

“TO PLUNDER ALL UNDER THE PETTY-COATE”:
PROSECUTING SEXUAL CRIME AND GENDERED VIOLENCE
IN THE ENGLISH REVOLUTION

by

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This dissertation by Talya Housman is accepted in its present form by the Department of History as satisfying the dissertation requirement for the degree of Doctor of Philosophy.

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LIST OF ABBREVIATIONS

TNA	The National Archives
SHC	Somerset Heritage Centre
ERO	Essex Record Office
LMA	London Metropolitan Archive
ESRO	East Sussex Record Office
KLHC	Kent Library and History Centre
BED	Bedfordshire Archives and Record Service
WSRO	West Sussex Record Office
NRO	Norfolk Record Office
WSHC	Wiltshire and Swindon History Centre
DERB	Derbyshire Record Office
SRO	Staffordshire Record Office
NYOR	North Yorkshire County Record Office
LANC	Lancashire Archives

INTRODUCTION

In 1651, John Organ stood before Elinor Huggins with a knife saying that “hee could as willingly thrust it in, & lett out his heart bloud, as receive a flatt deniall from her [for sex].” It had not always been this way between them. They had shared a platonic friendship that Huggins valued deeply. Despite gossip from the town about their relationship being inappropriate since Organ had a wife and children, Huggins enjoyed his company and their “religious discourses.” However, once Organ’s father confronted him about the relationship, Organ admitted to Huggins that he wanted more. From there, things deteriorated quickly. Organ asked Huggins “to goe w[i]th him into Holland” and told her that though his children were “neare” to him, compared to Huggins they were “no better then dirt.” Organ grew increasingly unhinged, threatening to drown himself in a well, and finally drew a knife to his chest. Huggins had had enough. On June 10th, she sued for the peace against Organ explaining that she was “tyred w[i]th his continuall sollicitacons, & terrified w[i]th his outrageous carriage.”¹

Only a year earlier and less than a hundred miles away, a pamphlet titled “The Good Womens Cryes against the Excise of All Their Commoditie” by “Mary Stiff” attacked Parliamentarians Oliver Cromwell, Miles Corbet, Henry Mildmay and William Lenthall not only for their political carriage, but for their behavior towards women:

Such Hypocrits can never scape,
that murther, steale, and commit Rape;
for them the mouth of hel doth gape,
wide ope[n]; were ever people deceiv'd thus?
was ever King so glorious?²

¹ Information of Elinor Huggins (Wiltshire Quarter Sessions, 10 June 1651) A1/110/1651H (150), WSHC. [C3315]

² Mary Stiff, *The good vvomens cryes against the excise of all their commodities. Shewing, as the businesse now stands, they are in no case able to bear such heavy pressures, and insupportable burthens, occasioned*

In actuality, “Mary Stiff” was likely the pseudonym of a male author. The publication details were littered with bawdy jokes. The pamphlet was printed at the “Signe of the *Hornes*” which was on “*Queen-street,*” and were to be “sold at the *Dildoe*” which was on “*Distaffe-Lane.*” Cuckolding, in the reference to horns, as well as the many phallic symbols in “dildo,” “distaff,” and obviously, the name Mary “Stiff” all suggest this fell into the well-trodden genre of men writing as women for propagandistic purposes. Much of this pamphlet involved women fantasizing about revenge on the men of high politics.

Both of these accounts discussed sex. Both were written in the same period. Both involved a supposedly female individual calling for the end of male sexual impropriety. Yet, in most ways, these two accounts have little in common: one was authored by someone pretending to be a woman, the other actually was authored by a woman; one was short, the other long; one was specific, the other general; one bawdy, the other begging for decency; and so on. The most obvious difference between them, though, are their respective representations of sexual order: Stiff’s passage represents an opened hellmouth of sexual impropriety, while the unwanted attention described by Huggins is quotidian and familiar. These two texts express the fundamental disparity between public print and court records during the English Civil Wars and Interregnum: one represented sexual and gendered order as torn completely asunder, left in chaos; the other showed daily life continuing unchanged by the pens and guns of political revolution.

by the iuncto's new impost on their wares, whereby they are like to fall into great want of trading, and putting off their commodities at the prizes formerly, to the utter undoing of their deare husbands and families for ever (London, 1650), 2. [Line breaks added to emphasize rhyme]

This dissertation examines, both qualitatively and quantitatively, the common law court prosecution of illegal sex, domestic violence, and bastardy, between 1642 and 1660. Overall, it finds that the prosecution of sexual crime and gendered violence changed little in number or substance during the civil wars and Interregnum despite voluminous print alleging rampant sexual misconduct and an imploding gender order. This consistency in the regulation of sex and gender argues for social stability during a period of extreme political upheaval.

HISTORY & HISTORIOGRAPHY: A VIEW OF SOCIAL UPHEAVAL

The eighteen years of the English Civil Wars and Interregnum, from 1642 to 1660, were no doubt a period of deep political instability. State institutions fought with one another and were regularly replaced. No individual or institution was exempt from the possibility of being removed, dissolved, or ousted. The volatility was unprecedented. The burgeoning sphere of public print churned out propaganda in which individuals of all political persuasions fought political battles using the language of sex and gender. If one follows contemporary public print, it seems logical to infer that a collapse in social order, particularly the order governing gender structures and sex, followed the political crisis. During the civil wars, the visions peddled by politicians—both those of hope and promise as well as those of fear—often coalesced around views of gendered and sexual order. Sharon Achinstein observed that it is “precisely at the moment when English citizens were engaging in conflict over political ideologies that we see a preoccupation with the

institutions of marriage and the family.”³ Gender, in the words of Ann Hughes, “was central to the images of inversion that sought to evoke a polity in crisis.”⁴

Georgia Wilder argued that during the civil war, “images of the body politic became transgendered.” In satires, “women ruled the country, and men were impotent both sexually and in affairs of state.”⁵ Many scholars, including Laura Gowing, Martin Ingram, Bernard Capp, and Susan Amussen, have noted metaphors drawn between the gender order and the political order.⁶ These metaphors expressed both the disorders of the current state and the ideals of what a properly governed state *should be*. Most common were analogies between the king and the head of the household in his capacity as father or husband or master. However, these metaphors had a rich array of social violations to choose from in describing political rights and wrongs. For example, in December 1650, *Mercurius Politicus* defended the new Cromwellian Commonwealth government using an analogy of rape:

If a woman had once desired to marry a man, and it hapned afterwards that he took her away from her friends by force and ravish’t her, she was no less his lawfull wife, than if she had been given to him by her Parents; for, the marriage became lawfull, though she were forced, if she gaue consent to it after the Rape: So likewise, the same might be said of him, or Them, who hold a Government over men by force after a Victory.⁷

³ Sharon Achinstein, “Women on Top in the Pamphlet Literature of the English Revolution,” *Women’s Studies* 24, no. 1 (1994): 156-7.

⁴ Ann Hughes, *Gender and the English Revolution* (New York: Routledge, 2012), 132.

⁵ Georgia Lee Wilder, “Public Voices, Private Closets, and Naked Truth” (Unpublished University of Toronto PhD Dissertation, 2000), 56.

⁶ Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford; New York: Oxford University Press, 1996); Martin Ingram, “Courtship and Marriage, c. 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abingdon; New York: Routledge, 2013), 313–27; Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England* (New York: Springer, 1996), 117–45; Susan Dwyer Amussen, “Gender, Family and the Social Order, 1560-1725,” in *Order and Disorder in Early Modern England* (Cambridge; New York: Cambridge University Press, 1985), 196–210.

⁷ *Mercurius Politicus Comprising the Summ of All Intelligence* (London, 5 – 12 December 1650), Issue 27, 2.

These political metaphors were not only used overtly in political print, but also in mid-seventeenth-century fiction. Perhaps the most striking example of mid-seventeenth-century rape language arises from Lady Hester Pulter's unfinished prose piece *The Unfortunate Florinda*.⁸ As Peter C. Herman convincingly argues in his discussion of Pulter's work, in the 1640s, "rape and political theory were inextricably intertwined with each other," and Pulter wrote of "sexually rapacious monarchs" who justified "their actions by explicitly using the language of absolutism, the political ideology for which Charles I lost his head."⁹ Nor were sexual metaphors reserved for political wrongs. Georgina Wilder has noted that many metaphors of the civil wars were "conjoining of military cowardess [sic] and sexual failure."¹⁰ Siân Reynolds has noted that border conflicts frequently dipped into the linguistics of rape, using terms such as "crossing the threshold," while alliances used the terminology of marriage, discussing the pre-alliance dance as "flirtation" and more.¹¹

Public print did not just use sex and gender metaphorically. Royalist propagandists accused "Roundhead" (or Parliamentary) opponents of actually committing sexual transgressions and Parliamentary writers leveraged similar claims against the "Cavaliers" (or Royalists). Each side in the English Civil Wars had not one, but a constellation of narratives made up of practical allegations of sexual misconduct. Hughes writes that "if

⁸ Hester Pulter, *Poems, Emblems, and the Unfortunate Florinda*, ed. Alice Eardley (Toronto: Iter Inc.; Centre for Reformation and Renaissance Studies, 2014).

⁹ *ibid.*

¹⁰ Wilder, "Public Voices, Private Closets, and Naked Truth," 57.

¹¹ Siân Reynolds, "Scottishness and Gender History in a Cross-Border/International Context: Reinventing the Border?" in *Gendering Border Studies* (Cardiff: University of Wales Press, 2010), 192–207.

royalists were unmanned by debauchery and whoredom, Roundheads in Cavalier propaganda were emasculated through cuckoldry, in a parallel and inter-dependent sexual smear.”¹² In the words of Jason McElligott, sexual libel was “one of a repertoire of rhetorical devices that the royalists used to attack and undermine their enemies.”¹³ Stereotypes of Royalists, or “Cavaliers,” were categorized by impropriety and excess, notably drinking and whoring. There was an equal and opposite set of propaganda smears against Parliamentarians. In Hughes’ words, “if promiscuous Cavaliers had too much sex, repressed Roundheads had too little.”¹⁴

Accusations against individual public figures were rife. Chief victim of these smears on the Royalist side was likely Charles himself. Hughes notes that “challenging Charles I’s fitness to rule involved denying his proper manliness; a man in thrall to a foreign, Catholic wife, could not be effective either as man or king.”¹⁵ Lucy Hutchinson, the wife of one of the regicides, decried “male princes [who we]re so effeminate as to suffer weomen of foreigne birth and different religions to entermeddle with the affairs of state,” and claimed that the queen, “by her priests affected with the meritoriousnesse of advancing her owne religion...applied...her greate witt and parts” to keep power “over her husband, who was enslav’d in his affection only to her.”¹⁶ Parliamentarians published the

¹² Hughes, *Gender and the English Revolution*, 95.

¹³ Jason McElligott, *Royalism, Print and Censorship in Revolutionary England* (Woodbridge; Rochester: Boydell Press, 2007), 51.

¹⁴ Ann Hughes, “Manhood and the English Revolution,” in *The Palgrave Handbook of Masculinity and Political Culture in Europe*, ed. Christopher Fletcher, Sean Brady, Rachel E Moss, and Lucy Riall (London: Palgrave Macmillan UK, 2018), 233. It is worth noting that these divisions did not chart perfectly. Men on both sides were accused of whoredom, debauchery, and cuckoldry.

¹⁵ *ibid.*, 230.

¹⁶ Lucy Hutchinson and Julius Hutchinson, *Memoirs of the Life of Colonel Hutchinson* (London: Printed for Longman, Hurst, Rees, Orme, and Brown, 1822), 134-35. Hutchinson was a translator, poet, and

correspondence of the king and queen which they had captured following the battle at Naseby and made ample use of it to show “that the Kings Counsels are wholly governed by the Queen.”¹⁷

Parliamentarians fell victim to gendered and sexual slander as well. Thanks to his publicly known cuckoldry in the early seventeenth century, as well as his wife’s attempts to poison him, Parliamentarian General Robert Devereux, third earl of Essex, was a perfect target of Royalist propaganda.¹⁸ Whether simply called “Cuckold Essex” or “Impotent Essex,” or the subject of more complex accusations, Essex was a popular victim of the Royalist press.¹⁹

These slanders were also deployed against the wives of male public figures. Royalist writer John Cleveland criticized Parliamentarian general William Waller, “whose

biographer in her own right. Her identification here by her husband is used solely to express her political views.

¹⁷ *The Kings cabinet opened: or, Certain packets of secret letters & papers, written with the Kings own hand, and taken in his cabinet at Nasby-Field, June 14. 1645. By victorious Sr. Thomas Fairfax; wherein many mysteries of state, tending to the justification of that cause, for which Sir Thomas Fairfax joyned battell that memorable day are clearly laid open; together, with some annotations thereupon. Published by speciall order of the Parliament* (London: Printed for Robert Bostock, 1645), 43.

¹⁸ Essex publicly admitted that he had not “lain by the lady Frances two or three years last past, and hath no motion to know her, and he believes never shall.” Subsequent to this testimony, his marriage was annulled and James I forced him to return Frances’ dowry. Interestingly, at the time, Frances was the one who bore the brunt of the sexual scandal, perhaps because of the ensuing Overbury affair. See John S Morrill, “Devereux, Robert, third earl of Essex (1591–1646), parliamentarian army officer,” *Oxford Dictionary of National Biography* (Oxford University Press: January 3, 2008) accessed 22 November 2018. <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-7566>; and Alastair Bellany, “Howard [married names Devereux, Carr], Frances, countess of Somerset (1590–1632),” *Oxford Dictionary of National Biography* (Oxford University Press: January 3, 2008) accessed 22 November 2018. <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-53028>.

¹⁹ See for example *Dregs of drollery, or Old poetry in its ragges a full cry of hell-hounds unkennelled to go a king-catching: to the tune of Chevy-chace* (London, 1660), 8; *The sence of the House or the opinion of some Lords and Commons, concerning the Londoners petition for peace* (1643); John Cleveland, *Poems by J.C. with additions* (1651), 42.

Lady is the *Conquerour*.”²⁰ Waller’s wife, Anne, was well known to contemporaries—and to modern scholars—as the prototypical parliamentary wife, overstepping her place by speaking in public. However, this was not an exclusively Royalist tactic.²¹ Hughes identifies Katherine Stuart, Lady Aubigny, as playing “a parallel role in parliamentary pamphlets to that occupied by Lady Anne Waller in the royalist press.”²² Though both sides engaged in these slanders, “unruly women” were significantly more essential to the Royalist narrative of Parliamentarians. In fact, one Royalist pamphlet claimed that Parliamentarians had “no lesse then 50000 or 60000 men ready” because “the Women (who as M. Peters did instruct [Illegible word] in the Pulpit, have huggd their Husbands into this Rebellion).”²³ In other words, the Parliamentary *women* had goaded the men into their rebellion.²⁴

²⁰ John Cleveland, *The character of a London-diurnall with severall select poems* (1647), 4.

²¹ Jennifer Francis Copley, “The Construction and Use of Gender in the Pamphlet Literature of the English Civil War, 1642-1646” (Unpublished University of Southampton PhD Dissertation, 2010), 185-99.

²² Hughes, “Manhood and the English Revolution,” 234.

²³ Samuel Butler, *A letter from Mercurivs Civicvs to Mercurius Rusticus, or, Londons confession but not repentance shewing that the beginning and the obstinate pursuance of this accursed horrid rebellion is principally to be ascribed to that rebellious city* (1643), 13.

²⁴ It is interesting that this was also the logic used against Irish women in propaganda about the 1641 uprising. Andrea Knox writes that “as far as the English were concerned, women, and wives specifically, incited their male kin to rebel.” See Andrea Knox, “Testimonies to History: Reassessing Women's Involvement in the 1641 Rising,” in *Irish Women and Nationalism: Soldiers, New Women and Wicked Hags*, ed. Louise Ryan and Margaret Ward (Dublin: Irish Academic Press, 2004), 23. In fact, the Parliamentarians defended their slaughter of Welsh female camp followers after the Battle of Naseby by claiming to have mistaken the “Welsh” women for Irish women. In a letter defending their battlefield actions to William Lenthall, they acknowledged that their “soldiers [proceeded,] sometimes not sparing the women” but defended the actions against Irish women arguing that “many [Irish] women being manifestly very deep in the guilt of this rebellion... exciting [their husbands, friends and kindred] to cruelty against the English acting therein, and in their spoils even with the rage and fury with their own hands.” See Great Britain. Royal Commission on Historical Manuscripts et al., *Calendar of the Manuscripts of the Marquess of Ormonde, K. P.: Preserved at Kilkenny Castle* (H. M. Stationery Office, 1903) Vol II: 130-31.

Nor were these allegations of sexual misconduct reserved for the high and mighty of each side. Any country at war in the early modern period had to contend with the specter of soldiers roaming the country. Public print during the English Civil Wars loudly proclaimed the sexual threat constituted by soldiers—a perceived threat readily believed by a populace primed for these fears by the violence of the continental Thirty Years’ War. In addition to plunder and destruction, rape and seduction were well publicized dangers. Stories circulated, like one in *The Debauched Cavalier*, which reported the story “of two Cavalliers who ravished one Maide while another stood by and held the Horses...besides the many [other] Rapes and Chamber Adulteries...that cannot be free from their Campe.”²⁵ Preachers spread stories about Scottish soldiers coming over in order “to ravish mens wives and to deflower virgins.”²⁶ Soldiers in the Queen’s Army were accused of mass rape and gang rape.²⁷

The burgeoning newsbook press on each side of the conflict often used rapes committed by enemy troops as fodder in their political mudslinging. The Parliamentary newsbook *Mercurius Britanicus* regularly reported on the vicious actions of the Royalists who “spoile, and ravish, and def[l]ower wives and maides in so bestiall a manner, that divers of them have lately died by their violence.”²⁸ Parliamentarians accused Lord

²⁵ George Lawrence and Christopher Love, *The debauched cavalier: or the English Midianite. Wherein are compared by way of parallel, the carriage, or rather miscarriage of the cavalleeres, in the present reigne of our King Charles, with the Midianites of old. Setting forth their diabolicall, and hyperdiabolicall blasphemies, execrations, rebellions, cruelties, rapes, and robberies* (Printed by L.N. for Henry Overton: London, 1642).

²⁶ Clive Holmes, *The Suffolk Committees for Scandalous Ministers, 1644-1646* (Ipswich: Suffolk Records Society, 1970), 57.

²⁷ Mark Stoyle, *Soldiers and Strangers* (London: Yale University Press, 2005), 98-99, 137.

²⁸ *Mercurius Britanicus* (7 July - 5 August 1644) No. 46, 363.

Wentworth of encouraging his soldiers “to plunder Townes, and ravish Virgins” and when he finished this rousing speech to his troops, according to Parliamentarians, “the whole Crew in an applausive manner, cryed out.”²⁹ Nor were Parliamentarians alone in these allegations.³⁰ *Mercurius Rusticus*, a Royalist newsbook, claimed that during the Earl of Stamford’s pillage of royalists in Herefordshire in October 1642, Parliamentary soldiers threatened Thomas Swift’s wife that they would “Plunder all under the Petty-coate, and other uncivil unmodest words, not fit for them to speake or me to write.”³¹ Many of these

²⁹ William Wentworth, *A Barbarous and inhumane speech spoken by the Lord Wentworth, sonne to the late Earle of Straford vvhether he encourageth his souldiers to plunder townes, and ravish virgins with many more inhumane outrages: also a protestation made by the said Lord VVentworth: wherein he sollemnely protesteth to revenge his fathers death on all the Kingdome : likewise a true relation of a cruell combate that happened betweene the said Lord Wentworths regiment, and the regiment under the command of Prince Robert* (London: Printed for I.H. and William Somerset, 24 December 1642). This is one of many examples. See also the accusations that Royalists “most cruelly pillaged...ravishing the women and maidens in a most barbarous manner, shewing themselves to be the true sonnes of the Rebbels in Ireland.” *A Trve and exact relation of a great overthrow given to the cavalliers in Winchester by Colonell Hurrey, Colonell Browne, and some others of the Parliaments forces, on Tuesday last: with the certaine number and names of the prisoners, hor[s]e, armes, and other provision that was taken: as it was sent in a letter to the Houses of Parliament on Thurseday last* (London: Printed for Frances Leach and Francis Coles, 17 December 1642). Royalists “bestly assaulted many Womens chastity” and “offer[ed] violence to the honest Matrons and Beautifull Virgins.” *Prince Rvperts burning love to England discovered in Birminghams flames, or, A more exact and true narration of Birmingham's clamities under the barbarous and inhumane cruelties of P. Ruperts forces [electronic resource]: wherein is related how that famous and well affected town of Birmingham was unworthily opposed, insolently invaded, notoriously robbed and plundered, and most cruelly fired in cold blood the next day by Prince Ruperts forces* (Printed for Thomas Vanderhill, 1643). See also G.H., *Abingtons and Alisburies present miseries. Both which townes being lately lamentably plundred by Prince Robert and his cavaliers. Expressely related as it was certified to some of the Honourable the High court of Parliament* (London: Printed by Rich Herne, 1642). Prince Rupert’s troops supposedly committed “many horrid Rapes, and insolencies” *Perfect Diurnall of Some Passages in Parliament* (London, February 12, 1644 - February 19, 1644), Issue 30. Royalists “ravished women, defloured Maydens, and dispoyled men of their goods.” Ralph Hopton, *A message sent from the Lord Hopton, and Sir Richard Greenville to the Prince, and a fight in the isle of Guernsey. Also, the King of Portugals answer to a message sent unto him by Generall Blake. With a speech made to the Lord Cromwel in behalf of the Lord Mayor, aldermen, and Common-Council of the City of London. And the last transactions in Scotland, with a letter from their declared King, their preparations for his coming to Edinburgh, and several Acts made in that Parliament* (London: Printed for J. C., 1650).

³⁰ John Morrill has argued that the ability to better pay the New Model Army made it rapidly “the only reasonably well-disciplined army in the kingdom.” See John S Morrill, *Revolt in the Provinces: the People of England and the Tragedies of War, 1630-1648*, 2nd ed. (New York: Longman, 1999), 148-49.

³¹ *Mercurius Rusticus* (Oxford, 8 July 1643), 60.

publications were issuing direct responses to Royalist claims. Royalists tended to recount specific instances of violence against women rather than general accusations that all Parliamentarians were rapists. Parliamentarians favored the opposite strategy. Regardless, both clearly incited fears of sexual crime by soldiers. In January 1645, *Perfect Passages of Each Dayes Proceedings in Parliament* recorded complaints to Parliament about soldiers committing rape.³² Even the State Papers contained many references to soldiers' violence, "including the burning of houses, the ravishing of maidens, and the theft of private property."³³

These fears were unique neither to civil war armies nor to England. Soldiers, regardless of affiliation, were seen as a dangerous enemy to much of the populace. Much of the populace was surely aware of the horrible stories emanating from other parts of Europe.³⁴ Prints such as *The Lamentations of Germany* advertised foreign atrocities,

³² *Perfect Passages of Each Dayes Proceedings in Parliament* (London, 22-28 January 1645), Issue 14.

³³ David Cressy, *England on Edge: Crisis and Revolution, 1640-1642* (Oxford; New York: Oxford University Press, 2006). Cressy was quoting CSPD 1640, 156, 190, 196.

³⁴ See Geoff Mortimer, *Eyewitness Accounts of the Thirty Years War 1618-48* (Houndmills; New York: Palgrave, 2002); Andreas Bähr, "Remembering Fear: the Fear of Violence and the Violence of Fear in Seventeenth-Century War Memories," in *Memory Before Modernity: Practices of Memory in Early Modern Europe* (Leiden: Brill, 2013), 269–82; Charlotte Woodford, "Women as Historians: the Case of Early Modern German Convents" *German Life and Letters* 52, no. 3 (1999): 271–80. Mortimer, Bähr, and Woodford were citing, among others, Jan Peters, "Ein Söldnerleben Im Dreißigjährigen Krieg. Eine Quelle Zur Sozialgeschichte," *Revue De L'IFHA, Date De Parution De L'Œuvre*, 1993; Horst Leuchtman, "Zeitgeschichtliche Aufzeichnungen Des Bayerischen Kapellaltisten Johannes Hellgemayr 1595–1633: Ein Beitrag Zur Münchner Stadt-Und Musikgeschichte," *Oberbayerisches Archiv Für Vaterländische Geschichte* 100 (1975): 142–221; R Großner and Freiherr B von Haller, "'Zu Kurzem Bericht Umb Der Nachkommen Willen': Zeitgenössische Aufzeichnungen Aus Dem Dreißigjährigen Krieg in Kirchenbüchern Des Erlanger Raumes," *Erlanger Bausteine Zur Fränkischen Heimatforschung. Sonderband*. 40 (1992); Gerlach and Hans Zimmermann, "Das Tagebuch Des Schulmeisters Gerlach in Albertshausen: 1629-1650," 1991; Hans Conrad Lang, "Tagebuch Des Hans Conrad Lang, Bürgers Von Isnay Und Beisitzers Von Biberach, Ulm Und Memmingen, Weiland Kriegskommissär In Kaiserlichen, Schwedischen Und Spanischen Diensten Aus Den Jahren 1601-1659," 1930; Caspar Preis, *Bauernleben Im Zeitalter Des Dreißigjährigen Krieges : Die Stausebacher Chronik Des Caspar Preis, 1636-1667*, ed. Wilhelm A Wilhelm Alfred Eckhardt, Helmut Klingelhöfer, and Gerhard Menk (Marburg an der Lahn, 1998); Peter Thiele and Bernhard Elsler, *Peter Thiele's Aufzeichnungen Von Den Schicksalen Der Stadt Beelitz Im 30jährigen Kriege: Unbekannte Chronik Eines Zeitgenossen* (Schneider, 1931); Otto Von Guericke and Friedrich Wilhelm Hoffmann, *Geschichte Der Belagerung, Eroberung Und Zerstörung Magdeburg's*

including whole sections on rapes committed in Germany and Italy.³⁵ Specific violent events, such as the sacking of Magdeburg in 1630, generated a wealth of stories of rape, amongst other atrocities.³⁶

Yet the populace feared more than rape from soldiers. Soldiers' use of alcohol and prostitutes were also considered social threats. In *The Mercenary Souldier*, published in 1646, the soldiers speak of prostitutes and ale in an easy, degrading manner, looking for "a Female of an easie rate/Let's see her, for my flesh doth tumults breed."³⁷ Newsbooks often cast the victims of soldiers' sexual threats not as prostitutes in alehouses, but as everyday English women. *Mercurius Aulicus* told the story a Scottish soldier who, despite already having both a wife and a mistress, felt the need to seduce a Leicestershire woman.³⁸ Soldiers seducing married women and virgins were common themes in ballads. Broad sides like the popular ballad of *The Soldier and Peggy* advertised women leaving their husbands

(Magdeburg: E. Baensch, 1860). See also Christoph Brandis, *A Case of Rape* (1636), Christoph Brandis, *Gains and Losses: Quartering and Occupation* (1636), Martin Bützinger, *Torture: Swedish Cocktail and Waterboarding* (1640), Barbara Cautzner from Witzhausen, *Letter to Her Dear Husband* (1625), Friedrich Flade, *The Military Occupation of Olmutz* (1642-1643), Augustin Gŷntzer, *Quartering Soldiers: A Household Under Stress* (1633), Peter Hagendorf, *A Soldier's Fortune. Everyday Life and Surviving the War* (1627-1631), Peter Hagendorf, *A Soldier's Various Ways of Dealing with Women* (1634-1641), Peter Hagendorf, *Peasant Violence Against Soldiers, and Its Retribution* (1641), Volkmar Happe, *Lupus Lupo Lupus* (1639), Volkmar Happe, *Violence Between Peasants and Soldiers* (1627), Anna Immick from Allendorf, *Letter to the Soldier Balthasar Wahs* (1625), Maria Anna Junius, *Fear of Rape, Management of Relations, and Sweet Pacifications* (1632), Michael Krafft, *Letter to Anna N.* (1625), Christian Lehmann, *Hounding Civilians* (1638), Margaret, the Mosbachers' Maid, *Letter to Her Dearest Brother* (1625), Johann Georg Maul, *The Burden of Contributions on a City and on a Household* (1637), Thomas Schmidt, *Contribution Arrangement for the City of Wernigerode* (1626) in Hans Medick and Benjamin Marschke, *Experiencing the Thirty Years War: a Brief History with Documents* (New York: St Martins Press, 2018).

³⁵ P. Vincent, *The Lamentations of Germany* (London: Rothwell, 1638) 17-19.

³⁶ F.W. Hoffman, ed., *Otto von Geuricke: Geschichte der Belagerung, Eroberung, und Zerstörung Magdeburg's* (Magdeburg: Baensch, 1860).

³⁷ *The mercenary souldier* (London, 1646).

³⁸ *Mercurius Aulicus* (Oxford, 6 - 12 October 1644), E. 16 (3).

for soldiers. Peggy proclaimed “Ile leave my owne husband, /to travel with you.” The ballad ended by begging the “good wives” who heard the song to “Live at home with your husbands/ and do them no wrong.”³⁹

Marauding soldiers were made even more threatening given the absence of decent men from their homes.⁴⁰ The dearth of men, contemporaries worried, left women sexually unsatisfied. *The Virgins Complaint*, published in 1643 and narrated through the voice of women, complained that the only men left were “bodies of [old] age” who were in “no way acquainted with a tender Virgins qualme and longings.”⁴¹ There was a repeated refrain of women having “no man that will rub up our memories, or delight our sense, which have quite lost their feeling for want of bodily exercise...having no body to warm our frosty constitutions.”⁴² Thus women were forced to wander the city, without any man to “offer his body to her service,” like “solitary Turtles without mates.”⁴³ The openly stated female sexual hunger implicitly threatened that women would turn to whoredom, adultery, and

³⁹ Richard Crimsal, *A new ballad of the souldier and Peggy. To a new northerne tune* (London: Printed by J. Okes for F. Coules, 1640). This ballad was printed at least twice in 1640 and at least one more time between 1654 and 1664.

⁴⁰ Military service was only one wartime threat which took men from their wives. Disease was also more common in wartime. In addition, men were more likely than women to be victims of violence from soldiers.

⁴¹ *The virgins complaint for the losse of their svveet-hearts, by these present wars, and their owne long solitude and keeping their virginities against their wills: presented in the names and behalves of all the damsels both of country and city* (London: Printed for Henry Wilson, 1643), 3. It was reprinted in 1646. See *The virgins complaint for the losse of their sweet-hearts, by these present warres, both in city and country. And their owne long solitude and keeping their virginities against their wills: presented in the names and behalves of all the damsels both of city and country by sundry virgins of the City of London. Whereunto is added a mournful dittie, written by some of the wittiest wenches among them* (London, 1646), 1.

⁴² *The Widovves lamentation for the absence of their deare children and suitors and for divers of their deaths in these fatall civill warres* (London: Printed for John Robinson, 1643), 6.

⁴³ *The humble petition of many thousands of wives*, 5.

fornication to achieve sexual satisfaction. The most strident examples in this genre were the mock female petitions from the early 1640s in which the female speakers were “driven by sexual starvation” and argued that with all “the suitable men too busy fighting in the country to fornicate with them in the city, England face[d] the future collapse of its population.”⁴⁴ However, the hysteria over women’s insatiable appetites might have been intentionally created as propaganda. Literary scholar Marcus Nevitt argues that these texts, written by men, “lampooned real women’s mass petitions so that material need” was “rewritten as sexual appetite,” and “the desire for political agency” was “transformed into an insatiable and apparently collective libido.”⁴⁵

Perhaps most emblematic of the fears of soldiers committing sexual crimes was the character of Captain Carlo Fantom, the semi-mythological Croatian captain who initially joined the wars on the Parliamentary side, but then switched to the Royalist side before finally being hanged by the Parliamentarians for rape. The earl of Essex saved Fantom from hanging for rape not once, but twice at Winchester and St. Albans before the captain was finally hanged at Oxford.⁴⁶ Fantom was quoted as flippantly remarking in John Aubrey’s *Brief Lives*: “I care not for your Cause : I come to fight for your halfe-crowne, and your handsome woemen.”⁴⁷ As with most of the “foreign rapist” figures, part of

⁴⁴ Chantelle Thauvette, “Female Impersonation and Patriarchal Resilience in Early Stuart England” (Unpublished McMaster University PhD Dissertation, 2013), 113.

⁴⁵ Marcus Nevitt, *Women and the Pamphlet Culture of Revolutionary England, 1640-1660* (Burlington: Ashgate, 2006).

⁴⁶ John Aubrey and Oliver Lawson Dick, *Aubrey's Brief Lives*, 1998, 105-6. Given the slanders against Essex, this presented an interesting matrix of parliamentary sexual deviance: the cuckold preserving the rapist. Thank you to Dr. Andrew Hopper of the University of Leicester for introducing me to the character of Carlo Fantom and to Samuel Fullerton of the University of California, Riverside, for insights into the interesting Fantom/Essex matrix.

⁴⁷ *ibid.*

Fantom's danger was the potential to contaminate the morals of the native English soldiers with whom he served. In fact, it was reported that Fantom "was not content only to ravish himself, but he would make his soldiers do it too, and he would stand by and look on."⁴⁸

In addition to public print rhetoric using sex and gender, the years of the civil wars and Interregnum also appear to have opened certain opportunities for women. The disruption of war and the rising influence of certain religious groups allowed for an increased presence of women in public life. Frontiers are often spaces of gender experiment, where women are allowed more rights. Many scholars have argued that the 1640s and 1650s provided these opportunities to women. As Christopher Hill asserted, the "Revolution helped many women...to establish their own independence."⁴⁹ Women of the upper classes were sometimes forced to defend their homes militarily while their husbands were away at war, including Royalist Lady Mary Bankes and Parliamentarian Brilliana Harley.⁵⁰ Wives petitioned local courts and Parliament on behalf of their husbands' estates.⁵¹ Many scholars have explored how radical sects and godly preaching particularly offered women new opportunities in the 1640s and 1650s.⁵² Achinstein argues that the

⁴⁸ *ibid.*, 106.

⁴⁹ Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (London; New York: Penguin Books, 1991), 321.

⁵⁰ Between 1643 and 1645, Lady Bankes defended Corfe Castle, through a siege from Parliamentarians. Harley defended Brampton Bryan Castle through a three-month Royalist siege in 1643.

⁵¹ Achinstein, "Women on Top in the Pamphlet Literature of the English Revolution," 136; Patricia Higgins, "The Reactions of Women, with Special Reference to Women Petitioners," in *Politics, Religion and the English Civil War* (London: Edward Arnold, 1973).

⁵² See, for example, Phyllis Mack, *Visionary Women: Ecstatic Prophecy in Seventeenth-Century England* (Berkeley: University of California Press, 1995); Dorothy Paula Ludlow, "'Arise and Be Doing': English 'Preaching' Women, 1640-1660" (Unpublished Indiana University PhD Dissertation, 1978); Patricia M Crawford, *Women and Religion in England, 1500-1720* (London; New York: Routledge, 1993).

“structural social crisis” was deeply related to “the political crisis in which women were taking on new roles.”⁵³ Thus, the “domestic arena was undergoing transformation” at least partially because “women were struggling to participate in public activity like never before.”⁵⁴

Chief among the causes for a large shift in “sexual” order during the 1640s and 1650s, according to historians, was the influence of Puritanism. As Capp has written, the 1650s “witnessed a sexual regime that was perhaps harsher than any before or since.”⁵⁵ The laws were “more severe” and “there were puritan justices throughout the country eager to enforce them.”⁵⁶ Puritan sexual morals are so famed for restrictive adherence to traditional values that the term “puritanical” has come to mean rigid inflexibility. Two of the most commonly noted features of the Puritan influence on sex and gender were the 1653 Marriage Act and the Adultery Act of 1650.

The 1653 *Act touching Marriages and the Registering Thereof* required a spoken contract between husband and wife, presided over by a justice of the peace and formally witnessed by other community members.⁵⁷ This marked a change from previous weddings

⁵³ Achinstein, “Women on Top in the Pamphlet Literature of the English Revolution,” 156.

⁵⁴ *ibid.*, 157, 136.

⁵⁵ Bernard Capp, *England's Culture Wars: Puritan Reformation and Its Enemies in the Interregnum, 1649-1660* (Oxford: Oxford University Press, 2012), 151.

⁵⁶ *ibid.*

⁵⁷ Marriage reform did not come out of nowhere. Political crises had delayed calls for marriage reform which had been present since the 1630s. Throughout the debates over the Marriage Act, MPs were clear in their desire to stabilize and clarify marriage. In September 1654, some MPs expressed concerns over the stringency of the requirements for a valid marriage, fearing that rather than ending marital disputes, it would lead to increased confusion over inheritance. In response, the matter was referred to a committee in order to explore the results of the legislation in the year since its enactment. The matter was referred to another committee in 1656 and disagreements over civil marriage continued in 1657. Though civil marriage narrowly passed with enough votes to continue in 1657, the legislation was altered to accept non-civil forms of marriage. While this was clearly an attempt to avoid invalidating marriages of those trying to

performed by ministers. It also required that all marriage, births, and deaths be registered civilly, instead of by parish. Some historians argue that the 1653 Act caused a collapse in marriage.⁵⁸ Others argue that the rise of Puritan morality resulted in massive declines in bastardy rates during the 1650s.⁵⁹ These scholars depend on parish register evidence, which shows large declines in illegitimacy ratios, particularly in the period immediately following the 1653 Act.⁶⁰

The 1650 *Act Against several Atheistical, blasphemous and Execrable Opinions* made adultery a capital crime and mandated punishments for fornication and incest, among other sexual crimes.⁶¹ Historians have long noted that this act was rarely enforced.⁶² One

marry in good faith, it only served to confuse the issue further. Christopher Durston notes that “one MP was particularly disturbed that they might as a result have validated all marriages contracted since 1653 without parental consent.” See Christopher Durston, *The Family in the English Revolution* (Oxford; New York: B. Blackwell, 1989), 71. See also, Rebecca Probert, *Marriage Law and Practice in the Long Eighteenth Century: a Reassessment* (New York: Cambridge University Press, 2009), 169; Shannon Miller, “Maternity, Marriage, and Contract,” *Studies in Philology* 102, no. 3 (July 1, 2005): 352.

⁵⁸ Durston, *The Family in the English Revolution*.

⁵⁹ Richard Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England* (New York: Manchester University Press, 1996).

⁶⁰ Peter Laslett, Karla Oosterveen, Richard Michael Smith, and Cambridge Group for the History of Population and Social Structure, eds., *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan* (Cambridge: Harvard University Press, 1980).

⁶¹ A previous bill against adultery in 1601 stripped husbands of their wives’ lands and wives of their tenancies in dower. Other bills appeared in 1604, 1614, 1621, 1626, 1628, and even weeks before Parliament’s dissolution in January 1629. Though Puritans had attempted to make adultery a felony in 1584 and 1604, most of these bills were more lenient and imposed economic penalties and milder corporal punishments such as whipping. Many of these failed not because of lack of support but rather for technical issues of wording or detail. See Keith Thomas, “The Puritans and Adultery: the Act of 1650 Reconsidered,” in *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*, eds. Donald H Pennington, and Keith Thomas (Oxford: Clarendon Press, 1978), 273.

⁶² See *ibid.*; Faramerz Dabhoiwala, *The Origins of Sex: a History of the First Sexual Revolution* (New York: Allen Lane, 2012), 48; Capp, *England's Culture Wars*, 151; Stephen K Roberts, “Fornication and Bastardy in Mid-Seventeenth Century Devon: How Was the Act of 1650 Enforced?” in *Outside the Law: Studies in Crime and Order, 1650-1850*, edited by John Rule (Exeter: University of Exeter Press, 1982); John Cordy Jeaffreson, A T Watson, and Basil Woodd Smith, eds., *Middlesex County Records*, vol. III (London: The Middlesex County Records Society, 1886), 207–96; Godfrey Davies, *The Early Stuarts, 1603-1660* (Oxford: Clarendon Press, 1952), 179; G E Aylmer, *The State's Servants: the*

contemporary wrote that the 1650 act was specifically written so that “few or none will ever be convicted upon it.”⁶³ Keith Thomas has argued that although the “rarity of convictions for adultery is usually attributed to the humanity of judges and jurors,” it was in fact due to “the sheer technical difficulty of securing proof.”⁶⁴

Some scholars have taken this non-enforcement as evidence that Puritans inadvertently created a period of sexual freedom. According to this argument, since early modern communities were hesitant to inflict the harsh punishments mandated by the 1650 act, courts actually became more, rather than less, permissive. Capp noted that the “severity of the law prompted widespread resentment.”⁶⁵ Some have argued that the closing of the ecclesiastical courts during the 1650s led to greater permissibility of aberrant sex. Hill, for example, asserted that there was a “liberating effect of the breakdown of church courts.”⁶⁶ Others have critiqued the “Puritan Revolution” in sexual order for its lack of staying power, rather than its existence and impact in the first place. For example, Derek Hirst argued that the Puritan Revolution failed not because there was no real attempt, but because it was

Civil Service of the English Republic, 1649-1660 (London; Boston: Routledge & Kegan Paul, 1973), 306; Krista Kesselring, “No Greater Provocation? Adultery and the Mitigation of Murder in English Law,” *Law and History Review* 34, no. 1 (2016): 199–225. This is not a new historiographical development. See, for example, John Stoughton, *History of Religion in England From the Opening of the Long Parliament to the End of the Eighteenth Century* (London, 1881).

⁶³ *Examen Legum Angliae: or, the Laws of England Examined* 1656, 127–128; quoted in Thomas, “The Puritans and Adultery: the Act of 1650 Reconsidered,” 279.

⁶⁴ There were loopholes and exceptions built into the law. For example, a man would not be punished for adultery if he had not known that the woman was married, and neither man nor woman would be punished for adultery if her husband had been gone for more than three years. Husbands and wives could not testify against one another, and even the confession of one of the accused parties was not considered acceptable evidence against the other. See Thomas, “The Puritans and Adultery: the Act of 1650 Reconsidered,” 279–80; Hughes, *Gender and the English Revolution*, 136.

⁶⁵ Capp, *England's Culture Wars*, 149.

⁶⁶ Hill, *The World Turned Upside Down*, 312.

“one more experiment in reformation” that was “abortive” and “wrapped up” by the Restoration.⁶⁷ Some have argued that Puritan reforms were “doomed from the start” because, in the words of Mary Fissell, “legislation can rarely accomplish the magnitude of attitudinal change sought by the Puritans in power in the late 1640s and 1650s.”⁶⁸ Capp argued further that “it is clear that puritan magistrates in the 1650s were imposing a rigid sexual code that was out of line with public opinion.”⁶⁹ However, even historians who have argued against the efficacy of Puritan sexual change still insist that it yielded some results. For example, Fissell argues that the “aftershocks” of Puritan reformation attempts “were felt long after the Restoration.”⁷⁰

Scholars have argued that Puritan efforts at reforming the sex and gender order were not restricted to corrective disciplining of sexuality, but also included preventative measures, such as instructive print guiding proper family life. Many have noted the disproportionate number of Puritan authors in the growing conduct book literature writing on the effective governance of households. These books advocated family partnership and household heads who governed through non-violence.⁷¹

The picture of this period painted by both contemporary print and modern historiography is one of chaos and change—not just politically, but also socially. Politicians

⁶⁷ Derek Hirst, “The Failure of Godly Rule in the English Republic,” *Past & Present* 132 (August 1991): 65.

⁶⁸ Mary Elizabeth Fissell, *Vernacular Bodies: the Politics of Reproduction in Early Modern England* (Oxford; New York: Oxford University Press, 2004), 163.

⁶⁹ Capp, *England's Culture Wars*, 149.

⁷⁰ Fissell, *Vernacular Bodies*, 163.

⁷¹ Jacqueline Eales, “Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639),” *Studies in Church History* 34 (1998): 163–74; Hill, *The World Turned Upside Down*, 309.

were bereft of morality. Soldiers roamed the country, raping virgins and wives or merely convincing the lonely, sexually starved women who were left behind to yield to their passions. Women were suddenly taking on male roles including public petitioning, godly preaching, and military defense of their homes. Church courts were closed, leaving little recourse for disciplining sin. Puritans pushed through harsh changes to the legal regulation of marriage and illegal sex.

Not only this, but England was a country whose very social structures were being debated and argued. Since social structures are dependent on gender, this leaves us with the fundamental question: to what extent did the social order of sex and gender *actually* change during the civil wars and Interregnum? This question spawns a series of others. Did changed laws result in changes in sexual crime or the prosecution of sexual crime? How, if at all, did early modern communities differentiate between the new harsher laws and morality? Did the laws reflecting the general influence of Puritanism result in an altered mindset towards sex and the family? Did family structures of gender change? Did bastardy rates drop?

A LEGAL APPROACH TO TESTING SOCIAL STABILITY

In order to answer these questions, this dissertation uses common-law prosecution of sexual crime and gendered violence to test the impact of political volatility on social order. Court testimony was one of the few places where the voices of women and the laboring classes—the wives and daughters of laborers, millers, bakers, ironmongers, butchers, blacksmiths and so on— can be heard by modern readers. Four basic systems of law courts existed in England in the seventeenth century: equity courts, customary law

courts, ecclesiastical law courts, and common law courts.⁷² Equity courts handled civil law while the other three systems adjudicated both criminal and civil law. Though all three heard criminal cases, each was run by different authorities, and thus enforced different sets of laws. Customary law comprised laws of local custom, and varied from locality to locality.⁷³ Though ecclesiastical law was created by the church, and common law was statutory law that had been passed by Parliament, both were national systems whereas customary courts were localized.⁷⁴

This dissertation focuses also focuses on common law courts because they were criminal law courts. Though equity courts provide information on gender structures, because they were largely civil courts, they offer little to the historiography of sex.⁷⁵

⁷² For more information, see James A Sharpe, *Crime in Early Modern England, 1550-1750* (London; New York: Longman, 1999); Tim Stretton, "Women and Litigation in the Elizabethan Court of Requests" (Unpublished University of Cambridge PhD Dissertation, 1993).

⁷³ These included manorial courts and leets.

⁷⁴ As many scholars have noted, there was no straightforward difference between the state and religion. The state was not a purely secular institution, and neither was the church divorced from the state.

⁷⁵ Sexual offenses were criminal, and not civil, offenses. Studies of customary law demonstrate "the degree to which women's rights and legal options depended not just on their marital status, but on where they lived." Equity court records offer a wealth of information on the intersection between class and gender in property disputes. See Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge; New York: Cambridge University Press, 1998), 31; Amy Louise Erickson, *Women and Property* (London; New York: Routledge, 2002); Maria L Cioni, "The Elizabethan Chancery and Women's Rights," in *Tudor Rule and Revolution: Essays for G.R. Elton From His American Friends* (Cambridge; New York: Cambridge University Press, 1982), 159–82. These records show clear differences between the ways in which men and women used civil law to protect themselves and their properties. These records also demonstrated important differences in the options available to women depending on their wealth and marital status. While modern readers might group the property rights of women together, early modern individuals would likely see the property rights of married and unmarried women as completely distinct issues. See Rachel Judith Weil, *Political Passions: Gender, the Family, and Political Argument in England, 1680-1714* (Manchester; New York: Manchester University Press; St. Martin's Press, 1999), 4. Thomas Edgar's *The Lawes and Resolutions on the Rights of Women*, which was the seminal work on women and the law in the early modern period, placed all women in one of two categories: either "married or to bee married." See Thomas Edgar, *The lawes resolutions of womens rights: or, The lawes prouision for woemen A methodicall collection of such statutes and customes, with the cases, opinions, arguments and points of learning in the law, as doe properly concerne women* (London: Printed by Miles Flesher for John More, 1632), 6. Chancery courts, which practiced equity law, offered protections to "wealthy married women who were disadvantaged at common law" but were little help to unmarried ones. See Sara Heller Mendelson and

Criminal courts, on the other hand, have much more to contribute to a history of sex because many types of sex—including fornication, adultery, rape, and buggery—were criminalized. The two main criminal courts of early modern England were common law courts: the quarter sessions and assizes.⁷⁶ They were efficient, conveniently located, and relatively cheap to operate. A case at the assizes or quarter sessions could usually be “adjudicated within a single meeting with a minimum of costly paperwork.”⁷⁷ In addition, while women had little recourse when it came to property rights, save for wealthy women at the courts of chancery, criminal action did not officially privilege male litigants in the same way that civil law did. While women did not have the same rights to property, they had the same rights to be free of bodily assault.⁷⁸ For these reasons, this study uses criminal law to interrogate questions of sex and gender.

Although customary, ecclesiastical, and common law courts all handled criminal cases, this study will concentrate on common law because of the relative survival and uniformity of its records.⁷⁹ Surviving customary court records are non-standardized,

Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford; New York: Clarendon Press, 1998), 38; Cioni, “The Elizabethan Chancery and Women’s Rights.” Many contemporaries claimed that the law treated single men and women equally but in marriage women were subsumed within the legal persona of the husband and lost their individual rights. Much is made of the lack of married women’s legal rights. Mendelson and Crawford write that “man and wife were one person, and that person was the husband.” See Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 39, 37. While many argue that women’s rights were increasing over this period, the variety of types of courts and legal actions meant that women had varying degrees of rights depending on what sort of legal action they were pursuing.

⁷⁶ Cynthia Herrup, “The Common Peace: Legal Structure and Legal Substance in East Sussex, 1594–1640” (Unpublished Northwestern University PhD Dissertation, 1982), 45.

⁷⁷ *ibid.*

⁷⁸ See Chapter 2 for some minor differences.

⁷⁹ See Appendix B for a discussion of regional record survival of quarter session records.

scattered, and incomplete.⁸⁰ Though there was a significant degree of overlap between the common law and ecclesiastical courts, ecclesiastical courts were disbanded for much of the 1650s as part of the efforts to reform the church.⁸¹ Lastly, since much of the print alleging gendered and sexual disorder were commenting on a *political* instability in Parliament, it makes sense to use the court that prosecutes the laws set forth by Parliament.

In order to handle the volume of primary sources, I have created a database called the “Sexual Crimes and Gendered Violence” database (or SCGV).⁸² Common law courts were organized in a hierarchical system in which the assizes and quarter sessions were the highest and second highest courts, respectively.⁸³ Assize judges travelled along one of six predetermined circuits to hear cases twice annually.⁸⁴ (See **Figure 0.1** for the geographic distribution of the circuits.) Quarter sessions were held four times annually at a county level.⁸⁵ SCGV includes records from two assize circuits and eight county quarter session courts. Survival rates of quarter sessions and assize records across England are not uniform, and thus I prioritized those courts with substantial collections from 1642-1660.⁸⁶ A

⁸⁰ Customary court records are valuable in establishing local variance in legal culture.

⁸¹ In the early modern period, there was no hard and fast separation of church and state. Sharpe, *Crime in Early Modern England, 1550-1750*, 5.

⁸² For more information on the database and its methodology, see Appendix C. For more information on the types of records in this database, consult Appendix A.

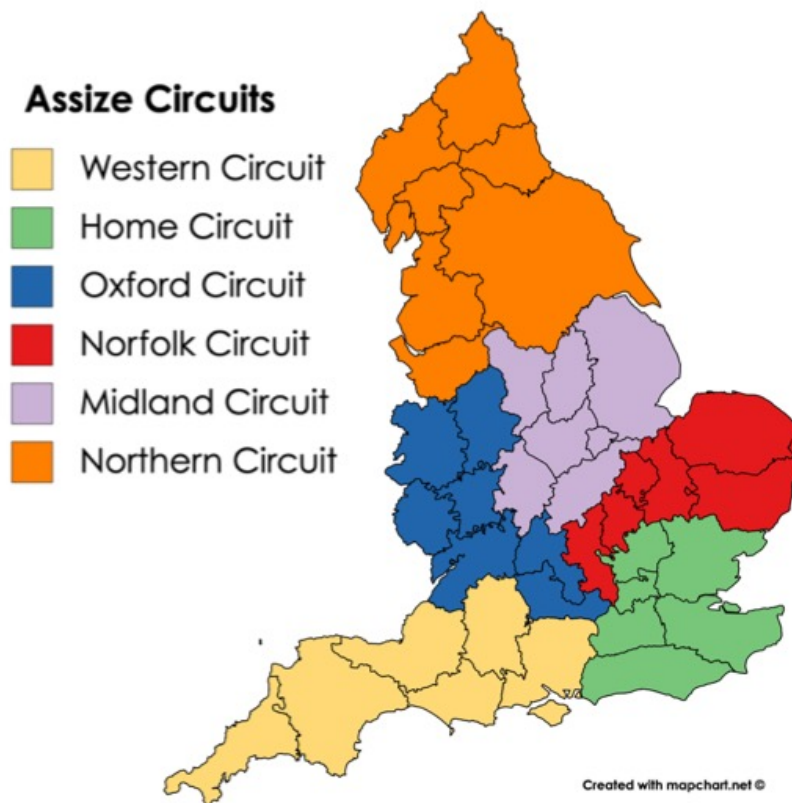
⁸³ As a general rule, quarter sessions were held at the county level four times per year in fall (Michaelmas), winter (Epiphany), spring (Easter), and summer (Midsummer). Occasionally extra sessions were added because there was too much business for the courts to hear than what could be squeezed into the four sessions a year. See Sharpe, *Crime in Early Modern England, 1550-1750*.

⁸⁴ Cases at the assizes were supposed to be heard by two judges and their sessions normally lasted about two days. Herrup, “The Common Peace” (Unpublished Dissertation), 43.

⁸⁵ Some cities, such as Colchester, Essex also had city borough sessions.

⁸⁶ See Appendix B for the regional survival of quarter sessions records.

relatively complete record of assize indictments and recognizances exists from the Home Circuit for the period 1642-1660. The Northern Circuit has a substantial, although incomplete, collection of records that reflects the full range of assize documents, including not only indictments and recognizances, but also depositions and other records.⁸⁷ The records of the Palatinates of Cheshire, Durham, and Lancashire and the records that survive from the Western, Norfolk, Oxford, and Midland circuits are not included in this study due to their piecemeal survival for the period 1642-1660.⁸⁸



*Figure 0.1: Assize Circuits*⁸⁹

⁸⁷ See Appendix A for an explanation of the different types of documents.

⁸⁸ In each palatinate, a nobleman retained some of the vestigial powers of the feudal system. Durham, Lancashire, and Cheshire all retained various parts of these powers until the nineteenth century, including some of their own courts. However, each county was also integrated into the regular common-law system.

⁸⁹ Graphic created using <https://mapchart.net/uk.html>.

Large collections of quarter sessions records for the period between 1642 and 1660 exist in eleven counties: Yorkshire, Lancashire, Staffordshire, Cheshire, Somerset, Wiltshire, Sussex, Essex, Middlesex, Kent, and Norfolk. Limited collections exist for Dorset, Hampshire, Warwickshire, Northamptonshire, Bedfordshire, Durham, Suffolk, and parts of Lincolnshire. All other counties have few to no quarter sessions records for this period.⁹⁰ Since time was insufficient to conduct a study of all quarter sessions from the period, this study has focused on those counties with substantial collections from the southern half of the county.⁹¹ For this dissertation, I have collected data from the sessions papers in Somerset, Wiltshire, Sussex, Essex, Kent, and Norfolk - six out of the eleven counties holding substantial quarter sessions records.⁹² In addition, I have drawn on the modern calendars for the Middlesex sessions. These records shed light on sexual violence in the metropolis, although the calendars are not complete.⁹³ The two extant order books from Bedfordshire are also included in this study.⁹⁴ (See **Figure 0.2** for a representation of which quarter session records are included in this study.)

⁹⁰ I examined the collections of every county record office (or offices) using their online catalogues and followed up by email. The Nottinghamshire Archives was the only office I was unable to reach and am therefore unable to confirm the state of their collections.

⁹¹ The southern half was selected mainly due to practical difficulties presented by the northern record offices. The southern half allowed for an examination of seven counties, rather than four, had the northern counties been selected. In addition, the Yorkshire records are divided between three record offices making an examination more difficult.

⁹² For information on regional record survival in these counties, see Appendix B.

⁹³ These calendars catalogued what was in the session papers using summaries and quotes. Though they gave an overview of the material, they cannot be taken as representative of the totality of what is in the session papers. Although no two counties are alike, Middlesex was perhaps the most exceptional because of London's urban sprawl. For this reason, only modern calendar records for Middlesex are used in this study rather than the actual quarter sessions papers themselves.

⁹⁴ This inclusion is due to a chance visit, rather than design.

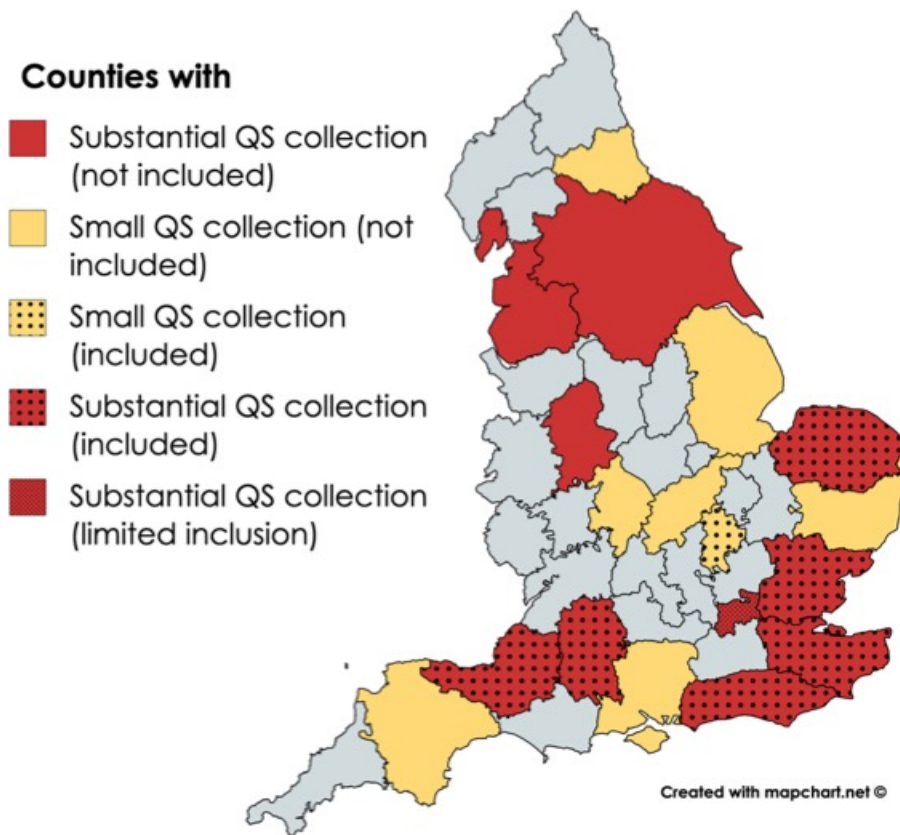


Figure 0.2: Quarter Sessions Records, 1642-1660⁹⁵

Particularly when conducting quantitative analyses, it is crucial to highlight that record survival from the seventeenth century is often far from complete. There might be documents, cases, whole sessions or even years' worth of records missing from the collections available to modern historians. Some documents have been misplaced or destroyed. In particular, since quarter sessions records were the private property of the justices who were usually local gentlemen, it seems “likely that many county records were (if not lost or destroyed) handed down to their families or their professional successors

⁹⁵ Graphic created using <https://mapchart.net/uk.html>.

instead of to their successors in office.”⁹⁶ Missing records might also indicate that the courts actually did not meet for a particular session. This happened, for example, during the civil wars, which unquestionably disrupted the scheduled meetings of the courts. But disrupted court sessions were only one way wartime could interfere. Wars could also prevent individuals from *getting to* the sessions to serve as accusers, witnesses, and defendants. Here, as well, it is important to note regional variation. Most counties show some evidence of wartime disruption in the 1640s, but while in some counties the difference is minimal, in others it is large.⁹⁷

TYPES OF CRIMES TRACKED

In this dissertation, sexual crimes will be defined as illegal sexual practice. Sexual crimes included adultery, fornication, buggery, incest, bastardy, rape, and attempted rape. Theoretically, the difference between adultery, fornication, buggery, and incest all had to do with the identities of the parties involved in sex. Fornication was sexual intercourse between unmarried parties. Incest was sexual intercourse between family members.

In early modern parlance, “buggery” could either mean “sex with an animal” or “sex between men.”⁹⁸ Of the twenty-two cases listed as “buggery,” fifteen cases specified

⁹⁶ Frederick George Emmison, *County Records (Quarter Sessions, Petty Sessions, Clerk of the Peace and Lieutenancy)*, ed. Irvine Egerton Gray, vol. 62 (London: Historical Association, 1961), 4.

⁹⁷ See Appendix B for more information on record survival.

⁹⁸ As Alan Bray has noted, the language to used describe homosexuality is difficult because there is no word which applies exclusively to homosexuality. While “buggery” and “sodomy” are the most common, “buggery” is also used to describe bestiality and “sodomy” to describe certainly all anal sex regardless of the gender of the parties involved and is even more broadly used to sometimes merely apply to unsavory sex in early modern England. See Alan Bray, *Homosexuality in Renaissance England* (New York: Columbia University Press, 1995), 14.

animals.⁹⁹ Of the remaining seven cases, four cases offer no clues on whether “buggery” referred to homosexual sex or bestiality.¹⁰⁰ One case was clearly a case of homosexual sex.¹⁰¹ The final two cases were heard before the Home Assizes held in Southwark on March 7, 1655. There was one entry in the jail listing which recorded that two men (Joseph Holgate and Henry Harlow) were being held on “suspicion” of buggery. The two being listed together might indicate that it constituted a single crime of homosexual sex between the two men. However, sometimes individuals were grouped by offense or outcome in jail listings. For example, the same jail listing grouped eight individuals together who were “convicted of several ffelonyes & manslaughter,” capitalized on their literacy to “plead the book,” and were branded rather than being executed.¹⁰² It seems unlikely that these eight individuals were all being sentenced for the same offense. Thus Joseph Holgate and Henry Harlow might have been suspected of a single crime of homosexual sex together or two separate crimes of bestiality individually.¹⁰³ Since there are no other records related to this

⁹⁹ The following is the breakdown between the different kinds of animals in bestiality cases: nine horses (C125, C217, C245, C395, C397, C441, C659, C1822, C3367); three cows (C366, C396, C1135); two pigs (C374, C818); and one dog (C1204).

¹⁰⁰ Those four cases are C2920, C2642, C326, and C178.

¹⁰¹ See C61. Interestingly, this was also the only case where an individual was described as black or “negar.” Bray also noted this significance. See Bray, *Homosexuality in Renaissance England*, 72.

¹⁰² Pleading the book was also known as “benefit of the clergy” and involved the male convict proving that he could read in order to be spared from execution. This practice hailed from a time when it had been assumed that only the clergy could read. In practice, of course, many more men than merely the clergy could read. It was a common legal loophole for men to escape execution.

¹⁰³ It is also theoretically possible that Holgate and Harlow did not have sex with each other, but instead each had sex with another man (or men). However, given that Holgate and Harlow counted individually as separate instances of homosexuality would only be the second and third cases of homosexuality heard in common law courts between 1642 and 1660, it seems unlikely.

case, it remains unclear whether this was a single case of homosexual sex or two cases of bestiality.

The definition of adultery was somewhat more complicated. Technically, adultery was when a married woman had sexual intercourse with someone who was not her husband. Sex between an unmarried woman and married man was technically considered fornication, not adultery, although it was occasionally described as “adultery” in court records.¹⁰⁴ The exact definition of “adultery,” and whether the concomitant culpability fell on the woman or man (or both), were both significant debates in early modern thought.¹⁰⁵ The distinction between the two was important because of a vast difference in punishment. The 1650 Adultery Act made adultery a capital offense. Meanwhile, individuals convicted of

¹⁰⁴ Hughes, *Gender and the English Revolution*, 136.

¹⁰⁵ While in contemporary law sexual intercourse with a married man was fornication and sexual intercourse with a married woman was adultery, moralists did not necessarily agree with these castings. Daniel Rogers argued that prohibitions against adultery “an equall duty of both... the tye is equall.” See Daniel Rogers, *Matrimoniall honour, or, The mutuall crowne and comfort of godly, loyall, and chaste marriage wherein the right way to preserve the honour of marriage unstained, is at large described, urged, and applied* (London: Printed by Thomas Harper for Philip Nevil, 1642), 182. William Gouge acknowledged that the “inconveniencies” of female adultery were more troubling than male adultery, but still argued that “in regard of the breach of wedlocke, and transgression against God, the sinne of either partie is alike. Gods word maketh no disparity betwixt them.” See William Gouge, *Of domesticall duties eight treatises* (London: Printed by John Haviland for William Bladen, 1622), 219; William Gouge, *Of domesticall duties eight treatises* (London: Printed by John Beale for John Grismond, 1627), 128; William Gouge, *Of domesticall duties eight treatises* (London: Printed by George Miller for Edward Bewster, 1634), 221. In addition, Matthew Griffith argued that while the man was more culpable as the *sinner* since he was the superior being, the woman’s *sin* was worse because of the depth of the damages of female adultery to her own body and soul, “they that commit Adultery, doe both kill, and steale: yea, of all theeves and murtherers whatsoever, they are the worst.” Griffith defends this extreme assertion arguing that the adulterer steals “that which God himselfe hath made most neere; and all good men that ever lived, accounted most deare unto them... The use (and so the right) of his wife.” See Matthew Griffith, *Bethel: or, A forme for families in which all sorts, of both sexes, are so squared, and framed by the Word of God, as they may best serve in their severall places, for usefull pieces in God's building* (London: Printed by Richard Badger for Jacob Bloome, 1633), 299-300; Matthew Griffith, *Bethel: or, A forme for families in which all sorts, of both sexes, are so squared, and framed by the Word of God, as they may best serve in their severall places, for usefull pieces in God's building* (London: Printed by Richard Badger, for Robert Allot, 1633), 299-300; Matthew Griffith, *Bethel: or, A forme for families in which all sorts, of both sexes, are so squared, and framed by the Word of God, as they may best serve in their severall places, for usefull pieces in God's building* (London: Printed by Richard Badger, for Henry Tanton, 1633): 299-300.

fornication served only a three-month jail sentence and had a bond of good behavior for a year.¹⁰⁶

While the definition of adultery was contentious in early modern times, the definition of rape is still contentious even today. This dissertation does not attempt to weigh into modern discourses on the legal requirements to classify an offense as rape. Instead, the classification of rape in this dissertation is left up to the early modern records. Cases are only classified as “rape” (or attempted rape) in the database if they use the words “rape,” “ravish,” or specifically state that there was sexual intercourse without the woman’s consent.¹⁰⁷ However, the SCGV database employs the category of “sexual violence” to record those cases that might be considered rape or attempted rape by modern standards, but that in early modern courts were not prosecuted as such. The most common type of case in this category involved forced sexual interaction but no vaginal penetration.¹⁰⁸ However, other types of cases, such as those involving sex with unconscious women are also classified as “sexual violence” rather than “rape.”

There are several other categories of crimes recorded in the SCGV database. To track the legal treatment of female violence and female victims of violence, any assault that involved a woman was recorded. These instances of assault and murder are referred to collectively in this dissertation as “gendered violence.” Infanticide, the most common type of homicide committed by women, was tracked separately from other types of assault.

¹⁰⁶ Geoffrey Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick: Rutgers University Press, 1979), 41.

¹⁰⁷ Other cases of sexual violence are listed in the “sexual violence” category, as discussed later.

¹⁰⁸ Early modern discourses of rape required vaginal penetration and emission of semen in order to classify a sexual interaction as rape.

SCGV also records instances of “disputed marriage.” “Disputed marriage” is defined in this dissertation as any case inquiring into legality, or lack thereof, of a marriage. The most common type of “disputed marriage” was bigamy, which is recorded separately. However, the database also tracks marriages of underage minors and those married in illegal marriage ceremonies. Some cases in this category were eventually ruled to be legal marriages, and therefore were deemed not criminal offenses. In addition, SCGV records illegal discussion of sex. Broadly speaking, there were two categories of illegal discussions of sex. One was “sexual sedition” or committing sedition against the reigning authority using allegations of sexual impropriety or sexual slurs. When used against a neighbor rather than a public figure, however, these same allegations were not considered sedition, but rather, a second category: libel. Witchcraft cases are also tracked in SCGV due to ongoing historiographical debates about the role of gender in witchcraft prosecution.¹⁰⁹ Abduction cases are recorded to explore incidents of trafficked women and the endurance of the idea of the female body as male property. Lastly, the category “Lewd” is used as an all-encompassing term for inappropriate sexual behavior that did not fall into one of the previously mentioned categories of crimes. (See **Figure 0.3** for a full breakdown of all cases in SCGV).

