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**'Thou Art A Verie Baggadge'-  
Gender and Crime in  
Seventeenth-Century  
Nottinghamshire and Staffordshire**

**by**

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**A thesis submitted in partial fulfilment of the  
requirements for the degree of Doctor of Philosophy.**

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## Abstract

The last thirty years have witnessed an increase in research by historians into the lives and experiences of women, including those of early modern women. However, this has still to a large degree excluded any interest in the lives of women from the lower orders. These earlier studies have largely considered the role and experiences of women in isolation and few have examined the role that gender played in shaping experience. This thesis examines questions of gender and its relation to a range of crimes through the records of the church courts in Nottinghamshire, between 1603-1642, the quarter session courts in both Nottinghamshire and Staffordshire between 1603-1660, and a range of contemporary pamphlets. Female participation in criminal activity has largely been ignored by historians or at best been viewed in relation to male activity and in this way has been judged as insignificant. This perspective fails to consider gender differences and societal expectations of male and female conduct. Through an analysis of what constituted male and female criminality it will be possible to identify on what grounds society constructed male and female identity. From contemporary sources such as sermons, homilies and pamphlets it would appear that female identity was constructed primarily around notions of their sexuality, this will be tested by examining a range of crimes, some of which were closely associated with female sexual conduct and others which had no obvious association. By drawing on evidence from two counties it will be possible to identify how mutable or fixed perceptions surrounding appropriate female conduct were, and what factors, if any, contributed towards the construction of these notions. Finally, it will become evident whether women should only be seen as victims of a patriarchal society or whether they were able to negotiate a more comfortable position within, or even contribute to, this system.

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## **Conventions and Abbreviations**

Contracted words have been extended where necessary to aid comprehension, and 'i's have been replaced by 'j's, and 'u's for 'v's where appropriate. Spellings of places and names have only been modernised in my text, in quotations they remain as in the original. The year is taken to begin on 1 January for all court records

The following abbreviations have been used to denote the locations and types of primary source evidence:-

**NAO** - Nottingham Archive Office.

**SRO** - Staffordshire Record Office.

**WSL** - William Salt Library, Stafford.

**C/QSM/** - Quarter Session Minutes. (Nottinghamshire)

**Q/SR/** - Quarter Session Rolls. (Staffordshire Record Office)

**QS** - Quarter Session Rolls. (William Salt Library)

Pamphlets, where used in the text, have been given their full titles.

## Chapter One

### INTRODUCTION

The study of history has traditionally meant the study of important men, and this was especially true for the early modern period. The growth of feminism in the 1960s and 1970s led to attempts to restore women to the historical record. This research into women's history, which concentrated on the histories of worthy individuals, gradually developed into attempts to incorporate women into all history. Gender history emerged from this as an awareness grew of the need to understand women's experiences through their relationships with men. In addition, in the last two decades the enthusiasm of social historians has led to the incorporation of new and exciting topics incorporated within historical research, two of which have been studies of crime and of women.<sup>1</sup> However, within the earlier major texts on these subjects little has been done to integrate these ideas, or to investigate the dynamics of social interaction. By examining the interrelation between crime and gender it will be possible to identify how these concepts informed and constrained the activities of both men and women. This thesis will address this issue by examining the role of gender in crime in two counties, Nottinghamshire and Staffordshire, between 1603-1660.

The introductory chapter will cover several themes. Firstly, the aims of the thesis will be discussed, followed by a survey of the major works on both crime and gender. This

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<sup>1</sup> For examples of this see MacFarlane, A., The Justice and the Mare's Ale, (Basil Blackwell, Oxford, 1981); Herrup, C.B., The Common Peace, (Cambridge University Press, Cambridge, 1987); Cockburn, J.S., Crime in England 1550-1800, (Methuen & Co. Ltd., London, 1977); Prior, M., ed., Women in English Society 1500-1800, (Methuen, London, 1985); Thompson, R., Women in Stuart England and America: A Comparative Study, (Routledge & Kegan Paul, London, 1974).

will serve as a background to the more specific historiographies of the individual crimes which will be discussed within the relevant chapters. Within both of these sections the major relevant historiography will be discussed, demonstrating how most previous methodologies have denied us the opportunity to examine the role of gender within criminal activity.<sup>2</sup> This will be related to the methodology employed within this thesis and how it seeks to offer a more complete analysis of female and male criminal participation. A discussion of the sources used for this study will follow, including their limitations and problems. There will then be a brief discussion of Nottinghamshire and Staffordshire in the seventeenth-century, the two counties under review. This will include an examination of any social, religious and economic differences, (for example the predominance of Puritans or Catholics, or the different types of economic activities), that may have contributed towards any apparent variations in activity or attitudes. There will also be a discussion of the ideological aspects of, and attitudes towards, the place of early modern woman in society, and the significance and impact of the importance of reputation for men and women, which will provide the context for an examination of their role in criminal activities. Finally, a brief outline of the contents of the thesis will be presented.

As has already been noted until the 1960s and 1970s there was a conspicuous absence of women from the historical record with women generally not considered to be an area worthy of study.<sup>3</sup> Feminist historiography in the 1970s sought to remedy this omission

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<sup>2</sup> Two recent studies for the early modern period that have combined a the study of gender and crime are Kermode, J. & Walker, G., Women, Crime and the Courts, (UCL Press, London, 1994); Gowing, L., Domestic Dangers, (Clarendon Press, London, 1996).

<sup>3</sup> Clark, A., The Working life of Women in the Seventeenth Century, 1919, (Reprinted Routledge, London, 1992), was an important exception to this.

and began the recovery process by focussing on their roles and experiences.<sup>4</sup> The first histories of women were still grounded in the histories of worthy individuals, albeit women in this case.<sup>5</sup> Gradually this limited approach was replaced with a desire to incorporate women into all history. In this way feminist history and women's history sought to challenge and redefine history, not merely to add women to existing historical knowledge, which contributed significantly to altering perceptions about women.<sup>6</sup> The developments and various strands of feminist and women's history led to some heated debates between their different exponents, but within their work they identified not only the broad experiences of women but also the contexts within which they must be considered.<sup>7</sup> This work has revealed how definitions of male and female behaviour have changed over time, and has shown how culturally specific male and female differences were. This recent research into the fields of women's and gender history has considerably altered our interpretation of the past.<sup>8</sup> The many debates surrounding

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<sup>4</sup> See Maynard, M., 'Beyond the 'Big Three': the Development of Feminist Theory into the 1990s', Women's History Review, (1995), vol. 4, pp. 259-78;

<sup>5</sup> For a discussion on the value of biographies of famous or great people, even women, which as she asserts makes women marginal, see Caine B., 'Feminist Biography and Feminist History', Women's History Review, (1994), vol. 3, pp. 247-61.

<sup>6</sup> Bennett, J. M., defined feminist history, as historical work infused by a concern about the past and present oppression of women, and women's history as historical work on women, 'Feminism and History', Gender & History, (1989), vol. 1, pp. 251-72.

<sup>7</sup> For a wider examination of this debate and the differences between feminist, women's and gender history see Bennett, J.M., 'Feminism and History'; Bock, G., 'Women's History and Gender History: Aspects of an International Debate', Gender & History, (1989), vol.1, pp. 7-30; Gordon, A.D., Buhle, M.J., Schrom Dye, N., 'The Problem of Women's History', in Carroll, B.A. ed. Liberating Women's History, (University of Illinois Press, London, 1976), pp. 75-92; Hoff, J., 'Gender as a Postmodern Category of Analysis', Women's History Review, (1994), vol. 3, pp. 149-68.

Scott, J.W., Gender and the Politics of History, (Columbia University Press, New York, 1988);

<sup>8</sup> For a discussion of the development of women's and/or gender history see Bennett, J.M., 'Women's History: A study in Continuity and Change', Women's History Review, (1993) vol.2, pp. 173-84; Bock, G., 'Women's History and Gender History: Aspects of an International Debate'; Clegg, S., 'The Feminist Challenge to Socialist History', Women's History Review, (1997), vol. 6, pp.201-214; Carroll, B. ed.,

women's history and gender history, despite conflicts concerning the methodology and approaches, have brought the search for a history of the feminine into the public arena, and brought older interpretations of history into question.<sup>9</sup> These new interpretations of the past have long been overdue. Within any society in which approximately fifty per cent of its members are female, to ignore their input into that society is to deny the 'reality' of historical experience itself. The late Joan Kelly stated the need for women's history to make sex, 'as fundamental to our analysis of the social order as other classifications such as class and race'.<sup>10</sup> The 'natural' evolution from this beginning was the growth of gender history, which sought to consider the socially constructed, rather than the biologically based, construction of gender.<sup>11</sup> This perspective is important as it

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Liberating Women's History; Hill, B., 'Women's History : A Study in Change, Continuity or Standing Still?', Women's History Review. (1993), vol. 2, pp. 5- 22; Giele, J.Z., 'Centuries of Womanhood: An Evolutionary Perspective on the Feminine Role', Women's Studies, (1972), vol. 1, pp. 97-110; Scott, J.W., Gender and the Politics of History; Zemon-Davis, N., 'Women in History' in Transition: The European Case', Feminist Studies, (1976), vol. 3, pp.83-102; Johansson, S.R., 'Herstory' as History: A New Field or Another Fad?', in Carroll, B.A., Liberating Women's History, pp. 400-30; Beddoe, D., 'Why Should We Study Women's History', in Beddoe, D., Discovering Women's History, (Pandora, London, 1983), pp.5-16; Davin, A., 'Redressing the Balance or Transforming the art? The British Experience', in Retrieving Women's History, (Unesco Press, Paris, 1992); Kleinberg, S.J., Retrieving Women's History, (Unesco Press, Paris, 1992); Rendall, J., 'Uneven Developments': Women's History, Feminist History and Gender History in Great Britain', in Offen K., Roach Pierson, R., & Rendall, J. eds., Writing Women's History- International Perspectives, (Macmillan Press Ltd., Basingstoke and London, 1991);

<sup>9</sup> See Corfield, P., for a critical assessment of the debates surrounding gender history, 'History and the Challenge of Gender History', Rethinking History, (1997), vol 1, pp. 241-58.

<sup>10</sup> Cited in Scott, J.W., Gender and the Politics of History, p.23. For an examination of the interrelationship between gender and class see Amussen, S.D., An Ordered Society: Gender and Class in Early Modern England, (Columbia University Press, New York, 1988).

<sup>11</sup> Later works though criticise the denial of the biological basis of masculine and feminine identity. See Roper, L., Oedipus and the Devil, Witchcraft, Sexuality and Religion in Early Modern Europe,

exemplifies the fact that gender as a category should be given as much significance as class and race within historical enquiry. This development from women's history, which was often accused of concentrating on women in isolation, allows for new questions to be raised about the relations between the two sexes in history. This move to study gender history rather than women's history in isolation grew from the concept that, 'women's history concerns not merely half of humankind, but all of it'.<sup>12</sup> Focusing solely on women's history separately to the wider historical debates is just as problematic as focusing solely on men's history.

The specific meanings implied by some terms used in this thesis will now be clarified. The term gender will be used 'to signify those aspects of relations between women and men that are socially induced. Gender refers to a complex set of relations, and historical enquiry must regard 'gender as both an analytical category as well as a cultural reality'.<sup>13</sup> 'Sex' denotes biological differences between women and men; 'gender' the differences that are created by societies'.<sup>14</sup> The meaning of patriarchy, as a concept, also needs clarifying. Adrienne Rich defined it as,

A familial-social, ideological, political system in which men - by force, direct pressure, or through ritual, tradition, law, and language, customs and etiquette, education, and the division of labor, determine what part women shall or shall not play, and in which the female is everywhere subsumed under the male.<sup>15</sup>

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(Routledge, London, 1994), p.4; Rublack, U., 'Pregnancy, Childbirth and the Female Body in Early Modern Germany', *Past & Present*, (1996), vol.150, pp.84-110.

<sup>12</sup> Bock, G., 'Women's History and Gender History: Aspects of an International Debate', pp. 7-30.

<sup>13</sup> Bock, G., 'Women's History and Gender History: Aspects of an International Debate', p.15.

<sup>14</sup> Bennett, J., 'Feminism and History', *Gender & History*, p. 258.

<sup>15</sup> Rich, A., *Of Woman Born*, (Virago, London, 1977), p. 57, cited in Bennett, J.M., 'Feminism and History', *Gender & History*, (1989), vol.1, p. 260.

Patriarchy, within this thesis, denotes the early modern system of authority and hierarchy within which men and women operated, as it manifested itself in early modern society, whilst highlighting that it should not be considered as a single, ahistorical manifestation, but one which changed through time. This thesis will examine the lives and actions of early modern women and men in relation to the system of patriarchy present in early modern England.

Gender, as a concept, enables an analysis of crime that investigates the relative power held by men and women, and gives an insight into the otherwise invisible constraints that the social construction of gender placed both on men and women. Whilst emphasising the role of gender within criminal activities, it is important to note that the term 'gender' does not presuppose the homogeneity of female experience, and allows for a consideration of both inter- as well as intra-gender relations.<sup>16</sup> Crucial to an exploration of gender within criminal trial records is the way in which the category of gender can be applied. Joan Scott noted that it could be used both as an 'object of analytic attention' as well as 'a method of analysis'.<sup>17</sup> This enables an investigation into gender relations in the early modern period, including an identification of the social construction of gender in slander accusations, rape cases, and a wide range of other criminal prosecutions.

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<sup>16</sup> Miles, R., The Women's History of the World, (Paladin, London, 1989), p.13; Bock, G., 'Women's History and Gender History: Aspects of an International Debate'; Kelly, J., Women. History and Theory - The Essays of Joan Kelly, (The University of Chicago Press, London, 1984), pp. 7-30; Kermode, J. & Walker, G. eds., Women, Crime and The Courts in Early Modern England, pp. 20-1; Wiesner, M., Women and Gender in Early Modern Europe, (Cambridge University Press, Cambridge, 1993), p.3; Carroll, B.A. ed., Liberating Women's History - Theoretical and Critical Essays; Zemon-Davis, N., 'Women's History in Transition: the European Case', pp.83-4, 93;

<sup>17</sup> Scott, J.W., Gender and the Politics of History, p.3.

Through an examination of criminal prosecutions from a gender perspective it will be possible to identify the workings of early modern patriarchy. As Judith Bennett notes,

To many feminist historians it has seemed a depressing and pointless endeavour. Instead of looking at how women have coped and survived, created their own discourses and standards of beauty, nurtured their friends and frustrated their enemies, the study of patriarchy looks at the mechanisms through which women have been oppressed, kept down, put in 'their place'.<sup>18</sup>

This identification of patriarchy solely with women as victims is misleading as women have always 'been both victims and agents'.<sup>19</sup> Within this study it will be possible to witness some of the workings of early modern patriarchal structures, showing women both as agents and victims, and as colluding in the subjection of other women.<sup>20</sup> By considering all of these elements the ideological constraints as well as the practical limitations on female experience will become visible.

The study of gender has, through this process, become an integral part of historical research. Gender is now recognised as a crucial element in the social, political, economic and legal frameworks in society.<sup>21</sup> In his work on gender in the early modern period, Anthony Fletcher explores the way in which patriarchy worked within early modern society.<sup>22</sup> He presents an extensive and useful discussion about the multifarious aspects of gender, how this pervaded the everyday existence of women and men, and

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<sup>18</sup> Bennett, J.M., 'Feminism and History', p.262.

<sup>19</sup> Bennett, J.M., 'Feminism and History', p.262; Bennett, J.M., 'Women's History: A Study in Continuity and Change', pp.173-84;

<sup>20</sup> For this aspect see also Hester, M., Lewd Women and Wicked Witches. (Routledge, London and New York, 1992); Kermodé, J. & Walker, G. eds., Women, Crime and the Courts in Early Modern England; Gowing, L., Domestic Dangers. Women, Words and Sex in Early Modern London, amongst others.

<sup>21</sup> Walker, G. & Kermodé, J. eds., Women, Crime and the Courts In Early Modern England, p. 1.

<sup>22</sup> Fletcher, A., Gender, Sex & Subordination in England 1500-1800, (Yale University Press, New Haven and London, 1995).

discusses the ways in which an understanding about the female body influenced ideas about gender.<sup>23</sup> As Jill Matthews stated,

Human biology is not unchanging; the human body is not an ahistorical entity. Both have changed over time and, more importantly, the significance or meaning given to both is social and hence historically created.<sup>24</sup>

As James Sharpe notes in his work on women and witchcraft, 'the problem of gender is one that has only recently begun to attract the attention of historians of crime, of the law, and of the operation of legal systems'.<sup>25</sup> Despite his pessimism he acknowledges that this is a worthwhile task which requires an understanding and appreciation of the English legal system, and its male dominance. Recently there have been more studies that have sought to incorporate women's and gender history alongside studies on criminal activity. Studies by Garthine Walker, Laura Gowing, Mark Jackson and Kirsteen Macpherson Bardell have all considered the impact of gender within their examinations of a variety of activities labelled as criminal.<sup>26</sup> These studies provide a

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<sup>23</sup> Roper, L., has recently attacked theories of the social construction of gender, and she asserts that, 'sexual difference, both as physiological and psychological fact and as social construction, is part of the very stuff of culture', Oedipus and the Devil. Witchcraft, Sexuality and Religion in Early Modern Europe, p.4. Rublack further argues for a history of the body to aid an understanding of how meaning was ascribed by early modern individuals to their physicality and needs in social interaction, Rublack, U., 'Pregnancy, Childbirth and the Female Body in Early Modern Germany', pp. 84-110.

<sup>24</sup> Matthews, J. J., Good and Mad Women. The Historical Construction of Femininity in Twentieth-Century Australia, (Allen & Unwin, Sydney and London, 1984), pp. 10-11, cited in Davin, A., 'Redressing the Balance or Transforming the Art? The British Experience', p.75.

<sup>25</sup> Sharpe, J.A., 'Women, Witchcraft and the Legal Process', in Women, Crime and the Courts in Early Modern England, pp.106-25.

<sup>26</sup> See Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', Liverpool University Thesis, (1994); Gowing, L., Domestic Dangers: Women, Words and Sex in Early Modern London; Jackson, M., New Born Child Murder, (Manchester University Press, Manchester and New York, 1996). Macpherson Bardell, K., 'Death by Divelish Demonstration - Witchcraft Beliefs, Gender and Popular Religion in the Early Modern Midlands and North of England', The Nottingham Trent University PhD. Thesis, (1999). Other studies include Beattie, J.H., 'The Criminality of Women in Eighteenth-Century

consideration of female participation in crime that was impossible in earlier work. Further work incorporates gender and crime within wider studies into the role of women or gender in early modern society.<sup>27</sup> Much of the previous research carried out by historians of crime, although thorough in its analysis, has failed to address many of the above mentioned issues. Studies by Cockburn, Sharpe and Curtis, amongst others, whilst providing a sound and excellent basis for any investigation into crime and early modern society, largely failed to address the issues of male categorisation of criminality, thereby missing an opportunity to investigate the social construction of male and female identity.<sup>28</sup> Few studies of criminal litigation have considered the category of gender.<sup>29</sup>

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England', Journal of Social History, (1975), vol. 8, pp. 80-116; Hanawalt, B., 'The Female Felon', Viator, (1974), vol. 5, pp. 253-68.

<sup>27</sup> For a study that examines gender in society from the mid-seventeenth-century see Shoemaker, R.B., Gender in English Society 1650-1850. The Emergence of Separate Spheres. (Cambridge University Press, Cambridge, 1991). For other works which consider specific aspects of sin and crime in relation to women and/or gender, see Gowing, L., Domestic Dangers: Women, Words, and Sex in Early Modern London. This study provides an insight into the gendered construction of male and female identity as seen through the prism of defamatory language, and male and female participation both as victims and agents in violent crime; Fletcher, A., Gender, Sex and Subordination in England 1500-1800. Although Ingram, M., in his study of the church courts, examines male and female participation in sexual misdemeanours, including, fornication, adultery, incontinence and sexual slander, gender is not applied as an analytical tool. The result is a substantial and thorough study into male and female participation, but one that lacks the insight available to those who seek to question the dynamics of societal structures, in Church Courts, Sex and Marriage in England, 1570-1640. (Cambridge University Press, Cambridge, 1987).

<sup>28</sup> See Beattie, J.M., Crime and the Courts in England 1660-1800, (Clarendon Press, Oxford, 1986); Beattie, J.M., 'The Pattern of Crime In England, 1660-1800', Past & Present, (1974), vol. 62, pp. 47-95. Herrup, C.B., The Common Peace: Participation and the Criminal Law in Seventeenth-Century England; Sharpe, J.A., Crime in Early Modern England 1550-1750, (Longman, London and New York, 1984); Sharpe, J.A., Crime in Seventeenth-Century England: A County Study. (Cambridge University Press, Cambridge, 1985); Cockburn, J.S., Crime in England 1500-1800.

<sup>29</sup> Walker, G. & Kermode, J., eds., Women, Crime and the Courts, p.4;

Even those studies that have focused primarily on female illicit sexual conduct have failed to appreciate the role of gender present in early modern attitudes. G.R. Quaife, in his research into seventeenth-century Somerset, identifies hostility towards bastard-bearers as being grounded particularly in financial concerns.<sup>30</sup> Whilst this is in part true, the opportunity to broaden his approach to consider the impact of gender within these prosecutions is noticeable by its absence.<sup>31</sup> However, focusing on the church courts Martin Ingram's study on sex and marriage addresses a wide range of issues. He examines the social values of early modern society as seen within these courts.<sup>32</sup> It will be argued in Chapter Two and Three, that perceptions regarding female sexuality directed such prosecutions. Recent studies of crime that considered female participation within crime have, through their methodology, identified female participation as numerically insignificant, thus placing female criminality in a subsidiary position to male criminality. In this way female agency has often been denied, and if female criminality was acknowledged at all as a powerful force it has often been in relation to those activities specifically labelled as female crimes, such as infanticide, witchcraft,

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<sup>30</sup> Quaife, G.R., Wanton Wenches and Wayward Wives, (Croom Helm Ltd., London, 1979); An alternative approach to the responses of the courts towards bastardy can be seen in King, W.J., 'Punishment for Bastardy in Early Seventeenth Century England', Albion, (1978), vol. X, pp. 130-51.

<sup>31</sup> For further studies in to sexual crime see Adair, R., Courtship, Illegitimacy and Marriage in Early Modern England, ( Manchester University Press, Manchester, 1996; Addy, R., Sin and Society in Seventeenth-Century England, (Routledge, London, 1989); Laslett, P, Oosterven, K. & Smith, R.M. eds., Bastardy and its Comparative History, ( Edward Arnold, London, 1980); Thomas K., 'The Double Standard', Journal of the History of Ideas, (1959), vol. XX, pp. 195-216; Capp, B., 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', Past and Present, (1999), vol. 162, pp. 70-100;

<sup>32</sup>Ingram, M., Church Courts, sex and Marriage in England, 1570-1640, although a thorough and informative study is, as he states himself, primarily a concentration on the workings of church courts in relation to sex and marriage and not a gendered approach to the sins themselves, p. 18.

and scolding, for which women were disproportionately prosecuted.<sup>33</sup> Another consequence of this perspective is that by focusing numerically on female participation in criminal activities, which identify female participation within crimes such as theft and interpersonal violence as numerically insignificant, these crimes in turn become seen as masculine crimes, with far higher numbers of men evident than women.<sup>34</sup>

This thesis has examined an unprecedented range of crimes from a gender perspective and it is now necessary to consider some of the crimes covered in this thesis and the way that they have been treated in previous studies. Carol Wiener, in her study on sex roles and crime, whilst acknowledging apparent differences in participation between men and women, fails to consider the different experiences of the two genders. She states that female reluctance to participate in violent crime was associated with their

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<sup>33</sup> The most obvious example of this is witchcraft, although many recent histories have extended the boundaries of witchcraft research and have identified the role of women in witchcraft prosecutions. For examples of this see Gregory, A., 'Witchcraft, Politics and Good Neighbourhood in Early Seventeenth-Century Rye', Past & Present, (1991), vol.133, pp. 31-66; Gaskill, M., 'Witchcraft and Power in Early Modern England: the Case of Margaret Moore', in Kermode, J. & Walker, G. eds., Women, Crime and the Courts; Macpherson Bardell, K., 'Death by Divilish Demonstration'; Sharpe, J.A., 'Witchcraft and Women in Seventeenth-Century England: Some Northern Evidence', pp. 179-99. For scolding see Ingram, M., 'Scolding Women 'Cucked or Washed': A Crisis in Gender Relations in Early Modern England?', in Kermode, J. & Walker, G. eds., Women, Crime and the Courts; Underdown, D., 'The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England', in Fletcher, A.J. & Stevenson, J. eds., in Order and Disorder in Early Modern England. (Cambridge University Press, Cambridge, 1985), pp. 116-23; Jones, K. & Zell, M., 'Bad Conversation? Gender and Social Control in a Kentish Borough, c. 1450-1570', Continuity and Change, (1998), vol. 13, pp. 11-31.

<sup>34</sup> For debates on the nature of physical violence in early modern England. See Stone, L., 'Interpersonal Violence in English society, 1300-1980', Past and Present, (1983), vol. 101, pp. 22-33; Sharpe, J.A., 'The History of Violence in England: Some Observations', Past and Present, (1985), vol. 108, pp. 206-15; Stone, L., 'A Rejoinder', Past and Present, (1985), vol. 108, pp. 216-24; Stone, L., 'Interpersonal Violence in English society, 1300-1980', pp. 22-33; Cockburn, J.S., 'Patterns of Violence in English Society: Homicide in Kent, 1560-1985', Past and Present. Amussen, S.D., 'Punishment, Discipline, and Power:

inherently socially or biologically induced passivity and non-violent nature'.<sup>35</sup> As Garthine Walker states, 'the notional polarization of words with women and deeds with men has died hard'.<sup>36</sup> It is clear from studies of verbal abuse that this was not solely a female activity, but that its circumstances were usually located within female spheres of influence.<sup>37</sup> Both men and women engaged in physical violence, even if women did so to a lesser degree. Again the typicality of the crime has been held up as a 'yardstick of its worth', as a topic for historical study. By examining the circumstances of the attacks, a greater awareness of the constraints on women, and the attitudes towards them, as well as the implications for them can be seen. Within domestic violence the relationships within marriages can sometimes be identified, and where this breaks down societal norms and expectations become evident. A final consideration when looking at violent crime is that the boundaries between physical and verbal violence were extremely blurred. By employing a gendered analysis of crimes of violence the constraints and expectations that were placed on male and female conduct can be identified.

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The Social Meanings of Violence in Early Modern England', *Journal of British Studies*, (1993), vol. 34, pp. 1-34.

<sup>35</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire', *Journal of Social History*, (1975), vol. 8., p.8, cited in Walker, G. 'Gender, Crime and Social Order in Early Modern Cheshire', Liverpool University PhD Thesis, (1994).

<sup>36</sup> Walker, G. 'Crime, gender and Social Order', p.71.

<sup>37</sup> For studies on verbal violence see Ingram, M., "Scolding Women, Cucked or Washed": A Crisis in Gender Relations in Early Modern England', pp. 48-80; Underdown, D., 'The Taming of the Scold', pp. 116-36; Gillespie, R., 'Women and Crime in Seventeenth-Century Ireland', in MacCurtain, M. & O'Dowd, M. eds., *Women in Early Modern Ireland*, (Edinburgh University Press, Edinburgh, 1991), pp. 43-52; Sharpe, J.A., *Crime in Early Modern England*, p.89; Gowing, L., 'Gender and the Language of Insult in Early Modern England', *History Workshop Journal*, (1993), vol. 35, pp. 1-21; Gowing, L., *Domestic Dangers: Women, Words and Sex in Early Modern London*; Jones, K., & Zell, M., 'Bad Conversation? Gender and Social Control in a Kentish Borough, c. 1450-1570', pp. 11-31;

Within acts of homicide, infanticide cases represent a particularly high proportion of female perpetrated homicide, and as women constituted the overwhelmingly higher proportion of those prosecuted for the crime of infanticide, it became labelled as a particularly female crime. The major works on infanticide have largely ignored the potential for understanding this crime that only a gendered analysis can provide. Wrightson's work, which concentrates on the seventeenth-century, focuses mainly on the debate that considers the rationale behind infanticide either as a means of population control or as the act of an unbalanced mother. Although this is a thorough and worthwhile study the opportunity to consider infanticide in relation to the gendered construction of the ideal woman has been overlooked. Historians whose studies show more awareness of the social context of infanticide and the identification of single mothers as 'lewd and dissolute' include J.M.Beattie, P.C. Hoffer and N.E. Hull, and R.W. Malcolmson, although some of these studies are focused primarily on the eighteenth-century.<sup>38</sup> Two historians, who have considered the implications of gender recently, are Mark Jackson, whose study on the eighteenth-century is grounded in the context of the 1624 Statute,<sup>39</sup> and Laura Gowing, although it should be noted that Gowing's emphasis is on the circumstances and experiences surrounding pregnancy and

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<sup>38</sup> Beattie, J.M., *Crime and the Courts in England, 1660-1800*, chapter three, pp.113-23; Hoffer, P.C. & Hull, N.E., *Murdering Mothers: Infanticide in England and New England 1558-1803*. (New York University Press, New York and London, 1981); Malcolmson, R.W., 'Infanticide in the Eighteenth Century', in Cockburn, J.S., *Crime in England 1550-1800*. See also Langer, W.A., 'Infanticide: A Historical Survey', *History of Childhood Quarterly*, (1974), vol. 1, pp. 353-66; Kellum, B.A., 'Infanticide in England in the Later Middle Ages', *History of Childhood Quarterly*, (1973), vol. 1, pp. 367-88; Damme, C., 'Infanticide: Worth of an Infant Under Law', *Medical History*, (1978), vol. XXII, pp. 1-24, however, this study offers a more child centred approach. A further study which provides trial transcripts for the eighteenth century is Frith, V., *Women & History: Voices of Early Modern England*, (Coach House Press, Toronto, 1995).

<sup>39</sup> See Chapter Three for a discussion of this Statute.

childbirth, highlighting the differences between the experience of married and unmarried mothers.<sup>40</sup>

What has largely been ignored in many of these examples is the need to 'conceptualize or contextualize the gendered differences in either the behaviour itself or the meanings of such behaviour'.<sup>41</sup> Whilst it is true that infanticide was gender-related for social, economic and biological reasons, it will be argued in Chapter Three that attitudes towards infanticide in the seventeenth-century led to the act of 1624 which made it exclusively a female crime.<sup>42</sup> The statute specifically applied to the mothers of bastard children, and only they were liable to prosecution, and this was for concealment of the stillbirth rather than for causing the child's death. Therefore, the high numbers of females prosecuted for this crime do not so much reflect female participation in infanticide, as much as the criminalisation of a specific group in society for this act. By defining offences such as these as feminine we are constructing an artificial view of the female offender, and by definition the male offender.

Historians such as James Sharpe, Joel Samaha, J.S. Cockburn, and Keith Wrightson, all agree that prosecutions for property crime more than any type of crime was on the increase by the beginning of the seventeenth-century.<sup>43</sup> However, the debates

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<sup>40</sup> Jackson, M., New-Born Child Murder; Gowing, L. 'Secret Births and Infanticide in Seventeenth-Century England', Past and Present, (1997), vol. 156, pp. 87-115.

<sup>41</sup> Walker, G., 'Crime, Gender and Social Order', p.6.

<sup>42</sup> 21 James 1, c. 27; see Jackson, M., New Born Child Murder, for a full discussion of this.

<sup>43</sup> Sharpe, J.A., Crime in Seventeenth-Century England: A County Study; Samaha, J., Law and Order in Historical Perspective: The Case of Elizabethan Essex, (Academic Press, New York, 1974); Cockburn, J.S., 'The Nature and Incidence of Crime in England 1559-1625: A Preliminary Survey', in J.S. Cockburn, ed., Crime in England 1550-1800, (Methuen & Co. Ltd., London, 1977); Wrightson, K., English Society

surrounding property crime have focused more on the relationship between theft and dearth, without any consideration of a gendered approach.<sup>44</sup> Carol Wiener's analysis of female roles in theft and property related offences is representative of the rest of her article. Having quantified female involvement in comparison to male involvement, she discounts women as playing 'a minor role.'<sup>45</sup> There is no acknowledgement of the different spheres women occupied or their different concerns. This approach denies the involvement of those women who engaged in crime, by assessing their involvement numerically in relation to men. Garthine Walker addresses this omission in her study into theft in early modern Cheshire. In this she stresses the need for historians to expand the 'conceptual and methodological parameters of their inquiry to take account of the sphere of women's knowledge and influence in their communities'.<sup>46</sup> This focus, more than any other previously addressed by historians of crime, informs the approach taken in this thesis, and whilst this thesis seeks to demonstrate male and female criminality *per se*, its prime focus is on the role of dynamics of gender within the social order.

Those historians who have noted the existence of rape have recognised it as numerically insignificant, whilst realising that it frequently went unreported.<sup>47</sup> More recently a new history of rape has been developing, in which attempts have been made to analyse the

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1580-1680, (Hutchinson & Co., London, 1982); and giving a European perspective, Weisser, M.R., Crime and Punishment in Early Modern Europe, (The Harvester Press, Bristol, 1979).

