

"Justice Without Partiality": Women and the Law in Colonial Maryland, 1648-1715

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“JUSTICE WITHOUT PARTIALITY”: WOMEN AND
THE LAW IN COLONIAL MARYLAND,
1648-1715

by

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ABSTRACT
“JUSTICE WITHOUT PARTIALITY”: WOMEN AND
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Monica C. Witkowski

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What was the legal status of women in early colonial Maryland? This is the central question answered by this dissertation. Women, as exemplified through a series of case studies, understood the law and interacted with the nascent Maryland legal system. Each of the cases in the following chapters is slightly different. Each case examined in this dissertation illustrates how much independent legal agency women in the colony demonstrated.

Throughout the seventeenth century, Maryland women appeared before the colony's Provincial and county courts as witnesses, plaintiffs, defendants, and attorneys in criminal and civil trials. Women further entered their personal cattle marks, claimed land, and sued other colonists. This study asserts that they improved their social standing through these interactions with the courts. By exerting this much legal knowledge, they created an important place for themselves in Maryland society. Historians have begun to question the interpretation that Southern women were restricted to the home as housewives and mothers. The research in this dissertation illustrates that the female role in Maryland's legal system refutes this assumption specifically about Maryland women. Studies of Maryland, whether of society, women, or the law, are numerically fewer than studies of other colonies. This includes the other southern colonies. Nevertheless, in the past twenty years, there has been a historiographical shift toward rehabilitating the role women had in society. This dissertation contributes to that trend by illustrating women's agency outside of the household.

Maryland was unique. As the first British colony to allow all Christians freedom of conscience, Maryland had a society that allowed rights for a variety of people. Extending from this point, the Maryland legal structure in the early colonial period allowed women many rights. As the system developed, women learned to understand how to use and abuse the legal system. This is evident in the four categories of crimes in this dissertation. Witchcraft, violent crimes, sexual offenses, and property offenses all involved females in different capacities. It was this experience with these varied cases that helped women from 1648 through 1715 carve out a place for themselves in society.

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Monica C. Witkowski

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Only think on't! A province, an entire people – all unsung! What deeds forgot, what
gallant men and women lost to time!

— John Barth, *The Sot-Weed Factor*

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NOTES

All quotations from primary printed and manuscript sources adhere to the original spelling. Where necessary, punctuation and spelling have been modernized to assist meaning.

All dates in the text are rendered according to the New Style calendar, with the year taken to start on January 1.

Archives of Maryland Online hereinafter cited as AOMOL. This series is ongoing and available on line at <http://archivesofmaryland.net> where volumes, collectively or individually, can be searched electronically.

Introduction

On January 21, 1648, a propertied colonist went before Maryland's General Assembly and "requested to have vote in the howse . . . and voice also." Governor Thomas Greene denied the request and the colonist went away protesting the proceedings of the Assembly.¹ The petitioner was a unique individual who not only served as the Lord Proprietor's attorney, but also as executor for late Governor Leonard Calvert's estate. Since arriving in Maryland ten years previous, this petitioner had appeared before the Provincial Court no less than two dozen times, as plaintiff, defendant, and attorney. There was one other noteworthy fact about this individual. This petitioner with the exceptional legal and political background was also a female. The woman in question, forty-seven-year-old spinster Mistress Margaret Brent, is perhaps best known for her request to the General Assembly, but she was also accustomed to dealing with Maryland's legal system. Brent held property in St. Mary's County and Kent County; she served as attorney or executrix for at least a dozen men and women during her time in Maryland; she managed her own affairs, entering her own cattle mark and taking property claims to court as her own attorney.² Although her individual situation was unique, Brent represented the potential women had for advancement in colonial Maryland. But, was Margaret Brent, her experience with the courts, and her legal acumen typical of Maryland women at the time?

This study investigates the place of women before the bar in Maryland. The main

¹ AOMOL 1:215.

² Lois Green Carr, Women's Career Files, MSA SC 4040, 164-001, <http://www.msa.md.gov/megafile/msa/speccol/sc4000/sc4040/000001/000164/html/sc4040-0164-001.html>, (Accessed January 25, 2010). This included both her brothers Giles and Fulke, Governor Leonard Calvert, his brother Lord Proprietor Cecil Calvert, and men such as Cuthbert Fenwick. See: Land Office (Patent Record), 1637-1651, 2, 530, MSA SM2-3, SR 7342.

question this dissertation aims to answer is: what was the legal status of women in early colonial Maryland? This question seems simple. However, inherent in this straightforward question are a host of additional questions. Did women understand the new legal system imposed on Maryland by colonial leaders? How did women view their role and abilities under this legal system? And finally how did justices, jurymen, and other authorities treat women who exercised their legal rights? This study demonstrates a number of things about women and the law in colonial Maryland. First, colonial women exhibited an understanding of the legal system which was more than superficial. Indeed, the women explored in this dissertation exhibited a sophisticated understanding of the legal workings of the colony. Many colonial women also understood how to manipulate the legal system to procure a more favorable outcome. Secondly, authorities did not disadvantage women because of their sex. In general, these authorities appear to have upheld the law which gave women the ability to establish themselves as knowledgeable legal individuals.

The way women exerted their legal and social agency in Maryland throughout the early colonial period is at the heart of this dissertation. As an analytical category, “agency” is the way a certain “dispossessed” group manipulated the systems around them to gain power.³ Agency also involves the intellectual ability the woman (in this case) used to exert herself in a certain realm.⁴ That realm was the legal realm. As demonstrated through the following cases, women exerted their importance to Maryland society through their understanding of Maryland’s legal system. Women related to the world

³ Cornelia Hughes Dayton, “Rethinking Agency, Recovering Voices,” *The American Historical Review*, (June 2004), 827. Dayton argues that the term agency is not too simplistic or vague and should continue to be used to understand the place of various subjugated groups in society.

⁴ Ronald G. Bodkin, “The Issue of Female Agency in Classical Economic Thought: Jane Marcet, Harriet Martineau, and the Men,” *Gender Issues*, (September 22, 1999), 62.

around them through the legal system. Sometimes they failed, but they always demonstrated their understanding and legal capacity.

The pages that follow explain, through a series of case studies, how the legal system created in colonial Maryland treated women, how well women understood the law, and how the law adapted to deal with the unique circumstances in Maryland. Each case explored herein represents a different aspect of women's interplay with Maryland's legal system. The cases and outcomes varied; yet, each illustrates what level of knowledge women had of the law, how they demonstrated legal agency, and how the legal system responded to them. It would not be correct to say that the legal system completely excluded women's voices. Instead, they clearly understood the law and also understood how they could best use the law when dealing with a variety of situations in their lives.

There are a number of potential reasons for this. The Maryland colony was unique. Although many people assume that Maryland was the "Catholic colony," it was much more. Founders George Calvert, First Lord Baltimore, and his son Cecil, Second Lord Baltimore, were Catholics. They wanted Catholics to be able to worship freely in Maryland, but they also granted religious liberty to all Christian settlers. The 1649 Act Concerning Religion made this goal clear to settlers. This freedom of conscience was meant to apply to more than just Catholics; thus, it is a misnomer to assume that Maryland was founded strictly as the "Catholic colony." In fact, a majority of settlers who first arrived in the colony were Protestant. As a persecuted minority in England, Catholics such as the Lords Baltimore did not aim to legally persecute minorities in society, including women. Additionally, as argued in the following chapter, women

played an important role in early Maryland society. Their numbers, although limited, were necessary to the foundation of a stable society. Not only did women bring civility to Maryland, they labored to create a more domestic society on the frontier, similar to the society that colonists left behind in England. This fact, coupled with the goal of granting some degree of freedom to minorities created a situation wherein women gained legal rights and the ability to exercise these rights.

Recent histories of colonial Maryland women are sparse. Over the past decade, *The American Historical Review*, *The William and Mary Quarterly*, *The Journal of Women's History*, and *The Journal of Legal History* have featured relatively few reviews of works relating to Maryland women or Maryland legal history.⁵ This is particularly true of women in Maryland's earliest years. Over the course of a decade only one author published a monograph dealing exclusively with the status of women in colonial Maryland. The author, Debra Meyers, argues that men gave so-called "Free Will Christian" women of all faiths (Catholics, Arminian Anglicans, and Quakers) more rights than their counterparts did for "Predestinarian" (Puritan) women.⁶ This was mostly because of the religious beliefs of the two groups. Meyers' division of the groups into two neat religious categories is troublesome, particularly in light of the growing body of work regarding Puritan women's growing importance to the church.⁷ Meyers has drawn much criticism from reviewers for failing to completely ground her assertions in

⁵ I chose these journals because they relate specifically to the topic of this dissertation. From 2000 through 2009, the *William and Mary Quarterly*, the leading journal of topics in early American history, featured a number of reviews of books relating to life in the Chesapeake region or women throughout the colonies, but only one review of a work solely about women and only one article dealing with Maryland, albeit not women.

⁶ Debra Meyers, *Common Whores, Vertuous Women, and Loveing Wives: Free Will Christian Women in Colonial Maryland*, (Bloomington, IN: Indiana University Press, 2003).

⁷ One example is Elizabeth Reis' *Damned Women: Sinners and Witches in Puritan New England*, (Ithaca, N.Y.: Cornell University Press, 1997).

evidence, creating false analytical categories, and not extending her conclusions to other, similar settlements in the New World. In spite of these criticisms, historians have also praised Meyers for a number of things. First, Meyers raises the issue of the role of religion in the south as a whole and Maryland specifically. Although some of her conclusions are difficult to prove, she rightfully argued that religion played an important role in Southern life.

Second, and perhaps most important for future works, Meyers uses the underutilized resource of seventeenth-century Maryland wills to argue her point. This source has long been available, but somewhat ignored. Meyers based much of her work on these wills, closely reading them to determine what the authors meant, rather than just what they wrote. By utilizing this source, Meyers opened the door for historians of early Maryland to use sources sometimes ignored by or unavailable to earlier historians. One author who did this is Maureen Rush Burgess. In her dissertation, she relies heavily on internet sources, particularly examples of family histories relating to her topic. She explained in her introduction that “thanks to a rise in computer literacy and an increase in interest in family histories, much more information [is] available to researchers than in even the previous decade.”⁸ Together, Meyers and Burgess have helped introduce a variety of sources into studies of colonial Maryland and have influenced this dissertation.

One of the major difficulties in studying colonial Maryland is the lack of personal sources such as seventeenth-century letters and diaries. These sources, were they present, could help the historian understand how women truly felt about their personal interactions with Maryland’s courts. In the absence of such sources, historians must glean

⁸ Maureen Rush Burgess, “The Cup of Ruin and Desolation: Seventeenth-Century Witchcraft in the Chesapeake,” (Ph.D. diss., University of Hawaii, 2004), 2.

what they can from other sources. Women's voices come to us, and are present in this dissertation, through more official documents, such as court judgment records, wills, land records, and inventories. The Maryland State Archives have preserved these documents admirably; many judgment records have been digitized and are available to the researcher online. The Maryland State Archives are one of the leaders in the practice of putting such sources online. Given the importance of the internet to the researcher, I have chosen to primarily rely on these digitized sources. When they are unavailable, I have relied on original documents available at the Maryland State Archives in Annapolis.

Although these new sources are important, their presence should not lessen the importance of works written before the digital age. Mary Beth Norton has written extensively on early colonial women, particularly women and the law. Several of her works deal solely or heavily with Maryland.⁹ Norton drew her evidence from an extensive database she compiled of many seventeenth-century legal cases that appear in the published Provincial Court records. All of her works on early Maryland focus on how male authorities suppressed women, either by the use of the court system or the political structure. These three works hearken back to her earlier work, "The Myth of the Golden Age," which provided the standard analytical framework for colonial and early American women's historians.

The most important work written on women in early colonial Maryland remains

⁹ Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *The William and Mary Quarterly*, 3rd Series, Vol. 44, No. 1, (January, 1987); Idem., "Gender, Crime, and Community in Seventeenth-Century Maryland," in *Seventeenth-Century Maryland*, in *The Transformation of Early American History* ed. James Henretta, Michael Kammen, and Stanley Katz, (New York: Alfred A. Knopf, 1991); Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society*, (New York, N.Y.: Alfred A. Knopf, 1996).

Lois Green Carr and Lorena Walsh's 1977 study.¹⁰ They acknowledge the difficulties faced by women alone who were susceptible to abuse by male members of society. More importantly, women in the earliest years of settlement had opportunities not available to their contemporaries in England. Single free women had considerable freedom in choosing a spouse, often with the opportunity for upward mobility. Widows gained extensive property and considerable power within their families. As Maryland grew more stable and a native-born population emerged, women may actually have lost social power. In short, demographics and an unsettled social order combined to create circumstances wherein female immigrants had the opportunity to gain some degree of social equality.

This dissertation builds on the work of Carr and Walsh by looking at the ways women dealt with the opportunities and difficulties they found in Maryland. It is important to remember that colonial authorities based Maryland's legal system on that of the mother country. Although historians have agreed that the main goal of those creating a legal system was to mirror England, one historical debate that has galvanized legal historians is whether the colonists imposed English law wholesale on the colony, or whether the founders created a new legal system.¹¹ In general, scholars have concluded that Maryland law was similar to English law, but with characteristics unique to a frontier

¹⁰ Lois Green Carr and Lorena S. Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *William and Mary Quarterly*, Third Series, Vol. 34, No. 4 (Oct., 1977), 542-571.

¹¹ Historians have struggled with this issue since at least the mid-nineteenth-century. In 1903, St. George Sioussant published one of the best known monographs on the topic, *The English Statutes in Maryland*, (Baltimore, MD: Johns Hopkins University Press, 1903). Sioussant looked primarily at the 1720s and the controversy that swept the colony regarding the imposition of all English Statute law. The controversy over this period and the earlier colonial period addressed in this dissertation continued throughout the twentieth-century. Although historians have not reached a consensus on this question, perhaps Zachariah Chaffee posited the most convincing argument in 1969. In a chapter entitled "Colonial Courts and the Common Law" in *Essays in the History of Early American Law*, ed. David Flaherty, (Chapel Hill, N.C.: The University of North Carolina Press, 1969), 53-82, Chaffee argued that Maryland law was not rigidly one form of the law but a mixture of English Common Law and laws crafted for the colony.

society. With the emphasis on reflecting English values in law, women's position should have mirrored women's position in England. However, numerous historians, such as Carr and Walsh, have found that women had different and sometimes better opportunities in Maryland than they would have in England.¹²

In 1938, Julia Cherry Spruill asserted that women in the Southern colonies had power, simply because they fulfilled their roles as wives and mothers. By contributing to the household economy in such an instrumental way, women earned special privileges that they perhaps did not experience in England.¹³ Mary Beth Norton sought to disprove Spruill and her followers (including Mary Beard).¹⁴ Since 1979, Norton's thesis has generally been accepted by historians, replacing the argument of Spruill. Norton's argument posits the idea that women did not have many choices outside of working at home. This was limiting to many Southern women. Norton is correct in her assertion that this was not a time of equality or great progress for women. Maryland certainly was not a land of happy endings for many women, but the reader should not discount the agency women in the colony had or how the legal system empowered some women to publicly exert themselves.

Other works on colonial Chesapeake women fail to engage directly the Maryland experience. Kathleen Brown published one of the most influential works on the colonial Chesapeake written in the last twenty years. She focuses on changing racial and gender relationships in Virginia from 1690 through 1750. Brown omits the earliest years of

¹² Carr and Walsh, "The Planter's Wife," 543, 570; James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake*, (Chapel Hill, N.C.: The University of North Carolina Press, 1994), 214-215, 227, 250.

¹³ Julia Cherry Spruill, *Women's Life and Work in the Southern Colonies*, (New York: Russell & Russell, 1969), 232-254.

¹⁴ Mary Beth Norton, "The Myth of the Golden Age," in *Women of America: A History*, ed. Carol Berkin and Mary Beth Norton, (Boston: Houghton Mifflin Company, 1979), 37-47.

settlement, largely because there are not enough sources to make any sort of argument.¹⁵ Aside from her considerable contribution to women's studies in colonial Chesapeake society, Brown's work also illustrates the preponderance of Virginia within studies of the colonial south. Another influential work, that of Catherine Kerrison, alleges to represent all Southern women in early America; however, her work focuses primarily on Virginia and the Carolinas.¹⁶ Likewise, Cynthia Kierner deals with the Southern colonies from Virginia south. Under this scheme, Maryland does not even fall in the south, thus the reader must assume that all conclusions reached by Kierner do not apply to Maryland. Even historians like Kierner, who tout the advent of histories of Southern colonial women, note that Virginia and the Carolinas have dominated the historiography.¹⁷ Works by Brown and Terri Snyder focus solely on Virginia and at the same time have become the finest examples of the "new" literature about Southern women.¹⁸

If conditions for women in Maryland were the same as women in colonial Virginia, this would not be a historiographical problem. However, in the earliest years of settlement there were definite differences between the two colonies. As discussed above, Maryland's settlement was unique. The alien religion of the founders, along with a charter that may have disadvantaged some Virginia settlers, created an animosity in Virginians that immediately set them against Marylanders.¹⁹ Although the two colonies

¹⁵ Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial America*, (Chapel Hill, NC: The University of North Carolina Press, 1996), 4.

¹⁶ Catherine Kerrison, *Claiming the Pen: Women and Intellectual Life in the Early American South*, (Ithaca, N.Y.: Cornell University Press, 2006).

¹⁷ Cynthia A. Kierner, "Women, Gender, Families, and Households in the Southern Colonies," in *The Journal of Southern History*, Vol. 73, No. 3 (August 2007), 643-658.

¹⁸ Terri Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia*, (Ithaca, N.Y.: Cornell University Press, 2003).

¹⁹ One must consider William Claiborne and his claims to Kent Island, land that fell within the boundaries of Maryland's land grant. Claiborne argued he had already patented that land in the name of

grew more similar as settlement progressed, both in economy and social character, the early decades of life in Maryland must be viewed separately.

Women's legal history is a growing subfield of feminist studies. The subfield first emerged in the 1960s and 1970s along with historians' growing interest in social history.²⁰ Women's legal history is continually changing. Recently, historians have shifted to studies of the common woman in society. Their main goal is to discern how the law impacted women's status in society and how they influenced the law to effect some sort of change.²¹ However, before scholars can apply feminist language to the study of women and the law they must delineate the legal status of women in certain societies. There has not been an extensive body of literature regarding women and colonial law. Colonial studies of women and the law have dealt almost exclusively with New England. Arguably, the best known work dealing with women and the law is by Cornelia Hughes Dayton. Her monograph deals exclusively with Connecticut, but should serve as the model for all following works on women and the law in colonial America. Dayton argues that the eighteenth century marked a turning point for women in New England. Due to a changing economy, women found themselves excluded from the "litigated economy" and therefore from the courtroom in general.²² Dayton's conclusions mirror women's situation in colonial Maryland. Her conclusion that there was an open legal culture in the earliest years of Connecticut and New Haven's settlements illustrates that women throughout the colonies were familiar with the court and expressed themselves through

Virginia. He led the first of a number of revolts in Maryland in an unsuccessful bid to regain control of Kent Island.

²⁰ Marylynn Salmon, *Women and Law of Property in Early American*, (Chapel Hill, N.C.: The University of North Carolina Press, 1986), xi.

²¹ Tracy L. Thomas, "The New Face of Women's Legal History: Introduction to the Symposium," *The Akron Law Review*, Vol. 41, No. 3, (2008), 695-700.

²² Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789*, (Chapel Hill, N.C.: The University of North Carolina Press, 1995), 69-72.

the justice system.

There is no similar study regarding Maryland. Much like Connecticut, however, there are excellent, nearly complete court records in existence for colonial Maryland.²³ Men are represented in court records more frequently than women, but justice was important for women. This study, as with any other study of the legal system, suffers from selective recordkeeping. Despite the completeness, significant data never made it into the records. What was said and who said it was not part of the record. The recorder noted what he heard, not necessarily what was said. Still, these records yield a glimpse into the past, where the women in the pages of this dissertation come alive. Unlike *Women before the Bar*, this work does not explore how women's roles changed as Maryland moved into the eighteenth century. Instead, the main purpose of this work is to understand what role women played before Maryland's bar and, perhaps more importantly, how they viewed their role. Close readings of the records indicate that women believed they had a right to and capability of functioning under Maryland's nascent legal system. As illustrated herein, authorities recognized female ability and their legitimacy in functioning in various roles before the courts.

Historians have composed few exclusive studies of colonial Maryland law. Richard Morris focuses most of his study on New England and the Middle Colonies but insinuates that Maryland society was dominated by "conservative authorities."²⁴ Due to their conservative nature, Morris argues, male authorities found legal ways to suppress the actions of women. After this assertion few historians looked to Maryland as anything other than a repressive society for women. It was not until Mary Beth Norton began to

²³ Ibid., 3-4.

²⁴ Richard B. Morris, *Studies in the History of American Law: With Special Reference to the Seventeenth and Eighteenth Centuries*, Second Edition, (New York: Octagon Books Inc., 1964), 132.

look deeply at women before Maryland's bar that Maryland became a subject for feminist legal historians. Norton's studies of women and crime and women and the law of defamation are the most famous examples of how women in Maryland interacted with the law. The only problem is that Norton argues the law was used in Maryland to suppress women. Although her argument is well-researched and proves tenable within her restricted subject, Norton does not assess the entirety of Maryland law and how women fit into the legal structure. Certainly courts prosecuted women more frequently for loose talk than for other more violent crimes, but this was a transatlantic trend. Women in England, too, were prosecuted for defamation at a higher rate than males.

The legal history of Maryland at large has fared somewhat better than the legal history of Maryland women.²⁵ One of the most heavily cited and important monographs relating to this history of colonial law in Maryland is Raphael Semmes's *Crime and Punishment in Early Maryland*. Semmes relies solely on the published archives to explicate crime and law in early Maryland. Although somewhat formulaic and lacking a comprehensive argument, this remains one of the most important, and complete, works on crime in the colony.²⁶ This dissertation builds on Semmes's work in order to give a more complete picture of how women functioned before Maryland's bar. In his assessment of how English common law was implemented across the colonies, William E. Nelson devotes an entire chapter to the legal system of Maryland. He describes early

²⁵ In addition to the works mentioned here Maryland law is featured in a number of works relating to the Chesapeake and colonial law in general. Two excellent examples are Gloria Main, *Tobacco Colony: Life in Early Maryland, 1650-1720*, (Princeton, N.J.: Princeton University Press, 1982) and James Horn, *Adapting to a New World*.

²⁶ Raphael Semmes, *Crime and Punishment in Early Maryland*, (Montclair, N.J.: Patterson Smith, 1970).

Maryland as having "a complex and sophisticated legal system."²⁷ Nelson's sentiment echoes that of Maryland Governor Herbert R. O'Connor who, in 1941, commended the "enlightenment of the Colony's character," particularly the legal system.²⁸ This changed, according to Nelson, as Maryland grew more similar in character to Virginia. The legal structures of Maryland and Virginia also seemed to grow more similar. As this happened, Maryland lost some of its unique legal character. Women lost some of their autonomy.

This dissertation, through an assessment of four different types of crimes (witchcraft, violent crime, sexual offenses, and property offenses) and the courts' reactions to them, interprets the interplay between women and the law in early colonial Maryland. Christine Daniels describes servants as equal to free women in legal standing. Despite their lack of political and economic standing, like servants, women were "legal persons, not things."²⁹ This gave women certain rights before the courts, which they exercised. Although this was not a so-called "golden age" for women they did benefit from the situation in Maryland. This is reflected in the courts' handling of cases involving women. It was impossible for Maryland freemen to completely break with English tradition, nor, under the circumstances, did they show much interest in doing so. However, the treatment of the following offenses illustrates that women exercised their agency, understood the legal system, and how best to maneuver under the law. Women who were conscious of the law, combined with a legal system which allowed them some degree of agency, helped the legal system, even if not "enlightened," to develop in a way

²⁷ William E. Nelson, *The Common Law in Colonial America*, Vol. 1, The Chesapeake and New England, 1607-1660, (New York: Oxford University Press, 2008), 125.

²⁸ AOMOL, 409:362.

²⁹ Christine Daniels, "'Liberty to Complaine': Servant Petitions in Maryland, 1652-1797," in Christopher L. Tomlins and Bruce H. Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001), 223.

which more often than not aided females who found themselves before the law. There was an interplay between females who were cognizant of their legal rights and abilities and a legal system which was forced to develop with the new colony. There is no definitive answer for the question of how the courts treated women given later struggles that gave women more rights than they had in colonial society. Yet, for the most part jurists not only treated them fairly, but some women managed to obtain some degree of equality through the courts in early colonial Maryland.

Chapter one of this dissertation describes the foundation of Maryland's legal system and the place of women under that system. The legal system was fluid and ever changing. The presence of a legal system, as explained in chapter one, was key to creating an orderly society. Most colonists encountered the judiciary at some point, whether they were involved in a criminal case or civil litigation. Women, like men, interacted with this new legal system. The main purpose of this chapter is to outline the development of the judiciary and the way justices of the new legal system treated women. When the first settlers arrived in 1634, authorities developed a legal system that allowed equal participation of men and women. Women understood their legal privileges and acted upon them. This chapter traces the way women established themselves as legal entities throughout the earliest years of settlement.

In addition to delineating how the legal structure of Maryland developed and how it functioned, this chapter addresses the issue of how life functioned in early colonial Maryland. The role women played and the difficulties they faced is a particularly pertinent topic for this dissertation. Women had a unique place in Maryland society and this affected the way they functioned in society and how officials regarded their role and

rights. Although a number of historians have already written on this point, women's roles, along with the development of a new legal system, is addressed briefly in chapter one.

Chapter two deals with one of the crimes most associated with women in the early modern world – witchcraft. Trials for witchcraft were rare in colonial Maryland. Justices heard criminal cases, wherein the defendant was accused of practicing the dark arts against the law of England, and civil, wherein the plaintiff sued another colonist for attempting to smear her name by alleging she was a witch. Accusations of witchcraft could have fearsome consequences in the early modern world. Indeed one woman in Maryland was executed for the crime and one man was sentenced to serve the Lord Proprietor for his transgressions. In short, witchcraft was real to citizens of colonial Maryland, even if trials were limited. Authorities appear to have understood how important it was to have a legitimate trial before sentencing someone to death for this crime. Hence, Maryland's legal authorities actively prosecuted those involved with the two instances of witchcraft onboard ships sailing to Maryland that ended with the extralegal execution of the assumed witch. This chapter proves that women in Maryland feared such accusations but had a familiarity with the court system that allowed them to, mostly, escape punishment.

Violent crime, the subject of chapter three, includes a variety of crimes. The courts heard cases wherein women committed murder and assault, as well as the female-specific crime of infanticide. This chapter proves that the courts treated women similarly to males in most cases. The courts handled infanticide in a fashion similar to England. Authorities had a difficult time proving infanticide because there were a number of ways

a child could have died that did not involve the mother's actions. When a case was clear, authorities did not hesitate to sentence a woman to death. Although women acted independently to murder a newborn, women often worked with their husbands to execute the murder of an adult. Some women, this chapter argues, proved particularly malicious in their treatment of servants. However, these women illustrated a deep understanding of courtroom practices, perhaps more so than single women accused of infanticide. For that reason they generally escaped punishment. Although the women portrayed in this chapter exhibited violent tendencies, they still proved capable of dealing with the law in a sophisticated manner.

One further crime examined in chapter three is abortion. Although authorities accused no women of this crime, the prosecution of abortion illustrates much about how the courts viewed women in colonial Maryland. Authorities treated the limited number of alleged cases of abortion caused by men seriously. Women played an important role in such cases, whether as accuser, victim, or member of a matron's jury. This chapter, therefore, illustrates the important role played by women in court proceedings. The court cases in this chapter could not proceed without women, illustrating their significance before the courts.

Women could not always escape punishment for sexual offenses. Chapter four includes a selection of sexual offenses, cases of adultery, fornication, and bastardy, to argue that women could not overcome some accusations, but did exercise their legal rights and talents to gain a more favorable outcome. In England, church courts generally handled such cases. Since no such court existed in Maryland, secular authorities held jurisdiction over cases of morality. Justices appeared somewhat reticent to punish certain

cases of adultery, as evidenced by the Taylor/Catchmey case. Finally, women wielded great power within their marriages. Not only did some cuckold their husbands, some women resorted to public displays in order to punish an unfaithful or inattentive husband. Since these cases did not necessarily disrupt public order, justices did not prosecute them as intensely as cases that did upend social order. As with murder cases, the courts required the expertise of other women in order to prosecute or free a woman. The courts believed only women were intimately enough acquainted with the female body to assess pregnancy or other physical concerns. Women were intimately intertwined with Maryland's court system. This allowed them to exert their influence over the law and permitted them to act as independent legal individuals.

The final chapter of this dissertation deals with a variety of property offenses. Authorities viewed most property offenses, such as theft, as threatening to society. Women, sometimes under the influence of males in their lives, partook in a variety of these crimes. In cases of theft, the actual items other colonists accused them of stealing differed somewhat from what neighbors accused men of stealing. However, women did steal, sometimes on their own. They also embezzled from estates for which they had been charged with caring. There is at least one case of a woman committing an act of forgery and at least one case of a female arsonist. This chapter focuses on a variety of thefts committed by women, the practice of extorting from a decedent's estate, and defamation as a form of theft of one's good name, as well as a way the defendant could disparage another individual publicly. Through all these actions, women illustrated a refined understanding of the legal system and justices struggled with finding the best way to punish a female offender.

One theme that runs throughout these chapters is that of defamation. Defamation was a civil offense, somewhat different from the criminal offenses examined in the following pages. Unlike criminal cases which dealt with threats to the public order, civil cases dealt with an individual's private rights.³⁰ By law, county courts handled civil cases and these cases could be solved with the payment of a fine or a public apology.³¹ Such cases were not tried by a jury; rather these cases were heard by the court commissioners or justices. Slandering another was particularly offensive to Marylanders. One historian characterizes the colonists as "very zealous in guarding their reputations."³² Witchcraft, violence, sexual offenses, and property offenses all were topics of gossip. Much like in England, women were especially vulnerable to accusations of sexual wrongs.³³ Gossip used as a means to denigrate the status of another colonist indicated that the gossiper knew such accusations could harm the victim's status in the community.

It was important that a person be sure that they were rightfully accusing someone of a property offense. Such an accusation could harm the reputation of the accused before his or her neighbors. Contemptuous speech left in its wake a social mess that authorities often were forced to deal with in court. As residents of the Chesapeake struggled to form community bonds amidst the tumultuous nature of society, authorities and court commissioners understood how fragile community bonds were. In order to build up the community, they attempted to ensure that residents were not harming the bonds they had formed with other settlers. Such bonds could be broken through idle gossip.³⁴ Beyond the

³⁰ See: "Civil" and "Criminal Law," in *Black's Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 262, 403.

³¹ AOMOL, 1:47.

³² Semmes, *Crime and Punishment*, 207.

³³ Horn, *Adapting to a New World*, 363.

³⁴ Edmund Morgan, *American Slavery, American Freedom*, 152.

important community implications of this sort of defamation, victims often considered gossip to be a crime equivalent to theft – the gossip or defamer “stole” the good name and reputation of their target.³⁵ Reputation and good name were important commodities to both men and women in early Maryland. In 1696, Ralph Arundel sued his neighbor, William Jones for 10,000 pounds of tobacco for slander. Jones loudly declared to other neighbors that Arundel had two wives, one in Virginia and one in Maryland, and thus was a bigamist. Arundel petitioned the Kent County court for some redress against this smear. The reason Arundel sued Jones was because prior to this declaration, neighbors viewed Arundel as a law-abiding, generally good man. After this, no one would spend time with the man according to Arundel and “he is extreemly hurt in his good Name fame Credit and reputacon.”³⁶ Arundel’s case echoed the sentiments expressed in 1664 by Henry Spinke of his wife. Spinke responded to a slur against his wife by appealing to the harm done to her reputation, which was “far dearer then life.”³⁷ In both cases, the authorities awarded damages to the defendant because they found it difficult to prove defamation had truly occurred. Although both cases involved allegations of sexual impropriety of some sort, slander cases also involved the accusation that the plaintiff had committed theft.

Although defamation was an offense unto itself, especially in a community trying to form a civil society, the crime has been included in each chapter as applies. Of course defamation related best to theft, as to defame someone was to steal their good name. However, defamation relating to witchcraft and sexual misconduct was also keenly

³⁵ Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England*, (New York: Oxford University Press, 1997), 125, 186.

³⁶ AOMOL, 557:646-647.

³⁷ *Ibid.*, 49:79. For more on the Spinke case see Chapter 4.

important. The topic helps understand how important these crimes were in early Maryland. Hence, these cases have been included in the following chapters.

This dissertation builds on the works mentioned herein to answer the broad question of women's legal standing in the colony. Early colonial Maryland women understood how to function within the colony's legal system. In most cases women used their considerable legal knowledge to better their overall position in colonial society as a whole. Margaret Brent, the petitioner mentioned at the start of this work may have been an aberration in so far as her legal career was more extensive than that of most women and brought her into contact with some of the most important figures in Maryland's history. However, she was not alone in her role as female legal authority. The women in the following pages serve to set Brent up as a model, but not as the only woman involved in Maryland's legal system.

Chapter 1: “To Preserve Harmony among Men” - And Women?: Colonial Maryland Society, Women, and the Law

The history of Maryland is inextricably linked to English law. England’s penal legislation, intended to enforce religious uniformity and punish nonconformists, especially Catholics, alienated many in England. Men and women alike suffered under this legislation. Women, like men, who openly refused to ally themselves with the Church of England often were jailed as nonconformists. The Calverts, founders of Maryland, were no strangers to repercussions of the penal laws. George Calvert's step-mother, Grace Crosland Calvert, refused to conform to the Church of England. In 1604, a notice listed her as a "non-communicant at Easter last."¹ These laws not only drove Catholics into hiding or out of England, they left certain Catholics wary of laws that penalized one set of persons more harshly than the others. Although he desired a profitable colonial enterprise, George Calvert, First Lord Baltimore, also saw Maryland as a place where persons of all Christian faiths could coexist. His son, Cecil, pursued the colonization of Maryland and the goal of religious liberty after his father’s death.

On May 25, 1634, about 140 of Maryland’s first settlers disembarked from the *Ark* and the *Dove* on the shores of a foreign, dangerous land.² A small number of these settlers, likely less than ten, were women.³ In a letter to Thomas Wentworth, Earl of Strafford, Cecil Calvert explained that he had “sent a hopeful Colony into *Maryland*, with

¹ John D. Krugler, *English and Catholic: The Lords Baltimore in the Seventeenth Century*, (Baltimore, MD: Johns Hopkins University Press, 2004), 16-18, 28-29, for quote regarding Grace Calvert see page 29.

² Russell R. Menard, “Population, Economy, and Society in Seventeenth-Century Maryland,” *Maryland Historical Magazine*, 79 (Spring, 1984), 71.

³ There is no complete passenger list for the *Ark* and the *Dove*, although historians have compiled several lists based on contemporary sources and inferences. There may have been more women on board not listed in any passenger lists because they were serving as maids, yet there were only a limited number of women known to be on board.

a fair and probable Expectation of good Success.”⁴ Despite Lord Baltimore’s optimism, high mortality rates, a sexual imbalance, and late ages of marriage made it nearly impossible for the colony to have a predominantly native-born majority until well into the eighteenth century.⁵ Simply maintaining any population at all proved difficult for Lord Baltimore and his representatives in the colony. Rebellion and general uneasiness plagued Maryland. By 1647, following Ingle’s Rebellion, also known as the “plundering time,” the population of the colony dropped from around 500 to about 100.⁶ Slowly, the colony’s population began to grow again after this point, fueled mostly by new immigration. Various difficulties still plagued the colony. Some of these difficulties, such as disease and troubles with the Indians, were endemic to the Chesapeake region. In both Maryland and Virginia, marriages only lasted around seven years because of early death. Nearly half of all children lost at least one parent before reaching the age of majority.⁷ Other difficulties, particularly rebellions dealing with religion, were unique to Maryland. In such an austere environment life expectancy for both sexes was low. It remained

⁴ William Knowler, *The Earl of Strafforde’s Letters and Dispatches*, (Dublin, Ireland: Printed by R. Reilly for Robert Owen, 1740), 178.

⁵ Russell R. Menard, “Immigrants and their Increase: The Process of Population Growth in Early Colonial Maryland,” in *Law, Society, and Politics in Early Maryland*, ed. Aubrey Land, Lois Green Carr, and Edward Papenfuse, (Baltimore, MD: The Johns Hopkins University Press, 1977), 91; The title Lord Baltimore refers to Cecil Calvert, Second Lord Baltimore, unless otherwise specified.

⁶ Timothy B. Riordan, *The Plundering Time: Maryland and the English Civil War, 1645-1646*, (Baltimore, MD: Maryland Historical Society, 2004), 3, 335 n. 2. There is no definitive population estimate for this period since there was no census conducted. Riordan uses a number of sources to reach his estimate.

The event known as Ingle’s Rebellion occurred when Richard Ingle, an English seaman, attacked Maryland and took over control of the Catholic-run government in the name of Puritans in England. Ingle sacked and commandeered the estates of wealthy Catholics until he was driven out of Maryland in 1647. Ingle’s Rebellion followed Claiborne’s earlier rebellion and predated the Battle of the Severn (1655) and Josias Fendall’s “pygmie rebellion” (1660). All of these events occurred because of tensions between Catholics and Protestants.

⁷ Lorena Walsh, “‘Till Death Do Us Part’: Marriage and Family in Seventeenth-Century Maryland,” in *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society*, ed. Thad W. Tate and David L. Ammerman, (New York, N.Y.: W.W. Norton and Co., 1979), 128-132; Darrett B. and Anita Rutman, “‘Now-Wives and Sons-in-Law’: Parental Death in a Seventeenth-Century Virginia County, in *ibid.*, 153.

especially difficult for families to develop and remain intact under such circumstances.

Providing women to the colony proved to be a particularly complicated issue for colonial leaders. Indentured servants were one source of a female population, but servitude did not always guarantee a consistent number of women traveling to Maryland. In general, land owners desired male servants more than female servants, especially given the rigors of growing and harvesting tobacco. Even the population of males willing to serve another in exchange for transportation to the colony dropped off in the 1680s as England stabilized politically after the Revolution.⁸ The colony also outlawed criminal transportation in 1676, which was, although not a perfect source of settlers, a guaranteed source.⁹ Settling and peopling the colony under such circumstances proved difficult.

Amidst these challenges that faced the settlement, leaders needed to create the civil structure necessary to, as one historian has written, "preserve harmony among men."¹⁰ The new colonists knew that creating a legal system was of the utmost importance. Lord Baltimore's "Instructions to Colonists" contained a provision that the new settlers "bee very carefull to do justice to every man without partiality."¹¹ As in England it was not merely men who constituted this new society or benefited from the desire for impartiality. Women, although relatively few in number, also interacted with these new social structures. Perhaps the most noticeable of such social structures was the legal system. The charter of Maryland, crafted by George Calvert, First Lord Baltimore,

⁸ Russell R. Menard, "British Migration to the Chesapeake Colonies in the Seventeenth Century," in *Colonial Chesapeake Society*, ed. Lois Green Carr, Philip D. Morgan, and Jean B. Russo, (Chapel Hill, N.C.: The University of North Carolina Press, 1988), 130-131.

⁹ AOMOL, 2:540.

¹⁰ Aubrey Land, *Colonial Maryland: A History*, (Millwood, New York: KTO Press, 1981), 25.

¹¹ "Lord Baltimore's Instructions to Colonists," *The Calvert Papers No. 1-3*, ed. John Wesley Murray Lee, (Baltimore, MD: J. Murphy and Co. Publishers, 1889-99), 140 at <http://memory.loc.gov/cgi-bin/query/r?ammem/lhbcb:@field%28DOCID+@lit%28lhbc3364adiv16%29%29>, (Accessed November 7, 2009).

stated that all laws created in Maryland “be not repugnant or contrary, but (so far as conveniently may be) agreeable to the Laws, Statutes, Customs, and Rights of this Our Kingdom of England.”¹² This was a practice followed in other North American colonies. The same concept appeared in the 1629 Charter of the Massachusetts Bay colony. It was particularly important for the Calverts to uphold English law. As Catholics, the Calverts had to balance their religion with their national loyalties.¹³

Despite this supposed conformity with England, lawmakers in both Maryland and neighboring Virginia wrote colonial laws that varied from English laws to meet the specific needs of their colonies. The legal systems of the Chesapeake borrowed much from the mother country, but tended to simplify England’s legal system to fit the local conditions in the colonies.¹⁴ Authorities thus tempered some of the more intense punishments assessed in England. For example, the harsh punishments assessed in England for property offenses were lessened drastically in Maryland because the colony was “so meanly and thinly Inhabited.”¹⁵ However, colonists still relied heavily on preexisting law. In fact, English law was enforced fully where colonial laws were silent. These circumstances allowed officials to implement a legal system that was a mixture of both English common and statute law, and new laws unique to the colony and custom as it developed.

Most laws used by the judicial bodies of Maryland were statute laws, passed by the General Assembly. The first Assembly met in 1635, but Lord Baltimore considered it illegal since he did not authorize it. He did not approve any of the laws sent to him by his

¹² Maryland State Archives, *The Charter of Maryland*, 11, 1635, <http://www.msa.md.gov/msa/educ/exhibits/founding/pdf/charter.pdf>, (Accessed December 5, 2009).

¹³ Krugler, *English and Catholic*, 1-11.

¹⁴ *Ibid.*, 349.

¹⁵ AOMOL, 7:201; and 13:479.

brother.¹⁶ The Lord Proprietor envisioned he would be the final decider on the legitimacy of Maryland's laws, but the Charter bound him to make laws with the "advice, ascent, and approbation of the Free-men of the said Province."¹⁷ This created an ongoing tension. It was a Charter obligation from the crown for the Lord Proprietor to call some sort of assembly to make and approve laws. Thus, in 1638, Cecil Calvert asked Governor Leonard Calvert to officially appoint "a general assembly of all the freemen of this Province . . . to consult and advise of the affaires of this Province."¹⁸ Initially, Lord Baltimore created laws for the colony and sent them to the General Assembly for approval. He did not anticipate a challenge to his right to initiate legislation.

Calvert may have been more concerned with securing his own political power through Maryland, but the members of the Assembly had different priorities in mind when they passed legislation.¹⁹ When Baltimore submitted his own laws to the newly approved Assembly in 1638, the freemen of the Assembly did not approve them.²⁰ The members of Maryland's General Assembly, at times, struggled to balance their loyalty to Lord Baltimore with their desire to act independently. It would be naïve to assume these men were always acting in the best interest of the colony. Yet, as residents of the colony, they were more closely tied to the realities of daily life than the Lord Proprietor was in England. After the struggle over the 1638 laws, Cecil Calvert granted the governor "full Power and Authority . . . to give assent unto such Laws as you shall think fit and necessary for the Good Government of the said Province of Maryland and which shall be

¹⁶ Krugler, *English and Catholic*, 170.

¹⁷ Maryland State Archives, *The Charter of Maryland*, 9.

¹⁸ AOMOL, 1:1.

¹⁹ Susan R. Falb, "Advice and Ascent: The Development of the Maryland Assembly, 1635-1689," (Ph.D. diss., Georgetown University, 1976), 8.

²⁰ Krugler, *English and Catholic*, 174.

Consented unto and approved of by the Freemen of that Province.”²¹ The Lord Proprietor retained the ability to disallow laws and suggest legislation to the Assembly, but the General Assembly, after this, had nearly complete control of Maryland’s laws.

Although this led to stability in the process of creating laws, there was still a great amount of legal instability in Maryland. The General Assembly passed certain acts that were legally intended “to endure for three years or to the end of the next General Assembly.”²² This constant need for renewal of statutes seems inefficient, yet Maryland authorities did not completely rely on the acts as written. Often when an act expired, justices still applied the expired law. High turnover in the General Assembly also plagued the Maryland legal system, leading to instability as there was little membership continuity in the early years of the Assembly. Additionally, authorities altered the application of some laws as a means of dealing with the social stresses of the new colony and in accordance with English practices of sometimes attempting to illustrate mercy. This is particularly evident in witchcraft cases. Even though English law prescribed death for such offenses, most Maryland women were not executed for perpetrating this alleged crime. Practicing witchcraft was legally punishable by death in Maryland. The Provincial Court tried several women for alleged witchcraft. Yet, colonial authorities executed only one woman for this crime. Clearly, Maryland authorities imported a system similar to the mother country, but they adjusted punishments to fit the crime. The new system of legislation they developed may have been distinctive because colonial officials were starting anew with their system or they may have been ignorant to the specifics of the

²¹ AOMOL, 1:31.

²² AOMOL, 1:535. This particular act, intended for providing a magazine for the colony was renewed within two years and repeatedly thereafter throughout the colonial era.

legal system of the mother country and thus simply went about with their own project.²³

However, this seems unlikely, at least initially, as colonists showed a peculiar acumen for dealing with English law.

In addition to crafting a body of laws, authorities were also charged with creating the mechanisms of a legal system for the colony. Leaders attempted to keep a structure consistent with that of England, but, as with the creation of laws, circumstances unique to the colony helped leaders form a legal system unique to Maryland. Maryland judicial institutions developed gradually. Under the charter, King Charles I charged Proprietor Cecil Calvert, Second Lord Baltimore, with appointing justices, creating a legal system, and determining how justices would apply the law.²⁴ Calvert, lord of his new palatinate, was theoretically so powerful that he held a position in the colony comparable to that of the King in England. Even with this power, the absent proprietor, although remaining the final arbiter of legal matters, granted control over the judicial process to his brother, Leonard Calvert, governor of the colony, and the freemen who aided Calvert in creating the new legal system.

Marylanders certainly respected the English legal system, but attempted to impose laws suitable for the colony. By 1642, members of the General Assembly asserted that Maryland law was supreme, asserting that “all crimes and offences shall be judged & determined according to the law of the Province.”²⁵ They did not ignore the law of England, but acknowledged that Maryland law was the law of the land. This was a fine balancing act for members of the General Assembly. They remained indebted to English

²³ There was no trained legal profession in Maryland until the 1660s so any legal work done before then was by the untrained.

²⁴ Maryland State Archives, *The Charter of Maryland*, 9.

²⁵ AOMOL, 1:147.

common law and structures and attempted to uphold English law but they were forced to alter their legal system to fit the needs of the nascent colony. Maryland officials clearly understood the importance of establishing authority by setting court officials apart from the general population. In 1666 Assemblymen passed a law requiring members of the Provincial Court to appear at the proper time for court wearing their “ribbon and meddle.” If members decided not to wear these symbols they would be fined a noble.²⁶ Cecil Calvert likewise understood the importance of publicly representing official authority. In 1671 he wrote to his son, Governor Charles Calvert and Maryland’s Councilors to suggest that all officials of the colony, including judges of any level, set themselves apart from “the Rest of the people of our said Province Either by the wearing of habbits Meddalls or otherwise.”²⁷ These outward symbols clearly were meant to illustrate the “majesty” of Maryland law and establish the legitimacy of the new legal system.²⁸

Essential to the creation of a new legal system derived from that of the mother country was a widespread understanding of English law among settlers. A high degree of knowledge or at least awareness of the law allowed settlers to impose English law on their fellow colonists. Indeed, Maryland’s first settlers seemed to have had a good grasp of English law and were able to impose much of the extant system of common law on Maryland settlers. Women were not exempt from having a sophisticated understanding of the law. As illustrated by the cases examined in the following pages, women exhibited an

²⁶ Ibid., 3:547. A noble was an English gold coin, valued at over six shillings. See: *Oxford English Dictionary*, s.v. “Noble-adj. and n.1,” http://0-dictionary.oed.com.libus.csd.mu.edu/cgi/entry/00325522?query_type=word&queryword=noble&first=1&max_to_show=10&sort_type=alpha&result_place=3&search_id=a9cg-thGtdc-10882&hilite=00325522, (Accessed January 12, 2010).

²⁷ AOMOL, 15:16.

²⁸ For more on the alleged majesty of the law see Semmes, *Crime and Punishment*, 1-20.

understanding of their individual rights, the workings of the legal system in Maryland, and ways in which they could maneuver through the new legal system.

The system began when Cecil Calvert relinquished control of the judicial process to the governor and two council members. In 1637, Calvert commissioned Leonard Calvert and the Maryland Council, after two years of this rudimentary type of administration of justice, to act as a court. It was reminiscent of how justice had been administered before this commission. Now it was official.²⁹ The court, originally called the County Court, later renamed the Provincial Court, had jurisdiction over nearly every legal matter in Maryland. It had both original jurisdiction and came to serve, as other courts developed, as an appellate court. This informal arrangement eventually gave way to the formal Provincial Court. In 1642, the General Assembly passed “An Act for Judges.” This law marked the first time the title Provincial Court was used in the colony. The Governor and one or more Council members served as court members. If the Governor was not present, the role of presiding judge fell to an appointed Councilor.³⁰ The Councilors were known as justices.

The Provincial Court functioned in a way that would expedite justice.³¹ The Lord Proprietor dictated that commissioners or justices would head the court and act as its members or judges. By 1670, law required four members of the council to be present at any sitting of the Provincial Court. There could be up to nine justices in addition to the governor, but the maximum number ever present was only six.³² This panel ruled

²⁹ AOMOL, 3:53.

³⁰ Ibid., 1:147.

³¹ There is no complete study, to date, of how the Maryland justice system compared to England’s justice system. However, in the rural society of Maryland, many of the functions of English courts were collapsed into fewer courts.

³² AOMOL, 65:Preface 12

independently in certain cases. This was particularly true in civil cases. Frequently, the parties would settle disagreements independently. Justices summoned a petty jury for the most serious cases they heard, but, a convicted person could ask to be tried by the court. In that case, the justices would hand down a ruling without the petty jury.³³

Similar to English law, a grand jury decided if a criminal case had merit. The grand jury, usually composed of sixteen to twenty propertied men, received cases from the Attorney General or introduced cases anew.³⁴ They ruled one of two ways – either *billa vera* (meaning “true bill”) or *ignoramus* (meaning “we do not know”). If the grand jury ruled the former, or formally indicted the accused, members of the court asked the indicted to enter a plea of guilty or not guilty. If the accused pled not guilty their case proceeded in one of two ways. Either the accused asked to be tried by the court without a jury or “by God and the Country.” A petty jury then heard the case.³⁵ A group of roughly twelve freemen who lived in the same area or neighborhood as the accused assembled to hear the case.³⁶ By law, anyone summoned by the court was required to serve on a petty jury. Any person not obeying a summons to serve could be fined five hundred pounds of tobacco. The profits of the fine went to the Lord Proprietor. If the reticent juror did not have the tobacco or goods to pay the fine, he was imprisoned for two months without

³³ The case of William Mitchell, an example of a person asking to be tried by the court, can be found in chapter 4. Sometimes, citizens felt they had a better chance of receiving a lessened punishment from the justices.

