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"Idle, Lewd, Brabbling Women:" Slander and Bastardy in Colonial Tidewater Virginia, 1640-1725

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**“IDLE, LEWD, BRABLING WOMEN”: SLANDER AND BASTARDY IN
COLONIAL TIDEWATER VIRGINIA, 1640-1725**

A Thesis

Presented to

**The Faculty of the Department of History
The College of William and Mary in Virginia**

**In Partial Fulfillment
of the Requirements for the Degree of
Master of Arts**

by

Anne Elizabeth Ward

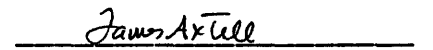
1994


Approval Sheet

This thesis is submitted in partial fulfillment of
the requirements for the degree of
Master of Arts


Anne Elizabeth Ward

Approved June, 1994


James L. Axtell


James P. Whittenburg


Carol Sheriff

For my parents, James and Roberta Ward.
This is where I've been when I haven't been with us.

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Abstract

Women who challenged the social and moral norms of colonial Virginia were punished harshly. Women were urged to come to the colony to act as stabilizing influences, mostly by subduing the rowdy population of young single males. However, lawmakers soon realized that women posed their own challenges to the fragile social order, especially through the crimes of bastardy and slander.

Women used slanderous words in different ways than men. Women's slanders were usually sexual, questioning a man's fidelity to his wife or suggesting another woman's promiscuity. Women who bore bastards caused economic burdens for the community because the upkeep of their fatherless children became its responsibility.

Women used their sexuality to challenge community norms because it was their one weapon; they were excluded from having public lives. They were under their husbands' absolute control, unable to own property or to have a voice in colonial affairs. Their reputations and worth were based on their sexuality: a woman was respected for bearing many children and for remaining faithful to her husband. By rejecting such community expectations, women who spoke sexually slanderous words or dared to bear children out of wedlock presented unusual challenges to the order of the colonial tidewater Virginia community.

**“IDLE, LEWD, BRABLING WOMEN”: SLANDER AND BASTARDY IN
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Introduction

Women who challenged the community norms of colonial tidewater Virginia posed a particular concern for law-makers. Authorities expected women to provide a stabilizing influence for a rowdy colony by espousing Anglican values of piety and family. However, women did not always conform to their community's ideals: some of them hurled venomous slanders at both men and women, while others had bastard children, which placed economic burdens upon their communities. In these ways, women used their sexuality to challenge established social norms of the colony. Afforded no voice in politics and sheltered as the wards of their husbands, women turned to the one aspect of themselves they had absolute control over—their sexuality—to make public justifications (either through harsh words or “greate bellyes”) about behavior that concerned them: men who were unfaithful to their wives, masters who took advantage of their servants, and other women who falsely posed as “good wives.” Though not conducted through the usual channels, women's challenges to socially-accepted female standards of behavior gained them much attention, and forced their communities to acknowledge their influence.

Colonial Virginia experienced growing pains during its early years: a fluid social order, lack of church courts, skewed sex ratios, young population, absence of extended kin networks, housing shortages, and labor constraints made prosecution of sexual offenses,

particularly slander and bastardy, a high priority.¹ Numbers of immigrants destabilized the already shaky social order of the fast-growing colony. In 1648, Virginia had a population of 15,000 Englishmen, but by 1660 the numbers had quadrupled to 60,000. The population reached a plateau between 1660 and 1671, when only 10,000 more colonists arrived.² Most alarming was not the jump in general population, but the rapid increase in the number of servants immigrating to the colony. In 1671, in a total population of 40,000, there were 6000 "Christian servants for a short time," and by 1681, their number had almost tripled to 15,000.³ Coming to America without the specific moral mission that characterized many of the New England colonies, the large number of colonists, mostly single men, seeking their fortunes in Virginia lent the colony its

¹For discussions of social conditions, see James P.P. Horn, *Adapting To A New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, forthcoming), 81 (all page numbers are galley pages and apt to change with the final edition); John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York, 1988), 9-11; Robert V. Wells, "Illegitimacy and Bridal Pregnancy in Colonial America," in Peter Laslett, Karla Osterveen, and Richard M. Smith, eds., *Bastardy and its Comparative History: Studies in the History of Illegitimacy and Marital Non-conformism in Britain, France, Germany, Sweden, North America, Jamaica, and Japan* (Cambridge, Mass., 1980), 349- 361; Kathleen M. Brown, "Gender and Genesis of a Race and Class System in Virginia, 1630-1750," (Ph.D. Diss., University of Wisconsin-Madison, 1990), 127- 30.

²Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* (New York, 1932), 136- 39.

³Greene, *American Population*, 136; the quotation is from William Walter Hening, *The Statutes at Large: Being a Collection of all the Laws of Virginia from the first session of the Legislature in the Year 1619....* 13 vols., (Richmond, 1809-1823), II, 515.

rowdy, lawless flavor.⁴ Some of these single men were convicted criminals whose sentences had been commuted in exchange for service in Virginia, and in the 1660s were eagerly recruited to tend the tobacco crop. The constant movement of such widely diverse social classes into the community increased sexual license and blurred social boundaries in the community.⁵ Their physical and social mobility made sexual relations across social lines more commonplace in Virginia than in England.

The absence of English ecclesiastical courts also permitted looser sexual relations. Without these formal institutions to police public morality, the burden of enforcing sexual mores fell to colonial civil authorities; in bastardy and slander cases as well as such offenses as drunkenness, fornication, and adultery, the English ecclesiastical courts would have been responsible for punishing offenders. But this was not the case in Virginia, where ministers could only chastise church members, especially with penance punishments. Ministers assigned offenders to public displays of contrition in churches and courthouses, but the government held responsibility for most legal enforcement.

Enforcing Virginia's statutes was a burden in part because of the colony's unbalanced sex ratio. Men outnumbered women six to one in 1635 and four to one in 1660; the ratio leveled off at roughly two-

⁴Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), 215, 236; D'Emilio, *Intimate Matters*, 10.

⁵Horn, *Adapting to A New World*, 82.

and-a-half men for every woman in 1686.⁶ The high number of servants skewed the sex ratio; on the Peninsula, for example, seventy-eight percent of households owned anywhere from four to seven slaves or servants. Most of the men came as servants, without land or property, creating an underclass that scared property-owning taxpayers. Most frightful to the other colonists was the knowledge that such men were armed; frontier conditions and proximity to Indians demanded that colonists carry weapons, but it also meant that the very segment of society that was most morally dangerous was also physically dangerous.⁷

Not only did men predominate in the colony, but its few women were young. In the seventeenth century, three percent were under fifteen, thirty percent of women servants were under twenty years of age, and less than one percent were over thirty-five; fully fifty percent of the women living in the colony were under twenty-five. Since on average women first married at twenty-four, servant women who immigrated to Virginia could not have been not old maids looking for husbands.⁸ Instead, they appear to have been youthful, healthy females who must have seemed a welcome sight to the colony's young single men. The gender imbalance gave the colony a decidedly masculine character that created the need for sexual regulation and increased the competition for finding a wife. Young

⁶James P. Horn, "Servant Emigration to the Chesapeake in the Seventeenth Century," in Thad W. Tate and David Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo- American Society* (Chapel Hill, 1979), 62.

⁷Morgan, *American Freedom*, 215.

⁸David Hackett Fischer, *Albion's Seed: Four British Folkways In America* (New York, 1989), 231, 278; Horn, "Servant Emigration," in Tate, et al, *The Chesapeake*, 65.

and in short supply, women had more opportunities for adulterous liaisons because they enjoyed the advantage of easily moving from one eager and available partner to another if their sexual appetites were not sated, or if they sought higher status or more wealth from their husbands.

The colony's sprawling expanse and distance from England also kept communal sexual ideals from being achieved. Far-flung settlements hindered the formation of extended kin networks, and thus another extra-legal method of regulating sexual behavior was lost. Distances between these settlements were so great that it was unusual for colonists to enjoy the same close relationships with neighbors and kin they had in England. There, family members had eagerly observed each others' behavior and relations, and were quick to censure or publicize any miscreants. But in Virginia, families immigrated member by member, with the men usually coming first, followed later by women and children. Thus, the colony lacked the same sense of family-centered communities found in England.

The erosion of traditional kinship networks in Virginia was exacerbated because of a housing shortage. Though servants in England must have been familiar with the problems posed by inadequate housing, such conditions were new and strange for gentry families immigrating to Virginia. With a lack of building skills and willing laborers to erect houses, many people lived in each dwelling, combining servants, families, and the elderly under one roof. Proximity bred intimacy, and the breaking down of strict gender segregation relaxed such practices as dressing and bathing. Indeed, John Demos has wondered if privacy would have been a meaningful

concept at all, with “a group of five, six, eight, or even a dozen people living and working and playing all together, day after day, in one room of rather modest size?”⁹ As a part of these dynamic households, women servants became more accessible and were accepted into the family and into men’s beds much more easily than when segregated into servants’ quarters. Children also learned about sex at earlier ages because of thin walls and fewer rooms; many people sharing a house led to rather public sexual relations. This was the case in 1643 when young Susanna Kennett and John Tully “pried loose a board [in the wall of the house] to observe Mary West ‘with her Coates upp above her middle and Richard Jones with his breeches down Lying upon her.’”¹⁰ Such early and ready exposure to sexual relations meant that colonists could not possibly hope to enforce the same morals and value systems they had held in England.

Early Americans paid close attention to sexual behavior, not necessarily to repress it, but to channel it into acceptable settings and purposes— marriage and procreation. Courts attempted to transform violators of social norms into disciplined citizens of the community, basing legislation on English laws but also allowing for variations as frontier conditions demanded. Their attention in particular to crimes involving unmarried women demonstrated their desire to reconstruct a Virginia society that mirrored the traditional English importance of family structures and society arranged around

⁹John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York, 1970), 47.