<sup>44</sup> See also Walter, J. & Wrightson, K., 'Dearth and the Social Order in Early Modern England', Past and Present, (1976), vol. 71, pp.22-42.

<sup>45</sup> Wiener, C.Z., 'Sex Roles and Crime', p.40.

<sup>46</sup> Walker, G., 'Women, Theft and the World of Stolen Goods', in Walker, G. & Kermode, J. eds., Women, Crime and the Courts in Early Modern England, pp. 81-105, and p.9.

<sup>47</sup> See Bashir N., 'Rape in England between 1550-1700', in The Sexual Dynamics of History, ed. London Feminist Group,, (Pluto Press, London, 1983), pp.28-41; Beattie, J.M., Crime and the Courts in England 1660-1800; Porter, R., 'Rape- does it have an Historical Meaning?' in Tomaselli, S. & Porter, R. Eds., Rape, (Basil Blackwell, Oxford, 1986), pp.216-36;

accounts of assaulted women, alleged rapists and witnesses.<sup>48</sup> Recent studies on rape in the early modern period have at last examined the social construction of gender to understand both the deed itself, and the way in which the victims and the perpetrators vocalised their experiences.<sup>49</sup> Roy Porter, in his essay on rape, discusses the earlier neglect by male historians of rape as a subject worthy of research. He also considers some of the more recent work undertaken and concludes that work such as that by Susan Brownmiller has put rape back into history, whilst acknowledging that it has its own problems.<sup>50</sup> Marianne Hester locates rape within the wider debate concerning male domination as an ahistorical category. She identifies rape as being central to the 'construct of male sexuality because, in the contemporary male supremacist context, male sexuality is about male power'.<sup>51</sup> Anna Clark, although her focus is on the late eighteenth and early nineteenth- centuries, also sees rape as an integral part of male domination and part of the workings of patriarchy. She states that, 'rape was just one of

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<sup>48</sup> See Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century', Gender and History, (1995), vol. 7, pp. 378-407; Clark, A., Women's Silence Men's Violence: Sexual Assault in England 1770-1845, (Pandora, London and New York, 1987); Herrup, C., 'The Patriarch at Home: The Trial of the 2<sup>nd</sup> Earl of Castlehaven for Rape and Sodomy', History Workshop Journal, (1996), vol. 41, pp.1-18; Walker, G., 'Rereading rape and Sexual Violence in Early Modern England', Gender and History, (1998), pp. 1-25.

<sup>49</sup> Amussen, S.D., 'The Part of a Christian Man': The Cultural Politics of Manhood in Early Modern England', in eds., Amussen, S.D. & Kishlansky, M., Political Culture and Cultural Politics in Early Modern Europe, (Manchester University Press, Manchester and New York, 1995); Bashar, N., 'Rape in England between 1550 and 1700'; Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century', pp. 378-407; Hindle, S., 'The Shaming of Margaret Knowsley: Gossip, Gender and the Experience of Authority in Early Modern England', Continuity and Change, (1994), vol. 9, pp. 391-419; Walker, G., 'Rereading Rape and Sexual Violence in Early Modern England', pp.1-25;

<sup>50</sup> Porter, R., 'Rape - Does It Have a Historical Meaning?', see Brownmiller, S., Against out Will: Men, Women and Rape, (Secker and Warburg, London, 1975).

<sup>51</sup> Hester, M., Lewd Women and Wicked Witches. A Study of the Dynamics of Male Domination, p. 61. See Amussen, S.D., 'The Part of A Christian Man': The cultural politics of Manhood in Early Modern England', pp. 213-33.

the many ways in which women were oppressed.<sup>52</sup> Whilst appreciating the value of feminist theory on rape, for its role in bringing discussions about rape to the forefront, she stresses the need for an historical perspective. She states that,

Rape is not an unchanging consequence of male biology, for the way sexual violence functions as a means of patriarchal domination, and indeed patriarchy itself, varies historically.<sup>53</sup>

Rape in early modern society should be seen as a consequence of patriarchy, in the sense that the position of women left them vulnerable to the unwanted physical attentions of men. This was further compounded by early modern perceptions about female sexuality and their bodies, which often denied them the right to report the deed. Within this thesis rape will be considered through its silences, which in themselves reveal the dilemmas that early modern women faced in reporting rape, its actions, and the social, economic and political contexts. Although the accused in all of the cases being considered were male and the victims female, gender analysis is still essential. It is not enough to identify the assailant and the victim, but also the structures that allowed and encouraged this to happen.

Within all of the above crimes a gender perspective has usually been sadly lacking, and without it in place golden opportunities to investigate male and female social relations, and the constraints under which both genders were placed, have been missed. The 'natural' assumption that importance can only be allocated to those crimes that were numerically significant, denies the opportunity to analyse the ways in which men and women co-existed and interrelated in early modern society.

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<sup>52</sup> Clark, A., Women's Silence- Men's Violence: Sexual Assault in England, 1770-1845, p.2.

<sup>53</sup> Clark, A., Women's Silence-Men's Violence: Sexual Assault in England, 1770-1845, p.2.

Despite the vast increase in the amount of research carried out into women's and gender history over the last thirty years, the early modern period still provides a valuable and under researched period.<sup>54</sup> In contrast with the identification of the early modern period as the birth of the Renaissance, research already carried out into this period into women's history refutes this perception. As Roper points out,

How can we continue to view the seventeenth century, during which hundreds or perhaps thousands of women were burned as witches on the European continent, as the period of 'the spread of rational thought'.<sup>55</sup>

In order to contextualize these crimes it is necessary to consider the early modern construction of the ideal woman. It is against this background that the actions and attitudes evident in this thesis will be considered.

Conduct books and household manuals were extremely popular at the end of the sixteenth and early seventeenth-centuries, and offered 'advice and instruction about marriage and the ordering of domestic relations'.<sup>56</sup> Such works provide an insight into

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<sup>54</sup> Recent studies that have addressed women in early modern England include; Aughterson, K., Renaissance Woman - Constructions of Femininity in England, (Routledge, London and New York, 1995); Crawford, P., Women and Religion in England 1500-1720, (Routledge, London and New York, 1993); Eales, J., Women in Early Modern England. 1500-1700, (UCL Press, London, 1998); Erickson, A.L., Women and Property in Early Modern England, (Routledge, London and New York, 1992); Fletcher, A., Gender, Sex & Subordination in England 1500-1800; Frith, V., ed., Women & History - Voices of Early Modern England; Hufton, O., The Prospect Before Her- A History of Women in Western Europe. Volume One 1500-1800, (Fontana Press, London, 1997); Laurence, A., Women in England 1500-1760- A social History, (Weidenfield and Nicolson, London, 1994); Wiesner, M.E., Women and Gender in Early Modern Europe. These all followed a considerable period after Alice Clark's seminal work on women and work in 1919, A Working Life of Women in the Seventeenth Century.

<sup>55</sup> Roper, L., Oedipus and the Devil - Witchcraft, Sexuality and Religion in Early Modern Europe, p.5.

<sup>56</sup> Eales, J. 'Gender Construction in Early Modern England and the Conduct Books of William Whately', Studies in Church History, (1998), vol. 34, p. 163; Jones, A.R., 'Nets and Bridles: Early Modern Conduct Books and Sixteenth-Century Women's Lyrics', in Armstrong, N. & Tennenhouse, L. Eds., The Ideology

the prescribed construction of masculine and feminine behaviour in the early modern period. In William Whately's popular *A Bride-Bush*, based on the marriage sermon, he emphasised that 'The Husband is the Wives Head', and affirmed that the 'male sex is preferred before the female in degree of place & dignity'.<sup>57</sup> In this work Whately expounded commonly held contemporary conceptions about gender.<sup>58</sup> It is important to note though that even given these traditional ideals of the place of women being subordinate to men, women were generally recognised as a partner in married relationships, both spiritually and economically.<sup>59</sup> Protestants, Puritans and Catholics all described the family in 'patriarchal language and endowing the good wife with conventional female virtues'.<sup>60</sup> Richard Greenham, a Puritan divine, placed women's subjection to her husband above all other virtues stating that, 'yet not being subject to her husband they are nothing... if shee be not obedient she cannot be saued'.<sup>61</sup> However, as will be argued in the following chapters, these prescribed boundaries were continually being negotiated.<sup>62</sup> Probably nowhere in the social hierarchy was this

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of Conduct- Essays on Literature and the History of Sexuality, (Methuen & Co. Ltd., New York and London, 1987).

<sup>57</sup> Whately, W., 'A Bride-Bush, or a Wedding Sermon: Compendiously Describing the Duties of Married Persons By Performing Whereof, Marriage Shall be to Them a Great Helpe, Which Now Finde it a Little Hell', cited in J. Eales, 'Gender Construction in Early Modern England', p.163.

<sup>58</sup> See also William Gouge's 'Of Domesticall Duties', 1622., for confirmation of this perception.

<sup>59</sup> Wrightson, K., English Society 1580-1680, p.82 ; Amussen, S.D., 'Gender, Family and the Social Order, 1560-1725', in Fletcher, A. & Stevenson, J. eds., Order and Disorder in Early Modern England, pp. 196-205;

<sup>60</sup> Willen, D., 'Godly Women in Early Modern England: Puritanism and Gender', Journal of Ecclesiastical History, (1992), vol. 43, pp.563-80.

<sup>61</sup> Greenham, R., 'The Workes of the Reverend Richard Greenham', ed., H[enry] H[olland], London, 1612, p. 742, cited in Diane Willen, 'Godly Women in Early Modern England: Puritanism and Gender', p.564.

<sup>62</sup> This process can be seen in many recent studies, such as Gowing, L., Domestic Dangers: Women, Words and Sex in Early Modern England; Walker, G. & Kermode, J. eds., Women, Crime and the Courts in Early Modern England; Fletcher, A., Gender, Sex and Subordination in England 1500-1800; Pollock,

negotiation more likely to occur than in the lower orders, where female participation in the economy provided them with wider experiences and opportunities.

Women were not without their advocates, the first published legal treatise, *The Lawes Resolutions of Women's Rights: Or, The Lawes Provision for Women*, that dealt with both women's status and their rights appeared in 1632. Although the question of its authorship still arouses discussion, its content is seen as representative of much that early modern society believed about the position of women in the hierarchy.<sup>63</sup> Given its avowed intention to serve women, their position in society still appears tenuous, even though according to Alan Macfarlane, early modern England was a veritable 'paradise for women'.<sup>64</sup> Other historians, however, argue that women in early modern England generally occupied a subservient role.<sup>65</sup>

The controversy over the nature of women, known as the *querelle des femmes*, questioning whether women were innately bad or good, 'raged sporadically in literature during the sixteenth and seventeenth-centuries'. This debate took on a new vigour during the seventeenth-century with arguments becoming more caustic. Women's sexuality, their place in marriage, whether or not it was justifiable for men to beat their

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L., 'Teach her to Live Under Obedience: The Making of Women in the Upper Ranks of Early Modern England', *Continuity and Change*, (1989), vol. 4, pp. 231-58; Shoemaker, R. B., *Gender in English Society 1650-1850-The Emergence of Separate Spheres*.

<sup>63</sup> For a discussion on authorship see Prest, W.R., 'Law and Women's Rights in Early Modern England', *The Seventeenth Century*, (1991), vol. VI, pp.169-87. This work is generally ascribed to T.E., Thomas Edgar, who declared that the original author was already dead.

<sup>64</sup> Cited in Houston, R.A., 'Women in The Economy and Society of Scotland, 1500-1800', p. 119, in Houston, R.A. & Whyte, I.D. eds., *Scottish Society, 1500-1800*, (Oxford University Press, London, 1989).

<sup>65</sup> Durston, C., *The Family in The English Revolution*, (Basil Blackwell, Oxford, 1989). In this study Durston examines the ways in which women contested their subservient role during the civil wars.

wives were all part of the discussions, and all reveal some of the early modern attitudes towards women that informed criminalisation of certain behaviour.<sup>66</sup> In 1612 Robert Cleaver epitomised the early modern perception of the 'ideal woman'. According to him the good woman should,

Shake off slouth, and love of ease: she must avoid gosseping,  
further then the law of neighbourhood doth require... Towards  
her neighbours she is not sowre; but courteous, not disdainull  
to the basest, but affable with modestie... let her be not  
gawkish in apparell, but sober and modest: not nice or coy,  
but handsome and huswifelike.<sup>67</sup>

The construction of the 'ideal woman' played a significant role in the criminal prosecution of women. Female conduct was held in comparison against the 'ideal' and was often found wanting. Within the prosecutions before both the church and secular courts women can be seen defying this construct, both within their families and their local communities.

This concern with the control of women must be related to the broader concern with the social order. This apparent 'crisis' of order originated in the fears surrounding a rapidly rising population, which led to land shortage, vagrancy, inflation and subsequent poverty. The substantial increase in the proportion of spinsters between the mid-sixteenth and mid-seventeenth-centuries probably contributed to the misogynistic attitudes.<sup>68</sup> Patriarchal structures would have clearly felt under considerable threat, with

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<sup>66</sup>Hull, S., 'Books on the Controversy', *Chaste. Silent and Obedient - English Books For Women 1475-1640*. (Huntingdon Library, San Marino, 1982), p.106.

<sup>67</sup> Cleaver, R., *A Godly Forme of Household Government*, (1612), pp. 93-5, cited in Gowing, L., 'Gender and the Language of Insult in Early Modern London', p.17.

<sup>68</sup> Watkins, S.C., 'Spinsters', *Journal of Family History*, (1984), p.316. See also Fraser, A., *The Weaker Vessel - A Woman's Lot in Seventeenth Century England*. (Weidenfield & Nicolson, London, 1984), pp.89-90.

contemporaries feeling that they were living in a world turned upside down. This fear of women subverting the 'natural' order can be seen in contemporary popular ballads.<sup>69</sup> It is also important to note the effect that the civil wars had on society in general, and on masculinity and femininity in particular.<sup>70</sup>

The experience of the wars inevitably altered perceptions about women, and perhaps more importantly affected women's own opinions about themselves.<sup>71</sup> Both before and after the wars patriarchal society felt threatened by independent women, and women without a male head of the family, whether widowed or single, threatened patriarchal order the most. As families were assumed to function well only under a male head, then such aberrations to the patriarchal structure constituted a threat or danger to order. Single women were not supposed to be recognised in the law, as the *Laws Resolutions* of 1632 notes,

All of them [women] are understood either married or to be married and their desires are subject to their husband, I know no remedy, though some women can shift it well enough.<sup>72</sup>

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<sup>69</sup> See Foyster, E., 'A Laughing Matter? Marital Discord and Gender Control in Seventeenth Century England', *Rural History*, (1993), vol. 4, pp.5-7.

<sup>70</sup> Crawford, P., 'The Challenges to Patriarchalism: How did the revolution affect Women?', in Morrill, J. ed., *Revolution and Restoration: England in the 1650s*. (Collins and Brown, Ltd., London, 1992), pp. 112-28; Durston, C., *The Family in the English Revolution*; Fraser, A., *The Weaker Vessel: Woman's Lot in Seventeenth-Century England*; Higgins, P., 'The Reactions of Women, with Special reference to Women Petitioners', in Manning, B. ed., *Politics, Religion and the English Civil War*, (Edward Arnold, London, 1973); Mack, P., 'Women as Prophets During the English Civil War', *Feminist Studies*, (1982), vol. 8, pp. 19-45; Thomas, K., 'Women and the Civil War Sects', *Past and Present*, (1958), vol. 13, pp. 42-61; Bennett, M., *The Civil Wars In Britain & Ireland*, (Blackwell Publishers, Oxford, 1997), pp.7-8; Amussen, S.D., *An Ordered Society*.

<sup>71</sup> This is not to suggest that once war was over women contested their subservience, but that such a cataclysmic experience must have caused the search for a return to order and the status quo.

<sup>72</sup> Prest, W.R., 'Law and Women's Rights in Early Modern England'.

Despite their role as subservient to husbands and fathers, who in law were responsible for women, the early modern period witnessed many women appearing before the courts, especially the church courts, in their own right.<sup>73</sup>

Litigation for slander rose considerably during the late sixteenth-century, with defamation suits rising in all courts. The allegations that were made primarily against men usually appeared before the secular courts, such as drunkenness, debt or theft, but those that were aimed at women, overwhelmingly sexual insults, appeared before the church courts.<sup>74</sup> Reputation or 'credit' had different meanings and implications for men and women.<sup>75</sup> For women reputation was an extremely fragile commodity, dependent primarily on their sexual honesty.<sup>76</sup> 'Sexual virtue and scolding speech are the unique definers of female credit', writes Laura Gowing, based on her study of slander litigation presented before the church courts.<sup>77</sup> Whereas for men, reputation was based on a wider range of issues such as 'probity in business dealings'.<sup>78</sup> This concept of the gendered

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<sup>73</sup> Many such women found themselves the victims in witchcraft accusations, see Karlsen, C.F., The Devil in the Shape of a Woman, p.149-150; Quaipe, G.R., Godly Zeal and Furious Rage, p.174. noted in Macpherson Bardell, K., 'Death by Divilish Demonstracion', pp.30-1.

<sup>74</sup> This is because the church courts dealt with moral crimes and the quarter session courts dealt with civil crimes.

<sup>75</sup> Thomas, K., in 1959 pointed out the centrality of women's sexual conduct to concerns about reputation, through the terms 'the double standard', whereby women were more culpable than men for sexual relations, 'The Double Standard', p.210. However, this concept has been questioned in a later essay by Bernard Capp, 'The Double Standard Revisited: Plebian Women and Male Sexual Reputation in Early Modern England'. Capp argues that whilst the main strand of Thomas' thesis still holds, the focus is over emphasised. He identifies that male sexual reputation was of enough importance to the 'middling' or 'honest poor' men to enable women with a valuable means of redress in a variety of circumstances.

<sup>76</sup> Fletcher A., Gender, Sex and Subordination in England 1500-1800, p.101-5

<sup>77</sup> Gowing, L., 'Gender and the Language of Insult in Early Modern London'.

<sup>78</sup> Ingram, M., "Scolding Women Cucked or Washed": a Crisis in Gender Relations in Early Modern England', p. 49.

construction of reputation has since been challenged by Garthine Walker. She writes that this oppositional model of gendered honour ignores the mutability of reputation and honour for both sexes.<sup>79</sup> However, from the sources available for this thesis, whilst acknowledging that the social construction of reputation was not a fixed category, it appears that women were judged more extensively by their sexual reputations than by any other means, and men were only very occasionally judged in this way.

As James Sharpe noted in his work on sexual slander, whilst reputation and honour were at the beginning of the 1980s subjects that had been generally ignored by historians, they had been much studied by social anthropologists.<sup>80</sup> The social freedom that early modern English women of the lower orders experienced was considerably different to that experienced by women in the 'honour and shame' societies studied by social anthropologists. Despite these differences the notion of vulnerability to accusations potentially damaging to one's reputation held as much force for early modern English women as it did for those from the Mediterranean peasant societies mentioned above. Drawing on Max Gluckman's work, Sharpe highlights the importance of gossip in small-scale societies.<sup>81</sup> The usual theme of this gossip was a 'good reputation', making gossip the medium through which an individual's reputation was

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<sup>79</sup> Walker, G., 'Expanding the Boundaries of Female Honour in Early Modern England', Transactions of the Royal Historical Society, (1996), vol. 6, pp. 235-45.

<sup>80</sup> Sharpe, J.A., 'Defamation and Sexual Slander in Early Modern England; The Church Courts at York', Borthwick Papers, (1980), vol. 58, pp.1-36.

<sup>81</sup> Gluckman, M., 'Gossip and Scandal', Current Anthropology, (1963), vol. IV, pp. 307-16, cited in Sharpe, J.A., 'Defamation and Sexual Slander in Early Modern England', p.18; and Bailey, F.G., ed., Gifts and Poison: The Politics of Reputation, (Basil Blackwell, Oxford, 1971), Chapter One. Wilson, P. J., 'Filcher of Good Names : An enquiry into Anthropology and Gossip', Man, (1974), vol. IX, pp. 93-102.

made or broken after close scrutiny by members of the local community.<sup>82</sup> A contemporary, William Gouge, denying the benefits of gossip, noted that,

When rattling gossips meet, their usual prate is about their husbands, complaining of some vice or other in them.

Although he also recognised the propensity of men to complain about their wives, the term gossip was for Gouge gendered as feminine, and subordinate. Wives were considered alongside servants in their temptation to gossip about their superiors, by Gouge, when he wrote,

For when servants of divers houses men or maids meet together, all their talke for the most part is of their masters and mistresses, whereby it cometh to pass that all the secrets of the house are soone knowne about the whole towne or city.<sup>83</sup>

The most common expression of gossip as witnessed by the church courts was as a function of controlling sexual conduct, especially female sexual conduct, as will be seen in Chapter Two on sexual crime. The control of the sexuality of females of the lower orders, with their daily exposure to society, would have been impossible by restrictive practices, or by provision of chaperones, therefore gossip became the normative restriction, and the threat of damage to one's reputation became its reinforcer.<sup>84</sup>

Steve Hindle demonstrates how a study of gossip can fuse a discussion of gender relations and popular politics. He states that,

Gossip, whether simply informative or, more especially, judgemental, was overwhelmingly regarded by contemporaries as a female activity, ....awareness of the milieux in which

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<sup>82</sup> Following on from Gluckman's earlier work on gossip are Paine, R., 'What is Gossip about? An Alternative Hypothesis', *Man*, (1967), vol.II, pp.278-85; Wilson, P., 'Filcher of Good Names: An Enquiry into Anthropology and Gossip'.

<sup>83</sup> Gouge W., 'Of Domesticall Duties;Eight Treatises', (1622), p. 251.

<sup>84</sup> See Sharpe, J.A., 'Defamation and Sexual Slander', pp.1-36.

gossiping took place enables us at least to begin to trace  
the boundaries of 'female social space'.<sup>85</sup>

Through his analysis of one episode of gossip he explores this and also demonstrates how gossip should also be viewed as a 'clandestine' form of communication. Through such analysis, the role of gossip in the perpetuation of reputation is apparent. That reputation was a crucial component in early modern social relations is not questionable.<sup>86</sup> It shaped attitudes between neighbours alongside social position.<sup>87</sup> Within the confines of daily experience one's reputation directed later exchanges within the community. When challenged with regard to dubious activities, both men and women sought to draw on their past reputations, in the expectation that its worth would cast doubt away from them. When seeking aid and assistance from churchwardens and overseers of the poor, past reputation was the basis upon which judgements were made, and accusations of witchcraft were usually aimed at individuals whose past reputations were already damaged.<sup>88</sup> Once a woman had lost her reputation locally she was subject to a wide range of accusations regarding her misconduct, all situated outside of the prescribed conduct of the 'ideal woman'. This can be seen especially in cases of sexual misconduct, or as previously mentioned, witchcraft accusations, when accused of misconduct individuals could also rely on the discredited reputation of their accuser.<sup>89</sup>

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<sup>85</sup> Hindle, S., 'The Shaming of Margaret Knowsley: Gossip, Gender and the Experience of Authority in Early Modern England'.

<sup>86</sup> Sharpe, J.A., 'Defamation and Sexual slander in Early Modern England: The Church Courts at York'.

<sup>87</sup> Amussen, S.D., *An Ordered Society*. p.98.

<sup>88</sup> For a further discussion of this in relation to witchcraft, see Macpherson Bardell, K., 'Death by Divelish Demonstration', Chapter Two.

<sup>89</sup> In 1616 William Moorton of High Offley was accused by Elizabeth Smyth of getting her with child. He denied this stating that, 'he will prove himself to be innocent, whereas his accuser is known to be a

This thesis seeks then to examine not only female participation in crime, but the role of gender within criminal activity and criminal prosecutions. The interrelation between concepts of gender, crime and social order in the seventeenth-century will be considered. How much did female criminal activity reflect or correspond with images of the ideal woman, or woman as dependent upon a male whether it was a father or husband? Although this thesis focuses primarily on women, it is only within their relationships with men, whether licit or illicit, that the role of gender can be identified. So the social dynamics of relationships between men and women will provide the focus for this study.

The study focuses on all appearances for the aforementioned crimes under review, before the quarter sessions between 1603- 1660 in Nottinghamshire and Staffordshire, and before the archdeacon's court in Nottinghamshire between 1603 and the court's cessation in 1642.<sup>90</sup> These years were chosen as they mark the period between the beginning of James I's reign and the restoration of the monarchy. Nottinghamshire and Staffordshire were selected as they both have extensive and similar quarter session records for the period under review. Nottinghamshire also has a good survival of easily

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common woman'. He requested time to bring other witnesses to his good name and her bad reputation. WSL, QS9, Roll 52, Trinity 1616, no. 33.

<sup>90</sup> Within this recognisances, indictments, depositions, petitions, presentments and informations have all been included, as even those cases that did not eventually come to trial provide the historian of crime and gender with a valuable insight into their relationship to one another. The church court records for Staffordshire, held at Lichfield, have been excluded from this study as on an initial examination they were for the main part extremely difficult to read with any level of accuracy. Where a reasonable interpretation was possible, the impression gained from them was not dissimilar from that evident in Nottinghamshire. As this study does represent a direct comparison of the role of gender within the two counties, but draws on both counties for qualitative material this should not present any difficulties.

accessible Archdeaconry records, both as originals and transcripts.<sup>91</sup> Reference has also been made to the high numbers of prosecution of scolds within the Nottingham borough court records, which David Underdown identifies as part of his argument that scolding was predominantly an urban or wood pasture phenomenon.<sup>92</sup> Unfortunately the assize court records for both counties have only survived in limited numbers. Nottinghamshire has no extant assize records for the period between 1603-1660, and Staffordshire has few surviving records.<sup>93</sup> However, where applicable this information has been incorporated into the study. The lack of survival of a significant number of assize records is problematic for the study of murder, grand larceny, rape, infanticide, and after 1650, adultery, since these as felonies would have been referred to a higher court. However, the quarter session and the archdeaconry records have provided a rich vein of information for most of the crimes under review.<sup>94</sup>

The quarter sessions dealt with secular crimes and civil and administrative business and normally met four times a year. There was little variation as to when this occurred,

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<sup>91</sup> The Archdeaconry in Nottinghamshire had a greater degree of autonomy than was usual due to its geographical situation. It lay the remote edges of the diocesan of York, and was therefore allowed a semi-independent jurisdiction. Cited in Jennings, S., 'The Gathering of the Elect' The Development, Nature and Social-Economic Structures of Protestant Religious Dissent in Seventeenth Century Nottinghamshire', The Nottingham Trent University PhD Thesis, (1999), p.23. This thesis includes a thorough discussion of practicalities and broader implications of this.

<sup>92</sup> Underdown, D.E., 'The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England'.

<sup>93</sup> Those records surviving for the Oxford Circuit, which included Staffordshire, were sparse, and cover only the period between 1636-42, and 1656-60. These are used primarily to identify prosecution in infanticide cases.

<sup>94</sup> For a discussion of the problems inherent in these records see Shoemaker, R.B., 'Using Quarter Session Records as Evidence for the Study of Crime and Criminal Justice', *Archives*, (1993), vol. 20, pp. 145-57; and Cockburn, J.S., 'Early-Modern Assize Records as Historical Evidence', *Journal of the Society of Archivists*, (1975), vol. 5, pp. 215-31.

following the statutory times laid down in Henry V's reign. The justices met in the weeks following Epiphany, Easter, the Translation of Thomas Becket and Michelmas. Both Nottinghamshire and Staffordshire, as did some other counties, substituted the feast of Trinity for the Translation of Thomas Becket. This meant that sessions were generally held in January, April, July and September or October. However, where necessary, such as at times of unusual and threatening unrest, special sessions would meet.

Quarter session records consist predominantly of minute books, or entry books, which contain a record of the work of the court. There are also order books, a formal record of the orders made by the Justices of the Peace; and session rolls, which contained a wide variety of indictments, presentments, articles, recognizances, depositions, petitions, informations, gaol delivery rolls and any other business of the court.<sup>95</sup> Within Nottinghamshire and Staffordshire the majority of the quarter session material available are indictments and recognizances. Indictments are formal written accusations that illustrated the exact nature of the crime and recognizances for good behaviour were bonds used to guarantee the appearance of the accused at the next sessions, or to enforce their good behaviour within the community.<sup>96</sup> Both indictments and recognizances,

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<sup>95</sup> For a thorough discussion of these see Shoemaker, R.B., Prosecution and Punishment- Petty Crime and the Law in London and Rural Middlesex. c. 1660-1725, (Cambridge University Press, Cambridge, 1991); Tarver, A., Church Court Records- An Introduction for Family and Local Historians, (Phillimore & Co. Ltd., Midsomer Norton, 1995); Ingram, M., Church Courts Sex and Marriage in England. 1570-1640, pp. 27-69; Brinkworth, E.R., 'The Study and Use of Archdeacons' Court records: Illustrated from the Oxford Records (1566- 1759), Transactions of the Royal Historical Society, ( 1943), vol. 24, pp. 93-119.

<sup>96</sup> Baker, J.H., The Legal Profession and the Common Law- Historical Essays, (The Hambledon Press, London, 1986), chapter 16; Shoemaker, R.B., Prosecution and Punishment - Petty Crime and the Law in London and Rural Middlesex. c. 1660- 1725, pp. 25-28; Shoemaker, R.B., 'Using Quarter Session records as Evidence for the Study of Crime and Criminal Justice'; Sharpe, J.A., Crime in Seventeenth-Century England, pp.21-40; Fletcher, A., Reform in the Provinces, (Yale University Press, New Haven

because of their formulaic nature, often give little information except for the names, frequently of victim, accused, accuser and witnesses. However, the petitions presented to the courts provide a much wider picture. The assize court material available for study makes a limited contribution as the only information provided is the name, crime and sentence. However, some quantification of the rate of conviction is possible, although the interpretations can only be very tentative.

Ecclesiastical courts dealt primarily with sins or crimes of a moral nature, as well as those involving religious transgressions.<sup>97</sup> The archdeaconry court records of Nottinghamshire are a rich source of information for this thesis, especially with regards to perceived sexual misconduct, and prosecutions for verbal slander. Several of the women and men presented before the archdeacon's court later appeared before the quarter session court. Most of the cases at the ecclesiastical court, ended with a dismissal, public penance, often in church at sermon time, when the maximum humiliation could be effected, or compurgation. In many cases where a defendant pleaded not guilty to an offence they were required to produce a certain number of compurgators, or witnesses, to swear to their good name. This again highlights the importance of a good reputation in the community, as will be demonstrated within the following chapters of the thesis. Excommunication appears to have been used primarily

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and London, 1986), p. 81; Cockburn, J.S., 'Trial by the Book? - Fact and Theory in the Criminal Process 1558-1625', in Baker, J.H. ed., Legal Records and the Historian, (Royal Historical Society, London, 1978), pp. 60-79.

<sup>97</sup> Witchcraft cases where the accused was presented for the lesser charges of sorcery, divination and fortune telling, were presented here, and it is possible to identify many women accused of both a lesser charge connected with witchcraft and sexual or verbal offences. The antithesis of the ideal woman incorporated all aspects of female deviancy.

for cases where the defendant did not appear.<sup>98</sup> The obvious weakness in this sentence is its lack of impact on the irreligious, or those disenchanted with the orthodox church. However, the exclusion and ostracism that accompanied the greater excommunication, intruded into all aspects of social life for most individuals.

Finally, in order to gain a broader impression of popular attitudes and perceptions towards crime, a range of pamphlets and ballads will be considered. This is one source that has often been used effectively to highlight contemporary attitudes towards women, and crime, in early modern society.<sup>99</sup> From her investigation into street literature in early modern Germany and England, Joy Wiltenberg shows that although,

The confines of patriarchy were tightening during the sixteenth and seventeenth centuries..... in the images of popular literature, this picture of the sexual order dissolves, as women were constantly depicted escaping from male control.<sup>100</sup>

This depiction of women as subversive creatures reflects contemporary male concerns about female threats to patriarchal power. These concerns were further developed by their introduction to the mass of the population. Due to their widespread production and low cost both mediums reached a potentially wide audience, including those of the

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<sup>98</sup> There were two degrees of excommunication, the greater and the lesser. That most usually employed was the lesser which deprived the offender of the services of the church, but did not involve legal disabilities or ostracism, which accompanied the greater. For a full discussion of this penalty see Ingram, M., Church Courts. Sex and Marriage, pp.52-3

<sup>99</sup> For further discussions of these genres see Wiltenberg, J., Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany, (University Press of Virginia, Charlottesville and London, 1992); Gaskill, M., 'Reporting Murder: Fiction in the Archives in Early Modern England', Social History, (1998), vol. 23, pp. 1-30; Marshburn, J.H., Murder & Witchcraft in England, 1550-1640: As Recounted in Pamphlets, Ballads, Broadside and Plays, (University of Oklahoma Press, Norman, 1971); Clark, S., Elizabethan Pamphleteers: Popular Moralistic Pamphlets 1580-1640, (Fairleigh Dickinson University Press, Rutherford, 1983), pp. 17-39; Fox, A., 'Ballads, Libels and Popular Ridicule in Jacobean England', Past and Present, (1994), vol. 145, pp. 47-83.

lower orders in society. Whilst considering these sources it is important to note their limitations, but as with all sources available to the historian providing that these are understood and appreciated then much is to be gained from their study. Firstly it must be stated that literature is not necessarily an accurate reflection of reality, and that the relationship between the author and their audience was a complex one.<sup>101</sup> They also tended to be sensational and this must be considered when assessing their relevance to this study. Whether or not the street literature provided an accurate representation of attitudes towards women and men, its production and performance provided a legitimacy that informed public opinion.