³⁴ The Lord Proprietor appointed Maryland’s first Attorney General in 1657. The Attorney General served mainly as the Lord Proprietor’s attorney and represented the province in cases. Attorney Generals were not all professional lawyers until well into the eighteenth century. Although there has been no complete work solely on the Attorney General in Maryland, the role is explained in more depth in Alan F. Day, *A Social Study of Lawyers in Maryland, 1660-1775*, (New York, N.Y.: Garland Press, 1976); *idem.*; “Lawyers in Colonial Maryland, 1660-1715,” *American Journal of Legal History*, Vol. 17, No. 2 (Apr., 1973), 145-165; and C. Ashley Ellefson, “William Bladen of Annapolis, 1673?-1718: ‘The most capable in all Respects’ or ‘Blockheaded Booby?’” *AOMOL*, 747.

³⁵ *AOMOL.*, 65:Preface 15. The petty jury was also called a trial jury or a jury of life or death.

³⁶ *Ibid.*, 1:151.

bail.³⁷ Initially, members of the General Assembly granted each petty juror thirty pounds of tobacco, paid for through a public tax, in order to defray the costs of his journey to court and time away from his estate. This amount rose to 120 pounds by the early eighteenth century.³⁸ The colony did not pay grand jurymen for their service until 1675 when they were granted 2500 pounds of tobacco for each court at which they appeared.³⁹

If the Provincial Court's petty jury found the accused guilty of certain capital felonies, the guilty party could plead "benefit of clergy." There was never a specific law enacted sanctioning benefit of clergy in Maryland. However, Maryland residents attempted to beg for clergy as early as 1638.⁴⁰ Justices granted this privilege regularly after 1660.⁴¹ The practice of pleading benefit of clergy was a rather antiquated practice that was not used in all the colonies. Harkening back to English common law, benefit of clergy had originally only been applied to the members of the clergy charged in secular courts. Basically, this plea allowed them to be tried in a church court where they could not be executed. Eventually this privilege extended to any man (or woman) who could read. The one caveat for laymen who pled benefit of clergy was that they could only have benefit of clergy once. Those who did were branded after a successful try at reading to give visual evidence that they could not plead benefit of clergy again.⁴² In one case, a Marylander attempted to plead benefit of clergy twice, but was denied his second attempt

³⁷ Ibid., 1:411.

³⁸ Ibid., 29:281.

³⁹ Semmes, *Crime and Punishment*, 30; AOMOL, 2:462. Semmes argues that the Provincial Court grand jurors were granted 2500 pounds of tobacco as a body. This would still allow each man 125 pounds of tobacco or more for each sitting of the jury. Like many other laws, this was passed for three years. However, the General Assembly maintained the requirement that each grand juror be paid 2500 pounds of tobacco well into the period of Royal Government. See: Ibid., 13:501.

⁴⁰ Bradley Chapin, *Criminal Justice in Colonial America*, (Athens, GA: The University of Georgia Press, 1983), 49.

⁴¹ Jeffrey K. Sawyer, "'Benefit of Clergy' in Maryland and Virginia," *The American Journal of Legal History*, Vol. 34, No. 1 (January 1990), 52.

⁴² Semmes, *Crime and Punishment*, 27-28.

because he had already been granted clergy.⁴³ Certain crimes in England and Maryland were “non-clergyable offense.” Perpetrators of these crimes were not eligible for benefit of clergy. These included the highest felonies, such as treason, homicide, and piracy and certain kinds of theft. Benefit of clergy persisted in Maryland until after the American Revolution, but was not abolished in England until 1827.⁴⁴

The Provincial Court served as the model for the structure and procedure of other courts in Maryland, especially the county courts. Justice at the county level was less formal than that of the Provincial Court. The county courts were set up similarly to the Provincial Court and had jurisdiction over criminal and civil cases. The governor appointed court commissioners or justices. These justices either decided a case themselves or presided over the impaneling of a jury at the pleasure of the defendant.⁴⁵ Justices typically ruled in civil cases. However, after 1642 either the plaintiff or defendant could request a jury hearing in civil cases.⁴⁶

Unlike the Provincial Court, the justices and petty jury of the county court could not rule in matters of “life or member,” which meant they could not judge capital offenses. Generally, such cases were initiated at the county level. If a grand and petty jury found the case had merit, they sent it to the Provincial Court for final judgment. In addition, the defendant could appeal the ruling of the county court to the Provincial court. In terms of civil cases, county courts could only hear cases in which damages totaled less than the value of 3000 pounds of tobacco. After 1694 county courts could try cases involving 10,000 pounds of tobacco. By 1709, county courts were the only provincial

⁴³ AOMOL, 49:545.

⁴⁴ Semmes, *Crime and Punishment*, 264 n. 1.

⁴⁵ Marilyn L. Geiger, *The Administration of Justice in Colonial Maryland, 1632-1689*, (New York, N.Y.: Garland Publishing, Inc., 1987), 195-196; AOMOL, 1:48.

⁴⁶ AOMOL, 1:151.

courts with jurisdiction over property cases involving less than 5000 pounds of tobacco.⁴⁷ County courts developed as the population of the colony grew. St. Mary's County, Maryland's first county, was established by order of the Governor by 1637, although the Provincial Court likely served as a general court for the county until the early 1640s. The Governor and Council established the next county, Kent, in 1642 and the founding of a county court followed shortly thereafter.⁴⁸ Although there were a host of different courts in colonial Maryland, the Provincial and county courts heard most cases that involved women. The Provincial and county courts are therefore the focus of this work.

As with any study of crime and the law, it is impossible to determine the complete extent of crimes committed in colonial Maryland. The "dark figure" of crimes never reported to authorities is likely enhanced in the austere setting of colonial Maryland. Pursuing justice came at considerable cost to the plaintiff who chose to initiate court action. Maryland, like England, employed a diluted adversarial system of justice. Generally, the wronged party chose to press charges against a defendant. However, the colony employed an Attorney General to serve as prosecutor for the province in the name of the Lord Proprietor. If the wronged party chose to raise a case before the courts they were forced to bear the cost of prosecuting the case. Aside from court costs, the party needed to travel to either the location of the county court or to the capital (either St. Mary's or Annapolis) to go before the court. As illustrated by payments allotted to jurors, spending a day or more away from home and work cost a sum. Not only could this be costly, it proved time consuming. In an agricultural society where a planter had to tend

⁴⁷ Pat M. Clerks, "The Judicial System . . ." *Archives of Maryland Online* Special Collections, <http://www.msa.md.gov/msa/speccol/sc5200/sc5294/html/patmclerks.html>, (Accessed October 25, 2009).

⁴⁸ Burgess, "The Cup of Ruin and Desolation," 186; Maryland State Archives, Guide to Government Records, Agency History for Provincial Court, <http://guide.mdarchives.state.md.us/history.cfm?ID=SH5>, (Accessed October 25, 2009).

their crops nearly constantly, it sometimes proved unfeasible to leave even for a day.⁴⁹ This was especially true for small farmers who had limited hired, indentured, or enslaved laborers. The prohibitive cost and time served as a greater deterrent to indentured servants who perhaps wished to seek justice. All these factors lowered the reported number of cases heard by the courts. Such a system both helped and hurt colonial women. While women were deterred from pursuing their own cases because of the cost, some women were appointed attorneys for their husbands, to permit someone with knowledge of the case to appear before the court while still allowing males to remain on their land and deal with other concerns. Additionally, certain cases were settled privately amongst parties, which leaves no record.⁵⁰

Women and the Law

Females were not allowed to sit on either the grand or petty juries. Both were composed solely of freemen. Women did, however, serve as witnesses in certain cases. Witnesses, like jurors, were paid thirty pounds of tobacco for answering a summons and appearing in court or fined for failing to appear. Women did sue male defendants when they were not paid for their time, although they generally co-sued with their husbands.⁵¹ The only "juries" women served on were medical juries of women (also known as a

⁴⁹ Tobacco was a particularly labor intensive crop. Most of the year was dedicated to farming, harvesting and drying tobacco. For a description of the tobacco year see: Lois Green Carr, Russell R. Menard, and Lorena Walsh, *Robert Cole's World: Agriculture and Society in Early Maryland*, (Chapel Hill, NC: The University of North Carolina Press, 1991), 55-76.

⁵⁰ One example of this phenomenon is found later in this chapter with the situation of Ann Hammond, appointed as attorney for her husband. Regarding a case where one party attempted to settle the situation out of court see the case of Overzee v. Clocker in Chapter 5. Simon Overzee attempted to employ a sort of informal retribution known as "theftbote" to recoup some of his losses from Daniel and Mary Clocker. Theftbote generally involves the wronged party taking their goods back following a theft in exchange for a promise not to prosecute the offender. Such an action is illegal and compounds a crime.

⁵¹ AOMOL, 10:401.

matron's jury) tasked with examining the body of an accused woman for signs of witchcraft or pregnancy. The matrons' jury was not supposed to have any legal power, but frequently it offered their opinion to members of the petty jury who upheld the opinion of the women.

There were a limited number of women in the colony, which was one reason jurymen likely regarded the opinion of the matron's jury with some degree of reverence.⁵² In the 1630s and 1640s men outnumbered women by roughly six to one. This ratio improved throughout the seventeenth century as two or three men immigrated to the colony for every female. In the first decade of the eighteenth century there were about three men for every two women, a much healthier sex balance. Thus, according to statistics compiled regarding the population of the colony, in the 1640s there were eighty women in the colony, to approximately 480 men. In the 1710s there were about 17,474 women to 26,209 men in the colony, many of them native born.⁵³ Because they married later than future generations, women only had about four children in their lifetimes. This meant that in the seventeenth century the population of Maryland was not in majority native, but relied on immigration for growth. Although women were highly desirable to males looking to form a family, many women, perhaps 85 percent of all female immigrants, were indentured servants who could not marry or reproduce unless the interested male was willing and able to buy the woman's work contract.⁵⁴ Therefore, free

⁵² This issue is explored in more depth in Chapter 5. Another reason men put so much weight on the opinion of the matron's jury was because they felt women had a greater understanding of other women's bodies.

⁵³ Menard, "Population, Economy, and Society in Seventeenth-Century Maryland," 72-73. Menard's article describes the situation for men and women in early colonial Maryland and has become the standard interpretation of life conditions in the colony in the seventeenth-century. In addition to his description of life in the colony, Menard provides population statistics for the earliest colonial period. I have used Menard's figures to determine these figures.

⁵⁴ Carr and Walsh, "The Planter's Wife," 542.

women (a decided social minority) were in particularly high demand as marriage partners.

Free women in the earliest years of settlement focused on two things – marrying and bearing children. It was imperative that a married woman act as a good wife to her husband and keep a good household. Some in England believed all women in Maryland were discouragingly tasked with manual labor, but this was not the case, especially for women who did not arrive as indentured servants. In his 1655 treatise *Leah and Rachel or the Two Fruitful Sisters Virginia and Maryland*, John Hammond answered this charge and described most women of the Chesapeake as being tasked with “domestique employments and housewifery.” Those who were “nasty, beastly, and not fit to be so employed” or drunkards (especially servant women) were put to work doing manual plantation labor.⁵⁵ Although at least one historian argues that the scarcity of women in the colony led to male abuse of women, Commissioner Thomas Cornwallis described how one particular female’s “Industrious huswifery hath soe Adorned this Desert, that should his [Jerome Hawley, her husband] discouragements force him toe withdraw himself and her, it would not A Little Eclipse the Glory of Maryland.”⁵⁶ The author of the 1634 *Annual Letter* of the Jesuits to the General Society at Rome noted the death of one of the “noble matrons” who had arrived with Maryland’s first settlers. In addition to her fortitude in dealing with the harsh environment, the author lauded her as “a perfect example of right management . . . in her domestic concerns.”⁵⁷ Although both Elinor

⁵⁵ John Hammond, *Leah and Rachel or the Two Fruitful Sisters Virginia and Maryland*, in *Narratives of Early Maryland, 1633-1684*, ed. C.C. Hall, (New York: Barnes and Noble, Inc., 1967), 290-291,

⁵⁶ Norton, “The Myth of the Golden Age,” 41; “Thomas Cornwaleys to Lord Baltimore,” in Lee, *The Calvert Papers*, 180-181.

⁵⁷ “From the Annual Letter of 1638,” in Hall, 123-124.

Hawley and the nameless matron faced great hardships, they apparently never worked the land, rather men praised them for their domestic ability.

Even when they received independent praise for their housekeeping abilities, the legal standing of women depended heavily on their husbands. Under English law, once a woman married, her husband and she were legally obliged to exhibit “unity of person.” In other words, the woman became a *feme covert* or “covered woman,” effectively barring her from participating in public business unless joined by her husband. William Blackstone explained that “the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover* she does everything.”⁵⁸ This meant a married woman was legally barred from acting alone in legal matters, including the sale and management of the goods, wages, and property that she brought into the marriage.⁵⁹ In England and throughout the colonies, women ceased to exist as legal entities once married. Although the earliest Maryland laws did not outline the meaning of a woman’s status under coverture. A nineteenth-century law that grouped married women with infants and the mentally ill may suggest women’s lower status in earlier times.⁶⁰ A woman’s power before the law and her ability to pursue justice rested almost solely with her husband. This does not mean, however, that women were unable to exercise some legal power over their land in Maryland once married.

Even though Maryland women lived under a system of coverture, Maryland’s

⁵⁸ Sir. William Blackstone, *Commentaries on the laws of England*. Vol. 1, (San Francisco, 1915-1916), *The Making of Modern Law*, Gale, Cengage Learning, <http://0-galenet.galegroup.com.libus.csd.mu.edu/servlet/MOML?af=RN&ae=F3750660057&srchtp=a&ste=14>, (Accessed February 1, 2010).

⁵⁹ Salmon, *Women and the Law of Property*, 14-15.

⁶⁰ AOMOL, 133:4580.

laws did not entrench male legal supremacy in writing as did some other colonies' laws. The earliest laws of Connecticut and New Haven had a gendered tone. One historian quotes the constitution passed in 1638 by the Connecticut General Court that read "No man's Life shall be taken away; no man's Honour or good name shall be stained . . . No man shall be deprived of his Wife, or Children."⁶¹ Connecticut's 1650 law against manslaughter also is fraught with such language. The law, applying mainly to cases of self defense, dictated that "if hee conceive hee cannot with safety of his owne person, otherwise take the ffelon, or assailant, and bring him to trial, hee should be holden blameless."⁶² No similar language ever appeared on the books in Maryland. In fact, the law regarding capital crimes stands in sharp contrast to this law. Justices considered homicide a "lesser" capital offense. The punishment, according to the law, was supposed to be similar to that of England. If the offender was not executed he or she could face a variety of other punishments, including "to lose all his or her Lands for life."⁶³ In all other laws, justices referred to the offender either as "him or her" or as simply "the person." Compared to Connecticut, Maryland law was written in gender-neutral terms. This allowed that the offender or the victim be either male or female, that females could own forfeitable land, and that both sexes required similar punishment. The language used in Maryland legislation was not the only way in which the law regarded women as nearly legal equals to males.

In 1674, the General Assembly established a set of guidelines for selling or giving

⁶¹ Dayton, *Women before the Bar*, 20. This particular law dates to 1715, although Dayton points to earlier legislation in the two colonies to illustrate the staid nature of New England law.

⁶² Connecticut. *The Code of 1650, being a compilation of the earliest laws and orders of the General Court of Connecticut : also, the Constitution, or Civil ...* Hartford, 1822,. *Sabin Americana*, (Gale, Cengage Learning. Marquette University - Memorial Library). <http://0-galenet.galegroup.com/libus.csd.mu.edu/servlet/Sabin?af=RN&ae=CY3801798433&srchtp=a&ste=14>, (Accessed January 31, 2010).

⁶³ AOMOL, 1:158.

away a married woman's property. This law demanded that in order to give away or sell any land belonging to a married woman, the woman had to give her consent to the transaction. In order to assure that these women were not pressured, abused, or in some other way coerced by their husbands in order to gain their consent, members of the Provincial Court instructed a court member to examine her “privately and secretly out of the hearing of her husband.”⁶⁴ Authorities already used this practice in the colony to deal with conveyances of land owned by females, but up until 1674 it had never been formalized by a statute in any colony. Although this law was not without flaws, this law was a tacit acknowledgment of female property rights.⁶⁵ Other colonies in British North America had similar laws, although the Maryland law predated these laws and served as a model. Connecticut, South Carolina, and Pennsylvania did not develop similar laws until the eighteenth century.⁶⁶

Even aside from this statute, Maryland had a tradition of honoring female property rights. Women understood that the courts would often aid them in their destitution, helping them to retain private property rights in order to support themselves. This may have been an effort by Maryland authorities to protect the females in the colony or it may be a product of women’s energy in defending their rights. Either way, the legislators' willingness to grant married women individual property rights sets Maryland apart from the mother country and many of the other colonies. One woman who used the court system to retain her own property was Hannah Lee Price. When Hannah Price arrived in Maryland she was married Robert Huett. When Huett died in 1650, Hannah

⁶⁴ Ibid., 2:391. A nearly identical law was passed in Virginia in 1674.

⁶⁵ Salmon, *Women and the Law of Property*, 18.

⁶⁶ Marylynn Salmon, “The Legal Status of Women in Early America: A Reappraisal,” *Law and History Review*, Vol. 1, No. 1 (Spring, 1983), 144.

remarried Hugh Lee. Almost immediately, Hannah petitioned the Land Office for 800 acres of land due to her previous husband for indentured servants whose transport fee they had paid.⁶⁷ Hannah Lee's life after this was eventful, bringing her frequently into contact with the authorities, perhaps helping her better comprehend the law. When Hugh Lee died in 1662, he left Hannah a life interest in his estate. When she married William Price shortly thereafter she controlled a considerable estate. However, under laws of coverture Price gained control of his wife's estate when he married her. This arrangement disadvantaged Hannah Price, who fell into poverty because Price did not use profits from her property to support her. In 1666, Hannah petitioned the Provincial Court that all goods and charity she received from her "friends and neighbors" to help with her maintenance would be for her sole use. Her husband, she begged, should have no part of what she rightfully owned. The commissioners of the Provincial Court acquiesced to this plea, granting Hannah all profits gained from a plantation she had inherited from her husband Hugh Lee. William Price, they ruled, was "forever debarred from any claim thereto."⁶⁸ Although it took some work, women in the earliest years of Maryland's existence were allowed to control their own property.

There are a number of examples of women petitioning authorities for control of what was rightfully theirs. Throughout the colonial period, inheritance laws helped women gain a more equitable share in family estates. In part, this was because Maryland lawmakers did not follow changes in English law rather, stayed with the initial law passed in Maryland.⁶⁹ This benefitted women by granting them property rights not found

⁶⁷ Land Office, (Patent Records), AB&H, 44, [MSA SM2-5]. Lee also made an oath at this time that her "son-in-law" had transported himself seven year prior and deserved a land grant.

⁶⁸ AOMOL, 57:131.

⁶⁹ Salmon, "Legal Status of Women," 138-139.

in England or some of the other colonies. Although women certainly gained some equality through cases involving property, it would be wrong to assume that women in Maryland only dealt with their private property in the courts. Instead, they interacted with the courts regarding other issues, even when they were married. Husbands appointed their wives as attorneys frequently enough to incite the Governor to declare before the Provincial Court that “the Wife of Noe person or persons residing within this province after the end of this present Court . . . shall bee from henceforth admitted or allowed as Attorneys for their husbands in any Court of this province.”⁷⁰ This 1658 law barring women from acting as attorneys for their husbands did not, however, bar them from serving as attorney to any other colonist. Female colonists were adept at exercising this role as illustrated by Ann Hammond. In 1655, John Hammond named his wife, Ann, and an associate, Walter Pake, as his joint attorneys. The following year, Ann Hammond revoked Pake’s appointment.⁷¹ Through her actions, Ann obtained sole power to control her husband’s estate. Even after the 1658 law barred women from serving as attorneys for their husbands, Ann Hammond continued to appear before the Provincial Court as her husband’s attorney.⁷²

Once in Maryland, women (whether servant, convict, or free) faced a situation unlike what they faced in the mother country. The ratio of men to women ranged somewhere between one woman to every six males to one woman for every three males. Therefore, women were an important commodity in Maryland. Ann Hammond and

⁷⁰ AOMOL, 41:233. The term “attorney” refers to any person appointed to represent another in court. The term “lawyer” refers to someone who served the same purpose but with formal legal training.

⁷¹ *Ibid.*, 10:472.

⁷² Ann Hammond showed particular legal acumen. Not only did her husband appoint her to serve as his attorney, which she did frequently, she personally sued and was sued by male and female colonists with mixed results.

Hannah Price, both active in the court system, were married women. Both women acted independently outside of their marriages. Both also chose to remarry numerous times in their lives. Due to the imbalanced sex-ratio, women almost always remarried when widowed. Despite the independent power a woman gained in widowhood, few women chose to stay unmarried. Even fewer women chose never to marry. One woman who opted to remain unmarried and deal with her own affairs both inside and outside of the courtroom was Margaret Brent. Margaret Brent arrived in Maryland in 1638 with her sister Mary and her two brothers Giles and Fulke. The Brents sprang from a well-off English Catholic family, much like the Calverts. Indeed, the Brents may have been distant relatives of the Calverts.⁷³ Like Margaret, Mary Brent opted to remain unwed. The women may have taken temporary vows to work with the Jesuits and remain celibate.⁷⁴ This would have protected the women from the pressures to wed that they found in Maryland. The Lord Proprietor granted both women substantial estates, commensurate with grants given to the colony's first investors.⁷⁵ They increased the land they held and personally ran their estates until they left the colony in the 1650s. Margaret Brent's tenure in Maryland was unique. Not only did she remain single and run a successful estate, she proved herself adept at serving as an attorney for other colonists (some of high social esteem) and administering estates, even the estate of Governor

⁷³ Historians are divided on this point. The controversy stems from uncertainty regarding Leonard Calvert's mysterious wife Anne. Some historians posit that Anne was actually Margaret Brent's sister, while others argue the Brents were distant cousins of the Calverts. One final argument is that the Brents were cousins of Anne Arundell, Cecil Calvert's wife. For an excellent discussion of the possibility that Leonard Calvert married Margaret's sister see Riordan, *The Plundering Time*, 106-108.

⁷⁴ Lois Green Carr, "Margaret Brent," *Archives of Maryland*, (Biographical Series,) [MSA SC 3520-2177], <http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/002100/002177/html/bio.html>, (Accessed December 6, 2009).

⁷⁵ In 1639, Margaret and Mary Brent each patented 70 ½ acres of land in St. Mary's County. Margaret, Mary, and Giles Brent also held land in Kent County. For land patents see: Maryland State Archives, Maryland Indexes, Patents, <http://www.msa.md.gov/megafile/msa/stagser/s1400/s1426/b/pdf/54brea-bric.pdf>, (Accessed December 6, 2009).

Leonard Calvert.⁷⁶

On June 9, 1647, Leonard Calvert died after a short illness. On his deathbed, Calvert appointed Catholic Thomas Greene to be the next Governor of Maryland. He also famously called Margaret Brent to his bedside, telling her “I make you my sole Exequitrix. Take all and pay all.”⁷⁷ Calvert’s declaration was a critical event for the colony. Margaret Brent not only faced typical administrative duties, such as paying debts and distributing the decedent’s estate to kin, but also the demands of the Virginia militiamen Calvert had recruited to restore the colony to the Lord Proprietor’s control during Ingle’s Rebellion. Calvert had promised these men food and pay for their services. The governor had granted Brent the right to use his entire estate to pay these men, but proceeds from his estate were not enough to pay his other debts and compensate the soldiers. Leonard Calvert intended to use Lord Baltimore’s estate to pay the soldiers and oversaw the passage of an unpopular tax on tobacco to raise funds. His death preempted both plans, forcing Margaret Brent to deal with colonial unrest.

The question remains why Calvert appointed Brent, a woman, to administer his estate. There certainly were other qualified administrators in the colony. Calvert’s dismissal of all witnesses except Margaret Brent while on his deathbed has led some scholars to assume Calvert and Brent were involved in a romantic affair. However, later

⁷⁶ Margaret Brent’s lengthy legal career, wherein she mostly succeeded in her suits, is detailed in Maryland’s Provincial Court records and Dr. Lois Green Carr’s Career Files, found at <http://www.msa.md.gov/megafile/msa/speccol/sc4000/sc4040/000001/000164/html/sc4040-0164-001.html>. (Accessed December 6, 2009).

⁷⁷ Governor and Council, (Proceedings), 1647-1651, liber A, folio 64, MSA S-1071-4. Some historians have wondered if Leonard Calvert would have appointed Giles Brent had he been available. Giles Brent was returning from captivity in England when Calvert died. Additionally, Giles had been a controversial figure in Maryland politics; thus, making his sister a more neutral choice. Her ability also proved the foresight of this decision.

historians have discredited this theory.⁷⁸ Some historians hypothesize that Margaret Brent and Leonard Calvert were related through marriage or by some distant relative. Of course, Calvert must have realized Brent's considerable experience and talent for such a role. Margaret Brent had already shown great ability when tasked with administering her brothers' estates. Likely this was one reason why Leonard Calvert appointed Margaret Brent as his administrator and not one of his male colleagues.⁷⁹ Brent's role may appear surprising given her sex; however, it may have been her sex that aided her quest to restore civility to the colony.

In order to quiet the troops and restore peace to the colony, Margaret Brent took an unheard of step for a woman. In 1648, Governor Thomas Greene raised the issue of whether or not Leonard Calvert's administrator, Margaret Brent, should also have control over Lord Baltimore's possessions as his attorney. As Leonard Calvert's executrix, Greene argued, Brent should have the same powers the governor had prior to his death. One of Calvert's powers had been the legal administration of his brother's Maryland estate. Greene, with the assent of councilor Giles Brent, granted Margaret Brent a limited right to act as Baltimore's attorney, at least for settling his debts.⁸⁰ This gave her the power to sell the Lord Proprietor's cattle in order to feed and pay the troops as Leonard Calvert had promised. By importing corn from Virginia and paying the soldiers via the sale of Lord Baltimore's cattle, Brent averted disaster and effectively saved the colony. Perhaps inspired by her role and realizing the importance of having legal rights on January 21, 1648, Mistress Margaret Brent went before the General Assembly and

⁷⁸ Julia Cherry Spruill, "Mistress Margaret Brent, Spinster," *Maryland Historical Magazine*, (December 1934), 264.

⁷⁹ Nuran Çınlar, "'Came Mistress Margaret Brent': Political Representation, Power, and Authority in Early Maryland," *Maryland Historical Magazine*, (Winter, 2004), 416.

⁸⁰ AOMOL, 4:358.

“requested to have vote in the howse for her selfe and voice also.” Brent requested not one, but two votes, one for herself and one for her role as attorney to the Lord Proprietor. The governor denied her request, to which “Mrs Brent protested agst all proceedings in this present Assembly.”⁸¹ She never obtained voice or vote and some historians wonder if she even believed she would be granted such.⁸²

Despite her extraordinary actions, there is no evidence that women were inspired by Margaret Brent or were even aware of her actions.⁸³ Members of the General Assembly, to whom Brent pled her case, did not grant women the right to sit on juries, in the Provincial Court, or in the General Assembly. She undertook actions not generally considered normal for her sex, going as far as seeking the vote for herself. Nevertheless, Mistress Margaret Brent did not seek the vote for all women, therefore she should not be considered America’s first feminist.⁸⁴ However, Margaret Brent’s story was symbolic of the legal and political situation many women in the colony faced. Although Brent failed to gain the right to vote in the General Assembly, the same men who denied her this right praised her profusely to the Lord Proprietor. This was a risky move by the members of the Assembly as Calvert had expressed a decided distaste for Brent and her actions. In 1648, Cecil Calvert sent the General Assembly what must have been a decidedly scathing

⁸¹ Ibid., 1:215.

⁸² Çinlar, “Came Mistress Margaret Brent,” 406.

⁸³ In 1658, the Provincial Court probated the estate of Thomas White. A woman named Margaret Brent petitioned the court for control over White’s estate. Modern scholars sometimes are still prone to arguing that this was the famous Margaret Brent, but in 1934, Julia Cherry Spruill dismissed the idea that this was Mistress Margaret Brent because the petitioner claimed she was a “Servant Maid,” which was the complete opposite of Brent’s status. Additionally, Brent was already settled in Virginia and had renounced all participation in Maryland affairs. It was likely a coincidence that there two women named Margaret Brent in Maryland; yet this other woman never appears in any colonial records aside from this case.

⁸⁴ Norton, *Founding Mothers and Fathers*, 281. Norton argues that Brent gained as much power as she did primarily because of her elite standing. However, it is difficult to argue that every colonist, male or female, was as adept at this role as Margaret Brent. For one historian who points to Margaret Brent’s actions foreshadowing “American militant suffragettes” see Paul Wilstach, *Tidewater Maryland*, (New York: Tudor Publishing Co., 1931), 309.

letter in which he lambasted Brent's actions.⁸⁵ This angered Assemblymen, prompting a strong reply. Amidst a longer explanation of the problems that had recently befallen the colony, members of the General Assembly said of Mistress Brent that “it was better for the Collonys safety at that time in her hands then in any mans else in the whole Province.”⁸⁶ Their praise was a direct refutation to the Lord Proprietor’s indignation. It was also an acknowledgement that beyond her considerable skill, her sex likely saved the colony. The Assemblymen noted that “the Soldiers would never have treated any other with that Civility and respect and though they were even ready at several times to run into mutiny yet she still pacified them.”⁸⁷ In an age where men still had high regard for women of a superior social standing, Leonard Calvert, as he was dying, and the General Assembly recognized that dealings with the soldiers without the initially adequate funds required respect and delicacy, something only a woman of Brent’s status could possess.⁸⁸ Lord Baltimore’s distance from the events colored the way he reacted.

Baltimore’s actions were somewhat surprising in light of his past actions. Throughout his life, Lord Baltimore showed no real prejudice against women. In 1638, Thomas Copley wrote Lord Baltimore a letter discussing Maryland’s newly proposed laws. One law dictated that no woman could come into the colony and hold land without marrying within seven years.⁸⁹ As final arbiter on the laws of the colony, Lord Baltimore did not agree to any of the proposed laws. The General Assembly never proposed this particular law again. Further, Cecil Calvert also corresponded with at least one other

⁸⁵ An in-depth discussion of Cecil Calvert’s letter to the assembly is found in the conclusion of this work.

⁸⁶ AOMOL, 1:239.

⁸⁷ Ibid.

⁸⁸ Riordan, *The Plundering Time*, 301.

⁸⁹ Thomas Copley to Lord Baltimore, April 3, 1638, in Lee, *The Calvert Papers*, 165.

woman in the colony. In 1642, Calvert asked his brother to thank one Mistress Traughton for a letter she had sent him in reply to an inquiry he had made of her the year before.⁹⁰ Like Margaret Brent, Mary Traughton was an unmarried female settler who apparently had some knew and corresponded with Lord Baltimore. Cecil Calvert's actions regarding Brent, therefore, were precipitated by his desire to preserve his Maryland estate and wealth, not by some prejudice against females.⁹¹

Due to his anger over Margaret's sale of his private cattle and Giles Brent's apparent power grab in the form of his marriage to Mary Kittamaquund, Cecil Calvert eventually succeeded in driving Brent and her family out of Maryland into Virginia.⁹² When she had arrived in Maryland in 1638, Brent arrived with the Lord Proprietor's favor and a private letter from Lord Baltimore, along with orders that she and her family be granted the same amount of land as the first settlers in Maryland. Yet, by 1650 she had lost this favor. Margaret Brent, who had been more active in Maryland politics than any other woman, having effectively saved Cecil Calvert's colony from disruption wrote in that year that she "would not intangle my Self in Maryland because of the Ld Baltimore's disaffections to me and the Instruccons he Sends agt us."⁹³ Margaret Brent's fall from Calvert's favor was dramatic, but does not lessen her importance to any study of women in colonial Maryland. She participated in and challenged the legal system of the

⁹⁰ Cecilius, Lord Baltimore to Governor Leonard Calvert, November 23, 1642, in *Ibid.*, 221.

⁹¹ Cecil Calvert's marriage to Anne Arundell joined him with a strong woman. Anne Arundell, like her husband, was dedicated to the Maryland colony. She also illustrated personal business acumen as evidenced by a letter Lord Baltimore sent to Leonard Calvert on November 21, 1642 which described her investment in Virginia. She was apparently highly regarded by men in Maryland, who named a county in her honor after her death. Regarding her sending an "adventure" see: "Cecilius, Lord Baltimore, to Governor Leonard Calvert," in *Ibid.*, 214.

⁹² Mary Kittamaquund was an Indian ward of Margaret Brent. She stood to inherit much of her tribe's unpatented land. Thus his marriage to this young Indian would eventually make Giles Brent the largest and most powerful landholder in Maryland. Giles Brent had also refused to lead a group of Kent Islanders in an attack against local Indians.

⁹³ AOMOL, 10:104.

colony. Her status as a female did not completely hinder her actions at court or socially. Indeed, it was her sex that helped her fulfill the duty Leonard Calvert assigned to her. Even though her situation was extraordinary, she represented the struggle and ability of all women in the colony.

Conclusion

One certainty is that women were highly valued in the colony. One historian argues that the early presence of women in the colony helped Maryland achieve a more domesticated society than neighbor Virginia. This was one of the reasons Maryland did not face the instability Virginia did in the earliest years of settlement.⁹⁴ However, women were still regarded as women. Even when praised, women were viewed differently than men. Thomas Cornwallis, in his praise of Elinor Hawley, made a point to note that she had comported herself well in light of her husband's troubles, which was all the more noteworthy given her "sex."⁹⁵ Margaret Brent, like other women, was referred to by her sex, even as the courts praised her for her actions. When an unmarried woman came before the courts she was referred to, as was common practice, as a spinster. No such appellation applied to unmarried males. Justices and other leaders were certainly aware of women's sex and how this allegedly disadvantaged them. Yet, women were able to present their cases to all courts, even separate from male guardianship. This ability is the focus of the following work.

Women in colonial Maryland were multifaceted. They were convicts, free women, servants, attorneys, landholders, and wives. These roles brought them into

⁹⁴ Robert J. Brugger, *Maryland: A Middle Temperament, 1634-1980*, (Baltimore, MD: The Johns Hopkins University Press, 1988), 10.

⁹⁵ "Thomas Cornwaleys to Lord Baltimore," in Lee, *The Calvert Papers*, 181.

contact with an equally multifaceted legal system. The all-male collection of Maryland authorities desired to keep their laws consistent with those of England. However, when faced with the realities of life in the Chesapeake they opted to alter their laws to suit the colony. Women were particularly cognizant of these laws and, as the women in the following pages exhibited, had a certain adeptness at dealing with the legal system. Most women who interacted with the various colonial courts showed no fear of the system. Some women, such as Margaret Brent, chose to assist the colony, in spite of the way her actions were perceived by the legal leaders of the colony. Accused witch Joan Michel also attempted to use the laws to aid her cause. She went as far as challenging the justices of the Charles County court to aid her in proving her innocence against what she saw as slanderous or loose speech.

Such loose talk by females, as exhibited in Joan Michel's numerous slander suits, particularly concerned early modern law makers. Early modern society was still largely an oral culture. What one person said about another was taken as the truth regarding that individual. In such a society it was imperative to maintain as much credit as possible and maintain a good reputation.⁹⁶ Therefore, words spoken against an individual were especially dangerous to communal order. Thus, in England and the colonies, gossip was viewed as a particularly dangerous means to cause dissent in the community. Especially in the New England colonies, gossip was linked with the crimes of defamation and scolding. Both crimes helped establish women as powerful figures and arbiters of behavior in society and thus were linked to female behavior. In the New England colonies, disorderly speech was punished through the use of the ducking stool. A ducking

⁹⁶ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London*, (New York: Oxford University Press, 1998), 111.

stool was basically a chair fastened to two beams and suspended above a body of water. The accused scold or defamer was lowered into the water repeatedly, allegedly to “cool her immoderate heat.”⁹⁷ Such a public punishment was extremely demeaning for the accused woman and under Maryland law every county was legally obligated to construct a ducking stool. According to a 1663 law passed by the General Assembly every county, except Talbot and Baltimore Counties, was to construct a “Pillory Stocks and Ducking stoole.”⁹⁸ Counties were to construct such devices because they mostly lacked prisons and offenders were escaping without punishment. Given the fact that most defamation cases were punished via fines and public apologies and no cases of scolding appear in early court records, it is somewhat puzzling that legislators passed such an intense law. It is further confounding to consider that no women were ever sentenced to punishment in the ducking stool in early colonial Maryland. This law further illustrates that Maryland authorities attempted uniformity with England, but did not necessarily enforce them with the same rigor. Women, on the other hand, understood their rights as slanderers and slandered. That is why certain cases never reached the courts. Again, women understood

⁹⁷ Misson, Henri. *M. Misson's memoirs and observations in his travels over England. With some account of Scotland and Ireland. Dispos'd in alphabetical order. Written originally in French, ...*, 1719. *Eighteenth Century Collections Online*. Gale, <http://0-find.galegroup.com.libus.csd.mu.edu/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CW3302384154&source=gale&userGroupName=milw10296&version=1.0&docLevel=FASCIMILE>, (Accessed December 4, 2009). Misson refers to the device as a “cucking stool,” a term frequently interchangeable with ducking stool. In 1881, William Andrews explained that the two devices were actually different, the cucking stool being intended for women who made bad ale and was placed in front of the offender’s front door. See: William Andrews, *Punishments in Olden Times*, (London: W. Stewart and Co., 1881), 3-4.

⁹⁸ AOMOL, 1:490. The pillory, apparently used more frequent than stocks, is often referred to by modern viewers as the stocks. A pillory is “a wooden framework with holes through which an offender’s head and hands are placed.” An offender who was “pilloried” had to stand as opposed to an offender who was placed in the stocks who sat. “Pillory” and “Stocks,” in *Black’s Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 1185, 1459.

what was expected of them under the law and how to circumnavigate the legal system.⁹⁹

It is difficult to assess how women felt about their situation and the opportunities they encountered in the New World. Despite periodic spikes in the prosecution of certain crimes, women's interaction with the law was largely unchanged by the frequent disorder in Maryland and legislative instability. Nonetheless, it is impossible to say women were treated equally by the law. Laws regarding witchcraft, predominantly a female crime, and sexual offenses, wherein the punishment usually favored the male over the female, remained much the same as in England. Beyond the inequality engendered by these laws, there are horrifying stories of men mistreating women (physically and sexually), particularly female servants.¹⁰⁰ Although not all women were servants, servant women's stories help illustrate the perilous life women could face in the new colony. Court records reveal a number of cases of masters who raped their female servants. Testimony regarding these cases is explicit. One master even boasted that "he had got the finest lye upon Williams [his servant] that ever any man had, and that if he had not taken that Course of beating of her he Should never have gained it."¹⁰¹ Some servant women did not face such outright abuse, but were subject to maltreatment by their masters. This continued throughout the colonial period. In 1756, servant Elizabeth Sprigs wrote a letter to her father in England and described her servitude, telling how she was "almost naked no shoes nor stockings to wear, and the comfort after slaving during Masters pleasure,

⁹⁹ Gowing, *Domestic Dangers*, 122. Gowing notes that women in England were particularly aware of their legal rights and responsibilities. This clearly carried overseas to the Maryland colony. Women were defamers but they did not face the ducking stool.

¹⁰⁰ Christine Daniels argues that servants in colonial Maryland understood their rights and courses for redress against mistreatment. This included female servants who were willing to use the courts to avoid maltreatment. Justices, in turn, were not biased against servants who brought petitions before them. See: Christine Daniels, "Liberty to Complaine," 219-249.

¹⁰¹ AOMOL, 10:181.

what rest we can get is to rap ourselves up in a Blanket and ly upon the Ground."¹⁰² Such stories illustrate the difficulties faced by females in colonial Maryland, adding to the tradition that women were suppressed and nearly invisible to authorities in colonial Chesapeake society, but, as women's understanding and actions in the budding legal system illustrate, these stories do not tell the whole story.

¹⁰² Elizabeth Springs, "Letter to Her Father," in *Voices of America Past and Present* Volume I ed. Michael Boezi (New York: Pearson Education Inc., 2006), 44.

Chapter 2: “They Say I am a Witch”: Early Maryland and Witchcraft

There are three crimes in the early modern world that are associated predominantly with women – witchcraft, infanticide, and scolding.¹ Of these, the crime most commonly associated with women in colonial America, at least in popular imagination, has to be witchcraft. Perhaps this is because of the ubiquitous presence of the 1692 witch craze in Essex County, Massachusetts, in our popular culture. The most obvious example of this is the omnipresence of Arthur Miller’s Cold War play *The Crucible* in high school curricula. Moving away from the popular imagination and literature, New England witchcraft has also dominated the historiography of witchcraft in America. Due to this fascination, historians have scarcely mentioned witchcraft accusations outside of the Puritan colonies. This is not, of course, to say that witchcraft outside of New England has been completely ignored in either the historical or popular imaginations. A long standing tale, told throughout Maryland, holds that around 1697 neighbors blamed Moll Dyer for conditions of suffering in the colony. They accused her of witchcraft and drove her from her home. Driven from her home and into the woods, Dyer allegedly used her powers to curse the town. Eventually she froze to death. A few days later a child in the woods found her body.²

Although Marylanders have told and retold Dyer’s story, the reality is that there were only a limited number of witchcraft cases that came to trial and an even smaller number of convictions. The legal system of Maryland was prepared to deal with such

¹ J.A. Sharpe, *Crime in Early Modern England, 1550-1750* Second Edition, (New York: Addison Wesley Longman Limited, 1999), 156-157. Prostitution, a modern crime associated with women, was not yet criminalized in Europe or the colonies at this time.

² Ed Okonowicz, *Haunted Maryland: Ghosts and Strange Phenomena of the Old Line State*, (Mechanicsburg, PA: Stackpole Books, 2007), 97-99.

accusations in a manner that did not lead to the same sort of panic as was seen in Massachusetts. The inhabitants of Maryland had no less a belief in the devil or the reality of witchcraft than their compatriots to the north. They just showed more moderation in regard to accusations of supposed witchcraft.

Historians have attempted to explain this divergence with little success. Most recently Maureen Burgess acknowledged that “witchcraft was a reality” to both Northern and Southern colonists.³ Burgess gave a number of reasons for the disparity in prosecutions. Her main argument is that Chesapeake colonists, mainly those in Virginia, harbored an essentially frontier mentality. Thus, while Northerners were able to secure the existence of their colonies, Southerners were fighting for survival. One of the main threats to these nascent communities in the Chesapeake was Indian attacks. Since the colonists were too busy fighting Indians to worry about internal threats, they did not see witchcraft as a serious concern.⁴ There is no doubt that Marylanders also were threatened by Indian tribes surrounding them, principally because these curious people were unknown to the settlers. Nonetheless, Maryland did not have the same sort of troubled relations that the Virginians did with surrounding Indians. In fact, one historian notes that even though Maryland’s history does show scattered examples of “thievery and murder . . . Maryland never had an Indian ‘problem’ in a century and a half of her provincial history.”⁵ While Indian attacks were clearly a concern to the settlers of Maryland, they did not distract the colonists from attempting to implement a system of laws similar to

³ Burgess, “The Cup of Ruin and Desolation,” 8. This is the most recent study of witchcraft in Maryland and one of the few to attempt to explain why trials were less common in the Virginia and Maryland than in places such as Massachusetts.

⁴ See Burgess, 2-8. Burgess also attributes the lack of prosecutions to the fact that the Chesapeake did not have the same Calvinist background as the New England colonies. The Puritans actually had a strong influence on the development of Maryland, particularly after the Puritans were expelled from Virginia by Governor William Berkeley following the restoration of the monarchy in England in 1660.

⁵ Land, *Colonial Maryland*, 11.

those of England.

Further, to assume that New Englanders were any less threatened by Indian attacks is largely false. A series of wars, including King Philip's War and Queen Anne's War, pitted Northern Puritan settlers against local natives. Attacks illustrate how prevalent hostilities were between the two groups. In 1704, local Indians and their French allies attacked Deerfield, Massachusetts.⁶ This was only one Indian attack on New Englanders by local natives, illustrating how prominent and noteworthy attacks on New Englanders by Indians were in the colonial period. Attempts by Northern Puritans to defend their borders against Indians intensified the witch hunt. New England colonists "attempted to shift the responsibility for their own inadequate defense of the frontier to the demons of the invisible world."⁷ This begs the question of Burgess's work – if Northerners were equally affrighted by the Natives, how can this be considered a reason why there were *not* more accusations in the Chesapeake?

To fully understand the meaning of witchcraft in Maryland, the colony must stand alone from Virginia. In many cases it is useful to treat the two colonies as one entity. In the case of witchcraft, this is not so. As was evident in Europe during the time of the continental witch hunt, residents of different regions harbored different attitudes towards the threat of witchcraft.⁸ The same holds true for the English colonies. One of the reasons for this was the religious development of the colonies. Virginia remained religiously

⁶ John Demos, *The Unredeemed Captive: A Family Story from Early America*, (New York, N.Y.: Alfred A. Knopf, 1994).

⁷ Mary Beth Norton, *In The Devil's Snare: The Salem Witch Crisis of 1692*, (New York, N.Y.: Alfred A. Knopf, 2002), 308. Norton is not the only one to consider the threat of Indian attacks as a cause for the witch craze in New England. Other works that reference the threat of Indians as a cause for the 1692 outbreak include David Lovejoy, "Satanizing the American Indian," *New England Quarterly*, 67 (December 1994), 603-621; and John McWilliams, "Indian John and the Northern Tawnies," *New England Quarterly*, 69 (1996), 580-605.

⁸ For a discussion of the variances in European witch hunts see Brian Levack, *The Witch-Hunt in Early Modern Europe*, Third Edition, (New York: Pearson Education Limited, 2006), 1.

stable under an Anglican establishment throughout the earliest years of settlement, while Maryland fluctuated between a tolerant community with a Catholic proprietor, a Puritan-dominated colony and a royal colony with an established Protestant church. The uncertainty would seem to create the proper conditions for a witch craze, yet this never occurred. It is certain that witchcraft was a reality to the settlers of Maryland. A 1642 act declared that “all offences of homicide pyracry robbery Burglary Sacrilege Sodomy Sorcery rape polegamy and larceny,” were lesser capital offenses, and were punished by execution, branding, cutting off of a limb, forfeiture of land and position, imprisonment, servitude to the proprietor, or exile from the colony.⁹ These crimes were considered second in severity only to murder and crimes against the colony.

This act was a carryover from English law, a part of the statutes put forth by James I in his first year on the throne. According to William Kilty, this law along with a law punishing any person accused of faking witchcraft practices was later repealed.¹⁰ In England, Parliament repealed the law against witchcraft in 1736. In 1704, the Maryland Assembly repealed all acts passed by previous assemblies, but did not enact a new set of laws. Thus many of the former laws remained in force, to be enforced at the discretion of

⁹ AOMOL, 1:158. A few other crimes were placed in the category of lesser capital crimes. These included burning another’s house, tobacco, or other farmed goods and cutting out another’s eyes or tongue.

One of the more interesting facts about this law is that the term sorcery is used interchangeably with the term witchcraft. Oftentimes these terms were not synonymous with each other – sorcery involving acquired skills and, often, paraphernalia of some sort, while malefic witchcraft involved a power that was given by the devil. Richard A. Horsley argues that historians need to take a closer look at how these terms are used,; however, Alan Macfarlane does point out that in some societies, including England, there was no clear distinction made between the two terms. This was clearly the case in Maryland which borrowed from the English law. Richard A. Horsley, “Who Were the Witches? The Social Roles of the Accused in the European Witch Trials,” *Journal of Interdisciplinary History*, Vol. 9, No. 4, (Spring, 1979), 695; Alan Macfarlane, *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study*, (New York: Harper and Row, 1970), 4.

¹⁰ William Kilty, *Kilty's English Statutes*, 143:190, *Kilty's English Statutes, 1811*, AOMOL, 43:190. Although this portion of the Act would be repealed, other portions, such as the punishment for rape, would stay on the books.

the residents of the Province.¹¹ In 1723, the Assembly renewed an act in the exact language as that deeming sorcery to be a capital offense.¹² The fear of witchcraft, coupled with a fear that people would attempt to fake the practice of witchcraft or sorcery, indicates that the members of the General Assembly truly believed that witchcraft had the potential to be a serious problem. One historian notes that “lawmakers only feel it necessary to restrict actions that people are actually doing or that the lawmakers think they might contemplate doing.”¹³ Had these laws remained on the books but unenforced, it could be assumed that the settlers of Maryland did not believe that witchcraft was a crime. However, given the length of time that they remained in effect, along with the fact that the courts prosecuted witchcraft, indicates that witchcraft was indeed real to the inhabitants of Maryland and certainly a threat.

Witchcraft trials in Maryland can be divided into two categories. The first, criminal trials, involved a woman or man who was accused of practicing witchcraft and was subject to death or another serious punishment under the law. A subset of those cases involves those trials which happened outside of the legal jurisdiction of Maryland, but had an element dealt with by its courts. Those include the two cases that happened at sea wherein an execution occurred and the courts brought the captain of these ships to trial for disobeying English law. The second category is civil cases. These cases involved women, or their husbands, accusing another resident of slandering them with an

¹¹ “An Act Repealing all former Acts of Assembly heretofore made, saving what are hereby excepted,” in *The Laws of the Province of Maryland*, (Wilmington, DE: Michael Glazer, Inc., 1978), 42-43. An act passed during the same session of the Assembly granted legitimacy to actions of the courts which were taken between 1690 and 1692 (see *ibid.*, 33). The repeal and enactment of new laws took place upon the accession to the English throne of Queen Anne. Most of these laws dealt with payment to government officials as well religious issues so it should be assumed that the prohibition of witchcraft remained on the book, as laws against perjury and dishonoring the Sabbath were renewed.

¹² AOMOL, 34:671.

¹³ Mary Wiesner, *Women and Gender in Early Modern Europe* Second Edition, (New York: Cambridge University Press, 2000), 36.

allegation of witchcraft. Both sorts were dealt with seriously by the courts, indicating the importance of witchcraft to early Maryland, while also illustrating the agency shown by females in dealing with the courts.

