Women, Power, and Litigation in the English Atlantic World, 1630-1700

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Dedication

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Abstract of Dissertation

"Women, Power, and Litigation in the English Atlantic World, 1630-1700"

Working at the intersection of women's history, social history, and legal history, this study reveals that women who appeared before the courts comprehended their legal rights and privileges, possessed a sound understanding of the legal issues at stake in their cases, and protected their self-interest through legal recourse. By setting women's litigation in a comparative framework encompassing England and its colonies, this study seeks to explain why and it what ways women's legal capabilities varied across the Atlantic world. Women who appeared before the courts in England and Massachusetts benefited from the traditional support networks of family and friends that characterized social relationships in English villages and New England towns. These family members often provided critical support for women initiating or responding to legal suits as legal advisors and witnesses. Maryland women, especially servants, lacked the networks of support that could bolster their cases before the magistrates. While women in all areas of the English world remained subordinates at the level of both household and state, I argue that women in England benefited from a multi-jurisdictional legal system that allowed them more freedom and flexibility at law than women in the colonies.

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Chapter 1: Introduction

In 1632, Thomas Edgar, author of the *Lawes Resolution of Womens Rights: Or, the Lawes Provision for Women*, argued "that women have no voyse in parliament. They make no lawes, they consent to none, they abrogate none. All of them are understood either married or to bee married and their desires are subject to their husband. I know no remedy, though some women can shift it well enough."[1] However, while Edgar thus recognized the fact of women's subjection in both the political and familial orders, his treatise went on to explain in detail women's rights under English law, including cases in which a woman could initiate litigation without her husband at common law, and how to sue for separation from an abusive spouse. In outlining English women's legal rights, Edgar's treatise reflected that women could do more than "shift" the limitations of their political, legal, and familial subordination; English law guaranteed them a variety of legal rights that worked to women's benefit.

The publication in 1700 of another legal pamphlet on women, *Baron and Feme: A Treatise of the Common Law Concerning Husbands and Wives,* demonstrates that women's status under the law continued to be a matter of interest nearly seventy years after Edgar wrote. While the anonymous author of *Baron and Feme* noted the disadvantages married women faced under English common law, he went on to outline in great detail the legal devices that allowed married women to retain control of their property independently of their husbands, including the creation of marriage settlements and jointures contracts enforceable by equity law. *Baron and Feme* went on to present detailed instructions on how to initiate litigation in common law courts, and emphasized

[1] Thomas Edgar, *The Lawes Resolution of Womens Rights*, (London: 1632), 6.

the right of widows to collect their dower lands upon the deaths of their husbands. If a widow's right to her dower lands was contested by an heir, *Baron and Feme* outlined how she could file a writ of declaration to commence the suit, and how to file pleadings.[2] In its detailed and comprehensive overview of English women's status under the law, *Baron and Feme* shows how women could control and protect their own property, and seek legal redress when their right to property was threatened.

Though the *Lawes Resolution* and *Baron and Feme* were published in London and were written with English women in mind, women who settled in the English colonies across the Atlantic enjoyed many of the same privileges outlined in these treatises. In the years between the publication of these two works, women in both England and the colonies did, in fact, appear frequently in the courtroom. As civil litigants, they initiated legal suits and defended their rights to property. As criminal defendants, they shaped the narrative of their crimes in their testimonies before the courts. As witnesses, women testified in cases ranging from debt collection, to theft, rape, and murder. At the same time, women in England and the colonies faced many of the same limitations on their freedom of action at law. Patriarchy, as both a defining feature of power relationships in early modern households, and as a social, legal, and economic structure, remained in all areas of the English world. Common law rules restricting the legal capabilities of married women remained firmly in place. Operating at the juncture of the legal privileges guaranteed by English law and the limitations they faced as household dependents, women who appeared before the bar reflected the inherent tension between a legal system

[2] *Baron and Feme: a Treatise of the Common Law Concerning Husbands and Wives*, (London: 1700), 96-98; 115-117.

that allowed subordinates to voice their complaints, and the patriarchal structures that continued to dominate familial, social, and legal relationships.

I. Argument

Working at the intersection of women's history, social history, and legal history, this study reveals that women who appeared before the courts comprehended their legal rights and privileges, possessed a sound understanding of the legal issues at stake in their cases, and protected their self-interest through legal recourse. While women in all areas of the English world remained subordinates at the level of both household and state, I argue that women in England benefited from a multi-jurisdictional legal system that allowed them more freedom and flexibility at law than women in the colonies. Equity and ecclesiastical law, which in England operated alongside common law, granted English women extraordinary legal capabilities that were unmatched in the colonies. This argument stands in stark distinction to decades of historiography on seventeenth-century colonial women, discussed in detail in section three of this chapter, that has viewed them as having much more freedom and latitude than women in England. Indeed, in contrast to the multi-jurisdictional legal system present in England, the lack of a well-developed system of equity in the seventeenth-century colonies placed colonial women in a disadvantaged position. While women in Maryland by the end of the seventeenth century had begun to benefit from the establishment of an equity jurisdiction, women in Massachusetts were bound to the rigidity of common law.

By setting women's litigation in a comparative framework encompassing England and its colonies, this study seeks to explain why and in what ways women's legal capabilities varied across the Atlantic world. Women who appeared before the courts in

England and Massachusetts benefited from the traditional support networks of family and friends that characterized social relationships in English villages and New England towns. These family members often provided critical support as legal advisors and witnesses for women initiating or responding to legal suits. Maryland women, especially servants, lacked the networks of support that could bolster their cases before the magistrates. Thus, while women in England and New England who appeared before the courts could draw from the advice and experience of relatives and friends when appearing before the courts, Maryland women found themselves isolated from support networks, and had few who looked after their best interests.

Female litigants could actively shape, interpret, and negotiate the structures of authority that governed them, and their testimonies, petitions, and correspondence make clear that they were the forces at work in the legal cases in which they were involved. The actions of these women seem to have been rarely orchestrated by male relatives seeking their own advantage. Several examples discussed in this study show that women directly challenged household hierarchies by making accusations in court. Female servants, for example, charged their masters and mistresses with a range of offenses before the law, as Chapter Four shows. Additionally, Chapter Five reveals that married women brought complaints before the magistrates when husbands threatened to cut them off from their inheritance. The actions of women who sought legal redress directly challenged seventeenth-century notions of women's natural inferiority and passivity.

While women who appeared before the courts in all areas of the English world actively pursued legal cases as knowledgeable, self-directed individuals, whether their litigious actions are examples of "female agency" requires further clarification. As Walter

Johnson has shown, the use of terms such as agency has the potential to obscure more complex discussions of human subjectivity, and "overcode" the contexts and consequences of human activity.[3] Thus, while I argue for the causal role of women in history and the fact that many female litigants aggressively challenged the patriarchal hierarchy within the family by bringing complaints against their superiors in court, I also recognize that women's roles in the seventeenth century continued to be defined in terms of the family. Indeed, it was within the nexus of these familial relationships that many women voiced their concerns before the magistrates. Some of the women discussed in this study clearly initiated legal action in an effort to further the interests of husbands, children, and grandchildren. Women's central roles within patriarchal households, as servants, daughters, wives, and mothers, largely defined how they interacted with the law, and what strategies they employed in following their cases through the courts.

Because social and marital status were defining features of women's experiences both in the household and at law, this project examines women in various stages of the female life-cycle, and from a variety of social backgrounds. Chapters Three and Four examine the experiences of single, lower-status women, including servants and other poor women. Chapter Three focuses on women charged with bastardy in England, Massachusetts, and Maryland, and how these women used the law to secure maintenance from the men they named as the fathers of their children. Chapter Four explores female servants who initiated legal action against their social superiors for a variety of offenses, including rape, abuse, and wages due. These chapters argue that the legal capabilities of young women in England and Massachusetts were substantially better than in Maryland.

[3] See Walter Johnson's discussion of the concept of agency in works on American slavery. Johnson, "On Agency," *Journal of Social History* 37, no. 1, (Autumn 2003): 114.

English and Massachusetts women charged with bastardy more frequently gave their testimonies before the courts to demand financial maintenance from fathers, and as maidservants benefited from the substantial support networks at their disposal when initiating legal action.

Focusing on the experiences of wives and widows, the second half of this study shows how middling and high-status women initiated litigation over property, inheritance, and debt collection. Chapter Five looks at the experiences of elite women. In England, these women were the wives and daughters of men who ranked as knights or better. In the colonies, elite women could often claim ties or kinship with aristocratic families in England. As educated and literate members of the elite, this chapter examines the extent of women's legal knowledge, and the legal devices they used to protect their property. This chapter argues that women in England benefited from the well-developed system of equity law headed by the court of Chancery in London. Toward the end of the seventeenth century, women in Maryland gained a slight advantage over their Massachusetts counterparts as the Maryland Court of Chancery began to take a great role in the protection of women's property. Chapter Six, which focuses mostly middling status women, draws from a wide variety of different legal jurisdictions to look at women's relationship to property, their ability to sue for debt collection, and their petitions before the court demanding sums of money due. In England, these women were the wives or widows of substantial merchants, artisans, or yeomen; in the colonies, they were the wives and widows of farmers with modest to substantial landholdings. Focusing on these women's roles as the executors and administrators of estates, this chapter argues that women in England benefited substantially from the presence of the ecclesiastical courts.

II. Women's Social, Economic, and Legal Positions within the Household

As a set of political, economic, and legal structures, patriarchy governed the lives of women in all areas of the English world. This system of "household government," a term commonly used by seventeenth-century writers, was built upon understandings of hierarchy and deference that had important implications for dependents within early modern families. At the level of the individual household, wives, children, and servants were understood to be under the authority of a male head-of-household, who acted as the legal and political representative of the family.[4] The most fundamental aspect of patriarchy in the English world was the common law, which merged the legal identities of married women with their husbands, and privileged the descent of property to eldest sons. As wives, the common law doctrine of coverture prevented women from drawing up their own wills without the consent of their husbands, entering into binding contracts, or initiating legal suits in a court of law. A husband also legally controlled and reaped the profits of his wife's wages or property during their marriage together.[5]

Like wives, servants were dependents within early modern households, and were subject to the authority of their masters. Usually dwelling in the same house as the families for which they worked, servants were young people hired to work in exchange for board, meals, and wages. These functional members of the family contributed substantially to the economic life of the household. While the relationship between masters and servants was primarily an economic one based on contract, servants were

[4] See for example, Richard Bernard, *Touching Houshold Governement for Well-Ordering a Familie*, (London: 1612), and Robert Cleaver, *A Godly Form of Householde Governement for the Ordering of Private Families*, (London: 1630). Cotton Mather, *Ornaments for the Daughters of Zion: Or, The Character and Happiness of a Vertuous Woman,* (Cambridge, MA: 1691). These treatises are discussed in more detail in Chapter 2.

[5] Barbara Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers*, (Oxford: Oxford University Press, 2002), 17-18.

nevertheless bound to the moral, religious, and social supervision of their masters.[6] Masters could administer "moderate" physical punishment to correct his servants, as he could to his wife and his children; however, attempts on a master's life by any of the dependents in his household constituted petty treason.[7]

While the authority of a master extended in theory over his wife, his children, and his servants, recent scholarship has pointed out that the workings of patriarchal authority was never so clear in practice. Joan Scott argued in her seminal article on gender in 1986 that patriarchal understandings of gender differences in household and society were frequently the products of conflict and negotiation rather than social consensus. Scott's article revealed that while theorists and religious writers might have articulated the gender hierarchy in absolute terms, in practice, patriarchy was always subject to interpretation and revision.[8] Historians of England have come to similar conclusions. Linda Pollack, in her study of the family and patriarchy in seventeenth-century England, has shown that while the theory of patriarchy "assumed a simple hierarchy of principles that would dictate behavior," in practice it "had different weightings according to circumstance and individual priorities."[9] In their studies of female litigants in common law courts, Margot Finn and Joanne Bailey have found that the doctrine of coverture, traditionally interpreted as one of the main pillars of women's subordination in the early

[6] Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain*, (New Haven, CT: Yale University Press, 2002), 30-35.
[7] Carole Shammas, " Anglo-American Household Government in Comparative Perspective," *The William and Mary Quarterly* 52, No. 1, (January 1995): 107-108.
[8] Joan Scott, "Gender: A Useful Category of Historical Analysis," in *The American Historical Review* 91, No. 5, (December 1986): 1053-1075.
[9] Linda Pollack, "Rethinking Patriarchy and the Family in Seventeenth-Century England," *Journal of Family History* 23, No. 3, (1998): 20.

modern world, was frequently bypassed, and sometimes ignored.[10] As Barbara Harris has shown, this could be just as true for elite women as it was for those lower on the social scale. In her study of Yorkist and Tudor aristocratic women, Harris argued that while patriarchy and coverture remained a defining feature of women's lives, in reality "there was considerable flexibility in the impact of patriarchal institutions on particular aristocratic women." Harris added, "A delicate, ever-changing equilibrium developed between these structures and everyday practice" that allowed women considerable latitude and freedom in working for their families' best interest.[11] In all, these recent studies show that patriarchy, embodied in both the law and the household, could be challenged, revised, negotiated, and questioned.

II. Historiography

Though there have been several studies of women's legal capabilities in the colonial and British contexts separately, to date there has been no sustained comparison between the experiences of English and colonial women before the courts. Works on the history of English women published in the 1960s, 70s, and 80s focused on the severity of the law's restrictions on women, and their subjection under common law. Pearl Hogrefe, for example, argued in 1972 that the small measure of legal protection that women had under English common law could be circumvented by husbands, brothers, and fathers in court.[12] Medievalists came to a similar conclusion. In her article on the legal status of women and litigation records from 1066 to 1485, Ruth Kittell concluded that while

[10] Margot Finn, "Women, Consumption, and Coverture in England, c. 1760-1860," *The Historical Journal* 39, No. 3, (September 1996): 703, 719-720. Joanne Bailey, "Favoured or Oppressed?: Married Women, Property, and 'Coverture' in England, 1660-1800," *Continuity and Change* 17, No. 3, (2002): 353.
[11] Harris, *English Aristocratic Women, 1450-1550,* 17.
[12] Pearl Hogrefe, "Legal Rights of Tudor Women and the Circumvention by Men and Women," *Sixteenth Century Journal* 3, No. 1, (April 1972): 97-105.

church law and manorial law treated women "almost equally with men," she concludes that common law, especially the practice of primogeniture, severely disadvantaged medieval women.[13] Patricia Crawford argued in a 1984 article on women in early modern England that the common law "assumed that women were inferior and were the responsibility of their fathers or husbands" concluding that the one notion that remained "remarkably constant" between 1500 and 1750 was that "women were weaker than men...and because of their inferiority, it was deemed that they should be subordinate."[14]

More recent works on the relationship of English women to the law has emphasized women's legal capabilities, and has moved away from an exclusive focus on the common law to focus instead on the variety of jurisdictions in which women participated. While this historiography is discussed in more detail in Chapter Six, a brief outline of these works is provided here in order to set this body of literature within the context of the larger corpus of scholarly writing on early modern English women. Drawing from probate records from the ecclesiastical courts, Amy Erickson's work on women and property in the sixteenth and seventeenth centuries showed that while the common-law practices of primogeniture and coverture limited women's access to property, women in fact inherited and controlled a substantial amount of property during their lifetimes as both wives and widows.[15] Like Erickson, Christine Churches' 1998 article on women and property in the town of Whitehaven in northern England found that

[13] Ruth Kittel, "Women Under the Law in Medieval England, 1066-1485," in *The Women of England: Interpretive Bibliographical Essays*, ed. Barbara Kanner, (Hamden, CT: The Shoe String Press, 1979), 131-32.
[14] Patricia Crawford, "From the Woman's View: Pre-Industrial England, 1500-1750," in *Exploring Women's Past: Essays in Social History*, ed., Patricia Crawford, (London: George Allen & Unwin, 1984), 61-63.
[15] Amy Erickson, "Common Law versus common practice: Marriage Settlements in Early Modern England," *The Economic History Review* 43, No. 1, (February 1990), 21-39. Amy Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1993).

manorial legal customs and the use of trusts allowed women to control and inherit property in spite of common-law restrictions.[16] Recent work on women in English cities has also emphasized that women enjoyed a great deal of freedom and independence as managers of small business and household economies. Marjorie McIntosh's article on women in late medieval London has shown that, in the City's Sheriff's and Mayor's courts, women enjoyed *femme sole* status that allowed them to trade and enter into legally binding contracts independently of their husbands. [17] Similarly, Craig Muldrew, in his article on female traders in Great Yarmouth, Norfolk, and London, argued for the growing role of small businesswomen in litigation in the seventeenth century.[18] Studies of women in the eighteenth and early-nineteenth century England have reinforced the view of women as economic agents. Margot Finn has shown that married women frequently appeared in small claims courts to enforce contracts, while Joanne Bailey has argued that married women could legally contract debts in their own names to buy household goods.[19] Taken together, these historians have suggested that English law allowed women a great deal of flexibility as the economic managers of property, small businesses, and households.

As managers of property, households, estates, and businesses, women were frequently drawn into litigation to protect their economic interests and secure the benefit of their families. Barbara Harris, in her study of English aristocratic women between

[16] Christine Churches, "Women and Property in Early Modern England: A Case-Study," *Social History* 23, No. 2, (May 1998): 165-180.
[17] Marjorie K. McIntosh, "The Benefits and Drawbacks of Femme Sole Status in England, 1300-1630," *Journal of British Studies* 44, (July 2005): 410-438.
[18] Craig Muldrew, "'A Mutual Assent of her Mind'? Women, Debt, Litigation, and Contract in Early Modern England," *History Workshop Journal* 55, No. 1, (Spring 2003): 47-71.
[19] Margot Finn, "Women, Consumption, and Coverture in England, c. 1760-1860," *The Historical Journal* 39, No. 3, (September 1996): 703. Joanne Bailey, "Favoured or Oppressed?: Married Women, Property, and 'Coverture' in England, 1660-1800," *Continuity and Change* 17, No. 3, (2002): 353.

1450 and 1550, has argued that while patriarchy remained a powerful force in Yorkist and Tudor England, women of the elite exercised a remarkable amount of freedom and independence in their management of family affairs. Harris shows how women were often central players in negotiating marriage contracts for their younger relatives, a role which frequently drew them into the legal arena as they helped to draw up and defend marriage settlements, and also emphasizes the role of women as managers of large family estates as both wives and widows. Women of the English aristocracy possessed a great deal of power, prestige, and freedom that allowed them to uphold the status and wealth of their families and their class. [20]

Recent studies of the legal activity of English women has pointed to the increasing use of equity law by women in the early modern period, and has suggested that our understanding of women's disadvantaged position under common law should be supplemented by other legal jurisdictions. Maria Cioni's seminal work on female litigants in the Court of Chancery, has shown how English women used legal devices such as jointures and separate estates, which are discussed in detail in Chapter Five, to their own advantage. Cioni suggests that these devices, upheld only in equity courts, compensated married women for the disadvantages they faced under common law which had been "consistently unreceptive to their legal demands."[21] Like Cioni's work on women in Elizabethan England, Wilfrid Prest's 1991 article on women's rights in the late-sixteenth and early-seventeenth centuries has also argued that while women played a minor part in the expansion of common-law litigation between 1560 and 1640, their role was greater in

[20] Harris, *English Aristocratic Women, 1450-1550.*
[21] Maria Cioni, *Women and Law in Elizabethan England with Particular Reference to the Court of Chancery,* (New York: Garland, 1985): 84. Maria Cioni, "The Elizabethan Chancery and Women's Rights," in *Tudor Rule and Revolution*, eds., D. J. Guth and J. W. McKenna, (Cambridge: Cambridge University Press, 1982): 160.

the equity courts. He concludes that "in some particular respects the early modern period did see real improvements in the law's provision for women," and that "the national extension of Chancery's equitable jurisdiction…plainly provided substantial benefits to married women by enabling them to act in many respects as though they were actually *femes soles*."[22] Tim Stretton, in *Women Waging Law in Elizabethan England* (1998), complemented Cioni's and Prest's work by examining women's legal activity in the sixteenth-century Court of Requests. Stretton argued that despite the structures of patriarchy embedded in early modern law and society, the numbers of female litigants in equity courts expanded in the late-sixteenth and early-seventeenth centuries as women appeared to maintain control over property, to uphold marriage agreements, and to collect debts.[23] The importance of equity law in upholding women's legal access to property has also been recognized by scholars working on the eighteenth century. Margaret Hunt's article, published in 2000, on women in the Court of Exchequer found that women continued to appear in equity courts in the eighteenth century. Hunt has shown that women frequently sued for property or moveable goods guaranteed through their marriage settlements.[24]

While colonial historians have presented a detailed picture of women's capabilities in seventeenth- and eighteenth-century America, few of them have proffered a sustained comparison of the lives of English and colonial women based on engagement with English sources. This insulation is remarkable given the voluminous literature on

[22] W. R. Prest, "Law and Women's Rights, in Early Modern England," *Seventeenth Century* 6, No. 2, (1991): 182-183.
[23] Tim Stretton, *Women Waging Law in Elizabethan England*, (Cambridge: Cambridge University Press, 1998), 58-59.
[24] Margaret Hunt, "Wives and Marital 'Rights' in the Court of Exchequer in the Early Eighteenth Century," in Paul Griffiths, Mark Jenner, eds., *Londonopolis: Essays in the Cultural and Social History of Early Modern England*, (York: Manchester University Press, 2000), 107-29.

English women that has appeared since the early-twentieth century. In the colonial historiography, there has been a strong trend toward American exceptionalism that has argued that colonial women possessed more freedom, independence, and legal capabilities than their counterparts in England. However, these statements about the limitations faced by English women are based on very little discussion of the evidence available for the English context. Richard Morris argued in his *Studies in the History of American Law: With Special Reference to the Seventeenth and Eighteenth Centuries* (1930) that the colonial period was a time of significant improvement in the lives of colonial women. Indeed, his chapter titled "Women's Rights in Early American Law," Morris argued that colonial acceptance of marriage as a contract and reciprocal agreement, "helped materially to raise woman from the state of legal subordination which was her position in England." Liberated from a feudal past and outdated English precedents, Morris argued, colonists adopted policies that favored women's property rights, and their ability to contract, sue, and act independently in the marketplace. Morris wrote, "As a result of the new economic conditions in the colonies, women, both married and single, were attaining a measure of individuality and independence in excess of that of their English sisters."[25]

Morris' optimistic view of colonial women's rights in comparison to English women's set the tone for colonial scholarship on women for the next five decades. Though the question of colonial women's legal status in relation to English women's continued to be a topic of concern in works published in the 1970s and 80s, these studies also lack any in-depth discussion of the legal rights and capabilities of English women.

[25] Richard Morris, *Studies in the History of American Law: With Special Reference to the Seventeenth and Eighteenth Centuries* (New York: Octagon Books, 1930), 126-128, 200.

In *Women in Stuart England and America* (1974), Roger Thompson argued that English jurisprudence was "simplified, more flexible, and more equitable in the New world," in such a way that colonial women "reaped considerable advantages." Quoting Morris' work directly, whom Thompson describes as "long the authority on this subject," Thompson argues that colonial law had an "increasing tendency to treat women as individuals before the law." Looking specifically at colonial Massachusetts and Virginia, Thompson emphasizes the "admission of divorce suits in Massachusetts overthrew to all intents and purposes the common-law myth that husband and wife were one legal person." Further, for Virginia, Thompson concludes that "Virginian courts seem to have been more liberal than English in their treatment of separated women's legal rights."[26]

Likewise, in their seminal article on women in seventeenth-century Maryland published in 1977, Lois Green Carr and Lorena Walsh argued that in the founding years of the colony, Chesapeake women enjoyed more freedom and independence than their counterparts in England. These scholars have contended that Maryland women benefited from the drastically disproportionate sex ratio of men to women in the early colony, and that the frequency of widowhood allowed women to control and inherit property. Further, Carr and Walsh stated that "there were fewer restraints on social conduct...than in England; women were less protected but also more powerful than those who remained at home."[27]

Joan Gundersen's and Gwen Gampel's work on married women's legal status in eighteenth-century New York and Virginia has argued that women's standing under

[26] Roger Thompson, *Women in Stuart England and America: A Comparative Study*, (Boston: Routledge, 1974), 160, 165, 177-179.
[27] Carr, Lois and Lorena Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *William and Mary Quarterly* 34, No. 4, (October 1977): 543.

common law in the colonies was not as restrictive that faced by women in England. They have argued that "in general, the colonies took the common law concepts, such as dower, and extended them in ways that gave women more control over property than their English counterparts." Gundersen and Gampel further suggest that colonial jurisprudence had largely done away with the notion that a married woman had no legal identity apart from her husband, arguing that "colonial law did not introduce the concept of legal fiction for married women despite its strong position in England."[28] In her work on English and colonial inheritance law, Carole Shammas has suggested that the tendency for English families to employ the strict family settlement, which granted all of an estate intact to the eldest male heir, meant that younger sons and daughters in England inherited only a small portion of the family lands. In contrast, Shammas suggested, the colonists' infrequent use of the strict family settlement allowed sons and daughters to inherit more equitably, and made "the establishment of a dynasty lasting many generations…more difficult."[29] In effect, these colonial scholars have argued that the position of colonial women within the patriarchal household, and their relationship to property, was much more advantageous than that suffered by their English counterparts.

The theme of American exceptionalism continued in more recent work on colonial women. In her study of women, witchcraft, and religious culture in seventeenth-century New England, Elizabeth Reis has argued that while Puritanism linked women closely with the devil, they nevertheless "may have been less subordinate than many European women of their day." Citing New England women's roles in the economy and

[28] Joan R. Gundersen and Gwen Victor Gampel, "Married Women's Legal Status in Eighteenth-Century New York and Virginia," *W&MQ* 39, No. 1, (January 1982), 127, 133.
[29] Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, No. 2, (April 1987), 163.

the household, Reis contended that New England "was a new society, and as such it offered women as well as men new opportunities and demanded of them new responsibilities.[30] Irmina Wawrzyczek's article on women and the law in seventeenth-century Virginia has likewise argued that women in the Chesapeake enjoyed "relative personal freedom in comparison with contemporary England and even New England."[31]

Cornelia Hughes Dayton's work on women and the law in colonial Connecticut has reached a similar conclusion. Though her research and analysis of the legal capabilities of colonial women is superb, the comparisons she has drawn with the legal status of English women are unfounded. Dayton has argued that in the seventeenth century, the New England colonies had done much to erase the sexual double standard regarding the prosecution of fornication and illegitimacy. She wrote, "Only there [in New England] had dissenting Protestants established a seventeenth-century society that departed in significant respects from the double sexual standard deeply embedded in early modern English culture."[32] As evidence that such a double standard characterized gender relations in early modern England, Dayton problematically quoted Keith Thomas' 1959 article "The Double Standard," which focused mostly on the history of statute law pertaining to prostitution and divorce in the nineteenth century.[33] Dayton's articles have made similar arguments: in her article "Was There a Calvinist Type of Patriarchy?," which examines the religious and legal cultures in Calvin's Geneva and early Connecticut in a comparative perspective, she argued that the Connecticut magistrate's insistence on

[30] Reis, Elizabeth, *Damned Women*: *Sinners and Witches in Puritan New England*, (Ithaca: Cornell UP, 1997), xi-xii.
[31] Irmina Wawrzyczek, "The Women of Accomack Versus Henry Smith: Gender, Legal Recourse, and the Social Order in Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 105, No. 1, (Winter 1997): 6.
[32] Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789,* (Chapel Hill: University of North Carolina Press, 1995): 161.
[33] Keith Thomas, "The Double Standard," *Journal of the History of Ideas* 20, No. 2, (April 1959): 195-216.

informality in legal procedure "had the general effect of increasing access to the courts by women and other groups who would have found the English common-law courts intimidating and too costly."[34] Further, Dayton wrote, "the growing reliance on English legal treatises and more formal evidentiary standards meant that women's charges were treated much more skeptically..."[35]

Though the dominant trend in the history of colonial American women has tended to present an optimistic picture of women's legal and economic status relative to English women's, there has also been a strain of dissent running through this scholarship that has focused more on disadvantages faced by colonial women. Mary Beth Norton's *Liberty's Daughters* (1980) clearly challenged the "golden age" thesis and the assumption that colonial women enjoyed a higher status than their counterparts in England and Europe. In her study of women's private writings in the eighteenth century, Norton found that colonial women lived narrowly domestic lives, and had a "very limited conception of themselves and their roles."[36] However, Norton also argued that the American Revolution opened avenues for women to participate in the public sphere, and to achieve a greater confidence in their abilities. Norton's *Founding Mothers and Fathers* (1996), which focused on women and the construction of gender in the seventeenth-century colonies, shows that women enjoyed a sort of subordinate power within their traditional roles as daughters, wives, and widows. Norton argued that the colonial worldview "offered certain women the short-term potential for wielding authority while at the same time in

[34] Cornelia Hughes Dayton, "Was There a Calvinist Type of Patriarchy?: New Haven Colony Reconsidered in the Early Modern Context," in *The Many Legalities of Early America*, eds., Christopher Tomlins and Bruce Mann, (Chapel Hill: Omohundro Institute of Early American History and Culture, 2002), 346.
[35] Dayton, "Was There a Calvinist Type of Patriarchy?: New Haven Colony Reconsidered in the Early Modern Context," 351.
[36] Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800*, (Boston: Little Brown, 1980).

the long run depriving them of its reality."[37] Like Mary Beth Norton's work, Marylynn Salmon's *Women and the Law of Property in Early America* (1985) has argued that while married women enjoyed some control over property, especially in colonies with courts that upheld women's separate estates, in general women remained dependent and their access to property limited. Salmon's analysis of colonial women's relationship to property drew limited comparisons with the English context, stating that the varieties of legal jurisdictions and regional diversities in England made a comparative analysis too difficult to undertake. While her own work focused on the period 1750 to 1830, she indeed made a case for the importance of a comparative focus centering on the seventeenth century. She wrote, "the answers to many of our questions about Anglo-American comparative law lie in the earliest years of settlement."[38]

While these works have provided a detailed picture of the lives of women in the English and colonial contexts separately, there has been remarkably little dialogue between these two areas of scholarship. Colonial historians have, for the most part, been reluctant to engage substantially in English sources, while historians of English women have generally not drawn any comparisons at all with colonial women. Though the work of Atlantic historians and transnational legal scholars reflect the growing interest in broadly conceived comparative studies, historians of women in both England and the colonies have remained isolated from these larger currents in historical literature.[39] This is more remarkable given the well-developed bodies of literature on women in Britain

[37] Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society*, (New York: Knopf, 1996): 398.
[38] Marylynn Salmon, *Women and the Law of Property in Early America*, (Chapel Hill: University of North Carolina Press, 1986), xiv-xv.
[39] Two notable examples of these comparative studies are Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900,* (Cambridge: Cambridge University Press, 2002). Kenneth MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576-1640,* (Cambridge: Cambridge University Press, 2006).

and America that would make such a comparison possible. However, historians of women and Atlantic historians have recently begun to recognize the importance of setting gender, family, and sexuality in an Atlantic context. Social historians of English women such as Susan Amussen have argued for the need for studies that draw broadly from archives on both sides of the Atlantic, while still retaining a focus on "local grids of power."[40] A recent roundtable discussion on gender and the family in the Atlantic World in *History Compass*, has also pointed to a lack of sustained studies of women in an Atlantic context. Karin Wulf, a contributor to the forum, has written that while "we may find gender lurking around the margins of the (Anglo) Atlantic, a critical consideration of women and family as subjects and agents is sorely lacking." One of the reasons for this, she suggests, is that Atlantic historians have been more interested in examining the movement of people, ideas, and things, rather than at continuities and stasis, which "was a dominant experience and mode for women."[41]

One notable exception, however, is Rosemary O'Day's recent work on women in Britain and colonial America. In *Women's Agency in Early Modern Britain and the American Colonies* (2008), O'Day examines how the experiences of women in England, Scotland, Ireland, and Wales compared to women in the North American colonies, arguing that both British and colonial women enjoyed a great deal of freedom and independence in their traditional roles as wives and mothers.[42] Drawing from women's

[40] Susan Amussen, "Britain in Early Modern Global Contexts" (comment presented at the 2009 meeting of the North American Conference on British Studies, Louisville, Kentucky). Amussen is now co-authoring an article on the subject with Allyson Poska titled "Restoring Miranda: Towards a Gendered Early Modern Atlantic World," (forthcoming).
[41] Karin Wulf, "Women and Families in Early (North) American and the Wider (Atlantic) World," part of a roundtable titled "Rethinking Gender, Family, and Sexuality in the Early Modern Atlantic World," in *History Compass* 8, No. 3, (2010): 242.
[42] Rosemary O'Day, *Women's Agency in Early Modern Britain and the American Colonies*, (London: Pearson Longman, 2008).

letters, diaries, and accounts, the comparative focus of her study is based on women of the British and colonial elite in the eighteenth century. While O'Day's book is an important step forward in establishing a comparative framework for the study of British and colonial women, the availability of court records on both sides of the Atlantic make it possible for us to go beyond her analysis.

IV. Sources and Methodology

Legal records are one of the only sources that make a comparison between women's lives in the seventeenth-century Atlantic world possible. Though women left few records of their daily lives in the seventeenth century, women on both sides of the Atlantic frequently appeared to make their testimonies and to present petitions before the courts. These legal documents form the basis of the comparison of the lives of women in England and the colonies pursued in this study. Though women's words before the court were mediated through the clerks who recorded their deposition, these legal records nevertheless provide insight into the challenges, ambitions, and desires that spurred average women into legal action. The letters and correspondence left by elite women in England, the majority of which are written in their own hands, provide a uniquely rich and detailed glimpse into the extent of elite women's knowledge of the law, and the level of their participation in their legal cases. I look at these letters and correspondence in Chapter Five. Unfortunately, the lack of such letters surviving from seventeenth-century colonial women has made it impossible to be as detailed in my accounts of elite women in colonies.

i. Legal Cases and Geographical Scope

This study is based on a sampling of over 3000 cases and petitions heard in courts in England and America between 1630 and 1700. Nearly 1850 of these cases were civil prosecutions, while an additional 850 cases were criminal. Over 300 petitions presented to the court by both men and women were also examined. These cases formed the basis of a database designed to track the numbers of women appearing before the courts. The database was constructed by logging each case in which a woman appeared as a plaintiff, a civil or criminal defendant, or as the victim of a crime. These cases were matched by approximately equal numbers of civil and criminal cases in which only men appeared.[43]

The majority of the 3000 cases sampled for this project are drawn from England, where the variety of legal jurisdictions and the larger absolute number of women using the courts made a larger sampling necessary and more feasible. As Table 1.1 shows, I examined over 2,300 cases and petitions from a variety of different English courts and legal jurisdictions. From the ecclesiastical courts, I sampled 235 cases drawn from the Essex Archdeacon's court, the London Commissary Court, and the London Consistory Court.[44] The 416 common law cases, sampled from the courts of Quarter Session sitting in Essex and London (which includes the City, Middlesex, and Westminster), includes mainly criminal trials and petitions presented to the court. The substantial sampling I have from the London Lord Mayor's Court, which comprises 1350 civil cases, reflects both the large number of surviving cases from the seventeenth century, as well as the organization of the collection. The Mayor's Court Original Bills, discussed in Chapter Six, are well-cataloged and are organized by type of case and by year, making the

[43] This methodology was adopted on the advice of Mary Beth Norton, who has used similar data and methods in her own work. See *Founding Mothers and Fathers*, Appendix 1, pp. 409-410.
[44] The procedure and jurisdiction of all of the courts mentioned here are spelled out in Chapter 1.

collection easy to work through. The much smaller number of cases sampled from the English equity jurisdiction, 41 cases from the Court of Chancery, form the basis of Chapter Five on elite women. Though this chapter is based on a smaller sampling of cases, it also draws from a variety of other sources, including elite women's correspondence and inventories.

Table 1.1: Overview of English cases and petitions sampled by legal jurisdiction and location, 1630-1700

Jurisdiction and Location	Number of cases sampled
Ecclesiastical	235
Archdeaconry of Essex	59
London Commissary	91
London Consistory	85
Common law	2,048
London Mayor's Court	1350
London Quarter Sessions[45]	416
Colchester Borough Court	285
Equity	41
Chancery	41
Total	2,324

The colonial dimension of this project, which focuses on Essex county, Massachusetts, and Talbot, Kent, and Somerset counties, Maryland, draws mainly from the county courts in these areas. I sampled a total of 713 cases from these areas based on the same methods of selecting cases I used for the English documents. In Maryland, I sampled 227 cases from common law courts, which includes both criminal prosecutions and civil litigation. The small number of cases sampled from the Maryland Court of

[45] Includes cases and petitions heard before the Quarter Sessions in the City, Middlesex, and Westminster.

Chancery, which was not established until 1660, reflects the fact that this court rarely heard suits between parties, although these suits seem to have been more common by the late-seventeenth century. My sampling of 417 cases from Massachusetts, where neither equity law nor ecclesiastical law were established, is drawn from common law county courts sitting in Essex county. The majority of these cases are drawn from the Quarterly courts of the towns of Salem and Ipswich, although I have occasionally drawn from Boston's court records when necessary. Like the Maryland county courts, the Essex Quarterly courts heard both civil litigation and criminal prosecutions.

Table 1.2: Overview of colonial cases and petitions sampled by location and legal jurisdiction, 1630-1700

Location and Jurisdiction	Number of cases sampled
Maryland	
Common law	227
Kent County Court	73
Talbot County Court	33
Somerset County Court	104
Provincial Court	17
Equity	15
Court of Chancery (after 1660)	15
Massachusetts	
Common law	471
Essex County Courts[46]	471
Total	713

ii. The Social Status of Litigants

The men and women who appeared in these cases came from a variety of different social backgrounds. While the court clerks who generated the written court records indicated the social status of the people involved in the case in only the broadest terms,

[46] Includes courts sitting in Ipswich and Salem.

these records provide a general outline of the type of people who appeared before the courts. The majority of people examined in this study were drawn from the middling and lower orders of society. In England, these people included merchants and wealthy tradesmen, down to petty artisans and the laboring poor. The social status of the men and women appearing before the courts in Massachusetts and Maryland is more difficult to decipher with certainty. The only social group that is clearly and consistently demarcated in the court records are servants. The vast majority of colonists who appeared before the courts were given no defining title at all, although the details of their court cases suggest that many of them were merchants and farmers.

The level of participation by women of the English and colonial elite form a minority of litigants appearing before English and colonial courts. This group of people, whose experiences in the courtroom form the basis of Chapter Five, comprised titled members of the gentry and nobility, from the level of knights up to the peerage. Men from these families filled positions of both local and national significance. Women of the colonial elite were often the daughters of members of the English gentry, and frequently married men of equivalent status upon their arrivals in the colony. In Massachusetts, families such as the Winthrops, the Bradstreets, and the Endicotts, formed the educated ruling elite in the seventeenth century. In Maryland, the Calverts and the Brents, both of whom claimed aristocratic family connections in England, were large landowners with extensive households of servants.

iii. Periodization

Though the seventeenth century Anglophone world experienced major political and religious upheavals, this study reflects the continuities that characterized women's

lives. By focusing on the period from 1630 to 1700, this study disrupts the traditional periodization of seventeenth-century British history, which has tended to divide the century into pre- and post-civil war stages. While this division may be appropriate in studies of politics and religion, it distorts the fundamental continuities that governed familial, social, and cultural life in the English world throughout the seventeenth century. Additionally, my focus on women's experiences in the early decades of colonization allows me to draw more useful comparisons between the women in England and the colonies. Though Maryland and Massachusetts sustained native-born populations by 1700, in the seventeenth century, the majority of colonists were English immigrants who had spent a substantial portion of their lives in England. Thus, while the lives of women in the New World were undoubtedly different from experiences of women in England, in the seventeenth century both English and colonial women retained a common social and cultural heritage.

V. Conclusion

As the following chapters show, women in England and the colonies possessed a sound understanding of the legal issues at stake in their cases, and were not afraid to appear before the law to seek legal redress. However, the different demographic, economic, social, and legal contexts in which women in England, Massachusetts, and Maryland lived and worked led to substantial differences between the experiences of female litigants across the Atlantic World. The next chapter lays the foundation for the rest of this study by analyzing the different societies and cultures that arose on both sides of the Atlantic, and the impact that these factors had on women and the law.

Chapter 2: "When Women Goe to Law, the Devill is Full of Businesse:" The Cultural, Social, and Legal Contexts of Women's Litigation

In John Webster's tragi-comedy *The Devil's Law-Case: or When Women goe to Law, the Devill is full of Businesse* (1623), the widow Leonora takes her son, Romelio, to court, attempting to disinherit him and make her daughter heir in his place. When her servant Winifred tries to persuade her to settle her family business privately, out of the public eye, Leonora retorts "Privacie? It shall be given him/ In open Court, Ile make him swallow it/ Before the Judges face..."[1] One character in the play reviles Leonora for her litigious behavior, saying that such women "have more need/ Of a Physician then a Lawyer," and that their frivolous "vile suits/ Disgrace our Courts."[2] Leonora had overstepped the bounds of traditional female roles by acting as an agent rather than an object, and thus had broken the societal order ordained by God and upheld by man.

While Webster's Leonora was a fictional character meant to chide litigious women for being overly bold and independent, this outspoken widow represents a shift in the portrayal of women in popular drama, from the passive victims of the law to legal actors in their own rights. Unlike Elizabethan playwrights such as Thomas Garter, who frequently depicted women on trial, Jacobean dramatists, including Webster and his contemporary Francis Beaumont, emphasized women's legal activity by portraying them not as the accused, but as the accuser.[3] As Tim Stretton has pointed out, Jacobean playwrights depicted women not just as victims, but as "customers" of the legal system.[4] While these portrayals of female litigants were often critical and negative, Webster and

[1] John Webster, *The Devil's Law-Case: or When Women goe to Law, the Devill is full of Businesse,* (London: 1623), G 3.
[2] *Ibid*., G 5-6.
[3] Thomas Garter, *The Commody of the Moste Veruous and Godlye Susanna,* (London: 1578). Francis Beaumont, *The Woman Hater* (1606) and *The Nightwalker, or the Little Thief* (1611).
[4] Tim Stretton, *Women Waging Law in Elizabethan England*, (Cambridge: Cambridge University Press, 1998), 58-59.

his contemporaries consistently depicted women as articulate and capable defenders of their interests in the courtroom. [5]

The changing representations of women in early seventeenth-century dramas reflected a real growth in the numbers of women appearing in courts of law. While women comprised 17 percent of all litigants in the English Court of Chancery during the reign of Elizabeth, this number had risen as high as 40 percent by 1625.[6] The number of women appearing in the Court of Requests rose slightly during the late sixteenth and early-seventeenth centuries, from about 12 percent in 1562 to 18 percent in 1624.[7] The ecclesiastical courts also saw an increasing number of women appearing as litigants. While female plaintiffs brought a little over half of defamation actions in the York Consistory Court in 1590s, by the 1690s this number had risen to 76 percent.[8] The same was true of ecclesiastical courts in the southeast. Based on a sampling of cases between 1630 and 1699 from the court of the Archdeaconry of Essex, the Diocese of London Commissary Court, and the London Consistory Court, women accounted for 84 percent of the plaintiffs named in slander cases before the courts, and 52 percent of the plaintiffs named in inheritance litigation.[9] The rising numbers of female litigants were part of the growing litigiousness of English society as a whole: cases heard in the central courts of

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[5] Carole Anne Blessing, "Women and the Law in the Plays of John Webster," (PhD diss., University of California, Riverside: 1991): 6.

[6] Amy Erickson, "Common Law versus common practice: Marriage Settlements in Early Modern England," *The Economic History Review* 43, No. 1, (February 1990): 28. W. R. Prest's estimates for the number of women appearing in Chancery in the early seventeenth century is somewhat higher than Erickson's. See Prest, "Law and Women's Rights, in Early Modern England," *Seventeenth Century* 6, No. 2, (1991): 182.

[7] Stretton, *Women Waging Law,* 39.

[8] J. A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York*, (York: Borthwick Institute of Historical Research, 1980), 27-28.

[9] Based on a sampling of a total of 241 cases from English ecclesiastical courts, 63 from the Archdeaconry of Essex Depositions, Essex Record Office,, Chelmsford, England, D/AE/D8, 93 from the London Commissary Court, and 85 from the London Consistory Court, London Metropolitan Archives, D/CL. See also Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London*, (Oxford: Oxford University Press, 1996), 35-37.

Common Pleas and King's Bench more than doubled between the 1580s and 1670s.[10] These numbers indicate that, during the seventeenth century, more women than ever before were appearing in courtrooms, prosecuting cases, presenting petitions, or testifying on behalf of another party.

This chapter examines the social, economic, political, and cultural contexts that shaped women's experiences before the magistrates. First, it examines women's roles within the patriarchal household. Though works published by contemporary writers in both London and Boston extolled the subordinate positions of women within the household as daughters, wives, and servants, in reality, women could both challenge and uphold the structures of authority that governed them. Second, it examines the demographic and social contexts of women's litigation. Maryland's unique demographic climate and stratified social groupings was one of the defining factors in the ability of Maryland women to use the law to their own benefit. Third, the variety of legal jurisdictions available to women in England benefited them substantially. Though colonists sought to establish English common law courts and procedure from the earliest days of colonization, the lack of an equity and ecclesiastical jurisdiction placed colonial women at a disadvantage. Fourth, this chapter examines the circulation of printed legal literature, and how women might have become aware of the legal rights afforded them by English and colonial law. These printed legal texts outlined women's legal rights, and provided them with detailed information about the protection of their property through dower, wills, jointures, and inheritance. Popular literature, especially plays, suggests that women were becoming increasingly aware of their legal capabilities, and could often be

[10] Christopher Brooks, *Lawyers, Litigation, and English Society Since 1450*, (London: Hambledon, 1998), 68.

both knowledgeable and assertive in their pursuit of redress for their grievances. Though these plays reproached litigious women for their bold behavior, both English and colonial law gave women the opportunity to protect and defend their self-interests through legal recourse.

I. Women, Patriarchy, and the Early Modern Family

In all areas of the English world, seventeenth-century understandings of hierarchy, patriarchy, and subordination governed relationships within the family, and characterized the individual's relationship with political and legal authorities. Contemporary writers understood women, children, and servants to be under the dominion of male heads-of-household, who had political and legal authority over his dependents.[11] Robert Cleaver wrote in 1598 that the "household is… a little commonweath," divided into "the governours," and "those that must be ruled." According to Cleaver, while a wife might be in a position of authority over children and servants, she was subordinate, "a fellow helper" to her husband, who was "the Cheefe governour."[12] Religious writer Richard Bernard wrote in 1612 of families as the "churches of God," in which the "master be the domesticall head…and the religious Governour of a family." These "governours" must "bring all his household in subjection to Gods word…and must set up within his house religious exercises." Further, they were charged to keep stern watch over the morality of their servants and children, making known "their ful resolution to all…that they will allow no order to be broken."[13] William

[11] See Suzanne Hull's work, especially *Chaste, Silent, and Obedient: English Books for Women, 1475-1640*, (San Marino: Huntington Library Press, 1982); Hull, *Women According to Men: the World of Tudor-Stuart Women*, (Walnut Creek: AltaMira Press, 1996).
[12] Robert Cleaver, *A Godly Forme of Houshold Government* (London: 1598), 1-9.
[13] Richard Bernard, *Josiah's Godly Resolution in Conference with Caleb: Touching Houshold Governement for Well-Ordering a Familie*, (London: 1612), 22-29.

Gouge, author of *Of Domesticall Duties*, published in London in 1622, extolled the order and hierarchy of the household, and upheld "the reverence of wives to their husbands, and of children to their parents." Speaking of the economic position of wives, Gouge stated that any grant or contract for "goods, lands, or other things whatsoever made by a woman covert…if they be done without her husband's consent, are void. For the authority which God hath given a husband, and subject which he hath laid on a wife, restrain her power and liberty in that which is her own."[14]

Other writers such as William Whately, an early-seventeenth century Puritan preacher, explained the household hierarchy in the starkest of terms: while husbands were "the first mover and chief," the wife was "a subordinate and a good furtherer." A woman's duty, wrote Whatley, was two-fold: "to acknowledge her inferiority: the next, to carry her selfe as inferiour." A wife must be convinced that she is not her husband's equal, and that "her husband is her better by farre, else there can bee no contentment." Whatley also emphasized the position of wives with that of other dependents such as children and servants: a wife "was bound equally with the children and servants to reverence her husband; all inferiours owe reverence alike." According to Whatley, wives owed their husbands absolute obedience, even in the face of physical violence. While a woman may "fly to the magistrate and seek safety" when threatened by her husband with having "her brains knocked out," she still "may not fly quite away from him with a purpose of not returning."[15]

Hierarchy and subordination were central to colonial understandings of power and authority. Though very few of these sermons were published in the colonies prior to

[14] William Gouge, *Of Domesticall Duties*, (London: 1622), 596.
[15] William Whately, *A Bride Bush: Or, a Wedding Sermo*n, (London: 1617), 14, 36-44.