Whilst considering all of the sources under investigation some further points need to be made. When considering the role of gender within criminal activities and prosecutions it is important to remember that criminal records were largely male produced or male orchestrated accounts. Even in female depositions, questions were framed and posed by male officials, so whilst the voice of women can be heard it arrives through the prism of male intervention. Furthermore, the cases being considered probably represented a small proportion of the crimes committed, or prosecuted. Many cases will have been dealt with informally or within the lesser courts, such as the manor or leet courts.<sup>102</sup>

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<sup>100</sup> Wiltenberg, J., Disorderly Women and Female Power. p.7.

<sup>101</sup>For a full discussion see Gaskill, M., 'Reporting Murder: Fiction in the Archives in Early Modern England'.

<sup>102</sup> For a discussion of the role within the community see, King, W.J., 'Untapped Sources for Social Historians: Court Leet Records', Journal of Social History, (1991), vol. 15, pp. 699-705; Bennett, H.S., Life on the English Manor - A Study of Peasant Conditions, Chapter Five, 'The Manor Court', (Cambridge University Press, Cambridge, 1962).

Finally these sources must be considered within an analytical framework that allows gender as a category to be employed and identified.<sup>103</sup>

To avoid some of the limitations of some of the earlier studies of crime in the early modern period within which women's criminal participation was quantified, found to be 'missing' and thus discounted, this thesis intends to employ a different methodology. Quantification, as has already been stated, marginalised female participation in crime by considering it only in relation to male participation, whereby female participation was deemed insignificant due to their relatively infrequent appearances in court. Or sometimes the reverse was true whereby their participation was sensationalised in such crimes as infanticide, scolding and witchcraft, which because of the high incidence of women prosecuted became designated as female crimes. Although, as was stated earlier, infanticide and to a lesser degree scolding were by definition crimes for which only women could be found guilty.<sup>104</sup>

As Garthine Walker and Jenny Kermode note, 'qualitative material can tell us far more about the activities and attitudes of ordinary people than can aggregates of litigation alone'.<sup>105</sup> The problems that accompany any quantification of crime also cast doubt on

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<sup>103</sup> As Kleinberg, S.J., notes, there is not yet a definitive methodology appropriate to women's or gender history, but the general trend has been away from 'simple documentation of women's historical agency to a preoccupation with gender as a category of analysis', in 'The Problem of Invisibility', in Retrieving Women's History: Changing Perceptions of the Role of Women in Politics and Society, p.14.

<sup>104</sup> Although outside of the scope of this thesis, witchcraft accusations, which were overwhelmingly against women, were mainly constructed around ideals of inappropriate female behaviour.

<sup>105</sup> Walker, G. & Kermode, J. eds. Women, Crime and the Courts in Early Modern England, pp.4-5.

<sup>105</sup> Sharpe, J.A., Crime in Early Modern England 1550-1750, p.42-43; Sharpe, J.A., 'Quantification and the History of Crime in Early Modern England; Problems and Results', Historical Social Research.

the validity of the results. As James Sharpe notes the 'dark figure of crime', which encompasses all criminal behaviour that was never reported or prosecuted, is impossible to assess.<sup>106</sup> By combining both a qualitative approach with quantitative methods a greater understanding of the individuals involved and the role of gender within the criminal activities and prosecutions can be gained. To aid efficient handling and analysis of this material, as the resultant cases under analysis were extremely copious, a database of over 6,000 cases, involving many more individuals, was constructed (see appendix 1). This enabled any quantitative work to be carried out more efficiently, and enabled repeaters before the courts for different crimes to be more readily identified.

By a close examination of the contexts of the cases, geographical, social and political, wherever possible, a better understanding of the dynamics of interpersonal relationships can be reached. The thesis will take the form of a more experiential study, although quantification will be used to illustrate some issues. Of importance within this thesis is the understanding that typicality, by quantification, will not be considered as 'a yardstick of historical worth' except where comparisons are being made between like elements.<sup>107</sup> For example where punishments were imposed on individuals found guilty of sexual misdemeanours, they will be quantified according to their gender. This should

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(1990), vol. 15, pp. 17-32; Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire'; Barber-Mercer, S.A., Prosecution and Process: Crime and the Criminal Law in Late Seventeenth-Century Yorkshire, University of York DPhil Thesis, (1988), p.15.

<sup>107</sup> Walker, G. & Kermode, J. eds., Women, Crime and the Courts in Early Modern England, p.5.

illustrate differentials between the treatment of male and female offenders for identical crimes.<sup>108</sup>

Where possible meanings will be sought to account for the behaviour of individuals, not simply how often and by whom crimes were committed. Geographical locations of the deeds will be considered in order to identify male and female social spheres. Social and economic spheres will be identified within the theft of stolen property, and female roles within the market place, both licit and illicit, will be investigated. In this way what it meant to be female or male within the lower orders in early modern society should become more apparent.<sup>109</sup>

A brief overview of the counties of Nottinghamshire and Staffordshire will provide a geographical context for this thesis. Both Nottinghamshire and Staffordshire are located in central England, in the East and West Midlands respectively. Catholic survivalism can be traced in both counties but was more in evidence in Staffordshire, and whilst the senior church administrators in Staffordshire 'were diligent in their attempts to combat recusancy, the same could not always be said of the local clergy'.<sup>110</sup> Many sheriffs and J.P.s who maintained close relationships with many recusants also failed to support the higher officers of the church. The numbers of Catholics resident in Staffordshire increased dramatically between 1585 and 1641, although some areas of Staffordshire,

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<sup>108</sup> It is probable that another interpretation will be placed on any inequitable punishments apportioned; that is that the crime committed was perceived as a different one. But this itself highlights gendered constructions of criminality, achieving the same ends.

<sup>109</sup> This is not to discount any references to those of a higher social status, but simply to acknowledge that the material under review generally represents the reported conduct of those lower down the social scale.

<sup>110</sup> Petti, A.G., 'Roman Catholicism in Elizabethan and Jacobean Staffordshire', Collections for a History of Staffordshire, Staffordshire Record Society, Fourth Series, Vol.Nine, (Wood Mitchell & Co.Ltd).

such as Burton, were predominantly Puritan.<sup>111</sup> Its northern areas border Derbyshire and Cheshire, both counties with established recusant communities. This proximity to other recusant counties and its distance from London, all helped to facilitate Catholic survival and growth. Wolverhampton was the strongest Catholic stronghold in the county, due in the main to the Giffard family's influence there. So powerful was their influence that by the mid-seventeenth-century this area was known as 'Little Rome'.<sup>112</sup>

In contrast with this Nottinghamshire was predominantly a protestant county, where a long history of non-conformity added to the religious diversity.<sup>113</sup> The non-conformists were predominantly situated in the rural parishes of the north of the country.<sup>114</sup> Nottinghamshire's easy accessibility, via the river Trent and the Humber to Hull and then on to the protestant Netherlands, enabled and encouraged settlement by and trade with foreigners with more radical protestant ideas.<sup>115</sup> 'The sixteenth-century also witnessed a growing number of Puritan incumbents taking up appointments within the archdeaconry', which laid the foundations for future Puritan dissent within the county.<sup>116</sup> The main arterial route, the Great North Road, linking London and Scotland, ran through the west of the Nottinghamshire, crossing the river Trent at Newark. This,

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<sup>111</sup> Langley, C.A., 'Roman Catholicism in Staffordshire, 1580-1642', Unpublished B.A. Dissertation, The Nottingham Trent University, 1993, p.29.

<sup>112</sup> Greenslade, M.W., & Stuart, D.G. eds., A History of Staffordshire, (Phillimore, Chichester, 1998).

<sup>113</sup> For an excellent study on the existence and growth of non-conformity in Nottinghamshire see Jennings, S., 'The Gathering of the Elect', and for a discussion of the survival and persecution of Catholic recusants see Smith, T.S., 'The Persecution of Staffordshire Roman Catholic Recusants: 1625-1660', Journal of Ecclesiastical History, (1979), vol. 30, pp. 327-51.

<sup>114</sup> Jennings, S., 'The Ecclesiastical Returns for Nottinghamshire', Transactions of the Thoroton Society, (1995), p.75.

<sup>115</sup> Hull at this time was a maritime and merchant dominated city where Protestantism became established at an early date, cited in Jennings, S., 'The Gathering of the Elect'.

<sup>116</sup> Jennings, S. 'The Gathering of the Elect', p. 27.

along with the Trent, ensured the passage of travellers, new ideas and news. The easy navigability of the river encouraged regional and coastal trade.<sup>117</sup> The subsequent development of coal mining was aided by the transportation possibilities of the river, and by 1655 16,000 tons of coal were passing along the Trent to Newark. In return corn and malt were brought back from Lincolnshire and Norfolk.<sup>118</sup> In Staffordshire communication were not as good as it was in Nottinghamshire. Inaccessible moor and upland predominated in the northern areas. However, there were two main road links from Lichfield to Birmingham, and a road linking Dudley, West Bromwich and Birmingham. The third, which during bad weather was not always traversable, eventually branched off at Stone to the main London to Chester road.<sup>119</sup>

Throughout the seventeenth-century Staffordshire witnessed the growth of industry and by 1700 Staffordshire was,

A countryside in the course of being industrialised; more and more a strung out web of ironworking villages, market towns, next door to collieries, heaths and wastes gradually and slowly being covered by the cottages of nailers and other persons carrying out industrial occupations in rural surroundings.<sup>120</sup>

Alongside this industrial activity the majority of the population in Staffordshire were engaged in farming. The agricultural areas were mainly given over to pastoral activities,

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<sup>117</sup> Nottingham was accessible by barges with or without the aid of locks which encouraged a vigorous trade, see Dury, G, The East Midlands and the Peak, (Thomas Nelson and Sons Ltd., London, 1963), p.98.

<sup>118</sup> Beckett, J.V., The East Midlands from AD 1000, (Longman, London and New York, 1988), p.151; Page, W. ed., The Victoria County History of Nottingham, (1910), vol. II, pp. 283-4.

<sup>119</sup> Langley, C., 'Roman Catholicism in Staffordshire, 1580-1642', pp. 29-30.

<sup>120</sup> Adey, K.R., 'Seventeenth-Century Stafford: A County Town in Decline', Midland History, (1974), vol. II, p. 164.

which offered a very different way of life to arable areas in other parts of the country.<sup>121</sup> As a long-standing pastoral area it differed in its social structure to both the newly converted pastoral areas as well as the arable areas of other counties. Most of the population lived in scattered settlements, not in one village, in the centre of the parish, and the different social classes tended to live in different communities.<sup>122</sup> The consequences of this were that the lower orders were not as exposed to the influences of the rich, which in turn led to a more independent spirit. A significant proportion of the population in Staffordshire were employed in dual occupancy, balancing between industry and farming, until for many industry took over completely.

Industry in Nottinghamshire varied from hosiery manufacture, coal mining, glass-making, and agricultural iron and steel ware was made from local ore. One of the employment opportunities for women as well as within farming, and as servants, was in the hemp and flax industries, which employed them in the curing processes 'as well as affording an occupation for spinners and weavers'.<sup>123</sup> Evidence of this can be seen in the high numbers of individuals presented at the quarter sessions for soaking hemp and flax.<sup>124</sup> The frequent references to married women as 'spinsters' within the quarter session records highlights the existence of this and the knitting industry. A further

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<sup>121</sup> Thirsk, J., 'Horn and Thorn in Staffordshire: The Economy of a Pastoral County', North Staffordshire Journal of Field Studies, (1969), vol. IX, pp. 1-16.

<sup>122</sup> Half of the parishes in Staffordshire were constituted of mixed social classes and half kept them separate. See Thirsk, J., 'Horn and Thorn in Staffordshire', p.3, for examples of this phenomenon.

<sup>123</sup> Thirsk, J., Agrarian History of England and Wales, vol. IV 1500-1640, (Cambridge University Press, Cambridge, 1967), p.40.

<sup>124</sup> Copnall, H.H., Nottinghamshire County Records, (Saxton, Nottingham, 1915), p.61.

important locally based rural industry was leather working, reflecting the predominance of cattle rearing around Newark.<sup>125</sup>

Nottinghamshire in the seventeenth-century had areas of both arable farming and also pasture or woodland.<sup>126</sup> As has already been noted the settlement pattern of the latter was spread and scattered and in the former settlement patterns were nucleated and centred about the church and the manor house. Usually within arable areas there would be a resident gentry family, in contrast to the situation in much of Staffordshire. The fertile valleys of the Trent and its tributaries were the richest areas of the shire, but those areas in the north-west of Nottinghamshire were not far behind, in population or wealth.<sup>127</sup>

This introductory chapter has established the aims of the thesis and the parameters within which it operates. The relevant historiography of gender and crime has been discussed, noting how this study relates to it. It shows to what extent it provides a development of, and contribution to understanding the role of gender in participation and prosecution of crime. In order to consider any possible implications of any evidence of the differences experienced between Staffordshire and Nottinghamshire, a brief overview of the social, religious and economic context of both counties has been examined. The full implications of this will not be fully explored within this thesis but

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<sup>125</sup> Beckett, J.V., *A Regional History - The East Midlands from AD 1000*, p. 155.

<sup>126</sup> For a detailed discussion of aspects of Nottinghamshire's geographical environment see Keating, H.M., 'Village Types and their Distribution in the Plain of Nottingham', *Geography*, (1935), vol. XX, pp. 283-94; Edwards, K.C., 'Nottingham', *Geography*, (1935), vol. XX, pp. 85-96; Scurfield, G., 'Early Seventeenth Century Worksop and its Environs', *Transactions of the Thoroton Society*, (1986), pp.46-56;

<sup>127</sup> Wood, A.C., *Nottinghamshire in the Civil War*, (S.R. Publishers Limited, Menston, 1971), p.2.

will provide possible areas for future research.<sup>128</sup> The nature of the sources and the methodology used have also been examined in order to present a clear picture of how this thesis provides a gendered analysis of the relevant court material, pamphlets and popular literature. This allows a greater understanding of what it was to be male and female in early modern England.

Chapter Two is concerned with the prosecution before the church courts of 'crimes' of sexual immorality, and to a lesser degree before the quarter session courts. These include incontinence, fornication, adultery and prostitution. The range of cases appearing before the courts in Nottinghamshire and Staffordshire illustrate those actions that broke society's moral and legal codes. After examining the various presentments it will be possible to identify how theories of sexual culpability were applied, and how commonly held perceptions of female sexuality, as opposed to male, defined the way in which sexual conduct was judged. The punishments meted out to males and females indicate that the courts' intentions were different according to one's gender and the reasons for this will be considered. It will also be possible to identify whether Keith Thomas's concept of the 'double standard' present in early modern England accurately reflects the reality.<sup>129</sup> Finally, the attitudes prevalent within Staffordshire and Nottinghamshire will be considered, and whether any change is apparent between 1603-1660.

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<sup>128</sup> Although attempts will be made to suggest factors that influenced behaviour and attitudes, any further exploration is beyond the scope of this research. I believe that this can be better achieved once this research has been completed.

<sup>129</sup> Thomas, K. 'The Double Standard'.

Chapter Three is concerned with whether or not attitudes towards sexual immorality remained constant when the conduct threatened the social and economic order by the production of an illegitimate child. The crime of bastardy, a crime that represented a combination of sexual immorality and economic pressure on communities, and the related crime of infanticide will be examined. The motivating factors behind the hostility to sexual misconduct will be considered, to assess whether it was purely financial or whether the control of women was more significant. The fear of women as potential heads of households can be seen, as well as the way in which society criminalised female sexual activity whilst condoning male sexual activity. Social constructions of gender provided the rationale for this inequitable treatment defining female behaviour in opposition to male. The prosecution of infanticide became the focus for this identification of 'lewd and dissolute' women by creating a criminal category that could only be applied to single unmarried mothers. The subsequent punishment of males and females reveals the gendered allocation of blame. The role of women in the prosecution of other women indicates that gender boundaries were not clear cut with women as victims and men as agents, but that women colluded in the subjugation of female rights. Finally different social contexts affected attitudes towards sexual immorality and a comparison will be made between the responses of those in authority in Nottinghamshire and those in Staffordshire.

The prosecution of lethal and non-lethal physical violence will be explored in Chapter Four. Those actions that allegedly resulted in physical harm will be examined and the bearing of sexual difference on the forms this violence took will also be considered. The authorities' attitudes towards female perpetrated homicides, especially when the victims

of those attacks were their husbands, will also be assessed. Witchcraft will be considered as an act of physical violence, as in almost all of the cases that appeared before the quarter session courts in Nottinghamshire and Staffordshire physical harm was involved, often linked to poisoning. Notions of order are shown to be mutable; thus culpability for violence was not always measured in relation to the degree of physical harm inflicted. The background to physical violence should reflect the concerns and social spheres of males and females, and this will all be situated within the context of religious, social, political and economic crisis and upheaval.

Chapter Five considers the gendered use of verbal violence, considered by many to be the female counterpart of physical violence. Scolding, a crime that was viewed as the epitome of female insubordination, will be shown to be not dissimilar to the crime of barratry which was usually ascribed to men. It will be argued that in some areas, notably Staffordshire, these two crimes were often interchangeable with men being prosecuted for scolding and women for barratry. The boundaries between the two were often extremely blurred. Defamation cases will examine the grounds on which males and females defamed others and were defamed in return. The gendered construction of insults reveals the grounds on which masculinity and femininity were constructed. Lack of verbal control was closely associated with a lack of sexual control. Also scolding women were often linked with witchcraft and as such represented the antithesis of the ideal woman. It will also be clear how far women had absorbed the construction of themselves as 'silent, passive and obedient'.

Sexual violence, including rape and attempted rape, will be explored in Chapter Six. This assertion of male power will be considered both as a sexually and physically

violent act. Consideration will be given to whether it was used to subjugate women, or whether it was a part of the 'normal' heterosexual sphere of relationships. The place of women first as property, for whom their husbands or fathers became the alleged victims, and then as independent women, who attempted to stand out against such acts, will be considered in relation to crimes of sexual violence. Patriarchal authority and the difficulties faced by young female servants will contextualise rape within the broader picture of gender and authority. Finally, the legal responses to rape and the reality of female experience before the courts will be shown once again to rely on male acceptance of female culpability for sexual misconduct, which was further confused by early modern perceptions about the female body.

Chapter Seven seeks to analyse the role of gender in shaping the nature and extent of male and female involvement in theft and related crimes against property. It will be argued that the notion of differential treatment of male and female offenders is misleading. The consensus that women were dependent thieves unable or unwilling to act alone will be challenged. Men and women had different patterns of criminal activity, both in their choice of partners and types of goods stolen, but it will be demonstrated that these reflect their concern with goods that came within their social sphere and not their lack of audacity. Women will also be shown to have been active within female networks of social transmission both as enforcers and breakers of the law. Previously female involvement in receiving and marketing of stolen goods has been largely ignored or deemed as insignificant. This chapter will show the significance of particular goods for males and females, but also that early modern perceptions about female sexuality were less influential in attitudes towards property theft than they were in the other crimes under review.

## Chapter Two

### 'THOU ART A VERIE BAGGADGE'

#### Incontinence, Fornication, Adultery and Prostitution.

In 1604 at Nottingham, William Ludlam accused Katherine Blanterne of being, 'a verie baggadge and scomme of the towne', and that she was 'a burned arsed whore'.<sup>1</sup> William repeated gossip that said that 'a man out of the gaole met thee at the bridge and burned thee'. Reference to sexual disease carried with it implications of prostitution. For defaming her William was ordered to pay 3s 8d taxed costs, and to do penance in St. Mary's Church, Nottingham between the hours of two and three on the following Sunday. Within this case it is evident that Katherine's reputation and identity were clearly being constructed around ideas of her sexual honesty. Sexual difference, and the subsequent perceptions about sexual appetites and behaviour according to one's gender, formed a fundamental part of the prescribed construction of female identity in the early modern period.<sup>2</sup> This meant that the reality of everyday existence for females of all ages and status revolved around perceived ideas about female weakness and sexual voraciousness. The most obvious outcome of illicit sexual conduct was bastardy, which will be examined in Chapter Three, but other sexual offences also had the potential to disrupt the gender order.

Martin Ingram in his study into sex and marriage, whilst noting that fornication and adultery were not condoned, failed to explore the implications of this for the social

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<sup>1</sup>NAO, DDTS, 14/26/9, Register 10 3/3/1604 St.Peter's Nottingham f84, p.112.

<sup>2</sup> Crawford, P., 'Sexual Knowledge in England, 1500-1750', in Porter, R. & Teich, M. eds., Sexual Knowledge. Sexual Science: The History of Attitudes Towards Sexuality. (Cambridge University Press, Cambridge, 1994), p.85.

construction of gender, and the allocation of blame for sexual misconduct primarily on women.<sup>3</sup> Other aspects of sexual immorality also presented problems for local communities. Extra-marital sexual activity potentially threatened families in a variety of ways. Husbands, whose wives committed adultery, were thought to have failed in their duty to control and govern their households, and men who committed adultery failed to fulfil the role of a loving husband. Perhaps more significantly they threatened the economic structures of a community by diverting their finances away from their lawful wives to their lovers.<sup>4</sup>

This chapter examines the prosecution before the church and secular courts and the dynamics of a range of crimes of a sexual nature committed by both males and females. The crimes that will be examined include fornication, incontinence, adultery and prostitution. The range of cases that appeared before the quarter session courts in both Nottinghamshire and Staffordshire, and before the church courts in Nottinghamshire, illustrates those actions that broke society's moral and legal codes. The activities that were frequently more closely identified as being sinful and which resulted in the presentment and prosecution of those who were seen to have broken society's moral codes, appeared before the church courts. In this way it will be possible to identify any

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<sup>3</sup> Ingram, M., 'The Reform of Popular Culture? Sex and Marriage in Early Modern England', in Reay, B., Popular Culture in Seventeenth-Century England, (Routledge, London, 1985), pp. 129-65. However, Quaife finds that for the majority of the populace 'sex was not a moral issue', with fornication and adultery only leading to condemnation when they caused disruption or economic implications for the community, Wanton Wenches and Wayward Wives, pp., 178-9.

<sup>4</sup> Amussen, S. D. 'Gender, Family and the Social Order, 1560-1725', in Fletcher, A. & Stevenson, J. eds., Order and Disorder in Early Modern England, (Cambridge University Press, Cambridge, 1985), p.207.

differences that one's gender made in the way individuals participated in sexual crime, and the way in which society viewed that participation.

Through a close examination of the individual cases it is possible to identify those issues which were deemed important for the maintenance of the ordered structure of early modern society. It will also highlight the differing responses to the crimes dependent on whether the perpetrator was male or female. However, it is important to note at this stage that attitudes were not always uniform. The attitudes of both local communities and the authorities will be explored and thus will reveal whether early modern society sustained equality in its attitudes or whether it employed a double standard.<sup>5</sup> As has already been identified in Chapter One, early modern society had very clearly defined parameters of behaviour for males and females, and those judged to have moved outside these boundaries were seen as disrupting the social order.<sup>6</sup> However, women were not only the victims within this arena, on occasions they manipulated the system so that some, if not all, of the blame for their deeds was allocated to undeserving men.

As has already been discussed in Chapter One, the primary way in which society constructed female identity was through ideas about their sexuality, especially the acceptance of female culpability for sexual behaviour, and this was the key factor in determining appropriate behaviour. It was those females who challenged the prescribed sexual codes that most seriously threatened the social order, and it is therefore within

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<sup>5</sup> See Thomas, K. 'The Double Standard'. For a revision of Thomas' work see Capp, B. 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England'.

<sup>6</sup> For a more in depth analysis of this see Amussen, S. D., 'Gender, Family and The Social Order 1560-1725', p.196-217.

the field of sexual activities that the most stringent reaction by the authorities, both on a community and institutional level, occurred. The dual standards which were applied by those in authority to males and females involved in sexual crimes, more than in any other categories of crime under investigation, clearly show that one's gender rather than one's participation in a particular activity was the key issue. As will be shown, the various crimes brought disapproval upon those accused for a wide range of reasons, these will be explored and contextualised, highlighting the centrality of sexuality in the construction of appropriate behaviour.

### **Fornication, Incontinence, and Adultery**

During the first half of the seventeenth-century the sins of fornication, incontinence and adultery were presented before both the church and quarter session courts. The largest proportion of the cases was tried by the former as part of their attempt to control and reform the morals of their parishoners. The role of these courts as the primary agency for the enforcement of sexual discipline makes them a significant source for an investigation into the workings of sexual activity within early modern England.<sup>7</sup> The cases presented to the church courts will be the first to be placed under close scrutiny.<sup>8</sup>

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<sup>7</sup> For a discussion on the role of the church court in the control of sexual morality see Ingram, M., Church Courts. Sex and Marriage in England. 1570-1640, pp. 323-63; Addy, J., Sin and Society in Seventeenth-Century England, pp.127-58; Marchant, R., The Church Under the Law: Justice. Administration and Discipline in the Diocese of York. 1560-1640. (Cambridge University Press, Cambridge, 1969).

<sup>8</sup> Ingram, M., Church Courts. Sex and Marriage in England. 1570-1640, p.238.

### **Presentment of sexual misconduct before the Archdeaconry courts**

Sexual conduct was one of the main forms of business presented before the church courts, and this reflects the concern that society felt when faced by men and women who broke society's moral codes. The high level of sexual offences is not really surprising because, as Ingram states, 'whatever the state of Christian belief and observance, it was inevitable that a sizeable minority of people would indulge in sins of the flesh.'<sup>9</sup> The canons of 1604 required the churchwardens to present cases of adultery, whoredom and incest, and any other wickedness to the church courts.<sup>10</sup> The opportunity to discipline errant villagers arose particularly when the churchwardens were required to present any transgressors at the Archdeacons' visitations. Both men and women were regularly presented to the courts for sexual misconduct, including adultery, fornication, incontinence, and occasionally for bastardy, although during this period bastardy cases were prosecuted mainly in the secular courts.

Many married couples were also presented for fornication before marriage and for clandestine marriages, but these cases reveal a concern primarily with the regulation of marriages rather than with sexual morality.<sup>11</sup> The prosecution of all of these cases reveals the authorities' concern with the maintenance of an ordered societal structure. There is ample evidence of neighbours attempting to control the behaviour of other

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<sup>9</sup> Ingram, M., Church Courts, Sex and Marriage in England, 1570-1640, p.239.

<sup>10</sup> Historians already working on the church court records have failed to identify the significance of the gendered construction of sexuality, see studies by Addy, J., Sin and Society in Seventeenth-Century England; Quaife, G.R., Wanton Wenches and Wayward Wives; and to a lesser degree Ingram, M., Church Courts, Sex and Marriage in England, 1570-1640.

<sup>11</sup>For a discussion of clandestine marriages see Outhwaite, R.B., Clandestine Marriage in England 1500-1850, (The Hambledon Press, London and Rio Grande, 1995), and Schellekens, J.,B. 'Courtship, the Clandestine Marriage Act, and Illegitimate Fertility in England', Journal of Interdisciplinary History, (1995), vol. 25, pp. 433-44.

members of the community. When offended, or concerned with the financial implications of another's actions, it appears that they did not hold back in their accusations and presentments of other individuals. Those villagers, who particularly, and often regularly, offended the wider community, were sometimes brought to the attention of the Justices of the Peace by means of a petition.

The role of the household in community life made stable, valid marriages critical, so it is not surprising to see those actions which threatened the stability of marriages being prosecuted.<sup>12</sup> It is also important to be aware of the implications for society if the accusations of sexual impropriety which individuals challenged in defamation cases were true.<sup>13</sup> Those who were accused of fornication or adultery threatened society with a potential chargeable bastard if the woman was unmarried, but if the woman was married then the main concern was the threat to the honour of her husband and the possible disruption of a household.

One group in society who most often came under the close scrutiny of their neighbours were young, single, female servants.<sup>14</sup> This group frequently had more available opportunities for sexual relations than other females under the tighter control of a father or husband. These opportunities for illicit sexual activity, and the subsequent potential for financial burdens for communities, aroused concerns and led to the close observation of the wider community. Female servants were likely to be involved in

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<sup>12</sup> Amussen, S.D. An Ordered Society, p.104.

<sup>13</sup> Amussen, S.D. An Ordered Society, p.102.

<sup>14</sup> Jackson, M. New Born Child Murder, p.48. See also Sharpe, J.A., Crime in Early Modern England, 1550-1750, p.110, for difficulties facing servants.

sexual activity with their masters, or their masters' sons, whereas there is little evidence to indicate that male servants were involved sexually with their mistresses or their master's wives. This is not to assume that this scenario was absent from early modern England but that it was not reported and recorded. Although such activities would have been disparaged, the potential for financial burdens for the local community would not have been anywhere near as great as if the situation had been reversed. Where male servants were accused of sexual misconduct this frequently involved a female servant within the same, or neighbouring, household. For example, Trotha Walker, servant to Leonard Nixe, along with Leonard and a fellow servant Robert Gascoigne, all found themselves presented to the church courts for incontinence. Both men were accused of incontinency with Trotha, but only Robert was found guilty. Leonard pleaded not guilty and had to purge himself, whereas Robert had to perform a penance. The key concern of the courts in this case was to allocate blame and, therefore, responsibility because, as a result of her illicit liaison with one or both of the men, Trotha was pregnant.<sup>15</sup> The court's judgement is significant. Perhaps only Leonard, a man with more authority in comparison with Robert, was thought able to rely on compurgation to support his claim of innocence.

Between 1603-1630 an average of over 80 men and women were presented each year to the church courts in Nottinghamshire for fornication, and over 48 men and women for incontinence. Men and women were almost equally represented within these cases, with only slightly more women being presented for fornication and slightly more men for

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<sup>15</sup> NAO, DDTS 14/26/11, 1608, p.262.

incontinence, (see Table 1).<sup>16</sup> In almost all of the incontinence presentments both the man and the woman involved were named, but within the fornication cases more lone individuals were presented. There were significantly fewer cases of adultery appearing before the courts with an average of less than four cases per year.<sup>17</sup> After 1630 very few cases of fornication, adultery or incontinence appear in the records, with most of the business during that period being mainly concerned with ecclesiastical issues such as recusancy and church duties.<sup>18</sup> What is apparent from a detailed analysis of the period 1603-1630, is that whereas the number of presentments for fornication and incontinence declined after 1620, the number of adultery presentments increased. After 1620 the average number of presentments for adultery rose from just over 4 cases per year to almost 9 cases, a rise of over 100%. This probably reflects a hardening of attitudes towards adultery in this period and the move to prosecute bastardy within the quarter session courts.

Incontinence and fornication were extremely difficult to differentiate between, and quite often the terms became interchangeable. Both terms indicated that local communities were not at ease with the sexual conduct of the individuals involved but it is unclear as to the extent of the sexual contacts. At one end of the spectrum some of these cases were presumably simply an understandable extension of acceptable courtship rituals, whereas at the other end both men and women were engaging in activities that

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<sup>16</sup> Based on a search of the Nottinghamshire Archdeaconry court registers, 1603-1630. DDTS 14/26/9 - 14/26/20. There were very few presentments for sexual crimes after this date until the cessation of the church courts.

<sup>17</sup> Both men and women appeared in all of these cases.

<sup>18</sup> Perhaps this is indicative of the weakening power of the church courts in the control of morality.

threatened and subverted the social order with the ultimate threat being the production of a bastard. Only a few female defendants were accused of, and confessed to, having had sexual relations with more than one man. In 1609 Alice Hornbie was presented for fornication with three different men, William Clarke, Henry Spaudforth and Peter Stevenson.<sup>19</sup> Other women appeared at regular intervals, accused of fornication or incontinence, with a variety of male partners. There is some indication in several of these cases that the women involved were acting as prostitutes. There is less evidence for males engaging in sex with more than one female partner, but this probably depended more on the fact that men had fewer occasions to be presented for such activity. This was due, in part, to the fact that a subsequent pregnancy did not bring them into the public debate, rather than that they were naturally less promiscuous.

Even though the number of married women presented for all of the above sins represented only a minority of those accused, they were evident in significant enough numbers to illustrate that married women had enough freedom to engage in illicit sexual activity.<sup>20</sup> As Table 1 demonstrates, the level of married female participation in sexual acts such as incontinence, fornication and adultery, indicates the propensity of married women to involve themselves in illicit sexual activity.<sup>21</sup>

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<sup>19</sup> NAO, DDTS 14/26/11, 1609.

<sup>20</sup> It is however, important to note, as Ingram, M., comments in his work on the church courts, that the numbers of married women are underestimated as the churchwardens, and court scribes often failed to record the fact that the women were married. Church Courts. Sex and Marriage in England. 1570-1640, p.249.

<sup>21</sup> Although not quantified in his study on Wiltshire, Ingram, M., notes that prosecutions against married women were 'strikingly rare'.

**Table 1**

**NUMBER OF MEN AND WOMEN PRESENTED TO THE CHURCH COURTS  
IN NOTTINGHAMSHIRE FOR SEXUAL CRIME, 1603-1642\***

	MEN	WOMEN			% Of Married Women
		Single/ ** Unknown	Married	Widows	Married
Fornication	872	897	9	4	1%
Incontinence	547	459	40	7	7.9%
Adultery***	84	81	17	2	17.0%
<b>Total</b>	1503	1437	66	13	4.4%

\*These figures can only determine the marital status of women, as male marital status was not recorded. Also this represents the minimum number of married women, as marital status was not always recorded for women.

