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“INSOLENT AND CONTEMPTUOUS CARRIAGES”: RE-CONCEPTUALIZING
ILLEGITIMACY IN COLONIAL BRITISH AMERICA

by

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A thesis submitted in partial fulfillment
of the requirements for the degree of
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Table of Contents

Abstract		ii
Chapter One	Introduction	1
Chapter Two	Sex, Marriage, and Illegitimacy in the British Colonies	12
Chapter Three	“A World of Wanton Wenches and Potent Patriarchs: Gender Inequities in Bastardy Cases”	25
Chapter Four	“‘The Hazard of Bearing a Bastard was a Hazard of Being a Servant’: Class Dimensions in Colonists’ Understanding of Illegitimacy”	41
Chapter Five	“‘Spurious Issue’ and ‘Abominable Mixtures’: Racial Inequities in the Conceptualization of Colonial Bastardy”	57
Chapter Six	Conclusion	70
Bibliography		73

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ABSTRACT

This Master’s thesis investigates one particular aspect of sexuality in colonial Anglo America—the products of non-marital intercourse. Earlier historical research emphasized the importance of economic considerations in the creation of bastardy laws and the prosecution and punishment for violators of these statutes. Undoubtedly, financial anxieties were a major concern in out-of-wedlock births, but they were only one concern of many. Class, race, and gender dynamics were prominent in colonists’ conceptualization of illegitimacy and largely defined who was at risk for having an “insolent and contemptuous carriage” and the resulting punishment for the debauched act. Elite, white officials made women, servants, and Africans increasingly vulnerable to bastardy prosecution, thereby, marginalizing a large segment of the colonial populace.

Gendered relations, class biases, and racial inequities structured colonial society, and, therefore, merit consideration in a study of illegitimacy. This research aims to culturally describe and analyze bastardy within the context of the Chesapeake and New England regions. There is more to the study of colonial illegitimacy than economic concerns. Thus, applying cultural factors to a study on colonial bastardy further explores one of the many concerns that influenced colonists’ understanding of illegitimacy.

Chapter One

Introduction

During a routine December day in 1656 at Maryland's Kent Island County Court House, two court members became ensnared in a heated war of words. Thomas Ringgold and Joseph Wickes shouted insults at one another in front of a courtroom audience. A verdict finding Wickes guilty of impregnating Mary Hartwell, a Virginia widow, with an illegitimate child initiated the barrage of words between him and Ringgold. According to one witness, Ringgold lambasted Wickes, declaring "it was not fitting Any whore Master should sett at Table There [preside as a member of the court]." In response to this assault against his masculinity, Wickes proclaimed "it was better [to] be a whore Master Then A Thiefe as he [Ringgold] was."¹

As evidenced by the uproar over Wickes' depraved act, bastardy was a base condition that elicited opprobrium and dishonor. Siring an illegitimate child was a criminal act in British America that imperiled an individual's reputation. Joseph Wickes, a respectable court magistrate, faced rebuke and a potential loss of status for

The title originates in part from the following passage in the *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, Vol. 2 (Boston: The County of Suffolk, 1904), 93: "George Hurne is Comited to bee layd in irons and to be whipped tomorrow for his insolent and contemptuous carriage." The words "insolent carriage" and "contemptuous carriage" are used synonymously with illegitimate births in this study.

¹ Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," in the *William and Mary Quarterly*, 3rd Series, 44:1 (1987), 15-16. Norton relies on William Hand Browne, ed., *Archives of Maryland: Proceedings and Acts of the General Assembly of Maryland* (Baltimore: Maryland Historical Society, 1883-1912), Vol. LIV, 85-86; Vol. X 493. See also Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 337. Norton explained that Mr. Wickes hastily married Mary Hartwell, thereby allowing him to avoid serious consequences barring a temporary suspension from his position in the court.

impregnating a woman outside the confines of marriage. Before considering why bastardy precipitated an outpouring of disdain and shame, it is first necessary to define the term. Defining illegitimacy is tenuous because its meaning changes according to customs, culture, location, time, and numerous other variables. With this disclaimer in mind, this study describes an illegitimate child as progeny whose conception and birth transgressed the institutional rules that governed society, including the norms of reproduction. Simply put, bastardy refers to offspring whose parents were not married at the time of their carnal engagement.² These progeny were illegitimate because their birth violated the law and/or established custom. Colonial authorities lumped bastards with a “motley crowd” of whores, thieves, beggars, and other reprehensible people who composed a throng of miscreants.³ Clearly, bastardy fostered outrage among colonists, yet the reasons behind the contempt and anger were less apparent.

This Master’s thesis contends that cultural factors, such as class, race, and gender, influenced British colonists’ understanding of bastardy and shaped lawmakers’ efforts to combat and discipline the transgression. Courts effectively used the language of economics to veil social inequities in the construction of illegitimacy. This is not to deny the importance of economic motivations, which served a prominent role. Yet social dynamics also figured prominently into whom courts targeted for conceiving a child out

² Jenny Teichman, *Illegitimacy: An Examination of Bastardy* (New York: Cornell University Press, 1982), 80. Southern colonies were more lenient about the exact time that sex occurred, as long as the parents were married prior to the child’s birth. Conversely, Puritans considered offspring who were conceived before their parents’ marriage illegitimate, even if the parents wedded before the birth of the child.

³ Peter Laslett, Karla Oosterveen, and Richard M. Smith, editors, *Bastardy and Its Contemporary History: Studies in the history of illegitimacy and marital nonconformism in Britain, France, Germany, Sweden, North America, Jamaica and Japan* (Cambridge: Harvard University Press, 1980), 71. In Chapter Two, Alan Macfarlane quoted Kingsley Davis’s “Illegitimacy and the social structure” (page 21).

of wedlock and the punishment the couple received.⁴ Lawmakers throughout colonial America crafted discriminatory bastardy laws to buttress their own authority, as they subjected others to a more rigorous enforcement of these rulings. As a result of both financial and social issues, elites ensured that women, subservient classes, and non-white colonists would suffer the most from bastardy laws because of their diminished economic means and lack of recourse to challenge white, male hegemony.⁵

The words “legitimate” and “illegitimate” differentiate between births that conformed to societal values and distinguish those children whose arrival into the world marked an infringement of the law and a direct challenge to institutional authority. Bastardy is culturally constructed, meaning that it is contingent upon the historical period, ruling institutions, and social forces. Therefore, non-marital births represented something different to each community.⁶ Since this study more broadly focuses on the British colonies in general (primarily dealing with Virginia, Maryland, South Carolina,

⁴ Else K. 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, 2001), 118-20. Hambleton claimed that she “would agree that economic factors played a major role in determining rates, but cultural factors are also important.”

⁵ A few notes on terminology. Puritan region and New England are used interchangeably in this study. This does not mean that every inhabitant of New England was a Puritan. Though not everyone living in New England was a Puritan, all inhabitants, regardless of religious beliefs, had to obey the region’s governing officials who were Puritans. Puritans shaped and ruled New England society, regardless of the fact that many of its residents were not “saints.” Furthermore, the expressions Anglo, European, English, and white all refer to someone with white skin color and of Anglo-Saxon descent. Moreover, the terms servant, indentured laborers, bonded laborers, and house maids all imply that an individual was of the subservient class. The word “slave” is used sparingly because the institution of slavery did not technically develop until the end of the seventeenth century. Since this paper deals with the mid to late seventeenth century, the line between slave and servant crosses several times. Before slavery became codified (1690s), it was common for both whites and blacks to serve as indentured laborers. For more information on race and class, see Kirsten Fischer’s recently published book, *Suspect Relations*.

⁶ Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (New York: Manchester University Press, 1996), 4; Ann Twinam, *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford: Stanford University Press, 1999), 128. For instance, officials in colonial Spanish America provided for the legitimization of bastard children if their parents eventually married, yet no such system existed in the British colonies. A system similar to that of the Spanish colonies existed in Scotland as well. See Rosalind Mitchson and Leah Leneman, *Sexuality and Social Control: Scotland 1660-1780* (New York: Basil Blackwell, 1989), 79.

North Carolina, Connecticut, and Massachusetts), which means that there is not a single conceptualization of illegitimacy that applies equally to all colonists. There were, however, certain beliefs about bastardy that were endemic to all colonies. Rather than compare and contrast the New England and Chesapeake regions, this research highlights similarities and differences between colonies themselves with minimal regard to regional geography.

Before the infusion of social dynamics into bastardy laws, governing officials and colonists alike viewed fornication and illegitimate children as sinful and immoral transgressions that endangered the most important social unit in British America—the family. Court officials passed laws aimed at preserving families, punishing sin, and encouraging morality through public example.⁷ Economic considerations, however, gradually supplanted ethical behavior in the regulation of bastardy, emerging earlier in the Chesapeake than in New England. For instance, Virginia lawmakers relegated matters of morality to the churches, while they focused upon issues of politics, law, and economics. Bastardy cases remained the only type of fornication that Virginia courts continued to prosecute, primarily due to their financial impact. Between 1694 and 1770, there were only seven presentations for non-marital sexual intercourse in Richmond County (Virginia) courts, while numerous single women appeared before judges on bastardy charges.⁸ Historians use this information and other similar data to delineate

⁷ Christine Daniels and Michael V. Kennedy, ed., *Over the Threshold: Intimate Violence in Early America* (New York: Routledge, 1999), 176. See also Laslett, Oosterveen, and Smith, *Bastardy and its Comparative History*, 355. See Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca: Cornell University Press, 2002), 113.

⁸ Peter Charles Hoffer and William B. Scott, eds., *Criminal Proceedings in Colonial Virginia: Richmond County, 1710-1754*, in *American Legal Records* series, vol. 10 (Athens: The University of Georgia Press, 1984), X. See also Lee Gladwin, “Tobacco and Sex: Some Factors Affecting Non-Marital Sexual Behavior in Colonial Virginia,” *Journal of Social History* 12, no. 1 (1978), 69. By the end of the seventeenth century, few lawmakers felt compelled to stamp out non-marital sex. If the intimate act bore fruit,

between illicit sex and illegitimate offspring as evidence of the change from a moral to an economic paradigm in bastardy cases.

Scholars generally have considered monetary concerns as the major stimulus for lawmakers' development and enforcement of bastardy laws. In 1938, Julia Cherry Spruill argued that court justices were more concerned with finding someone to defray the pecuniary costs associated with bastard children than the "preservation of morality for its own sake." Spruill believed that judges were more intent on ensuring the financial security of bastard offspring than punishing the parents for fornicating. Spruill's contention that financial motives drove bastardy prosecutions was corroborated by other historians throughout the remainder of the twentieth century.

Nearly forty years after Spruill's watershed work, G. R. Quaife claimed: "Economics, not morality, was the prime consideration of the parish." Quaife's analysis of the correlation between financial motives and bastardy prosecutions focused in England, though it was representative of colonial America as well. Lawrence Stone, also an English historian, contended that the prime reason for authorities' harsh treatment of illegitimacy was due to its financial "drain" on the parish. John Demos described a comparable situation in the Plymouth colony. Demos explained that officials took steps to limit illegitimacy because of bastard children's economic strain on the community, while he downplayed the role of morality and other social factors in the decision to crackdown on non-marital births. For example, Plymouth authorities attempted to uncover the child's paternity, because if the father remained anonymous and the mother was destitute, the parish had to defray the expense of illegitimate offspring. Quaife,

however, authorities were likely to punish the woman. This explains why many single women appeared before the court on charges of bastardy, but relatively few faced prosecution for illicit sex.

Stone, and Demos performed their research in the mid to late 1970s, a time of dynamic change in the writing and theorizing of history. Interestingly, the views of Quaife, Stone, and Demos on bastardy remained consistent with earlier scholarship, as they contemplated economics concerns while excluding social factors.

Despite the proliferation of social and cultural history in the 1980s and 1990s, historians continued to deal with illegitimacy in a fashion similar to the pioneers of the study more than a half century ago. In a 1980 cross-cultural analysis of bastardy, Robert Wells explained that the motive behind punishing illicit carriages was to limit the number of offspring chargeable to the parish. Wells continued that the economic implications of bastardy were of the utmost significance. Mark Jackson also substantiated bastardy's monetary strain on the parish. He claimed that the fiscal stress on the community was more important to legislators than the belief that bastardy was to "the great Dishonour of Almighty God." Holding views similar to Stone and Jackson, Helena Wall emphasized financial considerations above all others. According to Wall, Virginia officials' foremost goal was to prevent illegitimate offspring from ruining the financial solvency of the parish.⁹

Though most historians in the 1980s and 1990s dealt with bastardy in a matter similar to their predecessors, there were some paradigm changes in the works. In 1982,

⁹ Julia Cherry Spruill, *Women's Life and Work in the Southern Colonies* (New York: W. W. Norton & Company, 1972), 176-77, 315; G. R. Quaife *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick: Rutgers University Press, 1979), 245; Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1977), 324-25; Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 355-56; Mark Jackson's *New-Born Child Murder: Women, Illegitimacy, and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996), 30, 130; Helena M. Wall, *Fierce Communion: Family and Communion in Early America* (Cambridge: Harvard University Press, 1990), 65; John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York: Oxford University Press, 1970), 152-53. See also John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2003), 128; Fischer, *Suspect Relations*, 102; Gladwin, "Tobacco and Sex," 69. There are many more books that could be referenced, yet because they reach similar conclusions, the above historiography will suffice.

Jenny Teichman completed an influential study of illegitimacy. She explored bastardy in a theoretical framework, defining the criteria for who is a bastard and explaining authorities' motives for differentiating between "legitimate" and "illegitimate." Teichman argued that the regulation of sex was a form of social control.¹⁰ Colonial authorities' active regulation of childbirth rewarded those who conformed to social institutions' idea of the proper channels for marriage and reproduction. Colonial officials' policing of children's birth status figured prominently into a hierarchal social structure. Moreover, in a recent study of colonial North Carolina, Kirsten Fischer used sexual relations as an arena to discuss race. Fischer challenged the work of prior historians who studied the relationship between sex and cultural factors. Despite offering a fresh look at colonial sexuality, Fischer stressed the importance of monetary concerns in bastardy trials, thereby continuing the long historiographical tradition started by Julia Spruill.¹¹

Scholars have pointed to the financial solvency of parishes as the impetus for prosecuting bastardy. Undeniably, economic considerations were significant. Historians' treatment of bastardy, however, suffers from their disregard of cultural factors, which profoundly shaped colonists' understanding of insolent carriages. This study will focus less on financial considerations and, instead, rely upon social factors to account for colonists' conceptualization of bastardy. Identifying financial motives as a monocausal explanation of bastardy ignores the complexity of the topic. Peter Laslett contended that bastardy resulted from "an interplay of factors" rather than a single cause. To more completely address illegitimacy, Richard Adair stressed the need for casting a wider net

¹⁰ A similar claim will be made about the intrusiveness of bastardy laws in this thesis.

¹¹ Teichman, *Illegitimacy*, 1-10; Fischer, *Suspect Relations*, 1-11.

when discussing it. There exists no theory persuasive enough to explain bastardy that does not incorporate the “kaleidoscopic and multifaceted” nature of the subject.¹²

Cultural dynamics, such as race, class, and gender, are noteworthy forces that impact and shape the past, thereby, meriting further scholarly inquiry. These social factors deserve due consideration within the context of illegitimacy in colonial British America.