¹⁰⁹ See Clive Holmes, “Women: Witnesses and Witches,” *Past & Present* 140 (January 1, 1993): 45–78; Malcolm Gaskill, “Witchcraft and Evidence in Early Modern England,” *Past & Present* 198, no. 1 (January 1, 2008): 33–70.

Crime	Count
Infanticide	122
Bastardy	1420
Marriage Violation ¹¹⁰	47
Lewd	57
Adultery	109
Fornication	289
Buggery	22
Incest	26
Sexual Violence	38
Assault ¹¹¹	864
Sexual Libel or Sexual Sedition	87
Witchcraft	90
Abduction	15
Rape	112
Attempted Rape	68
Bigamy	57

Figure 0.3: Breakdown of Cases

TOWARDS A NEW UNDERSTANDING OF SOCIAL STABILITY

Print, literacy, and political upheaval were all on the rise in mid-seventeenth-century England. The political grievances of the period were often fought out in print using gendered and sexual language, but their impact on gender and sex is less clear-cut. Sexual crimes were more than a rhetorical device, of course; they were real crimes that victimized real people. Although these printed accounts may have alleged extreme disorders in sex and gender, through quantitative and qualitative analysis of prosecution, this dissertation

¹¹⁰ This included cases of people who married illegally. This might involve an underage child marrying without their parent's consent. It also included cases of couples who lived as man and wife and the local community considered them to be married, but they were not officially married. This also included couples who were married by a minister in a church rather than a justice of the peace after the Marriage Act of 1653 required civil marriage.

¹¹¹ I only counted cases of violence between genders or cases when women assaulted other women. In other words, I counted all cases that were *not* men assaulting other men.

demonstrates that both the incidence of and response to sexual crime was stable throughout English Civil Wars and Interregnum.

This study takes a step back to see how much, if at all, social discipline really shifted. For all the change in political discourse, ballads, and even medical tracts and conduct books—was there actually an evident change in legal and social enforcement? While there have been brilliant studies weaving together social, cultural, and political history—such as the works of Amussen, Gowing, and Garthine Walker, among others—these studies have focused on the early modern period as a whole, not specifically on the social history of the 1640s and 1650s. Thus the question remains: what was the relationship between political discussions of sexual crime and actual instances of sexual crime and its prosecution for everyday English people? Was there widespread breakdown in sexual and gender order during the English Civil Wars and the Interregnum? Gowing writes that “gender history demands a dialogue between prescription and practice.”¹¹² This dissertation attempts to put these works on public print in conversation with the many excellent works on gender and the courts from the broader early modern period. The three chapters look at three different types of crimes—illegal sexual intercourse, domestic violence, and bastardy—in order to explore, respectively, ideas of culpability, interventionism, and economics.

Chapter 1, “Culpability & Illegal Sex,” explores the interaction between early modern English women and legal trials for sexual crime. It suggests that women used the court as a forum of public opinion to shift culpability from themselves onto their male sexual partners to subtly portray the relationship as one of perpetrator and victim, rather

¹¹² Laura Gowing, *Gender Relations in Early Modern England* (Harlow; New York: Pearson Education, 2012).

than of co-conspirators or passionate lovers. In so doing, this chapter explores the role of the courts as just one of the tools of early modern communities for controlling sexual order. This chapter argues for a complex early modern understanding of the law and its interactions with morality and maintaining social order. The chapter shows that when examining the legal treatment of sexual crime on a local level, we come away with a very different picture of the state of sexual order in this period than when solely examining the content of national public print.

Picking up on these themes of public print, Chapter 2, “Domestic Violence & (Non) Intervention,” compares prescriptive conduct book literature with the actual responses from courts and neighbors to cases of wife-beating. In so doing, it exposes a seeming contradiction: despite voluminous discussion about and intense discouragement of domestic violence, in practice neighbors refrained from intervention and courts hesitated to punish these behaviors. This shows the divergence between the word of public print, which criticized domestic violence with increasing vehemence, and the daily lives of wives, servants, and children who were beaten by their husbands, masters, and parents without intervention or punishment of the perpetrators. In print, theoretical opposition to domestic violence appeared not only in conduct books, but also in popular murder pamphlets and political propaganda, all of which increasingly argued against abuse by tyrannical authority figures. Yet despite these significant overlaps in multiple print genres, the actual response to domestic violence from the women themselves, neighbors, and courts shows that domestic violence continued to be tolerated.

The third chapter, “Stability, Bastardy, & Poor Relief,” examines the treatment of bastardy in the civil wars and Interregnum. Using parish registers, some scholars have

argued that the 1650s witnessed the nadir of English illegitimacy. In some ways, that argument seems to be substantiated by the rise of Puritan morals. Yet despite tremendous amounts of public print warning about the sexual dangers posed by soldiers, the closing of the ecclesiastical courts, and the change in government, common-law prosecutions for bastardy both in number and in procedural focus continued as they had before and would continue to do after the 1640s and 1650s. This chapter argues that bastardy continued to be treated as an economic issue, and that provision for illegitimate children without paternal sources of income was a kind of poor relief. Thus the stability of bastardy also suggests the stability of social welfare during this period of social unrest. Due to the heavy use of quantitative argument in this chapter, Appendix E provides all numbers and calculations used in this chapter. Appendix F reinforces the numbers in Appendix E by showing that an alternative method of calculating population produces very similar bastardy rates.

Overall, this dissertation argues for a fundamental disjuncture between sex and gender order as portrayed in public print and as experienced in actuality during a time of political upheaval. The stability of social order in court prosecutions of sexual crime and gendered violence demonstrates not only the endurance of social order, but also that through the political unrest of the English Civil Wars and Interregnum, the common law courts remained an enduring authority which people on all sides deemed legitimate. This discrepancy between print and court records begs for future studies of the period to employ an integrated approach using multiple sources, including not only public print and parish registers, but also court records and qualitative analyses to maximize our understanding of the multi-faceted society of seventeenth-century England.

CHAPTER 1:
Culpability & Illegal Sex

INTRODUCTION

On Friday, November 2, 1655, Joan Daniels's husband tore into the Norfolk house of her sister and brother-in-law. Daniels's husband told her sister that Timothy Kitner had "ravished" Daniels and he wanted her brother-in-law's help to confront Kitner. Daniels's sister claimed she heard Daniels say that Kitner's actions were "against her will," and also heard the account of Daniels's husband that he heard a noise and saw Kitner restraining Daniels with her petticoats high in the air. Yet Daniels's sister seemed suspicious. She saw no marks of violence on Daniels, nor did Daniels's husband claim to have heard Daniels cry out.¹ The story of Daniels's sister was further complicated by the fact that the testimony of Daniels's husband did not mention ravishment at all. He claimed he heard Daniels say that Kitner "had done it upon force ag[ains]t her will" but never heard her say that Kitner "had had carnall knowledge of her body." The one claim of ravishment in the deposition of Daniels's husband to the Norfolk Quarter Sessions - that after Kitner left, Daniels had told her husband that Kitner "had ravished her" - is struck out on the page with deep black strokes.² Daniels herself claimed only that "kitner tooke her about the wast in his armes, & offered to take up her coats," but that since "she strove with him," he did not "ever carnally know her." A dog barking in the yard caught her husband's attention and he came in and interrupted Kitner. Though Kitner fled, Daniels told her husband what had happened, but

¹ Information of Emma Eldridge (Norfolk Quarter Sessions, 6 November 1655) C/S 3/box 42A, NRO. [C2682]

² Information of William Daniel (Norfolk Quarter Sessions, 6 November 1655) C/S 3/box 42A, NRO. [C2682]

she specified that she “never told him that the sd kitner had carnall knowledge of her body nor any words to that purpose.”³ A neighbor who lived in the house adjoining the Daniels’, claimed to have been home all day that Friday and not to have heard anything.⁴ Kitner, for his part, claimed “that he never did attempt eyther to have the carnall knowledge of” Daniel, nor did he “offer any other encivill cariage or violence or other misdemeanor towards the sd joane.” He merely came to the house to lend some money to her husband. Kitner insisted he only found out about the “pretended misdemanor” the next day when William came to try to arrest him.⁵

The story of Timothy Kitner’s alleged attack on Joan Daniels brings out many themes common to stories of sexual violence in early modern English depositions: the importance of neighbors and witnesses, claiming that the victims “cried out,” descriptions of raised petticoats, and perhaps most markedly—confusion. This chapter compares women’s depositions in rape cases and in other kinds of sexual crime cases. By finding the overlap in the Venn diagram of rape testimonies and testimonies from other types of sexual crimes, this chapter argues that women’s aims when testifying about illegal sexual encounters did not center wholly around legal proof, but also addressed their public standing in the complex metric of social culpability. This chapter first offers some background on the different types of illegal sex existing in this period, the legal history of rape in England, the continuing complications in colloquially defining rape, and the rarity

³ Information of Joan Daniel (Norfolk Quarter Sessions, 6 November 1655) C/S 3/box 42A, NRO. [C2682]

⁴ Information of Joan Downes (Norfolk Quarter Sessions, 6 November 1655) C/S 3/box 42A, NRO. [C2682]

⁵ Examination of Timothy Kitner (Norfolk Quarter Sessions, 7 November 1655) C/S 3/box 42A, NRO. [C2682]

of rape prosecution and conviction. The chapter will then examine the most common strategies for proving rape including crying out, claiming previous attempts by the accused on the victim's chastity, testifying about the vehemence of the victim's refusal and exhibiting torn garments. The chapter next demonstrates how the prosecution of sexual crime was a communal venture which required individuals to involve themselves in their neighbors' sex lives. However, while public perception was related to legal outcome, perception and verdicts were not one and the same. Thus, many women appearing in court to answer for participating in illegal sex often attempted to shift culpability onto the male actor without alleging rape. To do so, women used a variety of strategies including showing situational pressure, the presence of alcohol, and using subtly coded language. Child rape cases are examined as exceptions that prove the rule of women's self-presentation in court cases. Lastly, the chapter will offer some concluding thoughts on why the framework of culpability was particularly important during the years of the civil wars and Interregnum. The strategies for navigating this framework demonstrate the importance and endurance of the local community as the arbiter of social order.

BACKGROUND

Types of Illegal Sex

As discussed in the Introduction, illegal sexual intercourse could refer to one of any number of crimes including buggery, rape, adultery, incest, fornication, bastardy, and attempted rape. Fourth-century Roman emperor Gratian quipped that "fornication is one thing, *stuprum* another, adultery another, incest another, *raptus* another" and so on.⁶ It is

⁶ Latin: "*Aliud enim est fornicatio, aliud stuprum, aliud adulterium, aliud incestus, aliud raptus.*" Gratian, *Decretum magistri Gratiani*, in *Corpus iuris canonici*, ed. Æmilii Friedberg, 2 vols (Leipzig:Bernhard

worth taking a few pages to contemplate the definitions of these crimes. All extramarital sex was criminal, but the court needed to establish more than whether extramarital sex had occurred in order to determine the nature of the offense. Some definitions were relatively straightforward. For example, according to Lancelot Andrewes, who served the Caroline church in many positions including the bishoprics of Chichester, Ely, and Winchester, sexual intercourse “with a beast” was “Buggery,” whereas sexual intercourse with a “party...allied to us” was “incest.”⁷ The differentiation between most kinds of illegal sex revolved around the identities of the parties engaged in coitus: whether it were a relative, a married woman, an animal, or just an unmarried woman.

Rape and attempted rape were slightly different. They alone were defined by the nature of the sexual interaction, rather than by the identities of the parties involved. Andrews specified that if sex occurred “unwillingly,” it was “Raptus, a Rape.” Most legal handbooks defined the crime of rape as sex “against a woman’s will” or, like Andrewes, as when the woman was “unwilling.”⁸ A woman’s consent or dissent could not determine a *man*’s innocence or guilt, though it could determine if his crime was fornication (or adultery if she was married) or rape. However, a woman’s consent could determine if the *woman* was guilty or innocent. Contemporary thought unequivocally supported the idea that women’s dissent maintained their innocence. Andrewes explained that “if a man offer to

Tauchnitz, 1879 and 1885) vol. I, part II, XXXVI.i. 2, 1288. Translation from Corinne J Saunders, *Rape and Ravishment in the Literature of Medieval England* (Cambridge; Rochester: D.S. Brewer, 2001), 77.

⁷ Lancelot Andrewes, *The morall law expounded ... that is, the long-expected, and much-desired worke of Bishop Andrewes upon the Ten commandments : being his lectures many yeares since in Pembroch-Hall Chappell, in Cambridge ... : whereunto is annexed nineteene sermons of his, upon prayer in generall, and upon the Lords prayer in particular : also seven sermons upon our Saviors tentations* (London: Printed for Michael Sparke, Robert Milbourne, Richard Cotes, and Andrew Crooke, 1642), 762.

⁸ Andrewes, *The morall law expounded*, 762.

force a Virgin, or woman, *she* seeking to resist him, is *innocent*: but he shall die.”⁹ Giving consent was what made the woman guilty of fornication or adultery. However, legal treatment of rape was, in the words of Corinne Saunders, “by no means straightforward” because the discourse on rape “encompassed so many levels and genres of writing.”¹⁰

Legal History of Rape

Illegal sex has been part of the English legal code since the very first laws were written in the late sixth and early seventh centuries.¹¹ Forced sexual intercourse was first outlawed in the ninth-century laws of Alfred.¹² In 1275, the First Statute of Westminster stipulated that the “King prohibiteth that none do ravish, nor take away by Force, any Maiden within Age (neither by her own Consent, nor without) nor any Wife or Maiden of full Age, nor any other Woman against her Will.”¹³

Caroline Dunn has argued that to “ravish” or “take away by force” (*ne ravie ne prenge*) could have referred to abduction, or, more likely, to both rape and abduction, but not to rape alone.¹⁴ In fact, Amy Greenstadt argues that the statute’s stipulation that it was

⁹ Andrewes, *The morall law expounded*, 775. Emphasis added.

¹⁰ Saunders, *Rape and Ravishment in the Literature of Medieval England*, 76.

¹¹ Rebecca Frances King, “Rape in England 1660–1800” (Unpublished Durham University MA Dissertation, 1998), 27.

¹² Carole Hough, “Alfred’s “Domboc” and the Language of Rape,” *Medium Ævum* 66, no. 1 (1997): 1–27; Julie Coleman, “Rape in Anglo-Saxon England,” in *Violence and Society in the Early Medieval West* (Rochester: Boydell Woodbridge, 1998), 195, 198, 203.

¹³ 3 Edw I, c. 13.

¹⁴ Caroline Dunn, “The Language of Ravishment in Medieval England,” *Speculum* 86, no. 1 (March 16, 2011): 79–116; Caroline S Dunn, *Stolen Women in Medieval England: Rape, Abduction, and Adultery, 1100–1500* (New York: Cambridge University Press, 2013), 51.

a crime for a man to ravish a woman “whether she consented or not” was “a perspective that made sense in a legal context where she was regarded as an object of property.”¹⁵ Here some contextualization is necessary. The stipulation in the First Statute of Westminster that disregarded a woman’s consent only applied to a “maiden within age,” or, an underage girl. A maiden “of full age,” meanwhile, could only be ravished “against her will.”

However, Greenstadt’s focus on a woman’s monetary value is not entirely misplaced. The First Statute of Westminster was written at a time when the monetary value of women was important to discussions of rape. Italian canonist Henry of Segusio created a comprehensive hierarchy of different types of illegal sex in his *Summa Aurea*, written between 1250 and 1261. In this ranking, the most serious type of illegal sex was *raptus*, namely the abduction of a virgin, widow, or nun. *Stuprum*, which was “the defloration of virgins or widows outside the context of marriage,” was slightly less serious.¹⁶ A woman’s consent in no way affected the crimes of *raptus* or *stuprum*: they were crimes whether she consented or not. The least serious crime was the rape of wives. According to Saunders, this was because sex with another man’s wife did “not decrease the woman’s value.”¹⁷ In other words, abduction deprived the woman of a marriage choice, while extramarital defloration merely lowered her value in any eventual marriage.

Henry of Segusio was not the only writer wrestling with the fraught connection between rape and abduction. Bernardus Papiensis, a twelfth-century Italian canonist, noted

¹⁵ Amy Greenstadt, *Rape and the Rise of the Author: Gendering Intention in Early Modern England* (Burlington: Ashgate, 2009), 12.

¹⁶ Saunders, *Rape and Ravishment in the Literature of Medieval England*, 79. Saunders was referencing Henricus de Segusio, Cardinalis Hostiensis, *Summa Aurea* (Lugduni, 1588), V, 301v-303.

¹⁷ Saunders, *Rape and Ravishment in the Literature of Medieval England*, 86.

that a man could be “termed raptor in two ways.” First, if he was “a snatcher of things,” and second if he was “a snatcher of men, and especially of women.” In the “strict sense,” *rapina* was the theft “of things” and *raptus* “of women.”¹⁸ Saunders has shown how some early medieval law commentators distinguished between the forcible use of a woman’s body and the theft of her person, though both were criminal.¹⁹ Saunders explains that the first is akin “to that of borrowing (but not stealing) a horse without permission,” and the second is taking a woman “with a view to marriage.”²⁰ What distinguished sexual assault from abduction, therefore, was not the woman’s consent, but instead, the permanence of her sexual occupation.²¹ Of course, these writers were exploring canon law, not secular law.

¹⁸ Saunders, *Rape and Ravishment in the Literature of Medieval England*, 79. Translation of “*Raptor dicitur duobus modis: dicitur enim raptor rerum et raptor hominum et praeciose foeminarum; dicitur autem proprie rapina rerum, et raptus mulierum.*” Bernardus Papiensis, *Summa Decretalium*, ed. E. A. T. Laspeyres (Ratisbon: Joseph Manz, 1860), V.xiv.1, 231. See also James A Brundage, “Rape and Marriage in the Medieval Canon Law,” in *Sex, Law, and Marriage in the Middle Ages*, vol. 28 (Brookfield, Vt., USA, 1993), 62–75.

¹⁹ See Terence P. McLaughlin, ed., *The Summa Papiensis on the Decretum Gratiani* (Toronto: Pontifical Institute of Mediaeval Studies, 1952), XXXVI.1, 272.

²⁰ Saunders, *Rape and Ravishment in the Literature of Medieval England*, 80. Raymond clarified that forcible use of a woman’s body could be continual and still not fall into the category of stealing the woman’s person if no marriage occurred. In other words, holding a woman as a concubine without marriage was considered stealing her sexual product repeatedly, rather than stealing her person once. See Raymond of Penafort, *Summa Sancti Raymundi de Peniafort Barcinonensis ord. praedicator de poenitentia et matrimonio cum glossis Ioannis de Friburgo* (Rome: Johannis Tallini, 1603), II.v.1, 166–67. See also *ibid.*, 83.

²¹ Not all commentators even distinguished between sexual assault and abduction. Rufinus, for example, characterized all situations of “women who [we]re seized from their parents” as cases of *raptus*, even though some were “taken for marriage” and others were taken “for defloration.” Translation from Saunders, *Rape and Ravishment in the Literature of Medieval England*, 77. The original Latin reads: “*Diligenter hic notandum est quod femine, que rapiuntur parentibus, quedam ad coniugium, quaedam ad stuprum. Item alie sunt nobiles, alie innobiles; item nobiles que rapiuntur aut raptoribus consentiunt, aut non.*” Rufinus, *Die Summa Decretorum des Magister Rufinus*, ed. Heinrich Singer (Paederborn: Ferdinand Schöningh, 1902), XXXVI.1, 534. The woman’s consent did hold weight in some medieval commentaries. Stephen of Tournai wrote that if “virgins consented to *raptus* for the purpose of marriage, they were not returned to their parents, although a penalty had to be paid.” See Saunders, *Rape and Ravishment in the Literature of Medieval England*, 79. She was referencing Stephen of Tournai, *Die Summa de Stephanus Tornacensis über das Decretum Gratiani*, ed. J. Friedrich von Sculte (Giessen: Emil Roth, 1891), XXVI.1, 257.

Though the canonical and secular definitions of *raptus* significantly “overlapped,” they were not identical.²² Yet they are helpful in contextualizing the broader environment in which the Statutes of Westminster defined *raptus*.

The 1285 Statute of Westminster II expanded the First Statute of Westminster’s definition of rape, making it a felony and a capital crime. According to this statute, if a man “ravish[ed] a Woman married, Maid or other, where she did not consent neither before nor after he shall have Judgement of Life and of Member.” However, the statute added that “likewise where a Man ravisheth a Woman married...with Force, although she consent after” would also have judgement of life and member.²³ In addition to the changes in classification (as a felony) and punishment (as a capital crime), it is worth noting that the First Statute uses the framework of “against her will” while the Second Statute used the framework of “without consent.”²⁴ Unwillingness indicated the presence of some *active dissent*, rather than the mere *absence of consent*. This is not merely a modern distinction, as early modern individuals asked these same questions. In 1657, Michael Hawke, a Hobbesian legal and political theorist, specifically distinguished his claim that “it is not properly a marriage till she doth consent” from the definition of Robert Brooke, a sixteenth-century law reporter, who “rather thinketh that it shall be intended a good marriage till she

²² Saunders, *Rape and Ravishment in the Literature of Medieval England*, 76.

²³ 13 Edw I, St. 1, c. 34.

²⁴ For a more in depth discussion of the two statutes of Westminster, see J B. Post, “Ravishment of Women: the Statutes of Westminster,” edited by J H Baker (London: Royal Historical Society, 1978), 150–64.

doth dissent.”²⁵ In other words, Hawke specified that the presence of consent was required and absence of dissent was insufficient.²⁶

However, many early modern legal scholars continued to harken back to the First Statute’s definition of “against her will.” Matthew Hale, in his *Historia Placitorum Coronæ*, defined rape as “the carnal knowledge of any woman...against her will.”²⁷ John Wilkinson’s 1651 legal guide book titled *A treatise collected out of the statutes of this commonwealth* defined rape as taking a “woman against their wils.”²⁸ Similarly, in the central early modern work on women and the law, *The Lawes Resolutions of Women’s Rights* (1632), Thomas Edgar used the definition of “against her will” to apply to women who had attained the legal age of maturity.²⁹

²⁵ Michael Hawke, *The grounds of the lawes of England* (London: Printed for H. Twyford, T. Dring, Jo. Place, and W. Place, 1657), 150-151. Though Hawke was discussing marriage in this quote, his very next sentence moves into a discussion of marriage by abduction, and then into a discussion of rape. He explicitly ties debates about marriage, abduction, rape together into one discussion of consent and dissent.

²⁶ This issue continues to crop up in legal writings over the years. See, for example, Theodore J Grayson, “The Law as to Consent When Pleaded as a Defence to Certain Crimes Against the Person,” *American Law Register* (Philadelphia, PA: 1898), 1903, 469. Grayson claims this distinction between consent and “against her will” “was responsible for much of the difficulty in which the subject became involved in later years.

²⁷ Matthew Hale, *Historia Placitorum Coronæ or The History of the Pleas of the Crown* (Sollom Emlyn, 1800), I, 627.

²⁸ Wilkinson, *A treatise collected out of the statutes*, 27.

²⁹ Thomas Edgar, *The lawes resolutions of womens rights: or, The lawes prouision for woemen A methodicall collection of such statutes and customes, with the cases, opinions, arguments and points of learning in the law, as doe properly concerne women* (London: Printed by Miles Flesher for John More, 1632), 380. Interestingly, the only legal manuals during the early modern period that did use ‘lack of consent’ as the threshold were those on the laws of early New England. See Major John Child, *New-Englands Jonas cast up at London: or, A relation of the proceedings of the court at Boston in New-England against divers honest and godly persons, for petitioning for government in the common-wealth, according to the lawes of England, and for admittance of themselves and children to the sacraments in their churches; and in case that should not be granted, for leave to have ministers and church-government according to the best reformation of England and Scotland* (London: Printed for T.R. and E.M., 1647), 8; or *The capitall lawes of New-England, as they stand now in force in the Common-wealth. By the court, in the years 1641. 1642 Capitall lawes, established within the iurisdiction of Massachusets* (London, Printed for Ben Allen, 1642), 1. The New England statutes distinguished between married and unmarried victims of rape. Men who raped married women were sentenced to death but those who raped unmarried women could be

Many early modern writers considered “force” central to the definition of rape. An anonymous pamphlet on Christian doctrine published in 1647 defined rape as “when one of the parties, of what condition soeuer the person be, is forced to the act.”³⁰ William Ames, an English Puritan theologian, similarly located the lynchpin of the crime of rape as “when force is added” to sex.³¹ The sixteenth-century lawyer William Lambarde, in Thomas Edgar’s words, thought “the word [force] to be but declaratorie, signifying all rauishment to bee forcible.”³² Edgar disputed the view of Lambarde, arguing instead that the law intended “two kinds of ravishments” in which one was “more odious than the other.” The first was described as a ravishment where the “woman forgive him, and consent to him.” Worse, according to Edgar, was a ravishment where a man “ouercome with concupiscence, ouercommeth a woman hand to hand, by length of breath, and strength of his owne sinewes.”³³ This definition seems to distinguish between pressured consent and physical force. However, it also demonstrates the lack of consensus on the definitions of “force” and “rape” in early modern theory.³⁴ The confusion surrounding the force/consent/dissent

punished with death or “some other grievous punishment” based on the discretion of the judges from the circumstances. Some scholars have argued that Child used New England laws on sexual crime for polemical purposes and thus misrepresented them. See Robert Emmet Wall, *Massachusetts Bay: the Crucial Decade, 1640-1650* (New Haven: Yale University Press, 1972), 176-9.

³⁰ *A Declaration of the principall pointes of Christian doctrine* (Paris: Printed by Sebastien Cramoisy Printer to the King, 1647), 263-64.

³¹ William Ames, *The marrow of sacred divinity drawne out of the Holy Scriptures* (London: Printed by Edward Griffin for Henry Overton, 1642), 373. Ames died in 1633, but this work was published posthumously.

³² Edgar, *The lawes resolutions of womens rights*, 396. See also William Lambarde, *Eirenarcha: or of the office of the iustices of peace in two bookes: gathered. 1579. and now reuised, and firste published, in the 24. yeare of the peaceable reigne of our gratioous Queene Elizabeth* (London: Printed by R. Newbery and H. Bynneman by the assigns of Richard Tottell & Charles Barker, 1581), 398.

³³ Edgar, *The Lawes Resolutions of Women’s Rights*, 396-7.

³⁴ Though both statutes of Westminster emphasized the absence of consent or violation of the woman’s will, a 1382 statute brought abduction back into the discussion of rape. In this statute, in any case of

issue might have been intentional since ambiguous legal definitions were a common strategy for legislators who wanted guilt and innocence determined on a case-by-case basis.

Colloquial Definitions of Rape

Confusion about the definition of rape was by no means restricted to the legal sphere. Though vernacular ideas and meanings of words can differ substantially from legal meanings, in the case of rape they reflect a similar lack of consensus. Dictionaries can give us a clue regarding common usage of the words “rape” and “ravish.” There were twelve editions of *The English Dictionarie or, An Interpreter of Hard English Words* printed between 1623 and 1670.³⁵ The dictionary never included entries for both “ravish” and “rape” in the same edition. In 1626, 1631 and 1632 (the second, third and fourth editions, respectively), the dictionary included “to rauish a Maide, Depudicate, diurginate, Abripe”

ravishment even if the woman “consented” afterwards, “the ravishers and the ravished shall be disabled from having dower, jointure, or inheritance.” See *Rotuli Parkamentorum*, iii. 139-40; *Statutes of the Realm*, ii. 27; 6 Rich. 11, Stat. I, c. 6. Translation from J B. Post, “Sir Thomas West and the Statute of Rapes, 1382,” *Historical Research* 53, no. 127 (October 12, 2007), 26-27. Post notes that “the statute as enrolled in Latin was more carefully worded, but to the same effect.” Families were awarded the same “powers of legal reprisal against the man” as women had under the old appeal of rape. Post, “Sir Thomas West and the Statute of Rapes,” 27, FN 24. While one might argue that this was regressive and only intended to protect the family holdings rather than the woman herself, it also took away the incentive to abduct wealthy women and force them into marriage. Here, again, the context was important. This statute was specifically created in response to a petition by Sir Thomas West and his wife, Alice, regarding Nicholas Clifton’s abduction of their daughter, Eleanor. Abduction continued to remain a part of discussions of English statutory law throughout the medieval period. E. W. Ives has explored how the Abduction Act of 1487 made abductions felonious even where no sexual intercourse occurred. In addition, the 1487 Act treated accessories to abduction as principals. See Eric William Ives, “‘Agaynst Taking Awaye of Women’: the Inception and Operation of the Abduction Act of 1487,” in *Wealth and Power in Tudor England: Essays Presented to S. T. Bindoff* (Atlantic Highlands: Wealth and Power in Tudor England: Essays Presented to ST Bindoff, 1978), 21-44.

³⁵ It is possible that there are subsequent editions to 1670, but they are not examined in this chapter.

and “a rauishing, Rape.”³⁶ An identical definition appeared in the tenth edition from 1655.³⁷ However the very first edition (1623) and the intervening editions from 1637, 1639, 1642, 1647 and 1650 (fifth, sixth, seventh, eighth and ninth, respectively) instead included entries for “Rape, a violent taking of any feminine against their wills.”³⁸ This definition reappeared in the eleventh edition (1658).³⁹ It is worth noting that although the wording of all six of these entries were identical, the spelling varied, indicating that each edition was newly type-set. This suggests that the editors had an opportunity to correct and change elements from previous editions.⁴⁰ Overall, the dictionary definitions of “rape” and “ravishment” were not static and continued to fluctuate.⁴¹

³⁶ Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 2nd ed. (London: Printed by Isaac Jaggard for Edmund Weaver, 1626); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 3rd ed. (London: Printed by Thomas Harper for Thomas Weaver, 1631); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 4 ed. (London: Printed by Thomas Harper for Thomas Weaver, 1632).

³⁷ Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 10 ed. (London: Printed by A.M. to be sold by Andrew Crooke, 1655).

³⁸ Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 1 ed. (London: Printed for Edmund Weaver, 1623); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 5 ed. (London: Printed by I.H. for Edmund Weaver, 1637); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 6 ed. (London: Printed by T. Cotes for Thomas Weaver to be sold by John Crooke and Richard Serger, 1639); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 7 ed. (London: Printed by G.M. for T.W. to be sold by Andrew Crooke, 1642); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 6 ed. (London: Printed by A. M. for T.W. to be sold by Andrew Crooke, 1647); Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 9 ed. (London: Printed by A. Miller to be sold by Andrew Crooke, 1650).

³⁹ Henry Cockeram, *The English Dictionarie: or, an Interpreter of Hard English Words*, 11 ed. (London: Printed by A.M. to be sold by Andrew Crooke, 1658).

⁴⁰ A further fact to note is that the 12th edition’s entry reads “Rape, Ravishment; a violent deflouring of a Woman.” See Henry Cockeram, *The English Dictionarie*, 12 ed. (London: Printed for W. Miller, Revised and Enlarged by S.C., 1670).

⁴¹ Kathryn Gravdal notes an interesting gender flipping in the use of the term “ravishing.” In the early modern period the requirement for a woman to be literally carried away in rape gradually lost favor to be replaced by the definition of rape as sex without consent. At the same time, “ravishing” became an adjective in addition to a verb. However, in describing a female as “ravishing,” supposedly a compliment, in fact, the author implied that the woman had caused the man to be figuratively carried away by her beauty

Prosecutions for Rape in Early Modern England

The discussions of what constituted rape were fraught with disagreement, confusion, and oscillation between different definitions. It should be no surprise, then, that convictions for rape in the early modern common law courts were extremely rare. Lack of understanding or consensus about what constituted rape no doubt hindered its prosecution. Verdicts of rape cases in the early modern period were almost a forgone conclusion that nearly always absolved the accused from legal wrongdoing.

Nazife Bashar has noted that in the five home counties, the number of rape indictments ruled “*ignoramus*” or “not a true bill” was twice as high as any other crime between 1550 and 1700.⁴² According to J. M. Beattie’s study of Surrey court records between 1660 and 1800, Surrey Assize grand juries endorsed just over half of rape accusations as “true bill” (55.6%) compared with approximately 85% of murder cases.⁴³ Interestingly, attempted rape accusations were ruled “true bill” in 73% of Surrey Assize cases and 84% of Surrey Quarter Sessions cases.⁴⁴ Both Bashar and Beattie included assize and quarter session records in their studies. Conviction rates were similarly low. Bashar observes that while a quarter of men tried were convicted in rape cases between 1558 and 1559, only one in five was convicted between 1600 and 1649. Between 1650 and 1700, only one in eight was convicted. Beattie shows that Surrey Assize and Quarter Sessions

and sexual allure. Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* (Philadelphia: University of Pennsylvania Press, 1991), 5.

⁴² Nazife Bashar, “Rape in England Between 1550 and 1700,” in *The Sexual Dynamics of History: Men’s Power, Women’s Resistance* (London: Pluto Press, 1983), 34.

⁴³ J M Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 402.

⁴⁴ *ibid.*

courts ruled as guilty approximately 64% of attempted rape defendants, against only 15% of rape defendants.⁴⁵ Not only that, but fewer rape cases were brought to court. Bashar finds that there were 84 rape cases that made it to trial between 1558 and 1559, 64 between 1600 and 1649, and only 46 between 1650 and 1700.⁴⁶ According to Beattie's figures, between 1660 and 1800, the assizes at Surrey prosecuted murder two and a half times more frequently than rape and attempted rape combined.

Assize justices played the role of connecting central government to localities, a link that went both ways. Assize justices collected information on local grievances while also passing the "concerns of central government" to localities.⁴⁷ Local elites served as quarter sessions magistrates, or justices of the peace (JPs). These men might be lawyers (signified by an "Esquire" after their name) or they might be local gentry or town officials. Individuals appearing before the quarter sessions were likely to be familiar with the justices presiding over their sessions.⁴⁸ For instance, when Sarah Evan threatened her Somerset master with legal action after he beat her in 1652, she specified that she would bring the case to "Justice Latch."⁴⁹ Giles Gillam exploited his geographic knowledge of the justices. Though Gillam obeyed the technicality of the law by acquiring a warrant against an accused criminal, by deliberately going to the furthest possible justice for this warrant, he

⁴⁵ *ibid*, 411.

⁴⁶ Bashar, "Rape in England," 34. This did not include bills ruled *ignoramus*.

⁴⁷ James A Sharpe, *Crime in Early Modern England, 1550-1750* (London; New York: Longman, 1999), 5.

⁴⁸ Cynthia Herrup, "The Common Peace: Legal Structure and Legal Substance in East Sussex, 1594-1640" (Unpublished Northwestern University PhD Dissertation, 1982), 43.

⁴⁹ Information of Sarah Evan (Somerset Quarter Sessions, 25 September 1652) Q/SR/85 (56), SHC. [C2985] This likely indicated Justice Thomas Latch of Over Langford Manor in Upper Langford, Somerset.

allowed the accused man time to escape.⁵⁰ Both of these cases indicate that the quarter sessions justices were not only local men, but men known to the broader population of the county.⁵¹ The influence of these village elites allowed quarter sessions to continue to be guided by local custom despite serving as arbiters of national law.⁵² The non-uniform enforcement of law by quarter sessions across several counties might seem to suggest haphazard legal work, but in actuality it represents a local response to crime. As James Sharpe has pointed out, it is crucial for any legal historian to acknowledge that the practice of courts is often at odds with legal theory.⁵³ In this period, there was a stark contrast between “the harshness of legislation” and the “dearth of successful convictions.”⁵⁴ Douglas Hay has claimed that this gap “represented a conscious use of discretion by the judiciary.”⁵⁵ It reflected the continuing local character of quarter sessions courts, and helped them remain a constant and stable presence in this period of national unrest.⁵⁶ The

⁵⁰ Petition of the inhabitants of Broad Hinton (Wiltshire Quarter Sessions, Michaelmas 1642) A1/110/1642M (169), WSHC. [C1854] See also C1695.

⁵¹ Parish elites in this period grew tremendously in social and economic importance. See Joan Kent, *The English Village Constable 1580-1642: a Social and Administrative Study* (New York: Oxford University Press, 1986), 282; Keith Wrightson and David Levine, *Poverty and Piety in an English Village* (Oxford; New York: Clarendon Press; Oxford University Press, 1995); Steve Hindle, *The State and Social Change in Early Modern England, c.1550-1640* (Basingstoke; New York: Macmillan; St. Martin's Press, 2000).

⁵² Kent, *The English Village Constable 1580-1642: a Social and Administrative Study*, 288.

⁵³ Sharpe, *Crime in Early Modern England, 1550-1750*, 11.

⁵⁴ Tim Stretton, “Women and Litigation in the Elizabethan Court of Requests” (Unpublished University of Cambridge PhD Dissertation, 1993), 33.

⁵⁵ *ibid.*, 33. Stretton was paraphrasing Douglas Hay, “Property, Authority and the Criminal Law,” in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York, 1975). While I do not agree with Hay's conclusion in the Hay/Langbein debate that prosecution of criminal offenses represented a form of class warfare carried out by the ruling classes on the lower classes, I do think his understanding of judicial discretion is correct. See also John H Langbein, “Albion's Fatal Flaws,” *Past & Present* no. 98, no. 98 (1983): 96–120.

⁵⁶ The local influence also meant that specific quarter sessions could experience local unrest when the rest of the country remained calm. For example, Sharpe has noted that between 1628 and 1632, the Essex Quarter Sessions experienced a “‘control wave’ set in motion by fears of social breakdown in a period of

assizes, on the other hand, were superior courts where one might appeal a ruling from the quarter sessions. Traditionally, as the superior court, the assizes heard more serious crimes than the quarter sessions. Though quarter sessions could theoretically hear all manner of cases, in practice the more serious cases tended to wait for the assize courts.⁵⁷ As we can see from **Figure 1.1**, the 80 rape cases were more evenly distributed between the quarter sessions and the assizes than most other types of sexual crime cases in SCGV. Conversely, the 52 attempted rape cases in SCGV were heard almost exclusively by the quarter sessions. However, this might merely reflect a difference between the six counties of quarter sessions and two assize circuits. Therefore, **Figure 1.2** narrows in on the cases heard in the quarter sessions and assizes of a single geographic area: Sussex. The Sussex rape and attempted cases in SCGV show a more muted version of the general trend that rape cases slightly favored the assizes and attempted rape cases heavily favored the quarter sessions. Like attempted rape, fornication and bastardy both heavily favor the quarter sessions, albeit in a more muted fashion when limited to the Sussex cases alone.⁵⁸

acute economic problems.” James A Sharpe, “Quantification and the History of Crime in Early Modern England: Problems and Results,” *Historical Social Research / Historische Sozialforschung* 15, no. 4 (1990): 22.

⁵⁷ Quarter sessions did hear cases of all types. However **Figure 1.1** and **Figure 1.2** make it clear that the most serious of crimes (rape and infanticide) were largely heard by the assizes while the crimes that favored quarter sessions prosecution were crimes such as attempted rape (a class of assault) and fornication (the least serious of sexual crimes).

⁵⁸ Adultery, incest, and buggery all show much more dramatic change between Sussex and the full SCGV data. However, this is likely due to the low numbers of cases of these kinds heard in Sussex.

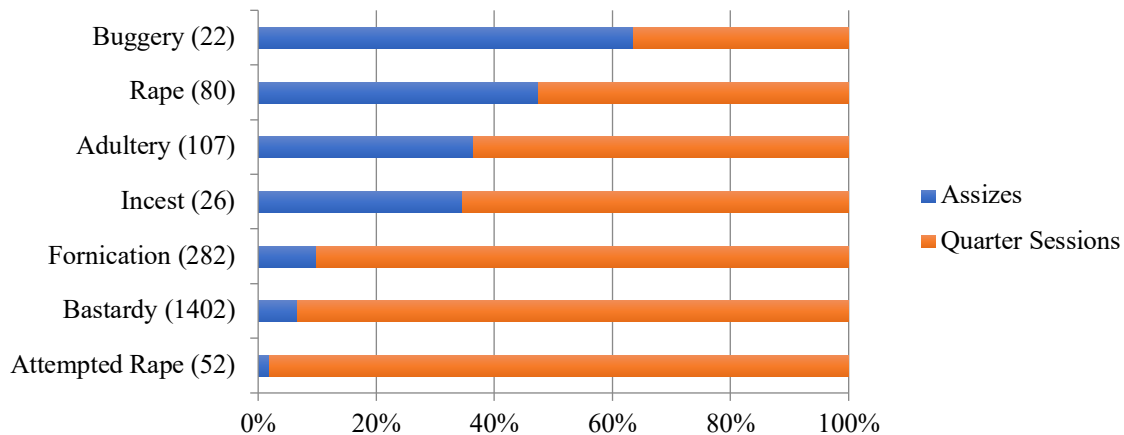


Figure 1.1: Percentage of SCGV Sexual Crime Cases (count) heard in Assize v. Quarter Session Courts

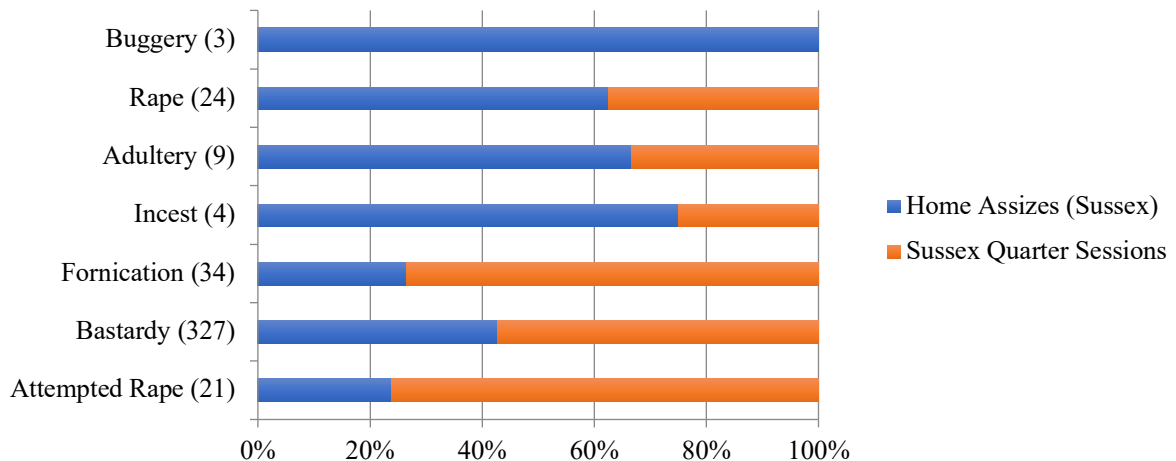


Figure 1.2: Percentage of SCGV Sexual Crime Cases (count) heard in Sussex Assize v. Quarter Session Courts

Assize judges had certain powers that were unavailable to the local magistrates who presided over the quarter sessions. Assize justices could award benefit of the clergy or “benefit of the belly” to remove capital sentences, respectively, from men who could read and women who were pregnant.⁵⁹ Assize judges also had investigative powers and could

⁵⁹ As discussed in the Introduction, any man who could read could claim “benefit of the clergy.” This required the convicted individual to prove he could read in order to commute his sentence from execution to a lower punishment, usually branding. Women had no such permanent escape. The only legal loophole for a woman was to claim pregnancy. However this option was a temporary reprieve from execution until

dismiss “unsupported felony accusations prior to any court hearing.”⁶⁰ In practice, local magistrates often ignored these distinctions and acted as the assizes judges did.

Justice Matthew Hale has often been vilified for his “misogynist” comments about false rape accusations.⁶¹ Yet Hale has been largely misinterpreted. In his *Historia Placitorum*, he noted that there had previously been a conviction or execution for rape in a locality and “some malicious people” saw “how easy it was to make out such an accusation, and how difficult it was for the party accused to clear himself.”⁶² Hale went on to give several instances of men being falsely accused of rape, claiming that he only mentioned these instances so that people would “be more cautious upon trials of offenses of this nature.” He worried that “the heinousness of the offense” often pushed the judge and jury to be “over hastily carried to the conviction of the person accused thereof, by the confident testimony of malicious and false witness.”⁶³ Yet, in all the instances presented by Hale, not one man was convicted. So, how were judges and juries “over hastily carried to the conviction” if no one was convicted? Here, I think it is necessary to consider the possibility

the child was born. See Krista J Kesselring, “Bodies of Evidence: Sex and Murder (or Gender and Homicide) in Early Modern England, c.1500-1680,” *Gender & History* 27, no. 2 (July 15, 2015): 245–62.

⁶⁰ Herrup, “The Common Peace” (Unpublished Dissertation), 45.

⁶¹ See, for example, Lisa R Eskow, “The Ultimate Weapon: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution,” *Stanford Law Review* 48 (1995): 677; Julia R Schwendinger and Herman Schwendinger, “Rape Myths: in Legal, Theoretical, and Everyday Practice,” *Crime and Social Justice* 1 (1974): 24; Susan Estrich, “Palm Beach Stories,” *Law and Philosophy* 11, no. 1 (1992): 6. FN 5. Jennifer J McMahon, “Marital Rape Laws, 1976-2002: From Exemptions to Prohibitions” (Unpublished University of Georgia MA Dissertation, 2005), 5. FN 3. R R L, “Checking the Allure of Increased Conviction Rates: the Admissibility of Expert Testimony on Rape Trauma Syndrome in Criminal Proceedings,” *Virginia Law Review* 70, no. 8 (1984): 1661-62. FN 14.

⁶² Hale, *Historia Placitorum*, 635.

⁶³ *ibid.*, 636.

that Hale was acknowledging the effects of rape accusations on public opinion, rather than legal verdict.

As Michael Braddick and John Walter note, “legitimacy is not the same as legality since actions can clearly be legal without being seen and legitimate and vice versa.”⁶⁴ In Laura Gowing’s words, “there was a substantial gulf between legal and popular understandings of rape.”⁶⁵ Although rape cases were almost always ruled in favor of the accused, this did not mean that neighbors or the court thought that the accused was innocent— but merely that there was insufficient evidence to prove his guilt. In Garthine Walker’s examination of early modern newspaper articles, she notes that early modern individuals understood that being ruled legally innocent did not mean that a defendant did not commit the crime.⁶⁶ In depositions it was often blatantly obvious that neighbors thought that the accused was guilty even though the eventual verdict was almost uniformly acquittal.

The gulf between legal guilt and public opinion included sexual interactions that might be criminal, but not rape. Not all forced sexual interactions could qualify as rape. In his 1657 instructional manual for magistrates, Justice David Jenkins stated that “in Rape there must be *Rem in re*, penetration, as well as *emissio seminis*; otherwise it is no Felony.”⁶⁷ Early modern consensus was that penetration and emission of semen were

⁶⁴ Michael Braddick and John Walter, “Grids of Power: Order, Hierarchy and Subordination,” in *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge; New York: Cambridge University Press, 2001), 9.

⁶⁵ Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003), 101.

⁶⁶ Garthine Walker, “Rape, Acquittal and Culpability in Popular Crime Reports in England, c. 1670–c. 1750,” *Past & Present* 220, no. 1 (2013): 115–42.

⁶⁷ David Jenkins, *Pacis consultum a directory to the publick peace: briefly describing, the antiquity, extent, practice and jurisdiction of several countrey-corporation-courts; especially, the court leet. An exact and perfect method to keep a court of survey for the setting forth and bounding of the mannors, lands, and tenements; with the articles to be therein given in charge: a work most useful: of which subject, never was*

necessary for a sexual assault to be considered rape. This does not mean that other types of sexual assault did not happen or were not crimes; they merely did not legally qualify as rape. All other types of sexual assault fell into the broad category of “assault,” which was a misdemeanor rather than a felony.⁶⁸ If a rape allegation could not be proved, it sometimes happened that women prosecuted men for assault. Alice Cock accused Ralph Sleigh of rape in the Staffordshire Quarter Sessions, but it was ruled not a true bill.⁶⁹ That did not stop Cock from bringing an assault accusation against Sleigh at the next quarter sessions.⁷⁰

Rape cases might likely be lurking behind some of the 1402 bastardy cases, 282 fornication cases, and 107 adultery cases in SCGV, even when not stated outright. Elinor Slap of Taunton James testified very simply that Moses Hutchings was the father of her bastard child and that he only had sexual intercourse with her a single time and promised her marriage.⁷¹ However Thomas Gardiner, the constable of Taunton James, told a

any thing printed before. An abstract of the penal statutes, useful for all men to know. Also some difficult questions in law, proposed unto, and resolved (London: Printed by J.C. for H. Fletcher, 1657), 10.

⁶⁸ Early modern records record many instances of forced sexual interactions which did not involve vaginal sex. One of the most egregious accounts that was not legally prosecuted as a rape was the case of Elizabeth Bissenden. Bissenden’s testimony began normally enough: claiming she only allowed Richard Mephem to have sexual intercourse with her after he promised her marriage and that he was the father of her child. However, from there, her testimony deviated sharply from the standard pattern. After Richard had sex with her the second time, he brought her to an alehouse where he and a man named Jeffrey Mephem “did make her drink” and she heard that they had bragged about putting “something in her drinke.” Jeffrey and Thomas Sagett then threw her on the ground, pulled up her petticoats, and “cast salt and drinke upon her sd privie parts.” Richard used his hands to stick salt up inside her body. See Examination of Elizabeth Bissenden (Sussex Quarter Sessions, 18 June 1657) QR/116 (93), ESRO. [C1455] Strangely, Richard Mephem was not mentioned in the indictment or any document other than Bissenden’s testimony. See Indictment of Thomas Sagett, Jeffrey Mephem (Sussex Quarter Sessions, 1 April 1657) QR/117 (6), ESRO. [C1455]

⁶⁹ Indictment of Ralph Sleigh (Staffordshire Quarter Sessions, July 1659) Q/SR/307/54, SRO. [C2232]

⁷⁰ Indictment of Ralph Sleigh (Staffordshire Quarter Sessions, October 1659) Q/SR/308/5, SRO. [C2232]

⁷¹ Examination of Elinor Slap (Somerset Quarter Sessions, 25 December 1655) Q/SR/93 (190), SHC. [C474]

decidedly different story. According to Gardiner, Elinor Slap had “confessed” to him that “she had comitted fornicacon with one Thomas Peirce” and that Peirce “tooke her agt her will, & ...did then stop her mouth with his hand.”⁷² When Gardiner asked Slap why she named another man “seeinge the sd thomas Peirce had done her evill,” Slap replied that when she went to a female neighbor’s house and explained the situation, the neighbor explained that Peirce would give Slap money to name another man as father. Not only that, Gardiner’s testimony alleged that when Slap was questioned about the child’s paternity, “Peirce stod behind her & when she was prest to name the father he stept upon her foote to presse her to name another.” It is likely that women chose not to accuse men of rape because they were aware of the unlikelihood of conviction. Early modern individuals were very familiar with the law. According to Craig Muldrew, each year approximately one fifth of the early modern English population was drawn into some sort of legal action.⁷³

Prosecutions and convictions for assault as well as other crimes such as fornication and bastardy were much more common than rape. As Gowing has noted, “some of the most detailed testimonies of rape come not from prosecutions at the assizes, where rape was a capital offence, but from witness statements at the quarter sessions and church courts, where the offence at stake was pregnancy or fornication.”⁷⁴ While depositions from women in some bastardy and fornication cases were basic and formulaic, clearly following the

⁷² Information of Thomas Gardiner (Somerset Quarter Sessions, 30 April 1657) Q/SR/95 (174), SHC. [C474] Due to this examination, this case is classified in SCGV as a rape case. However, it is obviously debatable since Slap herself did not testify that it was a rape.

⁷³ Craig Muldrew, *The Economy of Obligation: the Culture of Credit and Social Relations in Early Modern England* (New York: St. Martin's Press, 1998), 227.

⁷⁴ Gowing, *Common Bodies*, 101.

line of questioning, others were peppered with phrases and language reminiscent of rape depositions.

STRATEGIES FOR PROVING RAPE

While there were certainly patterns in the testimonies from rape victims, there was no single tried and true way of proving rape. Many testimonies from rape victims included the term “force,” or stated that the attack was “violent,” and that the woman was “unwilling” or that the sexual congress was “against her will.”⁷⁵ However, there are recurring themes in depositions from rape victims that suggest certain common strategies for “proving” rape. Some of the most common were to include descriptions of: crying out, the accused’s previous attempts to rape the victim, and strong refusals towards the accused’s advances.

“Crying Out”

Giovanni Diodati’s *Pious annotations*, published in England in 1643, suggested that if a woman “cried not... therefore she could not be supposed to have been forced.”⁷⁶ When Francis Barber raped Jane Bingley in 1647, Bingley testified that “when she cried out for helpe he swore if she did cry out as she did, & not hould her tongue he would kill her.”⁷⁷

⁷⁵ Since record survival is not complete, there are only existant testimonies from victims in 28 rape cases. For “force,” see victim testimonies in C2292, C2288, C2228, C2223, C2249, C1833, C2173, C2718, C2328, C2291, C2289, C2286, C2219, and C2210. For “violence,” see C1634, C2294, C2244, C1833, C2173, C2718, C2328, C2291, C2219, and C2210. For “unwilling” or “against her will,” see C2328, C3194, C2304, C2291, C2289, C2286, C2285, C2272, C2210, and C2219.

⁷⁶ Giovanni Diodati, *Pious annotations, upon the Holy Bible expounding the difficult places thereof learnedly, and plainly: vvith other things of great importance* (London: Printed by T.B. for Nicholas Fussell, 1643), 120.

⁷⁷ Examination of Jane Bingley (Northern Assizes, 10 June 1647) ASSI 45/2/1 (13), TNA. [C2210]

During her rape, Isabel Moorehouse “cried out but...John Wood layd his hand on her mouth and stoppt her from crying.”⁷⁸ Asking women whether they cried out seems to have been standard questioning in rape cases. If a woman claimed to have cried out, the court usually pressed her for why no one answered. If the woman instead claimed that she had not cried out, she had to give a compelling reason as to why she had not. When asked why she did not cry out when George Pigeon attempted to rape her in Southampton in 1650, Elizabeth Armstrong answered “that she could not cry out because Pigeon stopped her mouth with his tounge.” This was unsurprising given that in her testimony she claimed that Pigeon “had almost torne her jawes to peeces with foringe his tongue into her mouth.”⁷⁹ Elizabeth Frith acknowledged that when Walter Patrick raped her, there were two boys “near to them in another cloase yet she nev[er] called” because Patrick “did strive soe violently with her that she could not crye out for helpe.”⁸⁰

Crying out was also important because it led to neighborly confirmation. If no one heard the victim’s cries, she had to alert as many people as quickly as possible, thereby creating witnesses to the aftermath of the attack, if not the attack itself.⁸¹ When Elizabeth Linton refused Stephen Maultas’s advances, “she was forced to cry out murder” and “divers of hir neighbors did heare hir, vpon hir crye,” upon which Maultas fled.⁸²

⁷⁸ Examination of Isabel Moorehouse (Northern Assizes, 27 October 1653) ASSI 45/4/3 (113), TNA. [C2249]

⁷⁹ Sheila Thomson, ed., *The Book of Examinations and Depositions Before the Mayor and Justices of Southampton 1648-1663*, vol. 37 (Southampton: Southampton Records Series, 1994), 73.

⁸⁰ Information of Elizabeth Frith (Northern Assizes, 20 November 1653) ASSI 45/4/3 (78), TNA. [C2244]

⁸¹ Garthine Walker, “Sexual Violence and Rape in Europe, 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Oxford; New York: Routledge, 2013), 434.

⁸² Information of Francis Linton (Northern Assizes, 20 July 1647) ASSI 45/2/1 (181), TNA. [C2253]

Although “crying out” might seem straightforward, even if the court believed that a woman had “cried out,” this did not necessarily equate to dissent. Some might have assumed the denials were part of a courtship ritual. Sara Mendelson and Patricia Crawford have discussed the early modern “art of scorning” in which “feminine scorn and masculine diligence were two halves of a ceremonial trial by ordeal.”⁸³ They noted that this placed women in the tricky role of balancing “the exact degree of scorn necessary to turn away undesirable suitors, while keeping a desirable suitor attracted long enough to test his sincerity and fidelity.”⁸⁴ Contemporary drama was filled with references to false maidenly refusal. In Shakespeare’s *Richard III*, Buckingham asserts “Play the maid’s part, still answer nay, and take it.”⁸⁵ Similarly in *Two Gentlemen of Verona*, Julia comments “since maids, in modesty, say no to that/ Which they would have the profferer construe ay.”⁸⁶ Gerasto, in Fletcher and Rowley’s *The Maid in The Mill*, encouraged his friend that he “should have ta’en her then.../And shak’d her stubborn will; she would have thank’d you,/ She would have lov’d you infinitely: They must seem modest,/ It is their parts; if you had play’d your part.”⁸⁷ These stereotypes made women’s testimony to their own dissent more suspect, as many signs of dissent could be interpreted as ritual scorning.

In addition, it was sometimes difficult to tell if words like “groan,” “cry,” or “shout” were signs of consensual sex or assault. For example, James Prior testified that he saw

⁸³ Sara Heller Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford; New York: Clarendon Press, 1998), 117.

⁸⁴ *ibid.*, 117.

⁸⁵ William Shakespeare, *Richard III*, Act 3, Scene 7, v. 2252.

⁸⁶ William Shakespeare, *Two Gentleman of Verona*, Act 1, Scene 2, v. 55-56.

⁸⁷ John Fletcher and William Rowley, *The Maid in the Mill*, Act 5, Scene 2.

Elizabeth Hampton and William Gain in some sexually compromising positions. In addition to seeing them, Prior also heard them. He testified that he “did heere [Hampton] groane” and that he heard Gain “say doest thou groane, besse I will make thee groane more before I have done.”⁸⁸ In this case, groaning appears to be the normal sound of consensual sex. “Groans” and “cries” did not always seem easily distinguishable either to those eavesdropping on sexual interactions or to scholars evaluating the legal record.

Previous Rape Attempts: A Serial Offender

Another strategy for rape victims seeking to provide evidence of dissent was to invoke previous attempts by the accused to rape them. Elizabeth Attye, for example, testified before the 1650 Northern Assizes that Richard Harwood “attempted her chastity several times.”⁸⁹ Isabel Moorehouse reported that she fought off John Wood’s attempts to rape her once before he eventually succeeded.⁹⁰ According to Clara Barron’s testimony, her master John Wallace attempted to rape her several times before he finally was able to.⁹¹ As we will see later, some women reported previous attempts in fornication and bastardy cases, as well.

Previous attempts, therefore, did not prove rape per se, but they did nudge answerability for the sexual crime onto the male actor. These stories of endemic pursuit of

⁸⁸ Prior found Gain lying on top of Hampton with his breeches down. The story was actually far more dramatic since Gain’s wife was Hampton’s sister so Gain was cheating on his wife with his sister-in-law. See Information of James Prior (Sussex Quarter Sessions 29 June 1651) QR/116 (94), ESRO. [C1451]

⁸⁹ Information of Elizabeth Attye (Northern Assizes, 12 April 1652) ASSI 45/4/2 (22), TNA. [C2251]

⁹⁰ Information of Isabel Moorehouse (Northern Assizes, 27 October 1653) ASSI 45/4/3 (113), TNA. [C2249]

⁹¹ Information of Clara Barrow (Northern Assizes, 2 October 1655) ASSI 45/5/3 (124), TNA. [C2248]

sex might not have been a targeted attempt to shift culpability. They may, indeed, have merely reflected the reality of events. However, in practice, demonstrating the serial nature of a man's advances was an extremely effective way to shift responsibility for sexual encounters from the woman to the man for several reasons. Neighbors could corroborate reports of repeated attempts more often than they could an actual rape. People rarely watched rapes without intervening, so it is likely that if there were witnesses to an event of this kind, it was an attempted, rather than a completed, rape. In addition, if attempts occurred multiple times, it gave the victim multiple opportunities for witnesses. For example, when Mark Pumey raped his cousin Mary Pumey in 1653, Mary testified that "though she cryed out" there was "noe company being neare to come rescue her."⁹² However, Richard Quithampton was able to testify that on a previous occasion, "he heard an outcry" and came into a room where he saw Mark lying on Mary "in a most uncivil manner having his hand under her coates." When Quithampton asked Mark if he meant to "make his house a bawdy house," Mark scarpered.⁹³ Multiple attempts to rape meant multiple opportunities for witnesses. Indeed, many more witnesses corroborated stories of consistent thwarted attempts at sex than corroborated accounts of actual rapes. This shored up the credibility of the accuser in her accusations.

In addition to shifting culpability, when it could be shown that a man had repeatedly attempted to rape a woman, his crime might no longer be seen as the mistake of an everyman, but as one committed by a lingering social danger. Walker has noted an

⁹² Examination of Mary Pumey (Sussex Quarter Sessions, 18 October 1653) QR/102 (59), ESRO. [C2292]

⁹³ Information of Richard Quithampton (Sussex Quarter Sessions, 7 January 1654) QR/102 (58), ESRO. [C2292]

everyman/monster dichotomy in perceptions of the crime of rape. While some early modern crimes of rape were normalized and tolerated by the community, others were violently challenged and labeled as monstrous.⁹⁴ In some instances of rape, kin and neighbors jumped to the defense of the perpetrator as an everyman of society, while in others community members were outspoken in calling for retribution on behalf of the victim. By offering evidence that a rape or attempted rape was an ongoing problem rather than a one-time incident, women testifying to past attempts subtly pushed men from the “everyman” category into the “monster” category. While the “everyman” could make a mistake, repeated offenses suggested a deeper, more “monstrous” issue.

The Lucretia Refusal

Another way in which women evidenced their dissent was by recounting how they verbally attempted to dissuade the assailant from sexual advances. There were many ways that a woman could verbally refuse a man but one of the strongest was for a woman to claim that she “would rather die” than have sexual intercourse with the man. This was particularly evocative because of the relationship between women’s sexual reputations and death. The idea that dying remedied a raped woman’s honor transcends temporal and geographic boundaries. Literature is littered with examples from Philomena to Geoffrey Chaucer’s Virginia in *The Physician’s Tale* to Shakespeare’s Lavinia in *Titus Andronicus*. Perhaps the most famous example is Lucretia, a Roman mythological figure who killed herself after being raped by Sextus Tarquinius, son of the king of Rome. In many myths,

⁹⁴ Garthine Walker, “Everyman or a Monster? the Rapist in Early Modern England, c.1600–1750,” *History Workshop Journal* 76, no. 1 (October 1, 2013): 5–31.

Lucretia's rape and death served as catalysts for the overthrow of the Roman monarchy. The story of Lucretia was an extremely salient one for England in the era of the civil wars and Interregnum since she could represent the abuses of the monarchy and even offer justification for regime change.⁹⁵ Many women harkened back to this trope in their testimonies with claims that they would rather die than be raped, which we might call the "Lucretia Refusal."

In Essex in 1645, Elizabeth Spugion was washing dishes in the kitchen when her master entered the room. Without a word, he "puld hir downe, & stoppd hir mouth with his handkercheife, & puld upp her cloathes as high as they could pulled, & kneeled uppon her with his knee, & pulled out his member & touched her hand with it so kneeling uppon hir." Spugion yanked the handkerchief from her mouth and begged him "to cutt her privates or knocke hir onn the head, rather than offer hir that wrong."⁹⁶ In Westmorland, Clara Barron unsuccessfully attempted to dissuade her master from raping her by stating that she "would rather loose her life" than have sex with him.⁹⁷ One might notice an interesting parallel between these two examples: Spugion and Barron were both responding to inappropriate advances from their masters. The Lucretia Refusal was used in situations of exploitation at the hands of male superiors. The most frequent instance was that of masters and servants. However, since men were socially superior to women, it could also be used in other scenarios. For example, Comfort Holmes testified in 1654 that although Otto Mappin

⁹⁵ A search for "Lucretia" on Early English Books Online yields 280 results in 140 works published between 1642 and 1660. Similarly, the variant "Lucrece" yields 106 results in 70 works for the same years.

⁹⁶ Examination of Elizabeth Spugion (Essex Quarter Sessions, 12 May 1645) Q/SBA 2/56, ERO. [C835]

⁹⁷ Information of Clara Barron [one of two] (Northern Assizes, 2 January 1656) ASSI 45/5/3 (124), TNA. [C2248]

aggressively and physically pursued her, “shee ever denied to yield to him...saying she would rather dye then be guilty of committing of so filthy a sinne.”⁹⁸ When Anne Scott “would not consent” to let John Harding have sex with her in Sussex in 1652, he shoved her, and yanked up her petticoats. Scott responded to this violence by suggesting to Harding that “you should kill me” which seemed to give Harding pause, and he left her.⁹⁹

Damaged Clothes

Many modern scholars have also argued that damage to clothing could prove a rape. Walker, for example, has argued that “torn garments connoted sexual struggle, and had long been associated with rape.”¹⁰⁰ Gowing argued that London rape depositions talked “about damage to clothes and goods more than the physical attack.”¹⁰¹ In general, there were few entries in SCGV which referred to damage to clothing. Depositions from both victims and witnesses often commented about the accused lifting the victim’s petticoats, but this seemed to be more a symbol of the sexual nature of the attack—by uncovering nakedness—than about the clothing itself. Occasionally women discussed men tugging at their clothes.¹⁰² One of few examples where women actually discussed destruction of clothing arises in a fornication case. Richard Apsley followed Elizabeth Brown and John

⁹⁸ Information of Comfort Holmes (Northern Assizes, 24 March 1654) ASSI 45/5/2 (64), TNA. [C95]

⁹⁹ Information of Anne Scott (Sussex Quarter Sessions, 8 [illegible] 1652) QR/W75 (73), WSRO. [C3043]

¹⁰⁰ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 59; Walker, “Sexual Violence and Rape in Europe, 1500-1750,” 434.

¹⁰¹ Laura Gowing, “Knowledge and Experience, c. 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abingdon; New York: Routledge, 2013), 248.

¹⁰² Information of Emma Smith (Sussex Quarter Sessions, 24 December 1647) QR/79 (51), ESRO. [C2289]

Wallace to a Kent marshland in October of 1654, where he overheard Brown agree to have sex with Wallace “with all my heart.” Brown’s only hesitation was: “But i shall crumple my handkerchief and apron.” Given her enthusiasm, the concern for her apron and handkerchief sounds somewhat jarring. Wallace did not seem too bothered and simply told her to “pull them off then & take up thy coatts” while he pulled off his breeches.¹⁰³ Gowing has suggested that perhaps women’s discussion of clothing were “metaphors that gave women a better way of understanding the trauma of assault.”¹⁰⁴ While torn clothing was clearly evidence of violation, the language of torn clothing also likely evoked an emotional response. Clothing was one of few possessions allotted to women of all stations. Female servants were frequently given the cast-offs of their mistresses or left clothing in wills. The violation of clothing constituted a violation of one of the only possessions a woman truly owned.¹⁰⁵ Some might attribute the discrepancy between SCGV and Gowing’s London records to the urban locale of her study but Walker also refers to “torn or soiled clothing” and the bulk of her research comes from Cheshire.¹⁰⁶ The cases in SCGV relied much more on the testimony of neighbors than on any sort of physical evidence. Many of these strategies were dependent on witnesses. Crying out, previous attempts, and even torn clothing all often involved others hearing, seeing, and witnessing.

¹⁰³ Information of Richard Apsley (Kent Quarter Sessions, 3 October 1654) Q/SB/5 (28), KLHC. [C1392]

¹⁰⁴ Gowing, “Knowledge and Experience, c. 1500-1750,” 248.

¹⁰⁵ See Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 223.

¹⁰⁶ Garthine Walker, “Rape, Acquittal and Culpability in Popular Crime Reports in England, c. 1670–C. 1750,” *Past & Present* 220, no. 1 (2013), 135.