Criminal Witchcraft

There were only a handful of criminal indictments brought against supposed practitioners of witchcraft in the colony. The first criminal trial for witchcraft in Maryland came before the Provincial Court in 1665. In that year, the Council of Maryland had ordered four of the colony's commissioners (also referred to as a "grand jury") "to "Enquire by the Oathes of good & lawfull men of your County aforesaid of all manner of ffellonyes Witchcrafts Inchantments Sorcerys Magick Arts."¹⁴ The commissioners, if they found the accused guilty of the alleged crime, were ordered not to execute or punish the accused witch. Rather, they were instructed to wait for the next Provincial Court session, where a punishment would be meted out. The first person accused under these provisions was Elizabeth Bennett, whose accusation was brought before the Provincial Court in 1665. Little remains of Bennett's case – it was so minor that there is no indication of why Bennett was accused of witchcraft or who accused her. What can be gleaned from her accusation and acquittal is that the commissioners were unable or unwilling to pursue accusations of witchcraft in a criminal case.¹⁵

Elizabeth Bennett immigrated to the colony in 1646 with her husband, Richard, and her five children. Aside from her role as Richard Bennett's wife, the record is silent

¹⁴ AOMOL, 3:535. Similar expectations were placed on the commissioners of the various counties. This is evidenced by the verbatim requirement of officials found in the Charles County Court Proceedings of 1661. See: *Ibid.*, 53:129.

¹⁵ *Ibid.*, 49:508.

as to her life in the colony before this accusation. This is not the case for her husband. Richard Bennett the elder was born in 1614, making him 54 at the time of Elizabeth's trial for witchcraft.¹⁶ The family was relatively well-off, holding a plantation of several hundred acres at Poplar Hill. Immediately after arrival, Bennett demanded 450 acres be laid out for him, followed by a demand for 150 acres of land in 1663, due to his service administering the estate of John Hollis.¹⁷ Bennett held a few minor offices in the colony including Grand Juror in 1661 and Appraiser in 1667.¹⁸ Although the Bennett record in the colony is extensive, it does not indicate a family which struggled to keep the peace with its neighbors. Until 1662, Bennett did not face the threat of any legal action, beyond a judgment ordering the paying of some debts. Then, in 1662, Thomas Bassett accused Bennett before the Provincial Court of refusing to aid him in taking a man accused of shooting his hog to the local Justice of the Peace. The neighbor accused Bennett of contempt against the government for his actions. The Provincial Court ended the case by noting that "This being the first faulte comitted by Richard Bennett and upon promise of amendment for the future The Leiutennt Generall hath pardoned him."¹⁹ The Bennetts were an upstanding group, not a family of common criminals, which arguably helped gain a fast acquittal in Elizabeth's witchcraft trial.

Most accused witches in colonial Maryland similarly were acquitted. Two

¹⁶ Lois Green Carr notes in her Biographical Files of 17th and 18th Century Marylanders that there may have been three Richard Bennetts at one point in the records – the elder Bennett, his son, and a famous Virginian of the same name, who played a key role in the Puritan uprising of the 1650s in Maryland. Dealings with Margaret Brent, for example, should be attributed to the Virginian and not the colonist.

¹⁷ Lois Green Carr, Men's Career Files, MSA SC 5094, 352-03 and 352-04.
<http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/004000/004329/html/sc5094-0352-03.html>,
 (Accessed July 17, 2008).

¹⁸ Ibid., MSA SC 5094, 352-01,
<http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/004000/004329/html/sc5094-0352-01.html>,
 (Accessed July 17, 2008).

¹⁹ AOMOL, 41:553.

criminal cases, however, did not end in an acquittal for the accused. These cases are as important for the outcomes as for the sex of the accused. The first occurred in 1674 when a man by the name of John Cowman (or Coman) was “Arraigned Convicted and Condemned upon the statute of the first of King James of England &^c. for Witchcraft Conjurat[i]on Sorcery or Enchantment used upon the Body of Elizabeth Goodale.”²⁰ Cowman had been convicted of practicing the most threatening form of witchcraft – *maleficium*, causing bodily harm to another person through the practice of magic. Dating back to a Tudor statute of 1563, proof of *maleficium* was required to prove that a person was committing felonious witchcraft in England.²¹ The proof of harm necessary to convict in an English court separated English witchcraft from Continental witchcraft, where proof of *maleficium* was not necessary to convict.

In spite of this most serious of offenses, Cowman petitioned the Lower House of the General Assembly to remit his sentence. The Assembly, apparently in agreement with Cowman’s plea, petitioned the governor, Charles Calvert, for “the Exercise of your Excellencys Mercy & Clemencie upon so wretched and Miserable an Object” as the accused.²² Calvert honored the wishes of the Assembly and granted Cowman a reprieve. The crime, however, did not go completely unpunished. Cowman was taken by the sheriff of St. Mary’s County to the gallows, wearing a noose around his neck. There, he was to make known publicly how deeply indebted he was to the Lower House and the governor. Afterwards, Cowman was to remain at St. Mary’s City in the service of the governor and Council. Although his life was saved, Cowman became an indentured

²⁰ Ibid., 2:425.

²¹ Peter Charles Hoffer, *The Salem Witchcraft Trials: A Legal History*, (Lawrence, KS: University of Kansas Press, 1997), 41.

²² AOMOL, 2:425.

servant to the Proprietor and other officials of the colony. This fact alone makes Cowman's case important in understanding witchcraft in colonial Maryland. The crime of witchcraft was still seen as warranting punishment, even though the accused was given a stay of execution. Perhaps more importantly, colonial officials provided some additional labor for the Proprietor while also showing mercy.

Service was apparently nothing new for Cowman or his alleged victim, Elizabeth Goodale. Cowman arrived in Maryland in 1671 aboard the *Constant Friendship* as a servant.²³ Little is known of his term of service, although after his arrival his service was sold to Benjamin Roger.²⁴ Following his arrival and prior to his accusation, Cowman only appears in the colonial records once – as a sworn witness in the case of Mary Stevens, accused of infanticide. Cowman, as was the case for any indentured servant, did not socialize outside of his own sort. It should not be surprising, therefore, that Elizabeth Goodale was also a servant. Tracing Elizabeth Goodale through the records proves to be somewhat difficult. Prior to her interaction with Cowman, Goodale petitioned the Provincial Court to lessen the time of service for her son Gilbert. While this in itself is interesting, as the highest court in the colony heard a female indentured servant's case, the most confusing aspect is that Goodale is referred to by three different names – Elizabeth Goodale, Isabella Goodale, and Elizabeth Gibbs.²⁵

Regardless of the social situation of the other settlers Cowman dealt with, he was clearly not a man of the same stature as Elizabeth Bennett. Having arrived as a servant,

²³ Lois Green Carr, Men's Career Files, MSA SC 5094, 873-03, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/000001/000873/html/sc5094-0873-3.html>, (Accessed July 17, 2008).

²⁴ Jane Baldwin, ed., *Maryland Calendar of Wills*, Vol. 1, (Baltimore: Geneological Publishing Company, 1968), 195. The only reference to Benjamin Rogers is in the will of Thomas Corker of Charles County, who willed a portion of his moveable property to Rogers in 1676.

²⁵ AOMOL, 65:475.

even if he was free of his indenture by the time he was accused of witchcraft, Cowman would not have been considered one of the colonial elites. Unlike other freed servants, there is no record of Cowman owning a significant property or being involved in local politics. His reprieve reflects similarities between the legal system of seventeenth-century Maryland and that of eighteenth-century England. By the eighteenth century, English authorities had shied away from the use of executions to establish the strength of the law. Rather than engage in “judicial murder” the eighteenth-century Parliamentarians established a legal system that illustrated the majesty, justice, and mercy of the law.²⁶ The last point is most applicable to this case. Rather than face hanging, Cowman had to publicly acknowledge the mercy of the governor and Assembly. Although predating the work of Cesare Beccaria and the post Revolutionary English Parliament, this case illustrates how important it was to Maryland authorities to establish a respected and fair legal system in the colony.

Whether the accused were male or female, chances were that the courts of colonial Maryland were not interested in executing accused witches. This is not to say, however, that all those accused of witchcraft were as fortunate as Elizabeth Bennett or John Cowman. Of all the criminal cases tried in the Chesapeake (Virginia and Maryland) only one ended with the actual execution of the alleged witch. The Provincial Court heard the case against Rebecca Fowler in 1685. At the time of her accusation Fowler was identified as “the wife of John Fowler . . . otherwise called Rebecca Fowler, late of Calvert County, spinster.”²⁷ Unlike Bennett, who was clearly past child-bearing years,

²⁶ Douglas Hay “Property, Authority, and the Criminal Law,” in *Albion’s Fatal Tree: Crime and Society in Eighteenth Century England*, ed. Douglas Hay, et. al, (NY: Pantheon Books, 1975), 17-63.

²⁷ Judgment Record (Provincial Court), Provincial Court Proceedings, 1702, Pages 34-35, MSA SM20-22, SR2492. See Also: Francis Neal Parke, “Witchcraft in Maryland,” in *Maryland Historical*

Fowler's age and situation are more difficult to comprehend. Her husband, John, is listed as a planter. Aside from this, nothing is known of Rebecca Fowler outside of her indictment for witchcraft.

Compared to the formal accusations against other accused witches, Fowler's alleged crimes appear the most damning. Fowler was accused of practicing *maleficium* on the bodies of her victims, especially laborer Francis Sandsbury. What sets her case apart from either Bennett or Cowman is that her crimes were done "at the instigation of the Divell."²⁸ The phrase was colonial legal speak, carried over from England. Generally, this phrase is found in cases of adultery, fornication, theft, and assault. It was applied to more crimes during the reign of Queen Anne, but records of earlier cases also contained this phrase. In fact, in 1637 the Provincial Court took up the case of almost twenty men who allegedly aided William Claiborne in an attack on the colony. These men were charged with assaulting several other colonists "at the malicious instigation of the divell."²⁹ Thomas Aquinas addressed the issue of crime or sin being solely the work of the devil in the *De Malo (On Evil)*, written around 1270. Aquinas notes that although the devil is involved with the human compunction to commit many sins, "not every sin is committed at the instigation of the devil."³⁰ Therefore, a crime committed "at the instigation of the devil" was especially evil to early modern residents because it insinuated the special relationship that the accused had with the devil.

This sort of relationship with the devil, known as "diabolism," was necessary in order to execute an accused for witchcraft under English law. As Brian Levack explains

Magazine (Vol. 31 No.4), 283. This case was lost until many 1685 judgment records were discovered in the 1702-1703 records.

²⁸ Parke, "Witchcraft in Maryland," 283.

²⁹ AOMOL, 4:23.

³⁰ Thomas Aquinas, *On Evil*, Brian Davies, ed., (New York: Oxford University Press, 2003), 158.

“a witch was a person who not only performed harmful magic but who also made a pact with the Devil and paid some sort of homage to him.”³¹ Although a number of offenders allegedly committed crimes with the devil's help, there are only a few instances in Maryland of an accused witch allying with the devil, this being the most notable. It may have been colonial legal speak, but it does indicate that Fowler had a special relationship with the devil. This fact likely led to her demise. Fowler's trial moved quickly, although without undue haste. On September 29, 1685 a grand jury indicted her on the charges of witchcraft. A trial jury followed, but agreed that if the justices of the court did not agree, they could (and should) overturn the charge of witchcraft. Having taken a few days to more fully consider the evidence, the justices concurred with the grand and trial juries and on October 9, 1685, Rebecca Fowler was hanged. Much of the evidence the witnesses presented against Fowler was never recorded, but it must have been enough to convince the normally forgiving court to execute her. Her case is even more peculiar, considering that the next spring a woman named Hannah Edwards was found not guilty of the crime of witchcraft – her indictment was nearly verbatim that of Fowler's including the portion regarding the devil.

A less celebrated case than that of Rebecca Fowler was the case against Katherine Prout. This case illustrates how selective Maryland law was when it came to the prosecution of accused witches. In 1702, Katherine was accused before the Anne Arundel County Court of practicing witchcraft upon Charles Killburn. In court, Prout proved difficult. Before the trial could commence Prout was fined 100 pounds of tobacco “for

³¹ Levack, *The Witch-Hunt in Early Modern Europe*, 7-8. James Horn argues that “no Chesapeake witches were accused of devil worship.” While there is no evidence of such things as the witches' sabbat, promises from the devil, or sexual relations with the devil, some Chesapeake witches still were believed to have at least a tenuous relationship with the devil that led them to the dark arts. Horn, *Adapting to a New World*, 413.

her misbehavior in her Saucy Language and abusing the Court.”³² Her past offers some hints that Prout was no stranger to obstinate behavior. In 1694 Katherine appeared before the Provincial Court with her husband John Prout where the two were seeking a separation. The cause for the marriage ending appears less than amicable. Upon deciding that John was to give Katherine the third of the estate that was due to her, the court ordered that “Catherine shall utterly leave and be totally seperated from the said John her husband and provide for herself.”³³ The agreement gave Katherine 720 acres of land, along with a mare named Jenny.

Divorce in Maryland was not legal. Perhaps this was due to Catholic tradition carried over to the colony. Puritans took a different attitude towards marriage and divorce than Catholics. Puritans viewed marriage as a legal obligation rather than a religious vow. Catholics considered marriage solemn. It could not be broken by the courts. In Maryland, both men and women could obtain a separation from bed and board, meaning that partners could be legally separated, although they could not legally remarry. Legal separation was not common and often involved an unfaithful or abusive partner. There is no apparent evidence that this was the case between the Prouts. Their situation, nonetheless, mirrored other cases of separation in the colony. In 1656, for example, the Provincial Court found that Cornelius and Susan Cannady were simply unable to exist together, thus they were ordered to live separately. Susan, after receiving at least 130 pounds of tobacco from her husband, agreed not to “desire demand or expect and further

³² Parke, “Witchcraft in Maryland,” 295.

³³ “The Agreement between John Prout and his wife Catherine . . .,” AOMOL, 717:793. The third of the estate John owed to Katherine was equal to her “widow’s third” – the amount of a man’s estate his wife was legally entitled to upon his death.

allowance, Maintainance or Subsistance from the Said Cornelius her husband.”³⁴ The case of the Prouts is merely a later example of the continuing practice of legal separation. Divorce would not become legal in Maryland until 1792 - after the American Revolution.

Although Prout was a woman without a male to act as her guardian, probably past childbearing years, accused by a male of malefic witchcraft, and with a reputation for unruliness, the court did not send Prout’s case to the Provincial Court, instead prosecuting it fully at the county level. After paying her fine, Prout went free. Within two months, Killburn was again in court, charging Prout with slander for accusing him of perjury. He “won a nominal victory.”³⁵ Prout continued to have a busy year, later suing Kate Quillin for slander. Prout sued Quillin for two events. First, Quillin accused Prout of witchcraft. Secondly, Quillin accused Prout of stealing molasses and fish from a cellar in Annapolis. The court ruled in Prout’s favor. With that, the case of Katherine Prout ended. This case, in and of itself, illustrates the nature of the courts. Rather than immediately seeing to Prout’s hanging, the justices recognized that this was more of a neighborhood feud than a case of malefic witchcraft. Like the majority of cases in early Maryland, this trial ended with the defendant going free, as the court held closely to the letter of the law.

Why is it that Rebecca Fowler was executed for witchcraft when the courts acquitted all other women accused of criminal witchcraft and lessened the punishment of the one male? There is one thing about Rebecca Fowler that differed from the others. Unlike each of the other defendants, Fowler evidently had no experience with the courts. This issue illustrates how important it was for women to have some knowledge of court proceedings and how important it was for members of the courts to know the accused.

³⁴ Debra Meyers, *Common Whores*, 197n10; AOMOL, 10:471.

³⁵ Parke, “Witchcraft in Maryland,” 296.

For Fowler, whose background was perhaps somewhat of a mystery, justices likely viewed her as a possible danger and were more likely to find her guilty of this alleged crime. For the others who were accused, their backgrounds and the court's knowledge of them allowed justices and jurymen to dismiss their accusations as cases of inter-neighborly squabbling. The others, who had a more sophisticated understanding of court proceedings, were able to navigate the complexities of the court system in order to assure an acquittal.

Complicating the issue of witchcraft accusations and casting some doubt on Maryland authorities' apparently lenient attitude towards accused witches, particularly women, are the two cases of witchcraft at sea. On two separate occasions, in 1654 and 1658, women on ships bound for Maryland from England were hanged at sea because they were thought to be witches. In both cases, the master of the ship was not held responsible for the deaths. In both cases, however, provincial authorities held inquests into the circumstances surrounding the hangings. Upholding the law was of the utmost importance to the Maryland Assembly, perhaps more so than protecting the rights of citizens.

The relationship between witchcraft and the sea was a very serious concern for English officials of the time. Matthew Hopkins, the self-appointed "Witchfinder General" of England from 1645 until his death in 1647, believed that "witches interfered with trade by cursing ships."³⁶ Although Hopkins's witch hunt was relatively short, it was bloody. One estimate of the number of women killed from 1645 to 1647 is 1000. Hopkins was considered somewhat of an expert throughout Europe and received the support of such

³⁶ Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*, (Boston, MA: Beacon Press, 2000), 92.

revered men as Thomas Hobbes, which further legitimized Hopkins's actions.³⁷ Coming shortly after such a violent episode in England, and with the fear that witches targeted ships, it is not much of a leap to assume that when in 1654 the ship *Charity* experienced intense storms at sea, leaving the ship "Leaky almost to desperation," the crew would believe that a diabolic force was at play.³⁸

Indeed, the crew of the *Charity* arrived at this conclusion. Their immediate reaction was to accuse Mary Lee, a passenger aboard the ship, of practicing witchcraft. Lee was an obvious choice due to her rather harsh actions and speech. The crew searched Lee for a "witch's mark" or sign that she was communing with the devil by nursing a familiar. Finding such a mark convinced the crew they had found their witch, but the ship's master, John Bosworth, refused to allow a trial of the woman to proceed. He cautioned the crew to take no action against the woman and continued to refuse to try her, as such an action did not follow English law. As bad weather continued to follow the ship, the crew ignored Bosworth's orders and executed the woman. Her body and all her belongings were thrown into the ocean, although the storm did not subside after this action.³⁹ When the ship arrived in Maryland, the Council called Bosworth to trial. When it became apparent that he did not authorize such a breach of law, Council members cleared Bosworth of wrongdoing.⁴⁰

The Provincial Court heard a similar case in 1659, regarding an event which had occurred the previous year. Virginian John Washington (great-grandfather of George Washington) brought the case before the court. Washington alleged that Edward Prescott

³⁷ Ibid.

³⁸ For the timeframe of the storm see "Annual Letters of the Jesuits," in Hall, 141; AOMOL, 3:306 - 308.

³⁹ Hall, *Narratives of Early Maryland*, 141.

⁴⁰ Ibid., 306-308.

had hanged a woman on a ship bound for Maryland from England. Less is known of the circumstances of the alleged witchcraft practiced by Elizabeth Richardson. Prescott pleaded to the court that he had appointed a man named John Greene as commander of the ship for that voyage. Even though Prescott was the owner of the ship, he had turned the command over to Greene who threatened (with the crew) to mutiny if the woman was not hanged as a witch. Prescott resisted the hanging until it became apparent his ship and self were in danger. As no one refuted Prescott's testimony and Washington failed to appear to testify against him, the Provincial Court absolved him of wrongdoing, just as it had with Bosworth previously.⁴¹

It is essential not to dismiss these trials as examples of sailors executing women without cause and Maryland authorities overlooking these crimes. In both situations the courts met the alleged execution of a woman at sea without the benefit of certain legal procedures with grave disapproval. When Washington made his complaint to the Provincial Court, justices immediately ordered Prescott arrested and held on a bond of 40,000 pounds of tobacco – a considerable sum.⁴² After the Richardson trial there would be no more reports in Maryland of such actions taken on any voyage to the colony. Nevertheless, these cases represent how severe an accusation of witchcraft was, along with the justices' desire to closely follow the letter of the law.

Since colonists clearly believed in the reality of witchcraft, there was no reason why justices did not hear more cases of criminal witchcraft.⁴³ The Council even

⁴¹ AOMOL, 41:327 - 329. In the same year the Virginia courts heard a case against the captain of a ship headed for that colony upon which an alleged "witch" was executed. Details of this case are sparse. See Burgess, 107.

⁴² AOMOL, 41:327.

⁴³ Burgess notes that these cases illustrate how Puritan beliefs regarding the devil were seeping into the Chesapeake. However, if this were the case, it would stand to reason that there would have been a real rise in cases on land, and not merely at sea. See Burgess, 108.

attempted in 1665 to encourage the grand jury to more aggressively pursue allegations of witchcraft. Yet, the numbers still remained low. The last accusation took place in 1712 in Talbot County, Maryland. The court brought forth six witnesses against the accused, Virtue Violl, but acquitted her.⁴⁴ Certainly women were the main targets of witchcraft accusations but the low rate of convictions indicates a number of things. First, Marylanders were not convinced that women necessarily were likely to follow the Devil, even when Puritans dominated the colonial government during the interregnum period (1649-1660).⁴⁵ Secondly, a woman's previous familiarity with the law might perhaps assist her and lead to her acquittal.

Civil Cases Stemming from Witchcraft Accusations

Even if the authorities were not inclined to follow the biblical injunction to “not suffer a witch to live,” residents of the colony still saw accusations of witchcraft as a way to damage the reputation of their neighbors. Those who were deemed witches sought to disabuse their community of this illusion.⁴⁶ Being accused of witchcraft in colonial Maryland was an effective, and frightening, means of character defamation. As seen with the case of Katherine Prout, the courts viewed accusations of witchcraft as serious, but as grounds for civil suits, not criminal action. Arguably, the slander involved in witchcraft cases was more important to residents than the criminal aspect. Even though slander affected both sexes, there was still a double standard in these slander cases that indicated

⁴⁴ Parke, 288-289; Ellefson, “William Bladen of Annapolis,” 166. A 2004 article from *The Herald-Mail* claims that a man named Samuel Smith confessed to practicing witchcraft in 1687 in Worcester County. Smith, however, did not confess to his belief in witchcraft until 1787.

⁴⁵ For a discussion of the nature of the female soul under the Puritan belief system see Elizabeth Reis, *Damned Women* and Susan Juster, “Sinners and Saints: Women and Religion in Colonial America,” in *A Companion to American Women's History*, edited by Nancy Hewitt, (Malden, MA: Blackwell Publishers, Ltd., 2002), 66-80.

⁴⁶ Exodus 22:18

that witchcraft was not the worst thing of which to be accused. The difference between Prout's accusing Kate Quillin of calling her a witch and Charles Killburn accusing Prout of alleging him a perjurer is that Prout won three pounds, but had been forced to pay Killburn double that in the second case. Both witchcraft and perjury were felonies in early colonial Maryland.⁴⁷ However, Prout's accusation against Killburn brought a stiffer penalty, illustrating the weight justices put on slander against a male versus slander against a female.

The importance of gossip and slanderous speech to the burgeoning colony of Maryland is something that has drawn some historical attention in the past two decades. However, like most social issues in colonial America, studies of gossip have been mostly limited to New England. Mary Beth Norton analyzed 145 cases of slander found in the records of colonial Maryland.⁴⁸ These cases illustrate that the people involved in slander cases (both as the accused and accuser) were predominantly female. In light of these findings, it stands to reason that accusations of witchcraft would be common. This, however, is not the case. The extant court records indicate that only two civil cases involving accusations of witchcraft were heard by the Provincial Court. This does not include the case of Katherine Prout, as no elements of her case ever reached the Provincial Court and her case initially was meant to be a criminal accusation.

The first mention of witchcraft, in what can be legally deemed a civil case, came in October of 1654 and involved a woman named Elizabeth Manship. Her husband sued a neighbor, Peter Godson, for accusing her of bewitching him. The Manships and the Godsons had a good number of interactions. In fact, at the same time Richard Manship

⁴⁷ AOMOL, 1:71.

⁴⁸ Norton, "Gender and Defamation," 3.

was suing Peter Godson before the Provincial Court, the two families were testifying in court that they had witnessed the aftermath of Phillip Hyde's beating of Margaret Herringe.⁴⁹ Although the neighbors had worked together to ensure that Phillip Hyde was brought to justice, Richard Manship could not overlook the slander levelled at his wife by Peter Godson. Elizabeth Manship had not aided her own cause and had perhaps done more to provoke Godson into thinking she was practicing the black arts than not. Godson testified that he had visited Elizabeth Manship at her home. In jest, Manship had stated "they Say I am a witch, if I am a witch they Say I have not power to Skip over these two Strawes and bid the Said Peter Godson to Skip over them." About a day after this exchange, Godson found himself lame and assumed that Elizabeth Manship had used her dark powers against him.⁵⁰ Margaret Herringe also attested to hearing Godson tell of Manship's apparent bewitching of him. Richard Manship, having heard Godson telling his tale, challenged Godson to prove his wife a witch. With no apparent proof of her witchcraft forthcoming, Manship took this case before the Provincial Court. It found no validity to Godson's charges and ordered that Godson and his wife pay court costs and make a public apology to the Manships.⁵¹

Although only a minor case of inter-neighborhood squabbling, the case of the Manships and Godsons is incredibly important to understanding the nature of witchcraft cases in colonial Maryland. This proves to be more a case of slander than witchcraft, although an accusation of witchcraft raised serious questions before the bar. In 1654, the General Assembly passed the first law against slander. The law took effect the same month as the Manship trial. It stated that "all such person or persons who by Slandering

⁴⁹ AOMOL, 10:400.

⁵⁰ Ibid, 10:399.

⁵¹ Ibid. This case is an example of justices assigning a punishment without the input of a jury.

tale bearing or backbiting shall Scandalize the Good Name of any person or persons directly or indirectly . . . shall be counted Slander being Lawfully Convicted shall be Censured both by way of Satisfaction to the party Injured thereby and also to the Commonwealth for the breach of the peace thereof.”⁵² Cases such as the Manship case, therefore, were seen as much as an attempt to sully the good name of Elizabeth as an act which created disorder in the community. The Godsons were as beholden to the colony as they were to the Manships. It was not so much that Elizabeth Manship had been called a witch, but that this act caused disorder to the entire community.

The Godsons and the Manships, like most residents of the Chesapeake area lived in small communities and the inhabitants dealt regularly with a small cohort of their neighbors.⁵³ Most individuals, especially women, limited their associations with the few plantations, generally between ten to twenty, that were within a few miles of them.⁵⁴ In poorer communities, social circles were even more circumscribed. In at least one community, residents visited only neighbors who resided within five miles of them.⁵⁵ These neighbors were perhaps not all friends, but they did all deal with each other on a regular basis. The community to which the Manships belonged was one in which all parties were deeply enmeshed in the lives of the others. To understand this tangled communal web of relationships we use court records to reconstruct the links between the principals in this case. The various litigants spent much of the year from July through October presenting various cases before the Provincial Court. These cases tell just how closely these individuals were associated with each other. The main actors in the

⁵² Ibid., 1:343.

⁵³ There is reference to Jane Moore (later Godson) being a resident of Calvert County in Ibid., 10:396.

⁵⁴ Horn, *Adapting to a New World*, 242.

⁵⁵ Brown, *Good Wives*, 275.

witchcraft case – Richard and Elizabeth Manship, Peter and Jane Godson, Bartholomew and Margaret Herringe, and Phillip Hyde – were also involved in various ways with the aforementioned beating case of Margaret Herringe. The Manships and Godsons both testified that they had seen Margaret Herringe after the beating, when she informed them that Phillip Hyde had been the perpetrator. Elizabeth had arrived at the scene of the beating on her way home from Peter Godson’s house. Additionally, as a chirurgeon, Peter Godson tended to the injured Margaret. This action would lead Godson to sue Herringe for 1430 pounds of tobacco for aiding in her care. Throughout the course of this Provincial Court session the various parties found themselves testifying for and against each other repeatedly.

The life of chirurgeon Peter Godson, the man who accused Elizabeth Manship of witchcraft, gives a few clues as to why he may have been seeking to advance his standing in the community through gossip or lashing out against a perceived threat. In 1640 the Assembly passed an act which stated that “the County Court may moderate the bills wages & rates of artificers labourers & chirurgeons,” according to the current rates in England for their services.⁵⁶ This law, with its grouping of professions, illustrated “the low plane occupied by the practice of chirurgery.”⁵⁷ The practice of medicine was still not professionalized in the mid-seventeenth century. Science had only recently begun to be seriously studied. The Royal Society of London, which was “dedicated to the improvement of natural science,” did not come into existence until 1662, the Academie des Sciences of Paris opened in 1666.⁵⁸ It would not be until 1760 when there was an increased effort, both in England and the colonies, to require professional training for

⁵⁶ AOMOL, 1:97.

⁵⁷ Semmes, *Crime and Punishment*, 238.

⁵⁸ Frederick F. Cartwright, *A Social History of Medicine*, (New York: Longman, Inc., 1977), 19.

medical practitioners.⁵⁹

Even with the practice of medicine becoming better understood in England and on the Continent, colonial medical practices lagged behind. Much medical practice reflected the environment that the colonists found themselves in – an environment that did not include hospitals, specialized medical instruments, or current medical texts. Additionally, there seems to have been a serious lack of interest in medical works imported from England. There are records of very few medical texts held by colonists prior to the mid-eighteenth century and those that can be traced were held by prominent New Englanders, such as Cotton Mather.⁶⁰ Thus, most colonists relied on people called chirurgeons for medical aid. They were not the most trained or reliable source of care.⁶¹ Oftentimes, those who were chirurgeons were also barbers. In one case, a chirurgeon in Maryland was also a carpenter. These men did not have the finest reputation or training. Godson was not able to sign his own name, leaving only his mark. The chirurgeon was marginalized when compared to a “doctor” or “physician” in the colonies, largely due to his lack of university training. In Virginia by the early eighteenth century, a physician charged double the fee or a chirurgen for his services.⁶² Judging by a number of court cases brought by or against Godson, his ability could not have been too great. Although his neighbors clearly relied on his ability, the courts judged his services in treating Margaret

⁵⁹ Richard Harrison Shryock, *Medicine and Society in America, 1660-1860*, (New York, New York University Press, 1960), 21.

⁶⁰ *Ibid.*, 47.

⁶¹ There are a number of histories of the development of the medical profession in the west. One that deals with the distrust of male doctors in obstetrics is Linda Forman Cody, *Birthing the Nation: Sex, Science and the Conception of Eighteenth Century Britons*, (New York, N.Y.: Oxford University Press, 2005). Although not applicable to all male “chirurgoens” in the colonies, this book lends some interesting insight into the difficulties male physicians had in dealing with female issues.

⁶² Wyndham Blanton, *Medicine in Virginia in the Seventeenth Century*, (New York: Arno Press, 1972), 124.

Herringe worth only 590 pounds of tobacco when Godson had asked for 1430 pounds.⁶³ In another case, Godson was ordered to repay 600 pounds to Thomas Iger for failing to cure him. Godson's treatment had, in fact, left Iger "worse than he [Godson] had found him."⁶⁴ Perhaps most telling was another surgeon, Peter Sharpe, suing Godson for killing a man by taking too much blood. Sharpe was called to fix Godson's mistake and, failing to do so, brought suit against the man.⁶⁵

In addition to his profession, Peter Godson's marriage to Jane Moore may have created some questions among Jane's neighbors. The Manships had been at the bedside of Richard Moore, Jane's previous husband, when he died in early July 1654. By late July, Jane Moore was married to Peter Godson, although he had to swear before the Provincial Court that he would not attempt to take for his own any of Richard Moore's estate. Quick remarriage was nothing remarkable in the early Chesapeake, given the short lifespan of new settlers. Males who immigrated to the colony could expect to live for roughly eleven years after migration. Women were faced with a particular struggle, as they frequently outlived their first husbands. Faced with running a plantation alone or with children, a widow "may have found quick remarriage the only solution to her difficulties."⁶⁶ Jane Moore, in addition to running her husband's plantation, had seven children at the time of his death. Three were sons, who had not yet reached eighteen and four were female who had not reached fifteen. Moore saw fit to leave the management and distribution of his estate and property to his wife and told her to divide it among her

⁶³ For more on surgeons and their reputation in early Maryland, see Semmes, *Crime and Punishment*, 238-239, for information on Godson's inability to sign his name see *Ibid.*, 245.

⁶⁴ AOMOL, 10:434 and 439.

⁶⁵ *Ibid.*, 10:432.

⁶⁶ Carr, Menard, and Walsh, *Robert Cole's World*, 18, 144.

children as she pleased.⁶⁷ Given the daunting task ahead of her, Jane's marriage to Peter Godson was nothing extraordinary in terms of speed. In addition to the tasks Jane was facing, "widows . . . might find themselves to be the most vulnerable to conflict." One of the main sources of conflict for Chesapeake widows was often their neighbors. Regardless of their prior relations, "neighbors were not always inclined to respect [widows'] property."⁶⁸ Although there is no evidence that the Manships made any attempt to infringe on the widow Moore's property rights, she probably married quickly to prevent any such incursions by neighbors.

What is more extraordinary than the speed Jane Moore remarried at is that there is no record of Peter Godson interacting with the Moores or their cohorts before Richard's death. Likely, he was an outsider to this community. The Manships, as mentioned, were obviously well enough associated with Richard Moore to be at his side while he was on his deathbed.⁶⁹ That his widow, who was left with what must have been a relatively sizeable estate, would marry an unknown man certainly could have caused some tension with the neighbors. Additionally, he practiced a somewhat low class profession and at one time was accused of theft from the wife of another neighbor. Both facts must have raised some questions among the Manships and others.⁷⁰ These various, but not uncommon, social tensions manifested themselves in the accusation of witchcraft levelled against Elizabeth Manship and failed to go beyond any sort of idle gossip thanks in part

⁶⁷ AOMOL, 10:395.

⁶⁸ Snyder, *Brabbling Women*, 117.

⁶⁹ Even after this case, Elizabeth Manship (then Elizabeth Smith) was with Jane Godson when Jane died and witnessed her nuncupative will wherein the woman left nothing to Peter Godson.

⁷⁰ As previously discussed, Peter Godson was clearly not that good at his practice. As Semmes pointed out, he could not even sign his name, indicating that he had never been educated in medicine. In 1655, Godson was convicted of stealing a bodkin from the wife of John Hambleton, a juror. Godson was forced to pay four shillings and six pence in silver to the defendant and court costs of 406 pounds of tobacco. See: AOMOL, 10:424.

to the Provincial Court's proclivity not to encourage such gossipy behavior.

Even though the courts were highly unlikely to pursue alleged witchcraft trials beyond the civil level, gossip did continue and women continued to find themselves accused of witchcraft in early Maryland. One of the most complicated tales of witchcraft accusations and neighborhood fighting involves a woman named Joan Michel (alternately spelled Mitchell, Michell, or Michael). Michel was the wife of a man named Thomas Michel.⁷¹ Clearly evidenced by the records is that Thomas Michel was a mariner who was engaged in the typical property suits associated with Maryland residents of the time.⁷² Outside of her husband's business dealings, little is known of Joan Michel's life before the 1660s. While records may be silent regarding her early life in the colony, there is evidence that she did not always have the most peaceable relations with her neighbors, making the accusations regarding witchcraft not totally surprising.⁷³

Thomas Michel brought the first slander suit involving Michel before the Court of Charles County in November, 1659 and illustrates the sorts of tensions faced by Michel. Like the Manship case, Thomas Michel, not his wife, brought the accusation. An apparently neighborly exchange between Joan Michel and one "Mis" Hatch, wife of John Hatch (presumably this would make her Alice Hatch), turned into a slander accusation worthy of the courts. When asked by Michel how she was, Hatch told her that she

⁷¹ This was not the infamous Joan Toast Mitchell who was made famous by John Barth in his 1950 novel *The Sot-Weed Factor*, (New York, N.Y.: Anchor Books, 1987) although there was a Thomas Mitchell in the colony who may have been a relation of Toast Mitchell's common law husband, Captain William Mitchell. In 1660 Thomas Mitchell was named as the current controller of Captain William Mitchell's estate in a suit against the estate. AOMOL, 41:397. All parties were residents of Charles County, further indicating that Thomas Michel and Thomas Mitchell were the same person.

⁷² See AOMOL, 53: 40, 57, and 61.

⁷³ Due to the varying spellings of Joan Michel's last name I have chosen to use the spelling Michel since it appears most frequently in the records, to avoid any confusion between this subject and Joan Toast Mitchell. This does not definitively rule out her relation to the residents whose last names are Mitchell.

“thought she [Joan Michel] had bewitched her face.”⁷⁴ Upon hearing this, Joan told her that if she were being honest in her assessment, Michel would have her tried for this slander. Indeed, Joan stood by her threat and watched her husband bring suit against the wife of John Hatch. This case had increased significance as John Hatch was a member of Governor Josias Fendall’s Council.⁷⁵ The Michels were not of an equal social status, as indicated by records that refer to Alice as “mis” (or Mrs.) and Joan as “goodie.” Interestingly, John Hatch had come to the colony as an indentured servant, but by 1660 was a member of the Council. He also was the father-in-law of Fendall.⁷⁶ Regardless of the amount of evidence against either woman, the case was dropped shortly after it was taken up by the courts, as Thomas Michel died.⁷⁷

Although a widow with a lower social standing than those she interacted with, Joan Michel continued her quest to clear her name before the courts. She brought at least four additional cases of slander before the Charles County court, all relating to the opposing parties insinuating that she was a witch.⁷⁸ Just as Elizabeth Manship knew that neighbors regarded her as a witch, Joan Michel must have known of her reputation as a practitioner of witchcraft. That she worked so ardently to clear her name indicates just how degrading it was to have one’s name associated with the dark arts. In 1661, Michel asked for warrants to be issued against Francis Doughty, his son Enoch Doughty, James

⁷⁴ Ibid., 53:55.

⁷⁵ John Hatch served as a justice in Charles County from 1658-59 alongside James Walker, another alleged slanderer of Joan Michel. When commissioned, these men were commanded to seek out witchcraft and initiate proceedings against anyone violating the prohibition against the practice of witchcraft. Ibid., 41:87.

⁷⁶ Russell R. Menard, “From Servant to Freeholder: Status Mobility and Property Accumulation in Seventeenth-Century Maryland,” *The William and Mary Quarterly*, Third Series, Vol. 30, No. 1, (Jan., 1973), 44.

⁷⁷ Semmes, *Crime and Punishment*, 169.

⁷⁸ Michel’s cases never went beyond the county courts, much like the Prout cases, and unlike the Manship case which was heard by the Provincial Court.

Walker, and Mrs. Ann Long. This was an interesting, and somewhat formidable, group of defendants. Francis Doughty was an Anglican minister with an occasional penchant for seeking witches and stirring up religious controversy throughout the Chesapeake. He had solidified his standing in Maryland by marrying Ann Eaton, the sister of former governor William Stone. The younger Doughty did not share his father's ministerial profession or penchant for moving between Virginia and Maryland, instead becoming a Maryland planter. James Walker arrived in Maryland as an indentured servant in 1642. He was free by 1647 and rose quickly in the community. His social standing is evidenced by the fact that at the time of his accusation by Michel records refer to him as "Mr." At his death he held several hundred acres of property, making him a "substantial planter." While Walker did not lead an extravagant life his "economic position was secure."⁷⁹ Long is more of a mystery, as even her first name does not appear clearly in the records (although it may have been Ann). Since she was publicly referred to as "mis" she was of social standing equal to Walker and Hatch and above that of Michel.⁸⁰

These cases say as much about the nature of gossip and slander under the burgeoning legal system in colonial Maryland as they do about witchcraft. The 1654 law against slander that had been passed under the parliamentary commissioners, gave women unprecedented access to the courts and vastly increased the number of slander cases heard.⁸¹ For seventeen years the courts of Maryland, for a time under the majority control of the Puritans, were open to accusations of slander filed by both sexes. The

⁷⁹ Menard, "From Servant to Freeholder," 41.

⁸⁰ For more on the Doughties, see Semmes, *Crime and Punishment*, 298-299, n.58. Walker's interesting life and career can be followed in Dr. Lois Green Carr's Men's Career Files, MSA SC 5094-4329, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/004000/004329/html/sc5094-4329-01.html>, (Accessed August 13, 2008). There is evidence of a Mr. Thomas Long living in the vicinity of Patuxent who may have been the husband of "Mis Long." See AOMOL, 41:221.

⁸¹ For precise numbers of slander cases, see Norton, "Gender and Defamation," 8.

various cases of Joan Michel would not have been heard as they were before 1654 or after 1671 when a new law was passed limiting the sorts of cases heard to those that involved slander against a government official. The 1654 law was significant, also, for its divergence from English law. Whereas slander cases in England would be heard by ecclesiastical courts, these cases were to be placed solely in the hands of secular authorities. Although there is no existing evidence to speak of Cecil Calvert's reaction to such a law, the lack of effort to rescind this legislation shows an attempt to balance religion with allegiance to the mother country. In that effort, women found themselves with even more rights.

It was under these conditions that Goodwife Joan Michel, "a poore distressed widow," attempted to recapture her good name before the Charles County court after having been deemed a witch. The alleged actions of the slanderers indicate that they had a well-formed understanding of witchcraft and the sorts of things supposed witches were known to do. The testimony Michel gave concerning Enoch Doughty raised the interesting question of what activities women in the seventeenth century were expected to understand. Two other women, Ann Cage and Eleanore Beane, testified that they had heard Enoch Doughty ask Goodwife Michel if "she did not swime over unto Mr Pillses the previous year."⁸² The insinuation that Michel was able to swim would automatically be an insinuation that she was a witch.⁸³

Witches had been associated with the water long before Matthew Hopkins feared they would aversely affect maritime enterprises. As early as the third century B.C., an

⁸² AOMOL, 53:143.

⁸³ Of course, Doughty may have been referencing his having seen Michel submitted to a "water test" to see if she could float, thus making her a witch. This does seem unlikely since there are no other references to a water test being administered in colonial Maryland.

ordeal by water was used to test the guilt or innocence of the accused. The theory was that the water, which was pure, would reject an impure criminal, allowing them to float or swim. This test was used on accused Continental witches and for a time was adopted by England. By the time of Joan Michel's accusation the trial by swimming had been legally outlawed in England; however, the majority of women were still not instructed on how to swim. Swimming was considered an activity fit for elite men. In 1622, Henry Peacham explained in *The Compleat Gentleman* that "The skill and art of swimming is . . . very requisite in every noble and gentleman, especially if he looketh for employment in the wars."⁸⁴ There are limited references to female swimming in early modern treatises on the topic, but generally, it was assumed to be a skill required only of gentlemen, both in England and on the Continent. Women, especially upper class women, were encouraged to pursue hobbies other than physical exercise such as gardening.⁸⁵ Therefore, a lower class woman who was seen swimming would be abnormal and, some would argue, exhibiting a sign of her allegiance with the devil.⁸⁶ Although Enoch Doughty had accused Michel of witchcraft in a way that would be recognizable by all who heard this, the court decided that there was not enough evidence to continue her slander accusations against the younger Doughty and dismissed the case. Enoch had been helped in his cause by Hugh Neale, who did not recall hearing the same thing that the two women had heard.

⁸⁴ Henry Peacham, *The Compleat Gentleman*, (Electronic reproduction. Ann Arbor, MI: UMI, 1999), 139, [http://0-eebo.chadwyck.com/libus.csd.mu.edu/search/full_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=V14695&FILE=&SEARCHSCREEN=param\(SEARCHSCREEN\)&VID=14695&PAGENO=79&ZOOM=FIT&VIEWPORT=&SEARCHCONFIG=param\(SEARCHCONFIG\)&DISPLAY=param\(DISPLAY\)&HIGHLIGHT_KEYWORD=param\(HIGHLIGHT_KEYWORD\)](http://0-eebo.chadwyck.com/libus.csd.mu.edu/search/full_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=V14695&FILE=&SEARCHSCREEN=param(SEARCHSCREEN)&VID=14695&PAGENO=79&ZOOM=FIT&VIEWPORT=&SEARCHCONFIG=param(SEARCHCONFIG)&DISPLAY=param(DISPLAY)&HIGHLIGHT_KEYWORD=param(HIGHLIGHT_KEYWORD)), (Accessed September 8, 2008).

⁸⁵ Anne Laurence, *Women in England, 1500-1760: A Social History*, (New York: St. Martin's Press, 1994), 158.

⁸⁶ George Lyman Kittredge, *Witchcraft in Old and New England*, (New York: Russell and Russell, 1958), 232-234. For a more in-depth discussion of the "swimming of witches," see Chapter XV: "Cold Water," in *Ibid.*, 232-238 and Levack, *The Witch-Hunt in Early Modern Europe*, 255, 260, and 275.

The dismissal of Michel's suit against Enoch Doughty mimicked the outcome of her suit against his father. Francis Doughty's accusations had been no less scandalous than those of his son. Francis Doughty appears guilty of engaging in idle gossip, but refused to reveal who his cohorts were. Joan Michel explained that Doughty had spread the tale of how she had greeted a woman in church, perhaps with a wave, only to have the woman claim that "her teeth fell a Aking as if shee had bin mad."⁸⁷ Doughty claimed that he had not been the originator of this rumor, but did help perpetuate it. As he had accused her of practicing some sort of malefic witchcraft, Michel feared the impact of this rumor on her reputation. Although she begged the court to impanel a jury of women to search her body for the witch's mark, the Charles County Court did not see a need to pursue this suit and it, too, was dismissed.

The suit brought against Long also involved her accusing Michel of malefic witchcraft, this time used against animals. The outcome, however, was meant to harm the humans involved in an economic way. Richard Tarlin testified that he had heard Mrs. Long tell of the hen and chickens she had purchased from Michel. When the "Chickings thearof did die in such a strang manner," Long instantly "thought sum old witch or other had bewitched them."⁸⁸ Tarlin's wife concurred that Long had said this, but no other witnesses were able to independently verify Long's words. Long herself testified that she had not said such a thing and currently had no accusations against Michel. In light of this testimony, and since the prior testimony had merely been circumstantial, Michel's suit against Long was dismissed as the previous cases had been.

Michel's vaguest testimony came against James Walker, one of Charles County's

⁸⁷ AOMOL, 53:142.

⁸⁸ Ibid., 53:144.

justices. There is no direct indication that Walker accused Michel of witchcraft, simply that “he hath spoken words tending to the taking away of your Petitioners good name.”⁸⁹ Like her earlier slander suits, the defendant denied ever having slandered the widow and, as she could provide no further evidence, the case was dismissed. One of the most bizarre aspects of the Walker case is that Michel had previously pointed out that his men had thrown stones at her one day when she was “going to church with too of Capt: Fendalls folks.”⁹⁰ Michel assumed that Walker had instructed his servants to harass Michel in such a manner, even though Walker personally only attacked Michel with his words. Michel raised the tale of Walker’s servants having thrown stones at her in the unrelated suit against Minister Francis Doughty. Michel’s anger at Walker was evident when she brought this case up in the midst of a slander trial. What led Walker to have his man hassle Michel is unclear. They were both Protestants and partisans of Josias Fendall. Walker likely owed his short term as Charles County justice to his allegiance to Fendall, for Walker never held another position with the government after Fendall’s “pigmie rebellion.”⁹¹ Although the neighborhood motive for targeting Michel is not obvious, her associations with the colonial elite explain why she was so desperate to prevent rumors of her being a witch from spreading. It was her good name alone that allowed her to grasp some modicum of standing in this society. Were she to lose that, her situation would be dire indeed.

Clearly, Joan Michel’s cases were not as much about witchcraft as they were

⁸⁹ Ibid., 53:145.

⁹⁰ Ibid., 53:142.

⁹¹ George Alsop, “A Character of the Province of Maryland, 1666,” in Hall, 381. The “pigmie rebellion” also known as “Fendall’s Rebellion” occurred in 1660. In March, 1660 Governor Josias Fendall encouraged the Lower House of the General Assembly to abolish the Upper House and rule the colony just as the House of Commons had in England during and after the English Civil War. Fendall’s Rebellion was short lived as Lord Baltimore regained control of the colony in June, 1660.

about slander and community relationships. Both the Manship and Michel cases initially involved husbands reacting to accusations of witchcraft against their wives. While the Manship case resulted in satisfaction for Elizabeth Manship, all of Michel's cases were dismissed. The case brought by Thomas Michel against John Hatch ended abruptly with Michel's death. Joan carried on after his death attempting to thwart attacks against her good name. Both of these cases came after a coalition of Virginia Puritans who supported Parliament and disgruntled Marylanders overthrew the Proprietor in 1654. They passed a more restrictive Act Concerning Religion that denied religious freedom to Catholics and Church of England adherents. The repressive atmosphere persisted until Baltimore reestablished his control in the late 1650s. Accusations of witchcraft were seen as slander rather than a serious threat to society. Notably, these cases did not involve neighbors accusing a woman before the courts of practicing witchcraft, they involved the accused demanding reparations for harm done to their characters. At no other time in colonial Maryland could cases such as these have even reached the courts. As Mary Beth Norton had noted, the slander law put in place by the Puritan-dominated Assembly was the most open-ended ever to be found in the colony. At no time previous or no time after were women and men able to sue alleged slanderers. Previous and later laws allowed slander cases only if the accused made the defamatory remark against the government.⁹²

The evidence that remains of this period illustrates a number of things about the nature of colonists' feelings regarding witchcraft. First, residents of Maryland were aware of how witchcraft accusations were handled in the broader British Atlantic world. Joan Michel was aware that if she were accused of witchcraft, a jury of women would need to be impaneled to search her for physical signs of witchcraft. She welcomed this search,

⁹² Norton, "Gender and Defamation," 8.

knowing that a failure to find any sort of witch's mark would immediately restore her name. The courts, however, did not see this as a necessary step since she was clearly not considered a serious threat. Secondly, those involved with these cases were aware of what sorts of actions could be considered those of a witch. Both Enoch Doughty and Ann Long levelled charges against Michel of alleged malefic witchcraft, or her using her powers to bring harm to a person or animal. Francis Doughty's insinuation that Michel was seen swimming automatically associated her with witchcraft.

Regardless of how well the widowed Michel fit the mold of a witch, her cases all involved slander and not witchcraft accusations. Nonetheless, there was a very real fear that the appellation of witch would stick to Michel, and she was attempting to protect her good name. To do so, she was willing to take on men and women who were superior to her socially. Beyond the fear that a reputation as a witch would ruin one's social standing, there is also the idea that by drawing attention to the fact that neighbors gossiped about her might have helped illustrate that Michel did have social standing. Anthropologist A.L. Epstein explains "To be talked of in one's absence, in however derogatory terms, is to be conceded a measure of social importance in the gossip set; not to be talked about of social insignificance, of exclusion from the set."⁹³ For Michel to be called a witch by her social superiors indicated that she played an important part in her community – one which garnered her the attention of those beyond her standing. Thus, while witchcraft may not have been something that the residents of Maryland found threatening to their society, at least in the earliest years of settlement, those accused of this crime knew that having a reputation as a witch could be a double-edged sword.

⁹³ A.L. Epstein quoted in Wolf Bleek, "Witchcraft, Gossip, and Death: A Social Drama," *Man*, New Series, Vol. 11, No. 4, (Dec., 1976), 537.