While bastardy is a useful tool of historical analysis, the study of illegitimacy must be conducted with caution. Colonial records are episodic and partial, providing scholars with fragmentary evidence.¹³ Historians must make sense out of these incomplete accounts to construct meaning. To no scholar’s surprise, historical sources are often flawed. Further complicating the study of bastardy is its clandestine and controversial nature, which makes the historical record even more difficult to navigate. Court records contain numerous inconsistencies, but none more glaring than the problem of confusing bastardy with other forms of sexual misbehavior (non-marital intercourse, slander cases, common law marriages, adulterous relations, illicit sexuality, etc.). Court proceedings often identify all forms of unlawful copulation simply as fornication. For example, in Robert Wells’s study of illegitimacy in colonial America, there was a county record consisting of eleven cases of sexual misconduct and only one of these cases directly involved bastardy. The numerous obstacles to the study of bastardy is a

¹² Peter Laslett, *Family Life and Illicit Love in Earlier Generations: Essays in Historical Sociology* (Cambridge: Cambridge University Press, 1977), 108; Adair, *Courtship, Illegitimacy and Marriage in Early Modern England*, 227.

¹³ Lawrence Stone *Uncertain Unions Marriage in England, 1660-1753* (New York: Oxford University Press, 1992), 7. Stone writes: “The actors in this drama [the past] emerge from the shadows; strut a while upon the stage; expose in intimate detail a story which may cover only a few years or decades of their lives up to that moment; and then once the trial is over, abruptly vanish into the darkness of unrecorded history.”

motivating force to further investigate the topic, for the subject is worthy of historical analysis.¹⁴

Another problem facing scholars dealing with non-marital births is that many bastard children were never formally labeled illegitimate. Most bastards were never baptized, which meant that their illicit status remained obscured. Moreover, there stood a very real chance that illegitimate progeny would not survive childbirth. The risks for miscarriage and stillbirth were elevated. Even a successful delivery did not end the precarious situation for newborns, who continued to face the prospects of death in their first years of life.¹⁵ Incidences of mothers who disposed of their socially-tabooed child by either infanticide or abortion also skew the records of illegitimate births.¹⁶ Without knowing how many women employed these techniques, historians cannot accurately quantify the number of illegitimate children. The secrecy and deception associated with illegitimacy make statistical figures tenuous and uncertain, thus minimizing their presence in this study. Instead, primary accounts and a theoretical framework are relied upon to explore and explain why social factors influenced what constituted a bastard and the punishment meted out to forbearers of illegitimate children.

¹⁴ Laslett, Oosterveen, and Smith, *Bastardy and Its Contemporary History*, 352.

¹⁵ Quaife, *Wanton Wenches and Wayward Wives*, 203.

¹⁶ For the most complete accounts on infanticide and abortion, see Jackson, *New-Born Child Murder*, all pages; Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village" *William and Mary Quarterly*, 3rd Series, 48:1 (1991): 19-49; and Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981). For additional information see Kirsten Fischer, *Suspect Relations*, 105; Irmina Wawrzyczek, "The Women of Accomack Versus Henry Smith: Gender, Legal Recourse, and the Social Order in Seventeenth-Century Virginia," in *Virginia Magazine of History and Biography*, 105:1 (1997), 10, 13-14; James Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill: The University of North Carolina Press, 1994), 358; Stone, *The Family, Sex and Marriage*, 401; Antonia Fraser, *The Weaker Vessel* (New York: Alfred A. Knopf, 1984), 66-67; Spruill, *Women's Life and Labor*, 323, 325-26; and John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row Publishers, 1988), 34.

Before launching into a discussion of cultural issues and bastardy, the following chapter takes a more general look at sex, marriage, and illegitimacy in the British colonies. Chapter Two provides background information on colonists' understanding of copulation and beliefs about carnal involvement. Moreover, an examination of marriage in the colonial context complements colonists' views of intimacy. Marriage is inherently linked to illegitimacy because the delineation between "legitimate" and "illegitimate" rests on the parents' marital status. This chapter concludes with a look at bastardy in British America, focusing on issues such as frequency, punishment of the transgression, and differences between the colonies.

The correlation between gender, class, and race and bastardy cases will be dealt with respectively in Chapters Three, Four, and Five. The decision to separate gender, class, and race into their own chapters was strictly for organizational purposes. These social factors overlap and are related and, therefore, should not be thought of as isolated dynamics.¹⁷ The chapter on gender considers women's increased vulnerability to bastardy charges, while it explores men's ability to evade punitive measures. Primary source material reveals that women were punished more frequently and severely than their male counterparts for committing the same transgression. Discrimination based on social status also occurred within bastardy cases. Chapter Four investigates the role of class-based issues in courts' handling and punishment of illegitimacy. Juxtaposing the increased probability of servants suffering punitive measures for bearing illegitimate fruit with privileged men's ability to contravene the bounds of proper sex with minimal fear of punishment illustrates social rank biases. Along with gender and class inequities, many

¹⁷ Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: The University of North Carolina Press, 1996), 4.

colonists endured the injustices of racial prejudices. Chapter Five examines the role of skin color on judges' response to and penalties for bearing a child outside of marriage. Men of reputation and wealth crossed the racial divide in pursuit of female partners without fear of rebuke or punishment. Conversely, white women who fornicated with non-whites faced severe and swift penalties. For instance, Virginia officials banished white women who were intimately involved with an African from the British mainland colonies. Similarly, men of color who participated in an interracial relationship endured stiff and often brutal punishments for their actions. Courts, however, seldom castigated non-white women for miscegenation. Chapter Five explores the dynamics of miscegenation in the colonial era and applies racial inequities to the study of bastardy.

Chapter Two

Sex, Marriage, and Illegitimacy in the British Colonies

Sexual intimacy was a central part of colonial life. Individuals frequently familiarized themselves with the illicit pleasures of the opposite sex. These sexual rendezvous occurred in localities that dotted the colonial landscape, including places such as crowded, single-room dwellings, barnyards, and slave quarters. These cramped and unpleasant venues did not deter couples from copulating. Children grew up hearing cries of ecstasy emanating from their parents' sexual intercourse in the nighttime hours. The half-muffled erotic sounds filling the air and cramped living quarters guaranteed that most children possessed first-hand knowledge of procreation. Michel Foucault described the seventeenth and eighteenth centuries as a time when "bodies made a display of themselves."¹⁸

To limit carnal excesses, religious officials narrowly defined appropriate sexual relations. Acceptable copulation occurred only if a number of conditions were met. Every detail was of concern to governing officials, including the timing of coitus. Sexual relations were not supposed to occur on certain days of religious significance or to take place during particular physiological conditions (i.e. menstruation, pregnancy, or following a recent childbirth). Regulation of sexual positions was another point of interest (or control) to clergy. Missionary style was the only sanctioned way for couples

¹⁸ Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Vintage Books, 1991), 95. Michel Foucault, *The History of Sexuality*, Volume 1: An Introduction, translated by Robert Hurley (New York: Vintage Books, 1990), 3.

to have intercourse. Authorities' foremost concern with intimate behavior was that it occurred solely between married partners.¹⁹

Officials in both New England and the Chesapeake mandated that copulation happens only within the confines of marriage. In terms of controlling sexuality, the regions resembled each other more than they differed. There were a few factors, however, that specifically affected sexual patterns in the Chesapeake. Most importantly, the Southern colonies experienced a gender imbalance, with nearly four men for every one woman. With a shortage of suitable marriage partners, men had a difficult time finding women to satisfy their sexual desires. Conversely, women found the gender disparity empowering. An overabundance of men afforded Chesapeake women with greater marriage opportunities than their Puritan counterparts. Another demographic factor that affected sexual relations was the deluge of indentured servants arriving on the eastern shores. Lawmakers did not allow bonded men and women to marry (unless they had their master's permission), which further reduced the pool of eligible marriage partners. Additionally, colonists were widely dispersed across the colonial landscape. The distance separating individuals made it more difficult for Chesapeake residents to find sexual partners. Many colonists chose to engage in illicit affairs because marriage options were limited and the prospects of getting caught were low (the sparsely populated community was not conducive to effective supervision). As long as these relationships were kept quiet and did not threaten the social hierarchy, lawmakers generally ignored these unlawful acts. Though initially opposed to non-marital intimate relations, New England officials also grew less concerned with the debauched relations after the 1660s. By the end of the seventeenth century, the regions' response to illegitimacy grew

¹⁹ Quaipe *Wanton Wenches and Wayward Wives*, 38.

increasingly similar, though differences continued to exist between and within the Chesapeake and New England.²⁰

Defining sexuality in British America is inherently complicated and nuanced, as colonists' views on intimacy existed within a broad continuum of ideas and attitudes. At one end of the spectrum were the "evangelicals" who emphasized sexual repression. For instance, a dogmatic minister condemned copulation as a "base and contemptible thing" that beasts would "naturally abhorre" if there were not physical pleasure in it. A "genteel" model of sexuality represented the opposite end of the spectrum. This paradigm provided for the open expressions of desire and mirrored European libertinism, as personified by the self-indulgent rakes. In between these two extremes were moderate Protestants that confirmed the importance of intercourse, but advocated moderation within carnal affairs.²¹ Court records reveal that colonists, including Puritans, possessed a familiarity with the sins of the flesh, suggesting that they were neither prudish nor sexually ascetic. Colonists accepted that physical intimacy was an essential aspect of life, yet they approached sexual relations with ambivalence and anxiety.²²

Pleasures of the flesh were necessary for procreation, and, therefore, responsible for populating the colonial landscape. The "use of the Marriage Bed" was "founded in mans Nature" and it served as the only appropriate avenue for sexual gratification. Colonial officials understood the necessity of intercourse and expected nuptials to

²⁰ D'Emilio and Freedman, *Intimate Matters*, 9-14.

²¹ Philip J. Greven, Jr., *The Protestant Temperament: Patterns of Child-Rearing, Religious Experience, and the Self in Early America* (New York: Alfred Knopf, 1977), 248, 314, 316; See also D'Emilio and Freedman, *Intimate Matters*, 19.

²² Francis J. Bremer, *The Puritan Experiment: New England Society from Bradford to Edwards* (New York: St. Martin's Press, 1976), 114. See also Edmund Leites, *The Puritan Conscience and Modern Sexuality* (New Haven: Yale University Press, 1986).

properly channel it.²³ Ministers hoped that wedded couples experienced sexual fulfillment because colonists believed that both partners had to orgasm to conceive a child. Moreover, unsatisfied marriage partners had a greater proclivity to commit adultery. Puritans and other colonists alike believed that if lustful cravings were pent up, in time they would explode with detrimental consequence. When faced with an epidemic of sexual misconduct, Plymouth Governor William Bradford explained that when society suppresses matters of the flesh there remains an underlying desire to engage in illicit behavior. He compared restrained sexuality to dammed up water—once it “get[s] passage they flow with more violence, and make more noys and disturbance, then when they are suffered to rune quietly in their owne channels.”²⁴

Colonists believed that intercourse served a higher good, for it glorified God. Each experience, including coitus, was of, by, and for God. For Puritans, the central objective of life was to exalt the Almighty and earthly pleasures had to complement this goal, not hinder it. One Protestant minister warned married couples not to become “so transported with affection” that they consider “no higher end than marriage itself.” While excesses between wedded couples concerned religious officials, sensual transgressions outside of marriage disappointed and infuriated spiritual leaders. Non-marital intercourse was an egregious sin against God, a blatant violation of the law, and a direct challenge to the authority of governing and religious officials. Clergy condemned fornication because it threatened familial stability—the bedrock of colonial life. The family provided the

²³ Edward Taylor, *Commonplace-book, 1638-1725* (Massachusetts Historical Society, Archival Material). As quoted in Edmund S. Morgan, “The Puritans and Sex,” in *The New England Quarterly*, 15:4 (1942), 592-92.

²⁴ William Bradford, *History of Plymouth Plantation, 1620-1647*, Vol. 2 (New York: Russell & Russell, 1912), 309.

means to transfer property, instill values, and maintain order. Governing officials agreed that sexual intercourse outside of marriage must be prohibited.²⁵

Community, church, and courts alike made a concerted effort to restrict sex to only married couples, thus limiting illegitimate marriages. Marriage was the quintessential element of colonial society, for it was the only natural state for man and woman. Nuptials were intricately defined and involved set procedures. A minister had to perform the service; otherwise the union was unofficial and unlawful. For those couples wishing to unite, authorities required them to publicly announce their plans. Virginia officials mandated that the partners publicize their “bannes.”²⁶ Massachusetts enacted similar legislation, demanding “noe psons shalbee joyned in marriage” before the intention of the parties to marry was “published at some time of publike lecture or towne meeting” in plain sight for at least fourteen days.²⁷ Another obstacle to marriage was partners’ responsibility to secure a marriage license. If these procedures were not strictly adhered, colonial officials did not sanction the pair’s vows. An unofficial marriage left a couple vulnerable to fornication charges and, if they conceived a child together, they were likely to stand trial for bastardy.

While marriage was necessary for legitimate sexual relations, its functionality extended beyond the bedroom. Happily wedded couples were the surest way to prevent

²⁵ Michael Zuckerman, “Pilgrims in the Wilderness: Community, Modernity, and the Maypole at Merry Mount” in *The New England Quarterly*, 50:2 (1977), 265; Morgan, “The Puritans and Sex,” 593-94; Merrill D. Smith, *Sex and Sexuality in Early America* (New York: W. W. Norton & Company, 1972), 87. Though their efforts varied by location and time period, colonial leaders in both New England and the Chesapeake sought to channel sexual intimacy into the confines of marriage.

²⁶ William Waller Hening, *The Statutes at Large: Being a Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619*, Vol. 2, (Charlottesville: University Press of Virginia, 1969), 50-51.

²⁷ Nathaniel Shurtleff, *Records of the Governor and Company of Massachusetts Bay in New England*, Vol. 1 (Boston: The Press of William White, 1853), 275; *The Colonial Laws of Massachusetts. Reprinted from the Edition of 1660 with the Supplements to 1672. Containing also the Body of Liberties of 1641* (Boston: Published by order of the City Council of Boston, under the Supervision of William H. Whitmore, Record Commissioner, 1889), 171-72.

non-marital sexual escapades and others forms of illicit carnality.²⁸ The spoken vows shared between husband and wife created a familial unit to raise and care for progeny. Moreover, wedded couples maintained a mutual support system; thereby, providing stability and a modicum of financial security in a precarious world.²⁹ The parents' marital status was the deciding factor when differentiating between legitimate and illegitimate children. A foremost goal of matrimony was to validate intimate behavior, which resulted in socially acceptable offspring. Alternatively, sexual intercourse outside of marriage was a sinful transgression that eroded moral purity and distanced individuals from God's grace.³⁰

Within the patriarchal social structure of British America, men found an added use for marriage. The patriarchal status of a husband/father ensured that he had unfettered access to his wife's body, domination over his family and labor supply, and the right to control and punish members of his household.³¹ As husband and wife, a man's power went unchecked in colonial households, as the woman submissively followed orders. Matrimony ensured the continuation of male lineage, preserved a man's private property, and supplemented the husband's wealth and power by transferring to him all of his wife's land claims. Moreover, a child's paternity was uncertain if couples were not in a monogamous union. A colonial court warned in 1654 that when couples "live together like man and wife one can never know when the woman will again be pregnant by him."

²⁸ Morgan, "The Puritans and Sex," 604.

²⁹ Teichman, *Illegitimacy*, 83. Jenny Teichman defines marriage as "a relationship between a man and a woman such that the children born to the woman are recognized as the legitimate offspring of both parents." Teichman outlined four characteristics of marriage: (1) marriage sanctions sexual intercourse; (2) marriage sanctions reproduction; (3) marriage is an economic and domestic arrangement designed for the support and maintenance of children; and (4) marriage is a mutual support system designed for the maintenance of the married partners.

³⁰ D'Emilio and Freedman, *Intimate Matters*, 4, 38; Stone, *Uncertain Unions*, 17.