SEX AND THE PUBLIC

Communal Participation in Sexual Crime Enforcement

The participation of early modern individuals who were not the accuser or the accused is crucially important to understanding the early modern prosecution and defense of sexual crime. Sex itself was public in a way that is often non-intuitive to modern readers. Stephen Roberts has argued that successful prosecution of cases of sexual crime “depended on confessions, since such a private offence was rarely reliably witnessed by third parties.”¹⁰⁷ However, as Gowing has noted, the “early modern household was not built for privacy....walls were thin, keyholes large, and partitions of cloth easy to pull aside.”¹⁰⁸ Gowing’s turn of phrase is not only elegant, but literal. Thomas Merrick witnessed his mistress and William Russell having sex by looking down through a hole in the floor of an attic room that opened onto the ceiling of his mistress’ bedroom.¹⁰⁹ Elizabeth Sprang noted that when her master’s son had sex with her against a board in the kitchen, Mr. Bampffield, Mr. Swape, and Mr. Willoughby were in the hall where they all could have heard or seen because the door between the hall and the kitchen was open and the door itself was merely “a wainscott partition.”¹¹⁰

¹⁰⁷ Stephen K Roberts, “Fornication and Bastardy in Mid-Seventeenth Century Devon: How Was the Act of 1650 Enforced?” in *Outside the Law: Studies in Crime and Order, 1650-1850*, edited by John Rule (Exeter: University of Exeter Press, 1982), 4.

¹⁰⁸ Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford; New York: Oxford University Press, 1996), 190.

¹⁰⁹ Information of Thomas Merrick (Wiltshire Quarter Sessions, 27 June 1655) A1/110/1655M (188), WSHC. [C3213] Joan Perry and James Perry both also testified that they had looked through the hole in the floor and seen Merrick’s mistress with Russell. Information of Joan Perry; Information of James Perry (Wiltshire Quarter Sessions, 27 June 1655) A1/110/1655M (188), WSHC. [C3213]

¹¹⁰ Examination of Elizabeth Sprang (Somerset Quarter Sessions, 1653) Q/SR/87 (15), SHC. [C918]

Though many modern scholars have emphasized the frequency of sexual relationships between masters and servants, such as that between Sprang and her master's son, the role of servants as witnesses, rather than sexual partners, was equally, if not more, important. Gowing notes that most households had at least "a servant or apprentice who was usually in the house."¹¹¹ Though the geographic scope of Gowing's study (London) was much more urban than this study, both cases above involved witnessing a master or servant in a sexual act. Houses across England were still densely occupied, often with servants and apprentices, even when they were not urban. The presence of servants, family members, and others packed into tight quarters meant that sexual activity could often be witnessed, either heard or seen.¹¹² Witnessing sex was unavoidable. Robert Harding specifically stated that he "saw Thomas Horne...have the carnall knowledge of Joan Streete...in his owne house and sight."¹¹³ Nor was he the only one to witness sex in his own house and sight. Christopher Mountstephen testified that he saw William Hawkins "take up" Ellen Mountstephen's "coates and lye betweene her legges" on the ground by the fire in his house.¹¹⁴

Sarah Strange and John Stevens had sex in a bed that Stevens shared with his fellow servant Richard Cutt. Unsurprisingly, Cutt was able to testify in detail about the physical

¹¹¹ Gowing, *Domestic Dangers*, 190.

¹¹² Gowing writes that discovering "an employer in a situation of such vulnerability bestowed upon a servant the power of disclosure and sometimes a conflict of loyalty." *ibid.*, 191.

¹¹³ Information of Robert Harding (Wiltshire Quarter Sessions, 17 May 1658) A1/110/1658M (159), WSHC. [C3394]

¹¹⁴ Information of Christopher Mountstephen (Somerset Quarter Sessions, 28 October 1653) Q/SR/87 (5), SHC. [C744] Frances Flea claimed that Hawkins had confessed the relationship to her, but Hawkins denied both a sexual relationship with Ellen Mountstephen and having confessed to anyone. See Information of Frances Flea, Examination of William Hawkins (Somerset Quarter Sessions, 28 October 1653) Q/SR/87 (5), SHC. [C744]

nature of the relationship between Stevens and Strange.¹¹⁵ Sharing a bed often created witnesses. Since Lucy Sumpter and Elizabeth Leech shared a bed, Robert Lock actually had to restrain Leech in order to have sex with Sumpter.¹¹⁶ The dynamic in this case was quite unusual because after Lock finished having sex with Sumpter, he offered to have sex with Leech. Leech responded that she would cut off his genitals if she could. This did not convince Lock to stop attempting to have sex with Leech. In addition, Sumpter interrupted to counsel Leech: “what you are a foole will not you take that which is good?” However, when Leech threatened to “shreeke out & call out for helpe against him,” Lock desisted. Lock did, however, promise Leech that if she kept his “uncivil carriages” to herself, she “should never want so longe as...locke had one penny to helpe himselfe.” Though this case is unusual, the interaction clearly indicated the importance of witnessing sex. Lock did not fear Leech’s physical defenses, but rather, her ability to witness and create witnesses (by crying out and notifying neighbors) to his sexual crimes.

Yet faulty partitions and close quarters were not the only reasons community members spied on one another. For one thing, even when walls, doors, and other partitions successfully prevented hearing and seeing sexual activity, friends and neighbors testified that the presence of the barriers themselves were suspect. Locking doors was often seen as a sign of sexual impropriety. William Hodges locked his brother Robert out of the house they shared with their parents in order to have sex with Jane Williams.¹¹⁷ George Hoy and

¹¹⁵ Information of Richard Cutt (Somerset Quarter Sessions, 12 April 1653) Q/SR/86 (104), SHC. [C523]

¹¹⁶ Information of Elizabeth Leech (Norfolk Quarter Sessions, 30 July 1655) C/S 3/box 42, NRO. [C2664] See also Information of Joan Thropkin (Norfolk Quarter Sessions, 30 July 1655) C/S 3/box 42, NRO. [C2664]

¹¹⁷ Examination of Jane Williams (Somerset Quarter Sessions, 3 June 1650) Q/SR/82 (145), SHC. [C748]

a friend “knoct at the chamber doore where” his master Anthony Buckingham and a maidservant Elizabeth Thurgood had entered and “would have gone in but the latch of the door was puld in soe as hee could not gett in.” Hoy suspected the two of sexual impropriety and noted in his deposition that Buckingham and Thurgood often lay together in the same chamber when Buckingham’s wife was ill in another chamber nearby.¹¹⁸

Sexual intercourse was also frequently witnessed outside the house in fields, through hedges, and over fences. Robert Blasey spied on Mary Wickes and Richard Melton from behind a hedge, witnessing a half-hour conversation and sexual intercourse between Wickes and Melton.¹¹⁹ Other spying neighbors could not claim to have actually seen sexual intercourse, but clearly thought that sex had taken place based on what they had seen. William Dawkins saw William Ranger and Elizabeth Powell walk off and lie down next to each other in a field and surmised that they were intending to have sex.¹²⁰ John Shepper specified that he saw Ranger pull up Powell’s petticoats and reveal her legs.¹²¹

The actual practice of law *required* the participation of the community. Gowing writes that “neighbours and family as well as magistrates” enforced the social control of sex.¹²² By 1604, there was clear legislation mandating that “all persons in the community” must “assist in the apprehension of rogues.” Anyone who failed to arrest a criminal and

¹¹⁸ Examination of George Hoy (Essex Quarter Sessions, 10 September 1655) Ph 4/151/7 Q/SBA 2/93, ERO. [C1162]

¹¹⁹ Information of Robert Blasey (Norfolk Quarter Sessions, 29 May 1654) C/S 3/box 41A, NRO. [C2615]

¹²⁰ Information of William Dawkins (Wiltshire Quarter Sessions, 25 May 1659) A1/110/1659T (163), WSHC. [C3394]

¹²¹ Information of John Shepper (Wiltshire Quarter Sessions, 25 May 1659) A1/110/1659T (163), WSHC. [C3394]

¹²² Gowing, *Common Bodies*, 6.

“convey him to the nearest constable or tithingman was to be fined 10s.”¹²³ Neighbors took this duty seriously. Early modern individuals transported their neighbors to local officials, witnessed their behavior, and served on their juries. Early modern juries did not function as impartial evaluators. Instead, they were experts, “selected locally because they were expected to bring some prior knowledge of the facts and/or the litigants to the trial.”¹²⁴

Many early modern individuals actively followed neighbors and acquaintances whom they suspected of having sex. In Somerset in 1653, Edward Light and Francis Arnold saw Hannah Bampton and John Norris together and “went after them as privately as they could to see what they intended to doe.” Light and Arnold listened as Norris propositioned Bampton for sex, as Bampton refused, and as Bampton eventually gave in after Norris promised to marry her. Light and Arnold even watched as the couple had sex, seeing Bampton was “naked, from the girdle downwards” and that Norris was “betweene her legges, (comitteinge the Act) with his britches downe about his heeles.” Light and Arnold waited until Norris and Bampton had “almost ended what they were about” before confronting the couple.¹²⁵ In 1656, William Fowl and Alexander Barker saw Alexander Cannon and Ellen, the wife of Henry Sherry, together in a ditch under a hedge in Essex. When Sherry noticed Fowl and Barker, she ran, and Cannon lay “upon his belly flatt on [th]e ground as if he had been asleepe.” Fowl and Barker pursued Sherry until they were certain they had established her identity, and then returned to find Barker, who in the meantime had fled. When they finally found Barker in another field, he begged them to

¹²³ Kent, *The English Village Constable*, 31. Kent was describing 1 Jac 1, c. 7 and 7 Jac 1, c. 4.

¹²⁴ Barbara J Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca: Cornell University Press, 2000), 11.

¹²⁵ Information of Edward Light (Somerset Quarter Sessions, 20 June 1653) Q/SR/98 (123), SHC. [C502]

keep what they had seen to themselves because if they made it “knowne it would bee a great disgrace vnto him.” Barker insisted that “it was [th]e first time that ev[er] he had beene in her [Sherry’s] companie and it should be [th]e last.”¹²⁶ In Somerset in 1659, Simon Speller had “a suspicion” about Jane Mutter and John Combe “in regard of thier familiarity together that they had an intent to comitt some wickeness,” so he followed them. It was not only present suspicions, but also reputation that had encouraged Speller to spy. He reported that Mutter was “accounted to be an idle woman and of a very loose life and conversation.” Speller’s account was specific about how far they rode (“about half a mile”), how they went inside a hedge but then moved because Mutter complained that the ground “was to hard for her,” and how their final placement was in a ditch with Mutter’s back against its bank. Speller even noted that he “saw them...in the very act together.”¹²⁷ When Mary Reeves saw Anne George go into a barn with a soldier and lock the door behind them, she became suspicious. Reeves managed to open the door and saw the soldier “lying uppon” George with “her cloathes upp soe that” Reeves could see George’s “naked skinn.”¹²⁸ When Jonas Craven and a constable came to arrest John Chippendale for stealing geese, they found him and Jane Starrer naked in bed together.¹²⁹ Though Craven was not intentionally trying to uncover sexual impropriety, he was still acting as law enforcement for his neighbors.

¹²⁶ Information of William Fowl and John Barker (Essex Quarter Sessions, 6 October 1656) Ph 4/151/7 Q/SBA 2/97, ERO. [C1174]

¹²⁷ Information of Simon Speller and Walter Easton (Somerset Quarter Sessions, 25 May 1659) Q/SR/98 (142), SHC. [C595]

¹²⁸ Information of Mary Reeves (Somerset Quarter Sessions, 24 February 1652) Q/SR/84 (54), SHC. [C1102]

¹²⁹ Information of Jonas Craven (Northern Assizes, 29 December 1651) ASSI 45/4/1 (34), TNA. [C138]

Some witnesses who claimed that their witnessing of illegal sex had not been intentional were clearly more involved than they would admit. In the previously mentioned case of James Prior witnessing Elizabeth Hampton and William Gain having sex, Prior claimed he had only “accidentally” gone into Hampton’s house where he saw her lying on a chair with “her clothes ypp about her & her thighe bare and one William Gayne...lying upon her w[i]th his breeches downe.” Hampton noticed Prior and begged him not to say anything, claiming that “Gaine was such a man that he would have his will whether right or wrong.” Hampton even offered to give Prior the clothes that he had commissioned her husband to make for free. Though Prior did not refuse this bribe to Hampton’s face, it was not sufficiently enticing to keep his mouth shut. When he returned to collect his clothes, Hampton called him an “idle rogue” for tattling on her and Gain. Though Prior claimed his entrance into the house was “accidental,” he was in the house again to see Elizabeth enter the buttery where Gain was (with his breeches off), and to hear her “groan.”¹³⁰ Given that he witnessed the couple having sex on two separate occasions, it seems unlikely that Prior was present only by chance. Prior was not the only witness who could testify to multiple instances of witnessing illegal sex. William Ingram testified that he saw Timothy Brett and William Stanley’s wife, Joan having sex “sundry” times and added that a “common bag pipe player” also had sex with Joan “five or fower tymes at the least.”¹³¹

¹³⁰ Information of James Prior (Sussex Quarter Sessions, June 29 1651) QR/116 (94), ESRO. [C1451]

¹³¹ Information of William Ingram (Essex Quarter Sessions, 25 May 1647) Ph 4/151/6 Q/SBA 2/65, ERO. [C1256]

Legal Guilt vs. Public Perception

The courtroom was part of a wider process of conflict negotiation. Meetings of the court were public events. In part, they constituted an intentionally created, formal spectacle. Towns provided trumpeters and a formal guard for the justices, who wore robes.¹³² This was a deliberate fashioning of court sessions into public performances of justice. Myron Noonkester argues that the public spectacle of the assize courts created “distraction by integrating violence into a procedural drama.”¹³³ Such sessions also offered opportunities for meeting, socializing, and conducting business. The arrival of assize justices was “an important event in the social life” of both the town and county.¹³⁴ Cynthia Herrup commented that no other forum was as “communal” in operation.¹³⁵ All evidence was given “orally in open court” which sometimes included reading written depositions as evidence.¹³⁶ The participation of local residents ranged from official roles such as witnesses or jurors to merely gathering, observing, and commenting on the proceedings.

As Gowing has explained, “by the time most people told their stories to magistrates or church court officials, they had almost certainly told them before.”¹³⁷ Nor was the courtroom the only venue for early modern individuals to sort out their differences. Sharpe

¹³² Herrup, “The Common Peace” (Unpublished Dissertation), 45.

¹³³ Myron C Noonkester, “Power of the County: Sheriffs and Violence in Early Modern England,” in *Violence, Politics, and Gender in Early Modern England*, ed. Joseph P Ward (New York: Palgrave Macmillan US, 2008), 151.

¹³⁴ Sharpe, *Crime in Early Modern England, 1550-1750*, 23.

¹³⁵ Herrup, “The Common Peace” (Unpublished Dissertation), 45.

¹³⁶ Written depositions were read aloud in court sometimes even when the “deponent was available to give oral testimony.” John H Baker, “Criminal Courts and Procedure at Common Law 1550-1800,” in *Crime in England, 1550–1800*, ed. J S Cockburn (Cambridge: Methuen & Co Ltd., 1977), 39.

¹³⁷ Gowing, *Common Bodies*, 14.

has noted that early modern communities could combat sexual offenses by a vast array of formal and informal means “ranging from the skimmington to indictment at the assizes.”¹³⁸ In the previously mentioned case of Anne George and the soldier having sex in a barn, the neighbors did not wait for the courts. Instead, they “tooke her & ducked her in a millstreame saying that if she was hotte they would coole her.”¹³⁹ Tim Stretton, among others, has noted that the courtroom could also provide an entry into less formal settlements. Early modern litigants might enter legal action to gain an advantage in a subsequent settlement outside of the courtroom.¹⁴⁰

Though the court verdict did not necessarily reflect the opinion of the community on the guilt or innocence of the accused, legal proceedings could still affect public opinion. Stretton’s examination of contemporary diaries revealed “that at least a few neighbours fretted over the negative consequences of legal confrontations.”¹⁴¹ Social opinion, unlike legal guilt, was a complex phenomenon. According to Sharpe, early modern litigants “were aware that they were acting within a context of some sort of community social values, and were concerned that their conduct should be, and should be seen to be, broadly in accord

¹³⁸ James A Sharpe, ““Such Disagreement Betwyx Neighbours’: Litigation and Human Relations in Early Modern England,” in *Disputes and Settlements: Law and Human Relations in the West* (Cambridge; New York: Cambridge University Press, 1983), 167–87. “Skimmington,” “riding the skimmington,” or “skimmington ride” referred to a popular ritual of parading a cuckolded husband (or later, an unfaithful wife,) through the village to mock and publicly humiliate him (or her).

¹³⁹ Information of Mary Reeves (Somerset Quarter Sessions, 24 February 1652) Q/SR/84 (54), SHC. [C1102]

¹⁴⁰ Tim Stretton, “Written Obligations, Litigation and Neighbourliness, 1580–1680,” in *Remaking English Society: Social Relations and Social Change in Early Modern England* (Woodbridge; Rochester: Remaking English Society: Social Relations and Social Change in Early Modern England, 2013), 191; Sharpe, ““Such Disagreement Betwyx Neighbours,”” 185.

¹⁴¹ Stretton, “Written Obligations, Litigation and Neighbourliness, 1580–1680,” 192.

with those values.”¹⁴² The courtroom was a public platform. Behavior in the courtroom was public and offered litigants an opportunity to present themselves in the best possible light. The skyrocketing numbers of early modern defamation lawsuits confirmed that, in Sharpe’s words, “the contemporary Englishman was unusually [relative to other periods in history] willing to protect his reputation through waging law.”¹⁴³ So too, were early modern English women.

There were a number of ways women could wind up testifying about their illegal sex in court. Women were often dragged before the courts and prosecuted for a sexual relationship through the intervention of others. However, some women brought forward cases themselves. In either of these eventualities, by “aligning themselves with the legal process...women accessed concepts of honor which could eclipse the shadow of dishonor that their sexual activity might otherwise have cast upon their testimonies.”¹⁴⁴ Though individuals did not often overtly state in their testimony why they had brought cases to court, rare occasions do give glimpses into their reasoning. When Elizabeth Frith brought a rape case against Walter Patrick, she explained that when she told her husband that Patrick had raped her, her husband was “dungen the teeth with beeing cuckold” and “therefore shee doth Prosecute the aforesd Partricke for ravishmt to avoyd scandall and shame.”¹⁴⁵

¹⁴² Sharpe, ““Such Disagreement Betwyx Neighbours’: Litigation and Human Relations in Early Modern England,” 180.

¹⁴³ *ibid.*, 172. See also Martin Ingram, “Ecclesiastical Justice in Wiltshire 1600-1640, with Special Reference to Cases Concerning Sex and Marriage” (Unpublished University of Oxford PhD Dissertation, 1976); Christopher A Haigh, “Slander and the Church Courts in the Sixteenth Century,” *Transactions of the Lancashire and Cheshire Antiquarian Society* 78 (1975): 1–13.

¹⁴⁴ Garthine Walker, “Expanding the Boundaries of Female Honour in Early Modern England,” *Transactions of the Royal Historical Society* 6 (1996): 243.

¹⁴⁵ Information of Elizabeth Frith (Northern Assizes, 20 November 1653) ASSI 45/4/3 (78), TNA. [C2244]

Public shame was central in this case, and not just to Frith. When Frith's father notified Patrick's mother of the rape, Frith's father was offered a bribe of wheat "to let it falle, and publish it noe further." However, Frith's father countered that he would not accept anything under £10, "if 10li would doe it." Nor was Elizabeth Frith the only woman to openly state that she had come to court to defend her reputation. In 1653, Edward Futchet, Moses Hibbert and Henry Stokes gossiped so badly about Mary Floyd that Floyd "was enforced to p[ro]secute suite of Law ag[ains]t them for [th]e vindicacon of her reputacon."¹⁴⁶

Public confrontation of rumors in court was never a woman's preferred plan to remedy rape or coerced sex. Concealment, if possible, was often the best avenue. Joan Pascal did not tell anyone other than her sister about John Isaac's repeated advances towards her. Her sister had advised Pascal not to even tell Pascal's husband "lest it might bred ill will in her husband towards her."¹⁴⁷ Bernard Capp has noted that a hesitance to tell even their husbands was common in early modern women because "their position was too vulnerable, an 'honest' reputation too easily lost," and a husband's response was "too unpredictable."¹⁴⁸ Anne Barney told her husband the first time Robert Stocks attempted to rape her. Her husband suggested she talk to her mother, who told Barney to "conceal" the event. However, after Stocks attempted to rape Barney two more times, she finally complained of the attacks to the quarter sessions.¹⁴⁹ In addition to public reputation, social dynamics often forced women into silence. Elizabeth Clark admitted to the courts that she

¹⁴⁶ Petition of Mary Floyd (Wiltshire Quarter Sessions, 1653) A1/110/1653H (164) WSHC. [C1920]

¹⁴⁷ Information of Joan Pascal (Somerset Quarter Sessions, 21 October 1654) Q/SR/90 (19), SHC. [C2989]

¹⁴⁸ Bernard Capp, "Separate Domains? Women and Authority in Early Modern England," in *The Experience of Authority in Early Modern England* (Springer, 1996), 136.

¹⁴⁹ Information of Anne Barney (Norfolk Quarter Sessions, 17 August 1649) C/S 3/box 40, NRO. [C2319]

had to “resist” and “struggle” and threaten “to call out to neighbors” in order to prevent Samuel Doolan from raping her on several occasions. However, Clark testified that she kept silent because Doolan often employed her husband and paid her husband well and “therefore shee was unwilling to make a breach between them for longe as she could conceale it and keep him from doeinge her any wrong.”¹⁵⁰ Once these types of events became public knowledge, reputations were stained, social connections strained, and the court became an option for women to remedy their reputations.

STRATEGIES FOR MITIGATING CULPABILITY

Depositions for other sexual crimes, particularly bastardy, often borrowed from the language of rape accusations. In Margaret West’s bastardy examination, for example, West claimed that Edward Bates, the father of her child, only had sex with her once “though he did oft attempt it.”¹⁵¹ This language harkened directly back to the trope of “repeated attempts” used by many rape victims. In her bastardy case, Anne Prior painted a scene with many of the criteria used by rape victims to demonstrate rape: Stephen Whiteare had previously attempted to sleep with her, she cried out but the house was empty except for Whiteare’s father who was “dead druncke asleepe [and] heard her not,” and finally only “for fear of him...[she] consented.”¹⁵² Caving to repeated pressure for sex commonly appears in women’s sexual crime depositions. For example, Mary Hebditch testified that

¹⁵⁰ Information of Elizabeth Clark (Somerset Quarter Sessions, 21 October 1654) Q/SR/90 (19), SHC. [C2990]

¹⁵¹ Examination of Margaret West (Sussex Quarter Sessions, 4 January 1658) QR/122 (67), ESRO. [C1459]

¹⁵² Examination of Anne Prior (Wiltshire Quarter Sessions, 2 December 1652) A1/110/1654H (163), WSHC. [C1952]

William Stevens “never left persuading her until he had persuaded this deponent to have the carnal knowledge of her body.”¹⁵³ Elizabeth Andrews, similarly, only agreed to sex with Robert Cox “after much entreaty.”¹⁵⁴ In Anne Peace’s testimony to the 1659 Northern Assizes, she added, almost as an afterthought, that Thomas Andrew continually pestered her for sex. Peace “could never be att quiett for him in her owne house nor else where if he was without the use of her said body.”¹⁵⁵ It was not always clear where the language of pestering for sex ended and the language of previous rape attempts began.

Coded Language and Male Aggression

In addition testifying about previous attempts and “crying out,” one of the most common descriptions in women’s rape testimonies was that the accused “threw” the victim down on the ground.¹⁵⁶ However, depositions in non-rape cases also used this construction as well. Physically forceful terms, such as “pulling her into,” or “holding her down,” or “striving,” were common even without any discussions of the woman’s consent or the words “rape” or “ravish.” Further complicating these language choices were more muted terms such as “laying her down” and “setting her down,” where again the men physically manipulate the situation with no indication of the woman taking any active role in encouraging or discouraging the assailant.

¹⁵³ Evidence of Mary Hebditch (Somerset Quarter Sessions, 24 June 1654) Q/SR/89(77), SHC. [C467]

¹⁵⁴ Evidence of Elizabeth Andrews (Somerset Quarter Sessions, 6 September 1658) Q/SR/96(99), SHC. [C598]

¹⁵⁵ Examination of Anne Peace (Northern Assizes, 7 March 1659) ASSI 45/5/6 (74), TNA. [C147]

¹⁵⁶ See, for example, C2304, C2285, C2228, C2223, C2219, C2292, C2249, and C2210.

Early modern words describing sex had common connotations relating to responsibility. In a study of Shakespearean terms for intercourse from male and female perspectives, Eric Partridge notes a heavy dependence on “those terms which state or imply a man’s deliberate siege of, or assault upon, a woman’s powers of sexual resistance,” as well as words that demonstrated the art of seduction such as “get a maidenhead,” “make defeat of virginity,” and “pluck a sweet.”¹⁵⁷ These words made seduction of women an art form at which men could succeed or fail—where they could display either skill and prowess, or deficiency and weakness. Partridge also demonstrates the heavy reliance on words of rape and violation such as crack, defile, deflower, stain, force, pollute, ransack, and violate. Likewise, many female verbs were passive such as: yield, fall, let in, lie on one’s back, lie under, and lie back.¹⁵⁸ Perhaps most striking “is the number of sadistic words” such as: strike, charge, stab, plough, thrust, “flesh one’s will upon” and others, which demonstrated aggressive violence from men. However, Partridge argues that there was a separate class of words “that convey mutual participation and the two angles of approach” for the sexual act. These included: juggle, knot, sate, wrestle, content, compound, “do the deed of darkness,” and honey, among others. More procreative terms, according to Partridge, also fell under this category, such as: beget, stamp, father, and so on.¹⁵⁹ Depositions of sexual crime only utilized the mutual participation terms in bastardy cases when they drew on the

¹⁵⁷ Eric Partridge, *Shakespeare's Bawdy* (London; New York: Routledge, 2001), 32.

¹⁵⁸ *ibid.*, 34.

¹⁵⁹ *ibid.*, 35.

language of procreation. Otherwise bastardy cases, like cases of adultery, fornication, and rape, only used the terms drawing on masculine aggression.¹⁶⁰

However, women did (albeit rarely) use alternative language to suggest their own active participation in sexual relationships. For example, in her bastardy examination, Elizabeth Martin stated that Nicholas Manser had the carnal knowledge of her body “divers times after as *they* could find oppertunity.”¹⁶¹ Martin did not give Manser alone the credit for their physical relationship. Instead she indicated that she, too, sought the opportunity to pursue a sexual relationship with Manser. The previously mentioned Elizabeth Brown voiced her own agency in her relationship with John Wallace even more strongly. When Wallace asked to have sex with Brown, she replied that she would “with all her heart.” This was a highly unusual response, perhaps because it was a spying neighbor who reported it, rather than Brown or Wallace themselves. If that was not emphatic enough, the neighbor reported that after the couple had sex, Brown “r[ose] upon her knees & t[ook] him about the necke & kissed him.”¹⁶² However, these two examples are exceptions that prove the rule.

¹⁶⁰ The one exception which I have found to this rule is the case of William Pinkney and Mary Knights where she described their carnal union using the term “make love.” However, this seems to have been a case of underage marriage, though it was prosecuted as both fornication and illegal marriage. Pinkney was described as being under 21 years of age and specified that his mother was opposed to the union. See Examination of William Pinkney, Examination of Mary Knights (Wiltshire Quarter Sessions, 10 August 1654) A1/110/1654 (207); Indictment of Mary Knights (Wiltshire Quarter Sessions, 1 September 1654) A1/110/1654M (126); Indictment of William Pinkney (Wiltshire Quarter Sessions, 1 September 1654) A1/110/1654M (127); Recognizance of Mary Knights (Wiltshire Quarter Sessions, 10 August 1654) A1/110/1654M (17); Recognizance of William Palmer (Wiltshire Quarter Sessions, 10 August 1654) A1/110/1654M (80); Recognizance of William Pinkney (Wiltshire Quarter Sessions, 10 August 1654) A1/110/1654M (16); WSHC. [C3151]

¹⁶¹ Examination of Elizabeth Martin (Sussex Quarter Sessions, 16 January 1644) QR/66 (72), ESRO. [C1283] (*Emphasis Added*)

¹⁶² Information of Richard Apsley (Kent Quarter Sessions, 3 October 1654) Q/SB/5 (28), KLHC. [C1392]

There are multiple potential reasons for the norm of “female passivity” in the legal record. Female passivity could have been a tactic for appearing to conform to gender norms and achieve a more sympathetic verdict. It could have been an actual representation of consensual sex in a society fed tales of sexuality in which only men were supposed to be active participants.¹⁶³ It might also suggest that women were attempting subtly to influence the opinion of the court and the public towards the idea that these sexual escapades were the result of masculine aggression rather than mutual participation. The mixing between rape and other sexual crime depositions invites modern readers into the messy gray area of early modern sex. As can clearly be seen from the discussions of legal theory, early modern individuals were well aware of the complexity of forced sex. Early modern understandings allowed for a middle ground between fully consensual sex and outright rape. While this was not a legally recognized category, it was certainly a socially recognized one. Thus, emphasizing male action could also have been a subtle way of representing unwanted advances while still falling short of an outright accusation of rape.

Many testimonies of women explicitly referred to their experiencing fear or pressure without making overt accusations of rape. Specific allegations provided the accused an opportunity for evaluation and defense. It was much harder to dispute a general impression, because those listening or reading tended to absorb impressions without applying the same critical lens that they would to an accusation. Nor was there an obvious space in which to present a defense against these accusations. Coded language was harder to dispute since it involved disputing a perception or feeling, rather than a fact. Thus

¹⁶³ This does not mean that women lacked sexuality, sexual pleasure, or sexual expression. This merely meant that in the physical act of sexual congress men were expected to take the leading role.

women's testimonies imparted feelings of fear and force on listeners (and readers) without offering a specific accusation to combat.

Fear, Coerced Consent, and Situational Pressure

To some contemporaries, fear was sufficient to nullify consent. Edgar clearly stated that if there was "assent for feare of death at the time of the rauishment," it was still rape, "for assent must be voluntarie."¹⁶⁴ Edgar was not alone in his emphasis on freely given consent. Writing about marriage in 1654, Joseph Hall argued that: "when a woman is upon fear of pain, or death compelled to yeeld her self in marriage, and is not perswaded, but affrighted into the bonds of wedlock: surely this is rather a rape then a matrimony."¹⁶⁵ Hall clearly distinguished between scaring someone into consenting and convincing someone to consent. In addition, he explicitly tied his discussion of consent in cases of marriage to rape by claiming that a coerced marriage was "rape." Mary Nightingale presented her consent to Edmond Goldsmith in 1648 with a framing of force and persuasion. Nightingale testified that after "many fayre words & speeches [Goldsmith] moved & enticed her" to go with him into a Sussex warren, despite the fact that for "a longe time" she had refused to

¹⁶⁴ Edgar, *The lawes resolutions of womens rights*, 395. Here, Edgar actually harkens back to a popular argument in canon law. Sixteenth century Jesuit writer Thomas Sanchez argued that "whatever way force may be brought to bear on a woman in order to compel intercourse suffice[d]" as evidence of rape. See Thomas Sanchez, *Disputationum de sancto matrimonii sacramento*, 3 vols (Antwerp: Martinus Nutius, 1607), vol. II, 49, no. 31. Translation from Saunders, *Rape and Ravishment in the Literature of Medieval England*, 86-7.

¹⁶⁵ Joseph Hall, *Cases of conscience practically resolved containing a decision of the principall cases of conscience of daily concernment and continual use amongst men: very necessary for their information and direction in these evil times* (London: Printed by R.H. and J.G., 1654), 378.

go there with him. Nightingale described their actual sexual congress as occurring “more by force then by p[er]swasion.”¹⁶⁶

Fear is detectable in many depositions. Geoffrey Quaife has shown that in Somerset “somewhat less than one in ten” of women in cases of sexual crime “consented to sexual intercourse through fear or violence.”¹⁶⁷ Contemporaries recognized fear as a means of gaining consent. The gray area between fear, threats of violence, and violence itself was large and the court testimonies reflected a diversity of experience. Frances Rogers consented to Edward Davis “partly through fear, he being a troublesome man.”¹⁶⁸ Samuel Keener, Bride Pitman’s master, “locked [Pitman] with himselfe into his howse, swearing that hee would kill her, unles she would consent that hee should have bodily & carnall knowledge of her.”¹⁶⁹ Pitman’s case was tried as a bastardy case and no accompanying case for rape survived, which might suggest that Keener’s actions did not meet the contemporary legal standard for rape. However, the court’s questioning of Keener indicated that his actions were clearly thought to be morally problematic and potentially illegal even if they did not meet contemporary criteria for rape.

Some women were more specific about the pressure they had experienced. Dorothy Taylorson testified that one night in her mother’s alehouse Marmaduke Lindsay took her candle, put it out, and hid it in his pocket as he tried to persuade her into intercourse. When

¹⁶⁶ Examination of Mary Nightingale (Sussex Quarter Sessions, 4 November 1648) QR/W64 (62), WSRO. [C1635]

¹⁶⁷ Geoffrey Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick: Rutgers University Press, 1979), 65.

¹⁶⁸ Evidence of Frances Rogers (Somerset Quarter Sessions, 7 September 1656) Q/SR/93 (65), SHC. [C590]

¹⁶⁹ Examination of Bride Pitman (Somerset Quarter Sessions, 14 January 1653) Q/SR/86 (56), SHC. [C692]

forcing her into darkness did not work, he eventually offered her money, which she took. However, her testimony did not mention actually participating in sexual intercourse with Lindsay, indicating she might have taken the money and not had sex with him.¹⁷⁰ When John Bartlett Jr. pursued his father's servant, Mary Goodenow, repeatedly pestering her, she eventually gave in. Goodenow "oftentimes denied" Bartlett's advances, until one night when "by striveing & perswades" he was able to have "the carnall knowledge of this Informants body."¹⁷¹ It is unclear whether Goodenow eventually consented to the intercourse, but it appears that, after a while, she at least ceased to dissent. However, the description of "striving and persuasion" did imply coercion. None of these cases, however, were described by contemporaries as rape cases.

Pressure could also be significantly subtler. Some cases described men manipulating women into physical environments where they might be more likely to consent. Frequently, this involved maneuvering a woman into a secluded area or following her home. For example, John Sage told Elizabeth Howell her best route home was to leave the main road and walk through the fields, thereby ensuring that they were off the road together and alone. Soon after he "tempted her to have the carnall knowledge of her body, & [tha]t by [th]e importunity, & fair p[re]tentures & p[ro]mises of [th]e sd Sage she suffered him to have the carnal knowledge of her body."¹⁷² John Ellis and Joan Wilmot drank together before he overtook her on the road, propositioned her, promised her

¹⁷⁰ Examination of Dorothy Taylorson (Northern Assizes, 31 December 1660), ASSI 45/5/6 (109), TNA. [C214]

¹⁷¹ Examination of Mary Goodenow (Somerset Quarter Sessions, 23 June 1655) Q/SR/93 (98), SHC. [C513]

¹⁷² Examination of Elizabeth Howell (Somerset Quarter Sessions, 7 March 1658) Q/SR/98 (70), SHC. [C708]

marriage, and she agreed to have intercourse with him.¹⁷³ Similarly, Nicholas Clift and Elinor Whatley drank together at an inn called “the Bear” in Wiltshire and when Clift walked Whatley home, he led her out of her way to a churchyard and asked for sex.¹⁷⁴ Dorothy Bennett made it clear that Thomas Northam forced her into a stable when she was drunk. However, on the subject of the sexual intercourse that took place between them in the barn, she was silent except to say that it happened—failing to indicate whether she consented or dissented.¹⁷⁵ Both the stables and the road were common locations for sex in depositions. In these cases, by engineering the situation to put the woman in a particular position, the man pressured her consent.

That a man might physically lead a woman into a different environment to have sex was not only important because it implied male manipulation, it also harkened back to the treatment of rape in medieval canon law. Saunders has noted that “the act of taking the victim from one place to another does appear to have been viewed by the canon lawyers as a critical element of the crime of *raptus*.”¹⁷⁶ For example, fourteenth-century Italian jurist Albericus de Rosate wrote that a man who led a woman “by force from one place to another” and then knew “her carnally” was guilty of *raptus*.¹⁷⁷

¹⁷³ Examination of Joan Wilmot (Somerset Quarter Sessions, 8 August 1653) Q/SR/86(19), SHC. [C524]

¹⁷⁴ Whatley, somewhat unusually, explicitly says “she denyed him and told him shee had once been in that danger before and therefore would not consent.” See Examination of Elinor Whatley (Wiltshire Quarter Sessions, 11 November 1652) A1/110/1653H (220) WSHC. [C3327]

¹⁷⁵ Evidence of Dorothy Bennett (Somerset Quarter Sessions, 18 July 1657) Q/SR/95 (95), SHC. [C739]

¹⁷⁶ Saunders, *Rape and Ravishment*, 84.

¹⁷⁷ “*Raptor mulieris non dicitur ille, qui per vim eam cognoscit, sed ille qui adducit per vim de loco ad locum & eam carnaliter cognoscit.*” Albericus de Rosate, *Dictionarium Iuris, tam Ciuilis, quam Canonici*, Series Chartarum (Venice: Impensis Societatis Librorum Legalium, 1601), 278v. Translation from Saunders, *Rape and Ravishment*, 84.

While the presence of fear and pressure seems to have earned sympathy for the women, it is unclear if they lessened the woman's burden of fault in a legal sense. The words of men like Edgar, Hall, and Hawke suggested that perhaps fear might lessen the impact, but there was little evidence in the proceedings themselves to suggest that women were held less legally accountable for sexual crime when they experienced pressure or coercion that did not develop into explicit threats or physical violence. This again suggests that women were using a series of different strategies to push the moral responsibility for sexual crime onto their attackers in the eyes of the community. It seemed this approval from their community, rather than a guilty verdict, was often the goal of women in court.

Alcohol

Despite the early modern idiom "no remedy quicker, then a Cup of good liquor," alcohol complicated legal cases of sex.¹⁷⁸ Sometimes couples drank together before having sex.¹⁷⁹ Alcohol could also play a more ominous and active role in sexual crime. In Joan Chislett's testimony, she claimed that Robert Teek "constrayned" her to "drinke tooe much," followed her to bed, and had sex with her.¹⁸⁰ Chislett did not explicitly state that Teek plied her with alcohol with the express purpose of sex, but she was clear that she had never had

¹⁷⁸ *A semi-diplomatic transcription of selections from the Miscellany of Henry Oxinden at the Folger Shakespeare Library*, edited by Julie Bowman, Meaghan J. Brown, Paul Dingman, Megan Heffernan, Talya Housman, Katherine Lazo, Kristin B. Leaman, Victor Lenthe, Joseph D. Mansky, Catherine Medici-Thiemann, Sarah Powell, Raashi Rastogi, Dylan Ruediger, Margaret Simon, Nancy L. Simpson-Younger, Misha Teramura and Jonathan Woods. "Miscellany of Henry Oxinden, ca. 1642-1670 V.b.110," Folgerpedia Article, Folger Shakespeare Library: 74.

¹⁷⁹ Examination of Joan Wilmot (Somerset Quarter Sessions, 8 August 1653) Q/SR/86(19), SHC. [C524]; Examination of Elinor Whatley (Wiltshire Quarter Sessions, 11 November 1652) A1/110/1653H (220), WSHC. [C3327]; Evidence of Dorothy Bennett (Somerset Quarter Sessions, 18 July 1657) Q/SR/95 (95), SHC. [C739]

¹⁸⁰ Information of Joan Chislett (Somerset Quarter Sessions, 31 May 1650) Q/SR/82 (74), SHC. [C700]

sex with Teek “since nor before” the one occasion when he forced her to drink too much. Charity Kerle testified that Gyles Balch and William Guppie forced her to drink and then each raped her in the presence of several other people, including Guppie’s sister. Kerle clearly thought that getting her drunk was a strategic decision. She testified that Balch and Guppie “force[d] her to drink more then shee was willinge to take” specifically for the “purpose (as shee conceaveth) to have their unlawfull desires of her.” Kerle noted that Balch frequently attempted “to have the carnall knowledge of her body, the which shee did still denie to consent there ivnto.”¹⁸¹

There were multiple depositions in which women testified that they were given substances without their knowledge. Elizabeth Bissenden claimed that she heard her three Sussex assailants put something in her drink before violently assaulting her.¹⁸² Margaret Wyllis testified that she successfully resisted John Watt’s advances on a number of occasions, including a promise of marriage, until one evening when he managed to “putt some whyte powder into the Beere which he compelld her” to drink. Once she had drank, Watts found that “she could not deny him” sex.¹⁸³

Alcohol was probably more common a factor in sexual crime cases than the depositions reveal because one effect of excessive drinking is memory loss.¹⁸⁴ Richard

¹⁸¹ Information of Charity Kerle (Somerset Quarter Sessions, 22 August 1654) Q/SR/89 (42), SHC. [C2219]

¹⁸² Examination of Elizabeth Bissenden (Sussex Quarter Sessions, 18 June 1657) QR/116 (93), ESRO. [C1455]

¹⁸³ Examination of Margaret Wyllis (Somerset Quarter Sessions, 7 September 1652) Q/SR/86 (157), SHC. [C2218]

¹⁸⁴ According to Peter Clark there was “a broad consensus of opinion” among all classes of early modern English society that alehouses bred crime, disorder, drunkenness, and fostered “promiscuity and other breaches of orthodox society.” Peter Clark, “The Alehouse and the Alternative Society,” in *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*, ed. Donald H Pennington and Keith Thomas (Oxford: Clarendon Press, 1978), 48. Contemporary authorities seemed

Lelis followed Dorothy Smith into her house after she had too “much drink.” Smith testified that Lelis “threw her therevpon a bedd, but what he then did vnto her shee cannot remember.”¹⁸⁵ Upon witnessing Smith lying on the bed with Lelis on top of her, a neighbor entered the room and tapped Lelis on the shoulder “who p[re]sently tumbled of from her [Smith], leaveing her body bare from the wast downward, and soe laid a little space.”¹⁸⁶ This evidence unwittingly corroborated Smith’s testimony of inebriation by showing her lack of response to Lelis falling off her body in the middle of the sexual act. Either Smith’s reactions were slowed by alcohol or she was unconscious.

Men occasionally used intoxication as an excuse for sexual crime. When William Body asked Richard Wright why Wright had raped Jeanette Sykes, Wright replied that “he was in drink or else he had not done [Sykes] that wrong.”¹⁸⁷ However, though this excuse

almost obsessed with de-licensing alehouses throughout the mid-seventeenth century. Quarter sessions were full of men and women indicted for selling ale or beer without license. Court records show that violence did often occur in alehouses. Many petitions to the quarter sessions linked complaints of “lewdness” to complaints of “drunkenness.” See, for example, Petition of the Inhabitants of Barnham against Jane Searles (Essex Quarter Sessions, 26 June 1647) Ph 4/151/6 Q/SBA 2/65, ERO. [C2347] The link between alcohol and sex is well documented across time and heavily commented on by both contemporaries and modern scholars. Alehouses were common sites of sexual crime both in court records and the public imagination. However, entering an alehouse, rather than making a woman’s case stronger, sometimes actually made her more culpable for blame. Contemporaries thought of sexual violence as almost a type of “assumed risk” for entering an alehouse. See Susan Dwyer Amussen, “Punishment, Discipline, and Power,” *Journal of British Studies* 34, no. 1 (January 1, 1995): 1–34; Mark Hailwood, *Alehouses and Good Fellowship in Early Modern England* (Woodbridge: Boydell Press, 2014); Bernard Capp, “Gender and the Culture of the English Alehouse in Late Stuart England,” *Studies Across Disciplines in the Humanities and Social Sciences*, 2007, 103–27; Timothy C Curtis, “Quarter Sessions Appearances and Their Background: a Seventeenth-Century Regional Study,” in *Crime in England, 1550–1800*, ed. J S Cockburn (Cambridge: Methuen & Co Ltd., 1977), 135–54.

¹⁸⁵ Examination of Margaret Wyllis (Northern Assizes, 7 September 1652) ASSI 45/4/3 (86A), TNA. [C2218]

¹⁸⁶ Information of Elizabeth Flea (Northern Assizes, [likely 9 August] 1653) ASSI 45/4/3 (86), TNA. [C2252]

¹⁸⁷ Information of William Body (Northern Assize Records, 13 March 1651) ASSI 45/4/2/69, TNA. [C2246]

might earn social reprieve, it was legally insufficient because there was “no formal provision in English law for pleading drunkenness as extenuating condition.”¹⁸⁸

THE EXCEPTION THAT PROVES THE RULE: RAPE OF CHILDREN

Neighbors, coroners, matrons, and victims themselves frequently testified to bodily damage in cases of non-sexual assault, but these depictions were strikingly absent from cases of sexual violence inflicted on adult women. Whether in rape or fornication or bastardy cases, adult women almost never described the sexual act itself or subsequent physical bodily harm in detail.¹⁸⁹ In many cases, sexual violence remains a lingering specter beneath the surface of the words of the legal records.¹⁹⁰ Even in rape cases, while many victims testified that they were forced into sex through “violence,” few gave details, and those who did did not describe the effect on their bodies. For example, Alice Hawker

¹⁸⁸ Rod Phillips, *Alcohol: a History* (Chapel Hill: University of North Carolina Press, 2014), 162.

¹⁸⁹ Both Gowing and Walker suggested that women did not describe the sexual act itself because, in Gowing’s words, “to describe penetrative sex explicitly would be to admit an act that necessarily conveyed consent and submission.” See Gowing, *Common Bodies*, 93. Gowing argues that women were limited by the vocabularies available to them and their silence on the sexual congress itself could be read as a refusal to describe their participation as consenting. In a study of the 1641 uprising in Ireland, Morgan Robinson argues that “both sexes had the vocabulary to talk about the sexual violence of rape, and the words of these legal narratives were largely those of the victims alone.” Morgan T P Robinson, “An Act ‘Soe Fowle and Grievous’,” *Irish Historical Studies* 39, no. 156 (December 18, 2015): 617.

¹⁹⁰ See, for example, Mary Brooke’s testimony. In her 1657 testimony to the Sussex Quarter Sessions, Mary laid out the scene thoroughly, explaining how Thomas Jenner arrived at her house, sent her maidservant out to walk his horse, took the child she was holding out of her hands, gave the child a shilling to play with, set the child on a chair, and so forth. However, the detail provided in her set up of the scene is contrasted with her bare description of the actual incident of sexual intercourse, where she said only that he “carried her into an inner roome flunge her down upon a bed & then had carnall knowledg of her body” before launching back into a detailed description of how Jenner unlocked the door and paid her maidservant for walking his horse, and so on. Brooke also mentioned that she only told her husband because “Jenner did three times afterwards come to her house to have laine w[i]th her againe.” This suggested that at least afterwards, Brooke was not interested in sex with Jenner, but it did not openly say she dissented in any way. See Examination of Mary Brook (Sussex Quarter Sessions, 10 April 1657) QR/116 (98), ESRO. [C1454]

testified that at about ten o'clock at night on the Tuesday after Whitsuntide, William Coles did "take her violently against her wil and by force, and ravished her, and had the carnall knowledge of her bodie." According to Hawker, Coles ignored "her cryinge out to him to forbear his uncivell carriage" and continued "his striving with her" until "hee had his purpose of her."¹⁹¹ Anne Baker similarly claimed that William Hoare "violently did assault and ravish her, not withstanding she cryed out and resisted him w[i]th all the force she could."¹⁹² Neither of these testimonies describes sex or violence in any detail.

There was, however, one very clear exception to the general rule of reticence on sex and violence: cases of child rape. Cases of rape in which the victim was a child bear almost none of these hallmarks of "mitigated culpability." However, descriptions of violence in child rape cases were jarringly forthright. For example, in 1655, Anne Stanfast gave frighteningly detailed testimony about each of the nine times her father sexually abused her, including one where:

he cast her down vpon her bed the about 3 of the clock in the afternoon, haveing put down his breeches he lay vpon her & put his finger first into her as far as the first ioynt as shee beleaved, at which shee cryed out & hee bid her bee quiet & sayd now my finger is in & was going to put in his yard to the place but she cryed, & therevpon did leav her, fearing the neighbor being in the next Roome to theirs would hear her cry.¹⁹³

Other scholars have noted this pattern of candor from children about sex. Gowing has suggested that "sometimes ignorance was hard to maintain and modesty had to be

¹⁹¹ Examination of Alice Hawker (Wiltshire Quarter Sessions, 1 July 1651) A1/110/1651H (148), WSHC. [C2328]

¹⁹² Examination of Anne Baker (Kent Quarter Sessions, 30 May 1654) Q/SB/5 (22), KLHC. [C2294]

¹⁹³ Information of Anne Stanfast (Somerset Quarter Sessions, 8 December 1655) Q/SR/91 (1), SHC. [C735]

learned.”¹⁹⁴ However, a more likely explanation is the difference in the type of proof required from child victims. By the early modern period, statutory rape laws were already hundreds of years old. The First Statute of Westminster had specified that consent was only an issue if the female in question was eleven years old or younger.¹⁹⁵ An act of 1576 removed the benefit of the clergy from child rape cases.¹⁹⁶

Legal and religious texts agreed that individuals could not consent prior to a certain age, yet the age in question varied widely. Nathaniel Bacon placed the age earliest: seven years old. However, even he acknowledged that this was perhaps too young. Although a girl was considered “to be fit for marriage at seven yeeres of age, or at least to give her consent thereto,” Bacon admitted that at that age “in truth she was neither fit” for marriage nor consent.¹⁹⁷ Edward Coke wrote that the consensus was that “a woman cannot consent before twelve.”¹⁹⁸ Frenchman John Pierre Camus’s *Nature’s Paradox*, published in English

¹⁹⁴ Gowing, “Knowledge and Experience, c. 1500-1750,” 240.

¹⁹⁵ According to Wilkinson’s legal treatise, the law was that “none shall ravish nor take by force a maide within the age of eleven yeares with her consent, or without her consent, nor any dame or maide of age, nor other woman against their wils.” John Wilkinson, *A treatise collected out of the statutes of this commonwealth, and according to common experience of the lawes, concerning the office and authorities of coroners and sherifes together with an easie and plaine method for the keeping of a court leet, court baron, and hundred court, &c.* (London: Printed for W. Lee, D. Pakeman, R. Best, and G. Bedell, 1651), 27.

¹⁹⁶ The text of the act read: “if any person shall unlawfully and carnally know any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony, and the offender thereof being duly convicted shall suffer as a felon without allowance of clergy.” 18 Elizabeth, c. 7; 4 Stat. Realm 618.

¹⁹⁷ Nathaniel Bacon, *An historicall discourse of the uniformity of the government* (London: Printed for Matthew Walbancke, 1647), 283-84.

¹⁹⁸ Coke also listed more detailed for females including seven years old “to have aid pur file Marr,” nine to deserve dower, twelve to consent to marriage, fourteen to be out of ward, sixteen to tender a marriage made under the age of fourteen, and twenty-one to “to alienate her Lands, goods and Chattels.” See Edward Coke, *An abridgement of the Lord Coke’s commentary on Littleton* (London: Printed for W. Lee, D. Pakeman, and G. Bedell, 1651), 26, 94-95. To Coke, gender, in addition to the type of consent being solicited, was crucial to age of consent. Coke had an entirely separate classification system for males. This was perhaps unsurprising given Coke’s personal life in which he habitually misused his wife’s property from a former husband and forced his daughter and step-daughter into marriage without their consent,

in 1652 and sold in both London and Oxford throughout the rest of the century, suggested that at certain ages one was not only “incapable to consummate the marriage, but” also incapable of giving “full and perfect consent, without which...that knot could not be rendred indissoluble.”¹⁹⁹ However Camus failed to give a specific age. John Cowell stated that it was a rape when “any one hath the carnall knowledge of any woman who is under the age of ten years old whether it be with her Will and consent or without.”²⁰⁰ Blaine Greteman has suggested that “between ages of seven and fourteen, puberty could be proved by inspection.”²⁰¹

I suspect that the graphic nature of young girls’ descriptions of the damage done to their bodies in rape cases actually had to do with proving, both legally and socially, that their bodies had not yet hit sexual maturation. This served as physical evidence for their status as minors, under the age of consent. Stanfast’s testimony, for example, directly attests

leaving his daughter so unhappy in her marriage with John Villiers that she was brought before the court in 1627 to answer charges of adultery.

¹⁹⁹ Jean-Pierre Camus, *Nature's paradox, or, The innocent impostor a pleasant Polonian history*, translated by Major Wright (London: Printed by J. G. for Edward Dod and Nathaniel Ekins, 1652), 69. See lists from book sales including Edward Millington, *A catalogue of English books: in divinity, humanity, philology, history, &c. of Mr. Charles Mearne's, late bookseller to His Majesty; which will be exposed to sale by auction, at Richard's Coffee-House in Fleetstreet, near the Middle-Temple Gate, on Thursday the 17th day of this instant Februy 1686/7* (London, 1687), 6; and John Bullord, *Bibliotheca Andertoniana, sive, Catalogus variorum librorum antiquorum & recentiorum variis facultatibus clarissimorum: quorum auctio habenda est in gratiam doctiss. vivorum academ. Oxon in aedibus Banisterianis prope Northgate (I) die Martii 1698/9* (Oxford: George West and Anthony Peisley, 1699), 23.

²⁰⁰ John Cowell, *The institutes of the lawes of England digested into the method of the civill or imperiall institutions : useful for all gentleman who are studious, and desire to understand the customes of this nation*, translated by W.G. (London: Printed by Thomas Roycroft for John Ridley, 1651), 266. Cowell also argued that anyone who drew away an unmarried woman under 16 “without the consent of parents” was liable for two years imprisonment, but five years if he should have sex with the girl in addition. However, if the girl was between twelve and sixteen and gave her own consent, the man was no longer liable and instead the girl forfeited her hereditary lands and rights by consenting to such a match. See Cowell, *The institutes of the lawes of England*, 24.

²⁰¹ Blaine Greteman, *The Poetics and Politics of Youth in Milton's England* (Cambridge: Cambridge University Press, 2013), 29.

that her body had not matured sufficiently for penetration. She explained that the third and fourth time her father tried to abuse her, she threatened to tell her mother of it, and he insisted “hee would but play with her shee was not big inough for him to do any thing else then, hee could not put him in.” On the fifth and sixth time, her father “said he would try whether she were big inough or not.”²⁰²

Another factor which suggests that the presence and absence of physically graphic testimony had to do with the aims of the deponent, rather than a lack of learned reticence, was the fact that adults’ accounts of child rape cases were also more graphic than in adult sexual crime cases.²⁰³ For example, the deposition of Sarah Beer’s mother specified the physical effects of Robert Maynard’s rape on her daughter, describing how Sarah could “neyther go nor stand w[ith]out helpe.”²⁰⁴ When William Auger assaulted nine-year old Elizabeth Springfield, the adults caring for Elizabeth testified that she “was dangerously hurt” and her “cloathes were bloudie.”²⁰⁵ These testaments to the bodily damage of sexual

²⁰² Information of Anne Stanfast (Somerset Quarter Sessions, 8 December 1655) Q/SR/91 (1), SHC. [C735]

²⁰³ Children often did not testify themselves. Under eight years of age, children were usually judged to be incapable of giving evidence. Sarah Toulalan, “‘Is He a Licentious Lewd Sort of a Person?’: Constructing the Child Rapist in Early Modern England,” *Journal of the History of Sexuality* 23, no. 1 (2014): 37. Even when children eight and younger were judged capable of testifying, they were still not allowed to do so under oath. With children aged nine or older, it was murkier, and though some were judged old enough to give testimony, others were not. For example, Charity Thomas’s own words are missing, although a neighbor testified how Thomas, sobbing heavily, complained to a him that “her father was as bad as the souldiers & that she could not be in quiett for him.” See Information of Thomas Martin (Somerset Quarter Sessions, 10 June 1650) Q/SR/82 [pt 2] (150), SHC. [C1097] Thomas’s father admitted that his daughter had “layne in bed with him, & betweene him & his wife,” but that it only happened in “tymes of nessesity.” See Examination of George Thomas (Somerset Quarter Sessions, 10 June 1650) Q/SR/82 [pt 2] (150), SHC. [C1097]

²⁰⁴ Information of the Widow Beer, Mary Beer, Thomas Spurgion (Essex Quarter Sessions, 4 December 1656) Ph 4/151/7 Q/SBA 2/97, ERO. [C2169]

²⁰⁵ Information of Joan Pond and Marie Swayer (Essex Quarter Sessions, 11 June 1645) Ph 4/151/5 Q/SBA 2/57, ERO. [C2284] Auger himself admitted that he stuck his fingers inside the young girls genitals and that “his nayle being verie long” he might have scratched the inside of her. See Examination of William Auger (Essex Quarter Sessions, 11 June 1645) Ph 4/151/5 Q/SBA 2/57, ERO. [C2284]

violence were absent from testimony about sexual violence towards adults, suggesting that physical evidence was more relevant in child rape cases than adult rape cases.

CONCLUSION

The differences in the ways in which girls and adult women were presented in cases of sexual crime demonstrates the attention paid to what information was conveyed in court and how. Due to the communal nature of enforcing sexual norms in the early modern period, women in cases of sexual crimes feared not only legal guilt, but reputational damage. In courtroom testimonies, women not only used words like “force” and “violence,” but also described “crying out,” previous attempts made on their chastity, and the “Lucretia Refusal.” These were not the only tools available to women to show that the responsibility for a sexual crime lay with the man, and not with them. Women also used subtly coded language as well as descriptions of situational pressure and coerced consent to shift culpability for illegal sexual interactions onto the male actor in the public eye. Women utilized these strategies of mitigating culpability for sexual crime not only in court cases for rape, but in court cases for all sexual crime including fornication, bastardy, adultery, and incest. The line between where one type of testimony ended and another began was not always clear cut. When examined as a whole, these testimonies show the messy gray area of culpability for sex in early modern England.

Understanding of the multi-layered self presentation of female culpability in sexual crime trials during the English Civil Wars and Interregnum is important not only for its own sake, but also because it shows how contemporaries saw the law and the control of sex. Many of the strategies used for mitigating culpability were not specific to women or

to the courtroom. Capp, Ann Hughes, and Susan Amussen, among others, have noted that political tracts often used gendered and sexualized language to fight political battles. Many of the most effective pamphlets, Peter Lake and Michael Questier have claimed, mixed sex and violence “in order to shock, titillate and engender that frisson of horror laced with disapproval that allows both pleasure and excitement.”²⁰⁶ Gowing writes that “women’s sexual agency” became “a metaphor for royal tyranny and political chaos.”²⁰⁷ Propagandists exploited fears of soldiers raping and pillaging to label enemy actions as monstrous, and used the “Lucretia Refusal” to demonstrate the monarchy’s exploitation of its subordinates. Perhaps most notably, authors employed similar strategies of silence and coded language to suggest guilt without making outright allegations. Sharon Block explained that rape was a useful rhetorical tool for early American propagandists precisely because it allowed them to demonstrate “the obvious malevolence of attacker” without getting mired in “women’s potentially dubious claims.”²⁰⁸ By introducing rape only in general or coded language, writers were able to instill the image of their opponents as rapists without actually opening themselves up for dispute on specifics. Block argues that “omitting the details of the forced sexual attack” left “no space to question the facts of the rape,” strengthening it as a political tool.²⁰⁹ These media narratives of rape and culpability drew on a lexicon shared not only with the courtroom, but also with the world of literature.

²⁰⁶ Peter Lake and Michael Questier, *The Anti-Christ's Lewd Hat* (New Haven: Yale University Press, 2002), 28.

²⁰⁷ Gowing, *Common Bodies*, 85.

²⁰⁸ Sharon Block, “Rape Without Women: Print Culture and the Politicization of Rape, 1765–1815,” *The Journal of American History* 89, no. 3 (2002): 857–58.

²⁰⁹ *ibid.*, 858.

Rape appears in many of the most famous early modern works of literature.²¹⁰ Casting a monarch as either a victim or perpetrator of rape was a powerful, evocative political statement that could neatly communicate a writer's political beliefs in terms accessible to all. Perhaps most compellingly, sexual crime offered a scenario that could leave the two parties participating in the sexual act differently responsible for the same crime. The manifold layers of consent allow us to see past the legal binary of innocence and guilt and into a significantly messier discussion of moral responsibility for action. In these conversations, contemporary theorists had to contend with fear, pressure, and force, and how each affected an individual's responsibility.

Yet these similarities between print and women's self-presentation cannot be read as binary equivalence. This chapter demonstrates how the law was one part of a community's strategy for policing sex rather than the totality of the enforcement of sexual norms. As Christopher Brooks has persuasively argued, early modern law was a "societal institution."²¹¹ Early modern individuals used court prosecutions for broader aims than merely legal verdict. In addition, the difference between legal and public opinion outcomes demonstrates that early modern communities distinguished between the law and morality. This is crucially important, particularly in understanding how the social order could remain

²¹⁰ Shari A Zimmerman, "Disaffection, Dissimulation, and the Uncertain Ground of Silent Dismission: Juxtaposing John Milton and Elizabeth Cary," *English Literary History* 66, no. 3 (October 1, 1999): 553–89; Carolyn D Williams, "'Silence, Like a Lucrece Knife'," *The Yearbook of English Studies* 23 (January 1, 1993): 93–110; Leah Sinanoglou Marcus, "The Milieu of Milton's Comus: Judicial Reform at Ludlow and the Problem of Sexual Assault," *Criticism* 25, no. 4 (October 1, 1983): 293–327; Barbara Joan Baines, *Representing Rape in the English Early Modern Period*, vol. 106 (Lewiston: Edwin Mellen Press, 2003); Barbara Joan Baines, "Effacing Rape in Early Modern Representation," *English Literary History* no. 1, no. 1 (1998); Suzanne Gossett, "'Best Men Are Molded Out of Faults': Marrying the Rapist in Jacobean Drama," in *Renaissance Historicism: Selections From English Literary Renaissance*, ed. Arthur F Kinney and Dan S Collins, vol. 14 (Amherst: University of Massachusetts Press, 1987), 305–27.

Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (New York: Cambridge University Press, 2008).

untouched by the political upheaval of the civil wars and Interregnum. The framework of public culpability shows how discipline of social order could remain stable through period of political instability, sexualized public print, and changes in the laws governing sex.

CHAPTER 2: *Domestic Violence & (Non) Intervention*

INTRODUCTION

Just after the execution of Charles I, in 1649, an anonymous pamphlet defended the regicide by making an analogy: “When my wife turneth adulteress, my Covenant with her is broken, And when my King turneth Tyrant, and continuity so, my Covenant with him also is broken.”¹ Allegories have long been used to characterize the relationship between the king and his subjects: the king is to his subjects as God was to the Israelites, and so on. However, many scholars have noted that early modern writers specifically sought an allegorical pair for the monarchy in the domestic sphere. The relationship between king and subject could be cast as that of a father and child, husband and wife, or master and servant. Ann Hughes wrote that “arguments through analogy and comparison were characteristic of early modern political discussion,” particularly those which used comparisons between familial “and political authority.”² Laura Gowing noted that there were “correlations drawn by so many contemporary writers between household and state.”³ Martin Ingram agreed that “royal and patriarchal authority were mutually validating reflections of a divinely ordered hierarchy.”⁴ Bernard Capp demonstrated that this mutual

¹ N.T., *The resolver continued, or Satisfaction to some scruples about putting the late King to death. In a letter from a minister of the Gospel, to a Friend in London; together, with a word to the Parliament, the High Court of Justice, Malignants, discontented Friends, and the People of the Nation* (London: Printed by J. Clowes, for Hannah Allen, 1649), 6.

² Ann Hughes, *Gender and the English Revolution* (New York: Routledge, 2012), 9-10.

³ Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford; New York: Oxford University Press, 1996), 186.

⁴ Martin Ingram, “Courtship and Marriage, c. 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abingdon; New York: Routledge, 2013), 318.

reinforcement encouraged an understanding of a structure where “the family was miniature commonwealth in which the father was king.”⁵

Most compellingly, Susan Amussen has roughly outlined the adherence of Parliamentarians to social contract theory and Royalists to patriarchalism in their respective analogies to the gendered familial hierarchy.⁶ Broadly speaking, this division meant that while Royalists propagated a theory of divinely inherited patriarchal power in fathers and kings, Parliamentarians focused on the necessity of a social contract between a husband/wife and king/people for legitimate authority. Anthony Fletcher, among others, has cited this “great battle between patriarchalists and social contract theorists” as the “master theme of seventeenth-century political theory.”⁷

Patriarchalism was “a body of political thought that emerged in the seventeenth century seeking to justify the origin and the authority of monarchy through a genetic argument.”⁸ This idea—that power was divinely inherited and passed along the bloodline—was widely disseminated by Royalists to defend the rights of Charles I. The early modern French political theorist Jean Bodin applied the concept of deferring to the sovereignty of the head of household (*l’obeissance d’un Chef de Famille*) on a larger scale to the

⁵ Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England* (New York: Springer, 1996), 118.

⁶ Susan Dwyer Amussen, “Gender, Family and the Social Order, 1560-1725,” in *Order and Disorder in Early Modern England* (Cambridge; New York: Cambridge University Press, 1985), 196–210.

⁷ James Daly, *Sir Robert Filmer and English Political Thought* (Toronto; Buffalo: University of Toronto Press, 1979); J P Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's Press, 1992); John Dunn, *The Political Thought of John Locke: an Historical Account of the Argument of the “Two Treatises of Government”* (New York: Cambridge University Press, 1982); Gordon J Schochet, *Patriarchalism in Political Thought: the Authoritarian Family and Political Speculation and Attitudes, Especially in Seventeenth-Century England* (New York: Basic Books, 1975).

⁸ Shannon Miller, “Maternity, Marriage, and Contract,” *Studies in Philology* 102, no. 3 (July 1, 2005): 356.

political sovereignty of the head of state over the people.⁹ Parliamentarians, meanwhile, favored social contract theory, which emphasized an analogy between king and husband, rather than king and father. This focused on a social contract between two parties (as in marriage or government) through which one would rule the other. Though it was an unequal relationship, it was still a contract with terms. If the terms were broken or violated, it created a problem. As indicated by the opening quote, Parliamentary polemicists used this strategy to attack the monarch and defend the resistance of subjects.

Beliefs about the construction of order in society were often close to the heart and extended beyond politics. Stories of violence within the home were not just a political analogy, but also an established genre of literature. Murder pamphlets, especially those featuring violent wives, were extremely popular. In addition to the publicity of domestic unrest in political print and contemporary murder pamphlets, conduct books argued with escalating fervor and increasingly varied reasons for patriarchal authorities not to beat their subordinates. Yet despite conduct books and the explosion of political analogies to the household which argued against tyrannical abuse of authority, in practice neither neighbors nor courts tended to intervene in matters of domestic violence.

This chapter explores early modern domestic violence legally and morally, quantitatively and qualitatively, as well as in theory and practice. It will first introduce the genre of conduct books before delving into the conduct book discussion of beating subordinates. After examining the complexities of wife beating, servant beating, and child beating, the chapter uses the figure of the female aggressor to show where the divisions

⁹ Bodin, Jean. *Abrégé de la République de Bodin*, 2 vols (London, 1755) Vol. 1, 19. (translation: obedience to the head of the household)

between public print and the actual incidence of crime emerge. Women could be authority figures, and thus their violence towards children and servants could sometimes fall under the category of beating subordinates. Despite murder pamphlets heaping overwhelming attention on cases of wives murdering husbands, common law courts actually saw far fewer cases of wives murdering husbands than of husbands murdering wives. In addition, intensifying discouragement of wife-beating in conduct book literature and a growing body of political works speaking out against the abuse of subordinates had little effect on actual domestic violence: wives still hesitated to accuse their husbands of violence and both common law courts and neighbors continued largely not to intervene on the behalf of wives. Lastly, this chapter will explore what this difference between political propaganda, popular literature, and actual cases tried in court might mean about the reaches of political unrest.