While being called a witch could be socially damaging to them, it also helped them to remain somewhat important in their society.

Conclusion

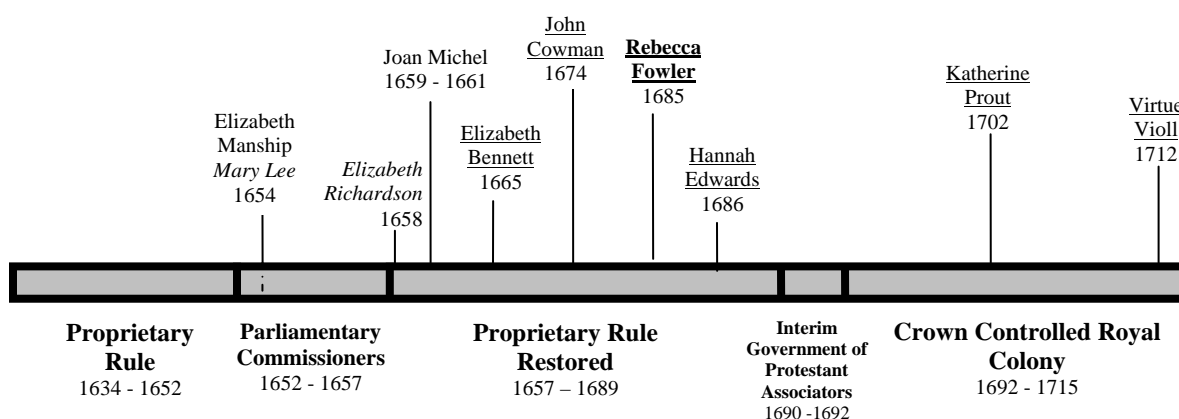
In 2004, an Associated Press writer wrote that “Witchcraft trials and executions were facts of life in colonial Maryland.”⁹⁴ While true that witchcraft was a reality to the early settlers of Maryland, the rarity of cases indicates that witchcraft accusations were not something that most Marylanders ever dealt with personally. There has been a general belief that Maryland, due to the limited number of cases, has no witchcraft history. In 1915, Hester Dorsey Richardson explained “It should be particularly gratifying to all Marylanders to know that the belief in witchcraft did not reach the ruling classes, and that no law exist[ed] regarding witches, hence Maryland has the proud and comforting satisfaction of never having tainted her soil with the innocent blood of helpless men and women in the name of religion.”⁹⁵ Clearly, Richardson overlooked the case of Rebecca Fowler, wherein blood was spilled and did not properly gauge the attitude of the “ruling class” and their laws. No less a learned man than Father Andrew White believed in the reality of witchcraft. His belief led him to wonder if a storm at sea was caused by “all the sprightes and witches of Maryland.”⁹⁶ The reality of witchcraft accusations and beliefs in Maryland, and the impact they had on women, is somewhat more complicated than Richardson’s assertion.

⁹⁴ David Dishneau, “Witchcraft trials are part of Md., Va. history,” October 10, 2004, *The Herald-Mail.com*, http://www.herald-mail.com/?module=displaystory&story_id=92195&format=html, (Accessed September 8, 2008).

⁹⁵ Hester Dorsey Richardson, *Side-Lights on Maryland History, with Sketches of Early Maryland Families* (2 vols.; Baltimore: Williams and Wilkins Company, 1913), I, 143.

⁹⁶“Father White’s Briefe Relation,” in Hall, 31.

Unlike colonies such as Massachusetts or Connecticut, there never was an epidemic of witch accusations in early Maryland. The cases that did make their way to the courts reveal insights to ways women fared before the law in the colony. As shown in illustration 1.1, there is no clear pattern of who was accused of the crime or when the sporadic witchcraft accusations took place.



1.1 Accused Witches in Early Maryland

Not surprisingly, most of those accused of witchcraft were women. About 75 percent of all accused witches (in Europe and America) were women. In Maryland, 90 percent of the accused were women – but given the limited number of trials these percentages are not easily comparable. Of the ten total cases involving witchcraft (in Maryland and at sea), two were civil cases, with a third evolving from a criminal accusation of witchcraft to a legal feud relating mostly to slander. Two cases took place at sea, placing them outside of the immediate jurisdiction of the colony's courts. Aside from these two incidents, there are no hard and fast similarities among the entirety of Maryland witchcraft accusations. No two cases (aside from those in 1654, one of which was at sea)

were held in the same year. Only two criminal cases occurred in consecutive years. While those two cases (Rebecca Fowler and Hannah Edwards) bear striking similarities, the outcomes were not the same. Fowler was executed, while Edwards was freed.

Because there was no vast outbreak of witchcraft accusations, there was likewise no discernible pattern of who would be accused of witchcraft in Maryland. Those prosecuted for witchcraft in early modern Europe mostly hailed from the lower classes. They were not, however, the poorest sorts in society. Due to their marginal status, these women were generally made scapegoats by society.⁹⁷ In this sense, Maryland resembled the colonies of New England more than the mother country. Over the course of the seventeenth century, women and men of all classes found themselves open to accusations of witchcraft in New England.⁹⁸ The same can be said of the cases in Maryland. Elizabeth Bennett hailed from a family of some economic standing in her community. John Cowman was an indentured servant. Joan Michel was not an elite woman, but had enough to sustain herself after her husband died and she intermingled with people such as James Walker and Captain Fendall's people who would be considered influential in the colony. Katherine Prout may have been on the margins of society due to her situation, but she still had controlled a plantation of several hundred acres.

Marital status, like economic position, also did not determine who was going to be accused of witchcraft. The following chart shows the divergence in marital status among those accused of witchcraft:

⁹⁷ Levack, *The Witch-Hunt in Early Modern Europe*, 157 – 158.

⁹⁸ Carol Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England*, (New York: W.W. Norton & Co., 1998), 79.

NAME	MARITAL STATUS	YEAR	CRIMINAL/CIVIL
Elizabeth Manship	Married	1654	Civil
Mary Lee	Unknown	1654	Criminal (at Sea)
Elizabeth Richardson	Unknown	1658	Criminal (at Sea)
Joan Michel	Married/Widowed	1659-61	Civil
Elizabeth Bennett	Married	1665	Criminal
John Cowman	Unknown	1674	Criminal
Rebecca Fowler	Married	1685	Criminal
Hannah Edwards	Married	1686	Criminal
Katherine Prout	Separated	1702	Criminal/Civil
Virtue Violl	Unmarried	1712	Criminal

1.2 Marital Status of Alleged Witches

Of the three unknowns, it is probable that due to his servile status and lack of land John Cowman was, and would remain, unmarried.⁹⁹ The two women executed for witchcraft at sea – Mary Lee and Elizabeth Richardson – were either widows or spinsters. Neither was ever mentioned travelling with a husband or other family. Virtue Violl was the only woman in Maryland associated with witchcraft accusations who was unmarried, or legally a “spinster.”¹⁰⁰ Two of the other women were no longer married – Michel and Prout – although both previously had been. The prototypical witch in early modern Europe was unmarried, either a widow or a spinster. Slightly below half of the women

⁹⁹ Cowman likely entered into his relatively short servitude in exchange for his transportation and nothing more. Even under normal circumstances if Cowman received the fifty acres typically allotted to a servant, there is no guarantee he was in possession of the land or had even had it laid out for his use. Thus, upon being freed of his indenture he would not have immediately had land by which to set up a decent home. Gust Skordas, *The Early Settlers of Maryland: An Index to Names of Immigrants Compiled from Records of Land Patents, 1633-1680, in the Hall of Records, Annapolis, Maryland*, (Baltimore, MD: Genealogical Publishing Company, 1968), xi, 101; Menard, 50-51.

¹⁰⁰ The *Oxford English Dictionary* defines spinster as a term “Appended to names of women, originally in order to denote their occupation, but subsequently (from the 17th century) as the proper legal designation of one still unmarried.” There is also an association between the word spinster and one who is past the typical age of marriage. There is some evidence that not every woman called a spinster was unmarried, but in Maryland it clearly denotes one who was unmarried. Both Rebecca Fowler and Hannah Edwards were married, but shown in the records as previously being spinsters. *Oxford English Dictionary*, s.v. “Spinster,” http://dictionary.oed.com/cgi/entry/50233548?single=1&query_type=word&queryword=spinster&first=1&max_to_show=10, (Accessed September 3, 2008).

accused during the Salem witch hunt of 1692 were single. The majority of all accused of witchcraft in colonial America were married.¹⁰¹ Again, Maryland resembles the New England colonies more than Europe. The only execution in the colony was a married woman, while the closest Maryland came to executing a second accused witch was in the case of a single man. Marital status in Maryland simply did not affect one's chances of being accused of witchcraft.

Without any clear patterns of accusations (whether in criminal or civil cases) there is no evident link amongst Maryland's accused. Colonists, primarily women, did not have to fear that they would be accused and executed for witchcraft in Maryland, especially if they had some background with the courts. There was a greater chance of an execution happening at sea outside the reach of English and Maryland law, than on terra firma. This is in light of the fact that Maryland did boast the only person executed in the colonies outside of New England.¹⁰² These facts, coupled with popular depictions of the silver-screen's Blair Witch and the famous legend of Moll Dyer could lead one to believe that Maryland was not a safe place for women trying to avoid superstitious accusations of witchcraft. Yet, the Blair Witch is a fictional movie creation, while there is no historical record of a Moll Dyer. Like these "cases," it is fiction to assume that colonists were overwhelmed by their desire to root out witches.

"In order for folk beliefs and petty resentments among neighbors to become worthy of the attention of courts of law," one author explains, "authorities had to be

¹⁰¹ Levack, *The Witch-Hunt in Early Modern Europe*, 155; Karlsen, *The Devil in the Shape of a Woman*, 71.

¹⁰² Marc Carlson, "Historical Witches and Witchtrials in North America," 2004 <http://www.personal.utulsa.edu/~Marc-Carlson/witchtrial/na.html>, (Accessed September 3, 2008). In comparison, there were nineteen people executed for witchcraft during the 1692 Salem incident which tops the entire number of people *tried* for witchcraft in colonial Maryland.

convinced that witches engaged in activities that were illegal.”¹⁰³ Maryland authorities did not argue that witchcraft was not dangerous or illegal, but they did not act frequently against allegations of witchcraft. Most of the cases they heard that involved witchcraft involved exactly the reason accusations of witchcraft could be doubted – petty resentments among neighbors. Interacting across and within social lines, the men and women who were accused of, and accused others of, practicing witchcraft were more heavily products of their own environment than they were of the larger beliefs of the European world. Due to their serious doubt over the validity of such accusations, along with a real desire to remain loyal to English law and legal methods, the authorities of colonial Maryland never instituted a large scale witch hunt. The elites of colonial Maryland echoed Joseph Addison when he explained in *The Spectator* that he “believe[ed] in general that there is and has been such a thing as witchcraft; but at the same time can give no credit to any particular instance of it.”¹⁰⁴ While the whole colony benefited from this legal restraint, women found themselves benefiting the most, avoiding undue prosecution while also navigating the complicated world of community relations all while maintaining their limited social standing. While they were open to social criticism, gossip, and even personal smears because of supposed witchcraft, Maryland women were not heavily targeted as criminal witches. Beyond the reticence to prosecute women, their own legal experience ensured that women would not be condemned to death as a witch in the colony. Thus, while witchcraft did play an

¹⁰³ Susan C. Karant-Nunn, “The Reformation of Women,” *Becoming Visible: Women in European History*, Third Edition, ed. Renate Bridenthal, Susan Mosher Stuard, and Merry E. Wiesner, (Boston, MA: Houghton Mifflin Company, 1998), 192.

¹⁰⁴ Joseph Addison, *The Spectator*, Vol. 2. (London, 1788), Vol. 2, p. 145. 8 vols. *Eighteenth Century Collections Online*. Gale Group, <http://0-galenet.galegroup.com.libus.csd.mu.edu:80/servlet/ECCO>, (Accessed August 18, 2008).

important role in early Maryland life, it in no way impeded the growth a colonial legal system or the role played by women.

Chapter 3: “Would You Have Me Confess That I Killed a Man?”: Infanticide, Murder, and Assault

Life in Maryland was unsettled. Arguably, the Chesapeake colonies of Virginia and Maryland in the seventeenth century were “among the most violent societies in the American colonies.”¹ Given the uneven ratio of men to women and the highly competitive nature of tobacco growing, it is not surprising that the early Chesapeake society be seen as one of the most violent. As a frontier society, Maryland was populated mostly by males. Young males are society's most violent group. However, women were not immune from this tendency towards violent behavior. One important difference between violent crimes and witchcraft is that there was a greater variety of crimes considered “violent.” Violence incorporates many crimes; a legal reference defines it as “an act of physical force . . . especially physical force unlawfully exercised with the intent to harm.”² As this definition can incorporate a vast range of crimes, it is not surprising that fellow colonists accused women of most violent crimes. These included murder, including infanticide, and assault.³

Although they did commit all varieties of violence, during the seventeenth-century women were much less likely than men to commit the crimes of homicide and assault in Maryland. The two crimes each make up 3.2 percent of all crimes committed by women. For men, 7.5 percent of crimes committed were assaults, 5.3 percent were

¹ Douglas Greenberg, “Crime, Law Enforcement, and Social Control in Colonial America,” in *The American Journal of Legal History*, Vol. 26, No. 4 (Oct., 1982), 302.

² “Violence,” in *Black’s Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 1601.

³ Infanticide is an inexact term, considered the murder of any child up to age 9. Some historians have chosen to use the phrase “newborn child murder” to distinguish between the murder of a newborn and the murder of older children. This dissertation, while acknowledging the inexact nature of the term, will still use infanticide for the murder of any new-born or very young child. For more information on this distinction see Julius Ruff, *Violence in Early Modern Europe, 1500-1800*, (New York: Cambridge University Press, 2002), 149.

murders. The courts tried men for forty-one assaults and twenty-nine murders. Maryland authorities tried women for five assaults and five murders in the same period.⁴ Published records reveal a similar pattern for the early eighteenth century. In part, this reflected larger patterns occurring in England at the time. Historians tend to agree that during the seventeenth century in England, society seemed to be moving from a more violent society, as seen in the Middle Ages, to a less violent society. Of course, regional differences illustrated that some societies were more violent than others, at least as reflected by homicide convictions.⁵

The crime of infanticide, where a murder was committed, but of a newborn not an adult, complicated the situation. When factored in with these numbers, women were tried for infanticide at a rate of 7.1 percent of all crimes committed by women. Combining infanticide trials with homicide trials, reveals that women were tried for murder at a rate of about 10.3 percent of all crimes. When assault is included, the percentage of violent crimes committed by women rises to 13.5 percent. About 13 percent of crimes committed by males were violent – either murder or assault.⁶ Women and men in the seventeenth century were equally violent. Although the numbers clearly indicate that neither sex was more nor less prone to violence, they do not reveal why these colonists, especially women, acted the way they did or why the courts responded in the way they did.

Understanding the way the courts dealt with women as violent criminals illustrates much about female standing in the colony. Accused women received the same sort of trial accused men did, at times even incorporating other women in the process. Through their actions, the women accused of violent crimes and the other females who

⁴ Norton, "Gender, Crime, and Community," 135.

⁵ Sharpe, *Crime in Early Modern England*, 87.

⁶ Norton, "Gender, Crime, and Community," 135.

were involved in the courts' prosecution of these crimes, illustrated knowledge of the courts. The motivations of the accused for committing these most violent of crimes vary and were different in almost every case. A high level of fear ran through the community, especially when dealing with sexual crimes. In other cases, women sought to protect their reputation or the lifestyle they had built. In short, women proved equally as violent as men, but in different ways and equal to their male counterparts in manipulating the courts.

Infanticide

One of the most notable violent crimes that women in the colonies were convicted of was infanticide (here defined as the killing of a child within twenty-four hours of birth).⁷ It was a truly female crime. Throughout the colonies, women, predominantly unmarried women, faced pressures from society to remain unburdened by a child and retain at least the appearance of moral purity. It was these pressures that led to relatively high prosecution rates for females. In North Carolina, for example, women were prosecuted for murder at a rate comparable to men, largely because of infanticide cases.⁸ Authorities prosecuted infanticide much more intensely than the female-dominated crime of witchcraft in Maryland. Historians are at odds over how many cases occurred in seventeenth-century Maryland. Estimates indicate that between 1637 and 1675 there were a reported ten cases of infanticide brought before Maryland's Provincial Court, which

⁷ See footnote 3 above for an explanation of the term infanticide and its use in this dissertation.

⁸ Between 1663 and 1740, murder accounted for nearly 8 percent of all female prosecutions in North Carolina. By comparison, murder accounted for slightly over 6 percent of all male prosecutions in the colony. The number of women prosecuted is only about 1/3 the number of all men prosecuted. Donna J. Spindel and Stuart W. Thomas Jr., "Crime and Society in North Carolina, 1663-1740," in *Crime and Justice in American History: The Colonies and Early Republic* Vol. 2, ed. Eric H. Monkkonen, (Westport, CT: Meckler Publishing, 1991), 714-715.

made up over a quarter of all murder cases heard in the colony.⁹ Others put the number at eleven for the period from 1632 to 1700, while at least one other historian points to 14 suspects indicted for the crime between 1656 and 1676.¹⁰ Of course, many infant bodies were never found. Newborn bodies were small and easily concealed. Additionally, the nature of seventeenth-century clothing made it relatively easy to obscure a full-term pregnancy. Regardless of the number, it is clear that women in Maryland were prosecuted at a higher rate for infanticide than for any other “violent” crimes. Partially this is due to the nature of Maryland society throughout the seventeenth century. Women were more likely to be prosecuted for this crime in modestly populated areas. The difficulty in prosecuting a woman in a densely populated area lay in the inability of colonial courts to positively identify the mother of a dead or abandoned child.¹¹ Also, in more tightly-knit rural communities, the population knew one another well. They could attest to a crime or aid in proving a crime did not happen, although family, business, and personal relations meant that such testimony could not always be trusted. Additionally, even though the rate of prosecution was higher in Maryland than in many colonies, the rate at which women were indicted was markedly lower than in New England, indicating a continued reticence among the colony’s courts to convict women of infanticide.¹²

Modern observers cannot fully know each individual female’s motivation. The reasons that a woman might have chosen to kill her newborn are certainly numerous.

⁹ Horn, *Adapting to a New World*, 358.

¹⁰ Mary Beth Norton argues for 11 cases in the whole century, while Peter Hoffer and N.E.H. Hull argue that there were 14 during the twenty year period mentioned. Hoffer and Hull, and Norton in at least one instance, are including cases of abortion. As the cases are rare, they are properly grouped with infanticide cases and will be addressed as such herein. Norton, “Gender, Crime and Community,” 135; Peter Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803*, (New York: New York University Press, 1981), 45.

¹¹ Richard Godbeer, *Sexual Revolution in Early America*, (Baltimore, MD: Johns Hopkins University Press, 2002), 317.

¹² Hoffer and Hull, *Murdering Mothers*, 45.

Women were most likely to kill their newborn children if the child was conceived out of wedlock. A bastard-bearer faced court-ordered punishment and a certain level of public shame that many women were not ready to face. Largely because of this shame, a single woman with a child was sometimes rendered unemployable and unmarriageable. Of course, in a society with such an imbalanced sex-ratio women were still likely to marry.¹³ Aside from personal reasons, there was a monetary reason for doing away with one's child. If there was no father to support the child, the community or colony would undertake the monetary support of the child. Female servants were particularly likely to engage in the murder of newborn children, as the birth of an illegitimate child during the time of service was punishable by an extension of her term. If a woman succeeded in hiding her pregnancy and then killing her child, it could be difficult to hide the evidence of her crime due to the presence of a body. Women who chose to follow this path were taking a certain risk. Prior to the seventeenth century in England, infanticide and abortion were not treated as murder. Rather, they were considered lesser crimes, punishable by church courts. It was not until the seventeenth century that infanticide was made a capital crime in England and consequently the colonies.¹⁴ The punishment faced by a woman caught hiding the birth of a child was harsh. Under a 1624 English statute, which was apparently followed by Maryland authorities, it was a capital crime to conceal the birth of a bastard child.¹⁵ Even if a child was found dead, one of the most obvious issues for the courts was that at times it could be difficult to determine whether or not a woman had murdered her

¹³ Horn, *Adapting to a New World*, 357-358.

¹⁴ Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750*, (NY: Vintage Books, 1991), 196.

¹⁵ Helen Brock and Catherine Crawford, "Forensic Medicine in Early Colonial Maryland, 1633-1683," in *Legal Medicine in History*, ed. Michael Clark and Catherine Crawford, (NY: Cambridge University Press, 1994), 39.

child or whether the child had died for other reasons. The difficulty of proving this fact helps explain why there were so few executions for this crime.

One of the earliest recorded cases in Maryland was the 1659 case of Anne Barbery. The Barbery case illustrates the difficulty of proving that a woman willfully murdered her child. Barbery was a thirty-six-year-old spinster at the time of the delivery. Barbery lived independently. In the year before she was tried for murdering her child, she won 295 pounds of tobacco in a cask in a suit against Thomas Stone.¹⁶ Upon delivering her child she hid it in a tobacco barrel until, she claimed, she was strong enough to take the child to its father. Two male neighbors found the child in the tobacco barn and delivered it to Barbery who confessed that the child was hers and that the father was Joseph Edlow (or Edloe). Later, Barbery's child died, which forced the courts to determine whether the death was intentional or accidental. That witnesses saw her nursing the child strengthened the notion of an accidental death. Unable to determine the cause of death, justices of the Provincial Court punished Barbery for bearing a bastard child by sentencing her to receive 30 lashes.¹⁷

Frequently, evidence in cases involving women killing their children was more conclusive. In such cases it was more difficult for women to escape punishment as Barbery had. The case of Elizabeth Greene, also a spinster, did not involve the complicated situations that the Barbery case did. In 1664, Greene bore a bastard child "and made away with her said Child."¹⁸ Governor Charles Calvert, before the Provincial Court, personally accused Greene of giving birth to a full term child and throwing it into the fire. She, however, claimed that she had only been pregnant with the child for four

¹⁶ AOMOL, 41:30.

¹⁷ *Ibid.*, 41:330 – 331.

¹⁸ *Ibid.*, 49:212.

months, miscarried, and destroyed the premature child in fear.¹⁹ Greene was not consistent in her testimony. At first, she admitted that she had killed the child by burning it, but she later claimed she had buried it in a swamp. When this was proven false, Greene reverted to her original story that she had burned the infant to death.²⁰ The Provincial Court's grand jury sentenced Greene to death for this crime. Her only statement was that she "threw herself on the mercy of the board."²¹ The justices did not respond to Greene's plea for mercy. The courts proceeded with her execution – an outcome which would be repeated, albeit infrequently, throughout the colonial period.

In 1671, the Provincial Court charged Isabella Yausley, also a spinster, with killing her newborn baby boy. The petty jury believed that Yausley, despite her protests of innocence, had killed her child since she bore the child without the presence of other women.²² The birthing process was sacred for early modern females, one that had to be prepared for before the birth. This included gathering a midwife (if one resided near the pregnant woman) and other females to assist in the birth and provide a community for the woman in labor. Women in labor depended on other women who had experienced childbirth not only to assist them physically, but also to provide mental companionship in this uncertain time.²³ In a case of bastardy, which Yausley's pregnancy clearly was, officials charged the women, especially the midwife, with attempting to ascertain the identity of the father. A woman who was about to birth a bastard was unlikely to put

¹⁹ *Ibid.*, 49:232.

²⁰ *Ibid.*, 41:218-219.

²¹ *Ibid.*, 49:235.

²² *Ibid.*, 65:9.

²³ There is a vast body of literature on women and the childbirth process in early America and early modern Europe. See Sara M. Evans, *Born for Liberty: A History of Women in America*, (NY: Free Press Paperbacks, 1997), 30-31 and Wiesner, *Women and Gender*, 63-64.

herself in a situation that could further indict her or the father of her child.²⁴ That Yausley had made no preparations and then disposed of the body of her child indicated to the jury that she was guilty and deserved death for this crime.²⁵ Her actions differed from Barbery's since Barbery was seen caring for her child after its birth, something Yausley apparently had no intention of doing. The crime was heinous enough to draw a speech from the chancellor (or presiding judge) of the court exhorting Yausley to prepare for her death even though he had not yet read the final verdict.

Authorities tried a number of additional cases of other single, free women for the murder of their children. Aside from Greene and Yausley, most women accused of infanticide in early colonial Maryland were acquitted. There are a number of reasons why these women escaped punishment, ranging from elite family members to other women who were interested in the outcome of these cases, as evidenced by the following cases. The Provincial Court charged Ann Pattison with infanticide in 1672. Thomas Pattison transported his daughter Ann to Maryland in 1665.²⁶ By the 1680s, Thomas Pattison had extensive landholdings in Dorchester County. Much of the land was originally patented to James Pattison and several others, but James Pattison eventually gave the patents over to Thomas.²⁷ Like Yausley, Ann Pattison did not assemble a group of women to help her through her labor. However, this did not seem to be enough to convict her, and the

²⁴ Norton, *Founding Mothers and Fathers*, 227.

²⁵ The testimony regarding this case is rather sparse but the presence of a coroner as a witness indicates that a body was present since a coroner was always called to make an examination of corpses to determine the cause of death.

²⁶ Prerogative Court (Wills) 11, 136, [MSA SM 16-17].

²⁷ Maryland State Archives, Maryland Indexes, Patents, <http://www.msa.md.gov/megafile/msa/stagser/s1400/s1426/p/pdf/54pattison,t-pearce,t.pdf>, (Accessed November 3, 2008).

Thomas is not listed as one of James Pattison's sons when James was transported to Maryland. It is likely, however, that they were related in some fashion, especially given the amount of land that James gave over to Thomas.

Provincial Court acquitted Ann.²⁸

At least three other free women were tried before the Provincial Court in the earliest years of the colony for killing their newborn children. Jane Crisp, Joan Colledge, and Rebecca Saunders all faced the court for their actions. The case of Jane Crisp in 1666 had a most peculiar outcome. Initially tried before the Talbot County court, the case of Jane Crisp involved a woman who intended to hide the birth of her child. A local servant named Charles Herbert exposed her condition. After Herbert fetched a midwife and two other women to examine Crisp, she informed the group that she had delivered a child and subsequently “the Hogs had Eaten it.”²⁹ Later that year, the Provincial Court heard Crisp’s case. After the court heard the not guilty verdict of the trial jury, Provincial Court justices called three times for other witness to testify against Crisp, but none came forward. Notably, no one presented the atrocious story of the hogs eating the child; instead the Attorney General accused Crisp of exposing the girl child to the cold, leading to her death. Without the initial details, Crisp was acquitted, charged only to pay imprisonment charges.³⁰ In reality, Crisp’s child may have been stillborn, or this case may have been fictionalized by Herbert.³¹ The absence of reliable evidence led to Crisp’s acquittal. The women Herbert called clearly refused to testify against Crisp, creating a united front and illustrating female legal solidarity. In addition to their reticence, the women realized that by refusing to appear they could influence the outcome of this case.

The fates of Saunders and Colledge are uncertain. Both were found guilty and sentenced to be executed for their crimes, but intervening events may have saved them

²⁸ AOMOL, 56:33.

²⁹ Ibid., 54: 395.

³⁰ Ibid., 57:123-124, 153. Crisp was transported by someone else, but there is no mention of her being a servant.

³¹ Ibid., 57: Preface 29.

from death. After Saunders' initial trial and conviction by the Provincial Court, the Council sought a reprieve for her from the Lord Proprietor. Saunders likely sought the services of the Council of Maryland after her conviction. Council members argued that there was not enough evidence presented to convict Saunders. They also argued that the "great Care seemingly used by the Mother toward it [the baby] in wrapping it in clean Linen" showed that Saunders had not killed her child.³² The Lord Proprietor's answer does not remain in the records. There is no further reference to Saunders.

Similarly, the Provincial Court convicted Joan Colledge of murdering her newborn in 1669. After justices called seven witnesses and Colledge was "heard likewise," a petty jury found her guilty and sentenced her to death.³³ At this point, Colledge's case diverged from similar cases, perhaps best illustrating female agency in dealing with the law. Again, it was women's actions that determined the final outcome of this case. Immediately following the conviction, "Elizabeth Rousby Mary Keene Ellinor Smith Ann Dorrington Mary Larkin Grace Parker Mary Williams and sundry other persons" presented a petition to the court asking that Colledge's execution be postponed until a pardon hearing could be held.³⁴ The women who supported Joan Colledge were Colledge's social superiors. Ann Dorrington, for example, was either the wife or daughter of William Dorrington, a Quaker with a moderate amount of property. William Dorrington held the offices of appraiser and Justice of the Peace, eventually moving from St. Mary's County to Dorchester County. There he held at least 1300 acres of land and

³² Ibid., 8: 334.

³³ Ibid., 57:599.

³⁴ Ibid.

several servants.³⁵ The elder Ann owned property in her own right. In 1656, Ann was involved in a court case regarding land rights that pitted her against Henry Keene, whose daughter Mary would play a role in the Colledge petition signed by Ann.³⁶

Mary Keene was no stranger to the courts. In 1672, her uncle appointed her executrix of his estate and he also granted her two cows and two calves. The list of legally well-versed and elite women petitioning on Colledge's behalf continued beyond Dorrington and Keene. The list of women who signed the petition included Elizabeth Rousby who served as executrix of her first husband's estate and also his sole legatee. As such, she inherited his entire estate, including his 200 acre plantation. Grace Parker was not only the wife of an established planter; in 1663 she served as her husband's attorney in court.³⁷ In 1659, Mary Williams was defendant in one of the most notorious theft cases in Maryland's history. She only escaped execution because of Cecil Calvert's remittance of her punishment.³⁸

The collection of women who petitioned for Colledge had an impressive background in dealing with the courts. Grace Parker, especially, had illustrated her knowledge of the law when her husband appointed her as his attorney. It was not extremely rare to see women act as attorneys in colonial Maryland. Before 1674 there was no law on the colonial books dictating the qualifications to serve as an attorney. Even then the law did not specifically bar women from acting as attorneys, as the law granted the governor the power to appoint "a certain number of honest and able Attorneys . . . in

³⁵ Lois Green Carr, Men's Career Files, MSA SC 5094, 1173-01, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/001000/001173/html/sc5094-1173-01.html>, (Accessed November 3, 2008).

³⁶ AOMOL, 10:460.

³⁷ Grace Parker also testified against Elizabeth Greene in her 1664 trial. Parker had questioned Greene over her child, and testified to the woman's inconsistency. This is quite opposite of her involvement in the Colledge trial. See: *Ibid.*, 49:217.

³⁸ The case of Mary Williams is examined in greater depth in Chapter 5.

the Provincial Court Chancery Court or other Court of Record.”³⁹ Joan Colledge’s case, although it has an unclear outcome, may be the most important case in understanding the way the Provincial Court responded to women in the colony. Not only had Colledge herself testified in her own defense, the petitioning women proved themselves adept at understanding colonial legal procedure, and the court responded by taking their petition seriously. As infanticide was one of the most serious crimes a woman could be accused of, the legal restraint illustrates both a desire to remain consistent with English law, while valuing all colonists’ legal literacy.

Not all women had the sorts of connections and standings as women like Joan Colledge or Ann Pattison. A number of women who came before the courts charged with infanticide were indentured servants. Indentured women not only had to conform to social morality, they were bound by their indenture to remain without children born out of wedlock. Were they to become pregnant while in the service of their master, indentured servants were legally bound to repay their masters for the time lost. This meant an extension of their term. In Virginia, this meant a two year extension. The Maryland law states “The mother of such Child shall onely be lyable to satisfie the damages soe sustained by Servitude, or other wayes as the Court before whom such matter is brought shall see convenient.”⁴⁰ The mother, therefore, was not expected to serve a set amount of time. Nevertheless, for many female servants, any extension of time or additional service appointed by the courts was unbearable.

Perhaps because of the servant’s value to her master, female servants in Maryland

³⁹ Ibid., 2:409. This law was enacted not because colonists were practicing the law without training, but rather because other colonists were complaining of excessive fees charged by those practicing law and these supposed lawyers desire to insight frivolous lawsuits for profit.

⁴⁰ Ibid., 1:373.

were statistically less likely than free women to be executed for their crime. The servant women who came before the Provincial Court, accused of the crime of infanticide, were rarely, if ever, sentenced to death. There are only a few cases of servant women who were even tried for murdering their newborns. Before 1700 there were only four servant women accused of this crime before the Provincial Court. While their cases are some of the most unusual of the sort, juries acquitted all four on the charge of infanticide. Mary Stevens, Susan Hunt, and Elizabeth Harris attempted to hide their pregnancies through alleged murder. Judith Catchpole was involved in a rather peculiar case of shipboard murder, while Mary Marler (with the help of her mistress Hannah Price) never faced the courts because she fled the law by escaping from her trial.

Susan Hunt, about 24 or 25 at the time of her trial in 1668, was a servant of John Grammer.⁴¹ In 1664 she had testified that she had no knowledge of her master ordering the beating of a fellow servant.⁴² Elizabeth Grammer and Elizabeth Cartwright gave depositions in Hunt's infanticide case. Both were free women - Grammer, either the wife or daughter of Hunt's master, and Cartwright having been transported to the colony in 1663 by her free husband. The women were convincing in their defense of Hunt; Provincial Court justices cleared her by proclamation later the same year.⁴³

Just as in the case of Susan Hunt, a grand jury found no proof of guilt in the case of Mary Stevens and the court cleared her. The trial against Mary Stevens in 1671 could not proceed without witnesses. After one trial was aborted because all witnesses failed to

⁴¹ This is not the same Susan Hunt who was married to William Hunt. This is clear by this Susan Hunt's testimony in 1664 when Grammer was noted to be her master.

⁴² *Ibid.*, 49:309.

⁴³ *Ibid.*, 57:251, 57:318.

appear, the Provincial Court took up Stevens' case later in the year.⁴⁴ Witnesses appeared at this later hearing but their evidence was not convincing. Mary Stevens was found not guilty of killing her child and was also acquitted. One interesting feature of Stevens' case is that her master, Patrick Forrest, was sitting on the petty jury that eventually acquitted her. Forrest had been seated for an earlier murder case and returned for the Stevens case. While this could be seen as an indication that Stevens could not have been acquitted without her master's assistance, it is more likely an indication of the informal nature of the Maryland court system. Conflict of interest, a serious issue in modern courtrooms, was clearly not a concern to the Provincial Court of early Maryland.

The case against Elizabeth Harris, while arguably one of the most famous cases of infanticide in early Maryland, illustrates other difficulties the courts faced in prosecuting cases of child murder. Elizabeth Harris was brought before the Provincial Court in January, 1660. The crime she was accused of had occurred in 1657 when Elizabeth was still an unmarried servant of James Langworth. In the intervening years, Elizabeth married Samuel Harris and was no longer servant to Langworth. The case had not simply been delayed from the time it was committed to the time it was tried – it simply had never been raised before the courts until 1660. Robert Joyner eventually made the accusation. He relayed a story of how in 1657 he had been helping to free a cow that was stuck in the mud. Upon returning home he and a companion encountered Elizabeth carrying a bundle. It is unclear what piqued the men's interest in relation to the bundle. When Joyner asked the woman "whats this that looketh like fish Gutts" she responded that it was fish guts.⁴⁵ When Joyner attempted to look into the bundle, Elizabeth threw it into the water. For

⁴⁴ Ibid., 65:20. One of the men who initially failed to appear against Stevens was fellow servant John Coman who would be convicted of witchcraft.

⁴⁵ Ibid., 41; 431.

further unknown reasons, Joyner fished it out of the water only to discover that it was a dead child. Joyner and his companion, John Gee, intended to immediately inform Langworth of this crime. However, when they arrived at his home they found too many people in the house and decided to return later to tell of the crime. In order to buttress their point, Joyner and Gee buried the body with all intention of retrieving it. The next day, however, the body was gone. The men did not further pursue this issue until 1660.

Why they never mentioned this incident to anyone and chose not to pursue the incident for three years after the supposed crime is a mystery. When it did come before the Provincial Court, a female witness undermined the testimony of the accusers. Margaret Marshguy, a twenty-four-year-old servant had known Harris for many years. Both women had arrived in Maryland in 1646 and became Langworth's servants. Marshguy testified that she and Elizabeth had shared a bed and all the while Marshguy never suspected that Elizabeth was pregnant. Marshguy also testified that she had never heard any insinuation that Elizabeth had been pregnant. Elizabeth's former master, James Langworth, seems to have appeared briefly to concur with Marshguy's assertions.⁴⁶ The jury, having heard this testimony, agreed that Elizabeth was not a child murderer and freed her.⁴⁷

The case of Judith Catchpole in 1656 was one of the most bizarre cases in early Maryland. The prime witness in Catchpole's case had recently died. This presented an even greater challenge than the reticent witnesses to Harris' crime. The deceased man had accused Catchpole, a newly arrived servant of William Dorrington, not only of murdering

⁴⁶ *Ibid.*, 41:432.

⁴⁷ It is possible that Harris was disposing of a body that evening but that does not mean it was her child. Harris could have been aiding a fellow servant (perhaps Marshguy) by covering up the evidence of her pregnancy and possible infanticide.

her newborn at sea, but of slitting a woman's throat and stabbing a seaman while en route to Maryland aboard the *Mary and Francis*. The latter two charges were dismissed quickly because the evidence was merely hearsay and witnesses portrayed the deceased accuser as "not in Sound Mind."⁴⁸ The man's accusations do seem absurd. In the first, Catchpole was said to have slit a maid's throat on the ship while the woman slept. As the woman did not feel anything, Catchpole sewed the wound with a thread and needle. The woman was fine. The stabbed seaman likewise met no ill end. In that case, Catchpole, accompanied by the unnamed servant, stabbed a man in the back. She then rubbed some borrowed grease on the wound and he revived. Both stories were relayed to the court by Mrs. Elizabeth Norton who had heard the tale from the deceased servant.⁴⁹

While these accusations do seem far-fetched, the Provincial Court, at this time under the de facto control of Parliamentary Commissioners, took the accusation of child murder more seriously. The accused murder took place at least eight months before the trial. Catchpole allegedly waited until all passengers and crew were sleeping before killing her child. Afterwards, the deceased servant and Catchpole walked around the deck for fifteen minutes before retiring for the evening. The court responded to this allegation by impaneling a jury of eleven free women to examine Catchpole to determine if she had had a child when the alleged murder took place. The women, after examining Catchpole, determined that she had not had a child. In this instance, the women's testimony carried the same weight as male's. The grand jury of the Provincial Court accepted their

⁴⁸ AOMOL, 10:458. Lou Rose posited that Catchpole's alleged actions and outcome of these incidents indicated that she would be suspected of practicing witchcraft. No mention of witchcraft ever arose during this trial and Catchpole was never accused at any later time of being involved with witchcraft. Lou Rose, "A Memorable Trial in Seventeenth-Century Maryland," *Maryland Historical Magazine* Vol. 83, No. 4 (Winter, 1988), 366-67.

⁴⁹ AOMOL, 10: 457. Elizabeth Norton was involved in a 1657 bastardy case wherein her husband threatened to kill her if she discussed his affair.

testimony and dismissed the case against Catchpole.

The evidence against Catchpole was hearsay originating from a man of questionable sanity. The court never seriously entertained the idea that Catchpole had committed the alleged shipboard mischief of throat cutting and stabbing. That the court even entertained this evidence is surprising, aside from the fact that these supposed incidents could have proven Catchpole a volatile and violent woman, capable of child murder. More important, the court accepted the testimony of the female jury and did not indict Catchpole for infanticide. The case simply died after her dismissal. The jury of women was an important feature in infanticide cases. Catchpole's case was not the only one to involve women in such an important role. In 1668 the Kent County Court impaneled a jury of twelve women to exam Hannah Jenkins to determine if she had ever had a child. Like Catchpole, Jenkins was accused of bearing and murdering an illegitimate child. The women found that Jenkins had never had a child. The court found that Jenkins could not have murdered a child that she had never had. It cleared her by proclamation.⁵⁰

The jury of women played a key role in the courtrooms of early modern society. Throughout England and the colonies, magistrates would impanel a jury of women (or a jury of matrons) composed of midwives and women with some social gravitas. These juries physically examined women on trial for certain crimes involving a woman's body but most frequently in cases dealing with reproduction. Following English law, a group of "honest women" would be used in cases of alleged witchcraft, as suggested by the

⁵⁰ Ibid., 54:250. In her unpublished dissertation, Amanda Lea Miracle minimizes the role played by the women in the acquittal, attributing it rather to the presence of Jenkins' father-in-law who acted as her attorney. See: Hannah Lea Miracle, "Rape and Infanticide in Maryland, 1634-1689: Gender and Class in the Courtroom Contestation of Patriarchy on the Edge of the English Atlantic," (PhD diss., Bowling Green State University, 2008).

Malleus Maleficarum, to search the clothing and body of the accused for any hidden instruments of witchcraft or physical manifestations of witchcraft.⁵¹ No instances of a jury of women searching a woman for signs of witchcraft appear in Maryland, but women were impaneled to determine if a woman was pregnant or had recently given birth. In both the Catchpole and Jenkins cases, the court instructed women to determine if the accused had given birth recently. In both cases, the jury found that these women had not given birth and the grand jury followed their opinion, dismissing the cases.

The jury of women in the Catchpole trial was composed of at least one midwife (Rose Smith) and two women related to one of the members of the grand jury. The Jenkins case similarly featured at least one midwife (Ann Blunt) and five women who were related (probably wives) to the members of the grand jury. That the female juries returned with no evidence of pregnancy and that they were taken at their word by the elite men indicates that women were essential to cases involving the bodies of other women. They wielded a unique power thanks to this role. There is no evidence that the women were pressured by their husbands to return this verdict in order to protect the servants of another landholder or that they were attempting to exert female solidarity by helping to free another woman. Indeed, Ann Blunt, serving on the Jenkins' case, had a reputation for scrupulousness in her attempts to ascertain the truth from other women. She famously attended the birth of Elizabeth Lockett's bastard child in 1660. Witnesses testified that Mistress Blunt, according to the custom of the day, insisted that the mother of the child swear to its paternity while the child was in the birth canal. Blunt and the other women present were not convinced that the father of the child was the man Lockett had named,

⁵¹ Summer Montague (trans.), *The Malleus Maleficarum of Heinrich Kramer and James Sprenger*, (New York: B. Blom, 1970), 478.

but upon her continued declaration, the women swore to the paternity in court.⁵² Clearly, Blunt was in the habit of fulfilling her duties with thoroughness, thus illustrating that her word on this jury was trusted and important. Although serving on a jury of women seems only a minor role for women, it indicated that women were essential to the judicial process of early Maryland thanks to their expertise in matters of the female body.⁵³

One additional case of infanticide by a servant bears scrutiny. In 1665, Mary Marler, a servant to Hannah Price, gave birth to twins – a boy and a girl. For reasons that were never fully explained in court, Marler killed the boy child, leaving the girl child alive. Marler’s mistress aided her by placing the child outside in the cold. Had Marler faced trial for her crime she would have been freed as the jury could find no evidence to prove she had committed this crime. While imprisoned prior to the trial, Marler escaped prison and fled Maryland, leaving Price to face the court for her complicity to the crime. The woman’s flight indicated to the court that she was guilty. Justices of the Provincial Court called Marler three times to appear to defend herself. If she failed to appear she would be forever outlawed from Maryland. Marler never returned, although both key witnesses, Joan Nevill and Eleanor Lindsey, did appear to testify against her. In the absence of Marler, the justices tried Price for “Concealmt of the murder of the Childe.”⁵⁴ Price remained imprisoned for this crime, but by October 1666 the Provincial Court cleared Price for her role in the murder.⁵⁵

The Provincial Court considered Marler and Price’s case important enough that

⁵² AOMOL, 54:211. For more on the Lockett case see Chapter 4. Also see Norton, “Gender, Crime, and Community,” 123-124.

⁵³ For an opposite view of the importance of women’s juries see Susan A. Lentz, “Without Peers: A History of Women and the Trial by Jury Part One – From the Women’s Sphere to Suffrage,” in *Women & Criminal Justice*, Vol. 11 (3) 2000, 92-94. For an analysis of how women’s juries helped create a community for colonial Maryland see Norton, *Founding Mothers and Fathers*, 225-239.

⁵⁴ AOMOL, 57:74.

⁵⁵ *Ibid.*, 57:125.

the court made a serious effort to assure that Nevill and Lindsey appear to testify against the two women. In fact, the Provincial Court ordered the sheriff of Calvert County to send a messenger to Charles County to assure that Eleanor Lindsey would appear by the following Saturday to testify against Marler and Price in person.⁵⁶ When both women initially failed to appear, the court repeatedly called for them to make their appearance at the next sitting of the court to file their testimony. In spite of the court's efforts to find her, Marler remained missing and her case simply disappeared. Without the mother of the alleged deceased, the case against Price would not hold. What became of Marler's daughter remains a mystery, along with any record of what happened to the woman after she fled Maryland.⁵⁷ The Provincial Court had used considerable time and resources on prosecuting Marler and Price, but they did not pursue the case once it became clear that the woman would not return.

Abortion

Abortion was rare, but regarded with gravity in early Maryland. By 1644 Edward Coke in *The Third Part of the Institutes of the Laws of England*, noted that abortion was "a great misprision and no murder" regardless of how it occurred or at what point in the pregnancy.⁵⁸ Although Coke did not believe abortion to be illegal while the child was in the womb, he also wrote that "if the child be born alive and dieth of the potion battery or

⁵⁶ Ibid., 49: 476. Lindsey was on the verge of giving birth at the time, giving her a reason not to be at court.

⁵⁷ There is no record of Hannah Price retaining custody of Marler's child but given Price's lack of children and her history of attempting to wrest custody from rightful parents, it is not beyond the realm of possibility that Marler's daughter (if she survived) was simply taken in by Hannah Price or was taken on the run with Mary Marler.

⁵⁸ Edward Coke quoted in Brock and Crawford, "Forensic Medicine in Early Colonial Maryland," 37. Coke was dead by 1634, but his Institutes were not completely published until 1644.

other cause, this is murder.”⁵⁹ Maryland officials disagreed with Coke and applied a twenty-first-century legal definition of abortion to the crime. One legal text defines abortion as “an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus.” An induced abortion, as the cases that follow were, is “an abortion purposely and artificially caused either by the mother herself or by a third party.”⁶⁰ In adhering to these definitions, the court of Maryland, unlike the courts of England that followed Coke’s word, did not make any distinction between abortion and murder. Therefore, by considering abortion to be murder, it was unnecessary to have a law specifically regarding abortion. The courts also had to be as concerned with morality as with abortion. The Mitchell/Warren case, especially, illustrated the many complicated issues that arose during such trials, namely Mitchell’s high standing and marital status. As the case involved not only abortion but also adultery, fornication, and a potential illegitimate birth, the punishments that both received were legally commensurate with their actions.

While no men were accused of infanticide, several men were tried for causing the death of a child in-utero. Although women did not commit the crime, abortion was linked to them in various ways. In most cases, women played a pivotal role in the prosecution of the alleged perpetrator. Hence, for this crime it is important to understand the role women played within the Maryland legal system. Prior to the mid-seventeenth century, abortion had been considered murder in England if it occurred after “quickening,” also known as

⁵⁹ Edward Coke, “Of Murder,” in *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminal Causes*, (1797), 62, http://0-heinonline.org.libus.csd.mu.edu/HOL/Page?handle=hein.beal/tpile0001&id=1&size=2&collection=beal&index=alpha/T_beal, (Accessed December 9, 2008).

⁶⁰ “Abortion” and “Induced Abortion,” in *Black’s Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 6.

“ensoulment.”⁶¹ There was no specific law in colonial Maryland against abortion, but the Maryland courts, against the laws of England, still viewed abortion as a crime and tried such cases as murder thus negating the need for a specific law. Illustrating the courts’ understanding of the crime, the woman who had the abortion was never charged with murder, but the Provincial Court did charge men who tried to induce the abortion. Francis Brooke, prosecuted in 1656, was charged with repeatedly assaulting his wife, including beating her with a cane until it broke, and thus causing the death of her unborn child. The Provincial Court tried Brooke for murder and initially based their opinion on the testimony of two women.⁶² The evidence of abuse against Brooke was incriminating, but testimony never indicated that he beat his wife to induce an abortion. Regardless of his intent, Maryland authorities still tried him for the murder of his unborn child. Elizabeth Claxton testified that Brooke had beaten his wife repeatedly for a series of alleged transgressions on her part. When she went into labor, Brooke and Claxton fetched a midwife. That midwife, Rose Smith, testified that the premature child was born bruised all over one side of its body – to the point that the child was colored black.⁶³ When pressed, Brooke claimed that his wife had fallen out of a peach tree. Brooke’s wife agreed that she had fallen from the tree causing her miscarriage, in spite of Claxton’s earlier testimony regarding her repeated beatings at the hands of her husband. Due to his wife’s testimony, justices set Francis Brooke free without punishment. Unlike other cases of abortion, Brooke was married to the woman whose child he was accused of murdering

⁶¹ Brock and Crawford, “Forensic Medicine in Early Colonial Maryland,” 37. Quickening was defined as the point in which a mother could feel her child move. Prior to this moment, the child was not considered to be a living creature. See Cornelia Hughes Dayton, “Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village,” in *William and Mary Quarterly*, 3rd Ser., 48 (1991), 20n3.

⁶² AOMOL, 10:464- 465, 488.

⁶³ Smith was influential in her role as midwife. This was the same Rose Smith who served on the jury of women for the Catchpole trial.

and thus had persuasive power over her.

In at least two other cases, men were charged with murdering the children of their mistresses. In 1652 Captain William Mitchell was accused of causing his twenty-one-year-old mistress, Susan Warren, to abort after drinking poison he gave her. Mitchell was in the colony by 1650 and around that time Warren admitted before the Provincial Court that she was pregnant with Mitchell's child.⁶⁴ The two had allegedly carried on a rather well-known affair, as a number of people (including Warren's fellow servant and chamber-mate) admitted to knowledge of the affair. A few facts add to the sordid nature of the relationship. First, Mitchell called Warren by the name "Elizabeth" or "Betty Williams" after a supposed beloved sister or friend.⁶⁵ In reality, Warren was a widow who had agreed to become a servant to Mitchell in order to pay off a debt. It is likely he called her by another name simply to keep her real identity a secret. Secondly, when he gave her the abortifacient or "physic" he pretended to also have taken it himself. He was thus able to act as though both Warren and himself were sickened. It was difficult to fall for this ruse as Martha Webb admitted to having brought the physic to Mitchell and found the smell alone overwhelming. She would not even touch the pill, let alone believe that anyone would willingly take it. Webb also testified that she saw Mitchell in apparent good health while Warren was desperately ill. When others came to see to the sick woman, Mitchell himself acted ill in order to show that both parties had taken the mystery pills.⁶⁶ Finally, Mitchell attempted to ease Warren's conscience by promising marriage or something commensurate, especially since his wife was now dead.⁶⁷ When

⁶⁴ Ibid., 10:80.