¹⁰Susie M. Ames, *County Court Records of Accomac-Northampton, VA, 1632-1640* (Washington, 1954), 290. For colonial conditions, see D’Emilio, chapter one; for housing situations, see Horn, *Adapting to a New World*, chapter 5.

discrete units.¹¹ Although Virginia lawmakers remained faithful to their English heritage and saw the Anglican Church as the principal vehicle in moral discipline, the lack of ecclesiastical courts and a shortage of clergy in the colony necessitated that civil courts assume the responsibility of moral enforcement.¹² The churches' eagerness to prosecute women who slandered demonstrates the importance the colony placed on maintaining order. Quick words not only started fights but threatened families, the foundation of society. However, to Virginians prosecuting women accused of bastardy, Anglican strictures of piety and prudence were arguably less important than economic concerns. That someone should shoulder the responsibility became increasingly necessary as women turned to the legal system to justify their behavior. That they got pregnant, whether by design or ill-fortune, is less important than that they used the courts to try to evade their punishments. Women were not simply pawns of the men who held power in colonial Virginia, but savvy barristers who recognized their power when bringing matters to the public eye of the colony.¹³

¹¹D'Emilio, *Intimate Matters*, 16. Ames, *Accomack- Northampton*, lii; Horn, *Adapting to a New World*, 82.

¹²Horn, *ibid.* For discussion of religion and sexual beliefs, see Daniel Scott Smith and Michael S. Hindus, "Premarital Pregnancy In America 1640- 1971: An Overview and Interpretation." *Journal of Interdisciplinary History* V (1974- 1975), 537- 570.

¹³For examinations of women in the court systems of colonial Virginia, especially African-American women, see Kathleen M. Brown, "Born of a Free Woman: Gender, Race, and the Politics of Freedom in Colonial Virginia," a Jamestown/Yorktown Foundation lecture delivered on June 10, 1994.

The first chapter, “‘Revilinge and Opprobrious Speeches’: Women and Slander,” examines the ill effects a woman’s tongue had on the reputations of others in her community. The chapter also contrasts the unique and highly sexual nature of women’s slanders to the comparatively minor slanders used by men. The second chapter, “‘Idle, Vague, Lewd Women’: Bastardy in Colonial Virginia,” shows why bastardy slanders were of such a serious nature and particularly threatening to the colony’s fragile social and economic order. Bastardy cases were one of the few opportunities women had to exercise legal power over men, and their willingness to go to court shows a determination not to wholly submit to laws in which they had no part in making.

I have examined the court records of five tidewater Virginia counties between 1640 and 1725 looking for slander and bastardy charges. Though I cannot claim to have examined every court record for each county, the cases I have found reveal trends in ways the legal system dealt with women who challenged the social norms of colonial tidewater Virginia.

“Revilinge and Opprobrious Speeches”: Women and Slander

Kneeling in a white shroud and holding a lighted candle, Joan Nevill begged forgiveness from members of her community and particularly from Mary Dod, the woman she had called “Captayne Battens whore.” Nevill claimed that Dod had lain with the captain “at Patuxon in the sight of six men with her Coats up to her mouth.” Dod denied the charge and sued Nevill for her slanderous words. Neither the crime nor the punishment was especially unusual in colonial Virginia; slander charges occupied seventeen percent of civil courts’ dockets in the seventeenth century, second only to bastardy crimes. Slander was defined as any defaming statement about another person of either sex, whether carefully plotted and shouted at a court judge, or simply a scathing public remark made in a heated argument. Public penance was the norm for all crimes like slander that transcended community morals, such as fornication and drunkenness.¹ Challenging another colonist’s reputation by publicly questioning his or her honesty, sexual fidelity, or morals in scandalous attacks was one of the few ways women in colonial Virginia could exercise power. Excluded from courthouses, legislative processes, and office-holding, women turned to one of the few weapons they possessed: their voices.

¹James P.P. Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, forthcoming), 365; Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens, GA, 1983), 132.

Their vocal attacks potentially caused as much damage as a man's musket or an Indian's war club. Women used slanderous words to challenge the reputations of men whom they felt treated women poorly. However, women often attacked other women, questioning their claims to the status of "good wives."² Women seemed to have a keen sense that bringing private matters, especially issues of sexuality, to the attention of the rest of the community would be most damaging to both men's and women's reputations. Men, on the other hand, seemed reluctant to slander people using sexual or private terms; men generally questioned the validity of business deals or another man's honesty.

Repression of slanderous remarks was crucial to community harmony because most slanders expressed the anxieties of local communities: business matters, household politics, and sexual propriety of its women. The Virginia colony was particularly vulnerable to social discord because of its social and economic insecurity in a "geographic and recreationally subscribed environment." Colonists possessed an abnormal sensitivity to unfavorable criticism, with a number of determined individuals who asserted their own import or superiority.³ A mushrooming dispute could very easily disrupt a small isolated community without an organized

²See Kathleen M. Brown, "Gender and Genesis of a Race and Class System in Virginia, 1630-1750." (Ph.D. Diss., University of Wisconsin-Madison, 1990), for a discussion of "good wives" and "nasty wenches." Laurel Thatcher Ulrich also establishes the models of "good wives" and "Jezebels" for New England in *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York, 1980).

³Horn, *Adapting to a New World*, 367; Susie M. Ames, *County Court Records of Accomac-Northampton, VA, 1632-1640* (Washington, 1954), li.

militia, very few social leaders, and only the suggestion of established religious authority.⁴

Women focused their slanders on sexuality as a direct result of the importance their society placed on maintenance of virtue. A woman's reputation and worth in her community was gained by regulation of her sexuality—her ability to secure a good marriage, to bear children, and to maintain a monogamous relationship with her husband. Yet a man earned his reputation through successful business dealings and an upright reputation as a prosperous provider for his family among members of his community. The potential damage to each sex from slander reflected the value system of colonial Virginia; women had only their sexuality to indicate their worth, while men relied on their businesses as well as stable marriages to maintain their reputations. By slandering a woman's sexuality, members of the community could be sure that they were addressing both the most personal and most public aspect of her character.⁵ Bringing such private matters to public attention gave women a measure of power over men and their communities. Women who slandered enjoyed the harmful effects of their words, at least until they faced humiliating public punishments like ducking (being repeatedly held under water) or begging forgiveness in public.

⁴ Clara Ann Bowler, "Carted Whores and White Shrouded Apologies: Slander in the County Courts of Seventeenth-Century Virginia," *Virginia Magazine of History and Biography*, LXXXV (Oct 1977), 421.

⁵ Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *William and Mary Quarterly* 3d. ser., XLIV (Jan 1987), 36. My approach is similar to Norton's in that we both argue that women were not ignorant of their power over their communities when making public slanders. However, Brown argues more forcefully for a distinct female agenda against the men in positions of power, finding that women used their sexuality to achieve that agenda.

Most slander cases grew out of the milieu of community gossip and running commentaries on the activities and speculations about the reputations of neighbors and social superiors. Because any individual could be involved in a slander case, gossip was neither idle nor trivial, but instead a way of exchanging news and regulating and enforcing social norms of the community. Gossip networks allowed the community to identify potential miscreants and identify them for public punishment.⁶ Enforcing punishments of slanderers helped restore a defamed person's name, reputation, and honor, all essential personal traits in seventeenth-century Virginia society. One's good name determined credit opportunities, community standing, and respectability, all of which decided social rank.

Slander usually took one of three forms (or blended elements of all into one venomous outburst): charges of felony, of sexual licentiousness, and of business incompetency. Felonious slanders included calling people rogues and witches or questioning their honesty. Charges of sexual licentiousness were most common among women, especially when the slanderer called another woman a whore, a "carted" whore, or the bearer of a bastard. As such, slander became a way of imposing social control horizontally, between individuals of a community. It was a complicated series of checks and balances in which contestants won and lost their reputations. However, because of the importance of having a moral and

⁶Hörn, *Adapting to a New World*, 362; Norton, "Gender and Defamation," 7.

upright community, sexual slander inflicted the most damage on both men and women.⁷

Sexual slander grew out of complicated female gossip networks. Though women made up less than one-fourth of Virginia's population before 1650, they appeared in one-half of all slander cases.⁸ A slanderous insult was the last resort of those trying to stop the wagging tongues of gossips. Disparaging comments were expected, but in an effort to assert superiority or to end the conversation, a final biting comment would be hurled. Women created their own informal gossip networks outside of male-dominated formal public life. Although they were prohibited from formal votes on decisions, they could still express their opinions through gossip. Women used this weapon to protect against the erosion of social and political position for themselves as well as for their men or kin.

Gossip acted as a social control that threatened even the authority of court justices; it competed with formal legal institutions. Women were the arbiters of gossip: for men it was a pastime, but for women gossip proved essential. Lower-class women gossiped about each other as a matter of course, while higher-class women used gossip to claim their authority as the moral guardians of behavior for the lower classes.⁹ As a consequence of their access to information about other women's bodies and their sexual behavior, their places in local gossip networks, and their "potential for involvement in sexual misdemeanors," women stood in a complex relation to the legal system of colonial Virginia. The courts and the colony hoped

⁷Chapin, *Criminal Justice in Colonial America*, 133; Brown, "Gender and Genesis," 342; John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York, 1988), 29.

⁸Brown, "Gender and Genesis," 147.

⁹Norton, "Gender and Defamation," 5-7, 19; Brown, "Gender and Genesis," 147.

that women would lend stability to Virginia, but instead discovered that women challenged the system. "Although courts attempted to regulate the behavior of women and maintain authority and social order, they instead found their legal actions shaped by the very women they wished to control."¹⁰

Thus, slander in colonial Virginia was serious business, grouped in the laws with such "disturbing" crimes as fornication, drunkenness, and swearing. However, the only punishment for slander appears in the legal statutes for December 1662, when the Grand Assembly found that "oftentimes many brabling women often slander and scandalize their neighbours for which their poore husbands are often brought into chargeable and vexatious suites, and caste in greate damages."¹¹ The law mandated that each county was to erect a ducking stool on which "wives" accused of slander were immersed. Ducking was a humiliating and potentially fatal punishment in which the woman was tied to one end of a "stool", a platform mounted on four wheels that was lowered by a rope into

¹⁰Brown, "Gender and Genesis," 148, 138. Women would have had information about other women's sexuality from their service on matron juries in bastardy cases and their experiences at lying-ins. Rhys Isaac found a later and similar (though less sexual) challenge to the social order in Virginia in *The Transformation of Virginia, 1740-1790* (Chapel Hill, 1982), in Chapter Eight, "The Popular Upsurge: The Challenge of the Baptists."