³¹ Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 3-5. Brown explains that patriarchy was a "highly contested form of domestic authority." See also Norton, *Founding Mothers & Fathers*, 5

Following the public recital of vows, a married man could confidently assert the legitimacy of his children and the continuation of his surname.³²

Thus far this chapter has focused on intimacy and nuptials in the British colonies; the conversation now turns to the fruits of copulation outside of marriage. To appreciate colonial authorities' reaction to and handling of bastardy cases, it is necessary to consider the frequency of unlawful births. The efforts by ministers and lawmakers to prevent illegitimacy achieved mixed results. Evidence shows that these officials were able to limit insolent carriages, though they were unable to eliminate them completely.³³ The fear of public ignominy and corporal punishment was so great that it usually attenuated colonists' libido. In a study of seventeenth-century Essex County, Massachusetts, Else Hambleton found that there were 126 documented non-marital pregnancies in this New England county during a fifty-two year period. Considering the ineffectiveness of birth control and primitive state of abortive techniques, the birth of 126 bastards was relatively few (naturally not all illicit carriages were recorded). Essex County was not an anomaly, for a number of other counties throughout Anglo America also had relatively low numbers of non-marital births according to their historical records. In Rowley, Massachusetts, the illegitimacy rate was roughly two percent between the years 1640 and 1692, with the number increasing to three percent as the seventeenth century ended.³⁴

³² Stone, *The Family, Sex and Marriage in England, 1500-1800*, 37; A.J.F. Van Laer, ed., *Minutes of the Court of Fort Orange and Beverwyck, 1652-1660* (Albany: University of the State of New York, 1920-1923), 189, as quoted in Wall, *Fierce Communion*, 65. For more on the transfer of private property see Robert C. Tucker, ed., *The Marx-Engels Reader*, 2nd edition (New York: W. W. Norton & Company, 1978), 81-93, 159-60.

³³ See Morgan, "The Puritans and Sex," 591, 595-96. Morgan contends that "illicit sexual intercourse was fairly common" and that it was so frequent in fact, that Puritans "became inured to sexual offenses." Morgan explained that Puritans could tolerate such misconduct because humankind was flawed since the fall of Adam.

³⁴ Hambleton, "The World Fill'd with a Generation of Bastards," 81-82, 343. While this study is important, the actual number of bastards may bear little resemblance to Hambleton's statistics. It is impossible to

Similarly, the illegitimacy rate in Prince Georges County, Maryland, in the years from 1696 to 1699, came in nearly equal at 2.6 bastards per 100 births.³⁵

The paucity of recorded bastardy cases suggests two possible rationales. First, colonists who surrendered to the temptations of the flesh attempted to conceal their contraventions. Thus, colonial officials and judges failed to uncover an unknown number of non-marital births. For instance, in 1654, Martha absconded from New Haven after conceiving a child out-of-wedlock. To “avoyde the shame” of bearing a bastard, Martha and her sexual partner, John Richardson, covered up their liaison by moving to Boston.³⁶ Colonists who used this tactic and a host of others, such as concealed births, bribery, abortions, and infanticide, found a degree of success in their endeavors based upon the dearth of seventeenth-century illegitimate births that appear in trial records.³⁷ An alternative explanation to the low number of bastard births was that the consequences were so harsh that colonists decided the risks were not worth it. Many colonists preferred abstinence over the stern punishments meted out to bastard bearers. Effective methods of

account for the number of illegitimate that remained concealed and unknown to the community. Additionally, there is no telling how many bastard progeny died during or after birth, whether intentionally or accidentally.

³⁵ Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 354; D’Emilio and Freedman, *Intimate Matters*, 33. The middle colonies (New York, New Jersey, Pennsylvania, and Delaware) experienced far fewer bastardy cases than its neighbors to the north and south. Between 1693 and 1707, only one in a thousand births occurred out of wedlock in Albany, New York. The first documented illegitimate offspring in Quaker congregations did not appear until 1780.

³⁶ Charles J. Hoadly, ed., *Records of the Colony or Jurisdiction of New Haven, from May, 1653, to the Union* (Hartford, 1858), 122-23. See Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: The University of North Carolina Press, 1995), 175. Upon their return to New Haven, rumors surfaced about their illicit affair. Consequently, Martha and John faced criminal charges.

³⁷ Roger Thompson, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst: The University of Massachusetts Press, 1986), 29. Thompson discussed a wide variety of methods used to cover up an illegitimate birth. In addition to the ones already mentioned, Thompson explained other strategies including, deceiving midwives, paying midwives to lie about the child’s condition, bribing officials, agreeing to tricked marriages, and remaining within private accommodations when pregnant. Thompson’s study of the Middlesex County records reveal that colonists became increasing reliant on these deceptive tactics during the second half of the seventeenth century.

veiling pregnancies and fear of repercussions largely explain why bastardy cases did not saturate colonial court records.

Puritan officials better monitored intimate behavior than their counterparts in the Southern colonies, increasing their likelihood of discovering women who got big with child outside of marriage. Colonial settlement was more dispersed in the Chesapeake, making efforts to regulate sexual conduct a Herculean task. The rural character and sparse population of Southern colonies provided ample opportunities for individuals to satiate their sex drive without fear of getting caught. Furthermore, Chesapeake inhabitants had access to African women, who were unlikely to disclose the wrongdoings of white men. New England towns proved more conducive to supervising private matters because of the neighbors' proximity to each other. Thus, New England authorities were more likely to uncover carnal misbehavior than their Chesapeake counterparts.³⁸

Initially, all colonies adamantly opposed sexual misconduct and desperately tried to curb immoral activity. As early as 1612, William Strachey, a chronicler and governing official, articulated Virginia's opposition to fornication. Stern punishments were in place for those who violated sexual mores. Virginia officials punished an early seventeenth-century couple for copulating outside of marriage by forcing the pair to stand upon a stool in the middle of church with a white wand in hand.³⁹ In 1619, the House of Burgesses, Virginia's representative assembly, met for the first time. Among the legislative body's first actions was instructing ministers and churchwardens to "seeke to presente all ungodly disorders." Fornication was among these "disorders" that officials

³⁸ D'Emilio and Freedman, *Intimate Matters*, 12.

³⁹ Gladwin, "Tobacco and Sex," 69.

attempted to stamp out during the early years of colonization.⁴⁰ Up until the mid-seventeenth century, Chesapeake courts regularly punished moral transgressions with swift and stern justice. As the Southern population grew and dispersed westward in the second half of the seventeenth century, efforts to prosecute sexual misconduct declined. For example, Mabel Hackney, daughter of William and Elizabeth Hackney, grew fond of her neighbor, Francis Dodson. Unfortunately for Mabel, the object of her affection was already spoken for. Dodson's wife and family, however, did not dissuade Mabel from copulating with him. Their illicit relationship resulted in a pregnancy. To avoid public humiliation and legal charges, William Hackney married his daughter off to Nicholas Paine. The solution worked; there were no charges brought against either Mabel or Francis. In the time between the examples of William Strachey (1612) and Mabel Hackney (1687), Virginia courts grew less concerned with unlawful sexuality, especially when it involved non-bonded white colonists whose child did not pose a financial burden to the parish.⁴¹

Generally, the courts in the mother country and the Chesapeake region rendered more lenient sentences in response to carnal misbehavior than did New England judges. This is not to say that these courts allowed for illicit affairs and impropriety to go unchecked. Similar to their New England counterparts, Southern colonists considered serious sexual crimes, such as bastardy, rape, sodomy, and buggery, as grounds for

⁴⁰ Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 356.

⁴¹ Darrett B. Rutman and Anita H. Rutman, *A Place in Time: Middlesex County, Virginia, 1650-1750* (New York: W. W. Norton & Company, 1984), 121.

prosecution. Yet Chesapeake courts had a tendency to prosecute fewer people for a smaller number of crimes and in a less severe manner than did the Puritan legal system.⁴²

By the end of the colonial era, New England courts dealt with sexual immorality in a fashion similar to Southern judges' reaction to the transgression. During the seventeenth century and the early part of the eighteenth century, however, Puritan officials maintained an arsenal of punishments for those who engaged in non-marital sex. Puritan judges handed down sentences ranging from "enjoying [couples] to marriage, or fine, or corporall punishm^t," or some combination of these punitive measures. The penalty for sexual misconduct was somewhat arbitrary because Puritans believed that the real punishment was spending an eternity in hell.⁴³ The Plymouth colony dealt with improper sensuality quite similar to the neighboring Puritans. Separatist officials ensured that both guilty partners faced retribution, which usually entailed a public whipping or a fine of ten pounds.⁴⁴ Puritans and Pilgrims' reaction to fornication in the seventeenth century was more stiff than was their southern neighbor's handling of the transgression, though the differences faded by the end of the colonial period.

The motivation behind prosecuting sexual misconduct differed in the two regions. New England courts were more concerned with punishing unlawful sex than the consequence of the action—illegitimate children. For example, Connecticut decided not to punish bastardy up until 1650, even though the colony crafted legislation that dealt

⁴² Norton, *Founding Mothers & Fathers*, 324, 357. Norton described Chesapeake courts as being "more passive than active."

⁴³ Shurtleff, *Records of the Governor and Company of Massachusetts Bay in New England*, Vol. 2, 21-22; Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: John Wiley & Sons, Inc., 1966), 90.

⁴⁴ Demos, *A Little Commonwealth*, 152.

harshly with fornication.⁴⁵ Furthermore, New England courts had the sole distinction of prosecuting couples who conceived a child before saying their wedding vows. Because the couple was not married at the time of conception, courts charged the man and woman with premarital copulation and deemed the child illegitimate. Partners who engaged in sex prior to marriage composed more than two-fifths of all fornication charges in the New England region. Colonial Massachusetts records are filled with instances of courts indicting couples for having intercourse before their wedding. For example, a Puritan judge fined John Downham “20s” for “getting his wife wth child” prior to exchanging wedding vows. Likewise, a Massachusetts court “enjoyed” Thomas Scot and his wife to stand at the marketplace for an hour with a “paper with great letters, on their hatts” because the pair committed uncleanness (i.e. copulated prior to marrying).⁴⁶

Conversely, Southern colonies and England showed leniency to couples who married after participating in intercourse, regardless if the woman was already pregnant.⁴⁷ The illicit fruit of fornication was of prime concern to residents of England and the Chesapeake, not the act of conceiving the child. Nearly half of all sex-crime prosecutions in the Southern colonies were for bastardy, while non-marital intercourse represented fewer than twenty percent of the cases. The complete opposite held true for Puritan-

⁴⁵ Hambleton, “The World Fill’d with a Generation of Bastards,” 344; Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 355-56.

⁴⁶ Norton, *Founding Mothers & Fathers*, 336; *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, Vol. 2, 94, 124; Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: The University of Massachusetts Press, 1993), 53. McManus explained that the Old Testament allowed premarital fornicators to partially square things through marriage; Wall, *Fierce Communion*, 65. Wall explained that Plymouth officials displayed a degree of leniency if the couple could prove that their sexual intimacy began “before marriage, but after contract.” For more on premarital pregnancies see Daniel Scott Smith and Michael S. Hindus “Premarital Pregnancy in America, 1640-1971: An Overview and Interpretation” in *Journal of Interdisciplinary History*, 5:4 (Spring, 1975), 537-70.

⁴⁷ D’Emilio and Freedman, *Intimate Matters*, 10. Considering that up to one-third of all immigrant brides in the Chesapeake delivered a baby within the first nine months of marriage, it was almost necessary to overlook this transgression.

controlled colonies. In New England, fornication totaled fifty percent of the prosecutions for sexual misconduct, while just one in ten cases involved illegitimacy.⁴⁸

This chapter has highlighted colonial authorities' role in the regulation of marriage, sex, and illegitimacy in British America. Authorities throughout the Chesapeake and New England regions defined what constituted a proper marriage and prescribed the appropriate bounds for intimate behavior. Governing officials regulated copulation and social unions to buttress their own authority while limiting the autonomy of others. Elites were not above manipulating bastardy as well. Authorities punished illegitimacy not only to protect the financial solvency of the parish, but also to discriminate against non-whites, women, and servants. The remainder of this study investigates how and why colonial authorities used race, class, and gender inequities to single out the more vulnerable members of society.

⁴⁸ Norton, *Founding Mothers & Fathers*, 336. For more statistics on the Southern colonies, see Horn, *Adopting to a New World*, 361. Horn contends that moral offenses comprised between twenty to thirty percent of the cases that came before Charles, Lancaster, and Lower Norfolk courts, of which bastardy was by far the most common transgression.

Chapter Three

“A World of Wanton Wenches and Potent Patriarchs: Gender Inequities in Bastardy Cases”

Priscilla Willson, a sixteen-year-old orphaned resident of Hammersmith, Massachusetts, conceived a child during an out-of-wedlock sexual rendezvous. The judge found Willson guilty of fornication, yet he failed to uncover the father's identity. The Hammersmith community presumed that Samuel Appleton was the progenitor. The court, however, refused to act on this suspicion. Witnesses insinuated that Appleton forced himself upon the young and vulnerable Willson, who neighbors testified “behaved herself soe modestly and Civilly all her time before this transgression.” The sexual encounter caused Willson to get big with child, thereby indicating that she took pleasure in the experience.⁴⁹ Puritan judges believed that Willson's impropriety warranted punishment, regardless of whether Appleton was responsible for her carnal misdeeds. Court officials permitted the gender double standard to influence who faced prosecution and the severity of the sentence. Judges acquitted Appleton, who in all likelihood either seduced or raped Willson, from all charges of wrongdoing. Conversely, court officials punished Willson for fornication and bastardy, even though her consent to sexual relations was dubious. The gender discrimination present in this case was representative

⁴⁹Anglos believed that women had to sexually climax to conceive a child. Since society equated pregnancy with orgasm, courts exonerated men who sexually assaulted women from rape charges if she became “big with child.” For instance, in 1680, John Hunkins, a sexual predator who had already impregnated one young woman, forced himself upon Sarah Lambert, another adolescent girl. Pregnancy resulted from Hunkins's dastardly deed. Consequently, the court exonerated Hunkins of rape charges and prosecuted Lambert for fornication. See Hambleton, “The World Fill'd with a Generation of Bastards,” 319-320.

of both the large and small indignities and injustices facing women across colonial America.⁵⁰

The court's decision in the Willson-Appleton case illuminates the role that gender played in bastardy cases. This chapter does not refute that illegitimacy laws were intertwined with financial concerns; rather it considers bastardy charges as a means to discriminate against women. Gender figured prominently into the courts' prosecution of bastard bearers. Men often evaded legal charges for siring children outside of wedlock, while women committing the same transgression more frequently faced criminal charges. Another disparity between the sexes was that they received unequal punishments for committing the same sexual contravention. Before investigating the correlation between gender and bastardy prosecutions, it is important to define what is meant by gender.

Kathleen Brown defined gender as "the historically specific discourses, social roles, and identities defining sexual difference and frequently deployed for the purposes of social and political order."⁵¹ Gender is neither a biological term, nor is it a description of male and female anatomy. Rather the word describes the culturally-assessed attributes assigned to the two anatomical models. Gender is a social construct that is defined by the traits ascribed to male and female. Therefore, the concept is dependent upon time, location, and culture.

The prevailing belief among white colonists was that an individual's sex (physical quality) was inherently linked to a gender role. The presence of a penis and testicles

⁵⁰ M. G. Thresher, ed., *Records and Files of the Quarterly Court of Essex County, Massachusetts*, Vol. 9 (Salem, Mass.: Essex Institute, 1975), 64; Smith, ed., *Sex and Sexuality in Early America*, 1, 89.