\*\* Within these records there were no records indicating that a female was unmarried. However, as married women and widows were recorded it has been assumed that where there was no reference to the female's marital status, she was a single woman.

\*\*\* These figures are problematic as adultery by definition involves at least one married person, usually female, and lack of accurate recording of marital status could distort the figures considerably.

Despite the prescribed sexual conduct of women as chaste, married women alongside their unmarried sisters clearly felt little compunction in engaging in extramarital sexual activity. If the result of an illicit sexual activity proved to be a child then that child could be passed off as the result of normal marital activity. Despite any suspicions on the part of the husband or the local community, any children born in wedlock were not

considered to be bastards whoever their father was suspected to be. It was at this stage that gossip perhaps enters into the equation with neighbours demonstrating the resemblance between a child and the suspected father. Such cases provide the backbone to many of the defamation suits presented within the church courts.<sup>22</sup> It is through such mediums that the individual circumstances of the majority of these occasions are made visible as those accused rarely made full and detailed confessions. Despite the apparent ease with which married women engaged in extramarital activities, such activities were viewed with considerable disfavour by the church courts, and even though neighbours were constantly observing each other's conduct this did not discourage all women from engaging in 'loose conduct'.

Early modern attitudes towards female adultery can be seen in contemporary ballads dealing with adultery by husbands. In *The Patient Wife Betrayed; Or, The Lady Elizabeth's Tragedy*, the narrative fails to concentrate upon the adulterous behaviour of the husband, but on the 'wicked woman' who by her lewd behaviour seduces him, and with whom the culpability must rest.<sup>23</sup> Despite this usual allocation of blame onto the woman involved, men who committed adultery with married women sometimes received the same condemnation for their actions. Nicholas Dove, of Mansfield, provided a threat both to the social structure and to another man when he adulterously involved himself with a married woman. By his illicit sexual misconduct Nicholas threatened disruption to another's marriage, leading to the accusation that he was, 'adulterously abusinge the bodie of John Skeepies wife'.<sup>24</sup> In 1606 another man, James

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<sup>22</sup> As can be seen in Chapter Five on verbal violence.

<sup>23</sup> Foyster, E. 'A Laughing Matter? Marital Discord and Gender Control in Seventeenth-Century England', p. 7.

<sup>24</sup> NAO, DDTS 14/26/15, 4<sup>th</sup> June, 1616, p. 139.

Archer, represented a similar threat. Despite having already been presented to the church courts for incontinence with the wife of John Marnham, James Archer still 'resorted to her'.<sup>25</sup> He was reported to have said that,

If he coulde not have the use of the bodie of Anne Marnham  
in her husband's house he would send for her and have his  
pleasure of her at somme of her neighbours houses.

Archer blatantly declared his intention and his right to sexual intercourse with another man's wife, which in turn led to his repeat presentment to the church court. Anne Marnham was not brought to court on this occasion. Whether this was because the court was more lenient in its attitude towards her is unclear. Clearly the men in this scenario are the active participants, Anne's role was perhaps more passive, more in keeping with her prescribed role in life.

The threat that a wife's infidelity represented to the cuckolded husband, and the fear that this aroused in men, is evident in popular ballads. The alternative title for the *Cuckhold's Haven*, *The Marry'd Man's Miserie*, highlights the dilemma of all married men who are not convinced of their wives' fidelity,

The marry'd man's miserie, who must abide  
The penalty of being Hornify'd:  
Hee unto his Neighbours doth make his case knowne,  
And tels them all plainly, The case is their owne.<sup>26</sup>

Here the cuckolded husband represents the realisation of other married men's fears. Ballads such as this aroused much laughter at the expense of men. However, this was

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<sup>25</sup> NAO DDTS 14/26/10, 4<sup>th</sup> August 1606, p.211

<sup>26</sup> *Cuckold's Haven*, London, 1638, printed for Francis Greve. See also *The Merry Cuckold*, London, 1630.

probably a nervous reaction, as much humour is, to the possibility that this could be any husband.<sup>27</sup>

According to Margaret Sommerville, married men who were unfaithful with single or widowed women were more likely to be labelled as 'fornicators' or 'whoremongers', than adulterers.<sup>28</sup> The double standard often referred to with regard to sexuality was embodied in the language itself. As an early modern contemporary noted that,

Custom, which is the master of the language, in a manner appropriated the title of adultery to the falseness of the wife ....and absolved the husband from the imputation of it where he did not defile another's bed.<sup>29</sup>

Within the Nottingham church court records, both men and women were presented for adultery, although the significance of the act varied according to one's gender. One man who was presented for adultery, when the woman involved was single, was Alexander Allen. His conduct threatened his own marriage, and threatened to remove the financial support from his wife, when he was presented for,

Not cohabiting with his wife and also that there is and hath of longue tyme beene a common fame that the said Alexander Allen liveth and continueth still in adulterous sorte with one Widowe Armstronge nowe of Horsley in Darbshire.<sup>30</sup>

By his actions Alexander provided both a social and economic threat to the communities in which he conducted his sexual misdemeanours.

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<sup>27</sup> For a more complete discussion of the role of laughter in gender control see Foyster, E., 'A Laughing Matter? Gender Control and Marital Discord in Seventeenth Century England'.

<sup>28</sup> Sommerville, M.R. Sex and Subjection, (Arnold, London, 1995), p.141.

<sup>29</sup> Towerson, G. 1676, 'An Explication of the Decalogue' p.206, cited in Sommerville, M.R., Sex and Subjection, p.141

<sup>30</sup> NAO, DDTS 14/26/15, 4<sup>th</sup> June, 1616, p.139.

On some occasions women manipulated the system to accuse an innocent man of adultery or sexual misconduct. The motivation behind this was frequently for support of a subsequent bastard child. Alice Morehouse of Mansfield Woodhouse used this tactic when she falsely accused Humfrey Snowden of adultery.<sup>31</sup> Humfrey responded to this accusation by taking Alice to court for defamation. Humfrey was not only protecting his reputation, but importantly for him he was protecting himself from becoming liable for the financial burden of Alice Morehouse's child. Alice stated in court that,

About a fortnight since shee did unjustlie saie and confesse publicuelie in Mannesfielde Woodhouse that the said Humfrey Snowden had committed adulterie with her and got her with childe, and that she was moved thereunto by somme whome she tooke to be her friends, for which wronge doinge to him the said Humfrey she is verie sorie because the said Humfrey did neither commit adulterie with her nor get her with childe but that one Francis Carter late of Mannesfielde Woodhouse, mercer, is the man who did get the said Alice Moorehouse with childe where with she now goeth.

For lying and defaming Humfrey, Alice was ordered to perform a penance and to pay costs.

The church courts presented both men and women primarily for actions that contradicted society's moral codes. The majority of those presented if found guilty were ordered to pay costs and to do penance in public, either in the church or perhaps the market place. This highlights the perceived effectiveness of public shame and humiliation in this period. Both men and women appeared before the courts accused of incontinence, fornication, and adultery, amongst other crimes, but the judgements of the courts reveal significant differences in the perception of those in authority to the implications of differing behaviour. So closely linked was the analogy between order in the family and order within the state, that to threaten the former was seen to have severe

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<sup>31</sup> NAO, DDTS 14/26/16, pp.190-1, f 48, 26<sup>th</sup> January, 1618.

consequences for the latter. Therefore, all of the above, being activities which have the potential to disrupt order within communities, appeared before the courts with increasing frequency in this period.

Contemporary ecclesiastical theorists recognised male and female culpability for adultery and the evidence from the church court records appears in part to reflect this attitude.<sup>32</sup> Although males and females both appear before the ecclesiastical courts for sexual incontinence, fornication and adultery, the records indicate that the emphasis was on the reinforcement of the appropriate behaviour of women.<sup>33</sup> This dual standard can also be seen in the fact that male adultery was not an accepted ground for marital separation but female adultery was. Adultery by men was not seen to threaten the hierarchical order upon which families and the wider society was built.<sup>34</sup> 'It was the wife and her lover, not the married man and his mistress, who made adultery such a 'notorious theft'.<sup>35</sup> The church courts demonstrated their disapproval of the infringement of the prescribed sexual moral codes by punishing the offenders, but this punishment varied widely in its application and severity.<sup>36</sup> However, despite the evident condemnation of sexual misconduct, the punishments for all of these sins were not usually as harsh as those allocated in the quarter session courts. In most cases where

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<sup>32</sup> Gowing, L. 'Gender and the Language of Insult in Early Modern London'.

<sup>33</sup> There appears to be some generalised use of the terms adultery and fornication to denote the same behaviour.

<sup>34</sup> One reason for this is that a married woman committing adultery might have produced a bastard who would then inherit from the husband. Also women who committed adultery denied the authority of their husbands and threatened the social order.

<sup>35</sup> Thomas, K., 'The Puritans and Adultery: The Act of 1650 Reconsidered', in Pennington, D., & Thomas, K. eds., Puritans and Revolutionaries - Essays Presented to Christopher Hill, (Clarendon Press, Oxford, 1978), p.262.

<sup>36</sup> See Ingram, M. for a discussion of the effectiveness of the church courts, Church Courts, Sex and Marriage in England, 1570-1640, p.4-5.

those presented pleaded guilty, then the judgement would be to perform a penance. If they pleaded not guilty then they would have to undergo compurgation with around six neighbours, and where the accused did not appear excommunication would follow. Although there was no apparent gender bias within the allocation of these judgements, the language of the individual cases constructed the guilt as belonging to the female. In the majority of the cases in which men were accused of fornication they pleaded guilty and accepted the court's judgement, which usually ranged from dismissal, compurgation, or performing a penance.

Ingram states, in his study on adultery on Wiltshire, that very few culprits made full confessions, with the majority of convictions relying on compurgation.<sup>37</sup> What is apparent in Nottinghamshire is that whilst many males confessed to adulterous behaviour, very few females confessed, probably as the implications of this were far greater for them. Male acknowledgement of guilt probably depended more on the fact that society more readily accepted male sexual misdemeanours than the drive to confess on the part of the males. In the majority of cases in which women stood accused, the crime was denied but this had little impact on the court's judgement. Most women, once accused, were found guilty and punished. What is most evident from the church court records in Nottinghamshire is that penance was the most common punishment for females, with a strong likelihood of the penance being commuted to a payment for males.<sup>38</sup> The reasons for this were probably twofold. Perhaps the courts saw the need for females to experience public shame and humiliation, providing an example as a

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<sup>37</sup> Ingram, M. Church Courts, Sex and Marriage in England, 1570-1640, p.250

<sup>38</sup> With less frequency this was applied to females too, for example in the case of Katherine Knoddell, NAO, DDTS 14/26/9, f68d P.32 8/12/1603 East Retford, however she failed to pay and was excommunicated.

deterrent for other miscreant women, or perhaps it is because males represented a greater opportunity for the church to raise money from the fines as few women had money of their own. It is most likely that both of these factors influenced the decisions and responses of the church courts.

The impact of ecclesiastical justice in such cases could be viewed as ineffectual, but it would be wrong to see it in this way. The presentments before the church courts should be viewed as the culmination of neighbourhood disapproval of those individuals within the local communities who had defied the rules of propriety. For most of those presented, the greatest threat would have been the public exposure and shame, as well as the potential damage to their reputations. In addition, for those men accused of fornication, the possible subsequent threat of a maintenance order for a bastard child could have followed.<sup>39</sup> By bringing their misdeeds into the public arena closer scrutiny of the guilty parties would have occurred, possibly bringing to an end their unsuitable behaviour.

Most of the cases for sexual misconduct within the church court records reveal little of the individual circumstances, but some provide a greater insight into the sexual lives and conduct of ordinary people. The move to present these cases to the secular courts in the seventeenth-century, reflects the harsher attitudes towards those who broke society's moral codes.<sup>40</sup> Within the quarter session courts attitudes towards females as opposed to males appear to have been much harsher than within the church courts.<sup>41</sup>

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<sup>39</sup> For a further discussion on this see Chapter Three.

<sup>40</sup> This could also be seen to have been as a result of the declining power of the ecclesiastical authorities.

<sup>41</sup> Perhaps this is because the quarter session courts regularly dealt with the financial implications of bastardy cases.

### **Presentments before the Quarter Session Courts**

The same range of cases as have already been identified as appearing before the church courts, also appeared before the quarter session courts, although in fewer numbers. What is evident within the quarter session presentments is a much harsher and usually more gendered approach. Only five individuals were presented for adultery to the quarter session courts in Nottinghamshire between 1630-1660, four of whom were female and one male, with one of the women being sent to the House of Correction. By presenting these cases neighbours showed their censure of such conduct. In those cases where men and women were named only the woman was identified as behaving in an inappropriate manner.

Katherine Beckingham was presented to the courts in 1628 because the common fame was that she was, 'a woman of evil and dissolute conduct and conversation and lately had a child at Thoresby.'<sup>42</sup> The local communities were attempting to control her moral conduct through the secular courts in much the same way as through the church courts. Her appearance before the quarter session courts led to a harsher punishment. For her misconduct she was to be sent to the House of Correction for one year where she would receive 'condign punishment' and 'be put to work'. What is most significant about this case is not what it contains, but what is ignored. If Katherine had had an illegitimate child, which had since died, there must have been a father. However, his behaviour does not appear to have warranted correction. But then, as has already been identified, the responsibility for sexual morality was assumed to lay with the female, and even though the child had died and had not become a charge on the parish, the prescribed punishment of Katherine still followed.

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<sup>42</sup> NAO, C/QSM1/73/2 East Retford 25<sup>th</sup> April, 1628 p.147.

On some occasions a woman's sexuality became the tool by which her neighbours were able to exert power over her. Widows were frequently subject to the fear and condemnation of their neighbours. Without a male head to control them they were often viewed as the epitome of the 'lewd and dissolute woman'. Mary Orston, widow of Aslockton, confirmed this stereotype by giving birth, according to her neighbour William Leighton, of Aslockton, Nottinghamshire, to two illegitimate children.<sup>43</sup> On William's oath, Mary was sent to the House of Correction for one year. It is impossible to say whether this accusation was part of an ongoing dispute between William and Mary, but it is clear that whatever the circumstances men, and sometimes women, were able to draw on the image of women as sexually uncontrollable, to construct any accusations against them.

Many of the individuals, especially women, who were presented to the quarter session courts, had already been presented for their actions before the church court. Usually this occurred when the crime led to a financial threat to the community, such as the case of bastardy. However, there were a considerable number of cases in which it appears that the church courts were perhaps assumed to have failed in their attempt to control and direct the behaviour of those it reprimanded. The secular courts with more effective punishments, such as a term in the House of Correction, appear to have been viewed as the more appropriate arenas for disciplining dissolute women.

The production of a bastard child was also often the reason behind the presentments before the quarter session courts for sexual misconduct, sins more appropriately dealt with by the church courts prior to 1642. In 1638, Margaret Watson appeared before the

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<sup>43</sup> NAO, C/QSM1/74/3, Nottingham 8<sup>th</sup> July, 1633, p.352.

quarter session court for the birth of her bastard child, which she had fathered onto two men, Thomas Parker and Oliver Godborne. The blame was allocated solely onto Margaret, and she was sent to the House of Correction for one year, according to the statute.<sup>44</sup> The fact that Margaret had accused two men and because she was already known to have 'misconducted herself with two other men', probably influenced this decision.<sup>45</sup> The case of Cecily Bower, who appeared before the quarter session court at Nottingham in 1615, appears superficially to have originated because she already had two bastard children.<sup>46</sup> Cecily had previously been sent to the House of Correction for incontinence with one Nicholas Hancock by whom she had had two children. Cecily's relationship with Nicholas appears to have been a stable one but it fell outside the acceptable limits of early modern marital arrangements. At the next meeting of the quarter sessions Cecily was ordered, 'to live at least 6 miles from Clipstone and never again allow Nicholas Hancock to come near her'.<sup>47</sup> If she obliged then she was to be released. Whatever the circumstances of this relationship, Cecily, not Nicholas, was held culpable.

Similar circumstances led to the incarceration in the House of Correction for Anne Fowler of Hayton. Anne was sent to the House of Correction because she was the mother of two bastards by Thomas Eastwood, gentleman, and also because she lived with him. The financial implication of their illegitimate offspring was not the primary concern of the courts, as Anne and Thomas were involved in a stable, even if somewhat unconventional relationship, and therefore did not provide any economic threat to the

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<sup>44</sup> 7 James I, c.4.

<sup>45</sup> NAO, C/QSM1/76/2, Nottingham 18<sup>th</sup> January, 1638, p.9

<sup>46</sup> NAO, C/QSM1/69/2, Nottingham 11<sup>th</sup> July, 1615, p.110.

<sup>47</sup> NAO, C/QSM1/69/2, Newark, 12<sup>th</sup> July, 1615, p.115.

local community. Their crime was their overt affront to morality, for which Anne alone was held responsible.

Few cases of sexual misconduct other than bastardy appeared before the Staffordshire quarter session courts, but those that did still drew on the image of women as sexually voracious and prone to illicit sexual conduct. Many of these accusations of sexual misconduct were frequently part of an extended dispute in which their sexual behaviour was only one aspect of their activities condemned by the community and the authorities. Mary Bull, wife of Nicholas Bull, of Pipehill, Staffordshire, would have felt that she had no choice but to seek a good behaviour order against Joan Smythe, spinster, servant to Nicholas Bull. Joan had threatened her reputation and her position in the marital home. Mary had been accused by Joan of incontinence with her son, and Joan then pursued her attempt to alienate Mary from her husband Nicholas.<sup>48</sup> This defamatory attack by Joan led to Mary being questioned before the Dean of Lichfield, after which Mary was ordered to purge herself. Nicholas identified himself as the injured party in this dispute because claims about his wife's sexual misconduct with Joan's son placed him a position of ridicule with the community. Accusations of cuckoldry seriously threatened a man's reputation. Nicholas' response to this was to manacle Mary with a plate and lock about her body until 'she was in danger of her life'. Whether or not Joan was trying to replace Mary in Nicholas' affections is impossible to know, but the damage and destruction that the label of incontinency attached to a married woman could bring is evident within this case. The need to protect one's good name is clear. Despite Nicholas' attack on his wife Mary, he was not prosecuted. The court clearly

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<sup>48</sup> WSL QS12A Michaelmas, 1617, nos. 33&34.

considered that his physical abuse of his wife was justified if the accusations were true, but as they were not proved then Joan alone was punished for stirring up trouble.<sup>49</sup>

In 1636, Anne Watherhogg, of Penkridge, was brought before the Justices, following a petition by her neighbours. The petition was just one part of an ongoing dispute that focused on her inappropriate conduct. The petition highlighted the fact that Anne had,

For many years together lived a most ungodly and adulterous life, and doth still ..continue in the same lewd and wicked course to the great dishonour of God and scandal of all her neighbours.<sup>50</sup>

This case continued showing that Anne Watherhogg was a woman who made no deference towards appropriate female conduct. Upon the previous Shrove Tuesday some apprentices and servants, 'and young boys of the town', witnessed an attack by John Micklin, 'a lewd fellow and a companion of hers'. John had thrown Richard Culfeld in a ditch of water and held him down till he was almost drowned. The said Anne Watherhogg then set upon Richard, at which point the youths put her into a cart and drew her through the town. The youths had identified Anne's violence as inappropriate to her gender, whilst ignoring John's original attack on Richard. Following the youths' attack on Anne she had threatened to obtain a good behaviour order against them. The youths requested a pardon on the grounds that the said Anne,

Is a lewd and adulterous woman, a disturber of all her neighbours and hath found the overthrow and undoing of at least 3 or 4 young men that frequented her house and used her company.

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<sup>49</sup> Joan was committed to gaol from where she petitioned for her release, WSL, QS 12A, Roll 58, Epiphany, 1618, no.49.

<sup>50</sup> SRO, Q/SR/221, Easter 1636, p. 19.

Anne's reputation altered the balance of blame in this case, and led to her communal humiliation and punishment by the young men of the town. Her gender, and therefore her sexuality, located the blame and the consequent punishment firmly on the sexual conduct of Anne. Anne threatened the gender order by the manner in which she conducted herself, firstly as an adulterer and possibly as a prostitute.

Despite the prescribed conduct of women in early modern England, many women including those who were married and involved in marketing their produce, had opportunities for extramarital sex away from their homes. A common location for this would have been the alehouse or inn.<sup>51</sup> However, this act of secrecy did not necessarily prevent them from being discovered. On 9<sup>th</sup> May, 1630 at an alehouse in Walsall, Thomas Smith and Katherine Ropier were discovered together, in an upstairs chamber, by Thomas' wife. The confrontation led to a physical attack on Katherine by Thomas' heavily pregnant wife.<sup>52</sup> In defending Katherine, Thomas had beaten his wife 'to the greate danger of her lyfe'. Katherine was committed to the common gaol of Walsall, 'untill such tyme as yt shall be seene whether the said Smithes wife lyve or die'. Despite Thomas's obvious involvement, Katherine was identified as being the guilty one, especially by Thomas' wife, and the authorities found Katherine culpable even though Thomas had physically attacked his own wife.<sup>53</sup>

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<sup>51</sup> For a wider discussion of this see Quaife, G.R. Wanton Wenches and Wayward Wives., pp.128-9 and Clark, P. 'The Alehouse and the Alternative Society', in Pennington, D. & Thomas, K. eds., Puritans and Revolutionaries, pp.47-72.

<sup>52</sup> WSL, QS 17, Trinity 1630, p.52

<sup>53</sup> For allowing bawdry in his house John Booth unlicensed alehouse keeper was suppressed. WSL QS 17, Trinity 1630, no. 52.

Where the local communities and the authorities did respond to sexual crime, it was usually with a gendered response. The case of incontinency involving Margaret Henson, and Robert Taylor, both of Stapleford, came before the quarter session courts primarily because it threatened the economic structure of two families.<sup>54</sup> Robert had abandoned his wife and children to 'wander abroad with Margaret Henson, leaving his wife and children to be a charge on the parish'. Margaret had two bastards already and provided a financial as well as a moral threat to the community. For their crimes both Margaret and Robert were punished. Margaret was sent to the House of Correction, and Robert was to be committed to gaol until he could find sufficient security to protect the parishes from the financial implications of his actions. Margaret and Robert had received different punishments according to their gender with different aims behind each punishment. However, when men threatened the rights of another men they faced similar condemnation of their actions as women.

On 11<sup>th</sup> July 1610, Nicholas Walker of Bilsthorpe, Nottinghamshire, gentleman, stated on oath that,

Peter Roos of Weston in the county of Stafford gentleman being a married man had unbecomingly kept company with the wife of the said Nicholas as appears by letters that passed between them, and that the same Peter had challenged Nicholas to a fight body for body, and if the said Peter should be released from his recognisance of the peace he would kill the said Nicholas, And the same Peter offered to give the said Nicholas £50 if he would sue for a divorce from his wife.<sup>55</sup>

This case of adultery appears to be more complex than the cases of illicit sexual activity

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<sup>54</sup> NAO, C/QSM1/76/2, Nottingham 2<sup>nd</sup> April 1638, p.36.

<sup>55</sup> Copnall, H.H. Nottinghamshire County Records, pp. 40-41.

usually presented. In this case the relationship between the male and female adulterer appears to be well established with marriage, not extramarital sexual activity being the end goal. For the second time Peter was bound by an order for good behaviour. There is no indication within this case of the attitudes of those involved towards the wife of Nicholas Walker. The prosecution focuses primarily on the protection of Nicholas' masculinity and his rights as a husband.

The courts responded similarly at the end of the 1650s to William Greene, of Balderton, Nottinghamshire. On 13<sup>th</sup> January 1658, William was committed to gaol until he found security to appear at the next sessions. He was to answer a charge of incontinence with one John Richardson's wife of Norwell Woodhouse, and of 'inveighing her from her husband, with him in his own house'.<sup>56</sup> At the next meeting of the Newark sessions William was ordered to appear before the assize court for 'incontinency with Elizabeth wife of John Richardson'.<sup>57</sup> This reflects a much harsher attitude towards men accused of incontinent behaviour, even with a married woman, than earlier in the seventeenth-century.<sup>58</sup> However, William had threatened John's patriarchal authority and masculinity by conducting himself in this way with his wife, especially within John's own home whilst he was in. Again there is no record of the court's response to John's wife.

The rare insights into the sexual conduct of single men and women in Staffordshire are usually only glimpsed when sexual offences develop into deeds that the secular courts

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<sup>56</sup> NAO C/QSM1/1/13, Newark 13<sup>th</sup> January 1658.

<sup>57</sup> NAO, C/QSM1/13, Newark 21<sup>st</sup> April 1658.

<sup>58</sup> This was probably a part of the wider attempt to control morality apparent during the 1650s.

considered within their jurisdiction to prosecute. The case of Sybill Hare, servant to John Bromley for seven years, shows the many difficulties that single young women in service frequently found themselves facing. Her petition to the courts, on finding herself pregnant, highlights the potential difficulties of many young women in her position. Sybill claimed that she lived in good fame and name for seven years as servant to John Bromley,

Until by the wicked enticement and devillish alurement of Robert Bromley sonne to the said John Bromley she was begot with child by the said Robert Bromley upon which she did father the said child at the time of her delivery.<sup>59</sup>

Sybill drew on her past reputation as one of demonstrating her honour, which she contrasted Robert's 'wicked enticement and devillish allurements'. Despite her immoral behaviour she attempted to establish herself in the image of the 'ideal' woman, until a man, in the guise of the devil, had led her astray. To what extent the justices were persuaded by this line of argument is impossible to assess, but she succeeded in obtaining the satisfaction of the most pressing of her needs. The justices granted her a weekly allowance for the maintenance of her child.

Masters sometimes responded to claims by their female servants that they had fathered their child by defaming their past sexual conduct. In 1642 William Crundall of Enfield, having been accused of fathering Mary Browne's child, claimed that Mary had previously laid with another, one John Williams alias Davis.<sup>60</sup> Crundall was able to support his claim with the signatures of twenty-five men, his neighbours, who claimed that he had lived amongst them for fourteen years and had behaved himself religiously,

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<sup>59</sup> SRO, Q/SR/231, Michaelmas 1637, p.13.

<sup>60</sup> SRO, Q/SR/250, Easter 1642, p.9.

soberly and honestly. They also claimed that he had never been guilty of the sin of incontinency, and he was then discharged by the court. Perhaps Mary saw the need to name a substantial inhabitant of the community who could financially support her child, instead of John William who had since fled the district. Alternatively perhaps Crundalls' social standing had enabled him to extricate himself from not only the financial repercussions but also from the disintegration of his reputation. Within this case Mary was caught by the double subordination of both her gender and her class.

As Keith Wrightson notes, in the aftermath of the wars and subsequently during the interregnum, attitudes towards ungodly behaviour hardened, leading to the introduction of sterner laws to suppress such conduct.<sup>61</sup> Justices of the Peace were encouraged to present and punish those who offended the moral sensibilities of the more godly sections of the communities. Even within Staffordshire, where attitudes towards immorality prior to the civil wars do not appear to have been as aggressive as in Nottinghamshire, there is evidence that after the wars those more 'respectable' members of society pursued a campaign against ungodliness.<sup>62</sup>

By the 1650s adultery was a treasonable offence. The structure and language of the 1650 Act for 'suppressing the detestable sins of Incest, Adultery and Fornication' represented an attempt to put the 'full machinery of the state behind the enforcement of

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<sup>61</sup> Wrightson, K. *English Society 1580-1680*, p.215.

<sup>62</sup> Prosecutions for crimes against morality went up in this period.

sexual morality'.<sup>63</sup> Within it a far greater emphasis was placed on the conduct of married women, than on married men.<sup>64</sup> It stated that,

In case any married woman shall be carnally known by any other man (other than her husband) (except in the Case of Ravishment) and of such offence or offences shall be convicted as aforesaid by confession or otherwise, every such Offence and Offences shall be and is hereby adjudged Felony: and every person, as well the man as the woman, offending therein, and confessing the same, or being thereof convicted by verdict upon Indictment or Presentment as aforesaid, shall suffer death as in case of Felony, without benefit of Clergy.

Provided, That this shall not extend to any man who at the time of such offence committed, is not knowing that such woman with whom such Offence is committed, is then married.<sup>65</sup>

Behaviour that had previously been classified as sins were reclassified as secular crimes, and adultery became a felony, carrying the sentence of death without benefit of clergy.<sup>66</sup> This Act, in its entirety, classified adultery in relation to a married woman only, defining the act as one which 'married women only could commit. Married men committed the crime of fornication'.<sup>67</sup> One woman who fell foul of this act was Elizabeth Sorbie. On the 15<sup>th</sup> January, 1658, Elizabeth was ordered to appear at the next assizes,

For having a chyld begot on her body by Thomas Turner, her husband being alive as is supposed.<sup>68</sup>

The circumstances surrounding the absence of Robert are not given. Perhaps he had been missing since the end of the wars. That the local community in Ordsall,

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<sup>63</sup> Thomas, K., 'The Puritans and Adultery: the Act of 1650 Reconsidered', p. 257.

<sup>64</sup> 'An Act for Suppressing the Detestable Sins of Incest, Adultery and Fornication', in Acts and Ordinances from the 9<sup>th</sup> February 1649 to 16<sup>th</sup> March 1660, P.389.

<sup>65</sup> The act also declares this penalty void for women whose husbands have been absent beyond the seas for three years.

<sup>66</sup> The Act was found to be so unworkable that in 1660 it lapsed and was not renewed.

<sup>67</sup> Crawford, P., 'Sexual Knowledge in England, 1500-1750', p.90.

<sup>68</sup> NAO, C/QSM1/13, East Retford, 15<sup>th</sup> January, 1658.

Nottinghamshire knew them both is evident, or Elizabeth and Thomas' conduct would not provoked the same response. Even though in the 1650s both counties witnessed stiffer responses to immorality, the more usual punishment for bastardy would still have been incarceration for the mother, as will be explored in Chapter Three, whereas adulterers faced the higher jurisdiction of the assize courts.<sup>69</sup>

Despite the apparent inequitable treatment of female adulterers, men were also presented to the courts for adulterous conduct, not primarily for sexual misconduct but for their attack on other men's rights. In 1656 Thomas Lovett of Wheaton Aston, was presented to the Justices at Stafford. Firstly, he was accused of being 'a sower of sedition between neighbours', and secondly because,

He had committed the horrible sin of adultery - he doth endeavour to enfixe all men's wives.<sup>70</sup>

Within this case the threat to 'other men' was probably more significant than his 'lewd and dissolute conduct'. His immorality would not have had the same impact had the women involved been single and not under the auspices of another male. Although the consequences of being accused of committing adultery were evidently greater for women than they were for men, it is evident that it could still have significant social implications for men too, particularly in the 1650s. If this had not been the case then the false accusation made by Mary, the wife of Richard Roberts of Sutton on Lound, against her husband of being in bed with one Grace, wife of William Liller, would have

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<sup>69</sup> This was the normal response of the courts following the 1650 act 'for suppressing the detestable sins of Incest, Adultery and Fornication'. in Vol.11, Acts and Ordinances from 9<sup>th</sup> February 1649 to 16<sup>th</sup> March 1660, p. 397.

<sup>70</sup> SRO, Q/SR/294, Easter 1656, p.25.

had little impact.<sup>71</sup> Having been brought before the Justices, Mary denied the accusation. If in fact the accusation had been true then perhaps she had achieved the desired effect by bringing Richard's conduct into the public arena. The risks of doing this were quite considerable, as Mary was committed to the common gaol for making this false accusation.

There is no evidence within the court records of men found guilty of making false accusations against their wives. The reasons for this could be twofold. Firstly, men would not want to draw attention to themselves as a 'cuckolded husband', as the accompanying ridicule and humiliation would have been too great a price to pay. Secondly, because where men accused their own wives of adultery, this would have been more readily accepted as the truth by the court, and would not have been questioned. Clearly one's gender situated an individual differently in relation to any act of sexual immorality whereby some crimes were seen as being committed by only one gender, females.

One of the rare occasions, on which a divorce petition is noted in the quarter session records, stems from a woman's adulterous liaison with one Richard Robinson.<sup>72</sup> In 1630, Thomas Kilbie, of Stone, Staffordshire, petitioned the courts for a divorce from his wife, Margery. The problems they had experienced occurred over a long period. After five years of marriage Margery left Thomas and went with Richard Robinson to Ireland. Four years later she was presented to the church courts at Lichfield, where she

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<sup>71</sup> NAO, C/QSM1/13, East Retford 11<sup>th</sup> January 1656, see also C/QSM1/13, East Retford 5<sup>th</sup> October 1655, where Richard Roberts was ordered to appear for adultery with Grace wife of William Liller of Kirton.