⁶⁵ Ibid., 10:175.

⁶⁶ Ibid., 10:178.

⁶⁷ Ibid., 10:177.

Warren delivered the child it was full term, but dead. She admitted that the child had been dead in the womb for a time due to the abortifacient administered by Mitchell prior to a trip he took to England.⁶⁸ Mitchell acted as though he had no knowledge of this crime, even going as far as apologizing to Warren for the disgrace caused by her pregnancy. These actions were not shocking as William Mitchell was known to lead “a most scandalous life” in the colony, but the crime of causing an abortion was considered one of his gravest.⁶⁹ Mitchell held a place on the Governor’s Council at the appointment of Cecil Calvert. After this incident he was removed from his position and charged to pay 5000 pounds of tobacco for adultery, fornication, and murder to the Lord Proprietor. Warren was given 39 lashes for fornication but also freed from her service to Mitchell.⁷⁰ Mitchell had been charged with a number of things including “that he hath Murtherously endeavoured to de-stroy or Murther the Child by him begotten in the Womb of the Said Susan Warren” after the death of Warren’s child – an interesting accusation given that there was no law against abortion in the colony. In contrast to English law, the courts did see the murder of an unborn child to be a felony even if Mitchell did not receive a capital punishment.

Another colonial reprobate, Jacob (or John) Lumbrozo, was also tried for inducing an abortion in his mistress (who was also his maid) in 1663. Lumbrozo, thought to be the first Jewish resident of Maryland, like Mitchell, gave his mistress Elizabeth Wild a concoction or “physic” which caused her to abort her child. Wild’s pregnancy followed an episode wherein Lumbrozo apparently raped her and then promised marriage. Lumbrozo’s promise may have been an empty one since he had no intention of

⁶⁸ Ibid., 10:177 and 10:171.

⁶⁹ Ibid., 1:333.

⁷⁰ Ibid., 10:185.

allowing Wild to carry the child to term. The Charles County court first heard this case, and then ordered it sent to the Provincial Court. A series of witnesses testified graphically against Lumbrozo, proving that his actions had led to the death of Wild's unborn child. Had his case ever been tried at the higher court he probably would have been found guilty.⁷¹ However, the Provincial Court never tried Lumbrozo's case. Lumbrozo rendered the charges moot by marrying Wild. It appears that Wild, perhaps seeking marriage to Lumbrozo, had no intent to testify against her husband, having claimed in her initial testimony that she had lied about the whole story.

In general, accounts of abortion were not widespread in early America.⁷²

Abortion methods were neither safe nor certain to work. The most popular method of abortion, well into the later colonial period, was ingesting some sort of poison, as seen in all the Maryland cases. Such a practice could be dangerous if the proper dosage was not administered. In a time when there were not well-trained medical practitioners in the colony there was little certainty that the poison would kill the child alone and not the mother too.⁷³ In other cases, the abortifacient was not strong enough to meet its expected ends. Such was the case with Elizabeth Robins who, in 1657, attempted to abort a child by taking oil of savin. The oil, drawn from juniper berries, was commonly used as an abortifacient in early America. Robins told several women that she had taken the savin for worms, but it was well-understood that Robins was attempting to rid herself of a child possibly conceived in an adulterous relationship. Not only did Robins fall ill from taking the drug, she did not abort the child, as she was publicly holding the infant when she was

⁷¹ *Ibid.*, 53: 387-391.

⁷² Dayton, "Taking the Trade," 23. There is a small but important body of literature relation to abortion in America. For more see *Ibid.*, 20n3.

⁷³ Marvin N. Olasky, *Abortion Rites: A Social History of Abortion in America*, (Wheaton, IL: Crossways Books, 1992), 27.

tried for adultery the following year.⁷⁴ The Robins case illustrates that most women did not have knowledge of how to use poison to abort a child. They did not want to involve another person who may have had more knowledge of the process so as not to spread their secret. No women in early Maryland attempted a surgical abortion as there was simply not the medical expertise to ensure that the mother would live through the procedure.⁷⁵

In short, Maryland authorities treated the murder of children seriously, but they did not yield the number of executions or the drama the New England colonies produced.⁷⁶ Historians point to as many as eleven executions for infanticide in the New England colonies during the seventeenth century, almost double the number of executions found in Maryland in the same period. Like many crimes in Puritan societies, it was expected that the mother make a public confession and seek forgiveness for her crime before she was executed. No such actions were demanded of the criminal in Maryland. Women of differing social classes, legal standing, and race all faced charges of infanticide before the Maryland courts, but there was no excessively harsh treatment of them. The execution rate remained low, again illustrating that there was no large-scale attempt to suppress women through these charges. Although women were not accused of abortion, some men were. Women proved essential to these cases. In some cases, like that of Brooke, the word of a wife superseded all other testimony. In other cases, such as that of Jacob Lumbrozo, the accuser exhibited a desire to marry her wealthy master, not

⁷⁴ AOMOL, 41:85. For more on the Robins case, and the eventual outcome, see Chapter 4.

⁷⁵ Dayton, "Taking the Trade," 20. Dayton points to only one reported case of a surgical abortion taking place in the colonies. That case was in 1742 in Connecticut. There may have been more cases that went unreported. Although abortions with the use of instruments were not unheard of, it was not a practice that can be found in early modern England or the colonies.

⁷⁶ See Martha Saxton, *Being Good: Women's Moral Values in Early America*, (New York, N.Y.: Hill & Wang, 2004), 86-87.

necessarily have him indicted. Additionally, women who served on matrons' juries and as witnesses played pivotal roles before the courts in these cases. These roles did not make them equal to men, but did help them to retain some legal standing in the colony.

Murders Committed by Women

Although life was chaotic in the early Chesapeake, murder in these colonies was rare. Even though life was unsettled, officials seriously honored their obligation to protect the life of white colonists.⁷⁷ Women, like men, were thus accused of murder and assault other than the murder of children. Even though conviction rates in the Chesapeake were higher than in England, women often exhibited enough legal shrewdness to avoid conviction, as illustrated by some of the following cases. In cases where there was strong proof against the accused women, the Provincial Court did not hesitate to convict and sentence women to death, but women of all social classes were charged.

Servants were sporadically charged with the murder of other servants, such as the case of Hannah Rogers in 1660. Rogers, maidservant to Samuel Chew, was accused of murdering Richard Stevens, a fellow servant. Rogers was alleged to have struck Stevens over the head with a hoe causing his death. Rogers' master, Samuel Chew, patented several hundred acres of land in Anne Arundel County throughout the 1660s. At the time of his servant's crime, it is unclear how much land he had or how many servants he employed. Chew brought Hannah Rogers with him when he arrived in the colony in 1659. Stevens did not arrive at the same time as Rogers and Chew.⁷⁸ The two servants had a serious disagreement that provoked Rogers to the alleged attack. Twice the

⁷⁷ Roger Lane, *Murder in America: A History*, (Columbus, OH: The Ohio State University Press, 1997), 44-45.

⁷⁸ Land Office (Patent Record), Liber 4, Folio 54, MSA SM2-7, SR 7346.

Provincial Court record noted that Rogers took a hoe in both hands and gave Stevens “a grievous wound in the head” that led to his death.⁷⁹ After the grand jury indicted her, Rogers entered a plea of not guilty and asked to be tried by God and the court. Upon this request, court commissioners impaneled a petty jury. They returned a verdict of not guilty and freed Rogers. There is no record of any witnesses for or against Rogers, although it is likely there was some evidence presented. Regardless, Rogers went free.

The same cannot be said of Ann Smith, whose 1696 crime resulted in a death sentence. Smith, a servant, was charged with killing a “negro boy.” After her initial conviction, Smith appealed her case to the Council of Maryland. Upon opening the case, the Council called the sheriff of Anne Arundel County to inquire whether he believed it would be prudent to reprieve Smith from her sentence, saying she “is very penitent & may deserve mercy.”⁸⁰ After some deliberation between the Council and the sheriff, the men decided that Ann Smith should be freed but not until she had gone to the gallows and “made her Speech at the place of Execution.”⁸¹ Smith was not to know about her reprieve until she had made her final public statement or confession. The speech given by the convicted prior to execution was a part of the ritual involved with execution – a practice carried over from England and also common on the Continent. The accused often gave a speech condemning their crime or the actions that had led them to this fate.⁸² Smith was expected to speak in a way which would unburden her conscience, likely a public confession.

Smith’s case is noteworthy as she, a white servant, murdered a black male, likely

⁷⁹ AOMOL, 41:430.

⁸⁰ Ibid., 20:460.

⁸¹ Ibid.

⁸² Ruff, *Crime in Early Modern Europe*, 104.

a slave, and was sentenced to die for her actions. Her eventual pardon demanded deliberate action meaning that her case was not decided until it was heard by the General Assembly and the Council, who consulted with the sheriff before arriving at their final decision. The case tells as much about race relations in the colony, as both victim and perpetrator were treated as peers, as it does about gender relations. Given the status of blacks in early Maryland, it stands to reason that the courts did not put much value on the life of a white woman, since Smith was set to be executed for the murder of a “negro boy.” Nonetheless, the highest elites of the colony freed Ann Smith following the ritualized process that was demanded of capital punishment. Like most women who appeared before the colonial courts, Smith was held to the same standards as any other resident of Maryland, regardless of her victim. Her eventual reprieve was neither overly swift nor certain, but came after a host of authorities granted Smith the same sort of trial a male colonist was granted. Part of her receiving a reprieve was due to her boldness in suing for her freedom.

Not all women were freed from their punishments. In 1703, Joseph Sanders appeared before the Upper House of the General Assembly to ask for some recompense for his two recently executed servants – one a man and the other a woman, apparently William and Margaret Ward.⁸³ The Sanders servants were accused of having murdered another servant, John Austin, and the Provincial Court sentenced them to death for this crime. Between the loss of the murdered man and the deaths of the male and female servants executed for this crime, Sanders found himself with no servants. As he was introduced to the Assembly as a planter, it would be rather difficult for him to continue

⁸³ Judgment Record (Provincial Court), Provincial Court Proceedings, 1703, Page 1, MSA SM20-22, SR2492.

with no servants. Justices deemed both the male servant and female servant equally guilty for the murder and both were executed. Sanders made no distinction between the dead servants based on sex, seeking only to “have Allowance from the Country for such servants Executed.”⁸⁴ The members of the Upper House did not know of any such practice as giving compensation to a man in Sanders’ position, but conceded that the case should be heard by the Lower House, as the situation was indeed dire.⁸⁵

Sanders’ executed servant exhibited some of the same attributes as other women who were accused of murder in early Maryland. At least two women were accused of aiding their husbands in the execution of a murder, just as the servant woman aided her male counterpart in their crime. In 1660, the Attorney General accused the wife of Kent Island resident Thomas Bradnox of helping to murder Thomas Watson, their servant.⁸⁶ Testimony indicated the Bradnoxes were both displeased with Watson’s service and illustrated this through violent beatings and barring the other servants from helping ease Watson’s pains as he convalesced.⁸⁷ Mary Bradnox showed particular malice toward the servant – she not only denied him food and water but allegedly beat him with a pole when he came to the main house looking for food. Watson eventually died, perhaps of his injuries. A grand jury heard the case and recommended that Watson’s case deserved a hearing by a trial jury. Trial jurors eventually determined that Watson had died of a disease – perhaps dropsy or scurvy – not a beating.⁸⁸ In the midst of the trial, Thomas Bradnox died. However, members of the Provincial Court continued the trial of his wife

⁸⁴ AOMOL, 24:315.

⁸⁵ The fate of Joseph Sanders’ quest for compensation for his servants is unknown, as the Lower House Journal for 1703 (where his case would likely have appeared) is missing. *Ibid.*, 24:index.

⁸⁶ Thomas Bradnox was an important figure in Maryland, particularly after he took part in Ingle’s Rebellion from 1645-47. His relationship with his wife tended to be less than harmonious and will be discussed in more detail in Chapter 4. His relationship with servant Sarah Taylor is discussed in Chapter 5.

⁸⁷ *Ibid.*, 41:500-501.

⁸⁸ *Ibid.*, 41: 503.

for Watson's alleged murder, eventually acquitting her.

Most of the witnesses against the Bradnoxes were fellow servants of Watson's. The case shows judicial sophistication as it became clear to the justices that all servants of Captain and Mrs. Bradnox were unhappy with their treatment. They took this into account when rendering their judgment. Sarah Taylor, a servant of the Bradnoxes, testified on behalf of Watson, giving some of the most graphic and incriminating evidence. Although her testimony was dramatic, a separate witness gave proof that Taylor was not a reliable eyewitness. John Dobbs testified to having heard Taylor confess to desiring "that she would Run a Knife into her Mistres Bowells" on account of her treatment by Mary Bradnox.⁸⁹ Charles Hollinsworth characterized another witness, John White, as "an idle Runaway and of noe Creditt."⁹⁰ In view of the testimony of these freemen, the jury struggled to believe the testimony of Watson's fellow servants. Beyond this, John Dobbs testified that Watson himself stated that his master and mistress had not caused his decline, rather it was due to a disease from which he was suffering. The final cause for trusting the Bradnoxes over their servants was due to the "ordeal of touch" also known as the "bier test." Although a rather antiquated practice, many in Maryland still believed that if a murderer touched the body of one they murdered, the body would bleed. Thomas Wetherell testified that no blood appeared when Captain Bradnox touched Watson's body.⁹¹ Notably absent from this test was Mrs. Mary Bradnox. She was not, however, absent from her own trial. When the case was heard by a jury, Mrs. Bradnox presented her own witnesses. As seen, these witnesses testified not only to Watson and his fellow servants' untrustworthiness, they established the Bradnoxes as a couple who

⁸⁹ Ibid., 41:503.

⁹⁰ Ibid., 41: 505.

⁹¹ Ibid., 41:504.

were concerned for the well-being of their servant.

This characterization of Captain and Mrs. Bradnox lacked credibility. They had a rather lengthy history of mistreating their servants. Thomas Watson was not the only servant the couple was accused of murdering. In 1652, the Kent County Court inquired into the death of James Wilson, a Scottish servant in the employ of the Bradnoxes. Although Wilson had received a whipping from Captain Bradnox a few days before his death, the court did not see this as a cause for Wilson's death. Rather, the death had been caused by a "fever joined with the dropsy or scurvy."⁹² But such a finding did not relieve Mary Bradnox and her husband of responsibility for their servants' fates. Their servants were dying of dropsy or scurvy.⁹³ The prognosis of scurvy illustrated that the Bradnox servants were deficient in vitamin C. Dropsy, the other disease Watson was believed to have suffered from, could also be brought on by malnutrition. The two prognoses taken together illustrate that the Bradnoxes, even if not physically abusing these men, were not providing a balanced diet to their servants. Malnutrition was a problem for colonists in the Southern colonies well past the Revolution. Poor nutrition increased the risk of infection for the settlers, and without medical treatment such infections often resulted in death.⁹⁴

Excessive salt in the diet also caused dropsy.⁹⁵ Too much salt could cause "salt intoxication," a common condition for Chesapeake colonists that frequently resulted in

⁹² *Ibid.*, 54:9.

⁹³ The term dropsy is no longer in clinical use. The condition known to colonists as dropsy is now known as edema. Edema is the swelling of one's body caused by fluid under the skin or in the body cavities. As illustrated by the Watson case, when the skin of a person with edema was pressed it would generally stay indented. Edema is frequently associated with various congenital disorders, often those relating to the heart. Estes, J. Worth, "Dropsy," *The Cambridge Historical Dictionary of Disease*, ed. Kenneth F. Kiple, (New York: Cambridge University Press, 2003), 100-105.

⁹⁴ Shryrock, *Medicine in America*, 89.

⁹⁵ Wright, Kathleen, RN, "Edema," *Gale Encyclopedia of Medicine*, 3rd ed.. Vol. 2. 3rd ed., (Detroit: Gale, 2006), 1251-1252.

death. This resulted from brackish river water they often drank.⁹⁶ Such could be ignored as simply a byproduct of the times and situation. Salt intoxication is usually associated with early Virginia; however, it is not beyond the realm of possibility that Maryland servants were drinking river water, particularly since Mary Bradnox did not provide her servants with enough water. Servant Thomas Southern testified that Watson was forced to drink his own urine since Mary Bradnox forbade the other servants from assisting the man by giving him food or water.⁹⁷ She even beat the man for attempting to obtain food and water in the main house. Clearly, Mary Bradnox and her husband were unscrupulous, even murderous, in their behavior towards their servants.

Unlike Mary Bradnox, some women acted alone in the alleged murder of their servants. Mistreatment of servants by women was not uncommon. Approximately 3.9 percent of all crimes committed by women were cases of “mistreating servants.” In comparison, 2.9 percent of all crimes committed by men were cases of the same nature.⁹⁸ The case of Anne Nevell (or Nevill), wife of John Nevell, came before the Provincial Court in 1661. The Attorney General accused Anne of murdering her maidservant, Margaret Redfearne.⁹⁹ He alleged that Nevell caused Redfearne’s death because of the beating she administered the maid. Nevell supposedly pinched the servant in the throat and beat Redfearne with her hand and shoe, at one point even insisting that Redfearne strip naked and join her inside the house where Nevell beat the servant. The witness who saw the maid follow Nevell before the beating reported to hearing crying and the

⁹⁶ Carville V. Earle, “Environment, Disease, and Mortality in Early Virginia,” in Tate and Ammerman, *The Chesapeake in the Seventeenth Century*, 99.

⁹⁷ AOMOL, 41:501.

⁹⁸ Norton, “Gender, Crime, and Community,” 135.

⁹⁹ AOMOL, 41:467.

cracking of a stick or whip coming from the house.¹⁰⁰ Along with Thomas Pagett, the original complainant, Michael Farmer, a servant, testified to this beating. Unlike the Bradnox case, however, these men were the only servants who testified against Anne Nevell. The other witnesses – Thomas Cobham, Susan Barbery, and Andrew Hinderson – were all free landholders (Susan with her husband Thomas).¹⁰¹ Redfearne’s treatment was well-known throughout the community. Susan Barbery’s husband even bought the girl from John Nevell in an attempt to nurse her back to health. Under his care, Redfearne declared that Anne Nevell was the cause of her death and that the woman had told the servant to drown herself because she did not have more than two and a half months to live.¹⁰²

John Nevell’s wife was the sole person on trial. The evidence against her was indeed damning. Not only was there testimony against the woman from generally reliable witnesses, the court heard the deathbed statement of Margaret Redfearne, who again laid the blame for her death on her mistress. The Provincial Court sent two women to view the body of Redfearne to determine if she had died because of her wounds. The jury, having heard all of the evidence against Anne Nevell, brought back a verdict of “not guilty.” As no further witnesses appeared against Nevell, she was freed by proclamation.¹⁰³ The jury gave no reason for acquitting Nevell, leading one historian to

¹⁰⁰ Ibid., 41:479.

¹⁰¹ Carson Gibb, *The New Early Settlers of Maryland*, <http://www.msa.md.gov/msa/speccol/sc4300/sc4341/html/search.html>, (Accessed January 9, 2008). Interestingly, Gibb does not place Thomas Cobham in the colony until 1662 – one year after the trial. In the 1661 transcript Cobham does admit to not having first hand knowledge of the case even if he heard Redfearne lay blame for her death on Anne Nevell. Therefore he must have been in Maryland in 1661 to hear Redfearne’s testimony (see AOMOL 41:479. for Cobham’s testimony).

¹⁰² AOMOL, 41:479.

¹⁰³ Ibid., 41:480.

call this case a “travesty of justice.”¹⁰⁴ What is certain is that this case did not involve sex biases. Although John Nevell was said to have abused Redfearne, only Anne Nevell was on trial. What was more likely is that the jury released Anne Nevell on account of her social standing, not her sex.

The ultimate cause of Anne Nevell’s fatal attack on Redfearne did not relate to the servant’s performance, rather, Nevell probably was attempting to protect her own reputation. She administered the final beating that led to Redfearne’s death after Redfearne discovered a letter sent to her mistress by John Hatton. The servant, if she could read the letter, did not reveal its contents, only that her possession of it had been incriminating enough to cause Nevell to assault her in such a violent manner. As soon as her mistress discovered that the maidservant had found the letter, Nevell threw Redfearne over a log and then attempted to convince her to kill herself.¹⁰⁵ John Hatton, the letter writer, was a bachelor, who left no heirs to his rather sizeable estate. The anger exhibited by Nevell, along with the way she acted by herself in beating Redfearne, hints that the note possibly related to an affair that Nevell and Hatton were carrying on, although there is no proof what the letter said.

Adultery was common in early Maryland and Nevell, if this incident indeed indicated a sexual affair, was not alone in her infidelity. Nevell lashed out at Redfearne in order to keep her silent, likely because an accusation of adultery could harm the standing of Nevell both legally and socially in Maryland. Women, who engaged in extramarital relationships, were treated especially harshly by early modern courts because of the importance of children’s legitimacy. It was essential to men that their estates would pass

¹⁰⁴ Semmes, *Crime and Punishment*, 101.

¹⁰⁵ AOMOL, 41:479.

to their legitimate children. If the child was not his, he would be, in essence, passing his wealth on to a pretender. Beyond this, a rumor of such a nature could have led Anne Nevell to be labeled a whore by local gossips and John Nevell to be labeled a cuckolded husband.¹⁰⁶ As the Nevells were generally absent from local court proceedings, Anne would have wanted to avoid the sort of attention a rumor of adultery would cause. The only way to ensure this was to eliminate the only person, aside from Hatton, who knew of this dalliance.

One final case of alleged murder heard at the county level illustrates how difficult it could be to prosecute a woman (or man) for a violent crime in early Maryland. This case also illustrates how ordinary it was for women to be accused of violence against others. Finally this case also indicates how women controlled their own legal fate when charged with a crime. In 1693, Damarias Coleman was accused, with her husband Ellis, of murdering a man named Robert Darby who had lived with the couple at some point previous. The first witness against the pair illustrated exactly how confusing this case was. He recounted an argument he overheard between the Colemans. The man, John Watts, heard Ellis Coleman call his wife a “whore” and other names. In response, Damarias told Coleman “goe help the men to digg up the man.”¹⁰⁷ The two proceeded to argue back and forth over which of them actually knew of the location of the supposed body, each casting the other as the murderer.

The case seemed tenuous. An unknown man had purportedly been murdered. His body was then buried on the Coleman property. The murderer of the unknown man was either Ellis Coleman or Damarias Coleman. Or perhaps they acted together to murder the

¹⁰⁶ Snyder, *Brabbling Women*, 67-71.

¹⁰⁷ AOMOL, 406:233.

man. As the county court heard further testimony, witnesses identified the “dead” man as Robert Darby, who had not been seen for several years. His last known residence was with the Colemans. No one attempted to locate Darby after he disappeared; rather it was the Colemans’ own actions that led local residents to believe they had killed him. Watts was not the only one to hear the couple accuse each other of murdering a man. Three other witnesses heard an argument similar to the one Watts had heard. One other witness also overheard the two accusing each other of murder and further heard the most incriminating evidence. While Ellis and Damarias again accused each other, vehemently, of murdering the man who was buried in their yard, Ellis expressed his concern to his wife that he would be hanged if their yard was searched as the Constable had ordered. He spoke to her of wanting to flee, insisting after some thought that she should go away.¹⁰⁸

To be certain, the Colemans had a tumultuous relationship. Ellis repeatedly called his wife a whore and, on one occasion, threatened to kill her. Cornelius Gourde, a witness against the couple, even went as far as asking Ellis to be more civil with his wife. Although she may appear to be a victim, Damarias’ nature cannot be ignored. She repeatedly threatened to expose the murder that may have taken place and have her husband hanged for it. William Bowden witnessed Damarias, after some provocation from Ellis, punch her husband in the face and call him “A Thief & an old murdering Rogue.”¹⁰⁹ He also testified that their fighting went on for two hours. Nonetheless, fighting was not the only thing which characterized this couple. Anne Rice, a prior inhabitant of the Coleman household and a witness against them, found herself a first

¹⁰⁸ Ibid., 406:235.

¹⁰⁹ Ibid., 406:236.

hand witness to the couple's "exorbitant living."¹¹⁰ Perhaps because they had grown accustomed to a certain standard of living, or perhaps illustrating the couple's ruthless nature, in the same year as their murder trial, the couple was tried for stealing 406 pounds of tobacco from a local man. In the case of theft they were found guilty and Ellis Coleman was forced to pay 1624 pounds of tobacco to the man whose goods he stole.¹¹¹ Ellis Coleman had patented 450 acres of land in the 1680s, off which the couple presumably made their living.¹¹² They appear to have made an effort to further support their high standard of living by taking in boarders such as Rice and Darby, but this proved insufficient.

The murder case against Damarias and her husband seemed to be headed towards a guilty verdict. The actions and speeches of the couple, although making it unclear which had perpetrated the crime, painted them as guilty. Then, illustrating the uncertain nature of criminal trials in the early years of the colony, Ellis Coleman provided several signed letters explaining that Robert Darby was not dead, rather he was living in New England. Throughout the trial he had been adamant that Darby was alive and living in New England. Two justices of New Castle County, Pennsylvania signed sworn statements stating that they had seen John Darby, Robert's brother, who stated that Robert was alive, having fled Maryland in debt about five years previous. John had knowledge that the said Robert now resided in Connecticut, working as a butcher.¹¹³ The depositions were proven valid and the Colemans were freed. Ellis was ordered to pay 50

¹¹⁰ Ibid., 406:234.

¹¹¹ Ibid., 406:231.

¹¹² Maryland State Archives, Maryland Indexes, Patents, <http://www.msa.md.gov/megafile/msa/stagser/s1400/s1426/c/pdf/54coleb-collie.pdf>, (Accessed March 20, 2010).

¹¹³ AOMOL, 406:237.

pounds to ensure his and his wife's good behavior along with the cost of paying the men involved in the search for the murderer. With that, the bizarre trial of Ellis and Damarias Coleman ended.¹¹⁴

Damarias Coleman was evidently a cruel and conniving woman married to an equally cruel man. When Ellis was in Pennsylvania with John Darby, Damarias did not concern herself with the information that passed between the two regarding Robert Darby, rather she was interested in the "Clever pacing Mare" that John Darby owned. Damarias wished to have such a beast for her own use.¹¹⁵ She may have had devious intentions when she asked Cornelius Gourde to remain near her home in case Ellis murdered her. In fact, she may have wished Gourde to hear the conversation that ensued, wherein she accused her husband of murder. Since Robert Darby never appeared to testify on his own behalf, it is unclear whether or not he truly was still living. The fear exhibited by Ellis over a search of his yard indicates that there may have been a body buried there. Ellis never gave a reason for his visit to John Darby in court. Darby initially said he had not heard from his brother, but by court time witnesses testified that John Darby had, in fact, had contact with his brother.¹¹⁶ All these facts suggest that the Colemans may truly have murdered a man and buried him in their yard. The two Colemans likely collaborated in the murder of Darby or another man. There is no apparent motive, unless the relationship between Damarias and Darby had something to do with Ellis frequently calling her a "whore." Damarias, aware that her husband would likely pay for this murder, did nothing to relieve him of suspicion. Her motives may have been clear to her husband, as at one point, Ellis even asked his wife "would you have me

¹¹⁴ Ibid.

¹¹⁵ Ibid., 406:236.

¹¹⁶ Ibid., 406:235.

Confesse that I killd a man?" She made no reply, only saying it was a boy he killed, not a man.¹¹⁷ Damarias Coleman played a large role in fooling the courts, proving that women who committed violent crimes were not only aware of how the courts operated, but were able to maneuver around the law to achieve their own goals – whether of owning a good pacing horse or simply preserving their own life.

Assault

The women of colonial Maryland were clearly not averse to using murder as a way to deal with issues. Of course, not all violent crimes committed by females were murder. In the seventeenth century, women committed murder at the same rate as they engaged in assault.¹¹⁸ Mistreating a servant was viewed as a separate crime from assault, and occurred at a slightly higher rate than murder and assault. As illustrated by the trial of Thomas and Mary Bradnox, husbands and wives often worked together when beating their servants. The same holds true for Ann Dandy and her husband John. In 1650 Thomas Maidwell (or Medwell) accused the Dandies of assaulting him in a most violent manner. Unlike Watson or Redfearne, Maidwell was a free man, likely working for John Dandy in his mill.¹¹⁹ On one occasion, Maidwell accepted several peaches from a girl living in Dandy's household. Whether lashing out at Maidwell for accepting possibly stolen peaches, angered by this girl's attention to the blacksmith, or scandalized by Maidwell taking gifts from a female while still married, Ann Dandy lashed out at Thomas

¹¹⁷ Ibid., 406:233.

¹¹⁸ Norton, "Gender, Crime, and Community," 135. Norton found that women committed 5 murders and 5 assaults in the seventeenth-century. They were accused of mistreating servants 6 times.

¹¹⁹ Lois Green Carr, Men's Career Files, MSA SC 5094, 2743-01, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/002000/002743/html/sc5094-2743-01.html>, (Accessed March 20, 2010). Maidwell and Dandy were both blacksmiths.

Maidwell. Taking a cue from his wife's anger, John Dandy went after Maidwell with a hammer. His wife surprised the smith, who was fleeing from Dandy, and hit him over the head with a "smith's cindar."¹²⁰ While Maidwell was on the ground, John Dandy proceeded to beat him, leading Maidwell to fear that he would not be able to practice his trade without being tormented by the Dandies. Ann Dandy received no direct punishment for her contribution to the crime, while John Dandy was required to pay 2000 pounds of tobacco as security for the couple's good behavior. After this, the case disappeared, probably because Maidwell died the following year.

There are a number of reasons Dandy may have attacked Maidwell. The pivotal moment in the case came when Maidwell received a gift of peaches from a girl living in the Dandy household. There is no mention of a daughter of either Dandy, indicating that this was likely a servant in the Dandy household.¹²¹ The gift of peaches led Ann Dandy to hurl invectives at Maidwell and initiate his beating. The peaches may have belonged to the Dandies; thus, the servant's gift was stolen, either under her own volition or at the request of Maidwell. On the other hand, Ann Dandy may not have known that Maidwell had a wife and children in England. Thus, she may have assumed, based on this gift, that Maidwell and the servant were planning to marry. This was not a sign of Ann's concern for one of her female servants. More likely, Dandy did not wish to lose a servant to marriage. If a free man wished to marry an indentured female he could, and would, legally purchase her out of servitude. John and Ann Dandy had a history of criminal

¹²⁰ AOMOL, 10:31.

¹²¹ John Dandy would have been 28-years-old in 1650. Although Ann Dandy mentioned two children and a third on the way at the time of John's death it is not likely these would have been children of age to be courting a man. Dandy is also noted to have had at least two servants adding to the probability that the mentioned girl was a servant. Lois Green Carr, Men's Career Files, MSA SC 5094, 1048-001, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/001000/001048/html/sc5094-1048-001.html>, (Accessed March 20, 2010).

behavior both before and after the Maidwell trial, therefore Ann's beating of a man who threatened to take a servant away from her is not surprising.

The county courts heard a number of other assault cases but never sent them to the Provincial Court for various reasons. One notable case illustrates that women did not only assault their social inferiors, sometimes they succumbed to the pressures around them and assaulted other women. A woman named Joan Nevill and her husband John (apparently no relation to the woman who beat her maidservant to death), were accused of assaulting Mary Roe around June 1663. Richard Dodd testified that he heard the women fighting, followed by Joan Nevill attempting to start a fire near the log "blockhouse" where the Roes lived. Mary pushed Joan away from the fire, probably to save her house. After this, Dodd testified that "Joane neuill did Rise up and set on her."¹²² A free-for-all began between the two women, ending only when Joan's husband, John Nevill, came to the aid of his wife. John beat Mary Roe with a stick, causing her to fall to the ground, where both Nevills' continued to beat the woman, stopping only when a neighbor appeared and called for the man to stop the attack. Three neighborhood men testified on behalf of Mary Roe – all having seen her following the attack. One man, Thomas Baker, also testified to seeing smoke coming out of the house.¹²³

In light of the support for the Roes, the Nevills were found guilty of the assault. The Charles County Court fined the couple "ten groats" in damages and they were forced to pay court costs for the suit. The fine, which today would translate into 40 pence, was far less than the 3000 pounds of tobacco (equivalent to 25 pounds-sterling or 2500 pence)

¹²² AOMOL, 53:382.

¹²³ Ibid., 53:383.

which the Roes had wanted.¹²⁴ As the worth of the case was minimal, it did not go beyond the county authorities. There is no cause given for this fight, although it may relate to a defamation suit both women were involved in, wherein Joan Nevill was on trial for calling Mary Dodd a whore and engaging in a physical fight with her.¹²⁵ Mary Roe testified against Nevill around the same time as this brawl. It is noteworthy that Richard Dodd, husband of the slandered Mary, testified on behalf of the Roes, as did Robert Cockerill and Thomas Baker, both of whom also testified against Nevill in the Dodd case. For all of the sordid details of the Nevill-Roe case, it is clear that inter-neighborhood squabbling played as much a part in violent crime, wherein tempers flared, as it did in crimes such as witchcraft.

Conclusion

Given these cases, it might seem that colonial Maryland women were in some way depraved. Women, alone, were accused of murdering their newborn children. Although there may have been personal reasons for women to commit this crime, certain conclusions regarding infanticide can be drawn. Women attempted to conceal their sexual behavior from the community. No woman accused of infanticide was married, indicating that each child was a bastard. The free women clearly did not wish to incur society's scorn. Three of these women, while attempting to hide their sexual misdeeds, lost their lives. Servant women, however, did not face the gallows. Lawmen could not overlook their usefulness to their masters and society as a whole; consequently, the courts, while not condoning these women's actions, failed to hold them fully accountable.

¹²⁴ Semmes, *Crime and Punishment*, 143; Stephan Ostermiller, Coinmill.com – The Currency Converter, 2003-2009, http://coinmill.com/GBP_GBX.html#GBP=25, (Accessed January 5, 2009).

¹²⁵ AOMOL, 53:379.

While women were tried for murdering their newborns, there were no cases of women knowingly aborting their children, although in one case an attempt at such was mentioned. The men who attempted to abort children were, nevertheless, held accountable for their crimes. In Maryland, abortion was, contrary to English law, viewed as murder. Although women were victims in such cases, the courts never held them as perpetrators. Such shows a rather sophisticated view of pregnancy by the courts. Knowing that women were capable of child murder, justices nonetheless did not view women as capable of putting their own lives in danger over an unwanted pregnancy. That women did not practice abortion or infanticide more frequently is rather telling, especially given the harsh punishments they could expect to receive if convicted of fornication or bastard-bearing. During roughly the same time, women (particularly slave and servant women) in the Caribbean and Latin America regularly terminated pregnancies with abortions or committed infanticide to remain childless.¹²⁶ Such a pattern never emerged in Maryland, another cash-crop based economy. The women obviously faced different circumstances, although they did not seem to fear the repercussions of having a child. Of course, some cases of infanticide and abortion likely never reached the courts.

Although new-born child murder was the most frequent violent crime women were tried for, they also were involved in the murders of adults. More often than not, women aided their husbands, or were aided by their husbands in the execution of a murder. Servants, such as Hannah Rogers, murdered men in their same situation. The courts did not seem concerned with the causes of these crimes, nor were they willing to

¹²⁶ Edward F. Terrar, *Social, Economic, and Religious Beliefs Among Maryland Catholic People During the Period of the English War, 1639-1660*, (San Francisco, CA: Catholic Scholars Press, 1997), 268.

grant reprieves to every woman. Joseph Sanders' female servant faced the gallows for her actions, while Ann Smith was forced to endure the rituals surrounding execution, although she was pardoned. The free women accused of murder had a myriad of motivations. Mary Bradnox proved to be a cruel woman, especially when dealing with servants. Anne Nevell was attempting to hide something from her husband and neighbors. Damarias Coleman was a vain, self-serving woman. She and her husband were thought to have murdered a man who was not a servant, but who they clearly viewed as inferior. These women were all freed, despite sometimes convincing evidence against them.

The execution rate for women tried for violent crimes was likely kept low by women themselves. Women showed a strong understanding of the law. Whether they served on juries of women in order to examine the body of another woman or examined the corpse of a servant, the courts trusted their opinions. As the males in charge were not all endowed with medical knowledge (they could not tell the difference between scurvy and dropsy when trying the Bradnoxes), they believed that women had better knowledge of other women. As such, the courts granted women a certain degree of power. Further, when women attempted to petition for another to be reprieved from a death sentence for infanticide their case was sent to the Assembly. In all likelihood the woman was reprieved. As landholders and executrixes, they understood how to navigate through the court system. Even women on trial knew which witnesses would be most believable and often spoke for themselves before the court. Although it is easy to see women as victims of the law, depending on the powerful males in their lives, it is more pertinent to understand how women were able to keep prosecution rates low, even when they

committed truly heinous acts.¹²⁷ Even if this was one of the most violent colonial societies, women, and their treatment by the law, managed to give the society some civility or at least give the appearance of such.

¹²⁷ Amanda Lea Miracle argues that women were marginalized before the law, dealing successfully with the law only by having men to protect them. This chapter disproves this point.

Chapter 4: “Nor a Woman Chaste”: Sexual Offenses and the Courts

The original edition of Ebenezer Cooke’s famous poem, “The Sot-Weed Factor: or, A Voyage to Maryland,” ends with the speaker noting that in Maryland “no Man’s Faithful, nor a Woman Chaste.”¹ Cooke’s overall opinion of Maryland women was not the most flattering. His poem is filled with a variety of scandalous women. From Cooke’s description of a scantily-clad maid to a group of women drinking and arm wrestling to an Indian man’s body inspiring lustful thoughts in “widows and wives,” he leaves the reader believing that Maryland women were a decadent group.² Yet, nothing is more damning than Cooke’s final assessment of female sexual impurity.

Scholars continue to debate whether Cooke had gone to Maryland and had a negative experience there or if he was born in the colony.³ Cooke’s background notwithstanding, critics used the poem to paint the colony in the worst possible light. Men in early modern societies attempted to keep upper-class women from expressing their sexuality. Standards for middle and lower class women were more relaxed.⁴ To accuse a woman of sexual immorality (as Cooke was doing) was, therefore, to accuse her of being a lower class being. His charges, thus more likely reflected Cooke’s upper-class repulsion of crude, frontier Maryland society than they reflected colonial women’s immorality was base and uncivilized, than a reflection of colonial women’s morality.

Nevertheless, the poem raises some interesting questions about women in early

¹ Ebenezer Cook, “The Sot-weed Factor : or, A Voyage to Maryland In which is Describ’d The Laws, Government, Courts and Constitutions of the Country,” 1708, in *Shea’s Early Southern Tracts, No. II*, (1865; Project Gutenberg, 2007), <http://www.gutenberg.org/files/21346/21346-8.txt>, (Accessed July 15, 2008).

² *Ibid.*, 8.

³ *Ibid.*, 2-3.; Lawrence C. Wroth, “The Maryland Muse of Ebenezer Cook,” *American Antiquarian Society*, (October, 1934), 268-269.

⁴ Wiesner, *Women and Gender*, 59.

Maryland. The question is not only whether or not women in colonial Maryland really were as promiscuous as Cook portrays them. Sexual offenses were the female crimes heard most frequently by Maryland courts and we will draw on these cases to examine both female sexuality and how women were treated by the law when they did act against community sexual norms.

Numerous historians have dealt, with some contentiousness, with these questions. The county and Provincial courts appear to have attempted to regulate female morality through law with little success; Maryland women and men did not curb their immoral and illegal behavior. Of all crimes women were prosecuted for by the Provincial Court, sexual offenses make up three of the top four crimes, with bastardy ranking as the top crime for which women were prosecuted in the seventeenth century.⁵ A survey of the county court records indicates that an even greater number of cases were heard but never sent to the Provincial Court. The number and variety of court cases dealing with sexual offenses in the seventeenth- and early eighteenth- centuries is telling, not only for the way in which the courts treated women, but the way in which women responded. Women, like men, carefully guarded their reputations, perhaps most strongly against accusations of sexual wrongdoing. This often involved them facing the courts to counter such accusations.

Understanding how women operated under an accusation of a sexual crime is difficult. Although women sometimes approached the courts with fear, this did not prevent them from being heard in court. There are numerous examples in Maryland of women defending themselves when accused of sexual offenses or being treated somewhat equally to men accused of the same crimes. Sexual offenses in the colony

⁵ Norton, "Gender, Crime, and Community," 135.

were, by far, more numerous than the crimes assessed up until this point. Much has been written about adultery, fornication, and bastardy, even if there is little consensus about how officials dealt with these crimes. However, several of the specific court cases still merit scrutiny because of the way in which women interacted with the courts and how their actions reflect on colonial Maryland society. Even when women did not appear before the Provincial or local courts, their voices were heard through those that did testify. It is certain that punishments were harsher on women in cases of sexual misdeeds than men. These cases prove, however, that women were not passive receptors of sexual advances.⁶ They controlled their sexuality, often using it in ways that illustrated that they were aware not only of social norms, but ways in which to maneuver around local legal expectations. Trials for adultery, fornication, and bastardy, illustrate that while they were not equal before the eyes of the courts, women in early Maryland had certain legal rights that they willingly exercised.

Adultery

The term adultery today refers to any married person who has voluntary sexual relations with a person who is not his or her spouse.⁷ In the modern-day state of Maryland adultery by either party is still a crime. The punishment for such an offense is a ten dollar penalty. Although this punishment is not serious, adultery is grounds for divorce.⁸ Colonial Maryland law never defined adultery and probably relied on the

⁶ See Mary Beth Norton, “ ‘Either Married or to Bee Married’: Women’s Legal Inequality in Early America,” in *Inequality in Early America*, ed. Carla Gardina Pestana and Sharon V. Salinger, (Hanover, NH: University Press of New England, 1999), 25-45.

⁷ “Adultery,” in *Black’s Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 56-57.

⁸ Adultery, *Annotated Code of Maryland*, (2002), ch 26, §2.

English common law definition in which adultery involved only a married woman having sexual relations with a man other than her husband. If that occurred, whether the man was married or not, both parties could be punished. This was the standard followed by justices in the colony. If a married man had an affair with an unmarried woman he was not legally liable, nor was his partner.⁹

Even if it is no longer viewed as a threat to society, to some in early Maryland, adultery was considered a serious problem. In 1688, the acting governor of the colony, William Joseph, spoke before the General Assembly. He spoke of Maryland, declaring that “we may Justly say the Land is full of Adulterers.”¹⁰ Joseph was so appalled by the frequency of adultery in the colony that he demanded the Assembly enact stricter laws against the crime. The laws Joseph wanted hearkened back to the biblical injunction that adulterers should be executed. Maryland’s laws treated adultery with seriousness, but did not call for such a dramatic punishment. Enacted in 1650 under the first Proprietary Government, the law against adultery (which was coupled with the law against fornication) stated that any person who confessed or was surrendered for adultery would be given a punishment that the Governor or court officials “shall adiudge and thinke fitt.” This did not allow for the taking of life or limb for sexual offenses.¹¹ The Parliamentary Commissioners who later controlled the colony at the time renewed the law in 1654.¹² Despite Joseph’s plea, the Assembly enacted no stricter law. Adultery was never made a capital crime in Maryland. In fact, in 1704, it was enacted that “every Person convicted of

⁹ Rollin M. Perkins and Ronald N. Boyce, *Criminal Law* 3rd Edition, (Mineola, NY: Foundation Press, 1982), 455. This is best evidenced by the case of Robert Holt and Christian Bonnefield. She was unmarried and went unpunished although their affair was well-known.

¹⁰ AOMOL, 13:149.

¹¹ *Ibid.*, 1:286.

¹² *Ibid.*, 1:344-345.

Adultery shall be fined 40 *s.* Sterl. or 800 *l.* of Tobacco, or receive Corporal punishment [whippings, not more than 39 lashes].”¹³

Consensual sexual relations are generally considered victimless crimes, as there are no clear victims as would be found in crimes such as murder, assault, or theft. Victimless crimes are prosecuted most intensely by the most moralistic societies, as such behaviors “violate divine prohibition. They offend God, if not all men.”¹⁴ New England settlers were the most zealous settlers in early America. Massachusetts Bay colony’s original law against adultery, which was much harsher than the Maryland law, best illustrates this fact. In 1631, the Massachusetts Court of Assistants “ordered that if any man shall have carnall copulacon with another mans wife . . . they (both) shalbe punished by death.”¹⁵ The law was confirmed in early 1638. The enforcement of this law in Massachusetts Bay, however, was not consistent. In 1644, the Court of Assistants sentenced James Brittain and Mary Latham to death for adultery. However, in 1641, a man was sentenced to go to the gallows with a noose around his neck and sit there for an hour for unnamed “adulterous practises.” Afterwards, he was to return to prison.¹⁶ In 1694, the General Assembly of Massachusetts Bay colony passed a law stating that the couple found guilty of adultery was to stand at the gallows with a rope around their neck, with the other end thrown over the gallows. After an hour, they were to be removed from the

¹³ *Ibid.*, 193:8.

¹⁴ Jack D. Marietta and G.S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800*, (Philadelphia, PA: University of Pennsylvania Press, 2006), 40.

¹⁵ *Record of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1644* Vol. 2, (New York: AMS Press, 1973), 19.

¹⁶ *Ibid.*, 139, 70. Adulterous practices refers to any action which the courts saw as possibly leading towards adultery, without there being proof of the actual crime. For additional information on this crime see the case of Ann Hudson and Henry Dawson, both married, who may or may not have engaged in an adulterous affair. John Winthrop, *The Journal of John Winthrop, 1630-1649*, ed. Richard Dunn, James Savage, and Laetitia Yeandle, (Cambridge, MA: The Belknap Press of Harvard University Press, 1996), 609-610.

gallows, transported to the “Common Gaol” and whipped – not to exceed 40 lashes. As if this were not enough to humiliate the adulterers, after this whipping they were both to wear a capital letter “A” of cloth, 2 inches by 2 inches, and sewn on to their clothes, either at the arm or the back. If the convicted was seen not wearing the letter, they would be taken into custody and whipped, not more than 15 times.¹⁷

In the 1606 charter, King James I instructed the Virginia Company to make adultery a capital crime.¹⁸ The governor enacted harsh retributive punishment against adultery during the period from 1610-1611 when Virginia was under martial law. During that period, the law stated that anyone who could be “lawfully convicted of adultery” would be sentenced to death.¹⁹ This law faded quickly. From the repeal of the martial laws of Virginia in 1619 until the 1650s, Virginians treated adultery lightly. At least one historian views this period as reflective of an overall disregard for morality in the colonial Chesapeake. In part, this was due to the lack of justices to enforce the laws against adultery and the lack of ministers to legally marry couples.²⁰ An alternative view is that the colonies were simply following the mores of English society and allowing adulterous couples to remain unpunished.²¹

In 1658, during the Puritan regime, the Virginia government enacted strict laws against adultery. The new law stated that any person who was found guilty of adultery was to “be severely punished and generally to be held incapable of being a wittnes between partie and partie, and of bearing any publique office in the government of the

¹⁷ John D. Cushing, ed., *Massachusetts Province Laws, 1692-1699*, (Wilmington, DE: Michael Glazier, Inc., 1978), 82.

¹⁸ Chapin, *Criminal Justice in Colonial America*, 10.

¹⁹ William Strachey, *For the Colony in Virginea Britannia: Lawes, Divine, Morall and Martiall, Etc.*, (London: Walter Barre, 1612), 19.

²⁰ Norton, *Founding Mothers and Fathers*, 336.

²¹ Carolyn B. Ramsey, “Sex and Social Order: The Selective Enforcement of Colonial American Adultery Laws in the English Context,” *Yale Journal of Law & the Humanities*, (Vol. 10, 1998), 191-228.

colony.”²² In addition to whatever punishment the offender was sentenced to, they were to be stripped of some of their legal rights in the colony. Still, these laws, enacted by a Puritan-run government, were not as strict as the punishment proscribed under Massachusetts’ law.

Maryland did not have an established church, which perhaps led to less stringent laws against adultery and other moral crimes. Adultery occurred frequently in the colony, although the reporting of the crime depended solely on the couple either being found out or one party confessing to their impropriety before the courts. The Provincial Court tried the cases they heard with seriousness, indicating that it was still a crime that offended the sensibilities of Maryland residents. Two 1657 cases illustrate a number of aspects of adultery prosecutions in colonial Maryland. First, they illustrated how this crime could entangle other colonists and the courts. The cases also show two different and conflicting treatments of adultery cases. Second, these cases demonstrate how the courts’ familiarity with a female and her knowledge of the legal system could help assure her of a lesser punishment. The first example of a case that involved a number of neighbors is the case of John Nevill and Susan Attcheson.²³ A group of neighbor women brought the case of the two lovers before the Provincial Court largely because John Nevill and Susan

²² John D. Cushing, ed., *Colony Laws of Virginia, Volume 2, 1642-1660*, (Wilmington, DE: Michael Glazier Inc., 1978), 433.

²³ It is unclear if this is the John Nevill who was involved with the assault of Mary Roe or whose wife murdered Margaret Redfearne. Lois Green Carr does not believe these two men were the same. She initially argues that Nevill’s wife was apparently still in England, which would make sense that this is not the same John Nevill who was introduced in Chapter 3. There is, however, a reference to Nevill’s wife being in Maryland. See Lois Green Carr, Men’s Career Files, sc5094-3027-01 and sc5094-3027-07, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/003000/003027/html/sc5094-3027-01.html> and <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/003000/003027/html/sc5094-3027-07.html>, (Accessed January 8, 2009).

Raphael Semmes argues that this John Nevill was a seaman. He makes no claims about Nevill’s wife’s presence in the colony, although he points to a case wherein Nevill sued another man as Nevill’s wife did the man’s laundry. See: Raphael Semmes, *Captains and Mariners of Early Maryland*, (Baltimore, MD: The Johns Hopkins Press, 1937), 108-109; idem., *Crime and Punishment*, 300n13; AOMOL, 4: 223.

Attcheson, both married to others, were anything but careful about concealing their frequent liaisons.