1700, these writings extolled women's positions as wives, mothers, and godly members of their communities. As Laurel Thatcher Ulrich showed in her article on women in early New England, religious writers and preachers repeatedly emphasized that "vertuous" were pious, chaste, obedient, and godly.[16] William Secker's *A Wedding Ring for the Finger*, an English pamphlet republished in Boston in 1690 and 1705, encouraged men looking for a wife to "choose such a one as will be subject to your dominion. Take heed of yoking your selves with untaimed Heifers."[17] While Secker claimed that "the wife may be a sovereign in her husbands absence," she "must be subject in her husbands presence."[18] In his advice to wives, Secker exhorted them never to be contentious, but treat their husbands with sweetness and humbleness at all times. Secker's publication was followed only a year later by Cotton Mather's *Ornaments for the Daughters of Zion: Or, The Character and Happiness of a Vertuous Woman* printed in Cambridge, Massachusetts in 1691. In this treatise, Mather drew from biblical examples to exhort his female readers to remain submissive in all stages of their lives, from maidenhood through marriage to widowhood.[19]

While these works offered an idealized picture of early modern familial relationships, in reality, the patriarchal household was neither untested nor unchallenged. Indeed, court records reflect that individual women could dispute and defy the structures of authority that governed them within the household and in society more broadly. Historians such as David Underdown and Anthony Fletcher have even argued that the

[16] Laurel Thatcher Ulrich, "Vertuous Women Found: New England Ministerial Literature, 1668-1735," *American Quarterly* 28, No. 1, (1976): 20-40.
[17] William Secker, *A Wedding Ring for the Finger,* (Boston, 1690), 91.
[18] *Ibid*., 46.
[19] Cotton Mather, *Ornaments for the Daughters of Zion: Or, The Character and Happiness of a Vertuous Woman,* (Cambridge, MA: 1691).

political and social upheavals of the seventeenth century led to a "crisis" in gender relations. These historians argued that men's insecurities about their own elevated status within the patriarchal household clashed with women's efforts to work within the constraints placed upon them by patriarchy. These historians have pointed to women's outspoken denounciations of their husbands, friends, and neighbors, which resulted in a large part of the litigation for defamation heard in the ecclesiastical courts between 1560 and 1640, as evidence that women actively sought to threaten the authority of both the social and the gender order.[20] Contemporary writers urged women to be silent and submissive, but the lived experiences of women in the seventeenth century reflects that patriarchal authority, embodied in both state and household, was continually tested and challenged.

While some women challenged their subordinate positions within their households, others clearly worked to uphold their positions as daughters, wives, and widows within their households and families. A woman's decision to challenge or uphold household authority depended, in large part, on her circumstances. A female servant who had been mistreated, for example, might lodge a complaint in court against an abusive master or mistress. Conversely, a maidservant might also consider it to her advantage to uphold the authority of her superiors within the household and testify on behalf of her master or mistress. The varieties of women's experiences and relationships within in the household, which could range from loving and harmonious to spiteful and violent, meant

[20] Anthony Fletcher, *Gender, Sex, and Subordination in England, 1500-1800*, (New Haven: Yale University Press, 1995), 401-409; David Underdown, "The Taming of the Scold: the enforcement of patriarchal authority in early modern England," in Anthony Fletcher and John Stevenson, eds., *Order and Disorder in Early Modern England,* (Cambridge: Cambridge University Press, 1995), 116-136. On women and slander litigation, see Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London*.

that women challenged or upheld these hierarchal structures according to their own needs and the exigencies of their situations.

II. The Demographic, Social, and Political Contexts of Women's Litigation

The works of contemporary writers, which extolled the virtues of a stable, orderly society, also masked the real political, social, and economic changes that were at work throughout the seventeenth century. From 1520 to 1680, the population of England doubled from 2.5 million to around 5 million, and demographic changes brought rising inflation, decreasing wages, and increasing urbanization as people flooded into cities to find work.[21] In 1640, 400,000 people lived in the City of London and its suburbs, a number which dwarfed the populations of England's next largest cities, Norwich and Bristol, which each numbered 20,000 and 15,000.[22] Politically, the breakdown of the government of Charles I after 1640, the subsequent Civil Wars from 1642-1648, and finally the execution of the king in 1649, resulted in years of political turmoil as a variety of groups tested the limits of governmental and legal authorities, and new political actors pushed into the public arena.[23] Though the restoration of Charles II in 1660 reestablished monarchial authority, political tensions continued to escalate through the Popish Plot and the Exclusion Crisis in 1679-80, and finally the replacement of James II with William and Mary in January 1689.[24] These rapid social and political changes meant that

[21] Keith Wrightson, *English Society, 1580-1680,* (New Brunswick, NJ: Rutgers University Press, 1982), 121-128.
[22] Norman G. Brett-James, *The Growth of Stuart London*, (London: Allen & Urwin, 1935), 498; Roy Porter, *London: A Social History,* (London: Hamilton, 1994), 131.
[23] Tim Harris, "The Problem of 'Popular Political Culture' in Seventeenth-Century London," *History of European Ideas* 10, no. 1 (1989): 43-58. Keith Lindley, *Popular Politics and Religion in Civil War London* (Aldershot, England: Scolar Press, 1997). Valerie Pearl, *London and the Oubreak of the Puritan Revolution: City Government and National Politics, 1625-43* (London: Oxford University Press, 1961).
[24] Tim Harris, *Restoration: Charles II and His Kingdoms, 1660-1685*, (London: Allen Lane, 2005).

traditional notions of order and hierarchy did not go untested throughout the seventeenth century.

The social, economic, and political upheavals that shook the foundations of order in England were partly the reason that thousands of colonists embarked from their homeland for America in the 1630s. Over the course of the seventeenth century, around 21,000 colonists emigrated to New England.[25] Many of the settlers who came to Massachusetts Bay during the seventeenth century had a common religious outlook, as well as shared roots from the counties in East Anglia, which contributed to the stability of the colony and to the quick establishment of courts within years of the colony's founding.[26] Unlike the Chesapeake, the population of which was sustained by waves of single immigrants throughout the seventeenth century, the tendency for New England families to emigrate together produced a more stable, orderly society with established kin-networks. While New England had the fewest number of immigrants compared to the Chesapeake and the West Indies, by the end of the seventeenth century, the population of white settlers had reached nearly 91,000, compared to the white population of 85,000 in the Chesapeake and 33,000 in the West Indies.[27] The growth of a native-born population with families often settling in the same towns had a substantial impact on women's legal capabilities. The close proximity of dwelling houses and the presence of kin and neighbors provided oversight for the policing of sexual mores, and added some modicum of protection for young women vulnerable to unwanted sexual advances. Women seeking

[25] Alan Taylor, *American Colonies: The Settling of North America*, (London: Penguin, 2002), 169-170.
[26] David Grayson Allen, *In English Ways: the Movement of Societies and the Transferral of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century*, (Chapel Hill: University of North Carolina Press, 1981), 185-189.
[27] Taylor, *American Colonies,*169-170.

recourse at law could draw from their networks of natal, marital, and extended families at their disposal as they prosecuted their cases in court.[28]

From the colony's earliest founding, Massachusetts leaders sought to establish a well-ordered community rooted in the patriarchal family.[29] Based on religious ideals that likened the hierarchical relationship between husbands and wives to that between God and humankind, interpretations of gender, sexuality, and religion were at the heart of Puritan understandings of both the domestic and cosmic order.[30] Massachusetts magistrates took this ideal seriously: couples living apart from each other were frequently ordered by the court to return to their conjugal living arrangements, even if one of them was in England. While local authorities rejected marital separation, they upheld full, legal divorce in cases of adultery, desertion, or impotence, that would allow couples to remarry. The emphasis that Massachusetts magistrates placed on the family had important implications for women. Colonial leaders upheld the ideal that godly behavior should be the goal for everyone in the colony, and therefore prosecuted and punished both men and women for moral offenses such as fornication and adultery.[31] While Massachusetts authorities went some way toward eliminating the double standard in these areas, they continued to vigorously defend patriarchy in general. Women were still assumed to be in subordinate positions and to defer to men's proper governance.

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[28] David Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629-1692* (Chapel Hill, NC: University of North Carolina Press, 1979), 117-128. See also Roger Thompson, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699,* (Amherst, MA: University of Massachusetts Press, 1986), 157-168.

[29] William E. Nelson, "The Utopian Legal Order of the Massachusetts Bay Colony, 1630-1686," *The American Journal of Legal History* 47, No. 2, (2005): 186.

[30] Else Hambleton, *Daughters of Eve: Pregnant Brides and Unwed Mothers in Seventeenth-Century Massachusetts*, (New York: Routledge, 2004), 1-13.

[31] Cornelia Hughes Dayton, "Was There a Calvinist Type of Patriarchy?: New Haven Colony Reconsidered in the Early Modern Context," in *The Many Legalities of Early America*, eds., Christopher Tomlins and Bruce Mann, (Chapel Hill: Omohundro Institute of Early American History and Culture, 2002), 346-350.

In Maryland, the demand for labor resulted in a large population of indentured servants, and the establishment of a hierarchical and intensely stratified society in which a woman's legal capabilities were, in large part, defined by her status. Of the 120,000 English men and women who emigrated to the Chesapeake in the seventeenth century, only 25,000 paid their own passages and came as free agents.[32] As indentured servants, women were vulnerable to maltreatment and abuse from masters and mistresses, and to sexual exploitation from men within their households. Between 1658 and 1705, about twenty percent of the female servants living in Charles County were brought before the county court for bearing a child out of wedlock.[33] Unlike England and New England, where people tended to settle in towns and villages, the scattered nature of settlements in the Chesapeake also meant that servants who wished to seek legal recourse were far away from local authorities.[34]

While Maryland's female servants endured substantial risks during their indentured years, the shortage of women in the colony meant that if maidservants survived their years of servitude, they were extremely likely to marry, have a family, and manage households of their own.[35] Unlike the populations in England and New England, which were roughly balanced between men and women, in Maryland men outnumbered

[32] James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake*, (Chapel Hill, NC: University of North Carolina Press, 1994), 24-28.
[33] Lois Carr and Lorena Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *The William and Mary Quarterly*, 3rd Series, 34, No. 4 (October 1977): 548.
[34] Gloria Main, *Tobacco Colony: Life in Early Maryland, 1650-1720*, (Princeton: Princeton University Press, 1982), 42-45.
[35] Russell Menard has shown that male indentured servants enjoyed a great deal of upward mobility, especially in the early decades of the colony. See Russell Menard, "From Servant to Freeholders: status Mobility and Property Accumulation in Seventeenth-century Maryland," *W&MQ* 30, No. 1, (January 1973): 37-64.

women three-to-one throughout the seventeenth century.[36] Women thus had substantial opportunities to marry a man with prospects. As the wives and widows of planters, women could exercise a great deal of authority within their families and communities: as wives and widows, they managed plantations, paid and collected debts, and supervised households of slaves and servants. High rates of mortality in the Chesapeake also meant that if a woman outlived successive husbands, she might accumulate a substantial amount of property through the collection of her dower rights and bequests under the terms of her husband's will. As I discuss in Chapters Five and Six, Maryland husbands also frequently named their wives executors of their estates, a role which inevitably drew them into the courtroom as they paid and collected their husband's debts.[37]

III. Women, the Courts, and the Varieties of Anglo-American Law

Colonists sought to replicate common law and legal procedures that they had known in England. However, the multi-jurisdictional legal system of England, comprised not only of common law, but also of equity and ecclesiastical law, offered women in England more substantial opportunities for legal redress than that enjoyed by their colonial counterparts. English equity law had, by the seventeenth century, grown into a jurisdiction that protected women's property through marriage settlements, jointures, and separate estates. Ecclesiastical law, which arbitrated civil disputes over the administration of wills and the payment of legacies, allowed married women to appear in court independently of their husbands. In contrast, the lack of these jurisdictions in the

[36] James Horn, *Adapting to a New World*, 31; Carr and Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," 545.
[37] Carr and Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," 555-557.

seventeenth-century colonies made it more difficult for women to maintain independent control of their property, and to seek legal redress when that property was threatened.

i. The Law

Under English and colonial common law, a woman's legal standing depended upon her marital status. Common law granted single women and widows, as *femmes sole*, the same legal standing as men: they could sue and be sued, own property and inherit property in their own names, and make wills bequeathing their property to their heirs. However, married women, or *femmes covert*, had no legal identity apart from their husbands. Under the common law doctrine of coverture, a woman's legal identity was "covered" by her husband, which in practice meant that she could not own or sell property, could not bring or respond to a legal suit in her own name, and could not make a will without her husband's consent.[38] Any property, both real or moveable, that a woman brought into the marriage, or inherited while she was married, became her husband's.[39] While some urban areas such as the City of London upheld the right of married female businesswomen to make and defend legal contracts, according to the letter of the common law, a married woman could not own property or make a contract in her own name.[40]

As a defining feature of the common law, coverture only applied to the legal subordination of a wife to her husband during marriage. However, it implied a larger injunction that extended to young, unmarried women as well. As wives in the making,

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[38] Sara Mendleson and Patricia Crawford, *Women in Early Modern England*, (Oxford: Oxford University Press, 1998), 37-39; Amy Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1993), 24-25; Stretton, *Women Waging Law*, 31-33. Barbara Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers*, (Oxford: Oxford University Press, 2002), 18-19.
[39] Harris, *English Aristocratic Women,* 18
[40] Marjorie K. McIntosh, "The Benefits and Drawbacks of *Femme Sole* Status in England, 1300-1630," *Journal of British Studies* 44, No. 3, (2005): 410-438.

the legal identities of young women fell within the purview of their fathers or other male kinsmen who protected their interests in property, helped to arrange their marriages, paid their dowries, and drew up their marriage settlements. While young women were thus subject to the decisions made by their fathers, older brothers, and uncles, matriarchs could also play a central role in looking out for the interests of the young women in their families, and were often key players in the negotiation of marriage settlements for their daughters and granddaughters.[41]

Though common law severely restricted the legal rights of married women, it protected a woman's right to receive a portion of her husband's land if she should outlive him. Common law in England and most of the English colonies guaranteed a widow the use of one-third of her husband's real estate during her lifetime. This portion, also known as dower rights, had been established in England since the fifteenth century as a way to protect a woman's interest in the money and property she had brought into the marriage, and that she had helped to maintain through her labor.[42] Common law protected a widow's right to collect her dower rights whether her husband made a will or not. Under the terms of the Statute of Wills of 1540, a testator could devise all of his freehold and copyhold land to heirs of his choice without the hindrance of common law or manorial customs. However, while this meant that a testator could legally disinherit his children by the terms of his will, the statute maintained the right of widows to collect one-third of their husbands' estates, and explicitly barred men from bequeathing their wives' dower lands to other persons.[43] Though a woman's dower lands would descend to the next male

[41] Barbara Harris has shown the central role played by aristocratic women in the arrangement of marriages. See Harris, *English Aristocratic Women,* 43-60.
[42] William Searle Holdsworth, *A History of English Law*, 18 vols. (London: 1903-1972), Vol. 9, 196.
[43] 32 Hen. VIII, c. 1, 1540. Erickson, *Women and Property in Early Modern England*, 27.

heir after her death, common law guaranteed a widow an income during her lifetime, and ensured that she would share in the benefit of the estate she had contributed to throughout her life.

The majority of colonies followed English precedent in protecting the rights of widows to a portion of their husbands' estates. In the seventeenth century, a testator could not legally will away the land reserved for his wife's dower, although he could choose to disinherit his sons and daughters. [44] A Maryland law of 1642 guaranteed a widow the use of at least one-third of her husband's real estate; if her marriage had been childless, she would receive the use of the entire estate.[45] While widow's portions were relatively generous in the Chesapeake, a widow's right to collect her dower in Massachusetts was more uncertain. The Massachusetts legal code of 1648 gave widows the use of a "competent portion" of the estate, but left the exact allotment of land and moveable property to the discretion of the magistrates. The law stipulated that only a widow "living with her husband in this jurisdiction or other where absent from him with his consent or through his meer default, or inevitable providence, or in the case of divorce where she is the innocent partie," would be eligible to receive her dower rights. Further, it spelled out that only widows who "shall not commit or foster any strip or wast" to the land or houses on the estate would be judged worthy of its possession.[46]

While colonial law regarding a widow's right to collect dower could vary from colony to colony, in England, the development of equity law provided an alternative to

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[44] Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society*, (New York: Knopf, 1996), 111-112.; Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, No. 2, (April 1987): 158-159.
[45] "An Act touching Succession to Goods of Intestate Persons, 1642" in "Proceedings and Acts of the General Assembly, January 1637/8-September 1664," *Archives of Maryland*, Vol. 1, 156-157.
[46] *The Book of the General Lawes and Libertyes*, (Boston: 1648), 17-18.

dower in the jointure. Established by the fifteenth century, jointure agreements gave a husband and wife joint ownership of a portion of land during their marriage, with the longest survivor of the couple gaining control of the land as a widow or widower. Under the terms of a jointure, which in the seventeenth century commonly formed part of pre-nuptial marriage settlements, a woman who outlived her husband was guaranteed the right to possess a certain amount of land stipulated in the contract, or be paid an annuity, after the death of her husband. While dower rights could be difficult to claim, especially if an heir contested a widow's right to the lands, jointures lands descended to a woman on the day she became a widow. Jointures were also more flexible than common-law dower rights: unlike dower rights, which entitled a widow to one-third of her husband's land for her lifetime and excluded land held by copyhold, leasehold, or lands subject to entail, jointures guaranteed women the use of any lands stipulated in the agreement. [47]

Equity law also upheld legal devices that allowed women to maintain independent control of their property during their marriages. The equity doctrine of separate estates, in use from the late-sixteenth century onward, placed land in trust for a woman during coverture under the guardianship of a trustee who was legally obligated to act on her behalf. The separate estate allowed a married woman to retain property for her sole and separate use, and protected it from being sold or squandered by her husband.[48] Like jointures, a separate estate was usually stipulated in a pre-nuptial marriage contract and was defensible only in equity courts such as the Court of Chancery. A separate estate held

[47] J. H. Baker, *The Oxford History of the Laws of England, Vol. 6, 1483-1558*, (Oxford: Oxford University Press, 2003), 617-21; Stretton, *Women Waging Law,* 26-27, 109-110. Erickson, "Common Law versus Common Practice," 24-25.

[48] Erickson, "Common Law versus Common Practice," 21-39. Susan Staves has argued that while equity courts upheld women's right to separate estates in the eighteenth century, they began to put more restrictions on the terms of such settlements in the nineteenth century. See Staves, *Married Women's Separate Property in England, 1660-1833*, (Cambridge, MA: Harvard University Press, 1990).

in trust for a married woman could be either real or personal property, or an annuity. From the late-seventeenth century, an annuity paid as part of a jointure was also known as pin-money, or money reserved for a wife's exclusive use.[49]

If common law and equity law provided English women with various avenues to protect their property, ecclesiastical law further defined women's relationship to the law. While equity law allowed exceptions to the doctrine of coverture by upholding devices such as the separate estate, ecclesiastical law virtually ignored the assumption that married women should be legally represented by their husbands. The ecclesiastical courts were the only legal jurisdiction in which married women routinely appeared as litigants in their own rights.[50] From the twelfth century until 1857, the ecclesiastical courts heard conflicts and disputes that arose over the administration of estates, the payment of legacies, and decided in cases concerning the validity of wills. If these cases concerned real property or marriage settlements, they could also be heard at common law or equity law. Ecclesiastical rules of inheritance in cases of intestacy stipulated that a widow was entitled to inherit one-third of her husband's moveable property, with her children splitting the remaining two-thirds equally between them. Special provisions in the ecclesiastical law in cities such as York and the City of London protected a widow's right to one-third of the moveable goods even if her husband made a will.[51] In addition to their jurisdiction over moveable property, the ecclesiastical courts also dealt with issues ranging from moral offenses and matrimonial affairs, to defamation and the licensing of midwives.

[49] Erickson, *Women and Property in Early Modern England*, 102-103.
[50] See Chapter Six below.
[51] Erickson, *Women and Property in Early Modern England*, 27-28.

These complex and overlapping legal jurisdictions opened a variety of avenues for English women seeking legal redress for their grievances. However, while women in England frequently appeared in the equity and ecclesiastical jurisdictions, the colonies lacked a well-developed system of equity law in the seventeenth century. As a result, women's legal identities in the seventeenth-century colonies were defined solely by the common law. Though Maryland officials founded a Court of Chancery in 1660, unlike its English counterpart, the majority of business heard in the court was not on the behalf of private parties, but concerned the Lord Proprietor's interest in lands of people who died without legitimate heirs. [52] Colonies dominated by dissenters, such as Massachusetts, did not establish courts of equity at all; Additionally, the ecclesiastical jurisdiction, which was so frequently used by women in England, was never established in the English colonies. Instead, colonial common law courts oversaw the administration and probate of wills, and heard slander litigation, that in England would have been handled by the ecclesiastical courts.

Colonial scholars have come to different conclusions on why the colonies lacked a well-developed system of equity law, and the impact this had on women's ability to inherit and control property. Carole Shammas has suggested that colonists had an ideological aversion to courts of Chancery, and associated equity law with attempts of the English monarch to circumvent common law liberties.[53] Marylynn Salmon, in her study of women and property in early America, has alternatively argued that in the seventeenth century, colonial society was not sufficiently developed to warrant the establishment of an equity jurisdiction on the English model. It was not until the eighteenth century that

[52] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, xxii-xxxi.
[53] Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, No. 2, (April 1987): 157.

southern colonies such as Maryland, Virginia, and South Carolina established well-developed systems of equity to protect women's separate property. In the years before the American Revolution, these southern planter colonies, Salmon argued, had acquired the wealth and class structure that made the conveyance of women's property in trusts and marriage settlements more important. The establishment of Courts of Chancery had a significant impact on women's ability to control property: Salmon argued that because of equity law, women's "degree of independence" had increased by the early nineteenth century, when women's right to separate property "was exercised with relative ease." However, Salmon also points to the disadvantages faced by women in northern colonies such as Connecticut and Massachusetts, which never established courts of Chancery. Without Chancery, she wrote, the "New England judiciary felt unable to assist women in holding property free from the control of their husbands."[54] Though Salmon's argument points to the importance of equity law for women in the eighteenth and nineteenth centuries, I suggest throughout this study that the lack of an equity system that protected women's property disadvantaged seventeenth-century colonial women as well.

ii. The Courts

While the avenues for legal redress were more limited for colonial women, English women appeared in common law, equity, and ecclesiastical courts, from the royal courts centralized in London, to the more localized courts that sat in the counties. London was the legal capital of seventeenth-century England, and was home to the preeminent courts of the realm as well as a number of courts designed to attend to local affairs. The Court of Chancery, the highest court of equity in England, had jurisdiction over the

[54] Marylynn Salmon, *Women and the Law of Property in Early America*, (Chapel Hill: University of North Carolina Press, 1986), 88, 185-186.

protection of trusts, and the enforcement of simple contracts, including breach of faith. The Lord Keeper headed the court of Chancery; under him sat the Master of the Rolls, twelve Masters of Chancery, and a staff of clerks, the most important of which were the Six Clerks. These clerks acted as court-appointed lawyers for parties in Chancery, and as advisers to private solicitors hired to act on behalf of litigants.[55] Parties entered suits in Chancery by filing bills of complaint, after which interrogatories would be administered by the plaintiff's and defendant's counsel. The defendant then had the opportunity to enter and answer to the charge of the plaintiff. Some cases in Chancery ended at this stage if the defendant decided to settle out of court. However, parties who wished to dispute the charges could also proceed to hearing and judgment, and then, if they wished, to an appeal or a rehearing of the case.[56]

Like the Court of Chancery, the central common law courts, the Court of Common Pleas and the Court of King's Bench, also met in London. Both Common Pleas and King's Bench were headed by four royal justices and one chief justice who enjoyed their tenures at the pleasure of the king. Both courts had wide jurisdictions in both criminal and civil actions. The Crown side of King's Bench heard mainly criminal offenses, while the Plea side heard suits between parties. However, the bulk of the cases heard in both King's Bench and Common Pleas were civil actions, especially litigation over debt, trespass, and the common recovery.[57] However, King's Bench had jurisdiction

[55] Holdsworth, *A History of English Law*, Vol. 1, 416-417, 453-459; Vol. 9, 369-70.
[56] *Ibid*., Vol. 1, 336-368.
[57] Common recovery was a common law legal device that allowed entailed land to be converted to land held in fee simple, which could be sold at the owner's pleasure. J. H. Baker, *The Oxford History of the Laws of England*, Vol. 5, 694.

to hear cases of review and appeal from Common Pleas, and was therefore the superior court of common law.[58]

Though the central royal courts met in London, both the City and its suburbs had courts of local jurisdiction. The City of London, the one-square mile area bounded by the medieval city walls, was a separate legal entity in itself headed by the Lord Mayor and twelve Aldermen sitting in the Mayor's Court and the City Sessions at the Guildhall. The Mayor and Aldermen had the same powers as the justices of the peace in the countryside: they appointed sheriffs, punished those who broke the peace, and heard non-capital criminal cases such as petty theft and illegitimacy.[59] They also handled a variety of social and economic regulations, including the licensing of alehouses, and accepted petitions from those seeking legal redress for a variety of offenses. The Mayor's Court heard litigation concerning disputed contracts and debt collection of the many traders and merchants who lived within the City limits, and even enforced the business contracts of married female traders as if they were *femmes sole*.[60] The Middlesex Sessions, like its counterpart in the City, also dealt with a variety of misdemeanors, as well as social and economic regulations. Criminal causes in both Middlesex and the City were heard at the Old Bailey before the Mayor and judges.[61]

Local government and the administration of common law in the counties fell under the jurisdiction of justices of the peace, usually drawn from the landed county elite. In Essex, the courts of Quarter Sessions, staffed by justices who had been educated at the

[58] Holdsworth, *A History of English Law,* Vol. 1, 194-224. Baker, *The Oxford History of the Laws of England*, Vol. 5, 125-151.
[59] Baker, *The Oxford History of the Laws of England*, 277. On the workings of the City government, see Ian Archer, *The Pursuit of Stability: Social Relations in Elizabethan London*, (Cambridge: Cambridge University Press, 1991).
[60] McIntosh, "The Benefits and Drawbacks of *Femme Sole* Status in England, 1300-1630," 410-438. Baker, *The Oxford History of the Laws of England*, 265-272, 281-283.
[61] Baker, *The Oxford History of the Laws of England*, 285-86.

Inns of Court in London, sat in the county town of Chelmsford. The city of Colchester, which had a population of about 10,000 by the 1660s and was the largest city in Essex, had its own court of local jurisdiction in the borough court. The Colchester borough court dealt with many of the same issues as the Chelmsford Quarter Sessions, including non-capital crimes and social and economic regulation.[62] Capital offenses in the counties were heard by learned lawyers and justices of the peace from the central courts in London who went on circuit twice a year. These courts, known as the assizes, had begun in the 12th century to assure royal control over the local courts and the administration of justice. The Essex Assizes, held in Chelmsford biannually, heard serious offenses referred to them by the Quarter Sessions, such as witchcraft, rape, burglary, treason, and homicide.[63]

While the central royal courts and the courts of quarter session administered common law in London and the counties, the ecclesiastical courts had a wholly separate jurisdiction that operated at both the national and local levels. Though the Archdiocese of Canterbury was the seat of the English Church, the superior ecclesiastical courts met in London. The Prerogative Court of Canterbury held jurisdiction over the probate of wills and the administration of estates of those who left goods of over £5 in more than one diocese.[64] At the local level, each diocese had a consistory court headed by the bishop or his deputy, and often had a court of audience presided over by the bishops' chancellor. The local ecclesiastical jurisdiction for London, overseen by the Bishop of London, sat several days a week at St. Paul's Cathedral, and held disciplinary and probate jurisdiction

[62] J. A. Sharpe, *Crime in Seventeenth-century England: A county Study*, (Cambridge: Cambridge University Press, 1983), 15-19, 29.
[63] Sharpe, *Crime in Seventeenth-century England,* 22. Baker, *The Oxford History of the Laws of England*, 305-307.
[64] Baker, *The Oxford History of the Laws of England*, 233-34.

within the City.[65] Beneath the diocesan courts were the archdeacon's courts, usually headed by a commissary appointed by the bishop rather than the archdeacon himself. These archdeacon's courts, sometimes also called commissary courts, held jurisdiction over local probate matters, having the power to determine the validity of wills, the ability to grant probate of will and letters of administration, and handle suits concerning the distribution of contested legacies. In addition, they also handled matrimonial affairs, causes relating to benefices, and suits involving clerical discipline.[66]

While the English immigrants who settled in the North American colonies in the seventeenth century borrowed extensively from the precedents of English common law, colonists in both New England and the Chesapeake modified English jurisprudence to suit the unique needs of the colonial environment. Colonial law thus developed as a hybrid system that drew from English precedent and reflected the decisions of colonial legislative assemblies. [67] However, colonial courts retained many of the same functions, jurisdictions, and procedures used by the English common law courts. Both the northern and southern colonies adopted a county court system based on the English courts of Quarter Session. In Massachusetts, Quarterly Courts were established in Cambridge, Boston, Salem, and Ipswich by an act of 1636. In addition to hearing civil causes under £10 and non-capital cases, the Quarterly Courts heard cases concerning probate and will administration, and oversaw local affairs such as the maintenance of roads and bridges, the regulation of wages, and poor relief. Appeals, civil cases worth more than £10,

[65] Baker, *The Oxford History of the Laws of England*, 233-24. Baker notes that this court was distinct from the archdeaconry courts of London and Middlesex, although their jurisdictions overlapped.
[66] J. P. Anglin, "The Court of the Archdeacon of Essex, 1571-1609: An Institutional and Social Study," (PhD diss., University of California, Los Angeles, 1965), 16-17. Baker, *The Oxford History of the Laws of England*, 233-234. Gowing, *Domestic Dangers,* 30-32.
[67] Erwin C. Surrency, "The Courts in the American Colonies," *The American Journal of Legal History* 11, No. 3, (July 1967): 253-276. Horn, *Adapting to a New World,* 337. George Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design*, (New York: Archon Books, 1960), 6.

divorce, and capital crimes were heard by the Court of Assistants comprised of the governor, the deputy governor, and the magistrates. [68]

Similar to the Quarterly Courts in Massachusetts Bay, the county courts of Maryland acted as inferior courts of local jurisdiction hearing non-capital criminal offenses, civil cases under £10, and overseeing the administration of local economic and social affairs. County courts were established in St. Mary's County and Kent county in the 1640s. The Maryland Provincial Court, based in St. Mary's City, acted as the court of appeals, and dealt with matters of the most importance including cases involving loss of life and limb. The Provincial Court also heard testamentary matters until 1673, when the newly created Prerogative Court took over this jurisdiction.[69] Maryland was the first colony to establish a Court of Chancery in 1660, presided over by the Lord Proprietor as chief judge in equity.[70]

The variety of laws, legal jurisdictions, and court structures that governed the English world could differ drastically between the English mainland and the colonies. Despite these differences, however, women in England, Massachusetts, and Maryland were aware of their legal rights and privileges, and many of them showed a remarkable knowledge of the issues at stake in their cases. The next section suggests some ways that women might have educated themselves about their legal rights by looking at printed legal treatises and popular drama.

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[68] Joseph Smith, *Colonial Justice in Western Massachusetts, 1639-1702*, (Cambridge, MA: Harvard University Press, 1961), 66-76. Haskins, *Law and Authority in Early Massachusetts*, 32-33.
[69] "Proceedings of the Provincial Court, 1663-1666," *Archives of Maryland*, vol. 49, ix, xv-xvi. "Land Office and Prerogative Court Records of Colonial Maryland," *Archives of Maryland*, vol. 415.
[70] Surrency, "The Courts in the American Colonies," 271. The records of the Court of Chancery were scattered throughout the records of the Provincial Court until 1669, when a separate record was established. "Proceedings of the Court of Chancery," *Archives of Maryland*, vol. 51, xxxvi.

III. Women, Legal Knowledge, and the Circulation of Legal Literature

The proliferation of printed legal literature, pamphlets, and popular dramas indicates how women became aware of their legal rights, and the extent of their knowledge of legal procedure. This literature suggests that some women possessed a detailed knowledge of the workings of the law. While the printing of legal works in the colonies was limited in the seventeenth century, colonists drew from the long tradition of legal literature that had been published in England since the sixteenth century, including case reports, legal dictionaries, and year books. Anthony Fitzherbert's *The New Boke of Justices of the Peas* first appeared in 1538 as a practical guidebook for country gentlemen acting as local justices of the peace, and remained the most important legal handbook for English justices until it was superseded by Michael Dalton's *Countrey Justice* in 1618.[71] Dalton designed *Countrey Justice* as an instruction manual for JPs acting alone and keeping the peace outside of the general sessions; however, it quickly grew into the standard, quick reference guide for law and court procedure in counties. Dalton himself trained at Lincoln's Inn and served as a JP in both Cambridgeshire and Essex in the 1620s and 30s. Though Dalton died in 1644, *Countrey Justice* went through at least twelve editions until its last publication in 1746. [72] If Dalton was the guide for local justices administering law in their localities, Henry Swinburne's *A Briefe Treatise of Testaments and Last Wills*, which appeared first in 1591 and went through eight more editions before 1803, was designed as a manual for navigating the difficult process of drafting and executing wills. It was the first work of canon law to be published in English

[71] Baker, *The Oxford History of the Laws of England*, 494-505.
[72] L. R. McInnis, "Michael Dalton: The Training of the Early Modern Justice of the Peace and the Cromwellian Reforms," in Jonathan Bush, Alain Wijffels, eds., *Learning the Law: Teaching and the Transmission of Law in England, 1150-1900*, (London: Hambledon, 1999), 256-257; *Dictionary of National Biography Online*, "Michael Dalton," (2004).

rather than Latin, making it accessible to a wider, literate audience outside of the church or the Inns of Court.[73]

Though Dalton and Swinburne wrote their treatises for use in the English context, especially by the local governing elite, colonists also found these manuals useful. These books, which emphasized the practical workings of the law rather than the theoretical, suited the needs of a new colonial elite who were farmers and artisans rather than highly-educated members of the gentry.[74] An Act of the Virginia Assembly of 1666 required that both Dalton's and Swinburne's texts be purchased by each county court, the General Assembly, and the General Court. The Maryland General Assembly passed similar statutes. A law of 1678 required that "the statute books of England" and "Daltons Justice of the Peace" be bought by local authorities in each county "to be kept in their severall county courtes that the justices and officers of the said courtes and others may have recourse to the same."[75] Likewise, evidence from colonial inventories and court records show that Dalton's text and others like it circulated widely in the colonies in the seventeenth century. The 1690 inventory of Colonel William Colborne of Somerset County, Maryland, for example, included books such as "the Chronicles of England, Dalton, & one great bible."[76]

Though there were no native colonial printings of Dalton's or Swinburne's texts during the seventeenth century, colonists did publish abridgements of the laws passed by their representative assemblies. In the seventeenth century, Boston was the center of

[73] *Dictionary of National Biography Online*, "Henry Swinburne," (2004).
[74] Warren Billings, "English Legal Literature as a Source of Law and Legal Practice for Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 87, No. 4, (October 1979): 414-416.
[75] "Proceedings and Acts of the General Assembly, October 1678-November 1683," in *Archives of Maryland*, vol. 7, 70.
[76] "Somerset County Judicial Records, 1691-1692," in *Archives of Maryland*, Vol. 405, 46.

printing in New England, publishing not only laws passed by the General Assembly of Massachusetts Bay, but also laws for other colonies in the region.[77] A printing press was established in Massachusetts as early as 1638, and the first book of laws published in 1648. From 1661 to the end of the seventeenth century, the Massachusetts legislative assembly published these laws at least once a year. Another type of printed legal literature, trial reports, began with the printing of the Salem witch trials in 1692. In addition to these works published in the colonies, English case reports and legal texts imported from London circulated widely in the colonies.[78]

While books such as *Countrey Justice* and *A Briefe Treatise of Testaments and Last Wills* were intended as instruction manuals for male local authorities, they contained a good deal of information about the legal rights of women. In cases in which a single woman was tried for illegitimacy, for instance, Dalton wrote that "the mother may be examined upon oath, concerning the reputed father, and of the time and other circumstances, for that in this case the matter and the tryal thereof dependenth cheifly upon the examination and testimony of the mother." Dalton also outlined that justices could not administer corporeal punishment to a pregnant woman, nor send her to the house of correction "until after that the woman is delivered of her childe." Further it added that "neither are the justices to meddle with the woman until that the childe be born and she strong again."[79] Additionally, female servants who found themselves pregnant

[77] Erwin Surrency, "The Beginnings of American Legal Literature," *The American Journal of Legal History* 31, No. 3, (July 1987): 208.
[78] *Ibid*., 213, 218.
[79] Michael Dalton, *Countrey Justice,* (London: 1655 [1618]), 39-42. Essex Record Office, Chelmsford, England. Hereafter cited ERO.

could not be legally discharged from their masters' service unless their service contract expired.[80]

In *A Briefe Treatise of Testaments and Last Wills*, Henry Swinburne outlined in great detail the legal rights of single, married, and widowed women in testamentary actions. He stated that though married women could not make a will without the permission of their husbands, women were often involved in inheritance litigation as the executors of their husbands' estates, or as a legatee of the will. An unmarried woman could make a will, but it would become invalid at her marriage. Additionally, any will drawn up while a woman was under coverture was invalid even if she outlived her husband, unless she reaffirmed the will after her husband's death. A woman's moveable property also became her husband's upon her marriage, and he retained his rights over them even if he outlived his wife.

While Swinburne pointed out the limitations women faced in the law of property, he also outlined several loopholes in the law that women could use to their own benefit. The law provided that a woman could legally make a will so long as she had her husband's consent. However, as Swinburne pointed out, the law also assumed that any woman who did make a will had her husband's compliance. If the goods were delivered to a woman's executor at her death, there was nothing he could do to reverse the action "because in this case the same Law presumeth, that the husband gave his consent in the beginning at the time of the will making. And therefore the same being proved, and the goods delivered accordingly, it is then too late for him to revoke the same."[81]

[80] *Ibid*., p. 117.
[81] Henry Swinburne, *A Briefe Treatise of Testaments and Last Wills*, (London: 1640 [1591]), 82-83.

Swinburne also explained cases in which a wife could legally devise goods without the consent of her husband. A husband, Swinburne wrote, could not alienate the goods or property that belonged to his wife: "Neither can the husband bequeath by will, or make an executor of an obligation which he hath in right of his wife, nor of any other thing in action." A woman who acted as executrix to the will of a man other than her husband could make her will without the consent or input of her husband, "because such goods as she hath as executrix are not her husbands but are to be distributed for the dead, as for the payment of his debts, performance of his will, and for such other good and godly purposes." However, if a woman was a legatee of a will as well as the executrix, the goods she received from a legacy became the property of her husband. Furthermore, Swinburne stated that a woman who died during her betrothal, but who was not yet married, was not a femme covert and could devise her goods to anyone she chose.[82]

While these treatises outlined women's legal rights under common law and ecclesiastical law, the first published compendium of legal information that dealt exclusively with the legal rights of English women was *The Lawes Resolution of Women's Rights*, alternately titled "The Woman's Lawyer." Edited and prepared for publication by Thomas Edgar, a lawyer himself, *The Lawes Resolution* appeared in English in 1632, making it more accessible to a wide audience.[83] While the book targeted readers outside of its ostensibly female-only audience, such as students at the Inns of Court, it contained detailed information on complex issues surrounding jointures, and practical advice for women, such as the importance for consummating a marriage right away to protect dower rights. *The Lawes Resolution* outlined women's legal status in a

[82] *Ibid*., p. 85.
[83] Wilfrid Prest, "Law and Women's Rights in Early Modern England," 174-78.

variety of different cases and jurisdictions. In cases of divorce, for example, it explained that a woman could sue for separation when she "cannot dwell with her husband without manifest danger of death, because he is cruell and bloudy."[84] *The Lawes Resolution* also outlined the instances in which a married woman could sue at common law without her husband, such as in cases in which he had committed a felony, or had been banished from the realm. In these circumstances, she was awarded femme sole status to protect her property at law.[85] At criminal law, a married woman had to answer to criminal charges as a femme sole unless the crime was committed jointly with her husband.[86]

The 1700 publication of another treatise dealing with the legal status of English women, titled *Baron and Feme: A Treatise of the Common Law Concerning Husbands and Wives*, indicates that women's relationship to the law continued to be an important topic for discussion throughout the seventeenth century. The anonymous author of *Baron and Feme* wrote extensively of the legal issues that characterized the relationships between husbands and wives, especially issues surrounding the descent of property through marriage settlements, jointures, dower rights, and wills. Concerning dower, *Baron and Feme* spelled out the specific ways a woman could claim her widow's third, either by a writ from the sheriff, or by assignment from the heir. The treatise also presented detailed instructions on how to follow a case through the courts if an heir contested a widow's right to dower. It outlined how to file a writ and declaration to commence the suit and how to enter pleadings, while at the same time laying out the legal

[84] Thomas Edgar, *The Lawes Resolution of Women's Rights*, (London: 1632), 64.
[85] *Ibid*., 204.
[86] *Ibid*., 206.

basis on which widows could claim a contested dower portion.[87] However, it also stated that a woman who had accepted a jointure would be barred from collecting her dower lands at common law, for jointures were considered to satisfy the need for a dower.[88]

While none but the most educated of women would have read these legal treatises, this body of legal literature suggests that women's legal relationship to property was an issue that both men and women considered important. It is also possible that a learned or resourceful woman would have sought these books out if she were party to a case in the courts. Literacy rates among women of middling status in London, where most of these works were published, had increased dramatically by the end of the seventeenth century.[89] Women of the elite certainly bought and consulted legal treatises. An inventory of books bought by Lady Hester Temple in the 1650s included famous legal works such as Sir Edward Coke's *Reports*, and other titles such as the "Laymans Lawyer," and the "Exact Lawgiver."[90]

Popular London dramatists also portrayed women as both hard-nosed litigants and voracious readers of legal literature. Widow Blackacre, the fictional anti-heroine of William Wycherley's *The Plain Dealer* (1676), continually bustles around London, always holding a bundle of legal papers and directing her legal counsel in the intricacies of equity and common law. Wycherley, who had trained in the law himself, entering the

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[87] *Baron and Feme: a Treatise of the Common Law Concerning Husbands and Wives*, (London: 1700), 96-98.
[88] *Baron and Feme,* 115-117.
[89] David Cressy, "Levels of Literacy in England, 1530-1730," in Cressy, *Society and Culture in Early Modern England*, (Aldershot and Burlington, VT: Ashgate, 2003), 145-147. Cressy's study is based on the number of women who could sign their names on court depositions. He posits that seventy-five percent of female deponents in the City and suburbs could not sign their names in the 1670s, but by the 1690s this number had fallen to fifty-two percent.
[90] Edward Coke, *Reports*, (London: 1600-1658). See also "Sir Edward Coke," *Dictionary of National Biography Online.* The lack of an author or publication date for the "Laymans Lawyer" and the "Exact Lawgiver" makes it difficult to discover the publication and circulation history of these tracts. These titles are not found in the *Short Title Catalogue*. It is possible that they may have been works that only circulated in manuscript.

Inner Temple in 1659 at age eighteen, offered a critique of Restoration society as a whole through Widow Blackacre's singular pursuit of her own self-interest at law.[91] When an apprentice at a London bookseller's shop asks her if she would like to see the latest books on midwifery or a new book of plays, Widow Blackacre instead asks him for copies of treatises by some of the most prolific legal writers of the seventeenth century, including "Dalton, Hughes, Shepherd, and Wingate."[92] Widow Blackacre was not only literate, but also read Law French. As one character in the play remarked, when Widow Blackacre came to London "she lodges in one of the Inns of Chancery, where she breeds her Son, and is her self his tutoress in Law French."[93] When one of her lawyers questions her ability to conduct her case, she chides him: "I'd have you to know, I am no common woman; but a woman conversant in the Laws of the Land, as well as your self, tho' I have no Bar-gown."[94] She also clearly enjoys the freedom and legal independence that widowhood brings. When a young fop tries to woo her, she answers him with the question "wou'd you have me under Covert Baron again? No, Sir, no Covert Baron for me," further adding "I am a Relict and Executrix of known plentiful Assits and Parts, who understand myself and the Law."[95]

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[91] Jon Lance Bacon, "Wives, Widows, and Writings in Restoration Comedy," *Studies in English Literature*, Vol. 31, (1991): 435-436. *Dictionary of National Biography Online*, "William Wycherley," (2004).
[92] William Wycherley, *The Plain Dealer*, (London: 1676), 44. Michael Dalton, *Countrey Justice*. The work by "Hughes" referred to could be a number of treatises, including William Hughes *An Exact Abridgement in English of the Cases Reported by Sir Frances More* (1665), *The Grand Abridgement of the Law Continued* (1660), or *Hughes' Quaeries, or, Choice Cases for Moots Containing Several Points of Law* (1675). The works by "Shepherd" could be William Sheppard's *The Court-Keepers Guide*, (1649), *Action Upon the Case for Slander*, (1662) or *Actions Upon the Case for Deeds* (1663). The work by "Wingate" is probably Edmund Wingate's *The Bodie of the Common-Law of England* (1655) or *Maximes of Reason, or, The Reason of the Common Law of England* (1658).
[93] Wycherley, *The Plain Dealer*, 10.
[94] *Ibid*., 42.
[95] *Ibid*., 35.

IV. Conclusion

The chastisement of bold and litigious women in Jacobean and Restoration comedies such as *The Devil's Law Case* and *The Plain Dealer* reflects a pervading anxiousness that women who appeared in the courts had overstepped their ordained roles as the helpmeets of men, and had come to focus exclusively on their own self-interest. While the legal jurisdictions and court structures that governed women's lives could vary widely between England and the colonies, women in all areas of the English world were expected to abide by the same patriarchal ideals that taught them to be silent, submissive, and deferential. Local authorities, popular plays, and prescriptive literature on both sides of the Atlantic chided litigious and independent-minded women for appearing audaciously bold. Yet at the same time, English and colonial law not only protected women's legal rights, especially concerning property, but also upheld their right to appear before the magistrates to testify in their own defense. As the following chapters will show, women in all areas of the English world pursued and protected their self-interest by appearing before the courts as plaintiffs, defendants, witnesses, and petitioners. Women's legal actions reveal that they could often be knowledgeable of the law. If the assertive but fictional widow Leonora in *The Devil's Law-Case* declared that she would get the best of her son in court, and "make him swallow it/ Before the Judges face," real women in England and the colonies would show that they could also use the law to pursue their own self-interest.[96]

[96] Webster, *The Devil's Law-Case: or When Women goe to Law, the Devill is full of Businesse,* G3.

Chapter 3: Women, Sex, and the Prosecution of Bastardy

This chapter examines the centrality of women's testimonies in illegitimacy cases, and the specific ways that women exploited the contradictions and tensions within patriarchy to become important legal players in bastardy proceedings. It reveals that while prosecutions for illegitimacy and the policing of women's sexuality were a paternalistic method of social control in the early modern period, women charged with bearing children out of wedlock were nevertheless able to turn these trials to their own advantage through their testimonies before the court. Women who testified before the magistrates could secure important financial maintenance from the men they accused of being the fathers of their children. At the same time, the petitions and testimonies of unwed mothers allowed them to shape the narratives of their sexual encounters to their own benefit before their courts and communities.

This chapter pursues three avenues of analysis. First, it explores the intersection of patriarchy, bastardy, and the law through a discussion of contemporary writings on gender and sexuality, an analysis of statutory law regarding illegitimacy, and an explanation of how various courts in England and the colonies policed sexuality through the enforcement of such laws. Second, it examines specific examples of how single women accused of bastardy used petitions and testimonies to secure maintenance from accused fathers, and the strategies they used to salvage their reputations before the courts. In addition to the testimony of the unwed mother, the deposition of the midwife who attended her delivery could be key in securing financial maintenance from accused fathers. The third section explores how issues of economic status, social hierarchy, and the repressive conditions of servitude worked together to disadvantage women charged

with bastardy in colonial Maryland. Drawing comparisons between women's legal capabilities in England and the colonies, this section reveals that women in Maryland, many of whom were indentured servants, were overall less likely than their counterparts in England and New England to give their testimonies in bastardy prosecutions. While the legal capabilities of Maryland women charged with bastardy were more limited than their counterparts in England and New England, this chapter shows that illegitimacy trials provided women with an opportunity to seek legal redress against the men who had wronged them, and secure vital financial support for themselves and their children.

English social historians have long interpreted the prosecution of illegitimacy by secular and ecclesiastical authorities as an early modern method of social control. Arguing that authorities in early modern England were more concerned with the social and economic consequences of pre-martial sex than with issues of morality, these historians have seen the prosecution of fornication and bastardy as a way that local communities regulated social discipline. As Keith Wrightson pointed out in his article on levels of bastardy in the Puritan rule of the 1650s, "the formal regulation of sexual behaviour in the period was dependent upon local support for its efficacy," and that political changes at the center had little impact "unless independent local support existed for the programmes of a reforming government."[1] Martin Ingram's *Church Courts, Sex and Marriage* (1987) came to a similar conclusion. In his study of trials for sexual misbehavior heard before the ecclesiastical courts, Ingram argued that the ecclesiastical authorities worked with the local laity to enforce social norms and discipline in early

[1] Keith Wrightson, "The Nadir of English Illegitimacy in the Seventeenth Century," in *Bastardy and its Comparative History*, Peter Laslett, Karla Oosterveen and Richard M. Smith, eds., (Cambridge: Harvard University Press, 1980), 176.

modern communities.[2] More recently, historians of English women have argued that women too played prominent roles in policing sexuality in the early modern period. Laura Gowing has argued that overseeing the sexual order "was vital to the economic and moral health of household and parish; it became a collective project, sponsored by magistrates but enforced at a local, interpersonal level, between women, amongst neighbours, amongst the poor." Pointing to the key roles played by midwives in the process of policing women's bodies and sexuality, Gowing concludes that "patriarchy depended on the agency of women as well as men; but it also depended on the marking out of distinctions *between* women that granted authority to some and excluded others."[3]

Social historians of the colonies have also examined bastardy and fornication prosecutions to look at issues of sexual mores, religion, and social control. Roger Thompson's *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (1986), has argued for a "generational counterculture" in which sexual offenses such as fornication and bastardy had become more common and acceptable by the 1660s. Thompson shows that "young people who appeared before the court…for fornication, bridal pregnancy, breach of promise, sexual deviancy, and illicit group activities," were indeed examples "of moral decay," and that "by the late 1650s patriarchal control seems to have lost its vigor." At the same time, Thompson argues that most young people grew out of the "subversiveness" of their youths by their late twenties, and that their illicit sexual activity was "just a passing phase" on their way to becoming good Puritans.[4]

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[2] Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640*, (New York: Cambridge University Press, 1987).
[3] Laura Gowing, "Ordering the Body: Illegitimacy and Female Authority in Seventeenth-Century England," in Michael Braddick and John Walter, eds., *Negotiating Power in Early Modern Society: Order, Hierarchy, and Subordination in Britain and Ireland*, (Cambridge: Cambridge University Press, 2000), 45.
[4] Roger Thompson, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst: University of Massachusetts Press, 1986), 94-96, 104.