CONDUCT BOOKS

This chapter draws on household manuals, or conduct books, as a source of early modern theories of the household. These books gave “supportive advice” on household organization and the duties of various residents of early modern households.¹⁰ Authors who wrote conduct books rarely limited themselves to this genre alone. Sylvia Brown argues that because pedagogical and evangelical methods and aims were so closely linked, early modern authors of conduct books often tried their hands at multiple genres including catechisms, dictionaries, and manuals of rhetoric.¹¹

¹⁰ Anthony Fletcher, “Men's Dilemma: the Future of Patriarchy in England 1560-1660,” *Transactions of the Royal Historical Society* 4 (1994): 73.

¹¹ Sylvia Brown, “Women and the Godly Art of Rhetoric: Robert Cawdrey's Puritan Dictionary,” *Studies in English Literature, 1500-1900* 41, no. 1 (2001): 136.

Conduct books experienced a surge in popularity in this period. According to Jacqueline Eales, conduct books reached their height of popularity between the “late sixteenth century and the civil war.”¹² It is noteworthy that in this time of political unrest, domestic home organization seemed to “become more rather than less important.”¹³ Household manuals like William Whatley’s *A Bride-Bush*, William Gouge’s *Domestical Duties*, Matthew Griffith’s *Bethal*, John Dod and Robert Cleaver’s *A Godly Form of Household Government*, and Daniel Rogers’ *Matrimonial Honour*, were some of the most popular in the early modern era. Rogers’ *Matrimonial Honour* has received less attention from scholars only, according to Fletcher, because it was “much more limited in scope than Whatley and because its author was a less colorful and controversial character.”¹⁴ *A Godly Form of Household Government* was one of the most popular manuals, printed at least eleven times between 1598 and 1630.¹⁵ Beginning in 1610, the work was revised and

¹² Jacqueline Eales, “Gender Construction in Early Modern England and the Conduct Books of William Whatley (1583–1639),” *Studies in Church History* 34 (1998): 163.

¹³ Frances Elizabeth Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700* (Ithaca: Cornell University Press, 1994), 91.

¹⁴ Anthony Fletcher, “The Protestant Idea of Marriage in Early Modern England,” in *Religion, Culture, and Society in Early Modern Britain: Essays in Honour of Patrick Collinson*, ed. Anthony Fletcher and Peter Roberts (Cambridge; New York: Cambridge University Press, 1994), 166.

¹⁵ There were three different printings in 1598 and one in 1600 and 1603 each. See R. C., *A godlie forme of householde gouernment for the ordering of priuate families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife: and the wifes dutie towards her husband. The parents dutie towards their children: and the childrens towards their parents. The masters dutie towards his seruants: and also the seruants dutie towards their masters* (London: Printed by Felix Kingston for Thomas Man, 1598); R. C., *A godly form of hovseholde gouernment: for the ordering of priuate Families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the Husband towards his wife: and the wiues dutie towards her husband. The parents dutie towards their children: and the children towards their Parents. The Masters dutie towards his seruants: and also the seruants dutie towards their Masters* (London: Printed by Thomas Creede for Thomas Man, 1598); R. C., *A godlie forme of householde gouernment for the ordering of priuate families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife: and the wifes duty towards her husband. The parents duty towards their children: and the childrens towards their parents. The masters dutie towards his seruants: and also the seruants dutie towards their masters* (London: Printed by Felix Kingston for Thomas Man, 1600); R. C., *A godly form of hovseholde*

expanded by non-conformist ministers Dod and Cleaver for eight subsequent editions after the original 1598 printing. However, the authorship of the original pamphlet is somewhat disputed. The work bears the initials “R.C.” which some have assumed to stand for Robert Cleaver. However, this seems unlikely as the edited editions are described as “First, gathered by R.C. And now newly perused, amended, and augmented, by John Dod, and

gouernment: for the ordering of priuate Families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the Husband towards his wife: and the wiues dutie towards her husband. The parents dutie towards their children: and the children towards their Parents. The Masters dutie towards his seruants: and also the seruants dutie towards their Masters (London: Printed by Thomas Creede for Thomas Man, 1603). 1610 was the first edition with additions from John Dod and Robert Cleaver. However, it was reprinted in 1612, 1614, 1621, and twice in 1630. See John Dod and Robert Cleaver (based on R.C.), *A godlie forme of householde gouernment: for the ordering of priuate families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife: and the wifes dutie towards her husband. The parents dutie towards their children: and the childrens towards their parents: the masters dutie towards his seruants: and also the seruants dutie towards their masters* (London: Printed by Thomas Creede for Thomas Man and George Norton, 1610); John Dod and Robert Cleaver (based on R.C.), *A godly forme of householde government for the ordering of private families, according to the direction of Gods word : whereunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife, and the wiues dutie towards her husband, the parents dutie towards their children, and the childrens towards their parents, the masters dutie towards his seruants, and also the seruants dutie towards their masters* (London: Printed for Thomas Man, 1612); John Dod and Robert Cleaver (based on R.C.), *A godly forme of housholde gouernement: for the ordering of priuate families, according to the direction of Gods word. : Whereunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife: and the wiues dutie towards her husband. The parents dutie towards their children: and the childrens towards their parents. The masters duty towards his seruants: and also the seruants duty towards their masters* (London: Printed by T.C. for Thomas Man, 1614); John Dod and Robert Cleaver (based on R.C.), *A godly forme of houshold government for the ordering of priuate families, according to the direction of Gods word : wherunto is adioyned in a more particular manner, the seuerall duties of the husband towards his wife, and the wiues dutie towards her husband, the parents dutie towards their children, and the childrens towards their parents, the maisters dutie towards his seruants, and also the seruants duty towards their maisters* (London: Printed by R. Field for Thomas Man, 1621); John Dod and Robert Cleaver (based on R.C.), *A godly forme of hovsehold gouernment: for the ordering of priuate Families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the Husband towards his wife: and the wiues dutie towards her husband. The parents dutie towards their children: and the children towards their Parents. The Masters dutie towards his seruants: and also the seruants dutie towards their Masters* (London: Printed by R. Field for Thomas Man, 1630); John Dod and Robert Cleaver (based on R.C.), *A godly form of hovsehold gouernment: for the ordering of priuate Families, according to the direction of Gods word. Whereunto is adioyned in a more particular manner, the seuerall duties of the Husband towards his wife: and the wiues dutie towards her husband. The parents dutie towards their children; and the children towards their Parents. The Masters dutie towards his seruants: and also the seruants dutie towards their Masters* (London: Printed by the Assigns of Thomas Man, 1630).

Robert Cleuer.”¹⁶ It would have been illogical for the printer to have described Cleaver first as “R.C.” and subsequently with his full name. Conrad Russell and Sylvia Brown support the view that Robert Cawdrey was the original author, while Anne Haselkorn and Betty Travitsky favor Robert Carr as the author.¹⁷ All of the books examined in this chapter were reprinted, often with multiple editions making significant changes over time. William Gouge’s *Domesticall Duties* is the exception, as the content varied little for all three editions printed between 1622 and 1634, though each time the work’s type was reset.¹⁸ Given the constant reprinting of household conduct books, it is perhaps unsurprising that most manuals were updated between editions.

Though conduct books were broadly popular, in early modern England it was largely a Protestant male genre. Despite the domestic focus of these texts, both their authors and intended readers were largely male. Fletcher notes that the audience for William Gouge’s conduct books was mostly made up of “the earnest substantial householders of London’s professional classes and the middle sort, men who needed reassurance about the stern and authoritative role their Puritan faith made them feel called upon to play in their own household.”¹⁹ Shortly after getting married in the 1620s, the diarist Nehemiah

¹⁶ Dod and Cleaver, *A godlie forme of householde gouernment* (Creede for Man and Norton, 1610), 1.

¹⁷ Conrad Russell, “Arguments for Religious Unity in England, 1530–1650,” *The Journal of Ecclesiastical History* 18, no. 2 (1967): 201–26; Brown, “Women and the Godly Art of Rhetoric;” Anne M Haselkorn and Betty Travitsky, *The Renaissance Englishwoman in Print: Counterbalancing the Canon* (Amherst: University of Massachusetts Press, 1990).

¹⁸ William Gouge, *Of domesticall duties eight treatises* (London: Printed by John Haviland for William Bladen, 1622); William Gouge, *Of domesticall duties eight treatises* (London: Printed by John Beale for John Grismond, 1627); William Gouge, *Of domesticall duties eight treatises* (London: Printed by George Miller for Edward Bewster, 1634).

¹⁹ Anthony Fletcher, *Gender, Sex and Subordination in England 1500–1800* (New Haven: Yale University Press, 1995), 116.

Wallington noted in his diary that he picked up a copy of Gouge's *Domesticall Duties* and used it in the ordering of his own household, as well as for scholarly work.²⁰ Both Gouge and Wallington were Puritans. Although household manuals were penned by writers of all subsets of English Protestantism, it is true that a large number were authored by Puritan clerics. Given this fact, it is worth questioning if the disproportionate number of Puritan authors distorted the views disseminated in conduct books. Fletcher felt that Puritan writers' "idealistic conception of marriage never penetrated very deeply into the gentry elite as a whole and theirs remained a distinctly minority view before the civil war."²¹ However, not all scholars agree. On issues of sexual behavior, Keith Wrightson argues that "the Puritans added nothing to the official homilies of the church." Instead, Wrightson insists that their contribution "lay more in the vigour with which they broadcast their views."²² In other words, there was nothing particularly "Puritan" about the content of their views, only their passion and advocacy for them. Kathleen Davies has similarly argued that there was little that "was new or unusual in the writings of Gouge or [William] Whatley."²³ Instead, Davies, along with Margo Todd and Margaret Sommerville, have argued that Puritan conduct books drew on pre-Reformation advice to the laity.²⁴ Thus, although Puritans are

²⁰ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 116; Fletcher, "Men's Dilemma: the Future of Patriarchy in England 1560-1660," 73.

²¹ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 199.

²² Keith Wrightson, "The Nadir of English Illegitimacy in the Seventeenth Century," in *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan*, ed. Peter Laslett et al. (Cambridge: Harvard University Press, 1980), 179.

²³ Kathleen M Davies, "The Sacred Condition of Equality: How Original Were Puritan Doctrines of Marriage?" *Social History* 2, no. 5 (1977): 578.

²⁴ *ibid.*; Margo Todd, "Humanists, Puritans and the Spiritualized Household," *Church History* 49, no. 1 (1980): 18–34; Margaret R Sommerville, *Sex and Subjection: Attitudes to Women in Early-Modern Society*

overrepresented among conduct book authors, these manuals clearly engaged with a broader audience than merely those subscribing to Puritan beliefs.

CONTEMPORARY THOUGHT ON WIFE BEATING

William Whatley's *A Bride-Bush*, though not the only work to change over time, was perhaps the most extreme in its variance. Whatley was "one of the most well-known of the conduct book authors" and *A Bride-Bush* went through three printings: first in 1617, followed by subsequent editions in 1619 and 1623.²⁵ The 1617 edition warned against physical violence as a means of discipline, arguing:

We dare not allow [a husband] to proceede so farre as to correct [his wife] by blowes...Let his wisdome rather appeare in abstayning from blowes, & preuenting the breaking forth of such enormities as may challenge them, than in giuing them moderately, and (as he thinkes) in due manner. But for commandements and reproofes he may, he must giue them: and herein we will direct him as we are able.²⁶

However, by 1619, Whatley had done an about-face, claiming:

if a wife will put vpon herselfe euen seruile conditions: if she will abase her selfe to foolish, childish, slauish behuour; I see not why the rod, or staff, or wand, should not be for the fooles backe in this case also.²⁷

(New York: St. Martin's Press, 1995); Eales, "Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639)."

²⁵ Eales, "Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639)," 167.

²⁶ William Whatley, *A Bride-bush, or A vvedding sermon compendiously describing the duties of married persons: by performing whereof, marriage shall be to them a great helpe, which now finde it a little hell* (London: Printed at London by William Iaggard for Nicholas Bourne, 1617), 22.

²⁷ William Whatley, *A Bride-bush, or A direction for married persons. Plainely describing the dvties common to both, and peculiar to each of them. By performing of which, marriage shall prooue a great helpe to such, as now for want of performing them, doe find it a little hell* (London: Printed by Felix Kingston for Thomas Man, 1619), 106.

Whatley explained the discrepancy between the two editions by arguing that the 1617 version, which had in fact been written around 1608, had been printed without his knowledge or consent by an acquaintance in possession of his manuscript.²⁸ However, even in the 1619 version, Whatley's uneasiness and defensiveness about his acceptance of wife-beating was obvious, as he wrote "For my part, I would be loath to allow an husband the liberty of carrying himself vnto his wife, as vnto his slaue" because how could a man "come to kiss and embrace the same person, whom he hath laid vpon with his fist or with a cudgel?"²⁹ Whatley eased this discomfort by claiming this was a decision up to God, not him. Since "God hath giuen the husband authoritie, and hath no where forbidden him the exercise of any part of authoritie...I cannot dare to say, but that...he may launch his owne army where it swelleth."³⁰ He even preempts the argument that wives are not beaten in the Bible and therefore should not be beaten by arguing that it was "because no wife in scripture is read to haue offended in such kinds and degrees, as might reasonably call for such seuerity."³¹

Whatley's discomfort was understandable as his position "placed him at odds with the majority of English clerical opinion at the time."³² Other English writers were much

²⁸ Eales, "Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639)," 168.

²⁹ Whatley, *A Bride-bush* (1619), 106-107; William Whatley, *A Bride-bush, or A direction for married persons. Plainely describing the duties common to both, and peculiar to each of them. By performing of which, marriage shall prooue a great helpe to such, as now for want of performing them, doe find it a little hell* (London: Printed by Bernard Alsop for Benjamin Fisher, 1623), 106-107.

³⁰ Whatley, *A Bride-bush* (1619), 107.

³¹ Whatley, *A Bride-bush* (1619), 108-109; Whatley, *A Bride-bush* (1623), 108-109.

³² Eales, "Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639)," 169.

clearer cut in their declarations against wife beating.³³ Gouge, for example, answered the question whether wife beating was acceptable in a fairly straightforward manner:

Quest. May not then an husband beat his wife:

Answ. With submission to better iudgements, I thinke he may not.³⁴

If that was not clear enough, Gouge went on to assert that “there is no hope of any good to proceed from an husbands beating of his wife.”³⁵ All editions of *A Godly Form of Household Government* declared that “The best rule that a man may hold and practise with his wife, to guard and gouverne her, is to admonish her often, and to giue her good instructions, to reprehend her seldome, neuer to lay violent hands on her.”³⁶ Even Whatley, the only proponent (and a cautious one at that) of wife beating, acknowledged that this should be a last resort.³⁷ It was only legitimate for a man to beat his wife “if she giue iust cause after much bearing and forbearing, and trying all other ways” including admonishing,

³³ Margaret Sommerville notes that “one of the few areas of marital relations in which a Catholic-Protestant divide can be detected” is that Catholics on the continent did allow ‘moderate beating’ of wives. Sommerville, *Sex and Subjection*, 95.

³⁴ Gouge, *Of domesticall duties* (1622), 390; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 394.

³⁵ Gouge, *Of domesticall duties* (1622), 392; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 397.

³⁶ R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1598), 169-170; R. C., *A godly form of hovseholde gouernment* (Creede for Man, 1598), 168; R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1600), 169-170; R. C., *A godly form of hovseholde gouernment* (Creede for Man, 1603), 169-170; Dod and Cleaver, *A godlie forme of householde gouernment* (Creede for Man and Norton, 1610), 167; Dod and Cleaver, *A godlie forme of householde gouernment* (Man, 1612), 167; Dod and Cleaver, *A godly forme of housholde gouernement* (T.C. for Man, 1614), L4; Dod and Cleaver, *A godly forme of housholde gouernement* (Field for Man, 1621), L3; Dod and Cleaver, *A godly forme of housholde gouernement* (Field for Man, 1630), L3; Dod and Cleaver, *A godly forme of housholde gouernement* (Man, 1630), L3.

³⁷ Whatley did not advocate wife-beating so perhaps the word “proponent” is misleading. He merely accepted wife-beating as legitimate, though he did not recommend it. Gouge allow a husband to “defend himself” if his wife beats him, “as he would from a man, but he has no more right to hit her than any other man.” See Gouge, *Of domesticall duties* (1622), 393; and Gouge, *Of domesticall duties* (1634), 397.

extorting, and praying.³⁸ Even the opinion that “allowed” wife beating emphasized the husband’s role as the center of a Christian domestic life.³⁹

Arguments against wife beating varied. Many suggested that wife beating was a poor choice because it was ineffective.⁴⁰ This argument emphasized love, rather than physical force, as the fuel that kept a marriage running smoothly. In all three versions of his text, Whatley argued that the “way to maintain authoritie” in society was “not to use violence, but skill.”⁴¹ In many ways this was practical, rather than moral advice, as Whatley claimed a wife “will not relish a reproofe when her heart is imbittered.”⁴² Whatley was not alone. All editions of *A Godly Household*, for example, declared that it was better for a husband to “reproue his wife louingly, rather by perswasion, then by force.”⁴³ Rogers’ 1642

³⁸ Whatley even recommended that if the wife’s “father be liuing, let him be intrate to fight” and only “if she haue none, or he cannot, or will not” then, and only then, may a man beat his wife for discipline. This suggests indirectly that wifely insubordination was a failure of the father’s discipline and thus a duel between father and husband, as the respective disciplinarians in the woman’s life, was deemed appropriate. See Whatley, *A Bride-bush* (1619), 107, 108.

³⁹ Karen Harvey, “The History of Masculinity, Circa 1650–1800,” *The Journal of British Studies* 44, no. 2 (2005): 298.

⁴⁰ Laura Lunger Knoppers, “Rewriting the Protestant Ethic: Discipline and Love in *Paradise Lost*,” *English Literary History* 58, no. 3 (1991): 550.

⁴¹ Whatley, *A Bride-bush* (1619), 100; Whatley, *A Bride-bush* (1623), 100. See also the 1617 version’s different wording: “Know then yt authority in this society, must not be kept by maine force, and by violence, but by skil.” Whatley, *A Bride-bush* (1617), 19.

⁴² Whatley, *A Bride-bush* (1617), 25.

⁴³ R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1598), 205-206; R. C., *A godly form of hovseholde gouernment* (Creede for Man, 1598), 199; R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1600), 205-206; R. C., *A godly form of hovseholde gouernment* (Creede for Man, 1603), 205-206; Dod and Cleaver, *A godlie forme of householde gouernment* (Creede for Man and Norton, 1610), 204; Dod and Cleaver, *A godlie forme of householde gouernment* (Man, 1612), 204; Dod and Cleaver, *A godly forme of housholde gouernement* (T.C. for Man, 1614), unpaginated image 106; Dod and Cleaver, *A godly forme of housholde gouernement* (Field for Man, 1621), unpaginated image 100; Dod and Cleaver, *A godly forme of housholde gouernement* (Field for Man, 1630) unpaginated image 106; Dod and Cleaver, *A godly forme of housholde gouernement* (Man, 1630), unpaginated image 106. Amussen has noted that “all the manuals instituted that love of each other and of God held the family together.” See Susan Dwyer Amussen, *An Ordered Society* (Columbia University Press, 1988), 39.

household manual *Matrimoniall Honour* stressed love, rather than “tyranny.”⁴⁴ Others argued that beating one’s wife was dishonorable. Though John Wing argued in *The Crowne Coniugall* that a wife “must be subject to her husband,” he noted that “Stripes (where we may giue them) doe argue inferiority without honour.”⁴⁵ Wing’s justification for non-violence was not equality, but rather familial honor. The language is reminiscent of Kate’s famous quote to her husband Petruccio in William Shakespeare’s *Taming of the Shrew*: “If you strike me, you are no gentleman.”⁴⁶ Margaret Hunt argues that the change over the course of the seventeenth century was not from acceptance to rejection of wife-beating, but instead a change in the logic against wife-beating from a practical argument that it was counterproductive to the characterization of family violence as a working-class crime.⁴⁷

Gouge presented several reasons why a husband should not beat his wife. Husband and wife, according to Gouge, “*are one flesh*” and “no man but a frantike, furious, desperate wretch will beat himselfe.”⁴⁸ In addition, the beating could result in a disruption of the familial structure “if the children or seruants should know of it” because they might be unable to “respect her as a mother or a mistresse” if she was “under correction as well

⁴⁴ Knoppers, “Rewriting the Protestant Ethic: Discipline and Love in *Paradise Lost*,” 550.

⁴⁵ John Wing, *The crowne coniugall or, The spouse royall: A discovery of the true honor and happines of Christian matrimony published for their consolation who are married, and their encouragement who are not, intending the benefit of both* (Middelburgh: Printed by Iohn Hellenius, 1620), 134, 136. See also John Wing, *The crowne conjugall, or The spouse royal A discovery of the true honour and happinesse of Christian matrimony* (London: Printed by John Beale for Robert Mylbourne, 1632).

⁴⁶ William Shakespeare, *Taming of the Shrew*, Act 2, Scene 1, Line 236.

⁴⁷ Margaret Hunt, “Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London,” *Gender & History* 4, no. 1 (March 1, 1992): 10–33; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 67.

⁴⁸ Gouge, *Of domesticall duties* (1622), 391; Gouge, *Of domesticall duties* (1627), 227; Gouge, *Of domesticall duties* (1634), 395.

as they.”⁴⁹ Gouge added that it was likely impossible for a husband to beat his wife without the knowledge of the servants and children, for “how can such a thing be done in the house, and they of the house know it not?”⁵⁰ Whatley recognized this problem, cautioning that a husband and wife must work together for “if he doe, and she vndoe; or if she correct, & he cocker; what will be the fruite, ...after both their authorities...they haue shewed themselves so indiscreete?”⁵¹ Whatley asked for marital cooperation for the sake of effective household governance.

Some manuals noted that other types of coercion or pressure could be used to control wives, without resorting to physical violence. In the words of Gouge, “Other forceable means may be vsed : she may bee restrained of liberty, denied such things as she most affecteth, be kept vp, as it were, in hold.”⁵² Even at this time, though, Gouge’s opinions were contentious, and by the 1670s “Gouge’s kind of patriarchal rhetoric” was openly mocked in Thomas Shadwell’s *Epsom Wells*.⁵³ Shakespeare scholar Emily Detmer suggests that Petruccio, in *Taming of the Shrew*, was the prototype for this kind of early modern man as he mastered his rebellious wife without ever raising a violent hand towards her.⁵⁴ Petruccio psychologically manipulates Kate into submission, without administering

⁴⁹ Gouge, *Of domesticall duties* (1622), 391; Gouge, *Of domesticall duties* (1627), 227; Gouge, *Of domesticall duties* (1634), 394.

⁵⁰ Gouge, *Of domesticall duties* (1622), 391; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 395.

⁵¹ Whatley, *A Bride-bush* (1617), 18.

⁵² Gouge, *Of domesticall duties* (1622), 392; Gouge, *Of domesticall duties* (1634), 397.

⁵³ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 116.

⁵⁴ Emily Detmer, “Civilizing Subordination: Domestic Violence and the Taming of the Shrew,” *Shakespeare Quarterly* 48, no. 3 (1997): 273–94.

physically violent discipline, while still adhering to the restriction that a husband should rule his wife. Shakespeare was not alone in writing these sorts of stories. Ballads told similar tales.⁵⁵

Yet actual court records made clear that non-violent “misuse of wives” was also unacceptable. William Tayles was sentenced to the stocks in Middlesex for beating and misusing his wife, as well as for being drunk and indecent. One of his offenses against his wife, in addition to beating her, was giving her “the poxe.”⁵⁶ There were obviously issues of moral contagion at play in this case, as many scholars have noted how the pox and other sexually transmitted diseases were treated as moral contagion in the early modern period.⁵⁷ Though there were multiple reasons to bring forward a case against Tayles, the inclusion of the allegation of giving her the pox suggests that misuse of wives could stretch beyond physical beating. Eight percent of wife-beating cases include an accusation of the husband withholding or stealing his wife’s clothing as part of his “misuse.” Claims of this withholding as abuse suggest that even Petruccio’s non-violent strategies for depriving Kate might not have been wholly acceptable in an actual case, even if they had provided comedy in a Shakespearean play.

⁵⁵ See, for example, *A pleasant new Ballad, both merry and witty, That she weth the humours, of the wiues in the City* (London: Printed for H. G., 1630). From University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 20174, Pepys Ballads 1.376-377. (<http://ebba.english.ucsb.edu/ballad/20174/xml>)

⁵⁶ William Tayles (Middlesex Quarter Sessions, May 1656) Book 155, 30 as referenced in Books Calendar (June 1652 - Jan 1656/7), Hicks Hall, 164-165.

⁵⁷ Louis F Qualtiere and William WE Slights, “Contagion and Blame in Early Modern England: the Case of the French Pox,” *Literature and Medicine* 22, no. 1 (2003): 1–24; Keith Thomas, “Health and Morality in Early Modern England,” *Morality and Health*, 1997, 15–34; Kevin P Siena, “Pollution, Promiscuity, and the Pox: English Venereology and the Early Modern Medical Discourse on Social and Sexual Danger,” *Journal of the History of Sexuality* 8, no. 4 (1998): 553–74.

In some ways, views on domestic violence did change over time. Dod and Cleaver, while leaving much of the work of the original (disputed) author untouched, did make some small differences worth noting. The 1598 edition claimed:

The husband ought not to bee satisfied *that he hath robd his wife of her virginitie*, but in that he hath possession and vse of her will.⁵⁸

By contrast, the 1621 edition argued:

The husband ought not to be satisfied *with the vse of his wiues body*, but in that he hath also the possession of her will *and affections*.⁵⁹

While in practice these two do not seem very different, the change in connotation feels substantive. The “use of his wife’s body” sounds much less violently aggressive than the “robbing of his wife’s virginity.” Additionally, the desire for the wife’s “affections” and not just her “will” seems to imply a marriage based not only on legitimacy, but also on love. Both of these editions drew on similar sentiments in a sixteenth-century conduct book which suggested that a “wise man maye not be contented onely with the Spouses virginitie, but by little and lyttle must gently procure that he maye also steale away hir priuat will.”⁶⁰

Many scholars have argued that the early modern period saw a shift towards companionate marriage, but some historians have taken issue with the argument.⁶¹ These

⁵⁸ R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1598), 168. Emphasis added.

⁵⁹ Dod and Cleaver, *A godly forme of housholde gouernement* (Field for Man, 1621), 82. Emphasis added.

⁶⁰ Edmund Tilney, *A briefe and pleasant discourse of duties in mariage, called the Flower of friendship* (London: Printed by Henrie Denham, 1571), unpaginated image 14; Edmund Tilney, *A briefe and pleasant discourse of duties in mariage, called the flower of friendship* (London: Printed by Henrie Denham, 1568), unpaginated image 14; Edmund Tilney, *A briefe and pleasant discourse of duties in mariage, called the flower of friendship* (London: Printed by Henrie Denham, 1577), unpaginated image 15;

Edmund Tilney, *A briefe and pleasant discourse of duties in mariage, called the flower of friendship* (London: Printed by Abel Ieffs, 1587), unpaginated image 15.

⁶¹ Alan Macfarlane, “Love and Capitalism,” *Cambridge Anthropology* 11, no. 2 (1986): 22–39; Ralph A Houlebrooke, *The English Family 1450-1700* (Routledge, 2014); E A Wrigley, *Population and History* (New York: McGraw-Hill, 1969); John Hajnal, “European Marriage Patterns in Perspective,” in *Population*

critiques do not challenge the argument that *there was a shift towards companionate marriage* - they merely dispute the timing. Some of these scholars, such as Alan Macfarlane, locate the rise of companionate marriage in the late Middle Ages.⁶² Others claim the early modern shift to companionate marriage has been exaggerated because companionate marriage was not invented in the eighteenth century, instead citing an origin closer to the late sixteenth century.⁶³

These changes in the direction of more egalitarian marriage with a focus on love snared the conduct manuals into a contradiction. The conduct books clearly stressed that men were to be the kings of their households. In Whatley's words: "The Lord in his Word calls him the head; hee must not stand lower than the shoulders; if he doe, that is a deformed family." Whatley cautioned that it "is not humility, but basenes, to be ruled by her whom he should rule" because it "is a sin to come lower than God hath set one."⁶⁴

Yet in the majority of all three versions, Whatley focused on how to behave ideally in marriage, striking a much more egalitarian tone. They all emphasized how each husband and wife had duties towards one another, and though they might be required to reprove one another's faults, it should be a task performed in kindness and love, not anger and spite. Lawrence Stone was the first to note the tension between the "increasing stress laid by early seventeenth-century preachers on the need for companionship in marriage" and the

in *History: Essays in Historical Demography*, ed. David Edward Charles Eversley (London: E. Arnold, 1965); Peter Laslett, *Family Life and Illicit Love in Earlier Generations: Essays in Historical Sociology* (Cambridge: Cambridge University Press, 1977).

⁶² Macfarlane, "Love and Capitalism."

⁶³ Keith Wrightson, *English Society, 1580-1680* (New Brunswick: Rutgers University Press, 1982), 103.

⁶⁴ Whatley, *A Bride-bush* (1617), 18-19.

same preachers' "own arguments in favor of the maintenance of strict wifely subjection and obedience."⁶⁵ Garthine Walker describes the contradiction as a "mixed message of wifely submission and equality."⁶⁶ For example, she shows how Daniel Rogers argued in his 1642 conduct book, *Matrimonial Honour*:

that although the married estate, be an equall estate, yet the carriage of both must not be the same: but the love of the one must be conveyed with royalnesse without tyranny, the other in loyall sweet subjection, without slavery. So then, as the head and other inferior members, are equally parts of one body, yet the head in a different and more singular maner, then the rest: so ought the case to be betwixt husband and wife⁶⁷

Fletcher argued that this contradiction between "advocating mutuality in the private and sexual domain of marriage, [and] maintain[ing] that the display of patriarchal authority was absolutely essential to the proper government of a household" was why conduct books sold so well.⁶⁸ They were constructed to guide readers through exactly this type of contradiction. Amussen points out that even internally, "the structure, definitions, ambiguities of household manuals" allowed them to "sustain various interpretations of the duties of subjects, wives, and children."⁶⁹ For example, Whatley's apparent inconsistencies "can be explained by the fact that he tended to emphasise spiritual and marital equality when addressing the husband, and laid greater stress on the differences between man and wife

⁶⁵ Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1979), 325.

⁶⁶ Walker, *Crime, Gender and Social Order in Early Modern England*, 66.

⁶⁷ Daniel Rogers, *Matrimoniall honour; or, The mutuall crowne and comfort of godly, loyall, and chaste marriage wherein the right way to preserve the honour of marriage unstained, is at large described, urged, and applied* (London: Printed by Thomas Harper for Philip Nevil, 1642), 153.

⁶⁸ Fletcher, "Men's Dilemma: the Future of Patriarchy in England 1560-1660," 73.

⁶⁹ Amussen, *An Ordered Society*, 47.

when addressing the wife.”⁷⁰ Whatley seems to be illustrative of the genre of conduct books, which were meant to be preventative, rather than curative, guides for households.

Here it is important to once again stress a distinction between morality and legality, both of which are visible in legal records. Most conduct books focused on preventative, rather than corrective measures. Yet the law was almost uniformly corrective (or, more accurately, punitive) in its approach. The household manuals offered theories of morality, religion, and conduct. They were not legal manuals. Though these books clearly argued against wife beating as a general rule, they had no effect on common law, which allowed a husband “moderate correction” and continued to be upheld in the court into the eighteenth-century.⁷¹

According to the law, there were limits on husbandly violence. In legal manuals such as Thomas Edgar’s, the legal rights to wife beating were carefully circumscribed with exhortations that husbands were not to do wives any “bodily damage.”⁷² In other words, even according to the law, extraordinary damage, or fear of death, were universally considered unacceptable.⁷³ The overall message of both the legal and non-legal manuals stressed fairly clearly (though with varying nuance) that though husbands *legally could* beat their wives a minimal amount, they *should not*.

⁷⁰ Eales, “Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639),” 171.

⁷¹ Stone, *The Family, Sex and Marriage in England, 1500–1800*, 326.

⁷² Edgar, *The lawes resolutions of womens rights*, 128.

⁷³ Gowing, *Domestic Dangers*, 207; Walker, *Crime, Gender and Social Order in Early Modern England*, 63.

WIFE BEATING VS. BEATING OTHER SUBORDINATES

Amussen argues that master/servant and parent/child were relatively simple relationships and that marriage was the outlier in its complication, despite the efforts of early modern writers who “sought to bring it into conformity with other relationships.”⁷⁴ Most manuals seem fairly explicit in acknowledging the differences between different household relationships. *A Godly Form of Household Government* asserted that “all in the familie are not to be gouerned alike. There is one rule to gouerne the wife by, another for children, another for seruants.”⁷⁵

Gouge argued that wife beating was not only different from, but *worse than* beating servants.⁷⁶ Some of Gouge’s reasons were temporal: husbands had more time to beat their wives than their servants, both because wives and husbands spent more time together than did servants and masters, and because servitude was a temporary arrangement while marriage was permanent. However Gouge also noted that the law offered more protections to servants against masters than to wives against husbands and that some men beat their wives, but not their servants.⁷⁷ Most striking were Gouge’s emotional insights. He argued that the psychological effect on wives was worse than on servants due to the closer bond between wife and husband. In addition, according to Gouge: “the lesse power and authority that an husband hath to strike his wife, then a master to strike a seruant, the more heauy

⁷⁴ Amussen, *An Ordered Society*, 41.

⁷⁵ R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1598), 17.

⁷⁶ Gouge, *Of domesticall duties* (1622), 389-90; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 394.

⁷⁷ Gouge points out that wives “cannot haue so good remedy by the helpe of the law against cruell husbands, as seruants may haue against cruell masters.” See Gouge, *Of domesticall duties* (1622), 390; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 394.

doe his strokes seeme to be, and the worse doth the case of a wife seeme to be in that respect.”⁷⁸ This quote indicates that he considered the blows from a husband to a wife to be worse than the blows of a master to a servant since it was a grosser abuse of power.⁷⁹

Cleaver and Dod’s *A Godly Form of Household* compared the care of servants to that of oxen and horses who “must bee beaten and inforced to their worke.”⁸⁰ Legal cases brought by servants against abusive masters rarely resulted in punishment for the employer, although they did provide just cause for a servant to leave his or her post. For example, Ann Daniel claimed that her master, John Cox, “hath often beaten her, & that she is afraide of her life or laving, if shee continue any longer in his service.” John Osborn, the Justice of the Peace who heard her case on July 31, 1654, discharged Daniel from the remainder of her term and ordered Cox to pay the full of her wages up until July 30.⁸¹ While beating a servant might have been grounds for an employee to terminate their contract, it was not likely to be an offense that would result in punishment for the abusive master. Employees tended to bring cases that yielded them tangible benefits rather than simply a punishment for the master. Termination of an employee’s contract was just one of these potential purposes. For example, in July 1650, Thomas Parker, apprentice to Somerset blacksmith Richard Collier, testified that Collier beat him until he was crippled and unable to find

⁷⁸ Gouge, *Of domesticall duties* (1622), 390; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 394.

⁷⁹ There are two other slightly varied readings here. One is that the blows *felt* worse to *wives* because they were a grosser abuse of power. Another potential reading is that since husbands *know* that they have less legitimacy to beat their wives, they tend to beat them more viciously. The reading hinges on the interpretation of “seeme to be.” However, all readings argue that wife beating was less legitimate than servant beating.

⁸⁰ R. C., *A godlie forme of householde gouernment* (Kingston for Man, 1598), 155.

⁸¹ Order (Kent Quarter Sessions, 31 July 1654) Q/SB/5 (84), KLHC. [C1520]

work.⁸² In his deposition, Parker borrowed from the language of widows and impotent petitioners begging for relief from the quarter sessions and seems to be seeking some sort of monetary support. Steven Smith notes that the Middlesex Sessions of the Peace, as well as the Mayor's Court, contain "numerous cases of apprentices suing their masters as a result of mistreatment."⁸³ These people were seeking financial support. The SCGV database indicates that Middlesex might be unusual in this regard as it heard cases of abusive masters seven times more frequently than Somerset, Sussex, Kent, and Wiltshire each—the only other counties which heard cases of abusive masters.⁸⁴

It is possible that the variation between counties merely reflects the larger number of servants in the relatively urban locale of Middlesex, or that the urban environment made servants more likely to speak out against mistreatment as there were more options for finding other places to work.⁸⁵ However the more likely reason for the disparity is that the Middlesex Sessions seem more prone than other courts to handing out discharges from work. Six out of seven Middlesex cases of masters beating servants were merely petitions

⁸² Information of Thomas Parker (Somerset Quarter Sessions, 6 July 1650) Q/SR/82 pt 2 (184), SHC. [C2454]

⁸³ Steven R Smith, "The London Apprentices as Seventeenth-Century Adolescents," *Past & Present* 61 (1973): 61.

⁸⁴ My numbers from Middlesex are tentative as the LMA was the only archive where I did not go through the Sessions Papers and instead used a calendar (thus performing a less exhaustive search). However, one would expect this to lead to finding *fewer* cases in Middlesex than in other counties since it was a less exhaustive search.

⁸⁵ Eleanor Hubbard suggests that migrant women might have lost the protection of kinship networks by moving. Given the large population of migrant servants in London, it is possible that these women more often turned to the courts, rather than personal social circles, to solve issues of labor abuse. See Eleanor Hubbard, *City Women: Money, Sex, and the Social Order in Early Modern London* (Oxford; New York: Oxford University Press, 2012).

for discharges.⁸⁶ The cases in other courts had more varied motivations: in the Somerset Quarter Sessions, a servant attempted to receive recompense for being beaten until impotent and unable to work; and the Yorkshire Assizes heard a case of a woman ostensibly beaten to death by her mistress. Eleanor Hubbard notes that though London magistrates “did intervene to remove servants from abusive households, in general they were more interested in order than in justice.” Even if a violent beating proved fatal, “there was little will to convict masters and mistresses.”⁸⁷

This left little incentives for servants to bring these cases to court. Other cases which mentioned abusive masters without prosecuting them, such as that of Nicholas Pockney, who claimed he stole money from John Grooms only because his master and mistress threatened to beat him, indicate that servant beating might have been significantly more common than prosecutions for it would suggest.⁸⁸ Since our knowledge of the Pockney/Groom servant beating is only incidental, mentioned in relation to a case of theft rather than a specific prosecution for servant beating, it is possible that some cases of servant beating went unreported to the courts.

Though different from servant beating, child beating was also an issue of moderating subordinate discipline. In the early 1630s, George Herbert declared that a household head should show to his children “more love then terrour, to his servants more

⁸⁶ See C1016, C1076, C999, C1035, C1007, and C1043. The remaining case involved a warrant for the “immoderate beating” that a servant received. See C1001.

⁸⁷ Hubbard, *City Women*, 38.

⁸⁸ See C2493.

terroure then love.”⁸⁹ Puritan household manuals “without exception urged children to show deference to their parents and parents to exercise strict control over their charges.”⁹⁰ Most contemporary writers “cautioned against the overbearing and physically violent parent.”⁹¹ Margo Todd demonstrated humanist and Puritan agreement that reasoning, rather than corporal punishment, was preferable when dealing with an aberrant child.⁹² However, Robert Schnucker found that approximately 90% of his twenty-two Puritan sources between 1560 and 1634 agreed that corporal punishment could be used on children when verbal correction failed.⁹³ Fletcher similarly noted that “during the period from the 1560s to the 1640s numerous prescriptive works advocated parental beating, or ‘correction’ as it was usually called.”⁹⁴ These books criticized parental overindulgence towards their children which allowed children to become “forward, willfull, unruly, and disobedient.”⁹⁵ Schnucker summarized Puritan attitudes towards childhood discipline as “it is better to be whipped than damned but a greater virtue to be persuaded verbally to reform than to be whipped.”⁹⁶

⁸⁹ George Herbert, *A priest to the temple, or, The country parson his character, and rule of holy life* (London: Printed by T. Maxey for T. Garthwait, 1652), 43; Anthony Fletcher, “Manhood, the Male Body, Courtship and the Household in Early Modern England,” *History* 84, no. 275 (1999): 214.

⁹⁰ Todd, “Humanists, Puritans and the Spiritualized Household,” 28.

⁹¹ Robert V Schnucker, “Puritan Attitudes Towards Childhood Discipline, 1560-1634,” in *Women as Mothers in Pre-Industrial England: Essays in Memory of Dorothy McLaren* (London; New York, 1990), 115.

⁹² Todd, “Humanists, Puritans and the Spiritualized Household,” 28-29.

⁹³ Schnucker, “Puritan Attitudes Towards Childhood Discipline, 1560-1634,” 117.

⁹⁴ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 209.

⁹⁵ *ibid.*, 214. See also Dod and Cleaver, *A godly forme of housholde gouvernement* (T.C. for Man, 1614), S4.

⁹⁶ Schnucker, “Puritan Attitudes Towards Childhood Discipline, 1560-1634,” 117.

Though some historians have claimed that this was a period of severe discipline for children, Fletcher argues that “direct references to the beating of children in the home are extremely sparse.”⁹⁷ My findings in the legal records confirm Fletcher’s observation. When John Shephard the younger accused his godfather John Chester of beating him in Somerset in 1649, Chester did not deny the beating, merely the severity of the beating. Chester claimed that when he found his godson breaking open a gate to the wheat fields, he gave Shephard “some correccion with a smale sticke aboute fower or five blowes.”⁹⁸ Chester’s defense supports the theory that it was extreme violence, rather than any beating, that was deemed unacceptable. The appearance of a child beating case before the courts was incredibly rare. Most of the evidence of child beating is incidental—appearing in the body of depositions on other matters. In the thousands of records examined in this study, there were only two prosecutions for beating one’s own child. To give a sense of how few prosecutions this was, there were equivalent numbers of prosecutions for child beating as there were prosecutions for fathers having raped their own daughters.⁹⁹

However, it is important not to read too much into the absence of child beating cases. The absence could just as easily signal acceptance of child beating as it could signal

⁹⁷ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 208. For the opposing view, see Shulamith Shahar, *Childhood in the Middle Ages* (Taylor & Francis, 1990), 235–6; Stone, *The Family, Sex and Marriage in England, 1500–1800*, 167; Peter Earle, *The Making of the English Middle Class: Business, Society, and Family Life in London, 1660–1730* (Berkeley, 1989), 233. However, most historians agree with Fletcher. Linda Pollock argues that parents had a whole range of tools to discipline children and encourage good behavior and that beating was a rarely used method. See Linda A Pollock, “Parent-Child Relations,” in *Family Life in Early Modern Times, 1500–1789*, edited by David I. Kertzer, Marzio Barbagli (Middletown: Choice, 2002), 191–220. See also Wrightson, *English Society, 1580–1680*, 116.

⁹⁸ Examination of John Chester (Somerset Quarter Sessions, 6 December 1649) Q/SR/81 (125), SHC. [C2452]

⁹⁹ Only two prosecutions for either of these appear in my records. Cases of fathers raping daughters: C1097, C735. Cases of parents beating their own children: C2452, C2455.

that child beating was rare. It could also indicate that extra-judicial methods, such as neighborly or familial intervention, was a preferred method for these cases rather than litigation. Sarah Toulalan suggests that children, by their own admission, “did not tell anyone what had happened to them because they were afraid of being beaten.”¹⁰⁰ Lastly, if Gouge thought wives had limited access to court protection relative to servants, children had even less. Children under eight years of age were usually not allowed to give evidence and were never allowed to do so under oath. Not all children over eight were allowed to testify, either.¹⁰¹

WOMEN AS AGGRESSORS

Many manuals note the responsibilities of mothers and mistresses, in addition to those of fathers and masters. This begs the question of the role of women as social superiors within the early modern hierarchies of power. Depending on class, women could command servants, and many had children who fell under their jurisdiction until maturation.¹⁰² Since women could have both children and servants under their charge, did *female* heads of household have different boundaries for acceptable violence from their male counterparts? Although Frances Dolan concedes that “it was possible for female gender to coincide with

¹⁰⁰ Sarah Toulalan, “‘Is He a Licentious Lewd Sort of a Person?’: Constructing the Child Rapist in Early Modern England,” *Journal of the History of Sexuality* 23, no. 1 (2014): 33.

¹⁰¹ Ages of maturity were heavily debated in the early modern period. See previous chapter or *The confession of faith and catechisms* (London: printed for Robert Bostock, 1649), 51; Nathaniel Bacon, *An historicall discourse of the uniformity of the government* (London: Printed for Matthew Walbanke, 1647), 283-84; Edward Coke, *An abridgement of the Lord Coke's commentary on Littleton* (London: Printed for W. Lee, D. Pakeman, and G. Bedell, 1651), 26.

¹⁰² For a discussion of this phenomenon in a later period, see Patty Seleski, “Women, Work and Cultural Change in Eighteenth-and Early Nineteenth-Century London,” in *Popular Culture in England, c. 1500-1850* (London: Springer, 1995), 143–67.

domestic authority...the popular texts that survive seldom tell these stories.”¹⁰³ Women in positions of power had much more carefully curated jurisdiction over violence than did men. Gouge noted that despite the wife’s subservience to her husband, “of all other inferiours in a family, wiues are farre the most excellent, and therefore to be placed in the first ranke.”¹⁰⁴ Similarly, Whatley exhorted his readers that though the husband was “Gods immediat officer, and the King in his family: the woman [w]as the Deputie subordinate, and associate to him.”¹⁰⁵ The division between print depictions and actual incidence of crime begins to emerge by looking at the female aggressor.

Cases defining female violence appeared less frequently in the court record than those of male violence, but there are surviving examples. Elizabeth Pearson’s death in 1656 threw suspicion on her mistress, Mary Taylor. Two neighbors testified that Pearson showed them the bruises on her body and told them that Taylor had “given her two blowes vpon the back and one bunch or kick vpon the side about the short ribbes,” so severe that she thought they “would be her death.”¹⁰⁶ Indeed, Pearson died shortly after.¹⁰⁷ It is noteworthy that while male masters were sometimes brought to court for beating female servants, no female mistresses were brought to court individually for beating male servants.¹⁰⁸ This

¹⁰³ Dolan, *Dangerous Familiars*, 24.

¹⁰⁴ Gouge, *Of domesticall duties* (1622), 25.

¹⁰⁵ Whatley, *A Bride-bush* (1617), 16.

¹⁰⁶ Information of Elizabeth Smith and Anna Pearson (Northern Assizes, 19 November 1656), ASSI 45/5/3 (97), TNA. [C196]

¹⁰⁷ Elizabeth Pearson’s brother, Robert, accused not only Mary Taylor, but also her husband, Henry. Additionally, Elizabeth Pearson told her brother not to “meddle or have any coroner for god was able to reward them according to their dealings.” See Information of Robert Pearson (Northern Assizes, 19 November 1656), ASSI 45/5/3 (97), TNA. [C196]

¹⁰⁸ There was one case where a master, William Lovejoy, and his wife and mother beat their apprentice, Matthew Nicholas. However, this case was exceptional for several reasons. Nicholas’ father petitioned for

might suggest that while masters could beat any servant, mistresses could only beat female servants.¹⁰⁹ Most common was for male masters to beat female servants. This occurred in 40% of the servant beating cases in SCGV.¹¹⁰ In 30% of SCGV servant beating cases, female mistresses beat female servants, in 20% of cases, male masters beat male servants, and in 10% of cases, master and mistress together beat a female servant.¹¹¹ Though there were certainly gendered stereotypes at play in court cases of female employers beating employees, *legally*, the woman's gender mattered little.

Women's violence against their children in the court record was quite different from that of men. Though "the mother's place was always one of subordination to the father...she was second in command over the entire household."¹¹² Some conduct books suggested that mothers were to take control of disciplining daughters, and fathers of disciplining sons.¹¹³ More commonly, tracts argued that in the absence of the father, mothers could rule with full household authority. Mothers, same as fathers, had the

his son's release based on the inhumane treatment of his son. In the petition, he reported that the trio fettered Nicholas to their shop with locks when they went away and, on another occasion, beat Nicholas until he was bloody, then rubbed salt in his wounds before holding him in front of an open fire. Thus the Lovejoy-Nicholas case is far from the norm. See C1043.

¹⁰⁹ It is worth noting that I was not looking specifically for cases of servant beating and was instead tracking gendered violence which might bias against cases of male on male violence, but all other types of violence were tracked equally.

¹¹⁰ See C1016 (Middlesex), C999 (Middlesex), C1035 (Middlesex), C1520 (Kent).

¹¹¹ For examples of mistresses beating female servants, see C196 (Assize - Yorkshire), C1076 (Middlesex), C1007 (Middlesex). For examples of masters beating male servants, see C2454 (Somerset), C2427 (Wiltshire). Again, the number of men beating men is likely higher as the database only specifically tracked violence involving women - female attacking female, male attacking female, and female attacking male. For masters and mistresses together beating female servants, see C1001 (Middlesex).

¹¹² Schnucker, "Puritan Attitudes Towards Childhood Discipline, 1560-1634," 114.

¹¹³ *ibid.*, 114. See also Henry Smith, *A preparatiue to mariage The summe whereof was spoken at a contract, and enlarged after. Whereunto is annexed A Treatise of the Lords supper: and another of vsurie* (London: Printed by R. Field for Thomas Man, 1591), 57.

technical right to discipline their children. In fact, as Mendelson and Crawford have argued, if “a mother did not allow her children to be beaten, it seems to have occasioned remark.”¹¹⁴ Cases of female violence against their children were almost entirely absent from court records, save for one important category: infanticide.

As Keith Wrightson correctly notes, infanticide was primarily associated with bastard-bearers attempting either to “conceal their offense or to rid themselves of the unwanted child.”¹¹⁵ Out of the 122 infanticide cases in SCGV, 89 were committed against illegitimate children. While this imbalance might reflect the reality of infanticides, it could equally have reflected the fact that “if a married woman’s child died, the burden of proving that she had killed it rested with the crown.”¹¹⁶ In other words, only an unmarried woman had to prove that she *did not* murder her child.¹¹⁷ Yet whether or not it reflected the physical reality of infanticides, this legal imbalance did reflect the early modern fear of and focus on murdering illegitimate children.¹¹⁸ Early modern individuals were sufficiently

¹¹⁴ Sara Heller Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford; New York: Clarendon Press, 1998), 161.

¹¹⁵ Keith Wrightson, “Infanticide in Earlier Seventeenth-Century England,” *Local Population Studies* 15 (1975): 11.

¹¹⁶ Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 45.

¹¹⁷ Anne-Marie Kilday, *A History of Infanticide in Britain: c. 1600 to the Present* (Basingstoke: Palgrave Macmillan, 2013); Nichola Erin Harris, “The Idea of Lapidary Medicine” (Unpublished Rutgers University PhD Dissertation, 2009); Sarah Shippy Copeland, “Constructions of Infanticide in Early Modern England: Female Deviance During Demographic Crisis” (Unpublished Ohio State University MA Dissertation, 2008); J R Dickinson and James A Sharpe, “Infanticide in Early Modern England: the Court of Great Sessions at Chester, 1650–1800,” in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000*, ed. Mark Jackson (Burlington: Infanticide: Historical perspectives on child murder and concealment, 2002), 1550–2000; Mary Della Heckmann, “Infanticide in Early Modern England” (Unpublished University of California, Riverside PhD Dissertation, 2002); Laura Gowing, “Secret Births and Infanticide in Seventeenth-Century England,” *Past & Present* no. 156, no. 156 (1997): 87–115; Wrightson, “Infanticide in Earlier Seventeenth-Century England.”

¹¹⁸ Women who birthed bastards had more reason to hide pregnancy and birth, and thus potentially had more reason to murder their children. However, as Louise Jackson has noted, though “the courts were just beginning to accept illness as mitigation for infanticide in the most exceptional cases, there was no

preoccupied with the killing of illegitimate children that Parliament debated bills on the topic in 1606-7 and 1610, and in 1624 finally passed an act “to prevent the Destroying and Murthering of Bastard Children.”¹¹⁹

Modern studies exploring early modern conviction rates for infanticide have produced mixed results.¹²⁰ Amussen found that 53% of women accused of infanticide in Sussex between 1600 and 1640 were convicted, and 88% of those convicted were hanged. By the end of the seventeenth century, most of the women accused of infanticide in Norfolk were acquitted.¹²¹ According to Markus Eder’s sample of 406 cases brought before the assize courts between 1670 and 1729, nearly 70% were either acquitted or had the bills ruled *ignoramus*.¹²² Additionally, of the 123 remaining who faced the death penalty, only 81 were actually hanged. Though Eder’s numbers indicate that a fifth of the women accused

discussion of what we would perhaps now term post-natal depression or post-partum psychosis.” See Louise Jackson, “Witches, Wives and Mothers: Witchcraft Persecution and Women’s Confessions in Seventeenth-Century England,” *Women’s History Review* 4, no. 1 (March 1, 1995), 76. Dolan has similarly noted that infanticide is easily associated with “self-destructive acts” such as suicide. See Dolan, *Dangerous Familiars*, 16. Presumably, married and unmarried mothers were just as likely to suffer from this sort of psychosis, which would likely have been the most common cause for infanticide. However, it is difficult to assess this issue with any certainty since it was not discussed by contemporaries.

¹¹⁹ Joan Kent, “Attitudes of Members of the House of Commons to the Regulation of ‘Personal Conduct’ in Late Elizabethan and Early Stuart England,” *Historical Research* 46, no. 113 (1973): 69; Wrightson, “Infanticide in Earlier Seventeenth-Century England,” 11; Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 44.

¹²⁰ Conviction rates in the quarter sessions and assize records used in this study have to be gleaned from tiny notes scribbled at the top of indictments in shorthand. This makes it difficult to evaluate the conviction rate. Other scholars, such as Amussen and Eder have had more success in this area.

¹²¹ Amussen, *An Ordered Society*, 115.

¹²² See Appendix A. This means the bill of indictment was ruled to be not a true bill and thus ignored.

of infanticide were hanged, Eder claims that “compared to the percentage of murder verdicts, [this represented] a very strong rate of complete exoneration.”¹²³

Dolan notes that public print often depicts the individual who threatens the social order as “a woman or a servant,” despite the fact that “legal records suggest that women and servants were more often the victims than the perpetrators of domestic violence.”¹²⁴ My research supports these findings. For the period between 1642 and 1660, SCGV has 183 cases where only female assailants were prosecuted and 356 cases where only male assailants were prosecuted.¹²⁵ These numbers are particularly striking because they do not include cases of where the violence was solely between men. Meanwhile, for the same period, in 495 cases the victims were only female while in only 213 cases the victims were solely men.¹²⁶ Similarly, of the 49 cases of spousal violence, only 2 are of wives against husbands.

One might note that there were significantly more cases of assault than cases of child beating, wife beating, husband murder, and servant beating. The relative scarcity of domestic violence cases from the court record did not necessarily mean, and likely does not mean, that domestic beating did not happen. Instead, this absence indicates that the courts were not the place where these cases were to be heard. As Amussen points out, courts

¹²³ Markus Eder, *“At the Instigation of the Devil”: Capital Punishment and the Assize in the Early Modern England, 1670-1730* (Hilgerthausen: Markus Eder, 2009), 36.

¹²⁴ Dolan, *Dangerous Familiars*, 4.

¹²⁵ There were 73 cases where assailants of both genders were prosecuted.

¹²⁶ There were 96 cases where victims were both genders. Again, these numbers do not include male on male violence.

“were a last rather than a first resort.”¹²⁷ Dolan argues that although “domestic relations remained outside ‘formal’ discipline,” they did not go “unobserved or unregulated.” Local communities had many ways of exerting control, including “confrontation, shaming rituals, and bringing the offending couple before the justice of the peace for ‘unquietness.’”¹²⁸ Amussen has found that between 1550 and 1750 there were communal “attempts at mediation and support for women after acts of violence continued.” In fact, though she acknowledges that between 1550 and 1750 “direct interventions in the midst of violent clashes between husband and wife may have become less common,” she found there to be “considerable evidence” that attempts at mediation and other support continued.¹²⁹

Court records hint at other ways of resolving tensions. In a rare case of an intervening neighbor, Samuel Smith, the local minister, testified that he went to speak to George Hayward and George’s father in 1644 after George’s wife, Dorothy, requested his help. George had apparently taken up with his servant, began beating Dorothy viciously, and turned Dorothy out of the house. Smith attempted to mend fences between the husband and wife, but George and his father refused. In addition, they resented Smith’s interference, abusing him with “base words before his face & behinde his back.”¹³⁰ However it is worth noting that in this case, Smith only stepped in after a request from Dorothy to intervene.

¹²⁷ Susan Dwyer Amussen, “‘Being Stirred to Much Unquietness’: Violence and Domestic Violence in Early Modern England,” *Journal of Women's History* 6, no. 2 (1994): 129.

¹²⁸ Dolan, *Dangerous Familiars*, 33.

¹²⁹ Amussen, “‘Being Stirred to Much Unquietness,’” 84.

¹³⁰ Information of Dorothy Hayward, Information of Samuel Smith (Essex Quarter Sessions, 28 January 1644) Ph 4/151/5 Q/SBA 2/56, ERO. [C1116]

George was also committing adultery with (and potentially rape of) his servant and a reconciliation with his wife would solve not only the wife beating, but also the adultery.

Beating of subordinates was not the only type of male violence in which direct interventions were rare. Moderated violence that supported patriarchal household authority and that could be “read as such by its victims, its witnesses and its defenders” was celebrated.¹³¹ Courts and neighbors also seemed hesitant to intervene in cases where men defended the honor of their wives with violence. Although legally men were not allowed to assault other men, even for slanders or threats against their households, contemporaries treated these scenarios with significant leniency. For example, multiple neighbors testified that John Walton taunted Henry Beecroft about drinking more than he could afford and punched him lightly in the arm, but Beecroft kept calm. However, when Walton announced “thou hast a faire wife: if I could gett you dead I would have her,” Beecroft picked up a hammer and smashed Walton on the head, a wound from which Walton subsequently died.¹³² While none of the neighbors shied away from accusing Beecroft of the murder, they made it a point to stress how Beecroft kept calm until Walton went after Beecroft’s wife. His neighbors seemed to consider Beecroft’s actions understandable.

Beecroft’s was not the only case of male-to-male violence over wives. When Robert Hubert’s wife, Mary, had sex with Robert Wyld in Manchester, Hubert killed Wyld.¹³³ In

¹³¹ Laura Gowing, “Women, Sex and Honour the London Church Courts, 1572-1640” (Unpublished University of London PhD Dissertation, 1993), 136.

¹³² Information of Thomas Whitham (Northern Assizes, 10 June 1648) ASSI 45/2/2 (11); Information of Anna Sherock (Northern Assizes, 10 June 1648) ASSI 45/2/2 (10); Information of Edmund Capinot (Northern Assizes, 10 June 1648) ASSI 45/2/2 (10); Examination of Henry Beecroft (Northern Assizes, 10 June 1648) ASSI 45/2/2 (9); TNA. [C192]

¹³³ Recognizance of Robert Hubert (Lancaster Quarter Sessions, 1647) QSB/1/285/18, LANC. [C1093]

addition, other testimonies hint that this sort of violence was expected. When Matthew Sully found his wife Margaret in bed with Thomas Mills “kiseinge & groapeing each other,” Mills “rose from the bed” and “searched his pocketts, as if he intended to draw his knife,” clearly expecting to face violence from Sully.¹³⁴

The interaction between Sully and Mills conjures up a trope that had been popular in public print since Elizabethan times: the adulterous wife conspiring with her lover to kill her husband. In this trope, aberrant sexual license mixes with violence to destabilize the family unit as the basic building block of societal order. This trope appeared not only in fiction literature but also in the growing field of cheap print purporting to be real news but in fact sensationalizing events or inventing them altogether.¹³⁵ Gowing notes that these tales of domestic homicides often featured “handsome young men, often apprentices, [who] cheated elderly husbands of their younger wives, and, in league with the wives, killed the husbands and replaced them in both business and marriage.”¹³⁶

¹³⁴ Information of Matthew Sully (Somerset Quarter Sessions, 24 May 1654) Q/SR/83 (108), SHC. [C830] This was a bizarre case where the Sullys were invited to John Warner’s house and upon arrival, Margaret went upstairs to sleep first with Thomas Goddard and then with Thomas Mills while other men attempted to prevent Matthew Sully from entering the room. During the confrontation with Mills, Margaret responded “would the knife were att the heart blood of thee” indicating that she wanted Mills to stab her husband. Sully responded to Mills attempts to draw a knife: “you will not draw your knife upon me will you sirra?” After this confrontation Margaret left Matthew, but not before breaking into his home and bringing goods from his house to John Warner’s house.

¹³⁵ See, for example, *Murther, murther, or, A bloody relation how Anne Hamton dwelling in Westminster nigh London by poyson murthered her deare husband Sept. 1641 being assisted and counselled thereunto by Margeret Harwood for which both committed to gaole and at this time wait for a tryall* (London: Printed for Thomas Bates, 1641); *Sundrye strange and inhumaine murthers, lately committed the first of a father that hired a man to kill three of his children neere to Ashford in Kent, the second of Master Page of Plymouth, murthered by the consent of his owne wife : with the strange discouerie of sundrie other murthers, wherein is described the odiousnesse of murther, with the vengeance which God inflicteth on murtherers* (London: Printed by Thomas Scarlet, 1591). See also *Arden of Feversham* (London: Printed by Edward White, 1592).

¹³⁶ Gowing, *Domestic Dangers*, 201.

The overwhelming majority of violent crimes committed by females that were reported to the courts involved infanticide, witchcraft, or poison.¹³⁷ This trifecta constitutes the female domain of violence in the court record. In SCGV, there are 122 cases of infanticide, 90 cases of witchcraft, and only 233 cases of women committing other violence (that was not witchcraft or infanticide).¹³⁸ In other words, witchcraft and infanticide made up almost half of women's prosecutions for violence. Although infanticide was the most common type of murder committed by females, the killing of spouses dominated the popular literature.¹³⁹ These stories appeared in court cases as well as popular print, but there were notable differences between the two.

Take for example, the case of Grace Griffen who was convicted by the Home Assizes of murdering her husband by putting Ratsbane, or white arsenic, in his honey.¹⁴⁰ Griffen was convicted and sentenced to be burned to death in August 1654. The Griffen case reveals several themes present in court cases of female violence more generally. The first was the method of violence. Not only was poison, along with witchcraft and

¹³⁷ Frances Dolan has argued that witchcraft could be used to process internal familial conflict, particularly within stepfamilies. See Dolan, *Dangerous Familiars*, 16.

¹³⁸ I do not cover witchcraft accusations here as they have been thoroughly covered in other works. See, for example Clive Holmes, "Women: Witnesses and Witches," *Past & Present* 140 (January 1, 1993): 45–78; Alan Anderson and Raymond Gordon, "Witchcraft and the Status of Women: the Case of England," *The British Journal of Sociology* 29, no. 2 (January 1, 1978): 171–84; Malcolm Gaskill, "Witchcraft and Evidence in Early Modern England," *Past & Present* 198, no. 1 (January 1, 2008): 33–70; Jonathan Barry, *Witchcraft and Demonology in South-West England, 1640-1789* (Houndmills: Palgrave Macmillan, 2012); Thomas Rogers Forbes, *The Midwife and the Witch* (New Haven: Yale University Press, 1966).

¹³⁹ Sandra Clark, *Women and Crime in the Street Literature of Early Modern England* (New York: Palgrave Macmillan, 2003); Lincoln B Faller, *Turned to Account : the Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge; New York: Cambridge University Press, 1987); Leigh A Yetter, "Attitudes to Crime, Criminality, and the Law in Print in England, c. 1580-c. 1700" (Unpublished Brown University PhD Dissertation, 2005); Heckmann, "Infanticide in Early Modern England;" Harris, "The Idea of Lapidary Medicine."

¹⁴⁰ Inquest into the death of Richard Griffen (Home Assizes, 1 August 1654) ASSI 35/96/8 (28), TNA. [C370]

infanticide, a common feature of female violence, it was also very rare to see men accused of any of those three crimes in this period. Of the two women who murdered (or attempted to murder) their husbands in this period, both used poison.¹⁴¹ Men, by contrast, used much more varied means to kill their wives. Seven men beat their wives to death, using only their limbs to hit, kick, and strike their wives.¹⁴² Four men used objects to beat their wives to death.¹⁴³ One man strangled his wife and one broke his wife's neck with his hands.¹⁴⁴ Two men were accused of poisoning their wives, but one of them acted in concert with a woman.¹⁴⁵ While there were two cases of husband poisoning and two cases of wife poisoning, poison was used on 100% of murdered husbands and only on about 12% of murdered wives. In terms of broader non-lethal spousal violence cases, poison made up 66% of violence against husbands and only about 4% of violence towards wives. Krista Kesselring argues that women, like men, violently kicked, hit, and physically beat other people.¹⁴⁶ Though women did resort to these types of physical violence in some of the cases in SCGV, especially in incidents where their violence was directed towards other women, these physically violent strategies are wholly absent from cases of wives murdering, or

¹⁴¹ See C1478, C370.

¹⁴² See C378, C190, C82, C172, C165, C210, C1309.

¹⁴³ See C227, C645, C92, C263.

¹⁴⁴ See C358, C1542.

¹⁴⁵ Robert Seymour and Philippa Hallum poisoned Robert's wife, Jane. Interestingly, the first accusation, ruled not a true bill, cast Robert as the poisoner and Hallum as merely aiding and abetting. The second indictment, ruled a true bill, declared both parties guilty of the poisoning of Jane Seymour. See Indictment against Robert Seymour and Philippa Hallum, Second Indictment against Robert Seymour and Philippa Hallum (Home Assizes, 20 November 1658) ASSI 35/100/7 (123, 126), TNA. [C649].

¹⁴⁶ Krista J Kesselring, "Bodies of Evidence: Sex and Murder (or Gender and Homicide) in Early Modern England, c. 1500-1680," *Gender & History* 27, no. 2 (July 15, 2015), 250-51.

attempting to murder, their husbands. Dolan suggests that perhaps poison was the female weapon of choice because it was “a stealthy, tidy, nonconfrontational method that relie[d] more on cunning than on physical strength.” In addition, with poison, wives manipulated “their husbands’ dependence on them for physical sustenance.”¹⁴⁷ Perhaps this reads too much into the choice. More simply, poison was a relatively cheap and easy way to commit murder which most women had the physical and monetary means to achieve, even if they lacked superior physical strength.

Grace Griffen’s punishment also indicated an important difference between husband-murder and wife-murder. Burning was a traitor’s death. The word “traitorously” was splashed all over the record of Grace’s conviction for her husband’s death. When a man killed his wife, it was seen as “murder.” However, when a wife killed her husband, it was “petit treason.”¹⁴⁸ Sentencing differed between types of domestic murder. The killing of husbands and masters were singled out as capital crimes.¹⁴⁹ This might seem to make sense: it reinforced the social hierarchy by establishing that killing authority figures was treasonous. However, it is worth noting that the gendered distinctions in murder went far beyond those between husbands and wives. The killing of women, *even when those women were authority figures*, was not categorized as treasonous. As Dolan writes, despite “the relatively frequent murders of women by their rebellious servants and children,” these incidents were not treated as treason by the statute.¹⁵⁰ Children and servants who killed

¹⁴⁷ Dolan, *Dangerous Familiars*, 31.

¹⁴⁸ 25 Edw 3, St. 5, c. 2. See also Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 44; Dolan, *Dangerous Familiars*, 21-22.

¹⁴⁹ Killing newborn children was also a capital crime for different reasons.

¹⁵⁰ Dolan, *Dangerous Familiars*, 24.

their fathers and masters committed petit-treason, but if they killed their mothers and mistresses, this was merely murder. This clearly defined that there were limits of female authority over subordinates. The law more aggressively protected male authority.

The preoccupation with women murdering husbands was evidenced not only by stricter punishment, but also reflected in public print. Kesselring writes that “while men far outnumbered women as accused killers” in court cases, this division was *not* reflected in “the lurid murder pamphlets of the early modern era.”¹⁵¹ In fact, quite the opposite. Murderous wives were popular characters in early modern literature.¹⁵² Dolan argues that this in turn, amplified anxieties “about murderous wives in inverse proportion to the actual threat they posed.”¹⁵³

One of the most popular stories was that of Ulalia Page, who together with her lover, George Strangwidge, murdered her husband. Ben Jonson and Thomas Dekker wrote a (now lost) play based on this story in 1599.¹⁵⁴ Broadsheets of Thomas Deloney’s ballad, *The Lamentation of Mr. Page’s Wife of Plymouth*, were originally printed in 1591 but were reprinted at least eleven times by 1730.¹⁵⁵ In fact, John Payne Collier, the famous

¹⁵¹ Kesselring, “Bodies of Evidence,” 248.