¹¹The representative Grand Assembly was formed in 1628, and acted as the sole legislative body of the colony. It passed legislation and also ruled on violations of those laws. Scott, *Criminal Law in Colonial Virginia*, 14-15; William Walter Hening, *The Statutes at Large: Being a Collection of all the Laws of Virginia from the first Session of the Legislature in the Year 1619* 13 vols. (Richmond, 1809-1823), II: 166-167. No further slander laws were enacted until October 1705, when bringing a slander offense to court after a year had passed was prohibited. Hening, *Statutes* III, 382-384.

the water. The offender was submerged under the water of a lake or pond for up to thirty seconds, forced to submit to this punishment until she confessed or repented her crime.¹² If the slander warranted reparations beyond the standard fine of five hundred pounds of tobacco, the woman was to be ducked once for each extra five hundred pounds above the norm. The gendered terms of the law suggest that perhaps female slanderers posed more of a problem than the community could suppress through social means. In response, the community turned to the legal system for help.

Though the 1662 law set out ducking as the specific punishment for slanderers, many penalties were determined by individual judges and ranged from monetary compensation to public penance. A woman might have had to beg forgiveness in church, ask the congregation to absolve her, and wear a placard stating her offense and inscribed with the name of the person wronged. In a variation of public penance and shame, a guilty woman in Northampton stood by the church door with a gag in her mouth. For some cases, corporal punishment was not unusual. In Norfolk in 1646, a woman received fifteen lashes on her bare back and was also forced to beg the community's forgiveness. Even more harshly, a gossip might find her tongue clamped in a cleft stick. But no punishment compares to what Richard Barnes faced in 1624: the James City County man had his "weapons taken away and broken, his tongue bored through with an awl, passed through a guard of forty men and butted by each, and then was kicked

¹²Julia Cherry Spruill, *Women's Life and Work in the Southern Colonies* (Chapel Hill, 1932 [rev. ed. 1972]), 331. Spruill gets much of her information from the testimony of an eyewitness to a public ducking.

down and 'footed' out of the fort."¹³ Evidently, the statute passed by the Grand Assembly simply served to officially prohibit slander and to suggest a minimum penalty rather than to regulate punishments.

In this way, colonial courts were less exacting about slander cases than English courts, where many "hair-splitting semantic exercises" took place to determine precisely what words and what contexts constituted slander. Like bastardy, slander straddled a line between civil and ecclesiastical jurisdictions, being an offense against both God and the crown. Slander fell between a tort and a misdemeanor; a slanderer faced a civil suit for damages to a person's reputation or business prospects as well as a criminal prosecution and public penance. Such penance reflected the ecclesiastical nature of the crime and demonstrated an intent on the part of the court to restore the plaintiff's reputation through a judicial statement or public apology. Emphasis in many slander cases rested on mutual apologies and peace-keeping rather than on compensatory damages. Conciliatory gestures were essential to preserving reputations that were so important in maintaining good business relations.¹⁴

¹³Philip Alexander Bruce, *Social Life in Old Virginia* (New York, 1910 [rev. ed. 1965]), 51-52; Chapin, *Criminal Justice in Colonial America*, 51; Arthur P. Scott, *Criminal Law in Colonial Virginia* (Chicago, 1930), 181.

¹⁴Chapin, *Criminal Justice in Colonial America*, 132, 131; Bowler, "Carted Whores," 415, 425. More rare but riskier were defamations against judges or members of the bench; people accused of crimes often struck back at the judges who passed sentences upon them. Challenging the legal system was a way for servants and the poor to vent their frustrations in public and express their contempt for authority. Horn, *Adapting to a New World*, 342, 343.

“Rascals, knaves, and Fooles”: MEN SLANDERING MEN

Men’s slanders, though not as scathing, provide an important comparison to women’s use of slander. Unlike women’s sexual slanders, men attacked each other for breaches of public affairs such as felonies or disreputable deals. They tended to avoid sexual slander, concentrating instead on harming a man’s business reputation enough to jeopardize future prospects. Terms like “rogue” and “knave” indicated untrustworthiness, and called into question the man’s probity in business dealings.¹⁵ Male slander cases usually made some mention of being done in public; such insults were intended as slander rather than as hurting another’s feelings. Generally, by an unstated “gentleman’s agreement,” men avoided damaging private slanders and called into question men’s public lives, business dealings, and public reputations.

Perhaps men’s unwillingness to venture into each other’s private lives came from an awareness of the disadvantage the sex ratio placed on men of a marriageable age. Men recognized their slim chances of finding a wife because of the few free women in the colony, and understood the seriousness a charge of bastardy meant to an eligible bachelor. It called into question his morals and his respect for women, both of which diminished his chances of winning a wife. Being responsible for fathering a

¹⁵Knave refers to “an unprincipled man, given to dishonourable and deceitful practices; a base and crafty rogue.” The term comes from the Old English as “cnafe” and was used as “one of low or ignoble character.” *The Oxford English Dictionary* ed. J. A. Simpson and E. S. C. Weiner, 2d. ed. (Oxford, 1989), Vol. VIII, 483. Rogue is a “canting word from the sixteenth century [Old English] to designate various kinds of beggars and vagabonds.” Interestingly, rogue may be derived from “roger”, an archaic term for illicit copulation, making rogue an especially potent term to use in a slander. (*OED*, Vol. XIV, 36).

bastard was also a heavy economic responsibility, one most men tried desperately to avoid.¹⁶

When men's honesty was challenged, charges of criminal activity were usually involved. For example, George Thorn and Daniel White met in a Westmoreland County court in 1692 over charges that Thorn had slandered White "in public disgrace among his neighbors," using "these false, feigned, scandalous and opprobrious words: [like] You Danll. White are an old hog-stealing rogue." The court sided with White, and Thorn paid ten pounds of tobacco for his offense.¹⁷ It seems that Thorn's public accusation was as much the reason for the suit as his actual words; the proceedings scrupulously note where the slander was spoken. In another case of public slander, this time in Charles City County, Capt. John Hamelin sued Phillip Jarmin for calling him a murderer, a false oath-taker, and for other various verbal abuses suffered under Jarmin. The court recorder carefully noted that these words were spoken in front of "divers people," suggesting Hamelin's concern for his public image. Jarmin was found guilty and paid a rather heavy fine of one thousand pounds of tobacco for his public transgression.¹⁸ By drawing a large audience to an argument, a slanderer like Jarmin was assured that his malicious words would have a larger detrimental impact than if they were spoken only to his opponent. A man slandered to hurt another man's business dealings; he used slander to warn potential partners away from a disreputable (in the slanderer's opinion) entrepreneur.

¹⁶Norton, "Gender and Defamation," 9, 12, 14, 15.

¹⁷John F. Dorman, *Westmoreland County, Virginia Order Book 1690-1698: Part Two: 1692-1694* (Washington, 1963), 19.

¹⁸Benjamin B. Weisiger, *Charles City County, Virginia, Court Orders 1687-1695, with a fragment of a Court order Book for the Year 1680* (Richmond, 1980), 170.

Slander that harmed a man's reputation was particularly damaging in a society where a good name made credit available for everything from food to tobacco. "Maj. Jno. Stith" took "Fra. Reeve" to court in Westmoreland in 1690 for calling him a liar. Reeve had said about Stith's oath: "tis false, tis false, regard it not." In his statement, Stith claimed that with Reeve's charge his "good name and reputation is lost and himself [Stith] rendered a perjured man." Reeve pleaded that his words were of "passion and not of knowledge or belief," and had his fine reduced from five hundred pounds of tobacco to five pounds plus an apology.¹⁹ Similarly, Morrice Veale attacked William Hyatt "at the dwelling house of Caleb Butler" in 1691, "malitiously envying the good name of Hyatt and endeavoring to take away the plaintiff's good name" by uttering "false, scandalous and opprobrious words." Veale called Hyatt a false-oath taker who had swindled tobacco owed to Veale, charges for which Hyatt demanded ten thousand pounds of tobacco. The court found that the plaintiff was "dampnified in his reputation" but only awarded Hyatt one hundred pounds of tobacco in recompense.²⁰ Claiming that a man could not even be trusted when under oath was a drastic measure that was sure to jeopardize his reputation.

Also in Westmoreland County, Thomas Harrison sued Robert Shorte, whom Harrison declared had been "maliciously minding to ruin [my] good fame," by stating in front of "divers peoples" that Harrison had stolen and marked all of Shorte's hogs. Harrison won and was awarded four thousand

¹⁹*Ibid.*, 77.

²⁰John F. Dorman, *Westmoreland County, Virginia Order Book, 1690-1698. Part One, 1690-1692* Part One (Washington, 1962), 44.

pounds of tobacco in damages.²¹ Lastly, in Lower Norfolk, Thomas Lambert was fined the huge amount of five thousand pounds of tobacco in 1654 for calling Matthew Fassett a “rascall, Knave, and foole in the Open Court.” The large fine was apparently based on the amount of damage done to Fassett’s livelihood, indicated in the words of the judgment “to the greate ympeachment of his good name and credit... where the sd. Fassett may come to the losse of his voyages or his utter undoeing.”²² The court recognized a tangible link between a slanderous tongue and its ill effects on a man’s business prospects, which was precisely the intention of men who slandered. Women, however, had different agendas in mind when they used defaming words.

Carted and Pocky Whores: WOMEN SLANDERING WOMEN

Women, unlike men, were not as preoccupied with their economic reputations. Wives, mothers, daughters, sisters, and single women called each other’s sexuality into question much more than they challenged one another’s honesty or family name. For women, a good image of one’s sexuality meant as much as a business reputation did for men. Indeed, in both a business deal and in a marriage, the assurance of honesty and virtue was central to the covenant. If men’s reputations testified that they could be trusted to carry on good business, then women’s reputations proved that they were “good wives.” A woman’s reputation hinged on her sexual behavior. Because of this, women’s slanders were of a highly sexual nature. Women were expert at bringing private matters into the public

²¹ *Ibid.*, 31.