<sup>72</sup> WSL, QS18, Roll 22, Michaelmas 1630, p.76.

confessed before the Lord Bishop of Coventry and Lichfield, that she had two children by Robinson. The Bishop bound her for her appearance before the quarter session courts, where, on 7<sup>th</sup> July, 1630, Margery was ordered to appear for,

Adulterously keeping companie with one Richard Robinson,  
who hath had two children by her at one bearth as she herselfe confessed.<sup>73</sup>

The significant crime, in the eyes of the court, was the production of not just one but two bastards. For Richard the punishment was to be an order for good behaviour granted against him, but he failed to appear. The Bishop had sought to further punish both Margery's and Richard's actions by presenting them to the secular authorities, but Thomas was denied the luxury of a divorce.<sup>74</sup>

The links between the administration of justice between the church and secular courts, in the first half of the seventeenth-century can also be seen in the case of William Onions, of Bobbington, in the parish of Bridgnorth. On the 4<sup>th</sup> October, 1630, William Madestand, J.P., addressed the justices at Stafford. He stated that,

William Onions of Bobbington in the peculiar of Bridgnorth  
has been excommunicated for several months for not appearing  
upon citation for suspicion of incontinence, and on 23<sup>rd</sup> September  
last he submitted and received absolution and was enjoined to  
purge himself on 7<sup>th</sup> October next.<sup>75</sup>

William's earlier non-appearance and subsequent excommunication, had led to his presentment to the quarter session court. Perhaps as concern with sexual morality, for financial or moral reasons, intensified in this period the quarter sessions became the

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<sup>73</sup> WSL, QS18, Roll 22, Michaelams 1630, p.60, f.183b.

<sup>74</sup> There is no reason given for this, but Richard could not be taken then. Perhaps by granting a divorce to Thomas then his wife Margery would have become dependent upon the parish.

<sup>75</sup> WSL, QS 18, Roll 24, Easter 1631, p.93.

more powerful prosecutor.<sup>76</sup> The changing language of the petition of the inhabitants of Smethwick in 1654 reflects the impact of the campaign, at least on the compiler of the petition. They petitioned the court against Alice, wife of John Cooke, husbandman of Harborne, for being,

A woman of ill-report, of base and naughty living with her now fellow profaner Roger Gilbert to the great scandal and offence of all godly and worshipping Christians.<sup>77</sup>

Alice alone was presented to the courts, even within this climate of increased moral outrage Roger was not presented. The sin of adultery and immoral conduct was seen as the sole responsibility of Alice. When there was no husband to consider then the attitudes towards immorality appear to have been more equitable.

Thomas Kirkham, the younger, of Perton, locksmith, and Anne Chandler, of Perton, spinster, were both presented to the court at Stafford at Michaelmas, 1656. The record states that they,

With force and arms had carnall knowledge of the bodies each of them of the other of them against the former statute in that case lately made and covered and against the public peace.<sup>78</sup>

However, this more equitable approach to male and female participation in sexual misconduct within Staffordshire was not always evident. At the Translation meeting of the quarter sessions at Stafford in 1657, John Sparry, gentleman of Bobbington, was

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<sup>76</sup> Despite its effectiveness in exposing deviant members of society the church courts were unable to administer especially punitive punishments, such as a stay in the House of Correction.

<sup>77</sup> SRO, Q/SR/285, Epiphany 1654, p.8.

<sup>78</sup> SRO, Q/SR/296, Michaelmas 1656, p.54. See also 'An Act for suppressing the detestable sins of Incest, Adultery and Fornication'. 10<sup>th</sup> May 1650. in Vol.11. Acts and Ordinances from 9th Feb. 1649 to 16<sup>th</sup> March 1660.

presented for a divers range of immoral and unruly conduct. He was judged to have been,

A common alehouse haunter, to be frequently drunk and in repute to be a common drunkard. Reported to be a common whoremaster and now maintains two bastards in his house. Also to be a common swearer.<sup>79</sup>

Although presented for his misdeeds, including his activities as a 'common whoremaster', there is no sign within the language used in the articles against John, that his sexual misconduct was deemed as more serious than his other more general bad behaviour. Alternatively at the same sitting of the Justices there is a reference to one Anne Maden who was currently incarcerated within the House of Correction, at Walsall, for, 'her insolent and bad conversation and multitude of bastard children'.<sup>80</sup> Despite the evident similarity between Alice and John's conduct, the difference in their gender, and probably their class, led to disparate punishments on the part of the court. Whereas Alice was incarcerated, John only had a good behaviour order granted against him.

### **Prostitution**

As Lyndal Roper notes, prostitution, long accepted as a necessary evil, was condemned by the post-reformation reformers.<sup>81</sup> It was supposed to enhance 'the good, piety and honour of the whole commune'.<sup>82</sup> Women were supposed to benefit because the towns and cities would be made safer. Married men were excluded from the benefits of

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<sup>79</sup> Despite the inference that force had been used there is no obvious suggestion that this was a rape case. SRO, Q/SR/299, Translation 1657, p.15.

<sup>80</sup> SRO, Q/SR/299, Translation 1657, p.33.

<sup>81</sup> Roper, L., The Holy Household, (Clarendon Press, Oxford, 1989), p.89-90.

<sup>82</sup> Cited in Roper, L., The Holy Household, p. 91.

brothels, or bawdy houses, although to what degree this was upheld is impossible to assess. Their clients were to be drawn from the ranks of unmarried apprentices and journeymen. Although in the main this referred to cities, bawdy houses operated in smaller towns and communities. Later attempts to control sexual immorality led to the closure of brothels, or lack of official sanction. When prostitution, as a legitimate if condemned profession, was made illegal, 'the boundaries between prostitute and non-prostitute became blurred'.<sup>83</sup> No longer distinguishable by clothing or location prostitute, fornicator, adulteress became one, and this blurring of boundaries affected all women. By the beginning of the early modern period prostitution threatened society in different ways. Not only did prostitutes epitomise the 'lewd and dissolute' women of the broadsides and ballads, but they also threatened the economic structures within local communities by diverting money and support away from families.<sup>84</sup>

The links and distinctions between fornication, incontinence, adultery and prostitution seem fairly straightforward, but for many women the distinction would not have been so obvious. The boundaries between consensual sex without payment and consensual sex for payment would have been extremely blurred.<sup>85</sup> In a period of difficult economic conditions some women would have felt the need to engage in prostitution as part of the

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<sup>83</sup> Roper, L., The Holy Household, p.130.

<sup>84</sup> See Griffiths, P. 'Structure of Prostitution in Elizabethan London', Continuity and Change, (1993), vol. 8, pp. 39-63.

<sup>85</sup> Roberts, M., notes that most sex for payment took place on a casual basis rather than a professional one, 'Women and Work in Sixteenth-Century England', in Work in Towns 850-1850, Corfield, P.J. & Keene, D. eds., (Leicester University Press, Leicester, London and New York, 1990), p.93; see also Clark, P. The English Alehouse: A Social History 1200-1830, (Longman, London, 1983), pp. 148-9; Sharpe, J.A., Crime in Early Modern England 1550-1750, p.58; Quaife, G.R., Wanton Wenches and Wayward Wives, p. 150.

informal economy.<sup>86</sup> Such women would probably have viewed their activities as a part of the continuum of normal heterosexual relations.<sup>87</sup> Susan Hall, spinster of Marnham, Nottinghamshire, was possibly one such woman. Before her appearance in court Susan had already antagonised the local community. In October 1620, the Newark quarter sessions court decided that she should be sent to the House of Correction as she was living, 'in idleness and dishonesty'. This alone would probably not have resulted in this punishment, but she was already known to have had one bastard, and 'admitted that others had carnal knowledge of her'. The court decided that a term in the House of Correction was the only option left to them, as, 'she makes the punishment of public penance ridiculous'.<sup>88</sup> The suggestion here is that the local community had already attempted to curtail Susan's activities by presenting her to the church courts, for which she would have been subjected to public penance. As this was judged not to have been effective in controlling her conduct she was later presented to the more powerful quarter sessions.

Those individuals who encouraged others in such activities brought upon themselves the condemnation of both the local communities and the courts. In October, 1616, Cecily Birketts, widow of Kneesall, was brought before the quarter session courts, accused of keeping a 'bawdy house', by reason of which her daughter Isabel had already given

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<sup>86</sup> See Lane, P., 'Work on the Margins: Poor Women and the Informal Economy of Eighteenth and Early Nineteenth-Century Leicestershire', *Midland History*, (1997), vol. 22, pp. 85-99, for a wider discussion of this. Some caution must be noted when identifying prostitutes within the court records as, as Michael Roberts notes, there was a tendency to identify the unemployed 'singlewoman' with prostitution, and the 'employed' maid with chastity, 'Women and work in Sixteenth-Century England', in Corfield, P.J. & Keene, D. eds., *Work in Towns 850-1850*.

<sup>87</sup> Most sex for payment took place on a casual basis rather than a professional one except in towns.

<sup>88</sup> NAO, C/QSM1/71/2, Newark, 4<sup>th</sup> October, 1620, p.76.

birth to three bastards. Both women had placed themselves outside the normal patriarchal order and as such proved to be a threat for society generally. Cecily was sent to the House of Correction until she found security for her good behaviour, and Isabel was to be sent there to be whipped.<sup>89</sup> The court's response to Cecily's crime shows that organised prostitution was not to be tolerated.<sup>90</sup> Being a 'bawd', or running a house of 'bawdrie', was an offence that also occasionally appeared before the church courts. Being a 'bawd' described an individual's participation as one who pandered to, or procured someone for immoral ends.<sup>91</sup> Joyce Tutburie was one such person, she had offended her local community by operating a 'house of bawdrie'. By doing this she personally encouraged, and facilitated illicit sexual activity. The information presented against her was fairly comprehensive, illustrating the close observation that neighbours placed each other under. It was reported that two men were found in bed with one woman in her house.<sup>92</sup> Four years later Joyce was once again presented to the church courts, this time for fornication, with one John Buckford.<sup>93</sup> For this act Joyce pleaded guilty and was ordered to perform a penance.

Men too were involved in organising prostitution. In 1626, Edmund Garland was ordered to do penance on three days, 'with capital letters on his breast and back for keeping a House of Bawdrie'.<sup>94</sup> Thomas Bibbie, deputy constable of Aldridge, Staffordshire, and other inhabitants there, petitioned the courts in 1630 for the

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<sup>89</sup> NAO, C/QSM1/70/1, p.28, Newark 12<sup>th</sup> October, 1616.

<sup>90</sup> See also NAO, C/QSM1/ 67/1, p. 7, where Widow Brumwell was presented for keeping a prostitute in her house.

<sup>91</sup> Ingram, M. Church Courts. Sex and Marriage in England. 1570-1640, p.282.

<sup>92</sup> NAO, DDTS 14/26/ 14, p. 6, 1612.

<sup>93</sup> NAO, DDTS 14/26/ 15, 1616.

<sup>94</sup> NAO, DDTS 14/26/19, 21<sup>st</sup> January, 1626, p.158.

suppression of John Booth, alehouse-keeper, for, 'ill-rule and bawdry in his house, especially on the Sabbath'.<sup>95</sup>

On 9 May at time of evening prayer, John Booth and Marian his wife kept Thos. Smith feltmaker and Katherine wife of Wm. Ropier of Walsall privately in an upper chamber.

On 19<sup>th</sup> May, the said Thos. and Katherine were in the upper chamber, when his wife and Wm. Brookes enquired for him. Upon denial that he was there, 'the said William Brookes (if it may be called presumption) went up into the said upper chamber, where he fownde them the said Smith and Katherine Ropier who came down into the house, whereupon there arose some distaste betweene the wife of the said Smith and the said Katherine and thereupon they were at blowes...

For his part in aiding this sexual offence, which in turn led to a physical attack on the wife of Thomas Smith, first by Katherine Ropier and then more aggressively by Thomas Smith himself, John Booth's license was suppressed. This prevented, at least for a short time, his sale of ale, and an order for good behaviour was also granted against him. Both husbands and wives could be presented as 'bawds' to their partners. William Heckles was presented for being a bawd to his wife, despite the potential for him to be seen as a cuckhold. Elizabeth, wife of Matthew Walsham, was presented for being, 'her husband's bawd'.<sup>96</sup>

From the various cases within the court records it is apparent that neighbours placed each other under close observation. The reporting of such activities to the churchwardens again highlights the fact that neighbours' sexual conduct was a concern for local communities. This community intervention was an integral part of everyday life in early modern society. Much was accepted or ignored but some incidents were

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<sup>95</sup> WSL, QS 17, Trinity, 1630, p.51.

<sup>96</sup> See NAO, DDTS 14/26/17, p.160, and DDTS 14/26/19, p. 112, 1625.

designated as outside appropriate conduct and as such were subject to the jurisdiction of either the ecclesiastical or secular courts. Some individuals were castigated as behaving in ways outside the accepted behaviour of the community. Despite the double standard that society held in relation to males and females, with regards to their participation in illicit sexual activity, the courts held no compunction in presenting both men and women for such involvement in illicit sexual conduct, but the judgements usually located the culpability with the female.

There are many other cases within the secular and ecclesiastical courts from which it is possible to infer that the women involved were engaged in prostitution. These women appeared fairly regularly before the courts accused of fornication, incontinence or bastardy, usually associated with different men each time. However, this relies on the assumption that women were only engaging in loose sexual conduct as a part of a financial arrangement. Other evidence would suggest that this was not the case, as has already been examined. There does not appear to have been any significant difference in the treatment of those accused directly of prostitution, and those found guilty of bastardy, as will be shown later. On being found guilty of prostitution Cicely Hartley, of North Collingham, was to be whipped through North Collingham 'until bloody'. Harsh treatment, but not dissimilar to that meted out to bastard bearers.<sup>97</sup> Another illustration of this can be seen in the case of Hellen Armstrong, mother of a bastard child, who was accused of prostitution and then sentenced to be 'whipped until bloody'. The court's response to the father of the child was simply to place the financial responsibility upon

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<sup>97</sup> NAO, C/QSM1/66/4, Newark 15<sup>th</sup> July, 1608, p.168.

him.<sup>98</sup> This drew upon, and reinforced, female culpability for all sexual misdemeanours, an accepted and apparently little challenged idea in early modern society.

Although not presented as a prostitute before the courts, the events surrounding Alice Birch's appearance would suggest that, for some of the time at least, prostitution was what she was engaged in. On April 6<sup>th</sup>, 1608, Alice Birch and Alex Brumwell, of Sutton on Trent, were presented to the Justices at Newark for bastardy. Alex was ordered to pay 3d a week and unusually Alice was to pay 1d a week to the overseers for the next seven years. Both Alex and Alice were to be subjected to corporal punishment by the ecclesiastical court.<sup>99</sup> Earlier that year one Widow Brumwell had also been presented to the Justices at Newark, for, 'keeping a prostitute in her house'.<sup>100</sup> In January 1614, Alice Birch of Sutton on Trent, appeared once again before the Justices at Newark. This time she was to be sent to the House of Correction. Her crime was that she was again pregnant, already having previously given birth to three bastards.<sup>101</sup> No father was named so it is impossible to assume that Alex Brumwell, father of an earlier child, was the father. However many different fathers there were, Alice was the one constant in this and as such provided the focus for the condemnation by the local community and those in authority. It is evident though that Alice did not conform to the proscribed image of the ideal woman. She was single without a male authority over her, and had already burdened the community with three bastards, for which she alone would be held culpable. Her obvious sexuality served to confirm existing stereotypes regarding 'lewd and dissolute women'.

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<sup>98</sup> NAO, C/QSM1/66/4 Nottingham 13<sup>th</sup> July, 1607, p.164.

<sup>99</sup> NAO, C/QSM1/67/1, p.24.

<sup>100</sup> NAO, C/QSM1/ 67/1, p.7, 11<sup>th</sup> January, 1608.

<sup>101</sup> NAO, C/QSM1/69/1, p.15, Newark 12<sup>th</sup> January, 1614

## **Conclusion**

Having examined a range of sexual crimes presented before the ecclesiastical and secular courts in Nottinghamshire and Staffordshire, it is evident that society constructed male and female identity in different ways. The notion of appropriate behaviour for males and females, although initially imposed from above by both the secular and ecclesiastical authorities, had by the beginning of the seventeenth-century become a commonly accepted and little challenged norm. This does not mean that all women conformed to the prescribed notion of the submissive, chaste and docile woman expounded in household manuals, sermons and homilies. Having identified society's concern with the regulation of sexual behaviour it is evident that one's gender did affect participation and prosecution of illicit sexual conduct. From the numbers presented it is evident that men and women engaged actively in illicit sexual conduct. It is important to note though that what is being seen are prosecution rates not actual rates of illicit sex.

It is also evident that societal responses to illicit sexual conduct were frequently gendered. However, it is clear from the court records that this is a complex issue. The perceived immorality of females caused a greater level of alarm than that of males, amongst those in power who were predominantly male. The unruly, lewd, and insubordinate woman was seen as a threat to social order and male control, and as such was open to increasingly harsh punishments as the seventeenth-century progressed. Those in authority, especially in Nottinghamshire, approached female and male sexual crime from differing standpoints and within such crimes females were held entirely responsible. It is evident that whereas for men frequent and varied sexual encounters with different women did not lead to accusations of prostitution, or outright condemnation of their acts, for women who behaved in a similar fashion it did. The

intensification of the prosecutions of sexual activity in Nottinghamshire, and belatedly Staffordshire, in the period 1603-1660, reflects local and national concerns with sexual promiscuity, for which females were held responsible.

The church court presentments reflect a reasonably equitable approach in their presentment of male and female offenders, but, a clear gender difference is apparent within the punishments allocated to males and females. Men were frequently able to commute their penance to a financial payment, whereas this was not usually an option for women. This may of course be directly related to their potential to pay. More probably this was part of a perceived need to publicly shame deviant women, and thereby deter other women from similar acts. Within the quarter session records even this level of equity is not evident. Accusations of adultery made within the quarter session courts focused solely on the culpability of women, and even where men were deemed culpable this was directly related to their threat to another man's rights. The relative severity of the treatment of women illustrates how constructions of gender impacted upon attitudes towards order.

As will become evident, especially within the defamation cases, reputation, an important concept in early modern England, was dependent on different issues for males and females. Although the behaviour of both was monitored, primarily only the sexual conduct of females threatened the foundations upon which society and social order were based, unless men threatened to usurp another's place. Those individuals accused of a sexual crime, saw themselves as being implicated in different ways and judged by

different criteria. Men felt perfectly justified in accusing women of being their whores, seeing no conflict or contradiction in this situation.

It is important to note that women were not simply the victims in illicit sexual acts, many women actively participated in premarital, or extramarital, sexual acts as a part of their normal everyday lives. These women frequently made such choices even though such conduct was outside the prescribed behaviour for women. Despite the societal condemnations against women engaging in illicit sexual relations, married women still involved themselves in this activity. Whether this is symptomatic of an unhappy or unfulfilled relationship is impossible to ascertain, but despite the implications of this sort of conduct many married women sought sexual satisfaction outside the marital home. One factor that worked to their advantage was that any subsequent child could be passed off as the legitimate offspring of the marital union. However, where those married women were found out they were judged not only in relation to their conduct, but also in relation to their husbands.

Those women, for whom prostitution, whether informal or formal, seemed the only alternative, more clearly than any other group were designated as criminal on grounds of their gender. As the recipients of financial and material gain in exchange for the 'use of their bodies', they placed themselves outside the moral and common law. Their position as poor women in the economic and social structure of early modern England denied them many opportunities for alternative employment or means of support. Whilst the 'double standard' employed consciously and unconsciously by most members of a patriarchal society allowed for, and understood, male needs and desires, it denied

the attendant reality that to fulfil this need women also had to engage in sexual activity. In this way they designated female participation as sexually deviant.

Through a close examination of both the secular and church court records it has been possible to identify the way in which commonly held perceptions of female sexuality, as opposed to male, defined the way in which behaviour was judged. Conflict with authority was not always dependent upon the same actions for males and females. Illicit sexual behaviour alone does not always appear to have led to the outright condemnation by communities of the women in their midst. The crucial difference was probably whether their conduct could be accommodated within the bounds of passive female activity. As has already been identified, adultery committed by a woman was perceived as a much more serious sin than adultery committed by a man, emphasised within the 1650 Act. However, the threat to another man's authority and position also brought men committing adultery into opposition with the authorities.

Within the court records it is possible to identify the grounds upon which males and females were labelled as sexually deviant, and this was not identical, but varied according to the gender of the accused. This in turn was fundamental to the apportionment of blame. Moral considerations regarding individual members of a community's behaviour ought not to have varied, sex before, or outside of, marriage should have been equally denigrated if the way in which society constructed male and female identity was uniformly applied. One's gender on rare occasions became subsumed beneath other ways of defining a person's 'otherness'.

When those perpetrating these 'crimes' were strangers or newcomers to the neighbourhood local communities appear to have been less forgiving, and their individual gender appears not have been the prime focus. William and Margaret Cripple, of Burton-upon-Trent, Staffordshire, became the recipients of 'community justice' when in 1618 they were punished for their supposed incontinency.<sup>102</sup> The two individuals had established dubious sexual reputations for themselves, and were accused of incontinency, cohabiting, and having sexual relations without the benefit of marriage.<sup>103</sup> The couple were subjected to a humiliating experience at the hands of the local community. According to them there were as many as four hundred inhabitants of Burton present to witness their humiliation.<sup>104</sup> The harshness of the townsmen's response to the Cripples was at odds with the attitudes generally witnessed in Staffordshire. This was probably rooted both in the fact that they were relatively new members of the community, and because Burton at the beginning of the seventeenth-century, when this occurred, was a hotbed of Puritan activity.<sup>105</sup> In such circumstances William, even as a male, was subject to the same condemnation as Margaret. With the hardening of attitudes towards personal morality gender played a less significant role.

This chapter has demonstrated that an examination of the acts of fornication, incontinence and adultery that were presented before both the church and secular courts, reveals a complex world of social and sexual relationships. Although it is clear that even though female sexuality was deemed to be deviant, women themselves frequently

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<sup>102</sup> Burne, S.A.H. ed., The Staffordshire Quarter Session Rolls. 1929. p.279. from the Star Chamber Proceedings. James I. 104/20

<sup>103</sup> Kent, J.R. 'Folk Justice' and Royal Justice in Early Seventeenth-Century England: A 'Charivari' in the Midlands', Midland History, (1983), vol. 8, p. 72.

<sup>104</sup> Kent, J.R., 'Folk Justice and Royal Justice', p.73.

<sup>105</sup> For a more in depth discussion of this see Kent, J.R., 'Folk Justice and Royal Justice', p.72.

actively and willingly engaged in illicit sexual behaviour. On one hand they could be seen to be the victims of a patriarchal society, but on the other they remained agents of their own sexuality. Despite the attempts by both the church and the secular authorities to define and control their conduct, they achieved a substantial level of personal autonomy. However, it must be remembered that the society in which they lived constrained their lives and opportunities, and the nature of female physiological make-up made it inevitable that females would pay the ultimate price for any sexual freedom. Society responded most aggressively when women engaging in sexual misconduct subverted the gender order. Wives who betrayed and cuckolded their husbands; prostitutes who threatened familial structures and single women whose sexuality had serious economic implications, all posed a greater threat than those women who passively engaged in heterosexual illicit sexual relationships which mirrored, rather than threatened, 'normal' marital relationships. The extension of this hostility towards female illicit sexuality will be examined in the following chapter through an examination of the mainly secular crimes of bastardy and infanticide.

## Chapter Three

### 'LEWD AND DISSOLUTE WOMEN'

#### Bastardy and Infanticide

Chapter Two demonstrated that even though women were held culpable for illicit sexual conduct, the attitude of the church courts within Nottinghamshire could usually be seen to be equitable, with both men and women being punished even though punishment was allocated differently according to one's gender. However, when illicit sexual conduct threatened either the social or economic order within communities then society frequently responded in a more aggressive manner.

This chapter will examine the crime of bastardy as prosecuted primarily by the quarter session courts in Staffordshire and Nottinghamshire between 1603-1660, to consider whether or not society responded to bastardy, a crime that represented the combination of sexual immorality and economic pressure, in a gendered manner. Most previous studies into bastardy in early modern society have ignored gender as a means of analysis, but have concentrated instead on different aspects. Laslett and Oostervan focused on whether or not the high incidence of bastardy at the beginning of the seventeenth-century reflects the existence of bastardy-prone sub-societies.<sup>1</sup> Levine and Wrightson sought to test this concept in their study into Terling.<sup>2</sup> However, their focus was on the social and economic context of the community into which bastardy occurred.

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<sup>1</sup> Laslett, P. & Oostervan, K. eds., 'Long-term Trends in Bastardy in England', *Population Studies*, (1973), vol. 27, pp. 255-86.

<sup>2</sup> Wrightson, K. & Levine, D. eds., *Poverty and Piety in an English Village: Terling*. (Academic Press, London, 1979)

Ingram in his work on Wiltshire focuses similarly on the context of illegitimacy, identifying the drop in bastardy rates as reflecting the 'shift in the moral climate', whereby a 'stricter, more intolerant attitude to bastard-bearing and related offences' occurred.<sup>3</sup> Although these studies are valuable in providing a contextual background for the incidence and circumstances of bastardy, they fail to explore the gendered attitudes towards its perpetrators. This thesis seeks to address that absence.

The specifically female crime of infanticide, as identified in the 1624 Statute, will also be examined in relation to the prosecution and circumstance of bastardy. Although a crime which by its definition could only be committed by single women, the circumstances surrounding accusations of infanticide reveal an insight into the gendered construction of sexual identity in early modern England.<sup>4</sup> In this way an examination of this crime can add considerably to the overall aims of this thesis. As was shown in Chapter One, the problem and nature of infanticide in the sixteenth and seventeenth centuries is an area that has been addressed by a number of historians, of which Beattie, Hoffer & Hull and Malcolmson have shown an awareness of the social context of infanticide and the difficulties that faced single mothers.<sup>5</sup> Within the existing studies

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<sup>3</sup> Ingram, M., Church Courts. Sex and Marriage in England 1570-1640, pp. 278-9.

<sup>4</sup> Those children born out of an adulterous relationship to a married woman did count as bastards, but were viewed, at least by the law, as the legitimate progeny of their husbands.

<sup>5</sup> Wrightson K. 'Infanticide in Earlier Seventeenth-Century England' Local Population Studies (1975), vol. 15, pp. 10-22; Hoffer P.C. & Hull N.E. , Murdering Mothers: Infanticide in England and New England 1558-1803; Langer W.A. 'Infanticide: A Historical Survey', pp. 353-66 ; Gowing L. 'Secret Births and Infanticide in Seventeenth-Century England'.

Mark Jackson and Laura Gowing are the only ones who have considered the role and implications of gender.<sup>6</sup>

Attempts to quantify the reported incidence of infanticide in either Nottinghamshire or Staffordshire are made impossible by the limited survival of the assize court records.<sup>7</sup> Despite the lack of evidence there is enough related information to add to this discussion. Through an examination of bastardy and infanticide in relation to each other it will be possible to identify the role of gender within the act of both, and the response of both the local communities and those in authority towards these crimes.

Anthony Fletcher suggests that after the effects of the dearth of the 1590s had passed there was an improvement in marital opportunities, with many young people planning to marry. These circumstances, along with the widespread popular toleration of ante-nuptial consummation, led to a subsequent loosening of sexual restrictions amongst them.<sup>8</sup> Fornication and bastard-bearing had always been condemned by the church, not only as a sin against God, but also as a burden on society. According to Fletcher,

The decades from 1600 to 1640 saw intense persecution in the church courts of illicit sex, harsher punishment within the parishes and an awakening involvement in control of bastardy by the J.P.'s.<sup>9</sup>

The upsurge in illegitimacy, which followed the changing attitude towards sexual continence, would account for the hardening of attitudes on the part of the Justices and

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<sup>6</sup> Jackson, M., New-Born Child Murder; Gowing, L., 'Secret Births and Infanticide in Seventeenth-Century England'; For a discussion of other studies and the way that they addressed this issue see Chapter One.

<sup>7</sup> See Chapter one for a discussion of this.

<sup>8</sup> Fletcher, A., Reform in the Provinces, p.253.

<sup>9</sup> Fletcher, A., Reform in the Provinces, p. 254.

local village officers.<sup>10</sup> The increased concern with fornication and the birth of bastards led to new legislation in the late sixteenth century. Deeds that were formally acknowledged as sins began to be defined more specifically as crimes. This in turn led to a move to present cases of sexual misdemeanours to the quarter session courts, especially bastardy cases.

Not surprisingly, as this is one of the most easily identifiable 'crimes' committed by women, it is one of the most frequently prosecuted crimes involving women in Nottinghamshire and Staffordshire to appear in the quarter session court records in the seventeenth-century. The increased threat of the rise in the birth of illegitimate children, coupled with the general feeling that society was facing a 'crisis of order', in turn led to the 1610 Statute against 'Lewd and Idle persons'.<sup>11</sup> Within this, bastardy was singled out as 'a great dishonour' and 'a great charge' to the nation.<sup>12</sup> Following this every lewd woman bearing a chargeable bastard was to be sent to the House of Correction for one year.<sup>13</sup> If she re-offended then she was to be committed until she found sureties for her good behaviour.<sup>14</sup> This statute reinforced existing prejudices against unmarried women as it provided punishment only for females.<sup>15</sup> Although in theory men were still liable under the 1576 Act, in practice the prosecution of males rarely focused on their sexual

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<sup>10</sup> 1576 Act, cited in Jackson, M., New-Born Child Murder.

<sup>11</sup> 7 James I, c. 4, which ordered that all mothers of bastards supported by the parish should be imprisoned for one year in the House of Correction.

<sup>12</sup> Hoffer, P.C. & Hull, N.E.H. eds., Murdering Mothers: Infanticide in England and New England 1558-1803, cited in Pollock, L. A., 'Childbearing in Early Modern England', p.302.

<sup>13</sup> 7 Jac. I c. 4, 1610, Jackson, M., New-Born Child Murder, p. 183.

<sup>14</sup> Jackson, M., New-Born Child Murder.

<sup>15</sup> According to Ashby, A.W., some women feared this statute so much that they committed infanticide rather than face imprisonment, as will be discussed later in this chapter. Cited in King, W. J., 'Punishment for Bastardy'.

behaviour, but on the imposition of financial burdens for the upkeep of the child, as we shall see below.

The apparent increase in illegitimate births served to confirm the perceived diminishing standards of sexual morality, and disrupted the supposed 'natural' order of familial structures, because which females would live in households without a male head, and furthermore inevitably threatened to impose severe financial pressures on local communities. As Hair suggests, 'to bring a child into the world without providing for its maintenance by tying down its father in marriage, was unquestionably an antisocial act'.<sup>16</sup> As such, bastardy was the epitome of the breakdown of order and the usurpation of male power and authority. As Susan Amussen notes,

Bastard-bearers raised other problems for villages in addition to the fear of having to support the child. The mother of the illegitimate child had no place in village society; her family had no head to ensure order and provide property or legitimacy.<sup>17</sup>

The panic that this resulted in is clear from the prosecution of bastard bearers by the secular courts. The evidence available from Nottinghamshire clearly reveals that bastardy, although the result of actions taken by a man and a woman, was seen almost exclusively as the result of the breakdown of female morality. The significance and implications of this will be explored at length. Where cases were brought before the courts both parents, where possible, appeared before the justices but this was generally

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<sup>16</sup> Hair, P.E. ed., Before the Bawdy Court, (London, 1972), pp. 239-42, cited in Wyatt, G., 'Bastardy and Prenuptial Pregnancy in a Cheshire Town During the Eighteenth Century', Local Population Studies, (1992), vol. 49, , p.38-50.

<sup>17</sup> Amussen, S.D., 'Gender, Family and the Social Order, 1560-1725', p..207.

for different reasons. The primary aim of the prosecution of males appears to have been to protect the parish from incurring any financial costs in the bringing up of an unsupported child. In almost all of the cases appearing before the Nottinghamshire and Staffordshire quarter sessions, a judgement for maintenance of the child was made in an attempt to protect the parish in which the child was born. Directly related to, but significantly different from bastardy was the more covert crime of infanticide.

Within this chapter the significance of and the motivation for the act commonly defined anachronistically as infanticide, will be examined.<sup>18</sup> Jackson points out that this term is inappropriate for the period under review, and in this way loses much of its focus, as in seventeenth-century England the focus and attention was on the murder of new-born children by their unmarried mothers.<sup>19</sup> Throughout the rest of this discussion the use of the term infanticide will specifically refer to those murders of new-born illegitimate children, who had they survived would have had the potential to add to the financial burdens of those in the community who contributed to the already overburdened poor rate. As has already been noted, the emphasis in the late sixteenth and early seventeenth-century legislation was on the punishment of unmarried mothers indicating a concern with the control of their sexuality and the potential financial implications.

There were no prosecutions for the murder of new-born legitimate children in either Nottinghamshire or Staffordshire, presumably because these mothers were more likely to be able to justify the sudden death of their new-born child. However, contemporary

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<sup>18</sup> Jackson, M., New-Born Child Murder, p. 6. As he states the term infanticide did not come into use until the nineteenth century and is frequently used as an all-inclusive term which loses some of its analytical force through its diversity.

<sup>19</sup> Jackson, M., New-born Child Murder, p.6

pamphlets do highlight the societal condemnation of the murder of young children by their mothers, or grandmothers, in which these women were described as the antithesis of the 'ideal woman'. Accordingly, within the pamphlets the murder of new-born bastards by their mothers was viewed as an inherently evil act, which in turn served to confirm early modern society's view of women as lewd and dissolute. By considering the crime of infanticide in relation to bastardy it will be possible to ascertain whether those who stood before the courts accused of infanticide were judged mainly with regards to perceptions about their gender and whether they should be seen as malicious and evil. Perhaps their choices were limited in such a way that the only path open to them was either to neglect the child, thereby causing its death, or to extinguish its life.