¹⁵² Peter Lake and Michael Questier, *The Anti-Christ’s Lewd Hat* (New Haven: Yale University Press, 2002), 55.

¹⁵³ Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700*, 26.

¹⁵⁴ Martin Wiggins and Catherine Teresa Richardson, *British Drama, 1533-1642: a Catalogue*, Oxford: Oxford University Press, 2014. See also “Page of Plymouth”. Lost Plays Database. Ed. Roslyn L. Knutson, David McInnis, and Matthew Steggle. Melbourne: University of Melbourne, 2009. Web.

¹⁵⁵ Thomas Deloney, *The Lamentation of Mr. Pages Wife of Plymouth, who being enforced to wed him, consented to his Murther. To the tune of Fortune my Foe* (London: Printed by Thomas Scarlet, 1591); Thomas Deloney, *The Lamentation of Master Pages wife of Plimmouth, who being enforced by her Parents to wed him against her will, did most wickedly consent to his murther, for the loue of George Strangwidge: for which fact she suffered death at Barnstable in Deuonshire. Written with her owne hand a little before her death* (London: Printed for H. Gosson, 1609) from University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 20054, Pepys Ballads 1.126-127.

nineteenth-century Shakespearean counterfeiter, even forged a fake early modern pamphlet titled “The Complaint of Ulalia Page.”¹⁵⁶ The incident also appears in Thomas Taylor’s *The second part of the theatre of Gods judgements and Sundry Strange Murthers Lately Committed*.¹⁵⁷

(<http://ebba.english.ucsb.edu/ballad/20054/xml>); Thomas Deloney, *The Lamentation of Master Pages wife of Plimmouth, who being enforced by her Parents to wed him against her will, did most wickedly consent to his murther, for the love of George Strangwidge; for which fact she suffered death at Barnstable in Devonshire. Written with her owne hand a little before her death* (1635) from University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 30122, C.20.f.7.182-183. (<http://ebba.english.ucsb.edu/ballad/30122/xml>); Thomas Deloney, *The lamentation of Mr. Pages wife of Plimouth: VVho being enforced to wed against her will, did consent to his murder for the love of George Strangwidge, for which fact they suffered death at Barnstable in Devonshire* (Printed for F. Coles, Tho. Vere, and W. Gilbertson. 1658-1664) from University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 31948, Euing Ballads 192. (<http://ebba.english.ucsb.edu/ballad/31948/xml>); Thomas Deloney, *The Lamentation of Mr. Pages Wife of Plimouth: Who being enforced to wed against their will; did consent to his Murder for the love of George Strangwidge, for which fact they suffered death at Barnstable in Devonshire* (Printed for F. Coles. T. Vere, W. Gilbertson, and J. Wright, 1663-1665) from University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 35426, 25242.68.5. (<http://ebba.english.ucsb.edu/ballad/35426/xml>); Thomas Deloney, *The Lamentation of Mr. Pages Wife of Plimouth. Who being forced to wed against her will, did consent to his Murther, for the love of George Strangwidge, for which fact they suffered death at Barnstable in Devonshire* (Printed for F. Coles, T. Vere, and I. Wright, 1663-74) from University of California Santa Barbara, *English Broadside Ballad Archive*, EBBA ID 34598, EB65 D3833 689l. (<http://ebba.english.ucsb.edu/ballad/34598/xml>); Thomas Deloney, *The lamentation of Mr. Pages wife of Plimouth who being forced to wed against her will, did consent to his murther, for the love of George Strangwidge, for which fact they suffered death at Barnstable in Devonshire. The tune is, Fortune my foe* (Printed for F. Coles. T. Vere, and I. Wright, 1674); Thomas Deloney, *The lamentation of Mr. Pages wife of Plimouth who being enforced to wed against their will, did consent to murder for the love of George Strangwidge, for which fact they suffered death at Barnstable in Devonshire* (London: Printed by F. Coles, T. Vere, W. Gilbertson, and J. Wright, 1680); Thomas Deloney, *The lamentation of Mr. Page's wife of Plimouth who being forced to wed him consented to his murder for the love of G. Strangwidge; for which they suffered at Barnstable in Devonshire. The tune of, Fortune my foe, &c.* (London: Printed by and for Alex Milbourn, 1670-1680); Thomas Deloney, *The lamentation of Mr. Page's wife of Plymouth* (London, 1710); Thomas Deloney, *The lamentation of Mr. Page's wife of Plymouth, who being forced to wed him, consented to his murder, for the love of Mr. George Strangwidge, for which they suffer'd death at Barnstaple in Devonshire. To the tune of, Fortune my foe, &c.* (Newcastle upon Tyne: Printed and sold by John White, 1730).

¹⁵⁶ William Carew Hazlitt and G J Gray, *Handbook to the Popular, Poetical, and Dramatic Literature of Great Britain: From the Invention of Printing to the Restoration* (London: John Russell Smith, 1867), 434; John Payne Collier, *A Bibliographical and Critical Account of the Rarest Books in the English Language, Alphabetically Arranged* (New York: D. G. Francis, 1866), 104; Arthur Freeman and Janet Ing Freeman, *John Payne Collier: Scholarship and Forgery in the Nineteenth Century* (New Haven: Yale University Press, 2004), 1426.

¹⁵⁷ Thomas Taylor, *The second part of the theatre of Gods iudgments collected out of the writings of sundry ancient and moderne authors* (London: Printed by Richard Herne, 1642): 95; *Sundrye Strange and inhumaine Murthers lately committed*, B2-FINIS.

However, while the incidence of “wife-murdering-husband” pamphlets certainly would have given the situation a higher profile, the moral messages of these pamphlets were not always perfectly straightforward. As Peter Lake notes, Ulalia Page and George Strangwidge were completely unrepentant in *Sundry Strange and Inhumane Murders* and the story was almost entirely devoid of moralizing content, save for a strange appearance by the devil with an ambiguous moral message to the readership.¹⁵⁸ Similarly, Henry Goodcole was sympathetic towards Alice Clark in his pamphlet on her 1635 murder of her husband. Differences in age and temperament marked her as “young and tender” while he was “old and peevish.” Her husband not only “beat her with the next cudgell that came accidentally unto his hand, but often t[ied] her to his bedpost to strip her and whippe her, &c.”¹⁵⁹ Alice planned to kill first her husband and then herself, but got cold feet after feeding her husband poison. She apologized to him, begged his forgiveness, and attempted to coax him into drinking the antidote. However, her husband refused cruelly saying: “nay thou Strumpet and murderesse, I will receive no helpe at all but I am resolv'd to dye and leave the world, be it for no other cause, but to have thee burnt at a stake for my death.”¹⁶⁰ Alice did have a lover, Henry White, who helped her plan her husband’s murder after he had a violent interaction with her husband.¹⁶¹ Perhaps most tragic was that Alice never

¹⁵⁸ Peter Lake, “Popular Form, Puritan Content? Two Puritan Appropriations of the Murder Pamphlet From Mid-Seventeenth-Century London,” in *Religion, Culture, and Society in Early Modern Britain: Essays in Honour of Patrick Collinson*, ed. Anthony Fletcher and Peter Roberts (Cambridge; New York: Cambridge University Press, 1994), 315.

¹⁵⁹ Henry Goodcole, *The adu[t]resses funerall day in flaming, scorching, and consuming fire, or, The burning downe to ashes of Alice Clarke* (London: Printed by N. and I. Okes by Authority and Commaund, 1635), 5.

¹⁶⁰ Goodcole, *The adu[t]resses funerall day*, 5.

¹⁶¹ Alice actually had a series of lovers, all of whom wanted her to murder her husband. However White was the only one with whom she actually plotted the murder.

intended to marry Clark, but was forced into the marriage after her former master got her pregnant and set up the marriage to Clark to cover his own indiscretion.¹⁶² However, for all the sympathetic treatment, Alice Clark was still burned at the stake for her crimes.

Here, there is some debate about the chronology of these representations. For example, Dolan and Sandra Clark have argued that popular representations of household violence only shifted from portraying “the murderous wife to the murderous husband” after 1650.¹⁶³ Others, such as Michael Questier and Lake, do not think that there was a clear-cut change in the mid-seventeenth century.¹⁶⁴ Of the 52 published accounts of spousal murder analyzed by Dolan, 28 of those published before 1650 were tales of wives murdering husbands while only two described husbands murdering wives. The reverse is true after 1650, where only four accounts of wives murdering husbands were published compared with 18 accounts of husbands murdering wives.¹⁶⁵ Fletcher has shown that this change extended beyond publishing and into local rituals. For example, charivari, the popular ritual of humiliating the socially deviant, shifted around 1800 from primarily targeting unruly women to domestically violent men.¹⁶⁶ However, Lake and Questier rightly caution that overrepresentation of husband-murder in pamphlet literature cannot be read in a binary way. They point out that these pamphlets do not represent an early modern populace

¹⁶² Goodcole, *The adultrresses funerall day*, 9.

¹⁶³ Dolan, *Dangerous Familiars*, 89; Clark, *Women and Crime in the Street Literature of Early Modern England*.

¹⁶⁴ Lake and Questier, *The Anti-Christ's Lewd Hat*.

¹⁶⁵ Dolan, *Dangerous Familiars*, 89.

¹⁶⁶ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 202.

unfamiliar with male violence, nor should the pamphlets be taken as evidence of a crisis in gender relations.¹⁶⁷

In the court records surveyed in this study, husbands murdering wives outnumber wives murdering husbands 16 to 2.¹⁶⁸ In addition, the imbalance in the treatment of male and female violence extended well past domestic violence. Female rioters were dealt with more leniently if men had been involved in the riot.¹⁶⁹ In the case of a riot involving both sexes, women could be seen as just following the example of men. Female violence, however, with no male violence to lead it, was seen as especially monstrous and transgressive because it violated not only the peace, but also the gender order.¹⁷⁰ Once again we see fear in public print diverging from reality in the court records: public print obsessed over the dangers of wives murdering husbands while the courts recorded almost exclusively cases of husbands murdering wives.

Public fears and fixations rarely correlated directly with natural threats. Julius Ruff has noted that “the early modern public, like its modern counterpart, formed many of its perceptions of violence from...less [than] factual sources.” In addition to news, “[r]umor, songs and popular entertainments, and...folk traditions...informed popular understandings of violence.” This meant that the “public’s perception of reality sometimes differed substantially from the reality.”¹⁷¹ Such misalignments between public fear and physical

¹⁶⁷ Lake and Questier, *The Anti-Christ's Lewd Hat*, 57.

¹⁶⁸ There are 31 additional cases of wife-beating where the wife survived.

¹⁶⁹ Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 44.

¹⁷⁰ Kesselring, “Bodies of Evidence.”

¹⁷¹ Julius Ruff, *Violence in Early Modern Europe* (Cambridge; New York: Cambridge University Press, 2001), 13.

reality are not unusual throughout history and can provide valuable insight into contemporary cultures. Gianna Pomata has shown the almost exclusive attention devoted to syphilis in nineteenth-century Italian foundling hospitals even as the contemporary scientific theory demonstrated that other diseases, such as tuberculosis, were more common and more fatal.¹⁷² Pomata explains that this discrepancy can be explained through the relative social importance of syphilis determining its “biography” not just its “biology.” The intense fear of the “moral contagion” that bound syphilis, lower class women, and prostitution hand-in-hand, allowed the biography to determine the priorities for the hospitals. Similarly, the trope of wives murdering husbands gave voice to a fear of social treason which allowed it to linger much more prominently than fears of husbands murdering wives. Despite the fact that the latter was far more common, the former challenged the primary building block of the early modern social hierarchy - making it appear much more lethal to early modern society.

NON-INTERVENTION

Though household manuals were fairly clear that a man should not beat his wife (even though he legally could), this directive obviously did not result in men ceasing to beat their wives. More importantly for our consideration is the fact that the courts, neighbors, and women themselves did not seek intervention to prevent wife-beating, despite the increasing fervor against it in household manuals.

¹⁷² Gianna Pomata, “Unwed Mothers in the Late Nineteenth and Early Twentieth Centuries,” in *Microhistory and the Lost Peoples From Europe* (Baltimore: Johns Hopkins University Press, 1991), 159–204.

According to Thomas Edgar, “if a woman be threatned by her husband to bee beaten, mischieued or slaine...she may sue out of Chancery to compell him to finde surety of honest behauour toward her.”¹⁷³ While a woman could petition for restraint “if she believed her life was at risk...she could not sue for bodily harm.”¹⁷⁴ These petitions for the peace were somewhat akin to modern restraining orders, ordering a husband to maintain civil carriage towards his wife. However, while a husband’s excessive violence against his wife was legally illegitimate, a wife’s complaints against her husband were socially illegitimate. Walker has noted that “in complaining about their husbands, wives were notionally overstepping the boundaries of orderly behavior.”¹⁷⁵ Complaints against their husbands marked wives as “undutiful” “home-rebels” and “house-traitors.” As John Wing explained, nothing could “vilifie, or defame [a wife] more, then rebellion against [her husband].”¹⁷⁶ Even women looking for court protection on the grounds of marital cruelty knew that they were likely to be labeled as “shrewish and disobedient” and thus always took care to stress that their own behavior had been modest and dutiful.”¹⁷⁷ In the 47 wife-beating cases in SCGV, only six women petitioned for the peace against their husbands.¹⁷⁸ This is compared to 16 cases brought forth after a woman had been murdered by her husband.

¹⁷³ Edgar, *The lawes resolutions of womens rights*, 128.

¹⁷⁴ Mendelson and Crawford, *Women in Early Modern England, 1550-1720*, 38.

¹⁷⁵ Walker, *Crime, Gender and Social Order in Early Modern England*, 63.

¹⁷⁶ Wing, *The crowne conjugall* (1632), 297.

¹⁷⁷ Capp, “Separate Domains?” 133.

¹⁷⁸ See C898, C1393, C796, C1268, C1992, C784. It is possible that there are others.

Capp suggested that the reason it was rare for women to bring charges against their husbands was because it “was bound to exacerbate tensions, and there was no guarantee of a fair hearing.”¹⁷⁹ Similar to modern restraining orders, the bonds for good behavior were ultimately only a piece of paper that had little ability to stop physical beating. Not only that, these bonds came at the potential cost of a woman’s reputation and an exacerbation of the tension at home. Even husbands who *were* actually dragged before the courts for beating their wives “could expect lenience.”¹⁸⁰ Gowing writes that men accused of cruelty to their wives “had considerable room for maneuver, which they used to defend themselves on the ground that their violence was a logical extension of the power accorded them in the conjugal economy.”¹⁸¹ If the woman died, the court had license to punish the husband, but until that point, there was little the court could do. For example, once the court established that Margaret Hunter had recovered from the beating that her husband William had given her, the court ruled that he should “be released of his bonds; he p[ro]mising never to abuse her in [th]e like kind againe.”¹⁸² This could have fatal consequences. Though Elizabeth Thompson complained to the Scarborough baliffs about the violent behavior of her husband, Joshua, he was imprisoned only after her death.¹⁸³ In addition, even subsequent

¹⁷⁹ Capp, “Separate Domains?” 133.

¹⁸⁰ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 110.

¹⁸¹ Gowing, *Domestic Dangers*, 220.

¹⁸² Certificate (Sussex Quarter Sessions, 6 October 1642) QR/58 (90), ESRO. [C1268]

¹⁸³ See Examination of Bartholomew Dewsberry (Northern Assizes, 1648) ASSI 44/3 (Box 1, Bundle 1); Examination of Anne Carr, Anne Bayes (Northern Assizes, 1648) ASSI 44/3 (Box 1, Bundle 1); Examination of Margery Fish (Northern Assizes, 1648) ASSI 44/3 (Box 1, Bundle 1); Examination of Jane Skelton, Anne Dishforth (Northern Assizes, 1648) ASSI 44/3 (Box 1, Bundle 1); Examination of Jane Hickson, Anne Owston (Northern Assizes, 1648) ASSI 44/3 (Box 1, Bundle 1); Information of Henry Walker (Northern Assizes, 23 October 1648) ASSI 45/3/1 (203B), TNA. [C190]

to a conviction, a man had legal options. As previously discussed, while men might avoid capital punishment through the benefit of the clergy, women's alternative of "pleading the belly" was only a temporary delay tactic.¹⁸⁴ Thus while women did occasionally sue for the peace from their husbands, far more common were murder cases after a husband had already killed his wife.

Amussen has written that if the head of the household were to do "his duty," then "neighbors would not have to step in"; intervention from external parties "to control behavior in families ought to have been unnecessary, and was a last resort."¹⁸⁵ There were many levels of potential external intervention, beginning with preliminary investigations from the kin of the victim, then the "grand jury and coroner's jury,...the magistrates, and from them (but beyond our period) to the police force."¹⁸⁶ Fletcher notes that this system strikingly blurs the lines between "private and public responsibility."¹⁸⁷ According to Amussen, the "acceptance and expectation that neighbors would watch events in a family, and intervene if necessary, made domestic violence a public issue."¹⁸⁸

Dod and Cleaver's *A Godly Form of Household Government* suggested that if "any vnkindnesse or displeasure should happen to be at any time betwixt the husband and the wife," neither of them "ought to impart, or to make it knowne vnto any one of their

¹⁸⁴ Krista Kesselring, *Mercy and Authority in the Tudor State* (New York: Cambridge University Press, 2003), 212-14.

¹⁸⁵ Amussen, *An Ordered Society*, 97, 98.

¹⁸⁶ John H Baker, "Criminal Courts and Procedure at Common Law 1550-1800," in *Crime in England, 1550-1800*, ed. J S Cockburn (Cambridge: Methuen & Co. Ltd., 1977), 16-17.

¹⁸⁷ Fletcher, *Gender, Sex and Subordination in England 1500-1800*, 217.

¹⁸⁸ Amussen, "'Being Stirred to Much Unquietness,'" 85.

neighbours.” Dod and Cleaver reasoned that ill-wishing neighbors would “rejoice” at such discord and well-meaning neighbors would “minister matter whereof to talke.”¹⁸⁹ Lisa Jardine described the introduction of neighbors into spousal disputes as “the spilling-over of private exchange into a public space” which in turn could transform “verbal abuse into event in the communal space.”¹⁹⁰ As Jardine explained:

the verbal has been constituted as *event* in the community by virtue of the circumstances of utterance, its location in public space, the inclusion in its performance of persons not entitled to hear what is uttered in privacy or intimacy.¹⁹¹

In other words, by discussing verbal abuse in public, spouses transformed it into a public event. However, as discussed in the last chapter, few people lived exclusively with a nuclear family unit; instead, extended family members, servants, and masters tended to cohabit houses in larger groups. The “early modern household was not built for privacy.”¹⁹² As we noted earlier, Gouge himself stated when arguing that husbands should not beat their wives because it lowered the wives stature in the eyes of servants and children, that it was likely impossible for a husband to beat his wife without the knowledge of the servants and children: “how can such a thing be done in the house, and they of the house know it not?”¹⁹³ It was difficult for individuals to keep secrets from their neighbors, co-workers, employers, employees, and family members.

¹⁸⁹ Dod and Cleaver, *A godly forme of housholde gouvernement* (Field for Man, 1621), 82.

¹⁹⁰ Lisa Jardine, ““Why Should He Call Her Whore?”: Defamation and Desdemona’s Case,” in *Addressing Frank Kermode: Essays in Criticism and Interpretation* (Houndmills: Palgrave Macmillan UK, 1991), 142.

¹⁹¹ *ibid*, 138.

¹⁹² Gowing, *Domestic Dangers*, 190.

¹⁹³ Gouge, *Of domesticall duties* (1622), 391; Gouge, *Of domesticall duties* (1627), 224; Gouge, *Of domesticall duties* (1634), 395.

Neighbors finding out about a crime did not guarantee intervention—far from it. Cristine Varholy, in a discussion of a sixteenth-century English domestic violence case, notes that one English husband defended himself against a domestic violence charge, despite the fact that he actually called “attention to the fact that he beats his wife frequently enough that the beatings [we]re common knowledge among his neighbors.” The husband insisted that he was justified in these beatings since they were carried out with the aim of controlling, in Varholy’s words, “his socially and sexually unruly wife.”¹⁹⁴ Amussen writes that though “neighbors did not like the task of keeping order in other households” they still “would do so when necessary.”¹⁹⁵ However I have found that the laws restricting male violence towards subordinates were rarely enforced, either by the courts or by neighborly intervention. Out of the 47 cases of wife-beating in SCGV that came before the courts for being cruel and inhumane, neighbors physically intervened in only two cases.¹⁹⁶ Neighbors verbally intervened in an additional three cases.¹⁹⁷

Murder trials for women killed by their husbands often included testimony from multiple female neighbors (and sometimes male neighbors as well), recounting conversations between themselves and the victims regarding the abuse. Testimony survives from neighbors in seven of the 16 murder trials and nine of the 31 non-lethal wife-beating

¹⁹⁴ Cristine M Varholy, ““But She Would Not Consent”: Women’s Narratives of Sexual Assault and Compulsion in Early Modern London,” in *Violence, Politics, and Gender in Early Modern England*, ed. Joseph P Ward (New York: Palgrave Macmillan US, 2008), 53.

¹⁹⁵ Amussen, *An Ordered Society*, 98.

¹⁹⁶ See C860, C172.

¹⁹⁷ See C190, C888, C852.

cases.¹⁹⁸ It is likely that more neighbors testified and the records do not survive.¹⁹⁹ For the majority of the remaining cases only recognizances, indictments, orders, or petitions survive, and these do not always indicate who, if anyone, actually testified in these cases. Two cases have testimony from the wife and no one else, and in an additional case, a neighbor testified against the husband but to other issues rather than his wife beating.²⁰⁰

In most cases it seemed the domestic violence was well known, especially by female neighbors. Take, for example, the supposed “suicide” of Anne Feales in Gleadles, Sheffield, which prompted suspicion against Anne’s husband, Marmaduke. Mary Dolfyn testified that Anne came into her house seeking shelter because Anne “feared her husband would kill her” and that Dolfyn had heard “Marmaduke say often before that time that he would eyther kyll or hange the said Anne his wife.”²⁰¹ Another neighbor, Anne Bradbury, deposed not only to Anne’s fear of her husband, but also that she had to help Anne out of bed due to the “diverse p[ar]tes of [Anne’s] body black with blowes & stroakes w[hi]ch [her husband] had given her.”²⁰² According to another neighbor, Anne Hartley, Marmaduke felt no remorse for the beatings. When Hartley asked him why he beat his wife so badly, he responded “yf you knew how I had bett her you would say soe, for from the crowne of the head to the sole of her foote I have not lefte one free spott on her.”²⁰³ Marmaduke, in

¹⁹⁸ Lethal cases: C190, C82, C172, C165, C210, C1309, C92. Non-lethal cases: C984, C986, C888, C1268, C860, C134, C1116, C852.

¹⁹⁹ See Appendix B for a discussion of record survival.

²⁰⁰ See C1253, C796. One neighbor testifies to other offenses in C1992.

²⁰¹ Information of Mary Dolfyn (Northern Assizes, 17 March 1641) ASSI 45/1/4 (13), TNA. [C82]

²⁰² Information of Anne Bradbury (Northern Assizes, 17 March 1641) ASSI 45/1/4 (13), TNA. [C82]

²⁰³ Information of Anne Hartley (Northern Assizes, 17 March 1641) ASSI 45/1/4 (13A), TNA. [C82]

his own testimony, denied any wrongdoing, claiming that he had gone out to pick up a dish of butter for his wife and came back finding her hanged.²⁰⁴ While technically the neighbors' depositions were taken concerning Anne's "death" rather than murder, the court's line of questioning was fairly obvious from patterns in the various female testimonies. The questions indicated that the court suspected Marmaduke of the crime even if there was insufficient evidence to convict him.

When Yorkshire woman Elizabeth Pearson was found dead in 1658, Sarah Burrill testified that Pearson was prescient enough specifically to ask Burrill "to beare witness that she ther declared that she had not received any harme by her sister or any of her children for she thought her husband might be apt to say so much when she was dead." Burrill, rather than trying to prevent Pearson's death, instead asked Pearson if she could forgive her husband, Samuel, for her death. Pearson hesitated before answering "if I forgive him not how shall I be forgiven of god?"²⁰⁵ Alice Gossup even testified that Samuel Pearson threatened to have Gossup arrested if she testified about the abusive nature of his relationship with his wife.²⁰⁶ Unusually, Samuel Pearson admitted to hitting his wife in almost exactly the same manner as his neighbors reported.²⁰⁷ In common law courts, outright denial seemed a far more common strategy. Marmaduke Feales, for example, denied he hit his wife at all, even going so far as to explain Mary Dolfyn's testimony that

²⁰⁴ Examination of Marmaduke Feales (Northern Assizes, 17 March 1641) ASSI 45/1/4 (13A), TNA. [C82]

²⁰⁵ Information of Sarah Burrill (Northern Assizes, 22 June 1658) ASSI 45/5/5 (57), TNA. [C210]

²⁰⁶ Information of Alice Gossup (Northern Assizes, 22 June 1658) ASSI 45/5/5 (56), TNA. [C210]

²⁰⁷ Examination of Samuel Pearson (Northern Assizes, 22 June 1658) ASSI 45/5/5 (59), TNA. [C210]

she heard Anne Feales crying “good duke” three times, was merely his wife’s response to his threats to leave her.

While several female neighbors discuss the wife’s forgiveness of her abusive husband, one record hints that this might have been a strategy for legal redress. Edith Jagger’s siblings Alice Ambler and Abraham Whitwham both testified that Edith made them aware that her husband Isaac was beating her, and would likely kill her, yet she told them both not to say anything until she was dead. While Ambler attributed this to kindly qualities of her sister, Whitwham argues that she did this intentionally to damn Isaac legally.²⁰⁸ She informed sufficient numbers of people to sway the court, which, only after her death, had the power to actually punish Isaac for his behavior.

However, communities did not always rally around the woman. Joan Miles sheltered Samuel Sykes after Sykes was accused of hitting his wife over the head with an iron pick-axe to knock her into a chalk pit, where she apparently drowned.²⁰⁹ Communities could also put negative pressure on wives. Mary Sparrow petitioned the Wiltshire Quarter Sessions in 1657 that though her husband had beaten her and turned her out of doors, she had managed to support herself financially, until talk in the parish had caused her to be excommunicated such that “noe pson shall have any dealinge or comerce wth her.”²¹⁰ In addition, neighbors sometimes offered conflicting testimonies. Susan and John Fuller testified that they knew Thomas Stonam murdered his wife not only because she had cried

²⁰⁸ Information of Alice Ambler (Northern Assizes, 20 December 1653) ASSI 45/4/3 (73); Information of Abraham Whittwham (Northern Assizes, 20 December 1653) ASSI 45/4/3 (74), TNA. [C92]

²⁰⁹ Bill against Samuel Sykes, Bill against Joan Miles (Northern Assizes, 16 July 1659) ASSI 35/100/7 (87), TNA. [C645]

²¹⁰ Petition of Mary Sparrow (Wiltshire Quarter Sessions, 1 July 1657) A1/110/1657T (100), WSHC. [C3270]

to Susan about beatings, but also because they had actually overheard Stonam administering one such beating to his wife on the night before she was found dead. However, Joan Reder, William Clark, Jane Beeching, and Francis Reder all cast their lots with Thomas Stonam, arguing that his wife was well known to have ague and that this was the cause of her death.²¹¹

Despite the fact that the occurrence of domestic violence seems to have been common knowledge to neighbors, few seem to have intervened while the wife was living. William Farnelley of Ecclesfield, Yorkshire, deposed that he was in Joan Farnelley's house when Richard Wright gave Joan a beating that led to her death eleven days later. Yet Farnelley gave no indication that he made any effort to stop the beating.²¹²

These cases do not fully answer the question of what duty neighbors had to a woman facing physical abuse from her husband. James Sharpe, in a study of the Archdeacon's court, argues that neighbors were only "willing to spy upon each other, and report what they had observed."²¹³ Intervention, though, lay outside the job description of a godly neighbor. Overall, my findings indicate that neighbors *did not* step in, either to prevent violence in the moment, or to prevent future violence. The majority of these testimonies demonstrate that neighbors were well aware of the violence, but do not suggest that they intervened to prevent it in any way and only came to court once they were called to testify, usually after the wife's death.

²¹¹ Information of Susan Fuller, Information of John Fuller, Examination of Joan Reder, William Clark, Jane Beeching, and Francis Reder (Sussex Quarter Sessions, 18 October 1642) QR/59 (49), ESRO. [C1309] "Ague" was a fever or shivering fit which some have since associated with malaria.

²¹² Information of William Farnelley (Northern Assizes, 21 June 1656) ASSI 45/5/3 (119), TNA. [C220]

²¹³ James A Sharpe, *Crime in Early Modern England, 1550-1750* (London; New York: Longman, 1999), 119.

The few cases where neighbors interceded in domestic disputes actually proved the norm of non-intervention. When Anne Fairbank was found dead, a mountain of depositions from family members and neighbors pointed fingers at her husband Robert's abusive behavior. The court heard that Robert had told neighbors he would "either knocke anne his wife in the head or putt her in some coale pitt for hee was not able to leade his life with her."²¹⁴ They heard that Anne attempted to keep out of his way by visiting her daughter.²¹⁵ Robert claimed he found Anne dead and had never beaten her, and even circulated a rumor that Anne had fallen and cracked her head on a pot. This was demonstrably untrue since the man assigned to examine Anne's body testified that her "Chin was swolne as big as two heads" and he could stick a quill two inches between her skin and scalp proving that she "was certainly knocked in the head."²¹⁶ In this case, while many merely attested to the abuse, some also attempted to intervene. Henry Popplewell testified that in the middle of the night, Anne came running down the street crying and begged Popplewell to open "the doore (for christ sake) for she was affrayde her husbande would follow her & kill her."²¹⁷ No sooner had Popplewell let her in the house than Robert "came rushing to the doore & soe threatened the said henry popplewell for harbouring his wife."²¹⁸ Anne, meanwhile, hid under the bed, for fear that her husband might break in. Others testified that Robert and

²¹⁴ Information of Charles Machir (Northern Assizes, 22 April 1655) ASSI 45/4/3 (40), Information of Godfrey Thorpe (Northern Assizes, 16 June 1653) ASSI 45/4/3 (41), TNA. [C172]

²¹⁵ Information of William Jubb (Northern Assizes, 16 July 1653) ASSI 45/4/3 (42), TNA. [C172]

²¹⁶ Information of John Harrison (Northern Assizes, 16 June 1653) ASSI 45/4/3 (41), TNA. [C172]

²¹⁷ Information of Henry Popplewell, Robert Popplewell, and Anne Popplewell (Northern Assizes, 22 April 1655) ASSI 45/4/3 (40), TNA. [C172]

²¹⁸ Information of Henry Popplewell, Robert Popplewell, and Anne Popplewell (Northern Assizes, 22 April 1655) ASSI 45/4/3 (40), TNA. [C172]

Anne's daughters dragged neighbors from their houses on diverse occasions to intervene for fear their father would kill their mother.²¹⁹ However, the testimony in the Fairbank case was exceptional not only for its content, but also for the quantity of depositions. Sixteen people testified about Robert's abuse, while the median number of neighbors testifying in spousal murder trials was about four.²²⁰

Neighbors disliked stepping in. The reason for this was simple: they hesitated to destabilize the natural order of things, where a husband ruled his wife. Fletcher writes that:

The authority of parents, masters and mistresses invariably received magisterial backing and never more fiercely than when the chain of order was threatened by open insubordination...it is the lack of a distinction between private and public responsibility in this system that is striking.²²¹

Here, Fletcher connects the private sphere of households and the public arena of courts. Specifically, he draws our attention to the courts' reinforcement of the authority of household heads, both by subtly undergirding it, and by overtly backing it when cases of household violence showed up in court.

CONCLUSION

We began this chapter with a Parliamentary articulation of resistance theory that used an allegory between the duties of a king and that of a husband. Lake and Questier note that:

²¹⁹ Information of Edward Fanam (Northern Assizes, 3 June 1653) ASSI 45/4/3 (44), TNA. [C172]

²²⁰ One neighbor testified in C165. Three neighbors testified in C1309. Four neighbors testified in C82 and C92. Seven neighbors testified in C210. Nine neighbors testified in C190.

²²¹ Fletcher, *Gender, Sex and Subordination in England 1500–1800*, 217.

[g]iven the centrality of the household and the gender and social hierarchies and relationships inscribed within it to wider notions of both political and social order, it would be surprising if the retelling of these bitter little tales of domestic dysfunction should not have expressed and addressed the political realm as well.²²²

Early modern English homes functioned “as a locus of conflict, an arena in which the most fundamental ideas about social order, identity, and intimacy were contested.”²²³ Indeed, in addition to contemporaries utilizing the household as an allegory for the body politic, there were parallels between the two.

Conduct books almost universally condemned wife beating, though some grudgingly acknowledged that it was legal. In addition, overwhelmingly, communities seemed to be aware when domestic violence occurred, making it a public, rather than a private act. Similarly, in the political sphere, by 1640, the population was almost unanimous in its discontent with King Charles I. Michael B. Young writes that Charles’ faults were “so well known that we should for the sake of fairness take stock of his merits as well.”²²⁴ Thus, by 1640, both the political actions of Charles I and the act of beating one’s wife were broadly accepted as incorrect. However, responses to both varied. In terms of domestic violence, few physically intervened to stop it although some evidence indicates that extrajudicial methods of mediation were available to local communities. In the political world, while there was consensus on Charles’ misconduct, there was less consensus on specifically which of his actions constituted misconduct.²²⁵ Even greater dispute arose with the question of appropriate redress for these wrongs.

²²² Lake and Questier, *The Anti-Christ's Lewd Hat*, 78.

²²³ Dolan, *Dangerous Familiars*, 1.

²²⁴ Michael B Young, *Charles I* (New York: St. Martin's Press, 1997), 174.

²²⁵ Conrad Russell has shown how many Royalists were hardly champions of the king’s government, noting Sir John Strangeway’s refusal of the Forced Loan, support for the Petition of the Right and the

However, it is here that the parallels come to an end. In 1649, Parliamentarians executed the king and abolished the monarchy. Domestic violence, meanwhile, continued unchanged, both in its incidence in the courts and neighborly response. Though domestic violence—and particularly the struggle between patriarchy and companionate marriage—was seen by contemporaries to reflect the broader political struggle of the English Civil Wars and subsequent governments of the Interregnum, in fact, little was changed in its incidence on the ground. Though political rhetoric reached into the household for allegories, the political crisis did not destabilize household organization. While Parliamentarians conquered the non-interventionist arguments in 1649, non-intervention continued to reign supreme in terms of treating each English man as king in his own home.

Remonstrance, as well as his opposition to Ship Money. Conrad Russell, *The Causes of the English Civil War: the Ford Lectures Delivered in the University of Oxford, 1987-1988* (Oxford; New York: Oxford University Press, 1990), 131-32.

CHAPTER 3: *Stability, Bastardy, & Poor Relief*

INTRODUCTION

In 1648, a pamphlet series was published, satirizing conversations between a fictional “Mistress Parliament” and various other figures including “Nurse Sedition” and “London.” In the first issue, London scorns Mistress Parliament, saying:

I come to laugh at thy sorrow, more then to helpe thee; thou hast had too much of my helpe already, and that hath imboldened thee the more to play the Strumpet with security, and to prostitute thy Members to all manner of Wickedness and Uncleaness: No, languish still, till thou hast brought forth the bastard Issue of thy own Lust thy own self, which was begot in obscenity, and shall be brought forth in iniquity for me; and may it prove as monstrous in its birth, and as fatall to it self, as it hath been ominous to others.¹

Mistress Parliament’s sexual transgressions have saddled her with a bastard child. Obviously, this was an allegory for the political plight of the nation, and alleged that the product of the sinning Parliament was illegitimate, legally and morally.² As this dissertation has already discussed, mid-seventeenth century political discussions often made use of language of sexual insult. These charges of sexual transgression included bastardy.³ Some scholars have shown how the constellations of insults surrounding

¹ Mercurius Melancholicus, *Mistris Parliament brought to bed of a monstrous childe of reformation. With her seven years teeming, bitter pangs, and hard travaile, that she hath undergone in bringing forth her first-borne (being a precious babe of grace.) VVith the cruelty of Mistris London her midwife; and great affection of Mrs. Synod her nurse, Mrs. Schisme, Mrs. Priviledge, Mrs. Ordinance, Mrs. Universall Toleration, and Mrs. Leveller her gossips* (1648), 5.

² Katherine Romack, “Monstrous Births and the Body Politic: Women’s Political Writings and the Strange and Wonderful Travails of Mistris Parliament and Mrs. Rump,” in *Debating Gender in Early Modern England, 1500–1700*, ed. Cristina Malcolmson and Mihoko Suzuki, *Debating Gender in Early Modern England, 1500–1700* (New York: Palgrave Macmillan US, 2002), 209–30.

³ Ann Hughes, *Gender and the English Revolution* (New York: Routledge, 2012); Ann Hughes, “Gender and Politics in Leveller Literature,” in *Political Culture and Cultural Politics in Early Modern England*, ed. David Underdown, Susan Dwyer Amussen, and Mark A Kishlansky (New York: St. Martin's Press, 1995),

Cromwell, in particular, relied on charging him with fathering bastards—both literally, and a bastard government.⁴ But political charges of bastardy extended far beyond just Cromwell. Printed pamphlets, ballads, and newsbooks produced by both sides presented an image of a moral England brought to its knees by sexually rapacious soldiers roaming England and sexually frustrated English women without men to care for their sexual needs. Just as Chapter 2 called into question the degree to which political debate reflected the reality of the incidence and punishment of domestic violence, this chapter questions the extent to which public print allegations of a bastardy problem actually reflected reality.

Previous studies of bastardy have not shown that bastardy increased wildly in this period, but that it actually experienced a massive drop in the 1650s. According to Peter Laslett, Karla Oosterveen, Richard Michael Smith, and the Cambridge Population Group, the low point of bastardy between 1540 and 1844 was 1655-1659, the only time in this 300-year period in which the bastardy rate fell below 1%.⁵ These studies relied on parish registers to measure its incidence. Other scholars, notably Richard Adair and those citing his work, have accepted these numbers as proof of a “nadir” of illegitimacy in the 1650s.⁶ In addition to quantitative evidence for changes in bastardy, some scholars have used the rise of the Puritan influence to argue for an increasingly aggressive policing of sexual

162–88; Jason McElligott, *Royalism, Print and Censorship in Revolutionary England* (Woodbridge; Rochester: Boydell Press, 2007).

⁴ See forthcoming work from Samuel Fullerton, *Fatal Adulteries: Sexual Libel in the English Revolution*.

⁵ 1565-9 was the last group of years that had a concrete number of bastards lower than 82. However far fewer parishes were included in the 1565-9 than in 1655-1659. See **Figure 3.1** in this chapter and **Figure E8** in Appendix E.

⁶ Richard Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England* (New York: Manchester University Press, 1996).

morality. Others have pointed to the closure of the ecclesiastical courts as the cause of the “change” in sexual crime prosecution in this period.

This chapter uses SCGV and court records to look at bastardy and pose the fundamental question: how did the English Civil Wars and the Interregnum affect the practical regulation of bastardy in England during the 1640s and 1650s? Within this larger question are several smaller questions. First, was there really a “nadir” of illegitimacy in the 1650s, as some studies have indicated? Were bastardy prosecutions altered, in number or substance, by a jurisdictional shift to the common law courts due to the closure of the ecclesiastical courts? Was bastardy prosecution affected, in number or substance, by the so-called “Puritan revolution”? Was there a major disruption of family life? Did the presence of soldiers have a large impact on bastardy in the 1640s and 1650s as contemporary public print threatened? Lastly, where did bastardy relief fit in with the larger historiographical debate on poor relief in this period?

Overall, this chapter argues that bastardy prosecutions remained fairly stable both in number and substance over the 1640s and 1650s. While it is possible that Puritanism affected the prosecution of other sexual crimes, particularly with the closure of the ecclesiastical courts, in the common law courts bastardy remained more of an issue of poor relief than one of sexual morality. As such, its prosecution remained largely stable. Court cases of bastardy show slightly increased prosecution in the 1650s, which is perhaps substantial enough to overturn the common wisdom set forth by the parish registers that the 1650s experienced the century’s low point. However, prosecution of bastardy actually remained numerically much more consistent than the prosecution of other sexual crimes such as adultery, fornication, and buggery, which expanded significantly from the 1640s to

the 1650s. In substance, neither the closure of the ecclesiastical courts nor the influence of Puritanism shifted bastardy prosecutions from focusing on financial provision for the child to focusing on sexual or moral regulation. In addition, despite the shrill warnings of public print, soldiers made only extremely rare appearances in bastardy cases—more often as a scapegoat for a bastard child rather than the actual father. Since bastardy prosecution focused on economic provision for the child, including financial support from the parish, this chapter also contributes to the existing historiographical debates on the stability of poor relief during the civil wars and Interregnum. By demonstrating that at least one local authority (the courts) and at least one type of poor relief (provision for illegitimate children) were relatively stable throughout the civil wars and Interregnum, this chapter argues that the civil wars and Interregnum did not cause a broader breakdown in social order.

In many ways, a dramatic change in social order would seem to be a logical consequence of the political upheavals of the civil wars and the Interregnum. There were many reasons to think, as scholars have argued, that this was a time of dramatic change in social order: the contemporary political propaganda overtly claimed it; Puritans, whose norms of sexual policing were more aggressive, gained power; and the parish registers showed massive changes in bastardy rates. Yet this chapter shows that these social changes *did not* occur, or at least *were not as substantial*, as has been previously suggested by both scholars and contemporaries. This is deeply important not only for understanding the limits of certain types of primary sources, but also the impact of the mid-seventeenth-century political crisis and the realms of society it failed to disrupt.

Legal History

From its outset, the crime of bastardy was cast as an economic issue. The first bastardy statute, passed in 1235, mostly focused on resolving issues of property and inheritance.⁷ Common law prosecution of bastardy in the seventeenth century mainly derived from two later statutes: one Elizabethan, the other Jacobean. The Elizabethan Poor Act of 1575 specified that illegitimate children should be “kepte at the Chardge of the Parishe where they bee borne,” although it recognized that this was a “greate Burden” on the parish and siphoned money away from the “Releife of the impotente and aged true Poore.”⁸ The Elizabethan statute required two justices of the peace to issue bastardy orders and left the punishment of the mother and father, as well as the decision to order more sustenance for the child, at the discretion of the justices. Should either the father or mother fail to comply, they were to be imprisoned without bail. If no father could be established, or if the father was unable to provide support, it was up to the parish to support the child. In short, bastards were worrisome not only because they were children unanchored to a familial structure, but also because they were potentially a financial liability for the parish. Extra-marital sex was regulated at least partially out of economic necessity. The Jacobean statute, passed in 1609, specified that women bearing bastards should be imprisoned in the House of Correction for a year at first offense and on second offense, imprisoned “untill shee can put in good sureties for her good behavior not to offend so againe.”⁹ Sir Edward Coke argued that the 1609 statute’s punishments were relevant only for bastards that were

⁷ See ‘Special Bastardy Act’ of 1235. 20 Hen 3, c. 4.

⁸ 18 Eliz I, c. 3.

⁹ 7 Jac I, c. 4, Section 7.

chargeable to the parish. In other words, women who bore bastards that the parish was *not* expected to pay for could be punished only according to the Elizabethan statute: at the discretion of the justices.¹⁰

QUANTITATIVE ANALYSIS OF BASTARDY CASES

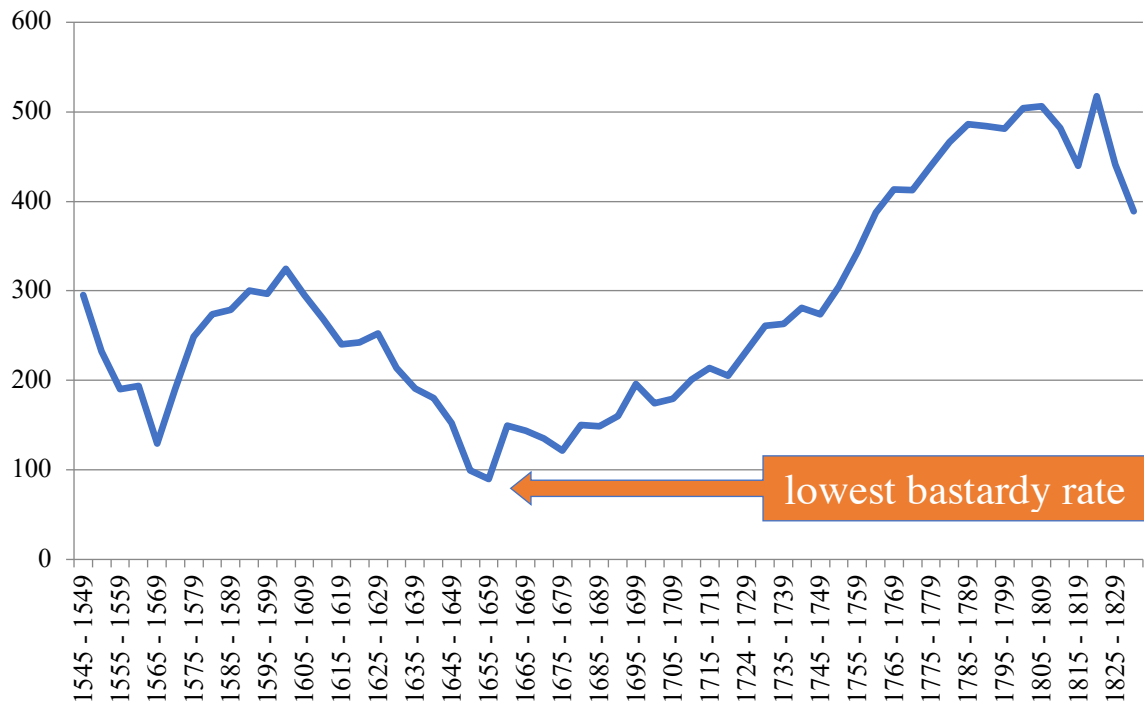


Figure 3.1: Bastardy Rate per 10,000 legitimate births, 1545-1839 (Cambridge Group)
 This figure shows bastardy rate as calculated by the Cambridge Population Group from parish register data.¹¹ It shows the low-point in the 1650s. The study only included the full 98 parishes starting in 1660. Prior to that date, varying numbers of parishes were included in the data. See **Figure E8** in Appendix E for more information.

¹⁰ Edward Coke, *The second part of the Institutes of the lawes of England containing the exposition of many ancient, and other statutes: whereof you may see the particulars in a table following* (London: Printed by M. Flesher, and R. Young, for E.D., R.M., W.L., and D.P., 1642), 733.

¹¹ Data taken from Peter Laslett, Karla Oosterveen, Richard Michael Smith, and Cambridge Group for the History of Population and Social Structure, eds., *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan* (Cambridge: Harvard University Press, 1980), 14-15. [Table 1.1 (a)]

The Cambridge Population Group study found only 82 bastards out of 9,130 registered births in 1655-59. 1650-54 was the only similar span, with 87 illegitimate births out of 8,748 registered births.¹² This was the low-point of bastardy rates in the entire study which covered almost three hundred years.

The authors of the Cambridge Group volume are cautious with their findings, offering warnings and qualifications about accuracy, mostly relating to the use of illegitimacy ratios.¹³ However, the editors of the volume do acknowledge “that it is no longer quite so clear that the lowest point of illegitimacy in early modern times” was the 1650s, especially if one accepts Keith Wrightson’s argument that the sharp descents and low point “were probably to a large extent registration artifacts.”¹⁴ Here Wrightson argued that Cromwellian secularization of registration in the 1650s resulted in large numbers of people abandoning parish registration wholesale in 1650s. Thus the “descent” of illegitimacy ratios in the late 1640s and early 1650s “may have been more gradual” than their data suggested.¹⁵

¹² These numbers add to 169 bastards registered in parishes during the 1650s in a survey of about 100 parishes.

¹³ The editors of the volume acknowledge that there are “defects of the illegitimacy ratio as measure” but that these are “quite insufficient” cause to deprive the scholarly community of a “general run of bastardy” in England. Potential defects of illegitimacy ratios include that changes in the age distribution of single women or in the amount of married women, as well as changes in fertility of married women can have significant effects on illegitimacy ratios. The editors also note that the amount of parishes in their survey dramatically increases between 1540 and 1660 which makes the numbers from 1660 onwards more likely to be a representative sample. See Laslett et al., *Bastardy and Its Comparative History*, 25.

¹⁴ *ibid.* They were referencing Keith Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” in *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan*, ed. Peter Laslett et al. (Cambridge: Harvard University Press, 1980), 176–91.

¹⁵ Laslett et al., *Bastardy and Its Comparative History*, 25.

Yet despite Wrightson's cautions and some scholars' impressions of the "nadir" as an illusion created by a temporary abandonment of parish registration, the idea of a 1650s "nadir" in illegitimacy rates is surprisingly persistent. For example, Faramarz Dabhoiwala argues that "the number of children born out of wedlock seems to have dropped to an all-time low in the 1650s" and that the "abolition of the church courts" was "disastrous," resulting in "a huge gap in sexual policing which was only slowly and partially filled by the expansion of sexual mechanisms."¹⁶ Will Coster explains that "the illegitimacy ratio fell...to its 'nadir', in the 1650s." Coster also notes that some scholars have suggested that these fluctuations were due to "social control exercised by Puritan elites, which grew towards the middle of the seventeenth century."¹⁷ Some scholars, like Alexandra Shephard, acknowledge "that it is impossible to generalise about the extent to which the social incidence of illegitimacy shifted downwards over the course of the period." Yet Shephard still notes the "decline in illegitimacy ratios towards the mid seventeenth century" without mention of a 1650s under-registration problem. Thus it is unclear if her comments were specifically related to the Cromwellian parish registration or a general warning of over-

¹⁶ Faramarz Dabhoiwala, *The Origins of Sex: a History of the First Sexual Revolution* (New York: Allen Lane, 2012), 50. Martin Quitt states the rates of illegitimacy "spiked at the turn of the 17th century, before falling to its nadir at mid-century." See Martin H. Quitt, "Trade and Acculturation at Jamestown, 1607-1609: the Limits of Understanding," *The William and Mary Quarterly* 52, no. 2 (1995): 238. Lois Schwoerer stated that "the ratio of illegitimate to legitimate births" had "its nadir during Cromwell's rule." See Lois G. Schwoerer, "Seventeenth-Century English Women Engraved in Stone?" *Albion: a Quarterly Journal Concerned with British Studies* 16, no. 4 (1984), 396. See also Sarah Shippy Copeland, "Constructions of Infanticide in Early Modern England: Female Deviance During Demographic Crisis," (Unpublished Ohio State University MA Dissertation, 2008), 15 FN 26. Copeland curiously reports the "nadir" as occurring in the 1640s, rather than the 1650s, which is potentially a typo.

¹⁷ Will Coster, *Family and Kinship in England 1450-1800* (Oxford: Routledge, 2016), 26, 27.

generalization from the sources.¹⁸ Other scholars overtly acknowledge the potential for under-registration in the 1650s and ultimately dismiss it. Adrian Wilson acknowledges the shortcomings of the parish registers and *still* argues for a 1650 low point in bastardy, insisting that the “‘nadir’ reflected *both* a low actual level of illegitimacy *and* a temporary failure of its registration.”¹⁹ However, the most notable proponent of the nadir view is Richard Adair who acknowledges that “registrational factors” may have “contributed to the low level of bastardy” in the 1650s but still argues that “the close agreement between regions of the lowest point of bastardy supports those who say that there was a real nadir in illegitimacy in England in these decades, independent of any registrational processes.”²⁰ This explanation is careful to take local variance into account but fails to consider the opposite possibility: that administrative issues with registration might have been correlated across the entire country. Much of the persistence of the “nadir” theory is likely due to the prominence of Adair’s work. Often scholars merely refer to Adair’s research on seventeenth century bastardy without comment or further examination, thereby perpetuating the myth of a mid-seventeenth aberration.²¹ This is perhaps unsurprising, given that the general trends within historical study have shifted from demographic study

¹⁸ Alexandra Shepard, “Brokering Fatherhood: Illegitimacy and Paternal Rights and Responsibilities in Early Modern England,” in *Remaking English Society: Social Relations and Social Change in Early Modern England*, (Rochester: Boydell Press, 2013), 62.

¹⁹ Adrian Wilson, *Ritual and Conflict: the Social Relations of Childbirth in Early Modern England* (Farnham: Ashgate, 2013), 9.

²⁰ Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England*, 61.

²¹ See, for example, Jacqueline Eales, *Women in Early Modern England, 1500-1700* (London: University College London Press, 1998), 59; A E. Wiedenbeck, “The Natural Mother: Motherhood, Patriarchy, and Power in Seventeenth-Century England,” (Unpublished Arizona State University PhD Dissertation, 2015), 95.

to more phenomenologically-focused studies, thus leading more recent historians to focus their examinations on other aspects of bastardy besides incidence. My findings from quarter-sessions prosecutions rebut the nadir view, finding that bastardy prosecutions increased slightly from the 1640s to the 1650s, but largely remained stable.

It is important to consider some differences between court records and parish registers as sources. First, not all illegitimate births were the subject of a court case. Thus we might expect bastardy rates measured from court cases to be significantly lower than bastardy rates measured from parish registers. This is certainly true to an extent. However, prosecution for bastardy could begin as soon as the woman was known to be pregnant, meaning that women who miscarried, delivered stillborn children, or committed infanticide, might be counted in a study of court records, but not in one of parish registers. There are also difficulties with court records. In the 1640s, wartime might have disrupted meetings of the courts or prevented individuals from making it to the sessions in order to accuse, defend, or testify. Lastly, record survival is not complete. However court records offer an important element not present in parish registers: descriptive sources. The indictments, recognizances, depositions, orders, and petitions provide a wealth of evidence to examine bastardy more holistically than a single entry in a parish register. This offers an opportunity to investigate the quantitative as well as the qualitative stability of bastardy in this period.

Timing of Registration/Prosecution

Though registration happened after birth, prosecution could begin prior to birth, as soon as the court was notified that a woman was pregnant. Prior to 1650, a child's birth was supposed to be registered within the first ten days of its life. After 1650, the deadline

was extended to fourteen days.²² It is possible that some of these women miscarried, delivered stillborn children, committed infanticide, or that children died before they could be recorded in parish registers, but were nonetheless recorded in court records.

There has been much debate about infant mortality in this period.²³ Lynda Payne estimates the English mortality rate in the first year of infant life for the sixteenth to eighteenth centuries as about 14%, based on parish registers.²⁴ Using John Graunt's 1662 London morality bills, Margaret Pelling argues that 36% of babies in London who were born alive died before their sixth birthday. However she also notes that the high population density in London led to significantly higher infant mortality rates than the surrounding areas.²⁵ B. M. Midi and Roger Schofield place the mortality rate for London infants under a year old at around 30% from the mid-seventeenth to the mid-eighteenth centuries.²⁶ Michael Flinn places the English infant mortality rate for 1500-1750 at around 19% compared with approximately 25% in France, 15% in Germany, 22% in Scandinavia, 28% in Spain, and 28% in Switzerland.²⁷ Thus, some percentage of bastardy cases likely resulted in the child dying before he or she could be registered. However, the numbers above from

²² B M Berry and Roger S Schofield, "Age at Baptism in Pre-Industrial England," *Population Studies* 25, no. 3 (1971): 454.

²³ I am grateful to Wanda Henry for her assistance with the debates on infant mortality.

²⁴ Lynda Payne, "Health in England (16th–18th c.)," in *Children and Youth in History*, Item #166, <http://chnm.gmu.edu/cyh/items/show/166> (accessed October 4, 2018).

²⁵ Margaret Pelling, "John Graunt, the Hartlib Circle and Child Mortality in Mid-Seventeenth-Century London," *Continuity and Change* 31, no. 3 (2016): 335–59.

²⁶ Roger S Schofield and E A Wrigley, *The Population History of England, 1541-1871: a Reconstruction* (Cambridge: Harvard University Press, 1981), 160.

²⁷ Michael Flinn, *The European Demographic System, 1500-1820* (Baltimore: Johns Hopkins University Press, 1981), 16-17.

Payne, Pelling, Wrigley and Schofield, and Flinn pertained to child mortality more generally, and thus only a small percentage of these children would have died within the ten- or fourteen-day window immediately after birth when children were supposed to be registered.

These mortality numbers also do not take miscarriages or infanticides into account. As mentioned in the previous chapter, bastards were more likely than legitimate children to be targets of infanticide and abortion attempts. Of the 122 infanticide cases in SCGV, 89 involved a bastard infant. In addition, abortive agents could end a pregnancy before birth, as was occasionally discussed in bastardy cases.²⁸ Elizabeth Searle testified that when she refused to take William Quinnham's recipes to abort their bastard child, he threatened to kill her and then promptly tried with both a spear and a hatchet before his brother-in-law intervened.²⁹ After Thomas Bailey had sex with Mary Fisher, he inquired whether she was pregnant. Although she told him she thought not, he "replied That if shee were hee could give her something should drive it away."³⁰ While it is unclear exactly what Bailey would have given Fisher, there were several remedies available for such purposes. Evidence from all over England suggests that abortive agents, particularly the herb savin, were common knowledge.³¹ Savin could have deadly side effects for the mother, which make it easier to

²⁸ For more on early modern abortion, see Mary Della Heckmann, "Infanticide in Early Modern England" (Unpublished University of California, Riverside PhD Dissertation, 2002), 26, 50-55; Carla Spivack, "To Bring Down the Flowers: the Cultural Context of Abortion Law in Early Modern England," *William & Mary Journal of Women and the Law* 14 (2007): 107.

²⁹ Examination of Elizabeth Searle (Somerset Quarter Sessions, 30 November 1658) Q/SR/96 (31), SHC. [C307]

³⁰ Examination of Mary Fisher (Somerset Quarter Sessions, 15 January 1658) Q/SR/98 (79), SHC. [C707]

³¹ Eleanor Fox and Martin Ingram, "Bridewell, Bawdy Courts and Bastardy in Early Seventeenth-Century London," in *Cohabitation and Non-Marital Births in England and Wales, 1600-2012*, ed. Rebecca Probert (Basingstoke: Springer, 2014), 18. Savin was an old abortion remedy known for being used in 1574 by the

identify from the primary sources than other abortion remedies. In 1653, John Martin was indicted for murdering his lover Elizabeth Ollie by giving her savin.³² It seems likely that he was attempting an abortion. Though an old and constant remedy, savin was hardly the only herb used to induce abortion in the early modern period. In another case, Thomasine Locker, who admitted that she had been pregnant out of wedlock “severall times,” was accused of regularly drinking “Rew & other medecines to Rid her selfe from being with childe.”³³ Other recipes reported in cases included boiling “Beares foote” with savin and drinking the concoction in milk, and boiling “hay mayden” (ground ivy) in beer.³⁴ Abortion attempts were sometimes more violent. Lydia Prynne testified that her master gave her “pilles” to take to “rid her of her childe” and when “she would not take those pills” he “twice violently put his hand up into her body (having oiled them for that purpose) & said he would pull away the childe from her.”³⁵ There were even hints of preventative birth control measures. Eleanor Fox and Martin Ingram reported a case where a man used the withdrawal method claiming “he ‘never contynued the act so longe whereby he could get

rector of Leaden Rothering in Essex to abort the child he had fathered. Macfarlane, “Illegitimacy and Illegitimates in English History,” 76.

³² Indictment of John Martin (murder), (Norfolk Quarter Sessions, 1 September 1653), C/S 3/box 41 (Bundle 2), NRO. [C2724] See also Indictment of John Martin (fornication), (Norfolk Quarter Sessions, 10 May 1653) C/S 3/box 41 (Bundle 2), NRO. [C2724]

³³ Information of John Owen, Information of Thomas Pring, Information of Agnes Chapman (Somerset Quarter Sessions, 7 August 1657) Q/SR/95 (95), SHC. [C740]

³⁴ Examination of Elizabeth Searle (Somerset Quarter Sessions, 30 November 1658) Q/SR/96 (31), SHC. [C307]

³⁵ Second Examination of Lydia Prynne (Sussex Quarter Sessions, 12 September 1655) QR/W83 (72), WSRO. [C3060].

her [with] child for he was fearfull yt she would lay it to him yf she should be w[i]th child though it were by an other.”³⁶

Regional Quarter Sessions Findings

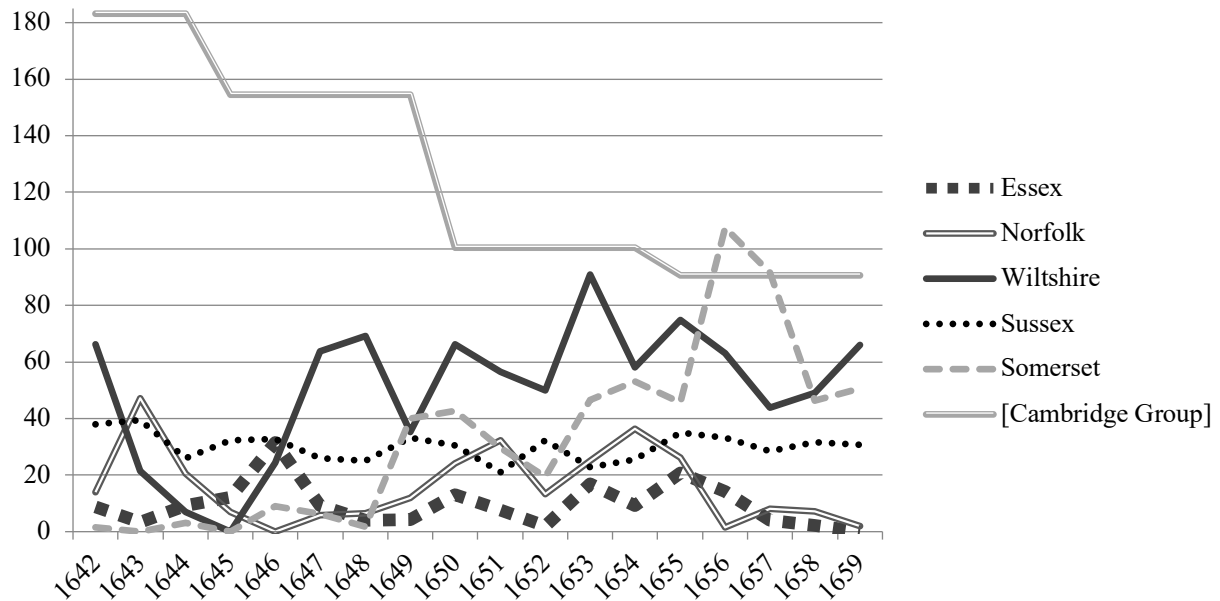


Figure 3.2: SCGV Bastardy Rates per 10,000 Births by County, 1642-1659³⁷

Figure 3.2 gives the bastardy rates per 10,000 births both nationally from the Cambridge Group parish register data and for the counties of Essex, Norfolk, Wiltshire, Sussex, and Somerset calculated from SCGV data. We can see that Norfolk, Sussex and Essex bastardy rates, as calculated by quarter sessions, were relatively stable throughout

³⁶ Fox and Ingram, “Bridewell, Bawdy Courts and Bastardy in Early Seventeenth-Century London,” 18. LMA DL/C/620 fol. 218r/p. 447.

³⁷ This graph was created using numbers in **Figure E4** (Appendix E). These numbers were calculated by dividing the *Bastardy Cases Heard in Quarter Sessions by County and Year* (**Figure E3**) by the number of *Number of Births by County and Year* (**Figure E2**) and then multiplying that value by 10,000. See **Figures E.2, E.3, and E.4** in Appendix E for full calculations.

the 1640s and 1650s. Wiltshire and Somerset did experience some significant jumps and falls, but these are likely due to skipped session meetings and record survival rather than actual dips in the number of bastards born. Though Wiltshire's bastardy rate plummeted briefly between early 1644 and early 1646, this was obviously due to the failure of the courts to meet. The Wiltshire Quarter Sessions did not meet for six consecutive sessions between late 1644 and early 1646 likely due to wartime disruption.³⁸

Somerset's bastardy rate shows a sharp jump from the late 1640s to the early 1650s and then a steady rise throughout the 1650s, with a major spike in 1656. The Somerset bastardy rate never went above nine bastards per 10,000 births between 1642 to 1648, whereas between 1649 and 1659, it only once went below 30 bastards per 10,000. Even during that one 1650s dip, in 1652, the bastardy rate was still 19 bastards per 10,000 births, or more than twice the highest bastardy rate between 1642 and 1648. However, the low bastardy rate in the 1640s is due to record survival.³⁹ While there is at least one surviving call number of session papers per year in the 1650s at the Somerset Heritage Centre, there is only one surviving call number devoted to 1642-1645, one devoted to 1647-48, and one for 1649-1650.⁴⁰ There are no other session papers from the 1640s. In addition, there are no Somerset indictments at all from 1644 to 1646, which is the only gap for the period

³⁸ Wiltshire was disputed territory until Parliamentarians finally gained more stable control of the area in late 1645. There were no meetings for the 1644 Michaelmas session, 1645 Hilary session, 1645 Easter session, 1645 Trinity session, 1645 Michaelmas session, and 1646 Hilary session. See Appendix B for more information on regional record survival.

³⁹ See Appendix B for more information on regional record survival.

⁴⁰ See Q/SR/79, Q/SR/80, and Q/SR/81, SHC.

1642 to 1660.⁴¹ The record survival, as measured by surviving number of pages, roughly corresponds to the wild oscillations in Somerset bastardy cases.⁴²

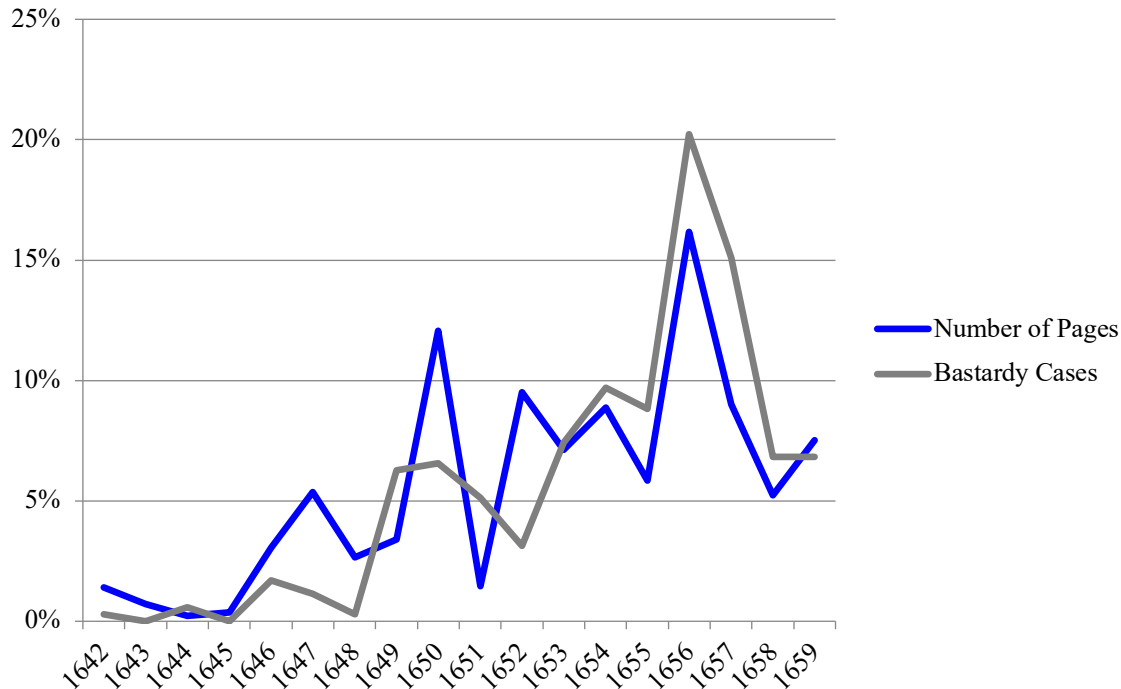


Figure 3.3: Distribution of Bastardy Cases v Surviving Pages of Records in Somerset, 1642-1659 from SCGV data⁴³

This figure compares two distribution curves. The “Number of Pages” curve divides the number of pages from each year by the total number of pages. The “Bastardy Cases” curve divides the number of bastardy cases heard each year by the total number of bastardy cases.