²² Lower Norfolk County, Minute Book (1637-1646), in Horn, *Adapting to a New World*, 365.

sphere, as well as challenging other women's sexual fidelity and men's dalliances with mistresses. There seemed to be little respect for the boundary between public and private when it came to female slander.

As a consequence of their public crimes of slander, many women were forced to beg for forgiveness in public, usually dressed in white and prostrated in front of the church congregation. Such public penance seemed appropriate for crimes that brought people's private lives into the public arena. Joane Wardley was forced to her knees to acknowledge her crime while wearing a paper on her chest describing her slander and the person wronged. If she had refused to serve her penance, her only option was imprisonment. Similarly, Elizabeth Large paid for her scandalous song by dropping to her knees in court and begging the community's pardon.²³

Other women did not receive such light punishment for their slanderous words. In Accomac in 1634, Joane Butler faced being "drawn over the Kings Creeke at the starne of a boate or Canew from one Cowpen to the other" for calling Edward Drew's wife a "common carted whore." If she had resisted this sentence, she would have been forced to recite a prescribed oath in front of the church congregation the following Sunday.²⁴ Perhaps getting wet would cool off a hot temper and remind the woman not to heat up again.²⁵ Besides, a woman could not speak if her mouth was full of water. The mortification of being seen in public dripping wet and the spectacle of being dragged through a creek may have served as an effective deterrent to other gossips. Furthermore, being dragged from a boat was a relatively inexpensive punishment for counties in financial

²³Spruill, *Women's Life and Work*, 333.

²⁴Ames, *Accomac-Northampton*, 20.

²⁵Spruill, *Women's Life and Work*, 330.

distress. It cost less than imprisonment and was, for the criminal, less painful and humiliating than public whippings.

But some women were whipped for their slanderous words against other women. The severity of the punishment proves that slander crimes were not taken lightly, nor were women spared harsh punishments because of the frailty of their sex. Whippings were not only painful, but spectacular public forms of punishment. Usually done in public with the woman bare to the waist, lashings compromised a woman's modesty as well as her reputation. Lashings, even ten, were violent actions. An observer of a whipping many years later recalled, "By the time [the sentenced] had received three hundred lashes, the flesh appeared to be entirely whipped from their shoulders." A woman, though never sentenced to more than one hundred lashes at a time, could bear the scars of the whip her entire life as a reminder of her transgression.²⁶

Generally, servants and lower-class women with few connections that might have gotten them clemency received lashings, as did Margaret Harrington in Lower Norfolk in 1638. Harrington, the servant of Sarah Julian, reported that she had often seen Cornelious Lloyd "use said mistress [Julian] in carnal copulation." For her observations, Harrington was sentenced to one hundred lashes in the public square, probably with her bare back exposed.²⁷ Servants like Harrington challenged their mistresses in an attempt to dispel the belief that, by virtue of their social position, they were above the temptations of sexual indiscretions. Mrs. Julian may not have been the "good wife" she was expected to be, and her servant

²⁶Fred Anderson, *A People's Army: Massachusetts Soldiers and Society in the Seven Years' War* (Chapel Hill, 1984), 138.

²⁷Horn, *Adapting to a New World*, 365.

simply may have pointed out the truth. But while challenging a woman of higher social status may have been satisfying, the severity of Harrington's punishments shows that it was also dangerous.

Such slander not only incurred harsh punishments but also jeopardized a woman's chance to make successful engagements and secure marriage possibilities. If a woman's reputation was called into question too often, or with too much venom, her possibilities for finding a husband decreased dramatically. No courting man wanted to marry a woman the community had labeled a whore. In colonial Virginia, an unmarried woman was an aberration: women expected, and society expected them, to marry. The possibility of losing the chance to marry so alarmed women that the loss of a specific marriage engagement had to be proven before damages could be awarded in a slander suit.²⁸ Because of this, women who slandered harshly wielded a powerful tool, as in the Accomac county case of *Mutlow v. Ballard* in 1729. Mutlow was called a whore and much more:

You are a pocky whore and are now full of the foul disease And your father is Obliged to keep Doctors to keep you Salved up with Plaisters, insomuch that they drop from you as you walk the Earth....²⁹

If Ballard used the term "pocky" to refer to smallpox, the terms of punishment would have been much less than if the pox in question was the French version (venereal disease). Either way, the plaintiff's chances for marriage were considerably lessened, and the slanderer's words a success.

²⁸D'Emilio, *History of Sexuality*, 4; Bowler, "Carted Whores," 425.

²⁹Bowler, "Carted Whores," 425.

He can “kiss my arse”: WOMEN SLANDERING MEN

Just as women jeopardized each other's chances for marriage, they also hurt a man's chance of finding a wife. A man's reputation had to remain blemish-free in order for him to win one of the few single women in the colony. Keeping this in mind, women turned to sexual slanders when they were most interested in harming a man.³⁰ Women slandered men as a redress for physical or sexual abuse they may have suffered, or to protect other women from similar abuse. In questioning a man's sexuality, either by suggesting that it was less than adequate or implying that he was a philanderer, a woman could significantly harm a man's social standing as well as his chances of finding a suitable wife. A married man suffered from women's slanders as well; charges of adultery against him by a woman harmed his reputation and put his business dealings in peril.

Mrs. Wilkins must have been aware of the import of her words when she slandered Fermer Jones of Accomac in 1639. Wilkins was brought to court to answer for “revilinge and opprobrious speeches” made against Jones and was forced to publicly acknowledge her fault and pay the court's expenses.³¹ A woman could even accost a dead man's reputation, as did Mrs. Thomas Causon of Norfolk in 1640. She challenged Adam Thoroughgood's memory by publicly declaring that “he paid slowly or paid not at all,” calling his honesty in business deals into question. She was

³⁰In the 54 slander cases I examined, women only used sexual slanders against men, and never turned to slanders of an economic or virtuous nature..

³¹Ames, *Accomac-Northampton*, 142.

forced to her knees to beg his widow's pardon both in court and at Thoroughgood's parish in Lynnhaven.³²

But challenging a man could have painful consequences, as Anne Gaskine discovered in 1641. For her slander against an unnamed man, she was given ten lashes, suspended on the condition that she do penance in church. She refused, and was then sentenced to receive twenty lashes. If she refused to appear for those, she was to receive thirty, then forty, then fifty lashes until she submitted to a public penance. The court, furious at her resistance, ordered her to "receive every Monday... fifty lashes until she perform according to the tenor of the aforesaid order."³³ Women who challenged the system of justice and then dared to resist their punishments were dealt with severely.

Despite numerous examples that showed the consequences of women asserting their measure of power, women continued to slander men. One of the most spirited slanderers was Anne Fowler, who, in an argument over her servants finding casks of Thoroughgood's, said "Let Captain Thoroughgood kiss my arse." She also called another man a "Jackanapes, Newgate rogue and brigand," and told him if "he did not get him out of doors [she] would break his head." For her vigorous outbursts, she was sentenced to twenty lashes and begging forgiveness before the court. Remarkably, she was not whipped or punished more harshly, considering the influence the Thoroughgood family held in Norfolk during the seventeenth century.³⁴ To challenge a man in such physical terms was

³²Bruce, *Social Life in Old Virginia*, 51.

³³Lower Norfolk, Oct 1641, in Scott, *Criminal Law in Colonial Virginia*, 182.

³⁴See Horn, *Adapting to a New World*, passim, for a discussion of the importance of the Thoroughgoods [Thorogoods] in Norfolk. Newgate was a notorious prison in London.

unusual in women's slanders; their threats were much more illusory than confrontational.

But women were often punished as harshly, if not more so, than men. Ducking or being dragged by a boat were frightening, potentially deadly punishments; they were much more rigorous than paying a fine.³⁵ Women underwent public humiliation in court or church by dressing up and begging forgiveness for sins far more often than men. Men's slander, while generally more innocuous, carried lesser (and more discreet) fines. Female punishments occurred in the same forum as their sins happened: in the public sphere. Women offenders were made public examples in lawmakers' efforts to control women's attempts at seizing what little power they could.

The Benefits of Coverture: "GOOD WIVES" AND SLANDER

Marriage was one of the few ways women could avoid traumatic or humiliating punishment. A common instance of slander cases involved married couples suing a single woman for slander against the wife. A single woman was at a disadvantage when trying to defend herself against charges of slander. Married women who were accused of slanderous remarks could rely on their husbands' presence in court to lend legitimacy to their protestations of being innocent. Any charges of sexual impropriety must be wrong if her husband supported her. If she were charging another

³⁵In all the cases of bastardy and slander I researched, I never found an instance when the male offender was punished more harshly than the female offender in the same suit. This disparate code of punishment becomes especially evident in bastardy cases (See Chapter Two: "Idle, Vague, Lewd Women...").

woman with slander, her husband by her side may have persuaded the judge that she was a “good wife.”³⁶ Men were also at a disadvantage when facing a couple. When Davy Wheatlye was tried for “scandalous speeches tendinge to their greate defamation” against Roulard Raine and his wife, he was sentenced to spend four successive Sundays in the stocks.³⁷ Apparently, Wheatley’s punishment came by virtue of Raine’s presence at his wife’s side. Men petitioning for their wives was a common manifestation of the social and legal order of colonial Virginia. Under laws of coverture, men protected their wives and handled any legal or financial matters for them.

More common were cases like that of a threesome in Accomac in 1637. Anne Stephens and Anne Wiliamson were accused of slandering John Waltham’s wife by “the most vyle and scandalas speches.” Both women were ducked and had to beg Waltham’s wife’s forgiveness in church.³⁸ That Waltham stepped in, and that his wife’s name was not recorded, suggests that he handled the matter of the courtroom suit for her. If a married woman was slandered, her husband often intervened on her behalf and cleared her of charges. Men were supposedly more comfortable in court because of their familiarity with the legal system by virtue of their public places in society. Women were afforded no role in a public life and were probably largely ignorant of courtroom procedure or public testimony.³⁹ Wives could only hope that their husbands served their interests well.