Focusing on the role of women in policing sexuality, Mary Beth Norton's work has shown that social control in seventeenth-century colonial towns depended upon cooperation between male local officials and the midwives who attended unwed mothers in childbirth. The female-only gatherings that formed around women in childbed has indeed led Norton to argue for a "women's childbirth community," in which elite women played prominent roles as midwives. "Throughout the seventeenth century," Norton concluded, "judicial authorities repeatedly deferred to women's collective expertise in cases involving childbirth and sexuality."[5]

Historians of women in both England and early America have also pointed to a double standard in the prosecution of bastardy, and in contemporary understandings of gender more broadly. Laura Gowing's work on women involved in libel suits in England has shown that women were more often the victims of sexual defamation than men.[6] Cornelia Hughes Dayton, in her study of women and the law in colonial Connecticut, has shown how Puritan conceptions of moral probity led them to prosecute men and women equally in fornication and bastardy prosecutions. While seventeenth-century jurists might have meted out equal punishments for men and women accused of bastardy, by the eighteenth century, she argues "middling men of property had pushed aside the Puritan obsession with pressing all sinners to acknowledge immoral behavior in the most public setting possible." As a result, "women came to stand alone in their adherence to the

[5] Mary Beth Norton, "'The Ablest Midwife That Wee Knowe in the Land:'" Mistress Alice Tilly and the Women of Boston and Dorchester, 1649-1650," *WMQ*, 3rd Series, 55, No. 1, (January 1995), 106-107. Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Knopf, 1996), 222-239.
[6] Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London*, (Oxford: Oxford University Press, 1996).

language and posture of repentant sinners."[7] Else Hambleton, in her work on women in seventeenth-century Massachusetts, has located this shift toward a double standard in the late-seventeenth century, when new laws made it more difficult to prove paternity.[8] In an article on gender and crime in colonial Maryland, Mary Beth Norton argued that women were more likely to be prosecuted for bastardy than were their male counterparts. She found that 38 percent of all female criminals were accused of bearing a bastard child. In contrast, only 5.5 percent of male criminals were charged with the same crime. Norton argues that these numbers suggest "the 'gendered' nature of crime and law enforcement in the Chesapeake colony."[9]

While these historians have rightly focused on the social, economic, and religious factors of bastardy prosecutions in England and early America, I would like to focus on the testimonies and petitions of the women who appeared before the courts. Male legal authorities who heard illegitimacy proceedings placed an extraordinary amount of importance on women's words before the court. This fact alone gave women charged with bastardy a good deal of legal leverage, in spite of their otherwise subordinate status as female criminal defendants.

I. Gender, the Law, and the Policing of Sexuality

Seventeenth-century understandings of gender and sexuality influenced how magistrates and lawmakers thought about illegitimacy as a moral, social, and economic

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[7] Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecituct, 1639-1789*, (Chapel Hill: North Carolina Press, 1995), 159-161. See also Cornelia Hughes Dayton, "Was There a Calvinist Type of Patriarchy?: New Haven Colony Reconsidered in the Early Modern Context," in *The Many Legalities of Early America*, eds., Christopher Tomlins and Bruce Mann, (Chapel Hill: Omohundro Institute of Early American History and Culture, 2002), 337-356.

[8] Else Hambleton, *Daughters of Eve: Pregnant Brides and Unwed Mothers in Seventeenth-Century Massachusetts*, (New York: Routledge, 2004).

[9] Mary Beth Norton, "Gender, Crime and Community in Seventeenth-century Maryland," in James Henretta, Michael Kammen, and Stanley Katz, eds., *The Transformation of Early American History: Society, Authority, and Ideology*, (New York: Knopf, 1991), 124.

problem. Contemporary religious and legal writers in England emphasized women's natural inferiority in body and mind, and advocated for women's subordination within both the household and the state. William Perkins, author of the treatise *Of Christian Oeconomie, or Household Government* (1609), stated that the "male sex is the superiour sexe, fit for procreation. The female is woman of an inferiour sexe, fit to conceive and beare children."[10] Quoting the biblical injunctions that women should be silent and submissive to their husbands, Perkins's writing was based on seventeenth-century understandings of gender rooted in the western Christian tradition. Indeed, colonial writers defined the status of women in much the same way. While New England Puritans emphasized the equality of souls before God, they nevertheless rigidly upheld the dominion of husbands over wives in the household, and the authority of men over women in society more broadly. William Secker, in *A Wedding Ring for the Finger*, published in Boston in 1690, argued that man was the "subject" and woman the "predicate." "A spouse," writes Secker, "should carry herselfe to her husband as not to disturb his love by her contention." Secker also disdained those who looked for sex outside of marriage. Extolling the virtues of matrimony, Secker argued that "marriage is like water, to quench the sparkes of lusts fire," and that "it is better to be lawfully coupled, than to be lustfully scorched."[11] The consequences of having a sexual relationship outside of marriage was, for Secker, disruptive to the social and moral orders.

Working within these contemporary understandings of illicit sexuality and women's inferior natures, lawmakers sought to regulate and control women's sexual activities in a variety of ways. Since the medieval period, English common law had

[10] William Perkins, *Of Christian Oeconomie, or Household Government,* (London: 1609), 24.
[11] William Secker, *A Wedding Ring for the Finger,* (Boston, 1690), 23-24, 26-27, 53-54.

privileged the eldest legitimate male offspring as the heir to the family real estate. The thirteenth-century Statute of Merton, which stipulated that any child born out of wedlock could not inherit his parent's property even if they later married, is one example of the centrality of women's sexual activities under common law.[12] The regulation of morality, which fell under the purview of the ecclesiastical courts, also placed women's sexuality at the forefront of their prosecutions for fornication. From the medieval period onward, successive statutes buttressed the right of the ecclesiastical courts to decide issues of fornication, and to pronounce judgment on who did and did not qualify as a legitimate heir. [13]

The surveillance of women's sexuality in England escalated in the late-sixteenth and early-seventeenth centuries, when new statutes gave secular authorities a broader jurisdiction to prosecute unwed mothers. This new push to regulate and punish female offenders was at once a paternalistic effort by local authorities to police illicit sexuality and uphold the moral order, and an economic effort to prevent children born out of wedlock from falling to the expense of the ratepayers.[14] An Elizabethan statute of 1576 stated that bastardy cases would henceforth be heard by two Justices of the Peace in the county in which the child was born, who would take order for the punishment of the mother and reputed father.[15] Under the terms of this statute, a mother who could not prove paternity or financially maintain the child by her own resources could possibly "bee committed to Warde to the Common Gayle" until she could give security to care for

[12] 20 Henry III, Statute of Merton, c. 9 (1235). R. H. Helmholz, "Bastardy Litigation in Medieval England," *The American Journal of Legal History* 13, No. 4, (October 1969): 360-383.
[13] 18 Edward III, c. 3, p. 2, (1330). L. R. Poos, "Sex, Lies, and the Church Courts of Pre-Reformation England," *Journal of Interdisciplinary History*, 25, (1995): 585. R. H. Helmholz, "Bastardy Litigation in Medieval England," *The American Journal of Legal History* 13, no. 4, (October 1969): 360-383.
[14] Wrightson, "The Nadir of English Illegitimacy in the Seventeenth Century," 178.
[15] 18 Elizabeth c. 3 (1576).

the child.[16] Lawmakers targeted women specifically in the bastardy statute of 1609. While the Elizabethan statute had stated that both the mother and father would be punished, the 1609 statute stipulated that only the offending woman would be expected to serve in the house of correction. It ordered that

> every lewde woman which...shall have any bastard that may be chargeable to the parish, the justices of the peace shall committ such lewde woman unto the house of correccion, there to be punished and sett to worke during the terme of one whole yere.

If she bore another child outside of wedlock, she would be put in the house of correction until she could put in security for her good behavior not to offend again.[17]

Like legal authorities in England, Massachusetts magistrates and lawmakers kept a close watch on single women's sexual activity. Despite the accusations of one Massachusetts woman accused of bastardy "that the court did not regard the sin so they could gett the mony" through punitive fines, Massachusetts magistrates saw fornication and bastardy as a violation of the laws of god, and a moral offense to be punished by the courts.[18] The first codified law on fornication and bastardy in Massachusetts, outlined by the "Laws and Liberties" of 1648, prescribed the same punishments for both men and women charged with the offenses, usually fifteen to twenty lashes.[19] However, over the course of the seventeenth century, Massachusetts lawmakers created loopholes in the bastardy law that allowed accused fathers to escape these harsh punishments. A 1668

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[16] 18 Elizabeth c. 3 (1576).
[17] 7 Jac c. 4 (1609).
[18] From the deposition of Sarah Haines, a witness in the bastardy case against Sarah Stickney. Phillips Library, Essex County Quarterly Courts, File Papers, 46-9-3. Salem, Massachusetts. Hereafter cited as PL.
[19] *The book of the general lawes and libertyes concerning the inhabitants of the Massachussets* (Cambridge, MA: 1648). Though the Massachusetts legal code only specifically mentions fornication, it is clear that colonial authorities meant that punishments meted out for fornication should also apply to couples whose union had produced a child. In about two-thirds of the cases in Essex county which contemporaries referred to as "fornication," the women identified were pregnant or had already given birth. *Records and files of the Quarterly Courts of Essex County, 1636-1686*, George Francis Dow, ed. (Essex Institute, MA: 1911), vols. 1-9. Hereafter cited as *Essex County Quarterly Courts.*

amendment to the fornication and bastardy law in Massachusetts stipulated that any man who claimed paternity and agreed to maintain the child would be free from prosecution and punishment by the court.[20] The transition from statutes which stipulated equal punishments for both men and women to laws that focused exclusively on the unwed mother, suggests that attitudes toward women's illicit sexuality hardened as the century wore on.

The surveillance of single women's sexual activity in Maryland became increasingly important as successive waves of female indentured servants emigrated to the colony in the 1640s and 50s. The "Act Concearning Servants that have Bastards," promulgated by the Maryland General Assembly in 1658, reflects the alarm of lawmakers at the influx of unmarried women into the colony, and the threat that bastardy posed to the productivity of the female workforce. In one sense, the bastardy law served the interest of masters by ensuring that any children born to their maidservants would not fall to their expense. The law stated that "divers women servants...not haveing husbands living with them have been gotten with child in the tyme of their servitude to the great dishonnor of God and the apparent damage to the masters, or owners of such servants." However, the law also protected the interests of female servants by ensuring that they would not be fined above their means by the court. The law further stated that women "not able sufficiently to prove the party charged to be the begetter of such child, in every such case the mother of such child shall onely be lyable to satisfie the damages soe sustained by servitude." If the woman could prove the father of her child in court, "either by sufficient testimony of wittnesses or confession," then the man she named would be held responsible for maintaining the child. If he was a servant, he would be bound to

[20] Hambleton, *Daughters of Eve*,. xiv.

satisfy half the damages; if he was a freeman, he would maintain all the expenses of the child. Furthermore, it stipulated that

> any such mother as aforesaid be able to prove by such testimony or confession...that the party charged (being a single person and a freeman) did before the begitting of such child promise her marriage, that then he shall performe his promise to her, or recompense her abuse. [21]

This radical provision to the 1658 law is unique in the English world. In no other area did lawmakers require that a man who had promised marriage to a woman prior to conceiving a child with her could be legally bound to marry her. The General Assembly affirmed the 1658 law again in April 1662, with the added proviso that the testimony of the mother in childbed, or "her declaracon in the extremity of her paynes and throwes of travaile," now counted as a legally valid statement of the child's paternity, as well as the testimony of the mother in court.[22] The law was further revised in 1669, making the unwed mother's testimony before a magistrate legally mandatory to prove paternity.[23]

While Maryland's bastardy statutes were unique in emphasizing the testimony of unwed mothers in court, legal literature that circulated widely in both England and the colonies stressed the centrality of women's words in bastardy proceedings. Though these writers upheld the authority of justices of the peace to prosecute women for illegitimacy, they also considered it critically important that the accused woman speak on her own behalf in court. Michael Dalton, author of the English legal handbook *Countrey Justice*, wrote that local authorities should always record the sworn depositions of women charged with illegitimacy. Dalton's text, which was the definitive handbook for English and colonial justices throughout the seventeenth century, advised magistrates to ascribe a

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[21] "Proceedings and Acts of the General Assembly, January 1637/8 – September 1664," *Archives of Maryland*, Maryland State Archives, 819 vols., (Baltimore: 1883-). vol. 1, 373-374.
[22] *Ibid*., vol. 1, 441.
[23] "Proceedings and Acts of the General Assembly, 1666-1676," *Archives of Maryland*, vol. 2, 216.

great deal of weight to the words of the mother under oath.[24] Dalton wrote that justices of the peace should especially question a mother concerning the paternity of her child, as well as the time and circumstances of her sexual encounters. "The matter and the tryal thereof," Dalton stated, "dependeth chiefly upon the examination and testimony of the mother."[25]

In all areas of the English world, justices and magistrates heard the petitions and testimonies of unwed mothers in local county courts. Women who appeared in these courts, which acted as the instruments of justice in specific localities, would no doubt have been at least somewhat familiar with the male legal authorities they encountered when they stood before the bar. In England, justices of the peace sitting in the courts of Quarter Session and the Borough Courts heard bastardy prosecutions. Local officials such as the constable or the churchwardens presented unwed mothers to the court for prosecution, although in some cases private informers initiated legal actions by lodging a complaint in court against the mother or father.[26] Because most of the women presented were either visibly pregnant or had already given birth (some women even brought their children to court with them), the majority of women pleaded guilty to the charges brought against them. The magistrates then heard the woman's testimony, usually outlining the circumstances in which the child was conceived, and charging a certain man as the father. The men these women named had the opportunity to dispute the charge, and some called for a jury to be empanelled to determine their innocence.[27]

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[24] On the circulation of this legal handbook throughout the colonies in the seventeenth century, see Warren Billings, "English Legal Literature as a Source of Law and Legal Practice for Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 87, No. 4, (October, 1979): 403-416.
[25] Michael Dalton, *Countrey Justice* (London: 1655 [1618]), 39-42.
[26] J. A. Sharpe, *Crime in Seventeenth-Century England: A County Study,* (Cambridge: Cambridge University Press, 1983), 34-36. Wrightson, "The Nadir of English Illegitimacy," 182.
[27] Sharpe, *Crime in Seventeenth-Century England,* 22-23.

Local Quarterly Courts, the colonial equivalent of the English courts of Quarter Session, heard illegitimacy proceedings in Massachusetts. These courts sat four times a year in the major population centers, the largest being Salem, Boston, Cambridge and Ipswich, and were staffed by members of the local elite acting as magistrates. The presentment and trial of offenders proceeded in much the same way as it did in England. Constables presented the unwed mother to the court, where she gave her testimony and named the father of her child. Within a few days, the magistrates would summon the accused father to court, and ask him to accept or deny the charge against him. After she delivered her child, the woman relied on the combined forces of the midwife and the grand juryman to bring the accused father to court for sentencing. Neighbors and the women who attended her during her delivery acted as the witnesses, and the father who had been accused would be ordered to supply maintenance payments for the child.

Massachusetts women with financial resources, however, might be more proactive in bringing their cases before the authorities. Some even presented themselves to the court and filed a formal complaint against the father once it was clear that their child would be carried to term, usually at about six months. By registering her complaint prior to her delivery, a woman could force the father to appear in court and arrange for child support payments before the child was born. If the father disputed the charge, more witnesses were called to testify, and the deposition of the midwife who attended the mother during her delivery would be recorded.[28] The accused father also had the option of calling a jury to hear the case.[29]

[28] Hambleton, *Daughters of Eve,* 46-47.
[29] John Atkinson of Ipswich Massachussetts, accused by Sarah Stickney of fathering her child, denied the charge and called for a jury to be empanelled to decide the case. He lost. This example is discussed in more detail below.

Illegitimacy cases in Maryland were also heard in the county courts, which were similar to the courts of Quarter Session in England and the Quarterly Courts in Massachusetts in that they met at regular intervals, usually five or six sessions a year, in the largest population centers, and were staffed by local landowners.[30] Justices or constables presented unwed mothers to the court, although like Massachusetts women, some women in Maryland found it in their interests to present themselves to the court to have the name of the father recorded.[31]

English and colonial law alike stressed the importance of women's petitions and testimonies before the court in illegitimacy cases, and also provided them with some amount of legal protection when they were charged with bastardy. As the next section demonstrates, unwed mothers charged with illegitimacy often used their day in court to secure vital financial maintenance from the men they named as the fathers of their children, and to proclaim their innocence before their courts and communities.

II. Illegitimacy, Social Status, and the Law in an Atlantic Context

i. Rates of Women Appearing in Bastardy Trials

The emphasis that writers, lawmakers, and local authorities placed on women's testimonies in illegitimacy trials in all areas of the English world meant that unwed mothers, as well as the midwives and matrons who attended them in childbed, frequently appeared before the court to have their depositions recorded. A midwife was charged with examining the body of a woman accused of illegitimacy for signs of pregnancy, and had the responsibility of encouraging her to name the father of her child during labor. In

[30] "Early Maryland County Courts," preface, in "Proceedings of the County Court of Charles County, 1658-1666, *Archives of Maryland,* vol. 53, i-xix.
[31] For an example of a Maryland woman presenting herself to the court to testify against the father, see Mary Hartwell's case below.

an age when many women died in childbirth, contemporaries believed that no woman would risk making a false allegation when her life was in danger. [32] Local authorities considered the mother's testimony from childbed, reported to the court through the deposition of the midwife, as sufficient proof of the father's identity. In some cases, the testimony of the midwife was enough to convict the father without the mother herself speaking in court.

Women charged with bastardy frequently named the fathers of their children, either in a deposition before the court, or during their deliveries. Table 3.1 shows the rate at which women charged with bastardy testified in illegitimacy proceedings. Based on a sampling of 213 bastardy cases from England, Massachusetts, and Maryland between 1630 and 1698, these cases reveal that 88 percent of women charged with bastardy in England named the fathers of their children in court or from childbed. Massachusetts women who appeared before the Ipswich and Salem Quarterly Courts testified at similar rates as their English counterparts. About 91 percent of women in Massachusetts named the fathers of their children through their own testimonies before the court or during labor. In contrast to England and Massachusetts, a sampling of 72 court cases from Kent, Talbot, and Somerset Counties reveals that only 39 percent of Maryland bastardy cases recorded the testimonies of the accused mother in court.

[32] Gowing, "Ordering the Body: Illegitimacy and Female Authority in Seventeenth-Century England," 45-49.

Table 3.1: Rates of Women Charged with Bastardy who Named Fathers Before the Court or in Childbed, 1630-1698[33]

	Charged mothers who testified or presented a petition before the court	Charged mothers who named the father during her delivery	Total Number of accused women who gave testimony	Total Cases examined
England	47 (58%)	25 (30%)	72 (88%)	81 (100%)
Massachusetts	33 (55%)	22 (36%)	55 (91%)	60 (100%)
Maryland	25 (35%)	3 (4%)	28 (39%)	72 (100%)

Though under half of the cases recorded the punishments of the women and men charged with bastardy in England, Massachusetts, and Maryland, the cases in which punishments are recorded reveal that women stood a good chance of gaining vital financial support. Table 3.2 reflects that the vast majority of men in England and Massachusetts were ordered by the court to pay maintenance for the children they had fathered. In Maryland, the majority of fathers convicted by the courts were also required to pay maintenance, but a substantial portion of them (23 percent) also endured corporal punishments, usually whipping.

A woman's decision to testify before the courts or to remain silent might have been based on a very conscious calculation of the costs of benefits of seeking legal recourse against the men who impregnated them. In addition to a weekly allowance given

[33] The data sets for tables 1, 2, 3 and 4 are based on the following archives: For the English context, ERO, Colchester Borough Quarter Sessions, Deposition Books, ERO, D/B 5 Sb 2/7-9. For the City of London Sessions, see the London Metropolitan Archives, CLA/047/LJ/13. Hereafter cited LMA. For the Middlesex, England records, see LMA, MJ/SP/1690-1698. For Massachusetts, a sampling of cases from the Quarterly Courts in Ipswich and Salem between 1636 and 1682 were examined. See *Essex County Quarterly Courts,* vols. 1-8, and also Phillips Library, Essex County Quarterly Courts, File Papers. For Maryland, I examined a sampling of cases from the county courts in Kent, Talbot, and Somerset counties between 1656 and 1687. See "Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668)," vol. 54, "Somerset County Judicial Records, 1670-1687," vols. 86-91. *Archives of Maryland*.

to the mother in support of her child, a father could also be bound to pay for the costs associated with her delivery and lying-in, as well as for the fee for putting the child out as an apprentice when s/he came of age. Women recognized the importance of naming a father before the court. In one example from Ipswich, Massachusetts in 1681, one Sara Davis asked her friend Rachel Whinnick, who was unmarried and had recently delivered a child, why she did not charge Hugh Alley as the father of her new baby. According to Sarah, this was the best course for Rachel to take so that she would receive maintenance for herself and the child, and "not go about begging."[34]

Table 3.2: Punishments for men convicted of bastardy in cases in which punishments are recorded, 1630-1698

	England	Massachusetts	Maryland
Child maintenance	28 (90%)		
Imprisonment	3 (10%)		
Child maintenance		28 (97%)	
Corporal Punishment		1 (3%)	
Child maintenance			14 (63%)
Corporal Punishment			5 (23%)
No punishment			2 (9%)
Added service			1 (5%)
Total	31 (100%)	29 (100%)	22 (100%)

Patterns of punishments meted out to women charged with bastardy is also revealing. Table 3.3 shows that women in England and Massachusetts were overall less likely than their Maryland counterparts to endure harsh punishments such as whippings or additional years of service. In short, women in England and Massachusetts had little to

[34] *Essex County Quarterly Courts, 1680-1683*, vol. 8, 103. The deposition appears to be part of a slander case between Hugh Alley and John Davis.

lose by making a testimony before the court, and had a substantial chance of gaining financial support. Around 65 percent of women in England convicted of bastardy were given no other punishment than care of their children. This finding is broadly consistent with Walter King's study of punishments for bastardy in Warwickshire, Hertfordshire, and North Riding in the seventeenth century. King reveals that over 80 percent of couples presented to the secular authorities for bastardy charges received no punishment other than to care and maintain the child.[35] In Massachusetts, while the majority of women were fined, most of them were not forced to endure harsh corporal punishments such as whippings.

Table 3.3: Punishments for women convicted of bastardy in cases in which punishments are recorded, 1630-1698

	England	Massachusetts	Maryland
No punishment	20 (65%)		
Imprisonment	11 (35%)		
Fined		36 (73%)	
Corporal Punishment		8 (16%)	
No punishment		3 (6%)	
Other		2 (5%)	
Corporal Punishment			27 (64%)
Additional Service			5 (12%)
No punishment			4 (10%)
Other			6 (14%)
Total	31 (100%)	49 (100%)	42 (100%)

In contrast, the majority of women in Maryland endured harsh corporal punishments for bearing children out of wedlock. About 64 percent of Maryland women convicted of illegitimacy faced whippings, usually 15 to 20 lashes. Additionally, a

[35] Walter King, "Punishment for Bastardy in Early Seventeenth-Century England," *Albion* 10, No. 2 (Summer, 1978): 136-137.

Maryland maidservant who served under indenture risked having one to two years of service added to her contract if she delivered a child during her term of service. Though the practice was not codified in law and was left to the discretion of the magistrate hearing the case, some servants certainly endured this punishment as a way to repay a master for the labor he lost during her pregnancy, lying-in, and delivery.[36] About 12 percent of Maryland maidservants had a year or more added to their indentures because they bore children during their terms of service.

The limited legal capabilities of Maryland women is perplexing given the emphasis Maryland lawmakers placed on the sworn testimonies of women before the courts. At least part of the reason for the low rate of female testimonies in Maryland illegitimacy cases is the low social status of the women charged. As Table 3.4 shows, well over half of the women brought before the courts on illegitimacy charges in Maryland were indentured servants. As such, these women were vulnerable to sexual exploitation from the men within their households, and might have faced intimidation from masters and other high-status members of the family to keep quiet if they became pregnant. In England and Massachusetts, female servants comprised only a small portion of the women charged with bastardy. In England, 11 percent of women charged with illegitimacy were servants. This finding roughly correlates with Keith Wrightson's study of women accused of illegitimacy in seventeenth-century Chelmsford, Essex, and Lancashire. Wrightson found that women in Chelmsford named their masters in their depositions before the court in 23 percent of cases, while in 14 percent of cases women in

[36] Carr and Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-century Maryland," 549.

Lancashire accused their masters of impregnating them.[37] The rates of female servants appearing in bastardy prosecutions in Massachusetts is similar to England. About 20 percent of women charged before the Salem and Ipswich courts for illegitimacy were servants.

Table 3.4: Women convicted of bastardy by social status and location, 1630-1698

	Female Servants	Female non-servants	Total Number of Cases
England	9 (11%)	72 (89%)	81
Massachusetts	12 (20%)	48 (80%)	60
Maryland	42 (58%)	30 (42%)	72

Why were Maryland's maidservants so vulnerable to charges of bastardy? The most obvious explanation is that the skewed gender ratio of seventeenth-century Maryland, in which men outnumbered three-to-one, meant that many men living in Maryland were unmarried, and may have used their young maidservants as sexual outlets. Lois Green Carr and Lorena Walsh have estimated that at least 20 percent of the female servants who immigrated to Charles County between 1658 and 1705 appeared before the courts on bastardy charges.[38] However, the situation of Maryland maidservants in relation to their English and New English counterparts goes beyond demographic explanations. The kind of indentured servitude practiced in the Chesapeake was unknown in England, and uncommon in Massachusetts. English and New English maidservants were generally bound to their service contracts for a year or less, and could leave their master's household and find work elsewhere with a quarter-year's notice.[39] In contrast,

[37] Keith Wrightson, "The Nadir of English Illegitimacy in the Seventeenth Century," 187.
[38] Carr and Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," 542, 545, 548. James Horn, *Adapting to a New World English Society in the Seventeenth-century Chesapeake*, (Chapel Hill: University of North Carolina Press, 1994), 31.
[39] Norton, *Founding Mothers and Fathers*, 336.

Maryland's indentured servants were bound to contracts from four to seven years, during which time they were forbidden to marry.[40] Maidservants in England and Massachusetts also tended to come from higher-status families, making it easier for them to return to their families and avoid a court appearance if they became pregnant. In her study of religion and sexuality in Massachusetts, Else Hambleton has estimated that one-half of the women charged with bastardy came from elite households and were servants at the time their children were conceived.[41]

The case of Alice Eliss suggests that Massachusetts indentured servants who did become pregnant seem to have been treated more leniently than their counterparts in Maryland. After Alice accused her master Richard Brabrooke of fathering her child before the Ipswich Quarterly Court in March 1652, he was ordered to be severely whipped, to bring up the child, and to maintain Alice financially until she had recovered from her delivery. Though Alice was also ordered to be whipped once her lying-in was over, the magistrates also saw fit to release her from her indenture contract rather than adding additional years to her term of service.[42]

ii. Women's Petitions, Testimonies, and Strategies

That magistrates often convicted fathers based on women's testimonies alone reflects how seriously local authorities considered these women's words in court. In one example from England, Elizabeth Barnard, a thirty-eight-year-old hired servant to Abraham Hills, charged him in April 1632 before the Colchester Borough court of being

[40] Warren Billings, "The Law of Servants and Slaves in Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 99, No. 1 (January 1991), 45-62. The differences between contracts in England and the colonies are discussed in detail in Chapter 4.
[41] Else Hambleton, "The World Fill'd With a Generation of Bastards: Pregnant Brides and Unwed Mothers in Seventeenth-century Massachusetts," (Ph.D. diss., University of Massachusetts Amherst, 2000), 55-56.
[42] *Essex County Quarterly Courts, 1636-1656*, vol. 1, 250.

the father of her child. According to her deposition, she and her "fellow maideservants were att Abraham Hills house being invited thither by him after supper and their staide about 4 howers." When she left to return home, "he cam runninge after her and drewe her back againe to his house [and] he had the carnall use & knowledge of her bodie and then begett her with childe wherof she was latelye delivered." Furthermore, Barnard deposed that before she had consented to sex, Hills "did promise to marrye her." In response, the justices of the peace sitting in court ordered that Hills "paye unto the said Elizabeth Barnard towards the charges for thett tyme," ten shillings for her lying in, and two shillings weekly to the churchwardens for maintaining the child. Elizabeth, for her part, was given no punishment at all, but was required by the justices by "her paines and labour to bringe upp the said child."[43]

Women in Massachusetts were also successful in securing maintenance from the men they named as the fathers of their children. When Mary Sheffield charged Isaiah Wood, a married man, with fathering her child in March 1662, the Quarterly Court in Ipswich, Massachusetts ordered him to pay three shillings per week for the support of the child, and to be imprisoned until he put in security for further payment. Though Isaiah and his wife, Mercy, denied her accusation in court, Mary firmly maintained that Wood was the father. Furthermore, she explained that he refused to own the child because his wife and his father would never receive him again.[44]

In illegitimacy cases, fatherhood could be an economic and social construct that focused less on establishing biological proof of paternity than in identifying the most

[43] ERO, D/B 5 Sb 2/7, April 13, 1632. See also the order for Edward Webb to pay for the child of Elizabeth Rolfe, ERO, D/B 5 Sb2/9, March 6, 1650.
[44] *Essex Quarterly Courts, 1656-1662*, vol. 2, 372-373. See also Mary Parker's successful prosecution of Teague Disco for maintenance in October 1673. *Essex Quarterly Courts, 1672-1674,* Vol. 5, 240, 298, 410.

plausible father.[45] The amount of evidence a woman could marshal against the man she named as the father of her child was key. Sara Stickney, a thirty-five-year-old widow from Ipswich, Massachusetts accused of bastardy in March 1681, first charged Samuell Lowell to be the father of her child. However, when Stickney's accusation against Lowell was found to be dubious, a year later she shifted her focus to another man, charging John Atkinson to be the father. Atkinson, a forty-nine-year-old married man with nine children of his own, might have seemed an unlikely target. Nevertheless, Stickney maintained that Atkinson was the father of her child, and she had only concealed this fact at her last court appearance because Atkinson had promised to secretly maintain the child if she kept his identity from the authorities. Stickney related that

> a littell before Ipswich court which was in March last John Atkinson came to my house called mee out of my house & tould mee that the court was neer & that he was goeing to Boston & he said he was willing to speake with me before he went on which John Atkinson gave me thirty shillings in money & bid mee to be true to him.[46]

In addition to speaking on her own behalf, Stickney called over a dozen witnesses to buttress her case against Atkinson. John Stickney, Sarah's sixteen-year-old son, testified that Atkinson had sent him to fetch a quart of wine which Atkinson and Sarah drank together at her house. On a different occasion, he had asked him to keep his horse out of sight while he stayed at the Stickney household.[47] Atkinson, who denied Stickney's charge and felt himself much aggrieved by the accusation, asked for a jury to be impaneled to come to verdict in the case. The jury decided that Atkinson was "the reputed father of Sarah Stickney's child [and] that the said Atkinson to pay from the

[45] Gowing, "Ordering the Body: Illegitimacy and Female Authority in Seventeenth-Century England," 52-53.
[46] PL, 46-11-1, Essex County Quarterly Courts, File Papers. This case is also examined by Else Hambleton in *Daughters of Eve*, (2004), Chapter 5.
[47] *Essex Quarterly Courts, 1680-1683,* vol. 8, 260-263.

brining upp of the child for the time past unto this time eight pounds in money & for the future to pay her 2s 6d per week until September court." Further, he had to pay court fees of £5.[48] Atkinson petitioned the court two months after his sentencing, alleging that his payments were too burdensome, and the court ordered that half his payments should be in money and the other half in provisions or clothing for the child.[49] Sarah Stickney's legal victories did not stop there. When Atkinson's wife called Sarah an "impudent baud," Sarah even sued Atkinson for slander that same month and won.[50]

Some women might even use the threat of a court appearance to parley their unfortunate situations into profitable marriages. If a woman threatened to make her condition known before court and community, some men, especially those of high status, might rather marry her than have the scandal made public. Mary Hartwell, a free woman of Maryland, accused Joseph Wickes, who sat on the bench of the Kent County court, of fathering her child in the winter of 1656. According to Mary's deposition, the child was conceived in Virginia, where she lived and where Wickes had recently visited the previous spring. According to the deposition of Morgan Williams, a kinsman of Wickes who visited Mary in Virginia, she was perturbed when Wickes at first refused to send her any maintenance. Williams deposed that Mary "wounderd that Mr Wickes did not send her som releive, for the child that she then went with was his, and she had sent him such word." Perhaps fearing that Wickes might never own the child, she went to the local magistrate to give her testimony under oath. She stated that "Mr Wickes had gotten her with child and it was his and no bodys elc." Further, she also got a letter of attorney "to

[48] PL, 46-5-3, Essex County Quarterly Courts, File Papers.
[49] *Essex Quarterly Courts, 1680-1683,* vol. 8, 296.
[50] *Essex Quarterly Courts, 1680-1683*, vol. 8, 259-263.

sew him if he would have gonn out of the countery as she heard he was, for he had undunn her."[51]

As a free woman rather than an indentured servant, Mary Hartwell marshaled all the resources she could to prosecute the case against Wickes and force him to pay her maintenance. She must have had friends in high places, for she also asked Morgan Williams "to acquaynt the governor with it or som of the commissioners there that som just corse might be taken with him and she releived." By December of 1656, Joseph Wickes had married Mary Hartwell, which allowed him to avoid the court appearance that would be required of him had he continued to refuse to support her. However, his unseemly behavior had been the subject of ridicule by some of his neighbors. One Mr. Ringgold told him that he would not sit at a table with a "whore master" such as he, Wickes replying that "it was better be a whore master than a theife as he was." For her part, Mary retracted the testimony she had given against Wickes when they married that same year.[52]

Maidservants who had been impregnated by their masters or a member of his family often faced threats from masters and mistresses, who might go to great lengths to keep a pregnant young servant out of court. Because they were often in service during their most fertile years and usually remained unmarried while in the house of their masters or mistresses, female servants were at an increased risk of exploitation by older, more powerful men. Despite these pressures, however, maidservants in all areas of the English world still named their masters or masters's sons as the fathers of their children.

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[51] "Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668)," *Archives of Maryland,* vol. 54, 113

[52] Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668)," *Archives of Maryland,* vol. 54, 78, 85, 121.

While the lack of testimonies from Maryland women make it difficult to determine the social rank of their sexual partners with accuracy, Maryland midwives and matrons, for example, often believed that the master of a pregnant female servant was the likely candidate for the father of the child. When Ann Doob, Ann Hill, Katherine Gammer, and Mistress Anne Blunt attended the delivery of servant Elizabeth Lockett in Kent county, Maryland in 1659, they repeatedly questioned her about her relationship with her master. Though Elizabeth maintained that her master was not the father of her child, the midwife and matrons remained suspicious. According to the midwife's and matrons' depositions, they had asked her "what hur master dide to hure in the husks in the tobaco house?" Elizabeth maintained that "hur master did but tickell hur" and that "she never knew hur Master but by his face and hands." Perhaps still doubting Elizabeth's statement of the paternity of her child, midwife Mistress Blunt "when the childs heed wase in the birth" made Elizabeth swear on the Bible that her master was not the father of her child.[53]

While the number of maidservants charged with bastardy in England remained low, one example reflects the particular challenges faced by female servants who found themselves pregnant during their years of service. Jane Cooknoe, servant to the Carey family of Buckinghamshire, England, accused her master, James Carey, in September 1647 of impregnating her, and her mistress of kidnapping, and possibly murdering her newborn child. Carey, the vicar at the local church in Thornborough, no doubt wished to avoid the expense of caring for the child and the shame that would follow a formal accusation by his maidservant. He was poor enough in 1638, for example, to petition the Archbishop of Canterbury that he had nothing "but his bare stipend of £40 per annum for

[53] "Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668)," *Archives of Maryland*, vol. 54, 211-212.

his vicarage."[54] Nevertheless, Jane deposed that six years previously, she was "overcome by the sayd Mr Carey, as to bee begot with childe by him." When her mistress found out that she was pregnant, "well knoweing by whom," she told Jane that "shee would have her to London and take care of her there, that shee should bee safely lookt to till she was delivered of the childe." Jane related that her mistress gave her money for her journey, and made arrangements for her to stay at "Mistress Careyes mothers house, one Mistress Lambert's in Saint Joanes in Clarkenwell parishe, at which house the sayd Jane was brought to bed of a sonne." After she had delivered the child, Mistress Carey told her that "a gentlewoman who had never a childe desyred to have it, and there uppon tooke away the sayd child the same day it was borne." Jane tried to protest, but she was "then in a very unable condition to resist her."[55] In her deposition, Jane suspected that Mistress Carey had "made away with the childe," and could never find out what became of the child "though shee hath very much endeavored it." She further deposed that "Mr Carey promised her if shee would but free him of the childe, hee would never suffer her to want as long as shee lived." Why Jane decided to make her case known before the courts six years after the incident had occurred is not explained in her deposition, but she did "freely and voluntarily acknowledge" her story before the court in the hopes of finding her child and to bring the Careys to justice.[56]

As Jane Cooknoe's example suggests, masters and mistresses who were prominent members of their communities might go to great lengths to keep a pregnant

[54] "Petition of James Cary, Clerk, Vicar of Thornborough, in *Calendar of State Papers Domestic, September 1638-March 1639*, accessed through *State Papers Online*, (Gale: Cengage Learning, 2010), 211.
[55] The Huntington Library, Temple Papers, Box 2, Folder 57, Sept 17, 1647. Cited hereafter as HEH. This bastardy deposition, the only one of its kind in the Temple manuscripts, most likely forms part of the collection because Sir Peter Temple (1592-1653) sat as JP for the town of Buckingham. "Sir Peter Temple," *Dictionary of National Biography Online*.
[56] HEH, Temple Papers, Box 2, Folder 57.

maidservant quiet. However, female servants who felt themselves wronged and then abandoned by their masters and mistresses still made their situations known before the courts. Elizabeth Dew, a servant in the household of John Endicott, deputy governor of Massachusetts Bay, charged Zerobabell Endicott, the son of her master, with fathering her child in 1653. Elizabeth apparently faced substantial pressure from the Endicott family to name Corneilus Huett, her current love interest and fellow servant, as the father of her child. Indeed, the fact that Elizabeth was widely known to have had a relationship with Huett made it easier for the Endicotts to place the blame on another man. Despite the attempts of the Endicott family to place the paternity of the child on Huett, in her testimony Elizabeth maintained that Zerobabell was the true father. Two female witnesses who spoke on Elizabeth's behalf related that she had several times complained of Zerobabell's "onsemly caridg" toward her, that Elizabeth had told him that she "would not be his common hore" and that he had done her enough harm already by getting her with child. When the witnesses asked her why she didn't complain to her master, Elizabeth replied that she had confided in a former servant in the Endicott's household, Mary Greene, who told her "I know thy condition a las pore wench," and that Zerobabell had done as much to her.[57] Elizabeth's accusation against Zerobabell posed a threat to the reputation of the Endicott household. John Endicott released her from her indenture contract and allowed her to leave his service. However, he also sued her for slander for being "persisint in her slanderous speeches uttered by her against Mr Zerobabell Endecott in fathering her child." [58]

[57] PL, 2-154-3, Essex County Quarterly Courts, File Papers.
[58] PL, Quarterly Court at Salem, vol. 3, October 2, 1654. Some Massachusetts maidservants refused to name the fathers of their children. There were four different male suspects in Elizabeth Gould's case, and

While securing financial maintenance for themselves and their children might have been the first priority of women who appeared before the courts on bastardy charges, these women also viewed their testimonies as crucial opportunities to salvage their reputations before their communities. The chance to speak before the court allowed women to shape their own accounts of the circumstances under which they had become pregnant. Women who were given the opportunity to testify commonly stated that they had been misled into a sexual relationship by false promises of marriage. Several examples from Colchester, England demonstrate that English women often argued that the fathers of their children promised them marriage during courtship. Elizabeth Barnard, charged at the Colchester Borough court in April 1632, testified that before she consented to sex with Abraham Hills "he did promise to marrye her."[59] Likewise, twenty-one-year-old Deborah Prisman, charged with bastardy the following August, testified that she and Daniel Agood "were servantes togither att the Whiteharte in Colchester about three quarters of a yere" during which time "he had the carnall use of her bodie often promisinge her marriadge."[60] Anne Clark testified in 1634 that she too had met her love interest at the White Heart tavern. According to her deposition, she and John Rhodes

> mett in the Whitehart yard & they 2 went into the barne, wher after some talke the said Rhodes promised her marriage, & there had the carnall use of her body, & that 3 severall times after he had the use of her body in the said barne, but the last time he denyed to marry her as he had formerly promised.[61]

In a further example from England, Bridget Browne accused Edmund Ray before the borough court of fathering her child in July 1668. She deposed that he pretended "some

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she refused to make clear which one was the father. See *Essex County Quarterly Courts, 1680-1683*, vol. 8, 382-384.

[59] ERO, D/B 5, Sb2/7, April 23, 1632.

[60] ERO, D/B 5 Sb2/7, August 26, 1632.

[61] ERO, D/B 5 Sb2/7, September 10, 1634.

affeccon to this examinant [and] made suite to her to have her for his wife and thereuppon they often mett together somtimes at this examinants habitacon and sometimes at the said Rays lodgings." Further, she stated that she had only consented to have sex with him after he had promised to marry her. She deposed "that uppon his promise to marry her she permitted him to have the carnall knowledge of her body...and that none but he since the death of her husband whoe dyed about nyne years agoe ever had the use of her body"[62] The justices who heard Bridget's case considered her testimony sufficient to order Ray to pay for the maintenance of the child.

By claiming that they had been victims of broken marriage contracts, women charged with fornication and illegitimacy argued that they were innocent, virtuous women worthy of the mercy of the court and the pity of their neighbors. Such strategies might result in lighter punishments, as well as quicker reintegration into the community. Massachusetts women followed a similar strategy when charged with bastardy. Mary Talbut, for example, charged her fellow servant Obadiah Wood with fathering her child in June 1674, stating before the court in Ipswich that he had often "assured her & promised her marriage" and had "drawne her to promise him" as well. According to Mary's deposition, which was recorded when she was about six months pregnant, she had told Wood that she was carrying his child "and he did not disowne it." She also deposed that she lived a chaste lifestyle, for "no man but Obadiah Wood ever had to doe with her."[63] Obadiah Wood countered Mary Talbut's accusation by questioning her sexual reputation. He deposed that during her "aboade in this town she hath beene knowne to be much given to the company of young men, and did affect the company of some others

[62] ERO, D/B 5 Sb2/9, July 28, 1668.
[63] PL, 22-67-2, Essex County Quarterly Courts, File Papers.

more then my selfe." He further stated that she frequently stayed out all night "without the knowledge of her master & dame," and that he had honestly "desired lawfull mariage with her and could not obtaine it." It wasn't until she discovered she was pregnant that "put her into a necessity to seeke that as a cover to her folly."[64]

Mary Talbut called nine witnesses to vouch for her virtuous lifestyle and to prove that she and Wood were betrothed before they began their sexual relationship. Seth Story testified in September 1674 that Wood told him that "Obadiah was in love with Mary Talbut," and that he had heard Wood "often saye that he was resolved that he would have" Mary and that "he was maried to her."[65] Others testified that Obadiah had been frequently in the company of Mary; Anne Reading even deposed that she was not surprised to hear that Mary was pregnant, for "wee feared [she] would be," because of Wood's "great & constant familiarity with her notwithstanding all our warning of him & forbidding him & telling him whoremongers & adulterers god would judge."[66] The deposition of Mary Talbut, combined with the nine witnesses she called to speak on her behalf, seven of whom were women, was enough to convince the magistrates that Wood was the father of the child. Soon after Mary delivered her child in early November 1674, the magistrates of the Ipswich court ordered Wood to pay Mary three shillings per week every week or at least twelve shillings per month.[67]

Petitioning the court was also a way that unwed mothers shaped the narratives of their sexual relationships. As supplicants to the court, female petitioners relied on the compassion of the justices and the juries who heard their cases. As a result, the petitions

[64] PL, 22-67-1, Essex County Quarterly Courts, File Papers,
[65] PL, 22-69-2, Essex County Quarterly Courts, File Papers.
[66] PL, 22-68-3, Essex County Quarterly Courts, File Papers.
[67] *Essex Quarterly Courts, 1672-1674,* Vol. 5, 411-413.

of unwed mothers to the court often describe in detail the alleged sexual exploitation and coercion they endured by the men who impregnated them. Denise Holland, a maidservant from Somerset County, Maryland, petitioned the county court in 1673 to charge Henry Smith, a prominent local landowner, of being the father of her three-month old child. Though she was called before the court to answer the charges of committing fornication and "for bearing a bastard chilld," the justices nevertheless gave her the opportunity to enter a petition on her own behalf before the court, and to call witnesses to corroborate her accusation against Smith. In her deposition before the magistrates, Holland recounted in detail how Henry Smith coerced and seduced her into a sexual relationship that had resulted in an unwanted pregnancy and the delivery of a child. Two of the women who were present when Holland delivered the baby also gave their testimonies against Smith, charging him to be the true father of Holland's child and reporting that Holland had named Smith as the baby's father during her delivery.[68]

Smith's position as a high-status landowner with ties to the powerful and influential colonial elite did not deter Holland from making her accusation against him. He had formed a close friendship with Virginia Governor William Berkeley after his immigration to the colony in 1666. In 1669, he was appointed a justice in Somerset county, Maryland, the very court in which Holland brought her accusation.[69] In her lengthy petition, she stated that she had not been in Smith's service a fortnight before he began to make advances toward her. She related before the court that she had been "much

[68] "Somerset County Judicial Records, 1671-1675", *Archives of Maryland*, vol. 87, 302-307.
[69] *Archives of Maryland*, Biographical Series, Henry Smith (ca. 1634-1703). While Henry Smith's harsh treatment of his wife and female servants in Virginia has been the subject of a study by Irmina Wawryczek, his continuing exploits in Maryland have not been the focus of a scholarly work. See Irmina Wawrzyczek, "The Women of Accomack versus Henry Smith: Gender, Legal Recourse, and the Social Order in Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 105, No. 1 (Winter 1997).

importuned by him and further seeing he woulld not take my denyall and coulld not be quiett, and being overperswaded by his sweete oratory I yeilded to his unjust request." She even recounted a bit of the conversation she and Smith had one night, stating that he had told her to

> come to bed unto me, I replyed I woulld not, he answered me I shoulld, I replyed againe and said I woulld not, he answered and said unto me that it were better to lye with him in a good feather bed then in a couch. At length being overcome by his sugered persuations I yeilded unto him and went in unto him.

Despite her protests, Smith's advances toward Denise persisted for the next few weeks. By the middle of February, Holland already suspected she might be pregnant. When Smith found her weeping one afternoon while she sat on her bed mending linen, Holland reported that Henry again enticed her to bed with him, telling her that if she were pregnant already that "it coulld be no worsse then it is," and that she was "his servant and he woulld doe what he pleased with me."[70] Holland's account of the speed of the relationship corresponds with the timeline of her pregnancy and delivery. She entered Smith's service in January 1672, and gave birth to her child the following October.

As Denise Holland's case shows, a Maryland woman's status as an indentured servant did not prevent her from appearing before the court to name the father of her child, masters who impregnated their maidservants might have given them plenty of incentives to keep their identities a secret. After Denise made her pregnancy known to Smith, he ordered her to remain silent about the child's true paternity. Denise related to the court that Smith had implored her not to name him before the court, and that he would ensure that "the midwife would not put me to my oath." Further, he encouraged Denise to lay the child to her former master, Captain Colborne, saying that "if my master Captain

[70] "Somerset County Judicial Records, 1671-1675," *Archives of Maryland*, vol. 87, 305-307.

Coleborn had but once occupied me that I shoulld be sure not to spare him but to lay the child to him, forasmuch as he was best able to maintaine it."[71] Though Smith's plan backfired when Holland appeared before the court and testified against him, Holland's case shows the pressures Maryland maidservants faced if they found themselves pregnant during their terms of service.