⁴¹ There are periodic gaps in records for Somerset indictments. For example, between 1598 and 1710, there are no indictments from between 1598 to 1602, 1660 to 1662, and 1663 to 1666. See Q/SI, SHC. There are 10 surviving indictment rolls from 1642 to 1649 (Q/SI 80, Q/SI 81, Q/SI 82, Q/SI 83, Q/SI 84, Q/SI 85, Q/SI 86, and Q/SI 87). There are 16 surviving indictment rolls for 1650 to 1659 (Q/SI 89 A, Q/SI 89 B, Q/SI 90 A, Q/SI 90 B, Q/SI 91, Q/SI 92, Q/SI 93 A, Q/SI 93 B, Q/SI 94, Q/SI 95, Q/SI 96, Q/SI 97, Q/SI 98, Q/SI 99, Q/SI 100, and Q/SI 101).

⁴² While the original form for these records was rolls, the Somerset Heritage Centre, like many record offices, has separated the records out into pages which were numbered and pressed into books.

⁴³ Counting the number of surviving pages is a very rough way, of course, of estimating record survival, but in this case it confirms the general impression from the indictments and sessions papers. Steven Hobbs, archivist at the Wiltshire and Swindon History Centre, formerly archivist at the Somerset Heritage Centre, believes that the SHC gap is likely due to the missing hundred juries relating to the upkeep of roads and bridges.

Thus, once one accounts for issues of record survival, the courts paint a picture of bastardy prosecution as stable, rather than the dramatic drop that parish registers suggest. This comparison between parish registers and quarter-sessions records suggests the need for further research assessing which bastardy cases overlapped between common-law records, ecclesiastical court records, and parish registers. This would, obviously, be a massive undertaking. SCGV will hopefully lessen the burden on a future scholar looking to take on this task. Alan Macfarlane has done this comparative work on a very small scale using the parish register data and comparing it with other records from Earls Colne, Essex. Macfarlane finds that, according to the parish register, five bastards were born or died between 1640 and 1659: in 1642, 1643, and three in 1656. However, he finds two additional cases not noted in the register: Joan Price of Earls Colne was dragged before the 1653 Essex Quarter Sessions for bastardy and a 1645 account in Ralph Josselin's diary of a woman named Mary Grant accusing John Besse of impregnating her.⁴⁴ Yet even his data fails to appreciate quite the breadth of the problem. For example, he fails to note that the 1657 Essex Quarter Sessions heard the bastardy case of Urina Harrison of Earls Colne, and her bastard was not listed in the parish register.⁴⁵ David Levine and Keith Wrightson

⁴⁴ See Presentments (Essex Quarter Sessions, 12 January 1653/4) Q/SR 355 (309), ERO. [C1917]; and Bastardy Order (Essex Quarter Sessions, 25 March 1654) Q/SR 360 (79), ERO. [C1917]. Alan Macfarlane, "Illegitimacy and Illegitimates in English History." In *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan*, edited by Peter Laslett, Karla Oosterveen, Richard Michael Smith, and Cambridge Group for the History of Population and Social Structure, Vol. 71 (Cambridge: Harvard University Press, 1980).

⁴⁵ Recognizance of Robert Pilborow, Thomas Downs, and Edward Frost (Essex Quarter Sessions, 23? Mary 1657) Q/SR 372 (43), ERO. [C1805]

similarly used Terling, Essex to demonstrate that the use of parish registers alone could not present an accurate picture of the incidence of bastardy.⁴⁶

Ecclesiastical and Secular Courts

Another factor that could possibly have distorted my data is the closing of the ecclesiastical courts in the 1650s, potentially funneling all of their cases instead through the common law system. This could theoretically have led to a bloating of the numbers of bastardy cases prosecuted in common law courts in the 1650s. However, this does not take into account the distinctions in how ecclesiastical and lay courts treated bastardy. As historian Walter King quipped in 1978, though “ministers may have preached on Sunday about the deplorable sin of bastardy...local officials found it necessary on the other six days of the week to legislate against an economic burden.”⁴⁷ In other words, common law handled assigning the economic responsibility for the child, while the moral crimes of fornication, adultery, and incest which could produce bastards remained the purview of the ecclesiastical authorities.

Figure 3.4 shows that although bastardy prosecutions followed the general trend of sexual crime prosecution, bastardy was actually prosecuted the most consistently during the 1640s and 1650s relative to other sexual crimes. If cases were heard equally throughout

⁴⁶ David Levine and Keith Wrightson, “The Social Context of Illegitimacy in Early Modern England,” in *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan*, ed. Peter Laslett et al. (Cambridge, Mass.: Harvard University Press, 1980), 158–75.

⁴⁷ Walter J King, “Punishment for Bastardy in Early Seventeenth-Century England,” *Albion: a Quarterly Journal Concerned with British Studies* 10, no. 2 (1978): 138.

the 1640s and 1650s, one would expect this graph to show a straight line between 5% and 6%.⁴⁸ Bastardy hovers fairly close to that line relative to the oscillations of other crimes.

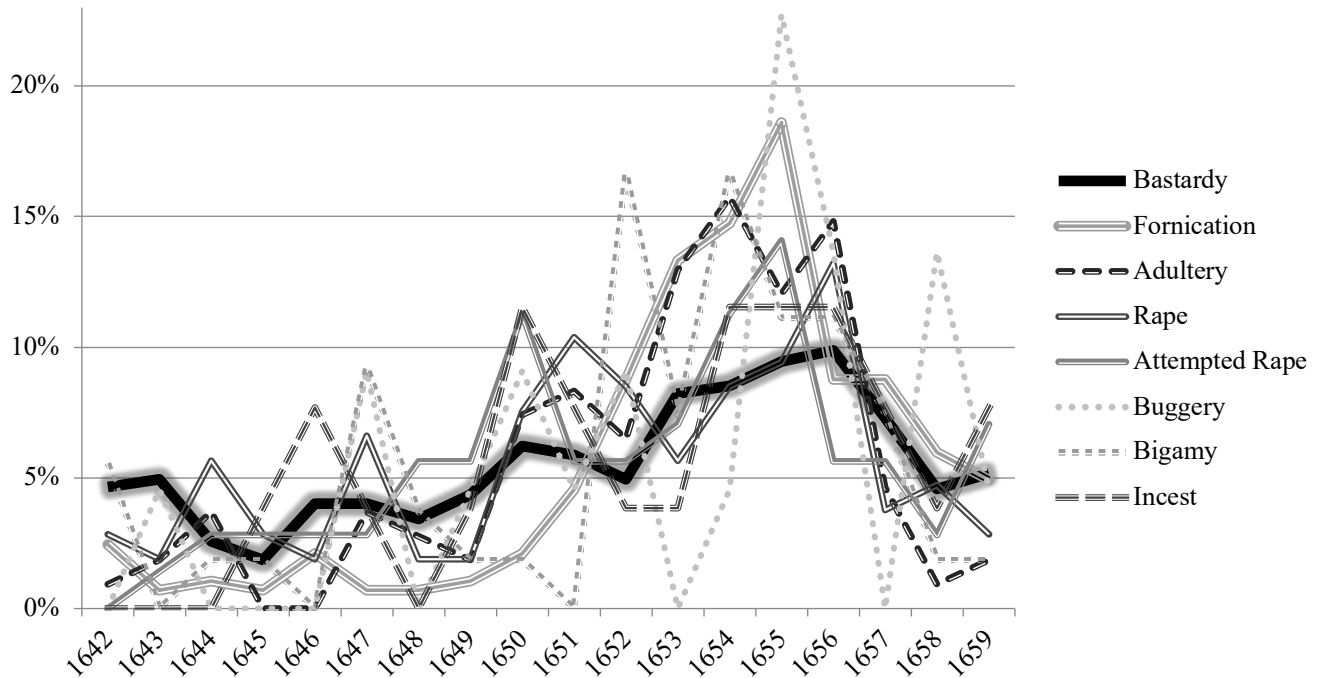


Figure 3.4: Distribution of Each Crime in SCGV, 1642-1659⁴⁹

This figure breaks down the cases of each crime heard between 1642 and 1659 by year. Each line is a distribution curve for a particular crime throughout 1642 to 1659. Each point on each line shows what percentage of the total cases heard between 1642 and 1659 were heard in that year. The line for bastardy cases is highlighted.

The stability is examined in more detail in **Figure 3.5**, which zeroes in on the year-to-year changes in **Figure 3.4**. Since **Figure 3.5** shows *change* year-to-year in percentage of cases prosecuted, one would expect to see a straight line at 0 if there was no change in the cases prosecuted year-over-year. While **Figure 3.5** does not show any crime at the 0 line, bastardy is consistently close, relative to other sexual crimes. It is possible that the

⁴⁸ This is distribution over an 18 year period, therefore a uniform distribution would result in 5.55% of cases being prosecuted each year. ($100 \div 18 = 5.55$)

⁴⁹ See **Figures E.5** and **E.6** in Appendix E for numbers and calculation.

spike in the late 1650s in all sexual crime litigation was a delayed reaction to the closure of the ecclesiastical courts and bastardy was relatively more stable in its common law prosecution because the common law courts continued to focus on the economics, rather than morality, of the crime.

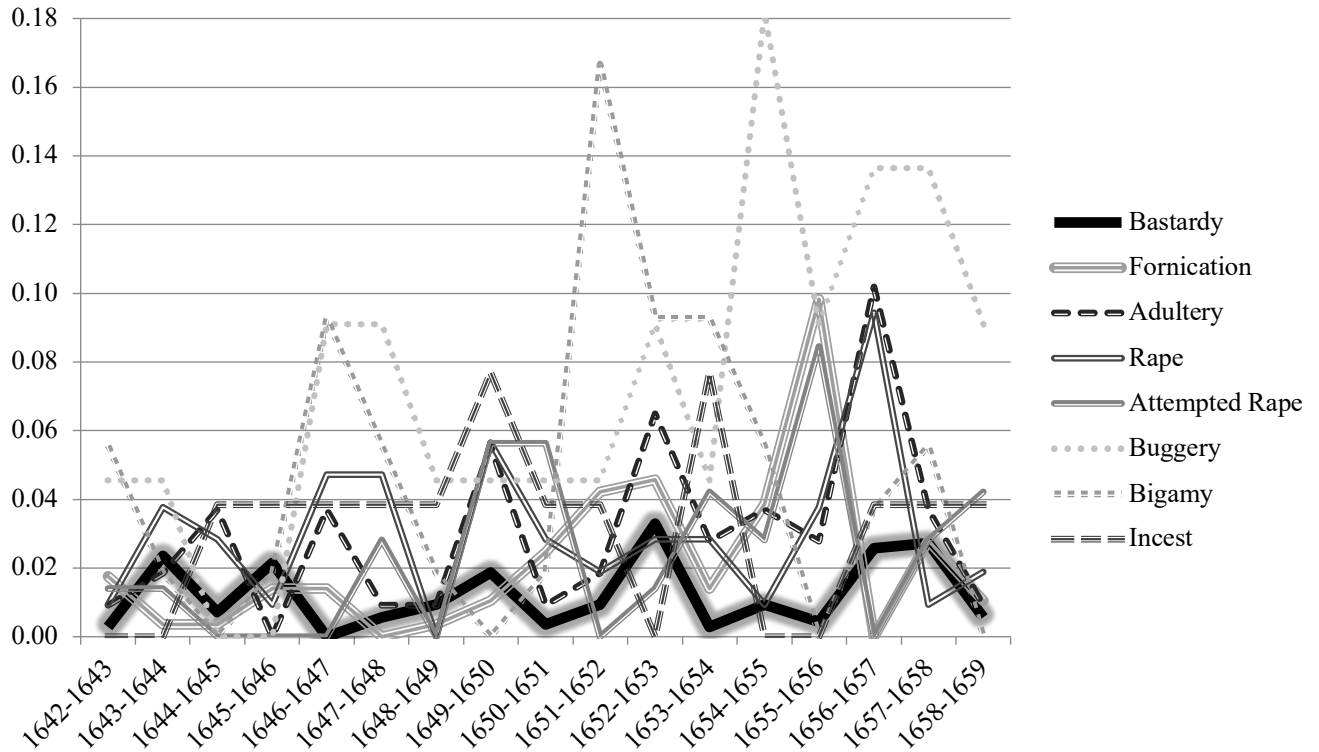


Figure 3.5: Change in Percentage of SCGV Cases heard year-over-year by Crime⁵⁰

This figure shows the absolute difference from year to year difference in the probability mass function for cases of each type heard between 1642 and 1659 by year. Each line represents a particular type of crime. Each point on a line shows the absolute change in the percentage of cases heard in that year. In other words, each point measures the absolute difference between two points on the **Figure 3.4** graph. The line for bastardy cases is highlighted.

We are left with the question of why parish registers and court records offer different illegitimacy trends for the 1640s and 1650s. On this issue, I agree with Keith

⁵⁰ See **Figure E7** in Appendix E for numbers and calculation.

Wrightson that the years of the Interregnum produced under-registration. Wrightson wrote that the “innovations of the Interregnum served largely to alienate and to confuse...[and that] The baptismal novelties of the Commonwealth church alienated large sections of the populace and resulted in the undermining of the system of registration.”⁵¹ In 1653, ‘An act touching Marriages and the Registering thereof: and also touching Births and Burials’ required that births (along with marriages and burials) be recorded by a *secular* authority. However, the majority of parishes continued to register baptisms while a minority complied and registered births civilly.⁵² Here it is important to emphasize that parish registers use *baptism*, while this study uses *court prosecution*, neither of which is a fully accurate measurement of *births*.⁵³ Though bastard-bearers might have been able to forsake the baptismal register in the midst of this confusion, they could not avoid civil court prosecution because someone had to pay for their child. Wrightson is not alone in identifying under-registration as the culprit for these changes. In their mammoth monograph on English population statistics, Tony Wrigley and Roger Schofield acknowledged that their statistical methods for detecting and correcting births in periods of under-registration produced “major changes in the original values in periods like the English Civil War.”⁵⁴ A qualitative analysis of the substance of these cases supports these

⁵¹ Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” 186.

⁵² Berry and Schofield, “Age at Baptism in Pre-Industrial England.”

⁵³ Fox and Ingram, “Bridewell, Bawdy Courts and Bastardy in Early Seventeenth-Century London,” 11. Just as parish registers do not accurately represent numbers of bastardy, court records, too, present difficulties in numerically representing the incidence of bastardy since they only record prosecutions and not births.

⁵⁴ Wrigley and Schofield, *The Population History of England*, 11.

quantitative findings that the prosecution of bastardy was largely stable throughout this period.

QUALITATIVE ANALYSIS OF BASTARDY CASES

We have seen the quantitative evidence (parish registers) which historians used to argue for a “nadir” in the 1650s. However, there was also a qualitative argument. This argument mainly revolved around Puritanism and the increasingly aggressive regulation of sexual morality. Lawrence Stone argued that there “is every reason to believe” that “the external pressure of Puritan organization and Puritan preaching” was “the chief cause of the unusually high and rising standard of sexual morality.”⁵⁵ Specifically, Stone tied the low point of illegitimacy “in the mid-seventeenth century” to the fact that this was the time “when the Puritan supremacy was at its height.”⁵⁶ Stone is not alone. Many scholars have identified Puritanism as the cause of changes in sexual morality, including illegitimacy.⁵⁷

In fact, even historians who acknowledge the shortcomings of the parish register data have argued for an increasingly aggressive policing of sexual morality thanks to the Puritan influence. As Keith Wrightson has noted, even the “most apparently stable

⁵⁵ Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1979), 395.

⁵⁶ *ibid.*, 105, 389-90.

⁵⁷ Robert Von Friedeburg, “Reformation of Manners and the Social Composition of Offenders in an East Anglian Cloth Village: Earls Colne, Essex, 1531–1642,” *The Journal of British Studies* 29, no. 4 (1990): 347–85; William Hunt, *The Puritan Moment: the Coming of Revolution in an English County* (Cambridge: Harvard University Press, 1983); David Underdown, *Fire From Heaven: Life of an English Town in the Seventeenth Century* (New Haven: Yale University Press, 1992). Some scholars have argued against this. See, for example, Margaret Spufford, “Puritanism and Social Control,” in *Order and Disorder in Early Modern England* (Cambridge; New York: Cambridge University Press, 1985), 41–57. See also Martin Ingram, “Reformation of Manners in Early Modern England,” in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (New York: Springer, 1996), 47–89.

structures are the expression of an equilibrium between dynamic forces.”⁵⁸ Thus a shift between the forces of sexual production and social discipline might produce apparent stability. In other words, a decrease in bastard-bearing and increase in prosecution of bastard-bearers could also produce a situation where parish registers showed a fall in bastardy but court records showed stability. If the parish registers were accurate in their presentation of a fall in bastard births, and scholars suggesting that the “Puritan Reformation of Manners” resulted in more frequent prosecution of bastardy cases were also correct, these two trends could cancel each other out, resulting in apparently stable numbers of bastardy prosecutions. This “equilibrium” framework, though, presents a logical and methodological difficulty. Theoretically, a fall in parish register bastardy and stability in the numbers of bastardy prosecutions could either indicate: a) a fall in illegitimacy rates coinciding with a rise in prosecution of sexual morality, or b) an abandoned parish register due to the confusion over Commonwealth registration processes. How do we know which was happening? In this case, court quantitative stability can be tested by examining the court sources qualitatively. If the numeric “stability” in the courts was masking a shift between falling illegitimacy rates and rising enforcement of social discipline, one would expect to see changes in the substance of bastardy prosecutions even if the volume remained constant.

Specifically, one would expect to see an increased focus on sexual morality, rather than economics. Manifestations of this change would be present in depositions and orders from bastardy cases. In depositions, lines of questioning and neighbors testimony would devote increasing attention to the fornication or adultery which produced the bastard child,

⁵⁸ Keith Wrightson, *English Society, 1580-1680* (New Brunswick: Rutgers University Press, 1982), 12.

rather than the birth or paternity. In orders, one would expect to see an increasing focus on punishment for the parents rather than provision for the child. In addition, one might expect to see cases brought with less substantial evidence: fewer statements from neighbors, more hearsay, and more denials. In fact, one might even expect to see these changes without a particular “Puritan” influence over local authorities. Thanks to the closure of the church courts in the 1650s, civil courts could no longer depend on ecclesiastical authorities to punish the moral offense while they dealt only with the economic issue. Thus one might expect to see common law courts increasingly focused on moral and sexual discipline in the 1650s to make up for the closure of the ecclesiastical courts.

None of these, however, are visible in the court records. Qualitative analysis of these cases actually reinforces the relative stability of bastardy throughout the 1640s and 1650s. Despite the absence of the ecclesiastical courts handing out sentences for moral crimes, bastardy cases in civil courts continued to center on financial support for the expected child. Though the SCGV data is limited to the 1640s and 1650s, its findings are consistent with the many scholars who have looked at the broader early modern period and argued that court prosecution of bastardy was primarily an economic issue. Macfarlane argues that “in England during our period, bastard children...were seen as an economic problem, likely to be a drain on scarce communal resources.”⁵⁹ King writes that even a glance at the primary sources “fosters the conclusion that it was an economic and not moral basis upon which many committals were made.”⁶⁰ Garthine Walker and Bernard Capp,

⁵⁹ Macfarlane, “Illegitimacy and Illegitimates in English History,” 75.

⁶⁰ King, “Punishment for Bastardy in Early Seventeenth-Century England,” 131.

among others, have also noted that bastardy prosecutions in common law focused on resolving the economic issue of bastardy.⁶¹

Determining Disputed Paternity

While ecclesiastical authorities might have been able to avoid punishing a potential father because they were not convinced of his guilt in the moral sin of bastard paternity, civil courts had no such luxury. Common law courts had to place financial responsibility for the resultant child *somewhere*. If they let the suspected father off the hook, someone else would have to pay. For example, the Wiltshire Quarter Sessions ordered William Bennett to pay for his illegitimate child but the overseers of the poor, one of whom was Bennett's employer, released Bennett from his financial responsibilities towards the child. This left the financial burden of the child with the child's maternal grandfather, who petitioned the courts to complain in 1647.⁶² If the father was absolved of financial responsibility, did not have financial means to support the child, or could not be determined, the courts were often forced to declare the parish financially responsible—an understandably unpopular move.⁶³ This left the court mired in the difficult business of determining who had fathered a child.

The most common difficulty was cases of disputed paternity, where women changed their testimony, naming different men at different times. Women changed their

⁶¹ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 233; Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (New York: Oxford University Press, 2003).

⁶² Petition of John Pearse (Wiltshire Quarter Sessions, 27 April 1647) A1/110/1647E Part 1 (260), WSHC. [C1755]

⁶³ Occasionally the mother or her family were ordered to pay, but this was not common.

paternity claims in about 5% of those cases for which depositions survive. In these cases, it was often difficult to tell which man, if either, had fathered the bastard child. For example, Joan Hill initially named Thomas Gunton as the father of her child, but changed her testimony and accused John Bond after Gunton had fled.⁶⁴

Determining paternity could also be challenging for the courts because bastard-bearers outright refused to name a father in 5% of disputed paternity cases. For refusing to name the father for her bastard child, Anne Hawes was presented to the Norfolk Quarter Sessions and Joan Bavington was imprisoned by the Wiltshire Quarter Sessions.⁶⁵ There was little the court could do to compel a statement of paternity other than ordering that the woman be imprisoned or fined. Even women who wanted to cooperate sometimes were not in a position to present the court with the necessary information. Anne Smith was drunk in a barn with Jeffrey Meachem, Thomas Green, Anthony Reeves, and Morris Workman when one of them had sex with her.⁶⁶ After Smith found herself with child, she confronted Meachem, Green, and Reeves, demanding which one of them had fathered her child. The other three pointed fingers at Workman, but the testimony gives little indication if Workman was actually guilty of fathering Smith's child or if he happened to have been an easy scapegoat since he was the only one missing when Smith confronted the group. In addition, if a woman had sexual intercourse with more than one man in a short span of time,

⁶⁴ Certificate (Essex Quarter Sessions, 23 April 1655) Ph 4/151/7 Q/SBA 2/91, ERO. [C1158]

⁶⁵ Presentments (Norfolk Quarter Sessions, 24 July 1649) C/S 3/box 40 (Bundle 2), NRO. [C1641]
Calendar of Prisoners (Wiltshire Quarter Sessions, 1647) A1/110/1647E Part 2 (330), WSHC. [C1748]
Others were also imprisoned, such as Mary Bond. See also Order (Wiltshire Quarter Sessions, 1658) A1/110/1658E (153), WSHC. [C3280]

⁶⁶ Information of Robert Blackden (Wiltshire Quarter Sessions, 1647) A1/110/1647E Part 1 (260B), WSHC. [C1756]

paternity could not be established with certainty. In one Sussex case, Mary Barber initially named John Pont as the father of her child, but once pressed, admitted that although she had in fact had sex with Pont three times, she had also had sex with Richard Brown in the same week.⁶⁷ If women had multiple sexual partners who might have fathered their child, determining paternity for the child became a logically impossible, but legally and financially required, task for the court. Admitting to sexual intercourse with more than one man was not particularly common, yet unbridled female sexuality loomed as a threat for which the court had no remedy.

Communal Intervention

Capp has noted that “respectable folk knew that a neighbor’s promiscuity might well burden them with higher poor rates to maintain an illegitimate child.”⁶⁸ Poor rates, the early modern English welfare system, were not the only communal supports burdened with illegitimate children. Neighbors provided other services, such as childcare. For example, in a Kent bastardy case, Elizabeth Rowland found and paid for a wet nurse of a bastard child that had been born in her parish.⁶⁹ Court testimonies demonstrated that in the 1640s and 1650s, communal involvement in bastardy cases continued: the entire community, not only the bastard-bearer herself, took part in them. After Elizabeth Sprange delivered a bastard child, one neighbor emphasized that Sprange should “name the true ffather though

⁶⁷ Information of Elizabeth Hills (Sussex Quarter Sessions, 14 January 1643) QR/66 (92), ESRO. [C1274] See also C1967.

⁶⁸ Capp, *When Gossips Meet*, 269.

⁶⁹ Information of Margaret King (Kent Quarter Sessions, 8 February 1652/3), Q/SB/4 (5), KLHC. [C1399]

he weare a chaine of Gold” and another overheard an overseer of the poor tell Sprange “the she should wronge noe body, & keepe her selfe in the tale that she had told, & she should have noe wronge by the said parish.”⁷⁰ It was not just the bastard-bearer or the named fathers, but the entire community who were potential victims of a bastardy case.

Women often claimed to have changed their paternity claims due to input from neighbors. Sarah Day retracted her paternity charge against her master, admitting that James Couch had actually fathered her child. Day claimed that she named her master only because “goodwife Wybrough of Tolleshunt knights told her, if shee should charge [th]e said James Coutch to be [the] father of the [th]e said childe, she the said Sarah should bee hanged.”⁷¹ Similarly, Alice Symes initially named Jonathan Dyer as father to her child, even though Peter Field had actually fathered her child. When questioned why she lied, Symes said it was “by the p[er]suasion of Susanna Boulees widdow” and “for feare of the law being he was a married man.”⁷² In 18% of disputed paternity cases, female neighbors influenced the woman’s decision of where to assign paternity.⁷³ These cases also show that women discussed their legal options with one another, hinting at the female networks explained in the works of scholars such as Capp and Laura Gowing.⁷⁴

⁷⁰ Information of Margaret Weller (Somerset Quarter Sessions, 1653) Q/SR/87 (16), Information of Judith Pierce (Somerset Quarter Sessions, 1653) Q/SR/87 (15), SHC. [C918]

⁷¹ Second Examination of Sarah Day (Essex Quarter Sessions, 14 August 1656) Ph 4/151/7 Q/SBA 2/95. [C1167]

⁷² Information of Alice Symes (Somerset Quarter Sessions, 1 Oct 1659) Q/SR/97 (45), SHC. [C738]

⁷³ C1167, C738, C730, C1274, C1348, C474, C730.

⁷⁴ Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England* (Springer, 1996), 117–45; Capp, *When Gossips Meet*.

However, other women were not the only community members who weighed in on a woman's decision of whom to name. Women also experienced pressure from men, particularly men in local leadership, such as churchwardens and constables. Anne Bishop initially named John Arford as the father of her bastard child, but later recanted and named Robert Cribs instead. Though Bishop admitted that two women had persuaded her to name Arford, she also noted (and had this testimony verified by others) that the local constable threatened to whip her or throw her in jail to rot if she did not recant the naming of Robert Cribs.⁷⁵ Local constables, in positions of tremendous power, were known sometimes to abuse their positions by accepting bribes or manipulating social situations to their advantage.⁷⁶ Indeed, the quarter sessions do contain, albeit rarely, petitions from citizens complaining about bailiffs, constables, and overseers using their positions to extort money.⁷⁷

The most immediate place of public intervention in bastardy was at the scene of birth. Gowing writes that the "moment of illegitimate birth was a point of confirmation or revelation... for neighbours, family, and employers."⁷⁸ Midwives were supposed to refuse care to a bastard-bearer until she named a father to the child.⁷⁹ Not only that, but midwives

⁷⁵ Information of Jarmin Dudridge (Somerset Quarter Sessions, 25 February 1649) Q/SR/82 (181), Examination of Anne Bishop (Somerset Quarter Sessions, 9 February 1649); Second Examination of Anne Bishop (Somerset Quarter Sessions, 27 March 1649) Q/SR/82 (184); Information of Dorothy Bishop (Somerset Quarter Sessions, 25 February 1649) Q/SR/82 (181); SHC. [C728]

⁷⁶ Joan Kent, *The English Village Constable 1580-1642: a Social and Administrative Study* (New York: Oxford University Press, 1986), 211-13.

⁷⁷ See, for example, Letter from John Emle (Wiltshire Quarter Sessions, 3 April 1649) A1/110/1649E (94), WSHC. [C3105]

⁷⁸ Laura Gowing, "Secret Births and Infanticide in Seventeenth-Century England," *Past & Present*, no. 156 (1997): 98.

⁷⁹ Heckmann, "Infanticide in Early Modern England;" Sarah Shippy Copeland, "Constructions of Infanticide in Early Modern England: Female Deviance During Demographic Crisis" (Unpublished Ohio

who tended to bastard-bearers “without informing the authorities were a prime target” to be summoned to church courts in London.⁸⁰ Quarter sessions also prosecuted midwives, albeit only occasionally. In 1657 the Wiltshire Quarter Sessions summoned Rebecca Hancock for delivering Mary Bond’s child without pressing her to name a father.⁸¹ Since there was a belief that women could not tell a lie during childbirth, the midwife’s testimony of labor often proved to be the deciding factor in disputed paternity cases. In a letter written to the Essex Quarter Sessions explaining his absence due to sickness, John Sanford argued that Daniel Ellison was the father of Anne Saward’s bastard child and not Thomas Lake. Sanford based this solely on *when* Saward named each man: she accused Lake initially, but when asked in the middle of labor, she named Ellison.⁸²

This made the scene of bastard childbirth one of extreme tension. Gowing suggests that in bastard births, “other women featured not as support, but as threats.”⁸³ This theme

State University MA Dissertation, 2008); Nichola Erin Harris, “The Idea of Lapidary Medicine” (Unpublished Rutgers University PhD Dissertation, 2009); Anne-Marie Kilday, *A History of Infanticide in Britain: c. 1600 to the Present* (Basingstoke: Palgrave Macmillan, 2013); J R Dickinson and James A Sharpe, “Infanticide in Early Modern England: the Court of Great Sessions at Chester, 1650–1800,” in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550–2000*, ed. Mark Jackson (Burlington: Ashgate, 2002), 35–51; Gowing, “Secret Births and Infanticide in Seventeenth-Century England;” Keith Wrightson, “Infanticide in Earlier Seventeenth-Century England,” *Local Population Studies* 15 (1975): 10–22.

⁸⁰ Fox and Ingram, “Bridewell, Bawdy Courts and Bastardy in Early Seventeenth-Century London,” 23. Anyone with knowledge or connection to such cases could be dragged before the courts. Employers were another popular target, which is perhaps the reason that it was “common for servants to run away from their masters after having had their child.” Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England*, 85. Servants running away might protect masters from court prosecution or protect the servants themselves from being turned in by their masters.

⁸¹ Recognizance of Rebecca Hancock (Wiltshire Quarter Sessions, 11 September 1657) A1/110/1656M (71), WSHC. [C3280]

⁸² John Sanford to the Essex Quarter Sessions (Essex Quarter Sessions, 23 April 1655) Ph 4/151/7 Q/SBA 2/91, ERO. [C1159]

⁸³ Gowing, “Secret Births and Infanticide in Seventeenth-Century England,” 155. See also Linda A. Pollock, “Childbearing and Female Bonding in Early Modern England,” *Social History* 22, no. 3 (1997), 303.

is evident in many birthing scenes described in depositions throughout the 1640s and 50s. In the previously mentioned Sussex case of Mary Barber, an argument broke out between the women attending Barber. Barber herself was upset that Elizabeth Hills, one of those attending her, had sent for a midwife and felt that Hills had “found fault with” her and sent for the midwife “to betray” her. Once the midwife arrived, Hills also refused the midwife’s request to send for other women to assist with delivery. Eventually the midwife sent for the other women on her own. But although she summoned help, the midwife was no ally to Barber. Once Barber was so far into labor that she “could nether rise nor stand up,” the midwife’s self-described “pressing” seemed to edge into name-calling, commenting that Barber “had plaid the whore formerly shee now continued playing the strumpett in laying of it to two.”⁸⁴ The midwife’s job was not only to deliver the baby safely, but also to establish a paternal source of income for the child.⁸⁵

Pressure on Illicitly Pregnant Women

While women had many reasons to lie about the paternity of their children, pressure from the father was one of the most common. As previously mentioned, some women (and men) attempted to avoid the embarrassing scene of a bastard birth through abortion. Most mentions of abortive medicine were cases where bastard-getters (men who fathered bastards) attempted to persuade bastard-bearers to end their pregnancies. For example,

⁸⁴ Information of Margaret Turner (Sussex Quarter Sessions, 14 January 1643) QR/66 (92B), ESRO. [C1274]

⁸⁵ It is interesting to think of midwives as communal authority figures who were meant to protect children not only through birth, but through life. Their job was ensuring for the child both a safe delivery and a paternal figure, who could be a source of income throughout childhood.

Ellen Lilly, a Wiltshire woman, claimed John Smith “forced her, and compelled her by violence...to comitt” fornication, resulting in a pregnancy which he “counselled her to take some thing to Destroy...or els to lay the accusation upon some other man.”⁸⁶ Smith’s servant testified that he had been sent to Lilly’s father to provide appropriate compensation. This may have been to prevent Lilly from bringing charges or to persuade her to drop charges, but this action seems to suggest that Smith did not dispute the paternity.⁸⁷

In disputed paternity cases, 13% of bastard-bearers claimed to have been paid or offered money by the bastard-getters to name another man as father to the child. When William Elliott impregnated his servant Frances Clay, he gave her £5 to name John Edmonds rather than himself.⁸⁸ Elizabeth Blacker actually identified the wrong man as the father of her child, before retracting her statement and admitting that her accusation “was not true & she was since much troubled for it so that she could not be at quiett untill she had revealed the true father of her child.” Apparently Blacker lied because the actual father “severall times did give her money & counseled her to hold her owne and she should not want.”⁸⁹ Bribes could prove not only the guilt of the accused father, but also the relative innocence of the expectant mother. Walker explains that women “who claimed that they had resisted the attempts to bribe or coerce them to name innocent men as fathers of their

⁸⁶ Examination of Ellen Lilly (Wiltshire Quarter Sessions, 11 February 1651) A1/110/1650H (216), WSHC. [C1833]

⁸⁷ Testimony of Alexander Street (Wiltshire Quarter Sessions, 11 February 1651) A1/110/1650H (216), WSHC. [C1833] There is no mention of rape or encouragement towards infanticide in the servant’s testimony.

⁸⁸ Examination of Frances Clay (Somerset Quarter Sessions, 19 October 1655) Q/SR/91 (75), SHC. [C546]

⁸⁹ Examination of Elizabeth Blacker (Essex Quarter Sessions, May 1647) Ph 4/151/6 Q/SBA 2/65. [C1259] The previous statement does not survive but we know one was made since she explicitly states that the previous statement was untrue.

illegitimate children also aligned themselves with law and honesty.”⁹⁰ This harkens back to the discussion of culpability in Chapter 1.

Bribes were not the only method of coercing women into naming alternative fathers. In 16% of disputed paternity cases, women reported receiving threats from the father.⁹¹ Threats could take all sorts of forms. Margaret Parsons testified that John Jones and his son Richard threatened to kill her if she named John as the father of her unborn child.⁹² Robert Whatley threatened to burn down Elinor Clark’s house if she claimed him to be the father of her bastard child.⁹³ Comments like these cannot be taken as idle threats, as on certain occasions, men clearly followed through. Robert Edington beat Mary Bond with a pikestaff for two hours just for testifying to his immoral behavior, leaving her “very weake and infirme of bodye.”⁹⁴

Bastard-bearers were not the only people threatened with violence in order to prevent paternity accusations. Other witnesses to paternity could be similarly threatened and dissuaded from testifying. John Sherman petitioned the courts because his master John Shelliker ordered a warrant for Sherman in retribution for Sherman testifying about Shelliker’s fathering of an illegitimate child.⁹⁵ Occasionally, threats and money were coupled. Mary Morris testified that Thomas Jeanes, who fathered her child, persuaded her

⁹⁰ Walker, *Crime, Gender and Social Order in Early Modern England*, 233.

⁹¹ See, for example, C532, C703, C720, C733, C852, C755.

⁹² Examination of Margaret Parsons (Somerset Quarter Sessions, 19 April 1650) Q/SR/82/143, SHC. [C703] Parsons suffered the additional misfortune that the child was the second bastard child she had delivered, making her a less sympathetic and believable witness to the community.

⁹³ Information of Elinor Clark (Somerset Quarter Sessions, 29 August 1656) Q/SR/93 (52), SHC. [C532]

⁹⁴ Information of Mary Bond (Somerset Quarter Sessions, 4 January 1659) Q/SR/96 (54-55), SHC. [C315]

⁹⁵ Petition of John Sherman (Norfolk Quarter Sessions, 1654) C/S 3/box 41A, NRO. [C2634]

to name another man as the father to her child and “threatened to kill her if she should name him the sd Jeanes to be the father.” Jeanes also sent her money, but it is unclear if this money was intended to bribe her into silence regarding his paternity, support the child, or both.⁹⁶

Potential for Economic Gain

Though women's' testimonies were often the sole factor in determining the paternity of their children, they were neither foolproof, nor thought to be so by early modern society. Women could gain an advantageous marriage or a large sum of money if they named men of means. These men might be required to pay substantial child support, find the child apprenticeships with their connections, or even to marry the expectant mother. This meant that there was incentive for women to lie about paternity for economic gain. Early modern people were well aware of this danger. A contemporary legal tract proclaimed that “a Jury ought to be very Carefull herein, and not find a bill upon any Sluts oath.”⁹⁷ In practice, jurists heeded this call to care. After coming forward to say she thought she was pregnant with the child of her master, William Stone, Mary Hooper was questioned whether she did this “wrongfully and of purpose to procure the sd Stone to marry her; beinge a man of a good fortune.”⁹⁸ John Gutch, one of the justices for Somerset, accused Mary Strode and her father of faking a rape case against John Hamm in order to get Strode

⁹⁶ Evidence of Mary Morris (Somerset Quarter Sessions, 15 July 1658) Q/SR/96 (109), SHC. [C733]

⁹⁷ David Jenkins, *Pacis consultum: a directory to the publick peace* (London: Printed by J.C. for H. Fletcher, 1657), 10. Though this work is attributed to Jenkins, it is unlikely to be authentic. See Christopher W. Brooks, “Jenkins, David (1582–1663), Royalist Judge,” *Oxford Dictionary of National Biography* (23 September 2004). Accessed 13 October 2018.

⁹⁸ Examination of Mary Hooper (Somerset Quarter Sessions, 6 July 1654) Q/SR/89(44), SHC [C512]

married to Hamm.⁹⁹ While much of this mistrust might be brushed off as misogynist, in some cases it was earned. Elizabeth Clement, for example, admitted that she named John Bellamy rather than David Griffen as the father of her child because “there would bee a good purse of money come from him.”¹⁰⁰ Whether or not the woman in question had actually lied, these suspicions demonstrated that contemporaries remained worried about women using an illegitimate pregnancy to advance themselves financially.

However, the courts’ need to provide for children often outweighed its suspicions even of women with poor reputations. In a Somerset order regarding Mary Doeth’s bastard child whom she had attributed to her master, John Slade, the court record noted that “Mary is reputed to be an impudent & a very lewd Wretch” and that “John Slade is a man of a very good estate,” which indicates the court’s suspicions about whether Mary’s child was actually his, or whether she was merely naming him for material gain.¹⁰¹ However, as Walker noted for the early modern period more generally, neither economic prosperity nor social prominence was guaranteed to free men from bastardy accusations. In a 1620 case similar to that of Doeth and Slade, Arthur Blackmoore, “a gentleman with an inheritance worth forty marks *per annum*,” was accused of fathering the child of “a woman of very ill behavior” who “hath had divers bastards.” Yet Blackmoore was not released from his bond. Walker suggests the first priority of the parish elites was “to ensure that bastard children

⁹⁹ Statement by John Gutch (Somerset Quarter Sessions, January 1658) Q/SR/96 (106), SHC. [C2214]

¹⁰⁰ Examination of Elizabeth Clement (Somerset Quarter Sessions, 1 May 1651) Q/SR/83(148), SHC. [C730] Women could be charged with lying even a child was not involved. In December 1650, Joanna Huddle was committed to the jail in Middlesex “for maliciously presenting against John King for a rape.” See Calendar Record (Middlesex Quarter Sessions, December 1650) Book 94 (36), LMA. [C2277]

¹⁰¹ Petition of the parish officers of Chilcompton (Somerset Quarter Sessions, 1650) Q/SPET/1 (29), SHC. [C829]

were financially supported,” which meant that men “claiming superior credit” actually made themselves more, rather than less, attractive to the court as a potential father.¹⁰²

It is important to consider the matter of bastards attributed to women’s masters in this light. Adair warns readers to be critical of women attributing paternity to their masters because “servants big with child, in a vulnerable position, may often have latched on their master as a convenient and plausible father for the benefit of the church courts and quarter sessions.”¹⁰³ Adair’s cautions are similar to the aforementioned concerns of contemporary early modern justices about women falsely ascribing paternity for economic gain, but the courts did not always side with the economically advantaged. In a Sussex case, though Joan Moore named Henry Grimes, a workman of her master Thomas Killingbeck, as the father of her child, the court ruled that Killingbeck himself was the father.¹⁰⁴ No other depositions survive from this case, so we have no way of knowing how or why the court decided this way. Thus, Adair may be correct that courts laid bastards to the care of masters who did not actually father them in order to resolve the economic issue of bastardy to the satisfaction of the surrounding community.

However, it is equally possible that more female servants than those who came forward had children by their masters. Many historians, including Adair and Wrightson, have noted that servants made up the majority of the bastard-bearers in this period.¹⁰⁵ These

¹⁰² Walker, *Crime, Gender, and Social Order in Early Modern England*, 234.

¹⁰³ Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England*, 74.

¹⁰⁴ Examination of Joan Moore (Sussex Quarter Sessions, 6 September 1644) QR/66 (91), ESRO. Order (Sussex Quarter Sessions, 21 January 1645) QR/66 (128), ESRO. [C1285]

¹⁰⁵ Wrightson, “Infanticide in Earlier Seventeenth-Century England;” Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England*.

women were more likely to name male servants than masters, yet masters were much more likely to be part of disputed paternity cases. A little fewer than half of master/servant bastardy cases were also cases of disputed paternity, making up nearly 30% of all disputed paternity cases.¹⁰⁶ However, the overrepresentation of master/servant relationships in cases of disputed paternity can be read several ways. One could take this as evidence that women were likely to latch onto their masters and take advantage, as Adair suggests, or that masters had more power to coerce their servants and dispute a paternity claim to achieve a favorable court outcome. The power imbalance between master and servant in bastardy cases was not only unequal in the employment relationship itself, but also in gender dynamics. Susan Amussen notes that masters had the upper hand both as employers and as men.¹⁰⁷ This power imbalance was relevant not only in the relationship itself, but also in the litigation of the relationship. Again, Adair suggests that “though many of these relationships were fundamentally exploitative, it would be wrong to assume that this were always so.”¹⁰⁸ Adair supports this theory by demonstrating that some masters did marry their servants. However, this ignores the fundamental power imbalance which Amussen noted.

¹⁰⁶ Some examples of master/servant cases *without* a disputed paternity claim include: C2224, C505, C506, C507, C508, C509, C510, C512, C513, C514, C515, C678, C692, C703, C704, C705, C751, C808, C829, C1155, C1160, C1161, C1165, C1168, C1175, C1177, C1230, C1237, C1250, C1381, C1384, C1395, C1438, C1530, C1533, C1735, C1900, C1966. Some examples of master/servant cases *with* a disputed paternity claim include: C306, C474, C1167, C1284, C1285, C1732, C546, C720, C1348, C1364.

¹⁰⁷ In her words, relationships between masters and servants certainly “involved a double exercise of power – as a master and a man.” Susan Dwyer Amussen, *An Ordered Society* (Columbia University Press, 1988), 159.

¹⁰⁸ Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England*, 85.

Parish Competition and Economic Fraud

Fox and Ingram have detailed how London parishes appointed men as “searchers of inmates” whose job it was to “prevent any incomer from charging the parish unnecessarily.” One of the searchers’ prime targets was “illicitly pregnant women.”¹⁰⁹ Moving from a poor parish to a wealthier parish prior to the birth of the bastard allowed bastard-bearers more certainty of economic support for their child. This created an interesting competition between searchers: each was trying to unload bastard-bearers on the others. One searcher from the early seventeenth century, Christopher Fawcett, noted that he returned a woman who had been brought into his parish by the constables of St. George’s parish in Southwark. Fawcett and a constable brought her back to St. George’s and left two watchmen to monitor that the constables of St. George’s did not return her to Fawcett’s parish.¹¹⁰

Parish struggles to unload illicitly pregnant women on other parishes were not merely the problem of Londoners. The parish of Ashill in Norfolk petitioned the quarter sessions in 1642 to have Claire Pitts returned to Bodney, where she had been resident when she conceived an illegitimate child. Ashill residents complained that if she become dependent on the parish, Bodney, not Ashill, should “p[ro]vide for her.”¹¹¹ In 1650, Katherine Benson gave birth to a bastard child in Litcham, Norfolk. However, the Norfolk Quarter Sessions ordered that she be returned to West Rudham, her last place of residence,

¹⁰⁹ Fox and Ingram, “Bridewell, Bawdy Courts and Bastardy in Early Seventeenth-Century London,” 18.

¹¹⁰ *ibid.*, 18.

¹¹¹ Order (Norfolk Quarter Sessions, 25 September 1642) C/S 3/box 33, NRO. [C2797]

to receive maintenance in that parish.¹¹² Though Anne Presson and Robert Twit's bastard child was born in Dersingham, Norfolk, the child was ruled to be chargeable to Swaffham, Norfolk. The inhabitants of Swaffham, however, successfully petitioned to have Dersingham pay for the child.¹¹³ William Style, a law reporter and legal writer, detailed a 1652 case from Sussex, where similarly, the court quashed the order for bastardy relief "because it did not appear...that the Child was born in that Parish to which the mony was awarded to be paid."¹¹⁴

Economic fraud centered on bastardy also continued in the 1640s and 1650s. In 1642, the inhabitants of Broad Hinton in Wiltshire petitioned the justices against Giles Gillam, who had been bringing pregnant women into Broad Hinton to give birth so that their children could be chargeable to that parish, a relatively wealthy locale.¹¹⁵ According to the petition, Gillam was able to successfully smuggle pregnant women into Broad Hinton on three different occasions before they went to the JPs to protest. Gillam was not the only man to be involved in transporting women pregnant out of wedlock. Edward

¹¹² Order (Norfolk Quarter Sessions, 16 July 1650) C/S 2/1 (50), NRO. [C2967]

¹¹³ Order (Norfolk Quarter Sessions, 15 July 1650) C/S 2/1, NRO. [C2969]

¹¹⁴ William Style, *Narrationes modernae, or, Modern reports begun in the now upper bench court at Westminster in the beginning of Hillary term 21 Caroli, and continued to the end of Michaelmas term 1655 as well on the criminall, as on the pleas side: most of which time the late Lord Chief Justice Roll gave the rule there* (London: Printed by F.L. for W. Lee, D. Pakeman, G. Bedel, and C. Adams, 1658), 368.

¹¹⁵ Petition of the inhabitants of Broad Hinton (Wiltshire Quarter Sessions, 1642) A1/110/1642M (169), WSHC. [C1854] See also C1695. In addition to changing the locale of the expectant mother, Gillam also warned the father and went to the geographically furthest possible JP for a warrant for the father after the birth, giving the father plenty of time to escape.

Shooter was required to appear at the Wiltshire Quarter Sessions for “the conveyinge away of one Anne Mayor” who had delivered a bastard child.¹¹⁶

Resolving Bastardy Cases

One of the most convincing arguments for the continued centrality of economics in bastardy cases is the resolution of cases. In particular, some cases were considered resolved once provision was made for the bastard child even if nothing was done about the sexual or moral crime. Resolving the common-law case after the child was provided for made sense when the ecclesiastical courts existed to punish morality and sins. However, even after the ecclesiastical courts were shut, establishing provision for illegitimate children continued to resolve common-law bastardy cases.

For example, Elizabeth Salmon asked the Sussex Quarter Sessions in 1652 to be excused from naming the father since her child “was not like to charge [th]e parrish.”¹¹⁷ When Joan Hill attributed paternity of her bastard child to John Bond in 1655, a warrant was put out for Bond.¹¹⁸ Yet just three months later the overseers, constables, and churchwardens of Hill’s home parish petitioned the quarter sessions that the bastard child was “dead and the towne [wa]s satisfied what charges they have disbursed.”¹¹⁹ Similarly,

¹¹⁶ Recognizance for Edward Shooter (Wiltshire Quarter Sessions, 1642) A1/110/1642H (25), WSHC. [C1667].

¹¹⁷ Examination of Elizabeth Salmon (Sussex Quarter Sessions, 6 December 1652) QR/98 (37), ESRO. [C1362] The indictment against “a certeyne man unknowne” was ruled a true bill suggesting that perhaps she succeeded in keeping his identity a secret. See Indictment against an unknown man (Sussex Quarter Sessions, 4 September 1652) QR/98 (16), ESRO. [C1362]

¹¹⁸ Information relating to parentage of base child of Joan Hill (Essex Quarter Sessions, 24 January 1654/5) Q/SR 364 (80), ERO. [C1158]; Recognizance for John Bond and Thomas Browne (Essex Quarter Sessions, 24 January 1654/5) Q/SR 364 (81), ERO. [C1158]

¹¹⁹ Petition of the Churchwardens, Overseers, & Constables (Essex Quarter Sessions, 24 January 1654/5) Ph 4/151/7 Q/SBA 2/91, ERO. [C1158] Overseers similarly asked John Collins to be released because his

the parish of Kingswood, Wiltshire had “no more to say to or ag[ain]st” William Ireland “nor any cause...to proceed ag[ain]st him” after the death of the bastard child he had fathered.¹²⁰ The town of Fakenham in Norfolk was similarly dismissive of the two dead bastard children of Margaret Sample and Thomas Harvey since they could not to be chargeable to the parish.¹²¹ In another case, Style described that parish support was ruled out “for the party may keep the Child himself, if he will, and then he need pay no money to keep it.”¹²² The need to pay for the child continued to be the primary need driving the parish, and once the child was gone, the parish ceased to press charges.¹²³ These standards harken back to Coke’s claim that women were not automatically bound to the House of Correction for the birth of a bastard, merely for the birth of a *chargeable* bastard. Despite wearing the additional new mantle shed by the church courts, civil courts continued to focus on resolving economic, rather than moral, issues.

In many cases, punishments for the sexual sins of mothers could actively exacerbate the economic situation. Locking a mother up in the House of Correction or executing her

and Susanna Slick’s bastard twins were dead. See also Bastardy Certificate (Wiltshire Quarter Sessions, 15 April 1656) A1/110/1656E (162), WSHC. [C3239]

¹²⁰ Order (Wiltshire Quarter Sessions, 18 April 1650) A1/110/1650H (171), WSHC. [C1829] These were not the only occasions of ending of cases after the child no longer needed provision. See also Certificate (Wiltshire Quarter Sessions, 10 January 1648) A1/110/1648H (266), WSHC. [C1750]

¹²¹ Bastardy Certificate for Margaret Sample (Norfolk Quarter Sessions, 1647-1648) C/S 3/box 38 Bundle 3, NRO. [C2767] See also Bastardy Certificate (Wiltshire Quarter Sessions, 1 July 1657) A1/110/1657T (101), WSHC. [C3271]

¹²² Style, *Narrationes modernae*, 386.

¹²³ Waiting out the lives (or, perhaps more accurately, the deaths) of their bastard children was sometimes a male strategy to avoid the financial burden of children. When John Long heard that Susanna Knight was pregnant with his child, he fled, only returning once he heard it reported that the child had died. This indicates that Long only thought he would be prosecuted if the child needed provision. It ended poorly for Long, though, because when he attempted to get married to another woman, Knight heard the bans being read and appeared in the church and claimed Long to be her husband. See Petition of the Inhabitants of Westbury (Wiltshire Quarter Sessions, 24 April 1655) A1/110/1655E(251), WSHC. [C1385]

merely left the parish to pay for her children. Indeed, parishes sometimes petitioned for mothers to be released from Houses of Correction in order to pay for their children. The inhabitants of West Lynn, Norfolk, petitioned the courts to release Alice Robertson from her sentence for bastardy in order to care for her children and aged mother.¹²⁴ Similarly, the inhabitants of Perlford, Somerset argued that Elizabeth Howell's child was "chargeable to the p[ar]ish *by reason of her imprisonment w[hi]ch if she were at liberty would be able to contribute something toward the maintenance thereof.*"¹²⁵ This was not a problem unique to the 1640s and 1650s. In an earlier session of 1637, the Somerset Quarter Sessions had to provide for the child of a woman who had been executed.¹²⁶ While the legal manuals noted that bastards were supposed to be raised by the parish while their mothers served in the House of Correction, it was not uncommon for bastard children to reside with their mothers in the House of Correction to correct for this problem.¹²⁷ Abraham Hale, who ran a House of Correction in Wiltshire, petitioned the quarter sessions for relief from providing for a bastard child in the House of Correction there.¹²⁸ A Norfolk Order Book actually

¹²⁴ Petition of the Inhabitants of West Lynn (Norfolk Quarter Sessions, 16 July 1655) C/S 3/box 42A, NRO. [C2685] Robertson served only about seven weeks at "the Bridewell in Swaffham to receive correction." See also Petition of the Inhabitants of Calne (Wiltshire Quarter Sessions, 7 July 1655) A1/110/1655T (105), WSHC. [C3152]

¹²⁵ Petition of the inhabitants of Periford (Somerset Quarter Sessions, 3 October 1654) Q/SR/90 (12), SHC. [C708] Italics added.

¹²⁶ Order (Somerset Quarter Sessions, n.d.) C/S 2/1, SHC. [C2972]

¹²⁷ Nicholas Collyn, *A briefe summary of the lavves and statutes of England so far forth as the same do concerne the office of justices of the peace, sheriffs, bayliffs, constables, churchwardens, and other officers and ministers of the commonwealth: together with divers other matters not onely acceptable for their rarity, but also very necessary for their great use and profit, for all persons, but especially for such as bear office in this common-wealth* (London: Printed by T.L. for Mathew VValbancke, 1655), 12, 13.

¹²⁸ Petition of Abraham Hale (Wiltshire Quarter Sessions, 1650) A1/110/1650H (144), WSHC. [C1795]

records a request for modifications to the House of Correction to build appropriate housing to accommodate all the women with children.¹²⁹

Overall, bastardy orders seem much more concerned with providing for the child than with ordering punishment. Orders do not survive for all bastardy cases, but of those that do, 114 order the father to pay for the child, 90 order the mother to be punished, 52 order the mother to keep the child, and only seven order the father to be punished. One might think that the frequency with which they punished mothers shows a heavy regulation of bastardy, as suggested by Stone and others who advocated the notion that Puritans increased the regulation of sexual morality. However, as previously mentioned, the 1609 statute *required* that women be sent to the House of Correction for at least a year, and left “further” punishment up to the justices.¹³⁰ Thus one needs to look more closely at the *kind* of punishment ordered. If there was an increasing effort to regulate illegitimacy, one would expect to see women being sentenced to longer than a year in the House of Correction, or to see corporal punishments ordered. However, this did not occur. With a single exception, every punishment of a mother was a sentence to the “House of Correction” or “Bridewell.” If the length of stay was specified, it was always a year. There was a single case from 1653 where the mother was executed.¹³¹ The father’s punishment, meanwhile, was left up to the discretion of the justices. These punishments included imprisonment, whipping, or being sent to the stocks. An increase in fathers’ punishments would indicate increased regulation

¹²⁹ Order for the Sheriff, July 1652 (Norfolk Quarter Sessions Order Book 1650 -1657) C/S 2/1 (156), NRO. [C2409]

¹³⁰ Even if one takes the Coke’s word that this statute was only enforced when the financial provision for the child was unlikely to work out, this was still merely statutory enforcement.

¹³¹ See C1950.

since punishment of the father was not mandated by the statute. However, punishment of the father remained, as it had been before, uncommon.¹³² Increased punishment could also be achieved with increased prosecution of bastardy. However, as discussed earlier in this chapter, bastardy prosecutions did not show dramatic quantitative increases in this period, either.

In cases where the parties involved in bastardy were both unmarried, marriage was an ideal solution for preserving the economic status quo. This presents an interesting conundrum. In theory, there were two types of early modern bastardy: ‘special bastardy,’ where the parents of a child born out of wedlock subsequently married, and ‘general bastardy’ where the parents remained unmarried. Though both were crimes in common law, only ‘general bastardy’ was a crime in the church courts. Theoretically, marriage solved “general bastardy” but in so doing, created a case of “special bastardy.” In other words, the theory that marriage solved bastardy only worked in the ecclesiastical courts where “special bastardy” was not a crime.

In practice, however, the quarter sessions, a court of common law, used marriage to solve fornication and bastardy cases both prior to and subsequent to the closure of the ecclesiastical courts. Thomas Knapp and Margery Stevens solved their fornication case by getting married in Wiltshire in 1649, as did Thomas Barker and Mary Evenden with their Sussex bastardy case in 1656.¹³³ In practice, justices seem to have abided by Coke’s ruling allowing for judicial discretion. Thus, the punishments for these crimes seem somewhat haphazard when considered as a whole. Married couples were occasionally punished for

¹³² Inarea

¹³³ Certificate (Wiltshire Quarter Sessions, 8 January 1649) A1/110/1649H (213), WSHC [C1800].
Certificate (Sussex Quarter Sessions, 26 June 1656) QR/112 (11), ESRO. [C1569].

pre-marital sex. For example, Thomas and Elinor Bonniface were prosecuted by the Sussex Quarter Sessions in 1651 because Elinor had been pregnant with Thomas' child when they got married.¹³⁴

If the parents of the bastard did not marry, an alternative solution was to marry the bastard-bearer to another man. Though Amussen noted that most men “did everything in their power to avoid paternity accusations,” in some cases of dubious paternity, men stepped up and took responsibility for the children of other men.¹³⁵ For example, Benjamin Walter claimed the bastard child of his wife as his own.¹³⁶ Rachel Weil has noted that though it was not universal, there was an “English practice of considering the husband of the mother to be the father of the child.”¹³⁷ In 6% of disputed paternity cases, bastard-getters promised to arrange marriages for the bastard-bearers in exchange for not being named as father. For example, Hannah Bamton testified that her sexual partner told her after intercourse that if she named another man as the father of her unborn child, he would ensure that the named man married her.¹³⁸

¹³⁴ Examination of Thomas Bonniface, Examination of Elinor Bonniface (West Sussex Quarter Sessions, 5 February 1651) QR/W73 (40), WSRO. [C1640].

¹³⁵ Amussen, *An Ordered Society*, 112.

¹³⁶ Information of Elizabeth Horley (Somerset Quarter Sessions, 22 February 1655) Q/SR/93 (196), SHC. [C868] Information of Benjamin Walter (Somerset Quarter Sessions, 22 February 1655) Q/SR/93 (196), SHC. [C868]

¹³⁷ Rachel Judith Weil, *Political Passions: Gender, the Family, and Political Argument in England, 1680-1714* (Manchester; New York: Manchester University Press; St. Martin's Press, 1999), 27.

¹³⁸ Information of Hannah Bamton (Somerset Quarter Sessions, 7 January 1656) Q/SR/93 (184), SHC. [C683]

Soldiers

One might expect, in the 1640s and 1650s, to see increased numbers of soldiers prosecuted for fathering bastards. As discussed in the Introduction, contemporary public print made much of the threats of soldiers. In addition to general fears about soldiers, the propagandists on both sides of the conflict weaponized this fear to publicize the atrocities of their enemies. For example, in December 1643, Parliamentary newsbook *Mercurius Britanicus* alleged that Royalists had “abounded at Oxford this [past] two years in oaths and periuries, and execrations, in rapes, adulteries and fornications.”¹³⁹ A Royalist newsbook, *Mercurius Rusticus*, alleged in 1644 that Parliamentarians “plunder the Maid-servants.”¹⁴⁰ Newsbooks are littered with references to the gross sexual violations of soldiers. The threats of soldiers were made more threatening by the absence of good men from their homes, due to war. According to contemporary print, this left women sexually starved. One pamphlet lamented that women had “no man to take them up, except” those who had “the palsie in all their joynts, decrepid old men,” who could not “lift up any part about us.”¹⁴¹ The insatiable sexual appetites of soldiers combined with the sexual starvation of common English women was a fearsome combination.

Often printed works spoke of the pregnancies that could result from the sexual conquests of soldiers. For example, the ballad *Deplorable news from Southwark*, published

¹³⁹ *Mercurius Britanicus* (21 - 28 December 1643) No. 20.

¹⁴⁰ *Mercurius Rusticus* (Oxford, 19 August 1643), 92.

¹⁴¹ *The humble petition of many thousands of wives and matrons of the city of London, and other parts of this kingdome, for the cessation and finall conclusion of these civill wars, and for the restitution and revocation of their husbands, who have as just cause to complaine for the want of them, together with our children and bosome friends, as the virgins have for losing their sweet-hearts. Presented by divers gentlewomen of good credit, and citizens wives* (London: Printed for John Cookson, 1643), 5.

in 1655, told of the lasses who had their hearts stolen by soldiers. Though in the beginning the soldiers were “Both civil in their actions,/ and constant in their carriage,” and the only complaint was the “lack of marriage,” their behavior soon deteriorated. Rumors first spread when “Pore Kate hath got a griping/ and rumbling in her belly;/ And pretty Nancies Apron/ is grown too short.” This soon turned to general havoc when “*Debro* [was] quite beguil’d,/ *Sara* hath lost her Maiden-head,/ and *Susan’s* great with Child.”¹⁴²

Yet the violations of soldiers were by no means solely the fabrication of early modern propaganda. Soldiers’ presence and violence left a significant trail in quarter sessions records. A soldier named George Long demanded entry to Anne Warburton’s Wiltshire house in 1644. When she “answered she would not unlesse hee was an officer...Long said hee was as good as any officer whatsoever, and ymediately by force broke down a window.” Part of the window hit and killed Warburton’s child and upon entry, “Long fell to byting, pinching, [and] scratching” Warburton. Long exploited the lengthy pauses between court sessions by fleeing while Warburton was obtaining a bill of indictment against him.¹⁴³ When a maidservant in John Todd’s Yorkshire household attempted to keep two soldiers from entering the home and harassing the women of the house, Todd came to her assistance, attempting to bolt the door.¹⁴⁴ Todd paid dearly for this

¹⁴² *Deplorable news from Southwark, or, The Loving lasses lamentations for the loss of their sweet-hearts* (London: Printed for Thomas Vere, 1655).

¹⁴³ Petition of Anne Warburton (Wiltshire Quarter Sessions, 1644) A1/110/1644E (134), WSHC. [C1719]

¹⁴⁴ Information of James Todd (Northern Assizes, 29 September 1648) ASSI 45/2/2 (115), TNA. [C215]

act of chivalry as one of the soldiers stuck a sword through a hole in the door and stabbed Todd, killing him.¹⁴⁵

Interestingly, however, soldiers were largely absent from the court records of bastardy cases. In SCGV, for example, soldiers were named in only five of the approximately 1,400 bastardy cases.¹⁴⁶ Even more strikingly, soldiers were only ever named in cases of disputed paternity. In one particular case, a woman was told outright by the father of her child that she should “laye it to some soldier or other and not to him.”¹⁴⁷ If she did this, he promised “he would bringe her forty shillings at the birth of the child and afterwards shee should nev[er] want for any thinge.” Frances Evans testified that after her master John Andrew raped her in Essex, he told her “that if she should prove w[i]th child, she might lay it to a soldier in the army.”¹⁴⁸ In a 1646 Wiltshire case, Anne Salter specified to Edith Alloway that she never had “anything to doe with any souldier neither would shee

¹⁴⁵ It is worth noting that soldiers also litigated to protect their reputations from accusations of plunder in the common law courts. See Petition of William Wilton (Wiltshire Quarter Sessions, 1646) A1/110/1646T (157), WSHC. [C2412]

¹⁴⁶ See, for example, the case of Alice Lewis who admitted in 1649 that “a souldier quartered in the house w[i]th her & her brother & did then gett her w[i]th childe.” See Examination of Alice Lewis (Northern Assizes, 9 September 1649) ASSI 45/3/1 (116), TNA. [C186] Elizabeth Nun was indicted for committing adultery with a soldier in Nottingham in 1641. However, this was prior to the civil wars. See (Nottinghamshire Presentments, 13 July 1641) AN/PB 299/327, University of Nottingham. Elizabeth Castle was accused of fornication with a soldier in 1651. See Examination of Robert Big (Kent Quarter Sessions, 30 May 1651) Q/SB/3 (1), KLHC. [C1387] Joan Bennington, who has several bastards, laid one to a soldier in 1649. See Examination of Joan Bennington (Wiltshire Quarter Sessions, 7 December 1651) A1/110/1652H (204), WSHC. (See also C1748, C1869) Some depositions hinted at impropriety without actual allegations. John Brunton claimed his wife Margaret drank with a soldier all night and was violent and belligerent when she came home the next day. However, there was no overt allegation of sexual impropriety. The case is one of domestic dispute where one neighbor accused John of beating Margaret, another claimed Margaret was drunk, and Brunton himself accused Margaret of beating him. See Information of Metcalf Farrer, Information of Elizabeth Farrer (Northern Assizes, 31 May 1647) ASSI 45/2/1 (37) TNA. [C130] Examination & Confession of John Brunton, Information of Elizabeth Hadden (Northern Assizes, 31 May 1647) ASSI 45/2/1 (36), TNA. [C130] See also C130, C1387.

¹⁴⁷ Information of Prudence Hayward (Wiltshire Quarter Sessions, 4 September 1646) A1/110/1646M (271), WSHC. [C1735.]

¹⁴⁸ Examination of Frances Evans (23 June 1645) T/A 465/1 D/B 5 Sb2/7, ERO. [C2286]

nor w[i]th any other man but her master john stokes.” Salter admitted to Alloway that when she had confronted her master (who had impregnated her) with the news, he had answered that if she would “laye it to some younge man or other and that then he would make him marry her or else he would drive him out of the country.”¹⁴⁹ However, Joan Cox testified that Salter responded to Cox’s inquiries about the paternity of her child by claiming “that it was one thomas greenewoods a souldier w[hi]ch was formerly quartered at her masters house.” When Cox questioned Salter about naming Stokes as the father of her child, Salter supposedly responded “that her master had nev[e]r any thinge to doe with her in that kinde in his life.”¹⁵⁰ Given the master’s instructions to “lay it to some young man,” the soldier Thomas Greenwoods seems to have been a convenient scapegoat rather than an actual source of increased bastardy.¹⁵¹ These cases leave us wondering if even the few cases where a soldier was named actually involved a soldier fathering a child, or merely the bastard-getter (or bearer) taking advantage of a popular stereotype about soldiers.¹⁵²

Nonetheless, while soldiers might have provided a new scapegoat, it was clear that even without soldiers, there was already a widespread practice of men encouraging their sexual partners to attribute paternity of their children to other men. The instruction to lay

¹⁴⁹ Information of Edith Alloway (Wiltshire Quarter Sessions, 8 December 1646) A1/110/1647H (283B), WSHC. [C1732]

¹⁵⁰ Information of Joan Cox (Wiltshire Quarter Sessions, 8 December 1646) A1/110/1647H (284), WSHC. [C1732]

¹⁵¹ See also Examination of Katherine Goddard (Wiltshire Quarter Sessions, 4 November 1652), WSHC. [C1918] Abraham Langley tried to convince Goddard to attribute their child “to the soldiers who had formerly quarters at her masters house.”