³⁶Norton, “Gender and Defamation,” 33, 34.

³⁷Ames, *Accomac-Northampton*, 150.

³⁸*Ibid*, 88.

³⁹Kathleen Brown, however, finds that women became more aware of the mechanics of the legal system in the early eighteenth century, and may have even recognized *de facto* “jailhouse

When Thomas Parks of Accomac slandered Andrew Jacobs' wife in 1645, he was promptly whipped, fined, and banned from the county. In Parks' words, "By God I did lye with Jacob's wife in a Chayre at Fleete Bridge: [he then] clapt his hand upon the foreparte of his breeches saying 'these are them that gave Jacob's wife Phisicke.'"⁴⁰ Mr. Jacobs denied Parks's claims of sexual relations with his wife and demanded a heavy punishment for Parks. Apparently, the court believed Mr. Jacobs's declarations of his wife's innocence because of her married status; the courts treated women more leniently if their husbands verified their innocence. The benefit of Mrs. Jacobs's marriage may have been the preservation of her social image.

The Intersection of Economics and Reputation: SLANDER AND BASTARDY

Charges of fathering a bastard were the most damaging accusations a woman could hurl at a man. A woman was not simply saying that a man impregnated her, because that accusation fell under the jurisdiction of bastardy crimes. Instead, she claimed that a man had fathered another woman's child without owning up to it. Not only did the philanderer's fidelity to his wife come into question, but he was also faced with a lifetime of financial support for the unwanted child if he could not disprove the charges. Bastardy slanders damaged the accused both economically and morally.

lawyers" who came to the aid of women facing criminal charges. Brown, "Born of a Free Woman," lecture.

⁴⁰Bowler, "Carted Whores," 419.

While men avoided paternal responsibility, women pregnant with bastards wanted to name the true father to insure that the child would receive support. They often turned to the courts and won in instances of unquestionable paternity. However, women recognized the opportunity to defame a man's reputation with charges that he bore a bastard. Such charges affected not only his reputation as a moral family man or an eligible bachelor, but also as an honest citizen. If he successfully defended himself against the charges, he still suffered under the negative impression of having evaded his responsibilities and having been charged with improper sexual activity. While society may have tolerated private indiscretions, public infidelity was not allowed.

Often women's accusations of bastardy against men evolved into slander cases as the man's innocence was proven and the court decided that his reputation had been harmed by the charges. This was the case in Westmoreland County in 1691 when Mary Williams swore that James Westcomb fathered her illegitimate child. Westcomb protested his innocence, claiming that Archibald Little was the real father. Williams eventually repented and admitted to never having seen Westcomb until "June the last past" and that Little had bullied her into the charges against Westcomb. The court's opinion was "that Westcomb could not be nor is the father but is grievously scandalized, abused, and wronged." The case against Westcomb was dropped and no charges were pressed against Little for his part in the collusion, but Williams still faced bastardy charges. The court recognized that whether found guilty or not, the charges of fathering a bastard cost a man the strength of his reputation.

Deborah Glascocke's severe punishment is indicative of the seriousness with which courts took false bastardy slanders. Unlike Archibald Little,

Glascocke was not able to avoid her punishment. Glascocke claimed that John Sibsey had gotten his maid pregnant, for which the Norfolk courts sentenced her to a hundred "stripes" and to ask forgiveness in church and in the court.⁴¹ Glascocke's charge was particularly dangerous for Sibsey because by impregnating a servant, Sibsey would have been obligated to pay for the child's rearing. He also would have assumed extra financial obligations while his servant was pregnant and delivered and in caring for her and the child in the free time he was awarded.⁴² In addition to a public acknowledgment of his infidelity, men who were convicted of bastardy charges faced a financial penalty.

Accomac courts were no less harsh on bastardy slanders. When Mr. Burdick was falsely accused of fathering a bastard, his unnamed female accuser was sentenced to thirty lashes the first Sunday, and twenty for the next two weeks thereafter, as well as a public apology.⁴³ The severity of punishments belied the seriousness of wrongfully accusing a man of fathering a bastard. Nor were Norfolk courts easier on women who made false accusations of bastardy crimes: Elizabeth Herd defamed the wife of Thomas Powell by "ill language tendinge to the bastardizing of the childe of the saide Thomas Powell." Herd asked public forgiveness of the Powells, and for the duration of the next court session stood with capital letters on her chest spelling out her offense.⁴⁴ Courts hoped to stave off false paternity accusations to save themselves needless bastardy trials and to protect the reputations of many prominent men who were accused in an

⁴¹Norfolk Deed Book A, 18 May 1638, in Brown, "Gender and Genesis," 138.

⁴²Hening, *Statutes II*, 167.

⁴³Bowler, "Carted Whores," 419.

⁴⁴Hom, *Adapting to a New World*, 365.

effort to obtain generous support for the child. While women used slander to challenge a system in which they exercised minimal power, women who bore bastard children found very little redress in the courts. Slanderous words may have been an effort to stave off a hopeless, unenviable condition by forcing the father to accept his responsibility of supporting both mother and child.

Slander was one of the few means women had to challenge the social order in colonial Virginia. Excluded from making public decisions, women turned to slander, an evolution of their gossip networks, to find ways to air their opinions. They attacked the most personal aspects of both men's and women's lives in an effort to assert their own interests and to cause the most damage to the other party. In this regard, women recognized that bastardy slanders, because of social and economic implications, would upset societal mores. Indeed, the crime of bastardy plagued the colony and offered women an opportunity to challenge the established social order of colonial Virginia.

“Idle, Vague, Lewd Women”: Bastardy in Colonial Virginia

Katherine Davis gave birth to a child out of wedlock in the late 1660s in Northumberland County, Virginia. The community censured her scandalous breach of morals: “Kath Davis having committed ye sin of fornication & having lately had a bastard child it is order'd yt ye Sher:f take ye sd Katherine into Safe custody and give her 20 stripes on her bareback until ye blood come.” The severity of Katherine Davis's punishment indicated the seriousness of her transgression against Virginia's communal norms. In a poor, tenuous society, like colonial Virginia, bastardy became a threatening crime. Unwanted infants were an economic threat to the emerging social order.

Virginians expected sexual relations to mirror rigid religious traditions and regulations. But the reality of their society, with its fluid social order, lack of church courts, skewed sex ratios, young average ages, absence of extended kin networks, housing shortages, and labor constraints, made strict adherence to such standards impossible. The evolution of bastardy laws toward harsher punishments for offending women illustrates the community's moral and economic concerns; Virginians' fears of unchecked sexual

relations and being burdened with the upkeep of bastard children led them to constantly amend their bastardy laws.¹

Women Before the Bench: THE EVOLUTION OF BASTARDY LAWS

The first laws against bearing bastards were enacted in 1642 by the Virginia House of Burgesses, the elected legislative body of the colony. The law forced servants who bore bastards to “serve out his or their tyme or tymes with his or their masters or mistresses, and after shall serve his or their masters or mistresses one compleat year more for such offence committed... the mayd or servant also marrying... shall double the tyme of service.”² With this legislation, masters were guaranteed the service of women who had to stop work to bear children. Masters were concerned about servant marriages because they feared that women would follow their husbands and abandon their terms of service; also, the likelihood of their becoming pregnant also increased with marriage. Servants' assertions of independence through marriage or unapproved sexual relations threatened masters with loss of control.³ Masters required

¹Quoted in Julia Cherry Spruill, *Women's Life and Work in the Southern Colonies* (Chapel Hill, 1932 [rev. ed. 1972]), 321; Kathleen M. Brown, “Gender and the Genesis of a Race and Class System in Virginia, 1630- 1750.” (Ph.D. diss., University of Wisconsin- Madison, 1990), 346.

²William Walter Hening, *The Statutes at Large: Being a Collection of the all the Laws of Virginia from the first Session of the Legislature in the Year 1619....* 13 vols., (Richmond, 1809-1823), I: 240 (hereafter cited as Hening, *Statutes*); Arthur Scott, *Criminal Law in Colonial Virginia* (Chicago, 1930), 24.

³Robert V. Wells, “Illegitimacy and Bridal Pregnancy in Colonial America,” in Peter Laslett, Karla Oosterveen, and Richard M. Smith, eds., *Bastardy and its Comparative History: Studies in*

that their servants gain their permission before marrying. That requirement encouraged illicit sexual unions, since marriage was not likely to be sanctioned. Later acts passed in 1643 and 1658 levied punishments of double service and a fine of 500 pounds of tobacco if servants' illegal marriages were discovered.⁴ The attention the community paid to women who engaged in sexual relations or married without permission is evident in the legislation. Such crimes were particularly offensive because pregnancy flaunted the woman's disobedience.

The colonists wrestled with the discrepancy between their ideals and reality in the mid-1660's when the focus of punishment for bastardy crimes shifted from parish penance to secular reprisals. The trend from religious to civil jurisdictions arose from two factors: the English church courts' failure to regain administration over sexual offenses following the Restoration, and the growth of bastardy as a sexual offense costly to parishes and counties.⁵ In one of the most effective measures against bastardy crimes, the Grand Assembly in 1657 revoked the accused father's right to testify in court or to hold public office. Such a restriction was an effective deterrent to most men who were eager to take part in the colony's affairs. Denying him

the History of Illegitimacy and Marital Nonconformism in Britian, France, Germany, Sweden, North America, Jamaica, and Japan (Cambridge, Mass., 1980), 357.

⁴Hening, *Statutes*. I: 252- 53; II: 114. See Richard B. Morris, *Government and Labor in Early America* (New York, 1932), 350, for interpretation of servant- master relationships.