⁵¹ Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 4. Since this paragraph largely deals with the theoretical framework of gender, much of this information is up for debate. This paragraph does not intend to enter into a historical debate about the meaning of gender, but rather the objective is to provide the reader with a brief understanding of gender.

translated to a certain gender role, while the absence of these anatomical parts represented a different gender role. Colonists believed that gender denoted much more than sexual organs, for it determined one's abilities, aptitude, intelligence, and responsibilities. Colonial leaders relied upon the gender double standard to discriminate against women, much as they utilized racial inequities to oppress non-whites. Ultimately, the gender double standard was another method of preserving white, male supremacy in the British colonies.⁵²

Gender biases were numerous and diverse in colonial America. The two major stimuli behind these inequalities were a male desire for power and a religious-based belief in female inferiority. By primarily implicating women on bastardy charges, judges allowed their brethren wide latitude in sexual relations. Men could participate in carnal affairs without fearing the repercussions of their actions. Meanwhile, women did not have the same freedom to express their sensuality. Men wielded power over their wives and daughters by controlling female sensuality. Without autonomy over their own sexuality, women increasingly mirrored a form of property. Elites' objectification and disempowerment of women buttressed the patriarchal system and legitimized men's right to rule.

Colonial authorities used religion to justify a system of male supremacy. Hugh Latimer, a prominent sixteenth-century martyr, expressed a commonly held view among colonists: "For a woman is frail, and proclive unto all evils; a woman is a very weak vessel, and may soon deceive a man and bring him unto evil..." Designed in an image

⁵² See Keith Thomas, "The Double Standard" in the *Journal of the History of Ideas* 20:2 (1959), 195-216; Hambleton, "The World Fill'd with a Generation of Bastards," 58-59. Hambleton argued that a strong sexual double standard usually resulted in higher illegitimacy rates because men felt entitled to a woman's sexuality. Additionally, men did not fear punishment because the judicial system tolerated such behavior.

and likeness of Eve, women had limited, if any, chance of transcending their ancestral legacy and assert religious or political authority. All women possessed the same characteristics as Eve—weakness, instability, and naivety. These qualities explained why Eve ate of the forbidden fruit and why colonial women could not be relied upon. Furthermore, men looked to John Milton’s *Paradise Lost* for confirmation of man’s natural superiority over the weaker sex: “he for God only, she for God in him.” Though Southern colonists did not possess the same religious intensity as their Puritan counterparts, they shared a common belief in women’s sinful and flawed nature.⁵³

Women’s inherent wickedness coupled with men’s thirst for power created a legal system that disproportionately penalized women for sins of the flesh. Adulterous relations and contemptuous carriages serve as prime examples of the gender double standard. New England judges charged women who engaged in extra-marital affairs with adultery, yet men who committed the same transgression were guilty of fornication, not adultery. The difference between the two violations was not a matter of semantics. Rather it was an issue of life and death because extra-marital affairs were a capital crime, while non-marital sex was not.⁵⁴ Gender inequities were more prominent in the Southern colonies. Chesapeake judges generally did not burden themselves with cases of husbands cheating on their wives. In the reverse scenario, however, judges did not hesitate to punish the female offender. For instance, in Northampton County, Virginia, an adulteress was tied to the back of a boat and dragged through the water for violating the law.⁵⁵

⁵³ Lonna M. Malmshemer, “Daughters of Zion: New England Roots of American Feminism” in *The New England Quarterly* 50:3 (1977), 484-85; Ulrich, *Good Wives*, 97; Demos, *A Little Commonwealth*, 82; For more on religion in the Southern colonies see Edward L. Bond, *Damned Souls in a Tobacco Colony: Religion in Seventeenth-Century Virginia* (Macon: Mercer University Press, 2000).

⁵⁴ Hambleton, “The World Fill’d with a Generation of Bastards,” 57.

⁵⁵ *Northampton County Records*, Vol. 1645-51, p. 148-49; Philip Alexander Bruce, *Institutional History of Virginia in the Seventeenth Century*, Vol. 1 (Gloucester, Mass.: Peter Smith, 1964), 48. For more on

The gender disparity present in adulterous affairs also occurred in fornication and bastardy cases. Initially, colonial courts disciplined bastardy with a semblance of gender equality. It did not take long for Southern colonies to shift from gender neutral punishments to penalties that discriminated on the basis of sex. In the Chesapeake, roughly the same number of women stood trial alone for bearing illegitimate progeny, as did so with their male partner. Since it requires both a man and woman to conceive a child, the fact that only half the fathers of illegitimate offspring faced bastardy charges indicates the presence of gender inequalities. Of those men who stood trial along with their female mate, only one out of every three of them received the same penalty as did their partner. Much as the Chesapeake legal system shifted away from applying the law equitably to women, the Puritan justice system followed a similar path.

During the first decade of settlement, the Puritan legal system sought out both partners in cases of insolent carriages and punished them with equal severity. By the 1640s and thereafter, however, New England courts were indicting more women than men on bastardy charges. Judges seldom prosecuted men for their unlawful embraces, unless the activity was particularly repulsive or egregious (i.e., bestiality, homosexuality).⁵⁶ Conversely, women remained as vulnerable as ever to the whims of the court. For instance, from 1640 through 1665, Essex County courts convicted 104 women of pre-marital sex after bearing an illegitimate child, while finding only thirty-five men culpable of the same offense. Between 1665 and 1689, non-marital intercourse

colonial adultery, see Norton, *Founding Mothers and Fathers*, 238, 341-46, 39; Smith, *Sex and Sexuality in Early America*, 290-91, 298-99; and Lyle Koehler, *A Search for Power: The "Weaker Sex" in Seventeenth-Century New England* (Urbana: University of Illinois Press, 1980), 146-53, 315-22.

⁵⁶ Pagan, *Anne Orthowood's Bastard*, 128; Dayton, *Women before the Bar*, 198, 206; Norton, *Founding Mothers & Fathers*, 144; Ulrich, *Good Wives*, 94. Ulrich argues that prosecution and punishment were more equitable than stated above, yet she is one of the very few historians to make such a claim. Based on the research for this thesis, the quantitative and primary data suggests a huge gender disparity.

accounted for forty percent of all female criminal transgressions in Massachusetts, an increase of twenty-five percent from the previous twenty-five year period. Moreover, after 1710, anytime New Haven officials brought fornication charges against a man, they would indict the female partner as well. Naturally, the opposite did not hold true. Twenty years later, New Haven women remained susceptible to prosecution for sexual misbehavior, but their male partners, who were “Equall with her in Transgration,” were strangers to the criminal process. New Haven officials decreased their efforts to apprehend the reputed fathers of illegitimate progeny and, eventually, courts decriminalized non-marital intercourse.⁵⁷

Along with men’s ability to elude prosecution for siring progeny out-of-wedlock, they received less severe sentences than their female counterparts. For instance, in the Willson-Appleton case, the judge exonerated Appleton for his impropriety while Willson faced the court’s wrath even though her consent to the illicit affair was dubious. Moreover, in Accomack County, Virginia, lawmakers ordered the father of a bastard to confess his sinful transgression before the church congregation. Meanwhile, the mother suffered a stern punishment of thirty lashes on her bare back for having an illegitimate child.⁵⁸ Religious convictions and gendered assumptions ensured that promiscuous women faced a more severe punishment than their equally guilty male counterparts. Generally, judges imposed a monetary fine on male bastard bearers, while women

⁵⁷ Hambleton, “The World Fill’d with a Generation of Bastards,” 13; Norton, *Founding Mothers & Fathers*, 346; Koehler, *A Search for Power*, 354; Dayton, *Women before the Bar*, 198, 206.

⁵⁸ Bruce, *Institutional History of Virginia in the Seventeenth Century*, Vol. 1, 47-48.

received a sound whipping, pecuniary fine, or an expanded period of servitude (if a servant).⁵⁹

When a court found a man guilty of siring illegitimate offspring, the punishment was often financial. According to the *Colonial Laws of Massachusetts*, any man convicted of fathering a bastard child “shall be at the care and charge to maintain and bring up the same.” For instance, William Flint engaged in an extramarital relationship with a “slutt.” The debauched woman conceived a child during the affair. Consequently, William had to pay a twenty pound fine, half went to the “Publique” and the remainder went to defray the cost of the bastard.⁶⁰ Similarly, in Virginia, the punishment for an alleged father of illicit progeny was “keeping the child and saving the parish harmlesse [i.e., compensating the cost of the child].” Once men satisfied the monetary penalty or settled the charges for the child’s upbringing, male bastard-bearers reestablished their good name. Considering that judges typically prosecuted male servants for impregnating women outside of marriage, it was quite common for men not to satisfy the court-imposed fines. If the father was a bonded laborer and/or could not afford to support the minor, safeguards were in place to ensure that he would eventually settle the charges. Instances when a “basterd is gott by a [male] servant” the parish cared for the child until the conclusion of the father’s indentured period. Afterwards, the progenitor “shall make sattisfaccon” to the parish by reimbursing the cost of the youth’s upbringing.⁶¹ In the meantime, fathers could avoid physical punishment by performing community service.

⁵⁹ Norton, *Founding Mothers & Fathers*, 346; Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 359.

⁶⁰ *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, Vol. 2, 137. The document spells the defendant’s name as William Fflint. I dropped the second “F” in Fflint because it appears to be a misprint.

⁶¹ Hening, *The Statutes at Large*, Vol. 2, 168, Vol. 8, 375. Additionally, see *Virginia Magazine of History and Biography* Vol. 5 (Richmond: Virginia Historical Society, 1928), 157.

Once a man served his punishment, he regained his reputation and social standing. The following anecdote aptly illustrates a man's ability to transcend his carnal impropriety.

Samuel Terry of Springfield, Massachusetts, personified the courts' toleration of male sexual misconduct. During a Sabbath sermon, young Samuel stood outside the meeting house "chafing his yard [penis] to provoak lust." Terry received a lashing for masturbating in public. In 1661, just eleven years after his first offense, Terry's wife delivered the couple's first child after only five months of marriage. Clearly, Terry and his wife engaged in premarital sexual relations. For their transgression, Terry paid four pounds for his unlawful sensuality. Twelve years later, judges sentenced Terry and eight other men to pay a fine for their performance of an "immodest and beastly" play.

Notwithstanding his sexually illicit behavior, Terry avoided a tarnished reputation and remained in good standing among his peers. The repeat offender went on to serve as the town constable. Furthermore, a Puritan court entrusted Terry with custody of John Matthew's infant son. Court records reveal that carnal misconduct was not uncommon in seventeenth-century Massachusetts and colonists took these violations in stride, particularly from elites and highly-skilled craftsmen.⁶² Though Terry's impropriety caused a brief loss of honor, he and other men of wealth and reputation could take solace in the fact that the consequences of sexual contraventions were temporary.

A further example of the gender inequities involved the indictment of Robert Wyar and John Garland "for ravishing two yong girles." Upon a search of the victims' bodies, the Massachusetts Court of Assistants found Sarah Wythes and Ursula Odle had been "defloured." Despite a preponderance of evidence suggesting that the duo sexually

⁶² Stephen Innes, *Labor in a New Land: Economy and Society in Seventeenth-Century Springfield* (Princeton: Princeton University Press, 1983), 132-33; D'Emilio and Freedman, *Intimate Matters*, 15.

assaulted the victims, the jury found Wyar and Garland not guilty of violating the “Capittal Law.” The court sentenced the young men to a public whipping on market day in Boston and another flogging during Lecture day in Cambridge. Garland and Wyar also paid a small fine to their masters. Shockingly, judges found Wythes and Odle, the young girls who were sexually victimized, guilty of “wickedness” and ordered them to “bee severely whipped” in the “p^resence of the Secretary.” The fact that the aggressors and victims received comparable sentences clearly indicated inherent gender unfairness in the prosecution of sexual crimes.”⁶³

Men faced disciplinary action for non-marital intercourse and bastardy less often than their female counterparts not because there was an absence of punishments, but rather due to a handful of dynamics that spared them from judicial fury.⁶⁴ Courts hesitated to chastise one of their equals [i.e. a socially prominent or wealthy man]. Judges seldom reprimanded elites whose status often overrode their transgression. Another factor limiting a court’s ability to convict alleged fathers was the difficulty of establishing paternity. Whereas bystanders could look at a woman and tell if she was pregnant, there was no obvious way of determining the father. Other than possibly bearing a physical resemblance to each other, the only way to link a father and child was by a woman’s admission. Often women were not forthcoming with this information, thereby allowing the father to escape legal charges.

In a patriarchal society, women had the difficult and potentially dangerous option of either revealing or concealing their sexual mates. Disclosing the father’s name

⁶³ *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692*, Vol. 2, 121.

⁶⁴ This may seem contradictory because a number of men were punished. While this is true, men faced prosecution less often than did their female counterparts. Additionally, in cases where courts found a man guilty of sexual misconduct, there was often an added circumstance making a man’s sexual transgression particularly appalling.

transferred financial responsibility for the offspring to him, thereby alleviating the mother of this burden. A woman who confessed the identity of the father, however, faced possible retaliation. The fear of revenge led many women to remain quiet on the matter. Alternatively, some women's reticence to discuss the affair was the result of the man's promise of incentives for remaining taciturn. Either way, judges did not find women's silence particularly troubling because they held women financially accountable for contemptuous carriages in the absence of a man. According to a North Carolina law, a woman that concealed the name of her partner had to pay fines and provide "sufficient security to keep such Child or Children from being chargeable to the Parish" or sentenced to prison. The unfortunate woman withered away in jail until she settled the fines or disclosed the child's father.⁶⁵

Had lawmakers punished bastardy for financial motives, as most historians claim, why did they continually prosecute women of meager financial means with such vigor? Although the answer remains elusive, court officials (i.e., elite men) likely punished women to bolster male control in the colony and to create an inexpensive labor source for plantation owners. Courts singled out the "fairer sex" for prosecution and sentenced them to harsher punishments. Women suffered physically, emotionally, socially, and religiously for bearing an illegitimate child. A bastardy conviction left an indelible mark on a woman's social standing, particularly in the New England colonies. Unless a woman came from a privileged family, engaging in non-marital copulation transformed an estimable virgin into a disreputable slut. Such behavior further confirmed women's

⁶⁵ Walter Clark, ed., *The State Records of North Carolina*, Vol. 23 (Goldsboro, NC: Nash Brothers, Books and Job Printers, 1904), 174.

innate lustfulness. Female promiscuity caught the ire of clergy, who already blamed the “weaker vessel” for humankind’s fall from grace.⁶⁶

Furthermore, the loss of sexual purity jeopardized a woman’s two most important functions—to marry and raise a family. A life of solitude was the most dreadful punishment that a Puritan woman could endure. Her primary objectives in life were to serve her husband, bear children, and worship God. Puritan women who were convicted of fornication or bastardy found their marital options severely limited. A study of bastard-bearing women in New England revealed that only twenty-nine percent of them went on to wed a man other than the child’s father. A much smaller number of women celebrated the vows of marriage with the men who impregnated them. The absence of a marriage partner significantly impacted a woman’s ability to raise a family because there could be no legitimate children without exchanging the sacred vows of matrimony.⁶⁷

In the Southern colonies, giving birth to illegitimate progeny did not necessarily prevent women from finding suitable marriage partners. Female scarcity in the Chesapeake ensured that women had ample opportunities to wed, regardless of a blemished reputation. A study of seventeenth-century Maryland revealed that once a woman completed her period of servitude, she could find a suitable male partner notwithstanding her physical attractiveness (or lack thereof) and socio-economic status.⁶⁸ For instance, Jane Palldin of Maryland fornicated with a planter and, resultantly, got big with child. Palldin married a different man two years later despite her sexual contravention. In another incidence, Lucie Stratton and Arthur Turner engaged in sexual

⁶⁶ Koehler, *A Search for Power*, 74.

⁶⁷ Koehler, *A Search for Power*, 74; Hambleton, “The World Fill’d with a Generation of Bastards,” 190, 49-50.