¹⁵² In Hannah Looker’s 1654 testimony, she claimed her child was fathered by “John Lirke, a Souldier (as he p[re]tended).” Looker’s deposition indicated that men might pretend to be soldiers. This could be another demonstration that numbers of soldiers who “fathered” bastards was inflated. See Examination of Hannah Looker (Wiltshire Quarter Sessions, 13 February 1654) A1/110/1655E (284), WSHC. [C3184]

the bastard child to another man, as evidenced above, was not merely directed at soldiers. One deposition even alleged that John Killingworth attempted to persuade his pregnant sexual partner to “let one Jefery baker have the carnall knowledge of her bodie that he should marry her.”¹⁵³ In other words, he encouraged her to engage in sexual intercourse with Jeffrey Baker to make a fake paternity accusation against Baker more credible. After John Combe and Jane Mutter had sex, they together plotted whom to blame the bastard child on should Mutter get pregnant, only to discover they had been watched and overheard by neighbors.¹⁵⁴ Soldiers may have provided a wealth of new targets on which to foist unwanted paternity claims, but male attempts to fob off bastard children on other men were neither new nor specific to soldiers.¹⁵⁵

BASTARDY AND POOR RELIEF

Bastardy was part of a larger system of communal fiscal responsibility for children. There were many situations in which parishes were left financially responsible for children. When Elizabeth Bensley and Richard Attmore eloped in 1651, they left Bensley’s child from her previous marriage behind in the parish of Martham, Somerset. The child, with a dead father and an absent mother, was left to the financial care of the parish. When the

¹⁵³ Information of Katherine Hammond (Essex Quarter Sessions, 24 August 1643), Ph 4/151/5 Q/SBA 2/51, ERO. [C1115]

¹⁵⁴ Information of Simon Speller and Walter Easton (Somerset Quarter Sessions, 25 May 1659) Q/SR/98 (142), SHC. [C595]

¹⁵⁵ Soldiers were blamed for a great deal more than just bastardy, some of which was likely merely convenient excuses. George Reynolds begged to be excused from holding the office of constable for the hundred of Elstubb & Everly because he had been beaten by soldiers, although he admitted he also could not write, or read, suggesting that he might have exaggerated his injury. See Complaint of George Reynolds (Wiltshire Quarter Sessions, 1648) A1/110/1648H (167), WSHC. [C2423] Thomas Strugnell also begged off constable duty, however, he only had the excuse of illiteracy, and no claims against soldiers. See Complaint of Thomas Strugnell (Wiltshire Quarter Sessions, 1648) A1/110/1648H (170), WSHC. [C2423]

parish petitioned the quarter sessions for help, the court ordered Bensley's mother to care for the child.¹⁵⁶ When Thomas Oakley and Alice Datterell died in 1644, they left seven children dependent on the parish of Eastergate, Sussex. The quarter sessions ordered the overseers and churchwardens to place the four older children in apprenticeships and to financially provide for the younger three.¹⁵⁷ The inhabitants of Christian Malford, Wiltshire informed the JPs that Joan Russ had left the parish with Edward West, abandoning her illegitimate child to the care of the parish.¹⁵⁸ Bastardy cases could also be reopened after the death of the financially responsible party. John Sherrer paid for the bastard child he had fathered until he died six years later.¹⁵⁹ After he died, his widow continued to pay for the child for about a year until her death. However, the case wound up back in court after his wife's death because her will made no provision for the child.¹⁶⁰ Parish officers did their best to control these charges, including petitioning the courts to remove unnecessary relief. For example, the constable of Fernhurst petitioned the Sussex Quarter Sessions in 1651 that Joan West, a refugee from Ireland, was now established in the parish and "suffitiently abl to meyntaine her self" and begged that the parish be released from providing relief for her.¹⁶¹

¹⁵⁶ Order (Norfolk Quarter Sessions, 8 July 1650) C/S 2/1 (88), NRO. [C2968]

¹⁵⁷ Order (Sussex Quarter Sessions, 30 September 1644) QR/W51 (51), WSRO. [C3419]

¹⁵⁸ Petition of the Inhabitants of Christian Malford (Wiltshire Quarter Sessions, 12 July 1642) A1/110/1642T (162), WSHC. [C1857, C1678] West was actually not the father of her child. John Hort had fathered Russ' child.

¹⁵⁹ Recognizance of John Sherrer (Wiltshire Quarter Sessions, 9 April 1643) A1/110/1643M (37), WSHC. [C1711]

¹⁶⁰ Order (Wiltshire Quarter Sessions, 29 March 1650) A1/110/1650H (191), WSHC. [C1711]

¹⁶¹ Petition of Richard Ced (Sussex Quarter Sessions, 1651) QR/W71 (14), WSRO. [C2281].

Early in the twentieth century, some historians argued that the civil wars and Interregnum saw a decrease in poor relief, both because of disruptions to the systems of poor relief as well as because of the rise of Puritanism and its harsher attitudes towards the poor.¹⁶² These views came increasingly under fire. As Paul Slack argued, “the collapse of Charles I’s personal rule in 1640, which ended central direction for good, did not...lead to the collapse of social policy as was once thought.”¹⁶³ Ronald Herlan argued for “continuity and resilience, not disruption and breakdown of public assistance to the English Poor” during the 1640s and 1650s.¹⁶⁴ Lee Beier, among others, argued that there was nothing particularly Puritan about severe views towards the poor. Both harsh opinions about idleness and generosity towards the poor were also well represented in Catholic writings.¹⁶⁵ In addition, Beier, along with G. E. Aylmer and Wilbur Jordan, argued that the Interregnum’s civil service actually brought more effective and more generous poor relief.¹⁶⁶ Beier argued that these increases came from increasingly effective statutory relief

¹⁶² Sidney Webb, *English Poor Law History*, ed. Beatrice Webb (Edinburgh: R. and R. Clark, 1929); Margaret James, *Social Problems and Policy During the Puritan Revolution, 1640-1660* (New York: Barnes & Noble, 1966); Margaret James, *Social Problems and Policy During the Puritan Revolution, 1640-1660* (London: George Routledge & Sons, 1930); Richard Henry Tawney, *Religion and the Rise of Capitalism: a Historical Study*, vol. 1 (London: John Murray, 1926). Christopher Hill even argued this as late as the 1950s and 1960s. See Christopher Hill, “Puritans and the Poor,” *Past & Present*, no. 2 (Nov. 1952): 32–50; Christopher Hill, “Puritanism, Capitalism and the Scientific Revolution,” *Past & Present*, no. 29 (Dec. 1964): 88-97.

¹⁶³ Paul Slack, *The English Poor Law, 1531-1782*, ed. Economic History Society (Cambridge; New York: Cambridge University Press, 1995), 23.

¹⁶⁴ Ronald W Herlan, “Poor Relief in London During the English Revolution,” *Journal of British Studies* 18, no. 2 (1979): 35.

¹⁶⁵ A L Beier, *The Problem of the Poor in Tudor and Early Stuart England* (London; New York: Methuen, 1983), 14-15; Slack, *The English Poor Law, 1531-1782*, 24.

¹⁶⁶ A L Beier, “Poor Relief in Warwickshire 1630-1660,” *Past & Present* no. 35, no. 35 (1966): 77–100; G E Aylmer, *The State’s Servants: the Civil Service of the English Republic, 1649-1660* (London; Boston: Routledge & Kegan Paul, 1973).

while Jordan argued that the increases were due to increasing Puritan compassion and charitable bequests.¹⁶⁷

This study documents that common-law bastardy prosecution, one type of monetary provision for children, remained relatively constant across certain counties between the 1640s and 1650s. It is important to qualify comparisons between SCGV and other studies of poor relief. Jonathan Healey's recent work on poor relief in Lancashire, for example, argues that "there is virtually no evidence for any working system of poor relief in Lancashire during the war itself."¹⁶⁸ There could be several reasons for the difference in parish relief between Healey's Lancashire study and SCGV, which showed stable parish support for bastardy. The first possibility is that the differences were regional. As John Morrill writes, the "administrative pattern in each county was distinctively its own."¹⁶⁹ This study only covers a limited set of counties: in the case of bastardy, only Somerset, Wiltshire, Essex, Norfolk, and Sussex are included. Healey notes that Lancashire Quarter Sessions ceased to sit between Easter 1643 and Epiphany 1646, which bears some similarity to Wiltshire, but quarter sessions obviously met during that period in other places including Essex, Norfolk, and Sussex.¹⁷⁰ The second possibility is that were differences

¹⁶⁷ Jordan's findings have been criticized for ignoring large changes in prices (inflation) when he was calculating increase in monetary poor relief as well as for not considering other factors besides religion in accounting for the increase in charitable giving. See D C Coleman, "Philanthropy Deflated: a Comment," *The Economic History Review* 31, no. 1 (1978): 118–20.

¹⁶⁸ Jonathan Healey, *First Century of Welfare: Poverty and Poor Relief in Lancashire, 1620-1730* (Boydell & Brewer Ltd., 2014), 66.

¹⁶⁹ John S Morrill, *Revolt in the Provinces: the People of England and the Tragedies of War, 1630-1648*, 2nd ed. (New York: Longman, 1999), 93.

¹⁷⁰ It might be worth noting that though I did not look specifically for poor relief information. Much of the information that I found on poor relief did show disruption between Easter 1643 and Epiphany 1646, the time for which Healey notes that there were no meetings of the Lancashire sessions. However, these other counties were not nearly as disrupted as Lancashire's. See Introduction and Appendix B.

based on type of relief. This dissertation only includes a particular type of poor relief—bastardy provisions—while Healey mostly examines statutory relief. It is possible that bastardy relief remained constant while other kinds of relief fluctuated or disappeared altogether. Lastly, though it is possible that there was no poor relief in Lancashire, it is also possible that there is merely no *record* surviving of the poor relief in Lancashire during the period in question. Despite the break in the Wiltshire Quarter Sessions for all of 1645, a note at the bottom of a late 1646 account of poor relief rates hints that though there was no record of the poor relief for 1645, it was possible that the rates were still administered (albeit at a reduced amount).¹⁷¹ Steve Hindle notes that it is deeply “problematic to assume that where there are no extant parish records there can have been no rates or pensions, not only because archives might have been damaged, lost, or destroyed, but also because accounts might have been cast informally, perhaps even orally.”¹⁷² It is possible that Lancashire administered poor relief in a formal or informal manner without a sitting quarter session. These explanations neatly map out the potential variations in different studies: variance based on county, parish, type of relief, and the qualities, quantities, and characteristics of different sources’ record keeping.

It is almost inevitable that there were localized regional variations within counties in addition to between counties. Herlan notes divergence on a parish level within London. Specifically, Herlan cites “that the parishes least able to alleviate the destitution of the poor

¹⁷¹ See Poor Rate Accounts (Wiltshire Quarter Sessions, 6 October 1646) A1/110/1646M (295), WSHC. This was an account of relief rates for the previous three months. The note at the bottom acknowledged that exactly two years prior two justices met and agreed that the area “was much over rated [and] they agreed and condisedned that it should be reduced unto ffortie markes for the Three monethes reliefe.”

¹⁷² Steve Hindle, *On the Parish? the Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford; New York: Oxford University Press, 2004), 233.

spent substantially higher proportions of their total outlays helping those in want than did their more highly endowed neighbors.”¹⁷³ However, much of the existing literature, including Herlan’s work, focused on London, which was in many ways an outlier. London’s poor relief had a much longer history, established institutions such as hospitals, and thus much more substantial resources for poor relief than those available to Wiltshire or Somerset, for example.

Different types of poor relief could also have completely different trajectories in their respective rises and falls. While Ben Coates, for example, agreed that “Herlan is certainly correct in arguing that poor relief did not collapse,” he took issue with Herlan’s assertion that Herlan’s study of London parishes demonstrated “that no part of the poor relief regime supported by public, private or other miscellaneous forms of supports collapsed.”¹⁷⁴ Literature on poor relief includes numerous types of relief including, but not limited to, hospitals, Bridewells, Houses of Correction, cash dole, and voluntary charitable giving. Each of these types of poor relief experienced its own fluctuations. For example, Tim Wales has argued that during the civil war years, particularly 1647-50, there was not only an increase in poor relief generally, but also that formal relief massively outpaced informal relief and became universally present across all of England, not only in London.¹⁷⁵

¹⁷³ Herlan, “Poor Relief in London During the English Revolution,” 40. Herlan only examined 8 out the 109 parishes in the City of London and none of the suburbs. Ben Coates argued that the “stability that Herlan found is only part of the picture.” Coates also critiqued Herlan’s lack of attention to livery companies and hospitals, but these are not relevant to bastardy relief. See Ben Coates, “Poor Relief in London During the English Revolution Revisited,” *The London Journal* 25, no. 2 (July 18, 2013), 46.

¹⁷⁴ Herlan, “Poor Relief in London During the English Revolution,” 40.

¹⁷⁵ Tim Wales, “Poverty, Poor Relief and the Life-Cycle: Some Evidence From Seventeenth-Century Norfolk,” in *Land, Kinship and Life-Cycle*, ed. Richard M Smith (Cambridge: Cambridge University Press, 2009), 351–404.

Stone, among others, suggested that Jordan's measurement of "increase in charitable giving" did not account for the change between the different types of wealth of gentry/nobility and mercantile classes. Charity was directly tied into the lives of the gentry and nobility in less monetarily countable ways such as home hospitality and donations of surplus food. Merchants, meanwhile, had more disposable income not tied to land which might more easily be redistributed.¹⁷⁶

In addition, it is important to note that the different literatures on poor relief use all sorts of documentary evidence. For example, Coates used poor rate receipts to demonstrate the decline of poor relief because the poor rates went unpaid.¹⁷⁷ Yet the initial court record would remain constant even if the rates went unpaid. One might see re-litigation of previously settled bastardy cases if the relief was not paid, which occurred occasionally. Passively ignoring the orders of the courts was not often documented in legal records, but some evidence of it exists. For example, Alice Paldret, despite residing in Burlington, Sussex, moved in with her father in Sutton when she found herself to be with child. The parishioners of Sutton were granted an order by the justices of Arundel to have Burlington provide for Paldret's child, but had to make a second petition to the Sussex Quarter Sessions because Burlington "refused to receive" Alice according "to the Tenour of the warrant" and instead sent her back to Sutton "without any Legall meanes, Authority or Equity whatsoever."¹⁷⁸ In addition, very occasionally, local officers complained of being unable

¹⁷⁶ Lawrence Stone, "Review: *Philanthropy in England, 1480-1660* By W. K. Jordan," *History* 44, no. 152 (1959): 257-60; Elizabeth R Foster, "Review: *Philanthropy in England, 1480-1660* By W. K. Jordan," *The Journal of Modern History* 32, no. 2 (1960): 152-53.

¹⁷⁷ Coates, "Poor Relief in London," 47-48.

¹⁷⁸ Second Petition of the Parishoners of Sutton (Sussex Quarter Sessions, 1651) QR/W71 (12), WSRO. [C3113].

to raise the court-mandated assistance. The overseers of Aldbourne complained to the Wiltshire Quarter Sessions that the court had promised four pounds to care for a child charged to the parish but they were unable to raise the full sum.¹⁷⁹ However, these rare cases are the exceptions that prove the rule. The fact that these cases show up in the court record suggests that individuals felt enough faith in the courts to complain when court orders were not followed. And that these cases show up *infrequently* suggests that failure to follow court-ordered relief was the exception rather than the rule.

Finally, there is the question of what qualifies as a “change” in poor relief. Is it a change in the *need* for poor relief? Is it a change in how much poor relief was *provided*? Herlan’s claims of “continuity and resilience, not disruption and breakdown” have been largely corroborated by other scholars.¹⁸⁰ However, many take issue with his claims of universal stability among different parts of poor relief. Hindle has argued that a “closer reading of the evidence suggests that the effects of military conflict and wartime taxation on the administration of the poor laws were particularly disruptive, even in those areas where magistrates proved themselves most assiduous.”¹⁸¹ However, though Hindle recognizes military disruption to relief, he also acknowledges that “the crisis of the late 1640s ratcheted up relief costs to a level from which they were not subsequently to fall.”¹⁸²

¹⁷⁹ They raised over half (44 shillings) but could “get no more” of the remaining 36 shillings. See Petition of the Overseers of Aldbourne (Wiltshire Quarter Sessions, 1647) A1/110/1647M (204), WSHC. [C2414]

¹⁸⁰ Herlan, “Poor Relief in London During the English Revolution,” 35.

¹⁸¹ Hindle, *On the Parish*, 254. Here, Hindle is in agreement with Philip Tennant. Philip Ernest Tennant, *The Civil War in Stratford-Upon-Avon: Conflict and Community in South Warwickshire, 1642-1646*, ed. Shakespeare Birthplace Trust (Stroud, Gloucestershire, 1996), 141-44; Philip Ernest Tennant, *Edgehill and Beyond: the People's War in the South Midlands, 1642-1645* (Wolfeboro Falls: Alan Sutton, 1992), 140-45.

¹⁸² Hindle, *On the Parish*.

There is no question that the wars likely produced increased charitable burdens: widows, orphans, maimed soldiers, as well as those who suffered both business and personal property destruction all were the financial responsibility of the parish. However, neither increased burden nor national government crisis brought the system of poor relief crashing down.

While this chapter makes no pretensions to cover all aspects of poor relief, by juxtaposing the literature on poor relief with that on sexual control, we see simultaneous battles being played out about the degree to which Puritanism increased or decreased effective relief and punishment of sexuality. Bastardy, here, is somewhat different, as this chapter does *not* suggest that there was an increased need for bastardy support during the years of the civil wars and Interregnum. Previous historiographical interventions have indicated that poor relief rates dropped in 1640s, while bastardy rates dropped in 1650s. Theoretically, if bastardy, as a type of poor rate, dropped in the 1640s, and registration dropped in the 1650s, this could present the same equilibrium, reached through a series of changes. Yet if this were the case, one would expect to see this change reflected in the substance of the prosecutions during the 1640s and 1650s, which did not occur.

While the equilibrium of poor relief might have shifted due to increased need, it is clear that some poor relief not only remained in place, but actually increased to meet the rising need brought on by war. In this way, the overall narrative that emerges from recognized scholarship is an increased burden from war met with an invigorated local bureaucracy after the wars. Morrill suggests that maintaining local order was a way of responding to national upheaval. In his words, “localism meant not an indifference to the

great issues agitating Church and State, but a preoccupation with the way these issues could be harmonised with the restoration of normality.”¹⁸³

CONCLUSION

We began this chapter with the bastard child of Mistress Parliament allegorizing the political plight of the nation. This, and other print tropes of Cromwell and soldiers fathering numerous bastards, begs the question of how the English Civil Wars and the Interregnum affected the *actual* incidence and regulation of bastardy in England during the 1640s and 1650s. Using an in-depth examination of a select set of counties, the answer appears to be somewhat straightforward: they did not. Despite massive upheavals in the 1640s and 1650s, the regulation of bastardy appears stable. Parishes continued to offload illicitly pregnant women on one another. Masters continued to impregnate servants. Judges continued to suspect female testimonies. Bastard-getters continued to procure abortions for, bribe, and threaten their pregnant sexual partners. The entire community continued to participate in bastardy cases through birth assistance, naming advice, and testimony. Perhaps most importantly, bastardy cases continued to be brought to the court and prosecuted largely on economic grounds of poor relief, rather than on moral grounds of illicit sex. Though, as Jean Mather put it in 1975, “there had been a revolution in national government to be sure...local government changed hardly at all.”¹⁸⁴ The need for the local government to continue administrating outweighed political difference. When one

¹⁸³ Morrill, *Revolt in the Provinces*, 64.

¹⁸⁴ Jean Mather, “The English Civil War and the Local Administration of Justice, 1642-1661” (Unpublished Yale University PhD Dissertation, 1977), 2.

considers the role of the common law courts as arbiters of social welfare for the parish, the functioning of these courts was necessary for continuing the lives, not only of the bastard-bearers and bastard-getters, but also of the entire parish community, which could be held financially responsible for illegitimate births.

Stability of bastardy prosecution, rather than a massive change in it, might seem anti-climactic but it is, in fact, of great importance. If the pamphlets were to be believed, soldiers fathered bastards left and right, wives ceased to obey their husbands, sexual impropriety became the norm, and individuals ceased to recognize the authority of local institutions and local administration of justice. Scholars have argued for decreases in bastard births based on parish registers, and increases in the enforcement of sexual morality due to Puritan influences. This, however, is not the reality documented by court records. Though the world might have been “turned upside down” by the destruction of the monarchy, the ground on which quarter sessions stood in places like Petworth, Norwich, and Chelmsford remained calm and steady.

CONCLUSION

Less than a month after the Battle of Worcester in 1651, Anne Gad entered an inn in Durston, Somerset where her sister had been taken hostage by a group of men. Anne had a strategy for obtaining her sister's release. Rachel Hullock, a neighbor, had advised Anne that if she "did reveale vnto them that she was unmarried they would keepe her as they did her sister," so instead she "told them that she beinge married...must be gone, for her Husband expected her returne." When Anne confronted William Morleigh, the leader of the group, about her sister's whereabouts, he did not acquiesce easily, demanding to know "where her kinge was." Anne's response was "that she had none, neither would she ev[er] be kinged." Morleigh yelled at her: "the divell take all Roundheaded Hores!"¹ As they descended the stairs of the inn, thinking themselves to be free and clear, Morleigh accosted them again and, with the help of his brother, captured Anne and recaptured her sister. Despite the brothers' repeated attempts to rape them, the Gad sisters eventually managed to escape home.

The 1640s and 1650s saw some of the greatest political turmoil that had yet unfolded on English soil. Disputes, and even bloodshed, over royal succession were not new, but the idea that Parliament—rather than a rival ruler—could challenge the king was new ground entirely. This time of upheaval did not leave the daily lives of common people untouched. To return to the example above, Morleigh argues with Gad over politics as he performs the sadly mundane and common business of sexual assault. Gad's responses, too, are familiar: faking a husband to save herself from a man's advances, and using the support

¹ Information of Anne Gad (Somerset Quarter Sessions, 4 October 1651) Q/SR/83 (61), SHC. [C2216]

of a female network between herself, her sister, and her neighbor Rachel Hullock. This contradiction—between the proliferation of political conflict and stasis of sexual norms—forms the core of this dissertation. Though disorder bleeds from political sources, the archives of the common law courts paint a picture of parish and court control that remained stable, consistent, and unchallenged.

In 1574, French Calvinist theologian Theodore Beza published a tract titled *The Right of Magistrates* (or *De jure magistratum*) that specifically argued for a separation of the king's person and the crown. According to Beza, subordinate authorities within the kingdom are “dependent not upon the person of the supreme magistrate but upon the supreme magistracy,” and therefore though they might be “subject to the supreme magistrate, receive their commands from him and are instituted and approved by him...upon the death of him who wielded the supreme power they each remain in their own station as before.”² In other words, it was the *institution of the monarchy*, not the *monarch himself*, from which power was derived.

For over a hundred years after its publication, *The Right of Magistrates* would infuriate many loyal English supporters of the monarchy. Some claimed Beza “ouerthroweth in effect all the authoritie of Christian kings, and magistrates,” and that he made “errors” that led citizens astray, while others called the book a “Devilish piece” and “a Jesuit's Book.”³ Upon the death of Charles I, the courts and lower orders of power, which

² Theodore Beza, *Right of Magistrates*, ed. Patrick S Poole, trans. Henry-Louis Gonin (1969), 10-11.

³ Matthew Sutcliffe, *An ansvere to a certaine libel supplicatorie, or rather diffamatory and also to certaine calumnious articles, and interrogatories, both printed and scattered in secret corners, to the slaunder of the ecclesiasticall state, and put forth vnder the name and title of a petition directed to her Maiestie* (London: Printed by the deputies of Christopher Barker, printer to the Queen, 1592), 192; Patrick Scot, *Calderwoods recantation: or, A tripartite discourse Directed to such of the ministerie, and others in Scotland, that refuse conformitie to the ordinances of the church* (London: Printed by Bernard Alsop, 1622), 29; John Northleigh, *The triumph of our monarchy, over the plots and principles of our rebels and*

supposedly received their authority from the king, continued to function as they had before his execution. Yet this situation did not exactly match Beza's since the 1640s saw not only execution of the *person of the king* but also the disestablishment of the *monarchy as an institution*. This was the destruction of the point from which English authority was derived. And yet, the courts continued to function. In fact, what is most striking is how *little* changed over the course of these eighteen years in the courts of law. Save for an increase in the overall general business of common law courts during the 1650s (likely due to the shuttering of the ecclesiastical courts and the wartime disruptions of the 1640s), court business was barely altered over this period. This makes a powerful statement about the enduring respect for the authority of the courts regardless of the particular political structure that topped the pyramid of civil and religious authority. Though the top of the pyramid shifted, individuals of all political persuasions continued to bring cases to the courts and continued to give the courts the power of arbitration.

Many scholars have noted the gendered and sexualized language of political propaganda during the civil wars and Interregnum. In particular, as Garthine Walker explains, the "ubiquitous analogy between domestic political power relations...meant that the political environment had profound implications for real women and men in both opening up and closing down the ways in which domestic disputes could be framed."⁴ Yet this dissertation finds that there are limits to the implications of the political use of gender

republicans being remarks on their most eminent libels (London: Printed for Benjamin Tooke, 1685), 378-79 & 423-24; Henry Neville, *Remarks upon the most eminent of our antimonarchical authors and their writings* (London & Westminster, 1699), 378-79 & 423-24.

⁴ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge University Press, 2003), 67.

and sex on everyday life. Instead, this dissertation argues that despite the spotlight cast on these issues by political propaganda, actual instances of sexual crime and gendered violence changed little.

In Chapter 1, this dissertation demonstrated that women litigated court cases of sexual crime for additional reasons aside from only achieving a successful legal verdict. Instead, women sought to influence the complex metric of social culpability by pushing responsibility for the sexual crime onto their male sexual partners. Whether by implanting an impression of the male as a serial offender, using “the Lucretia Refusal,” or employing subtle language that suggested (without stating) the other party’s guilt, women in the courtroom defended not only their legal innocence, but also their public reputations. These strategies reveal the complexities of early modern interactions with the court and the position of legal proceedings within broader communal structures regulating social order. In turn, this chapter demonstrated how social order might be unaffected by national changes to the law governing common law courts. John Morrill and John Walter noted that “after the king’s execution, social hierarchies trembled but ultimately held firm.”⁵ This was largely due to local and communal controls on social order. According to Anthony Fletcher and John Stevenson, “order in this period rested on the family and household...and on the formal and informal institutions of control in the parish.”⁶

In addition to the explosion of political print analogizing the relationship between king and country to relationships within the household, conduct books directing practical

⁵ John S Morrill and J D Walter, “*Order and Disorder in the English Revolution*,” in *Order and Disorder in Early Modern England* (Cambridge; New York: Cambridge University Press, 1985), 145.

⁶ Anthony Fletcher and John Stevenson, *Order and Disorder in Early Modern England* (Cambridge; New York: Cambridge University Press, 1985), 31.

behavior within the household grew more numerous in the lead-up to the civil wars. Both of these genres argued against wife-beating with increasing fervor. Chapter 2 demonstrated that despite an intensification of arguments against domestic violence in an expanding body of printed works in multiple genres, both neighbors and courts continued to abstain from intervening in actual cases of domestic violence. Where Chapter 1 showed the ways in which social order *might* diverge from national politics, Chapter 2 demonstrated that these divergences did, in fact, occur.

Though the change in approach to domestic violence remained strictly rhetorical, this was not true of bastardy. The laws governing the registration of bastardy did actually change during the Interregnum. Not only that, but the laws governing adultery and fornication—which could result in bastardy—became more severe. In addition, due to the differing ways in which common law courts and ecclesiastical courts heard bastardy cases, one would expect to see a modification to the prosecution of bastardy cases in the 1650s once the ecclesiastical courts had been closed. Previous scholarly interventions have also argued that the 1650s saw the nadir of illegitimacy cases for the entire seventeenth century. Yet, bastardy, like domestic violence, remained stable in its prosecution throughout the 1640s and 1650s. Chapter 3 showed that both the incidence and aims of common law bastardy prosecution remained consistent throughout the civil wars and the Interregnum. The common law focus on economics remained unchanged, and though national bureaucracy convulsed, the local administration of bastardy relief endured.

Taken together, these chapters show that political upheavals did not translate to a shift in daily incidents of or responses to sexual crime or gendered violence. This suggests not only a stable social order in spite of political chaos, but also an enduring local

bureaucracy and system of justice. These chapters all have important connections to one another, and reinforce the notion that, throughout the civil wars and the Interregnum, the courts remained stable. This argument for stability has relevance not only for the discipline of sexual crimes, but also for the debates on local authority during this time period.

The enduring authority of common law courts is perhaps most effectively proven by the few cases where individuals *did* challenge it. Quarter sessions show that individuals occasionally challenged local authority structures in explicit ways. These cases, however, constitute the exceptions that prove the rule. In 1647, a yeoman from Colchester named Thomas Green testified that John Potts, after being accused of having two wives, claimed “that he had scripture for it.” Though “a bushoppe [sic] should have but one wife,” according to Potts, it was not forbidden for “men that were not bushoppe[s] to have more then one wife.” Potts supported his assertions with examples of biblical figures including Jacob and King David. Green pointed out to Potts that the New Testament superseded these Old Testament regulations, citing the Book of Matthew’s assertion that the “firste instruccon of marriage [is] that a man should have but one wife.” Here their discourse spun wildly out of control, as Potts admitted that “he did not beleive the scriptures but was guided by the spirite in his owne brest.” Green accused Potts that he was not defending his “liberte of conscience but hellish lust.” Whereupon, Potts retorted “that he might saie as much by one savior christ for he made christ of mary magdalen to be his companion.”⁷ Thomas Green seemed to bring out these sorts of insubordinate views in people. John Purkiss claimed to Thomas Green that “the Magestrates of this Towne were ffooles and if

⁷ Information of Thomas Green (Colchester Borough Sessions, 29 October 1647) T/A 465/186 D/B 5 Sb2/8, ERO. [C1210]

they had had wit they would have kept him the said John in prison while they had him there.”⁸ When Thomas Green told Stephen Knight that if he did not appear before the general sessions it would cost him money, Knight complained “that the magistrates were oppressors and had oppressed him.”⁹ It is possible that these were three different men named Thomas Green.¹⁰ However, as they were all yeoman of Colchester, we cannot disregard the possibility that a particular Thomas Green was a trouble-maker who stirred up these sorts of conversations.

Mary Purkiss and John Alexander also directly challenged the authority of the borough sessions. Though Mary Purkiss was married to John Purkiss, and John Alexander was married to Rose Alexander, Mary Purkiss and John Alexander disregarded their previous marriages and married one another in 1647. When the magistrates attempted to question Mary, she “answered she would not answere to anie questions,” claiming that that the magistrates did “injustice.”¹¹ Alexander was similarly scornful of the reigning authorities, arguing that “Rose that was his wife (& still living) is nowe none of his wife but is a widowe.” When the justices asked him if Mary was pregnant by him, he disdainfully rebuked the justices for asking “such friuelous questions.” Instead, Alexander

⁸ Information of Thomas Green (Colchester Borough Sessions, 1 October 1649) T/A 465/186 D/B 5 Sb2/8, ERO. [C1211] It is unclear if this John Purkiss is the same John Purkiss who was the original husband of Mary Purkiss.

⁹ Information of Thomas Green (Colchester Borough Sessions, 21 March 1650) T/A 465/186 D/B 5 Sb2/8, ERO. [C1220]

¹⁰ SCGV contains only one Thomas Green out of over eight thousand people.

¹¹ Examination of Mary Purkiss (Colchester Borough Sessions, 18 December 1647) T/A 465/186 D/B 5 Sb2/8, ERO. [C1211]

reaffirmed that “he is dead to Rose his late wife & she is dead to this examinant.”¹² The contempt the two showed for the court seems not to have been limited to the matter of their bigamous marriage. When Alexander was punished for stealing wood in 1649, Mary claimed to a neighbor “that Allexander had as much honour by that whipping As Christ had by his sufferings upon the Crosse.”¹³ She admitted these words to the justices and once again defended her bigamous marriage to Alexander saying that she “had as good a call to doe those things w[hi]ch shee hath done as Abraham had for the offering his sonne Isaac.”¹⁴

Incidents of direct challenge to court authorities such as these, however, were rare. Though one might count several “incidents” in the aforementioned cases, in reality, all these cases swirled around a mere three individuals: Thomas Green, Mary Purkiss, and John Alexander. The three might have been exceptional. In addition, these cases all come from the Colchester borough sessions. The fact that similar cases do not exist for county quarter sessions could indicate a greater acceptance of their authority. In addition, the absence of other similar cases begs the question of whether there might be reason to distrust the Colchester sessions. This might perhaps indicate an issue with the local borough authorities, or the presence of local dissident politics.¹⁵

¹² Examination of John Alexander (Colchester Borough Sessions, 18 December 1647) T/A 465/186 D/B 5 Sb2/8, ERO. [C1211]

¹³ Information of Richard Burgis (Colchester Borough Sessions, 17 January 1649) T/A 465/186 D/B 5 Sb2/8, ERO. [C1211]

¹⁴ Information of Mary Purkiss (Colchester Borough Sessions, 17 January 1649) T/A 465/186 D/B 5 Sb2/8, ERO. [C1211]

¹⁵ There was an additional case in the Wiltshire Quarter Sessions where someone reported hearing Edmund Brinsdon said that “Judge Nicholas [Green] did wayte for a tenn grates Fee before these times & that he would shite as good a Judge out of his breech as he was And that he was a whorson piggardly Judge.” See Information of Henry Blackman (Wiltshire Quarter Sessions, 11 January 1653) A1/110/1653H (205) WSHC. [C3326]

It is important to distinguish the cases above, which specifically question the authority of the courts on moral or authoritative grounds, from the more self-centered aims of those wishing to continue with illegal activity. When Elizabeth Weld was warned that the mayor, who was also one of the JPs, was coming after her for keeping an unlicensed alehouse, she replied “that she would keepe an Alehowse although the Mayor & the devill stand in her doore, & that shee cared not for the Mayor & let [the] mayor kisse her arse.”¹⁶ Weld’s words do not suggest issues with the underpinning of court authority, but rather, displeasure with a particular court order. Though Weld also challenged the court’s authority, it was for a practical issue with the adjudication of a specific matter, not a theoretical issue with the overall authority of the court. Cases like Weld’s were slightly more common, although still unusual, occurrences.

Another type of exception that proves the rule of court authority was the rarity of cases of rescuing individuals from court custody. One of these rare examples is Mary Jordan, who was called to appear before the Wiltshire Quarter Sessions in 1649 to answer a charge of breaking her husband, John, out of court custody.¹⁷ However, direct challenges, escaped prisoners, and even disregard for unfavorable outcomes were all uncommon occurrences whose occasional presence buttresses the claims of enduring common law court authority. In fact, that individuals continued to bring cases to the courts demonstrates the continuing respect for the authority of the courts.

¹⁶ Information of Anne Tonnell (Colchester Borough Sessions, 24 August 1643) T/A 465/1 D/B 5 Sb2/7, ERO. [C1205]

¹⁷ Recognizance of Mary Jordan (Wiltshire Quarter Sessions, 21 August 1649) A1/110/1649M (57), WSHC. [C2429]

It is important to stress that stability in the social order does not mean eradication or containment of crime. Ben Coates argued that the fact that “poor relief did not collapse...does not mean that the social problems that arose from the war were successfully contained.”¹⁸ Stability of criminal activity, policing, and prosecution implies continued criminal activity. Successful containment of social problems would have been a dramatic change from prior to the war. If the 1640s and 1650s saw courts and neighbors frequently intervening in cases of domestic violence, for example, that would have marked a significant departure from the norm. Instead, the discipline of the courts remained, to the same degree, both effective and ineffective. However, the continued engagement of the public, both through neighbors’ testimony and the input of the local volunteer bureaucracy, suggests a continued acceptance of the authority of the courts.

It is natural to wonder *why* court authority endured as national political institutions crumbled and fell. Crucial to the endurance of court authority, I argue, were local and communal involvement in the courts. Keith Wrightson has written that though “justices of the peace could demand the implementation of policy and the prosecution of offenders...in the absence of a professional police force...they were obliged to rely for the enforcement of the law upon the willingness of the governed to bring cases to their attention.”¹⁹ Wrightson is not the only scholar to note this.²⁰ Noonkester notes that local sheriffs served

¹⁸ Ben Coates, “Poor Relief in London During the English Revolution Revisited,” *The London Journal* 25, no. 2 (July 18, 2013): 52-3.

¹⁹ Keith Wrightson, *English Society, 1580-1680* (New Brunswick: Rutgers University Press, 1982), 156.

²⁰ James A Sharpe, “Enforcing the Law in the Seventeenth-Century English Village,” *Crime and the Law: the Social History of Crime in Western Europe Since 1500* (1980): 97-119.

as “the hands, feet, and sometimes claws of officialdom.”²¹ It was the community and volunteer bureaucracy who were responsible for the continued functioning of the court system. Yet all types of communal participation in the court implicitly acknowledged the legitimacy of its authority. Even pleading or giving a deposition in court recognized the legitimacy of the institution, as can be seen by King Charles’ refusal to enter a plea at his trial because “by implication he would have accepted the legislative supremacy of the House of Commons.”²² Despite massive turmoil on the national political scale, widespread confusion over new secularized policies, and military unrest, locals continued to bring cases, testify, and plead before the common law courts.

Once cases appeared in court, in essence legitimating the court as authority, the court could only maintain that authority by enforcing its decisions. Enforcement required more than just hearing cases—it also required effective punishment. Julius Ruff argues that “any political authority itself ultimately rests on the state’s ability to maintain its laws with force or the threat of force.”²³ Communities continued to carry out punishments. In 1645, the constables from Walthamstow, Essex, petitioned the court for “a payer of stocks” and “a whipping post w[hi]ch by the law ought to be in every p[ar]ish within this kingdom.” Without these tools, the constables could not “punish offenders according to the Law” and

²¹ Myron C Noonkester, “Power of the County: Sheriffs and Violence in Early Modern England,” in *Violence, Politics, and Gender in Early Modern England*, ed. Joseph P Ward (New York: Palgrave Macmillan US, 2008), 149.

²² Sean Kelsey, “The Death of Charles I,” *The Historical Journal* 45, no. 4 (December 1, 2002): 753.

²³ Julius R Ruff, *Violence in Early Modern Europe* (Cambridge; New York: Cambridge University Press, 2001), 44.

even “the very sight whereof might be a means to keep som from offending the Law.”²⁴ Coates has noted that “one of the most important features of the English poor law was its decentralization.”²⁵ Coates’ intervention is crucial, not only for separating out regional disparity—but for understanding *how*, despite massive national upheaval, local criminal enforcement of sexual and gender norms seems to have remained constant in much of the parts of England surveyed. The legitimacy of the court’s behavior was innately accepted by the populace in their ongoing engagement with the legal system.

The gap between political rhetoric and the reality of sexual crime in this period exposes a question: *why* was there this gap? Keith Wrightson writes that for contemporaries who “were only dimly aware of the underlying causes of economic and social change, they were acutely conscious of the more pathological symptoms of the process of change.”²⁶ Vagrancy and increased poverty set off a hailstorm of fear about social dislocation. Though more serious crimes of sex and violence remained relatively stable, shifts in something like vagrancy or poverty were sufficient to cause worry about broader social unrest.²⁷ This is recognizable to modern readers as confirmation bias. Any changes that appeared to confirm the impression of rampant disorder were accepted and absorbed into a worldview.

Part of the reason for modern historians’ impression of widespread social change in the 1640s and 1650s is a tendency to rely too much on those print sources spouting fears

²⁴ Petition of the Constables of Walthamstow (Essex Quarter Sessions, 17 July 1645) Ph 4/151/5 Q/SBA 2/57, ERO. [C2340]

²⁵ Coates, “Poor Relief in London During the English Revolution Revisited,” 40.

²⁶ Wrightson, *English Society, 1580-1680*, 149.

²⁷ “Serious” here means legally grave. In other words, sexual and violent crimes were dealt with more harshly than vagrants. This is not to minimize vagrancy and poverty as social issues.

of social breakdown, while at the same time using only secondary works of social and cultural history that span a much broader period than merely those two decades. While this dissertation has been careful to separate national political print featuring gender and sex from the actual local administration of justice, it should *not* be taken as evidence that studies of sexual and gendered print are unimportant. This dissertation merely argues that such print sources cannot be read in a straightforward way to indicate the presence of actual social disorder. Studies of sexualized and gendered print are crucial to understanding contemporary perceptions, particularly about national politics. Lake and Questier have argued that though gender hierarchy was central to texts bolstering social order, “their centrality is probably not best seen as a direct reflection or product of ‘social reality,’ something that can be read as relatively transparent.”²⁸ This means that a closer, more complex reading is necessary. Rather than providing “direct evidence for a ‘crisis in gender relations’ somehow more intense in this period than in others,” Lake and Questier instead argue that these public texts offered little “tableaux....in and through which contemporaries could obsess and fantasise about wider issues of order and disorder, authority and its abuse.”²⁹ In other words, print served as a venue for contemporaries to express anxieties, rather than present straightforward representations of their day-to-day realities. As Susan Wiseman has explained, the “female” literature in the civil wars and Interregnum was actually much more about male politics than female domesticity.³⁰ In the words of Sharon

²⁸ Peter Lake and Michael Questier, *The Anti-Christ's Lewd Hat* (New Haven: Yale University Press, 2002), 57.

²⁹ *ibid.*

³⁰ Susan Wiseman, “‘Adam, the Father of All Flesh,’ Porno-Political Rhetoric and Political Theory in and After the English Civil War,” *Prose Studies* 14, no. 3 (1991): 134–57.

Achinstein, public print brought “the bedroom into matters of state,” not the other way around.³¹ By creating a connection between a gender and sexual order in crisis and a political crisis, these printed works sowed fears of widespread breakdown in social order, despite ongoing stability. The fact that early modern writers either *thought* gender and sexual order was actually collapsing, or if not, at least wanted to plant the image of social chaos in the minds of readers, is notable for its divergence from the reality of social stability. Here it is important to emphasize the potency of gender and sex as propagandistic devices. Many scholars have noted sex and gender are often used rhetorically in times of political upheaval.³² This is true not only of the early modern period, but of the present day.

After presenting research from this dissertation at a conference, I was once asked what I thought about the emotions of the individuals involved in these cases. The truth is, it is an issue with which I constantly struggle. Historians study the strange and the familiar. We can never know for sure exactly what early modern individuals felt or experienced. Yet finding this stability amongst the political wreckage of the 1640s and 1650s feels oddly

³¹ Sharon Achinstein, “Women on Top in the Pamphlet Literature of the English Revolution,” *Women's Studies* 24, no. 1 (1994): 153. Achinstein acknowledged the limits of her work. When questioning if “the English Revolution [was] an “advance” for women,” she admitted that her evidence was “skewed towards the literary, and thus the conclusions I draw are partial, perhaps deeply suspect to the historian trained on county and court records.” Achinstein, 156.

³² Ann Hughes, *Gender and the English Revolution* (New York: Routledge, 2012), 132; Christina Lerner, *Enemies of God* (London: Chatto & Windus, 1981), 195; Mary Elizabeth Fissell, *Vernacular Bodies: the Politics of Reproduction in Early Modern England* (Oxford; New York: Oxford University Press, 2004), 194; Frances Elizabeth Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700* (Ithaca: Cornell University Press, 1994), 91; Jacqueline Eales, “Gender Construction in Early Modern England and the Conduct Books of William Whately (1583–1639),” *Studies in Church History* 34 (1998): 163; Michael J Braddick, *The Oxford Handbook of the English Revolution* (New York: Oxford University Press, 2015); Susan Kingsley Kent, *Gender and Power in Britain, 1640-1990* (London; New York: Routledge, 1999), 19-29; Carole Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (Cambridge: Polity, 1989), 36-53; Gordon J Schochet, *Patriarchalism in Political Thought: the Authoritarian Family and Political Speculation and Attitudes, Especially in Seventeenth-Century England* (New York: Basic Books, 1975).

familiar. Writing this work between 2016 and 2019 invokes a feeling of unique insight into how one might feel as though their world were exploding, while at the same time day-to-day life continues largely unchanged, save perhaps for a black cloud of uncertainty and foreboding hovering over the future.

Finding this stability is both hopeful and hopeless. It offers hope because these pockets of stability allowed human life to continue and bring the world into better times. That was certainly the case for individuals in the 1640s and 1650s. Infant mortality rates would become much less dire. Quality of living, length of life, and political representation would increase. Yet the stability and endurance of the legal system—particularly in regard to sexual crime—is not entirely a cause for celebration.

In the present, we like to differentiate ourselves from our early modern counterparts, thinking that we have a much more nuanced approach to sex. Even historians occasionally fall into this trap. For example, Martin Ingram argued that “behavior that in 1550 might have been regarded as harsh but acceptable – or even commendable if required to enforce patriarchal authority – was regarded two centuries later as cruel and unmanly.”³³ Yet this view of progress is flawed, since in many ways, we have progressed little. Laura Gowing has argued that “rather than a progress towards ‘enlightenment’,” in early modern sex trials, we see “a series of overlapping sets of ideas about sex and models of the body, with ancient systems maintaining their hold on popular thought at the same time as new discoveries had an impact in some circles.”³⁴ This is not only true for early modern interaction with the

³³ Martin Ingram, “Courtship and Marriage, C. 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abingdon: Routledge, 2013), 313–27.

³⁴ Laura Gowing, “Knowledge and Experience, C. 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abingdon: Routledge, 2013), 239.

ancient, but also our interaction with the early modern. There is a much darker side to this story of continuity in sexual crime—not only throughout the upheavals of the civil war period, but also between that time and the present. As Walker explains:

Much historical writing about sexual violence in fact tends to combine an essentialist acceptance that men have a natural propensity for sexual aggression with an account of change over time in which men gradually learn to control their drives and urges as they become more modern.³⁵

Depositions reported actions familiar to modern women—being pestered for sex, being taken advantage of when drunk, having their food or drink spiked, being forced to lie about their marital status for fear of sexual attack. Nor is our understanding that gendered and sexual violence do not conform exclusively to the gender binary a uniquely modern understanding. Early modern individuals were aware that men could be raped. In defining different sexual crimes, Lancelot Andrewes wrote that the sexual act, if committed “unwillingly, it is Raptus, a Rape: if by consent, either of male or female: (for there is Rape done to both) male, and so it is the sinne of Sodome.”³⁶ This clearly expressed that men could be raped and that not all sex between men was considered rape. Andrewes did not mention women, indicating that perhaps only men were thought to be capable of rape. The inability of women to rape in contemporary thought was supported by Michael Hawke’s assertion that rape writs “will not lie against a woman, because one woman cannot ravish another.”³⁷ However, this specified women raping other *women*, not women raping men.

³⁵ Garthine Walker, “Sexual Violence and Rape in Europe, 1500-1750,” in *The Routledge History of Sex and the Body, 1500 to the Present* (Abington: Routledge, 2013), 430.

³⁶ Andrewes, *The morall law expounded*, 762.

³⁷ Hawke, *The grounds of the lawes of England*, 150-151.

Early modern people understood that unwanted advances, too, were not restricted to the boundaries of gender. Even if legal rape could only be committed by men, unwanted sexual attention in early modern legal records did not strictly adhere to the gender binary. Courts did note cases of women pressuring men into sex. When Katherine Mariott testified that William Jones beat her after she refused his advances, Jones counterclaimed that Mariott actually beat *him*. Jones' son corroborated his father's story and added the detail that Mariott beat Jones *because* Jones refused to bed Mariott.³⁸ Tales of female aggression seem to be more common as counterclaims against accusations, rather than as outright allegations. When Grace Peverell accused William Mitchell of fathering her child, Mitchell claimed that Peverell tried to seduce him, but failed and he never slept with her.³⁹ This gave Mitchell a legal defense (he never slept with Peverell) and a moral defense (that he was seduced) should the legal defense fail. Perhaps the most fascinating case in the legal record is that of Mary Coombe, whose impropriety left a seemingly endless trail of court records. In one set of articles against her from July 1657, John Barber testified that Coombe did "force an honest man to occupie her." In February 1656, she tried to "force" Barber to be with her by "spreading of her leggs & shewing her comoditie saying come you rogue look thee here with what thou shalt play with all." In May 1657, she tried to "force [Barber's] apprentice to occupie her thrusting of her hand into his cod peece."⁴⁰

³⁸ Examination of William Jones (Somerset Quarter Sessions, 24 September 1656) Q/SR/93 (83), Examination of Katherine Mariott (Somerset Quarter Sessions, 24 September 1656) Q/SR/93 (83), Examination of Alexander Jones (Somerset Quarter Sessions, 24 September 1656) Q/SR/93 (83), SHC. [C835]

³⁹ Examination of William Mitchell (Essex Quarter Sessions, 1654) Ph 4/151/7 Q/SBA 2/90, ERO. [C1147]

⁴⁰ Articles Against Mary Coombe by John Barber (Somerset Quarter Sessions, 13 July 1657) Q/SR/95 (164-165), SHC. [C826]

Coombe, while unusual, was not the only woman to aggressively pursue men to the point of being dubiously considered sexual assault.⁴¹ Geoffrey Quaife recounts one case tried in an ecclesiastical court in which a woman “most shamefully wrestled John Snow and threw him on his back and took out his privy member and said unto the rest of the women there present: ‘His name shall be no more called John Snow but I will christen his name John Toggerpin.’”⁴² In another case from the mid-1630s, two women ““did bind Thomas Perry and laid him upon a board and...pulled out his privy member and would have had him to have had the carnal knowledge of his body.””⁴³ These cases show women, as well as men, to be capable of sexual violence. Men even used some of the language generally ascribed to women’s rape testimony. In his advances towards Joan Chancellor, Henry Gregory told Chancellor that she “should have his maydenhead.”⁴⁴

In fact, the difference between early modern sexual crime and modern sexual crime largely comes down to the decriminalization of adultery, fornication, and bastardy. For example, in the early modern period it was more common for those accused of rape to claim no sex, rather than consensual sex. However, this derived more from a desire to avoid subsequent prosecution for adultery or fornication, rather than from increased appreciation for female consent.

⁴¹ By modern standards, Coombe’s actions are obviously sexual assault but early modern thought was somewhat more complex on these matters as will be seen in this section.

⁴² Geoffrey Quaife, *Wanton Wenches and Wayward Wives* (London: Croom Helm, 1979), 158.

⁴³ *ibid.*

⁴⁴ Examination of Joan Chancellor (Somerset Quarter Sessions, 17 December 1656) Q/SR/93 (32), SHC. [C2225]

Our attempts to look back on the past with a sense of superiority leave us with a distorted view. Justice Matthew Hale is often trotted out as the example of pre-modern misogyny to demonstrate how far we have come. In October 2018, Kaelyn Forde wrote for ABC News:

Many legal scholars trace the requirement for corroboration in sexual assault cases back to the 1600s and Sir Matthew Hale, an English jurist who wrote that “[Rape] is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent.”⁴⁵

However, as Walker has pointed out, this quote of Hale conveniently forgets the second half of the passage—that many people prosecuted for rape “‘are really guilty...yet evidence as is satisfactory to prove it can hardly be found.’”⁴⁶ Early modern writers should not be a prop we lean on to pat ourselves on the back for the advances we have made. Though many aspects of early modern life feel strange and alien when we read archival documents, sexual crime itself feels familiar. This dissertation offers not only a contribution to the historiography of scholars, but a corrective to the narrative of sexual progress, and forces us to question: how far have we really come?

⁴⁵ Kaelyn Forde, “What experts say about ‘corroboration,’ a key word from the Kavanaugh hearings,” *ABC News* (October 5, 2018). <https://abcnews.go.com/US/kavanaugh-hearings-wrong-corroboration-hurts-survivors/story?id=5825466>. Hale is a common punching bag for modern news stories. See also Sherry F. Colb, “What does #BelieveWomen Mean?” *Verdict* (7 November 2018). <https://verdict.justia.com/2018/11/07/what-does-believewomen-mean>. Brett Kavanaugh was not the only time when Hale has been trotted out. Hale is trotted out whenever there is a high-profile rape case with a “believability” element. For example, he was a particularly popular target in 2015 after a 2009 “false” rape claim was proved to be true. See T. Christian Miller and Ken Armstrong, “An Unbelievable Story of Rape,” *ProPublica, The Marshall Project* (16 December 2015). <https://www.propublica.org/article/false-rape-accusations-an-unbelievable-story>.

⁴⁶ Garthine Walker, “Rape, Acquittal and Culpability in Popular Crime Reports in England, C. 1670–C. 1750,” *Past & Present* 220, no. 1 (2013): 125. Walker was citing Matthew Hale, *Historia Placitorum Coronæ or The History of the Pleas of the Crown* (London, 1736), I, 635.

SUPPLEMENTARY MATERIAL

The appendices to this dissertation offer supplementary information on the legal, digital, and quantitative approaches of this dissertation. Each appendix lays out in detail background information used, calculations used, and/or discretionary choices made in this dissertation's analysis of archival material. The appendices provide information on the types of documents utilized, regional variation in record survival in the counties surveyed, the choices and structure of the SCGV database, the occupations of male litigants and the calculation of the figures on bastardy in Chapter 3, respectively.

APPENDIX A: *Types of Documents*

This appendix offers background information on the various kinds of documents generated by criminal prosecutions. Common law court documents generally fall into one of several different categories: indictments, recognizances, depositions, petitions, orders, and jail listings.¹

Indictments were presentments of an individual accusation of a crime. Presentments, including an inquest upon a suspicious death, could be made in a few ways, but were usually done by grand jury in common law courts.² In order for a bill to become an indictment and for legal proceedings to advance, a grand jury had to find it sufficiently plausible that the accused was guilty.³ According to Elizabethan statute, grand juries had to be at least twelve men.⁴ In practice the number of men varied and was usually higher. It

¹ There are other types of documents, but these are the six most common.

² There were additional options available in some other courts including in a leet or sheriff's tourn, which was the bi-annual sheriff's inspection. See John H Baker, "Criminal Courts and Procedure at Common Law 1550-1800," in *Crime in England, 1550-1800*, ed. J S Cockburn (Cambridge: Methuen & Co. Ltd., 1977), 15-48.

³ "Sufficiently plausible" was a variable term. Some members of grand juries treated this as akin to guilt in a normal trial while others considered "sufficient plausibility" a lower bar. Hale, for example, required only a *prima facie* case. Matthew Hale, *Historia Placitorum Coronæ or The History of the Pleas of the Crown* (Sollom Emllyn, 1800), II, 157. See Baker, "Criminal Courts and Procedure at Common Law 1550-1800," 18-19.

⁴ See 5 Eliz. I, c. 12. Contemporary law noted that criminals must be "indicted before them [JPs] by the Verdict of twelve men or more." See *Anno quinto reginae Elizabethæ. At the parliament holden at Wesmyenster the .xii. of Ianuary, in the fyfth yere of the raigne of our soueraigne lady, Elizabeth by the grace of god, of England, Fraunce, and Irelande, quene, defendour of the the fayth. [et]c. To the hygh pleasure of almyghtye God, and the weale publique of this realme, were enacted as foloweth* (1564), 46. See also *An acte for the hauynge of horsse, armour and weapon* (1558), 5. Identical wording but roman numerals replaced with the word "twelve" appeared in Joseph Keble, *An assistance to justices of the peace, for the easier performance of their duty* (London: Printed by W. Rawlins, S. Roycroft, and H. Sawbridge Assigns of Richard and Edward Atkins Esq for Samuel Keble, 1683), 67, 71. A 1609 legal manual explained: "if it be taken and found by a whole Iurie, consisting vpon twelue persons or aboue, it is called veredictum, viz. a presentment of truth." See Ferdinando Pulton, *De pace Regis et regni viz. A treatise declaring vvhich be the great and generall offences of the realme, and the chiefe impediments of the peace of the King and kingdome, as menaces, assaults, batteries, treasons, homicides, and felonies ... and by whome, and what meanes the sayd offences, and the offenders therein are to bee restrained, repressed, or*

was recommended to have an odd number to avoid tied votes.⁵ However, the higher numbers might also be due to jury packing and the attempts of magistrates to overcompensate for the “‘mean quality’ of grand juries appearing before them.”⁶ Beattie cites the *Clerk of the Assize* (1682) which “recommended a grand jury of between thirteen and twenty-three.”⁷ Juries in the Restoration seemed substantially larger than those in the earlier seventeenth century.⁸ During the civil war years, filling out grand jury panels became difficult. In 1658, six extra JPs were summoned to Yorkshire specifically to fill out grand juries.⁹ Grand juries could endorse bills of indictment “true” (or *billa vera*) on the back if there was enough evidence to proceed to trial. The defendant’s plea was sometimes scribbled in Latin and/or shorthand at the top of the indictment.¹⁰ These documents were simple statements that included the name, locale, and occupation of the accused, the crime committed, date that the crime was committed, and the victim’s name.¹¹ John Baker notes

punished. Collected out of the reports of the common lawes of this realme, and of the statutes in force, and out of the painfull workes of the reuerend iudges Sir Anthonie Fitzharbert, Sir Robert Brooke, Sir William Stanford, Sir Iames Dyer, Sir Edward Coke, Knights, and other learned writers of our lawes (London: Printed for the Companie of Stationers, 1609), 48.

⁵ Baker, “Criminal Courts and Procedure at Common Law 1550-1800,” 18-19.

⁶ J S Cockburn, *A History of English Assizes 1558-1714*, ed. J H Baker (Cambridge: Cambridge University Press, 1972), 115, 111.

⁷ J M Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 324-25.

⁸ *ibid*, 325.

⁹ See *ibid.*, 112. See also ASS 42/1 (Summer 1658).

¹⁰ Sometimes indictments would not even specify what crime had been committed, instead writing that the person was accused of one (or several) felony (felonies) or misdemeanor(s).

¹¹ Sharpe (and Cockburn) are both skeptical about the dates given in the indictments, claiming that they, like occupational and residential information, are largely fictional. Though, as will be discussed Appendix D, I disagree with Sharpe about occupational and residential data, here there is some evidence to support Sharpe. Dates of crimes did sometimes vary between depositions and indictments. See Sharpe, *Crime in Early Modern England* and Cockburn, *A History of English Assizes 1558-1714*.

that grand jurors were required to take an oath of secrecy to protect accusers in the event of an *ignoramus* bill and as a result, witnesses were summoned to the grand jury to give evidence privately. However, prosecutors occasionally requested public hearings and in all cases the witness statements were read aloud in open court if the bill was found to be true.¹² Finally, the jurors were community members who often interacted with the accuser, the accused, and witnesses subsequent to the trial. Thus the “secret” nature of the testimony was largely in name only.

Recognizances were bonds for a specific individual (or individuals) to appear to give information on a particular case. These were written up after an indictment was found to be a true bill. The individual in question might be the defendant, accuser, or a witness. Should the individual fail to appear in court to give testimony, s/he owed the court money. If the individual appeared then the recognizance was ruled “null and void.” These documents specified the name, locale, and occupation of the bonded individual. Sometimes recognizances named the specific crime, but often they merely stated that the individual was bound to give evidence against another individual or to bound to answer for what had been objected against him or her.

Depositions were pre-trial statements taken to establish the guilt of the accused party. Broadly, there were two types of depositions: “informations” were statements taken from witnesses and victims and “examinations” were statements from defendants.¹³

¹² Baker, “Criminal Courts and Procedure at Common Law 1550-1800,” 33, 39.

¹³ For example, if John Smith were testifying about a crime committed by someone else, his testimony was usually titled: “Information of John Smith.” If John Smith committed the crime that was being investigated, the same statement would be titled: “Examination of John Smith.”

Depositions provided the most in-depth information. Court testimony is one of the few places where the voices of women and the laboring classes—the wives and daughters of laborers, millers, bakers, ironmongers, butchers, blacksmiths and so on— can be heard by modern readers. Anthony Fletcher writes that “men’s control of women’s speech...was at the heart of the early modern gender system.”¹⁴ Lyndal Roper warns that exclusive reliance or over-reliance on dogmatic theoretical sources written by men could merely make gender history “a reinterpretation of the thought of powerful thinkers” which “denies individuals’ capacities to make their own meanings.”¹⁵

Depositions, however, were not the extemporaneous free speech of deponents. Miranda Chaytor has urged readers to be aware that depositions were “selective, subjective” stories “told in the shadow of a specific event.”¹⁶ Deponents spoke with a particular purpose: perhaps to prove themselves innocent or to prove another party guilty. Nor were the words of deponents unmediated by the input of other court factors. Most depositions were given in response to a specific line of questioning. Although we do not have the list of these questions, in many cases it is fairly straightforward to recreate them due to the formulaic nature of depositions. For example, these are the testimonies from women in two different Somerset bastardy cases heard by justice John Cary at the 1656 Epiphany sessions:

¹⁴ Anthony Fletcher, *Gender, Sex and Subordination in England 1500–1800* (New Haven: Yale University Press, 1995), 12.

¹⁵ Lyndal Roper, *Oedipus and the Devil, Witchcraft, Sexuality, and Religion in Early Modern Europe* (London; New York: Routledge, 1994), 11-19.

¹⁶ Miranda Chaytor, “Husband(ry): Narratives of Rape in the Seventeenth Century,” *Gender & History* 7, no. 3 (1995): 378–407.

Susanna Otle	Katherine Wake
“a well-wisher into this depon[en]t & promising to marry with this deponent, he oftentimes desired to have the carnall knowledge of her body but this deponent denied him but vppon his importunity & promising as above said, this deponent did yield into his desire.”¹⁷	“a well-wisher into this depon[en]t & promising to marry with this deponent, he oftentimes desired to have the carnall knowledge of this deponent’s body, which this deponent did often deny, but vppon his continuall importunity & promising (as above said) this deponent did yield.”¹⁸

These two depositions were written in the same hand, which indicates that they were penned by the same clerk. Clerks transcribing depositions occasionally manipulated the words of the deponent, whether willfully or accidentally. Ostensibly, a clerk was only supposed to take dictation from the witness. Yet, as Laura Gowing has noted, “we know that clerical manipulations must have distorted its transposition from voice to text.”¹⁹ Though deponents “signed” that the statements reflected their words, in many cases these “signatures” were a single letter, or even just a mark which indicated that they possessed limited or no literacy.²⁰ However, despite being mediated by lines of questioning and clerical manipulation, deponents’ input is still visible.²¹ If a deposition deviated from the

¹⁷ Evidence of Susanna Otle (Somerset Quarter Sessions, 9 February 1656) Q/SR/95 (227), SHC. [C493]

¹⁸ Evidence of Katherine Wake (Somerset Quarter Sessions, 11 February 1656) Q/SR/95 (228), SHC. [C515]

¹⁹ Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford; New York: Oxford University Press, 1996), 235.

²⁰ For more information on early modern female literacy, see Eleanor Hubbard, “Reading, Writing, and Initialing: Female Literacy in Early Modern London,” *The Journal of British Studies* 54, no. 3 (June 5, 2015): 553–77.

²¹ See Clive Holmes, “Popular Culture? Witches, Magistrates, and Divines in Early Modern England,” in *Understanding Popular Culture: Europe From the Middle Ages to the Nineteenth Century*, vol. 87 (New York: Mouton Berlin, 1984).

standard script, it likely reflected the words spoken by the deponent. Gowing has called attention to the speech patterns, showing that the depositions still bore “the hallmarks of oral narrative.”²²

The words of common people can also be found in petitions. Petitions were requests by individuals or groups for intervention from the courts. Intervention might be financial, protective, or punitive in nature. In this period, the most common types of petition were those from disabled soldiers or war widows.²³ Others too, however, including the poor, abandoned wives, non-war widows, and disabled persons, also requested monetary assistance. Petitioners sometimes arrived at the court “begging the peace” against a violent or disruptive neighbor. This was the early modern equivalent of asking for a restraining order. Often multiple individuals petitioned the court as a group. It was not uncommon, for example, for parishes to petition the courts to resolve a financial dispute with another parish, particularly in the case of supporting illegitimate children, the poor, and the impotent.²⁴

Orders were written by one or more justices to direct how a particular crime should be handled. The most common type of order in my database was a bastardy order, which stipulated financial provision for the child in question and often prescribed punishment for

²² Gowing, *Domestic Dangers*, 235.

²³ See David Appleby, “Unnecessary Persons? Maimed Soldiers and War Widows in Essex 1642-1662,” *Essex Archaeology and History* 32 (2001): 209–21; Hannah Worthen, “Suplicants and Guardians: the Petitions of Royalist Widows During the Civil Wars and Interregnum, 1642–1660,” *Women's History Review* 26, no. 4 (2017): 528–40; Imogen Peck, “The Great Unknown: the Negotiation and Narration of Death by English War Widows, 1647–60,” *Northern History* 53, no. 2 (2016): 220–35; Mark Stoyale, “‘Memories of the Maimed’: the Testimony of Charles I's Former Soldiers, 1660–1730,” *History* 88, no. 290 (2003): 204–26.

²⁴ Impotent, in early modern context, means suffering from physical disability, rather than sexual impotence. Parishes financially supported those who were unable to provide for themselves due to physical disability.

the mother and/or father. Sometimes multiple orders appear for the same case if the original order was not followed, could not be followed, or if new information had come to light.

Jail listings or punishment listings were lists of individuals who had been convicted or indicted of particular offenses. Depending on what type of listing it was, the list might note the sentencing justice, the crime, and the sentence. Lists might include individuals being held awaiting financial bonds for release from jail as well as those convicted of a crime.

APPENDIX B:
Regional Quarter Sessions Record Survival¹

Since the survival of court records from this period is not uniform across counties, it could potentially skew data and scholarship based on regional data. This appendix offers an expanded discussion of regional survival for quarter sessions records in this period. It attempts to account for where records do and do not survive between 1642 and 1660 in each of the counties whose court records are utilized in this study: Essex, Sussex Somerset, Wiltshire and Norfolk.

Essex

Between Epiphany 1642 and Michaelmas 1660, Essex is only missing records from six quarter sessions, including all four consecutive sessions between Easter 1643 and Epiphany 1644. Given the timing of the civil wars and the consecutive nature of the missing records, it seems likely that this gap was due to wartime disruptions rather than to simple misplacement of records.² Essex had troops billeted in the First Civil War. However, the major military action in Essex came during the Second Civil War (1648-1649). Thus it is also possible that the missing sessions might be an issue of record survival. Essex also does not have records from the 1648 Midsummer session or the 1657 Epiphany session. While

¹ Only Essex, Sussex, Somerset, Wiltshire, and Norfolk are included in this record survival analysis due to the scope of the study. The records from Bedford and Kent are sufficiently incomplete that no similar analysis for record survival is possible. Since Middlesex is only included in this study in the form of calendars rather than session papers themselves, a similar analysis of record survival is beyond the scope of this project.

² The seven sessions between the 1653 Easter session and the 1654 Michaelmas session have all been damaged by water. Some of the records were totally destroyed and though others survive, they are difficult to read and missing pieces.

it is unclear if the missing 1657 Epiphany session was due to a misplaced (or destroyed) record or a skipped meeting, the siege of Colchester took place in summer 1648 so it seems likely that quarter sessions did not meet for the 1648 Midsummer session.³

Sussex

The Sussex Quarter Sessions were unusual because Sussex was (and continues to be) separated into two administrative counties. Thus, there were separate sessions for the east and west of the county.⁴ Cynthia Herrup has noted that the East Sussex and West Sussex sessions “were effectively independent” and the only administrative link between the two was the office of the clerk of the peace.⁵ Epiphany, Easter, and Michaelmas sessions were held separately in the two parts of the county, while the Midsummer session was held jointly just before the meeting of the assize courts.⁶

Like Essex, the main gap in Sussex sessions is between 1643 and 1644. West Sussex is missing sessions for the 1643 Easter sessions and 1644 Epiphany sessions. Since West Sussex sessions did not meet for Midsummer, this gap roughly lines up chronologically with the gap in Essex. Between Easter 1643 and Epiphany 1644, the only records are from a single session in West Sussex: the 1643 Michaelmas session. The 1644 joint East/West Midsummer session is also missing. As in Essex, given the timing and how this correlates

³ James R Davis, “Colchester, 1600-1662” (Unpublished University Pennsylvania PhD Dissertation, 1980), 299.

⁴ Suffolk, Yorkshire, and Lincoln also split their quarter sessions into smaller geographic entities, but they are not covered in this study.

⁵ Cynthia Herrup, “The Common Peace: Legal Structure and Legal Substance in East Sussex, 1594–1640” (Unpublished Northwestern University PhD Dissertation, 1982), 36.

