio-economic and ethnic backgrounds, educational levels, and religious persuasions into the public space. Through legal, political and economic change, the court continued the tradition that had its roots in the colonial era as the institution that, more than any other propelled women into the public sphere.

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