Denise Holland's remarkable petition to the court shows that women could shape the narratives of their sexual encounters to their own benefit. Elizabeth Lockett, who appeared on charges of bastardy before the Kent county court in 1659, deposed that Thomas Bright was the father of her child, and that he had "promised hur mariege before the child wase gott." Three matrons who attended Elizabeth during her delivery corroborated her accusation against Bright, and affirmed that she had not had a relationship with any other man before the child was conceived. Ann Doob, Ann Hill, and Catherine Gammer all testified that Elizabeth had begun her labor "on Teusday night and so remained tell Wensday night and about cooke crowing she wase delivered and all that ever she confest wase that it wase Thomas Brights child." Mistress Blunt, the midwife who attended her delivery, "examened hure agayne and bade hure speake the trewth," yet all she confessed was that "she never knew any other man in three quarters of a yeare" and "that the child wase goote when hur master wase att Severen wheare that night Thomas Bright would not goe to beed [and] when the sarvants wase aslepe he came to the beed to hur and that night the child was goote." Though the testimony of Mistress Blunt alluded to the fact that Elizabeth had had a previous sexual relationship, the combined testimonies of Elizabeth Lockett and the women who attended her delivery was

[71] "Somerset County Judicial Records, 1671-1675," *Archives of Maryland*, vol. 87, 306-307.

enough to "plainly convict" Thomas Bright of bastardy, and he was ordered to "pay the charges that did inshue by thayre unlawfull doinge."[72]

While a woman's sworn testimony in court was an important element in the case against an accused father, as Elizabeth Lockett's example suggests, the testimonies of the midwife and matrons who attended her delivery could also be crucial in proving the child's paternity. As the keepers of knowledge about sex and reproduction, and as householders with a stake in maintaining order within their communities, local authorities relied on midwives and matrons to act as expert witnesses in illegitimacy cases as well as in rape, infanticide, and witchcraft trials. Margaret Wainswright, a midwife of Colchester, England, testified in both bastardy and witchcraft cases in the 1630s and 40s. In 1638, she was the leading witness in a case involving Joan Mumford, a servant prosecuted for bastardy, and in 1641, she spoke on behalf of Grace Thropley in an illegitimacy trial.[73] In 1645, she testified as part of the jury of matrons in the prosecution of Alice Stansby for witchcraft, stating in her deposition that the body of Stansby "was searched, & it did appeare that she had in her secret partes" the markings of a witch. As a midwife and an expert on women's bodies, Wainswright further stated that "she beinge a midwife have seene many women, but never did see any woman in such a condicion."[74]

Privy to secrets of the female world of childbirth, midwives and matrons acted as liaisons between the birthing chamber and the courtroom. Anne Jeys, the fifty-year-old midwife who attended the delivery of Mary Lee in April 1673, reported to the Borough

[72] "Proceedings of the County Courts of Kent (1648-1676), Talbot (1662-1674), and Somerset (1665-1668)," *Archives of Maryland*, vol. 54, 211-212.
[73] ERO, Colchester Quarter Sessions, D/B 5 Sb 2/7, April 9, 1638; June 1, 1641.
[74] ERO, D/B 5 Sb 2/8, August 26, 1645.

Court in Colchester, England that Lee had charged William Pryor to be the father of her child. Jeys stated that when Lee was

> in the extremity of her paines uppon her delivery this deponent and the other women then there present charging her truely to discoverr & make knowned hoe was the father of the said child she did declare and affirm that the said William Prayor was the father of it and that none other ever had any carnall knowledg of her body but he.[75]

Elizabeth Drake and Elizabeth Hammond, the matrons present at Lee's delivery, corroborated the testimony of Midwife Jeys, deposing that Lee "did uppon her life and death declare and affirm that William Pryor was the father and that noe man but he had had any carnall knowledg of her." The justices of the Quarter Sessions considered these testimonies sufficient proof of the paternity of the child, for two weeks later, they issued an order confirming Pryor as the father and outlining his responsibilities. Pryor was ordered to pay 20 shillings to the churchwardens within six days of the order, two shillings a week until the child was twelve years old, and five pounds when the child came of age. Mary Lee, for her part, was given no punishment, but only ordered to maintain the child.[76]

The testimonies of midwives and matrons became more important in cases of suspected adultery, abortion, or infanticide. Midwife Elizabeth Osgood of Salem, Massachusetts testified in July, 1672 that Elizabeth Eastman, wife of Nathaniel Eastman, had named a man other than her husband, Joseph Hale, as the father of her child. Because Elizabeth and Joseph's relationship had apparently occurred prior to her marriage to Nathaniel, she was not charged with adultery. However, Hale was ordered by the Salem magistrates to pay £12 in provisions toward the child's maintenance to Nathaniel

[75] ERO, D/B 5 Sb 2/7, April 1, 1673.
[76] ERO, D/B 5 Sb 2/7, April 14, 1673.

Eastman within two years, and to pay £5 to Jonathan Hudson, Elizabeth's father, for seducing her and frequenting her company contrary to her father's warning. In another example from Massachusetts, seventy-year-old Waiburrow Gatchell, a midwife of Salem, testified in April 1682 that Ruth Williams, wife of Gregory Williams, had named Peter Goite as the father of her child. Midwife Gatchell was apparently so busy in her profession that she could not attend the court hearing, and a court clerk was sent to record her testimony off-site. Gatchell's testimony confirmed that Ruth Williams, whose husband was often away at sea, had named Peter Goite as the father of her child during her delivery. Gatchell's testimony was enough for the magistrates to order that Goite pay Ruth Williams four shillings per week for the first four weeks and three shillings per week thereafter for the maintenance of the child.[77] These examples suggest that testimonies of midwives could be key in ascertaining which man was legally culpable for the maintenance of the child.

While early modern midwives provided expert medical advice to women in childbirth, they also acted as legal authorities in the birthing chamber. An unwed mother who wished to avoid being detected by local authorities might thus actively avoid calling a midwife to her delivery. Katharine O'Mullen of Somerset county, Maryland, who delivered her child in January, 1687, called on a friend and fellow servant, Geeles Mackleeger to help her during her delivery instead of a midwife. Katharine's pregnancy and birth were brought to the attention of local authorities by Frances Pointer, Mackleeger's mistress, who heard Katharine's cries and came to her assistance as she delivered her child. Pointer related how she brought Katherine into "my dwelling house...and with my own hands did deliver her of a man chilld still borne or dead borne."

[77] *Essex County Quarterly Courts*, vol. 5, 103; vol. 8, 345-46.

By not calling a midwife to her delivery, however, Katherine was charged not only with fornication, but was also presumed to be complicit in the death of her child. When Katharine was brought before the court, she was charged not only with having "committed the horrible & shamfull sinn of fornicacon but clandestinely & wickedly intending to [conceal] the birth of a bastard chilld." Further, the Maryland magistrates pronounced that Katharine was indeed responsible for the death of her child by "absent[ing] herselfe from the conversation of helpfull women, whereby the said chilld is murthered & dead."[78]

As this section has shown, the testimonies of women charged with bastardy, as well as the midwives who attended their deliveries, were central in the legal prosecution of bastardy in all areas of the English world. Women accused of illegitimacy stood to gain vital financial support by naming the fathers of their children in their testimonies, and often used their days in court to argue before their communities that they were virtuous women worthy of support. Midwives were not only expert medical professionals in the birthing chamber, but also acted as liaisons between the courtroom and the childbed. As these examples have suggested, in many cases the testimonies of midwives were instrumental in helping a mother prove paternity and secure maintenance from the man she accused of being the father.

IV. Conclusion

Seventeenth-century understandings of sexuality and gender informed laws regarding the prosecution of illegitimacy and framed the strategies women used in their petitions and testimonies before the court. In all areas of the Atlantic World, the laws and legal machineries that sought to control women's sexuality operated according to

[78] "Somerset County Judicial Records, 1687-1689,"*Archives of Maryland*, Vol. 91, 28.

common understandings of women's subordinate position within the patriarchal order. However, while writers of contemporary literature upheld the common stereotype of women, especially young, single women, as weak in mind and body, lawmakers and the writers of legal handbooks nevertheless emphasized the importance of women's words before the court.

Illegitimacy prosecutions demonstrate that women, even those of the lowest social standing, were aware of their legal rights, and sought legal redress for their grievances through their petitions and testimonies. Women charged with bastardy used their day at the bar to secure their own advantage, and relied on the testimonies of midwives to solidify their positions before the justices. In England and Massachusetts, many women succeeded in securing financial maintenance from the men they named as the fathers of their children. However, in Maryland, the combination of an unbalanced gender ratio and a socially stratified society produced an atmosphere in which many women charged with illegitimacy found it impossible to appear before the courts. It has been suggested here that one of the primary factors limiting Maryland women's legal capabilities in bastardy cases was the fear and intimidation these women faced as indentured servants. As subordinates in both their status and their sex, these women might have been forced to suffer silently. However, the remarkable few who did appear challenged both the social and gender hierarchy by taking advantage of the privileges the law allowed them.

Chapter 4: Maidservants, Masters, and the Law

As Chapter Three showed, women charged with illegitimacy in the seventeenth century used their day in court to secure maintenance from the men they accused as being the fathers of their children, and shaped their own narratives of their sexual encounters through their testimonies before the court. While servants comprised a small portion of the women charged with illegitimacy in the Atlantic world, female servants could appear before the courts for a variety of different reasons. The depositions and petitions of female servants before the magistrates reflects that even those women at the bottom of the social hierarchy were aware of their legal rights, and were not afraid to seek legal recourse when these rights were threatened. This chapter examines the types of cases female servants brought to the attention of local authorities, and the unique strategies they employed when they appeared to give their testimonies before the magistrates.

Recent scholarship in English social history has noted the challenges that servant/employer sexual relationships posed to patriarchy within early modern households. Tim Meldrum, in his work on London domestic servants in the seventeenth and eighteenth centuries, has argued that these relationships disrupted traditional order within the household, and threatened the reputation of the household head and his entire family. Focusing on how notions of gender effected relationships between masters and servants in the household, Meldrum argued that female servants were much more disadvantaged than their male counterparts. A female servant who entered into a sexual relationship with her master, whether willingly or unwillingly, was a victim who had much to lose "from the man ideally endowed with a duty of fatherly care over her." Male

servants who had sexual relationships with their mistresses, Meldrum asserted, had "plenty of other options available to him within the metropolitan economy." [1]

Laura Gowing has also argued that the frequency of sexual relationships between maidservants and masters undermined notions of patriarchy in the household, pointing out the "complicated relations" between the "triangle of master, mistress, and servant." The family hierarchy extolled by early modern moralists, clergymen, magistrates, and law-enforcers, Gowing argued, never functioned as smoothly in practice as it did in theory. Indeed, the reciprocal bonds that tied masters and servants together in the early modern world "implicitly suggested that sexual and economic power would be entwined in relations between masters and servants as it was between husbands and wives."[2]

Historians of colonial Massachusetts have also focused on how insubordinate behavior by servants could challenge patriarchal power in the household. Focusing on the position of servants in the households of eighteenth-century Massachusetts, Lawrence Towner argued that the growing insubordination of servants led writers such as Cotton Mather to publish works on the patriarchal authority of heads of households. While the authority of masters in the seventeenth century was accepted "almost silently, with little or no rationalization in literature and very little definition in law," by the eighteenth century, Towner argued, the family hierarchy had begun to break down as Massachusetts society became more heterogeneous.[3] Though Towner's article on servants was published nearly fifty years ago, his argument has remained influential. Roger

[1] Tim Meldrum, "London Domestic Servants from Depositional Evidence, 1660-1750: Servant-Employer Sexuality in the Patriarchal Household," in Tim Hitchcock, Peter King, and Pamela Sharpe, eds., *Chronicling Poverty: The Voices and Strategies of the English Poor, 1640-1840*, (London: Macmillan, 1997), 61. See also Tim Meldrum, *Domestic Service and Gender, 1660-1750*, (New York: Longman, 2000).
[2] Laura Gowing, "The Haunting of Susan Lay: Servants and Mistresses in Seventeenth-Century England," in *Gender & History* 14, No. 2, (August 2002): 186-187.
[3] Lawrence Towner, "Servant Protest in Puritan Society," *W&MQ* 19, No. 2 (April 1962): 204-205.

Thompson's work on adolescent culture and sexuality in Middlesex County, Massachusetts has suggested that the lack of servants in seventeenth-century New England gave them a good deal of latitude in behavior. However, Thompson located the tendency for young servants to challenge their masters and mistresses not in the eighteenth century, but in the 1650s. Most servants, Thompson argued, "did as little work as possible, pilfered or damaged employers' or neighbors' property, lied, swore, ran away, answered back, fornicated, broke the curfew, and generally subverted the Puritan culture of discipline." Thompson's work suggested that the family hierarchy based around a male head-of-household was challenged by subordinate groups from the earliest days of colonization.[4]

The relatively much larger body of literature on the status and experiences of servants and slaves in the colonial Chesapeake reflects historians' continuing interest in examining the transition from a white labor force to one dominated by slavery. Led in the 1970s and 80s by historians of the "Chesapeake School," this body of work has focused particularly on the nature and experience of bound servitude in the seventeenth century, and how a variety of economic, social, and cultural forces led to the establishment of slavery as an institution in the eighteenth century. A series of articles published by Russell Menard in the 1970s emphasized indentured servitude as a precursor to slavery, and sought to explain why Chesapeake planters had transitioned from white laborers to black slaves by 1700. Menard argued that a decline in the traditional labor supply of white indentured servants forced planters in the Chesapeake to recruit workers from new sources, especially from Africa. Though the opportunities for upward mobility were great

[4] Roger Thompson, "A Furious Master and His Blood-Sucking Servant: A Cambridge Tragedy, 1652-53," *The New England Quarterly* 78, No. 2, (January 2005): 289-297.

for white indentured laborers who immigrated in the 1630s, 40s, and 50s, Menard showed that these opportunities declined as the century progressed. By 1700, the Chesapeake had become a less attractive option for English men and women hoping to find better prospects in the New World.[5]

The local studies produced by historians such as Lorena Walsh and Gloria Main contributed to this interpretation of Chesapeake society. Lorena Walsh's study of Charles County Maryland between 1658 and 1705 examined the economic and social opportunities encountered by the men and women who emigrated from England to Maryland in the seventeenth century. Like Menard, Walsh found that chances of upward mobility for former indentured servants had decreased by 1680 as free immigrants with capital bought land and slaves, and began to dominate economic and political life.[6] Gloria Main, in *Tobacco Colony: Life in Early Maryland* (1982), came to a similar conclusion. She argued that the biggest change in colonial Maryland between 1650 and 1720 was the substitution of black slave workers for white servants, a transformation which pushed out small landholders who could not afford to buy slaves.[7]

Allan Kulikoff, in *Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake* (1986), argued that while white men in the seventeenth-century

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[5] These arguments are laid out in two important articles by Menard. See "From Servant to Freeholder: Status Mobility and Property Accumulation in Seventeenth-Century Maryland," *W&MQ*, 3rd Ser., 30, No. 1 (January 1973): 39-40; Menard, "From Servants to Slaves: The Transformation of the Chesapeake Labor System," *Southern Studies* 16, (Winter 1977), 355-56. See also the work of James Horn on servant emigration in the seventeenth century. James Horn, "Servant Emigration to the Chesapeake in the Seventeenth Century," in Thad Tate and David Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society*, (New York: Norton, 1979), 51-95; Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake*, (Chapel Hill: University of North Carolina Press, 1996).

[6] Lorena Walsh, "Servitude and Opportunity in Charles County Maryland, 1658-1705," in *Law, Society, and Politics in Early Maryland*, Aubrey Land, Lois Green Carr, and Edward Papenfuse, eds. (Baltimore: Johns Hopkins University Press, 1974), 127-28.

[7] Gloria Main, *Tobacco Colony: Life in Early Maryland, 1650-1720*, (Princeton: Princeton University Press, 1982).

Chesapeake enjoyed "openness, opportunities, and freedom," eighteenth- century Chesapeake society was dominated by "class and caste, where ownership of slaves determined the standing of whites and where black people were a subservient class of slaves." Moreover, Kulikoff asserts that the transition from a white labor force to slavery ran parallel to the development of a more rigid interpretation of gender, power, and patriarchy. Kulikoff writes that "Chesapeake gentlemen imposed patriarchal family structures upon their wives and children and demanded deference from yeomen and poor whites."[8] The work of social historians Darrett and Anita Rutman on early Middlesex County, Virginia, has also shown how the transition from white servants to African slaves contributed to the production of a socially stratified society by the 1690s, when wealthy plantation owners began to dominate economic and political life.[9]

Though debates about the transition from white indentured servitude to slavery continue to shape works in Chesapeake social history, other historians have recently begun to examine the roles and experiences of female servants in Maryland and Virginia.[10] Terri Snyder, in *Brabbling Women: Disorderly Speech and the Law in Early Virginia*, has shown how white servants and slaves petitioned the courts for legal redress when they had been abused. "Used skillfully," she argues, "the right to petition allowed servants the ability to broker the terms of their labor." Snyder also pointed to the strategies these women employed in making their cases before the magistrates: their words were "deliberately chosen to reflect badly on the masters who were supposed to

[8] Allan Kulikoff, *Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake,* (Chapel Hill: University of North Carolina Press, 1986), 44.
[9] Darrett and Anita Rutman, *A Place in Time: Middlesex County, Virginia, 1650-1760*, (New York: Norton, 1984).
[10] Lorena Walsh's most recent publication reflects that debates over servitude and slavery continue to be central to Chesapeake historiography. See *Motives of Honor, Pleasure, and Profit: Plantation Management in the Colonial Chesapeake, 1607-1763*, (Chapel Hill: University of North Carolina Press, 2010), 11.

head their households."[11] Christine Daniels' study of the petitions of both male and female servants in colonial Maryland has likewise shown that female petitioners accounted for more than a quarter of seventeenth-century petitions before the court, and were overall more likely to claim physical abuse than men.[12]

Though Snyder and Daniels' work has shown that some women in Virginia and Maryland successfully petitioned the court for legal redress, this chapter seeks to go beyond their works by setting the legal capabilities of women in the Chesapeake side-by-side with their counterparts in England and New England. I suggest that the Chesapeake was unique within the English world in its development of forms of servitude that severely restricted the ability of laborers to seek legal redress. While my research on the Chesapeake focuses on women in Maryland specifically, the relatively disadvantaged position of Maryland women applied to women in Virginia as well. Similar in terms of demographics, social structure, and patterns of immigration, women in colonial Virginia were subject to the same restrictive conditions of servitude that defined the experiences of Maryland women.

Subordinated by both their sex and their social status, female servants in all areas of the Atlantic world appeared before the magistrates to seek legal redress. These women, often young, poor, and single, nevertheless understood their rights and privileges within the framework of English jurisprudence and contemporary understandings of the relationship between masters and servants. Maidservants in all areas of the English world faced similar challenges during their terms of service; female servants commonly brought

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[11] Terri Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia*, (Ithaca: Cornell University Press, 2003), 90-91.
[12] Christine Daniels, "'Liberty to Complaine:' Servant Petitions in Maryland, 1652-1797," in Christopher Tomlins and Bruce Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of Norton Carolina Press, 2001), 240-241.

charges of sexual and physical abuse, as well as suits over non-payment of wages and violations of service contracts. These cases reflect that both English and colonial magistrates took the complaints of maidservants seriously, and that judges and juries considered them viable legal agents.

I. Masters and Servants in Society, Law, and Literature

i. The Social Conditions of Servitude

While domestic service had been a common employment of women throughout the medieval period, in the seventeenth century, economic expansion in England and the development of new societies in the colonies led to drastic changes in the experience of servitude.[13] In London, female servants outnumbered male servants four-to-one between 1660 and 1730 as women poured into the metropolis seeking better employment prospects and higher wages.[14] Women who didn't find work in an English city had the opportunity to go abroad in search of social and financial advancement. While a small portion of these women went to New England as indentured servants, the high demand for labor in the Chesapeake meant that the majority of female immigrants sought a new life in Maryland and Virginia. About one-third of the 90,000 indentured servants who immigrated to the Chesapeake in the seventeenth century were female, drawn by better marriage prospects and the allure of upward mobility.[15]

While the prospect of employment fueled the large-scale migration of people both within England and across the Atlantic, the experiences of female servants could vary

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[13] Judith Bennett, *Ale, Beer, and Brewsters in England: Women's Work in a Changing World, 1300-1600*, (New York: Oxford University Press, 1996).
[14] Tim Meldrum, *Domestic Service and Gender, 1660-1750: Life and Work in the London Household*, (Harlow, Essex: Longman, 2000), 19.
[15] Alan Taylor, *American Colonies: The Settling of North America*, (London: Penguin, 2002), 142. Lois Green Carr and Lorena Walsh, "The Planter's Wife," 545-546.

drastically depending upon their locations within the English world. Three unique features of servitude in the Chesapeake defined how female servants interacted with the law. First, servants in both Maryland and Virginia were limited by longer and more rigid service contracts than their counterparts in England and New England. Based on the English precedent of the legal contracts that bound English apprentices to their masters, indentured servants in Virginia and Maryland contracted to serve their masters anywhere from four to seven years in exchange for food, clothing, and housing. While local authorities promised male indentured servants parcels of land at the expiration of their service contracts, they also placed strict limits on their independence and mobility. Indentured servants, both male and female, were forbidden to marry, and their indentures could be bought or willed to others at their masters' discretion like any other form of property.[16] The long service contracts associated with indentured servitude in the Chesapeake meant that it was difficult for female servants to leave bad living situations.

In contrast to the limitations placed on indentured servants in Maryland, in England and New England, most service contracts in domestic service or husbandry lasted only a year, after which a woman was free to renew her contract with the same master or look elsewhere for service as she saw fit. A female servant who disliked her master was thus only subject to him for a relatively short period of time. Servant women who found their living situations intolerable might terminate their contracts with a quarter's notice. The higher degree of independence and mobility enjoyed by English and New English maidservants worked to their favor. For employers, training a new servant was costly and time-consuming, and a master might raise a servant's wages in order to

[16] Warren Billings, "The Law of Servants and Slaves in Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 99, No. 1, (January 1991): 45-62.

keep her on after her contract expired. Additionally, employers might also provide good food and clothing for their servants as an incentive to stay.[17] In short, while female servants in England and New England always had the option to terminate their contracts and find work elsewhere, Maryland servants in abusive households had few opportunities outside of the law to escape their situations. England's population had long supported a balanced gender ratio based on the nuclear family, and immigrants bound for New England tended to travel in family groups, producing a stable ratio of men to women in the northern colonies.

Second, the tendency for indentured servants bound for the Chesapeake to travel alone meant that young women were often isolated from the traditional networks of family and friends during their years of service. Drawn perhaps by better marriage prospects and the allure of upward mobility, the young women who came to the Chesapeake as indentured servants could, upon arrival in the New World, find themselves isolated and alone. [18]

In contrast to Maryland, Roger Thompson has shown that in Massachusetts, teenage girls who took up service in the household of a friend or neighbor were not isolated from their families; parents still regularly visited their children and frequently inquired about their well-being. [19] While maidservants in England and Massachusetts could and did prosecute their cases before the courts alone, the presence of relatives to speak in court on their behalves could bolster their cases before the magistrates. These networks would have informed female servants of what wages to expect from employers,

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[17] Sara Mendleson and Patricia Crawford, *Women in Early Modern England*, (Oxford: Oxford University Press, 1998), 102-103, 106.
[18] Walsh, "Servitude and Opportunity in Charles County Maryland, 1658-1705," in *Law, Society, and Politics in Early Maryland*, 112-113.
[19] Thompson, *Sex in Middlesex*, 164.

or if under indenture or an apprenticeship contract, what masters and mistresses owed them by law. Female servants in London sometimes followed their older sisters into service, and relied on their knowledge and expertise to guide them in their relationships with their masters and mistresses.[20]

Third, the high demand for labor and the pressure to produce a profitable cash crop meant that relationships between servants and masters in the Chesapeake were often fraught with tension and violence. The large-scale farming of the Chesapeake plantations and the high price of tobacco throughout the seventeenth century kept servants in high demand. Tobacco production was also highly labor intensive, requiring a large number of servants to work in the fields in order to remain profitable.[21] While those who survived their years of service had substantial opportunities for social advancement, the type of work female indentured servants undertook in the Chesapeake was much more physically demanding than that of their counterparts in England and New England. Though promotional literature extolled the social and economic advancement that awaited young people who emigrated to the Chesapeake, the demand for tobacco meant that nearly all servants devoted a substantial amount of their labor to fieldwork. As Kathleen Brown has shown, English women who emigrated to the Chesapeake were shocked to discover upon arrival that their masters demanded hard labor in the fields, a task that many of them found demeaning.[22] Small farmers in the Chesapeake could not afford to maintain a servant who did not contribute to the production of the cash crop, and as a result,

[20] Meldrum, *Domestic Service and Gender, 1660-1750*, 20.
[21] Taylor, *American Colonies*, 159-169.
[22] Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996), Chapter 3.

maidservants often divided their time between fieldwork and domestic tasks.[23] The shortage of labor in Maryland meant that planters faced significant economic pressure to extract as much work as possible from their servants. As a result, the relationships between masters and maidservants was more likely to be strained in Maryland than elsewhere in the English world.

If the harsh working conditions in the Chesapeake were likely to strain relations between masters and servants, the higher wages and more specialized work enjoyed by female servants in England and New England produced somewhat better working conditions. The number of indentured servants in New England remained low relative to the Chesapeake colonies, although about one-third of Massachusetts families hired a live-in servant to perform specific household tasks such as cooking and childcare.[24] While service might have been a necessity for some families in colonial New England, it was also a way to train young girls in housewifery, as well as provide an avenue for social advancement.

In England, the good wages and high demand for female servants in London, for example, attracted women from as far away as Ireland. Women who worked in the households of small craftsmen in London might undertake a variety of domestic tasks such as cooking and childcare, while those employed by wealthy merchants or aristocrats in the West End might work in a more specialized employment such as baking, washing linen, or acting as a chambermaid. In the seventeenth and eighteenth centuries, domestic

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[23] Carr and Walsh, "The Planter's Wife," 546-547.
[24] Thompson, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699,* (Amherst, University of Massachusetts Press, 1986), 167. Taylor, *American Colonies*, 159-169. Edmund S. Morgan, *The Puritan Family: Religion & Domestic Relations in Seventeenth-century New England,* (Westport, CT: Greenwood Press, 1980), Chapter 5, "Masters and Servants." Richard Morris, *Government and Labor in Early America*, (New York: Columbia, 1946), 55.

service was a stage in the female life-cycle: Tim Meldrum has shown that between 1660 and 1750, 75 percent of London's female servants were under the age of thirty. For many London maidservants, service was a temporary phase in which they saved money and gained valuable experience before settling down into households of their own. [25] Jane Whittle has shown the same to be true in more rural areas of England. Parents of the nobility and gentry placed their daughters in the service of female kinswomen to learn household skills and management, while yeoman's daughters were commonly registered as apprentices, and performed a combination of craft and household service. Lower-status women were commonly employed in domestic activities such as cooking, malting, brewing, and dairying, along with spinning, laundry, and childcare as needed. [26]

ii. Masters and Servants in Literature and Law

While the experiences of maidservants in each area of the English world could differ drastically depending on the contexts in which they worked, seventeenth-century writers and legal authorities across the English world emphasized the ideal of a harmonious household based on hierarchy, deference, and mutual obligation. William Perkins' *Christian Oeconomie: or, a Short Survey of the Right Manner of erecting and ordering a familie*, published in London in 1609, stressed the reciprocity of each family member's duties. Perkins emphasized the obligations of masters to choose industrious and God-fearing servants, and to encourage them to work while not requiring more of them than their strength would bear. A servant, however, owed his master respect in all things, and was to "faithfully and dilligently...demeane himself in the affaires of his master, and to doe service unto him as unto Christ, though he be froward and hard-

[25] Meldrum, *Domestic Service and Gender, 1660-1750*, 17.
[26] Jane Whittle, "Housewives and Servants in Rural England, 1440-1650: Evidence of Women's Work From Probate Documents," *Transactions of the Royal Historical Society*, (2005): 65-66.

harted."[27] Similarly, William Gouge's *Of Domesticall Duties*, published in London in 1622, likened the proper relationship between a master and servant to that of a husband and wife; masters and husbands held dominion over their households, and in return, servants and wives owed them respect, submission, and deference.[28]

While early-seventeenth-century treatises spoke generally about the duties of masters and servants, by the end of the century, works began to appear in London that focused exclusively on the relationship between mistresses and maidservants. Magistrates and writers of prescriptive literature emphasized that this young population of unmarried women needed strict moral supervision from their mistresses. John Shirley's *The Accomplished Ladies Rich Closet*, first published in 1687, stressed the role of the mistress in overseeing the moral virtue and industriousness of her female servants. Indeed, the frontispiece to the first edition contains a portrait of a gentlewoman peering out over her female servants performing their tasks in insets around the page. While the book contains all varieties of practical advice on household management, including recipes, cures for common ailments, and how to care for women in childbirth, Shirley makes clear in his last section that the moral virtue of the female servants redounds on the character of the mistress.[29]

Writers of religious and prescriptive literature in seventeenth-century Massachusetts exhorted masters to rule their households with godliness, and to maintain, discipline, and instruct young servants under their care. Cotton Mather, who published *A*

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[27] William Perkins, *Christian Oeconomie: or, a Short Survey of the Right Manner of erecting and ordering a familie*, (London: 1609), 151-180.
[28] William Gouge, *Of Domesticall Duties* (London: 1622), 598. For more on the authors of these treatises, see "Introductory Note," in *The Early Modern Englishwoman: A Facsimilie Library of Essential Works, Volume 5, Women in Service in Early Modern England*, Betty Travitsky and Anne Lake Prescott, eds., (London: Ashgate, 2008), ix-xi.
[29] John Shirley, *The Accomplished Ladies Rich Closet,* (London: 1687), 228-231.

Good Master Well Served in Boston in 1696, wrote that successful masters must always supply their servants with work and instruction, but should never overwork them or treat them cruelly. Mather wrote "you must lay no cruel commands upon them nor appoint them too hard work...a servant must not be handled like a beast." Masters also owed their servants food, adequate medical attention, and clothing that "be neat, warm, and modest." Furthermore, good masters cared for the "souls" of their servants: "when a servant comes to live with you, the God of Heaven does betrust you with another precious and immortal soul; a soul to be instructed, a soul to be governed." In return for their care, servants were to serve their masters diligently and faithfully, and should never abandon their duty by running away. A runaway servant was not only the scourge of civilized society, but she was also a challenge to the divine order. Mather wrote "a runaway servant, is a dishonest, and disgraced sort of creature, among all the sober part of mankind;" and further, "the Devil is the driver of those unfaithful servants, who unlawfully desert the service, wherein the good hand of God has fixed them."[30]

Though these writers stressed that servants should be submissive and deferential to their masters and mistresses, English and colonial law upheld a servant's right to legal recourse should a master or mistress abuse them, or if he or she violated a servant's service contract. As early as 1563, the Statute of Artificers stated that

> no such master, mistress, or dame shall put away any such servant at the end of his term or that any such servant shall depart from his said master, mistress, or dame at the end of his term without one quarter warning given before the end of his said term, either by the said master, mistress, or dame or servant the one to the other. [31]

[30] Cotton Mather, *A Good Master Well Served: brief discourse on the necessary properties & practices of a good servant in every-kind of servitude*, (Boston: 1696).
[31] 5 Eliz c. 4 (1563).

Masters who terminated a servant's contract before its expiration would be fined forty shillings unless he was able "to prove by two sufficient witnesses such reasonable and sufficient cause of putting way of their servant or servants during their term." However, a servant who left his master's service would be held in prison until he agreed to serve the rest of his contract. The law further stipulated that any disputes arising between masters and servants should be heard before a justice of the peace of the county or the mayor of the town in which the master resided.[32]

Legal handbooks that outlined the laws regarding servants such as Michael Dalton's *Countrey Justice* circulated widely in both England and the colonies in the seventeenth-century. Echoing the terms of the Statue of Artificers, Dalton explained that masters might bring servants who refused to attend to their duties before a magistrate to be punished. If they found the servant unruly and unrepentant, the "justices may cause due correction to be ministred to him as they shall thinke meet." However, servants who were "misused" by their masters or mistresses could also pursue legal recourse. According to Dalton, a justice of the peace "may discharge [an] apprentice of his apprenticeship and indentures" if a servant complained to one of the magistrates. English law further protected servants from masters who attempted to renege on their service contracts. Dalton noted that "no master mistress or dame shall put away any servant before the end of their terme unless it be for some reasonable cause nor shall put away any servant at the end of the term, without one quarters warning given before two sufficient witnesses."[33]

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[32] *Ibid*.
[33] Michael Dalton, *Countrey Justice,* (London: 1655), 86-89.

Massachusetts law characterized the relationship between masters and servants in much the same way as in England. As early as 1647, Massachusetts magistrates stated that servants were to serve their masters and mistresses faithfully and diligently, while masters were to give them food, wages, and if indentured, a certain amount of goods upon the expiration of their contracts. However, the law also protected servants from the abuse of masters, making it legal for a servant treated with "tyrannie and crueltie" to take shelter in a neighbor's house until a magistrate or constable could bring the case to trial. Though Massachusetts magistrates had an interest in maintaining the authority of masters, they also took the accusations of subordinates seriously, and sanctioned those masters who used extreme cruelty against their servants.[34]

The protection of indentured servant women was of particular concern to Chesapeake authorities. Bastardy rates were two-to-three times higher there than in England or New England, and local magistrates felt certain that illegitimacy threatened the productivity of the female workforce.[35] The Maryland General Assembly specifically addressed the illegitimacy problem by enacting a law in 1658 titled "An Act Concerning Servants that have Bastards." Though the law protected the master's economic interests by ensuring that the child would not fall to his expense, it also safeguarded the servant's interest by stipulating that the father must either marry her or "recompense her abuse" with financial support. Other statutes passed in the 1660s, which limited the number of years a servant could be bound by custom of the country, demonstrate that local

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[34] "Lawes and Liberties of Massachusetts," (Cambridge, MA: 1647), reprinted in Max Farrand, ed., *Laws and Liberties of Massachusetts*, (Cambridge, MA: 1929), vol. 1, 44-45. David Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629-1692* (Chapel Hill, NC: University of North Carolina Press, 1979), 150-153.

[35] Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Race, Class, and Gender in Seventeenth-Century Virginia,* (Chapel Hill, NC: University of North Carolina Press, 1996), 188.

authorities recognized the vulnerability of female servants and sought to give them some amount of legal protection.[36] In Maryland and Virginia, both masters and servants could seek legal recourse if either party broke the terms agreed upon in a servant's indenture contract. A servant who voiced her complaint in court and proved charges against her master had the possibility of gaining her freedom early.[37]

While masters retained a great deal of authority over their servants, servants also possessed legal leverage over their masters and mistresses. As the next section demonstrates, female servants appeared before the courts in all areas of the English world to protect themselves from abuse and maltreatment by their masters and mistress, and to sue for wages due.

II. Maidservants as Petitioners and Witnesses

Maidservants in all areas of the English world appeared in court as principle accusers in criminal cases, as petitioners for legal redress, and as witnesses in both criminal and civil litigation. However, the social conditions of servitude that characterized the Chesapeake impacted the legal capabilities of Maryland maidservants in two ways. First, the nature of servitude in the Chesapeake and the relative isolation of young maidservants from extended networks of family and kin meant that Maryland's maidservants faced more disadvantages than their counterparts in England and New England. While maidservants could and did appear alone before the courts to present petitions or to accuse a social superior of criminal misconduct, female servants in

[36] *Proceedings and Acts of the General Assembly, January 1637/8-September 1664*, in *Maryland Archives*, vol. 1, 373-74. See also a law of 1661 which limited the number of years a servant could be indentured, *Ibid.*, vol. 1, p. 443. Mary Beth Norton, *Founding Mothers and Fathers*, 133. Carr and Walsh, "The Planter's Wife," 545. For more on the Maryland court system, see H. Smith, "The Foundation of Law in Maryland," in George Athan Billias, ed., *Law and Authority in Colonial America: Selected Essays*, (Barre, MA: Barre Publishers, 1965). See also, Michael Tolley, "Maryland and its Anglo-American Legal Inheritance," *The Journal of Legal History* 11, No. 3, (1990).

[37] Billings, "The Law of Servants and Slaves in Seventeenth-century Virginia," 45-62.

England and Massachusetts benefited from the presence of relatives to speak on their behalves. In contrast, Maryland's servants stood alone before the magistrates. Second, as witnesses, Maryland's maidservants rarely testified on behalf of their master or mistress in criminal or civil litigation. While female servants in England and New England appeared to testify for their superiors, the relationships between masters and female servants in the Chesapeake was marked on both sides by animosity and tension.

i. Maidservants as petitioners

Female servants in all areas of the English world presented petitions to the court for a variety of complaints, including failure of a master or mistress to pay their wages, or to seek legal protection from abusive masters. These petitions demonstrate that female servants could be acutely aware of the rights that English and colonial law afforded them under the terms of their service contracts, as well as by statute law. While some maidservants presented these petitions to the courts without the apparent help of family or friends, female servants in England and Massachusetts relied on fathers, brothers, grandmothers, and other relatives to speak on their behalf.

Maidservants combined allegations of physical abuse with other complaints, such as failure to uphold the terms of their service contracts, or failure to pay outstanding wages. Margaret Bennett petitioned the court of Quarter Sessions held for Westminster in 1640, alleging that her master James Wright and his wife "did often tymes beate" her. Margaret must have persuaded the justices to her point of view, for the court released her from her service and ordered that Wright either pay her ten shillings or give Margaret the clothes he had bought her during her service.[38] In a later case also from the London area, Eve Salmon, who identified herself as the apprentice of Richard Atkinson and his wife,

[38] LMA, WJ/SP/1640

petitioned the court of Quarter Sessions in Middlesex in 1686 that she had been bound to the Atkinsons for eight years "to learne the art of houswifery," but that she "received severall abuses through want of food & clothes which has been the onely instrument to make her frequent ill companey." She begged the court to discharge her from her service.[39] Gertrude Kirby also petitioned the Middlesex court in 1692 that she had been "bound apprentice by indenture to Angella Patilla for the space of five years" to learn to wash lace. Gertrude explained that her brother, Thomas Kirby, had given six pounds and two new suits of clothes to her new mistress at the beginning of her time of service. However, Gertrude argued that her mistress "hath very much abused her in not allowing her necessary apparell and doth not instruct her in her trade." Gertrude also complained that she had been turned out of the house "without any just cause," and had received "a great damage in her brest by a bruise shee received from John Patilla her Mistress' husband."[40]

Female servants whose masters or mistresses died during their terms of service also petitioned the courts to ensure that the terms of their original indenture contracts were upheld when they were transferred to a new household, and to make certain that any instructions in their former mistress' will would be followed. Anne Askew petitioned the Middlesex justices in January 1692 explaining that about nine years before she had been contracted to Elizabeth Grundy, a widow, to learn the art of making gold and silver lace. However, Widow Grundy had made a will and then died, "making one Archibald Lovet executer and desired him by the said will to take charge of your petitioner & to see your petitioner placed forth apprentice." She also explained that Elizabeth Grundy had "left a

[39] LMA, MJ/SP/1691/02/012
[40] LMA, MJ/SP/1692/01/012

sufficient sum of money in the hands of the said Archibald Lovet to be applied to the purposes aforesaid, besides a legacy of forty pounds to be paid to your petitioner at her age of one & twenty years." While Lovet had found her a new apprenticeship in his daughter Katherine's household, Anne complained that "for a year and half past hath done nothing at all in the said busines to which she was bound but has been sent abroad by the said Archibald Lovets daughter only to do housework." Additionally, she argued that she "had been forced to lye on the ground," had endured "most cruel and unreasonable correction," and had not had "necessary apparell being contrary to the true meaning of the said will and indenture."[41]

Some female servants continued to petition the courts even if their first attempts were unsuccessful. Grace Hearle explained in her petition to the Middlesex court in September 1696 that she had been bound an apprentice to John Dayle of Cripplegate parish and Elizabeth his wife in 1688 to learn to make hoods and scarves. At the time she began her service, she recounted that she had "7 shillings in money, half dozens of all sorts of linnen, double apparell, and a feather bedd." She also explained that she had "often been misused and immoderately beaten" by her master, and that she had already petitioned "the Worshipful Justice Underhill for remedy and was by him reproved for doeing." Nevertheless, she continued to seek legal redress. She argued that her master "hath continued his cruelty to your petitioner," so much that she "is become infirm in her limbs & especially in her neck & shoulders being soe weakened that your petitioner cannot scarce goe upright." Grace Hearle also showed that she was quite aware of the terms of her indenture contract. She added that besides the abuse she had suffered from her master, he had also not instructed her "in the occupacion which the petitioner was

[41] LMA, MJ/SP/1692/01/008

bound into according to the purport of her indenture." The justices ordered that Grace be discharged from John Dayle's service "for immoderate correcon."[42]

In a case from London, Elizabeth Hunt, who identified herself as "a poore servant," petitioned the Westminster justices in 1645 for forty-five shillings due from the estate of her late master John Alsoone, a Frenchman who lived in Crown Court on Russell Street. Her case was indeed lamentable; she explained that "her master with her mistress and children being all dead of the plague" she had fallen ill herself, only to be turned out of the house by a Mr. Linxcome, the household cook and one of the executors of Alsoone's will. Elizabeth asked the justices to not only force Linxcome to pay her the outstanding wages, but also "so much as is due to her apothecary for Phisick (which shee humbly conceiveth is not above 5 shillings)." To give additional weight to her plea before the court, she included the signatures of four women who testified to the truth of her petition.[43] In a case from 1690, Elinor Randall of London petitioned the Middlesex justices for wages due from her master, Robert Hide. In her petition, she related that she had been hired for one year at the rate of 55 shillings, but that Mistress Hide "turned your petitioner out of doores exposing your petitioner to great want since wich time your petitioner hath been forced to sell her cloaths for her maintainance." Elinor begged the justices "in consideration of her poore condition" that her master be compelled "to pay your petitioner her quarters wages."[44]

[42] LMA, MJ/SP/1696/09/004
[43] LMA, WJ/SP/1645/11
[44] LMA, MS/SP/1690/06/007. For more examples of English maidservant's petitions for wages due, see MJ/SP/1690/09/001, MJ/SP/1692/12/003, MJ/SP/1694/A/002, MJ/SP/1696/07/013, MJ/SP/1696/09/005, MJ/SP/1696/12/012, MJ/SP/1697/01/002, MJ/SP/1697/05/003, MJ/SP/1698/05/001, MJ/SP/1698/09/012, MJ/SP/1698/A/001, MJ/SP/1698/A/004, MJ/SP/A/005.

Female apprentices in London were careful to see that the terms of their indenture contracts were upheld, and often showed a thorough knowledge of their rights under English law. Mary Jemmett's remarkable petition to the Middlesex court in January 1698 argued that the terms of her original indenture contract, signed in 1694, were not "persuent to the statute of the 5th of Elizabeth which appoint the term of seaven years at the least." According to Mary's petition, she had only been bound an apprentice to Jane Tillyard for the space of five years to "learne the trade of keeping a linnen shop," and that "she conceives & is advised that she can receive noe benefit by such service att the expiracon of her said indenture, but on the contrary may incurr a penalty by following such trade."[45] The statute that Mary referred to in her petition was the Statute of Artificers of 1563, which regulated service contracts and wages for apprentices, servants, and laborers, and also spelled out the rights of apprentices under the law. The Statue outlined that apprentices should serve at least seven years, and that the term of their indentures should not expire before the age of twenty-four.[46]

The terms outlined in the Statute of Artificers are reflected in the petitions of female apprentices who sought legal redress when they felt their masters or mistresses had infringed upon their rights. Margaret Dickenson, who had been bound an apprentice to a seamstress, complained to the Middlesex justices of the peace in July 1697 that her mistress, Abigail Bath, had not instructed her in the trade, and had used "imoderate correcon." In her petition, Margaret related that she had been bound for five years at 30 shillings a year, but "was greatly misused not having victualls necessary apparell allowed her nor was she instructed in her trade according to her indenture butt instead thereof was

[45] LMA, MJ/SP/1698/01/001.
[46] 5 Elizabeth I, c. 4.

putt to doe the drugery of the house." When appeals to "her friends" did not bring results or better her situation, she finally appealed "to justice for relief" and asked to be released from her indenture. Though the court records do not record the outcome of the case, the magistrates did order Abigail Bath to appear at the next court to show cause why Margaret should not be discharged.[47]

Maidservants in England and New England often had older relatives with resources to speak on their behalves when they brought petitions against their masters and mistresses. When Ann Jackson, a London apprentice bound to one William Wood and his wife for seven years, was abused and then abandoned by her master and mistress, her grandmother, also named Ann Jackson, petitioned the Middlesex county court on her behalf. According to the elder Ann Jackson's petition in October 1696, Wood and his wife "have severall times imoderately beaten and misused their said apprentice," and that "about two months ago the said Wood and his wife haveing been in trouble went away from their usual place of aboad and left the said apprentice att their sisters house at Lymehouse who being poor herself would keep her no longer." Perhaps fearing what might become of a young girl with no employment in a large city, Ann pleaded that the magistrates discharge her from her master and mistress "that she may be put to some other person to learn her trade whereby she may gett an honest livelyhood."[48]

Likewise, Massachusetts maidservants facing abuse from masters or their family members also relied on their relatives to speak for them before the court. When Samuel and Nathaniel Leonard, sons of Thomas and Mary Leonard, sued their family's servant, Hannah Downing, for slander in 1674, she fired back with allegations of abuse and sexual

[47] LMA, MJ/SP/1697/07/002.
[48] LMA, MJ/SP/1696/10/016.

misconduct. Her father, Macam Downing, also testified in the case. He deposed that he came to the Leonard's house to see his daughter while her master and mistress were not at home. When he sat up late smoking after everyone else had gone to bed, he heard Samuel in his daughter's room and went to see what was the trouble. Hannah's father must have been dismayed by Samuel's conduct toward his daughter, for Macam told him that "he did not like such doing." Fearing for his daughter's safety and reputation, he reported that to keep his daughter safe, "I lodged in that bed my salfe and Samuell lodged in the chamber."[49]

While English and New English female servants often had older relatives to speak for them in court in cases against their masters and mistresses, Maryland's maidservants lacked the networks of familial support that could be extremely helpful in initiating legal proceedings. When Maryland maidservants brought cases or petitions before the courts, they did so alone. Considering their relative isolation, their words before the court are all the more remarkable. Petitions presented by Maryland's female indentured servants reflect that they were aware of the rights and protections guaranteed by their indenture contracts, and sought legal redress when these rights had been violated. Elizabeth Frame, servant to Thomas Davis, argued for a release from her indenture before the Maryland Provincial Court in December 1657. According to the court records, Elizabeth alleged that "she is free, and that she will make it so appear in March court next." When Thomas Davis petitioned the court in the following April of 1658, he explained that his servant Elizabeth "did in December last sue your petitioner for her enlargement alleaging that shee the said Frame was free." However, Davis alleged that she "had time remayning of her service to him." When the petition was read out in court, Elizabeth made it clear that

[49] Hannah Downing won this case, and the Leonard family was fined. *Records of Essex County*, vol. 5, 352.

her master had not upheld his end of the service contract. She spoke in her own defense before the court, relating that "she hath not receaved of her master according to the covenant."[50]

Servants might also petition the court for wages left unpaid by a master or mistress. Anne Fletcher, for example, petitioned the Maryland Provincial Court in January 1643 to receive unpaid wages from her master, Sir Edmond Ployden. In her testimony, she related that she had agreed to serve her master "in the condition of a waitingmaid to his lady or his daughters" and "only from yeare to yeare." According to Anne's understanding of her service agreement with Ployden, she could go home to England again at the end of the year as long as she paid her master for her passage. She then deposed that she had "served him a yeare within a fortnight or thereabouts from her first contracting & hath received no wages & hath demanded her wages severall times." When he moved to Virginia, she refused to follow him or renew her service contract until he had paid her.[51]

Servants in Maryland were also careful to ensure that the terms of their indenture contracts were upheld, and showed a remarkable knowledge of the laws pertaining to them. Frances Shembreck, for example, sued her master John Meconicon for her freedom after her indenture contract had expired in 1667. According to the records of the Kent County court, Shembreck had come "into Court & demaunded hir fredom and hath made apeare that she hath sarved according to the act of Assimbly." The court ordered that she

[50] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41, 6, 67. At the same court session in which Elizabeth Frame appeared, Margaret Roberts entered a petition against her own master, John Hambleton, alleging that "shee is free, & that her master seeks to detayne her, & make her serve longer time, & withall very often striketh her." See *Ibid*, vol. 41, 68. See also the case of Mary Strattle, who won the case against her master before the Maryland Provincial Court in 1682. "Proceedings of the Provincial Court, 1681-1683," *Archives of Maryland*, vol. 70, 196-197.

[51] "Judicial and Testamentary Business of the Provincial Court, 1637-1650," *Archives of Maryland*, vol. 4, 224.

be set free and that her master pay her one barrel of Indian corn "in consideration of what is dew to hir by the custom of the cunetry for hir sarves."[52] The law to which Shembreck referred was probably the "Act Limiting Servants Times" which the General Assembly had passed in the spring of 1666. The Act limited the length of servants' terms to between five and seven years depending on their ages at the times their indentures were signed.[53] While Shembreck's age is not given as part of her testimony before the court, it would have been recorded at the time she and her master registered her indenture contract at the beginning of her service. Shembreck was thus well-aware of the space of time she was bound to serve under Maryland law, and demanded her freedom when that time had expired.

ii. Female Servants as Witnesses

If petitions presented to court reflect the isolation of Maryland's maidservants from extended networks of relatives and kin, female servants in the Chesapeake also endured a more adversarial relationship with their masters and mistresses than their counterparts in England and Massachusetts. While servants in England and New England appeared to testify on behalf of their masters and mistresses in a variety of different civil and criminal causes, in none of the cases sampled for this study did a Maryland servant testify on behalf of her master.