⁵Brown, "Gender and Genesis," 385, see fn 22.

legal participation reduced a man to the class of non- citizen, lowering him to the status of a woman or servant.⁶

The colonists' main intention in passing bastardy laws was to prevent the parish from assuming responsibility for the unwanted children born by servant women immigrating to the colony. The same act that forbade government participation stipulated that fornication and children born out of wedlock by servants were punishable by one "compleate year [of labor], or pay 1500 pounds of tobacco and give securitie to save harmless the parish... and defraye all costs of keeping the child." A freeman convicted of begetting a child was sentenced to pay 1500 pounds of tobacco or one year's service to the master of the woman by whom he "shall gett a bastard."⁷

The 1657 Act did not end the problem of servants' illegitimate children. In March 1660, the Grand Assembly passed another act declaring that any child born in the country shall be held "bond or free according to the condition of the mother," insuring that children born of servants would remain servants themselves, thereby defraying the burden of upkeep from the taxpayers in the county and holding the master responsible for his servants' illicit sexual relations.⁸

Bastardy persisted despite the efforts to halt it, and a measure enacted in 1662 increased servants' punishments even more. A

⁶ Hening, *Statutes* I: 433; Philip Alexander Bruce, *Social Life in Old Virginia* (New York, 1910 [rev. ed. 1965]), 50.

⁷ Hening, *Statutes* I: 438.

⁸ Hening, *Statutes* II: 170.

woman servant, in “regard of the losse and trouble her master doth sustaine by her haveing a bastard” was sentenced to pay 2000 pounds of tobacco or serve two years for her master after her initial time of service ended.⁹ Yet another act of 1662 targeted the fathers of bastards, and not only those children born by servants. Fathers were punished by being forced to keep the child to save the parish “harmlesse”. If the father were himself a servant, the parish assumed care for the child until the father was free, and then he was responsible for making retribution to the parish for the expense.¹⁰ This statute was amended in 1696, requiring the father to give bond, proving his ability to care for the child, but still forced the mother to give extra service. The terms were reduced, however, from two years or 2000 pounds to one year and 1000 pounds.¹¹

The increasing severity of the laws against sexual offenses belied the inability of the community to regulate sexual behavior to meet acceptable standards. The lawmakers recognized that masters were taking advantage of the extra time given to women bearing bastards and changed the statute to favor the women. “Late experiments show that some dissolute masters have gotten their maides with child,” the 1672 addition read, “and yett claime benefitt of their service.” Instead of requiring her to serve an extra year, the act forced the sale of the offending woman and stipulated that the profits go to the parish instead of her former master.¹² In 1691, punishments for

⁹Hening, *Statutes* II: 115.

¹⁰Hening, *Statutes* II: 168.

¹¹Hening, *Statutes* III: 139- 140. See also Morris, *Government and Labor*, 350- 353, for an examination of the evolution of bastardy and fornication laws in Virginia.

¹²Hening, *Statutes* II: 167.

bastardy and fornication were increased to a fine of 10 pounds sterling and “receiv[ing] on his, her, or their, bare backs, thirty lashes well laid on, or three moneths imprisonment without bail or maneprise.”¹³ This law was necessary to make punishments already dealt in many local courts legal, such as that given to Katherine Davis. Receiving twenty lashes may not have been part of the legally prescribed punishment for her offense, but undoubtedly she was not the only woman whipped. For example, Anne Newton, a servant, was sentenced in 1690 to corporal punishment “inflicted at the whipping post.”¹⁴ It may seem terribly cruel to modern sensibilities to whip a pregnant or nursing woman, and apparently there was some compassion for their plight. When Colonel Lawrence Smith of Gloucester City introduced a measure in 1696 that suggested more stringent measures for bastardy offenders to lessen the tax burden, the House of Burgesses roundly rejected it, ruling that the 1691 law was “forceful enough.”¹⁵ However unwilling the colony was to increase punishments, bastard children were undeniably a burden on tax payers, especially on the women's masters. In 1690, John Baxter was fined 200 pounds of tobacco to be paid to the colony for keeping his “serving wench” Rebecca's bastard for two months.¹⁶ The need for successive bastardy laws showed the reality that mores never reflected the community ideals.

¹³Hening, *Statutes III*: 74.

¹⁴Benjamin B. Weisiger, *Charles City County, Virginia, Court Orders 1687- 1695, with a fragment of a Court Order Book for the year 1680* (Richmond, 1980), 86.

¹⁵Minutes of the House of Burgesses, September 28, 1696; quoted in Bruce, *Social Life*, 50.

¹⁶Weisiger, *Charles City*, 54.

“A Bastard begott Upon her Body”: SERVANTS AND BASTARDY PROSECUTION

The colony depended on the work of indentured servants, and competition for them to stay with their original owners was fierce. Recognizing that women servants' bearing bastards was the most common sexual crime in the colonies, law-makers attempted to regulate servants' sexual behavior by awarding their masters legal control. Therefore, a woman's master was legally obligated to give permission for her marriage. Punishing servants more harshly for bearing children that hampered their ability to work was essential, especially to financially strapped masters who depended on them for their livelihoods.¹⁷ To bear a bastard child was a hopeless situation for a woman: she suffered the community's scorn, risked her master's ire should she name him as the child's father, and, most importantly, fell further into debt to her master as years were added to her servitude to compensate for labor lost during lying-in and recovery.

The skewed sex ratio guaranteed that most women would have no difficulty finding a partner; they had the luxury of choosing from among many possible suitors. The women who came to Virginia, however, were not always of the best character. Many came as indentured servants because of the opportunities spawned by the production of tobacco, and because of desperate conditions in England. People could not find work in England, especially in the

¹⁷Brown, "Gender and Genesis," 129.

urban areas of Bristol and London that were plagued with overcrowding and poverty brought on by a depression in the cloth industry. Some decisions to emigrate to America had little to do with the servants' desires, but more to do with economic and social conditions in England.¹⁸ Some even came because the courts in England had given them the choice of "Virginia or the gallows."¹⁹ Prostitutes and murderesses joined thieves and debtors in binding themselves to a master in America. Their terms ranged from four to seven years, and once free, they were expected to marry, more from communal norms than legislative action; women who did not wed were considered deviant.²⁰ A large number of women with questionable morals may have tempted masters to make sexual advances, but more likely most masters' underlying motives were to gain additional service by impregnating their servants.

Servants were understandably reluctant to name their masters as the fathers of their children; they were intimidated by threats of harsher service or mistreatment.²¹ In the few cases where a woman named her master as the father, she was fined or otherwise punished while he was generally absolved. For example, in February 1724 Margaret Connor, a servant of Christopher Pridham of Richmond County, filed a complaint against him, alleging that he

doth Continually Importune the said Margaret Connor by all ways and means to prostitute her body to him which

¹⁸ Horn, "Servants," in Tate, et al, *The Chesapeake*, 84.

¹⁹ Arthur Frederick Ide, *Woman in the American Colonial South* (Mesquite, TX, 1980), 48.

²⁰ *Ibid.*

²¹ Spruill, *Women's Life and Work*, 322.

he dayly practices to the other Servant Woman belonging to him and because she Refuses to Gratify his Vicious Inclinations he abuses her in a very Grose manner by both words and Actions, etc.²²

For his "inappropriate behaviour towards his said Majestie as all his said Liege people," Pridham was fined forty pounds sterling, but probably paid in tobacco, the common currency of Virginia. This case was unique not only because a woman servant initiated action against her master for unwelcome advances, but because it appeared that she spoke for other women similarly mistreated. Perhaps there was a kind of solidarity in oppression, and Margaret Connor was persuaded to be the spokeswoman for the group to challenge her master, recognizing the opportunity to strengthen her own case.

In a more typical case, Mary Rogers named her master as the father of her bastard child and was ordered sold with the proceeds given to the parish; the master went free.²³ Implicit in the 1662 statute preventing masters' illicit impregnation of their servants was the assumption that women were somehow responsible for getting pregnant, and should be punished for their temptation as well as for their actions. Lawmakers and fathers widely believed that women would name their masters simply to guarantee that they would be taken care of during their pregnancies and for at least a year afterwards. Fathers were responsible for their children's upkeep,

²²Peter Charles Hoffer, *Crime in Colonial Virginia: Richmond County Court Records* (Athens, GA, 1981), 70.

²³Northumberland County Order Book, 1720- 1729, 75: quoted in Spruill, *Women's Life and Work*, 323.

relieving the woman, already disadvantaged by being a servant, from that burden. The willingness to punish servant women illustrated the colonists' fears of a burgeoning underclass reproducing unchecked, shifting their burdens to the taxpayers who were eager to deal harshly with offenders, especially guilty women, to deter other women from sexual sin. In this way, punishment for bastardy was not only employed for economic restraint, but also for moral enforcement in an attempt at social control.

Young servant women were not the only ones accused of bastardy; single as well as married women were accused of fornication and bearing bastards. One of the best examples of bastardy transcending the servant class was found in the secret diary of William Byrd II, a wealthy planter in eighteenth-century tidewater Virginia. Byrd was an intimate friend of the royal governor, Alexander Spotswood, and his mistress Mrs. Russell. Byrd heard rumors that Mrs. Russell was pregnant and had been sent away to deliver Spotswood's bastard child. Byrd wrote, "Mrs. Russell was going to Pennsylvania for her recovery which some think is to lay a greate belly there."²⁴ That even the royal governor was engaged in an adulterous sexual relationship and the subject of community gossip signals the pervasiveness of bastardy, as well as the differences in punishment across class lines in early Virginia. While other women were whipped or publicly humiliated, the

²⁴ William Byrd II's diary, 5 May 1711. Louis Wright and Marion Tining, eds. *The Great American Gentleman William Byrd of Westover in Virginia: His Secret Diary for the Years 1709-1712* (New York, 1963), 148.

governor's mistress was allowed to quietly leave the colony without punishment.