As a felony, infanticide was prosecuted at the assize courts. However, except for a small number of years surviving for the Oxford Circuit within which jurisdiction Staffordshire came, the records are unfortunately no longer extant. This crime will, therefore, be examined through those rare instances that appeared before the quarter session courts. Those few examples, when considered within their individual and wider contexts, can still be informative and can demonstrate the dichotomy that early modern females faced. By understanding how and why the same actions by different individuals in society were viewed in different ways, and why society responded in contradictory ways to these actions, the relationship between the act, its perpetrators and society will become evident. Within this chapter all instances of the murder or attempted murder, or abortion, of new-born bastards will be examined.

## **Bastardy in Staffordshire**

In the 201 cases for bastardy presented before the Staffordshire Justices between 1603-1660, maintenance was the main focus in all of the cases. Fathers were presented following petitions sent by the churchwardens and overseers of the poor from the parishes affected in 84% of the cases. The mothers of the bastard children petitioned the courts for maintenance in 16% of the cases. Only rarely in the early part of the seventeenth-century were mothers presented to the quarter session courts for bastardy. The emphasis within the Staffordshire courts was heavily weighted towards protecting the parishes from any additional financial burdens. This is especially evident for the two decades before the civil wars. Over 61% of the cases appeared in this period, signifying the economic pressure that communities found themselves in at this time.<sup>20</sup>

The high numbers of women petitioning for relief demonstrates that they were not unduly concerned with the possible consequences of revealing their illicit sexual conduct to the courts. The documented responses of the courts indicate an acceptance of their conduct as long as the parishes were protected from the possible financial implications. This can be seen in the case of Margery Kilby, mother of a bastard, who was one of only a few women who had been ordered to go to the House of Correction. However, in 1631 the justices instructed that she was to be released from this order because the father, one Humfrey Cowdell, gave his word to discharge the parish from keeping the child.<sup>21</sup> The court's primary concern with the maintenance of the child is evident in this instance.

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<sup>20</sup> Although the wars put local communities under considerable financial difficulties the court records do not particularly reflect this. This is perhaps due in part to the disruption to the legal system during the conflict.

<sup>21</sup> WSL, QS 18 Roll 22, p.93, Easter 1631.

The significance of the financial consequences of the production of a bastard child to the local communities can be inferred from the determined approach of midwives when ascertaining the name of the putative father. Midwives, in the 'extremity of labour', pressed mothers for the father's name.<sup>22</sup> They frequently withheld medical assistance until the father had been identified in this way. This evidence, once given under these conditions, was considered by law to be sufficient proof to apportion blame, and financial responsibilities, to a specific man.<sup>23</sup>

Midwives attempting to ascertain the names of putative fathers in bastardy cases can be seen in 10% of the cases brought before the Justices in Staffordshire. Upon the corporal oath of Frances Keen, midwife, and other women, being present at the labour of Aldrey Beelande,

Travailing in the birth of her bastard child and in the extremity of her labour being demanded by the said Midwife and wives who was the father of that child answered Francis Bradburne and no other.<sup>24</sup>

Following the midwife's declaration, both Francis and Aldrey were ordered to pay 6d weekly each to whoever took care of the child. Midwives', and other credible women's, authority can also be seen in the case of Joanne Hollys. Anne Hollys, widow, and Dorothy Blakemore, wife of Roger of Wheaton Aston, having been examined regarding the birth of the bastard child of Joanne Hollys, said that at the birth Joanne fathered it on William Bourne. Joanne's father also stated that, 'ever since she was 16 that Bourne had

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<sup>22</sup> See Pollock, L.A., 'Childbearing in Early Modern England', *Social History*, (1997), vol. 22, p.303.

<sup>23</sup> Villagers paying the 'poor rate' to support bastards were only too aware that they were the ones paying for others' fornication. For the local community consequences of bastardy see Ingram, M., *Church Courts, Sex and Marriage in England, 1570-1640*, pp. 276-91; Quaife, G.R., *Wanton Wenches and Wayward Wives*, pp. 202-224; Amussen, S.D., *An Ordered Society: Gender and Class in Early Modern England*, pp.115-17.

<sup>24</sup> SRO, Q/SR/224, Michaelams 1636, p. 7.

been inveigling and ..... her to lewdness'.<sup>25</sup> So whilst allocating the financial costs to Bourne, Joanne's father sought to remove the moral blame away from his daughter. The authority of the midwives worked to his advantage in this situation. The power and authority of the midwives can be witnessed in those crucial moments of childbirth. These women in their role as midwives were pursuing the cause of local communities in allocating the financial costs of bastard children to the appropriate fathers. In protecting the community's interests they were also protecting their own. In 1641, Alice Baker, midwife of Sedgely, widow, and Margaret, wife of William Fulwood of Sedgely, locksmith, were present at the birth of the bastard woman child of Ann Gunson, of Sedgely, spinster. Alice informed Ann that, 'if she was to be safely delivered she had to name the father', which given the circumstances she did.<sup>26</sup>

This concern with the financial implications of bastardy cases can also be seen in the workings of the local officers. In 1631 John Stedman, constable of Forbridge, petitioned the court so,

That the parish may bear the loss of his mare killed in the night, when he was conveying with speed to Walton a woman in labour sent to Forbridge by the mayor of Stafford in March last, he having saved the parish of a great burden.<sup>27</sup>

This dash across the parish boundary with a heavily pregnant woman on the mare's back, conjures up a particularly cruel and stark image, one that reflects the desperation felt by some communities when faced with increasing numbers of unsupported women

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<sup>25</sup> SRO, Q/SR/294, Easter 1656, p.26.

<sup>26</sup> SRO, Q/SR/244, Easter 1641, p..25.

<sup>27</sup> WSL, QS19, Roll 27, Trinity 1631, p.58, f 12b.

and their offspring.<sup>28</sup> In this climate of zealous concern with the allocation of financial responsibility to a man, it is not surprising that men saw the need to petition the courts proclaiming their innocence. Of the nine men who petitioned the court, three men won their cause releasing them from future payments. In two of these cases the sexual reputation of the mother was a crucial factor. Dorothy Baylie, of Draycott in the parish of Hansbury, fathered her bastard child on four men. One of those named, Thomas Warde, was released from payments following his petition because of this and also because one George Lompe, to whom Dorothy was a servant, had given her,

One cow, one heifer, three petticoats, three waistcoats, one hat lined with velvett, and other necessaries amounting to £20.<sup>29</sup>

George Lompe was declared as the father of Dorothy's bastard. Thomas had previously been ordered to pay 12d weekly to the Churchwardens of Hanbury until the child reached thirteen years of age.<sup>30</sup> The petition of William Moorton of High Offley, was founded on similar issues. William claimed innocence on the grounds that Elizabeth Smyth, the mother,

Is known to be a common woman; the woman charged another man six weeks before she charged the petitioner.<sup>31</sup>

The court ordered William to procure witnesses as to his and Elizabeth's reputation. Another man, although failing in his attempt to be freed from the financial responsibility for a child, did manage to persuade the court to reduce his contribution.

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<sup>28</sup> For a further example of the removal of a pregnant woman from the parish in Nottinghamshire see Bennett, M., The Accounts of the Constables of Upton 1640-1666, (Thoroton Society Record Series, Vol. 39, 1995), p.80, where a woman that 'was greate with childe' was given 4d 'to get her awaye'. She was removed from the parish to prevent the cost of maintaining the child being found by Upton.

<sup>29</sup> WSL, QS9 Roll 49, Michaelmas 1615, No. 78

<sup>30</sup> This was considerably later than most orders for maintenance payments.

<sup>31</sup> WSL, QS 9 Roll 52, Trinity 1616, no.33

Despite the testament of his neighbours to his innocence, Roger Bradeley of Sedgeley, still had to pay 4d weekly until the child was seven. Eleanor's reputation as 'a lewd woman', and Roger's reputation, which depended on his 'good carriage' were instrumental in directing the court's attitude towards the allocation of blame. However, the desire to protect parishes from undue financial burdens meant that Roger, despite his good reputation, was still held financially responsible for the child.<sup>32</sup>

There is little indication in this or other similar cases in Staffordshire that there was an aggressive response to mothers of children born outside wedlock. Punishment for bastardy was allocated in only 11 cases (5.5% of all cases appearing before the justices in Staffordshire). Of these cases 3 men and one woman were punished as direct result of their failure to provide adequate security.<sup>33</sup> The one woman, who was publicly whipped, probably received this punishment not for begetting a bastard but for deserting it.<sup>34</sup> Further public condemnation was allocated to just two individuals, a man and a woman, who were to be stocked for four hours on the next Sabbath day.<sup>35</sup> The four remaining women who were punished were all sent to the House of Correction, one for bastardy and 'other misdeeds', two simply for bastardy, and one, Anne Maden, at the end of the period, whose conduct generally had led to her incarceration.<sup>36</sup> This final case only came to light because the inhabitants of Alstonfield sent a petition to the Justices of the

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<sup>32</sup> WSL, QS 15B, Easter 1628, p.21, f 88.

<sup>33</sup> See WSL, QS15A Epiphany 1626, p.63; SRO, Q/SR/217, p.75, Epiphany 1635; SRO, Q/SR/246, p. 21, Easter 1641.

<sup>34</sup> See WSL, QS12A Roll 58, Epiphany 1618, no. 63, Isabel Fletcher.

<sup>35</sup> WSL, QS 14 Roll 11, Michaelmas 1627, p.33 Richard Colley and Elizabeth Linsicome, widow.

<sup>36</sup> See WSL, QS12, Roll 62, No. 27, Easter 1621; QS15A Epiphany 1626, p.48; SRO, Q/SR/231, p.15, Michaelmas 1637; Q/SR/299, p.33, Translation 1657.

Peace requesting Ann Maden's release. Ann was in the House of Correction at Walsall because of,

Her insolent and bad conversation and multitude of bastard children, most of them begotten by unknown fathers.<sup>37</sup>

Their request was not based on sympathy for Ann but because the children, 'were in very great want and misery and have not body to aide them, being destitute of their mother'. Whilst requesting this they still acknowledged that 'she is very bad'. The implication is that Ann was engaged in prostitution, although possibly only part-time. This probably reflects her need to engage in the informal economy as a means to support first herself and her ever-increasing family.<sup>38</sup>

The general impression is that the communities, and those in authority in Staffordshire, were not too concerned with the moral issues surrounding the birth of bastard children, unless they provided a financial threat to the parishes.<sup>39</sup> The number of married men seeking maintenance for the bastard children of their wives, shows not only the concern with the expense of bringing up a child, but also that having already given birth to another man's bastard child, did not automatically irreparably damage a woman's marriage chances.<sup>40</sup> In those isolated cases where attitudes were more hostile, then often the birth of a bastard was an integral part of further dissolute and lewd conduct. This suggests that the pre-marital sexual activity was regarded as an acceptable part of

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<sup>37</sup> SRO, Q/SR/299 Translation 1657, p.33

<sup>38</sup> For a discussion of this in the eighteenth-century see Lane, P., 'Work on the Margins: Poor Women and the Informal Economy of Eighteenth and Early Nineteenth-Century Leicestershire'.

<sup>39</sup> However, caution must be noted, as it is possible that in Staffordshire this was dealt with by other means, although there is no suggestion within the quarter session records that this was the case.

<sup>40</sup> See WSL, QS12C Roll 69, Trinity 1622, no.23.

normal social relations.<sup>41</sup> This attitude that appears to be prevalent in the Staffordshire quarter session records is in stark contrast to that identified in Nottinghamshire.

### **Bastardy in Nottinghamshire**

As will be shown, the concern identified in Staffordshire with the financial implications of bastardy is also evident within Nottinghamshire, but, more complex attitudes towards the crime of bastardy are more clearly identified within the Nottinghamshire quarter session minutes. Over the period 1603-1660 there were 845 presentations for bastardy, almost 44% of which focused upon the allocation of maintenance payments. In the majority of cases the maintenance payments were allocated to the fathers, with only 5.7% being allocated to the mothers. This reflects the unlikely potential for women to be able to provide security for the upkeep and education of their offspring. Even though the main concern appears to have been protecting the individual parishes from the burden of supporting illegitimate children, there is ample evidence to indicate that allocation of blame, and subsequent punishment, was of particular importance.

As has already been shown in Chapter Two, young female servants were frequently in a vulnerable position within their master's household. As Anthony Fletcher notes, the 'sexual exploitation of servant girls was an accepted social phenomenon'.<sup>42</sup> They were vulnerable to the persuasions and advances of either masters or fellow servants, and

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<sup>41</sup> See Ingram, M., 'The Reform of Popular Culture? Sex and Marriage in Early Modern England', pp. 150-1.

<sup>42</sup> Fletcher, A., Gender, Sex and Subordination in England, 1500-1800, p. 219.

were sometimes used by their masters as surrogate wives.<sup>43</sup> Occasionally these young girls, by engaging in sexual relations, realised an opportunity to establish long-term relationships with their masters, or they may have hoped that by participating in a sexual relationship they would eventually persuade their sexual partner to marry them.<sup>44</sup> Whatever their expectations or motivations, this group of young women were perhaps the most liable to appear before the justices in bastardy cases. Their vulnerability in such circumstances can be seen in the many cases within the quarter session records of young servant girls being turned away before their service was due to be terminated for being pregnant.<sup>45</sup> The potential charge to their master, and the possible subsequent damage to his reputation, was enough to encourage him to turn them away.<sup>46</sup> The justices, wary of the possible potential charge to the parish, in all cases ordered that servants be returned to their masters, or mistresses, until their service was completed.

When Anne Walkden, servant to Anne Cooke, widow of Winthorpe, was discharged from her service on suspicion of pregnancy, the Justices ordered Anne Cooke to take her back.<sup>47</sup> At the same meeting of the Justices, Nicholas Cooke, Anne's son, appeared

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<sup>43</sup> For a discussion on whether or not these master/servant relationships were always exploitative see Adair, R., Courtship, Illegitimacy and Marriage, pp.86-8.

<sup>44</sup> See Ingram, M., 'The Reform of Popular Culture?', p.151, and Griffiths, P., Youth and Authority: Formative Experiences in England, 1560-1640, (Clarendon Press, Oxford, 1996), p.269-278 for an extended discussion of this.

<sup>45</sup> Masters of pregnant servant girls were one group who often found themselves financially liable when fathers were either too poor or absent. See Quaife, G.R. Wanton Wenches and Wayward Wives, for a discussion of this, pp.214-15.

<sup>46</sup> See NAO C/QSM1/ 71/3, Nottingham 9<sup>th</sup> July, 1621, p.130, William Barrow and Frances Wallys, 'whom he turned away as pregnant'; NAO C/QSM1/71/3, Nottingham, 9<sup>th</sup> April, 1621, p.108, Katherine Ansley and Christopher Wyld.; and NAO, C/QSM1/70/1, Nottingham, 8<sup>th</sup> July, 1616, p.8, Katherine Bennett turned away pregnant by Gervase Alder her mater, William Alder's son.

<sup>47</sup> NAO, C/QSM1/ 73/1, Newark, 4<sup>th</sup> April, 1627, pp. 69, 74, and C/QSM1/73/1, Newark, 11<sup>th</sup> July, 1627, p.89.

to answer for a child 'not yet born' by one Anne Walkden. It is impossible to guess the background to Anne's situation, whether she entered into a sexual relationship with Nicholas by choice or by force, but either way her position within the Cooke household cannot have been a comfortable one once she was returned to her service. As a young female servant, both her gender and her position made her vulnerable to those in power. This was the crux of the problem for female servants, the system of household patriarchy made turning down a determined master's, or his son's, advances almost impossible, but the consequences of accepting them if they became pregnant were dire.<sup>48</sup> Despite contributing to this problem Francis Basingdon of Misterton got off very lightly when he appeared before the Justices at East Retford on 18<sup>th</sup> April, 1656.<sup>49</sup> Francis had fathered two bastard children on two of his servants, but fortunately for him both children had since died and Francis escaped with only a good behaviour order against him.

Although the secular courts usually dealt with bastard-bearers, occasionally the women and men involved were presented to the church courts where they were condemned for their lax sexual behaviour and correspondingly punished. This was the case for Elizabeth Birche of Lowdham who, in 1610, named the father and was sentenced to do penance.<sup>50</sup> This was a light sentence in comparison to those passed in the secular courts, where the women were more severely punished, and the putative fathers faced maintenance costs. A considerable number of men and women appearing before the quarter session courts for bastardy had already appeared before the church courts for other sexual misdemeanours. A high percentage of these cases reached the quarter

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<sup>48</sup> See Fletcher, A., *Gender, Sex and Subordination in England, 1500-1800*, p.219.

<sup>49</sup> NAO, C/QSM1/1/13, East Retford, 18<sup>th</sup> April, 1656.

<sup>50</sup> NAO, DDTS 14/26/10, 6<sup>th</sup> July 1605, St. Peter's, Nottingham, f54, p. 71.

session courts after either a potential charge was likely to be incurred by the production of a bastard, or the woman had continually offended the moral sensibilities of her neighbours.<sup>51</sup>

Revel Hay, yeoman, and Joan Whitworth, alias Raph, are one such example. They first came into the public gaze in 1612, when they were both presented before the church courts for incontinence. Joan was Revel's maidservant, notoriously a precarious position, and one that brought the close scrutiny of neighbours upon it.<sup>52</sup> Directly after this both Revel and Joan were presented to the quarter session court at Nottingham for bastardy. The court ordered Revel to pay Joan £3 6s 8d relieving Mansfield of the expense of the child.<sup>53</sup> They eventually reappear in the church court records in 1617, when Joan pleaded guilty to fornication, and was later absolved.<sup>54</sup> Despite the repeated presentations to both the church courts and the quarter session courts, it appears that the situation was allowed to continue. The authorities only acted when the financial implications became apparent. Prior to this moral condemnation by the church courts was the only action taken. The evidence of their long relationship perhaps spared Joan from the more usual punishment of recidivist bastard bearers, a year in the House of Correction.

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<sup>51</sup> See Nathaniel Whittled and Alice Tomlynson, NAO, DDTS 14/26/12, 1613, for fornication, and NAO, C/QSM1/68/3, East Retford 15<sup>th</sup> January, 1613, p.137 for bastardy. Also Isabel Plowright and Isaac Wolley, NAO,DDTS 14/26/12, 1612, for fornication, and NAO,C/QSM1/68/3, Nottingham, 11<sup>th</sup> January, 1613, p.123, for bastardy.

<sup>52</sup> NAO, DDTS 14/26/ 13, 1612.

<sup>53</sup> See NAO, C/QSM1/ 68/2, Nottingham 21<sup>st</sup> April, 1612, p.79, and NAO, C/QSM1/69/2, p.110, Nottingham, 13<sup>th</sup> July, 1615.

<sup>54</sup> NAO, DDTS 14/26/16, 1617.

Further evidence of societal acceptance of female culpability can be seen in the court's attitude towards the corporal punishment of the mother and father in bastardy cases. With illegitimacy rates increasing gentry attitudes towards bastardy hardened with the emphasis moving from social welfare to punishment.<sup>55</sup> Nottinghamshire was one of the counties that applied the new powers regarding the sending of 'lewd women' to the House of Correction as soon as the act reached the statute book.<sup>56</sup> Punishment, in addition to financial punishment, was felt to be appropriate in over 21% of all cases of bastardy appearing before the courts, and ranged from physical punishment to incarceration. Over the first sixty years of the seventeenth-century punishment usually took one of three forms; whipping, public confession, being sent to the House of Correction, or a mixture of all three. However, these forms of punishment were primarily saved for females, with males usually only suffering from the imposition of financial restraints.<sup>57</sup>

As can be seen from Table 2, there was a considerable imbalance in the number of males and females punished. Where punishment, other than financial responsibility, was felt to be appropriate, women were overwhelmingly the recipients of this. In almost 67% of cases in which punishment was administered, women were the ones punished. If incarceration or whipping as a result of default in providing surety and maintenance payments are excluded from this calculation, then women were the ones receiving punishment in almost 90% of the cases. In those cases where both the male and female

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<sup>55</sup> Fletcher, A., Gender, Sex and Subordination in England 1500-1800, p.277.

<sup>56</sup> Other counties who responded in this way include Essex, Lancashire and Warwickshire, see Fletcher, A., Gender, Sex and Subordination in England 1500-1800, p.277.

<sup>57</sup> Whilst this thesis acknowledges that males would have probably perceived financial impositions as a punishment, it purports that those in authority when imposing financial judgements did so not to punish the male but to protect the parish.

were presented to the courts, bastardy was treated as a different crime according to one's gender.

**Table 2**

**PUNISHMENT OF BASTARDY CASES BY THE QUARTER SESSION**  
**COURTS IN NOTTINGHAMSHIRE 1603-1660**

Punishment <sup>58</sup>	Males	Females	% of those punished	
			M	F
To gaol in default of security	33	0	100%	0%
Whipped in default of security	13	0	100%	0%
To House of Correction	2	105	1.9%	98.1%
Whipped	8	15	34.8%	65.2%
Stocked	3	0	100%	0%
Stripped and Whipped	1	1	50.0%	50.0%
Maintenance Payments	293	5	98%	2.0%
<b>Gender Total</b>	<b>353</b>	<b>126</b>	<b>73.7%</b>	<b>26.3%</b>
<b>Total</b>	<b>479</b>		<b>100%</b>	

For the males, their crime was threatening the economic balance within a community, and thus the court's aim was to ensure that the male could provide enough security to protect the individual parish. As can be seen from Table 2 judgements against males focused upon the maintenance order for the child. Only rarely did those judgements

involving males include references to other forms of punishment, such as whipping, public penance, or incarceration in the House of Correction or gaol. When they were imposed it was usually done so because they had defaulted on their payments. Here economic issues were at stake not morality. In 33% of the cases where the father received corporal punishment, the mother was also whipped. Those women who were sent to the House of Correction for the statutory year were also subject to physical punishment for their crime. In Nottinghamshire it appears that women were not released early from their sentence but spent the full year, as ordered, in the House of Correction.<sup>59</sup>

One possible interpretation that could be placed upon the imbalance between men and women as the probable recipients of incarceration and corporal punishment is that women were usually unable to be held financially responsible. In these circumstances alternative punishments were deemed to be necessary. In only one case appearing before Nottinghamshire quarter sessions were the putative fathers sent to the House of Correction. Both men, Thomas Cooke, of Worksop, and John Rice of Gringley on the Hill, were committed after admitting to a charge of incontinence with Anne Simpson, 'now pregnant', who also was committed to the House of Correction. One key factor that might have influenced both men's fate was that Rice was known to be 'an incorrigible vagabond and receiver of stolen goods'.<sup>60</sup> His bad reputation would therefore have placed him outside normal social structures and would have made both himself and Cooke likely recipients of harsher punishments than usual.

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<sup>58</sup>The categories reflect those found in the quarter session records for Nottinghamshire and Staffordshire.

<sup>59</sup> All of the cases referring to the release of women from the House of Correction occur one year after their incarceration, as per the statute.

<sup>60</sup> NAO, C/QSM1/ 74/2, p.117.

Walter King, in his work on bastardy, suggests that punishment decisions were formulated on both an economic and moral basis, with mothers being incarcerated on moral grounds, and fathers not being incarcerated for financial reasons.<sup>61</sup> Such a punishment for men would have severely restricted their ability to pay. However, even within those cases in which the child had already died the mothers still received the designated punishment. Of the eleven cases presented to the Justices in Nottinghamshire in which the child had already died and the father was presented, four of the reputed fathers were completely exonerated following the death of the child. Five women were sent to the House of Correction, the usual punishment as per the statute. Jane Noble of Rempston, mother of a bastard child since dead, was one such woman. Jane was sent to the House of Correction for incarceration and punishment even though the child had since died, but there was no mention of any subsequent punishment for the father, one Robert Hallam.<sup>62</sup> In contrast to this, between 1603-1660 only two men whose child had since died were still punished, by whipping.<sup>63</sup> William Laming, 'putative father of child now dead', was subjected to this treatment. William was to be set in the stocks at Shelford and whipped, whereas Anne Hives, the mother was still ordered to go to the House of Correction for one year.<sup>64</sup>

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<sup>61</sup> King, W.J., 'Punishment for Bastardy', p.139.

<sup>62</sup> See NAO, C/QSM1/71/3, 13<sup>th</sup> January, 1623, p. 255, John Rawlinson and Anne Skearcliffe; NAO, C/QSM1/72/1, Nottingham, 11<sup>th</sup> July, 1625, p.193, William Laming and Anne Hives; NAO, C/QSM1/75/1, Nottingham, 7<sup>th</sup> April, 1637, p.227, Jane Noble and Robert Hallam; C/QSM1/1/13, Newark, 21<sup>st</sup> April, 1658, Elizabeth Richardson; C/QSM1/1/13, East Retford, 16<sup>th</sup> July, 1658, Elizabeth Sansom and Nicholas Smythe.

<sup>63</sup> See John Rawlinson and Anne Skearcliffe, NAO, C/QSM1/71/5, p.255, Nottingham 13<sup>th</sup> January, 1623.

<sup>64</sup> NAO, C/QSM1/72/1, Nottingham 11<sup>th</sup> July, 1625, p.193

The 1630s saw increasing numbers of single mothers, whose bastard child had already died, being presented and punished revealing a hardening of attitudes towards immorality especially towards women. Their gender must have been a significant factor in this disproportionate allocation of blame and punishment. Perhaps it was considered essential to remove women from circulation until they acquired the necessary sexual restraint. This is probably the reason why Love Hooton was sent to the House of Correction in 1625. The court decided that Love, as the mother of one bastard, and still leading an 'idle and dissolute life', was to be sent there as 'she was likely to get into more trouble'. George Woodsend, the father, does not appear to have been punished in any way. Community concern with his moral conduct is conspicuous by its absence.<sup>65</sup> Susan Hall, spinster of Marnham, also evoked a similar response from the court. The quarter session records state that Susan was a,

Mother of one bastard and admitting that others had carnal knowledge of her and in as much as she makes the punishment of public penance ridiculous and is now living in idleness and dishonesty to be sent to the House of Correction.<sup>66</sup>

The community had clearly made earlier attempts to control Susan's conduct through public penance, but this method had failed.

Attitudes towards the accepted means of punishment changed throughout the period, and even though the first House of Correction was erected in Nottinghamshire, at Southwell in 1611, it was not until 1613 that it was used as a punishment for bastardy. From this time onwards it increasingly became a preferred means of punishment for women. This emphasis on incarcerating females and not males suggests that bastardy was viewed as a significant offence for women, but not significant enough to

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<sup>65</sup> NAO, C/QSM1/ 72/1, Newark, 12<sup>th</sup> January 1625, p.156.

incarcerate men, which in turn would have further strained local economies.<sup>67</sup> Prior to this time whipping appears to have been favoured, alongside public shame in the stocks. At the end of the period under review incarceration appeared to be replacing public humiliation as a method of controlling female 'deviants' in society. Perhaps humiliation was no longer seen as an effective means of control.

As has been shown, the attitude towards bastardy in Nottinghamshire and Staffordshire became less tolerant as the seventeenth-century progressed.<sup>68</sup> By the end of the second decade of the seventeenth-century more cases of bastardy in which the putative father was identified appeared before the courts prior to the birth of the child.<sup>69</sup> This would suggest that as the problems of poverty grew, and the strain on local communities increased, then the need to allocate maintenance charges to the father intensified. As can be seen in the case of Henry Saunderson, the incentive to enforce the father to support the child was considerable.

The inhabitants of Sutton, Gesthorpe, and Cromwell, to maintain child of Henry Saunderson by Frances Frith until said Henry be taken. Then defendant is to pay overseer 1/- a week and repay sum disbursed by inhabitants.<sup>70</sup>

As in this case, the financial responsibility was frequently displaced onto the inhabitants in cases where the father was unknown, or had absconded. The stringent attempts by neighbours to allocate costs to fathers can be easily understood within this context. As the incidence of bastardy increased and put the poor rates under further pressure the

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<sup>66</sup> NAO, C/QSM1/71/2, Newark, 4<sup>th</sup> October, 1620, p.76.

<sup>67</sup> King, W.J., 'Punishment for Bastardy in Early Seventeenth-Century England', p.151.

<sup>68</sup> However, this clearly took place later in Staffordshire than in Nottinghamshire.

<sup>69</sup> NAO, C/Q/SM1/73/1/Vol 8 p.1 16/4/1626 Nottingham and NAO. C/QSM1/73/1, East Retford 4<sup>th</sup> July, 1626, p.25.

<sup>70</sup> NAO C/QSM1/68/1 Newark 10<sup>th</sup> July 1610 p.39,

courts sometimes intervened by fairly direct methods. When Phillip Old junior, servant, fathered a child by Margaret Roberts he was unable to maintain the child.<sup>71</sup> The court ordered that Old should serve John Smith senior, husbandman of Basford, for the next nine years, at a wage of 36/8d per annum. From this wage Old was ordered to pay Margaret Robert's father 13/4d a year for nine years. More than a third of his annual income was allocated for the foreseeable future.

Local communities also responded aggressively to individuals who threatened the parish poor rates by harbouring pregnant women.<sup>72</sup> On 13<sup>th</sup> April, 1621, Francis Sooby of Rampton appeared before the Justices at East Retford for allowing a 'strange woman' to give birth to a child, father unknown, in his house.<sup>73</sup> Whether or not Francis was the father of the child is impossible to know, but the aim of the prosecution was to allocate a maintenance order to Francis, thus protecting Rampton. Parents and masters frequently found themselves before the Justices accused of encouraging or at least allowing their sons or servants to escape before paternity could be allocated. For instance, John Wilkenson was doubly liable, given his position as constable of Bradmore, it was his duty to present his son, Richard, to the court.<sup>74</sup>

So, as some historians claim, it could appear that the hostility to bastardy, in Nottinghamshire too, was based solely on financial considerations.<sup>75</sup> The evidence from

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<sup>71</sup> NAO, C/QSM1/ 72/1, Nottingham, 15<sup>th</sup> April, 1625, p.172.

<sup>72</sup> Ingram, M., Church Courts. Sex and Marriage in England. 1570-1640, pp. 286-88; King, W. J., 'Punishment for Bastardy in Early Seventeenth-Century England', p.132.

<sup>73</sup> NAO, C/QSM1/71/3, East Retford, 13<sup>th</sup> April, 1621, p.121.

<sup>74</sup> NAO, C/QSM1/72/1, Nottingham 6<sup>th</sup> October, 1623, p.50.

<sup>75</sup> Referring specifically to Quaife, G.R., Wanton Wenches and Wayward Wives, p.154, Ingram, M. criticises this view in 'The Reform of Popular Culture? Sex and Marriage in Early Modern England',

the Nottinghamshire quarter session minutes does reflect a great concern with the financial protection of the respective parishes in the case of an illegitimate child, but within them a concern for the breaking of society's moral codes, especially by women, is clearly evident. If the financial implications were the sole consideration then the punishment of the individuals involved would not have been necessary once the parishes had been indemnified from any costs. This is patently not the case in Nottinghamshire. The over-riding impression from the court records is that the issue was twofold. Firstly the financial consideration was important, and every effort was made to ensure that the putative father, and in some cases the mother, was held financially responsible for the cost of the education and maintenance of the child.

More significantly, within an examination of the relationship between gender and social order, is the overt suggestion within the court records that the blame, and therefore the punishment, for this act which broke society's moral codes, was placed upon the mother. Even when incest led to females being pregnant as a result they were still usually the only ones to be blamed.<sup>76</sup> Robert Mee was presented to the quarter session court by his son and daughter, Anne. Robert was found guilty on their evidence 'that he had three bastard children by his daughter Katherine'. For this he was committed to gaol until he

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However, King, W.J., 'Punishment for Bastardy in Early Seventeenth-Century England', p.130, states that although the first impression of the court records is that economic not moral issues are the motivating factor behind the punishment of bastardy cases, on a deeper examination it is clear that this view must be refined. He suggests that, as has been identified in Nottinghamshire, women were imprisoned for moral reasons and men for economic considerations.

<sup>76</sup> For a discussion of the definition of early modern incest and societal attitudes towards it, see, Jonsson, M., 'Defining Incest by the Word of God: Northern Europe 1520-1740', *History of European Ideas*, (1994), vol. 18, pp. 853-67; Morris, P., 'Incest or Sexual Strategy? Plebeian Marriage within the Prohibited Degrees in Somerset, 1730-1835', *Journal of the History of Sexuality*, (1991), vol. 2, pp. 235-65; Ingram, M., *Church Courts. Sex and Marriage in England, 1570-1640*, pp. 246-49.

found sufficient security and Katherine was sent to the House of Correction for one year.<sup>77</sup> It is impossible to assess whether Katherine had been a willing partner in this or whether she had unwillingly suffered this abuse by her father. The response of the court indicates that whichever of these were true her activities were condemned with little sympathy being extended to her.