Female servants in London frequently appeared before the ecclesiastical courts to testify on behalf of their masters or mistresses in inheritance litigation and slander cases. Table 4.1 shows that female servants in England accounted for between one-quarter and

[52] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Maryland Archives*, vol. 54, 239.
[53] "Proceedings and Acts of the General Assembly, April 1666-June 1676," *Archives of Maryland*, vol. 2, 147-148.

one-fifth of all witnesses who testified in litigation heard before the London Commissary Courts and the London Consistory Court. Their depositions before the court reflect their close presence within the households of their employers, and their intimate knowledge about the families for which they worked.

Table 4.1: Rates of Female Servants Testifying in London Ecclesiastical Courts, 1630-1699[54]

	Number of Cases with Female Servant as Witness	Number of Cases Sampled
Inheritance Litigation heard in the London Commissary Court	27 (25%)	106
Slander Litigation heard in the London Consistory Court	20 (20%)	128

The high rates of female witnesses in inheritance litigation reflect that female servants frequently acted as caretakers for the sick of the household, and were often present when a will was made or when it was discussed among family members. Jane Batter testified before the Diocese of London Commissary Court in 1630 on behalf of her master, William Tuchin, in a dispute over the will of Jane Willis. Tuchin initiated the suit upon the premise that Willis had named him executor to her will prior to her death, but that the execution of the will had illegally fallen into the hands of Willis' mother, Joan Haye, who was the defendant in the case. In her deposition, Batter related that Joan Haye, had dined with her master at his house in London some time before the suit commenced. Jane Batter must have overheard much of the dinner conversation while she served her master and Joan Haye, for she gave a full relation of the conversation that had taken place. She deposed that

[54] LMA, Guildhall Manuscripts, 9065a, Vol. 8, Depositions of the London Commissary Court; LMA, Depositions of the London Consistory Court, microfilm, X79/53-60.

> at their supper amongest other discourses there happened some speech betweene the said producent [William Tuchin] & the said mrs Haye about the articulate Joane Willis and her will and she the said Mrs Haye did then in the presence & hearinge of this dept & of her said Mr & her Mrs the producents wife & others say & affirme that she was glad that her daughter (meaninge the deceased articulate) had made chance of soe honest a man as he the said producent (to whome she then spake) to be her executor.[55]

Jane admitted before the court that she came to be examined "upon the camand of the producent her maister." However, Batter's testimony reflects that masters and their servants could share a mutual best interest in appearing before the court together. Masters gained a valuable and well-informed witness in their cases while servants might expect some reward for faithful service to their masters.[56]

Servants who went on to marry and begin households of their own could also be called upon by their former masters and mistresses to testify. Mary Mulford, identified as a married woman in her deposition before the London Commissary Court in October 1681, explained that she was a former servant of the plaintiff, Alexander Hatchet, and had been called to testify on his behalf. Mary testified that while she was Hatchet's servant, she had been present when Jane Hetherington, also a servant of Hatchet, signed and sealed her will, naming Hatchet the executor. She went on to state that she had heard Jane say "that she was a servant to the sayd Alexander Hatchett for about 5 or 6 and

[55] LMA, London Commissary Court, Guildhall Manuscripts, 9065A, vol. 6. These manuscripts, normally produced at the Guildhall, were made available to me at the London Metropolitan Archives during the winter of 2010 when the Guildhall Library was closed for renovation.

[56] LMA, London Commissary Court, Guildhall Manuscripts, 9065A, vol. 6. For more maidservants who testified on behalf of their masters or mistresses in the London Commissary Court, see the following cases in LMA, London Commissary Court, Guildhall Manuscripts, 9065A, vol. 6-10: Catherine Wynn's testimony in Gabriel Miller vs. Jane Clarke, 1632; Elizabeth Chamber's testimony in Edmund Greenewood vs. Mary Greenewood, 1633; Sara Haddon's testimony in Elizabeth Britten vs. Christian Britten, 1674; Jane Wolfe's testimony in Sara Sharpe vs. John Walker, 1675; Mary Reyner's testimony in Thomas Hull vs. Hull, 1675; Agnes Lovelace's testimony in Henry Lee vs. Nichols Davies, 1677; Elizabeth Carter's testimony in Mary Pyle vs. Joseph Grace, 1677; Mary Philipson's testimony in Wolston Pastotn vs. Mrs. Holtby, 1677; Blanch Harmond's testimony in Mr. Owen vs. Knight, 1678, Sara Lawes' testimony in George Chetham vs. Robinson, 1680; Mary Walker's testimony in Elizabeth Winstotn vs. Pennington, 1688; Mary Turlington's testimony in Edward Wilson vs. William Grasing, 1698; and Sara Brown's testimony in Humphrey Burroughs vs. Anthony Parker, 1699.

twenty yeares as she taketh it, and that she had gotten all or most part of what she had in his service, and that when she dyed she would leave what she had in his hands for the use of her said daughter and grandchild." When Jane's sister, Hester Widows, seized control of her estate, Alexander Hatchet sued her alleging he was the rightful administrator.[57]

As witnesses to women's defamatory words spoken in kitchens, from doorways, or on the streets, female servants could provide valuable testimonies on behalf of their slandered mistresses. Mary Wood, servant to Anne Raiding and her husband of London, testified before the London Consistory Court in 1637 on behalf of her mistress in a slander suit against her neighbor, Wilsian Jourdaine. According to Mary's testimony, she was in her mistress' shop when she "heard the parties litigant in this cause at variance there in the street they standing at their respective doores." Mary related that Jourdaine had called her mistress "a whore and the Butchers whore" and had called her master a "Ramhead and Bulhead and cuckhold and pimpe."[58] In another suit heard before the London Consistory Court in 1670, Elizabeth Weil, testified on behalf of her Mistress Pope in a slander case against a Mistress Campion. Elizabeth related that she "being at her mistrises dore in new Gravell lane in Shadwell" fell into a quarrel with the neighbor, Mistress Campion, about "her mistresses dogg, which came runing out into the street." When Mistress Pope heard the disturbance in the street, she came out and asked Mistress Campion why she would not let her dog and her servant go quietly down the street? According to Elizabeth's testimony, Mistress Campion "in a great rage replyed that shee would run her knife in the dogg" and called her mistress "a whore, drunken whore."[59]

[57] LMA, London Commissary Court, Guildhall Manuscripts, 9065A, vol. 8.
[58] LMA, London Consistory Court, DL/C, 1637
[59] LMA, London Consistory Court, DL/C, 1670.

The domestic tasks undertaken by household servants such as Mary Wood and Elizabeth Weil put them in positions to overhear slanderous talk that often resulted in litigation.

Servants in Massachusetts also testified on behalf of their masters and mistresses in slander litigation. Elizabeth Dudley, a fifteen-year-old servant in the Giffard household of Salem, Massachusetts, spoke for her master and mistress against Daniel Hutchins, whom the Giffards sued for slander in March 1667. Elizabeth testified that she was present when Daniel Hutchins said that the Giffards were accursed of God for not paying their servants' wages, and that Mistress Giffard was a base, lying woman and that he would prove it. Later that month, Elizabeth testified again on behalf of her master and mistress in a case against Hutchins when he refused to deliver a horse and some cattle as he had agreed to do by contract.[60]

Maidservants in England and Massachusetts sometimes even showed loyalty to their masters and mistresses over other female servants in the house, and chose to testify on behalf of their superiors against their fellow servants. These witnesses could be especially useful for a master who had been accused of sexual misconduct by a female servant. Mary Thorndike, a servant to Thomas Woodbery of Salem, Massachusetts, testified on behalf of her master in January 1674 when a fellow female servant, Hannah Gray, accused him of inappropriate sexual conduct. Mary related that she lived in Woodberry's house about half a year, but during that time she "never sawe any evill lacivious or wanton behaviour by him in all my life nor did I ever hear him use any vaine

[60] *Records of Essex County*, vol. 4, 31-32. In another example from Massachusetts, eighteen-year-old Susanna Batten testified on behalf of her master William Quarlls of Ipswich in March 1683 that Samuel Lomas had mortally injured one of her master's hogs, valued at thirty shillings. *Records of Essex County*., vol. 9, 2.

or frothy speeches at any time."[61] Elizabeth Fowler, a servant who nursed Mistress Woodbery after the birth of a child, corroborated Mary Thorndike's testimony on behalf of her master. Fowler testified that Hannah Gray was "a lyeing girle" and that when the two shared a bed "I awaked [and] missed her out of the bed & heard her laughing & gigling of the boyes bed which was in the same roome." Further, she vouched for her master's character, saying that she had "knowne the said Thomas Woodberry a great while and never saw any uncivell behaviour by him & while I was there nursing his wife he carried austeerly towards the girle."[62] The jury returned a verdict of not-guilty for Thomas Woodbery the following March. Hannah Gray, for her part, was sentenced to stand in front of the meeting house in both Salem and Beverly with a paper on her head reading in all capital letters: "I STAND HEERE FOR MY LACIVIOUS & WANTON CARIAGES."[63]

Masters who suspected a servant of stealing or pilfering from them might also rely on their maidservants to testify against their fellow servants. Anne Hazwell, servant to Peter Courtney of Lyons Inn, London, accused her fellow servant, Hannah Bates, of stealing from her master's and mistress' household in March 1694. Bates, whom the court discovered worked under the alias Elizabeth Lambeth, perhaps made a career of stealing from unsuspecting masters and mistresses, and then disappearing with the loot. According to Anne Hazwell's testimony, Bates made off with £30 worth of silver plate from the Courtney's household. She testified that about three days after Bates began her service there, she noticed that the closet door in her mistress' chamber had been broken open, and the silver taken away. She testified that the goods stolen were "two silver

[61] PL, Essex County Court, File Papers, 21-34-2.
[62] PL, Essex County Court, File Papers, 21-34-3.
[63] *Records of Essex County*, vol. 5, 289-91.

salvers, two silver porringers, five silver spoones, four silver forkes, a sett of casters, four silver salts and three yards or thereabouts of black velvett value in all about thirty pounds (all which goods this informant left in the said closett a little before).” Anne Hazwell further deposed that she believed it was Bates who broke open the closet and stole the goods, for there was no other person in the room from the time she left it until she returned a short time later.[64] While it is possible that Hazwell testified against Bates to avoid being blamed for stealing the goods herself, Bates’ mysterious disappearance from the Courtney household immediately after the theft had taken place lends credence to Hazwell’s testimony.

While maidservants in England and New England could be valuable witnesses, sometimes even against their fellow servants, maidservants in Maryland seem to have rarely appeared before the court on behalf of their masters or mistresses. That female servants so rarely testified on behalf of their superiors reflects that there may have been a great amount of animosity on both sides. Maryland masters might also have feared what these young women might say before the court if given the opportunity to testify. It sometimes happened that a maidservant summoned before the court to testify might lodge a series of complaints against her master or mistress once she had the magistrate’s ear. Frances Shembreck, who had already sued a former master for her freedom in 1667 and won, was charged by her subsequent employers, William Bishop and Robert Palmer, with bastardy in 1670. She nevertheless used her day in court to not only answer to the crime of fornication, but also to voice grievances against her masters. In her deposition, she accused her “masters Mr William Bishop & Robert Palmer...of abuses and ill usedg as by the marks and tokens she hath shewed.” Though she confessed to committing fornication

[64] LMA, MJ/SP/1695

and was sentenced to receive twenty lashes (which was later remitted), she also proved the charges against her masters by calling three witnesses on her behalf. The court ordered that Bishop and Palmer pay costs of suit, and also one hundred pounds of tobacco more for Shembreck's maintenance "untill she be able to work."[65] Masters who brought their servants to court and allowed them to speak before the magistrates might therefore risk putting themselves in trouble with the law.

iii. Female Servants as Principle Accusers

While Maryland maidservants rarely spoke on behalf of their superiors, a number of examples suggest that female maidservants often appeared in court to speak against them. As Frances Shembreck's example revealed, Maryland servants who had the opportunity to speak before a legal authority could bring a variety of accusations against their master or mistress. In Maryland, these accusations often alleged excessive punishment, or physical and sexual abuse. Servant women were particularly vulnerable to rape and sexual abuse by their masters and their masters' sons, many of whom felt they had sexual license over the women in their households. Anne Gould, a servant of Kent County, Maryland, brought an allegation of rape against her master, Richard Owens, in April. 1656. She testified before the county court that her master had raped her one night when they were left alone in the house. She related that "presently after the Overseer was gone," Owens "pincht & abused her & threw her upon a bed, he allsoe forst yor deponent & had the usse of her bodie, which was much to yor deponents greife, beeinge the Custome of weomen was upon her." Gould also deposed that she had contracted a venereal disease from her master, saying that "this dissease that is upon her shee had it

[65] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 291-292.

from mr Owines & that till the tyme shee receivd this abusse shee was as well as ever in her life."[66]

Mistresses who wished to keep the inner-workings of their households a secret might go to great lengths to keep their maidservants from approaching the magistrates. Anne Nevell of Maryland, for example, threatened her servant Margaret Redfearne with harsh punishments in order to keep quiet her own affair with her neighbor John Hatton. Redfearne had accidentally intercepted a note from John Hatton to Anne Nevell, after which her mistress had beaten her harshly in an attempt to intimidate her into silence. Redfearne, however, made her sufferings known before the Maryland Provincial court in August 1661. Because she was so seriously ill she could not travel to the courthouse, a clerk came to her lodging to take her deposition. She stated that her mistress "was the cause of her death through the blowes and punchis which she the said Anne Nevell gave her." Susan Barbary, examined on behalf of the Lord Proprietor in the trial against Anne Nevell for murder, deposed that Margaret had told her that her bruises were the result of "her dame Nevells throweing her over a logg." She further stated that Nevell's threats against Margaret Redfearne had grown very serious; Nevell had at one point even encouraged Margaret to commit suicide. According to Barbary's deposition, Redfearne had told her that "Dame Nevell councelld her to drownd herself telling her she should not live two moneths if two moneths not two moneths and a halfe."[67]

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[66] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 69. Anne was still "consumed with the said disease" the next year when her new master, Joseph Weeks, petitioned the court for Owens to pay him restitution because she was unable to work. "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41, 270-275.

[67] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41, 478-80. Anne Nevell's harsh treatment of her servant Margaret Redfearne is even more interesting given that only two years before, in 1659, Nevell testified in the Provincial court on behalf of Alice Brasse, a maidservant who had

One remarkable example of a Maryland female servant who repeatedly charged her master and mistress with physical abuse warrants extended examination. Sarah Taylor, a nineteen-year-old indentured servant, appeared before the Kent County court on four separate occasions between October 1659 and August 1661 to accuse her master and mistress, Thomas and Mary Bradnox, of abusing her. In October 1659, she testified of the "divers wrongs & abuses given her by her Master & Mistress Captain Thomas Bradnox & Mary his wife." Witnesses who spoke on Sarah's behalf noted the bruises on her back and arms, and one recounted that he had heard Mistress Bradnox give Sarah "som bad words." Even Joseph Wickes, one of the magistrates who heard Taylor's testimony, reported that he had seen Mary Bradnox shamelessly "strikeinge her sarvant before him" with the end of a large rope "when the said sarvant was there to make her complaint."[68]

Only two months after she lodged her initial complaint against the Bradnoxes, Taylor went to court again complaining of abuse and maltreatment. In December 1659, she deposed that her mistress had given her "abuses & stripes...without cause" and "doth frequently beate & abuse [her]." She also came prepared to prove her allegations by calling witnesses to speak on her behalf, saying that "her complaint will suffitiently appeare either by the rest of the said sarvants of the house [and] the remarkable signes as this complant saith will appeare upon her body." Mary Bradnox maintained that she had only punished Sarah for laziness, and her correction was within the bounds of the law. She even produced the stick in court that she had used to beat Taylor as evidence that her

been beaten by her master. See "Proceedings of the Provincial Court, 1658-1662," *Maryland Archives*, vol. 41, 296.

[68] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland,* vol. 54, 167-168.

correction of Taylor was legal.[69] Witnesses on behalf of Mary reported that they had seen Mistress Bradnox strike Sarah Taylor only infrequently, and that she had attempted to be friends with Sarah after their falling outs. Nicholas Bradway deposed that "Mistress Bradnox sued to her the said Sarah to be freinds." But Taylor, who seems to have never backed down from a fight, said "that shee would not, she scornd it after shee was abused." Instead of returning her to the Bradnox household, the court allowed Sarah to stay with another family until they could investigate the matter further.[70]

In 1660, Sarah Taylor testified that her master and mistress had cruelly beaten, abused, and starved to death their servant Thomas Watson. In her deposition, Taylor reported that Watson in the "tyme of his sicknes had very bad usage which was not fitt for a Christian in his weake condicon," and that her mistress had forbidden the other servants "from carrying the said Watson either victualls or drink" for seven days, "soe that he drunck his owne water in yur deponents sight." Taylor also claimed that about three weeks before Watson's death, Thomas Bradnox had pulled Watson "out of the corner and struck him soe violently with his hand on the brest and face that the blood issued out of his mouth and nose." Taylor reported to the magistrates that in the last days of Watson's life, he repeatedly told her that he believed his master and mistress were the causes of his death. Two of Taylor's fellow servants, John White and Thomas Southerne, deposed a few months later that they believed Sarah Taylor was especially determined to see that her mistress was brought to justice for the abuse of Thomas Watson. They reported that they heard "Sarah Taylor tell [them] that if shee should not gett the upper

[69] *Ibid.*, 178-179.
[70] *Ibid.*, 179-181.

hand or day of her mistress in the seate which she hop't she should, that she would run a knife into her mistres bowells and also in her owne before the face of the Cort."[71]

The magistrates sitting on the bench of the Kent county court took Sarah's allegations against the Bradnoxes seriously. Indeed, her continual accusations against the Bradnoxes, and the evidence she produced against them for abuse, finally resulted in the court's decision to release her from her indenture contract "in regard of the eminent danger likely to insew by the invetterat mallice of hur master & mistress toward hure." Bolstering her testimony before the court by revealing the bruises and blows on her body to the magistrates, Sarah Taylor succeeded in gaining her freedom from her master and mistress and was allowed to leave their service.[72]

After Sarah testified against Mary Bradnox for the murder of Thomas Watson in the summer of 1661, Mary Bradnox sued Taylor for slander in the Kent county court. Indeed, though the magistrates had released Sarah Taylor from her indenture contract with her master and mistress, the legal battles between Taylor and her mistress continued as Bradnox attempted to salvage her reputation. That Bradnox would undergo the extra time and expense of initiating another legal suit against Taylor demonstrates that she took the allegations of her servant seriously, and that Taylor's testimonies against her had damaged her standing in the community. Bradnox alleged that Sarah Taylor "did take a falce oath in Court to theire great indamagmt." Taylor, in a show of legal maneuvering, requested a nonsuit for lack of evidence. The court consented, "finding noe caus of seut" and ordered Mary Bradnox to pay costs.[73] However, in a show of persistence, in

[71] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland,* vol. 41, 500-506.
[72] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 225.
[73] *Ibid.*, 225-226, 228.

November 1661, Mary Bradnox filed another petition against Sarah Taylor for slander and breaking her indenture by leaving her household before her contract had expired. Bradnox's petition stated that Sarah Taylor was "unjustly freed" and that she "craves such sattisfaccon of Sarah Taylor for such her conspiracy and running away from her service to accomplish her unchristean designe."[74] An almost identical petition, presented to the court three months later, confirms that Mary Bradnox's first petition was unsuccessful in forcing Taylor to pay damages for not fulfilling her service contract.[75] Perhaps in an admission of defeat, in June 1662 Mary Bradnox sued each of the four magistrates that had set Sarah Taylor free for two hundred twenty pounds of "good casked tobacco" as compensation for the loss of her servant.[76]

Mistress Mary Bradnox was wary of the capabilities of her female servants to make secret family happenings known before the court. Before Sarah Taylor arrived in her household sometime in 1658, Mary Bradnox had had trouble with other outspoken female servants who testified against her in court.[77] Anne Stanely, a twenty-one-year-old maidservant of the Bradnoxes, deposed in October 1657 that she had seen her mistress in bed with one of the neighbors, John Salter. According to the testimonies given in the case, the Bradnoxes had entertained their friends that day, spending the afternoon and evening drinking sack. Stanely testified that she was walking from the kitchen into the hall when she overheard voices in the next room. She reported that she heard John Salter

[74] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41, 506.
[75] *Ibid*., 525.
[76] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 234. For yet another case concerning an outspoken Bradnox servant, see Thomas Bradnox's cases against his former servant Margery Mannering for slander in November 1657. *Ibid*., 122.
[77] While the cases concerning the Bradnoxes and their servants have not been the subject of a book or article, they have been mentioned by scholars examining master-servant relationships in the Chesapeake. See Norton, *Founding Mothers and Fathers*, 246-247.

say to her Mistress "begod he would," and Mistress Bradnox saying "What, upon force? By fair meanes yow may doe much." As she listened, her master, hearing a disturbance, came out of his own chamber into the hall and found John Salter with his wife. According to Stanely's testimony, Salter had his "breches downe in his hand & my [mistress] upon the bed with her coats up as high as her brest." If that alone wasn't enough to scandalize the household, Stanely further testified that Master Bradnox "would have had society with his wife soe soone as John Salter was gone from her," but "she would not yeald caleing forth for helpe." Anne reported that Thomas Bradnox took his wife "& haled her in a unhumane manner & she calling to yor deponent for helpe & said if I were a woman to come & help her." Salter returned to the room in response to Mary's pleas, and a row ensued between Salter and Thomas Bradnox. Anne recounted that as Salter held Bradnox by the throat, "my maister saieing to Salter, Is this a civill action to use to my wife? The said Salter replied againe It is noe more then yow have don to my wife & he would prove itt." Anne, perhaps fearing for her mistress' safety, "tooke my Mistress & carried her into the shed chamber" and stayed with her there that night. However, Mary Bradnox wasted no time in making threats against her maidservant, urging her to keep the day's events quiet or else face a whipping. Anne reported that "she bid yor deponent have a care & said if I did sweare that I did see rime in ree between my Mistress & Salter that she would have me whipt."[78]

While the female servants in the Bradnox household are remarkable examples of the legal capabilities of female servants in Maryland, their testimonies before the court reflect that the relationships between masters and servants in the Chesapeake were

[78] "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 116, 120.

riddled with tension. Further, they provide evidence that servants could bring serious criminal charges against their masters and mistresses before the courts.

Though the willingness of maidservants in England and New England to testify on the behalf of their masters and mistresses reflect that the relationships between masters and servants could be harmonious, some of these women did in fact bring criminal charges against their superiors. A testimony given by Joyce Northall, servant to Richard Deadman, a coffeeman of the City of London, reveals that female servants in England endured sexual abuse by their masters, and also sought redress in court against them. In February 1674, Northall gave her deposition before a City Alderman, accusing Deadman of making continuous advances toward her and raping her one night while her mistress was away. In her testimony before the magistrates, she related that "severall tymes dureing the tyme shee was his servant hee would have forced her to have laine with him which shee refused & often putt him by." Northall's testimony reveals the vulnerability that female servants faced from persistent masters who took advantage of their wives' absence. Northall related that only about a week before she gave her testimony, her master had raped her "when her Mistresses was abroad & noe person in the house but her master & herselfe." In her detailed deposition before the court, Northall related that Deadman had

> forced her to goe upstaires and shee asking the reason or cause why hee answered that hee would speake with her above staires & then hee tooke her & threw her on the bed: but then some person knocking at the doore her master lett her goe down & when shee came to the doore noe person being there thereuppon she sate herselfe down to her work that shee was about below and then her master came down & tooke her uppin his armes & carryed her to the staire foote & then thrust her upp before him & threw her on the bed & tooke upp her coates & had the carnall knowledge of her bodye this informant cryeing out for help and desired &

> begged on him to be quiett & lett her alone which hee refused to doe. But with his weight and greater strength almost stifled and overcame her.[79]

Northall left her master's service the day before she gave her testimony, no doubt fearing the punishments he might inflict on her for making his crime known before the court and community. Given the nature of Deadman's abuse, Northall might have expected little help from her mistress. The menages-a-trois that sometimes emerged between masters, mistresses, and their young female servants could strain household relationships.[80] Mistresses also had an incentive to keep such incidents quiet; a public allegation of rape would expose the entire family to humiliation. As a result, maidservants who had been sexually abused might find themselves isolated. In these situations, testifying before the legal authorities might have been the only hope for a maidservant who endured sexual abuse during her time of service.

Some masters and mistresses bribed or threatened their maidservants to keep them from making a public accusation of sexual abuse in court. In March 1692, Hannah Harvey, a seventeen-year-old servant from Wenham Massachusetts, caused a scandal when she publicly accused her married master, Mordicai Larkin, of raping her in his barn near his house. When she was questioned before the court, she related that her master had often threatened to kill her if she told of his wrongdoings toward her, and that after the rape had taken place her master and mistress had bullied her into clearing Larkin of the charges. According to her deposition, she had been pressured into maintaining her master's innocence before the court in Salem a few months before "because he and his wife that evening before perswaded her soe to doe and she being under their charge and he having before threatened her she dare doe noe other and also promised her cloth or

[79] London Metropolitan Archives, CLA/047/LJ/13, February 1675. Hereafter cited LMA.
[80] Gowing, "The Haunting of Susan Lay: Servants and Mistresses in Seventeenth-Century England," 188.

stuff to make her a mantle if she would so do."[81] However, she must have retracted her former statement before the court and formally charged him again with rape. The magistrates took her accusation seriously; at the time Hannah made her deposition, Mordicai Larkin was already in jail. Larkin, who pleaded his innocence in a petition before the court, maintained that "he niver did lye with her nither with nor without her consent I did never forc her nor had carnall knolidg of her body." However, the allegations against him must have been serious enough for him to genuinely fear for his life. Larkin alleged that Harvey had only accused him of rape in a plot to kill him, saying in his petition "she did it to take away my life."[82]

Two female witnesses who spoke on Harvey's behalf corroborated her testimony and bolstered her case against Larkin. Sarah Edwards, whose relation to Hannah is not specified, reported that she was in the company of her friend Bethiah Herrick who "tould mee...that thay had putt Mordica Larcum in prison without the said Bethiah's testimony and...that if shee should bee brought to courte shee was afraid that if she should say what shee could say against him the said Larcum her evidence would hang him."[83] Twenty-one-year-old Hannah Wooding also testified that Moricai Larkin had made inappropriate advances toward her one night as he walked her home to her father's house. In her deposition, she related that "he tould mee hee must have a kiss" and that he would "have my maden head."[84] Though Larkin's interaction with Hannah Wooding apparently did

[81] PL, Essex County Court File Papers, 52-92-2.
[82] PL, Essex County Court File Papers, 52-97-1.
[83] PL, Essex County Court File Papers, 52-97-3.
[84] PL, Essex County Court File Papers, 52-97-3.

not go beyond these verbal threats, Wooding's testimony reveals it might have taken a few women to step forward with allegations of abuse to bring Larkin to justice.[85]

Maidservants who charged men outside of their households with rape or abuse could also fear the threats and censure of their masters and mistresses, and turned to local legal authorities for help when other options failed. Sarah Wood, servant to Richard Frisbye of Fetter Lane in the City of London, testified in November 1680 that John Sheffield, a lodger in her master's house, raped her one night while her master and mistress were away. While Frisbye's occupation is not stated in the court documents, that he rented rooms probably meant that he ran a lodging house or a tavern. These spaces, which lodged travelers and people new to the rapidly growing city, put female servants at more risk of enduring unwanted sexual advances from strangers than their rural counterparts. In her deposition, she related how Sheffield had taken her by the arm and pulled her into his chamber. She resisted and tried to leave the room, but he

> did immediately locke and bolt the doores, and then...threw her uppon the bed but shee strugling with him did get of againe, afterwards hee threw her on the bed again, and then this Informent cryeing out for helpe hee threatened to stabb her if shee made a noise and shee struggled with him soe long untill she was hardly able to speake and then being overcome by him hee the said John Sheffeild had the carnall knowledge of her bodye and did ravish her against her will and consent.[86]

Sarah Wood related that about half an hour after the incident, her master and mistress returned home, bringing with them her mistress' sister. Wood apparently felt that she could not bring the horrible incident to the attention of her mistress, although she deposed that that night she "did acquaint her said Mistress' sister how shee had been abused by the said Sheffield but shee could give her noe advice." The next morning she asked

[85] Maidservants in Massachusetts also accused servant men of rape. See Rebecca Black's successful case in 1656-57 before the Ipswich court. PL, Essex County Court File Papers, 3-60-4.
[86] LMA, CLA/047/LJ/13, December 1680 Sessions.

another lodger in the house, Mr. Gunter, for help, but his only advice was that she "be advised by her freinds." Alone in a large city with no one to take up her cause, Sarah finally resolved to make her case known to the legal authorities.[87]

Female servants in the colonies were also reluctant to tell their mistresses when they had been raped or molested by men in their communities, and looked instead to the magistrates for justice. Margere Toope, a seventeen-year-old servant in Essex county, Massachusetts, told the county court in 1674 that Samuel Myhill, a friend and neighbor of her mistress, forced her into sexual contact. She deposed that when her mistress sent her on an errand to Myhill's house, he requested her "to come to hime such a night into the orchard," but she refused. Myhill also made advances toward her one night while his wife and Margere's mistress sat in the house. According to Margere's deposition, she went out of the house to milk the cow and asked one of the children to come and hold the cow while she milked. Much to her alarm, Myhill offered to go instead. She stated that "I was unwilling to it but his wife & my mistris being in the howse I sayd nothing & he went with me & asked me to goe into the barne & I refused & did not." Apparently he persisted, for Margere related that he took her hand "& put my hand into his briches & one time before this he put his hand under my apron."[88] When charged with the case by Margere herself and a witness, William Tenny, who deposed that he had seen Myhill act lasciviously toward Margere when he was threshing in a neighbor's barn, Myhill confessed. The court fined him 30 shillings for his misconduct.[89]

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[87] LMA, CLA/047/LJ/13, December 1680 Sessions. Teresa Valentine, a servant of London, was reluctant to tell her mistress after Peter Brisson raped her. See LMA, MJ/SP/1691/07/052.
[88] PL, Essex County Court File Papers, 5-26-?
[89] *Records and Files of Essex County Court*, vol. 5, 303. See also Jane Evans' testimony that one of her master's neighbors, Richard French, had molested her, and that his wife, Goody French, had beaten her repeatedly. Thompson, *Sex in Middlesex*, 158-159.

Masters and mistresses in Massachusetts also felt threatened enough by the allegations of abuse from their maidservants that they sued them for defamation. For a maidservant, slander was a way of finding redress for harm done to her, and a weapon used to damage the reputation of her master or his family.[90] John Lumbrozo sued his married servant Margery Gold for slander in May 1663, alleging that she had falsely accused him of making sexual advances toward her. The witnesses who spoke on Lumbrozo's behalf stated that Margery Gold had told them that Lumbrozo "woold have lane with her and called her and her housband out of doores...and told them that if shee woold bee willing that hee shoold ly with her hee woold give them half his plantation and halfe his stocke of hogs." When Margery petitioned the court in her own defense, she explained that she and her husband had hired themselves to Lumbrozo for two years, but that they now desired to be released from the contract because of Lumbrozo's conduct toward them. She further stated that Lumbrozo "woold have her to bee his whoore and when my housband is out of the way hee is still at mee to fulfill his lust." She even alleged that he had tried to rape her: Margery recounted how Lumbrozo

> tooke mee in his armes and threw mee upon the bed and thear woold have the use of my bodie and I crying out aloud and then hee let mee goe and afterwards I asked him if hee was not ashamed and hee sayd to mee that hee was not and that hee woold show mee scriptur for it.[91]

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[90] For defamation in Massachusetts, see Thompson, *Sex in Middlesex*, p. 173. On the number of women in England who pursued slander litigation, see Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London*, 33-37. For the number of women involved in slander litigation in Maryland, see Mary Beth Norton, "Gender and Defamation in Seventeenth-century Maryland," *WMQ* 44, No. 1, (January 1987): 3-39.

[91] "Proceedings of the County Court of Charles County, 1658-1666," *Archives of Maryland*, vol. 53, 352, 355-357. Mary Beth Norton, who has also examined this case, suggests that the scripture that Lumbrozo (who was Jewish) referred to was Gen. 16:1-5, in which Abraham receives his wife's blessing to sleep with one of her servants, Hagar. See Norton, "Gender and Defamation in Maryland," f. 39. For another example from Maryland, see Thomas Bradnox's case against his servant, Margery Mannering. "Proceedings of the County Courts of Kent (1658-1676), Talbot (1662-1674), and Somerset (1665-1668) Counties," *Archives of Maryland*, vol. 54, 122.

The magistrates considered Margery's evidence seriously, and her account was given more weight by the fact that Lumbrozo already had a bad reputation within the community. One witness in the case stated that "in all probabilitie it might bee trew for that publicke fame wold give him no good report." Margery's case demonstrates that masters and mistresses with tarnished reputations might have more reason to fear the allegations of their maidservants in court; an accusation of abuse against a master or mistress was taken more seriously when it confirmed the suspicions of the larger community. Faced with an already blackened reputation and Margery's petition, Lumbrozo withdrew his suit from the court, and the magistrates ordered him to pay costs.[92]

Samuel and Nathaniel Leonard, two brothers of Salem, brought separate suits of slander against the family's maidservant, Hannah Downing, in June 1674. According to Samuel Leonard, Hannah had spread the rumor that he had attempted uncleanness with her and another maid, Elizabeth Looke. Nathaniel Leonard deposed that Downing was prejudiced against him because he frequently told her to attend to her work, and when she disobeyed, he gave her boxes on the ears. She had then falsely accused him of sexual misconduct toward her, which, he said, "I being a singell man my fortten would be leveled with her owne which we trust shall prove very mene." In her own defense, Hannah lodged a complaint with the court that both Samuel and Nathaniel had acted inappropriately toward her; they had teased her while she was in bed, kicked her, and struck her many times. The situation grew so bad that Hannah believed the two would kill her if she did not take recourse with the law. She had even tried complaining to the boys' parents, her master and mistress, but they did not believe her. She deposed that she was

[92] "Proceedings of the County Court of Charles County, 1658-1666," *Archives of Maryland*, vol. 53, 357.

"afraid that thay would kille mee if the athoriaty dos not take some corse with them." The case was very serious indeed; no fewer than twenty-seven witnesses spoke on behalf of the parties involved.[93] Downing won the case in the end, and Nathaniel Leonard was given an additional fine when he tried to resist arrest.[94]

IV. Conclusion

Masters, mistresses, and magistrates in all areas of the English world considered maidservants viable, and even formidable, legal agents. In all of these areas, female servants could and did take advantage of the protection the law offered them when masters and mistresses abused them, or failed to uphold their obligations. As servants who performed mostly household tasks, these women were privy to a variety of intimate happenings within the households of their employers; calculating maidservants might use their knowledge of family affairs to gain leverage over their superiors in court. Though female servants were subordinates within their households and were legally subject to the control and discipline of their masters and mistresses, they were also acutely aware of the rights that English law afforded them.

Maryland's maidservants faced challenges unique to the social and demographic situation of the Chesapeake. In contrast to England and New England, where maidservants testified on behalf of their masters and mistresses in a variety of cases, female servants in Maryland rarely spoke for their superiors. The high demand for labor meant that servants were frequently overworked and abused, producing a strained relationship between masters and servants. Though the relationship between female servants and their masters and mistresses could be adversarial in all areas of the English

[93] *Records of Essex County,* Vol. 5, 326, 351-355.
[94] *Records of Essex County*, Vol. 5, 358. For another example from Massachusetts, see Ephraim Herrick's case against his maidservant Susanna Reed for slander in 1669. *Records of Essex County*, vol. 4, 103-104.

world, it was uniquely so in Maryland. Female servants in England and New England also had the opportunity to draw from familial support networks when they appeared before the magistrates. The tendency of most female servants to live near a family member meant that a young maidservant who faced a court date during her term of service could draw from the support of relatives. In contrast, the skewed gender ratio of the Chesapeake, and the fact that most immigrants came to the region without family members, meant that female servants had to forge extra-familial support networks upon arrival.

Maidservants in all areas of the English world took advantage of the legal rights and privileges that English law offered them. Yet the disadvantages faced by Maryland's maidservants, from harsher working environments to the lack of familial support networks, makes their testimonies before the courts all the more remarkable. That female servants in Maryland challenged their masters and mistresses boldly, and at times, with vehemence, reflects that they overcame these challenges to find redress for their grievances through legal recourse.

Chapter 5: Elite Women, Property Litigation, and Legal Knowledge

If the testimonies and petitions of female servants discussed in the previous chapter reveal that even women at the bottom of the social hierarchy used the law to their advantage, the experiences of elite women in litigation reflects that wealthy, privileged women could also secure their own benefit through legal processes. In England, elite women comprised those whose husbands and fathers ranked as knights or better. In the colonies, elite women could often claim aristocratic ties with families in England. The experiences of elite women in litigation were different from other groups of women in three important ways. First, unlike middling- and lower-status women who left little mark on the historical record other than their testimonies or petitions before the court, the letters, inventories, wills, and marriage settlements left by elite women reveal in much more detail the extent of their legal knowledge, and their personal management of their legal affairs. Second, the large amounts of both land and moveable property that elite families had at their disposal meant that there was much more to protect at law. As important players within elite families, women interacted with the legal system in both England and the colonies as they protected their right to family property and the inheritance of their children. Third, the legal complexities surrounding marriage agreements, wills, and the collection of widow's portions meant that women's access to property by marriage, inheritance, or widowhood were frequently contested.

This chapter examines how elite women on both sides of the Atlantic protected and defended their property in both common law and equity courts. As members of the elite, these women were often the mothers, wives, daughters, and sisters of local legal authorities, and were clearly knowledgeable about their legal rights. Some of them kept

legal treatises in their own libraries, while others meticulously guarded the legal documents that outlined their claims to their property. When they appeared before the courts to answer challenges from brothers, in-laws, sons, and step-sons, they could be formidable legal opponents. However, the experiences of English and colonial women were, in the seventeenth century, fundamentally different. Elite women in England benefited substantially from the presence of a well-developed equity jurisdiction, and frequently appeared in the court of Chancery to protect both land and moveable property. In contrast, equity law in the colonies remained undeveloped in the seventeenth century. Colonial women's access to property was therefore governed almost exclusively by the common law, which, in most instances, upheld the subordinated legal status of women under coverture. Because the number of examples of elite colonial women interacting with the law are limited, it is difficult to discern differences between the status of women in the northern and southern colonies. However, I suggest that in spite of the supremacy of common law throughout the seventeenth-century colonies, elite women in Maryland seem to have been somewhat more successful in protecting their property in court.

While common law restricted women's ability to control and inherit property, the exclusive focus on women's limited status in common law courts has obscured how women used other legal jurisdictions to their own advantage. Recent work on the legal activity of English women points to their increasing use of equity law in the early modern period, and suggests that our understanding of women's disadvantaged position under common law should be supplemented by studies of their frequent involvement in other legal jurisdictions. Maria Cioni, in her work on Elizabethan women in the Court of Chancery, argued that equity courts allowed exceptions to the doctrine of coverture, and

upheld legal devices such as jointures and separate estates that allowed married women some degree of independent control over their own property. The advantages that equity law afforded married women, Cioni suggested, compensated them for the disadvantages they faced under common law.[1] More recently, Tim Stretton, in his study of women's legal activity in the sixteenth-century Court of Requests, argued that despite the structures of patriarchy embedded in early modern law and society, the numbers of female litigants in equity courts expanded in the late-sixteenth and early-seventeenth centuries. Stretton showed that a wide variety of women, from the elite to the poor, used the Court of Requests to maintain control over property, to uphold marriage agreements, and to collect debts.[2] Margaret Hunt's work on women in the eighteenth-century equity Court of Exchequer, which handled cases similar to those in heard in Chancery, showed that women frequently sued for property or moveable goods guaranteed through their marriage settlements.[3] Looking at the colonies, Marylynn Salmon's study of women and property in eighteenth- and nineteenth-century America emphasized the importance of English precedents in equity law in improving women's independent control of property in the decades surrounding the American Revolution. Salmon has argued that colonies that established courts of Chancery on the English model allowed women to maintain property separately from their husbands.[4]

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[1] Maria Cioni, *Women and Law in Elizabethan England with Particular Reference to the Court of Chancery,* (New York and London, 1985), 84.
[2] Tim Stretton, *Women Waging Law in Elizabethan England*, (Cambridge: Cambridge University Press, 1998), 58-59.
[3] Margaret Hunt, "Wives and Marital 'Rights' in the Court of Exchequer in the Early Eighteenth Century," in Paul Griffiths, Mark Jenner, eds., *Londonopolis: Essays in the Cultural and Social History of Early Modern England*, (York: Manchester University Press, 2000), 107-29.
[4] Marylynn Salmon, *Women and the Law of Property in Early America*, (Chapel Hill: University of North Carolina Press, 1986).

I. Women's Property at Common Law and Equity

Common law limited women from elite families in the same ways that it limited their lower-status counterparts. Under common law, married women, elite and lower-status alike, could not own or inherit property while they were under coverture. Any property a woman possessed prior to her marriage, both real and moveable, became the property of her husband upon her marriage. A woman's husband had the sole right to manage and reap the benefits of his wife's property, although he could not sell it, and married women could not make wills without the approval of their husbands. As widows, however, common law entitled women to their dower rights, or the use of one-third of their husbands' real and moveable property during their lifetimes. Widows could collect this portion whether their husbands devised a will or not. While men who did make wills could leave their wives more than one-third of their land, they could not leave them less. Under the terms of the Statute of Wills of 1540, a testator could devise all of his freehold and copyhold land to heirs of his choice without the hindrance of common law or manorial customs. While this meant that a testator could legally disinherit his children by the terms of his will, he could not legally bequeath the one-third of his land reserved for his widow's dower rights.[5]

The colonies followed English example in protecting dower rights. In the seventeenth century, men in the colonies could not will away their wives' portions, although they could choose to disinherit both their sons and daughters.[6] A Maryland law of 1642 guaranteed a widow the use of at least one-third of her husband's real estate. If

[5] 32 Hen. VIII, c. 1, 1540. Amy Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1993), 27.
[6] Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society*, (New York: Knopf, 1996), 111-112; Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, No. 2, (April 1987): 158-159.

the marriage had been childless, she was entitled by law to receive the estate in its entirety.[7] The relatively strong status of widows under Chesapeake law stood in stark contrast to that of women in New England, where a widow's right to collect dower was more uncertain. While the Massachusetts "Laws and Liberties" of 1648 gave widows the use of a "competent portion" of the estate, it left the exact allotment of land and moveable property to the discretion of the magistrates. Emphasizing the Puritan focus on the household and the family, the law stated that only a widow who lived with her husband would be eligible to receive dower rights. Further, it stipulated that only widows who "shall not commit or foster any strip or wast" of the land or houses on the estate would be judged worthy of its possession. However, the 1648 law did outline a few exceptions, including cases in which a wife had been deserted by her husband, or divorce "where she is the innocent partie." [8]

Common law inheritance practices also limited women's ability to inherit property as daughters. Under the common-law rules of primogeniture, which had been established in England since the mid-thirteenth century, real property held by a father at his death descended to his eldest son with daughters and younger sons inheriting moveable property jointly.[9] Entails became common in the seventeenth and eighteenth centuries among families of the English elite as a way to protect the family patrimony from being sold or alienated by a wayward patriarch. Entails were upheld by common law and usually stipulated in the terms of a will, and ensured that family estates would

[7] "An Act touching Succession to Goods of Intestate Persons, 1642" in "Proceedings and Acts of the General Assembly, January 1637/8-September 1664," *Archives of Maryland*, Vol. 1, 156-157.
[8] *The Book of the General Lawes and Libertyes*, (Boston: 1648), 17-18.
[9] Amy Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1993), 26-27.

pass intact to the eldest male heir.[10] Borrowing from English example, the southern colonies implemented the practice of primogeniture from the earliest days of settlement. The growth of large estates in the Chesapeake, where planters accumulated large tracts of land on which to grow tobacco, also made entails an attractive option for families of the colonial elite. These colonies passed successive laws making it difficult to reverse the terms of an entail made by an ancestor. The Virginia General Assembly, for example, passed a law in 1705 that made the breaking of an entail impossible without a special act of the Assembly.[11] The northern colonies, such as Massachusetts, Connecticut, Delaware, Rhode Island, Pennsylvania, and New Hampshire, broke from English common law tradition and practiced multigeniture. However, multigeniture still privileged the position of the eldest male heir, who received a double-share of his father's real estate, with younger sons and daughters inheriting one share each.[12] While daughters in the northern colonies might thus inherit a small portion of the family land, daughters in England and the southern colonies were unlikely to inherit real estate unless they were heiresses or a specific provision had been made for them in a will.

While these customs and laws formed the basis of women's relationship to property, by the seventeenth century, legal devices enforceable only in English courts of equity began to provide legal loopholes to circumvent the more rigid common law rules governing women's control over property. Amy Erickson has shown that propertied families in seventeenth-century England increasingly employed marriage settlements, upheld by the courts of equity, for the primary purpose of protecting a wife's property

[10] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 152.
[11] *Ibid*., p. 157.
[12] Norton, *Founding Mothers & Fathers,* 111-112. Shammas, "English Inheritance Law and Its Transfer to the Colonies," Table 1, Based on laws c. 1720.

rights.[13] The two primary devices used in these marriage settlements were jointures and the separate estate. From the fifteenth century onward, jointure agreements became popular among the elite as a legal device that guaranteed a woman the right to possess a certain amount of land stipulated in the contract, or be paid an annuity, after the death of her husband. Under the terms of a jointure agreement, usually set out as part of a marriage settlement, a husband and wife held the land jointly during their marriage, with the survivor of the couple gaining sole control of the land as a widow or widower. By the seventeenth century, jointures had replaced dower rights among the elite as the most secure way for a woman to receive property during her widowhood for her maintenance. While dower rights could be difficult to claim and required the cooperation of the heir, jointure lands descended to a woman on the day she was widowed. Jointures were also more flexible: unlike dower rights, which entitled a widow to one-third of her husband's land for her lifetime and excluded land held by copyhold, leasehold, or lands subject to entail, jointures could guarantee women the use of any lands stipulated in the agreement.[14]

While jointure agreements secured the interests of a woman by guaranteeing her maintenance during her widowhood, these settlements also served the interests of elite men. Jointures allowed large landowners to control more precisely the descent of property, and could ensure that the family's patrimonial estates would pass intact to the next male heir. Additionally, as Eileen Spring and others have shown, jointure settlements sometimes awarded women less than they would have received if they had

[13] Amy Erickson, "Common Law versus common practice: Marriage Settlements in Early Modern England," *The Economic History Review* 43, No. 1, (February 1990): 22.
[14] Stretton, *Women Waging Law,* 26-27, 109-110. Erickson, "Common Law versus common practice," 24-25.

instead claimed their dower thirds at common law.[15] By the terms of the 1536 Statute of Uses, a woman who agreed to a jointure settlement prior to her marriage nullified her ability to also collect dower rights under common law.[16] Though jointure agreements allowed a widow to enjoy the income of land for her lifetime, jointure lands often did not come with title or inheritance rights. At a widow's death, her jointure lands generally descended to her heir or back to her husband's family.[17]

Equity courts also upheld the doctrine of "separate estates," whereby a married women could retain independent control of her property for her separate use that could not fall under the control of her husband. This legal device worked because the land was held in trust for the woman during her period of coverture, usually under a feoffee or a trustee that was obligated by law to act on her behalf. While couples often agreed to separate estates in their marriage settlements, land held in trust for a woman's separate use could also be drawn up in secret by the bride's family.[18] Coming into use at the end of the sixteenth century, the doctrine of separate estates was frequently used by families of the English elite in the seventeenth and eighteenth centuries to protect land a wealthy woman brought into her marriage. As marriage portions rose among the English aristocracy over the seventeenth century, elite families became more concerned to see that the wealth a bride brought into her marriage would be reserved to her own benefit.[19]

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[15] Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300-1800*, (Chapel Hill: University of North Carolina Press, 1993), 42-65.
[16] 27 Henry VIII, c. 10. William Searle Holdsworth, *A History of English Law*, (London: 1903-1972), vol. 9, 196.
[17] Barbara Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers*, (Oxford: Oxford University Press, 2002), 19-23; Rosemary O'Day, *Women's Agency in Early Modern Britain and the American Colonies: Patriarchy, Partnership, and Patronage*, (New York: Pearson Longman, 2007), 478.
[18] Stretton, *Women Waging Law,* 26-27.
[19] Erickson, "Common Law versus common practice," 21-39. Susan Staves has argued that while equity courts upheld women's right to separate estates in the eighteenth century, they began to put more

While pre-nuptial agreements such as jointures and separate estates were frequently used among the English nobility and gentry, elite families in the colonies rarely made use of such devices in the seventeenth century. The courts of equity, which by the seventeenth century had grown into elaborate and effective arbiters of women's property in England, were generally unpopular in the colonies. As Carole Shammas has pointed out, equity law and courts of Chancery were associated in the minds of colonists with the attempts of the Tudor and Stuart monarchs to circumvent common law liberties. Colonies dominated by dissenters such as Massachusetts, Connecticut, and Rhode Island, never established courts of equity at all.[20] Marylynn Salmon has alternatively suggested that in the seventeenth century, colonial families had not yet accumulated enough wealth to warrant sophisticated devices such as jointures and separate estates.[21] Though Maryland established a Court of Chancery in 1660, unlike its English counterpart, the majority of the business heard in the court was not on behalf of private parties, but on the behalf of the Lord Proprietor's interest in lands of people who died without legitimate heirs.[22] The lack of a well-developed equity system in the colonies meant that women's relationship to property was defined by the colonial common law.