⁶⁸ Lois Green Carr and Lorena S. Walsh, “The Planter’s Wife: The Experience of White Women in Seventeenth-Century Maryland,” in the *William and Mary Quarterly*, 34:4 (1977), 550.

intercourse outside of marriage. Stratton refused to spend the rest of her life with Turner, declaring that “hee was a lustfull man.” Stratton’s rejection of Turner illustrated that Southern women felt confident that they would find an appropriate mate for life, regardless of their previous misconduct.⁶⁹ Moreover, Dorothy Holt felt so empowered by the shortage of women in the Southern colonies that she openly entered into an adulterous affair. Mrs. Holt bemoaned that her “heart was soe hardened” by her husband, Robert Holt, that she “would never darken his door again.” Mrs. Holt left her husband and moved in with Edward Hudson, despite that her marriage to Robert Holt was still legal. Mrs. Holt’s conspicuous relationship with Hudson ultimately led to her imprisonment. While female scarcity extended greater rights and authority to women, they remained vulnerable to the whims of the court. Notwithstanding Mrs. Holt’s punishment, her confidence to flagrantly violate colonial laws illustrates a level of autonomy among Southern women.⁷⁰ A similar degree of authority was not found among their Puritan equals. Whereas sullied Puritan women had to settle for who would have them, their Southern counterparts exercised greater influence when choosing a mate.

Though bastard-bearing women in the Chesapeake often found marriage partners, the double standard thrived in the Southern colonies. Men received reduced punishments and transcended the shameful vestiges of bastardy, whereas women faced judicial wrath and an eternal stain on their character. Judges were much more likely to convict a woman of bastardy than her male equal, despite the couple’s mutual responsibility for conceiving a child. When courts found both partners guilty of bearing illegitimate

⁶⁹ Browne, *Archives of Maryland*, Vol. 10, 516 and Vol. 41, 432-33 and 291-94; D’Emilio and Freedman, *Intimate Matters*, 11.

⁷⁰ Browne, *Archives of Maryland* Vol. 10, 109-112; Norton “Gender and Defamation in Seventeenth Century Maryland,” entire article; D’Emilio and Freedman, *Intimate Matters*, 11.

offspring, the woman received a more rigorous sentence. Women endured a barrage of penalties for sexual misbehavior, which grew more severe during the seventeenth century. For instance, the Virginia Assembly decided that penalties originally intended for men, should apply to women as well. It ruled that women were “lible to equall punishment” with the opposite sex. Not surprisingly, the reverse scenario did not hold true. The Assembly ruled that in the absence of a man to defray the expenses of an illegitimate child, the mother assumed financial liability.⁷¹

Transferring the cost of “insolent carriages” was an effective means of weakening female autonomy, while simultaneously strengthening male control. Making women financially accountable for bastardy was exploitative at its very core. This legislation empowered men by ignoring their sexual misconduct, while it increased the penalties women suffered for the same unlawful act. This meant that men could engage in illicit affairs without fearing harsh consequences or financially-draining repercussions. Women, however, grew more dependent upon men because they could not afford to pay for the child. No group of women was more vulnerable to this new legislation than house maids, who formed the largest demographic of bastard bearers. A variety of factors resulted in servants’ increased susceptibility to punitive measures. House maids frequently remained silent about their partner’s identity, enabling the court to stick these bonded women with financial responsibility. To make matters worse, servants possessed limited financial resources. Masters often defrayed expenses incurred by a female servant’s “contemptuous carriage,” but in return, she struggled through a lengthened

⁷¹ Quaife, *Wanton Wenches and Wayward Wives*, 225. A comparable situation arose in the mother country. English courts increasingly expected women to settle the cost of illicit offspring. In approximately half of all bastardy cases, judges required the mother to keep and raise the child. Courts ordered the mother to pay someone else to care for the child in one out of twenty cases concerning illegitimate offspring

period of service. Judges not only absolved men of their illicit relations, but also created for them a cheap labor force of bastard-bearing women. Bastardy, a contemptible condition for women that carried with it violent lashings on bare skin and a sullied reputation, now profited male elites.⁷²

Concurrent with Virginia's new legislation, Massachusetts passed a law that pardoned men for their sexual lapses so long as they financially provided for any illegitimate offspring stemming from their activity. This 1668 amendment absolved men from bastardy and fornication convictions, while women remained vulnerable to these charges. Courts' requirement of meager child support payments was a sign that male incontinency was less important than the promiscuity of their female counterparts.⁷³ Judges did not intend for child support payments to benefit the mother in any way, but rather to prevent parishes from enduring the expense of rearing the child. Community support of bastards equated to a major tax burden on New Englanders. As the number of offspring born out-of-wedlock swelled, Puritan authorities believed it was more important to protect the economic solvency of the community than to punish male transgressors.⁷⁴ Thus, Puritan leaders crafted a bastardy law that shielded colonists from

⁷² Pagan, *Anne Orthwood's Bastard*, 84-85; Hening, *The Statutes at Large*, Vol. 2, 114-15. Female servants either had to pay a fine of two thousand pounds of tobacco or perform an additional two years of service.

⁷³ John D. Cushing, *The Laws and Liberties of Massachusetts, 1641-1691*, Vol. 2 (Wilmington: Scholarly Resources Inc., 1976), 55; Hambleton, "The World Fill'd with a Generation of Bastards," 6, 30, 62, 95-97, 111, 260.

⁷⁴ Around 1660, there was a notable shift in the perception of illegitimacy and Puritan courts handling of the transgression. Several factors were integral to the change: decline in patriarchal control, young people became increasingly less truthful, increase of parental permissiveness, emergence of the Half-Way Covenant, and rise of non-marital (including bridal) intercourse and pregnancies. See Thompson, *Sex in Middlesex*, 104-105.

increased taxes and allowed men to circumvent punitive measures for their offense, while it unfairly targeted and rigorously disciplined women.⁷⁵

Interestingly, the Puritans' efforts to transfer the economic costs of illicit children to men had the unintended consequence of increasing rather than decreasing the excesses of carnality. Though women remained susceptible to corporal punishment and public shame, they no longer worried about the economic consequences of fornication. New England women effectively distanced themselves from financial responsibility for illegitimate offspring. Since judges expected men to cover the economic costs of a bastard youth, some historians assert that courts served the interests of the mother.⁷⁶

Though judges seldom ruled in favor of female defendants, not all women allowed their subjugated status to prevent them from seeking justice. For instance, in June 1693, Christopher Wormeley impregnated Margaret Devorage, a servant on his Middlesex (Virginia) plantation. Wormeley disciplined Devorage for conceiving an illegitimate child by increasing her period of servitude by two years. Challenging the punishment, Devorage maintained that she would perform no additional work once her

⁷⁵ Morgan, "The Puritans and Sex," 600-601; Fischer, *Suspect Relations*, 103.

⁷⁶ Fischer, *Suspect Relations*, 104, 110, 113; Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Vintage Books, 1990), 149-151; Thompson, *Sex in Middlesex*, 24; Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (New York: Harper & Row Publishers, 1975), 130; Morgan, "The Puritans and Sex," quoted in the Middlesex Court Files Folio #30. Although female empowerment seems tangential to a study of gender inequities in bastardy cases, it is worth considering. It cannot be stressed enough that the vast majority of women abided by the patriarchal system. There were a handful of women, however, that challenged the male-dominated system. Colonial women had no legal recourse (or at least very limited) and were essentially voiceless, two factors that did not bode well for female autonomy. Empowerment took many forms, including displacing responsibility for the child, abortion, infanticide, bribes, etc. The fear of severe punishment did not decrease bastardy, but rather left many women searching for ways to dispose of the evidence. Abortion and infanticide served as two methods of female empowerment because women avoided punishment for bastardy and fornication if the techniques were successful. Moreover, women falsely accused men of siring their illicit offspring either to avoid financial liability or protect the identity of the true father. For example, Elizabeth Wells, a Middlesex County, Massachusetts, maidservant announced "if shee should bee with child shee would bee sure to lay it un to one who was rich enough [and] abell to mayntayne it whether it were his or no[t]." When Wells conceived a child with Andrew Robinson, but falsely accused her master's son, James Tufts, of impregnating her. Similarly, in an unsigned letter discovered in Middlesex revealed a similar incident.

“Servis is Expired.” Devorage filed legal charges against Wormeley because he “Refused to sett your petition^r [Devorage] free & to pay her Corne & Cloathes According to the Custome of this Country.”⁷⁷ Devorage, along with a plethora of non-whites, women, and bonded individuals, understood that the construction and enforcement of colonial bastardy laws was inherently unfair and created an arrangement that permitted privileged white men to thrive at their expense. As evidenced by both the Willson-Appleton case (at the beginning of the chapter) and Devorage’s pursuit of justice, cultural factors merged with elite men’s greed to transform bastardy from a moral issue into a discriminatory condition based on gender (as well as race and class as will be seen in subsequent chapters).

⁷⁷ “Virginia County Court Records” *Virginia Magazine of History and Biography* Vol. 12 (Richmond: Virginia Historical Society, 1928), 191-193. See also Hening, *Hening’s Statutes*, Vol. 2, p. 167.

Chapter Four

“‘The Hazard of Bearing a Bastard was a Hazard of Being a Servant’: Class Dimensions in Colonists’ Understanding of Illegitimacy”

Anne Orthowood, a twenty-four year old unmarried indentured servant, left behind her life in Bristol, England, to start anew on the Eastern shores of Virginia. After settling into her new environment and beginning her term of bonded service, Anne grew fond of John Kendall. Kendall was quite a catch by the standards of the time—a non-bonded, bachelor and nephew of Colonel William Kendall, a gentleman of great influence and status. A socially-sanctioned marriage was not an option for Anne and John because of the vast class disparity between them. Consequently, the young lovers concealed their passion behind closed doors. The couple’s affair yielded twins, yet because they were not married, the progeny were illegitimate. Colonel Kendall opposed John and Anne’s secret affair and believed he had a duty to prevent illicit fornication involving laborers. Colonists feared that non-marital sex would lead to bastard births, thereby financially straining the parish and raising the tax burden for the wealthy. Furthermore, a carnal liaison between a person of privilege and a house maid challenged the social hierarchy.⁷⁸

Sexual intercourse served as more than an intimate physical act between individuals in the colonial era. Physical pleasure and romance existed in sex, but these

⁷⁸ Pagan, *Anne Orthowood’s Bastard*, 3-6, 150.

qualities were not necessarily the sole objectives of intimate involvement. Sex served as an arena for power, an act that involved male domination, and, most importantly, a locus to establish gender and social standing. Status and social rank were endemic to sexual relations, as fornication served to reify the social order. Social status predicted whether an individual faced prosecution for unlawful behavior and determined the severity of the punishment. Thus, class is a useful tool of historical analysis for exploring bastardy cases in the colonial era.

While confirming historians' contention that financial considerations were of prime concern in illegitimacy cases, this chapter investigates what role social status played in bastardy cases.⁷⁹ Wealthy individuals (mostly men, but some women), who could afford to pay the costs of rearing illicit offspring, usually avoided prosecution. Conversely, colonial authorities primarily prosecuted bonded laborers not so much to protect the parish from the costs associated with insolent carriages, but rather to buttress their social control and wealth. For instance, in the Orthowood-Kendall example, Kendall could afford to raise the illegitimate fruit of his relationship with Orthowood. Financial concerns were not the major issue in this case; instead, the fact that Kendall and Orthowood's relationship crossed class lines elicited social condemnation. Furthermore, bastardy punishments illustrate the extent of rank-based discrimination, as class factors influenced the severity of the sentence. To apply class as an instrument for historical study, it is necessary to define the concept and explain how the social dynamic functioned in the British colonies.

⁷⁹ The terms "social status" and "rank" are used interchangeably in this chapter. Class is also used as a synonym for status, but the reader should ignore the Marxist connotations associated with the word. The analysis of class in this chapter refers to a person's social standing, rather than a Marxist study of class (which is only marginally applicable to the Anglo colonies). For more on the difference between class and rank, see Mary Beth Norton, *Founding Mothers and Fathers*, 18.

Class represents the “inequality of human beings from the standpoint of social power.” In other words, class is a socially-constructed concept that ranks individuals according to their prestige within the community. Certain factors, such as wealth, ethnicity, race, and lineage, coalesced to create social identity, which, in turn, formed the basis of class groupings. These groupings were another instrument of social control, analogous to racial and gender inequalities. Colonial authorities crafted a hierarchal social structure to buttress their own authority by stripping away all vestiges of power from the subservient class. Elites equated servants’ bonded status with inferiority, thereby making non-bonded colonists superior. The subjugated status of the subservient class was made all the more important when considering that bonded individuals composed a major demographic segment. In fact, more than one-half of all immigrants arriving before 1776 at ports south of New England were servants.⁸⁰

Though servants were more frequently prosecuted for bastardy and punished more harshly for the offense, people of all social classes were guilty of this crime. Bastardy did not happen only between subservient or impoverished classes.⁸¹ Illegitimacy refers to the birth of a child to a couple that is not married and, therefore, can occur irrespective of social status. Social status, however, remained one of, if not the most, important factors in the prosecution and punishment of bastardy. Similar to gender disparities, class-based

⁸⁰ Barbara J. Fields, “Ideology and Race in American History,” in *Region, Race and Reconstruction*, J. Morgan Kousser and James M. McPherson, eds. (New York: Oxford University Press, 1982), 150; Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 4; Fischer, *Suspect Relations*, 101.

⁸¹ Hambleton, “The World Fill’d with a Generation of Bastards,” 83, 54; Dayton, *Women before the Bar*, 201-203. A study of seventeenth-century Massachusetts found that close to half of all women bearing illegitimate children were from families of middle or higher status. Connecticut prosecutions for non-marital births further confirm a degree of vulnerability among men of privilege during the early years of colonization. Approximately twenty percent of Anglos charged with bastardy from 1670 to 1740 had a father that held a militia post or possessed an estate valued at five hundred pounds or greater. The preponderance of couples involved in conceiving a child out-of-wedlock in Connecticut was from middling families. Even in the Southern colonies, men and women of privilege sometimes found themselves facing prosecution for unlawful carnality.

inequities afforded elites greater sexual freedom, while they limited sexual liaisons of the subservient class. For less privileged members of society, their status ensured that judges would look unfavorably upon them. There was a direct correlation between an individual's social standing and the punishment that the person received.

Servants faced widespread discrimination and harsh treatment in British America. Colonial planters characterized their bonded laborers as “filth and scum,” “miserable Wretches,” and “insolent young scoundrels.” Masters considered their servants dishonest, disloyal, and depraved. Bonded laborers received treatment nearly commensurate with Africans.⁸² Just as colonial officials regarded Africans as a licentious group, they attached an increased sexual desire to the subservient class. Servant promiscuity was corroborated by court cases, as laborers composed the bulk of defendants. Many of these trials focused on servants' carnal misconduct, with bastardy ranking as the most common sexual offense. As the number of servants increased, there was a subsequent rise in the illegitimacy rate. Lois Green Carr and Lorena S. Walsh succinctly described the correlation between subservient status and insolent carriages as the “hazard of bearing a bastard was a hazard of being a servant.” Between 1658 and 1705, one in five female servants who immigrated to Charles County, Maryland, appeared before county courts on charges of conceiving a child outside of marriage. Conversely, judges prosecuted only a handful of free women for the same unlawful behavior. The offspring resulting from non-marital relationships between non-bonded colonists usually avoided the shame associated with the condition of their birth. Evidence from the mother country also supports the conclusion that servants were

⁸² Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill: The University of North Carolina Press, 1998), 271.

particularly susceptible to bastardy charges. A study of illegitimacy in early modern England found that a large proportion of bastardy cases included indentured individuals. In the mother country, the majority of women prosecuted for non-marital births between 1570 and 1640 were domestic servants. There is a consensus within colonial records and among historians that judges selectively targeted servants for bastardy throughout the British world, yet the motivation behind their actions were less certain.⁸³

Servants represented one of, if not, the most important and profitable form of property in the seventeenth century. Colonial officials regarded bonded laborers as “more advantageous...than any other commodityes.” It took less than a year for a servant’s production to exceed his/her initial cost, meaning that masters enjoyed years of essentially free labor. Anything interfering with laborers’ productivity was of great importance to the master. Thus, servants’ intimate behavior remained of interest to planters. Masters expected servants to work, not to fornicate and risk becoming pregnant. Elite Virginians claimed that bastardy among their labor force was “prejudiciall to the masters and mistresses of servants” because it interfered with a woman’s ability to carry out her duties. The birth of a bastard meant that the mother would take time off from work, thus creating poor dividends on the master’s investment.⁸⁴ In addition to a servant’s lack of productivity while with child, there was a very real possibility that she

⁸³ Bruce, *Institutional History of Virginia in the Seventeenth Century*, Vol. 1, 48-49; Carr and Walsh, “The Planter’s Wife,” 547-48; Adair, *Courtship, Illegitimacy and Marriage in Early Modern England*, 84. Adair describes a study found in Blaikie’s *Illegitimacy Sex and Society: Northeast Scotland 1750-1900*. In nineteenth-century Rothiemay, 94.5 percent of mothers of illegitimate children were listed as servants in the record books; See also Hambleton, “The World Fill’d with a Generation of Bastards,” 35-36.