The courts did not even extend their sympathy to the mothers in those cases in which the young women thought they were going to be married. This is most clearly illustrated in the case of Mary Heapes and Ambrose Elsam.<sup>78</sup> Ambrose had promised to marry Mary and had the banns read, but after she had become pregnant he refused to marry her. In this case some sympathy for Mary's predicament might be expected, but this was not so. The justices punished Elsam financially, to protect the respective parish, but Mary, although apparently the victim of his deceit, was still sent to the House of Correction. To further ensure that the child would not become chargeable on the parish Elsam was ordered to keep the child and bring it up properly. This action avoided the possibility of Mary becoming the female head of a household. Only if Elsam was in default of security was he to be sent to prison. Further examination of the church records reveals that this was not the first time Ambrose had appeared before the courts. Ambrose's promise to marry Mary possibly followed his earlier presentment to the church courts, on 27<sup>th</sup> February, 1621. Ambrose had been presented as, 'the common fame is that he hath committed fornication with his maide'.<sup>79</sup> Ambrose ignored this presentment but probably subsequently averted attention from his actions, and continued his relationship with Mary by offering to marry her, an act he possibly never

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<sup>77</sup> NAO, C/QSM1/75, Nottingham 2<sup>nd</sup> October 1637, p.273.

<sup>78</sup> NAO, C/QSM1/ 71/5, East Retford, 12<sup>th</sup> July 1622, p.223.

<sup>79</sup> NAO, DDTS 14/26/ 17, 27<sup>th</sup> February, 1621, p. 14.

intended to carry out. This case is representative of the difficult position of female servants within early modern society, and the acceptance of female culpability for sexual misdemeanours as revealed within the quarter session and church court records.

It would, however, be wrong to give the impression that only women suffered as a result of bastardy presentments. The potential to accuse any man of fathering a child was a powerful weapon in early modern society. Women who perhaps hoped to marry a particular man could either falsely accuse him of fathering their child, or even feign pregnancy to obtain a marriage partner. This potential to be wrongly accused perhaps goes some way to explain male justices or jurists lack of inclination to further punish men who were already deemed financially responsible for the upkeep of a child. As Bernard Capp notes, men were vulnerable to such accusations both in regards to their reputations and also for financial implications.<sup>80</sup>

On April 9<sup>th</sup> 1624, Brian Dawson appeared before the Justices at East Retford for a child not yet born by Alice Storer.<sup>81</sup> Brian denied paternity of the child and was ordered to appear at the next sessions. On 16<sup>th</sup> July, 1624, one Henry Bowman, husbandman of Morehouse, appeared to answer for a child by the same Alice Storer.<sup>82</sup> It was only when 'in peril at childbirth', that Alice's declaration that Henry was the father, before the midwife, was believed. Henry was ordered to maintain the child and Brian for his incontinence was ordered to pay 5s for the use of the poor.<sup>83</sup> Although in this case both men appear to have been guilty at least of incontinence, on occasions the accusation was

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<sup>80</sup> Although Capp, B., takes this argument too far, the potential for wrongful accusation should not be ignored, See Capp, B., 'The Double Standard Revisited'.

<sup>81</sup> NAO, C/QSM1/72/1, East Retford, 9<sup>th</sup> April, 1624, p.102.

<sup>82</sup> NAO, C/QSM1/72/1, East Retford, 16<sup>th</sup> July, 1624, p.113.

founded more on the financial substance of the man named than on a prior sexual relationship. If the real father was unable to marry the mother because he was already married, had fled or had died, then the necessity to name another, preferably substantial, man was paramount. The presence of midwives or other credible women, especially at bastard births, helped to prevent some false accusations. These women refused help with the labour unless the identity of the father was revealed.<sup>84</sup> The difficulty of proving fatherhood did lead on occasions to the wrong men being accused, and even sometimes two or more putative fathers. Sometimes these claims were purely malicious, and on other occasions the mother did not know which one of her recent sexual partners was the father.<sup>85</sup>

Agnes Hutchinson during her labour named George Fisher as the father of her child, witnessed by 'trustworthy women'. She later named Thomas Champion as the father. It is unclear whether or not Agnes herself was in any doubt as to the paternity of her child, but the court was not impressed by her prevarication. For this the court ordered that Agnes was to be whipped on the following Sunday before her neighbours. Furthermore she was to bring the child up at her own cost. By allocating blame to two different men Agnes had clearly antagonised the Justices to her own detriment.<sup>86</sup> In 1638 Ismael Wood almost found himself responsible for the upkeep of Katherine Bolton's child.

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<sup>83</sup> NAO, C/QSM1/72/1, East Retford, 8<sup>th</sup> October, 1624, p.146.

<sup>84</sup> It was assumed that at the moment of childbirth the mothers would be honest, and aid was withheld until they named the father.

<sup>85</sup> See the case of Dorothy Errata and her father William who conspired to falsely accuse Edward Barnyard of causing her to be pregnant with a view to extort money from him. For this Dorothy was sent to the House of Correction, whereas her father was ordered to be of good behaviour, NAO, C/QSM1/74/3, East Retford, 13<sup>th</sup> July, 1632, p.270.

<sup>86</sup> NAO, C/QSM1/67/2, Nottingham 3<sup>rd</sup> October, 1608, p.56, see also C/QSM1/70/3, East Retford 12<sup>th</sup> October 1617, and C/QSM1/72/1, East Retford, 16<sup>th</sup> July, 1624, p.125.

Matthew Pacey, the father of the child, had previously bribed Katherine to swear it on Ismael. Pacey was ordered to maintain the child, but Katherine despite her eventual honest declaration of the paternity of her child, was still sent to the House of Correction. No further punishment was meted out to Pacey despite his attempts to accuse another man. In the case of George Bennet of Caunton, the court's concern appears to have been two-fold, firstly, their concern was to allocate financial responsibility to someone, even if that person was not to blame, and secondly, to condemn and punish female sexuality.<sup>87</sup> George denied the charges of paternity of Margery Dawes' child, but he was still found liable for the maintenance of the child, until he was able to find the person responsible.<sup>88</sup>

What has been identified is that whilst condemning and punishing female sexuality, both the local communities and those in authority usually chose to ignore the participation of males in sexual misconduct. In the majority of instances condemnation of men occurred in limited situations. Primarily men were held responsible for the financial implications following the birth of a bastard. Whilst not wanting to ignore the significance of this for men, the implications were not as considerable as they were for women. For women, whose reputation and access to support and relief were dependent on a good name, based on sexual integrity, the disintegration of their 'honour' and their likely incarceration in the House of Correction was of considerable significance. Within the language of the individual court cases females involved in illicit sex were held totally responsible. Their part in such events merely served to confirm and reinforce contemporary ideas about female lasciviousness.

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<sup>87</sup> NAO, C/QSM1/76/2, p.78, Newark, 11<sup>th</sup> July, 1638.

<sup>88</sup> NAO, C/QSM1/68/3, East Retford, 15<sup>th</sup> January, 1613, p.145.

It is not difficult to appreciate society's concern regarding a possible unsupported child, when it was faced with a rising population and increasing poverty. However, the focus on female culpability, based on moral considerations, that is clearly and unmistakably apparent within the bastardy cases was informed not primarily by this concern, but by the way in which female sexuality was constructed. The male, as the holder of more power in early modern society, ought to have been held morally as well as financially responsible for the production of a bastard child, but the blame was placed solely upon the female, labelling her as morally culpable for all sexual misdemeanours. The judgements made by the different courts compounded this imbalance, and served to reinforce the gender stereotype of the 'lewd and unnatural woman'.

Even those men who had previously tried to abort their bastard children, or had later attempted to give it away to vagrants or gypsies, were still judged to be the more suitable parent to bring up the child. The fear that society experienced with regards to single mothers as heads of households must have been phenomenal. For single women the act of childbirth, far from being the culmination of everything that early modern woman was judged to have existed for, became the definitive action of the 'lewd and dissolute' female, the antithesis of the ideal woman. That one act should be viewed from two such opposing positions highlights the significance of marriage and the necessary conformity of women in this period. It is into this framework that the hardening attitudes towards the act of infanticide in the seventeenth-century must be considered.

### **Infanticide**

The 1624 Statute, which provides the focus for this investigation, highlights the significance of the position of single mothers in society. The text of the 1624 statute

identifies single mothers as 'lewd', and notes that because of their shame and desire to avoid punishment they murdered or procured the death of their bastards.<sup>89</sup> By focusing solely upon the deaths of bastard children it is clear that the emphasis within the statute was not on the protection of new born children *per se*, but on the protection of new-born bastards from their mothers. This perspective lends itself most readily to only one interpretation, that bastard-bearing was the main focus of this act and that by declaring as illegal the concealment of the deaths of bastards, those in authority sought tighter control over the sexual behaviour of single women. Within the statute sexual promiscuity was condemned almost as much as murder, with the law being applied only to unmarried mothers. The court made clear links between the social isolation of the unwed female and the likelihood of her committing infanticide.

Of all young single females, servants were probably amongst those most likely to fall foul of the 1624 Statute, and as Jackson notes society particularly concerned itself with their sexual behaviour.<sup>90</sup> This group of single young women had more available opportunities for sexual relations than females under the tighter control of a father.<sup>91</sup> They lived in extremely close proximity with the members, both male and female, of their employer's family, and with other servants.<sup>92</sup> The opportunity for illicit sexual activity, and the subsequent potential for increased financial burdens for communities, aroused local concerns and led to closer scrutiny being directed at this group of young

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<sup>89</sup> 1624 Statute 21 Jac. 1 c. 27

<sup>90</sup> Beattie, J.M., notes that the majority of those accused of infanticide were women for whom pregnancy and motherhood posed serious threats to their livelihood, 'The Criminality of Women in Eighteenth Century England', p.84.

<sup>91</sup> Jackson, M., New-Born Child Murder, p.48.

<sup>92</sup> There are many cases of young female servants sleeping in the same room as their masters or fellow male servants., see Quaife, G.R., Wanton Wenches and Wayward Wives, p. 73.

women than many others. Their circumstances could, and probably did, lead to sexual activity between masters and servants, and male and female servants. This could either have been by choice, or particularly in the case of family members, masters or their sons, with coercion or brute force.<sup>93</sup>

The power relationship implicated in these circumstances left no doubt as to the relative position of the young female servant in relation to the master or his sons. Many bastardy cases involving servants reflect the situations that they found themselves in. They were faced by the need to work which usually involved working within another family home. This inevitably led to them living in close proximity with males. Some of the female servants presented for bastardy insisted that they had been promised marriage by the father of the child, possibly a fellow servant. Some of these cases demonstrate the subordinate position in which young unprotected females found themselves. On occasions a promise of marriage preceded the sexual act but, on other occasions, the threat of the loss of a job and home would have been enough to assure the acquiescence of an unwilling female.

The power relations that situated men as the dominant half of society were further reinforced in this situation by the relationship between master and servant, which in turn located young female servants in a position of double subordination. That these young women should feature highly amongst those accused of bastardy is not surprising. However, the links between being a bastard bearer and being accused of its murder or the concealment of the birth, needs further explanation. Although in theory servants

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<sup>93</sup> See the rape case of Alice Green by her employer's son Phialathes Fitzandolph NAO, C/QSM1/68/1, Nottingham 4<sup>th</sup> October 1613 p.175.

were protected from summary dismissal the evidence contained within the quarter session records appears to contradict this.<sup>94</sup>

The case of Hellen Caunt was typical of the dilemma pregnant servant girls faced. She was hired by Richard Wyld of Shipley, Derbyshire, for one year, but was unlawfully turned away when she became pregnant.<sup>95</sup> The court's concern in this case was with the burden to the parish as they judged her as liable to become vagrant or chargeable on some other place, and it ordered that Wyld was to take her back until her time, one year's service, was up. Although it might appear that Hellen was secure in work for the remainder of her term, her return to work would not have been a welcome one. Cicily Noton, too, followed in the footsteps of other young women before her. Whilst in the employment of Henry Wirral Esq., of Wysall, she too was unlawfully turned away as pregnant.<sup>96</sup> Hoping to prevent Cicily becoming a financial liability on the parish, the justices ordered that she return to her employment to serve her time. Richard Wilkenson, the reputed father of her child, and also of several other bastards, had also been in the employ of Wirral but had since absconded. Wirral was ordered to keep back the 25s arrears of salary he had belonging to Wilkenson, presumably to provide maintenance for the child. Cicily faced the dilemma of many young female servants in her situation, the loss of her job, and therefore her financial support, and the

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<sup>94</sup> 'An Act containing divers Orders for Artificers, Labourers, Servants of Husbandry and Apprentices', 5 Eliz. C. 4, 1562; Dalton, M., The Countrey Justice: Containing the Practices of the Justices of the Peace out of their Sessions. pp.68, 74.

<sup>95</sup> NAO, C/QSM/72/2, East Retford 15<sup>th</sup> July 1625, p.221.

<sup>96</sup> NAO, C/QSM/72/1, Nottingham 21<sup>st</sup> April 1623, p.8.

condemnation of society for the bearing of a bastard, for which, despite Wilkenson's past record, she alone would be held culpable.

The significance of female reputation in the early modern period, as discussed in Chapter One, establishes a framework into which community opinion about unmarried mothers and infanticide must be located. For single, independent women a 'good name and fame' were especially important as they were already viewed as being outside the normal familial structure, and as such were seen as a threat to society. So the importance of a good reputation is clear. The need for women to conform to the appropriate model of behaviour was paramount. It is therefore understandable that many single mothers sought to conceal their pregnancy from their neighbours. Whatever the reason for finding themselves alone in this crisis, whether they had considered themselves secure in a pre-marriage contract, or whether they had entered unwisely into pre-marital sex, their awareness of the condemnation that the resultant birth of an unsupported child would bring about, must have been sharply focused.<sup>97</sup>

Although the act of infanticide ought to have encompassed all aspects of the crime, including the murder of all new-born infants, the reality was such that discussions of infanticide focused solely upon the murder of new-born infants by their unmarried mothers.<sup>98</sup> The practice by unmarried mothers, of either directly killing their child or abandoning it, was commented on by contemporaries.<sup>99</sup> This was seen as an act in

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<sup>96</sup>For an extensive discussion of the dilemmas faced by single mothers in the seventeenth-century see Laura Gowing, 'Secret Births and Infanticide in England', pp.87-115.

<sup>97</sup> For a full discussion of this act see Hoffer, P.C. and Hull, N.E. H., in Murdering Mothers: Infanticide in England and New England 1558-1803.

<sup>99</sup> Gouge, W., 'Of Domesticall Duties', p. 507. Also as Walker, G. notes this association of the murder of infants with the sexual immorality of the mother entered the legal discourse at the end of the sixteenth-

which the intention was to conceal the offence of premarital sexual relations, or as an attempt by the mothers to rid themselves of the unplanned and unwanted child.<sup>100</sup> This differentiated females from males within the crime of infanticide. Contemporary approaches to this act focused solely upon the evil deeds carried out by unmarried mothers upon their newly born offspring.<sup>101</sup>

As has already been identified, seventeenth-century society was increasingly concerned with the increase in the rate of illegitimacy. This concern with the increase in the birth of bastards manifested itself into increased legislation primarily focused, as has already been identified, with the financial burdens. Within the 1610 legislation the emphasis was on chargeable bastards, so the main concern was still with the financial implications. This increasing legislation against mothers of bastards, supported by the attitude of many local communities towards these women, clearly would have

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century. By 1624 it was established as a sexual, as much as a violent, offence of the poor, 'Crime, Gender and Social Order in Early Modern Cheshire'.

<sup>99</sup> The attitude towards bastard bearers probably contributed towards the attempts by single mothers to conceal their sin by murdering their offspring, see Wrightson, K. 'Infanticide in Earlier Seventeenth-Century England', pp.10-22.

<sup>100</sup> For this and popular attitudes towards the murder of young children by their mothers or grandmothers see *A Pitiless Mother That Most Unnaturally at One Time Murthered Two of her Owne Children at Acton*' (London, 1616); *Natures Cruell Step-Dames: or Matchlesse Monsters of the Female Sex*, (London, 1637); *A True and Perfect Account of the Proceedings at the General Sessions of the Peace, holden for London and Middlesex*, (London, 1674); *Fair Warning to Murderers of Infants: Being an Account of the Tryal, Co[n]demnation and Execution of Mary Goodenough*, (London, 1692); *The Proceedings at the Assizes in Southwark*, (London, 1678); *The Unnatural Grand Mother, or a True Relation of a most barbarous Murther*, (London, 1659).; *Blood for Blood, or, Justice Executed for Innocent Blood-Shed*, (London, 1670). All of these pamphlets reflect society's attitude towards women whom they constructed as the antithesis of the 'ideal woman'.

contributed significantly to the attempts of many single young women, who, when discovering themselves to be pregnant, sought to both ignore and conceal it.<sup>102</sup>

The harsh laws and societal attitudes in some counties surrounding bastardy must have contributed towards the attempts by unmarried mothers to conceal their pregnancies.<sup>103</sup> As Hoffer and Hull stated, 'with the same force that the poor law urged magistrates to ferret out bastardy among the poor and punish it severely, the law counselled the poor to conceal bastardy pregnancy and perhaps to murder their bastard newborns'.<sup>104</sup> It was perhaps inevitable that in a society where the consequences of unmarried motherhood were so serious, a high proportion of bastards were probably disposed of at birth without the crime ever coming to the notice of the Justices.<sup>105</sup> A number of these deaths must have taken place with the knowledge and probably the assistance of the friends and/or family of the mother, usually the pregnant girl's mother.<sup>106</sup> As with other crimes, the 'dark figure' of infanticide is impossible to quantify.<sup>107</sup>

Concealment, often in the forlorn hope that by ignoring the reality of pregnancy they might postpone the problem indefinitely, was an understandable and often necessary

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<sup>102</sup> As Kellum, B.A., notes new-born children had been disposed at birth by overlaying; by secret burial; or as James I's statute notes, they were commonly murdered by drowning, 'Infanticide in England', p.371. See also Langer, W.L., 'Infanticide: A Historical Survey'.

<sup>103</sup> See Laurence, A., 'Women's Psychological Disorders in Seventeenth-Century Britain', in Angerman, A., Binnema, G., Keunen, A., Poels, V. & Zirkee, J., eds., Current Issues in Women's History. (Routledge, London and New York, 1989), p.212.

<sup>104</sup> Hoffer, P.C. & Hull, N.E.H., Murdering Mothers: Infanticide in England and New England 1558-1803, p.17. See also Sharpe, J.A., Crime in Seventeenth-Century England, p.137.

<sup>105</sup> For a discussion of similar consequences in the eighteenth-century see Malcolmson, R.W., 'Infanticide in the Eighteenth Century', p.193.

<sup>106</sup> Malcolmson, R.W., 'Infanticide in the Eighteenth Century', p.200.

<sup>107</sup> Malcolmson, R.W., 'Infanticide in the Eighteenth Century', p.191.

action to take, that is if such a choice was consciously made at all. Despite the difficulty in concealing the pregnancy from neighbours, who actively observed and policed each other, young women did, as can be seen from various court depositions, manage to give birth secretly and subsequently dispose of the bodies.<sup>108</sup> In this context infanticide was the product of exceptional economic and social circumstances, in which an unmarried female could see no way in which she could give birth openly to an illegitimate child.<sup>109</sup>

Some women chose to take action to avoid this dilemma by attempting to abort the child. One such woman was Ellen Hancocke, presented before the quarter session courts at Stafford at Michaelmas, 1636.<sup>110</sup> A neighbour, Joan Hope, on her corporal oath stated that Ellen,

Had been in travail with child and Joan Hope asking her  
whether she should fetch her dame she making answer  
that she would not have her dame to know...

Having refused Joan's offer, Ellen took a posset made by one William Wrenhurst, which had made her worse. Joan on attending her asked how she was feeling. Ellen answered that,

She was better and moreover she said that there came a thing  
from her as bigg as her hand and after she had... Joan Hope  
asked her where she had done it, she said she had put it in  
the chamber pot and in the morning the said Joan went to look  
and there was ... which made great signification that she was  
delivered of a child.

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<sup>108</sup> Gowing, L., 'Secret Births and Infanticide in England' p.103.

<sup>109</sup> Gowing, L., 'Secret Births and Infanticide in England', p.88.

<sup>110</sup> SRO, Q/SR/224, p.20.

The articles presented to the court stressed the fact that Ellen was reputed to be a 'lewd and wicked kind', and it was her poor reputation that primarily led to her condemnation, again emphasising the importance of a good reputation.<sup>111</sup>

Within the surviving ten years of the Oxford circuit of the assize judges, which included Staffordshire, only seven cases of infanticide in Staffordshire were recorded.<sup>112</sup> Of the seven women accused two were found guilty, of which one, Francis Palyn, was ordered to be hanged.<sup>113</sup> The other five were all acquitted although one, Anna Taylor, was left in gaol.<sup>114</sup> Further details are absent from all of these cases so it is impossible from this limited information to infer anything other than the fact that the majority of those prosecuted were acquitted, but even this loses its value given the small sample size.

In his history of Staffordshire, Robert Plot relates the tale of one Margery Mousok of Arley, in Stafford, who,

Being convicted of killing her bastard child, was, much more justly than Anne Green at Oxford, accordingly condemned and executed at Stafford for it, where she was hanged by the neck the usual time that other malefactors are, yet like Anne Green and Elizabeth the servant of one Mrs. Cope of Oxford, she came to life again, as it has been much more common for women to doe in this case, than it has been for men...<sup>115</sup>

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<sup>111</sup> It was customary for writers and the courts to refer to single women who had given birth to, and concealed bastards, as lewd and unnatural murderers cited in Jackson, M., 'Developing Medical Expertise: Medical Practitioners and the Suspected Murders of New-Born Children', in Porter, R., Medicine in the Enlightenment, (Rodophi, London, 1995), p.155.

<sup>112</sup> MF30 1636-42 and 1656-60.

<sup>113</sup> MF30 Stafford, 16<sup>th</sup> August 1658.

<sup>114</sup> MF30 Stafford 8<sup>th</sup> August 1659.

<sup>115</sup> Plot, R. History of Staffordshire, p.291.

Plot felt that her punishment had been justified, and compares her fate with other women similarly punished. Anne Greene's case had previously attracted much attention when she was still alive on being cut down from the gallows.<sup>116</sup> The assumption here was that Greene had been spared because she was innocent, however Plot felt that Mousok was unjustly spared. The authorities in Greene's case reviewed the case establishing with the evidence of midwives that what had occurred was a miscarriage rather than the birth and murder of her new-born infant.

Contemporary pamphlets occasionally revealed some aspects of the popular attitudes towards infanticide, although as with all pamphlets caution must be used as the intention of this genre was clearly sensationalistic.<sup>117</sup> As Frances Dolan notes all such material must be treated as representations, but they are none the less valid as insights into attitudes than any other source.<sup>118</sup> In a *Fair Warning to Murderers of Infants* the tale of Mary Goodenough is related. Mary did not represent the stereotypical unmarried female most commonly associated with infanticide, but her dilemma was just as tragic. Mary was a widowed mother who,

Being in great Poverty and Straits, even to the want of Bread for her and hers, she was seduced by a neighbouring *Baker*, (reported for like Practices with others,) thro' his Promises of some Allowance towards her necessary Maintenance, to the commission of Adultery with him who was a marry'd Man.<sup>119</sup>

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<sup>116</sup> Dolan, F., *Dangerous Familiars Representations of Domestic Crime in England 1550-1700*, (Cornell University Press, Ithaca and London, 1994), pp.133-4.

<sup>117</sup> Capp, B., argues that infanticide was a very untypical subject, 'Popular Literature', in Reay, B. ed., *Popular Culture in Seventeenth-Century England*, (Routledge, London, 1988), p.224.

<sup>118</sup> Dolan, F., *Dangerous Familiars*, p. 3.

<sup>119</sup> *Fair Warning to Murderers of Infants*, 1692, p.1. See WSL, QS19, Roll 27, Trinity 1631, p. 58 where a constable John Stedman rushed a pregnant woman over the parish boundary in Staffordshire to

Instead of easing her problems this relationship exacerbated them, as Mary became pregnant by him, leaving her with yet another mouth to feed. In her distress Mary left the new-born child to die. During her labour she had not sought help and had hidden the dead child at the foot of her bed. Based on this evidence the court judged that the child had died for want of help and due attendance. For this Mary was convicted of murder and received the sentence of death.<sup>120</sup> In contrast with the more usual condemnation of the murdering mother, the writer of this pamphlet highlights the failure of the community that had neglected to offer her support.<sup>121</sup>

Childbirth in early modern England was 'the female rite of passage *par excellence*' and the 'attendance of women at childbirth was an expected part of community culture'.<sup>122</sup> It was an inherently female sphere in which information and support were given and shared in an environment that was denied to men.<sup>123</sup> By placing themselves outside this supportive network, single women experienced the power of this female network turned against them. For those single women whose pregnancies were public knowledge, this power was used to allocate fatherhood onto one specific individual in an attempt to prevent the financial burden falling upon the parish. For some women the censure and punishment were too much and they saw the death of their child as the only way out of

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avoid the potential costs for the parish reflects the hostility and lack of support often experienced by single mothers.

<sup>120</sup> The punishment of death for infanticide has been described by Underdown, D., as, 'the wheels of justice ground to their inexorable conclusion', Fire From Heaven: Life in an English Town in the Seventeenth Century, (Fontana Press, London, 1993), p. 88.

<sup>121</sup> This attitude may signify the changed responses to infanticide at the end of the seventeenth century.

<sup>122</sup> Crawford, P., 'The Construction and Experience of Maternity in Seventeenth-Century England', in Fildes, V. ed., Women as Mothers in Pre-Industrial England. Essays in Memory of Dorothy McLaren, (Routledge, London, 1990), pp. 21, 27.

<sup>123</sup> This was to change later in the period with the professionalisation of midwifery.

their dilemma.<sup>124</sup> For these women for whom concealment had seemed to provide the only alternative, the same women who oversaw the rites of childbirth for married women became their judges and prosecutors as they were brought in to search for signs of recent or current pregnancy.<sup>125</sup>

This concern with concealment, which in turn thwarted neighbours' efforts both to identify the child's father and to prevent the financial implications of an unsupported child, is reflected in midwives' oaths.<sup>126</sup> In these they had to swear to prevent any child from being 'murdered, maimed or otherwise hurt' and to reveal the birth and prevent it from being secret.<sup>127</sup> For these single women the act of childbirth, far from being the culmination of everything for which early modern woman was judged to have existed, became the definitive action of the lewd and dissolute female, the antithesis of the ideal woman. That the act of childbirth could be seen as both a glorious occasion and the act of a lewd and dissolute woman highlights the significance of marriage and the necessary sexual conformity of women in this period.

Some women did achieve the secrecy they sought surrounding the birth, but if this was later discovered, and the child found to be dead, then the mothers would be prosecuted

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<sup>124</sup> Pollock, L.A., 'Childbearing in Early Modern England', p. 304.

<sup>125</sup> Gowing 'Secret births and Infanticide in England', p.91. The power of women in identifying signs of pregnancy can also be seen in witchcraft cases or as a means of avoiding the death penalty, see Oldham, J.C., 'On Pleading the Belly: A History of the Jury of Matrons', *Criminal Justice History*, (1985), vol. 6, pp. 1-64.

<sup>126</sup> Jackson, M., *New Born Child Murder*, p.50.

<sup>127</sup> Garnet, R., 'The Book of Oaths' 1649 in Aughterson, K., *Renaissance Woman*, p.212; Hitchcock, J., 'A Sixteenth Century Midwife's License', *Bulletin of the History of Medicine*, (1967), vol. XLI, pp.75-6,

for murder.<sup>128</sup> Prior to the implementation of the 1624 Statute this required that the prosecution prove that the child had been born alive, before a verdict of murder could be established. This difficulty, accompanied by the hardening of attitudes towards bastard bearers in some communities, led to the legislation that made prosecution easier. A series of attempts had been made within parliament to make it easier to prosecute the crime of infanticide and on May 27<sup>th</sup> 1624 'An Act to prevent the Destroying and Murthering of Bastard Children' was finally passed.<sup>129</sup> Chapter 27 of the statute read,

WHEREAS, many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children, and after, if the child be found dead, the said woman do alledge, that the child was born dead; whereas it falleth out sometimes (although hardly it is to be proved) that the said child or children were murdered by the said women, their lewd mothers, or by their assent or procurement.<sup>130</sup>

This statute moved the emphasis of proof away from local communities and those in authority. From then on the responsibility lay with the mother to prove that if her child was dead it had been born dead. It required that witnesses could affirm that the child had already been dead at birth. The statute did not, as is often assumed, presume that all single mothers whose children had died had murdered them. Instead it circumvented the need to address this difficult area by stipulating that in any instance whereby a bastard child had died whose birth had been concealed, that the mother was to,

Suffer death as in the case of Murther, except such Mother can make proof by one Witness at the least, that the Child was

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<sup>128</sup> The complexity of the circumstances surrounding the moment of childbirth and the rationale for concealing the act can be further explored in Gowing, L., 'Secret Births and Infanticide in England', pp.87-115.

<sup>129</sup> 21 Jac.1 c.27 in Jackson, M., New-Born Child Murder, p.32; also see Damme, C., 'Infanticide: Worth of an Infant under the Law'.

<sup>130</sup> Hoffer, P.C., & Hull, N.E.H., Murdering Mothers: Infanticide in England and New England, 1558-1803, p. 20.

born dead.<sup>131</sup>

The act of concealment of the death of a bastard child in itself became a criminal act, thus removing the need for the law to prove the guilt of the mother. In their defence some mothers would try to prove their innocence by demonstrating their expectations of giving birth to a child that they intended to nurture.<sup>132</sup> Although infanticide was judged to be a felonious act prior to the 1624 Statute, the implementation of this statute confirms that concern with the murder of new-born children was not merely a passing concern, but was one which was pursued and prosecuted actively in this period. This act, unique in this period, abandoned the principle of an individual being innocent until proven guilty.

Those women who sought to conceal their pregnancies often gave birth in secret. By doing this they avoided the customary attendance at the birth of bastards by midwives.<sup>133</sup> This attendance was seen as an opportunity to extract details of the father's identity.<sup>134</sup> In an attempt to enforce this single women who gave birth without witnesses were presented to the courts, even if the child had lived.<sup>135</sup> On October 5<sup>th</sup> 1638, Elizabeth Higgins, spinster of Eakring, was presented before the courts at East Retford, for the delivery of a bastard without the presence of a midwife or other creditable

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<sup>131</sup> 21 Jac.1 c.27, in Jackson, M., New-born Child Murder, p.32.

<sup>132</sup> This was done in a variety of ways, one being by preparation of clothes for the new-born child, although on occasions mothers stood accused of doing this after the death of the child. Jackson, M., New-Born Child Murder, p.34.

<sup>133</sup> Midwives were expected to attend deliveries in order to prevent infanticide, cited in 'Midwives as Experts in Court', Ackernecht, E.R., Bulletin of New York Academic Medicine, (1976), vol. 52, pp.1224-1228.

<sup>134</sup> Wrightson, K., 'Infanticide in Earlier Seventeenth-Century England', p. 13.

<sup>135</sup> See Ingram, M., Church Courts, Sex and Marriage in Early Modern England, 1570-1640, for the role of midwives as witnesses to still-births.

women.<sup>136</sup> The attempt here to control the birth and its environment was probably twofold. Firstly, to use the mother's extremities of labour to enable the midwife, or other creditable women, to extract the name of the father from her, and secondly, to prevent the concealment of yet another bastard child.<sup>137</sup> Bringing Elizabeth before the justices served not only to condemn her actions, but also to demonstrate to the wider community that such behaviour was not acceptable.

The evidence so far suggests that the prime concern of both those in authority and the local communities was not primarily the murder of a new born child, however heinous it was considered to be, but the need to control the supposed voracious sexual appetites of women. Those women seen to be most in need of control were single women who were outside of the hierarchical structure of patriarchal society. If society's concern had been primarily for the child then the 1624 statute would have been child centred in its perspective. However, this legislation focused solely on mothers of illegitimate children, not on the murder of all new-born children. The wording of the statute denied the possibility that unmarried mothers who had concealed their pregnancies might have suffered stillbirths, unless witnesses were present at the birth, whilst this still remained a reliable defence for married women. Insanity, too, was only open to married women as a defence, whilst unmarried women committing the same act were judged to have been sane. The crime of which unmarried women stood accused was already established by reason of their single condition whilst pregnant. The preamble of the 1624 statute condemned sexual promiscuity to almost the same degree as murder, and only applied it

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<sup>136</sup> NAO, C/QSM1/76/Vol 2 East Retford 5/10/1638 page 98

<sup>137</sup> In many of the cases for bastardy which were presented before the Nottingham Quarter Session courts, midwives and other creditable women gave evidence as to the father named in the time of greatest

to single mothers.<sup>138</sup> This identification of the single woman as sexually deviant, rather than the act of murder itself, is perhaps best illustrated by society's attitude towards the father's role in infanticide.

Despite their concern to reduce the number of bastards born in their parishes, neighbours still informed on those they saw as guilty of the disposal of such children. Richard Ashley, of Bloxwich Magna, Staffordshire, a victualler, was informed upon by John Harper for his attempt to cause the abortion of his bastard child.<sup>139</sup> According to Harper, Ashley begot with child a woman who dwelt in his house to the discomfort of his wife, and he,

Procured a part of a tree called Savin to the intent the woman should have eat of it whereby to have spoiled and made away or killed the child in the womb.