While colonists may have eschewed equity courts in favor of colonial common law courts, elite women in England used the equity jurisdiction with greater frequency throughout the fifteenth, sixteenth, and seventeenth centuries. Barbara Harris' work on elite women in the late-fifteenth and early-sixteenth centuries has shown that over half of

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restrictions on the terms of such settlements in the nineteenth century. See Staves, *Married Women's Separate Property in England, 1660-1833*, (Cambridge, MA: Harvard University Press, 1990).

[20] Shammas, "English Inheritance Law and Its Transfer to the Colonies," 157.

[21] Salmon, *Women and the Law of Property in Early America*, 88. However, Salmon does point out that these contracts had become more popular in the southern and middle colonies by the eighteenth century.

[22] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, vol. 51, xxii-xxxi.

the marriage settlement cases heard in the Courts of Chancery and the Court of Requests involved a conflict over a woman's jointure. Harris argues that the high rate of litigation over jointures in these jurisdictions reflect that grooms' families often resented a new bride for having a life interest in a substantial portion of the family estate.[23] Tim Stretton's work on women in the Court of Requests in the late-sixteenth and early-seventeenth centuries revealed that women comprised one-third of litigants in the court.[24] Women's participation in Court of Chancery in the seventeenth century may have been even higher. Wilfrid Prest estimated that as many as 40 percent of cases heard in Chancery were brought by or directed against women.[25] The growing rates of female litigants in English equity courts reflected an increasing tendency for elite families to draw up marriage settlements, and a rising propensity for women to seek legal redress when conflicts arose over these settlements.

Elite women in England most commonly sought legal recourse in Chancery when their claims to jointure lands or payments were threatened.[26] As the preeminent equity court in the realm under the jurisdiction of the Lord Keeper, Chancery's jurisdiction extended over all manners of trusts, including marriage settlements and jointures, that provided landowners an elasticity that was lacking under the more strict rules of common law. Women benefited from the more flexible procedures used in Chancery, which allowed exceptions to the doctrine of coverture, and allowed married women to sue and be sued as parties in their own right, apart from their husbands. This temporary suspension of a woman's status as a *femme covert* allowed her to sue even her own

[23] Harris, *English Aristocratic Women,* 52.
[24] Stretton, *Women Waging Law,* 39
[25] William Prest, "Law and Women's Rights, in Early Modern England," *Seventeenth Century* 6, No. 2, (1991): 181-182.
[26] Holdsworth, *A History of English Law*, vol. 1, 453-459.

husband; although such examples are rare, they did indeed happen. Additionally, it was possible for a woman to sue in any equity court even if she did not have the legal documents needed to prove her title to the property in question. She could even sue in Chancery to have the documents necessary for her case returned to her possession. [27] Though the cost of litigation in Chancery tended to be high, ranging anywhere from £50 to £400, the flexibility of court procedure and the ability of even married women to bring suits in their own names made Chancery a popular forum for elite women who wished to maintain control over the property.[28]

II. Elite Women's Legal Knowledge

In addition to acting as litigants, as part of the governing elite in England and the colonies many high-status women were in close contact with men in positions of local authority. As the mothers, sisters, daughters, and wives of the governing elite, these women were surrounded by men who had been trained extensively in the law, and who acted as local administrators of justice. Living in the same household with men who sat in positions of legal authority, these high-status women would also have had access to the legal works commonly found in libraries of elite families. Lady Eleanor Touchett Davies Douglas, who was involved in litigation over her right to her jointure lands in the English Chancery in the 1620s, 30s and 40s, married the Attorney General of Ireland, Sir John Davies, in 1609. The skill with which Lady Hester Sandys Temple prosecuted her many legal cases reflects her family's legal background. In 1595, Lady Hester married Sir Thomas Temple, who had trained in the law at Lincoln's Inn, and served as high sheriff for Oxfordshire in 1606-07, for Buckinghamshire in 1616-1617, and for Warwickshire in

[27] Stretton, *Women Waging Law,* 27-29.
[28] The figures for the cost of litigation in Chancery are based on a study of the late-sixteenth century. See Stretton, *Women Waging Law*, 83-84.

1620-21.[29] Through the marriage of her daughter Bridget Temple, Hester was also related to John Lenthall, one of the Six Clerks of the Court of Chancery.[30] Richard Brent, whose daughter Margaret Brent became one of the most litigious women in early colonial Maryland, was sheriff of Gloucestershire in 1614; Margaret's brothers, Fulke and Giles, were both educated at the Middle Temple, London before immigrating to the colonies as adults in the late 1630s. Giles Brent became one of the most powerful leaders of Maryland in the 1640s, holding the post of lieutenant general and acting governor in 1643-44.[31] Jane Fenwick Smith Taylor Eltonhead, who successfully petitioned the Maryland Provincial Court in 1658 to claim her late husband's estate, was sister to Cuthbert Fenwick, who sat as a justice of the peace for St. Mary's county.[32] Elizabeth Cogan Endicott, who became involved in a protracted legal dispute with her son over her widow's portion in the 1660s, married Massachusetts Bay Governor John Endicott in 1630. Governor Endicott had an extensive network of legal contacts in both England and the colonies. He had ties to the great lawyer and legal scholar Sir Edward Coke prior to his departure from England, and sat on Massachusetts General Court and the Court of Assistants until his death in 1665.[33]

Some of these women even purchased legal works themselves. An inventory of money spent on books drawn up by Lady Hester Temple in the 1650s included a copy of "Leonard's Reports," a digest of cases heard in King's Bench, Common Pleas, and the

[29] E. F. Gay, "The Temples of Stowe and their Debts: Sir Thomas Temple and Sir Peter Temple, 1603-1653," *Huntington Library Quarterly* 2, No. 4, (1939): 401-02.
[30] *Burke's Peerage and Baronetage*, Vol. 2, 106th edition, Charles Mosley, ed. (London: Routledge,1999).
[31] Edward C. Papenfuse, ed., "A Biographical Dictionary of the Maryland Legislature," *Archives of Maryland*, vol. 426, 161-162
[32] *Ibid*., vol. 426, 319.
[33] Lawrence Mayo, *John Endecott: A Biography*, (Cambridge, MA: 1936), 2-5.

Exchequer compiled by the Elizabethan lawyer William Leonard.[34] Also included in the inventory was "Cooks Reportes," which referred to Sir Edward Coke's *Reports*, a digest of famous cases and an essential reference book for seventeenth-century lawyers and legal scholars.[35] While both William Leonard's and Edward Coke's legal works were well-known and widely circulated, Lady Hester's inventory of books also included more obscure legal works such as "Laymans Lawyer," and the "Exact Lawgiver."[36] This inventory suggests that elite women took an interest in educating themselves about the law, and may have consulted these works as they prosecuted their cases in the courts.

In addition to these books bought by Lady Hester Temple, other legal treatises published in England included specific information about the legal devices commonly used by elite women to protect their property, including jointures, trusts, and marriage settlements. Thomas Edgar, the author of *The Lawes Resolution of Women's Rights*, targeted women specifically. Edgar advised that women should take care to see that their property rights were protected prior to their marriages: he stated that "A husband...is a delicable thing, but donements [gifts] or feoffements [trusts], etc. better the stomacke, though of itself it be good and eager."[37] While Edgar emphasized that wise parents would see that their daughters' marriage settlements were carefully crafted, Edgar also stated that women themselves had enough wisdom to ensure favorable terms in their marriage settlements, and urged them to avoid the pitfalls of relying on their common law rights of

[34] HEH, Temple Family Addenda, Box 1, HM 46533. Rosemary O'Day also cites this list in *Women's Agency in Early Modern Britain*, 266. William Leonard, *Reports and Cases of Law Argued and Adjudged in the Courts of Law at Westminster*, (London: 1658).
[35] Edward Coke, *Reports*, (London: 1600-1658). See also "Sir Edward Coke," *Dictionary of National Biography Online.*
[36] The lack of an author or publication date for these works makes it difficult to discover the publication and circulation history of these tracts. These titles are not found in the *Short Title Catalogue*. It is possible that they may have been works that only circulated in manuscript form.
[37] Thomas Edgar, *The Lawes Resolution of Women's Rights*, (London: 1632), 72.

dower. He stated that "our English women have with their singular vertue, so much wisedome of their owne, as to foresee for themselves and discerne the difference between that which wee call dower and joynture." He lays out the disadvantages of dower: "it must be demanded, sometime sued for, sometime neither with suit or demand obtained." Lands claimed by right of dower were also subject to forfeiture in the case of a husband's felony or treason "...all of which inconveniences being wisely forseene, women did learne to become joynt purchasors with their husbands of such estates."[38] While the extent to which women used *The Lawes Resolution* to educate themselves about the law is unknown, the emphasis that the treatise placed on women's management of their jointures and marriage settlements reveals that some legal writers thought it appropriate that women take a central role in the supervision of their own legal affairs.

Elite women's correspondence and inventories also reflect that some women kept detailed records of their legal claims to property, and carefully organized and guarded the legal documents that would uphold these claims in court. Anne Temple Roper, Viscountess Baltinglass, had trunks-full of legal documents, including depositions, bills, answers, interrogatories, and deeds, outlining her claims to her lands in Northamptonshire and Buckinghamshire. A list of over two hundred documents, ranging in date from the 1520s to the 1680s, were included in the inventory, which was organized by trunk and then by drawer.[39] Judith Barrington wrote to her estate steward John Kendall with instructions on how she had organized her "evidence trunk," which included deeds, inventories, bills, and documents relating to her marriage settlements with her first and second husbands. She explained that "the coort roll for taking up the 10 akers in Reding,"

[38] Thomas Edgar, *The Lawes Resolution of Women's Rights*, 182-183.
[39] HEH, Temple Family Catalogs, Lists, and Inventories, STT CL&I Box 1, 1550-1639.

were in "the black box that is titled my purchase lands" and that "my boxe of my joynture deeds is by ittselfe."[40] That elite women kept detailed accounts of their marriage settlements and litigation records reflects that they were often centrally involved in the legal cases concerning their property, and were well-aware of how important these documents could be in prosecuting cases in court.

III. Elite Women's Litigation in England

At the center of many elite women's legal conflicts was their right to control and reap the benefit of lands left to them as widows. Widows from gentry and noble families in England commonly went to law in Chancery to protect their right to possess lands by the terms of their marriage settlements. The legal conflicts between Lady Eleanor Touchett Davies Douglas and her son-in-law, Ferdinando, Lord Hastings (later the 6th Earl of Huntingdon), which spanned nearly three decades, concerned Eleanor's right to inherit portions from the estate of her first husband, Sir John Davies. Lady Eleanor has become well-known to historians primarily as a religious and prophetic writer whose outspoken and radical tracts against the Caroline regime resulted in hearings before the courts of Star Chamber and High Commission.[41] Between 1625 and 1652, she published nearly seventy religious and prophetic tracts.[42] However, these historians have overlooked Lady Eleanor's extensive involvement in litigation throughout the 1620s, 30s, and 40s.

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[40] BL, Egerton Mss., 2650/176, Judith Barrington to John Kendall [undated, probably from the 1630s].
[41] Esther Cope has published extensively on Lady Eleanor. See especially her *Handmaid of the Holy Spirit: Dame Eleanor Davies, Never Soe Mad a Ladie*, (Ann Arbor: University of Michigan Press, 1992). The work of Teresa Feroli also examines Lady Eleanor as a radical religious and political player. See *Political Speaking Justified: Women Prophets and the English Revolution*, (Newark: University of Delaware Press, 2006), and "Sodomy and Female Authority: the Castlehaven Scandal and Eleanor Davie's *The Restitution of Prophecy* (1651)," *Women's Studies* 24, no. 2 (1994): 31-49.
[42] See the list of "Lady Eleanor's Tracts" in the preface of Esther Cope's *Handmaid of the Holy Spirit.*

After the death of her first husband, Sir John Davies, in 1626, conflict almost immediately erupted between Eleanor and her son-in-law over her right to inherit portions of the Davies estate as a widow. Two major issues were at work in the proceedings of the case. First, the marriage between Lord Hastings and Eleanor's daughter Lucy, which had taken place in 1623 but had not been consummated because Lucy was only eleven at the time, had been undertaken on the condition that Sir John Davies' estate would pass to Lucy rather than to his wife Eleanor, with whom he had a strained and tempestuous relationship.[43] Second, Eleanor's marriage in 1627 to Sir Archibald Douglas jeopardized her claim to her jointure lands, the manor of Pirton in Hertfordshire and the manor of Englefield in Berkshire, which had been purchased for her by Sir John Davies.[44] While jointure lands passed to the use of a widow immediately upon the death of her husband without the need to go to law, a widow who remarried risked losing her jointure unless the terms of the settlement explicitly stipulated that she could hold the jointure for her natural life, and not during her widowhood only. Though the original jointure between Sir John and Lady Eleanor had outlined that she would hold her jointure lands for her life, even if she did remarry, before his death Sir John allegedly revoked the first jointure and made another stipulating the Eleanor's claim to her jointure was only valid while she remained a widow.[45]

These two issues gave Lord Hastings a claim to substantial portions of the Davies estate as the husband of Sir John and Eleanor's only surviving child. The properties at stake in the case were not only Eleanor's jointure lands at Pirton and Englefield, but also the manor of Fonthill in Ireland and a London house on the Strand. Immediately after the

[43] "Sir John Davies (1564/5-1626)," *Dictionary of National Biography Online*.
[44] "Lady Eleanor Touchett Davies Douglas (1590-1652)," *Dictionary of National Biography Online*.
[45] Cope, *Handmaid of the Holy Spirit,* 43.

death of Sir John Davies, the Hastings family demanded that the marriage between Ferdinando and Lucy be consummated to ensure their claims to the Davies inheritance, and moved to take possession of Englefield. Because Lucy Davies was only fourteen and still a minor upon the death of her father, the matter of who was her rightful guardian was a legal issue that had to be decided between her mother and her husband. A deposition given by Thomas Reeves, one of Eleanor's legal advisors, reveals that Eleanor was well-aware that her husband had left her in a vulnerable position regarding her inheritance. Reeves' deposition suggests that Eleanor was ready and willing to bargain with the powerful Hastings family both in and out of court. The deposition was part of a Chancery case initiated by Lady Eleanor and her second husband, Sir Archibald Douglas, against Lord Hastings in 1629. Reeves testified that in the days following Sir John Davies' death, Eleanor had related to him that she had given her son-in-law Ferdinando two choices: either he would allow her to act as the administrator of Sir John Davies' estate in exchange for a lease worth £200 per year, or he would allow her to inherit Englefield manor for her own use in exchange for her agreement to give up the administration. Reeves stated that he

> came unto the said Ladye Elianor aboute nyne of the clock in the morning to advise with her concerning her owne affaires, [and] shee told him that the daye before the said Lord Hastings had bin with her, and that shee had offered him his choise whether he would suffer her to take the administration quietly, and then shee would purchase to him and her daughter...a lease of two hundred pounds a yeare for one and twentie yeares for the bettering of his present mayntenance, or whether leaving her to possesse Englefield and some other things quietly he would take the administratcon to himself, and that the Lord hastings had chosen to take the administracon.[46]

That Lord Hastings had apparently given up his interest in Englefield and had chosen instead to act as administrator to Sir John's estate buttressed Lady Eleanor's claims to the

[46] HEH, Hastings Legal Papers, HA Box 4 folder 1, Douglas vs. Hastings, taken June 4, 1629.

Englefield lands. When Reeves advised Eleanor that "he could have wished that shee had kept the staff in her owne hands," she tartly answered him that "shee knewe best what shee had to doe."[47]

Lady Eleanor's tenacity in defending her claims to the Davies' lands was also alluded to in the testimony given by her son-in-law and opponent in the case, Lord Hastings. He testified that in the days before Sir John's death, Lady Eleanor had discreetly pocketed some of the important documents concerning the manors of Englefield and Pirton. While the content of the deeds are not specified in his deposition, the documents most likely pertained to Sir John Davies' attempt to restrict his wife from inheriting the estates. Lord Hastings deposed that Eleanor "founde the said deedes amongst some evidences in the said Sir John Davies studdy whilest she was alone there, and this defendante and the rest of the companie were in an Inner Chamber, and that soe she put it into her pocket, and woulde not produce it till she had founde and possessed herselfe of the saide deede and writing concerning Englefield and Purton." Lord Hastings' deposition also states that he attempted to strike a bargain with Lady Eleanor, perhaps preferring an out-of-court settlement to costly litigation in Chancery. However, when he proposed that Lady Eleanor should enjoy Englefield for life in exchange for her relinquishing her claims to Pirton, she allegedly replied that "she would not give over her interest in Purton, but did intend to houlde both it and Englefield and to have her thirds of the Irysh landes, and that she would answere the Earle of Huntington [Lord Hastings' father] in anie legall course he should proceede in against her."[48]

[47] HEH, Hastings Legal Papers, HA Box 4, folder 1, Douglas vs. Hastings, taken June 4, 1629.
[48] HEH, Hastings Legal Papers, Box 4, Folder 4, Depositions of Ferdinando, Lord Hastings, undated.

Lady Eleanor and Sir Archibald Douglas initiated a number of legal suits in the late 1620s in not only the preeminent courts of the realm, but also in a variety of different legal jurisdictions. She lamented in a petition to Charles I in January 1627/8 that her "matter" was now in "question in your highness Courtes of Chancery, Exchequer Chamber, Court of Wardes and your Benche and the Arches," adding that her many legal cases were both "very chargeable" and time-consuming.[49] Though Lady Eleanor had won cases against Lord Hastings in both Chancery and King's Bench in 1627, Lord Hastings entered a cross-suit against her in Chancery, and initiated another "tryall att the Comon Law for the House" in London.[50] In 1628, Chancery ruled against Eleanor's right to claim her jointure lands of Pirton, upholding the changes Sir John Davies had made limiting the use of jointure lands only to Eleanor's widowhood. Eleanor then entered another suit in Chancery in 1629 in an effort to reverse the previous decision of the judges.[51] In November 1632, she entered yet another suit in Chancery claiming her right to inherit the tapestries and household goods in Ireland left by Sir John Davies.[52] The refusal of both parties to come to an agreement over the Davies estate meant that litigation continued in these courts throughout the next two decades.

While Lady Eleanor acted as a joint party in these legal suits with her second husband, Sir Archibald, until his death in 1644, she was clearly knowledgeable about the particulars of her cases. She testified in a Chancery deposition that she was well aware

[49] HEH, Hastings Legal Papers, HA 2.12.2, "Petition of Archibald and Eleanor Douglass to the king," January 22, 1627.
[50] HEH, Hastings Legal Papers, HA 2.12.1, Sir Archibald and Lady Eleanor Douglas vs. Ferdinando Hastings, Earl of Huntington, "Summary of the Case," 1627. The previous year, Ferdinando successfully sued Lady Douglas in King's Bench for £370 worth of pearls and diamonds that he claimed should have descended to his wife Lucy after the death of her father. See *English Reports*, Lord Hastings vs. Sir Archibald and Lady Douglas, King's Bench, 1626, vol. 79, 901-904.
[51] HEH, Hastings Legal Papers, HA 3.3, December 1, 1628.
[52] HEH, Hastings Legal Papers, Box 4, folder 6, Complaint of Eleanor and Archibald against Ferdinando, Lord Hastings, November 29, 1632

that Sir John Davies had placed her jointure lands at Englefield in trust for her under the care of her brother the Earl of Castlehaven, and that under the terms of the jointure the lands would come under her own control upon Sir John's death. Eleanor further stated that the lands were granted to her "for her life in parte of her joynture...and not for her widowehood onely," as her opponent Lord Hastings had claimed. Combating claims that Sir John had changed the terms of her jointure prior to his death, she explained that her late husband did never "doe any acte to revoke or make voyde the said deed."[53]

Eleanor also drew on the testimonies of other women in her household to buttress her claims to the Englefield estate. According to a deposition given by Bridget Cross, an eighteen-year-old servant in Eleanor's household who was present during the meetings between Lady Eleanor and representatives of the Hastings family in London soon after Sir John's death, Eleanor had argued that she was not only entitled to £500 under the terms of her late husband's will, but also that she should by right have control of the estate at Englefield. According to Bridget's testimony, Eleanor had a rightful claim to Englefield under the terms of her marriage contract, and had been effectively administering the manor for the past several years. She stated that Eleanor had the "ordering, governing and direction of all manner of businesses concerning the manor of Englefeild and all the landes thereunto belonging as well for the Stocking sowing and ordering of the said landes as for the plowinge and displacing of servantes, selling of corne and cattell there." Bridget further stated that "shee hath often heard the said Sir John in his life tyme saye that Englefield house and all the lands thereunto belonging was

[53] HEH, Hastings Legal Papers, HA 4.5, Deposition of Eleanor Davies Douglas, October 20, 1629.

the joynture of the said dame Elianor and that he would doe nothing without her consent."[54]

Over the next fifteen years, Lady Eleanor vigorously defended her right to Englefield and Pirton against the claims of her son-in-law, Lord Hastings. The cases were still at issue in the early 1640s, when she entered a petition to the House of Lords. She wrote to her daughter Lucy, with whom she had remained close in spite of her conflict with Lucy's husband, that she had "entered a petition for Englefeild in the Higher House," but that she still intended "to make Purton notwithstanding my prime suite." She lamented to her daughter that she was poor and had difficulty paying for her "lodgein and dett and coach...besides the lawer." Yet she still held out hope that she would reclaim the vast sums she had outlaid for her legal expenses through her jointure lands, writing to Lucy that "Purton I make no doubte will soone make a returne of moneys for us both."[55]

As Lady Eleanor's many legal cases suggest, the marriage settlements so frequently used by elite families in England could be fraught with legal complexities and difficulties, especially if a woman remarried after claiming her jointure from her first marriage. Lady Judith Smith Barrington, a prudent and adept estate manager throughout her life, fought to legally protect land she claimed under her jointure agreements from her first and second marriages against the claims a variety of different legal actors. After the death of her first husband, Sir George Smith, in 1620, she successfully took possession of the manor of Flamsted in Hertfordshire as her jointure. As a young and wealthy widow, Lady Judith married Sir Thomas Barrington in 1624, and increased her interest in land by gaining the manor of Swanstone on the Isle of Wight as her jointure land.

[54] HEH, Hastings Legal Papers, HA Box 4, Folder 1, Douglas vs. Hastings, taken June 4, 1629.
[55] HEH, Hastings Correspondence, HA 2338, Eleanor Davies Douglas to Lucy Hastings, May 14, 1643.

While Sir Thomas and Lady Judith held these lands jointly during their twenty-year marriage, Lady Judith was integrally involved in seeing that her jointure lands were administered with care and efficiency. Though the relationship between Sir Thomas and Lady Judith seems to have been one of love and affection, Judith's frustration with her husband's ill-management of their property, especially lands touching her jointure, was a source of concern for her. She wrote frequently to her estate manager and secretary John Kendall in London with advice on how to manage the legal suits that arose over her jointure property. In 1632, she wrote to Kendall concerning a suit entered by Sir John Dingley against she and her husband in Chancery concerning her jointure land. She ordered Kendall to seek legal advice on the matter "& consider whether its not better for us to entertaine an atturney in London if the suite must be followed att London." She went on give detailed instructions to Kendall on how the suit should be managed. She wrote,

> [the property] is soe certainly ours that its a cleer case, soe that sence Sir John Dingley is soe hott in itt we have cause to fear that he hopes to make his advantage upon our ill manageinge, & forgetfulnes & carelesnes. Therfore we must be watchefull & diligent; and not delaye witnesses and proofes soe late as our counsell will have noe convenient time to consider thorowly of them...Heer is all the papers concerning that busines. Loose not them & if you see James Rookely enforme your selfe thorowly of all the perticulers. If you must leave the reasons on our side with counsell, then be sure you take a coppy least it be lost.[56]

She further added that she was glad Kendall had encouraged Sir Thomas to begin a suit to protect some of the timber on their estates. She wrote "I think it wear very fitt you gott your master to begin a suite with John Smyth aboute his spoyling Cottingham Woods," although she disapproved of Sir Thomas's tactic of delaying the case by having the jury

[56] BL, Egerton Mss. 2646/44, "Memorandums for London: Michelmas Term, 1632," Lady Judith Barrington to John Kendall. See also BL, Egerton Mss. 2646/46, Lady Judith Barrington to John Kendall, October 25, 1632. Lady Judith also wrote to her husband with advice and instructions. See Egerton Mss. 2647/175, Judith Barrington to Thomas Barrington, 1643

survey the land personally: "& this last coorse your master directed unto, in haveing a jury bringe in upon view his spoyle, wilbe nothinge but still delaying time, which he aimes att."[57]

After the death of Sir Thomas in 1644, Lady Judith became an important legal agent in her own right. Her jointure land from her first marriage, the manor of Flamsted in Hertfordshire, was the subject of a bitter legal dispute entered by Lady Judith against her former estate manager John Kendall in Chancery in 1648. In her bill of complaint, Lady Judith outlined in great detail her claim to the land and its history. She stated that Sir Thomas Barrington had sold the manor of Flamstead, with her permission, to Sir John Ferries to raise ready money to pay his debts. However, in 1638, Lady Judith authorized Kendall to repurchase Flamstead for £300 and place it in trust for her while she was under coverture. Under the terms of the agreement, Judith explained that the manor "should not be in the power of the said Sir Thomas Barrington," during her marriage, but that the land should be "in the name of the said Kendall but in trust for & to the onely behoof & benefitt of your oratrix & to be disposed of att her pleasure whensoever she should require." Lady Judith alleged, however, that Kendall had "in a subtle deceitfull way" used part of the money to purchase a portion of the land for his exclusive use. [58] Though Kendall submitted his answer to Lady Judith's bill of complaint, the lack of further documents in the case suggests that it might have been settled out of court. However, Lady Judith's bill of complaint made clear not only that she was centrally involved with the legal management of her jointure estates during her marriage, but also that she was not afraid to pursue litigation when those estates were threatened.

[57] BL, Egerton Mss. 2646/44, "Memorandums for London: Michelmas Term, 1632," Lady Judith Barrington to John Kendall.
[58] PRO, C 5/7/21, 20 April 1648

Lady Judith's management of her jointure estates on the Isle Wight brought her into increasing conflict with her step-son, Sir John Barrington, who had succeeded to his father's lands and titles. For years, step-mother and step-son attempted to settle their differences out of court, but their correspondence reflects that the two were coming into increasing conflict over Lady Judith's right to fell timber on her jointure manor of Swanstone. [59] As a widow, Lady Judith had complete control over the management of these lands during her lifetime. However, Sir John clearly also had an interest in seeing that the lands were efficiently managed, since they would revert to him upon Lady Judith's death. Sir John's correspondence with his step-mother reveals that he felt some resentment toward her holding of land that he felt was his. He wrote to her in May 1647 that "I hope you will be as carefull to preserve my right as you are desirous of a little profitt and as willing to allowe mee my due as you looke to have what is yours."[60] He added that he was "desirous that you would doe mee soe much right as not to deface my inheretance by destroying my timber uppon your joyntur. I beg nothing but what is fitting, the inheritance being mine."[61] Lady Judith responded that she rightfully should fell the trees on her land to make repairs to her tenant's houses, and that "I must fell for suffitient suplyes for repaires and such like that I am to provide my tenants, (theire houseing being left to me too much out of repaires) else you would another day more blame me for ruins."[62]

The conflict between Lady Judith and Sir John erupted into litigation in the late 1640s, when Lady Judith began to vociferously pursue legal action against him in

[59] ERO, D/DBa L26, "The Coppy of the first Agreement betwixt the Lady Judith Barrington & Sir John Barrington, 1644" and "The coppy of Sir John Barringtons demands of his mother, 1645."
[60] BL, Egerton Mss. 2648/136, Sir John Barrington to Lady Judith Barrington, May 4, 1647.
[61] BL, Egerton Mss. 2648/139, Sir John Barrington to Lady Judith Barrington, May 20, 1647.
[62] BL, Egerton Mss. 2648/137, Lady Judith Barrington to Sir John Barrington, May 20, 1647.

Chancery. In 1650, Sir John petitioned parliament that Lady Judith "by her insinuacon with the present commissioner of the greate seale, hath with all violence proceeded against your petitioner contrary to the knowne & accustomed rules" of the court of Chancery, and had obtained an "injurious decree" against him for "a supposed contempt in not yeilding obedience to the said decree."[63] In 1652, Sir John entered two cases in Chancery against Lady Judith, one claiming an interest in her jointure lands in Essex, and one for her lands in the Isle of Wight. Sir John entered the cases alleging that Lady Judith's ability to collect her jointure lands on the death of her husband was contingent upon her having children by Sir Thomas. Because the marriage was in fact childless, Sir John claimed the jointure lands reverted to him as the eldest male heir of his father. The following year, however, Lady Judith further delayed the litigation by procuring an order to have the cases dismissed because Sir John had failed to file his pleadings in the time allowed.[64] Though Chancery finally ruled against her in 1657, the year before her death, that Lady Judith continued to control the lands for the majority of her widowhood reflects her adept management of litigation concerning her property.[65]

The inter-generational rivalry so often at the center of property litigation among the English elite pitted mothers and step-mothers against their children and step-children. While the cases between Lady Judith Barrington and her step-son Sir John Barrington show that the relationships that arose from second marriages often resulted in bitter legal disputes, similar conflicts erupted even between biological mothers and sons. Lady Hester Sandys Temple's long-standing conflicts with her son and heir Sir Peter Temple is one example of this pattern. As a party to at least fourteen different legal cases during her

[63] BL, Egerton Mss. 2651/183, Sir John Barrington's petition against Lady Judith Barrington, 1650.
[64] ERO, D/DBa L51, Depositions in Lady Judith Barrington vs. Sir John Barrington, 1656.
[65] ERO, D/DBa F26, Sir John Barrington to Lady Judith Barrington, 1657.

long life (she lived to age 87), Lady Hester's experience in legal proceedings and detailed knowledge of court procedure is reflected in her frequent correspondence with one of the family lawyers, Robert Osney, and with her other family members.[66] Though women acting as litigants in Chancery worked with court-appointed lawyers and private solicitors in the management of their cases, Lady Hester's correspondence reveals that she clearly played a central role in supervising the cases.[67]

Like Lady Judith Barrington, Hester pursued cases that dealt with her jointure lands. Though she was a married woman until the death of her husband, Sir Thomas Temple, in 1637, nevertheless Hester was centrally involved in seeing that her jointure lands were maintained and defended even during her period of coverture. When Hester and her husband took out a bill of complaint in Chancery in 1629 against their son Peter Temple, Hester was centrally involved in the progression of the case. The case concerned the repayment of a loan of £10,000 made by Sir Thomas and Lady Hester to their son to discharge his debts prior to his marriage. As security for the loan, Sir Thomas and Lady Hester had put up part of Hester's jointure lands in Warwickshire, which were held in trust for her.[68] In October of that year Robert Osney wrote to Hester that she should herself testify in the case regarding "the yearely value of your landes, the surplus of them provided for your younger children, Sir Thomas his detts, and the moneys he paid for his fathers detts. These are those that are most materiall to be proved the rest of your

[66] Rosemary O'Day has examined Lady Hester Temple as an astute manager of the Temple family estates and a valuable partner to her husband Sir Thomas Temple. See O'Day, *Women's Agency in Early Modern Britain*, 212-216.

[67] The court of Chancery assigned each party entering a bill of complaint a court-appointed lawyer, although the parties could also hire private solicitors for further legal advice. Holdsworth, *A History of English Law*, vol. 9, 369-70.

[68] HEH, Temple Legal Case No. 178, Sir Thomas Temple and Lady Hester Temple vs. Peter Temple, Chancery, 1629.

business settled."[69] One of Hester's younger sons, Thomas, also worked as her agent in the suit in London. He wrote to her from Lincoln's Inn in anticipation of her arrival that he had copies of the depositions in the case, but that "I will not enter itt till you come to towne and till I have very good advise upon itt." In addition to keeping her apprised of the legal counsel at work on her case, he also made arrangements for her lodging in Chancery Lane. He wrote, "I have taken you two lodgings 14s a weeke for 3 weeks in Chancery lane at the White Horse a chandelor very neere Lincoln's Inn."[70]

Lady Hester also went to law to protect the rights of her tenants on her jointure manor of Morton in Warwickshire. In 1634, Edward Ayers entered a bill of complaint in Chancery against Hester and the trustees of the land at Morton, claiming rights to collect the crops on her land.[71] While her male kinsmen acted as trustees for the land in question, Hester herself wrote to Edward in 1635 concerning the case. She firmly stated that "I hope that you will accordinge to my expectation deal with mee like an honest plaine dealinge man... and if you have any querk [trick] in the lawe looke a little to your conscience."[72] Although she appealed to his honesty in the letter, she added that she would not be afraid to stand against him at law. She wrote "not that I feare you, for I doubt not but to bringe proofe sufficient...I shall bee able to give content if I had nott allreddy as I have. But if you delight in the lawe you maye well feare the end to bee naught. And furthermore lett me intreate you to remember what your promise was at the assigning of your lease."[73]

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[69] HEH, Temple Correspondence, Robert Osney to Lady Hester Temple, October 20, 1629.
[70] HEH, Temple Correspondence, Thomas Temple to Lady Hester Temple, STT 2209, April 10, 1630.
[71] HEH, Temple Legal Case No. 2, Edward Ayers vs. Sir Thomas Temple, Lady Hester Temple, Thomas Hickman, Spencer and Elizabeth Horley, William Temple, Giles Spencer Horley, Chancery, 1634.
[72] OED, in the seventeenth century, a "querk" or "quirk" was a trick or a piece of legal chicanery.
[73] HEH, Temple Correspondence, HM 46494, Lady Hester Temple to Edward Ayers, August 22, 1635.

Between the death of her husband in 1637 and her own death in 1656, Lady Hester was party to nine cases in the Court of Wards and Chancery.[74] In December 1639, at age 70, she petitioned the Commissioners of Chancery when her son, now Sir Peter Temple, attempted to legally force her to pay arrears on the vicarage at the family seat at Burton Dasset, Warwickshire.[75] In her petition, she wrote, "I know my sonne will stand hard against me, indeavouring to lay the whole arreare upon me. And therefore my request unto you all is that as in equitie you shall fine the quantitie of Acres, or what quantitie of land is due in the arreare for me to discharge, you would be pleased to certyfie the same that I may not be wronged in payinge beyond my proportion."[76] Lady Hester also continued to prosecute cases in Chancery against the claims of her other family members. For example, after her brother-in-law sued her in Chancery in 1647 claiming that she had failed to pay him an annuity of £40 left to him by his brother, Sir Thomas Temple, she filed a cross bill in Chancery. She argued that after the death of her husband in 1637, she had drawn up a contract and had paid Peter and his wife Katherine a one time "free gift" in lieu of an annual payment of £40 and that her obligations to them were no longer binding.[77]

While Lady Judith Barrington and Lady Hester Temple came into conflict with their sons and step-sons over control of their jointure lands, other elite women actively took part in protecting the interests of their sons in court. Indeed, these women could be just as knowledgeable and adept at securing lucrative marriage agreements for their

[74] HEH, Temple Legal Cases, Lady Hester Sandys Temple.
[75] The legal case between Sir Peter Temple and Lady Hester was the result of an earlier ruling in Chancery in favor of Robert Kenwicke, Vicar of Burton Dasset. See HEH, Temple Legal Case No. 70, Chancery, 1636-40.
[76] HEH, Temple Correspondence, HM 46550, Hester Temple to the Commissioners of Chancery, December 18, 1639
[77] HEH, Temple Legal Cases, No. 134. Lady Hester Temple vs. Peter Temple, 1637.

children as they were in protecting their own marriage settlements. Lucy Davies Hastings, Countess of Huntington, was a staunch defender of the interests of her children, and worked for decades to maintain the estates of the Hastings family after the death of her husband, Ferdinando Hastings, in 1656. Having seen her own mother, Lady Eleanor Davies Douglas, pursue litigation over her jointure rights for decades in the 1620s, 30s, and 40s, Lucy Davies was knowledgeable about the procedures involved in following a case in equity courts, and the legal issues associated with marriage settlements and jointures.

Lucy was centrally involved in a Chancery suit to collect the payment of a £10,000 dowry due to her son Theophilus upon his marriage to Elizabeth Lewis in 1672. Because Elizabeth's father, Sir John Lewis, had died before the sum could be paid, Lucy sued in Chancery for one-third of Lewis' estate in lieu of the substantial dowry. However, because Sarah Lewis, the widow of Sir John, claimed the disputed portion of the estate as her jointure land, the land could not be sold to pay the outstanding debt to Lucy and her son.[78] Before filing a bill of complaint in Chancery, Lucy went to London to consult with various lawyers and even the attorney general concerning her son's "great businesse." Lucy's daughter, Mary Hastings, Lady Joliffe, wrote to her brother Theophilus in October 1672 that her mother had been attending to the matter in London, writing that "shee has consulted the Attorney Generall severall times" and he was "of opinion that the first thing to be don, is to put in a bill in to the Chauncery to demand the writings which are in the executors and my Lady Lewis hands."[79] A series of letters between Lucy and

[78] HEH, Hastings Legal Papers, HA 12.1, Lucy, Countess of Huntingdon vs. Estate of Sir John Lewis, 1672.
[79] HEH, Hastings Correspondence, HA 7900, Mary Hastings, Lady Joliffe to Theophilus, Earl of Huntington, October 17, 1672.

her son written in October and November of 1672 speak in great detail of the issues at hand in the case. Lucy's understanding of legal procedure and her intimate involvement with the particulars of the case make her letters worth quoting at length. On October 22, 1672, she wrote to her son

> By the Satturday post I sent you the coppy of the bill in chancery for discovery of writings and principally of the articles between Sir Thomas Foote and Sir John Lewis relating to my Lady Lewis's joynture, though the mention of the joynture itself is purposly omitted, and the desire to see it (except in the counterpart) passed by, to avoid the custom of the chancery in such cases to conforme the joynture if they be compell'd to produce it...The affidavit, which it seemes you must make that you have none of those writings which you seeke to discover, is sayd to bee necesary and the usuall forme in law...The affidavit being to be made in the country before a master of the chancery one of whom you have not far from you..."[80]

The letters that followed show that Lucy continued to follow the suit, writing to her son when she received the affadavits, advising him to be careful with the deeds in his possession, and informing him that the lawyers they kept on retainer should attend to the business.[81] On November 12, 1672, she again wrote to her son

> I hoped to have sent you an answeare about the time of paying the legacys by Sir John Lewis's will, but my coppy being at Mr Atturny Generalls chamber, I trusted to see it there and have twice miss'd but I hope by thursday to give you an account of that. There are two bills exhibited, one for the discovery of the writings the other for a more particular inventory of the personall estate, and the busines proceeds in the names of both the heirs joyntly, and with good advice as farr as I understand it. Our solicitors goe together and our councillar the same. The answear of the other partys will bee in I think within 8 dayes.[82]

Because the estates of the Hastings family were heavily encumbered with debt, the collection of either money or property from the estate of Sir John Lewis was of the

[80] HEH, Hastings Correspondence, HA 5783, Lucy, Dowager Countess of Huntingdon to Theophilus, Earl of Huntington, Oct 22, 1672

[81] See HEH, Hastings Correspondence, HA 5784, Lucy, Dowager Countess of Huntingdon to Theophilus, Earl of Huntington, Oct 29, 1672; HA 5785, Lucy, Dowager Countess of Huntingdon to Theophilus, Earl of Huntingdon, Oct. 31, 1672.

[82] HEH, Hastings Correspondence, HA 5787, Lucy, Dowager Countess of Huntingdon to Theophilus, Earl of Huntingdon, Nov. 12, 1672.

utmost importance to both Theophilus as the heir, and to Lucy, who continued to rely on the estates for her income during her widowhood. Though the outcome of Lucy's case to collect the dowry due from her son's new bride is unknown, Lucy's clear legal acumen and her ability to pursue the case herself in London indicates that elite women played integral roles in managing their own legal affairs, and in protecting the interests of their children.

While Lady Hester Temple was a formidable legal opponent in her own right, her granddaughter, Anne Temple, was even more tenacious in pursuing her claims to her inheritance. Anne was involved in at least seventeen different legal cases from the 1640s through the 1680s. The majority of these were heard in the Court of Chancery, and dealt with her long-standing battle to gain control over lands that she claimed under the terms of the 1614 marriage settlement of her parents, Sir Peter Temple and his first wife, Anne Throckmorton Temple. The marriage settlement signed between Sir Peter Temple and Anne Throckmorton settled land in Buckinghamshire and Northamptonshire worth £700 a year, and lands worth £700 a year more at Burton Dasset in Warwickshire. According to the marriage agreement, these lands were part of a strict settlement that settled the lands on the heirs, either male or female, of Sir Peter and Anne Throckmorton.[83] As the only living heir of the couple, Anne Temple claimed these lands of her own. After her marriage in 1637 to the Irish peer Thomas Roper, Viscount Baltinglass, whom she married in spite of her family's aversion to the match, Anne and her new husband initiated two legal suits in Chancery in 1639-40 against her father, Sir Peter Temple, and

[83] HEH, Temple Legal Papers, Box 5, Folder 37, "The Case betwixt the Lord and Lady Baltinglasse and Sir Richard Temple," Undated.

her grandmother, Lady Hester Sandys Temple, for money due to her out of the estate of her mother and for her rightful portion of the Dasset estate.[84]

While it is clear that Anne, only seventeen at the time of her marriage with the Viscount in 1637, followed the lead of her older, more experienced husband in these early legal suits, by the early 1640s she began to take matters into her own hands. In 1643-44, she made moves to garner the support of powerful people to her cause, and began to gather evidence to support her claims to the Dasset lands. On June 14, 1643, she petitioned the House of Commons, arguing that her husband's estate had been decimated by the Irish Rebellion and asking that her father allow her £250 per year out of her future inheritance.[85] It was also clear that her petition had persuaded many MPs to sympathy for her cause: only two days after her petition was read in the House, Speaker William Lenthall wrote to Anne's father, Sir Peter Temple, informing him that it was the desire of the House that he "take your said daughter into your consideracon and to afford her somme meanes of subsistance accordinge to her peticon."[86] Sir Peter Temple's response to William Lenthall's request reflects the tenacity with which his daughter Anne pursued her claims:

> Since her marriage I have been questioned and prosecuted in Chancery as a wrongfull deteyner of her right, and the cawse hath received one hearinge, but the court hath found no cause to give her releif. I have also bene compleyned against by petition to the kinge, as an unnaturall at least an unkind father, for casting off my daughter without means of mainteynance and for wastinge her estate...but upon full hearing and debate, nothing appeared either in Lawe, equity, or common reason whereupon to ground releif.[87]

[84] Sir Peter Temple wrote that his daughter had "suffered herselfe to be stolne from mee, and hath match't herselfe not onley without, but much against my liking." Sir Peter Temple to William Lenthall, Temple Correspondence, STT 2044, July 5, 1643. HEH, Temple Legal Cases, No. 108, Thomas and Anne Roper vs. Sir Peter Temple, Chancery, 1640, and No. 109, Thomas and Anne Roper vs. Marie Wotton, Sir Peter Temple, Lady Christian Leveson, Lady Hester Sandys Temple, et al, Chancery, 1639-40.
[85] Journal of the House of Commons, June 14, 1643, The Petition of the Viscountess Baltinglass.
[86] HEH, Temple Correspondence, STT 1371, William Lenthall to Sir Peter Temple, June 14, 1643.
[87] HEH, Sir Peter Temple to William Lenthall, Temple Correspondence, STT 2044, July 5, 1643.

In two additional letters, in 1643 and 1644, Lenthall entreated Anne's father to give her maintenance "to sustaine her necesityes," or to allow her "to cutt timber of from her owne land to the valew of £200" which he had previously refused to do.[88] In 1644, she went a step further in an effort to gather the evidence that would support her cause against her father, allegedly breaking into the office of her grandmother, Lady Hester Temple, and stealing land deeds and other important legal documents. One of Hester's servants wrote to her mistress "My Lady B[altinglass]... hath broakened the doore whear your riteings are and hath made it fast againe and now she will kill me iff I should goe see what worke she hath made them."[89]

These bold moves, undertaken when Anne was in her mid-twenties, reflect her increasing role in the prosecution of the cases against her father and grandmother. After entering a further suit against her father in Chancery in 1648, this time protesting his felling of five hundred trees on the Dassett estate, she wrote to him that she and her husband intended "to move the court by our counsell the next terme uppon the mocion and draught of the order made by your counsell the 20th of November last of which wee thought fitt to give you notice, that if you please your self and counsell may be present." As to the felling of trees on her estate, she boldly added that "wee cannot accept of the trees uppon those tearmes menconed in the draught of the order aforesaid."[90]

Despite these early efforts to regain control of her land, it was not until after the death of her father in 1653 that Anne succeeded in gaining control of the Dassett estate,

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[88] HEH, Temple Correspondence, STT 1372-73, William Lenthall to Sir Peter Temple, July 2, 1643 and February 1, 1644/45. See also Sir Peter Temple to Viscount Baltinglass, STT 2050, April 29, 1643.
[89] HEH, Hastings Manuscripts 46462, Bridget Rogers to Lady Hester Temple, 1644.
[90] HEH, STT 1724, Lady Anne Baltinglass to Sir Peter Temple, December 18, 1648. See also STT 1723, Lady Anne Baltinglass to Sir Peter Temple, December 13, 1646.

despite the claims of her half-brother Sir Richard Temple, who claimed the land as the eldest male heir of his father. Prior to her father's death, it had become clear that he intended to disinherit Anne by the terms of his will. Sir Peter Temple wrote to his wife Christian in August 1653 that "I desire that my sonne may be putt in possession of that land in Dasset to which my daughter Baltinglasse pretends a title, and that the creditors may surrender it up to him."[91] However, immediately after the death her father, Anne and her husband moved to take possession of the family estate at Dassett, giving the tenants notice of the transfer of ownership and collecting the rents. Anne entered a bill of complaint against Sir Richard in 1653, and her claim to the property was upheld by a Chancery decision in November 1654, despite the clamor of her late father's many creditors to seize the estate after his death.[92] That same year, she also entered a petition in Chancery to have the deeds and other papers concerning the land at Dassett delivered to her.[93] After these legal victories, she entered yet another case in Chancery in 1655 against Sir Richard Temple, alleging that he was part of a conspiracy to defraud her of the Dassett lands that should have descended to her upon the death of her father.[94] While Anne and her husband are listed as joint parties in these suits, it is clear that Anne had taken the lead in prosecuting these cases. Anne herself entered the initial bill of complaint for yet another case in Chancery in 1658, arguing that the Dasset lands rightfully

[91] HEH, STT 2055, Sir Peter Temple to Lady Christian Temple, August 28, 1653.
[92] PRO, C 10/44/10, "Answers of Richard Temple to Viscount and Viscountess Baltinglass," January 24, 1653. HEH, Temple Legal Cases, No. 112, Thomas and Anne Roper vs. Sir Richard Temple, Lady Hester Sandys Temple, Lady Christian Leveson Temple, and others, Chancery, 1653-54 . Gay, "Sir Richard Temple," 265.
[93] HEH, Temple Legal Cases, No. 111, Thomas and Anne Roper vs. Sir Peter Temple, deceased, 1654, Chancery.
[94] HEH, Temple Legal Cases, No. 114. PRO, C 10/44/10, "The Answers of Richard Temple," January 24, 1655.

belonged to her after the death of her father, and "since that tyme which of right belonged to your oratrix amounting in the whole to the sume of £1500 and upwards."[95]

While Anne was under coverture until the death of her husband in 1665, nevertheless she was a bold and tenacious defender of her right to the family lands and a knowledgeable and careful follower of her many legal suits. Her forty-year correspondence with her brother Richard, which alternately takes on tones ranging from cool formality to outright hostility, demonstrates that she, not her husband, was behind the prosecution of her legal cases. She wrote to Richard in November 1655, after she won her second case against him in Chancery, "I have need of the £45 which the court hath adjudged you to pay mee, I beceech you lett me receive thes costs with the same expedition you demanded yours." She wrote again to Richard the following month, upbraiding him for his constant refusal to do as she asked. If other means of conciliation failed, Anne was more than willing to take her matter to the courts. Anne stated

> Now Sir take your choyce: if you prefear the amicable way lett us try that first and descourse the business by our selves; for heare the dispute is only matter of kindnes, if this take not efect: lett us then refer our selves to the judges of both courts, wher our titles are to bee controverted and determine what of right belongs to either, and each other.[96]

While Anne might pretend that her husband was the driving force behind her legal suits with her brother, her letters suggest that she was intimately involved in the decision-making behind the cases and in the details of the cases themselves. She wrote to her brother in April 1656, that she could not return him any decision in the case without her husband there, for she had "never don any thing of my owne head in this busines." However, she went on to say "at the first view it seemes to mee very unreasonable what

[95] PRO, C 10/51/17, May 10, 1658. HEH, Temple Legal Cases, No. 113.
[96] HEH, STT Correspondence 1727, Anne Roper, Lady Baltinglass to Sir Richard Temple, December 28, 1655.

you propound." Further, she wrote "what is my dew I doubt not," and that if she could not get it she would "hardly lett any other quiatly injoy it."[97]

Anne's success in prosecuting her cases was the product of not only her knowledge of the law, but also her ability to garner sympathy to her cause. Her suits against her father, and then her brother, won broad support from a wide range of society, from MPs to the tenants on the lands she claimed as her own. Anne's portrayal of herself as a poor, distressed young woman beleaguered by greedy kinsmen, won the support and sympathy of the juries and justices who heard her case.[98] Her connections with pamphleteers such as Sir Roger L'Estrange, with whom she lived after the death of her husband and allegedly had an affair, also allowed her to launch a media campaign in London.[99] In "The Case Betwixt the Lord and Lady Baltinglasse and Sir Richard Temple," Anne laid out her claim to the lands at Burton Dasset by the marriage agreement of her parents. Although the broadside is undated, the disparagement of Sir Richard as a privileged favorite and household servant of Oliver Cromwell, probably dates the broadside in the early years of the Restoration in 1660.[100] Sir Richard followed with his own attack in print, alleging that by "so many verdicts and judgements in Westminster Hall," his sister had been able "to disinherit her own brother and his issues of lands that came by the father... when she hath already a £1100 and land of inheritance by her father and mother to dispose of."[101] Her unflinching willingness to use supposedly

[97] HEH, STT Correspondence 1728, Anne Roper, Lady Baltinglass to Sir Richard Temple, April 2, 1656.
[98] See the letters from John Hart to Sir Richard Temple and Lady Christian Temple, HEH, STT Correspondence 988-989, 1654. Edwin F. Gay, "Sir Richard Temple: The Debt settlement and Estate Litigation, 1653-1675," *Huntington Library Quarterly* 6, No. 3, (1943): 284.
[99] L'Estrange also supported Anne's legal suits against her brother and testified on her behalf. See HEH, Temple Legal Cases Nos. 74 and 148.
[100] HEH, Temple Legal Papers, Box 5, Folder 37.
[101] HEH, Temple Legal Papers, Box 5, Folder 38, "The Answer of Sir Richard Temple to a printed paper, intituled the case between the Lord and Lady Baltinglasse and Sir Richard Temple." [undated].

underhanded methods to gain evidence for her cases also undoubtedly contributed to her success. Not only had she broken into her grandmother's study to seize the deeds and legal documents essential in upholding her claims to her inheritance, she had also been sued in Chancery in 1665 for concealing evidence that had allegedly come into her possession through "a trick from a Master of the Court."[102]

For nearly twenty years after her initial victory against her brother in 1654, Anne Temple Roper continued to receive rents from both the Dasset lands in Warwickshire and the lands in Buckinghamshire and Northamptonshire which had belonged to her mother, despite the continual efforts of her half-brother Richard to regain control of the land through successive suits in court in the 1650s and 60s.[103] However, Richard's persistence finally paid off when he won a case against her in Chancery in 1672. However, Anne retained a third part of the rent that was left to her after losing the other Dasset lands. While this was a setback for Anne, it did not break her will to continue her legal battles against her brother. In a remarkable letter dated July 1672, Anne wrote to her brother, asking that he pay her the rents to due to her: "I desire you will doe it presently, but if not lett me know your resolution, for I cannot waite at all for it, but will take a course to doe my selfe right some other way presently if you will not." She went on to discuss in detail the specifics of the case, demanding what was due to her according to the court's verdict:

> As for my costs, I was by agreement of your councill in court to have them payd before 7 a clocke the last day of the tearme now past, or else I might enter up my judgment for £80 which is done and might have ben entered up last Easter tearme (had not my aturney taken your word, and beleeved better of your dealings then hee found) and then I had had my £85 befor now.