⁸⁴ As will be discussed later in this chapter, masters used a servant’s pregnancy to their own economic advantage. Planters extended the indentured contract of servants who became pregnant before their term of service expired. The woman’s labor more than compensated for the cost of the child.

could perish during the pregnancy. The death of a maid meant that the planter completely lost out on his original investment.⁸⁵

The regulation of servant fornication was not solely an issue of economics, but also a matter of control. Consequently, elites often prohibited nuptials between servants, as a way to secure their labor force. Bonded individuals could marry only with the blessing of their master. Without the sacred vows of matrimony to legitimize their union and offspring, a servile couple faced criminal charges for satisfying each others sexual needs. Servants continued to enjoy the pleasures of the flesh despite the prohibitions placed upon their sensuality. The proximity of indentured workers translated into numerous opportunities for sexual rendezvous. Often carnal temptations proved too great, as servants' libido prompted them to contravene colonial laws.⁸⁶ For instance, Joshua Fletcher, a New England servant, admitted to sneaking out after bedtime to visit a fellow maid, Gresill Juell. Fletcher carried a ladder with him to climb through Juell's window and, once there, he "kept company" with her. Most servants did not have to leave home to find a willing sexual partner because there were ample indentured laborers located in the same dwelling. Even with the absence of privacy and cramped living space, it was not impossible for servant couples to copulate.⁸⁷ While masters were unable to prevent servants' promiscuous behavior, they did find ways to use it to their own

⁸⁵ Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton & Company, 1975), 175; Carr and Walsh, "The Planter's Wife," 548; Pagan, *Anne Orthwood's Bastard*, 4; Bruce, *Institutional History of Virginia in the Seventeenth Century*, Vol. 1, 45.

⁸⁶ Fischer, *Suspect Relations*, 110; Norton, *Founding Mothers & Fathers*, 69; Mitchson and Leneman, *Sexuality and Social Control*, 183. Mitchson and Leneman describe an analogous situation in Scotland. They wrote, "A young man and a young woman serving together in the same household would be thrown together frequently, and the large portion of cases involving fellow servants shows that this temptation was indeed difficult to resist."

⁸⁷ *Manuscript Files of Middlesex, Massachusetts, County Court*, folder 47, as quoted in Morgan, "The Puritans and Sex," 598-99.

advantage. Courts bolstered planters' authority and enlarged the labor force by criminalizing intimacy among servants.

Judges' decision to prosecute the subservient class illustrates the presence of a status inequity in bastardy cases that often allowed men of privilege to evade punitive measures for siring an illegitimate child. Colonial officials could dismiss illicit sex, adulterous relations, and liaisons with prostitutes as lapses of elite men, but they sternly punished these offenses among men and women of inferior social standing. In other words, the violator's class status was more important than the infraction itself. Elite status afforded men many opportunities that their less fortunate brethren did not have access to. It is incorrect to assume that privileged men had a sexual *carte blanche*, but restrictions were few in number and mild in severity.

A tacit toleration of elite men's sexual exploits was found throughout the British world, including the Puritan controlled colonies. Social classes in New England were somewhat problematic because many of the servants were sons and daughters of local farmers. Unlike in the Chesapeake, Puritan colonies did not rely primarily upon single, kinless immigrants as their labor source. If a master sexually exploited his indentured laborers in New England, the victim could rely upon her family for security. Even with these protections, class inequities thrived in the New England colonies. During the second half of the seventeenth century and beyond, Puritan officials distanced themselves from a single standard for bastard bearers as social status influenced who was prosecuted and the severity of the penalty. After 1668, Massachusetts men of social prestige and wealth "validated their virility" by simply paying two years of child support and enduring a modicum of public shame. This provided men of financial means with sexual freedom,

while impoverished and bonded men faced social contempt, emphatic punishment, and a lifetime of indignities for their illicit behavior.⁸⁸

A heated debate erupted in eighteenth-century Connecticut exemplifying the status dimensions of fornication cases. The nearly fifty year dispute centered upon who should be spared from fornication charges. On one side of the debate stood evangelicals, who sharply criticized the class biases present in the legal system. Elites' ability to evade punishment angered evangelicals, who believed that everybody had a responsibility to conduct themselves morally and honorably. These pious men insisted that all fornicators should be held to the same standard, allowing neither gender, race, nor class to affect who judges prosecuted for bastardy and the punitive measures meted out to the defendant. Conversely, newspaper commentators and middle-class youths contended that class disparities were appropriate. They insisted that courts should neither indict respectable men and women for sexual misconduct nor prohibit them from freely engaging in carnal affairs. Meanwhile, this outspoken group believed that laborers and destitute individuals ought to be held to a different standard that prevented sexual freedom. Connecticut judges were stuck in the middle of the debate, but tended to side with socially aspiring adolescents and newspaper commentators. Courts increasingly distanced themselves from calling all sinners to account equally for their transgressions. Consequently, judges selectively targeted poverty-stricken servants while sheltering men (and a fewer number of women) of reputation and affluence.⁸⁹

⁸⁸ Fischer, *Suspect Relations*, 122; Hambleton, "The World Fill'd with a Generation of Bastards," 40. New England judges became more discriminatory in their handling of bastardy, as the condition shifted from a religious to secular crime.

⁸⁹ Dayton, *Women before the Bar*, 65, 208-09.

Similarly, Southern courts directed their legal wrath against servants, while overlooking the sexual exploits of the wealthy and propertied. Planters had numerous opportunities to find bed mates because of the abundance of servants and slaves extending across the Chesapeake. Even if colonists did not sanction elites' sexual immorality, they refused to openly condemn the practice. Likewise, courts seldom punished the carnal misconduct of elites. In fact, illicit affairs did not affect a gentleman's ability to climb the social ladder. Promiscuous colonial officials were held in high esteem despite their lascivious nature. Had courts went after a man of reputation and wealth, he could avoid legal chastisement by making private compensation to his paramour.⁹⁰

English officials also were tolerant of sexual licentiousness among men of status. Aristocrats did not fear rebuke for their sexual escapades. In 1739, an anonymous English writer asserted that extramarital intercourse among gentlemen was "rather esteemed a fashionable vice than a crime." Men looked upon women of equal or lesser status as lustful. Therefore, these immoral women were appropriate objects of sexual desire. Gentlemen's decision to fornicate with "inferior" women was neither socially accepted nor condemned, rather the act remained largely unmentioned. The English aristocrat and Virginia planter, William Byrd, personified the sexual permissiveness among the English gentry. Byrd's countless sexual conquests usually involved women of lower social standing. On October 4, 1718, Byrd paid a visit to Mrs. A-l-n's house in London, but she was not there. Rather than returning home unsatisfied, Byrd "committed uncleanness" with the maid. Byrd's sexual appetite was not satiated and, upon Mrs. A-l-n's return, he "rogered" her. Byrd faced no shame or punishment for enjoying the carnal

⁹⁰ Smith, ed., *Sex and Sexuality in Early America*, 133.

pleasures of two women in one night, despite being married to neither of them. As a member of the gentry, Byrd involved himself in scandalous affairs and adulterous liaisons and lived according to a common set of values that endorsed pleasure, promiscuity, and indulgence.⁹¹

Relationships between elite men and servant women were a relatively common practice that partially account for the large number of bastard births among the subservient class. Planters' countless opportunities to exploit female laborers were too great of a temptation for many of them to avoid. Moreover, in a patriarchal society, women understood that rejecting a planter's offer to copulate was futile. There were no safeguards in place to prevent a master from having his way with laborers. The odds of successfully prosecuting a planter for rape were negligible, as judges did not like to punish men of reputation and financial means. Without legal recourse, servants had to submit to their master's whims and wishes.⁹²

Though masters' exploitation of female laborers was more widespread in the Chesapeake, a similar pattern of abuse occurred in the New England colonies. In the colonial era, women remained vulnerable to their master's sexual advances. In Middlesex County, Massachusetts, Elizabeth Dickerman brought legal charges against her master, John Harris, for "profiring abus to her by way of forsing her to be naught with

⁹¹ Stone, *The Family, Sex and Marriage in England, 1500-1800*, 330, 339; Quaipe *Wanton Wenches and Wayward Wives*, 181-82; William Byrd, *The Prose Work of William Byrd of Westover: Narratives of a Colonial Virginian*, Louis B. Wright, ed. (Cambridge: The Belknap Press of Harvard University, 1966), 14.

⁹² Spruill, *Women's Life and Work in the Southern Colonies*, 322; Fischer, *Suspect Relations*, 108; Adair, *Courtship, Illegitimacy and Marriage in Early Modern England*, 85. Masters unquestionably used their authoritative position to seduce young women and coerce them into having sex. Some intimate relations were consensual, but the very environment that they occurred in compromised a woman's ability to choose. Adair studied sexual relationships between master and servant in 250 parishes. In several incidences, the master and servant had intercourse on a number of occasions, suggesting a degree of mutual acceptance. In a case in Buckinghamshire, John Wansel and his housekeeper, Joane Norris, had five children together over the span of fifteen years before later marrying.

him.” Harris warned Dickerman of serious consequences if she divulged the event. Accordingly, Dickerman lamented that if she continued to “liwe ther shee shall be in fear of her lif.” While sexual manipulation was common in New England, it approached epidemic levels in the Chesapeake region.

Southern planters had access to numerous bonded women who were defenseless to the master’s sexual whims. Not only could Chesapeake men sexually victimize subservient women without fear of punishment, but they could also profit from the relationship. For example, in Middlesex County, Virginia, Jane Floyd received an added year of service to her contract for “having a bastard begotten by her Master.” Rather than punish the master, the court required Floyd to serve Matthew Kemp, a local planter, for one year. Kemp paid the parish five hundred pounds of tobacco in return for Floyd’s services. This was a very lucrative deal for Kemp because Floyd’s productivity far exceeded the worth of five hundred pounds of tobacco. Furthermore, in England, Anne Hunthatche had an illegitimate child with an anonymous partner. Reports surfaced that Hunthatche’s master, Roger Beckley, impregnated her. Four days later, English officials discovered Hunthatche drowned in a brook. A jury found the servant “gyltie of her owne deathe.” The court defiled the servant’s lifeless body by placing stones on top of the corpse and driving a stake through it. In all likelihood, Beckley sexually violated his servant and, when she got big with child, he murdered the young maid. Not only did the master avoid any punishment whatsoever, but Hunthatche suffered punitive measures even after her death.⁹³

⁹³ Hambleton, “The World Fill’d with a Generation of Bastards,” 82; *Manuscript Files of Middlesex, Massachusetts, County Court*, folder 94 as quoted in Morgan, “The Puritans and Sex,” 600 (The master was whipped, but still a minimal penalty); *Registers of Churchill in Oswaldslow* as quoted in Adair, *Courtship, Illegitimacy and Marriage in Early Modern England*, 83-85; See also Ramon A. Gutierrez,

In instances where a judge found a planter guilty of impregnating one of his servants, punishment was not necessarily forthcoming. In the event that they faced criminal proceedings, influential men utilized various techniques to avoid a guilty verdict. Commonly, masters employed servants to “fix” a potentially shameful situation. For instance, in 1705, Anne Webb, a servant in Middlesex County, Virginia, appeared before the court for bearing a bastard child. Webb misleadingly claimed that Daniel Hughes, an overseer at John Wormeley’s plantation, impregnated her. Thus, the “fix” protected the identity of the real father. Wormeley, the plantation owner, actually fathered the offspring but had one of his overseers take responsibility for the action to avoid a potentially tarnished reputation.⁹⁴

Master-servant relationships were profitable for the man, while exploitative and excessively punitive for the woman. Servants who were impregnated by their master had to perform two additional years of service beyond the expiration of their contract to compensate for the master’s “loss and trouble” and pay a fine of two thousand pounds of tobacco. For instance, a North Carolina court convicted Elizabeth Fitzgarrett of bastardy during her term of service. Consequently, the judge ordered Fitzgarrett to serve her master, Thomas Speight, for “two yeares over and above the time she is to Serve.” The extension of laborers’ contract served a two-fold purpose. First, the additional year(s) of service greatly benefited planters because labor was a highly-valued commodity in British America. Second, judges further delayed freedom to servants. Augmenting the

When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846 (Stanford: Stanford University Press, 1991), 184, 199. A similar phenomenon occurred in the Spanish colonies. Aristocrats often conducted sexual relations with their slaves. Upon his death, a Santa Fe don admitted to taking the virginity of his Indian slave. Baptismal registers listed children born from these illicit relationships as “father unknown.”

⁹⁴ Rutman and Rutman, *A Place in Time*, 162-163.

period of servitude created a very lucrative arrangement for elites and allowed colonial authorities to more easily implement their will upon laborers.⁹⁵

While planters typically assumed financial responsibility for illegitimate offspring, the laborer's lengthened term of service more than compensated for the expense. In Massachusetts, masters could expect to pay three shillings a week to care for a bastard child. This was a paltry sum considering that the master increased the servant's bonded period and bound out the illegitimate progeny to another planter. The labor shortage in the Anglo colonies (particularly in the Chesapeake) meant that augmenting the work force and extending periods of servitude were profitable exchanges for the small expense of raising a child. To alleviate the labor shortage, courts often did not bother locating the fathers of illegitimate offspring. Without a father to assume the cost of the child's upbringing, the mother had to perform a longer period of service to compensate the master for defraying the progeny's expense.⁹⁶

Colonial authorities were unwilling to allow servants to avoid prosecution for having an illegitimate child, regardless of whether the master was responsible or not. If courts had exonerated women who "gott with child" by their master, "it might probably induce such loose persons to lay all their bastards to their masters." By not punishing

⁹⁵ "Abridgement of Virginia Laws, 1694" in *Virginia Magazine of History and Biography*, Vol. 5 (Richmond: Virginia Historical Society, 1928), 52; William L. Saunders, ed., *The State Records of North Carolina*, Vol. 1 (Raleigh: P. M. Hale, Printer to the State, 1886), 655; Hening, *The Statutes at Large*, Vol. 8, 377.