On a Sunday in 1657, three women (Mary Gillford, Joanna Watts, and Susan Barbery) became suspicious of Nevill and Attcheson's actions. One of the women saw the two going into a thicket together, after having climbed a fence. The women discovered the two on the ground next to a tree. When they interrupted whatever the two were doing, Susan Attcheson claimed that she was just headed to the garden. Mary Gillford substantiated her opinion that the two were having an affair by pointing out to the court that the garden was in the opposite direction of where the two were found. Gillford had been the one to discover the clandestine meeting and got her neighbors to investigate. She surmised that Nevill and Attcheson were up to no good. Earlier in the season, she had seen Attcheson and Nevill with their hands in each other's clothes.²⁴ Joanna Watts testified that she had also been aware of the ongoing affair between the two. About two weeks earlier, Attcheson had declared to Watts that her husband, Thomas Attcheson, was abusive and she could not love him. If this was the only evidence against the two, it would be incriminating but not indefensible. However, even beyond this community of women, the Nevill/Attcheson affair was not a well-kept secret.²⁵

Joanna Watts' husband, Alexander, admitted that he had heard of Nevill and Attcheson being together while Thomas Attcheson was at court. This encounter was, according to what Watts' had heard, initiated by Susan Attcheson, not John Nevill.²⁶ On another occasion, Alexander Watts had called on John Nevill for help, as Watts was sick. At the time, Nevill was with Attcheson who demanded that he not leave to assist Watts.

²⁴ AOMOL, 10:509.

²⁵ *Ibid.*, 10:507.

²⁶ *Ibid.*

He did go help and, returning, found Susan Atcheson in Cornelius Cannady's bed.²⁷ Atcheson called for Nevill to join her, in order to keep her warm.²⁸ Watts was not the only man to see the two engaged in sexual relations. Thomas Plott, a servant of George Reed, discovered the two together on a bed in the Reed home. Susan attempted, during this encounter, to quiet Nevill. She also tried to call for help, although it is not clear if Nevill really was forcing himself on her, or if she was attempting to distract the servant from what was occurring.²⁹ A week or so later, Plott and an Indian witnessed Atcheson and Nevill "at Sack a Sack" or, engaged in intercourse, in a barn loft. Later, when asked by Plott's mistress what she was doing with Nevill, Atcheson claimed she was taking a tobacco pipe to him.³⁰ Plott also saw them together the previous winter. When he asked the woman about her involvement with Nevill, she apparently asked her lover to intervene. Nevill threatened Plott, telling him that he would whip the man until he drew blood if he told anyone of the affair.³¹ Nevill threatened similar action during the first encounter they had at the Reed home.

This case gained particular notoriety due to the carelessness of the two lovers. They seem to have attempted to hide their extramarital affair without much success. The majority of their sexual encounters took place on Sundays when people, such as the Reeds, would be away from home. Their encounters took place either outside or in someone else's home. Nevill, a freeman of some esteem, did not concern himself with being discovered by a servant. He knew his threats would silence the man, while Susan

²⁷ It is never explained why Atcheson was in Cornelius Cannady's bed. Recall that Cannady and his wife were granted a legal separation the previous year.

²⁸ *Ibid.*, 10:508.

²⁹ *Ibid.*

³⁰ *Ibid.*, 10:509.

³¹ *Ibid.*

tried to lie when pressed for details of her affair. At least one scholar argues that Nevill raped Attcheson since she cried out when discovered by Plott.³² If this is true, Nevill proved himself a cad. However, the woman's veracity is questionable. Attcheson eventually proved herself to have a voracious sexual appetite. She justified her affair by claiming that her husband, whether true or not, abused her. Due to this, she had to find solace in the arms of another man. Most striking about this case is not the salacious nature of the affair; it is the harm the neighbors believed it would cause if the two were discovered. The neighbors here, as throughout the colonies, acted as a de-facto police force, ensuring that the two would be tried for their action. Due to their diligence, John Nevill and Susan Attcheson were sentenced to 20 lashes apiece for living "in a Notorious and Scandalous Course of Life tending to Adultery & fornication."³³ The court also directed Nevill to pay court costs. During the same sitting of the Provincial Court "divers Neighbours" of John Nevill's presented a petition to the court. These neighbors asked that the corporal punishment allocated for Nevill would be remitted in favor of a fine. In response, a fine of 500 pounds of tobacco was demanded of Nevill. His neighbors agreed to pay the fine if Nevill was unable.³⁴ These neighbors made no mention of Susan Attcheson's punishment, nor did any of her friends come forward to ask for remittance of her punishment.

Thomas Attcheson had little input in the trial and seemed uninterested in his wife's activities. Thus, the Nevill/Attcheson affair may be viewed as a "victimless" crime. Certain cases of adultery in Maryland, however, were not victimless. The second 1657 case, that of Mary Bradnox, her husband Thomas, and their neighbor John Salter

³² Miracle, "Rape and Infanticide in Maryland," 83.

³³ AOMOL, 10:558.

³⁴ Ibid., 10:560.

illustrates how adultery could turn from a moral crime to a violent crime. It is unclear if the Kent County court tried the men for adultery or assault. Bradnox was a man of particularly questionable character, even among a group of unscrupulous men. For a time, Bradnox, about 58-years-old at the time of the assault, served as commander of Kent Island's militia. After his death, his company demanded that the new commander use fines levied against men for ignoring a summons to muster to buy drums and colors for the company. Bradnox was supposed to buy these with the 6000 to 7000 pounds of tobacco in fines he had collected. Instead, used the funds for himself, never buying the drums or colors.³⁵ Thomas and Mary Bradnox both were known to treat their servants harshly, even violently. Their actions, therefore, seem within their character. John Salter, the final member of the threesome, did not have the advantage of the same social standing as Bradnox. He acknowledged owing Robert Vaughan 390 pounds of tobacco in a cask. He also owed Thomas Bradnox 1364 pounds of tobacco in a cask. Both Bradnox and Vaughan were luminaries of Kent Island society and Salter found himself indebted to both.³⁶

In October, 1657, Salter came to the Bradnoxes' Kent Island home in order to partake in some spontaneous drinking with Thomas and one other man. Thomas Bradnox retired to his room, leaving his wife with the men. At one point, John Salter sought out Mary Bradnox, carried her to a bed, and said he was going to have his way with her. Mary responded to Salter saying, "by fair meanes yow may doe much."³⁷ Although their infidelity was witnessed by several in the house, it was not until Thomas Bradnox appeared that the situation turned violent. After Salter left the house, Thomas Bradnox

³⁵ Ibid., 3:455.

³⁶ Ibid., 54:119.

³⁷ Ibid., 54:116.

declared that he “would haue had society” with Mary.³⁸ The interaction, between the Bradnoxes, whatever Captain Bradnox’s intentions were with his wife, turned violent. As he dragged her off the bed “by the birth,” Mary Bradnox cried for help. John Salter heard her cry and returned to assist the woman.³⁹ Thomas Bradnox and John Salter, a younger man, began to fight, Salter eventually pinned Bradnox against the wall. When Bradnox asked Salter if he had had relations with his wife, Salter said it was no more than Bradnox had done with Salter’s wife, going as far as calling her Bradnox’s “whore.”

Although servants and other passersby broke up the fight, the two men remained ready to fight each other. Thomas Dickes escorted Salter outside, but he refused to leave until he had spoken to the “ould woman,” presumably Mary Bradnox.⁴⁰ Thomas Bradnox followed Salter outside, threatening to shoot him. Salter, likely a man who came to fight Ingle’s Rebellion on the side of the Proprietor, exhibited no fear of Thomas Bradnox, a Kent County commissioner, declaring “ould Tom doe thy worst I feare thee nott.”⁴¹ Despite the threats of continued violence, Salter finally left with one final word – a threat to charge Thomas Bradnox with rape. This was an empty threat, as John Salter never accused Thomas Bradnox of rape before any court. While the fight occurred, one of the neighbor men and servant Ann Stanley escorted Mary Bradnox to the “shed chamber.” The servant, perhaps in an effort to soothe her mistress, lay down with her. Mary Bradnox, even having been saved from her husband and kept company by Ann Stanley, told the servant that if she told anyone of what she saw between Mary and John Salter,

³⁸ Ibid.

³⁹ Ibid., 54:120.

⁴⁰ Ibid., 54:118.

⁴¹ There are several men by the name of John Salter in early Maryland. Raphael Semmes believes this was the John Salter who arrived as one of Leonard Calvert’s indentured servants; however, it is more likely the John Salter who arrived to fight Ingle’s Rebellion and was granted land on the Isle of Kent in 1658. It is also possible that this was the John Salter who married Jane Lumbar in 1659. See: Land Office (Patent Records), Q, 345-356, [SM 2-6]; AOMOL, 54:118.

Bradnox would have the servant girl whipped.⁴²

Mary's infidelity did not have an immediate or long-term impact on the couple.⁴³

Early the next morning, Joseph Wickes and Robert Vaughan, came to visit Thomas Bradnox, bringing with them a quantity of alcohol to share with the man.⁴⁴ Just as the men began to drink, Bradnox left to visit his wife, who had by that time returned from the shed chamber to their bed. Despite what had passed between them recently, Bradnox asked his wife "to drinke with him: or pledge him a dram & to forgett & pass by all malice or Cause of Discord that was betwixt them."⁴⁵ Given the way Bradnox had treated her after her unsavory interaction with Salter, Mary was not eager to share a drink with her husband. Eventually she did, perhaps to placate the man. After he left her side, Thomas Bradnox continued to imbibe with the other men. He became so drunk that he could not stand. When he tried, he fell, bloodying his nose. Mary Bradnox, with the help of Wickes, took the drunken Bradnox to bed, where the unfaithful wife and the friend, dried Bradnox's bloody nose and Mary Bradnox held him until he stopped bleeding.⁴⁶

County court justices did not charge any of the offending parties with any crime. They ignored the adultery, which at least two servants and Thomas Bradnox witnessed, and Thomas Bradnox's alleged infidelity. Unlike Susan Attcheson, Mary Bradnox did not

⁴² AOMOL, 45:120.

⁴³ At his death in 1661, Thomas Bradnox left his entire estate to Mary Bradnox. See: Prerogative Court (Wills), 1, 154, [MSA SM 16-1]; Baldwin, *The Maryland Calendar of Wills*, 20.

⁴⁴ Captain Bradnox's affection for alcohol was well-known. In 1659 he was tried before the Kent County Court on charges of being drunk and disorderly. He was also charged as a common swearer. It was stated that when Bradnox drank, he "swore like a madman" and beat his servants. AOMOL, 54:173.

⁴⁵ AOMOL, 45:121.

⁴⁶ There is some debate regarding the chronology of these events. Mary Beth Norton argues that the men appeared at the Bradnox home with the alcohol before the illicit sex, while Raphael Semmes (and the chronology of testimony) argues that the fight had occurred before the men appeared with the alcohol. It appears that Wickes and Vaughan came to the home after the initial fight, as both Thomas and Mary were in bed, Mary only arising after her husband was hurt. She was not in attendance for the majority of the drinking. Either way, the Bradnoxes had a tempestuous relationship, fueled by alcohol, culminating in Mary Bradnox's unsavory action.

claim her husband was abusive, although her affair may have been retribution for his loose behavior. Captain Robert Vaughan testified that when he arrived at the Bradnox home that morning, Thomas Bradnox “was uery full of greife” due to the falling out he had with his wife.⁴⁷ Clearly, the justices believed Robert Vaughan. As a councilor, appointed by Cecil Calvert to the Council of Maryland, he held one of the highest positions in the colony. Vaughan was known for his fierce loyalty to the Proprietor, especially involving the tempestuous Kent Island, along with his dependability of service.⁴⁸ Certainly he was a man to be believed. Further testimony gave crucial background information on the couple. During the grand jury inquest, another man testified that the couple were generally friendly, but were prone to arguments. On one occasion, Mary even left her husband’s bed after some sort of argument.⁴⁹ There is no reason given why none of the parties was ever charged in this matter. Perhaps Mary’s adultery, even though witnessed by two persons, was overlooked because of her husband’s standing in society.⁵⁰ The two appear to have reconciled after this incident. They next appeared together in court in order to defend themselves against murder charges. It is also possible that the Kent County court did not prosecute due to Mary and Thomas Bradnoxes’ tempestuous natures. In 1661, Thomas Bradnox left his entire estate to his wife upon his death.

These two cases illustrate conflicting views of adultery and the role the woman

⁴⁷ AOMOL, 54:121.

⁴⁸ Vaughan was a military leader of Kent Island’s militia during Ingle’s rebellion. Members of the Council of Maryland praised Vaughan for his “fidelity, courage, wisdom, industry and integrity.” AOMOL, 3: 216; David W. Jordan, “Maryland’s Privy Council, 1637-1715,” in Land, Carr, and Papenfuse, *Law, Society, and Politics in Early Maryland*, 71.

⁴⁹ AOMOL, 54:119.

⁵⁰ Both Thomas Snockes and Thomas Bradnox, who witnessed the intercourse, called for servant Ann Stanley to act as a second witness. This is because two witnesses were required to testify to a crime under English law. It is rare that two witnesses could be produced and even rarer that the offending parties were not prosecuted for their crime.

played in the situation. In cases such as the Nevill/Attcheson affair, adultery was a serious offense. Susan Attcheson bore the brunt of the punishment, while John Nevill was sent free with little punishment. Attcheson was not a woman of high standing and her neighbors clearly saw her behavior as unsettling to their society. The Salter/Bradnox incident ended with no punishment. The case was not even sent to the Provincial Court, despite its violent end. Mary Bradnox appeared more frequently before the courts than did Susan Attcheson, often demanding land or the payment of a debt from another colonist. Her husband, too, may have been an adulterer, but none of his offenses were ever tried; perhaps, again, because of his status.

The two cases do have some commonalities. Witnesses to both affairs sought additional witnesses. Although it may appear to be curiosity on the part of these witnesses, there was a legal basis for this. In England, a 1650 law implemented by the Commonwealth government made adultery a capital offense for a married woman.⁵¹ Although Marylanders never enacted a similar law, the colonists still appear to have tried to mimic English mores. Although they did not abide by this law, they may have attempted to have the same burden of proof for crimes such as adultery. In such cases, there needed to be irrefutable evidence to convict the parties. In order to convict for adultery in England, two eyewitnesses had to testify to witnessing the sex act between the couple.⁵² Even if this was not made official law in Maryland, residents still appear to have required witnesses to such affairs, especially in 1657 when both cases occurred. Mary Gillford made a point to get Susan Barbery and Joanna Watts to witness the Nevill/Attcheson affair, while both Thomas Snokes and Thomas Bradnox attempted to

⁵¹ Wiesner, *Women and Gender*, 297.

⁵² Ramsey, "Sex and Social Order," 2000.

enlist Ann Stanley as a witness to John Salter and Mary Bradnox's intercourse. The threat of witnesses frightened both John Nevill and Mary Bradnox – Nevill threatened Thomas Plott while Bradnox promised a whipping to Ann Stanley if she spoke of this incident.

A third example of adultery arose because of the rather awkward living conditions amongst some Maryland settlers. The case of Robert Holt, his wife Dorothy, and Dorothy's lover, Edward Hudson, involved not only adultery, but also assault and attempted murder. Women were in demand due to the skewed sex ratio in the colony. This led to men with mutual interest in a woman sharing the woman's sexual favors. In 1651 the Provincial Court heard the case of a married woman, Dorothy Holt, living with Edward Hudson, a business associate of her real husband Robert Holt.⁵³ Three witnesses testified that they had visited Edward Hudson, only to find that Dorothy Holt was living with him, as if the two were man and wife.⁵⁴ Despite her animosity towards her husband, Robert, Dorothy Holt and Edward Hudson eventually moved into Robert's house.⁵⁵

The living conditions certainly did not help the Holts' relationship. Rose Smith, a local midwife, testified that she went to visit the Holts, only to be told by Robert Holt that Dorothy Holt wanted to kill him. Incredulous at this news, Smith further asked the two if this was the case. Dorothy Holt declared that she did, in fact, wish to kill her husband. Smith's testimony matched Robert Holt's claims before the court; however, he took it one step further. In addition to testifying that Dorothy Holt wished him dead, Robert testified that she threatened this and went about abusing her husband due to Edward Hudson's instigations.⁵⁶ Dorothy did not help her own case. After Smith's visit, she

⁵³ Land Office (Patent Records), AB&H, 32, [MSA SM 2-5].

⁵⁴ AOMOL, 10:109.

⁵⁵ Ibid.

⁵⁶ Ibid., 10:109.

approached the midwife in order to explain her behavior. She told Smith that “her heart was Soe hardened against him [Robert Holt], that She would never darken his door again.”⁵⁷ John Medcalf, a local gentleman, likewise swore to Dorothy’s disdain for her husband. Although he did not know of any sort of adultery taking place between Dorothy and Edward Hudson, he had heard Dorothy declare that she wished her husband dead and rotting. Dorothy even directed her animosity toward her second son. Medcalf heard her publicly wish “that her Son Richard might end his days upon the gallows.”⁵⁸

Although most of the testimony related to Dorothy’s threats against Robert, both Dorothy and Edward Hudson were convicted for “their Scandalous Course of life.” Their punishments were harsh. Hudson was sentenced to thirty lashes and was banished from St. Mary’s County so he would have no further contact with Dorothy. He had to move twenty miles outside the county and, if found back in the county without license, pay 300 pounds of tobacco to the Lord Proprietor or be whipped thirty times for each offense. Dorothy, who was guilty of far greater mischief due to her threats, was sentenced to fifty lashes, had to move five miles from her husband’s home for three months (to remain close to her children), then she was to move outside of the county. She, too, was sentenced to be whipped if she returned. The couple also was forbidden from having any interactions that were deemed “offensive” to the Province.⁵⁹ Dorothy Holt and Edward Hudson immediately appealed this rather harsh sentence, asking for pardon if they reformed their ways. The Provincial Court justices remitted the sentence and encouraged Dorothy and Robert Holt to live together as husband and wife, which they did.⁶⁰

⁵⁷ Ibid., 10:110.

⁵⁸ Ibid.

⁵⁹ Ibid., 10:111.

⁶⁰ Ibid., 1:112.

The arrangement did not work. By 1658, Dorothy was not living with her husband anymore. She had been separated from Robert long enough to bear two children with Edward Hudson.⁶¹ In that year, Robert Holt, not Dorothy, found himself on trial for bigamy, having married a woman named Christian Bonnefield while Dorothy was still alive. Complete divorce, in which a man or woman was free to remarry after dissolving the bonds of matrimony, was still not legal in Maryland. Thus, when a clerk and pastor named William Wilkinson released Dorothy and Robert from “all claim of marriage” and married Robert to Christian, he was committing a felony.⁶² Wilkinson was charged for this crime, while Holt was accused before the Provincial Court of bigamy. Both crimes were felonies and, therefore, liable for the death penalty. Upon the impaneling of the trial jury, which was apparently composed of almost all Catholics, Wilkinson and Holt asked that a new jury composed of all Protestants be impaneled, so that they would be treated more fairly. Provincial Court justices granted this wish – the trial was put off until the next sitting of the court.⁶³

The case was not heard again as the men were eventually pardoned by Governor Josias Fendall in honor of the passing of Oliver Cromwell. This initial legal impediment did not stop Robert Holt from cohabitating with Christian Bonnefield. In 1661, the Provincial Court again tried Holt for living with Bonnefield as his wife.⁶⁴ Holt died before this case could come to trial, leaving his “pretended” wife to fight his oldest son, David, in court over property rights to Robert’s estate. Robert left the entire plantation to

⁶¹ Ibid., 41:229.

⁶² Ibid.

⁶³ Ibid., 41:244. At least two men who sat on the grand jury that indicted Holt and Wilkinson had their own experience with infidelity. Walter Pake found his wife engaged in intercourse with another man, while William Dorrington had a servant girl engaged in an illicit affair with a married man.

⁶⁴ Ibid., 41:528.

Christian, but David did not wish to allow Christian to have this property. Christian petitioned the Council of Maryland for her property rights, as Robert's wife. She noted that before she entered into "her unfortunate marriage" to Robert Holt she had lived an independent and comfortable life complete with considerable property, thanks to what she had been granted upon entry into the colony.⁶⁵ Apparently, some of her property had been lost because of her marriage. Nonetheless, she requested her share of Holt's property as though she had been his legal wife. Robert's son was unwilling to grant her request. The case was sent to the Provincial Court, where justices granted David Holt all his father's land. The rest of the goods and chattels on the plantation were to be divided equally between the two.⁶⁶

The Holt cases are further illustrative of the nature of adultery in Maryland, albeit involving different circumstances than the previous cases. Under the general English law only married women were punished for this crime, which explains why Christian Bonnefield was never tried. However, Robert Holt was twice accused of lewd behavior due to his living arrangements with Bonnefield. Dorothy's punishment was the most severe, while her lover, Edward Hudson, received only half what she was supposed to receive. It is uncertain what sort of punishment Robert Holt would have received since his cases were mitigated because of a pardon and his eventual death. Both Dorothy and Edward received pardons as well. She was never tried for bearing two bastard children and Christian, the woman whose crimes were similar to those of Dorothy Holt, was never tried at all. She exhibited legal acumen by petitioning the Council for her property rights, especially since she had come into her pretended marriage with considerable property

⁶⁵ Ibid., 3:463.

⁶⁶ Ibid., 41:593.

rights. The Provincial Court justices, final arbiters of this case, were torn between a legitimate son and a fake wife. Although Holt's will had given his land to Christian, the justices did not sanction his will but instead favored the legitimate son.

The Holt/Bonnefield "marriage" was not the only time the Provincial Court had to rule on a "pretend" or "supposed" marriage. Even though historians have viewed Maryland colonists as able to convince the courts of the legitimacy of their definition of marriage, officials still actively prosecuted some illegal marriages.⁶⁷ Perhaps the most famous case of an illegitimate marriage was the one between Captain William Mitchell and Joan Toast. Mitchell, a member of the Council of Maryland and a man of disreputable character, showed no real concern for the law of the colony. Aside from his actions with Susan Warren, he was involved with another young woman named Joan Toast. Joan Toast was in Maryland by 1652 when she was reportedly living as Mitchell's "pretended wife."⁶⁸ The accusations that Mitchell was fornicating with Toast by not legally marrying her arose during Mitchell's trial for the abortion he induced in his mistress, Susan Warren. In an effort to deal with Mitchell's numerous crimes, the Provincial Court tried Mitchell for a number of crimes including abortion and fornication, while at the same time trying him for atheism.

Details of the Warren/Mitchell affair had been sensational, but they only were intensified by the information that on April 10, 1651, Toast and Mitchell had been joined in supposed matrimony by William Wilkinson. Mitchell was involved with Susan Warren at this point, his wife having died mysteriously on the voyage from England to Maryland. Although he promised marriage to Warren, he chose to enter into some sort of unofficial

⁶⁷ Norton, *Founding Mothers and Fathers*, 69.

⁶⁸ AOMOL, 10:173.

matrimony with Toast. During the ceremony, he declared that “if there should be any Antipathie in nature betwixt them they would part or live a sunder but he would allow her means.”⁶⁹ Mitchell went on to explain that he hoped the marriage would never come to that. Mitchell’s declaration gives the appearance that he was planning to leave Toast at some point in the future, especially since this was not a normal part of marriage vows in the colony. He sought ways to negate such associations, such as he had done by promising Warren marriage in order to bed her. The unofficial marriage to Joan Toast also allowed Mitchell entry into her bed. She declared that after the marriage by Wilkinson (but not before) she had lived with Mitchell as husband and wife in regard to the marriage bed.⁷⁰

The Provincial Court charged Mitchell with four crimes at his trial. The most serious offense was the profession of atheism. The second and third charges, adultery and murder, related to his affair with Susan Warren. Finally, Mitchell was charged with fornication with Toast. While punished with a fine for his other actions, even the serious offense of professed atheism, justices ordered that Mitchell “and his now pretended wife Joan be Seperated till they be Joyned together in Matrimony in the usual allowed Manner.”⁷¹ The process required for a legitimate marriage was not extremely trying. That someone such as Mitchell would ignore the law indicates that he did not intend to remain married to Toast. According to a 1640 law passed by the General Assembly, a man had to publish the banns of his impending marriage three days prior to the marriage in a chapel or another public place. That allowed time for anyone with an objection to the marriage to make their complaint known. If it was impossible to publish banns, the parties could

⁶⁹ Ibid., 10:174.

⁷⁰ Ibid., 10:173.

⁷¹ Ibid., 10:185.

swear a statement in a county court declaring that both parties were free to marry. This meant that neither was already married or a servant, or for some other reason, unable to marry. If the couple did not take these actions (as in the Mitchell and Holt cases), it was illegal for anyone to join the two in matrimony.⁷²

There is an odd juxtaposition in the two situations. At the time of Warren's abortion, both Mitchell and Warren were not married. Either, the justices felt that Mitchell was committing adultery with Warren prior to the death of his first wife or they granted legitimacy to his marriage to Toast, thus making her his wife. Since there was no direct evidence that Mitchell had killed his first wife, the case was merely used as background evidence that proved he had the capability of killing Warren's child. Aside from Mitchell's nefarious nature, this case shows the difficulty colonial officials had when dealing with pretended marriages. William Wilkinson was a peddler of quick marriages, but the courts tended not to grant legitimacy to these unions. Nevertheless, Joan Toast was still called "Mrs. Mitchell" on one occasion, and the justices did not know how to handle the alleged marriage of the two.⁷³

Mitchell's attempt to induce his lover to abort their child is only one example of how a child could complicate an affair. In a clearer case of adultery, Elizabeth Robins became pregnant in 1657. There was some question over whether or not this child was Elizabeth's husband Robert's. Elizabeth Robins was a known adulteress. Hearsay held that Robert Robins told people his wife was "a Common whore" who publicly had sexual relations with her own brother (or brother-in-law), William Herde.⁷⁴ Elizabeth may have had reason for seeking solace in the arms of other men. She accused her husband of

⁷² Ibid., 1:97.

⁷³ Ibid., 10:173.

⁷⁴ Ibid., 10:503.

spending all his income on “whores.” Additionally, Thomas Mitchell testified that he had witnessed the two fighting, after which Elizabeth went to the house of another man only to have her husband follow and beat her with a tobacco stick.⁷⁵

The two were seeking a legal separation on grounds that they were not suited for each other. The case became complicated when later in 1657 Elizabeth was found to be pregnant. Robert Robins declared that Elizabeth “had long time lived from him,” and insisted that a jury of women search her to determine if she was pregnant. When the jury of women confirmed this, the sheriff took Elizabeth Robins into custody until the next session of the Provincial Court.⁷⁶ A jury of women played an even more important role than simply determining that Robins was pregnant. Upon their examination, they found that the woman was “in a very Sad Condition and in a Condition not like to other women.” Robins confessed that she had taken savin twice, not knowing she was pregnant. She supposed that now the child inside of her was dead. She also stated that the child was, undoubtedly, her husband Robert’s.⁷⁷

The child was, nevertheless, born alive. The child’s paternity remained a mystery, despite Elizabeth’s declaration. Two men testified that Robert Robins had asked his wife if the child was his (casting doubt on his earlier declaration that the couple had lived apart for sometime). Elizabeth “would not swear it,” but would not allow her husband to disown the child.⁷⁸ The Provincial Court, instead of maintaining Elizabeth Robins in jail, sent the case to the Charles County court, mostly to allow her to assemble her witnesses

⁷⁵ Ibid., 10:503-504. Raphael Semmes points to Robert Robin’s later prosecution for bastardy as evidence that Robins really was a whoremonger. Ibid., 53: 250.

⁷⁶ Ibid., 10:555.

⁷⁷ Ibid., 41:20. It is somewhat noteworthy that of the six women who served on the jury of women, two signed with an X, while the other four were able to sign their names.

⁷⁸ Ibid., 41:85.

(as she petitioned) and to give her time to find an attorney to argue her case. The latter never occurred and there is no record of her witnesses appearing.

The justices of the Charles County court heard “diverse depositions” regarding the case.⁷⁹ The grand jury did not find this evidence convincing. Instead of granting a separation, the justices ordered the Robins’ to live together as husband and wife and required Robert to provide for Elizabeth and “her children.”⁸⁰ The justices, although not convinced that Elizabeth was an adulteress, noted that if Robert could prove that the youngest child his wife had bore was not his, he could again seek a separation and be relieved of having to pay for her or her child. Such a provision foreshadowed the final outcome of the Robins’ marriage. Later in 1658, Robert and Elizabeth appeared before the county court. The circumstances surrounding this appearance are vague. Robert declared before the court “I Robert Robins doe hearby disclayme my wife Elizabeth Robins for ever to acknowledge her as my wife and I doe hear oblige myself and everie one from mee never to molest or trouble her any further.”⁸¹ Elizabeth Robins declared the same thing, adding only that she would not seek out Robert “for maintenance or any other necessities.”⁸²

With that declaration ended one of the more sordid cases of adultery in colonial Maryland. Elizabeth disappeared from the records, while Robert went on to have a rather eventful life, complete with a charge of bastardy and fornication. Although county court officials did not initially believe the evidence presented by Robert Robins, they eventually acquiesced to his desire to be separated from his wife. Separation was not

⁷⁹ Ibid., 53:4.

⁸⁰ Ibid.

⁸¹ Ibid., 53:33.

⁸² Ibid., 53:34.

encouraged in the colony.⁸³ However, this separation was necessitated by Elizabeth Robins's frequent adultery. Her adulterous behavior differed from that of Mary Bradnox, as Bradnox was only caught in adultery once. Although her husband was believed to be a philanderer, the two never sought any sort of separation, apparently living a rather sedate married life aside from this incident.

The Robins case, aside from its outcome, bore several other similarities to other adultery cases in Maryland and throughout the colonies. Elizabeth Robins, like many other women, engaged in extramarital relations with a seaman. A seaman testified that in 1657, Elizabeth Robins came aboard a ship with some companions. She drank alcohol for a time, then removed to a private cabin where she engaged in sexual relations with Mr. Hunnsiford, the owner of the vessel.⁸⁴ As there is no further record of Mr. Hunnsiford residing in Maryland, he likely was the resident of another colony. Or a seaman. Women in New England were known to frequently engage in affairs with seamen, because sailors were transient. Since seamen were not always in the community, women felt that affairs with such men could be kept secret. The same held true in Southern colonies like Maryland, where adultery held serious consequences for women.⁸⁵ Finally, most of the women accused of betraying their husbands claimed that their husbands were, at least at times, abusive. Robert Robins was known to be a wife-beater and Thomas Bradnox harshly beat his wife following her infidelity. Thomas Attcheson's wife accused him of being violent towards her, although there was no proof of this. There

⁸³ A woman named Anne Thompson was accused before the Provincial Court of having two husbands in 1685. She was sentenced to be burned in the hand. She appealed her case to the Council of Maryland, where she promised to abandon her second husband and "cleave to her said former husband." The Council pardoned her. *Ibid.*, 17:418.

⁸⁴ *Ibid.*, 41:50-51.

⁸⁵ Lyle Koehler, *A Search for Power: The "Weaker Sex" in Seventeenth-Century New England*, (Urbana, IL: University of Illinois Press, 1980), 150. Raphael Semmes notes that John Nevill was also a seaman; however, he appears to be confusing two men of the same name. See Chp. 4n23.

was also an indication of violence in the Holt marriage, although it appears it was Dorothy who was abusive. To escape abusive relationships, women often turned to other men to protect them or fulfill their needs. They also, sometimes, engaged in affairs as retribution to their husband for his ill-behavior.

Judgments in adultery cases favored the male. John Nevill received no physical punishment. Instead, he only paid a fine, while Susan Atcheson was whipped. Further, the court paid little attention to Elizabeth Robins when she claimed her husband was philandering. Oddly, Dorothy Holt was given a reprieve from her punishment. Ironically, it was her husband who faced legal action for having a relationship with another woman while Dorothy was still alive. While it may seem that accusations of adultery burdened women most heavily, finding their wives were cheating on them, cuckolding them, equally shamed men. At stake was not only the fidelity of his wife, but also his honor and reputation. A tradition of public scorn greeted the cuckolded husband. Throughout the colonies, citizens engaged in popular shaming rituals of local men whose wives were known to have betrayed them. One habit rarely seen in the Chesapeake was shaming a cuckold by having horns nailed above his door. This referred to the billy-goat, a symbol of cuckoldry to many in Europe.⁸⁶ Public shaming rituals served as a form of communal policing, illustrating the community's moral values.⁸⁷ These rituals also brought into question a man's ability to properly run his household.

One of the best examples in seventeenth-century America of a husband's fear

⁸⁶ Anton Blok, *Honour and Violence*, (Malden MA: Blackwell Publishers Ltd., 2001), 173-209. See especially Chapter 10: "Mediterranean Toteism: Rams and Billy-Goats" for an explanation of early modern beliefs about rams and goats and how they related to cuckoldry. Blok notes that the association of the billy-goat with a cuckold was prevalent in Europe, except France, where the association never took hold.

⁸⁷ Ramsey, 205-207.

over being exposed as a cuckold occurred in Maryland. In 1653, Mary Taylor gave birth to a full-term baby boy. The birthing followed normal procedures. Taylor had assembled a group of women, including midwife Anne Johnson (later Anne Dorrington), to assist her in the delivery. Taylor was not a first-time mother and understood what was expected of her during labor. Despite her attempts to make her labor seem typical, suspicions surfaced that Taylor's child was not the son of her husband Robert Taylor. The greatest cause for suspicion arose when the child was born full-term. During the time Mary would have had to conceive the child she was away in Virginia – without her husband.⁸⁸ The women present during Mary's labor and her husband were aware that the child was not legitimate.

The women eventually determined that a Virginia planter named George Catchmey fathered the child. Mary Catchmey, George's sister, swore to the court that Mary Taylor had seduced George Catchmey. Taylor acted in a provocative manner toward Catchmey. His sister reported that Taylor ran her hands through Catchmey's hair, declared her love for him, and hinted at her desire to have sexual relations with the man. George Catchmey reported this to his sister "after he had had the use of" Mary Taylor.⁸⁹ Taylor would confess that the alleged relations had occurred, but hinted that it was all at Catchmey's instigation. The matter of who seduced whom had little to do with the case besides implicating both parties. Taylor seems to have flirted with at least two men during her time in Virginia, eventually bedding the one who had a reputation for being

⁸⁸ Mary Taylor's childbed scene portrays the actions of a midwife attempting to ascertain the true paternity of a child, a rather dramatic scene of female on female violence, as well as neighborhood gossip regarding a woman's sexuality. The story can be found in AOMOL, 10:280-287, Mary Beth Norton also covers the case at some length. See Norton, *Founding Mothers and Fathers*, 228-231.

Ann Johnson may have had reason to press Taylor about the paternity of the child. Later that same year a man testified that Johnson and Taylor had a falling out and were not speaking at the time of Mary's labor. See: AOMOL, 10:289.

⁸⁹ AOMOL., 10:287.

“much given to women.”⁹⁰

Robert Taylor’s interaction with George Catchmey illustrates how pejorative it was for a male to be known as a cuckold. Mary Taylor’s actions shocked the women. They were stunned that she could cuckold a man whom they held in the highest regard. They were further horrified that she would allow Robert to undertake the cost of raising another man’s child.⁹¹ As for Robert Taylor, an associate of his assured him that “any man of understanding would not blame him for “his wife’s actions.”⁹² Robert, however, wished to turn out his wife and her bastard child. He, despite this claim and with his knowledge of her transgressions, still maintained his wife. The child, on the other hand, he desired to give to its legitimate father so he had the burden of raising the child.

Shortly after Mary delivered the child, Catchmey arrived at Taylor’s home. Robert Taylor locked the doors leaving only George Catchmey and the Taylors in a room. Mary Taylor rose from her bed and attempted to hand the child to George Catchmey, explaining it was his and he should raise it. Catchmey refused and the two struggled over the child. Robert Taylor stopped the argument, demanding that they “not let it fall for it was none of the child’s fault.”⁹³ Later, Mary attempted again to give the child to Catchmey, but he refused it because it was “yours as well as mine.”⁹⁴ At this point, Robert Taylor took down his gun, but did not harm Catchmey. The following day, the two men again discussed the care of the child. If the case went to court, Catchmey told Taylor, the record “would Record him [Taylor] Cuckold.” Robert Taylor told Catchmey he would raise the child as his own and maintain his good name, if Catchmey

⁹⁰ Ibid.

⁹¹ Ibid., 10:281.

⁹² Ibid., 10:287.

⁹³ Ibid., 10:284.

⁹⁴ Ibid.

gave Taylor 10,000 pounds of tobacco. Catchmey, willing to have Taylor raise the child in exchange for tobacco, protested that 10,000 pounds was too much. For that, the case would have to go to court. Again showing his reluctance to have his reputation smeared, Taylor lowered his request to 2000 pounds of tobacco. Catchmey later defaulted on his promised payment because he felt he had been deceived in sleeping with Mary Taylor through her words and actions. After this, Taylor offered Catchmey 10,000 pounds of tobacco to keep the entire situation a secret.⁹⁵

When the case came to court her attorney, John Hammond, demanded to know the charges against Mary Taylor. In the end, the case of adultery was dismissed “as done in Virginia under another Government, and of which the Court or Government here is conceived to have no cognizance.”⁹⁶ Later that year, Taylor’s attorney got the case officially dismissed, allowing Mary Taylor to sue any people who had testified against her for defamation. While there had been many aspects to this case, perhaps the most telling is how fearful men were of a reputation as a cuckold. He was willing to see his wife have the child of another man, and raise said child, but he refused to be seen as a husband who could not control his wife. He left his entire estate to his unfaithful wife, although she predeceased him, rendering his action irrelevant.

Fornication and Bastardy

While the court justices of Maryland struggled with how to prosecute and punish cases of adultery, they found many fornication cases much more straightforward. As with adultery, fornication required two witnesses or the confession of one of the parties to

⁹⁵ Ibid., 10:286.

⁹⁶ Ibid., 10:339.

convict. Yet, there was an element to fornication cases that made the crime more heavily reported than cases of adultery – the birth of an illegitimate child. Bastardy cases fill the pages of the Provincial and county court records.⁹⁷ A pregnant unmarried woman could hardly deny her unlawful action. The pregnancy of a married woman could be disguised as the result of marital relations. Cases such as that of Mary Taylor were difficult to prosecute because a husband desired to maintain his honor. For unmarried women, however, bearing a bastard demonstrated an illicit affair. As in cases of adultery, the court fined unmarried women and the fathers of the children at their discretion. Most cases heard by the courts involved pregnant female servants. This resulted because masters had a financial interest in assuring that they be compensated for time lost while a female servant was pregnant. Since the fathers of these children tended to be other servants, and thus were unable to pay to marry the mother of these children, they could not arrange a hasty marriage. The pregnant woman, and her lover, was at the discretion of the courts.

From 1667 through 1671, the Somerset County court dealt with a number of cases of bastardy. That the court mostly fined the indicted women indicated that they were free or had a benefactor who would willingly pay the fine. In general, the court fined bastard-bearers 500 pounds of tobacco. The court assigned women, such as Katherine Parker, who lacked funds, to twenty-five days of work. This penalty was not enough to deter some women from repeating this offense. County court justices tried Ann Carr in 1669 and again in 1679 for bearing a bastard child. Both times the court fined her 500 pounds of tobacco. It sentenced Edward Hassard, the father of the first child

⁹⁷ See, for example, *Ibid.*, 87:67. These Somerset County court records illustrate that both men and women were fined for begetting or bearing a bastard, respectively.

(possibly both) to work on the highways. This was a common punishment for men who begot children out of wedlock. They either were sentenced to work on the highways or to build and maintain bridges.⁹⁸

County courts, such as the one in Somerset County, dealt with these cases. However, a number of high-priority cases did come before the Provincial Court. Generally, these cases involved servant women having affairs with free men. There were often extensive fines involved, in excess of the service or 500 pounds of tobacco which were fined at the county level. In 1657, the Provincial Court heard a case regarding servant pregnancy in which the petitioner argued the child's alleged father, John Hambleton, was a particular problem because he had no property or residence in Maryland. His behavior, such as avoiding the local sheriff, led the petitioner, Robert Taylor, to worry that the man was a flight risk who was unwilling to pay for his misdeeds.⁹⁹ Hambleton did not flee the colony and must have taken responsibility for fathering Taylor's servant's child. Eventually he agreed to pay her master 1063 pounds of tobacco in a cask.¹⁰⁰ Cases such as this did not focus on the female's fornication, but on her pregnancy and illegitimate child, both of which caused some financial hardship for the master.

Not all men were fined or put to work for their indiscretions. It was not uncommon for them to be corporally punished for fornication, just as women were. In 1664, the Talbot County court sentenced William Mullins to twenty lashes across the

⁹⁸ Ibid., 87:67.

⁹⁹ Ibid., 10:337. This is the same Robert Taylor whose wife engaged in an extramarital affair in the same year. John Hambleton arrived in the colony with his wife, child, and one servant in 1652, he had land in the colony at least beginning in 1659, even having Robert Taylor serve as his attorney in a court case earlier in 1657.

¹⁰⁰ Ibid., 10:365. Robert Taylor seems more interested in other men's tobacco than the well-being or children of the women in his life.

bare back as punishment for admitting to fornicating with Sarah Sprudence.¹⁰¹ Sarah was not presented to court until the court's next session a year later. Like Mullins, justices sentenced her to receive twenty lashes for her actions with the man. Sprudence was pregnant at the time of her trial; therefore, her punishment was withheld until she delivered her child.¹⁰² Judging by the time span separating their trials, Sprudence and Mullins continued their affair even after he had received his twenty lashes.

If a woman became pregnant out of wedlock, justices could fine the father for the child's upkeep or they could instruct him to raise the child on his own. Such was the case with Arthur Turner, father of Lucy Stratton's bastard child. Turner was a widower, who was in the colony by 1648.¹⁰³ Stratton had served as Turner's indentured servant. In 1658, she entered a petition against him in the Charles County court, alleging that he refused to pay her dues after her indenture expired.¹⁰⁴ Later that year, Stratton again found herself in front of the Charles County court. This time she was the defendant, charged with "being brought to bed of a bastard and that She most unnaturally dried up her milke through which actione, the infants life might have bin in danger."¹⁰⁵ When asked who fathered the child, Stratton admitted that it was Arthur Turner, her former master. Turner initially denied fathering the child, leaving Stratton to receive thirty lashes for her fornication and attempt at child murder.¹⁰⁶ When Stratton again tried to sue for support of her child, evidence proved that Turner had never denied the child. He spoke frequently to neighbors regarding his newborn child, especially as he searched to find a

¹⁰¹ Ibid., 54:379.

¹⁰² Ibid., 54:385.

¹⁰³ Carson Gibb, *Supplement to Early Settlers of Maryland*, <http://speccol.mdarchives.state.md.us/msa/speccol/sc4300/sc4341/sc4341.cfm>, (Accessed March 20, 2010).

¹⁰⁴ AOMOL, 53:6.

¹⁰⁵ Ibid., 53:28.

¹⁰⁶ Ibid.

wet nurse for the child. He also argued he had only had sexual relations with her because he believed she would marry him. Stratton refused his overtures of marriage, declaring him “a very lustful man,” who had caused her enough trouble already. Turner was indignant at this accusation, reminding Stratton that she had initiated the intercourse.¹⁰⁷ Court justices struggled to adjudge blame. They eventually sentenced Turner to pay at least 700 hundred pounds of tobacco each year to support the child or to take custody of the child.

The woman’s success was short lived. Arthur Turner appealed the case to the Provincial Court. Several pieces of evidence seemed to resonate with the justices. First, Stratton’s unwillingness to marry Turner, a man who was both her social superior and willing to support the child if they were married, illustrated to the justices that she believed herself capable of caring for the child. Secondly, Stratton believed she could claim the child was that of her previous master, William Bous. Two other men are also mentioned as possible fathers, indicating Stratton’s rather promiscuous nature. The child could not definitely be proven to be Arthur Turner’s child, despite the fact that both parties felt relatively certain about the child’s paternity. The court did not reward promiscuity, especially when a woman could have married an upstanding gentleman. Taking these facts into consideration, the Provincial Court overturned the ruling of the Charles County court, insisting that Stratton raise and support the child herself.¹⁰⁸

Lucy Stratton was not the only woman who did not wish to marry a man with whom she had sexual relations. One of the most famous cases of fornication in colonial Maryland also illustrates the Provincial Court justices’ reticence to assign punishment or

¹⁰⁷ Ibid., 53:31.

¹⁰⁸ Ibid., 41:294.

force marriage upon an unmarried woman. In 1657, Peter Sharpe filed a complaint with the Provincial Court against Robert Harwood, on behalf of his twenty-four-year-old stepdaughter Elizabeth Gary (Sharpe was married to Gary's mother Judith). The family was not suing Harwood for fornication. Rather, they were seeking a resolution to a quandary brought on by Elizabeth's sexual encounter with Harwood. Apparently, twenty-nine-year-old planter Robert Harwood had pursued Elizabeth Gary for several years. She had repeatedly spurned his proposals of marriage, until he followed her to her garden, where she was collecting greens for a salad. There, Harwood "forced [Gary] to yield to lye with him." After the "filthy act" Elizabeth had committed with him, Harwood declared that now he would marry her, as no other man would have her.¹⁰⁹ Elizabeth again refused his proposal.

Later that same year, Elizabeth had a conversation with Sarah Benson about Harwood. Sarah asked Elizabeth when she would marry Harwood, as if it were a foregone conclusion. Elizabeth replied "never, if her mother could help it." Her refusal may have been at her mother's behest. Elizabeth did seem determined to marry Harwood, even telling Benson "She would not [have] any other man for her husband."¹¹⁰ Later that year, when the Provincial Court again heard the case, it became clear that Peter Sharpe was suing Robert Harwood for slander, which was of "great Detriment of the Said Elizabeth, and of the Said Peter Sharpe his wife and family."¹¹¹ Harwood claimed that Elizabeth Gary had agreed to marry him, a situation that did not please Sharpe and his wife. Sharpe argued that if Elizabeth was truly set on marrying the man, his wife and he would consent, albeit with reservation.

¹⁰⁹ Ibid., 10:499.

¹¹⁰ Ibid., 10:499-500.

¹¹¹ Ibid., 10:532.

The justices of the Provincial Court clearly struggled with a decision in this case. The justices, Sharpe, and Harwood eventually arrived at a compromise. After fifteen days, Elizabeth Gary was to move into a neutral home – that of Thomas Davis. She would spend six weeks there, during which time Robert Harwood was to visit her “and to use all faire and Lawfull Endeavours with her to Marry or Contract Marriage to” her. Harwood was required to bring one or more neighbors with him each time he visited, presumably to prevent any sort of chicanery on his part. Peter Sharpe was forbidden from contacting her by any means. If Elizabeth Gary did not consent to marry Harwood, he was never to contact her again. If she did consent to marry him, the marriage was to take place at her discretion, without any outside interference from her family. Additionally, in recognition of how trying the courtship was on the pair and how it could strain a relationship, Harwood had to promise “not to upbraid, or deride or any other way exercise, or use any bitterness to the said Elizabeth for or in relation to any former passages between them.” If he did in any way chastise her for previous actions, he forfeited his right to control or use any of the property she brought to the marriage. It was to be solely under her control.¹¹²

Robert Harwood succeeded in his attempt to marry Gary. Following their marriage, the Harwoods moved from Calvert County to Talbot County.¹¹³ There, they raised at least three children, prior to his death around 1674.¹¹⁴ Their marriage was, perhaps, not as important as the way the case played out. The case illustrates the court’s

¹¹² Ibid., 10:531-533.

¹¹³ This move must have taken place sometime after 1664, when Elizabeth Harwood and her mother, Judith Sharpe, appeared before the Provincial Court to offer testimony in the infanticide case of Elizabeth Greene. Both were fined by the court because, since they were Quakers, they refused to swear an oath before the court. AOMOL, 49:231.

¹¹⁴ Prerogative Court (Wills), 1, 494-497, [MSA SM 16-1]; Ibid., 2, 254-255, [MSA SM 16-2]; Ibid., 7, 264-265, [MSA SM 16-12].

willingness to empower this young woman. She, and not her mother or step-father, determined her marital fate. Court officials acknowledged the importance of her property and her control over it. The admitted sexual encounter incurred no penalty.

Elizabeth Gary's mother and step-father were not the only parents to attempt to prevent a child from marrying a mate they felt unsuitable. Some parents made marriage requirements of children in their wills. One historian, who looked at 3190 wills filed in the colony between 1634 and 1713, found that parents left marriage requirements in less than five percent of wills.¹¹⁵ The wills with marriage requirements tended to reflect biases a mother or father had against the child of another colonist or their desire that the child consult with the remaining parent before marrying. Fathers, mothers, and even grandparents left wills threatening to withhold property or other goods from a child (either male or female) if they were to marry against their wishes.¹¹⁶ Elizabeth Gary was one of the few women to defy her parents' wishes. In 1696, in her will, Jane Long granted her daughter Tabitha 20,000 pounds of tobacco. If she married George Chaney, however, she would only receive one shilling.¹¹⁷ Jane Long's fears proved unfounded. In the same year, Tabitha Long married Henry King.¹¹⁸ John Phillips of Dorchester County also left instructions to his children regarding marriage. In 1708, Phillips willed property to two of his sons. However, they had to give the land to Phillips's son-in-law if they married one of John Robson's daughters. Thomas Phillips, the older of the two sons, appears not to have married. The younger of the two, Bennony Phillips, married a woman

¹¹⁵ Meyers, *Common Whores*, 45.

¹¹⁶ *Ibid.*, 46-47.

¹¹⁷ Prerogative Court (Wills), 7, 141, [MSA SM 16-7].

¹¹⁸ Prerogative Court (Inventories and Accounts), 1, 381, [MSA SM 13-1].

named Jane, presumably not a Robson.¹¹⁹ The situation is further complicated by the fact that Phillips willed his “daughter Mary Robson one shilling.”¹²⁰ Since one child had already married a Robson, John Phillips had some reason for not wanting either of his sons to marry into the family. None of these children defied their parents in the way Elizabeth Gary did.

There are two issues at play in these fornication cases that reflect official attitudes towards sexual relationships outside marriage. First, officials were willing to overlook the actual fornication if a marriage followed. In both Stratton and Gary’s cases the courts sought to promote marriage. Stratton’s unwillingness to marry Arthur Turner led to her being forced to raise her illegitimate child on her own. Gary’s refusal of Robert Harwood appeared to have been caused by her family. The court’s ruling shows enough uncertainty on the justices’ part. This uncertainty drove them to allow Gary to decide (in a neutral environment) whether or not she wished to wed Harwood.¹²¹ There is a sex bias in how punishments were meted out, with women more frequently receiving the corporal punishment while men frequently either escaped punishment or had their sentence reduced.

The second issue illustrated in these cases, which is consistent with cases of adultery and other sexual offenses, was the importance of maintaining one’s honor. Again, this is typically a male issue. Peter Sharpe explained to the court that Robert Harwood had only declared that Elizabeth Gary felt affection for him and was planning to

¹¹⁹ Prerogative Court (Wills), 12, 212-213, [MSA SM 16-18]; *Ibid.*, 13, 350, [MSA SM 16-19]; *Ibid.*, 20, 72, [MSA SM 16-30].

¹²⁰ *Ibid.*, 12, 212-213, [MSA SM 16-12].