She further told him to "leave these wreached practies for they doe you more hurt

[102] *English Reports*, Vol. 22, 698, Gower vs. Baltinglass, Chancery, 1665.
[103] HEH, Temple Legal Cases, No. 148. Gay, "Temples of Stowe and their Debts," pp. 410-12.

than you can imagine, and make mee and all people dread to have to doe with you, and you loose that valew and respect you might other ways hope for from your much injurred sister (in which relation the most unfortunate of mortalls) Anna Baltinglasse."[104] In 1676, Chancery also upheld former verdicts of the Court of Common Pleas and King's Bench that protected Anne's right to the remaining lands.[105]

Like Anne Temple, Jane Paulet Egerton was embroiled in protracted legal disputes with her brother, Charles Paulet, second Duke of Bolton, after the death of their father in 1699. Under the terms of the late Duke's will, Jane and her husband, the Earl of Bridgewater, stood to inherit the lordship of Normanby in York, and lead mines in Westmoreland, and other lands in Southampton and Wiltshire worth nearly £30,000.[106] For the next seventeen years, first as a wife and then as a widow, Jane prosecuted cases in both Chancery and King's Bench as she pursued her right to inherit these substantial portions of land from her father. There were two issues at stake in the cases: first, the validity of the first Duke's will; second, whether the right to collect rents from the tenants on the Yorkshire estates belonged to Jane or her brother Charles.[107] In 1699, Jane and her husband entered a complaint in Chancery against her brother Charles, alleging that he had refused to agree to the terms of the will. According to Charles, the land should rightfully

[104] HEH, STT Correspondence 1729, Anne Roper, Lady Baltinglass to Sir Richard Temple, July 5, 1672.
[105] HEH, Temple Legal Cases, Nos. 149 and 185. English Reports, Tustian vs. Baltinglass, King's Bench, 1670, Vol. 84, pp. 1130-38. English Reports, Temple vs. Baltinglass, Chancery, 1676, Vol. 23, pp. 151-152.
[106] The terms of the Duke's will are spelled out in another legal case involving the Countess of Bridgewater in 1705. See PRO, C 5/331/8, Jane Dowager Countess of Bridgewater vs. Bridgewater, Chancery.
[107] The Yorkshire lands were held by the Paulet family in fee farm, that is, they were let out to tenants who paid the landowner a fee to use the land. Holdsworth, *A History of English Law*, Vol. 3, 52-53.

descend to him as the eldest male heir and the successor to his father's Dukedom. He also claimed that his father was not of sound mind when he made the will.[108]

The court upheld the portion of the will concerning the collection of rents from the Yorkshire lands, supporting the claims of Jane and her husband. Jane wrote to her brother in 1699, after Chancery had ruled in her favor, that she expected him to deliver the deeds to the lands as the court had declared. While Jane and her husband acted as joint parties in the suit until the Earl's death in 1701, it is clear from her correspondence that she was not only knowledgeable about the cases in which she was involved, but also intimately concerned with their details. She stated that

> Your councell would inform you of my Lord Keepers declairing in my favour at the last hearing and tho it's now goeing to my advantage makes it raither your graces part then myne to make proposalls of putting an end to this unhapy afayr yett I shall without any ceremony lett you see success has no way chang'd my inclinations.[109]

Further, if she could not obtain his cooperation "by all the gentle methods," then she would not be afraid to "seek the Law." She added that she was sure their father had never meant to dispose of the rents in any other manner than the law now declared.[110] After her brother still refused to make over the rents to her use, she entered another suit in King's Bench against him, and sought the legal advice of the preeminent justices of the realm. She wrote to him that "my cousell have informed me that my Lord Keeper had pursuant to the judgment given in the Kings Bench made a decree according to forme," but that she would not move ahead with the prosecution "untill I had the present Lord Cheif

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[108] PRO, C 5/282/34, Earl and Countess of Bridgewater vs. Charles Paulet, Duke of Bolton, 1699. The sanity of the 1st Duke had been a matter of speculation throughout his life, earning him the nickname "The Mad Marquess of Winchester" when he held that title in the 1670s and 80s. See "Charles Paulet, 1st Duke of Bolton," *Dictionary of National Biography Online*.
[109] HEH, Ellesmere Mss, Bolton Papers, EL 9005, Jane Paulet, Countess of Bridgewater to Charles Paulet, 2nd Duke of Bolton, 1699.
[110] HEH, Ellesmere Mss, Bolton Papers, EL 9005, Jane Paulet, Countess of Bridgewater to Charles Paulet, 2nd Duke of Bolton, 1699.

Justises of the Common Please opinion as well as Sir Christian Semenes and severall others."[111]

While the justices in Chancery and King's Bench initially ruled in Jane's favor, the legal complexities involved in the matter resulted in multiple hearings of the cases in both courts for the next seventeen years. By 1704, the case had already been argued three times before the justices in King's Bench, who again ruled in Jane's favor concerning her right to collect rents from the Yorkshire estates.[112] That same year, Chancery again upheld the terms of the late Duke's will.[113] She wrote confidently to her brother while the cases were still pending in both jurisdictions that "I have noe reason to fear but the justice of my cause will apear as plain in all plaices as it did both in Com'en Law & Chancery," and that although he had sought to "hinder me and mine of our rights," she had only wanted friendship from him.[114] The cases resurface again in both equity and common law in 1716. The justices in Chancery referred the issue of whether the late Duke intended the Yorkshire rents to pass entailed to the Duke's male heir, or if the rents were held in fee simple and could therefore be bestowed on an heir of the Duke's choosing.[115] The justices again ruled in Jane's favor, upholding her right to collect the

[111] HEH, Ellesmere Mss, Bolton Papers, EL 9006, Jane Paulet, Countess of Bridgewater to Charles Paulet, 2nd Duke of Bolton, undated.
[112] The legal technicalities and precedents in the case are explained in great detail in *English Reports*, Dowager Countess of Bridgewater vs. Charles, Duke of Bolton, King's Bench, Vol. 87, 861-871.
[113] *English Reports*, Dowager Countess of Bridgewater vs. Charles, Duke of Bolton, Chancery, 1704, Vol. 22, pp. 252.
[114] HEH, Ellesmere Mss, EL 9007, Jane Paulet, Countess of Bridgewater to Charles Paulet, 2nd Duke of Bolton, August, 1704.
[115] For an explanation of fee simple and fee tail, see Holdsworth, vol. 3, pp. 111-120.

rents.[116] Immediately after the pronouncement, she entered a writ of assumpsit in King's Bench for recovery of the rents with damages.[117]

III. Elite Women's Litigation in the Colonies

As the examples above have shown, English women from elite families frequently pursued litigation as both married women and widows to protect the land that they would enjoy during their widowhood and to claim property due to them by the terms of marriage settlements and wills in both common law and equity courts. While women of the colonial elite entered into litigation for many of the same reasons, their experiences are distinct from those of women in England in three ways. First, unlike their English counterparts, who were active participants in litigation as both married women and widows, colonial women seem to have only appeared before the courts as singlewomen or widows. This pattern suggests that colonial law rigidly upheld the terms of coverture that limited the legal status of married women.

Second, colonial women lacked a well-developed equity law jurisdiction, so frequently used by women in England, that recognized exceptions to the doctrine of coverture and allowed women to act as parties to cases even while they were married. Marylynn Salmon's study of women and property in colonial American between 1750 and 1820 showed how the establishment of equity jurisdictions in southern colonies such as Maryland in the eighteenth century increased women's ability to control and manage their own property. However, in the seventeenth century, the use of marriage contracts and separate estates that were enforceable only at equity law were not frequently used by

[116] HEH, Ellesmere Manuscripts, Bolton Papers, EL 8951, docs. 11-14, Jane Paulet, Dowager Countess of Bridgewater vs. Charles Paulet, 2nd Duke of Bolton, 1716; English Reports, King's Bench, Vol. 87, pp. 866-871.
[117] HEH, Ellesmere Manuscripts, Bolton Papers, EL 8951, doc. 12, Jane Paulet, Dowager Countess of Bridgewater vs. Charles Paulet, 2nd Duke of Bolton, 1716.

colonists. While some colonies did establish a Court of Chancery, as Maryland did in 1660, Salmon argued that equity law remained underdeveloped and little used until the middle of the eighteenth century.[118] The underdeveloped status of equity law in Maryland and the complete lack of an equity jurisdiction in Massachusetts meant that women of the colonial elite relied on the common law courts for redress of their grievances.

Third, the marriage settlements which were at the center of so many legal disputes entered into by English women, and which only equity law upheld, were infrequently used in the colonies. When marriage settlements were made, they were undertaken in common law courts.[119] Colonial women who wished to claim land or property as a widow therefore relied on common law courts to uphold the terms of their husband's wills and their dower thirds.

While married women appeared before the courts infrequently in the colonies, widows still enjoyed some amount of legal success. The many successful petitions and legal cases undertaken by the high-status Jane Fenwick Smith Taylor Eltonhead, who was married and widowed three times, demonstrate that elite women in the colonies interacted with the law as they sought to gain control over the estates of their late husbands. Born into a Catholic gentry family in Northumberland, England, Jane immigrated at age sixteen to Maryland with the first settlers in 1634. From the beginning, she was well-connected to other elite members of the colony. Her brother Cuthbert Fenwick, styled as "gent" in the court documents, served as a justice of the peace in 1644 and owned 2000

[118] Salmon, *Women and the Law of Property in Early America*, 88.
[119] See the 1649 jointure agreement of Cuthbert Fenwick and Jane Eltonhead Fenwick, "Proceedings of the Provincial Court," *Archives of Maryland*, Vol. 41, 261-262.

acres at his death in 1655.[120] Jane's successive marriages allowed her to accumulate property of her own. After the death of her first husband, Thomas Smith, who was executed for treason by Governor Leonard Calvert in 1638, she successfully petitioned the governor for control of Smith's estates for the use of herself and her children.

While Jane seems to have been an effective administrator of her own lands, she had ill-fortune in choosing husbands. William Eltonhead, her third husband, was captured by parliamentary forces in Maryland at the Battle of the Severn in March 1655, imprisoned, and executed.[121] Although she did not act as administrator to Eltonhead's estates, as a widow, she was party to at least fifteen different legal suits in the Provincial Court in 1657-58.[122] In September 1657, she sued the estate of Edmond Scarborough for "satisfaction for six oxen;" the following year, she brought suit against Josias Fendall for 2000 pounds of tobacco.[123] In October 1658, Jane also petitioned the Provincial Court to have Eltonhead's assets, which had been sequestered by the court after his conviction for treason, returned to her as his widow. Eltonhead's estate, while not vast, was still substantial: at his death he possessed 1,130 acres of land, over 14,000 pounds of tobacco, and the indentures of two servants.[124] In her petition, Jane lamented that her husband had made an oral will while he was imprisoned after his capture, in which he had left "all his lands with all his other goods & cattles to her disposing, for the good of her & her children & desyred her to allow unto Robert Fenwick & Richard Fenwick [Jane's

[120] "Judicial and Testamentary Business of the Provincial Court, 1649/50-1657," *Archives of Maryland*, Vol. 10, 191, 496. Edward C. Papenfuse, *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, 319.
[121] Papenfuse, *A Biographical Dictionary of the Maryland Legislature,* 304.
[122] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41.
[123] For the case against Scarborough's estate, see "Judicial and Testamentary Business of the Provincial Court, 1649/50-1657," *Archives of Maryland*, Vol. 10, 523. For the case against Fendall, see "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, Vol. 41, 78.
[124] Papenfuse, *A Biographical Dictionary of the Maryland Legislature,* 304.

nephews] some part of the lands, according to her discretion." The court ordered that, considering the unavailability of pen, ink, and paper in prison, William Eltonhead could not have able to make his will in writing "as in law is requyred for the passing of lands by testament," and that "Jane Eltonhead shall possesse the said land in as full, free, & large estate as if the said William had conceaved his will in writing." Further the court debarred any of William's kinsmen from claiming the estate from Jane, stating that "all the heyres att laww of the said William are for ever barred all claime to the said lands."[125] Jane's successful petitions meant that she could leave her son, Thomas, 2000 acres of land at a manor called Cedar Point upon her death in 1660. [126]

While Jane Eltonhead's legal activity shows that Maryland widows were actively involved in the defending their claims to their husband's land and personal property, women who acted as executrixes of estates were also drawn into legal conflicts as they sued for debts due to the estate, and bought and sold property. Mistress Margaret Brent, for example, acted as executor of the estate of Maryland governor Leonard Calvert in 1647. Margaret was born into a Catholic gentry family in Gloucestershire, England, and immigrated to Maryland along with her brothers, Fulke and Giles Brent, and her sister Mary, in November 1638.[127] As close allies of Cecil Calvert, Lord Baltimore, who acted as Lord Proprietor of Maryland from 1632 until his death in 1675, Margaret Brent received lands in Maryland on the same favorable terms as the original settlers of 1634. She was also a capable business woman in her own right; she remained unmarried throughout her life, and was actively involved in importing and selling servants and

[125] "Proceedings of the Provincial Court, 1658-1662," *Archives of Maryland*, vol. 41,178-179.
[126] Lois Green Carr, Women's Career Files, "Jane Eltonhead," Maryland State Archives Online.
[127] *Victoria County History, Gloucestershire*, Vol. 8, 236-242. Lois Green Carr, Biographical Series, "Margaret Brent—A Brief History," Maryland State Archives Online, (2002).

lending money to new settlers. [128] Though her demand for a vote in the Maryland General Assembly in 1648, a right she claimed both as a landowner and as the executrix to the estate of Governor Calvert, was denied, Margaret's high-status and wealth allowed her to become an important political and legal player in the colony.[129] From 1642 to 1644, she was involved in at least twenty-five separate legal suits before the Provincial Court. Though she was represented by male attorneys in three of these cases, she represented herself in all of the remaining cases; in one case, she even acted as attorney for her brother, Fulke Brent, in a case to collect 350 pounds of tobacco from one Marmaduke Snow.[130]

While Margaret was extensively involved in legal cases throughout her life, the bulk of the litigation in which she was involved resulted from her status as the executor of Calvert's will. When Calvert died in June 1647, he named Margaret the executor of his will on his deathbed. Ten days after his death, Margaret, now styled "gent" in the court documents, solidified her position as executor of the will by appearing before the Provincial Court, and requesting the testimony of succeeding governor Thomas Greene, who was a witness to Calvert's deathbed request. Greene deposed that when Calvert was "lying uppon his death bed, some 6 howres before his death...directing his speech to Mrs Margarett Brent sayd in presence of him the said Mr Greene & some others, I make you my sole exequutrix, take all & pay all. After which words hee the said Leonard Calvert desyred every one to depart the roome & was some space in private conference with Mrs

[128] Lois Green Carr, Biographical Series, "Margaret Brent—A Brief History."
[129] "Proceedings and Acts of the General Assembly, January 1637/8-September 1664," *Archives of Maryland*, Vol. 1, 215-16. See also Mary Beth Norton's work on Margaret Brent as a political figure in early Maryland, *Founding Mothers and Fathers*, 281-287.
[130] "Judicial and Testamentary Business of the Provincial Court, 1637-1650," in *Archives of Maryland*, vol. 4, 226.

Margaret Brent."[131] That same day, the Provincial Court allowed Margaret to lay claim to the estate of Leonard Calvert, and she asked that she be granted letters that allowed her to seize all the "lands, goods, & chattells" belonging to Calvert.

As executrix of the governor's large estate, which totaled 9,000 acres at his death in 1647, Margaret prosecuted and defended at least thirty legal cases in the Provincial Court between 1647 and 1651 as she collected and paid his debts.[132] In these cases, she came into conflict with some of the most prominent members of Maryland society, including William Stone, governor of Maryland from 1649 to 1655. In a protracted legal dispute in 1650-51 over a house in St. Mary's City that had belonged to Leonard Calvert, Margaret prosecuted Stone in the Provincial Court for his failure to pay for the St. Mary's house for which they had already contracted an agreement. She wrote to William Stone on July 22, 1650 that she had no wish to "intangle myself in Maryland because of the Lord Baltemore's disaffections to me." However, she was also prepared to defend what was rightfully hers. She reminded the governor that she had no doubt of her right to the title in the land, and at their next meeting she would "at my comeing down bring with me the coppy of the statute to justified my right to Mr Calverts land, and I hope to have a tryall for them in your own court." The matter was still at issue a year later, when Margaret wrote again to Governor Stone in July 1651 asking him to confirm the sale of the house and pay her for it; if not, she wrote, "I doe here declare to you that I will be disengaged of the bargain which I then profered you and now profer you of it, and free to

[131] "Judicial and Testamentary Business of the Provincial Court, 1637-1650," in *Archives of Maryland*," *Archives of Maryland*, vol. 4, 314

[132] "Records of the Provincial Court," Archives of Maryland, vol. 4. The size of Calvert's estate is given in Papenfuse, *A Biographical Dictionary of the Maryland Legislature, 1645-1789*, 190.

dispose of my house to my best profit."[133] These letters demonstrate that Margaret was a deft manager of her legal affairs, and used the law to protect the property over which she had control.

While widows and single women from Maryland's elite families secured their own benefit through legal recourse, widows in Massachusetts also entered into litigation to defend property from the claims of male family members. Like the inter-generational conflicts that characterized the litigation of elite families in England, women of the Massachusetts colonial elite sparred with sons and in-laws over the terms of their husbands' wills, and the collection of property left to them as widows. Elizabeth Endicott of Salem, the widow of Massachusetts Bay Governor John Endicott, came into conflict with her eldest son, John Endicott Jr., and his father-in-law Jeremiah Huchins, over her right to collect at portion of her late husband's estate after his death in 1665. Under the terms of Endicott's will, drawn up six years prior to his death, he left his wife Elizabeth an estate valued at nearly £600. Elizabeth's portion comprised a farm called Orchard in Salem, the moveable goods at his house in Boston, all his linens and plate, all "my ruther cattle of one kinde & another as also all my sheepe," and his land at "Catta Island neere Salem (which the generall Court gave me) during her natruall liefe & after her decease to my twoe sonnes, John and Zerobabel." He also made Elizabeth his "sole & onelie executrix of this my last will and testament."[134]

Though the terms of Endicott's will seemed clear, almost immediately after his death in March 1665, legal disputes arose between Elizabeth and her son over the

[133] "Judicial and Testamentary Business of the Provincial Court, 1649/50-1657,"*Archives of Maryland*, vol. 10, 104-105.
[134] John Endicott's will and inventory is reprinted in *Essex Institute Historical Collections*, Vol. 25, (Salem, MA: Essex Institute, 1885): 137-145.

division of Endicott's estates. John Jr. disputed the will on the grounds that there were no witnesses to it, and claimed the land as part of the property settled on him upon his marriage in 1653.[135] After the Middlesex County court in Boston ruled against Elizabeth Endicott's right to inherit the land in June 1665, Elizabeth petitioned the General Court to have the estate finally settled. While the judges in the General Court upheld Elizabeth's right to act as administrator of the will, and to enjoy "the goods & Chattells of the sayd John Endecott Esqr hir late husband," they did not support her claim to the lands at Orchard farm left to her under the terms of the will.[136] Elizabeth Endicott's cases suggest that while widows in Massachusetts were certainly able to appear in litigation in defense of property they claimed as their own, even the claims of the most high-status women were not upheld by justices in the courts. Even if a man bequeathed a portion of land to his wife by his will, as Governor John Endicott did, the courts could still rule in favor of a male heir over the claims of a widow.

IV. Conclusion

While elite women in England and the colonies went to law to protect their rights to property, the lack of well-developed courts of equity in the colonies placed women in both Massachusetts and Maryland at a disadvantage. In England, equity courts, especially the Court of Chancery, upheld elite women's access to property, and provided a forum for them to defend their property against the claims of male relatives. Though Maryland established a court of Chancery in 1660, the business of the court differed drastically from its English counterpart. While the bulk of litigation heard in the English Chancery

[135] Jonathan Chu, "Nursing a Poisonous Tree: Litigation and Property Law in Seventeenth-Century Essex County, Massachusetts, The Case of Bishop's Farm." in *The American Journal of Legal History* 31, No. 3 (July 1987): 222-223.
[136] *Records and Files of the Essex County Court*, Vol. 7, 16-17.

dealt with disputes over land held in trust, the Maryland Chancery was an instrument of the Proprietary government which was used to investigate the Lord Proprietor's claims to lands of those dying without an apparent heir. Northern colonies, such as Massachusetts, never established courts of equity at all. Thus, the women who were born into gentry families in England and who emigrated to the colonies did not have the same legal capabilities as their counterparts who stayed behind in England. The lack of a jurisdiction that gave women more independent control of their property through jointures and land held in trust made a substantial difference in the ability of colonial women to manage their claims to property in the courts.

Though the lack of a large number of examples of elite women's litigation in the colonies makes it difficult to argue with certainty, elite Maryland women may have had an advantage over their counterparts in Massachusetts in defending their claims to property in common law courts. Both Margaret Brent's and Jane Eltonhead's examples reveal that single women and widows in Maryland could be vigorous defenders of their legal claims to property, and also quite successful in their suits. In contrast, Elizabeth Endicott's claims to inherit land as the widow of Governor Endicott was not upheld by the court, even though her husband had specifically bequeathed the property to her in his will. These examples suggest that attitudes toward women's independent control of property and their ability to appear before the courts in their own suits were more favorable in Maryland than in Massachusetts.

Chapter 6: Women's Property, Debt Litigation, and the Varieties of Coverture

As chapter 5 showed, women of the English and colonial elite pursued litigation in equity and common law courts to protect their right to control land guaranteed by their jointure settlements and marriage contracts. However, the ability to pursue a case in law was not a privilege confined to those with titles and wealth. Average women, the wives of farmers and yeomen in rural areas and of shopkeepers and businessmen in cities, defended their property in a variety of legal jurisdictions. This chapter examines women's legal relationship to property in a comparative framework, focusing on women in southeast England, Massachusetts, and Maryland. It emphasizes women's roles as estate administrators and executors, which was the most common way that property, both personal and real, came under women's control. Section I outlines the variety of legal jurisdictions in which women appeared as litigants and petitioners to defend their right to control property, or to collect a debt or sum of money due to them. It shows that English women benefited substantially from the presence of ecclesiastical law, which allowed married women to bring suits independently from their husbands. The legal capabilities of women in the colonies was, however, more limited. While the growing role of equity law in Maryland provided women with a more flexible jurisdiction in which to hear cases concerning their property, Massachusetts women were subject to the strictures of common law.

Section II looks at the experiences of female litigants and petitioners before the courts, and examines the types of cases in which women were most frequently involved. Conflicts over the administration of estates, the execution of wills, the payment of legacies, and the collection of debts frequently drew women into the courts as they

protected and defended their access to property. While the common law doctrine of coverture limited women's access to and control of property in all areas of the English empire, the variety of legal jurisdictions available to women, most notably ecclesiastical law and equity law, provided them with a range of remedies not available under common law.

Historians of English women have in recent years moved away from the exclusive focus on common law in their examination of women's legal capabilities, and have instead begun to examine women's relationship to property in equity courts, ecclesiastical courts, and manorial courts. The work of Amy Erickson and Christine Churches, for example, has shown that women controlled and inherited property much more frequently than historians have previously realized. In her examination of probate records from the ecclesiastical courts, Erickson has argued that daughters in early modern England inherited on an equitable basis with their brothers, although girls usually inherited personal property while boys received real property. Erickson has also pointed out that men who made wills often left their wives greater portions of their estates than the law required.[1] Likewise, Christine Churches' local study of women and property in the town of Whitehaven in northern England found that manorial customs and the use of trusts allowed women to control and inherit property in spite of common law restrictions.[2] Moving away from a sole focus on English common law, these historians have pointed to the variety of legal measures adopted by women to protect their interests in property, and to manage it to their own benefits.

[1] Amy Erickson, *Women and Property in Early Modern England*, (London: Routledge, 1993), 19-20.
[2] Christine Churches, "Women and Property in Early Modern England: A Case-Study," *Social History* 23, No. 2, (May 1998): 165-180.

Recent work on female traders in English cities has also emphasized the growing importance of women as economic agents, and as the managers of money and property. Marjorie McIntosh's article, focusing on women in late medieval and early modern London, has shown that the City's Sheriff's and Mayor's courts granted married women *feme sole* status to trade and make contracts independently of their husbands.[3] Other historians have argued for the growing role of female traders in litigation in the seventeenth century. In his study of small businesswomen in a variety of different common law jurisdictions, Craig Muldrew found that women in Great Yarmouth, Norfolk, and London acted as parties in nearly 25 percent of cases heard before the courts by 1700.[4]

Studies of eighteenth-century English women have complemented this work on women in earlier periods. Margot Finn's work on women in eighteenth- and nineteenth-century England has shown that married women frequently appeared in small claims courts to enforce contracts they made to buy household necessities. Finn concludes that coverture was not monolithic, but "partial and contested."[5] Joanne Bailey's work on women and property in eighteenth-century England has come to a similar conclusion. Her examination of marital conflict in the ecclesiastical courts and the courts of quarter sessions suggests that women controlled, and indeed expected to control, a good deal of property during their marriages under what she calls the "law of agency," which allowed married women to contract debts in their own names to buy household goods. She argues

[3] Marjorie K. McIntosh, "The Benefits and Drawbacks of Femme Sole Status in England, 1300-1630," *Journal of British Studies* 44, (July 2005): 410-438.
[4] Craig Muldrew, "'A Mutual Assent of her Mind'? Women, Debt, Litigation, and Contract in Early Modern England," *History Workshop Journal* 55, No. 1, (Spring 2003): 47-71.
[5] Margot Finn, "Women, Consumption, and Coverture in England, c. 1760-1860," *The Historical Journal* 39, No. 3, (September, 1996): 703.

that while coverture continued to bind women under common law, in practice "coverture was often ignored or bypassed."[6]

In the colonies, women's relationship to property varied according to the colony in which she lived. Marylynn Salmon's study of women and property law in the eighteenth and early nineteenth centuries has argued that the legal status of women in the northern colonies, such as Massachusetts and Connecticut, was weak relative to their counterparts in the south. Salmon shows that the development of equity law in colonies such as Maryland, Virginia, and South Carolina, allowed women more control over property by upholding women's separate estates. While Salmon's study points to the importance of the development of equity law for women in the eighteenth and nineteenth centuries, she points out that this jurisdiction remained underdeveloped in the seventeenth century.[7] Cornelia Hughes Dayton has reached a similar conclusion about New England women's ability to enforce contracts and collect debts at law. Her study of women in colonial Connecticut has argued that the informal economic networks that characterized seventeenth-century New England allowed women, even married women, to participate in transactions and informal contracts for household necessaries. Like Muldrew's study of female traders in England, Dayton emphasizes the role played by women as the purchasers of household goods and day-to-day necessities, a role that drew them into the economic arena. However, Dayton shows that when these debts and contracts made by wives went unpaid, it was a woman's husband who went to court to recover the sums

[6] Joanne Bailey, "Favoured or Oppressed?: Married Women, Property, and 'Coverture' in England, 1660-1800," *Continuity and Change* 17, No. 3, (2002): 353.
[7] Marylynn Salmon, *Women and the Law of Property in Colonial America*, (Chapel Hill: University of North Carolina Press, 1986), 186-189.

due.[8] These studies show that the ability of women to maintain control over their property, to recover sums of money due to them, was severely limited in New England.

The view of historians of the colonial south, however, is more optimistic. Linda Sturtz's work on married women with power of attorney in seventeenth and eighteenth century Virginia has emphasized that women exercised a great deal of agency in their economic and legal affairs. Though these women tended to be the wives of wealthy men with overseas trading interests (and who were frequently far away from home), Sturtz suggests that cases in which women acted with power of attorney reveals that coverture, as a legal concept was not as rigid in the south as elsewhere in the colonies.[9] Lorena Walsh and Lois Green Carr's study of women in seventeenth-Maryland came to a similar conclusion about women's economic and legal agency. They have argued that the wives and widows of Maryland's early planters exercised a great deal of control over property, and that the tendency of wives to outlive their husbands meant that they often exercised at least temporary control of this property until their remarriages.[10]

I. Women, Property, and the Courts

Women appeared frequently in the ecclesiastical courts as litigants in cases concerning the right to act as an administrator of an estate, or to collect legacies due to them under the terms of a decedent's will. Since the twelfth century, the English ecclesiastical courts had heard cases concerning not only religious and moral offenses, but also conflicts that arose between parties concerning wills and estates. These

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[8] Cornelia Hughes Dayton, *Women Before the Bar: Gender Law, & Society in Connecticut, 1639-1789*, (Chapel Hill: University of North Carolina Press, 1995), 69-83.
[9] Linda L. Sturtz, "'As Though I My Self Was Pr[e]sent': Virginia Women with Power of Attorney," in Christopher Tomlins and Bruce Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of Norton Carolina Press, 2001): 250-271.
[10] Lois Carr and Lorena Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *The William and Mary Quarterly*, 3rd Series 34, No. 4 (October 1977): 555-559.

testamentary cases dealt with a variety of issues, including conflicts that arose regarding a person's right to act as an executor of a will, the capacity of the testator to make a will, and the payment of legacies stipulated by the testator.[11] The ecclesiastical jurisdiction over these affairs was based on the assumption that the motive for bequests was the soul's health after death. However, the church courts' jurisdiction over bequests extended only to moveable goods; the majority of property at issue in testamentary litigation were legacies, usually the payment of a cash sum, and household goods, utensils, and furniture. Land was never at issue in a case heard before the ecclesiastical courts, although sometimes leases for land were included in inventories of moveable property bestowed by a testator to a legatee.[12]

In addition to their jurisdiction in testamentary litigation, the English ecclesiastical courts also had an administrative jurisdiction over the process of probating a will. This role included proving the will in court, exhibiting inventories, filing accounts, and dividing moveable property among heirs in cases of intestacy. Though most women did not make wills, they commonly acted as executors and administrators of estates.[13] Amy Erickson has estimated that about 70 percent of all people filing accounts in the province of Canterbury were women, usually the widow of the deceased. A woman's right to probate her husband's estate was seen as a natural outgrowth of her investment in the estate during her lifetime, and her guardianship of any young children produced by the marriage. Widows who acted as executors had nearly complete control over their late

[11] Lloyd Bonfield, "Testamentary Causes in the Prerogative Court of Canterbury, 1660-96," in *Communities and the Courts in Britain, 1150-1900*, eds. Christopher Brooks and Michael Lobban, (London: Hambledon Press, 1997), 145.
[12] Erickson, *Women and Property in Early Modern England*, 32-34.
[13] A decedent who left a will named an executor of his estate, but the title of administrator was given to those administering an estate in cases of intestacy.

husbands' estates, and were charged with arranging and paying for funeral and burial expenses, paying the legacies specified in the will, and discharging the deceased's debts and collecting his credits. As executors of an estate, a widow received not only the bequests her husband gave her in his will (or her dower thirds, whichever was greater), but also the use of the portions of any of her children during their minorities.[14]

Contemporary legal treatises that outlined the process of drawing up and probating a will in the ecclesiastical courts pointed to women's roles as executors and administrators of wills. Henry Swinburne's *A Briefe Treatise of Testaments and Last Wills*, found frequently in both English and colonial libraries, outlined the difficult process of drafting and executing a will, and spelled out in detail the legal rights of women in testamentary actions.[15] For example, a woman who acted as executor to the will of a man other than her husband could devise her own will without the consent or input of her husband. In these cases, Swinburne writes that "such goods as she hath as executrix are not her husbands but are to be distributed for the dead, as for the payment of his debts, performance of his will, and for such other good and godly purposes."[16] George Meriton's *The Touchstone of Wills, Testaments, and Administrations*, which appeared in 1668, 1671, and 1674, cost only 1s. 6d, making it accessible to a wide stratum of society.[17] Meriton stated that "every person may be an executor" and "in some cases those who cannot make a testament or will may be executors," such as a "married woman." Following Swinburne's statement that a married woman cannot make a will of

[14] Erickson, *Women and Property in Early Modern England,* 27, 32-35, 156-171.
[15] An Act of the Virginia Assembly of 1666 required that Henry Swinburne's text be purchased by each county court, the General Assembly, and the General Court. See Warren Billings, "English Legal Literature as a Source of Law and Legal Practice for Seventeenth-century Virginia," *The Virginia Magazine of History and Biography* 87, No. 4, (October 1979): 414-416.
[16] Henry Swinburne, *A Briefe Treatise of Testaments and Last Wills*, (London: 1640 [1591]), 85.
[17] Erickson, *Women and Property in Early Modern England,* 27.

her own unless she acted as a executor of another's testament, Meriton stated that "a married woman cannot make her testament...without her husbands license, except she be a queen or empress, or that she were executrix to some other person, for in such case she may make her will of such goods as she hath as executrix without his license and name her executor."[18]

In the seventeenth century, the ecclesiastical courts were an efficient and accessible jurisdiction for the administrative process of probate, and for the hearing of testamentary litigation. While this machinery of ecclesiastical law was interrupted temporarily during the Interregnum, when probate was placed under a single, secular court, at the restoration of the monarchy in 1660, probate administration was returned to the ecclesiastical jurisdiction. Two Prerogative courts, one based in Canterbury and one in York, headed the ecclesiastical jurisdiction. According to Henry Consett's work on the ecclesiastical courts, published in 1685, the Prerogative Court of Canterbury had the capacity to judge "all approbations of testaments, the power of granting administrations of the goods of persons dying within the Province of Canterbury" who had goods "to the value of £5 or upwards."[19] Under the Prerogative courts, courts with smaller jurisdictions heard cases locally. The consistory courts sat under the jurisdiction of the bishops, while the archdeacons' courts, also known as the commissary courts, sat under the authority of the archdeacon or his deputy.[20]

If women commonly acted as executors and administrators of estates, they were also frequent parties in the testamentary litigation heard before the English ecclesiastical courts. The ecclesiastical jurisdiction was indeed unique in allowing married women to

[18] George Meriton, *The Touchstone of Wills, Testaments, and Administrations,* 51-53, 67.
[19] Henry Consett, *The Practice of the Spiritual or Ecclesiastical Courts*, (London: 1685), 9.
[20] Erickson, *Women and Property in Early Modern England,* 32-35.

appear as litigants in their own rights, independently from their husbands. Judging from the levels of their participation, women seem to have taken advantage of the legal freedom that ecclesiastical law allowed them. Table 6.1, which shows the levels of women's participation as plaintiffs in testamentary litigation, demonstrates that women initiated the majority of testamentary cases brought in the Essex Archdeacon's court and the London Commissary court. Women filed well over half of the allegations, the action that commenced a suit heard in the ecclesiastical courts, in both the early and late seventeenth century, while men, on average, initiated around 41 percent of allegations. [21]

Table 6.1: Sex of plaintiffs in testamentary litigation in the Essex Archdeacon's Court and the London Commissary Court, 1630-41, 1669-87[22]

	1630-1641	1669-1687	Total Cases Examined
Male	24 (42%)	32 (40%)	56
Female	32 (56%)	45 (57%)	77
Unknown	1 (2%)	2 (3%)	3
Total	57 (100%)	79 (100%)	136

Table 6.2: Sex of defendants in testamentary litigation in the Essex Archdeacon's Court and the London Commissary Court, 1630-41, 1669-87

	1630-1641	1669-1687	Total cases examined
Male	24 (42%)	38 (48%)	62
Female	24 (42%)	26 (32%)	50
Unknown	9 (16%)	15 (19%)	24
Total	57 (100%)	79 (100%)	136

[21] The procedure of filing a case in the ecclesiastical courts is as follows: the party wishing to commence a suit filed an allegation. The respondent, against whom the allegation had been entered, would then file an answer. Interrogatories would then be assembled by the court, and depositions taken in answer to the questions posed. Witnesses who were present during the execution of the will or during the process of making the will, or at the deathbed, might be called upon to give evidence. In the final stage, judgment would be pronounced. See Bonfield, "Testamentary Causes in the Prerogative Court of Canterbury, 1660-96," 141-142.

[22] Essex Record Office, Archdeaconry of Essex Depositions, Chelmsford, England, D/AE/D8. London Metropolitan Archives, Guildhall Manuscripts, 9065a, Vol. 8, Depositions of the London Commissary Court.

While Table 6.1 reflects that women could be proactive in bringing cases before the ecclesiastical courts, Table 6.2 shows that women comprised a minority of defendants in the Archdeacon's and the Commissary courts. However, their presence as defendants is still substantial. Women acted as defendants in 42 percent of cases heard in the 1630s and early 1640s, and in 32 percent of cases in the late 1660s, 1670s, and 1680s, which suggests that they could respond to suits as well as initiate them. Taken together, these tables shows that women frequently went to court to protect their rights to execute or administer an estate, to collect moveable property as an heir, or to sue for the payment of a cash legacy.

Women who acted as administrators or executors of estates were drawn into a variety of different legal jurisdictions as they collected debts due to the estate, or responded to suits initiated by the deceased's creditors. While in the medieval period, the English ecclesiastical courts had jurisdiction to decide claims against a decedent's estate, from the early-sixteenth century onward, the payment and collection of debts from an estate fell under the sole jurisdiction of the secular courts.[23] In seventeenth-century England, litigation over debt could be heard and decided at both common law and equity. The courts with highest jurisdiction over debt claims at common law were the central courts based in London. The Plea side of the court of King's Bench, and the Court of Common Pleas, both heard cases concerning debt and trespass. At equity, the court of Chancery decided cases of debt for which common law provided no remedy, including

[23] R. H. Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," *The American Journal of Legal History* 23, No. 1 (January 1979): 68-77.

cases of verbal contracts, and other cases in which written evidence of the debt was lacking.[24]

Courts of local jurisdiction also heard cases involving debt and trespass. In the city of London, where the business contracts of married female traders were regularly enforced by the City's local courts, the Mayor's Court and the Sheriff's Court heard litigation concerning disputed contracts and debt collection of the many traders and merchants who lived within the City limits.[25] Though the Mayor's court followed common law forms closely, it also borrowed procedures from equity when it heard cases dealing with actions for breach of covenant and actions of debt against executors, while also enforcing the contracts of married women traders. The London Mayor's Court also had a special jurisdiction over the custom of foreign attachment, in which a debt could be enforced not only against the principal debtor but also against third parties owing money to him. The court also ordered the sequestration of household goods of an absent defaulting debtor.[26]

While few of the records of the London Sheriff's Court have survived from the seventeenth century, the large collection of original bills presented to the London Mayor's Court between 1630 and 1690 reflect that the number of women prosecuting or responding to debt cases in English common law courts remained low. While Craig Muldrew's study of contracts made by female traders in Great Yarmouth, Norfolk, in the sixteenth and seventeenth centuries shows that the proportion of cases involving a female

[24] J. H. Baker, *The Oxford History of the Laws of England, Vol. 6, 1483-1558*, (Oxford: Oxford University Press, 2003), 125-151, 174-175, 188-189.
[25] Marjorie K. McIntosh, "The Benefits and Drawbacks of *Femme Sole* Status in England, 1300-1630," *Journal of British Studies* 44, No. 3, (2005): 410-438. Baker, *The Oxford History of the Laws of England*, 265-272, 281-283.
[26] Baker, *The Oxford History of the Laws of England, Vol. 6, 1483-1558,* 281-283.

plaintiff or defendant increased from 10 percent in 1552 to 28 percent by 1700, women's participation in debt litigation in common law courts in other areas of the county remained relatively low.[27] Table 6.3, which looks at the numbers of women involved in debt or trespass cases in the London Mayor's Court between 1630 and 1690, demonstrate that women acted as a party in only 10 percent of cases over the course of the century.[28]

Table 6.3: Women Involved in Debt Litigation in the London Mayor's Court, 1630-1690[29]

	Number of Female Plaintiffs	Number of Female Defendants	Number of Cases with a woman as party	Number of Suits Sampled
1630-31	12	11	23 (11%)	215
1640	10	5	15 (7%)	207
1650-51	9	18	27 (14%)	189
1660-61	10	5	15 (7%)	214
1670-71	10	5	15 (9%)	150
1680-81	14	9	23 (13%)	175
1690	16	6	22 (11%)	200
Total	81	59	140 (10%)	1350

Though the number of women appearing as parties in debt litigation in common law courts remained low, Table 6.4 shows that nearly half of the women who appeared before the London Mayor's Court pursued litigation as the executors or administrators of an estate. The majority of these women were widows. However, women who had remarried also appeared as joint parties with their new husbands. In two cases, single women acting as administrators of an estate appeared to collect a debt. These tables

[27] Craig Muldrew, "'A Mutual Assent of Her Mind'? Women, Debt, Litigation and Contract in Early Modern England," 54-55.
[28] The level of women's participation in the London Mayor's court are relatively consistent with the numbers of women appearing in debt litigation in other mayoral jurisdictions. Craig Muldrew estimated that cases in which women appeared as a party in the Exeter Mayor's Court accounted for under 16 percent of the debt litigation heard before the court in the seventeenth century. Muldrew, "'A Mutual Assent of Her Mind'? Women, Debt, Litigation and Contract in Early Modern England," 55, n. 51.
[29] Tables 6.3 and 6.4 are based on London Metropolitan Archives, Mayor's Court Original Bills, CLA/024/02, 1630-1690.

reflect that women's roles as the administrators and executors of estates were a major reason for their appearance in debt litigation at common law.

Table 6.4: Role and Marital Status of Women Involved in Debt Litigation in the London Mayor's Court, 1630-1690

	Number of cases
Women Initiating or Responding to Suits as Estate Administrators	68 (48%)
Widows	59
Married	7
Single	2
Women Initiating or Responding to Suits in other capacities	72 (52%)
Widows	44
Married	3
Single	7
Unknown	18
Total	140 (100%)

Petitions added a further avenue for legal redress for women wishing to collect a sum of money or a debt. Submitting a petition to the court could be less costly and time-consuming, and could result in a similar outcome as initiating litigation. Petitions were therefore a form of legal redress that favored subordinates, such as servants or married women. However, a petition could result in a civil suit if a justice of the peace thought that the complaint had merit and bound the parties to appear at the next session of the court. The presentment of petitions followed a similar procedure in England and the colonies. First, the petitioner had to prove her allegation by sufficient evidence. If she did so, the party against whom judgment was given had to pay court costs. If her petition was unsuccessful, she would be required to pay costs herself.[30]

[30] Christine Daniels, "'Liberty to Complaine:' Servant Petitions in Maryland, 1652-1797," in Christopher Tomlins and Bruce Mann, eds., *The Many Legalities of Early America* (Chapel Hill: University of Norton Carolina Press, 2001): 226-227.

Women in England frequently petitioned the courts for redress in monetary matters. As Table 6.5 shows, women accounted for over one-third (35 percent) of all petitioners who appeared before the Middlesex Quarter Sessions in the late 1690s. The level of women's petitioning in this common law court stands in striking contrast to the numbers of women appearing before the London Mayor's Court in the 1690s, in which women acted as parties in only 10 percent of cases (see Table 6.3). Taken together, Tables 3 and 4 suggest that women in London and environs were more likely to enter a petition in a common law court than initiate litigation.

Table 6.5: Numbers of Male and Female Petitioners Before the Middlesex Quarter Sessions, Sample Years 1696-1697[31]

	Female Petitioners	Percentage	Male Petitioners	Percentage	Totals
1696	35	38%	58	62%	93 (100%)
1697	25	32%	49	68%	74 (100%)
Totals	60	35%	107	65%	167 (100%)

Table 6.6 reveals that 28 percent of female petitioners before the Middlesex Quarter Sessions were married women. Unlike common law litigation, in which a married woman might act as a joint-party with her husband but not independently, petitioning allowed married women to ask for legal redress separately from their husbands. Indeed, as some examples discussed later will reveal, women could also enter petitions *against* their husbands to collect maintenance.

[31] LMA, Middlesex Quarter Sessions Petitions, MJ/SP/1696, MJ/SP/1697.

Table 6.6: Marital Status of Female Petitioners Before the Middlesex Quarter Sessions, 1690-1699[32]

Marital Status	Number of women	Percentage
Married	56	28%
Widowed	57	29%
Single	29	14%
Unknown	57	29%
Total	199	100%

The majority of petitions presented by women to the Middlesex Quarter Sessions concerned monetary matters, especially the collection of a debt or sum of money due. As Tables 6.7 and 6.8 show, women as a group were just as likely as men to enter a petition for the collection of a debt. Petitions for the recovery of a sum due accounted for about 30 percent of all petitions presented to the court by women, and 27 percent of all petitions presented by men. The main deviation in the subjects of women's and men's petitions to the court is that women were more likely to have an unruly or quarrelsome neighbor bound to keep the peace, while men were more likely to request that they be relieved from the burdens of serving in a parish office. These tables show that while women infrequently pursued litigation to recover a debt or a sum of money due, they often appeared before the courts to enter petitions for debt collection.

Table 6.7: Subject of Women's Petitions Before the Middlesex Quarter Sessions, 1690-1699

Subject of Petition	Number of petitions	Percentage
Collection of outstanding debt or money	58	30%
Discharge from prison/mitigation of sentence	34	17%
Release from/honor of an indenture	28	14%
Bind other to keep the peace	20	10%
Collection of poor relief from parish	16	8%
Other	43	20%
Total	199	100%

[32] LMA, Middlesex Quarter Sessions Petitions, MJ/SP/1690-1699.