⁹⁶ Morgan, *The Puritan Family*, 131; George F. Dow, *Records and Files of the Quarterly Courts of Essex County Massachusetts* (Salem, 1911-1921), Vol. 2, 68, 372, 384 and Vol. 5, 410-411; Spruill, *Women's Life and Work in the Southern Colonies*, 321. Judges eventually limited the benefits for masters who got to know their servants carnally. In 1696, Virginia legislators reduced the servant's sentence from two years to one year, an act later replicated by North Carolina in 1741. Additionally, lawmakers prohibited the master and his executors and administrators from any claim against the maid for any reason whatsoever. Virginia courts continued to lengthen the indentured period of servants, but rather than have them serve their masters, parish churchwardens sold the maids to another planter for a period of two years. By stripping away the masters' personal gain, court officials hoped to limit planters' sexual interest in their maids. See Hening, *The Statutes at Large*, Vol. 6, 361; Walter Clark, ed., *The State Records of North Carolina*, Vol. 23, 195.

female bastard bearers, elites feared that maids would claim that their master impregnated them and, thus, avoid disciplinary measures. Colonial courts ensured servants' powerlessness by holding them completely liable for the fruits of illicit relations, notwithstanding if they consented to it or not. Master-servant relationships represented two conflicting images for the parties involved. For the master, the servant was an acceptable sexual release valve. A planter faced no shame or punishment for his actions and, through most of the colonial era, he economically profited from the debauched affair. On the other hand, servants were in a precarious situation where they had little choice but to submit to their master's wishes. It is not too hyperbolic to compare life on the plantation to one of Dante's fiery layers of hell. Servants performed back-breaking labor, endured second-rate living conditions, and always faced the possibility of unwanted sexual advances.⁹⁷

Servants and other financially destitute colonists faced swift and stiff discipline for bearing illegitimate offspring. Laborers who engaged in illicit behavior endured a barrage of punishments for their physical intimacy, while society tolerated the same activity among higher society. The fact that laborers were punished more severely than a master for bearing a bastard was the nature of colonial society. Status inequities were endemic to the British colonies and influenced judges in both the New England and Chesapeake regions. The application of fornication laws was never uniform or fair. Colonial elites understood that wayward behavior among the subservient class challenged their authority and, therefore, leaders specifically targeted servants for prosecution. For instance, in 1696, Colonel Lawrence Smith of Gloucester County, Virginia, delivered a

⁹⁷ Hening, *The Statutes at Large*, Vol. 2, 167

proposition to the House of Burgesses “for Easeing of parishes in that Excessive Charge that lyes upon them by meanes of Bastard Children born of Servant Women.”⁹⁸

Female servants were not alone in enduring the wrath of colonial justice, for male laborers also suffered from their second-class status. Status inequities accomplished something that neither gender nor racial discrimination could—it ended the invulnerability of (many) white men to legal punishment. Elites used the protections and privileges that status brought them to separate themselves from other men who lacked money and influence. The social hierarchy ensured that servants suffered more often and more severely than men of privilege and wealth for the same transgression. For men who could not afford to raise an illegitimate child, court officials mandated that they “shall make Sattisfaccon” to the parish. Indentured men who impregnated a maid had to serve her master for one year or pay 1,500 pounds of tobacco to compensate for the woman’s lack of productivity while with child. In addition, courts mandated that male servants defray the cost of illegitimate progeny. For example, a Virginia statute described placing the male laborer “in security to kepp the parish harmless.” Whereas most free, white men never faced prosecution for bastardy in Chesapeake courts, judges often charged indentured men with the transgression.⁹⁹

Meanwhile, non-bonded men and women relied on their status to avoid or mitigate punitive measures. Courts seldom targeted free whites for prosecution unless an illegitimate child resulted from their illicit sex. Even this did not necessarily entail legal charges against the couple. Free persons often faced a fine and, in the more extreme cases, they suffered a whipping. As the colonial era neared its end, judges abated their

⁹⁸ Norton, *Founding Mothers & Fathers*, 132-33. Spruill, *Women’s Life and Work in the Southern Colonies*, 315-316.

⁹⁹ Hening, *The Statutes at Large*, Vol. 3, 140

practice of whipping free women for failing to pay pecuniary fines. Servant women, however, continued to endure relentless lashings on their bare skin. Moreover, non-bonded women were not as vulnerable as house maids to sexual exploitation by elite men because many of them already had a husband or suitor. Colonial authorities sought to protect the pureness of white women of status. Though society tolerated privileged men's sexual liaisons with servants and slaves, it vociferously condemned the deflowering of a non-bonded, white virgin.¹⁰⁰

Social rank remained a significant factor in the prosecution and punishment of bastardy in Anglo America. Judges' decision to prosecute the financially destitute while they pardoned the wealthy suggests that status inequities thrived in illegitimacy cases. The sexual conquests of influential men did not threaten the social structure or conflict with the established ruling class of the colony. Court officials, however, viewed sex among subservient populations as a societal evil and a direct challenge to elite, white male control. As the chapter's introduction showed, Anne Orthwood and John Kendall, a servant and an influential gentleman respectively, could not openly unite as husband and wife because their dissimilar social rank did not permit such a marriage. Kendall's prominent uncle, Colonel William Kendall, condemned relations between respectable and wealthy colonists and laborers and attempted to thwart unions that crossed class lines. Therefore, preservation of the class hierarchy and maintenance of social stability, together with monetary concerns, guided lawmakers' discriminatory handling of bastardy cases.

¹⁰⁰ Hening, *The Statutes at Large*, Vol. 8, 376.

Chapter Five

“‘Spurious Issue’ and ‘Abominable Mixtures’: Racial Inequities in the Conceptualization of Colonial Bastardy”

In May of 1694, Frances Driggus, an African-American servant, appeared before the grand jury of Northampton County, Virginia, for the “sin of fornication.” The judges ordered the young woman to serve her master, John Brewer, for an additional two years and to receive thirty lashings on her bare shoulder. Soon after, the court brought bastardy charges against Driggus for an illegitimate child stemming from her illicit affair. Recalling the court’s stern punishment for fornication, Driggus hoped to elude full responsibility for the bastard offspring by declaring that Brewer was the progenitor. Brewer categorically rejected the assertion, contending he “never knew her or was concerned with her in any such way.” Despite Driggus’s assurance that Brewer impregnated her, judges ignored the accusation because “what evil consequence such presidents [precedents] may futurely be if unduely grounded.” Rather than enforcing morality and holding the guilty accountable, the lawmakers transferred the case to the Governor and the Virginia Council because the grand jury refused to recognize the oath of a black woman in “soe tender a case.” Meanwhile, the judges sentenced Driggus to either pay a fine (which she obviously could not afford) or suffer another thirty lashings, while they exonerated Brewer.¹⁰¹

¹⁰¹ *Northampton County Deeds, Wills, Etc., 1689-1698*, 274, 279, 322. Quoted in Lois Green Carr, Philip D. Morgan, and Jean B. Russo, *Colonial Chesapeake Society* (Chapel Hill: University of North Carolina Press, 1988), 285.

The court case of John Brewer and Francis Driggus reveals that interracial copulation and illegitimate mulatto offspring precipitated public rebuke and contempt. This chapter explores colonists' understanding of race and how this cultural phenomenon influenced the creation and implementation of bastardy legislation, as well as the punishment for those who violated the law. The racial disparities found in the case of Brewer and Driggus and others like it are not adequately explained by financial concerns alone, for there were other factors that swayed judges' decisions. In the Brewer-Driggus trial, the judge was unwilling to accept a black woman's testimony, thereby leaving her vulnerable to the whims of the court while Brewer did not face punitive measures. Miscegenation also occurred between African men and white women, a relationship that elicited the strongest condemnation among colonial officials. If racial concerns were inconsequential to bastardy cases, why were elite men able to evade prosecution for interracial relations, while white women faced stern and, occasionally, brutal punishment for the same act? To employ race as an instrument of historical analysis, it is first necessary to define what is meant by the cultural dynamic and explain why the concept was used.¹⁰²

Race was a method of rationalizing, legitimizing, and scientifically explaining why non-whites were inferior to Europeans. White colonists relied upon skin color to determine an individual's worth. Lighter complexions represented respectability and intelligence, while darker shades symbolized savageness and ignorance. Race signified an individual's abilities, aptitude, and potential and, above all these things, it established a person's worth. Colonists understood race as a fixed characteristic, yet in retrospect

¹⁰² Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 4; Martha Hodes, *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999), 1.

this belief was short sighted and highly flawed. The attachment of certain traits to the color of one's skin pigment is culturally defined, not biological or unalterable. The qualities associated with pigment color varied according to location, value system, and time period. In other words, race is a product of history, not of nature.¹⁰³

In colonial America, elites effectively used skin tones to define authority, citizenship, marriage, and control. British colonists invoked racial categories to legitimize, buttress, and justify the distribution of power in Anglo America and maintain the social hierarchy.¹⁰⁴ Elites used racial, class, and gender discrimination to divide the colonial populace and, by doing so, they were able to sustain their authority. An example of this was elite men's ability to prohibit sexual relations between white women and African men. Thwarting sensual liaisons between the races preserved white women solely for white men and limited interracial cooperation. Colonial officials could not prevent these unlawful affairs from occurring, but they could decrease their frequency by policing racial boundaries. Therefore, authorities relied upon the severity of bastardy and fornication laws to serve as a deterrent to racially-heterogeneous affairs. In other words, bastardy prosecutions were aimed at more than monetary concerns, for they were a way to limit interracial relations (particularly for white women and African men).¹⁰⁵

From the outset, Europeans who colonized America brought with them preconceived notions about the inferiority of Africans. Englishmen believed their lifestyle, religion, knowledge, customs, and skin color were far superior to that of

¹⁰³ Fields, "Ideology and Race in American History," 152, 149. See also Colette Guillaumin, *Racism, Sexism, Power, and Ideology* (London: Routledge, 1995); Hannah Arendt, *Origins of Totalitarianism*, 2nd Edition (New York: World Publishing, 1969); and David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca: Cornell University Press, 1966).

¹⁰⁴ Jennifer Michel Spear, "'Whiteness and the Purity of Blood: Race, Sexuality, and Social Order in Colonial Louisiana,'" (Ph. D. diss., University of Minnesota, 1999), 29.

¹⁰⁵ Nell Irvin Painter, "'Social Equality,' Miscegenation, Labor, and Power," in *The Evolution of Southern Culture*, Nurman V. Bartley, ed. (Athens: University of Georgia Press, 1988), 48.

Africans, who the British viewed as technologically primitive, spiritually empty, and culturally inept. Europeans extolled their own discoveries of new lands, breath-taking achievements in the arts and humanities, and advances in the sciences, while they disparaged Africans' lack of progress. Due to the perceived differences between whites and non-whites, the colonial era witnessed a hardening of racial attitudes. Africans' sexual promiscuity and dark skin color made them disparate from whites. White colonists regarded Africans as more carnal, beastlike, and lascivious than themselves. Andrew Battell, an English explorer in West Africa during the Elizabethan era, wrote, "They [Africans] are beastly in their living for they have men in women's apparel, whom they keep among their wives."¹⁰⁶

Once Africans disembarked from the rancid slave ships onto the eastern shores of North America, they were greeted with shackles and forced labor. Over the course of the seventeenth and eighteenth centuries racial prejudices crystallized. Initially, however, colonial officials were less vocal in their opposition to interracial unions before the entrenchment of slavery.¹⁰⁷ White servants and blacks often empathized with each other, as their lives were marked by numerous similarities. On several occasions, whites and Africans would socialize together, runaway together, flout the law together, and engage in illicit sex together. Provided that Negroes composed a numerically insignificant part of society, there was little for white colonists to fear. As the number of Africans swelled,

¹⁰⁶ D'Emilio and Freedman, *Intimate Matters*, 35; Ernest George Ravenstein, ed., *The Strange Adventures of Andrew Battell of Leigh, in Angola and the Adjoining Regions* (London: Hakluyt Society, 2d Series 6, 1901) as quoted in Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (New York: W. W. Norton & Company, 1968), 32-33, 43;

¹⁰⁷ D'Emilio and Freedman, *Intimate Matters*, 34, 35. This statement is a generalization and, therefore, does not apply to each county or colony. In a broad sense, British colonists were more receptive to the idea of interracial affairs during the early years of colonization than they were towards the end of the seventeenth century. As the number of Africans increased and the institution of slavery became more vital (among other factors), officials grew more critical of interracial affairs.

however, colonial elites felt ever more threatened by the amity between whites and blacks. They knew that the surest way to safeguard the colonial power structure was to create hostility between poor British colonists and Africans. The Virginia Assembly took the lead role in curbing interracial camaraderie by passing a series of acts to foster disdain and dislike between whites and non-whites. Virginia officials prohibited free Indians and blacks from owning Christian slaves after 1670. Just ten years later the Assembly ordered thirty lashes for any slave that “lift up his hand in opposition” to any Christian (i.e. white colonist). This law permitted British servants to lash out at slaves without fearing repercussions, while denying Africans the right to defend themselves or strike back. In 1705, the Assembly afforded indentured whites protection from their master’s whip, yet Negroes remained vulnerable to brutal physical discipline. By casting black skin color as a mark of inferiority, elites diminished the affinity between lower-ranking Europeans and Africans.¹⁰⁸

Colonial society grew more tolerant of sexual misconduct between whites in the eighteenth century, yet the period also witnessed increased opposition to interracial relations. Between the 1660s and the turn of the century, colonial leaders and court officials increased the punishment for interracial fornication, making it incommensurate with the penalties for intra-racial relations. By 1750, the entire Chesapeake region, parts of New England, and Pennsylvania had laws prohibiting sexual relations between whites and non-whites. Colonial lawmakers denounced miscegenation in what Winthrop Jordan described as “language dripping with distaste and indignation.” A 1664 Maryland law referred to racially-mixed unions as “shamefull Matches.” In 1691, the Virginia Assembly took action to prevent the “abominable mixture and spurious issue” caused by

¹⁰⁸ Morgan, *American Slavery, American Freedom*, 327, 329, 331.

non-whites intermarrying with white women. Similarly, a North Carolina law declared that “no White man or woman shall intermarry with any Negro, Mulatto or Indyan Man or Woman under the penalty of Fifty Pounds for each White man or woman.”¹⁰⁹ Massachusetts also passed a bill that criminalized sensuality and marriage between British colonists and non-whites. Rhode Island banned interracial marriages, declaring them “absolutely null and void.” Delaware as well joined with other colonies in opposing racially-mixed relationships. Though the colony did not outlaw interracial unions, Delaware authorities imposed a double fine in bastardy cases with mulatto children. There was universal opposition to interracial unions and the fruits stemming from these relations throughout Anglo America, though the degree of resistance differed based on location and time.¹¹⁰

Male planters, who essentially dominated colonial society, typically evaded punishment for interracial sexual relations. For instance, a member of Virginia’s House of Burgesses reportedly enjoyed the “darke imbraces of a Blackamoore, his slave.” The colonial representative suffered no shame or rebuke for his sensual misconduct. Even if

¹⁰⁹ Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 358; Jordan, *White over Black*, 139; Morgan, *Slave Counterpoint*, 15; Hening, *The Statutes at Large*, Vol. 3, 86-87; Hodes, *Sex, Love, Race*, 115; Morgan, *American Slavery, American Freedom*, 334-335. Not only was this statute blatantly racist, but it was also sexist because it did not apply to white men. This law abandoned earlier sanctions placed on Anglo men’s ability to fornicate with non-whites; Clark, ed., *The State Records of North Carolina*, Vol. 23, 65. The legislation prohibiting interracial marriages began in Maryland and Virginia in the early 1660s, Massachusetts in 1705, North Carolina in 1715, South Carolina in 1717, Pennsylvania in 1726, and Georgia in 1750.