Whippings and Tobacco: GENDER DIFFERENCES IN PUNISHMENT

The methods and degrees of punishment meted out for bastardy magnified gender differences in Virginia. Women were often punished in an attempt to make them identify the father of their child to force him to assume financial responsibility, thereby relieving the colony of the burden of raising the child.²⁵ Men who were identified or admitted paternity were usually not punished harshly; often they were able to escape without penalty. Women, on the other hand, were invariably disciplined, usually fined and often whipped. Their punishments tended to be public, humiliating as well as painful. These beatings were a visible deterrent to other women, predicated on the belief that bastardy was their fault, a notion that harkened back to the Biblical stigma surrounding Eve for leading Adam astray.²⁶

The courts were somewhat arbitrary and the laws vague enough so that justices could exercise their personal discretion when handing down punishments.²⁷ More religious judges were apt to sentence guilty women to beg for forgiveness, while justices who enjoyed friendships in the wealthier echelon of the community were more

²⁵Brown, "Gender and Genesis," 346.

²⁶Id., *Woman in the Colonial South*, 16.

²⁷Spruill, *Women's Life and Work*, 318.

likely to look the other way when one of their friends was accused. They were more concerned with saving the parishes from the weighty expense of providing for bastards than in establishing legal precedent.

Bastardy case procedures enabled fathers to escape unscathed. A woman was summoned before the justices and asked to name the father of her child. She could either do so or refuse, but sometimes she named an innocent man in an attempt to avoid punishment.²⁸ If a man was able to intimidate the woman into not revealing that he was the father, or if she had multiple partners and was unsure of the child's father, the man was virtually guaranteed acquittal. If the woman accused him, and he denied the charge, the burden of proving him guilty fell on the judges, many of whom disdained the undercover work and prying into private affairs required by such an investigation.²⁹ But getting the name out of the mother was a tricky business. Justices had to rely on women's testimonies, one of the few times they had any influence in the courtroom. Women accused of bastardy, confidences of erring women, eavesdropping servants, and midwives were often the sole sources of evidence against women accused of bastardy.³⁰ Midwives were particularly adept in getting pregnant women to divulge the name of their partners. They would ask the mother who the father was repeatedly in the most intense time of their labor, using the pain and the distraction to elicit a

²⁸*Ibid.*, 315.

²⁹*Ibid.*

³⁰Brown, "Gender and Genesis," 137.

confession, an often effective technique.³¹ A midwife in Accomac County, Alice Wilson, “[was] urging Olive Eaton in the instant tyme of her payne in travell, to declare who was the true father of the child she was then to be delivered of, she answered William Fisher.”³² Such admissions, solicited and distributed collected by women, were often the only evidence the courts had to prosecute men for bastardy.

Men who were convicted of bastardy could plead their innocence, and hope that the judges were unwilling to convict them based solely on hearsay and gossip. If convicted, they could appeal their cases on grounds such as the child was a mulatto, the woman was a whore, the justices were relatives of the accused woman, the court was eager to have the father support the child, or that the proper legal procedures determining paternity had not been followed.³³ Generally, however, the wealthy escaped with little or no punishment, as did married couples when the woman had been accused of an adulterous affair. Katherine Lamkin avoided her bastardy charge in 1692 when her husband William Gardner appeared “in her behalf and assumed to pay 500 pounds of tobacco... for the said Katherin's fornication of which she stands convicted.”³⁴ A similar case in Accomac County saw the couple go free because of marriage: “The wife of Richard Cooper was summoned... for having a bastard child and her husband appearing alleged that they were

³¹ *Ibid.*, 141.

³² November 26, 1638 in Ames, *County Records of Accomac- Northampton*, 129.

³³ Wells, “Illegitimacy,” in Laslett, et al, *Bastardy*, 361.

³⁴ John Frederick Dorman, *Westmoreland City County, Virginia, Order Book 1690- 1698. Part Two: 1692- 1694* (Washington, 1963), 25.

married before delivery of ye child ye Court thinks fitt to discharge her from Sd fine.”³⁵ The Court dismissed her indictment thanks to her husband's money and intervention on her behalf. Lastly, couples who had never caused trouble before were rarely punished, if they were even brought up on charges.³⁶ Couples soon discovered that though servant women were invariably punished, couples who married and saved the parish the expense of raising their bastard were spared. Though a social norm promoting premarital abstinence was still legally enforceable, an alternative norm of permissiveness with affection or responsibility was accepted.³⁷

In the few instances when men were found guilty of bastardy and sentenced to be punished, the sentences were normally tasks that would benefit the whole parish rather than corporal punishment. John Pope of Accomac was sentenced to build a ferry boat across Plantation Creek, but would have received forty lashes and been forced to acknowledge his sin in front of the congregation if he had refused to build the boat.³⁸ But Pope at least had a choice— he could avoid public humiliation by performing community service.

Women accused of bastardy did not have the same luxury of choosing their punishments as did John Pope. The majority of women who successfully avoided punishment argued that they were seduced by promises that the father planned to marry them. In such cases, the justices frequently accepted that defense and ordered the couple

³⁵Lee A. Gladwin, "Tobacco and Sex: Some Factors Affecting Non- Marital Sexual Behavior in Colonial Virginia." *Journal of Social History* 12 (1978), 69.

³⁶Brown, "Gender and Genesis," 351

³⁷Gladwin, "Tobacco and Sex," 72.

³⁸Accomac County Records, vol 1632- 1640, 123; quoted in Bruce, *Social Life*, 47.

to marry and the man to assume responsibility for the child.³⁹ Such was the case of Catherine Medford, the servant of William Bridges, who was accused of bastardy. She “offered to depose That she was married to Thomas Medford... and that the child she was arrested for was lawfully begot on her body by her husband.” Thomas Medford was summoned to the next court session and acknowledged Catherine to be his wife, and the charges against her were dropped.⁴⁰

When men and women were punished for the same offense, the disparity in punishment degrees was patent. In 1638, John Holloway and “Catherin Joanes” were brought before the courts in Accomac-Northampton County. The judgment handed down read that “It is thought fitt and soe ordered by this Courte that the said Holloway shall acknowledge his fault before the Congregation th next Sabboth day... [and] pay twenty pounds of tobacco... said Catherine to be whipt and to have thirty lashes upon her backe.”⁴¹ In a case in Lower Norfolk in 1649, the mother got fourteen lashes while the father paid the cost of building a bridge across one of the creeks in the county.⁴² Gender did not inhibit lawmakers from imposing harsh measures of punishment on women who were pregnant or who had just given birth.

Women and men were given public penances as part of their punishments. They were commanded to appear before the community dressed in white to mock their loss of purity, and part of

³⁹Brown, “Gender and Genesis,” 361.

⁴⁰Dorman, *Westmoreland County*, 63.

⁴¹Ames, *Accomac- Northampton*, 128.

⁴²Lower Norfolk County Records, vol 1645- 1651, 131; quoted in Bruce, *Social Life*, 48.

the process of their humiliation involved begging for community forgiveness in church. Rebecca Noble, for example, was sentenced to ten lashes on her bare back and to do penance in Poquoson parish in York County by “standing in a white sheet & asking open forgiveness on hir knees of God Almighty for hir said offence before the whole congregation.”⁴³ Thomas Heyricke, however, the man with whom she was accused of having a child, was absolved of his transgression after calling Noble “a woman of very evill life and conversation.”⁴⁴ Apparently his slanderous words were not forceful enough to have charges pressed against him. When men were also assigned penances, they seemed to have accepted them much more easily, perhaps grateful to have escaped whipping or heavy fines. For example, Francis Penrice was sentenced to an anachronistic punishment of penance in York County in 1689, long after the shift from parish punishment to civil sanctions. Penrice was forced to appear in a Poquoson parish in ““ a white sheete bare legg and bare foote’” for committing fornication and bastardy with his wife’s sister.⁴⁵ Perhaps Penrice was amenable to his penance because of the particularly offensive nature of his crime; his was an especially contemptible transgression.

Unlike men, women did not always calmly accept their public punishments. Edith Tooker was found guilty and “robed in a white sheet and led into the parish church after the worshipers had taken

⁴³York County Deeds, Order, and Wills, 15 August 1661: quoted in Brown, “Gender and Genesis,” 133.

⁴⁴Brown, “Gender and Genesis,” 339.

⁴⁵York Deeds, Order, and Wills, 24 May 1689; quoted in Brown, “Gender and Genesis,” 383, fn 25.

their seats.” When she was then told by the minister to repent of her “foul sin,” she mangled and tore the sheet she was wearing, refusing to ask the members for forgiveness. For her disobedience, she was sentenced to forty lashes and had to repeat the process the next sabbath day.⁴⁶ Similarly, Edy Hooker was sentenced to appear in a Norfolk parish in a white sheet and to ask for forgiveness, and she too “cutt and mangled” her white garb and was impudent to the minister when he asked her to repent. She was sentenced to twenty lashes and forced to have a second chance at a public apology.⁴⁷ One wonders if the examples these women set for their community were not only the intended ones of contrite criminals repenting their sins, but also of strong, determined women challenging the legal system as well as social mores in general.

Between Two Worlds: MULATTO BASTARDS

Women bearing mulatto bastards received especially harsh punishments because they had violated both sexual and racial taboos. Interracial sex was not uncommon, especially among black and white servants who worked side by side and consequently developed a kind of solidarity. However, mulatto children posed a problem for the society in the creation of a separate race—neither white or black. In a colony experiencing a tobacco boom, consciousness of racial inferiority justified slavery.⁴⁸ Children of

⁴⁶Spruill, *Women's Life and Work*, 320.

⁴⁷Norfolk Deed Book A, September 6, 1641: quoted in Brown, “Gender and Genesis,” 341.

⁴⁸Morgan, *American Slavery, American Freedom*, chap. 15, “Toward Slavery.”

mixed origin did not quite fall into the slave world, nor did they fit into the white world. Free people of mixed ancestry blurred the lines of racial and social distinction.⁴⁹

In an attempt to stop miscegenation, the House of Burgesses imposed much heavier penalties on interracial offenders than on white. In 1691, it decreed that a woman's punishment for bearing a mulatto bastard was a fine of fifteen pounds sterling, and "in default of such payment she shall be taken into possession of said Church Wardens and be disposed of for five years... such bastard child be bound out as a servant... untill he or she shall attaine the age of thirty years."⁵⁰ White bastards were bound out for only twenty years and paid a ten pound fine. Elizabeth Stringer's thousand pounds of tobacco fine and extra two years of service contrasts to the more lenient punishments white women received. Not all women escaped with only costly fines, however; most offenders were usually whipped and punished further, as was Frances Williams who was convicted of adultery with a "Negro." She was fined one hundred pounds sterling and her husband was allowed to drive her from his house.⁵¹ The case of Hugh Davis was a typical example of the stigma and retaliation for interracial sex. On September 17, 1630, Davis was sentenced to be "soundly whipped, before an Assembly of Negroes and others for abusing himself to the dishonor of God and the assembly of Christians, by defiling his body in lying with a Negro;

⁴⁹Joel Williamson, *New People: Miscegenation and Mulattoes in the United States* (New York, 1980), 9.