Table 6.8: Subject of Men's Petitions Before the Middlesex Quarter Sessions, 1690-1699

Subject of Petition	Number of petitions	Percentage
Collection of outstanding debt or money	37	27%
Discharge from prison/mitigation of sentence	27	20%
Release from/Honor of an indenture	16	12%
Request to be removed from parish office	11	9%
Collection of poor relief from parish	6	4%
Other	38	28%
Total	135	(100%)

While common law courts handled the bulk of debt litigation, the flexibility of equity law procedure meant that a variety of cases concerning the recovery of land and the collection of debts and bonds could also be heard in equity courts. The seventeenth-century lawyer and legal scholar Sir Edward Coke, in his *Institutes,* outlined three categories in which equity had special jurisdiction. Coke explained that equity law had jurisdiction over cases that could not be tried under the strict rules of common law, such as "frauds and deceits, for which is no remedy by the ordinary course of law." Equity courts also had jurisdiction over "accidents, as when a servant...is sent to pay the mony on the day and he is robbed." In these cases, a person might be exempt from paying penalties for non-payment if she explained her circumstances before the court. Finally, Coke stated that equity law should also hear breaches of "trust and confidence." These cases could include the collection of a debt for which there was no written contract or other evidence.[33] Equity law also heard cases which concerned legacies or other forms of property that were held in trust for a beneficiary, or when the collection of a bequest was contingent upon the terms of a marriage settlement.[34] While Tim Stretton's study of

[33] Sir Edward Coke, *The Fourth Part of the Institutes*, (London: 1644), p. 84.
[34] Maria Cioni, *Women and Law in Elizabethan England with Particular Reference to the Court of Chancery,* (New York: Garland, 1985), 84-91.

female litigants in the Court of Requests, one of the central equity courts, has shown that litigation over wills and estates accounted for only about 5 percent of the total litigation heard by the court during the late-sixteenth century, women more frequently appeared to pursue cases concerning land and for monetary matters including the collection of debts and bonds. Additionally, Stretton points out cases concerning the recovery of money could often be associated with the administration of an estate.[35]

While women in England had a variety of legal jurisdictions open to them to sue for or defend their property, the levels of women's participation in testamentary litigation and debt collection in the colonies is more difficult to discern. Conflicts that arose over the administration of estates, the payment of legacies, and the collection of debts were, in Massachusetts, heard in the common law county courts. In Maryland, these cases could be heard by common law courts, or, in the later part of the seventeenth century, in the equity court of Chancery, which had been established in 1660. However, Cornelia Hughes Dayton has estimated that nearly 40 percent of women involved in civil litigation in seventeenth-century Connecticut did so in the role of an estate administrator.[36] Christine Daniels' study of servant petitions in colonial Maryland has shown that female servants filed over one-quarter of all petitions to the Kent county court in the seventeenth century. The majority of these petitions concerned the collection of dues or wages upon the completion of a maidservant's indenture contract. Further, female servants who submitted a petition were more likely to have their requests granted by the court: 89

[35] Tim Stretton, *Women Waging Law in Elizabethan England*, (Cambridge: Cambridge University Press, 1998), 98-99, 102.
[36] Dayton, *Women Before the Bar*, 40-42.

percent of the petitions women presented to the court were successful, while 81 percent of men successfully defended their petitions.[37]

What is clear, however, is that like their English counterparts, colonial women frequently acted as administrators and executors of their husbands' estates, a fact that attests to the confidence that husbands had in their wives' ability to manage their property. As Lorena Walsh and Lois Green Carr have shown for colonial Maryland, only 11 percent of men who left wills between 1640 and 1710 in Charles County named a person other than their wives as executor of their estates.[38] Colonial courts upheld the right of widows to act as administrators or executors of their husbands' estates. Statutory law in colonial New York and Virginia gave widows the first right to administer the estate of a husband who died intestate, and also upheld the right of widows who remarried to continue to act as administrators without their new husbands being named as a co-party.[39] Cornelia Hughes Dayton has shown the same to be true of women in Connecticut: while a man who made a will could choose any executor he pleased, in cases of intestacy Connecticut judges upheld a widow's right to administer her husband's estate.[40]

As in England, colonial women who acted as executors or administrators of estates were charged with presenting the will to the county court, drawing up an inventory of land and moveable goods, and collecting the bonds, receipts, and accounts of debt due to the estate. As the mediators between the heirs, creditors, and the courts,

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[37] Daniels, "'Liberty to Complaine:' Servant Petitions in Maryland, 1652-1797," 240-241.
[38] Carr and Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," 555-559.
[39] Joan Gundersen and Gwen Victor Gampel, "Married Women's Legal Status in Eighteenth-century New York and Virginia," *W&MQ* 39, No. 1, (January 1982): 118-19.
[40] Dayton, *Women Before the Bar*, 40-42.

administrators were also charged with the task of keeping track of inventoried, perishable goods consumed by the family, any wages earned by family members, and all debts contracted in the course of maintaining the family.[41] While these duties could be burdensome for some women, others seem to have taken on probate responsibilities very willingly. Acting as an executor or administrator of a decedent's estate gave women at least temporary control of a substantial amount of property, and allowed them to manage the division of the estate to their own benefits. Some colonial widows even discouraged their husbands from making wills that would limit their ability to manage the estates themselves. Frances Axey of Salem, Massachusetts, for example, actively discouraged her husband from drawing up a will on his deathbed, especially when he spoke of bequeathing a parcel of land to one of his male relatives. According to the deposition of Andrew Mansfield, who was present as Axey's husband lay dying, Frances Axey said to her husband shortly before his death, "cannot you confide in mee that I will performe what your minde is?" and that she was convinced if he made his will "you will give awaye all."[42]

II. Female Litigants, Petitioners, and the Protection of Property

a. Women as Litigants

A variety of legal avenues were open to women in England who wished to go to law to protect their property. As section one showed, women frequently appeared as litigants in the ecclesiastical courts, which allowed married women to sue in their own names independently from their husbands. Although the church courts did not have jurisdiction over land, women could initiate a suit in these courts for the right to

[41] Toby L. Ditz, *Property and Kinship, Inheritance in Early Connecticut, 1750-1820*, (Princeton, NJ: Princeton University Press, 1986), 144-145.
[42] *Essex County Quarterly Courts*, Vol. 4, 306-309.

administer a decedent's estate, or to dispute the validity of a will. Bennett Bowles Moss, a married woman living in Essex, England, appeared in the Archdeacon's court in 1632 to prosecute a case against her brother, Peter Bowles, for control of the estate of her recently deceased mother, Alice Bowles. When Peter seized control of the estate after Alice's death, Bennett sued him in the Archdeacon's court. The point at issue in the case was whether the will that Alice allegedly made on her deathbed, which named Bennett the sole executor of her estate in lieu of her brothers, was valid. Witnesses who spoke on behalf of Bennett, including the scrivener who made the will, his wife, and his servant, upheld Bennett's right to act as executor to the estate, and testified that the will had been legally signed and sealed by Alice before her death. Elizabeth Richardson, the fifty-two-year-old wife of the scrivener who wrote Alice's will, testified that she was present at Alice's bedside when she signed and sealed the new will giving Bennett full control of the estate. Elizabeth stated that Bennett had summoned her husband and "requested him to come to her mother to alter and newe write her will." Elizabeth's testimony was corroborated by the deposition of her twenty-year-old maidservant, Margaret Bragg, who had gone with her mistress to the Bowles household, and had "carryed her masters Inckhorne and wax to seale the will." Margaret testified that she was also present when Alice signed the will, and reported that Alice had said that Bennett "had bene a true and faithfull childe to her and therfore she would not have any of her brothers or sisters to domyneere over her but should rather be beholdinge to her then she to them."[43] That Bennett Moss was married did not prevent her from bringing suit in the Archdeacon's

[43] Essex Record Office, Archdeaconry of Essex Depositions, Chelmsford, England, D/AE/D8, July 25, 1632.

court, and also did not bar her from taking control of the execution of her mother's estate after her death.

Bennett Moss' case against her brother Peter over her right to act as executor of the estate of her mother reflects the legal conflicts that could arise between family members as they sparred for control over the estates of a deceased relative. Elizabeth Britten brought suit against her mother-in-law, Christian Britten, in the London Commissary Court in 1674 for the right to administer the estate of her late husband, William Britten. The dispute arose between the parties because William Britten had devised a nuncupative will, or an oral will, on his deathbed, leaving the details of the will and the circumstances under which it was made subject to dispute. Elizabeth's case turned upon the testimony of the witnesses present at the time will was made. Sara Haddon, a female servant in William and Elizabeth Britten's household, testified that she was a witness to the verbal will that William had made on his deathbed. Sara stated that she had lived with Britten "as his servant for above two yeares" and was "cald up into the sayd deceased's chamber to make a fire," where she heard William state from his deathbed who would receive legacies from his estate. According to Sara's testimony, William had related that he would give "my mother (meaning Christian Britten, widow) six pounds, and if shee doe not like that it should continue in my wives hands." However, Sara also reported that Britten had said that he would give "all the rest of my estate...to my wife (meaining the sayd Elizabeth Britten)." Sara's statement before the court was corroborated by another female witness, Mary Campe, who had apparently been sent for to read to Britten "out of a prayer book" during his sickness. Mary testified that she was also present when he made his last will "by word of mouth" and that Britten had given

his wife "all of his estate."[44] Both Elizabeth Britten and Christian Britten, as the widow and mother of the deceased, had an interest in gaining control of the execution of William's estate, and in seeing that the property was managed according to their interests.

Other cases from the London ecclesiastical courts show that litigation concerning the administration of an estate could be part of a larger legal dispute between family members. The depositions in the case entered by one Mistress Beard in the London Commissary Court in 1679 reveals that she also had a suit pending in Chancery against her step-son, Robert Jones. After Robert died at aged only twenty-three, she entered an action against Robert's uncle, Samuel Jones in the London Commissary court to gain control of Robert's estate. Thomas Oliver, who had acted as Robert Jones' attorney during his life, testified that there had been long-standing disputes between Robert and his step-mother Mistress Beard, "and a suite in Chancery which was not ended when the sayd deceased dyed...about some writings which the sayd Mistress Beard detayned from him." Witnesses who spoke against Mistress Beard recounted how Robert Jones had sought to keep all of his estate from her, and how he had proclaimed "under great oaths and protestations that neither his mother nor his sisters, nor any that belonged to them should ever be the better for what he had, let him dye when he would, and was alwayes raveing against the cruelty and base actions of his mother in law," calling her a "cheating damned jade." Another witness, Richard Buckland reported that he had several times heard Robert Jones "complaine of his mother Mistress Beards unkindness towards him, and that she kept away his writeings from him, and made him goe to law for them."[45] While no depositions on Mistress Beard's part are included in the court records, it is clear

[44] London Metropolitan Archives, Guildhall Manuscripts, 9065a, Vol. 8, Depositions of the London Commissary Court, Elizabeth Britten vs. Christian Britten, 1674.
[45] LMA, Depositions of the London Commissary Court, Vol. 8, Mistress Beard vs. Samuel Jones, 1679.

that she claimed the right to administer the estate as the creditor of the young Robert Jones during his lifetime, and as his caretaker during his sickness.

Women also brought suits in the church courts to claim moveable property and legacies due to them under the terms of a will. Sixteen-year-old Elizabeth Smith brought a suit with the help of her grandmother against William Hollyman, executor of her grandfather's estate, to gain control of a house in London left to her under the terms of her grandfather's will. Though William Hollyman claimed the right to act as administrator of the estate as the son of the deceased, Elizabeth and her grandmother fought for Elizabeth's right to inherit the London house. Because of Elizabeth's young age, it is clear that her grandmother, widow Sara Smith, was the force behind the suit. Smith testified that Elizabeth's grandfather had "a great kindness and affection to Elizabeth Smith, and he hath often times declared to this deponent that she...should have the house he lived or dwelt in" in London. Widow Smith went on to relate that prior to his death, Elizabeth's grandfather told her that she "shalt lead thy life where thy grandmother and I have lead ours, and when I dye I give thee this house as it is, and have a care Betty that noe body cozens thee, thy mother was the joy of my heart, and soe art thee." In addition to testifying herself, Sara Smith orchestrated the appearances of four other witnesses who spoke on behalf of her granddaughter in the case. Each of these witnesses related before the court that they had come at the request of Sara Smith. One of these deponents, Nicholas Parkes, testified that Elizabeth's grandfather "was resolved to give her the sayd house, and that he would not leave his son William Holyman any part of his estate because he had many ways disobliged him by his undutifulnesses."[46] While

[46] LMA, Depositions of the London Commissary Court, Vol. 8, Elizabeth Smith vs. William Hollyman, 1672.

women went to law to secure their own benefit, Elizabeth Smith's case reflects that women could also be staunch defenders of the legal rights of their younger female family members.

The ecclesiastical courts also heard cases concerning the payment of a cash sum to a legatee, as well as litigation concerning moveable property, such as houses and household goods. In 1681, Elizabeth Summers Emberson sued the executor of the estate of her former sweetheart in the Essex Archdeacon's court for a £100 legacy she claimed was due to her under the terms of the will. Though the court documents state that Elizabeth had recently married John Emberson, Elizabeth is named as the only plaintiff in the case, and it is clear that she prosecuted the case independently of her husband. Elizabeth claimed that the legacy left to her by Robert Greene had been spelled out in his will, and witnesses who spoke on her behalf emphasized that Elizabeth and Robert Greene had always been very close. Elizabeth Turner, one of the witnesses who spoke on behalf of Elizabeth Emberson, testified that Robert Greene "whilst he lived and for some yeares before he dyed did bear a great love and affection towards the said Elizabeth...and did severall times declare that he did intend to marry her." Elizabeth Emberson, however, had refused Robert's offer because he "being a Quaker would be married after the manner and according to the usual way of the Quakers marrying, which she the said Elizabeth thought illegall and contrary to the law."[47] Though Elizabeth Emberson apparently refused Robert Greene's proposal of marriage, when Elizabeth did finally marry, her status as the wife of John Emberson posed little threat to her ability to sue for her unpaid legacy.

[47] ERO, Archdeaconry of Essex Depositions, D/AE/D9, Elizabeth Emberson vs. John Greene, January 20, 1681.

Women who acted as administrators of estates were charged with not only paying legacies to heirs, but also with paying and collecting any debts still outstanding at the time of the deceased's death. Though these cases could be heard at equity law if they involved a trust, most suits concerning the recovery of a simple debt owing to an estate would be heard at common law. Margaret Powell, widow and executor of the estate of David Powell, brought suit against Robert Hall in the Mayor's Court in London in 1640 for the recovery of a £47 debt due to Powell's estate. To ensure the payment of the debt, Margaret entered the suit as a case of foreign attachment, under which Margaret could recover the debt through the seizure of Hall's goods even if they were in the possession of a third party. Margaret had the court appraise a large portion of Hall's household possessions to be valued against the debt. The very long list includes a variety of expensive household items, including "one cipress chest, six backstooles of Russia leather, six Turkey cushions, and twoe leather cushions guilt."[48]

Similar cases heard in the London Mayor's Court throughout the seventeenth century show that women acting as administrators of estates sued at common law to recover debts. For example, Rose Aspley, named as "widow and administratrix of all and singuler the goods, chattells, rights & creditts which were of Thomas Aspley deceased at the time of his death," brought suit against John Weeks for £250 due to the Aspley estate.[49] Though Widow Aspley's suit concerned a sum of money that was quite large, the Mayor's Court also heard cases dealing with the recovery of small debts. Widow Grace Verges, executor of the estate of her late husband William Verges, brought suit against William Webbe for the payment of a £5 debt in 1681. Included in the

[48] LMA, Mayor's Court Original Bills, CLA/024/02/102, fl. 74, Margaret Powell vs. Robert Hall, (1640).
[49] LMA, Mayor's Court Original Bills, CLA/024/02/118, fl. 13, Rose Aspley vs. John Weeks (1652).

appraisement of Webbe's assets was a small list of modest household goods worth £3, including sheets, a sideboard, a cupboard, tablecloths, and napkins.[50] As these cases show, as an estate administrator a widow had an interest in seeing that the debts of her husband were paid and collected, and that her access to and control of the estate would be protected.

The lack of an ecclesiastical jurisdiction in the colonies meant that the majority of cases concerning the administration of wills, the payment of legacies, and the collection of debts would be heard in the county courts. However, like their English counterparts, colonial women could be staunch defenders of their rights to act as administrators of estates and to manage the parceling out of legacies to heirs. In 1665, Ezekiel Rogers of Ipswich, Massachusetts sued his aunt Mary Rogers, the widow and executor of the estate of her late husband, in the Ipswich county court for a legacy of £400 due from the estate. Ezekiel claimed that he had been given only £20 from the will of his own father, Nathaniel Rogers, upon the presumption that his uncle would provide him with a substantial income upon his death. However, he claimed that his uncle had in fact provided him with only a relatively modest portion of £160. However, Mary Rogers, as administrator of a large estate appraised in the inventory at £1400, had a substantial interest in seeing that her control of the property was protected against the claims of her nephew. Witnesses on her behalf stated that Mary's husband had been very much dissatisfied with the conduct of Ezekiel, "particularly his familiarity with John Smith, his servant, the Scotchman." Mary herself testified that she didn't know why Ezekiel's father "Mr. Nathaniell Rogers gave his son but twenty pounds, but probably he did, as he was a wise and prudent man," and that Ezekiel would have had a larger portion of his uncle's

[50] LMA, Mayor's Court Original Bills, CLA/024/02/231, fl. 84, Grace Verges vs. William Webbe (1681).

estate "if he had been attentive to Mr Rogers." Further, she claimed that if consanguinity "and bearing of the same name was sufficient to give title to men's estates, we should have little need of law," and that "as for damage sustained by Ezekiell, they never knew any man to lose what he never had."[51] While the court initially ruled in Ezekiel's favor in March 1665, by June the case had come up for rehearing at Mary's request, and the verdict was still pending.[52] By September 1665, the Ipswich court had reversed its verdict in the case and ordered that Mary was not obligated to pay Ezekiel's legacy.[53]

Massachusetts widows acting as estate administrators also went to law to recover debts. Elizabeth Blesdale sued Edward Gyllman in June 1653 in Salem for the collection of £3 which he had promised to pay to her late husband, Ralfe Blesdale. The court ruled in Elizabeth's favor, and remarkably, she offered to remit some of the debt due if he promised never to challenge her in court concerning the matter again.[54] In another case from 1678, Elizabeth Price entered a suit against John Wincoll in the Salem court as the widow of Captain Walter Price and the executor of his estate. She sued him for the payment of a debt of over £400 worth of pine boards that Wincoll had contracted to pay Captain Price in the early 1660s. The court found for Elizabeth and ordered that Wincoll pay the debt due to her. Because the sum was so large, the court also required him to put up his land as security for the debt.[55]

In another case heard in Massachusetts, Elizabeth Fuller, executrix and widow of John Fuller, entered suit in the Ipswich Quarterly Court in March 1668 against Samuel Younglove for illegally collecting the hay on two or three acres of her meadow. By the

[51] *Essex County Quarterly Court*, Vol. 3, 227-235.
[52] *Essex County Quarterly Court*, Vol. 3, 263.
[53] *Essex County Quarterly Court*, Vol. 3, 275.
[54] *Essex County Quarterly Court*, Vol. 1, 281.
[55] *Essex County Quarterly Court*, Vol. 7, 23, 154.

terms of John Fuller's will, probated at the Ipswich Quarterly Court in September 1666, Elizabeth was to receive only £7 per year for her maintenance though Fuller's real and moveable property were appraised at nearly £250 in the inventory entered as part of the probate process.[56] Elizabeth was thus in a precarious financial position. The depositions in the case state that even before the death of Elizabeth's husband, she had sparred with Younglove over the proper border between their two farms and who should be able to collect the hay from the lands. Witnesses who testified in the case stated that over a year before, Younglove had entered an action against Elizabeth Fuller about the land in question.[57] Elizabeth herself testified in the case, saying that the agreement that Younglove had attempted to broker with her son, John Jr., she considered "of no effect." After Elizabeth won the suit, Younglove entered an action against her at the next court, held in June 1668, which was withdrawn for lack of evidence.[58]

Women acting as administrators to estates of merchants and overseas adventurers could often become involved in complex legal suits as they sought to collect and pay debts due the estate. In some cases, women tracked down the men indebted to them from across oceans. Mary Washburn, the widow of a profitable London merchant, pursued the collection of a £217 debt due to her all the way to New England. Mary was drawn into the case not only as the administrator of the estate of her son-in-law, William Woodcock, but also as one of his many creditors during his life. Mary thus had a substantial interest in seeing that the debt was repaid so that she could settle Woodcock's estate and recoup her investment. During his life, Woodcock had been actively involved in the sugar trade with Barbados, and had in 1638 invested the £217 that he had borrowed from his mother-

[56] *Essex County Quarterly Court*, Vol. 2, 358.
[57] *Essex County Quarterly Court*, Vol. 4, 3-4.
[58] *Essex County Quarterly Court*, Vol. 4,. 27.

in-law in a trading venture headed by Captain William Tinge. Shortly after he borrowed the large sum of money from Mary Washburn, Woodcock died, leaving Captain Tinge as the beneficiary of the investment until Tinge's own death in 1653.

Though Mary Washburn lived in London all her life, in 1654 she began a suit in the Ipswich Quarterly Court in Massachusetts, where Tinge's estate had been based, to recover the debt due to Woodcock's estate and reclaim her fifteen-year investment in Tinge's trading activities.[59] While Mary Washburn herself initiated the suit, Mary's granddaughter and her husband, Robert and Mary Bridges, helped to prosecute the case in Ipswich in her absence. However, Widow Washburn was integrally involved in the prosecution of the case. When she entered the suit, she explained that she was "above 70 yeares of age" and "haveinge a maternall affection towards her parentlesses Children to whome shee is a Granmother, tooke uppon her the trouble of an Admidstratrix unto the estate the which hath not (as shee informes) paid her areares."[60] She herself wrote to the administrator of Tinge's estate, explaining that the debt was due and demanding its repayment. She wrote from London to Edward Tinge in New England that she should see Woodcock's "just debts satisfied [and] receeve that which is due to my sonne Woodcock from Captain Tinge, I being administatrix, for the good of his children, there is many of them, to bee set forth into the world." She explained that she had given Robert Bridges, her grandson-in-law, "power of attorney to receive the same," and also informed Tinge that she had inclosed "a certificate under the register of the prerogative office, whoe hath certified under their hands, the truth of the adminstracon."[61]

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[59] *Essex Institute Historical Collections*, Vol. 17, 13-17.
[60] Phillips Library, Essex Quarterly Court, File Papers, 3-6-1.
[61] PL, Essex Quarterly Court, File Papers, 3-7-2, Mary Washburn to Edward Tinge, February 18, 1653. *Essex County Quarterly Court*, Vol. 1, 382-86.

While Widow Washburn gave her male kinsman power of attorney to collect the money, she relied on her granddaughter, Mary Bridges, to give the testimony. Mary Bridges testified that at her grandmother's request, she had for the last several years continually asked Captain Tinge to pay the debt to her father Woodcock's estate. She stated before the court that she "haveing had discourse severall times with Captain William Tinge deceased concerninge a debt which hee acknowledged...to be due to the estate of her deceased father from him, & she this attestant beeinge wrott unto by her granmother (Mistress Mary Washbourne) to solicite the said Captain Tinge to tell her what the just some was." She further explained that Tinge had told her that "the designe uppon which this debt arose proved a good busines & exprest himself very willinge to pay the said debt," but that he was not yet able to do it.[62] While the outcome of Widow Washburn's case is not known, her suit reflects that women might pursue the collection of a debt due to them across oceans if necessary, and relied on young, female kinswomen to act as their agents in cases in which they could not be present themselves.

Like their counterparts in Massachusetts, Maryland women acting as estate administrators also sued for the repayment of debts. Rebecca Burton, widow of Edmund Burton and executor of his estate, entered a suit against Henry Hudson in the Maryland Provincial Court in 1668. She informed the court that "her late husband Edmond Burton, of whose goods and chattles she is administatrix," had during his lifetime obtained an attachment against Hudson's goods for the repayment of a debt, and that "she prayes a continuance of the said attachment to her as administatrix." At the same time, she sued Hudson for the collection of the debt that he had owed to her husband. She stated that she "sues the defendant in a plea that hee render unto her seven thowsand five hundred

[62] PL, Essex Quarterly Court, File Papers, 3-5-2.

seventy fowre pounds of tobacco which hee oweth her and unjustly doth detaine."[63] She won on both counts against Hudson.

In their roles as executors, Maryland women also brought cases to recover debts in the Maryland Court of Chancery. Chancery had jurisdiction to recover a debt on grounds of breach of trust, which at common law could not be defended. While the Maryland Chancery was undeveloped and infrequently used in the seventeenth century, one case suggets that Maryland women might have been becoming more aware of the benefits of equity law by the end of the century. Anne Avery, as the widow of John Avery and the executor of his estate, entered a breach of trust case in Chancery in 1678 against her son-in-law, Benjamin Granger, for the recovery of £24 in cash and over 3000 pounds of tobacco. According to the court records, Anne had entered the case in Chancery because she had no case "by the strict rules of the comon law to enforce a discovery of such clandestine frauds & transaccons & trusts," that she alleged against Granger, which had been a "great hindrance of the execucon of the deceaseds last will and testament." Further, Anne had no written records to prove that John Avery had entrusted the sums to his son-in-law. The summary of the case further states that Anne, "not being able to make such proofe of the perticuler goods & sumes of money to him delivered by the said John Avery & intrusted with him as the law requires" that she therefore had "noe other ways to be releived save in this honoble court."

Acting as a joint-party with her new husband, John Hasslewood, Anne filed a bill of complaint against Granger for repayment of the sums so that Avery's debts could be paid and his estate settled. In her bill, Anne alleged that Granger and his wife, who was Anne's daughter, had accompanied John Avery on a business trip to England, and that

[63] "Proceedings of the Provincial Court, 1666-1670," *Archives of Maryland,* Vol. 57, 379, 415.

Granger had taken control of a large sum of Avery's money after he unexpectedly died on the voyage home. She stated that "John Avery dyed before he came on shore leaving all his money & goods in the possession of the said Benjamin Granger." Anne demanded "an account of the said money & goods or satisfaccon for the said sume & to acquaint her with what other goods or money he have in his custody," but "he absolutely refused." Though Benjamin Granger "did positively deny that he had or received of the said John Avery any of his goods," in the end, the court decided in Anne Avery's favor. The court ordered that John Avery "did lend to & entrust the same Benjamin Granger with severall quantities of goods & divers sumes of money," and ruled that he pay Anne the cash, tobacco, as well as costs of suit. [64] While Anne Avery's case is an isolated example of a woman bringing suit in the Maryland Chancery, her case is an early example of how equity law helped women acting as administrators of estates collect debts due to the estate.

Creditors seeking to collect debts from an estate also sued in Chancery to recover the debt due, and to demand the production of evidence, accounts, or deeds pertaining to the debt. The London creditors of Walter Story, an overseas merchant, tracked down his widow, Elizabeth Story, all the way to Maryland and entered a suit against her in 1670 in the Maryland Chancery to recover goods worth £513 from Story's estate. The creditors entering the case alleged that after the death of Walter Story, "Elizabeth Story his relict administering and having full effects to pay his debts...very well knew of the premisses" of the case, yet "she refuseth to make the complaintant any satsifaction." The creditors also wanted her to produce "Walter Storey's Books of Accompts and how the goods were disposed and to whom." Elizabeth, however, countered their accusation, stating before

[64] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 526-31.

the court that she "never knew of any goods consigned by the complaintant to Walter Story," and that "Story dyed in his return from England and never any of his papers or accounts came to [her] hands." Further, she pleaded to the court that she "being left a widow with one poor child," that the creditors took "advantage of her widowhood and ignorance of the matters contained in the said bill but have no just cause against her."[65] Despite her denial of knowledge of the debt and her claims to being a poor widow, the justices of Chancery decided against her and ordered that she repay the debt due out of Walter Story's estate.

b. Women as Petitioners

Petitioning the court was also an avenue for legal redress for women seeking to collect a sum due to them, or to protect their property. As supplicants to the legal system rather than litigants, female petitioners emphasized their weakness and inferiority, and deferentially pleaded with the court to recognize their pitiful situations. Often, they argued that they had been the helpless victims of some injustice that had placed them in a vulnerable financial position. As James Daybell has shown for the reign of Elizabeth I, high-status women who petitioned courtiers or government officials for patronage or special favor depicted themselves as objects of pity and the victims of poverty and suffering, and emphasized their desperation and despair. Daybell argues that a "female voice" emerged from aristocratic women's letters of petitions that emphasized weakness and helplessness and enticed the reader toward pity and compassion.[66] While the female petitioners examined in this chapter were not members of the elite, they employed many of the same strategies that Daybell has pointed out. Women who presented their petitions

[65] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 45-49, 409.
[66] James Daybell, "Scripting a Female Voice: Women's Epistolary Rhetoric in Sixteenth-Century Letters of Petition," *Women's Writing* 13, No. 1, (2006): 12-14.

before the courts in both England and the colonies often argued that they were the defenseless victims of injustice, and pleaded with the court to recognize their powerless positions.

The majority of petitions presented by women to the Middlesex Quarter Sessions in the 1690s concerned the collection of a sum of money. Widow Anne Gosling petitioned the justices in the Middlesex Quarter Sessions in July 1690 for the collection of 35 shillings due to her for nursing a sick servant. Gosling explained in her petition that she was hired by "Mistress Althea Clifford to attend and nurse Mary Morris her maidservant being sick." Clifford promised her "8 shillings weekly for her service." However, when Gosling discovered that the maidservant had smallpox, she wrote to Clifford that she "would not nurse her under 15 shillings per week to which in response Clifford answered that she would give [her] full satisfacon." At the time she entered the petition, she complained that she had cared for the servant for a "full three weeks and there remains therty five shillings due." The court ordered that two justices of the peace look into Gosling's allegations, and then ordered the payment of the sum to Gosling.[67]

Though widows were frequent petitioners before the Middlesex Quarter Sessions, married women were just as likely to petition the court as widows. Mary Gregory of London petitioned the Middlesex Quarter Sessions on three separate occasions to collect maintenance from her husband, Edward Gregory, whom she claimed had abandoned her and her children for another woman. In her second petition before the court, submitted in July 1699, Mary explained that she had been the "wife of the said Edward Gregory 24 yeares in which time shee has head 8 children by him two of which are now liveing." She went on to emphasize her pitiful and dire position, explaining that her husband had left

[67] LMA, MJ/SP/07/033, Petition of Ann Gosling, (1690)

her with no money for necessary, day-to-day expenses, and had also physically abused her. She related that "for the space of 18 months last past haveing been deprived of a maintainance & all necesaries and turned out of doors by her said husband (who keeps company with one Isabell Barbour an idle person whos husbands at sea)," and that she has "in the meane time suffer[ed] greatly for want of necesaries, her said husbands hard usage havieng disabled her from working as formerly." She further explained that she had petitioned two months prior to have her husband appear at court to answer to the charges, and that "this worshipful bench last session upon her humble petiton granted a warrant for taking & bringing her said husband befor your worships which warrant is since served." However, she also related that her husband "when the warrant was served in presence of the constable stuck her down on the ground where shee lay deprived of her senses for some time & afterward kept in bede the space of a weeke suffering greating for want of necesaries." She went on to emphasize her poor economic position: she explained that she "being very poor is not able to fee councell to plead for her therefore most humbly committs her case to your worships that shee may have a maintainance allowed & be freed from such hard usage from her said husband."[68] The court ordered that Edward Gregory appear before the court to face the charges alleged by his wife, and to show cause why he should not pay her maintenance. Mary's petitions before the court show that married women clearly thought it their right to receive money from their husbands for day-to-day necessaries, and went to court to collect the sums when husbands failed to provide for them.

[68] LMA, Middlesex Quarter Sessions Petitions, MJ/SP/1699/05/004, MJ/SP/1699/07/007, MJ/SP/1699/12/006.

Other married women who petitioned the Middlesex Quarter Sessions to collect debts due complained against male relatives or employers. Sarah Graves, for example, petitioned the court in February 1690 to receive money from her father-in-law John Graves. According to Sarah's petition, she had already been to the court (whether as a petitioner or a litigant is not specified) to complain against her in-laws and "to determine differences between your petitioner and her husband and his father and mother" and that the court had ordered them to pay Sarah the money due to her. However, she further explained that her "husbands father refused to pay the same," and that she "prays a warrant from the worshipfull Bench to take up your petrs husbands father John graves to shew cause why he will not abide the said order."[69] Another married woman, Martha Workman, entered a petition to the justices of the Middlesex Quarter Sessions in 1696 for the collection of a sum due for nursing a child. Workman complained that she "haveing a child place to her to nurse by one Bridgett Linsey" and was to have "3 shillings 9 pence per weeke which is now due 27 weeks...and unpaid by reason of the mother being not in a capacity to pay." She now petitioned that the child's grandfather, "Mr Osgood to pay for the nurseing, otherwise itt will be the utter ruine of your petitioner."[70]

Married women in the colonies petitioned the courts to protect their property, especially when they felt that they had been treated unjustly by their male kinsmen. In Massachusetts, Elizabeth Haskell Berry petitioned the Salem court in November 1672 claiming that she had been under duress when she relinquished her claim to any part of the estate of her late husband, Roger Haskell. Though she had married Edward Berry soon after the death of Haskell, she entered the petition to the court as a sole party. She

[69] LMA, MJ/SP/02/005, Petition of Sarah Graves (1690)
[70] LMA, MJ/SP/10/022, Petition of Martha Workman (1696)

alleged that after Haskell's death, his brother William Haskell had coerced her into agreeing to the will that deprived her of a portion of land her mother had purchased for her. She explained that Haskell "remeaned with me most of the tyme night and day using many arguments & provocations with me to have me goe to that court to have the will proved when I was very full of trouble, [I] knew not what I did being so short a tyme I did I knew not what but did by his advise." However, it is clear from the petition that Elizabeth had second thoughts about her decision soon after the will was proved in court.

Elizabeth gave her consent when her second husband, Edward Berry, initiated a legal suit to recover her land. She said that she "had disposed my mind to my husband that now is [Edward Berry] conserning the sute of law he had...about the land which my mother gave to me which is my reight," though she also stated that "I thoft I should have noe busines theare at court." However, her relatives persuaded her to appear before the court to claim the lands herself, for if her husband recovered the lands he would keep them for his own use. Elizabeth related that her relatives told her "will you give away your estate to such a husband that saith you are a baud and such like provokations? If he recover the land he will sell it & make a bag of mony and shew you a leight pare of heels." At her relatives' behest, Elizabeth appeared in court herself to try to claim the land. She explained that "I went to the court when I came thare Major Dinison sayed to me, Come good woman, you gave consent to your husbands will did you not?" She replied "In my fury I did say it Sir, but I have considered since I have don my selfe great wrong in spekeinge that word which was not truth for I doe protest before god that I never gave free consent to Roger Haskolls will which was my former husband."[71]

[71] *Essex County Quarterly Court,* Vol. 5, 111-112. For more petitions by Massachusetts women asking to have their husband's estates settled, see Katherine Clarks' petition (1647) and Judith Somersby petition

Because the will had already been entered to the court and proved, Elizabeth had little recourse under the letter of the law to recover her lands. Furthermore, she could not enter into litigation to reclaim the land without acting as a joint-party with her husband, Edward Berry, whom she obviously considered untrustworthy. However, petitioning gave her a legal avenue to seek legal redress to reclaim the land independently from her new husband.

While married women such as Elizabeth Haskell Berry sometimes entered petitions to the court, many of the petitions heard in the colonies that concerned property were entered by widows. For example, after Susanna Rogers, widow of Robert Rogers of Massachusetts, lost a suit to Philip Nelson in 1664 in which she charged him with collecting hay and crops upon her land, she submitted a petition to the court to have the land returned to her. She explained that she was "gratle damnified as being disposest of my habitashon and ben hendred of macking use of my madow whish is about forty ackers." Further she added that Nelson's collection of her hay and deprived her of a useful trading commodity. Further she added that "the lose of my grase pots me upon grat soferings for want of corne whish I could have had for my gras." When Nelson produced the deeds in court showing that Susannah's late husband, Robert Rogers, had legally sold the land to him before his death, Susanna pleaded with the court to return the land to her, explaining that the acres in question were her only means of income. She stated that she was a "poore widdow, haveing fower children left me" and desired the court to "considder her condition, my husband died and left me litle."

(1652). *Essex County Quarterly Court*, Vol.1, 119-120, 128, 132; *Essex County Quarterly Court*, Vol.1, 271.

Susannah also argued that she had been wrongfully deprived of her dower portion by the collusion of her late husband with Phillip Nelson to sell a portion of her land. She stated that she "desired of them my thirds of that they bought, contrary to my minde and knowledge." Remarkably, Susanna added that her effort to reclaim the land "I think was just and righteous, and it neede not soe have provoked them to indever to take or gitt from me that which is my right, for its knowne they have litle neede of it, but it is my livelehoode."[72] Rebecca's testimony and petition to the court shows that a husband could leave his widow in a legally vulnerable position; yet her case also reflects that widows clearly felt entitled to a portion of the estate that they had helped to cultivate and maintain throughout their marriages.

Widows in Maryland petitioned the Court of Chancery to keep portions of their late husbands' estates from escheating to the Lord Proprietor. Under Maryland law, any landowner who died without living heirs risked having his property fall into the possession of the Lord Proprietor, even if he had a wife and step-children who survived him. Widow Bridget Liget, for example, petitioned the Maryland Chancery in 1674 that since her husband died "without issue," his 400 acres of his land "are become escheated" to the Lord Proprietor. After her husband's death, she had tried to prevent the land from becoming alienated through "the absolute purchaseing of the premisses to her & her heirs forever." However, she discovered that since her husband had in fact "dyed seized of the premisses" that they were likely to fall to the Proprietor's interest. In response, Liget lamented that the "premisses is the onley support & livelyhood of your poor petitioner," and that "she hath been at great charge in building & clearing & paid the rent" on the

[72] *Essex County Quarterly Court*, Vol. 3, 188-89.

land. Further, "she humbly implores your Lordship would be graciously pleased" that she should prevent "the escheating of the said lands to his Lordships use."[73]

The same issue was at stake when Margaret Bird entered a petition to Chancery in 1675 to have her late husband's land, amounting to 160 acres, given to her and her child by a former marriage. Because Margaret's husband had died without any issue of his own, his land risked falling to the Lord Proprietor. However, Margaret requested that "she may have the said lands for her child whom she had by her former husband, because it was the verball will of the said Charles Bird." According to Margaret's account, on his deathbed Charles had said "that he did give the said land to his wife dureing her life & after her decease to her child." She also pleaded with the court to "shew some mercy toward her distressed condition in granting her the same her husband did will to her being in his perfect senses about a day before he dyed," and that "by reason of his dying intestate hath been a great deal of charge and trouble to your petitioner."[74]

Married women who entered petitions to the Maryland Chancery did so as joint-parties with their husbands. Anne Shulivant Sallers petitioned the court of Chancery in 1679 with her second husband, John Sallers, for the control of the estate of her late first husband, Jeremiah Shulivant. The petition related that though Jeremiah had bequeathed to Ann his whole estate "both land & chattells" by his written will, the man who wrote the will had failed to include that Anne was enjoy this property absolutely and not only for her lifetime. John and Anne explained that they were "informed that they are but termes for life to the said land, and after their death the said land will escheat to your Lordship for want of words significant in the said last will & testament to intitle the same

[73] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 147.
[74] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 162.

to your petitioner Anne & her heirs & assignes forever, which they humbly conceive was the fault of the writer of the said last will."[75]

In another petition from 1679, Elizabeth Grammer Hollis asked the court to have the land of her first husband, John Grammer restored to her after her marriage to her second husband, Henry Hollis. Elizabeth and Henry Hollis entered the plea to the court as joint petitioners, related that by the terms of John Grammer's will, he had only given his wife Elizabeth control of his estate "dureing her widowhood." If she remarried, then John Gammer ordered that "my said plantation and whole estate to be taken away from the said Elizabeth by the Court and to be kept by order of the said Court of Calvert County for the maintenance of the poor and orphans of this county forever." However, the petition went on to explain that Gammer's request to bequeath his whole estate to the poor was "by severall statutes of England forfeited and the said gift void & null." Henry and Elizabeth therefore asked the court to decide in the matter, and if it was indeed found that the land escheated to the Lord Proprietor, "that they may be admitted to purchase the said land to them and their heires at such reasonable rates as your lordship and charity shall think meet."[76]

III. Conclusion

As the previous section demonstrated, women in all areas of the English world appeared before the courts, as both litigants and petitioners, to protect their property and to collect debts. However, English women's legal capabilities seem to have been markedly better than their counterparts in the colonies. Women in England benefited substantially from the ecclesiastical jurisdiction, which allowed married women to

[75] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 248-249.
[76] "Proceedings of the Court of Chancery, 1669-1679," *Archives of Maryland*, Vol. 51, 305.

initiate litigation when their right to act as administrators of an estate was threatened, and also allowed them to sue as heirs for legacies. Additionally, common law justices' acceptance of married women's petitions in the Quarter Sessions also allowed women to bring grievances concerning monetary matters before the courts. While only a tiny percentage of married women appeared as independent litigants in a common law court, this chapter has shown that married women accounted for one-third of the female petitioners who appeared before the Middlesex justices.

While women in the colonies could also seek legal redress when their access to property was threatened, colonial women seeking control of their property formed a less substantial presence in the court. Married women, who almost never appeared before the courts without their husbands, formed even less of a presence than widows. In both Massachusetts and Maryland, women comprised a very small minority of litigants before the court. However, by the end of the century the Maryland Court of Chancery showed signs of becoming more sympathetic to the legal claims of women, as the petitions above have suggested. In Massachusetts, which lacked both an equity and an ecclesiastical jurisdiction in the seventeenth century, women's appearance before the court as either a litigant or a petitioner was rare.

Conclusion

I. Summary of Argument

Women in all areas of the English world sought legal redress before the courts, and English and colonial law allowed women a substantial degree of legal protection. Indeed, as the examples discussed in this study suggest, women were not only aware of their legal rights, but were not afraid to appear before the courts to demand what was due to them under law. While contemporary writers on both sides of the Atlantic exhorted women to be subordinate and obedient, the women who presented testimonies and petitions before the court argued for their own self-interest and for the interests of their families.

A woman's experience before the bar, and the type of case in which she was most likely to be involved, were largely defined by her social and marital status. Young, unmarried women often appeared before the law in criminal prosecutions for illegitimacy, or as witnesses on behalf of or against their masters and mistresses. Women's testimonies in illegitimacy cases were at the center of the attempts of English and colonial authorities to police illicit sexuality, and to keep poor children from falling to the expense of the ratepayers. Yet the low status and harsh conditions of servitude in the Chesapeake placed Maryland women charged with bastardy at a disadvantage. Their indenture contracts prevented them from marrying during their terms of service, and made it impossible for them to leave households in which they were abused or maltreated. However, the testimonies of maidservants appearing before the court suggest that even those women at the bottom of the social hierarchy often had a good working knowledge of their rights under English law.

As a woman progressed through the female life-cycle, the types of cases in which she was likely to be involved changed. As a wife or a widow, she was likely to be involved in civil litigation in cases involving the protection of property, the collection of debts, or the administration of an estate. Women of the elite appeared before the courts to deal with legal issues specific to their status and wealth. The frequent use of jointures and marriage settlements by the elite, which were designed specifically to protect women's property from encroachment by their husbands and relatives, were two major factors that drew these women into litigation. The correspondence, accounts, and inventories of these women also showed them to be adept students of the law, and to be extremely knowledgeable about the cases in which they were involved. Women of middling status, who were frequently involved in litigation concerning estates, also appeared before the law to collect or to pay debts.

As the emphasis on social and marital status in this work suggests, a woman's position within the family and the household was a defining feature of how she interacted with the legal system. Contemporary writers on both sides of the Atlantic stressed the subordinate positions of wives, children, and servants within the patriarchal household. While the testimonies of some women reflected the roles they played within the household, the sphere of women's legal activity was not confined only to their roles as wives, mothers, and grandmothers. Many of the women examined here pursued legal cases purely for their own self-interest, or for their own legal protection. Indeed, some women actively brought suits *against* their family members as they sparred over inheritance and family property.

This study has made two major comparisons between the legal capabilities of women in England and their counterparts in the colonies. First, young, single women who appeared before the law benefited substantially from support networks of friends and family who could speak on their behalf before the court. Women in England and Massachusetts drew from these support networks when they made their testimonies before the magistrates. However, young women in Maryland, most of whom were indentured servants, were isolated from these larger networks of support that were so beneficial to their counterparts in England and New England. The social and demographic contexts of these areas were a decisive factor in determining the legal capabilities of young women charged with illegitimacy, and in the ability of maidservants to bring cases before the courts. In England and New England, balanced gender ratios produced societies shaped by the nuclear family, and young women often had relatives nearby on which they could rely for help. In contrast, in Maryland, the high demand for field labor produced a society in which men significantly outnumbered women in the seventeenth century. As a result, these women were often isolated, and faced the magistrates alone.

Second, while young, unmarried women who appeared before the courts in England and New England had an advantage over their Maryland counterparts, wives and widows who had access to legal jurisdictions outside of the common law had more legal leverage when pursuing cases over inheritance and property. The Court of Chancery, the superior court in equity law, allowed exceptions to the common law doctrine of coverture by allowing women to maintain control of property independently from their husbands. Wealthy, elite women in England and Maryland benefited from the

presence of these courts, which provided them with an alternative to the common law as an avenue for legal redress. Women of the English elite frequently used the Court of Chancery to protect their access to property guaranteed through jointures and marriage settlements. By the end of the seventeenth century, the number of Maryland women appearing before the Court of Chancery seems to have been growing, a fact that points to the increasing importance of equity law in the southern colonies in the eighteenth century. However, the lack of an equity jurisdiction in Massachusetts meant that common law solely defined women's legal relationship to property. As a result, married women in Massachusetts, bound by the doctrine of coverture in common law courts, had few alternatives for legal redress for the protection of inheritance, property, and to collect debts.

The presence of legal jurisdictions other than the common law gave women more avenues for legal redress. Indeed, English women had an additional advantage over their colonial counterparts by having access to the ecclesiastical courts, which allowed married women to appear before the court independently from their husbands. Though English women still appeared in common law courts to sue for debt collection, they comprised only a small portion of the litigants. In contrast, women comprised the majority of plaintiffs in many of the ecclesiastical courts, where they appeared to sue for the right to administer an estate, or for a legacy due to them from a will. In the colonies, the lack of an ecclesiastical jurisdiction in the colonies meant that cases concerning wills and legacies were heard at common law, where women were subject to the doctrine of coverture. As a result, women in the colonies appeared in these cases much less frequently than their English counterparts.

While women in all areas of the English world could appear before the magistrates to plead their cases, women in England benefited substantially from the wider networks of familial support, from shorter service contracts, and from a multi-jurisdictional legal system that provided alternatives to the limitations of common law. Thus, this study suggests two important implications for the historiography of women in England and the colonies. First, it sets English female litigants firmly within the larger context of the rising levels of litigation during the seventeenth century pointed to by historians such as Christopher Brooks and others.[1] Though these historians have seen the Stuart period as an extremely litigious century, the levels of women's participation in this explosion of litigation has been generally understudied. While Tim Stretton and Maria Cioni have examined female litigants in the Elizabethan period, and Laura Gowing has studied women in the ecclesiastical courts up to 1640, to date there is no study of English women's participation in the law throughout the seventeenth century. My sampling of court documents from a variety of English legal jurisdictions throughout the seventeenth century suggests that such a study could be fruitful. While female litigants in England comprised only a portion of the women I examined for this study, the evidence presented here for English women's extensive engagement with the legal system nevertheless offers an important component to the scholarship on the rise of litigation in the seventeenth century.

[1] Christopher Brooks, "Litigation, Participation, and Agency in Seventeenth- and Eighteenth-Century England," in David Lemmings, ed., *The British and Their Laws in the Eighteenth-Century*, (London: Boydell Press, 2005), pp. 155-181. Craig Muldrew, "'A Mutual Assent of her Mind'? Women, Debt, Litigation, and Contract in Early Modern England," *History Workshop Journal*, Vol. 55, No. 1, (Spring, 2003), pp. 47-71.

Second, this study offers an alternative interpretation to the prevailing view of English women in colonial historiography, which has stressed that colonial women enjoyed much more freedom, flexibility, and independence than their English counterparts. In stark contrast to this body of work, I have suggested that English women actually enjoyed a much wider range of legal capabilities than those women who immigrated to the colonies. My contribution to the historiography of colonial women is thus to suggest a more precise interpretation of the capabilities of women in England in relation to women in the colonies.

II. Directions for New Research

One of the goals of this project has been to begin to foster a dialogue between historians of women in England and colonial historians. These two impressively large historiographies have, to date, generally run parallel to each other with few points of intersection. Indeed, while the 3000 legal cases I examined for this study has provided a basis of comparison for women in England and the colonies, my sampling of cases comprises only a tiny minority of the extraordinary number of court records still extant from the seventeenth-century English world. Thus, there is still ample room for comparative studies of women in England and the colonies in the seventeenth century.

From the beginning of my project, I have remained committed to examining women in a broad geographical context and time frame. At the same time, a more focused, localized comparison of women in England and colonies would make a substantial contribution to the historiography by delving deeper into the social and religious contexts. Indeed, at the very beginning of my research, Mary Beth Norton, who was so helpful in framing some of the early ideas for this study, suggested that I focus on

women in Essex, England, and Essex County, Massachusetts. Though I ultimately decided to look at women in the broader Atlantic world, her suggestion for a more localized study has much merit. The large collection of court documents at the Essex Record Office in Chelmsford is an incredibly rich repository for seventeenth-century legal documents. Additionally, the wonderful collection of court documents dealing with Essex County, Massachusetts, held at the Phillips Library in Salem, would provide a helpful counterpoint to the English documents. While I have drawn from both of these collections in this study, these collections are large enough to warrant a more extended and detailed examination of the specific social, religious, and political contexts in which women appeared before the courts.

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