¹¹⁰ Hodes, *Sex, Love, Race*, 74; Jordan, *White over Black*, 139; Samuel Sewall, *The Diary of Samuel Sewall*, Vol. 1, 1674-1708, Edited by M. Halsey Thomas (New York: Farrar, Straus and Giroux, 1973), 532. Toleration of interracial relationships survived longer in New England than it did in the Southern colonies. New England had a smaller population of Africans (in 1700, there were only one thousand Africans and their descendants living in New England) and the absence of a gender gap meant that fewer whites looked to Africans for sexual satisfaction. Samuel Sewall, a Massachusetts official, warned against a law on miscegenation because he feared it might lead to “murders and other abominations” committed against the children of interracial relations. In the Chesapeake region, many white men took Africans as sexual partners because slave women were plentiful and vulnerable and a gender imbalance in the region left many men searching for a female partner. Colonial officials expanded the parameters of appropriate fornication for themselves, as they limited it for others.

judges disciplined men of privilege for their carnal misbehavior, female slaves were in such a compromised situation that they would seldom, if ever, bring their story to the courts' attention. The judicial system was largely uninterested in the sexual exploits of society's upper crust so long as the episodes were kept silent and carried out behind closed doors. Elites' authority went unchecked in the colonial era, as evidenced by their (usually) forced relations with African women. Power relationships between black and white communities were skewed toward ensuring that white men wielded complete control. By imposing their will on African women, white men were asserting their own dominance. This form of miscegenation did not challenge the racial hierarchy, but rather strengthened it.¹¹¹

Moreover, white men did not fear fornicating with Africans because they could easily "reject its fruits." Men absolved themselves from any guilt or responsibility for mulatto progeny by declaring that the children were non-white. This meant that British men did not have to provide for these illicit children. Virginians, in particular, were so fearful of miscegenation and its social consequences that they were willing to alter the English precedent of children assuming the condition of their father. In 1662, the Virginia Assembly affirmed that progeny conceived by a British man and African woman was "bound or free only according to the condition of the mother."¹¹² Therefore, if a

¹¹¹ Peter Force, *Tracts and Other Papers Relating Principally to the Origin, Settlement, and Progress of the Colonies in North America, From Discovery of the Country to the Year 1776*, Vol. 1 (Gloucester, Mass.: Peter Smith, 1963), 46; Hodes, *Sex, Love, Race*, 113; Smith, ed., *Sex and Sexuality in Early America*, 173. A chapter of this book concerns Jamaican slave owners' sexuality, which was remarkably similar to the planters' exploits in the Southern colonies. It claimed: "The key fact about Jamaica's sexual culture was that it allowed extreme latitude to white men, who acted virtually how they pleased, without needing to fear that they would suffer any social consequence for their persistent philandering."

¹¹² Jordan, *White over Black*, 178; Hodes, *Sex, Love, Race*, 115; Robert Beverley, *The History and Present State of Virginia*, Louis B. Wright, ed. (Chapel Hill: The University of North Carolina Press, 1947), 271. Beverley wrote: "Slaves are the Negroes, and their Posterity following the condition of the Mother, according to the Maxim, *partus sequitur ventrem*."

white man and Negro woman conceived a child together, the offspring was deemed black and received the mother's status. The flood of new Africans into the Southern colonies troubled Maryland officials as well. The arrival of sexually vulnerable, black women on to the Maryland shores increased the likelihood of mulatto births. Accordingly, the colony passed an anti-miscegenation law in 1664 declaring that progeny stemming from interracial fornication were slaves.¹¹³ Maryland, just like its neighbor Virginia, hoped that relegating mulatto children to the shackles of slavery would preserve the racial hierarchy.

Despite judges' lax response to elite men crossing the racial divide to find a sexual partner, there was not universal acceptance of this practice. As early as 1630, Virginia officials displayed their contempt for interracial fornication. For instance, Hugh Davis, a white Virginian, received a severe whipping for "abusing himself" and dishonoring God by "defiling" his body during intercourse with an African.¹¹⁴ Ten years later, courts forced a Virginia gentleman to perform penance in church for "getting a negroe woman with child." The gentleman suffered a blow to his "Reputacon and Creditt," which was an ephemeral condition that would be mitigated in time. Meanwhile, the black woman received a sound whipping for participating in sexual relations.¹¹⁵ The case was typical of judges' reaction to interracial fornication: privileged men generally avoided a costly fine and corporal punishment, while African women suffered a sound

¹¹³ D'Emilio and Freedman, *Intimate Matters*, 35-36. Maryland's anti-miscegenation law also punished white women choosing to unite with an African by forcing them to serve their partner's master. This was aimed at deterring white women from taking African bed mates.

¹¹⁴ Laslett, Oosterveen, and Smith, ed, *Bastardy and Its Contemporary History*, 358.

¹¹⁵ Jordan, *White over Black*, 78; See *Orders and Wills*, Number 14, 1698-1710, p.37 and *Order Book and Wills*, Number 12, 1683-1689, p.269 in *Records of Northampton County* as quoted in Pagan, *Anne Orthowood's Bastard*, 110. There is a strong possibility that the African woman did not consent to the affair. Ultimately, judges did not care if the relationship was forced or not, they punished the woman just the same.

whipping. The heavy-handed bastardy punishments used against non-white women is further proof of the racial (in addition to class and gender) inequities present in illegitimacy cases.

Colonial society did not tolerate, under any circumstance, women who engaged in carnal affairs with non-whites. A 1681 Maryland act described unions between British women and black men as “always to the Satisfaccion of theire Lascivious and Lustfull desires, and to disgrace not only of the English butt allso of many other Christian Nations.” A non-bonded, white woman could change from a reputable and moral individual to a whorish servant by having intercourse with a black man on just one occasion. Although interracial copulation between white women and non-white men occurred less frequently than did intercourse between white men and non-white women, colonists’ fear of miscegenation was not unfounded. The act occurred more often than generally acknowledged.¹¹⁶ A newspaper advertisement illustrates one lucid example. In 1759, a Maryland man publicly denounced his wife, Mary Skinner, for sharing intimate embraces with an African. The husband claimed that he had provided Mary with “all the Love and Tenderness which could possibly be shown by Man to a Woman.” Despite the husband’s affection for his wife, Mary took “in my [the husband] stead, her own Negro slave” with who she conceived a child with. Consequently, the action caused so much

¹¹⁶ For instance, quantitative data from three Virginia counties illustrate the frequency of English women conceiving a mulatto child. Between 1690 and 1698, fourteen white women in Westmoreland County had a total of nineteen non-marital births; at least four of these children were mulatto. White mothers delivered an equal percentage of racially-mixed offspring in Norfolk County (courts punished thirteen women for conceiving a child out of wedlock). Similarly, in the years from 1702 to 1712, Lancaster County officials convicted twenty-six white women of bearing a total of thirty-two bastards. Exactly one-quarter of illicit carriages were mulatto progeny in Lancaster County. These statistics indicate that for every three white bastards there was one mulatto child born out of wedlock in late seventeenth-century Virginia. Though there is no evidence to confirm it, the sample counties in Virginia were fairly indicative of other Southern colonies. This data suggests that illegitimate mulattoes were a vexing problem for colonial leaders. See Morgan, *American Slavery, American Freedom*, 336.

humiliation and shame to the husband and his family that the he forbade Mary to see him anymore.¹¹⁷

To limit the base act of interracial fornication, white women endured forceful punishment and social opprobrium for conceiving a child out-of-wedlock with a black or mulatto man. Even non-bonded women suffered harsher disciplinary action when sexually involved with non-whites. For example, Virginia courts required a payment of 1,500 pounds sterling for women's reprehensible act of crossing the color line. If the woman could not afford this hefty fine, churchwardens indentured her for a five-year period. Additionally, white Southern women copulating with non-white men received a public whipping administered by the county sheriff.¹¹⁸ The disciplinary measures for bearing racially-mixed children increased in severity over the course of the seventeenth century. According to Virginia statutes, any white woman, regardless of class status, intermarrying with an African, mulatto, or Indian "shall be banished forever." Typically, lawmakers exiled female transgressors to the West Indies.¹¹⁹ North Carolina officials also reviled interracial fornication and were swift and stern in their discipline. While women who conceived a bastard child with a non-white colonist either performed an additional two years of indentured service (if she was a servant) or paid a six pound fine to the churchwardens. Non-bonded women faced a similar punishment—they either

¹¹⁷ Browne, *Archives of Maryland*, Vol. I, 533-34; Vol. VII, 204; *Annapolis Maryland Gazette*, April 22, 1773, October 12, 1769; Both anecdotes are quoted in Jordan, *White over Black*, 79-80, 138-139.

¹¹⁸ Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century*, Vol. 2 (New York: Peter Smith, 1935), 111.

¹¹⁹ Hening, *The Statutes at Large*, Vol. 3, 87. In 1705, the Virginia Assembly ended its policy of deportation because the colony was losing a valuable source of revenue and labor. The Assembly decided that a prison sentence of six months and a fine of ten pounds was a sufficient punishment for female violators, while the punitive measures remained in the colony's best interest. See Hening, *The Statutes at Large*, Vol. 3, 453-54; Morgan, *American Slavery, American Freedom*, 335.

satisfied a charge of six pounds or church officials sold them off for a period of two years.¹²⁰

If white women's punishment for interracial fornication seemed excessive, their black partners paid an even higher price. According to the colonial mindset, the libidinous Negro was guilty of robbing his paramour of her virtue and respectability. The woman left the relationship as a soiled dove, stripped of all decency. As guardians of female virginity and morality, white men failed to protect women from the sexual advances of Africans. Though colonial authorities could not prevent the illicit affairs altogether, they tried to limit them by harshly punishing black men. In 1688, a New Haven judge found Toney, an African, guilty of interracial relations with a white woman and sentenced him to twenty lashes. Toney's punishment was largely symbolic because he was the first Negro prosecuted for this transgression in the New Haven colony. Whereas white fornicators no longer faced corporal punishment for unlawful intercourse by the end of the seventeenth century, Toney and subsequent blacks found New Haven judges excessively hostile and punitive. The image of a black man tied to a whipping post with his body bare of clothes, as a man mercilessly lays lashes upon his back, was very powerful. For the next two decades every Negro appearing in a New Haven court for carnality with a British woman received the same brutal sentence. This stood in stark contrast to judges' silence when white men had their way with African women.¹²¹

While interracial relations elicited vociferous condemnation, courts ignored non-marital intercourse between blacks. Judges were unconcerned by the fact that all African children were illegitimate according to English standards, which required marriage to

¹²⁰ Clark, ed., *The State Records of North Carolina*, Vol. 23, 65.

¹²¹ Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789*, 184-85.

legitimize children. Since any progeny born to a female slave inherited the mother's bonded status, slave owners stood to profit from sexual relations between enslaved blacks. In return for the augmentation to his labor force, the master assumed financial responsibility for slave children. This was a very lucrative exchange for the master because the slave's productivity more than compensated for the paltry sum of maintaining him or her. Courts ignored fornication between slaves because the master ensured the economic security of the minor, thereby making the judicial system irrelevant.¹²² While historians recognize this as further proof of the essentiality of economic considerations in bastardy cases, they fail to appreciate the larger implications. By not holding slaves accountable to the law, judges permitted masters to exercise complete control over the lives of African children. Thus, lawmakers' solution to bastardy among blacks served the interests of elites, buttressed the social hierarchy, and expanded the institution of servitude (and after 1691, slavery). The regulation of Negro illegitimacy had little to do with the economic solvency of the parishes and everything to do with the financial interests of the planters.

In the trial of John Brewer and Frances Driggus (located in the chapter's introduction), judges of the Northampton County Court in Virginia refused to recognize an African's testimony against her white master who impregnated her. Court officials in this case and other such trials were unsympathetic to the sexual victimization of non-whites, as they ignored the carnal misbehavior of white men. Frances Driggus's black skin color not only precluded her from receiving a fair trial, but directly resulted in her

¹²² Laslett, Oosterveen, and Smith, editors, *Bastardy and Its Contemporary History*, 358; Rutman and Rutman, *A Place in Time*, 176. See Philip Bruce, *Economic History of Virginia*, 113. Bruce argued that an African woman still faced punishment even if her partner was black as well. He wrote, "If a negress gave birth to a bastard child who was entirely of her own color, proving that its father was of African blood, she was sent by her master to the county seat to be chastised by the sheriff."

facing stiff punitive measures. Meanwhile, Brewer evaded disciplinary action and left the courthouse with his reputation intact. Any children resulting from copulation between a white man and an African woman were unlikely to cause much alarm because colonial officials labeled these offspring as slaves. Elite men not only circumvented punishment for interracial fornication, but they actually benefited from the illicit affair (the addition of a new slave laborer). Conversely, women, both white and black, paid dearly for their involvement in mixed relationships. White women bearing mulatto children were responsible for creating a free, mixed-race population that directly challenged the white/non-white racial groupings present in British America. Elites considered sexual liaisons between an African man and a white woman a grievous violation of colonial law and responded with swift and severe discipline to combat the unlawful relationships. Whether it was the illicit carnality of women, servants, or non-whites, privileged men felt that it was their duty to regulate sexuality. Had the parish's financial solvency been the sole objective in the prosecution of bastardy, why did courts target impoverished individuals (non-whites and women) for having illegitimate, mulatto children while exonerating wealthy men? This chapter suggests an additional explanation for the courts' actions—control. The white, elite ruling class used racial inequities to satisfy their own sexual cravings and to constrict the acceptable bounds of sexuality for white women and all other non-whites.

Chapter Six

Conclusion

Bastardy was a contemptible condition in British America that threatened the virtue and spiritual salvation of the colonial populace and the financial solvency of parishes. During the early years of colonization, colonial officials targeted bastard bearers because their actions were morally reprehensible and conflicted with Protestant religious beliefs. As the number of illegitimate children increased, colonial authorities feared that the cost of raising bastard offspring would bankrupt parishes and communities. Historians have considered monetary expenses to be the driving force behind bastardy prosecutions. Undoubtedly, illegitimate children's financial drain on the community was of prime concern to most judges. Court records, however, reveal inconsistencies within the prosecution and punishment of bastardy, thereby indicating that there was more at work than economic factors alone. Therefore, this study explored how social factors figured into colonial authorities' response to and treatment of colonial illegitimacy.

Authorities weaved gender, class, and racial inequities into the regulation of contemptuous carriages. Colonial officials crafted bastardy laws not only to protect against charges to the community, but also for their own benefit. Elite men relied upon their status to attain certain privileges, including greater latitude in carnal matters, while excluding the remainder of society from these same rights. Men of wealth and influence circumvented bastardy laws, as women, indentured servants, and non-whites seldom

dodged legal charges because of their gender, class, and race respectively. For instance, Samuel Appleton eluded prosecution for impregnating Priscilla Willson, despite witnesses attesting to his guilt. Meanwhile, Willson received stiff penalties for her involvement in the affair, even though the trial record suggests that Appleton forced himself upon her. Moreover, social class distinctions increased the vulnerability of servants and laborers to bastardy charges. Anne Orthowood, a young indentured servant, who became pregnant with twins during a non-marital affair with a neighbor, personifies the social distinctions that permeated the British colonies. Orthowood was solely responsible for tending to the couple's offspring because her partner, who was from a distinguished family, could not marry a servant. Racial antagonisms also increased the susceptibility of non-whites and white women who fornicating with African men to bastardy charges. Virginia officials were so repulsed by white women's decision to copulate with African men that authorities actually banished these licentious women from British America. Across colonial America, court officials targeted women, laborers, and non-whites for their sexual contraventions, while they generally excused promiscuous behavior among wealthy and influential men.¹²³

Elites' use of status to protect their social position is not a new revelation; however, it is new to the study of colonial illegitimacy. This thesis examined bastardy through a cultural paradigm, resulting in a fresh and innovative way of re-conceptualizing a topic that is usually dismissed as purely economic (and initially religious). Social dynamics do not replace monetary concerns as colonial officials' impetus for prosecuting illegitimacy. Instead, the issues overlapped and thrived simultaneously. While

¹²³ Thresher, ed., *Records and Files of the Quarterly Court of Essex County, Massachusetts*, Vol. 9, 64; Smith, ed., *Sex and Sexuality in Early America*, 1, 89; Pagan, *Anne Orthowood's Bastard*, 3-6, 150.

privileged and wealthy men wrote, amended, and enforced bastardy laws to combat a costly problem of non-marital births, they also used these statutes to unfairly target and punish women, laborers, and non-whites for their sexual transgressions.

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