¹²¹ Debra Meyers (48) and Raphael Semmes (180) argue that Elizabeth was not interested in Harwood. However, neither assesses the testimony of Sarah Benson. The introduction to volume 10 of the *Archives of Maryland*, points to this case as an example of parental meddling. As neither assessed the final outcome of the courtship, they both have to make guesses as to how the case was resolved. Semmes correctly argues that the two did marry, while Meyers insinuates that the two did not.

marry him “for his own vindication.”¹²² The allegation of future marriage exonerated Harwood from having simply committed a crime with the woman. Men feared that accusations of sexual impropriety could damage their reputations. In 1673, Robert Bryant sued Theresa Arnard for attempting “falsly and Maliciously to Scandalize and Slander [Bryant] whereby to take away his good Name and Credit” by claiming that he had copulated with her.¹²³ This was a particular slight against Bryant, who intended to marry and “live soberly.” Having been slandered in such a way, he feared he could never achieve these goals. He sued the woman, who he clearly was not interested in marrying, for 2000 pounds of tobacco, a sum he felt would help repair the damage her rumors had caused him.¹²⁴

Sexual impropriety within a household also brought into question the householder’s reputation. Such was the case in 1660 when William Robisson sued William Wennam. Robisson alleged that Wennam had “dishonored your petitioner’s house by committing fornication” with Robisson’s maidservant Anne Mardin. After Mardin confessed to Robisson, her master privately asked Wennam to marry the servant. Wennam protested, saying he would not marry her unless she was pregnant. In a private conversation with another man, Wennam expressed concern that if he did not marry Anne Mardin after their sex act “none of his friends would abide him” and that he would be excommunicated.¹²⁵ Apparently, Wennam had no intention of ever marrying the servant. He had originally claimed he wanted to marry her in order to “lie” with her. When it

¹²² AOMOL, 10:532.

¹²³ Ibid., 53:576.

¹²⁴ A similar case was heard by the Talbot County Court in 1666. William Bagley brought Elizabeth Smith before the court for claiming she was pregnant with his child out of wedlock. When this was proved to be a lie, Smith was given 30 lashes and charged with paying court costs. Ibid., 54:392.

¹²⁵ Ibid., 53:133.

became evident that Mardin was not pregnant, Wennam admitted to neighbor Joan Nevill that if Robisson forced him to marry the woman, “he would bind her to a tree and every day whip her.”¹²⁶ Justices ruled that there was no actual proof of the relationship, thus Wennam could not be charged.

The pressure to avoid social censure due to an unruly daughter or servant was nearly solely focused on males. Women, however, were not exempt from fears that their reputations could be tarnished because of an accusation of sexual impropriety. In a particularly complicated 1664 case, Elinor Edwards Spinke and her husband sued Dr. Luke Barber for calling her a whore and perjurer. Elinor had been Barber’s servant prior to her marriage to Henry Spinke. Elinor testified against Barber in a suit earlier in the year. While on the stand, Barber called the woman a whore several times. He explained how he had arrived at this opinion, telling the court “tht hee had caught her wth her Coates up, & that Rogue Tom Hughes wth his breeches downe, in such uncyuell accons nott fitt to bee named.” Barber went on, explaining that Elinor’s testimony was false and that he could prove it. These claims were simply too damning for the Spinkes. Elinor had enjoyed an excellent, virtuous reputation prior to this. However, Barber’s speech had “so wounded her in her creditt, Reputaon & honor (wch is far dearer then life),” that she decided to sue.¹²⁷

The Provincial Court justices agreed that Barber’s claims caused great harm to Elinor Spinke. The jury found Dr. Barber guilty. The Spinkes were rewarded the hefty sum of 30,000 pounds of tobacco.¹²⁸ Barber was also charged with paying all costs incurred by the Spinkes in the case. Already a notable case because of the huge amount

¹²⁶ Ibid., 53:134.

¹²⁷ Ibid., 49:79.

¹²⁸ Ibid., 49:146.

Dr. Barber was ordered to pay to Spinke, the case became even more interesting when Barber appealed the ruling to the upper house of the General Assembly. After hearing the details of the case, the General Assembly ruled that Spinke had not adequately proved his case. The 30,000 pound fine was overturned, and both men were charged with paying their own court costs.¹²⁹

Although the Provincial Court's ruling was eventually overturned by the upper house of the General Assembly, the amount the Provincial Court had originally awarded to Spinke was astronomical. Not all cases of sexual defamation resulted in such a serious fine. Some cases did not even result in a court imposed fine. In 1663, Edward Harwood sued Elizabeth Greene for calling his wife, Olive, a whore and claiming she would prove her point. Provincial Court justices found in Harwood's favor. They sentenced Greene to "aske her [Olive Harwood] forgiveness in open Court & pay Costs of suite."¹³⁰

Apologies were also part of the sentences for men who chose to slander women. In 1649, the Provincial Court heard the case of Kent Islander Thomas Ward. Henry Clay was suing Ward. Clay asserted that Ward had slandered his wife. Ward apparently slandered Clay's wife, calling her "a burnt arse whore." The justices were swayed by Clay's witnesses, including the respected Robert Vaughan, all of whom agreed that Ward had slandered the woman in this way.¹³¹ The court ordered Ward to apologize to Henry Clay's wife and promise to never say such things again about the woman. If he were unable or unwilling to make this apology, Ward had to pay 1000 pounds to the Lord Proprietor. Barring his ability to do this, Ward would receive thirty- one lashes.¹³² Ward

¹²⁹ Ibid., 1:522.

¹³⁰ Ibid., 49:56.

¹³¹ Ibid., 10:234.

¹³² Ibid., 10:235.

was not the only man sentenced to be whipped for his transgressions. In 1670, the Talbot County court sentenced Richard Austin to receive thirty lashes for calling his master's wife a whore and other names.¹³³

There are many cases in the early Maryland records of women being called a whore and seeking legal redress.¹³⁴ While the punishments vary, there were certain commonalities in these cases. Most women who sued against slanderers were married. The cases were brought, almost uniformly, by their husbands. Although some cases ended in private settlements, most cases that went to court ended with a ruling favoring the offended party. These cases support a number of conclusions. First, women valued their reputations, although their husbands were the ones who willingly sued the party who slandered their wife. Again, this relates to the expectation that a husband would keep his household in order, at least sexually. The reputation of the woman, therefore, reflected strongly on the reputation of the male head of the household. Secondly, the courts took charges of sexual impropriety very seriously. Sexual reputation was important to residents of the colony. If there was enough evidence that someone did attempt to impugn the reputation of another, the courts acted on this, often strongly.

Conclusion

A survey of female involvement with sexual offenses in early Maryland suggests that women were a rather lascivious group. At times they exhibited their behavior very publicly. The most obvious examples of this are the women who publicly bore bastard children. Their sexual misdeeds became an issue that concerned their entire community.

¹³³ Ibid., 54:478.

¹³⁴ For more cases see Semmes, *Crime and Punishment*, 187-197 and Norton, *Founding Mothers and Fathers*, 336.

Perhaps more than moral concerns, officials and citizens desired not to support a bastard child out of public coffers. In addition to bastard-bearers there are other examples of women who flaunted their sexual misdeeds publicly. There are at least two women, Susan Atcheson and Mary Bradnox, who engaged in extramarital sexual relations in public view. It is these sorts of brazen actions that make Ebenezer Cooke's assessment of Maryland women seem plausible.

Justices of the Maryland courts were not as lenient with sexual offenses as they appeared to have been with other crimes such as witchcraft. It is true that the colonial Maryland government officials attempted to impose their own beliefs about sexual order and propriety on the colonists.¹³⁵ Mores of the day dictated that women had a particular obligation to observe these laws, maintaining some level of modesty and virtue. As such, women were whipped or fined heavily in cases where a male would often be released with a lesser punishment. At times it had to be maddening for accused women to see males receive no punishment, such as in the cases of Mary Hews and Katherine Budd. Both women were charged with being "loose livers" before the Charles County court in 1662. Both women were seen engaged in sexual relations with Thomas Shelton. Hews was sentenced to publicly ask for forgiveness for her actions and no longer be found in Shelton's company.¹³⁶ Katherine Budd, accused of the same crime with the same man, was given twenty lashes. She apparently had a reputation for this sort of behavior which made the punishment more necessary.¹³⁷ Thomas Shelton, accused of fornicating with both women, received no punishment.

¹³⁵ Godbeer, *Sexual Revolution in Early America*, 7.

¹³⁶ AOMOL, 53:225. Hews, apparently a servant, may have been tried because she publicly told of another man's intention to marry her and also to threaten his wife.

¹³⁷ *Ibid.*, 53:226.

This does not mean, however, that court officials used the enforcement of laws against sexual crimes to completely subjugate women. Frequently, sentences were commuted, women and men were punished equally, or women were able to have some control over the outcome of their cases, such as did Elizabeth Gary. Whenever possible, the courts attempted to promote marriage of an offending couple or preserve marriage where possible. Women were disproportionately punished for bastardy, and throughout the colonial period faced censure for fornication.

An assessment of sexual offenses gives considerable insight into the lives of women in Maryland. Women were not passive when it came to sexual relationships. Although they generally had little recourse against an abusive husband, they sometimes engaged in sexual affairs as a way of countering their husbands' actions. In part this indicates a belief amongst women like Susan Attcheson that engaging in extramarital sexual relations could mitigate the behavior of a weak or abusive husband. If an abusive husband made marital relations impossible or unpleasant, women sometimes sought satisfaction outside of marriage. Women seemed to use abuse as a rationale for an extramarital affair. Secondly, by cuckolding a husband, a wife could publicly shame him. A man who could not keep his house in order was considered socially weak and this cast doubt upon his masculinity. Thus, when the courts did not or would not act to address alleged abuse or infidelity, a wife could take matters into her own hands. Such was the case with Thomas and Mary Bradnox. Thomas Bradnox was a presumed adulterer whose relationship with his wife was sometimes strained. By engaging in a rather public sexual liaison with a neighbor, Mary Bradnox was turning the tables on her husband.

There was a level of uncertainty evident in court rulings regarding sexual

offenses. Joan Toast, although illegally wed to William Mitchell, eventually was referred to as Mrs. Mitchell. The Provincial Court justices evidently believed it was her intention to be wed legally to William Mitchell, thus authorities granted her marriage a certain degree of legitimacy. The officials also doubted the intention of Elizabeth Gary.

Although her step-father testified that Gary did not wish to wed Robert Harwood, even after they had fornicated, the justices were more than willing to allow Gary to make a decision regarding her future marriage. Justices also exhibited a certain reticence to rule on certain cases, such as that of Thomas and Mary Bradnox. Clearly, the two both were guilty of sexual offenses; officials of the Kent County court did not see a need to take action, rather allowing this case to run its course on its own, outside the courtroom.

Beyond this, the county justices were familiar with both Thomas and Mary Bradnox. As with many female criminals, their knowledge of the courts and the court's familiarity with them led to a lessened or negated punishment.

When the courts did weigh in and punish sexual offenses it was when such misbehavior threatened the community. If neighbors witnessed adultery or fornication occurring, court justices saw this as something that unsettled the community. In cases such as that of Susan Attcheson, the Provincial Court justices saw this as enough of a breach of the laws and social order that they ordered the offenders punished. The same holds true for the cases of Dorothy and Robert Holt. Even after Robert's death, his pretended wife Christian had to deal with the ramifications of an illegal marriage. The first goal was not necessarily to regulate all sexual behavior; it was rather to maintain order within the household and community. This would, consequently, bring order to the entire colony. For this reason, women were able to attain some level of sexual

independence, as long as their actions did not in any way cause there to be disorder in Maryland.

Chapter 5: “He Can and Will Prove Her a Thief”: Maryland Women and Property Offenses

Witchcraft, murder, and sexual offenses are, according to one scholar, examples of women’s “spectacular crimes.”¹ With so much emphasis on these crimes, scholars tend to overlook property offenses and the women who committed them. Although witchcraft, murder, and sexual offenses tell us much about how women interacted with society and the courts, a study of female involvement with crime and the courts is not complete without some analysis of property offenses. Women were deeply involved with a variety of property offenses. Next to sexual offenses no other crimes give the historian as much insight into female legal agency in colonial Maryland as property offenses. Additionally, perhaps no other crime involved such a variety of women. Women’s dealings with property offenses, although statistically infrequent, illustrate that they not only were knowledgeable about the law, they also exhibited a willingness to engage in crime. This is because women were deeply involved in society and had opportunities to commit crime. Property crimes brought them into close contact with the courts as plaintiffs, defendants, and witnesses, allowing them to hone their independent legal skills.

The phrase “property offense” includes a number of crimes. Theft, killing livestock, extortion, embezzlement, forgery, arson, and piracy are a few crimes that are grouped under the broad phrase property offense.² Other property crimes include trespassing, burglary, robbery, and pick-pocketing which did not appear frequently in the Maryland courts. Until the 1680s, the Provincial Court generally tried these crimes. However, by 1681, the General Assembly granted county courts exclusive jurisdiction

¹ Armel Dubois-Nayt, “Women Thieves in Early Modern England: What Can We Learn from Narrative Sources?” *Etudes Epistémiques*, 14 (Autumn, 2008), 193.

² James Horn, *Adapting to a New World*, 352.

over the crime of theft. Provincial Court justices still tried robbery and cases that involved property with a worth exceeding 1000 pounds of tobacco.³ The number of theft cases (the “felonious taking and removing of another’s personal property with the intent of depriving the true owner of it”) the Provincial Court heard declined after 1670.⁴ Those cases that the Provincial Court still heard notably entailed more stolen property and involved mostly males. The severity of punishments declined, likely because servants committed the majority of property crimes and the colonists could not spare the service of these men and women. This was especially true during the late seventeenth century when Maryland faced a shortage of labor as migration to the colonies dropped but migration within England increased.⁵

Theft, arguably the best known property offense, was uncommon in colonial Maryland when compared to other crimes such as adultery or homicide. Perhaps, as at least one historian has posited, this was because there were few goods of any value to steal.⁶ In the seventeenth century, theft accounted for 5.8 percent of crimes committed by women. In the same period, theft accounted for 10 percent of crimes committed by men.⁷ This limited number illustrates that theft truly was not a crime committed frequently in Maryland. In England, the generic term “theft” incorporated a number of crimes including “petty and grand larceny, housebreaking, burglary, pick-pocketing (and purse

³ AOMOL,7:202.

⁴ “Theft,” in *Black’s Law Dictionary*, Eighth Edition, ed. Bryan A. Garner, (St. Paul, MN: West, 2004), 1516.

⁵ Sue Wilkinson, “Making and Breaking the Law in Colonial Maryland,” *River Gazette*, (October/November 2007), 10; Russell Menard, “British Migration to the Chesapeake Colonies in the Seventeenth Century,” 110-111; Jim Rice, “‘This Province So Meanly and Thinly Inhabited’: Punishing Maryland’s Criminals, 1681-1850,” *Journal of the Early Republic*, Vol. 19, No.1, (Spring, 1999), 21.

⁶ Semmes, *Crime and Punishment*, 41.

⁷ Norton, “Gender, Crime, and Community,” 135.

cutting), robbery including highway robbery, and horse-theft."⁸ Maryland legislators defined theft in a much more limited manner. The General Assembly passed a law outlawing theft in 1654 wherein they defined a thief as anyone who did “take and Carry away any of the Goods or Chattells of any person or persons within the Province Contrary to the owners will and without their knowledge or Consent.” If another crime accompanied the theft, such as assault, housebreaking, or lock picking, the Provincial Court was ordered not to punish the perpetrator with death but at the “discretion of the Court.”⁹

To limit a study of women’s offenses against property to theft alone would fail to understand exactly how involved women were with colonial affairs. As forgers, embezzlers, and arsonists, women attempted to maneuver around the legal system for many reasons, but mostly to gain some advantage in their daily lives. As with the other crimes examined to this point, women who committed crimes against property and were caught were subject to trials and punishments similar to those of males accused of the same crimes. An examination of property offenses in colonial Maryland illustrates that women understood the legal system of the colony, but also that they were deeply involved with commerce and society. These activities led them toward property offenses. Although colonial authorities regarded property crimes as detrimental to society, they did not treat property crimes with the same severity as the mother country. Authorities also tended to grant women, often protected by ideas of coverture, some degree of leniency. This did not deter them from committing these crimes, but it did benefit them.

⁸ Garthine Walker, *Crime, Gender, and Social Order in Early Modern England*, (New York: Cambridge University Press, 2003), 159.

⁹ AOMOL, 1:344. The General Assembly repealed this law two years later. The never passed a new law regarding theft. Justices used this law in place of new legislation.

Theft

During the seventeenth and eighteenth centuries in England, authorities regarded theft as one of the most serious offenses. As society and the economy changed, property became sacrosanct. English authorities and property holders believed that one way to deter persons from violating or stealing another's property was the imposition of the death penalty for such crimes. For most of the seventeenth century, about fifty crimes in England were subject to the death penalty. These included such crimes as treason, murder, or arson. This changed dramatically after the Glorious Revolution. Parliament's passage of the laws that became known as the "Bloody Code" increased the number of crimes subject to capital punishment to more than 160 crimes by the mid-1700s. Many of those crimes were property offenses, including embezzlement, fraud, and receiving stolen goods.¹⁰

Like their English counterparts, Maryland authorities regarded property offenses seriously. In 1642, members of the General Assembly deemed robbery, burglary, and larceny to be lesser capital offenses, punishable by death, branding, service to the Proprietor, removal from the colony, or loss of property.¹¹ Maryland laws divided capital offenses into two categories. Greater capital offenses were a variety of treasonous offenses as defined in England. These offenses required that the criminal receive the death penalty. For lesser capital offenses, the criminal *could* receive death or one of the other corporal punishments listed in the statute. However, by the time English Parliamentarians passed harsh laws against property crimes, Maryland authorities were beginning to move away from England in terms of how the courts dealt with theft. This

¹⁰ Hay, "Property, Authority, and the Criminal Law," 17-63.

¹¹ AOMOL, 1:158 and 1:192.

happened despite the attempts to use British common law to ensure property security to all citizens.¹² In 1692, shortly after Parliament passed some of the harshest laws that made up the “Bloody Code,” members of Maryland’s General Assembly passed a law reiterating the law passed by the Assembly eleven years earlier stating that all theft, excepting robbery, burglary, and house-breaking should be tried by the county courts. Since county justices could not take “life or member” from an accused, the alleged thief could only be punished by “whipping or Pilloring or both.” If the same person committed this crime again, the county justices could give the criminal the same punishment. However, by the third offense the criminal would be sent to the Provincial Court for trial where they could be given the death sentence.¹³

It would be easy to assume that the Maryland authorities who created a more lenient penal regime than that of the mother country were simply forward looking. Yet, a number of practical factors went into this law. First, the main purpose of the law was to bring accused criminals to trial faster. Since the thief had caused no physical harm to the victim, the crime did not require the opinion of the highest court. Secondly, and perhaps more importantly, members of the General Assembly feared that implementation of England’s severe property laws would lead to executions and a loss of population not acceptable for the colony. Maryland’s 1681 and 1692 laws stated that England’s law was suitable for the mother country but not for a “Province so meanly and thinly Inhabited.”¹⁴ These two factors, coupled with the reality that there was not much of value to steal, helped Maryland’s authorities move away from the rather draconian laws of England.

By the end of the seventeenth century, Maryland’s authorities were cautious about

¹² Nelson, *The Common Law in Colonial America*,” 113; AOMOL, 49:238.

¹³ AOMOL, 13:480.

¹⁴ *Ibid.*, 7:201 and 13:479.

imposing overly harsh punishments on thieves so as not to deplete the colony of settlers. It stands to reason that authorities were especially reticent to prosecute women, who were far fewer in number than men. No woman was executed in the colony for the crime of theft. In fact, few women were even *tried* before the Provincial Court for theft. These facts illustrated how Maryland differed from the mother country. In England, several thousand men and women were executed for property crimes. There justices condemned women of such crimes as robbery, burglary, and housebreaking, all three of which were not typical crimes for women in Maryland.¹⁵ Although it was rare, several women were charged with theft before Maryland's Provincial Court before 1681. The justices of the Provincial Court condemned about one-third of the women to death, but even before the 1681 law, authorities, including the Lord Proprietor, found ways to ensure that women would not be executed for theft. In 1681, Provincial Court justices sentenced Elizabeth Withrington to death for felony theft "of severall goods belonging to Mr. Cogden and Mr. Scott."¹⁶

Withrington, a servant, appealed her case to Charles Calvert, Third Lord Baltimore. She acknowledged that she had committed the crime the justices convicted her of and asserted that she had no excuse for her actions. Before seeking the pardon, she agreed that her conviction was just. However, Withrington appealed to the Lord Proprietor's "abundant goodness and mercy," hoping that he would spare her life. Charles Calvert, either moved by the woman's appeal or fearful of losing a colonist and laborer to the gallows, granted her a pardon.¹⁷ There was precedent for Withrington's pardon. In

¹⁵ J.M. Beattie, *Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror*, (New York: Oxford University Press, 2001), 19.

¹⁶ AOMOL, 17:36 and 70:46.

¹⁷ *Ibid.*, 17:36.

1677, Charles Calvert pardoned a male servant named John Oliver, also convicted of theft. Withrington's case differed somewhat from Oliver's as Calvert granted her a pardon without condition. After Oliver's appeal, Charles Calvert extended his service to his master for committing the felony theft.¹⁸ Withrington's case is arguably the most important case regarding women and theft in the early years of the colony. Even Elizabeth Withrington, a servant who acknowledged her crime, had enough knowledge of the legal system to understand that she had recourse to Charles Calvert. Calvert appears to have overlooked her servitude. He was instead swayed by her argument and plea for mercy.

Theft by servants was common in the colony. In 1663, the General Assembly took "into their Serious Consideracon the many & great greivances that have happened unto many Masters within this Province." The said masters were concerned because their servants were in the habit of stealing their property and selling it, particularly to ships' captains who would not recognize them. The 1663 act imposed a corporal penalty of thirty lashes for any servant caught stealing and trading their master's goods or killing sheep, hogs, cattle, or poultry belonging to their master or another colonist. If the servant incurred a second offense, the same punishment would be meted out and the servant would be branded on the shoulder. The servant, however, would never be executed.¹⁹ The earliest records indicate that no women were accused of stealing and trading goods.

Servants not only stole for their own purposes. Their masters sometimes ordered

¹⁸ *Ibid.*, 51:214. Oliver's case further illustrates the difference between English and Maryland law. When first convicted, Oliver pled benefit of clergy, although he could not read the passage he was given. In England, theft had been a "non-clergyable" offense since the fifteenth-century, meaning someone convicted of theft could not receive benefit of clergy. See: Beattie, *Policing and Punishment*, 19.

¹⁹ AOMOL, 1:500. The servant would not be branded for killing poultry, although they would be whipped if caught.

servants to steal for them. Such was the case in 1659 when servant Sarah Taylor first sued for her freedom from Thomas and Mary Bradnox. During her testimony, Taylor told of how Thomas Bradnox beat her, then cryptically told her to “spoyle me a batch of bread againe.”²⁰ The record does not indicate what Bradnox meant when he demanded that Taylor spoil bread for him. The term, evidently understandable to a seventeenth-century audience, is likely an archaic one in which Bradnox told Taylor to go steal some bread for him.²¹ The servant must have done this for her master before, as evidenced by his demand that she steal bread again. Even if some of her actions were at his behest, Thomas Bradnox wanted authorities to believe that his servant was a common thief. In 1660, after her earlier attempt to sue for freedom, Thomas Bradnox sued Taylor, along with another servant, for stealing “Diveres goods as are in an Inventory” to aid them in running away.²² The justices of the Kent County court favored the servants, although the justices acknowledged the servants’ theft. Court justices struggled with ruling on such allegations. In 1662, Simon Carpenter sued his servant William Wake for satisfaction for running away for over three months and taking “away severall goods.” Although Carpenter sued Wake for time lost, as well as goods taken (as happened in Sarah Taylor’s case), the Talbot County commissioners ordered Wake to serve ten extra days of service for each day he was absent from his master. The commissioners chose not to charge Wake with theft.²³

The main reason that so many indentured servants were tried for theft is because

²⁰ Ibid., 54:224.

²¹ *Oxford English Dictionary*, s.v. “Spoil-v,” 8a, http://0-dictionary.oed.com.libus.csd.mu.edu/cgi/entry/50234084/50234084spg1?query_type=misspelling&queryword=spoyle&first=1&max_to_show=10&sort_type=alpha&result_place=2&search_id=J1N1-ceaak3-7727&hilit=50234084spg1, (Accessed October 3, 2009). This usage of the term was used from the 1400s through the mid-1800s, but appears to have disappeared from the vernacular after that time.

²² AOMOL, 54:213.

²³ Ibid., 54:420.

they had the easiest access to the goods of their masters or mistresses. Indentured servants possessed few material goods, so they often were tempted by the possessions of the masters and mistresses. Additionally, they associated with other servants who may have had even closer access to these goods. One of the most famous and complicated cases of theft in the colony involved at least one free colonist and two others who were servants of the victims.²⁴ Two of the accused were women. All of the accused understood the severity of the accusations they faced and attempted to deny their apparent guilt. The case took shape in 1658, when Sarah Overzee died in childbirth.²⁵ Her death and later burial created a diversion for servant Mary Williams to steal some items found in chests and trunks that she and another woman had forced open. Most of what they took was clothing or sewing items, such as buttons, thread, and cloth. During the early modern period, when goods were scarce and the value of clothing high, authorities and community members considered clothing theft exceedingly serious. The thieves could use the items for themselves or resell them for a profit.²⁶ The 1674 inventory of Elizabeth Grudden lists three types of goods – clothing and linen, house ware, and livestock. The majority of the inventory, including thirty-four pieces of linens, is either sewing goods or clothes. Grudden's inventory was one of many that listed cloth as one of the most

²⁴ Simon Overzee transported John and Mary Williams to the colony sometime between 1655 and 1658 as servants. The records of this case do not indicate what capacity they served in, but most likely were still serving Overzee at the time of the theft. See: Land Office, (Patent Records), Q, 323, [MSA SM2-6].

²⁵ Although the deceased woman is only referred to as Mrs. Overzee during the trial this was likely Sarah Overzee. Simon Overzee, arrived in the colony in 1650 with his wife Sarah. At his death in 1660, Simon Overzee was married to a woman named Elizabeth who went on to remarry, indicating that Sarah was the woman who died in childbirth. See: Dr. Lois Green Carr, "Men's Career Files," sc5094-3133-01, <http://www.msa.md.gov/megafile/msa/speccol/sc5000/sc5094/003000/003133/html/sc5094-3133-001.html>, (Accessed March 20, 2010).

²⁶ Walker, *Crime, Gender, and Social Order*, 163.

valuable items.²⁷ This was indicative of the overall value of these goods in Maryland society.

The goods stolen from the Overzee household were extremely valuable. All together, Simon Overzee valued the stolen goods at fifty pounds sterling. Overzee listed extensive and important items in his testimony before the Provincial Court. These included a pair of Irish stockings, several aprons made of fine Holland linen, one piece of course Holland linen, two caps (quoifes) made of Flanders lace, and “one bastard fflaunders Lacd' Holland smock.”²⁸ The latter was a woman’s chemise, made from inferior Flanders lace and Holland linen.²⁹ It was an interesting garment, indicative of Overzee’s wealth. The smock was an undergarment, often exposed outside the neck and sleeves of a dress for fashionable purposes.³⁰ Flanders lace was one of the most highly sought-after female accoutrements in the seventeenth century because of its fine quality, lightness, and complexity.³¹ Even the inferior sort owned by Overzee must have been fashionable. Sarah Overzee was likely a finely dressed woman. Her husband, a merchant who likely imported cloth, must have had money to at least buy the raw materials for his wife. Prices of such materials, such as Holland linen, were declining slightly by the later seventeenth century, but still were too costly for many colonists.³²

²⁷ Prerogative Court (Inventories and Accounts), 1674, Pages 4-5, MSA SM13-1, Roll 62-A. The recorded Inventories available at the Maryland State Archives are filled with accounts of the linens and clothing owned by colonists.

²⁸ AOMOL, 41:208.

²⁹ Most of these terms or their early usage are considered archaic or obsolete to modern readers but would have been obvious to residents of the seventeenth-century. Their definitions can be found in the *Oxford English Dictionary*.

³⁰ C. Willett and Phillis Cunnington, *The History of Underclothes*, (New York: Dover Publications Inc., 1992), 31, 45.

³¹ Pat Earnshaw, *Lace in Fashion: From the Sixteenth to the Twentieth Centuries*, (Guildford, England: Gorse Publications, 1985), 45.

³² Carole Shammas, “Changes in English and Anglo-American Consumption from 1550 to 1800,” in John Brewer and Roy Porter eds. *Culture and Consumption: The World of Goods*, (London: Routledge, 1993), 193.

The grand jury charged another woman, Mary Clocker, with being an accessory both before and after the theft. Clocker, charged the grand jury, had allegedly counseled Mary and John Williams as to what goods Sarah Overzee owned and where they were. Although Clocker was not a servant of the Overzees, she was an experienced midwife. Sarah Overzee must have arranged for Clocker to be present to assist her in labor. Clocker saw the fine linens and other items Sarah Overzee had in her possession during Overzee's fateful "laying-in" period. She informed Mary Williams about these goods, hatched a plan to take these goods, and Williams reported that Clocker assisted in the execution of the theft. After the crime, Clocker received most of the stolen goods from the couple.³³ Receiving stolen goods was a felony itself. The story became more complicated once Clocker and the Williamses were apprehended for the crime. Mary Clocker claimed that she had no part in the crime, but hinted that a recently arrived young man had taken some of the linen from the Overzee house.³⁴ John Williams, also realizing the severity of the charges he faced, claimed he was not involved with the initial crime and proceeded to blame his wife and Clocker. The man claimed his wife ignored his warnings and took items belonging to Simon Overzee. After he found out what his wife had done, John Williams helped to hide the items in a tree. He did not tell Overzee because he "thought Mr. Overzee would not have missed them."³⁵ Mary Williams, faced with this evidence, confessed to her crime, claiming she had first gone to the Overzee house looking for spices or salt. Mary Clocker then proposed to rob the Overzee chest. Two justices of the peace from St. Mary's County examined Mary Williams twice. She

³³ AOMOL, 41:208. For proof of Clocker's profession see: Ibid., 10:171. For testimony that the theft was Clocker's idea, see: Ibid., 41:210.

³⁴ Ibid., 41:207.

³⁵ Ibid., 41:209.

repeatedly attempted to lay most of the blame on Mary Clocker, claiming that she had initiated the theft and kept some of the goods.³⁶

The accused and other witnesses gave the petty jury much information to consider. The petty jury found that the three accused of felony were guilty. They ordered Clocker and the Williamses to remain in jail until Governor Fendall handed down a sentence. Late in 1658, the governor sentenced all three to be hanged.³⁷ Thus should have ended one of the most complicated cases of theft in Maryland's colonial period. The prisoners' pleas for mercy went unacknowledged. However, shortly after the three were sentenced to death, Oliver Cromwell died. In honor of Richard Cromwell being proclaimed Lord Protector of England, Cecil Calvert, Second Lord Baltimore and Lord Proprietor of Maryland granted a general pardon for all prisoners awaiting execution.³⁸ This included the two women and man who had stolen from Simon Overzee.

This case was multifaceted. Not only did it involve the theft of an incredible amount of property, two women spearheaded the crime. Although John Williams' involvement appeared limited and he supposedly was not present when the women committed the crime, the justices prosecuted him with the same intensity as his wife and Mary Clocker. He did admit to knowing about the stolen goods and assisting in hiding them. On the other hand, Daniel Clocker, Mary's husband, did not appear as either a defendant or a witness. Although she shared some of her stolen goods with her son, Mary Clocker acted independently. She decided to commit the theft and enlisted the help of the servants. Even though she hinted that a young man who was a stranger to the colony stole the goods, the testimony of Mary Williams and others showed that Clocker spearheaded

³⁶ Ibid., 41:210-211.

³⁷ Ibid., 41:225; and 41:255.

³⁸ Ibid., 41:258.

this effort. Beyond simply taking and receiving the goods, Clocker knowingly asked the justices to examine a witness of her choosing. This man was the only person who claimed that Clocker was not guilty.³⁹ Mary Clocker, a married woman, acted on her own to execute this crime. This alone illustrates how active women were within the colony and how willing they were to break the law, independent of their husband's involvement.

The Maryland theft cases that came before the courts often, but not always, involved women and their husbands. In the case of Mary and John Williams, it appears that Mary Williams was more closely involved with the execution of the crime than was her husband. This was not always the case when both a man and woman were accused of theft. In the 1650s, justices of the Kent County court tried John Salter and his wife, Jane, for a number of property crimes. In 1655, two men accused the Salters of killing other people's hogs. Hogs were an important source of revenue for colonists, making them worth almost as much as any other material possession. Hogs and cattle were a stable source of revenue during uncertain tobacco seasons and they provided a certain inheritance for children.⁴⁰ In Virginia, settlers found that cattle and hogs were constantly lucrative, even when tobacco revenues fell short of expectations.⁴¹ Initially, colonists were forced to purchase domesticated animals, such as hogs and cattle, from settlers in Virginia.⁴² In 1633, King Charles I sent a letter to Virginia authorities asking them to sell

³⁹ Ibid., 41:207. Clocker, for an unknown reason, objected to Edmond Lindsey serving as a petty juror. The court honored her objection, dismissed Lindsey, and replaced him with George Mee.

⁴⁰ Henry M. Miller, "An Archaeological Perspective on Diet in the Colonial Chesapeake, 1620-1745," in Carr, Morgan, and Russo, *Colonial Chesapeake Society*, 193-194. Hogs and cattle were of particular value as inheritance because they reproduced. In 1658, One hog was worth 250 pounds of tobacco. AOMOL, 41:247.

⁴¹ Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia*, (New York: W.W. Norton & Co., 1975), 138-140.

⁴² Margaret Shove Morriss, *Colonial Trade of Maryland, 1689-1715*, (Baltimore: Johns Hopkins University Press, 1914), 19. For more information on the first cattle and hogs in Virginia see: J.A.C. Chandler and T.B. Thames, *Colonial Virginia*, (Richmond, VA: Times-Dispatch Co., 1907), 174.

to the Maryland settlers any cattle or livestock which they could spare.⁴³ Some Virginians, opposed to the Maryland settlement, reportedly said they would rather “knock their Cattell on the heads then sell them to Maryland.”⁴⁴ This only increased the value of the livestock colonists could obtain. In addition to their value, thieves had the opportunity to covertly slaughter and carry away hogs because of contemporary husbandry practices. Most estates were at least several hundred acres in extent, and planters allowed their hogs and cattle to roam freely and reproduce. The General Assembly required that all owners of hogs and cattle mark their animals with some unique marking and register their mark with the Secretary or county court. Planters were legally required to fence their corn crops so as to save the crops from errant cattle and hogs. They were not, however, required to fence their animals or “to law” or wound the feet of their hogs to prevent them from wandering.⁴⁵ Perhaps the best example of the worth of hogs is illustrated in a 1663 defamation suit filed by Jacob Lumbrozo. Although Lumbrozo claimed the charges levelled against him were lies, testimony indicated that he had, in fact, asked one of his female hired servants “to bee his whoore.” In addition to asking the woman, Marjorie Gould, for this, Lumbrozo asked John Gould, her husband. In exchange for admission into her bed, Lumbrozo promised the Goulds half of his land and “halfe his stocke of hogs.” The Goulds denied Lumbrozo his request. Although Lumbrozo sued for defamation, he later withdrew his suit, aware that he could not prove his claims.⁴⁶ Lumbrozo believed his offer of hogs to the servant couple was worth enough to win him his objective.

⁴³ AOMOL, 3:22.

⁴⁴ Ibid., 3:30.

⁴⁵ Regarding marking, see: Ibid., 1:295. Regarding fencing, see: Ibid., 1:96.

⁴⁶ Ibid., 53:356-357.

When Maryland's General Assembly enacted legislation for the colony, they were sensitive to the worth of hogs and cattle, as well as the animals' appeal to thieves. In 1649, the General Assembly, at the urging of Governor William Stone, passed a law stating "whosoever shall steale wrongfully kill or carry away any marked swine of another mans shall pay double the value of such swine to the true owner thereof, and 200 lb. of Tob. more to him that shall inform thereof, and 300 lb. of Tob. more for a fine to the Lord Proprietor." In addition, any person found to have killed an unmarked hog had to pay 100 pounds of tobacco to the informant and 200 pounds of tobacco to the Lord Proprietor.⁴⁷ By 1662, the General Assembly passed an addition to this law, adding that county court justices were to sentence anyone caught stealing hogs for a second time to be branded in the shoulder with an H.⁴⁸ As the Assembly passed new statutes, they ordered stronger punishment of hog thieves. In 1671 the Assembly ordered that anyone convicted of hog stealing would be required to spend four hours in the Provincial Court's pillory, have his ears cropped, and pay triple damages to the owner of the hog or hogs. If the offender was again convicted for stealing hogs he would have an H branded onto his forehead. The Assembly deemed the third offense a non-clergyable felony, possibly punishable by death.⁴⁹

Given the worth of livestock and the legal implications of this crime, it is not surprising that residents of Kent County became upset when their hogs began to disappear in 1655. Women were not often perpetrators of this crime, but in this case, a woman did play an important role in the rash of Kent County hog thefts.⁵⁰ John and Jane

⁴⁷ Ibid., 1:251.

⁴⁸ Ibid., 1:455. The "H" indicated the person was a convicted hog-thief.

⁴⁹ Ibid., 2:278.

⁵⁰ Walker, *Crime, Gender, and Social Order*, 162; Norton, "Gender and Defamation," 16.

Salter had no hogs of their own. However, neighbors noticed that they frequently had pork at their house during the period when many hogs were disappearing.⁵¹ William Eliot and John Ringgold accused Salter, his wife, and a man who lived with them of theft before the Kent County court. They asked that the justices separate the three so that they could give individual testimony. The justices questioned the two men, but did not question Jane Salter, perhaps because justices relied more heavily on male testimony. Instead, the justices relied on the testimony of her neighbors. One woman testified to asking Jane Salter for some pork, since the Salters had apparently slaughtered a hog recently, only to have Jane respond that she only had pork thanks to the gift of a local widow. When the woman, doubting her answer, asked if the pork came from the man who threw the hog's intestines in the creek, Jane Salter said it had, although there was no reason for a man to hide intestines from an animal he killed legally.⁵²

Jane Salter freely shared the ill-gotten pork. Although she probably had no hand in killing the hog, she had cooked it and shared it with her neighbors, despite knowing that it did not belong to her husband. She further concocted a story about how the pig came to her, which differed from her husband's testimony that he had killed a wild boar. Since John Salter could not, or would not, produce the hog's ears to determine to whom it belonged, the justices freed him, although they demanded he not kill anymore hogs unless "twoe of his honest neighboures" were present for the slaughter.⁵³ The justices did not convict Jane Salter, although Eliot and Ringgold had included her in their charges. In 1639, the General Assembly had passed a bill stating that any person who harbored a felon or received goods from them would also be considered a felon, "except it be the

⁵¹ AOMOL, 54:42.

⁵² *Ibid.*, 54:43.

⁵³ *Ibid.*, 54:50.

felons wife.”⁵⁴ Although Jane Salter clearly knew about the crime, justices would be unlikely to prosecute her since the real thief was her husband.

The same cannot be said for county justices. The justices of the Somerset County court, for example, also dealt with rampant hog theft in their county. They found at least two women guilty of the crime and fined them. In March 1692, county commissioners twice tried servant Margaret Kenneday for killing and salting hogs. It was apparently the habit of her mistress to send Kenneday out to kill hogs and for Kenneday to obey this order. In one case, the Kent County commissioners tried Kenneday for joining two slaves in killing six hogs with the blessing of her master and mistress. For this crime, county commissioners sentenced Kenneday to pay “two thirds of that fourfold” that was due. Although Kenneday feared she would be whipped, the jurymen only fined her.⁵⁵ Later that same month, the county court tried Bridget Page, Kenneday’s mistress, for killing and eating two shoats and one barrow boar.⁵⁶ The hogs did not belong to Bridget Page; however, she knowingly sent her son, daughter, and servant, Margaret Kenneday, to kill the pigs. The justices found Page guilty of killing the shoats herself, while justices found Page, Kenneday, and the two Page children guilty of killing the boar. A trial jury fined Bridget Page four fold for all crimes, which her husband agreed to pay. Kenneday and the Page children were not punished for this latter crime.⁵⁷

Although women engaged in and conspired with perpetrators of hog theft, records indicate only one case of a woman engaging in a cattle theft and she apparently did not intend to kill and eat the cattle. In 1658, Simon Overzee sued widow Jane Eltonhead for

⁵⁴ *Ibid.*, 1:72.

⁵⁵ *Ibid.*, 405:174-176.

⁵⁶ A shoat is a young, weaned pig, under three years of age. A barrow is a castrated male hog.

⁵⁷ *Ibid.*, 405:181.

detaining one of his cows and her calf.⁵⁸ Eltonhead did not kill the cow, although it had supposedly died in the swamp. Perhaps because she had no intent to kill the cow or perhaps because justices could not determine if she intended to hide the cow from the court and Overzee, they ordered her to return the calf and one of her cows to Overzee as repayment.⁵⁹

Kent County hog thief, John Salter, was not ashamed to use his wife as an excuse for his bad behavior. First, he had allowed her to flaunt the pork of a stolen hog. Then he claimed she needed soap to wash his clothes when his neighbors suspected that he stole some soap from another Kent County man. He claimed the soap she used was a gift from another neighbor.⁶⁰ This certainly did not make Jane Salter a thief, but does illustrate how women were intricately tied to male property crimes. On the other hand, justices were sometimes unwilling to punish a woman who may have helped commit a crime with her husband. Tacitly, justices assumed that wives acted on their husbands' orders. In many ways this wrested culpability from the woman. The Salter case and others like it, such as the Carpenter case, illustrate this point. In 1669, the Provincial Court's grand jury heard Richard Tilghman's case against Simon Carpenter and his wife, Elizabeth. The Carpenters had assaulted Tilghman, cut off half his hair, and taken his cutlass, valued at ten shillings. Tilghman, the high sheriff of Talbot County, did not specify which Carpenter had initiated the assault or the theft; however, he accused both equally. Robbery, where a person was accosted and their goods taken by another, was considered a more serious offense than larceny because the perpetrators threatened the victim,

⁵⁸ *Ibid.*, 41:71.

⁵⁹ *Ibid.*, 41:253. It may be the calf who died when a neighbor attempted to feed it using a rag, which it consequently swallowed and choked on.

⁶⁰ *Ibid.*, 54:71.

causing fear and bodily harm.⁶¹ This was one of the rare cases of robbery in Maryland (and England) where a victim charged a woman with the assault. Members of the jury found the couple guilty and both Simon and Elizabeth begged for mercy. At the urging of the Attorney General, the jury sentenced Simon Carpenter to pay a fine of six shillings eight pence to the Lord Proprietor. The jury did not give Elizabeth Carpenter a sentence, despite her alleged actions in this case.⁶²

One common misconception is that husbands or other males persuaded women into criminal acts. Since women lost their individual legal standing when they married, their husbands were responsible for their actions. One historian notes that married women, because of their natural disorderly tendencies, were “under the legal tutelage of husbands.” A woman’s diminished legal capability indicated to some that they were incapable of exerting themselves in illegal ways. Clearly, this was not always the case. In England, women were more likely to participate with men in crimes like burglary; however, it was common for women to operate alone or with other women when committing petty larceny or simple theft.⁶³ Maryland was much the same. The women who did work with men (and got caught) often were in charge of the operation or the justices could not prove their guilt. In 1659, Jane Pauldin stood before the justices of the Provincial Court, accused of stealing goods valued at 12,000 pounds of tobacco from the estate of John Belcher. Like Mary Williams and Mary Clocker, Pauldin allegedly stole clothing and sewing items. In addition, Belcher’s administrator alleged that Pauldin had taken five hens and one chicken. The grand jury tried Pauldin as the sole perpetrator of this crime; however, two other colonists, James and Susannah Atchison, were charged as

⁶¹ Walker, *Crime, Gender, and Social Order*, 161.

⁶² AOMOL, 57:453.

⁶³ Walker, *Crime, Gender, and Social Order*, 171-172.

accessories before and after the crime. The petty jury returned a verdict of “ignoramus,” which literally translates to “we do not know.” In essence, the justices ruled that they could not give a verdict, as they were not convinced by the evidence presented.⁶⁴ John Titmarsh, Pauldin’s husband, appears to have had no role in the crime. Like in Mary Clocker’s case, Jane Pauldin purportedly operated without the help of her husband, although her accomplice seems to have had the assistance of her husband.

Another woman who operated alone with a much different result was Elizabeth Peterson. In 1700, the woman took goods valued at 500 pounds of tobacco from John Offley. Peterson, like many of the other women accused of this crime, stole sewing goods. Peterson twice promised that she would behave herself until her trial, but, being found guilty in March, 1701, Kent County commissioners forced her to find someone to post a bond for her further good behavior. Once the grand jury indicted Peterson, she pled guilty before the petty jury. The petty jurymen sentenced Peterson to receive four lashes and then spend fifteen-minutes in the Kent County pillory. They then ordered her to pay John Offley 880 pounds of tobacco and 664 pounds of tobacco to the court in fees.⁶⁵ There is no evidence that Peterson was a servant to Offley, or anyone for that matter. Her case stands out because she not only committed the crime herself; she faced her sentence without any male supporting her monetarily or legally. Although courts tended to lessen female punishment in these sorts of crimes, Peterson incurred a punishment that the justices usually reserved for males. This punishment implicitly acknowledged that the

⁶⁴ AOMOL, 41:432-433. This is the same Jane Pauldin who was tried in 1657 for bastardy.

⁶⁵ *Ibid.*, 730:85. Fifteen-minutes hardly seems to be a substantial time to spend in the pillory as punishment. However, throughout the eighteenth-century, Kent County justices sentenced most thieves to spend time in the county pillory. The time the convicted were sentenced to ranged from a quarter of an hour to one hour, depending on how much they were accused of stealing. Peterson, one of the earliest county residents sentenced to the pillory was whipped before standing in the pillory. By the 1720s, offenders were whipped varying times after their time in the pillory. See: *Ibid.*, 548:237, 567:87, and 567:115.

court understood Peterson exerting independent legal agency.

Women in Maryland sometimes committed crimes with other women or networks of women without the involvement of males. Perhaps the most notable of such cases occurred in 1689 in Somerset County. Elizabeth Ellis, wife of John Ellis, and Elizabeth Colebourne, wife of William Colbourne, went to visit John Reed. Reed was sick and dying, which made their visit appear neighborly. However, their intentions were anything but neighborly. Instead of consoling the dying man, four other women testified that Ellis stole clothing valued at 500 pounds of tobacco and wore them, while Colebourne stole clothing valued at 200 pounds of tobacco.⁶⁶ The crime seemed worse to the petty jurymen who heard the case because the goods the women took were intended for Reed's orphans.⁶⁷ Compounding the nature of this crime was the fact that Elizabeth Ellis's husband, John, was a known poultry thief. Elizabeth Colbourne's husband, William, was not as notorious as Ellis.⁶⁸ Apparently, witnesses did not implicate either man in the crime, although it is hardly likely that they were unaware of the crime since their wives both wore the stolen clothing.

The petty jurymen found both women guilty. They sentenced Elizabeth Ellis to post bond for her good behavior and court costs, along with the fees for the court officers. In addition, they ordered her to give twenty-five days service at the "Devideing Creeke" (a small local stream).⁶⁹ Her husband agreed to pay her bond and serve her twenty-five days of labor. The jurymen also sentenced Elizabeth Colbourne to pay costs associated with the suit against her and for her good behavior, but they did not sentence her to

⁶⁶ Ibid., 91:116.

⁶⁷ Ibid., 91:115.

⁶⁸ Ibid., 91:43. Colbourne was generally on the other side of the law, suing men for debt or taking them into custody for the Lord Proprietor. See Ibid., Volume 91.

⁶⁹ Others who were sentenced to work at the "Devideing Creeke" were tasked with bridge repair.

service. William Colbourne also agreed to pay the bond for his wife.⁷⁰ The jury took into account how much the two women stole when assigning their punishments. They sentenced neither woman to pay four times what they had stolen, as was the law, but the jurymen sentenced Elizabeth Ellis to service since she could apparently not pay a fine. In these cases, the women appear solely to blame for the crime, but their marital status saved them from having to repay their debt. Elizabeth Colbourne's social status could also have helped her cause. Unlike Elizabeth Ellis, Colbourne and her husband had never been servants. The jury found that Elizabeth Ellis' crime was worse than Elizabeth Colbourne's, perhaps because of the disparity in values or perhaps the justices heard evidence proving that Ellis was the leader of the crime.

Neighbors in Maryland, as in the mother country, were sometimes unwilling to turn a suspected thief over to the authorities, which may have kept the number of theft cases in Maryland low. Without an organized police force, law enforcement fell to the watchful eye of private citizens.⁷¹ Governor Seymour's 1707 letter to the English Board of Trade illustrated neighbors' occasional unwillingness to report criminal activity. Addressing piracy, another property offense, the Governor explained that Richard Clarke with a "Gange of Runaway Rogues" planned to burn the port of Annapolis, steal a ship, and turn to piracy. Although this troubled the Governor and members of the Assembly, they had trouble apprehending Clarke because Maryland citizens were "unwilling to bring him in" because he born in Maryland. They also tended to admire and fear Clarke because they knew him to be a "stout fellow."⁷² Although piracy was a far different

⁷⁰ *Ibid.*, 91:116-117.

⁷¹ Lorena Walsh, "Community Networks in the Early Chesapeake," in Carr, Morgan, and Russo, *Colonial Chesapeake Society*, 239.

⁷² AOMOL, 25:263.

crime than theft, this case illustrates one reason why neighbors could choose not to report a criminal.

Factors beyond fear or feelings of kinship led people not to report their neighbors' crimes. Although Jane Eltonhead admitted to detaining one of Simon Overzee's cows in 1658, at least one of her neighbors, a servant to another man, claimed that none of Eltonhead's cows had ever belonged to Overzee.⁷³ In the face of such overwhelming evidence to the contrary, it is unclear why this man would offer such contradictory testimony. Jane Eltonhead had her own cattle and she had admitted to keeping Overzee's cow. Perhaps the servant felt that the widow Eltonhead had not committed any crime or he knew that his master was complicit in taking the cow. In either case, the servant attempted to ensure that neither was implicated. This apparent reluctance to prosecute men and women involved in theft was a carry-over from England, where citizens were unwilling to see someone sent to the gallows over what could be seen as a rather trivial offense.⁷⁴ In Maryland, although the law said a person could be executed for theft, justices rarely administered such a punishment. This was particularly true after 1681, when county courts gained full jurisdiction over most theft cases. Nonetheless, it is likely that citizens remained silent regarding theft cases, as they did not wish to see the criminal of either sex punished.