⁶ *ibid*, 35-36.

to missing records in Sussex, it seems likely that the missing joint session from 1644 and the missing West Sussex sessions from 1643 and 1644 are due to a wartime disruption of court meetings, rather than misplaced records.⁷

West Sussex courts appear to have avoided further disruption merely by shifting where sessions were held. West Sussex experienced some military action, particularly around Chichester in 1645. In this period, the court regularly shifted locations from Arundel, to Chichester, to Petworth, and once, in January 1646, to Horsham.⁸ The courts avoided major disruption from Chichester military activity by not meeting in Chichester between October 1642 and April 1649, instead holding sessions in Petworth and Arundel.

In 1646, the Midsummer quarter sessions ceased to be a unified meeting between east and west. Instead, the Western sessions “dropped to three meetings yearly rather than join its colleagues in East Sussex” for the Midsummer sessions.⁹ The West Sussex 1651 Epiphany session and the East Sussex Midsummer session from 1660 are also missing. It remains unclear whether these were misplaced records or missed court meetings.

⁷ Cynthia Herrup has written that “the county abandoned even the single general meeting of the Summer Sessions” during the civil war. See Herrup, “The Common Peace,” (Unpublished Dissertation), 40. This seems to imply that the courts failed to meet at all between 1643 and 1646. However, the East Sussex Records Office holds all sessions from this period except the 1643 Midsummer session and the West Sussex Record office is only missing sessions from Easter 1643 and Epiphany 1644. Thus though wartime might have been disruptive to session meetings, it did not stop the sessions from meeting in the way that Herrup implied. Since Herrup quite clearly consulted these record offices, it is possible that these sessions files have been found in private property since Herrup’s dissertation was published in 1982. As Frederick George Emmison noted in the early 1960s, “a number” of quarter sessions records “may remain still undiscovered among private muniments or in the offices of old-established legal firms.” See Frederick George Emmison, *County Records (Quarter Sessions, Petty Sessions, Clerk of the Peace and Lieutenancy)*, ed. Irvine Egerton Gray, vol. 62 (London: Historical Association, 1961), 4.

⁸ See QR/W55.

⁹ Herrup, “The Common Peace” (Unpublished Dissertation), 40.

Somerset

Somerset seems to suffer the most from missing wartime records. The Somerset Heritage Centre has at least one call number of session papers per year in the 1650s. However from the 1640s, the archive has only one call number devoted to 1642-1645, one devoted to 1647-48, and one for 1649-1650.¹⁰ Somerset indictments also suffer. The only gap in indictments between 1642 and 1660 is from 1644 to 1646.¹¹ Put another way, there are 3,354 pages of Somerset Quarter Sessions records that survive from 1650-1659, and only 788 pages from 1642-1649.¹² Counting the number of surviving pages is very a rough way, of course, of estimating record survival, but in this case it confirms the general impression from the indictments and sessions papers that Somerset has few surviving records from the 1640s.¹³

It is not totally clear if this absence of records can be attributed to lack of meetings or poor record survival. There is no specific evidence to suggest that the quarter sessions themselves were disrupted in Somerset. However, Somerset did experience military action from 1642-1645 that could well have resulted in disruption.¹⁴ Though initially

¹⁰ See Q/SR/79, Q/SR/80, and Q/SR/81, SHC.

¹¹ There are periodic gaps in records for Somerset indictments. For example, between 1598 and 1710, there are no indictments from between 1598 to 1602, 1660 to 1662, and 1663 to 1666. See Q/SI, SHC. There are 10 surviving indictment rolls from 1642 to 1649 (Q/SI 80, Q/SI 81, Q/SI 82, Q/SI 83, Q/SI 84, Q/SI 85, Q/SI 86, and Q/SI 87). There are 16 surviving indictment rolls for 1650 to 1659 (Q/SI 89 A, Q/SI 89 B, Q/SI 90 A, Q/SI 90 B, Q/SI 91, Q/SI 92, Q/SI 93 A, Q/SI 93 B, Q/SI 94, Q/SI 95, Q/SI 96, Q/SI 97, Q/SI 98, Q/SI 99, Q/SI 100, and Q/SI 101).

¹² Steven Hobbs, archivist at the Wiltshire and Swindon History Centre, formerly archivist at the Somerset Heritage Centre, believes that the SHC gap is likely the missing hundred juries relating to the upkeep of roads and bridges.

¹³ Looking at **Figure 3.3** in Chapter 3, we can see a clear correlation between the number of surviving pages and the number of bastardy cases, suggesting that it offers a fair picture of record survival.

¹⁴ David Underdown, *Somerset in the Civil War and Interregnum* (Newton Abbot: David & Charles, 1973).

Parliamentarian in leaning, Somerset was conquered by Royalists in July 1643. It then fell back into disputed territory in March 1645, and by September was back under Parliamentary control. Despite switching sides, there was consistency in the makeup of Somerset's local administration. David Underdown gave the example of William Basset and William Bull, who were parliamentary committeemen at the outbreak of war but who continued to serve as judges even after the Royalists took power in the county. Though this might give these men the appearance of turncoats, Underdown emphasizes that they were "Somerset men first, partisans second."¹⁵

Wiltshire

Wiltshire's catalogue is unique because it distinguishes between missing records and times when the courts cancelled sessions. Wiltshire held Hilary, Easter, Trinity, and Michaelmas sessions rather than Epiphany, Easter, Midsummer, and Michaelmas sessions. The catalogue notes that there were no Easter and Trinity sessions in 1643 and no sessions between fall of 1644 and winter 1646.¹⁶ This is somewhat logical. Wiltshire changed hands between Royalists and Parliamentarians quite a few times before ultimately settling into Parliamentary control in 1645. The gap, therefore, might reflect the county's adjustment to Parliamentary control. Phyllis Overton, a litigant who came before the Wiltshire Quarter Sessions in 1656, gave the modern historian a window into the ways in which

¹⁵ Underdown, *Somerset in the Civil War and Interregnum*, 39. Upheaval led to the rise of men like John Pyne, who stoked radicalism, and who also appeared as a justice in at least twenty-eight of the Somerset bastardy cases.

¹⁶ This means records from the 1644 Michaelmas session, 1645 Hilary session, 1645 Easter session, 1645 Trinity session, 1645 Michaelmas session, and 1646 Hilary session.

military action could disrupt court meetings. When trying to specify when she and William Candy had sexual intercourse, she described the date as “the same day that the Assizes [sic] were interrupted at Salisbury and the Sherife carried away by the Caveleire ptye.”¹⁷ Wiltshire is also missing the records from the 1652 Michaelmas session, the 1658 Hilary session, and the 1660 Easter and Trinity sessions.¹⁸ The archive’s catalogue notes that the 1652 Michaelmas, 1658 Hilary, and 1660 Easter session records are missing. However, the 1660 Trinity session records appear both on the list of “missing sessions records” as well as the list of times when “no sessions were held.”¹⁹

Norfolk

The organizational structure of the Norfolk Record Office catalogue makes it difficult to interrogate the completeness of Norfolk’s records. Norfolk’s record structure does not clearly distinguish between different session meetings. Instead, Norfolk groups together multiple sessions and years in a single box. Norfolk has nine session roll boxes from the 1640s and six from the 1650s.²⁰ Though some of the documents within the boxes

¹⁷ Examination of Phyllis Overton (Wiltshire Quarter Sessions, 9 December 1655) A1/110/1656H (145), WSHC. [C3247] For more information on early modern notions of the passage of time, see Keith Wrightson, “Popular Senses of Past Time: Dating Events in the North Country, 1615-1631,” in *Popular Culture and Political Agency in Early Modern England and Ireland : Essays in Honour of John Walter* (Woodbridge, Suffolk, 2017), 91–108.

¹⁸ The record office also holds no 1660 Easter Sessions.

¹⁹ See ‘GREAT ROLLS’, A1/100 in “2 - JUDICIAL RECORDS/ A1- Wiltshire Court of quarter sessions,” WSHC Online. <https://calmview.wiltshire.gov.uk/CalmView/Record.aspx?src=CalmView.Catalog>

²⁰ The boxes from the 1640s are: C/S 3/box 33 (1642-1643), C/S 3/box 34 (1642-1645), C/S 3/box 35 (1641-1644), C/S 3/box 36 (1644-1645), C/S 3/box 37 (1645-1646), C/S 3/box 38 (1647-1648), C/S 3/box 38A (1647-1648), C/S 3/box 39 (1648-1649), and C/S 3/box 40 (1649). C/S 3/box 22 also has some records from the 1640s since it covers the years 1605-1646.

The boxes from the 1650s are: C/S 3/box 41 (1653), C/S 3/box 41A (1654), C/S 3/box 42 (1655), C/S 3/box 42A (1655), C/S 3/box 43 (Part 1) (1657-1658), and C/S 3/box 43 (Part 2) (1657-1658). C/S 3/box

are organized into bundles, the numbering of these bundles is not consistent, nor is there consistent pagination. However, Norfolk saw little military activity during the civil wars. In the words of Jean Mather, to Norfolk men and women, “battles were unhappy occurrences which took place somewhere else.”²¹ It seems possible that the Norfolk Quarter Sessions were largely unhindered by military activity.

44 (Part 2) contains some records from the 1650s as well since it covers the years 1659-1662. C/S 3/box 32 includes some records from both the 1640s and 1650s since it covers the years 1637-1685.

²¹ Jean Mather, “The English Civil War and the Local Administration of Justice, 1642-1661” (Unpublished Yale University PhD Dissertation, 1977), 12-13.

APPENDIX C: *Database Methodology*

To manage the large number of cases and records in this project, I created the SCGV relational database. This appendix will explain how the SCGV database is structured and explicitly lay out the editorial choices in curating this dataset. A relational database is a database made up of multiple datasets organized into tables. The tables have defined relationships with one another, making it possible to ask the database for information across several tables.¹ In each record office, I read all the extant sessions papers, order books, indictments, and recognizances for the years 1642-1660.² I logged each case that contained relevant crimes in the SCGV database.³ SCGV contains three types of information about the cases, organized into tables:

1) *Information about Cases*: The **Legal Cases** table, **Fornication** table, and **Bastardy** table contain information about the criminal cases themselves.

2) *Information about Documents*: The **Archives** table, **Call Numbers** table, and **Documents** table contain information about the documents where the cases can be found.

3) *Information about People*: The **People** table and the **Relationships** table contain information about the people involved in cases.

¹ The relational database management system (RDBMS) for this database is Libre Office Base and it is queryable using Structured Query Language (SQL).

² While the original form for these records was rolls, almost every record office had separated the records out into pages which were often numbered and pressed into books.

³ See section on *Types of Crimes* in the Introduction for a discussion of which crimes were tracked.

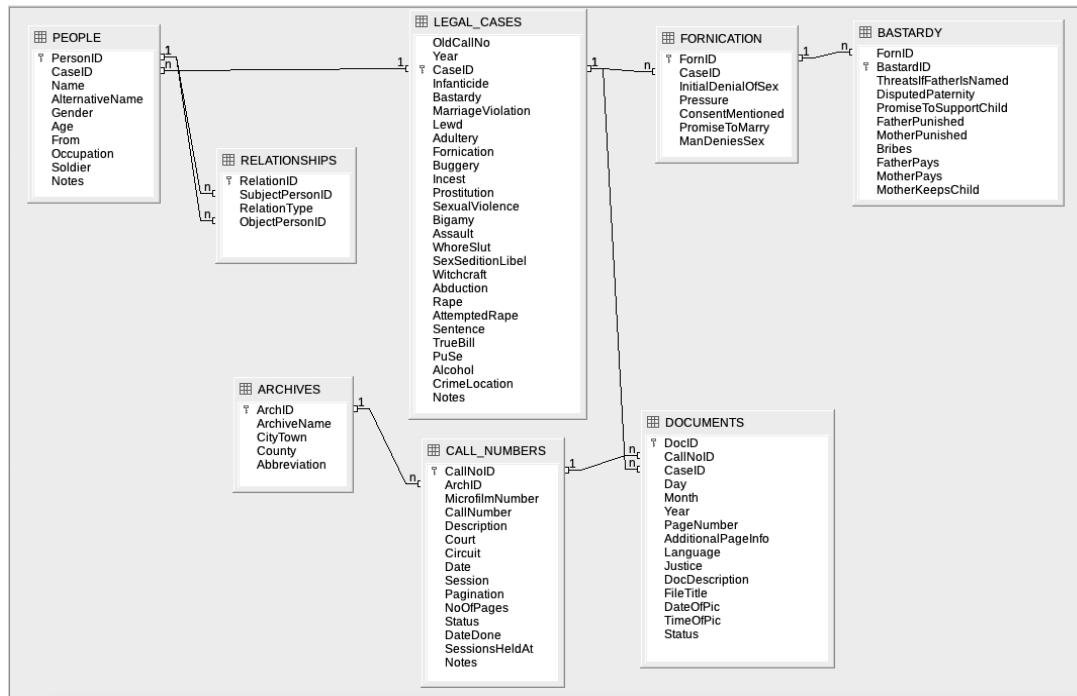


Figure C1: Database Schema

A relational database like this one makes it possible to manage a huge amount of information related to almost 3,500 legal cases. It also provides a framework to interrogate a large amount of interrelated data. SCGV allows the user to query information about people and cases. The database, however, and the counting of cases, people, and various factors involved, constitute merely the point of entry into this data. All quantitative and database work performed in this study goes hand-in-hand with qualitative work that is in dialogue with the substantial existing historiography.

Information about Cases

The **Legal Cases** table is the key building block of the database. Each entry in the **Legal Cases** table was a case heard before the courts and is assigned a unique primary key

identifier (CaseID).⁴ In addition to the CaseID, each entry in the **Legal Cases** table records the year of the case, the type of crime committed, whether there was alcohol involved, and some basic information about sentencing and indictment outcomes.⁵ For example, C3398 is listed as an assault case that occurred in 1659 and was ruled a “True Bill.” SCGV records only the prosecution of crime, not the crimes themselves. For example, though an offense of bastardy necessarily implied that either adultery or fornication had taken place, it was only listed as bastardy unless documents specifically indicated prosecution for the offense of adultery or fornication. This is not only important in defining the scope of this study, but also for understanding what this study can and cannot answer. This study cannot tell you, for example, how many illegitimate children were *born* between 1642 and 1660. It can, however—with some qualifications about geography and record survival—show how many expectant parents were *prosecuted* for bastardy between 1642 and 1660. These cases, and thus the **Legal Cases** table, form the core of the database. Information on both documents and people links back to the **Legal Cases** table using the CaseIDs.

Information about Documents

The goal of the data on documents is to be able to trace the sources of information on people and cases, which will allow other scholars to track down the primary sources used in the study. This information is split between three levels: the archive, the call number, and the page (“Document”). Almost every history begins with archives. The **Archives** table

⁴ These unique identifiers are called “primary key identifiers” or “primary keys.” In this study, cases will be cited by their CaseIDs, which are numbers preceded by the letter “C”.

⁵ Courts sometimes prosecuted two different offenses in the same legal case. For example, infanticide cases were often also bastardy cases.

has an entry for each of the fourteen record offices consulted for this study. Each entry in the **Archives** table is given a unique primary key identifier (ArchID), lists the name and location of the archive, and assigns an abbreviation for that archive.

Each archive has its own structure for organizing its documents by call number. These are the unique identifiers used to call up documents in the archive. SCGV has a separate **Call Numbers** table which includes all the call numbers that were examined for this study. Since call numbers are stored in archives, the **Call Numbers** table and **Archives** table are linked using the ArchID. Each entry in the **Call Numbers** table is listed as belonging to an ArchID. Since archives contain multiple call numbers, the same ArchID is listed for every call number stored in that archive. In addition to listing its parent ArchID, every call number is given a unique primary key identifier (CallNoID). CallNoIDs reflect the organization of each archive.⁶ Other information tracked in the **Call Numbers** table is the call number used by the archive, the Microfilm Number (if relevant), the type of court, the court session (i.e. Michaelmas, Easter, etc.), where the session was held, and the number of pages included in the call number.

Every page of a CallNoID that contained information about a CaseID is listed in the **Documents** table.⁷ Each entry in the **Documents** table is given a unique primary key identifier (DocID).⁸ Each DocID entry contains not only the DocID, but also the CallNoID

⁶ A CallNoID entry might be an item a single page, or hundreds of pages. These reflect the Call Numbers that each Archive uses to summon their documents. Each CallNoID entry reflects a single “Call Number” as defined by each archive.

⁷ Each entry in the **Documents** table is a page from a call number, but pages vary in size and format.

⁸ If the same page had information on multiple cases, there were two entries for the same page. For example, if the deposition of John Smith in C614 and the deposition of Mary Jones in C3041 were both on page 10 of call number A110/1658T in the Wiltshire and Swindon History Centre, each deposition would have its own entry in the “Documents” table with a unique primary key “DocID.” This is rare, but does occur. However, if multiple documents dealing with the same case were on the same page, these would be

to which the DocID belongs, and the CaseID of the relevant criminal case. Other information tracked in the **Documents** table is the date of the document, the page number, the language of the document, the name of the justice (or justices) administering the particular document, and a description of the document's contents. The type of document is listed in the document description.

Information about People

The goal of the data on people is several-fold. It offers the opportunity to track the types of people and relationships between people involved in cases. Providing such details also helps to prevent duplicate counting. By logging the names of the defendants, accusers, and others involved in a case, it becomes possible to check whether a case has already been entered into SCGV.⁹ The **People** table lists the CaseID for the relevant legal case, the person's name (and alternative names), gender, age, occupation, residence, and a unique primary key identifier (PersonID).

included in the same entry in the "Documents" table under a single primary key "DocID", and merely both named in the "Doc Description." In other words, if the depositions of John Smith and Mary Jones were both from C614 and on page 10 of call number A110/1658T from the Wiltshire and Swindon History Centre, there would be only one DocID. The "Doc Description" would read "Information of John Smith, Mary Jones." If the same document was split over several pages, (i.e. John Smith's deposition went from page 10 to page 12), these would also all be listed under a single entry in the "Documents" table with a single primary key "DocID." It would be noted under "AdditionalPageInfo" that the document included several pages.

⁹ Certain names are common and spelling was not standardized in the seventeenth century and thus this involves some educated guesswork. For example, there are 9 men named "John Smith" in the database. Using the occupation and the residence of the individual, as well as the names of others involved in each case, it was usually possible to determine if it was the same incident or not. This obviously contains some amount of guesswork as individuals could move or change occupations. What was slightly more difficult was determining if two different cases (known to be different by different crimes, or involve different secondary characters) contained an individual with the same name from the same place, since it was possible the same person could be involved in two different crimes.

Part of the role of a database is to provide data in a standardized form. This task is particularly difficult with early modern names due to the inconsistencies of seventeenth-century court records, which include non-standardized spelling, poor handwriting, faded ink, and damaged documents. SCGV makes some attempt to standardize names in the “Name” field. For example, between the different court records of a single case, they might list the same individual as “Joan,” “Johan,” “Joann,” “Joanne,” or “Jone.” In this case, the “Name” field in SCGV always uses “Joan” in the name field.¹⁰ The “Alternative Name” field lists the other ways the name was spelled in the documents, attempts to anticipate ways it might be spelled in future documents, and attempts to account for illegibility. For example, if a document listed “Jone Smith,” the “Name” field would be populated with “Joan Smith” and the “Alternative Name” field would contain “Jone Smith” to record how the document listed her name. SCGV would also record “Johan Smith” in the “Alternative Name” field since it is possible that a future document might refer to her as “Johan.” The “Alternative Name” field could also record other potential names when a document was illegible. For example, the “Name” field for PersonID #167 is listed as “John Gattleing.” However, the “Alternative Name” field lists several other potential readings including “John Cattleing,” “John Gattleing,” and “John Oatleing.”

In addition to conventions on entering name data, certain basic rules of querying the **People** table help to ensure more accurate results. First, the user should always query both the “Name” and “Alternative Name” field to ensure that they are getting the most complete results. Second, the user should query using the shortest querying term possible.

¹⁰ Other standardized names include Humfrey (not Humphrey), Steven (not Stephen), Elizabeth (not Elisabeth), Anne (not An, or Anna), and Katherine (not Catherine). In addition to alternate spellings, this field also attempts to accommodate alternative names such as maiden names and aliases.

For example, a user looking for “Alice Pearse” should search for “Alice P,” which would bring up entries for “Alice Peirce,” “Alice Pearce,” and “Alice Peace,” as well as “Alice Pearse.” Third, adding additional information to the query can help. For example, if looking for a person from Wiltshire, the user can add a condition to return only people whose cases are in records from the Wiltshire and Swindon History Centre. To go back to the example of Alice Pearse, querying SCGV for “Alice P” brings up eleven results. However, after adding the condition that the records must be from the Wiltshire and Swindon History Centre, these eleven results narrow to only two. Another way of adding information is to check for two different people from the same case and trying to find matching CaseIDs. The two CaseIDs that are returned from a search of “Alice P” in the Wiltshire records are C1668 and C1755. In Alice Pearse’s Wiltshire bastardy case, “William Bennett” was named as the father. Searching for a “William B” in Wiltshire records returns ten CaseIDs, including C1755 but not C1668. These are just a few examples to illustrate how querying people works in SCGV.¹¹

Age and Occupation are two fields that also present some complexities. Age is often blank because it was rarely listed. The most common “Age” listed in SCGV is “infant” because it is used for the illegitimate children in bastardy cases. As for occupations, court records usually list men’s occupations, while women are most often described by their marital status.¹² Therefore, the “Occupation” field for women in SCGV contains

¹¹ There are a multitude of ways to clarify queries including specifying the type of crime (i.e. searching all ‘Alice P’s involved in bastardy cases).

¹² The table records soldiers separately from other occupations because men are sometimes described with an occupation but having taken up arms to be a soldier for King or Parliament during the civil wars.

descriptors such as “widow,” “spinster,” “singlewoman,” or “wife,” based on how they are described in the court records.¹³

The **Relationships** table links together two different PersonIDs using a relationship. For example, if John and Mary Smith are married, the **Relationships** table will list Mary as the “Wife Of” John and John as the “Husband Of” Mary. These relationships allow the database to provide answers to certain types of queries. For example, in order to find out how many bastardy cases occurred between a master and servant, the user would need to check the **Legal Cases** table for bastardy cases and the **Relationships** table to determine if there were master/servant relationships. Using just a few lines of code, SCGV is equipped to carry out these kinds of queries.¹⁴

¹³ In cases where a woman was listed as a widow, but also as the wife of a man who was dead, the “Occupation” lists “widow” and the relationship to the husband would be noted in the **Relationships** table. For example, “Joan Smith, widow, alias Joan Smith, wife of John Smith” would be listed with an “Occupation” of “widow” and there would be two entries in the **Relationships** table listing Joan Smith as the “Wife Of” John Smith and John Smith as the “Husband Of” Joan Smith.

¹⁴ It is important to note that neither the **People** table nor the **Relationships** table existed at the beginning of the documentation stage. These tables were created midway through record processing. Names and genders are consistent across the totality of the tables, but only records from Norfolk and Wiltshire have occupations and places of residence entered consistently. Though the **Relationships** table was created at the same point, I was able to extrapolate the necessary information to consistently fill out the table using logical functions and simple Python code.

APPENDIX D: *Occupational Makeup of Common-Law Litigants*

This appendix will explore the occupations of men who came before the common law courts in England between 1642 and 1660. Broadly speaking, early modern common-law litigants came from multiple rungs of the social hierarchy.¹ Data from SCGV shows that the five major occupational types of male litigants who came before these courts were: gentry, yeomanry, craftsmen, husbandmen, and laborers.² At the top of this social pyramid were the gentry. The yeomanry were freeholders, considered the highest of the non-gentry class.³ Craftsmen varied depending on wealth and skill, but usually fell just below yeomanry in class. Farm husbandry was often a transitional job rather than permanent occupation.⁴ It was common practice for young men from rural areas to work as farm husbandmen during adolescence.⁵ The term “laborers” usually referred to day-laboring, which often was a permanent occupation. At the common law courts, laborers were the bottom of the five major occupational litigants.⁶

¹ Classification of people is fraught with issues. There is a rich body of scholarly work grappling with classification and identification of African slaves brought to the United States. See, for example, Lisa Lowe, “History Hesitant,” *Social Text* 33, no. 4 (January 12, 2016): 85–107.

² This is based on a partial sampling of counties. See section on Appendix C for full details.

³ Yeomanry only implied social class rather than actual occupation. Thus a “yeoman” might be engaged in any of a number of occupations.

⁴ Though early modern individuals were also employed in animal husbandry, the term “husbandman” was used to mean only farm husbandry in early modern records.

⁵ Ann Kussmaul, *Servants in Husbandry in Early Modern England* (New York: Cambridge University Press, 1981), 4.

⁶ For more information on occupational structure in early modern England, see J W Nixon, “Size and Structure of the Household in England Over Three Centuries: a Comment,” *Population Studies* 24, no. 3 (1970): 445–47; Peter H Lindert and Jeffrey G Williamson, “Reinterpreting Britain's Social Tables, 1688–1913,” *Explorations in Economic History* 20, no. 1 (1983): 94–109; Peter H Lindert and Jeffrey G Williamson, “Revising England's Social Tables 1688–1812,” *Explorations in Economic History* 19, no. 4 (1982): 385–408; Peter Clark, “Migration in England During the Late Seventeenth and Early Eighteenth

Some historians have been skeptical of the accuracy of the information recorded in indictments specifically. Sharpe complained that “the occupation of offenders was often only described in very general terms.” In fact, Sharpe claimed that the term “laborer” was used as a “blanket term” for “male offenders” in the seventeenth century.⁷ While this theoretically could be true, if it were, one would expect to see two things: first, conflicting information between depositions and indictments on men’s occupations, and second, laborers disproportionately outweighing all other occupations in indictments. Neither is the case, according to SCGV. Only four men had occupations that differed between documents. Of those four men, only one man had “laborer” listed as an occupation.⁸ In addition, in all of these cases, it seems likely that the man actually performed both occupational roles. For example, it makes sense that an “esquire” would also be a “justice of the peace.” This was often the case. A linen draper could easily also have been a mercer. Finally, “laborer” was not the most frequently listed occupation that came before the quarter sessions (See **Figures 6-8**). While it is true that these numbers include men who were victims of crimes as well, the occupations were quite varied.

Centuries,” *Past & Present* 83, no. 1 (May 1, 1979): 57–90; Peter Mathias, “The Social Structure in the Eighteenth Century: a Calculation by Joseph Massie,” *The Economic History Review* 10, no. 1 (1957): 30–45; Kussmaul, *Servants in Husbandry in Early Modern England*.

⁷ James A Sharpe, “Quantification and the History of Crime in Early Modern England: Problems and Results,” *Historical Social Research / Historische Sozialforschung* 15, no. 4 (1990): 22.

⁸ Steven Golder was listed as both a Laborer and a Guide. [C2690] Nathaniel Scott was listed as both a Linen Draper and a Mercer. [C1844] Henry Coates was listed as both a Singleman and a Warrener. [C2635] Tristan Diamond was listed as both “Esquire” and a Justice of the Peace. [C2691]

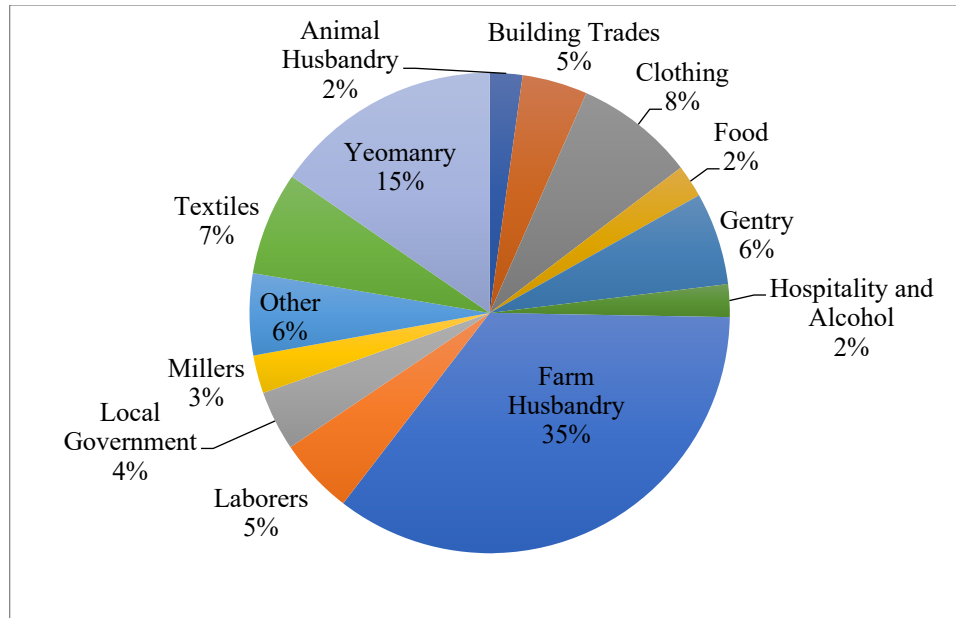


Figure D1: Males Summoned before Wiltshire Quarter Sessions, By Occupation 1642-1660⁹

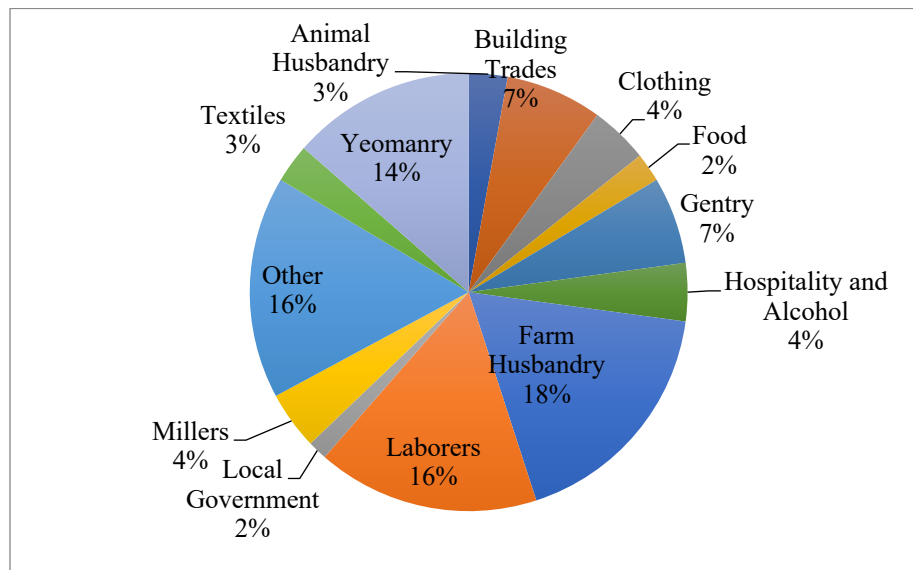


Figure D2: Males Summoned before Norfolk Quarter Sessions, By Occupation 1642-1660

⁹ As was mentioned in Appendix C, Wiltshire and Norfolk have the most complete occupational information in SCGV and thus they are the only two counties singled out here. See Appendix C for full details.

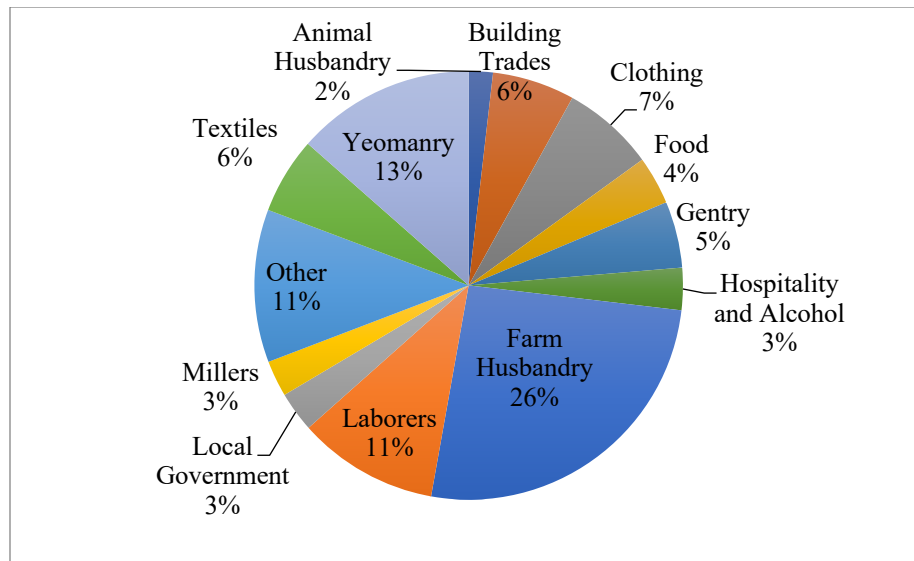


Figure D3: Males Summoned before Common Law Courts, By Occupation 1642-1660

Sharpe also has questioned the accuracy of the place of residence recorded in indictments, claiming that the “place of residence given on the indictment for the offender was normally merely the place where the offence was perpetrated.” Sharpe argued that once the indictments are checked against depositions, it is “apparent that persons described as being domiciled in the parish where they allegedly committed a crime were, in fact, outsiders.”¹⁰ SCGV did not specifically track whether there were multiple places of residence given, and thus SCGV cannot give specific figures on when depositions and indictments disagree on an offender’s place of residence. However, I suspect that this issue, too, is exaggerated by Sharpe. If this were actually a widespread problem, one would expect to come across inconsistencies when querying SCGV for people. For example, if one were reading a deposition featuring a “John Young” from Chippenham and the SCGV record listed him as from Urchfont instead, one would likely notice and investigate. But

¹⁰ Sharpe, “Quantification and the History of Crime in Early Modern England,” 22.

this has not happened once. Although one can note some variances in places of residence, they appear to result from inconsistent levels of specificity regarding those places. For example, someone might be listed as from the Devizes in one record and from Urchfont in another. Since Urchfont is in the Devizes, these do not conflict: they merely record the place with different degrees of specificity.

APPENDIX E:
Bastardy Calculations

This appendix offers supplementary information to Chapter 3. Specifically, it shows the numbers (and calculations) used to generate the various figures in Chapter 3. Here I calculate based on an assumption of fairly constant population in the second half of the 17th century. In Appendix F I show an alternative method of calculating that does not make this assumption, but arrives at similar results.

County	Essex	Norfolk	Somerset	Sussex	Wiltshire	England (National)
Wrigley Population	164,734	230,919	206,409	103,792	136,708	5,210,623
County % of National	3.16%	4.43%	3.96%	1.99%	2.62%	100.00%

Figure E1: English Population

This table shows an estimate of the relative populations of several English counties and England as a whole in the mid-seventeenth-century. The row “Wrigley Population” was taken from the figures for the year 1700 in Wrigley’s “Rickman Revisited.”¹ Wrigley only calculated county data for 1600 and 1700 but not the mid-seventeenth century due to the sources available to him. At the suggestion of Dr. Romola Davenport of the Cambridge Group for the History of Population and Social Structure, I have used the county data from 1700 as the data for 1650. This is because the population growth in the England took place largely over the first half of the century, after which, the country experienced stagnation. (See **Figure F1** and **Figure F2** in Appendix F for national population trends.) The row “County % of National” shows what percentage each county makes up of the total population of England. It was calculated by dividing the “Wrigley Population” County population by the “Wrigley Population” national population of England. For example, Essex’s population was 164,734 and the National population was 5,210,623. Thus $164,734 \div 5,210,623 \times 100 = 3.1615\%$. (For an alternative method of estimating mid-century population, see Appendix F.)

¹ E A Wrigley, “Rickman Revisited: the Population Growth Rates of English Counties in the Early Modern Period,” *The Economic History Review* 62, no. 3 (2009): 721.

Year	National Births	Essex	Norfolk	Wiltshire	Sussex	Somerset
1642	167,389	5,292	7,418	4,392	3,334	6,631
1643	172,173	5,443	7,630	4,517	3,430	6,820
1644	157,373	4,975	6,974	4,129	3,135	6,234
1645	168,614	5,331	7,472	4,424	3,359	6,679
1646	166,437	5,262	7,376	4,367	3,315	6,593
1647	157,007	4,964	6,958	4,119	3,127	6,220
1648	144,687	4,574	6,412	3,796	2,882	5,732
1649	136,752	4,323	6,060	3,588	2,724	5,417
1650	133,961	4,235	5,937	3,515	2,668	5,307
1651	150,658	4,763	6,677	3,953	3,001	5,968
1652	140,650	4,447	6,233	3,690	2,802	5,572
1653	138,433	4,377	6,135	3,632	2,757	5,484
1654	159,161	5,032	7,054	4,176	3,170	6,305
1655	168,375	5,323	7,462	4,418	3,354	6,670
1656	164,110	5,188	7,273	4,306	3,269	6,501
1657	143,571	4,539	6,363	3,767	2,860	5,687
1658	128,444	4,061	5,692	3,370	2,559	5,088
1659	117,600	3,718	5,212	3,085	2,343	4,659

Figure E2: Estimated Number of Births by County and Year

The “National Births” in this table are taken from the “Annual Birth/Death Rates” in Appendix 2, Figure 3 of Wrigley and Schofield’s *The Population History of England*.² This table was created by multiplying the “County % of National” row (**Figure E1**) by the number of births per year (“National Births” column). For example, according to Wrigley and Schofield, there were 167,389 estimated births in England in 1642. According to **Figure E1**, Essex made up about 3.16% of the English population in the seventeenth century. Thus $167,389 \times 0.03162 = 5,292$.

² Roger S Schofield and E A Wrigley, *The Population History of England, 1541-1871: a Reconstruction* (Cambridge, Mass.: Harvard University Press, 1981).

Year	Essex	Norfolk	Wiltshire	Sussex	Somerset
1642	5	10	30	14	1
1643	2	35	10	15	0
1644	5	14	3	9	2
1645	7	5	0	12	0
1646	18	0	11	12	6
1647	5	4	27	9	4
1648	2	4	27	8	1
1649	2	7	13	10	22
1650	6	14	24	9	23
1651	4	21	23	7	18
1652	1	8	19	10	11
1653	8	15	34	7	26
1654	5	25	25	9	34
1655	12	19	34	13	31
1656	8	1	28	12	71
1657	2	5	17	9	53
1658	1	4	17	9	24
1659	0	1	21	8	24

Figure E3: SCGV Bastardy Cases Heard in Quarter Sessions by County and Year

Year	Essex	Norfolk	Wiltshire	Sussex	Somerset
1642	9.45	13.48	68.31	41.99	1.51
1643	3.67	45.87	22.14	43.74	0.00
1644	10.05	20.07	7.27	28.71	3.21
1645	13.13	6.69	0.00	35.73	0.00
1646	34.21	0.00	25.19	36.20	9.10
1647	10.07	5.75	65.55	28.78	6.43
1648	4.37	6.24	71.13	27.76	1.74
1649	4.63	11.55	36.23	36.71	40.61
1650	14.17	23.58	68.29	33.73	43.34
1651	8.40	31.45	58.19	23.33	30.16
1652	2.25	12.83	51.49	35.69	19.74
1653	18.28	24.45	93.61	25.39	47.41
1654	9.94	35.44	59.87	28.39	53.93
1655	22.54	25.46	76.97	38.76	46.48
1656	15.42	1.37	65.03	36.71	109.22
1657	4.41	7.86	45.13	31.47	93.19
1658	2.46	7.03	50.45	35.18	47.17
1659	0.00	1.92	68.06	34.15	51.52

Figure E4: Method 1 for SCGV Bastardy Rates per 10,000 births by County and Year

This table was created by dividing the *SCGV Bastardy Cases Heard in Quarter Sessions by County and Year* (Figure E3) by the *Number of Births by County and Year* (Figure E2) and then multiplying that value by 10,000. For example, in 1642 there were an estimated 5,292 births in Essex (Figure E2) and 5 bastardy cases heard by the Essex Quarter Sessions (Figure E3). Thus $(5 \div 5,292) \times 10,000 = 9.45$.

Year	Bastardy	Fornication	Adultery	Rape	Attempted Rape	Buggery	Bigamy	Incest
1642	65	7	1	3	0	0	3	0
1643	69	2	2	2	1	1	0	0
1644	36	3	4	6	2	0	1	0
1645	26	2	0	3	2	0	1	1
1646	56	6	0	2	2	0	0	2
1647	56	2	4	7	2	2	5	1
1648	48	2	3	2	4	0	2	0
1649	61	3	2	2	4	1	1	1
1650	87	6	8	8	8	2	1	3
1651	82	13	9	11	4	1	0	2
1652	69	25	7	9	4	2	9	1
1653	115	38	14	6	5	0	4	1
1654	119	42	17	9	8	1	9	3
1655	132	53	13	10	10	5	6	3
1656	138	25	16	14	4	3	6	3
1657	102	25	5	4	4	0	4	2
1658	64	17	1	5	2	3	1	1
1659	72	14	2	3	5	1	1	2
TOTAL	1397	285	108	106	71	22	54	26

Figure E5: Cases in SCGV 1642-1659 by Crime and Year

Year	Bastardy	Fornication	Adultery	Rape	Attempted Rape	Buggery	Bigamy	Incest
1642	4.65%	2.46%	0.93%	2.83%	0.00%	0.00%	5.56%	0.00%
1643	4.94%	0.70%	1.85%	1.89%	1.41%	4.55%	0.00%	0.00%
1644	2.58%	1.05%	3.70%	5.66%	2.82%	0.00%	1.85%	0.00%
1645	1.86%	0.70%	0.00%	2.83%	2.82%	0.00%	1.85%	3.85%
1646	4.01%	2.11%	0.00%	1.89%	2.82%	0.00%	0.00%	7.69%
1647	4.01%	0.70%	3.70%	6.60%	2.82%	9.09%	9.26%	3.85%
1648	3.44%	0.70%	2.78%	1.89%	5.63%	0.00%	3.70%	0.00%
1649	4.37%	1.05%	1.85%	1.89%	5.63%	4.55%	1.85%	3.85%
1650	6.23%	2.11%	7.41%	7.55%	11.27%	9.09%	1.85%	11.54%
1651	5.87%	4.56%	8.33%	10.38%	5.63%	4.55%	0.00%	7.69%
1652	4.94%	8.77%	6.48%	8.49%	5.63%	9.09%	16.67%	3.85%
1653	8.23%	13.33%	12.96%	5.66%	7.04%	0.00%	7.41%	3.85%
1654	8.52%	14.74%	15.74%	8.49%	11.27%	4.55%	16.67%	11.54%
1655	9.45%	18.60%	12.04%	9.43%	14.08%	22.73%	11.11%	11.54%
1656	9.88%	8.77%	14.81%	13.21%	5.63%	13.64%	11.11%	11.54%
1657	7.30%	8.77%	4.63%	3.77%	5.63%	0.00%	7.41%	7.69%
1658	4.58%	5.96%	0.93%	4.72%	2.82%	13.64%	1.85%	3.85%
1659	5.15%	4.91%	1.85%	2.83%	7.04%	4.55%	1.85%	7.69%
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Figure E6: Distribution over the years 1642-1659 of Cases heard by Crime Type

Figure E6 shows the number of cases used to calculate the graphic in **Figure 3.4** (or in other words, the probability mass function). This table was created by dividing the number of cases heard of each type each year (**Figure E5**) by the “TOTAL” cases of that type heard between 1642 and 1659 (**Figure E5**). This number was then multiplied by 100 to get the percentage of the total cases. For example, in 1642, there were 65 bastardy cases heard. There were 1397 bastardy cases heard between 1642 and 1659. Thus $(65 \div 1397) \times 100 = 4.65$.

Year	Bastardy	Fornication	Adultery	Rape	Attempted Rape	Buggery	Bigamy	Incest
1642-43	0.0029	0.0175	0.0093	0.0094	0.0141	0.0455	0.0556	0.0000
1643-44	0.0236	0.0035	0.0185	0.0377	0.0141	0.0455	0.0185	0.0000
1644-45	0.0072	0.0035	0.0370	0.0283	0.0000	0.0000	0.0000	0.0385
1645-46	0.0215	0.0140	0.0000	0.0094	0.0000	0.0000	0.0185	0.0385
1646-47	0.0000	0.0140	0.0370	0.0472	0.0000	0.0909	0.0926	0.0385
1647-48	0.0057	0.0000	0.0093	0.0472	0.0282	0.0909	0.0556	0.0385
1648-49	0.0093	0.0035	0.0093	0.0000	0.0000	0.0455	0.0185	0.0385
1649-50	0.0186	0.0105	0.0556	0.0566	0.0563	0.0455	0.0000	0.0769
1650-51	0.0036	0.0246	0.0093	0.0283	0.0563	0.0455	0.0185	0.0385
1651-52	0.0093	0.0421	0.0185	0.0189	0.0000	0.0455	0.1667	0.0385
1652-53	0.0329	0.0456	0.0648	0.0283	0.0141	0.0909	0.0926	0.0000
1653-54	0.0029	0.0140	0.0278	0.0283	0.0423	0.0455	0.0926	0.0769
1654-55	0.0093	0.0386	0.0370	0.0094	0.0282	0.1818	0.0556	0.0000
1655-56	0.0043	0.0982	0.0278	0.0377	0.0845	0.0909	0.0000	0.0000
1656-57	0.0258	0.0000	0.1019	0.0943	0.0000	0.1364	0.0370	0.0385
1657-58	0.0272	0.0281	0.0370	0.0094	0.0282	0.1364	0.0556	0.0385
TOTAL	0.0128	0.0224	0.0313	0.0307	0.0229	0.0710	0.0486	0.0313

Figure E7: Change in Percentage of Cases heard year-to-year by Crime

This table shows the absolute difference from year to year difference in the probability mass function for cases of each type. (This is also known as the slope of the probability mass function). These are the numbers used in **Figure 3.5**. It was calculated by taking the absolute difference between two consecutive yearly values in **Figure E6**. For example, to calculate the absolute difference for the row “1642-43,” we need the **Figure E6** values for 1642 and 1643. 4.65% of the bastardy cases heard between 1642 and 1659 were heard in 1642 (See **Figure E6**). Meanwhile, 4.94% of the bastardy cases heard between 1642 and 1659 were heard in 1643 (See **Figure E6**). Thus $0.0465 (4.65\%) - 0.0494 (4.94\%) = 0.0029$.

Years Surveyed	Parishes included	Illegitimate births	Legitimate births	Total Births	Bastardy rate (per 10,000)
1540 - 1544	6-9	185	4,202	4,387	421.70
1545 - 1549	11-13	77	2,529	2,606	295.47
1550 - 1554	13-14	92	3,864	3,956	232.56
1555 - 1559	14-25	31	1,596	1,627	190.53
1560 - 1564	30-41	135	6,844	6,979	193.44
1565 - 1569	43-7	81	6,189	6,270	129.19
1570 - 1574	47-54	127	6,541	6,668	190.46
1575 - 1579	47-54	197	7,726	7,923	248.64
1580 - 1584	56-60	235	8,336	8,571	274.18
1585 - 1589	56-60	223	7,776	7,999	278.78
1590 - 1594	60-68	256	8,263	8,519	300.50
1595 - 1599	60-68	261	8,533	8,794	296.79
1600 - 1604	71-80	311	9,266	9,577	324.74
1605 - 1609	71-80	294	9,666	9,960	295.18
1610 - 1614	80-85	267	9,652	9,919	269.18

Figure E8: Quinquennial Illegitimacy Ratios in England (Part 1: 1540-1614)

This is the first part (of three) of the parish register data from the Cambridge Group study covering the years 1540-1839.³ The column “Total Births” was calculated by adding legitimate and illegitimate births. (i.e. Between 1540 and 1544 there were 185 illegitimate births and 4,202 legitimate births so $185 + 4,202 = 4,387$. The bastardy rate was calculated by dividing illegitimate births by total births and then multiplying by 10,000. For example, between 1540 and 1544 there were 185 illegitimate births and 4,387 total births. Thus, $(185 \div 4,387) \times 10,000 = 421.70$. Though the Cambridge Group included a bastardy *ratio* in their table, I calculated a bastardy rate to bring it in line with the rest of the bastardy rates in this study.

³ Peter Laslett et al., eds., *Bastardy and Its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan* (Cambridge: Harvard University Press, 1980) 14. Table I.I(a). See next two pages for the second and third parts (1640-1734 and 1735-1839, respectively.)

Years Surveyed	Parishes included	Illegitimate births	Legitimate births	Total Births	Bastardy rate (per 10,000)
1615 - 1619	80-85	243	9,868	10,111	240.33
1620 - 1624	85-7	239	9,607	9,846	242.74
1625 - 1629	85-7	257	9,930	10,187	252.28
1630 - 1634	87-8	220	10,081	10,301	213.57
1635 - 1639	87-8	206	10,567	10,773	191.22
1640 - 1644	88-9	193	10,537	10,730	179.87
1645 - 1649	88-9	143	9,250	9,393	152.24
1650 - 1654	89-96	87	8,661	8,748	99.45
1655 - 1659	89-96	82	9,048	9,130	89.81
1660 - 1664	98	125	8,252	8,377	149.22
1665 - 1669	98	165	11,333	11,498	143.50
1670 - 1674	98	132	9,650	9,782	134.94
1675 - 1679	98	116	9,405	9,521	121.84
1680 - 1684	98	148	9,716	9,864	150.04
1685 - 1689	98	147	9,744	9,891	148.62
1690 - 1694	98	152	9,338	9,490	160.17
1695 - 1699	98	198	9,897	10,095	196.14
1700 - 1704	98	195	10,962	11,157	174.78
1705 - 1709	98	188	10,304	10,492	179.18
1710 - 1714	98	199	9,710	9,909	200.83
1715 - 1719	98	239	10,948	11,187	213.64
1720 - 1724	98	235	11,201	11,436	205.49

Figure E8: Quinquennial Illegitimacy Ratios in England (Part 2: 1615-1724)

This is the second part of the parish register data from the Cambridge Group study covering the years 1690-1839.⁴ See previous page for the first part (1540-1614) and the following page for the third and final part (1724-1839). The full period of their study is 1540-1839. See previous page for an explanation of how the “Total Births” and “Bastardy rate (per 10,000)” were calculated.

⁴ Laslett et al., eds., *Bastardy and Its Comparative History*, 14-15. Table I.I(a).

Years Surveyed	Parishes included	Illegitimate births	Legitimate births	Total Births	Bastardy rate (per 10,000)
1724 – 1729	98	269	11,268	11,537	233.16
1730 – 1734	98	331	12,362	12,693	260.77
1735 – 1739	98	352	13,019	13,371	263.26
1740 – 1744	98	344	11,900	12,244	280.95
1745 – 1749	98	360	12,794	13,154	273.68
1750 – 1754	98	409	13,013	13,422	304.72
1755 – 1759	98	474	13,351	13,825	342.86
1760 – 1764	98	573	14,211	14,784	387.58
1765 – 1769	98	630	14,610	15,240	413.39
1770 – 1774	98	672	15,620	16,292	412.47
1775 – 1779	98	764	16,623	17,387	439.41
1780 – 1784	98	811	16,590	17,401	466.07
1785 – 1789	98	894	17,485	18,379	486.42
1790 – 1794	98	971	19,086	20,057	484.12
1795 – 1799	98	981	19,416	20,397	480.95
1800 – 1804	98	1038	19,559	20,597	503.96
1805 – 1809	98	1144	21,466	22,610	505.97
1810 – 1814	74	1104	21,812	22,916	481.76
1815 – 1819	74	1122	24,400	25,522	439.62
1820 – 1824	74	1504	27,564	29,068	517.41
1825 – 1829	74	1334	28,893	30,227	441.33
1830 – 1834	73-4	1210	29,903	31,113	388.90
1835 – 1839	18-73	1667	28,549	30,216	551.69

Figure E8: Quinquennial Illegitimacy Ratios in England (Part 3: 1724-1839)

This is the third and final part of the parish register data from the Cambridge Group study covering the years 1724-1839.⁵ See previous two pages for the first part (1540-1614) and the second part (1615-1724). The full period of their study is 1540-1839. See first part for an explanation of how the “Total Births” and “Bastardy rate (per 10,000)” were calculated.

⁵ Laslett et al., eds., *Bastardy and Its Comparative History*, 14-15. Table I.I(a).

APPENDIX F:
Alternative Bastardy Calculations

This appendix offers an alternative method (M2) to Appendix E of calculating population growth. Given that the majority of population growth between 1600 and 1700, the years for which we have population estimates, occurred between 1600 and 1650, calculating mid-century population can be done in several ways. Appendix E merely used the numbers from 1700 as estimates for the mid-century population figures. This table offers an alternative method of calculation and demonstrates that the numbers from all counties barely change with the alternate method.

Year	National Population
1601	4,109,981
1606	4,253,325
1611	4,416,351
1616	4,509,865
1621	4,692,975
1626	4,719,684
1631	4,892,580
1636	5,058,102
1641	5,091,725
1646	5,176,571
1651	5,228,481
1656	5,281,347
1661	5,140,743
1666	5,067,047
1671	4,982,687
1676	5,003,488
1681	4,930,385
1686	4,864,762
1691	4,930,502
1696	4,961,692
1701	5,057,790

Figure F1: Seventeenth-Century English Population from Wrigley & Schofield¹

¹ Roger S Schofield and E A Wrigley, *The Population History of England, 1541-1871: a Reconstruction* (Cambridge: Harvard University Press, 1981), Appendix 3, Table 1, 528-29..

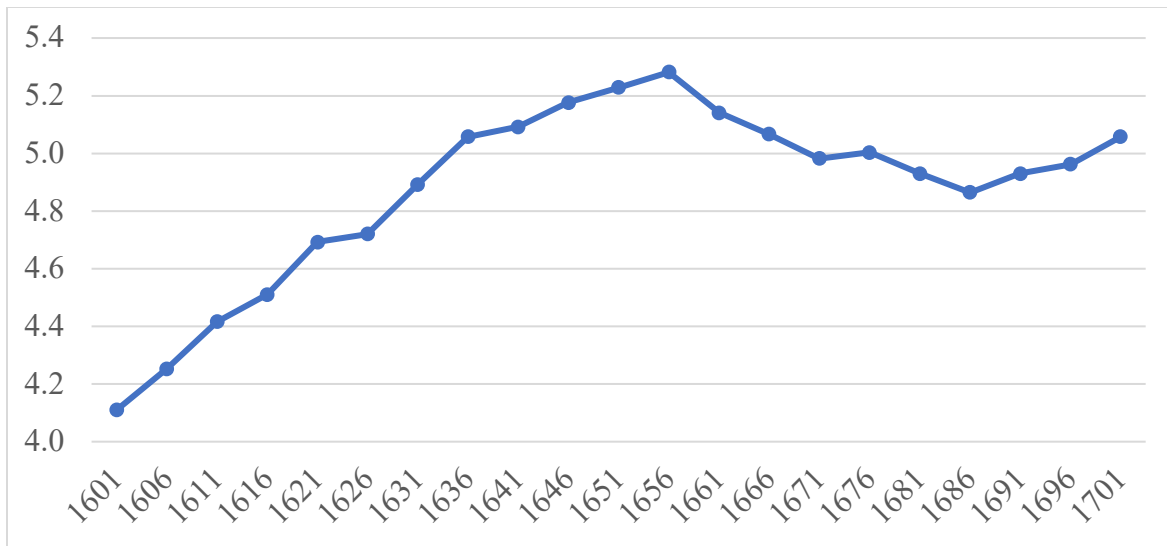


Figure F2: Seventeenth-Century English Population Growth (in millions)²

	National	Essex	Norfolk	Wiltshire	Sussex	Somerset
1600 Population	4,161,784	156,647	173,113	116,475	103,165	170,910
1700 Population	5,210,623	164,734	230,919	136,708	103,792	206,409
Total 1600 to 1700 Pop Growth	1,048,839	8,087	57,806	20,233	627	35,499

Figure F3: Century County Population Growth

This table shows total population growth between 1600 and 1700. The “1600 Population” and “1700 Population” are taken from Tony Wrigley’s “Rickman Revisited” numbers.³ The numbers in the “Total 1600 to 1700 Pop Growth” row are calculated by subtracting the “1600 Population” from the “1700 Population.” For example, Essex’s population was 156,647 in 1600 and 164,734 in 1700. Thus $164,734 - 156,647 = 8,087$.

² Graph of the data from **Figure F1**.

³ E A Wrigley, “Rickman Revisited: the Population Growth Rates of English Counties in the Early Modern Period,” *The Economic History Review* 62, no. 3 (2009): 721.

Year Window of Relevance	National Population Change	National Proportion of Centennial Change	Est. Essex Pop Change	Est. Norfolk Pop Change	Est. Wiltshire Pop Change	Est. Sussex Pop Change	Est. Somerset Pop Change
1600 - 1601	-51,803	-0.04939	-399	-2855	-999	-31	-1753
1601 - 1606	143,344	0.13667	1105	7900	2765	86	4852
1606 - 1611	163,026	0.15543	1257	8985	3145	97	5518
1611 - 1616	93,514	0.08916	721	5154	1804	56	3165
1616 - 1621	183,110	0.17458	1412	10092	3532	109	6198
1621 - 1626	26,709	0.02547	206	1472	515	16	904
1626 - 1631	172,896	0.16485	1333	9529	3335	103	5852
1631 - 1636	165,522	0.15781	1276	9123	3193	99	5602
1636 - 1641	33,623	0.03206	259	1853	649	20	1138
1641 - 1646	84,846	0.08090	654	4676	1637	51	2872
1646 - 1651	51,910	0.04949	400	2861	1001	31	1757
1651 - 1656	52,866	0.05040	408	2914	1020	32	1789
1656 - 1661	-140,604	-0.13406	-1084	-7749	-2712	-84	-4759
1661 - 1666	-73,696	-0.07026	-568	-4062	-1422	-44	-2494
1666 - 1671	-84,360	-0.08043	-650	-4649	-1627	-50	-2855
1671 - 1676	20,801	0.01983	160	1146	401	12	704
1676 - 1681	-73,103	-0.06970	-564	-4029	-1410	-44	-2474
1681 - 1686	-65,623	-0.06257	-506	-3617	-1266	-39	-2221
1686 - 1691	65,740	0.06268	507	3623	1268	39	2225
1691 - 1696	31,190	0.02974	240	1719	602	19	1056
1696 - 1700	248,931	0.23734	1919	13720	4802	149	8425

Figure F4: Estimated Quinquennial County Population Growth

This table shows the estimated growth of each county over the course of the seventeenth century. The numbers for 1600 and 1700 are taken from **Figure F3** and the rest are taken from **Figure F1**. The column “National Population Change” shows the change in the “Year Window of Relevance.” For example, according to **Figure F1**, the national population in 1601 was 4,109,981 and 4,253,325 in 1606. Therefore, the “National Population Change” between 1601 and 1606 is $4,253,325 - 4,109,981 = 143,344$. The column “National Proportion of Centennial Change” shows how much of the century’s growth takes place in the “Year Window of Relevance.” This was calculated by taking the “National Population

Change” and dividing it by the National “Total 1600 to 1700 Pop Growth” from **Figure F3**. For example, the “National Population Change” between 1601 and 1606 was 143,344 and the total national population growth between 1600 and 1700 was 1,048,839. Thus, $143,344 \div 1,048,839 = 0.13667$. The remaining columns are estimates for the population change of each county within the various “Year Window[s] of Relevance.” These were calculated by multiplying the “National Proportion of Centennial Change” by the “Total 1600 to 1700 Pop Growth” for each county from **Figure 3**. For example, Essex’s “Total 1600 to 1700 Pop Growth” was 8,087 and the “National Proportion of Centennial Change” from 1601 to 1606 was 0.13667. Thus $0.13667 \times 8,087 = 1,105$.

Year	Essex	Norfolk	Wiltshire	Sussex	Somerset
1600	156,647	173,113	116,475	103,165	170,910
1601	156,248	170,258	115,476	103,134	169,157
1606	157,353	178,158	118,241	103,220	174,008
1611	158,610	187,143	121,386	103,317	179,526
1616	159,331	192,297	123,190	103,373	182,691
1621	160,743	202,389	126,722	103,483	188,889
1626	160,949	203,861	127,237	103,499	189,793
1631	162,282	213,390	130,573	103,602	195,645
1636	163,558	222,513	133,766	103,701	201,247
1641	163,817	224,366	134,414	103,721	202,385
1646	164,471	229,042	136,051	103,772	205,256
1651	164,872	231,903	137,052	103,803	207,013
1656	165,279	234,817	138,072	103,834	208,803
1661	164,195	227,068	135,360	103,750	204,044
1666	163,627	223,006	133,938	103,706	201,550
1671	162,977	218,356	132,311	103,656	198,694
1676	163,137	219,503	132,712	103,668	199,398
1681	162,573	215,474	131,302	103,624	196,924
1686	162,067	211,857	130,036	103,585	194,703
1691	162,574	215,480	131,304	103,625	196,928
1696	162,815	217,199	131,906	103,643	197,984
1700	164,734	230,919	136,708	103,792	206,409

Figure F5: Estimated Quinquennial County Population

This table shows estimated county population over the course of the seventeenth-century. The table was calculated by adding the “Estimated Pop Change” for each county from **Figure F4** to the previous year. For example, the population of Essex in 1601 was 156,248. The **Figure F4** “Est. Essex Pop Change” from 1601 to 1606 was 1,105. Thus, $156,248 + 1,105 = 157,353$. Therefore the estimate Essex population in 1606 was 157,353. This would then be repeated for the population change from 1606 to 1611. (In other words, since the Essex population changed an estimated 1,257 from 1606 to 1611 and the estimated population of Essex in 1606 was 157,353, therefore $157,353 + 1,257 = 158,610$).

Year	National Births	National Population	Birth rate per 10,000	Essex	Norfolk	Wiltshire	Sussex	Somerset
1642	167,389	5,091,725	328.75	5,385	7,376	4,419	3,410	6,653
1643	172,173	5,091,725	338.14	5,539	7,587	4,545	3,507	6,843
1644	157,373	5,176,571	304.01	5,000	6,963	4,136	3,155	6,240
1645	168,614	5,176,571	325.73	5,357	7,460	4,432	3,380	6,686
1646	166,437	5,176,571	321.52	5,288	7,364	4,374	3,336	6,599
1647	157,007	5,176,571	303.30	4,988	6,947	4,126	3,147	6,225
1648	144,687	5,176,571	279.50	4,597	6,402	3,803	2,900	5,737
1649	136,752	5,228,481	261.55	4,312	6,065	3,585	2,715	5,414
1650	133,961	5,228,481	256.21	4,224	5,942	3,511	2,660	5,304
1651	150,658	5,228,481	288.15	4,751	6,682	3,949	2,991	5,965
1652	140,650	5,228,481	269.01	4,435	6,238	3,687	2,792	5,569
1653	138,433	5,228,481	264.77	4,365	6,140	3,629	2,748	5,481
1654	159,161	5,281,347	301.36	4,981	7,077	4,161	3,129	6,293
1655	168,375	5,281,347	318.81	5,269	7,486	4,402	3,310	6,657
1656	164,110	5,281,347	310.74	5,136	7,297	4,290	3,226	6,488
1657	143,571	5,281,347	271.85	4,493	6,383	3,753	2,823	5,676
1658	128,444	5,281,347	243.20	4,020	5,711	3,358	2,525	5,078
1659	117,600	5,140,743	228.76	3,756	5,194	3,097	2,373	4,668

Figure F6: Estimated Births by County

This table shows the estimated number of births in each county in each year. The numbers in the “National Births” column in this table were taken from the “Annual Birth/Death Rates” in Appendix 2, Figure 3 of Wrigley and Schofield’s *The Population History of England*.⁴ The numbers in the “National Population” column in this table were taken from **Figure F1**’s quinquennial figures. Since there was no yearly figure, the quinquennial figures are used for the two years on either end. In other words, the population for 1646 was also used for 1644, 1645, 1647, and 1648. The “Birth rate per 10,000” was calculated

⁴ Wrigley and Schofield, *The Population History of England, 1541-1871*.

by multiplying the “National Births” by 10,000 and then dividing by the “National Population.” For example, there were 167,389 births in 1642 and the national population was approximately 5,091,725. Thus, $167,389 \times 10,000 \div 5,091,725 = 328.75$. The approximate number of births in each county were determined by multiplying the county’s estimated population⁵ by the “Birth rate per 10,000” and then dividing by 10,000. For example, Essex’s population in 1642 was approximately 163,817 and the National birth rate per 10,000 was 328.75. Thus, $163,817 \times 328.75 \div 10,000 = 5,385$.

⁵ Like the national population, county population estimates used the quinquennial figures for the two years on either side.

Year	Essex	Norfolk	Wiltshire	Sussex	Somerset
1642	9.28	13.56	67.89	41.06	1.50
1643	3.61	46.13	22.00	42.77	-
1644	10.00	20.11	7.25	28.53	3.21
1645	13.07	6.70	-	35.50	-
1646	34.04	-	25.15	35.97	9.09
1647	10.02	5.76	65.43	28.59	6.43
1648	4.35	6.25	71.00	27.58	1.74
1649	4.64	11.54	36.27	36.83	40.63
1650	14.20	23.56	68.35	33.84	43.36
1651	8.42	31.43	58.24	23.40	30.18
1652	2.25	12.82	51.54	35.81	19.75
1653	18.33	24.43	93.70	25.47	47.44
1654	10.04	35.33	60.08	28.76	54.03
1655	22.77	25.38	77.24	39.27	46.57
1656	15.58	1.37	65.26	37.19	109.43
1657	4.45	7.83	45.29	31.88	93.37
1658	2.49	7.00	50.63	35.64	47.26
1659	-	1.93	67.82	33.71	51.42

Figure F7: Method 2 for SCGV Bastardy Rates per 10,000 births by County and Year

This table shows SCGV Bastardy rates using the alternative method of calculation from this Appendix. This table was created by dividing the *SCGV Bastardy Cases Heard in Quarter Sessions by County and Year* (Figure E3 in Appendix E) by the number of *Estimated Births by County* (Figure F6) and then multiplying that value by 10,000. For example, in 1642 there were an estimated 5,385 births in Essex and 5 bastardy cases heard by the Essex Quarter Sessions (Figure E3). Thus $(5 \div 5,385) \times 10,000 = 9.28$.

	Essex		Norfolk		Wiltshire		Sussex		Somerset	
	M2	M1	M2	M1	M2	M1	M2	M1	M2	M1
1642	9.28	9.45	13.56	13.48	67.89	68.31	41.06	41.99	1.50	1.51
1643	3.61	3.67	46.13	45.87	22.00	22.14	42.77	43.74	0.00	0.00
1644	10.00	10.05	20.11	20.07	7.25	7.27	28.53	28.71	3.21	3.21
1645	13.07	13.13	6.70	6.69	0.00	0.00	35.50	35.73	0.00	0.00
1646	34.04	34.21	0.00	0.00	25.15	25.19	35.97	36.20	9.09	9.10
1647	10.02	10.07	5.76	5.75	65.43	65.55	28.59	28.78	6.43	6.43
1648	4.35	4.37	6.25	6.24	71.00	71.13	27.58	27.76	1.74	1.74
1649	4.64	4.63	11.54	11.55	36.27	36.23	36.83	36.71	40.63	40.61
1650	14.20	14.17	23.56	23.58	68.35	68.29	33.84	33.73	43.36	43.34
1651	8.42	8.40	31.43	31.45	58.24	58.19	23.40	23.33	30.18	30.16
1652	2.25	2.25	12.82	12.83	51.54	51.49	35.81	35.69	19.75	19.74
1653	18.33	18.28	24.43	24.45	93.70	93.61	25.47	25.39	47.44	47.41
1654	10.04	9.94	35.33	35.44	60.08	59.87	28.76	28.39	54.03	53.93
1655	22.77	22.54	25.38	25.46	77.24	76.97	39.27	38.76	46.57	46.48
1656	15.58	15.42	1.37	1.37	65.26	65.03	37.19	36.71	109.43	109.22
1657	4.45	4.41	7.83	7.86	45.29	45.13	31.88	31.47	93.37	93.19
1658	2.49	2.46	7.00	7.03	50.63	50.45	35.64	35.18	47.26	47.17
1659	0.00	0.00	1.93	1.92	67.82	68.06	33.71	34.15	51.42	51.52

Figure F8: Method 1 v. Method 2 for Calculating SCGV Bastardy Rates

This compares the two different methods of calculating SCGV Bastardy rates from **Figure E4** (in Appendix E) and **Figure F7**. M1 was the method of using the 1700 county population estimates for 1700 as the population estimates for the 1640s and 1650s and M2 was the method of using relative growth rates to estimate mid-century data. This table demonstrates that the two methods produce very similar results.

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