⁵⁰Hening, *Statutes* III: 87.

⁵¹Weisiger, *Charles City County*, 96; Hoffer, *Richmond County*, 19.

which fault he is to acknowledge the following Sabbath day.”⁵² Publicizing the crimes and the rituals of public penance were calculated to deter others from committing the same offenses. The crime of bastardy, combined with the fears of the community about a growing class of misfits, led lawmakers to take measures to insure that miscegenation would not be tolerated.

What Became of her Great Belly?: INFANTICIDE AS A SOLUTION TO BASTARDY CRIMES

Perhaps Katherine Davis’s beating was an overly successful deterrent to other accused women. The increasing severity of punishments handed down to women accused of bastardy and the stigma of committing an offense against communal norms prompted some women to kill their babies soon after birth. If a woman could hide her pregnancy, kill her infant, and then claim that it was stillborn, she was able to avoid the punishments for the crime of bastardy. If she was subject to any legal sanctions, they would be only for the crime of fornication, which carried a much less severe sentence, usually only a fine.

Women who were found guilty of killing their infants, however, received much worse sentences than if they had only been accused of bastardy. They were treated as murderers and given punishments for a capital offense, usually the death penalty, enforced by a law passed in the 1690s that made capital punishment legal for

⁵²Hening, *Statutes* I: 146.

infanticide.⁵³ The woman could be spared if she could find at least one witness verifying that the baby was born dead. But the death penalty was used widely even before the law was enacted; Margaret Hatch was sentenced to death in 1633 for infanticide.⁵⁴

Infanticide was another instance in which women exercised power in the legal process. Women accused of infanticide were brought before a jury of matrons, whose job it was to determine if the woman had given birth, and if so, if the child had been born dead or killed after birth.⁵⁵ The matrons listened to the woman's testimony and that of the midwives who may have attended the birth, and then reported to the all-male jury about the condition of the accused woman. Matrons were allowed to test a woman's breast to see if she was producing milk, indicating recent birth and proving that a woman was not pregnant.⁵⁶ Determining pregnancy was important because if an accused woman was pregnant at the time of sentencing, she could not be executed. Many women used pregnancy as an excuse to spare their lives.⁵⁷ Being at the mercy of a jury of women could work both in favor of and against an accused woman. The matrons may have felt pity for an unwed mother who so desperately wanted to escape punishment that she killed her own child. Female juries also allowed for a measure of favoritism— they were able to cover crimes of friends or family members. Yet facing a jury of matrons meant confronting the very members of the

⁵³Spruill, *Women's Life and Work*, 324; Hening, *Statutes III*, 516.

⁵⁴Hening, *Statutes I*: 209.

⁵⁵Spruill, *Women's Life and Work*, 326

⁵⁶*Ibid.*

⁵⁷*Ibid.*

community most eager to uphold the sexual norms of marriage and childbearing. The matrons may have felt no sympathy for “idle, vagrant, lewd women living in loose wandering condition” who sank to the depths of killing their own infants to conceal the extent of their promiscuity. Indeed, infanticide represented the ultimate destructiveness of unchecked sexuality in the community: lust led to illegitimacy, the death of the child, and ultimately the death of the guilty woman as well.⁵⁸

Perhaps most significantly, the trials of women accused of infanticide demanded an incredible amount of time consuming investigation. Such probing into accused women's lives and affairs illustrated the adoption of sexual regulation as public domain of the community. For a sin committed in private, women were tried and sentenced publicly, with no consideration of modesty or of keeping childbirth and gynecological matters private. Catherine McCarty gave an explicit account of her childbirth, describing how she had fallen over a fence and induced early labor, so she delivered her child along the side of the road. It was stillborn, so she “raked a hole with her hands” and buried it. Her mistress was called into court to testify that Catherine had actually been pregnant, and had made “childbed linen” for herself, showing her intention to deliver a healthy child. Catherine's fate is not recorded, but she was remanded to the county jail to await trial in Williamsburg, the capitol city.⁵⁹

⁵⁸Weisiger, *Charles City*, 58; D'Emilio, *Intimate Matters*, 34.

⁵⁹Northumberland County Order Book, 1713- 1719, 109- 110; quoted in Spruill, *Women's Life and Work*, 325.

Margaret Richardson was brought to trial in June 1715 because she had admitted “privately burying” her child, but denied that she had killed it first. Three witnesses were called to testify that she had indeed buried a child who had been born alive. Mary Bluford, a neighbor of Richardson’s, claimed that Richardson had told her about a miscarriage the month before:

Bluford:I asked her what became of her Great Belly? She answered that she thanked God Almighty that he had eased her of what she had been a long time troubled with... and that they broke upon her upon a Tobacco hill in Mrs Dew's Tobacco ground, ... and the rain washed it all out.

Court:What did you apprehend she meant by her saying they had broke upon her?

Answer:I understood by it she meant that it then was with her after the manner of other Women.

Another witness, Mary Brady, also testified to knowledge of a miscarriage.

Brady:... she told me people said that she was with Child, but she ... told me them broke upon her, and she hoped in a little time her great Belly would fall.

Court:What did you understand she meant when she told you them broke upon her?

Answer:I understood she meant it was the Flowers of women.⁶⁰

⁶⁰Hoffer, *Richmond County*, 13- 16. Though Hoffer notes “broke upon her” as a euphemism for her menstrual period, it seems more logical that if she were pregnant, Margaret Richardson

George Bluford was called upon to attest to the grisly details of finding the buried child.

Bluford:When we came to the place where the child was, one of Mrs. Dew's Negroes put a hoe under it and lifted the Child up dirt and all, and the Armes were extended up over its head.

Court:Did the Child seem to be bruised?

Answer:On the back part of the head seemed to be a blow.⁶¹

Margaret Richardson was found guilty and sent to the jail in Williamsburg to await sentencing. Hers is a particularly good example of the inquisition faced by women accused of infanticide in colonial Virginia. To be brought before the courts for a sexual crime was to abandon any hope of privacy or modesty.

Women were generally shown little leniency after they had appeared before the jury of matrons and the male jury and were sent to Williamsburg for sentencing. They were treated as murderers in James City County courts in 1692: "A Woman for the murder of a Bastard child being sent to dye... the Councill answered that a warrant for her Execution was to issue of corse."⁶² Ann Tandy was also found guilty of infanticide, and was "Condemned [at] the Gen[eral] Court for concealing ye Death of her Bastard Child his

suffered a miscarriage rather than gotten her period, and delivered a dead fetus. Other evidence indicates that she was far enough along in the pregnancy that a miscarriage may well have resembled a child.

⁶¹ *Ibid.*, 16.

⁶² H.R. McIlwaine, *Executive Journals of the Council of Colonial Virginia Volume I (June 11, 1680- June 22, 1699)* (Richmond, 1925), 272.

Excellly in Councill signed a warrant for her execution on ye sixth day of May Next.”⁶³ Women killing their children risked much harsher punishment than those who submitted to the courts under bastardy charges. Undoubtedly there were also a goodly number of women who successfully concealed their crimes, and evaded the legal and historical record.

Women who committed sexual and moral transgressions against the community of colonial Virginia were punished harshly and differently from men who were found guilty of the same crimes. The colonial courts' eagerness to prosecute women for not meeting the community standards illustrated the need for order in a growing, fluid society. Quieting slanderous tongues and halting the birth of unwanted bastard children were the easiest solutions to assuaging the fears of colonists about maintaining reputations and draining an already meager colony fund. Women were vulnerable to punishment for slander because they more willingly slandered private aspects of a person's character than did men; women's slanders attacked sexuality and questioned the foundation of a community centered around upright, moral family groups.

Women were also vulnerable to bastardy charges because they bore the children; men often escaped punishment by denying bastardy charges. The character of Virginia, however, with its amorphous social structure, skewed sex ratios, large numbers of young immigrants, and absence of extended kin networks, made it impossible for the community to enforce rigid, traditional moral

⁶³Mcllwaine, *Executive Journals*, 236.

codes. These young, pregnant women used their sexuality to protest their unenviable social positions by challenging the men who impregnated and abandoned them. Women were not resigned to bearing their children in ignominy, but instead struggled against a system in which they had no voice. They took pride in their abilities to use their sexuality to confront men and force them to accept the responsibilities of fathering a child. Similarly, women who slandered used their unique positions in gossip networks to challenge the sexual behavior of both men and women in their communities. Whether participants in adulterous relationships or simply eavesdroppers, women had the information and the advantage to question the claims of "good wives" and honest businessmen. Though seemingly disenfranchised by a patriarchal legal system, women in colonial tidewater Virginia found ways to assert themselves and to shape the colony in which they were, after all, significant players.

SEXUAL PATTERNS OF SLANDER CASES

	Percent	Number
Men slandering women	4.0	2
Women slandering women	20.0	11
Women slandering men	24.0	13
Men slandering men	37.0	20
Women sued by husband/wife	15.0	8
TOTAL	100.0	54

These figures contrast with Mary Beth Norton's study of slander cases in Maryland. Norton found that 38 percent of women slandered other women and 58 percent of women slandered men. Meanwhile, 77 percent of men slandered other men, and 22 percent of men slandered women.¹

¹Mary Beth Norton, "Slander and Defamation in Seventeenth-Century Maryland," *The William and Mary Quarterly* XLIV (Jan 1987), 11. Norton's sample included 145 cases of slander.

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