Other Property Offenses

Women engaged in property crimes other than theft as well. In colonial Maryland,

⁷³ Ibid., 41:252.

⁷⁴ J.M. Beattie, *Crime and the Courts in England, 1660-1800*, (Princeton, N.J.: Princeton University Press, 1986), 167. This also led neighbors to undervalue the worth of stolen goods, to keep their accusation out of the realm of a capital crime.

justices of the Provincial Court accused women of crimes such as forgery and embezzlement. On at least one occasion, a plaintiff even insinuated that a woman helped perpetrate arson.⁷⁵ However, according to trial records, women were not as likely to engage in these sorts of offenses as they were to engage in theft. There are few commonalities among the few women who engaged in these sorts of offenses. Female servants, whose masters and other neighbors frequently accused them of theft, did not participate in other sorts of property crimes in the earliest years of settlement. The few women who were accused of such crimes were generally of various social standings.

Of property crimes that women were involved with, other than theft, the one they most frequently were accused of was embezzlement. Embezzlement is considered a form of theft, although it differs from common larceny because it involves the violator taking goods for their own use that had been legally entrusted to them.⁷⁶ In today's world, embezzlement is considered a white collar crime in which stolen money is usually intended for investment or public usage. However, in colonial society, most embezzlement occurred when one person was entrusted to administer the estate of a decedent and used their goods as their own. In 1657, Provincial Court justices charged Ann Dandy with embezzling items from her late husband's estate. It was the norm for a husband to name his wife as executrix of his estate and to leave her at least a portion of the estate. The Dandy case, however, was not normal. John Dandy was executed in 1657 for killing a man. Due to this sentence, the law dictated that Dandy forfeit his property to the Lord Proprietor. Ann, apparently not an independently wealthy woman, petitioned the

⁷⁵ Recall, Richard Dodd claimed Joan Nevill attempted to set Mary Roe's house on fire in 1663 during an argument, but nothing came of this charge. See Chapter 3 for more information on this case.

⁷⁶ Steven H. Gifis, *Law Dictionary*, Second Edition, (Hauppauge, NY: Barron's Education Services Inc., 1984), 153.

court that she should not be “left utterly destitute of competent subsistence for her own and relief of two orphans under her charge.” The court allowed this petition, granting Ann the full use and profits of her husband’s land, on the condition that she pay off all debts of her husband and report a full accounting of the estate to the next sitting of the Provincial Court. As was the case with most executors and executrixes, the justices obligated Ann Dandy to give security to the court that she would follow through on these demands.⁷⁷ The court treated this case as if Dandy had died without a will, which meant that Ann could not use the property for her own good when she still had debts to pay and an accounting to make to the Provincial Court.⁷⁸

Although the local sheriff took an inventory of the estate, Ann Dandy did not “put in good security” that she would pay her husband’s debts and be responsible for the estate.⁷⁹ It is likely that Ann Dandy did not pay her husband’s debts, instead taking the resources of the estate for her own use. In 1657, Provincial Court justices charged her with embezzlement. Unless Dandy made a full accounting of the estate, her property would be confiscated. Her unwillingness to follow the law cannot be attributed to her not understanding the law. Ann Dandy was no stranger to the courts. In May, 1655, John Dandy appointed her his attorney.⁸⁰ In December of the same year she sued John Milam for some mysterious felony that she believed he perpetrated against her. Milam countersued her (but not her husband) for defamation. Justices sentenced both Dandy and Milam to offer each other a public apology.⁸¹ Given this history, the court’s demands of her regarding her late husband’s estate should not have confused Ann Dandy, who in late

⁷⁷ AOMOL, 10:546.

⁷⁸ *Ibid.*, 2:326.

⁷⁹ *Ibid.*, 10:559.

⁸⁰ *Ibid.*, 10:443.

⁸¹ *Ibid.*, 10:432.

1657 or 1658 married Richard (Rice) Maddox.⁸²

Despite his new wife's apparent familiarity with the courts, Maddox took charge of the property himself. After justices declared that Ann "hath taken Imbezelled and Carryed away" part of her former husband's estate, Richard Maddox went before the Provincial Court in January 1658 to request that the justices grant him and his wife a reprieve until May 1659 so that he could have time to pay John Dandy's debts.⁸³ The justices agreed that, despite Ann's failure to follow through with her previous obligation, the Maddoxes could have until the following May to take an accounting of the estate, determine what debts were outstanding, and make arrangements for payment of those debts. If they did this, Richard and Ann Maddox could retain possession of John Dandy's estate.⁸⁴ There is no further reference to this particular case. For the next year, a number of men sued for repayment of debts from Dandy's estate. Once these cases were settled, Richard and Ann Maddox disappeared from the records, except for his appearance before the Provincial Court in 1676 for an unrelated case.

The Dandy embezzlement case was not unique. Although members of the General Assembly had not passed a law specifically relating to embezzlement, it was a serious concern in the colony. Often, when administrators gave an account of property in their control they claimed they could not give a full account of the goods or property or pay all debts associated with the estate because goods of the deceased had been "lost or imbezelled."⁸⁵ Although both sexes were accused of embezzling, this sort of accusation particularly cast doubt on an administratrix who stood to inherit her husband's property.

⁸² Maddox was familiar with the Dandy case. He, along with Emperor Smith, both surgeons, had been summoned to examine the body of the murdered man and dissect the servant's head.

⁸³ *Ibid.*, 10:559.

⁸⁴ *Ibid.*, 41:13.

⁸⁵ *Ibid.*, 8:471. For an earlier example, see: *Ibid.*, 3:292.

Ann Tovey accused Captain James Ringold of attempting to extort property from her after her husband died. He countered her claim, stating that she was unwilling to find her husband's will and that under her control "the Estate might be Imbezelled."⁸⁶ In 1694, Elizabeth Blackiston swore before the Council of Maryland that "she never Imbezelled any of the paprs of her decd husband relating to the publick Revenue of this Province."⁸⁷ Nehemiah Blackiston, Elizabeth's husband, had been the Receiver General of the Potomac district of Maryland, meaning he collected revenue from his district intended for the crown, from October 1692 to his death in October 1693.⁸⁸ Maryland's councilors had found a number of errors in the records, including accounting errors in Blackiston's records as early as 1692. The other members suspended Blackiston from the Council shortly before his death, but he retained his commission as Receiver General.⁸⁹ When death meant that Nehemiah could not attest to his guilt or innocence, suspicion of wrongdoing fell to Elizabeth Blackiston, his wife and administratrix. The commissioners were not only suspicious of her because of her relation to Nehemiah, but when the new Receiver General asked Blackiston for her late husband's paperwork, noting that refusal was a violation of the King's law, she claimed to know nothing of the matter.⁹⁰ Eventually, Elizabeth Blackiston surrendered the papers to the new Receiver General and escaped punishment.⁹¹

In the cases of both Tovey and Blackiston, they were accused of possible embezzlement for some particular reason. In Tovey's case, Ringold attempted to acquire

⁸⁶ Ibid., 17:291.

⁸⁷ Ibid., 20:183.

⁸⁸ Ibid., 20:183-184.

⁸⁹ Ibid., 20:19 and 20:30.

⁹⁰ Ibid., 20:131.

⁹¹ Ibid., 20:573.

land that Samuel Tovey may not have intended for him. Ann Tovey defended herself independently in court in the face of Ringold's accusations of possible embezzlement and of possibly not being married to Samuel Tovey. Although there remains no record of the verdict the councilors rendered in this case, it is likely they ruled in Tovey's favor. In 1687, two or three years after Tovey's death, Ann Tovey Joce was still administering Tovey's estate.⁹² Had Ringold succeeded in convincing the councilors of Ann Tovey's future plans to embezzle, they likely would have removed Tovey from her administrative position and appointed someone else. Blackiston's case was more relevant to colonial administration. Although she was likely trying to protect her husband's reputation by hiding the revenue records, nothing appears to have come of the incident. Once she returned the papers, Elizabeth Blackiston also continued to serve as her late husband's administratrix. Both women, it appears, were accused of embezzlement by males with an agenda. Yet, unlike an accusation of theft, these women's reputations do not appear to have been affected adversely.

These women, and others like them, were accused of embezzling from the estates of their husbands. However, at least one early eighteenth-century woman was charged with a different type of embezzlement – that of ammunition and arms. The public paid for the arms and ammunition of the colonial militia, so embezzling the arms and ammunition was a breach of public trust and a crime against the colony.⁹³ Members of the General Assembly debated a bill entitled “An Act prohibiting the Imbezelling his Lordship's Ordnance Armes Ammunition” as early as 1683.⁹⁴ By 1694, the General Assembly enacted another law that stated anyone who took the weapons or ammunition of the

⁹² *Ibid.*, 557:242.

⁹³ *Ibid.*, 3:287.

⁹⁴ *Ibid.*, 7:603.

colony had to restore the weapons or make restitution. Since this crime against the colony was such a serious matter, one particular case drew the attention of the General Assembly not the Provincial Court. In 1714, members heard the case against Philemon and Mary Hemsley for embezzling weapons and ammunition from the Annapolis magazine.⁹⁵ Members appointed a special committee to hear the details of this case. Their final report indicated that Mary Hemsley was not merely a spectator to this crime since the weapons had been placed in the trust of her previous husband Colonel John Contee. When Contee died in 1706, Mary married Captain Philemon Hemsley. Together, the two took three pistols, two muskets, one barrel of musket shot, one cutlass, and one barrel of gunpowder from the arms Contee controlled. They had no receipt that Contee had given them these items as a gift. Amos Garrett, James Harris, and Joseph Harrison, a special committee appointed for this case, recommended that the members of the General Assembly ask the Council of Maryland to sentence the two to make “satisfaction” for the missing goods, which the members did. They also sentenced the two to pay a total of 650 pounds of tobacco to various officials of the Assembly.⁹⁶

Like Hemsley, other women remarried and saw their new husbands embezzle their former husband’s goods. In 1667 Ann Pinner Attkins faced a similar situation. Unlike Hemsley, no one accused Ann Attkins of embezzling from her deceased husband’s estate, but her new husband had used her situation to take goods from said estate. Ann Pinner married George Attkins shortly after the death of her previous husband, Richard Pinner. Provincial Court justices appointed Ann Pinner Attkins executrix of Richard Pinner’s estate since he left no will. George Attkins, like Richard

⁹⁵ Ibid., 29:417.

⁹⁶ Ibid., 30:137-139.

Maddox, took it upon himself to control his new wife's estate. Two unnamed witnesses reported to the Provincial Court that Attkins had taken this opportunity to embezzle from the estate and that Pinner had, in fact, left a will. Once justices recovered the will, the Provincial Court again granted administrative duties to Ann Attkins, but barred her new husband from having anything to do with the estate to preserve what remained for Pinner's orphans. Of course, Ann Attkins was not accused of aiding in George Attkins' actions, but she may have been the one to hide Pinner's will, thus aiding Attkins and making her an accessory to this crime.⁹⁷ Although the crimes appear similar, especially since these women both were guardians of their late husbands' goods, there is at least one important difference between Ann Attkins and Mary Hemsley. Hemsley, unlike Attkins, aided her husband in embezzling from the colony. Attkins merely granted her new husband access to the estate intended for her children who were private citizens.

Women who embezzled were generally treated kindly by the courts. Although this was a serious offense it did not warrant the type of laws and punishment theft or other property offenses did. One final property offense that initially received a rather drastic punishment was forgery. In 1639, members of the General Assembly passed a law stating that forgery of certain papers, a type of embezzlement, was a felony, but one that was eligible for the benefit of clergy.⁹⁸ Despite this law, the justices never gave a forger the death penalty. In fact, in 1684, forger Richard Royston begged members of the Council of Maryland for a reprieve from his corporal (not capital) sentence. The Councilmen granted Royston a pardon.⁹⁹ This was not the case in 1663 when the Provincial Court

⁹⁷ *Ibid.*, 57:241.

⁹⁸ *Ibid.*, 1:72.

⁹⁹ *Ibid.*, 5:481.

tried Elizabeth Greene for having had a servant forge a receipt for her.¹⁰⁰

Forgery was not typically a female crime. Greene was one of the only women accused of forgery in colonial Maryland and likely one of the few in the early modern world. She did not receive the same lenient sentence accused female thieves or defamers did, but still managed to avoid death. Greene's action was in response to Robert King suing her current husband and her first husband's estate in 1659 for an unpaid debt. In the midst of this case, Elizabeth Greene presented a discharge of debt, or receipt, to the justices, claiming she had found the receipt with her late husband's papers and it proved the debt had already been paid.¹⁰¹ Unfortunately for Greene, a young male servant of hers testified that he had written the receipt, complete with falsified witness signatures, as instructed by his mistress.¹⁰² Whereas some masters or mistresses used their servants to steal goods or kill hogs, Elizabeth Greene used her servant's literacy to achieve her goal of maintaining the estate. It is not surprising that Elizabeth Greene could not write herself. Historians estimate that 27 percent of females in the Western world could sign their names. New England had a higher female literacy rate than the Chesapeake, so literate Chesapeake women fell below the 27 percent mark.¹⁰³ Early modern Maryland was essentially an oral culture where the General Assembly even passed laws against spreading false news.¹⁰⁴ Thus, it is not surprising that Greene needed someone else to write a receipt for her. Although she may have believed her crime was a secret, King's attorney obtained the servant's testimony.

¹⁰⁰ This is not the same Elizabeth Greene who was accused of infanticide, but it is the same Elizabeth Greene who twice was tried for defaming her neighbors with accusations of theft.

¹⁰¹ *Ibid.*, 49:44.

¹⁰² *Ibid.*, 49:53.

¹⁰³ Kenneth Lockridge, *Literacy in Colonial New England: An Enquiry into the Social Context of Literacy in the Early Modern West*, (New York: W.W. Norton, 1974), 42.

¹⁰⁴ AOMOL, 15:392.

A trial jury found her guilty of forgery. The grand jury sentenced her to “bee sett on the Pillory, & Loose one of her eares.” Afterwards, she had to spend one year in prison without bail and pay the plaintiff double the cost of what he sued for along with damages if he demanded.¹⁰⁵ This was one of the earliest cases of forgery in the colony, which perhaps explains why justices applied Greene’s sentence so strictly. Although authorities and colonists regarded forgery as a threat to the newly developing commercial society, forgery laws in Maryland developed slowly. Forgery was considered a misdemeanor in the mother country until the eighteenth century when forgery of certain documents became a non-clergyable felony.¹⁰⁶ As Maryland entered the eighteenth century, forgery must not have been punished severely. In 1708, Governor John Seymour addressed members of the General Assembly, imploring them to be stricter in their enforcement of the laws because the colony had fallen prey to immorality. Seymour pointed specifically to forgery as being treated as a “jest.”¹⁰⁷ Greene’s actions had broken the public trust, but the grand jury did not sentence her to death. Her sex did not cause the severity of her punishment, but rather the punishment was commensurate with how the law was applied at the time. Greene had also showed herself to be a bit of a public nuisance, having accused at least two others of theft in preceding years. It is likely they also considered Greene’s past actions when handing down a sentence.

Defamation and Theft

Defamation suits differed from typical property cases because it was a civil offense, not punishable corporally or capitally. Rather, the victims of slanderous words

¹⁰⁵ Ibid., 49:87.

¹⁰⁶ Sharpe, *Crime in Early Modern England*, 191.

¹⁰⁷ AOMOL, 27:183.

sought damages from their accusers in civil actions. Women statistically were particularly prone to loose talk in Maryland. Over half of all Maryland defamation suits in the seventeenth century involved a female. Women were involved in only 19 percent of all other civil offenses during the same period. Of all women defamed during the seventeenth century, the defamer accused slightly over 10 percent of theft.¹⁰⁸ Women were involved in other sorts of slander cases. They also, likely, were involved more heavily in criminal cases than civil cases. Yet, civil cases that involved theft accusations illustrate how heavily women were involved with civil affairs such as business. Not only did they accuse other colonists of theft, other colonists also accused them of theft. These cases demonstrate how important it was for a woman to retain her business reputation in the colony as well as a woman's understanding of the gravity of accusing another colonist of theft.

Defamation suits over theft accusations were particularly notable in the colonial Chesapeake. One historian estimates that in Virginia during the seventeenth century, one-sixth of all slander cases involved an accusation of theft.¹⁰⁹ Indeed, males accused other males of theft more than any other crime. Males frequently introduced legal action regarding theft accusations they saw as false. The vast majority of these accusations involved livestock.¹¹⁰ The number of defamation cases involving a theft accusation was similar in New England. During roughly the same period, in Connecticut, defamation suits involved an accusation of theft more than any other crime.¹¹¹ Most of these cases

¹⁰⁸ Norton, "Gender and Defamation," 4-5, 9.

¹⁰⁹ Horn, *Adapting to a New World*, 367. Horn draws his data from Norton, "Gender and Defamation," and Kathleen Brown's dissertation "Gender and the Genesis of a Race and Class System in Virginia," (Ph.D. diss., University of Wisconsin, 1990).

¹¹⁰ Norton, "Gender and Defamation," 15.

¹¹¹ Dayton, *Women Before the Bar*, 295.

were brought by males. Males must have viewed such accusations as particularly damaging, especially since they were more often involved with business matters. To be accused of dishonesty was tantamount to being accused of unsavory business practices. If a person could not be trusted, other Marylanders could refuse to do business with them.¹¹² Not only was it damaging to be called a thief by another settler in British North America, residents of colonial New France (Canada) were particularly sensitive to accusations of theft. The majority of male insinuated defamation cases in New France involved accusations of property mismanagement, including theft.¹¹³ Colonial women were more likely to prosecute for accusations of sexual misdeeds or witchcraft.

Although defamation cases regarding accusations of theft were more common for males than females, accusations of theft still troubled women in Maryland. One historian has found four cases in the printed records where one woman accused another of theft.¹¹⁴ Although a limited number, this underscores the fact that women knew of the potential damages a theft accusation could cause. Males, like females, accused women of being thieves, often to damage their reputation. Beyond legal ramifications, if justices could ascertain that such an accusation was true, the alleged thief stood to lose not only their reputation, but also believability and business associates. The potential of a theft accusation to discredit a person is why men accused women, especially female servants, of theft.

Masters sometimes accused their servants of theft in order to prejudice the court against them in other, unrelated cases. This seldom deterred court justices from believing

¹¹² Morgan, *American Slavery, American Freedom*, 153.

¹¹³ Peter N. Moogk, "'Thieving Buggers' and 'Stupid Sluts': Insults and Popular Culture in New France," *The William and Mary Quarterly*, Third Series, Vol. 36, No. 4, (Oct., 1979), 541.

¹¹⁴ Norton, "Gender and Defamation," 16. Norton also claims that women were untroubled by accusations of property offense.

the servant. Thomas Bradnox sued two of his servants for felony theft in 1660. The goods Bradnox accused John White and Sarah Taylor of stealing were mostly clothing items, although they were fine clothing items. Bradnox did not give the jury a value for what Taylor allegedly stole, but the worth had to be comparable to what Simon Overzee reported stolen. The twelve members of the Kent County grand jury did not find that the crime was a felony, refused to send it to the Provincial Court, and only ordered that Taylor and White return the goods to Bradnox. The servants were not punished for their attempted escape, although both were ordered to return to their master and mistress.¹¹⁵ Although the servants may have committed this crime, this may also have been an attempt by the Bradnoxes to subjugate their servants. Thomas and Mary Bradnox went to great lengths to control the behavior of their servants, particularly, it appears, Sarah Taylor. Taylor's court records while serving Bradnox are extensive. She had sued for her freedom in 1659, faulted her mistress for the death of another servant while also claiming to want to personally kill the woman in 1660, sued for her freedom again in that year while being accused of theft, and sued another time for her freedom, this time successfully, in 1661. Mary Bradnox must have viewed Taylor's service as essential to her lifestyle because after commissioners freed Taylor, Bradnox sued the commissioners of the Kent County court for compensation for the loss of her servant.

With a history as difficult as Sarah Taylor's, it is not surprising that the woman would attempt to escape from her master and mistress. In 1659, Taylor fled to the home of a neighbor, John Deere. Deere's servant, Katherine Gamer, witnessed Taylor hiding at Deere's house. Thomas Bradnox eventually called her to testify to this before the Kent County court. In an attempt to get his servant's testimony excluded, John Deere told the

¹¹⁵ AOMOL, 54:213.

justices that “he cann & will proue her [Gamer] a Thiefe & a Lyar.” It was not unusual for a master to claim a servant was lying to get testimony excluded – Sarah Taylor had the same charge leveled against her when she testified against Mary Bradnox in 1660.¹¹⁶ However, a theft accusation was extremely serious because of possible legal repercussions. The Kent County justices appear to have understood how serious such an off-hand accusation could be and they declared Deere’s claim irrelevant until he chose to prosecute the woman as he charged.¹¹⁷ Deere never prosecuted Gamer for theft; although he must have realized that had the justices believed Gamer to be a thief, they would have rejected her testimony to his benefit. In 1655, Deere had successfully sued a man for slander, having himself been labeled a thief by one of his neighbors. Deere won 500 pounds of tobacco.¹¹⁸ Hence, he obviously understood the seriousness of his accusation. Both Sarah Taylor and Katherine Gamer were accused by masters of theft in an attempt to suppress either their actions or words. Bradnox knew Taylor wanted her freedom and Deere understood that Gamer’s testimony would prove he illegally harbored a run-away servant. The Kent County justices, however, were aware that these accusations could be false.

One master even called his female servant a thief when he attempted to sell her service to another man, not when they were involved in legal action. James Neale said the nameless female maid was a good cook, made excellent butter, and had the potential to be a good maid to her new master. However, her qualities were hampered by the fact that, according to Neale, she was “a whore and a thiefe.” Nevertheless, Neale felt that Marshall still should desire her services because he could “breake her of thos faults.”

¹¹⁶ Ibid., 41:525.

¹¹⁷ Ibid., 54:168.

¹¹⁸ Ibid., 54:26.

Doubtlessly, Neale believed her vices could be beat out of her.¹¹⁹ It is perplexing why Neale would describe his servant in such unflattering terms. He stood to gain 2250 pounds of tobacco from the sale of her services and he claimed he had another girl who could take over her responsibilities. Yet, despite the fact that he claimed she stole and acted loosely, Neale made a provision in his dealings that if she was unwilling to go with Marshall she should stay Neale's servant. By accusing her of such damning vices, Neale may have been trying to undermine this sale. His reasons are unclear, but apparently Neale was attached to the girl or her service. An accusation of theft, because of its seriousness, could cut both ways. Either it could ensure that court justices would not trust the word of a servant or it could preempt a sale to another planter.¹²⁰

These three cases do not fully illustrate the implications a theft accusation had in the colony. Rather, the accusations appear to have been used as a sort of weapon against the female servants. The only record of the alleged defamation came in testimony related to other cases. More commonly, women would actively prosecute the party they felt “Slanderously abused” them in public.¹²¹ This was the case in 1657 when Mrs. Turner and Mrs. Ann Bussey sued another woman, Mrs. Elizabeth Jolly, for alleging that they had stolen linen from her. Jolly could not find some linens when another neighbor came to borrow them. Although both Turner and Bussey had been at Jolly’s house, a different neighbor swore that Jolly intended to “Swear Gooddy Turner was a Thiefe.”¹²² Although she chose not to press charges against Ann Bussey, Bussey joined with Turner in prosecuting Jolly for defamation. When Jolly could not prove that either of the women

¹¹⁹ Ibid., 53:169.

¹²⁰ Unfortunately for Neale his ploy did not work. Marshall still purchased the servant.

¹²¹ Ibid., 10:473.

¹²² Ibid., 10:477-478. Turner’s first name does not arise in court records. She is merely referred to as Mrs. Turner or “William Turner’s wife.”

stole from her, Provincial Court justices sentenced her to be put in jail until she would “in open Court acknowledge that She hath doth them wrong.” She also had to put in security to assure her good behavior, all of which she apparently followed through with.¹²³

It is noteworthy that the women’s husbands were not involved in this case, either on the side of the prosecution or defense. Generally, if a woman was married her husband was involved in her court cases involving defamation. In 1661, the Provincial Court’s grand jury heard Henry Pennington’s complaint against Elizabeth Greene for slandering his wife by accusing her of receiving stolen goods from one of Greene’s female servants. Greene appears to have attempted to get her maid to claim she had given the goods to someone else to avoid getting Rachel Pennington in legal trouble. However, she must have spoken of this enough for Henry Pennington to believe she was impugning his wife’s good name. The justices clearly felt that Greene had no place discussing this incident with her neighbors. They ruled in favor of the Penningtons, but did not sentence Elizabeth Greene to a fine or apology; rather, she just had to pay court costs associated with the suit.¹²⁴

The restraint shown by the justices in issuing such a mild punishment did not work to deter Elizabeth Greene from accusing others of theft. In 1663, John Williams prosecuted Greene for publicly calling Williams the “King of Thieves” and his wife the “Queen of Thieves.” Again, justices were forced to consider whether or not Greene’s words had harmed the reputation of Williams and his wife. Unlike the previous case, justices found that the charges levelled by Greene caused “no scandal” to the

¹²³ Ibid., 10:473.

¹²⁴ Ibid., 41:445.

Williamsses.¹²⁵ Perhaps, the justices believed that the squabbling between Greene and Williams would not be solved through punishment or perhaps they believed Greene had not actually said something false in her accusation of the Williamsses.

The difference between Greene's two slander cases rests not with her, but with the defendants. Rachel Pennington, the wife of another landholder, was Greene's social equal without any sort of criminal background. Greene's accusation could impact Pennington's reputation but not badly enough that the justices felt she deserved any reparation or apology. John Williams and his wife, Mary, had famously been tried for theft in 1660. Williams acknowledged his reputation, explaining to the court that this defamation was particularly harmful because Williams and his wife had been "formerly cleared by Law from those scandals."¹²⁶ Williams overlooked the fact that he and his wife had not been cleared by law, but rather the Lord Proprietor had pardoned the couple. He remained in debt to the Province. The Provincial Court justices allowed their biases to affect their ruling in these cases, not because Greene was a woman, but because John Williams had a history of theft. Her accusation against John and Mary Williams likely resonated with the justices, even though her alleged slander of Rachel Pennington may have been more factual.

Such slander was not a capital or corporal offense, but it could be costly to the convicted, both in monetary terms and reputation. Like in the Jolly case, most people of both sexes found liable of defaming a person were sentenced to offer the victim a public apology. This sentence diverged from English common law. Maryland justices appear to

¹²⁵ Ibid., 49:72.

¹²⁶ Ibid., 49:72.

have borrowed this punishment from Puritan law.¹²⁷ Just as defaming a person could diminish their honor, a public apology could diminish the honor of the accused. In many ways this served as equal retribution to the accused who was charged with public defamation of another colonist. This punishment was not unique to Maryland; justices often sentenced defamers in Virginia to apologize to their victims as well.¹²⁸ The Kent County justices sentenced Nicholas Browne to publicly apologize and pay 300 pounds of tobacco to John Deere for allegedly slandering his wife. In 1670, Eleanor King did not wait for the county court to officially convict her of defamation. Instead, she went into court and swore that she had only called Edward Burton a hog-stealer, which she swore she could prove to the community, “out of Passion.” Before Burton could prosecute his defamation case, King acknowledged her guilt, asked Burton for forgiveness, and agreed to pay court costs.¹²⁹ Eleanor King’s reputation may have suffered from her preemptive confession, but she evaded prosecution and she did not have to pay a fine. In a society where community relations were important, it appears more essential that an offender acknowledge their victim’s innocence.

Conclusion

The majority of criminals prosecuted in seventeenth-century English shire courts were accused of property offenses. In Maryland, the numbers were lower. At the county level, between 14 and 26 percent of all crimes tried were property offenses. At the Provincial (colonial) level, 19 percent.¹³⁰ Women contributed to these crimes, albeit at a

¹²⁷ Nelson, *The Common Law*, 105-106.

¹²⁸ Morgan, *American Slavery, American Freedom*, 153.

¹²⁹ AOMOL, 54:293.

¹³⁰ Horn, *Adapting to a New World*, 360.

lower rate than males. However, theft and embezzlement were both property crimes that involved females. They also were crimes of opportunity. The female perpetrators all had access to the goods they stole. They were further involved in civil defamation suits over supposed theft. Those who accused others of defaming them accused their neighbors and associates. As for the actual thieves, these women were the servants, neighbors, or wives of the people they stole from. As in England, the goods women stole were things useful to them.¹³¹ Frequently they were accused of stealing clothing, sewing items, or food. Some may have intended to sell the items they had stolen, but the law intervened before they could execute their possible plans. Others stole at a master or mistresses' behest. In general, these women believed they were benefiting themselves by stealing. Likewise, women charged with embezzlement all apparently thought they were helping themselves, their deceased husband, or their new husband by retaining these goods or documents. In certain cases, such as the Atkins case, the justices cast no suspicion on the woman despite evidence that she may have been involved.

Theft was the most prominent of property crimes in the earliest years of the colony. Even though the total number of cases amounted to less than 10 percent of all cases tried before the Provincial Court, authorities regarded it with such severity because theft had the potential to upend a colonist's commercial ambitions. In such an unpredictable environment with a newly developing commercial culture and strong community ties, theft had the potential to wipe out the living created by a planter.¹³² Since theft was potentially so devastating, accusing another colonist of theft could bring

¹³¹ Garthine Walker, "Women, Theft, and the World of Stolen Goods," in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker, (Chapel Hill, NC: The University of North Carolina Press, 1994), 89.

¹³² Horn, *Adapting to a New World*, 360, 265-266.

their reputation into question. Justices considered defamation a serious offense. Women were less likely than men to be accused of theft by another colonist.

Justices rarely applied physical punishment in cases of property crime. One of the few exceptions is the forgery case of Elizabeth Greene. The law dictated harsher punishments than justices often doled out to accused property offenders. Due to population strains, particularly involving women, Maryland authorities distanced themselves from the mother country. While Southerners were more likely to follow the law of England closely, when it came to property offenses authorities tended to consider the particular circumstances of their society before closely observing English law.¹³³ In England, women faced the same kind of punishment as men. There was a better chance that women would be freed from punishment in Maryland. Whether women knew of the leniency of the courts regarding them is unclear. A study of female involvement with property crime indicates that women were not afraid to involve themselves with business or community dealings in the colony. This helped them to understand the court system and become deeply involved, often independently. Authorities recognized their relevance to the colony and treated them not as inferiors but as an important commodity. This role helped women shape Maryland society and the laws.

¹³³ Salmon, *Women and the Law of Property*, 10.

Conclusion: A "Race of Convicts"?

One of the most important trends in American legal history, which is reflected in this dissertation, is the intersection of legal and social history.¹ Cornelia Hughes Dayton argues that using legal history to explain social phenomenon was exceptionally helpful for understanding the place of women in colonial society.² Historians continue to use this method. Prominent historians such as Mary Beth Norton have used legal records to explain how political philosophy affected the place of women in colonial society.³ Debra Meyers, who focuses solely on Maryland, uses similar records to study how women's religion affected their interaction with colonial society.⁴ In 2004, Russell Menard reviewed two books, *Killed Strangely: The Death of Rebecca Cornell* and *Anne Orthwood's Bastard: Sex and Law in Early Virginia*. These two books mark a shift away from traditional family history to using legal history to explain social phenomenon. Using legal records to understand the social and family life in the colonies continues.⁵

In many ways this dissertation is similar to these works. Using legal records offers interesting insights into both social and legal history. However, this should not mark a shift completely away from legal history. Terri Snyder urges Southern legal historians to "focus on the agency of individuals involved in the legal or criminal justice system."⁶

¹ In 1983, Marylynn Salmon explained two things. First "historians use the law as a baseline for understanding social evolution," and secondly that the law is important for women's historians to form an understanding of women's status in society. This is still an ongoing process. See: Salmon, "The Legal Status of Women," 131.

² Cornelia Hughes Dayton, "Turning Points and the Relevance of Colonial Legal History," in *The William and Mary Quarterly*, Third Series, Vol. 1, No. 1, (Jan., 1993), 15-17.

³ Norton, *Founding Mothers and Fathers*.

⁴ Meyers, *Common Whores*.

⁵ Russell R. Menard, "Early American Family and Legal History: New Ideas," in *Journal of Interdisciplinary History*, xxxiv: 3 (Winter, 2004), 435-440.

⁶ Terri Snyder, "Legal History of the Colonial South: Assessment and Suggestions," *William and Mary Quarterly*, Third Series, Vol. 50, No. 1, (January 1993), 26-27.

The preceding chapters have illustrated a small portion of this topic, although future projects will certainly illuminate this topic more completely. The women found in these pages understood how to function within the confines of the nascent legal system, a system which by most accounts was rather progressive.

Historians and other commentators have often stereotyped all colonists of the colonial South. Violence and criminality were nothing peculiar in Maryland. In 1769, on the eve of the American Revolution, Samuel Johnson described American colonists of both sexes as “a race of convicts.”⁷ Johnson’s assessment was highly politicized, but he has not been alone in criticizing the incivility of American colonists, more precisely colonists in the Chesapeake. Historians have long viewed the Chesapeake as disorderly and unsettled, populated by settlers of a character to match. Much of Maryland’s decidedly gloomy image stems from studies of Virginia, the other Chesapeake colony. Edmund Morgan describes Virginians as a collection of non-working “losers.”⁸ T.H. Breen views Chesapeake society as antithetical to the peaceful society found in New England. He notes that “Virginians rioted and rebelled” and “even in periods of apparent calm . . . were haunted by the specter of social unrest.”⁹ Russell Menard argues that a similar situation affected Maryland. Chesapeake colonists “found it difficult to create ‘well-ordered’ communities.”¹⁰ Douglas Greenberg offers one of the harshest commentaries on life in the Chesapeake colonies of Virginia and Maryland in the seventeenth century, explaining that they “were arguably among the most violent

⁷ James Boswell and John Wilson Crocker, *The Life of Samuel Johnson, LL.D* Volume 3, (London: John Murray, 1831), 188.

⁸ Edmund Morgan, *American Slavery, American Freedom*, especially Chapters 3 and 11.

⁹ T.H. Breen, *Puritans and Adventurers: Change and Persistence in Early America*, (New York: Oxford University Press, 1980), 110-116, 128.

¹⁰ Russell R. Menard, " Maryland's 'Time of Troubles': Sources of Political Disorder in Early St. Mary's," in *Maryland Historical Magazine*, Volume 76, No. 2, (Summer, 1982), 126.

societies in the American colonies.”¹¹ Given such assessments of life in the Chesapeake, it is easy to assume that the judicial system must have failed in times of unrest and that only elite groups participated in that system. However, even amidst such difficulties, the legal system continued to function. Women, a decided minority group in the colony, understood their rights and continued to exercise them.¹²

There are some impediments to fully exploring the legal status of women in Maryland. In spite of women’s prominent place within society and the legal system, finding the truth and reality about Maryland women can prove perplexing and even frustrating. As the preceding pages illustrate, it is not difficult to locate the historic woman in colonial Maryland. Women dealt prolifically with the law, often in spectacular ways but more frequently in rather mundane ways. Yet, women in colonial Maryland have been frequently defined by fictional portrayals of them. These fictions sometimes overtake the historical fact. One of the most popular fictional accounts of women is the 1999 film *The Blair Witch Project*, about an alleged eighteenth-century witch from Blair (now Burkittsville) Maryland. Although the tale has permeated popular culture and serves as one of the only introductions many people will have to Maryland witchcraft, this story has no historical grounding.¹³

The Blair witch likely was based on the story of suspected Leonardtown witch Moll Dyer. Dyer’s tale remains the most famous and long-lived witch story in Maryland. The St. Mary’s County Historical Society displays the rock Dyer supposedly leaned against as she froze to death, her handprint still in place. Newspaper articles, particularly

¹¹ Greenberg, “Crime, Law Enforcement, and Social Control,” 302.

¹² For more on images of disorder in Chesapeake society see Horn, *Adapting to a New World*, 334-335, especially n. 1.

¹³ Marion Gibson, *Witchcraft Myths in American Culture*, (New York: Routledge, 2007), 99-102.

in the twentieth and twenty-first centuries, have further fueled fascination with Moll Dyer's story.¹⁴ Streets and creeks in southern Maryland are named for Dyer and there is even a ballet about her ordeal. However, this fascination with Dyer's story, and continued belief that she truly existed, is misplaced. There is no historical record of Dyer's existence. She never appears in the written records and even her final artifact, the rock she left her handprint in, seems to raise more questions than it answers. Additionally, there seem to be few concrete facts surrounding Dyer's story.¹⁵

Witch stories continue to fascinate persons of all backgrounds, but they are not the only fictionalized accounts of women in colonial Maryland. Fictional stories have embellished the lives of two historical women in the colony in ways that have become part of the historical fabric of colonial Maryland. Perhaps the most noteworthy is Joan Toast. Joan Toast was one of the most dynamic characters in John Barth's highly acclaimed 1960 novel *The Sot-weed Factor*. In Barth's work, Toast is a prostitute who follows her love, the Poet Laureate Ebenezer Cooke, to Maryland with hopes of changing her life, only to contract a venereal disease. Eventually, Toast undermines the opponents of Cooke and restores his rightful estate to him through their marriage, only to die in childbirth. Toast is a particularly striking figure, portrayed as perhaps one of the most headstrong women in colonial Maryland. This fictionalized Joan Toast may be the most famous woman in the colony, immortalized in *The Sot-weed Factor*, and likely to live on

¹⁴ There are numerous retellings of Dyer's story. These are only two of the more interesting stories. Philip Love's article, published in 1974, was not only one of the first modern articles written about Dyer, the author is credited with finding Moll Dyer's rock. See: Philip Love, "Witch of St. Mary's Moll Dyer Lives on in Legend – and a Rock," *Baltimore Sun* supplement (October 20, 1974), 24-26. More recently, in October 2009, a story retelling the Dyer story appeared in the Southern Maryland Newspapers Online. See: Jason Babcock, "Witch or not, Moll Dyer legend lives on," *SoMdNews.Com*, http://www.somdnews.com/stories/10302009/entetop175334_32180.shtml, (Accessed November 10, 2009).

¹⁵ Dyer's story generally is thought to have occurred in 1697, but other stories place Dyer's ordeal as late as the 1790s. See: Gibson, *Witchcraft Myths*, 100.

in American literary studies. Despite this graphic portrayal of Toast, her real record is much more limited, even mundane. Unlike Moll Dyer, there is proof that Joan Toast lived in Maryland, albeit much earlier than when Barth set his work.¹⁶ In Maryland records, she is not a prostitute with a heart-of-gold; rather she was a woman who entered into an ill-advised and perhaps illegal marriage to known womanizer William Mitchell.¹⁷ Beyond this, little is known of Joan Toast Mitchell.

One of most fascinating women in colonial Maryland, who has drawn her own share of attention, both accurate and fictionalized, is Margaret Brent, a woman who left a more in-depth record than Joan Toast Mitchell. Brent's story has fascinated historians who have viewed her as everything from America's first feminist to America's first female lawyer to a woman who simply had the right connections.¹⁸ However, her story has also fascinated at least one fiction writer. In 1944, Dorothy F. Grant published *Margaret Brent, Adventurer*, a highly sentimental fictionalized account of Brent's time in Maryland. Grant based her story in fact, as much as possible, but noted that her novel "is a work of *FICTION*, and therefore, *under no circumstances should it be relied upon for historical reference.*"¹⁹ When published, Grant's novel earned a review in the *Mississippi Valley Historical Review*, wherein the reviewer called it "competent" and "sound."²⁰ With such reviews it is not surprising that at least one modern writer took Grant's fiction as fact. John T. Marck reproduced portions of a letter allegedly sent by Cecil Calvert to

¹⁶ Barth's work begins in 1699 and stretches over a period of years, while Toast's alleged marriage to William Mitchell occurred in 1652. See: Barth, *The Sot-weed Factor*, 3.

¹⁷ AOMOL, 10:173.

¹⁸ Margaret Brent's importance to popular history is perhaps best illustrated by the fact that she was once the subject of a segment of Paul Harvey's radio program "The Rest of the Story."

¹⁹ Dorothy Fremont Grant, *Margaret Brent, Adventurer*, (New York: Longmans, Green and Co., 1944), x. Grant also authored a children's book about Margaret Brent entitled *Margaret Brent: Adventurous Lady*.

²⁰ P.D.J. Review of *Margaret Brent, Adventurer* by Dorothy Fremont Grant in *The Mississippi Valley Historical Review*, Vol. 31, No. 3, (Dec., 1944), 444.

Margaret Brent regarding his displeasure with actions she took as his attorney.²¹ The letter is scathing and fascinating, but unreal. Grant acknowledged that she manufactured the letter since Calvert's letter to the General Assembly regarding Brent is no longer in existence.

The lives of Maryland women have clearly been embellished and even falsified for the sake of entertainment. This tends to create an unrealistic picture of women in the colony. Yet, reality is often as interesting as any fictionalized account of women in the colony. Women in colonial Maryland broke the law. They practiced the dark arts, they were abusive, murdered people, committed property crimes, engaged in sexual impropriety, and gossiped about their neighbors. Neighbors and colonial authorities considered these women criminals. Women were also on the receiving end of a host of criminal activities. Neighbors falsely accused them of practicing witchcraft, of stealing goods and livestock, and abusing other colonists, both servant and free. Other colonists gossiped about women just as they gossiped about men. In addition to fighting to preserve their good names, they sometimes had to fight for their property rights. All of this brought them into contact with Maryland's legal system. Generally, they faced the juries of the county courts, although more intense crimes brought them before the Provincial Court. Certain women, such as Margaret Brent, pursued her cause all the way to the General Assembly. In short, the women examined herein and throughout the colony dealt adeptly with authorities and understood the law that they faced.

Maryland, despite its closeness with Virginia and eventual shift to a type of justice similar to that found in Virginia, was unique. Of course, the two Chesapeake

²¹ John T. Marck, "Margaret Brent: America's First Feminist," *About Famous People*, <http://www.aboutfamouspeople.com/article1014.html>, (Accessed November 10, 2009).

colonies had much in common. An imbalanced sex ratio, economic reliance on tobacco, and endemic disorder caused by political changes in England were all features of the Chesapeake. However, the religious character of Maryland and the high level of disorder caused by various rebellions against Lord Baltimore set the colony apart from the other British North American colonies.²²

Much remains for scholars to explore regarding Maryland's legal history. In the future, historians can benefit from deeper explorations of the meaning of the law. Why did legislators make the statutes they did and what do these laws tell us about Maryland's legal and social past? Women clearly played an important part in Maryland's legal culture. The main questions posed by this research is how did women interact with Maryland's legal system and how did authorities react to women who interacted with that legal system in the seventeenth century and into the early eighteenth century. The cases examined in this dissertation illustrate that women not only understood the law and legal system of the colony, but also understood how to work in the confines of the law. Justices and jurymen did not disregard women's ability as legal creatures.

Margaret Brent may have been the most outstanding woman in regard to dealing with the justice system. However, Mary Bradnox perhaps provides a better illustration of female legal agency. Considered by at least one historian to have been America's second female attorney, Bradnox had a more ignominious reputation than Brent.²³ Mary Bradnox was married to one of Maryland's most notorious figures - Kent County commissioner

²² The question of how religion affected the legal system in women, especially in regard to women, is important but diverges from the theme of this dissertation. Historians have written several excellent works regarding religion including Tricia Pyne, "The Maryland Catholic Community, 1690-1775," (Ph.D. diss., The Catholic University of America, 1995) and Terrar, *Social, Economic, and Religious Beliefs*.

²³ Wilstach, *Tidewater Maryland*, 123.

Thomas Bradnox.²⁴ She arrived in Maryland in 1644 and first appeared in records of the Provincial Court in 1648.²⁵ Although Mrs. Bradnox had little to do with this particular case, her inclusion in testimony set the stage for her later interactions with the courts.

From this point forward, Mary Bradnox's interactions with the Maryland courts increased and varied broadly. Mary Bradnox served as her husband's lawyer several times, she went before the Provincial Court to demand payment of a promised cow, and acted as a witness in several cases before both the Provincial and Kent County courts. Kent County justices also appointed her a member of the "jury of women" in a 1662 case involving a servant woman allegedly impregnated by another colonist. Bradnox and the other women were unable to determine if the woman was pregnant. The justices of the court believed the opinion of the women's jury, although they still demanded security from the alleged father to save the county from having to support the child if the woman proved pregnant.²⁶ Bradnox also undertook activities typically associated with males. In particular, in 1661 she went before the Kent County court and entered her personal cattle mark.²⁷ This move indicated that Mary Bradnox owned cattle independently and was willing to take legal steps to protect her private property.

Although Mary Bradnox was generally involved with rather ordinary legal matters, she sometimes found herself on the other side of the law. At least two men sued Bradnox for defamation. The first case, initiated by John Salter, occurred in 1654. In this

²⁴ Thomas Bradnox was tried before the Kent County court for drunkenness and swearing in 1653. He also took part in Ingle's Rebellion, on the side of Ingle. In addition to imprisoning Captain Robert Vaughan and killing two of his servants, Margaret Brent alleged that Bradnox had stationed his rebel troops in her home, burned some of her buildings, and killed and ate some of her cattle. Some of his other transgressions are found in earlier chapters of this dissertation. Oftentimes, when county or Provincial justices tried Thomas Bradnox, Mary Bradnox was tried along with him.

²⁵ AOMOL, 4:448.

²⁶ *Ibid.*, 54:233.

²⁷ *Ibid.*, 54:208, William Cox deeded one calf to Mary Bradnox, not her husband. See: *Ibid.*, 4:471.

case, Bradnox appointed a male friend to serve as her attorney.²⁸ The following year, Henry Carline also sued Mary Bradnox for defamation.²⁹ Although the outcome of these cases is not known, Bradnox did not cease relations with either of these men. In 1655, she served as a witness against Carline in a case regarding his alleged adultery. As for Salter, he drunkenly had sexual intercourse with Mary Bradnox in 1656 and then assaulted her husband. This case brought the three before the Kent County court, but nothing apparently came from it.

Mary Bradnox was not simply a common gossip. Justices of the Kent County court also tried Mary and her husband for murdering one of their servants, although members of the Provincial Court eventually dismissed this case. Finally, the Kent County justices also tried the couple for abusing one of their female servants, eventually freeing the woman. By 1661, Mary Bradnox had dealt with the courts extensively and built much knowledge about legal proceedings in Maryland. After the Kent County commissioners freed her servant, Bradnox sued each man for 220 pounds of tobacco. A special commission appointed by Governor Charles Calvert decided in Bradnox's favor, awarding the woman 660 pounds of tobacco as compensation for her loss.³⁰

This case is truly important. Mary Bradnox was a cruel woman. Her speech was apparently loose, her servants hated her, and she, like her husband, had an affinity for alcohol. Yet, Mary Bradnox understood how the legal system worked, regardless of her sex. Even when she lost a case, such as the case of her servant girl, Mary Bradnox illustrated a clear understanding of her legal rights and willingness, in some ways like Margaret Brent, to challenge authorities in order to benefit from the case. Bradnox's final

²⁸ Ibid., 54:27.

²⁹ Ibid., 54:42.

³⁰ Ibid., 54:234.

interaction with the legal system occurred in 1664 when Mary Bradnox and her second husband, John Viccoridge, “Sett up their names to sue out for quietus ests.” Thomas Bradnox died in 1661, leaving all his land and goods to his wife. He also named her executrix of his estate.³¹ Provincial Court records reveal only one instance of someone suing Mary Bradnox for reparations out of her husband’s estate. However, by suing for quietus est, Bradnox and her new husband sought to remove themselves as executors of Thomas Bradnox’s estate. Provincial Court members acquitted the couple of their duty after they provided a complete inventory of the Bradnox estate. After that, Mary Bradnox disappeared from colonial records.

The extensive legal career of Mary Bradnox is representative of the many ways women interacted with Maryland’s legal system. Authorities still punished women for bearing bastards more strongly than the males who fathered the bastards. Women also were the subjects of neighborhood gossip, although men were also the subject of different topics of loose talk.³² However, women in colonial Maryland showed a real proficiency at dealing with the law. Women understood their own disadvantages, but also used the courts to achieve their goals, even if their goal was only to have the rights to a cow. They served as attorneys, acted as witnesses, served on matron’s juries, demanded their own private property rights, and sued other colonists. As for this last action, women not only used the courts to retain their good name (as Joan Michel), but sued men and women for property. For their part, justices and jurymen did not disadvantage women because of their sex. As illustrated by the case of Mary Bradnox, authorities viewed her complaints

³¹ Prerogative Court (Wills), 1635-1674, 1, 154, [MSA SM 16-1].

³² Mary Beth Norton describes the different types of gossip and how it was a gendered concept in “Gender and Defamation,” 9. Also, Norton points out that women were particularly susceptible to defamation accusations as a disproportionate number of cases involving women were defamation cases.

as legitimate. Not all women were of such an elite status as Bradnox, but all women, even servants, were capable of having their voice heard in court. Perhaps this is because, as one historian has noted, before 1660 Maryland had a “complex and sophisticated judicial system.”³³ Part of this sophistication was found in Cecil Calvert’s “Instructions to Colonists,” when he instructed that they give “justice . . . without partiality.”³⁴ Aside from this injunction from the Lord Proprietor, Council members and other lawmakers acted independently, creating laws independent of the Lord Proprietor and England that directly met the needs of the colony. The persistence of the practice of benefit of clergy, along with the tendency for Provincial Court officers to dismiss the death penalty whenever they found it did not fit the crime, indicates that Maryland’s judiciary was aware not only of inequities in the law, but of colonial circumstances that made constant capital punishment untenable.³⁵ These Councilors and justices had to pay special attention to the limited number of colonists, particularly women. With a sex ratio of one woman to every three males, Maryland could scarcely afford to implement a draconian legal system that drove women away from the colony. Justices, therefore, treated women as cognizant legal creatures. Neighbors and authorities still subjected women in the colonies to moral judgment as in England and they faced the often disproportionate punishment of the times. However, as this dissertation argues, women understood the legal system and used the rights authorities gave them, often independently and frequently with their own interests in mind. As demonstrated throughout this dissertation, women in early colonial Maryland illustrated through their interactions with the colony’s

³³ Nelson, *The Common Law*, 125.

³⁴ “Lord Baltimore’s Instructions to Colonists,” in Lee, *The Calvert Papers*, 140.

³⁵ Peter G. Yackel, “Benefit of Clergy in Colonial Maryland,” in Monkkonen, *Crime and Justice in American History*, 836-837.

judicial system and their awareness of their legal rights that they were so much more than Samuel Johnson's "race of convicts."

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