Ashley had probably already alienated his neighbours prior to this incident, and perhaps his ill treatment of his wife was as offensive to his neighbours as his attempt to abort the child. Communities were not always as concerned with attempted abortions.<sup>140</sup>

In 1619 Richard Muggleston, a labourer of Hickling, was presented to the court for the maintenance costs for his bastard by Mary Musson to be ordered.<sup>141</sup> Richard, by his

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extremity of labour. See cases NAO, C/QSM1/75/1, Newark 13<sup>th</sup> July 1636, p.161; NAO, C/QSM1/75/1, East Retford 14<sup>th</sup> July 1637, p.263; NAO, C/QSM1/ 76/2, Nottingham 22<sup>nd</sup> April 1639, p.132.

<sup>138</sup> Hoffer, P. & Hull, N. eds., Murdering Mothers: Infanticide in England and New England, 1558-1803, p.22-3.

<sup>139</sup> WSL, QS 14 ROLL 11, Michaelmas 1627, p.60.

<sup>140</sup> For a full discussion of the use of abortifacients see Griffiths, P., Youth and Authority, p. 246-48.

<sup>141</sup> NAO, C/QSM1/70/5, Nottingham 5<sup>th</sup> April 1619, p.216, Muggleston and Musson. This village on the Nottinghamshire-Leicestershire border witnessed many reported bastard births and appears to fit Laslett's notion of a bastardy prone sub-society. See Laslett, P., 'The Bastardy Prone Sub-Society', in Laslett, P.,

confession and that of Mary, had tried to persuade Mary to take a powder, with the intention of destroying the unborn child. Despite this the court still considered it appropriate to order that the child should reside with Richard, whilst Mary was sent to the House of Correction.<sup>142</sup> Although not legally defined as child murder, his attempt, albeit a failed one, to cause the abortion of his child did not cause the courts either to punish him or to be concerned as to the welfare of any child they would later place with him.<sup>143</sup> Alternatively Mary was to experience the full weight of the law in the condemnation of her actions.

Males were not totally immune to the condemnation of the courts in the case of the murder of bastards. Thomas Fairfoote, having already been acquitted for the murder of a bastard child, by the judges at the assize court at Nottingham in 1637, was kept in prison for default of payment of his fees. Unfortunately for him, this was not to be the end of the matter, for on the direction of the Earl of Chelmsford he was 'to be kept in prison until the next assizes when the allegation of the Earl that other and new material will be then proved against the prisoner.'<sup>144</sup> It is not possible to be absolutely sure as to what motivated the Earl to pursue Fairfoote through the courts but, unlike the cases of unmarried mothers, the onus in this case lay with the prosecution to prove the guilt of the father. The difference here is that the charges against the fathers were for murder, which was notoriously more difficult to prove, and not for concealment of the death of a bastard child. The concerns expressed in these cases are not synonymous with those

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Oosterven, K. & Smith R.M. eds., Bastardy and its Comparative History, pp. 217-39; also see Adair, R., Courtship, Illegitimacy and Marriage in Early Modern England, pp. 68-77.

<sup>142</sup> This powder was presumably an abortifacient.

<sup>143</sup> Despite the fact that moralists condemned abortion and canon law equated infanticide and abortion it was not made a statutory offence until 1803.

<sup>144</sup> NAO, C/QSM1/ 75, Nottingham 2<sup>nd</sup> Oct. 1637, p.272.

expressed against females within the 1624 Statute. The identification of this crime as a 'female crime' highlights two main issues.

Firstly, the difficult position in which unmarried mothers found themselves in early modern England, and secondly, that society identified infanticide as a crime only when unmarried women, not men, were suspected of lethal assaults on their children. Even when men were suspected of mistreating their children in such a way as could lead to their deaths, they were not viewed as having committed as heinous a crime as when women were involved. That fathers of bastards were tempted to dispose of their children by indirect means, such as placing them with vagrants or beggars, is evident by the many references in the quarter session records instructing fathers not to place their bastards with such people.<sup>145</sup> However, this in itself was not prosecuted as a crime. The eventual feminisation of this crime is not a consequence of feminine behaviour but a consequence of legal and social constructions of gender, and its role in criminality. The identification within the 1624 statute that only unmarried mothers were to be accused of this act reveals the significance of one's gender and marital status in the prosecution of the crime of infanticide.<sup>146</sup>

## **Conclusion**

Having examined the bastardy and infanticide cases presented to the courts in Nottinghamshire and Staffordshire it is clear that attitudes towards these crimes were

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<sup>145</sup> See the case of Bryan Wheatley and Anne Sleight, NAO, C/QSM1/ 71/3, Nottingham 9<sup>th</sup> July, 1621, p.132, and George Woolley and Dorothy Derbyshire, NAO, C/QSM1/71/4, Nottingham 7<sup>th</sup> January, 1622, p. 175.

<sup>146</sup> The need to control female sexuality within marriages was not an issue, so any subsequent disposals of unwanted children born in wedlock do not appear to have concerned the courts.

not uniform. Within bastardy cases the emphasis appears to be on the financial implications of the birth of an unsupported child in both counties. However, within Nottinghamshire it appears that the responses of the courts were more complex. From the subsequent punishments of both parents it is clear that the crime committed was viewed differently according to one's gender. Even though the concerns of a community ought to have been the same towards males or females, this was clearly not the reality. Moral considerations regarding individual members of a community's behaviour ought not to have varied. Sex before or outside of marriage should have been equally denigrated if the way in which society constructed male and female identity was uniformly applied. The male, as the holder of more power in early modern society, ought to have been held responsible for the production of a bastard child. It is not difficult to appreciate society's concern regarding a possible unsupported child, when it was faced with a rising population and increasing poverty. However, this focus on female culpability, which is clearly and unmistakably apparent within the court records, is informed not primarily by this concern, but on the way in which female sexuality was constructed. Thus the blame was placed solely upon the female labelling her as culpable for all sexual misdemeanours.<sup>147</sup>

As has been shown, identifying the treatment of bastard bearers by the courts, particularly in Nottinghamshire, allows a deeper understanding of the dilemma that faced unmarried women when they discovered that they were pregnant. As has already been noted, Quaife sees the increased activity in individual county's courts simply as a response to the increased financial burden. However, other concerns, apparent within

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<sup>147</sup> As Amussen, S.D., notes, the meaning of chastity was gendered, 'The Gendering of Popular Culture', in Harris, T. ed., Popular Culture in England. c. 1500-1850, (Macmillan Press Ltd, Basingstoke and London, 1976), pp.58-9.

Nottinghamshire, with regard to female sexuality carry more significance for an investigation into the background of infanticide cases, than the fear of possible financial pressures.<sup>148</sup> Within Nottinghamshire, the evidence clearly demonstrates that the threat of an additional financial burden for local communities was a significant factor in the presentment and punishment of the reputed fathers. For the mothers the prime motivating factor for their presentment before the courts appears to have been their exposure as 'lewd and dissolute' women. This in turn led to the subsequent punishment and censure that this identification would bring about. It could be argued that females were punished more harshly by the courts primarily because they were unable to indemnify parishes against financial burdens, but the evidence from the Nottinghamshire quarter session records does not support this argument. If this had been the rationale behind the differing treatments of males and females then on the death of a bastard child, which in turn removed the financial concerns of the parish, the court's approach towards the parents should have been more uniform. This, however, was not the case as in almost all of those cases in which this happened the response of the court was still to punish the mother and only rarely the father. Within the bastardy cases presented before the Justices in the Nottinghamshire quarter session courts mothers were ascribed absolute culpability for sexual behaviour. This reflects the attitudes that were prevalent in early modern society.

Women were identified in terms of their sexuality and were framed both as creatures weaker than men, but also as sexually active. As Elaine Hobby stated in her work on early modern women's writings, 'women were perceived as the more lustful sex', and

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<sup>148</sup> Quaipe G.R. Wanton Wenches And Wayward Wives, in his research into Somerset in the Seventeenth-Century confirms this focus.

were seen as 'sexually predatory'.<sup>149</sup> It was against this background that the reputation of females was constructed. The judgements made by the different courts compounded this imbalance, and served to reinforce the gender stereotype of the 'lewd and unnatural woman'. Males who had fathered bastard children, and even more surprisingly those who had tried either to abort it, or give it away to vagrants or gypsies, were still judged to be the most suitable parent to bring up the child.<sup>150</sup> The fear of the single mother as the head of a household must have been overwhelming.

Despite the obvious inequality and the clear execution of a double standard, this domination of females by males was supported not only by males but by females too, and although many females challenged their position in ways that will be examined later, few challenged the accepted notion of female chastity. The need for women to distance themselves from that behaviour which was deemed inappropriate was significant, as life could be very hard for women outside the norms of society. Both the church court and the secular court records reveal that many females derived power through the construction of female sexuality, and the enforcement of their own gender's continued control and subordination. One key area of power for women in which they were able to regulate each other's behaviour and also impact upon male domains was within pregnancy. Where issues surrounding pregnancy enter the court records it is usually intricately linked to bastardy cases in which paternity is under question, or in cases where accused women attempted to avoid punishment as a result of pregnancy.<sup>151</sup> As midwives and neighbours, women's involvement ranged from practical assistance in

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<sup>149</sup> Hobby, E., Virtue of Necessity. (Virago Press, London, 1988), p.2.

<sup>150</sup> NAO, C/QSM1/1/12, Nottingham, January 1641, Hugh Wallis and Anne Padgill.

<sup>151</sup> Forbes, T., 'A Jury of Matrons', Medical History, (1988), vol. 32, pp.23-33.

childbirth to the questioning of women about the paternity of their child whilst they were in the extremity of labour.<sup>152</sup>

Having identified early modern society's concern with the regulation of sexual behaviour, the concern specifically in Nottinghamshire and Staffordshire appears to have been, to varying degrees, with both the financial and moral aspects. It is evident from the court records that this is a complex issue. At a superficial level it would appear that the financial implications of sexual immorality carried the most importance, especially as the period progressed and fears surrounding population growth and poverty increased. However, although the financial implications were significant, through a closer, more qualitative, examination of the individual cases, it is clear that the perceived immorality of females creates a greater alarm amongst those in power, who these were predominantly male.<sup>153</sup> The unruly, lewd, and insubordinate woman was seen as a threat to social order and male control, and as such was open to increasingly harsh punishments as the early seventeenth-century progressed. Those in authority in Nottinghamshire approached female and male sexual crime from completely opposing standpoints, with females held totally culpable. This in turn led to the unequal treatment by society and the courts, of certain activities, according to one's gender.

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<sup>152</sup> NAO, C/QSM1/72/1, Nottingham 12<sup>th</sup> January 1624, p.25, and C/QSM1/ 72/1, Newark 12<sup>th</sup> January 1625, p.160, in which paternity is confirmed by the testimony of the midwife and other credible women, amongst many others.

<sup>153</sup> Although it is important to note that this attitude developed more slowly in Staffordshire than it did in Nottinghamshire.

Within this discussion it is argued that infanticide, as defined within the 1624 Statute, cannot be understood simply an act of violent aggression carried out by evil mothers, or even by mothers experiencing an unstable mental state following the birth of their children. It must be seen as an understandable response by single mothers, to the attempts of those, both within the communities who saw themselves as the 'better sort', or those in authority, to exert social control over the behaviour of single women. That the act of infanticide can be the culmination of exceptional mental conditions would not generally be disputed, but what we are often witnessing, especially in the early modern period, is the product of economic and social conditions, by which single mothers were faced with little choice.

The difficulties that were facing single mothers were, for many, insurmountable. Their good reputation, which as has already been identified, was of fundamental importance to all members of early modern society, especially females, would be lost if their pregnancy became known, thus denying them access to many of the support mechanisms of early modern communities.<sup>154</sup> Punishment for breaking society's moral codes, either in the form of a year in the House of Correction, where they would receive fitting punishment, or a public whipping, which would further distance them from the respectable members of the community, would inevitably follow. Also in a period in which, at any one time, a large percentage of the population was in danger of being destitute, and local charity was increasingly being refused, the financial implications for bastard bearers were frightening. There can be no surprise that females who found

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<sup>154</sup>As can be seen when women were seeking help and support from the courts, all depended on their good name.

themselves in this difficult position refused to accept the reality. They, therefore, often neglected themselves or the child, indirectly leading to its death, and sometimes they gave birth in secret, isolating themselves from the usual female networks of support, and extinguished the life of the child.

Although numerically this crime appears insignificant, with few cases appearing each year before the assize courts, and even fewer before the quarter session courts, it is argued that the combination of the attitude towards and the treatment of single mothers contributed directly towards the perpetration of many infanticide cases.<sup>155</sup> The fact that the Statute of 1624 focused only on single mothers, and not on the child whose death was concealed, signifies society's concern with the control of single women. Contemporary acceptance of the sexual proclivities of unmarried women is reflected by William Gouge when he affirms that these are, 'lewd and Unnaturall women, as leave their new-borne children under stalls, at men's doores, in Church porches, yea many times in open field.'<sup>156</sup> Percival Willoughby, the contemporary obstetrician, associated infanticide with the 'looser sort'.<sup>157</sup>

The implementation of the 1624 statute singled out the murder of newly born bastards, locating this act firmly in the domain of all unmarried mothers. Through this legislation those in authority demanded the exposure of all bastard bearers and brought them directly into the public gaze. Even those unmarried mothers who were not likely to become a charge on the parish were exposed to the public condemnation of their

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<sup>155</sup> It is important to note that some instances of infanticide would have had their origins in the fragile mental condition of the perpetrators.

<sup>156</sup> Gouge, W., 'Of Domesticall Duties', p.507.

<sup>157</sup> Cited in Fletcher, A., Gender, Sex and Subordination in England 1500-1800, p.278.

neighbours. Their identification, either as lewd women, or as bastard-bearers, brought forth public condemnation and punishment. With the loss of their good reputation they became situated outside appropriate societal behaviour. With this they could face the loss of charitable support from the local communities, and in times of increasing hardship and destitution this could represent starvation and possibly death.

Concealment of a pregnancy and infanticide in these circumstances was a logical and understandable response to a difficult situation. The evil, if it existed, must be located within those structures of society that constructed the image of femininity and masculinity in ways that were not compatible. Whilst society applauded male sexuality and denigrated female sexuality then the dilemma facing women would continue, and difficult sometimes morally unacceptable choices would have to be made. In this context infanticide must be viewed as being born out of necessity rather than as an evil act. The statute of 1624, by focusing only on concealment of the birth of bastard children, was by implication suggesting that only unmarried mothers committed infanticide, or that society was primarily concerned with the exposure of 'lewd and lascivious women'.<sup>158</sup> Whichever of these scenarios is correct, and it was probably a mixture of them both, the statute designated female sexuality as resulting in the breakdown of social order, and as therefore subject to tight controls. The assumption that only unmarried mothers would commit infanticide, reveals the strong belief that only mothers of bastards possessed motives for the concealment and murder of infants. As has already been identified in the examination of bastardy cases, mothers of bastards were already viewed as being solely responsible and open to condemnation by society.

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<sup>158</sup> Statute 21 James 1 c.27.

It is not at all surprising then to witness the extension of this condemnation of the unmarried mother into the area of infanticide.

Many cases of infanticide typified the dilemma that unmarried mothers must have faced. If they disclosed their predicament they would probably be condemned and punished by society for transgressing its moral codes, and threatening to disrupt the hierarchical social order, for the bearing of a bastard child. If they ignored, concealed and sometimes destroyed all evidence of their 'inappropriate and unacceptable' behaviour, they faced prosecution and possibly death. Infanticide can be seen, therefore, as means by which pregnant unmarried females sought to protect themselves from castigation from a society which condoned male sexuality whilst condemning female sexuality.

Clearly some cases of infanticide did not come into this category, but the way in which society defined female sexuality determined that the majority of unmarried mothers would be faced by this dilemma. As Jackson states,

The persistent prosecution of single women for the murder of their new-born children stemmed from concerns about the appropriate behaviour of unmarried women ...<sup>159</sup>

The focus of the 1624 Statute suggests that it is probable that early modern society did not view infanticide as especially abhorrent, but simply that the perpetrators of it should not belong to one particular section of society, that of the unmarried female. If this is in fact true then what is evident within the statute is not a society enforcing strict moral behaviour on its members in totality, but one which sought to restrict and control the behaviour of one subordinate section, single women. Its concern, therefore, was not

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<sup>159</sup> Jackson, M., New-Born Child Murder, p.15.

primarily with the newly born infant, but with the female who defied society's moral code. When examining the act of infanticide, it is essential to consider the place of women, especially unmarried ones, in early modern society.

Those women accused of infanticide were constructed in opposition to the ideal women, as unnatural rather than natural.<sup>160</sup> The perceived increase in bastardy and the mounting attention paid to infanticide, according Keith Wrightson,

Dramatically focused the gentry's fears.... The church courts were derided by puritans for their laxity and for the inadequacy of their 'toyish censures'. Under this pressure, previous tolerance towards premarital sex and bridal pregnancy collapsed.<sup>161</sup>

Of the two counties under examination, this scenario as put forward by Wrightson, is evident only in Nottinghamshire.<sup>162</sup> It is clear that both bastardy and infanticide were viewed by contemporaries as crimes committed by 'lewd and dissolute' women. Both crimes were located on different points along a continuum of illicit sexuality, in which infanticide represented the culmination of illicit female conduct. The prosecution of bastardy as predominantly a female crime, and the feminisation of infanticide as a crime committed only by single women, highlights the significance of one's gender within crimes of a sexual nature.

The previous chapters have focused specifically on sexual crime including infanticide, which although it was an act of violence was located within the construction of female

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<sup>160</sup> See Wrightson, K., 'Infanticide in Earlier Seventeenth-Century England', p.11

<sup>161</sup> Cited in Fletcher, A., Gender, Sex and Subordination in England 1500-1800, p.278

<sup>162</sup> Perhaps the reasons for this lay in the fact that 'Puritanism' had a greater hold in Nottinghamshire than in Staffordshire, where Catholicism was still very much in evidence.

sexuality. Bastardy and infanticide prosecutions, whilst representing the secular criminalisation of illicit sexual conduct and its consequences, were unusual in that they became crimes for which only single unmarried mothers were held culpable. Whilst it is true that men were found liable for the financial charges, they were not deemed as the guilty ones. Perceptions about female sexuality informed the judgements of the courts and wider society in all of the previous acts. In the following chapter I will identify whether the role of gender affected male and female participation in interpersonal physical violence, and whether the community and the courts responded differently to male and female physical aggression.

## **Chapter Four**

### **PASSIVE VICTIMS - VIOLENT AGGRESSORS?**

#### **Murder, Assault and Disturbing the Peace**

As has already been identified in Chapters Two and Three, gender played a significant part in the criminalisation of particular sexual conduct, with infanticide, a violent act recategorised as a sexual crime. Apart from Garthine Walker's study on crime in early modern Cheshire, most previous studies into physical violence have failed to consider the role of gender.<sup>1</sup> By taking gender into account this chapter will identify whether female behaviour reflected ideals of passive conduct, or whether women participated on equal terms with men. This chapter will also consider how perceptions about female identity affected attitudes towards female participation in physical violence. Carol Wiener states that female reluctance to participate in violent crime was associated with their inherently socially or biologically induced passivity and non-violent nature.<sup>2</sup> This chapter seeks to question this assumption.

Acts of violence against the person constituted a significant proportion of prosecuted crime in the early modern period.<sup>3</sup> Contemporary writers noted a trend of 'growing violence and brutality, amongst the lower orders, in sixteenth and early seventeenth-

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<sup>1</sup> See Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', chapter three. For more quantitative approaches that ignored the significance of the social construction of gender see Barbour-Mercer, S., 'Prosecution and Process: Crime and the Criminal Law in Late Seventeenth-Century Yorkshire'; Macfarlane, A., The Justice and the Mare's Ale; Samaha, J., Law and Order in an Historical Perspective: The Case of Elizabethan Essex,

<sup>2</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire', p.8.

<sup>3</sup> According to Barbour-Mercer, S., in her research into 'Crime and the Criminal Process in Late Seventeenth Century Yorkshire', this was 17% at quarter sessions and 14% at assizes for Yorkshire.

century crime'.<sup>4</sup> Within this category the offences varied from acts of physical violence including breaking the peace, assault, witchcraft, manslaughter and murder, to the non-physical offences such as defamation and scolding, generally seen primarily as crimes committed by females. All of the aforementioned acts of physical violence will be examined in this chapter, with verbal violence being considered in Chapter Five.

Interpersonal disputes and conflicts were regularly presented before both the secular courts and the ecclesiastical courts. One of the most regular crimes of violence that appeared within the quarter session records was breaking the peace. The majority of the cases within the secular court records give little insight into the background to the dispute that led to the presentation. However, those cases that came before the church courts reveal far more about the personal relationships of those presented. These cases will be examined later in Chapter Five as the majority involved verbal abuse or defamation. Personal conflicts, which occasionally resulted in murder, were primarily dealt with by the higher jurisdiction of the assize courts. Although the assize court records for this period have not survived for Nottinghamshire, and only a small section have survived for Staffordshire, it is evident from other surviving assize records that a guilty verdict for murder mostly brought with it severe penalties. This was, however, occasionally mitigated depending on the individual circumstances of the crime. As Walker notes, 'culpability in homicide was, then, mitigated by notions of justifiable or

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<sup>4</sup> Cockburn, J.S., Crime in England, 1550-1800 p. 56.

excusable killing'.<sup>5</sup> Males were able to draw upon masculine ideas of justifiable violence based upon the male notion of honour, for which females had no equivalent.

Despite the lack of surviving assize records there is, however, enough evidence within the quarter session records to identify the behaviour which sometimes precipitated murder, and to reveal some of the motives of the protagonists and society's response towards them. During the period 1603-1660 murder was considered to be the most abhorrent act that could be committed against another individual. Murder was judged to be a felony unless perpetrated upon a master by a servant, or in the case of a woman who killed her husband, when it became the more serious crime of petty treason. The distinction between murder and manslaughter developed in the sixteenth century, in which the degree of malice aforethought was the key issue. Murder was classified as unclergyable and manslaughter, for males, was clergyable.<sup>6</sup> Benefit of clergy involved the accused's ability to read a neck verse from the Scripture.<sup>7</sup> As Sharpe states this owed its origins to the conflicts between the state and the church of the high middle ages.<sup>8</sup> Clerics were allowed the right to be tried within church courts rather than the royal courts, and proof of literacy was the means to prove clerical status. Even though benefit of clergy still occasionally led to a painful branding it was far less severe than the alternative.<sup>9</sup> It became the most common mitigation of capital punishment in early

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<sup>5</sup> Walker, G. 'Crime, Gender and Social Order in Early Modern Cheshire' p.137.

<sup>6</sup>Kaye, J.M., 'The Early History of Manslaughter', *Law Quarterly Review*, (1967), vol. 83, p.365.

<sup>7</sup> This was so named because this proof of literacy saved the neck of those accused of capital offences.

<sup>8</sup> Sharpe, J.A., *Crime in Early Modern England*, p.67.

<sup>9</sup> Herrup, C.B., *The Common Peace*, p. 48.

modern England. By the end of the sixteenth-century this could only be claimed for first offences, and those accused of murder were denied this privilege.

Contemporaries were clearly able to separate manslaughter and murder, even though the circumstances that surrounded the deed were not always clear. The former was considered to arise from 'the sudden heat of the passions', and the latter from, 'the wickedness of the heart'.<sup>10</sup> The gender of both the perpetrator and the victim, and the relationship between them, often influenced the court's decision as to the guilt of the accused and the subsequent punishment of those found guilty. This can be most clearly seen in the cases of spousal murder highlighting the different positions of husbands and wives in early modern society. As Susan Amussen notes, many historians see violence as the key to the maintenance of the subordination of women, with the 'interconnection of sexuality, aggression and violence' being central to definitions of masculinity.<sup>11</sup>

Although a less serious act of physical violence, assault was one of the most common crimes prosecuted at the quarter sessions, but it was one of the most ambiguous in its definition. Physical sexual attacks have been excluded from this discussion, including child-rape, which was treated more as assault than as part of the continuum of heterosexual relations. Rape and sexual violence, although acts of physical violence, will be considered separately in Chapter Six, as they embrace contemporary ideas on the nature of female sexuality, and consequently notions of culpability. Witchcraft will also be considered as an act of physical violence, on the basis that in almost all cases

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<sup>10</sup> Blackstone, W., *Commentaries*, Vol.4, pp. 178-190.

<sup>11</sup> Amussen, S.D., 'The Gendering of Popular Culture', p.60. See chapter six for a discussion of this.

presented before the Nottinghamshire and Staffordshire quarter sessions physical harm was occasioned to a specified individual, often through the linked crime of poisoning.

Through an examination of a range of different acts of violence it is possible to assess the nature of male and female violence and the way it was perceived within society, both on a community and judicial level. The individual court cases cannot possibly hope to represent all violent behaviour and much of that recorded may not have been at all typical. It is however possible, through a close examination of those cases, to examine the role of gender in constructing the act of violence and to contextualise that act within broader societal structures. It is also possible by reference to contemporary ballads and pamphlets to identify the way in which these attitudes were developed and defined. Even though the pamphlets and ballads of the period were sensationalised, and frequently conformed to a specific genre, they would clearly have helped to shape public attitudes and expectations. Access to such popular texts was not the same for all sections of society, but their quick and cheap production meant that most people would have 'enjoyed' them either directly or through their redistribution, physically or orally.<sup>12</sup> These mediums became a significant tool in the reinforcement of the social and gender order, and the fate of those who transgressed the boundaries of appropriate behaviour was communicated to a wide section of society. The pamphlets and ballads drew on a shared range of motifs and images that aroused shared attitudes and values.<sup>13</sup>

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<sup>12</sup> See Dolan, F., *Dangerous Familiars*; Malcolm Gaskill, 'Reporting Murder: Fiction in the Archives in Early Modern England'; and Watt, T., *Cheap Print and Popular Piety, 1550-1640*, (Cambridge University Press, Cambridge, 1991), for a wider discussion of this.

<sup>13</sup> Gaskill, M., 'Reporting Murder: Fiction in the Archives in Early Modern England', p.8.

As has already been identified within Chapter One, female identity in early modern society appears to have focused primarily on female sexuality, and in those instances where society's moral codes were impinged upon females were found to be culpable. Within this chapter it will become evident whether or not this attitude extended into acts involving physical violence, and whether or not males and females were dealt with equitably. By examining those acts of violence against the person, rather than against property or society at large, committed by men and women it will be possible both to identify the nature of male and female violence, and witness the ways in which male and female aggression was expressed. It should then become clear whether or not early modern men and women, as is sometimes assumed, responded in gendered ways, with women resorting to verbal violence and men to physical violence. The assumption that aggression was expressed in clearly gendered forms, with men engaging in physical violence and women in non-physical violence, is certainly an over simplification. As will be shown, both men and women responded to different situations with both physical and verbal violence. What is apparent though, is that the social construction of appropriate male and female behaviour differed, and when women crossed the boundaries then society responded accordingly, especially when the victim of female aggressive behaviour, either verbal or physical, was male. In these instances the disruption of the hierarchical structure of society was the key element which influenced societal responses. Women found guilty of petty treason were subjected to death by burning, but men found guilty of the same crime were not. This means of death was far more barbaric than death by hanging for men.<sup>14</sup>

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<sup>14</sup> Campbell, R., 'Sentence of Death by Burning for Women', The Journal of Legal History, (1984), vol. 5, pp. 44-59.

Male participation in physical violence does not appear to have aroused any extreme or particular condemnation within this period, and was often viewed as a legitimate tool of social control. Although not condoned, any disapproval appears to be founded more on the disruption to social order which resulted from any such dispute, rather than to any horror expressed that males should engage in acts of violence. Most acts of this kind were not brought before the courts by a community offended by such actions but by the victims. By examining acts of violence perpetrated by women as well as men it will be possible to establish the terms upon which such behaviour was based, and defined. Those cases that involved both men and women should offer a clearer insight into the relationship between gender and social order. It will become evident whether or not men and women responded to identical stimuli in identical ways. It will also become clear whether the fact that as men and women inhabited different spheres of life their activities were delineated in such a way that the problems they encountered, and the way in which they dealt with those problems, varied for both genders. Some of these acts were clearly more obviously acts of violence than others, but what must be acknowledged is that what is designated as abhorrent behaviour, and therefore criminal behaviour, varies within different societies, both geographically and spatially. To understand the complexity of participation in, and the differing responses to, acts of violence it is important to be aware of contemporary attitudes towards order and how these were being challenged by many different circumstances in this period.

Adherence to authority in early modern society was a crucial factor in everyday existence. However, as James Sharpe comments, violence was a common phenomenon and could be linked to a variety of causes.<sup>15</sup> Some of these arose from personal conflicts

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<sup>15</sup> Sharpe, J.A., Crime in Early Modern England.

and others resulted from the increased pressure that much of society experienced through economic hardship. Enclosure protests frequently culminated in assaults. Many groups and individuals came into conflict with authority however, this conflict expressed itself in different ways. Depending upon which section of society was involved, and how the individual conflict was viewed, the response of both local communities and the authorities differed. The crimes that will be examined cover a broad spectrum, ranging from generally disruptive behaviour stemming from a variety of causes, to the more specific and apparently gendered crimes of witchcraft and poisoning.

As has already been suggested, this period witnessed an increase in the involvement of the formal authorities in the reinforcement of order. It would be inaccurate, though, to give the impression that order was merely something which was imposed from above. Although the ideals of appropriate behaviour were frequently established by those in the middle to upper levels of society, they became so accepted that most sections of society adopted much of the prescribed correct behaviour as natural. Most sections of society were involved in different ways in an attempt to ensure that its members conformed to the proscribed behaviour. Difficulties arose, as the concept of appropriate behaviour was mutable. This ambiguity is most clearly illustrated in cases where commoners defended their own interpretation of customary rights.<sup>16</sup> Many activities that some groups saw as long established rights, such as gleaning, and grazing animals on common land, were in this period being gradually criminalised. This inevitably brought

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<sup>16</sup> Griffiths, P., Fox, A. & Hindle S., eds, The Experience of Authority in Early Modern England (Macmillan Press Ltd., Basingstoke and London, 1996), p.4.

some members of society into conflict with either the authorities or other members of the community.

The period 1603-1660 witnessed many riots surrounding such conflicts, in which long accepted rights of a community conflicted with the individual rights of one of the community, reflecting the progression from a community based society to a more individualistic one. This transformation however was slow and erratic, with different areas of the country, and even different areas of individual counties, evolving at different rates. Conflict over such concerns was not apparent in all areas of the country. The way in which these and other disputes were conducted and expressed can provide valuable insights into the gendered construction of both male and female identity in the early modern period. As has already been identified, early modern society had clear prescriptive boundaries surrounding appropriate behaviour for males and females, and when those boundaries became blurred, or were transgressed, then it is possible that society responded aggressively. The background to, and the circumstances of those activities will be examined wherever possible. In this way the relationship between gender and crime against the person will become evident. In acts such as assault, murder and manslaughter, the gender of the perpetrator ought not to have had any particular significance. In addition the gender of the victim ought not to have had any bearing on societal responses, however, as can be seen in the crime of husband-killing, in contrast with that of wife-killing, the gender of the victim affected the attitudes of those in authority.

As will be explored later, the differing responses towards apparently identical crimes can only be sufficiently explained when gender as a category is carefully considered.

Those structures within any hierarchical society which were in place to define the hierarchy, were extended and reinforced to protect those higher up the hierarchical scale. In this patriarchal society those whom society sought primarily to protect were male. The activities, therefore, of the subordinated sections of society would be viewed from a different perspective to the activities of those with power. Violent acts were often spontaneous, with little or no obvious reasons for the attack.<sup>17</sup>

### **Precipitants of violent behaviour**

Physical attack was just one way in which individuals responded to interpersonal problems and, as has already been identified, order was of particular significance in the period between 1603-1660 and any occurrence that had the potential to disrupt this inevitably came under close scrutiny. Both men and women engaged in acts of violence with other males and females as a response to many different issues. They were often involved in riots, hedge breaking and assaults. Occasionally assaults were carried out by servants against their masters, however, the individual circumstances of the attacks are mostly absent from the court records.

In many of the cases involving males fighting, the background to the disputes were often ones stemming from drinking, defending their reputations with regard to such issues as theft, and so on. These cases were represented in ways that show men as aggressors and do not raise new questions as to the nature of male participation in violence. Such disruption to the social order did not pass unpunished. The authorities responded to such cases unsurprisingly by binding over, or committing the perpetrator to gaol. One common misconception is that women were not involved as the

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<sup>17</sup> For a further discussion see Curtis, T.C., 'Quarter Sessions Appearances and their Background' p.137 chapter 6 in Cockburn, J.S., Crime in England 1550-1800.

perpetrators of violence in disputes arising from an excess of alcohol, as the alehouse is more obviously identified as a male occupied space. It will be made clear from this study that this was not in fact true. The alehouse was an integral part of the community and women's association with it was both as traders and as customers. This subsequently led to their participation in many of the same activities as men.<sup>18</sup>

As has already been identified, assault was probably the most ambiguous category of violent crime, with the details of most cases being all but invisible even under close examination. However, there are some cases which are detailed enough to allow a thorough analysis of some of the motivation behind them. Alcohol was a contributory factor in physical aggression for men and women, and alcohol abuse often led to assault or even to murder.<sup>19</sup> Physical violence as a result of being drunk could perhaps more fairly be identified as a predominantly male crime, but this is based more on the opportunities for personal freedom in the period, rather than a 'natural' inclination towards physical aggression on the part of males. In 1657, Margery Bullock's neighbours had no hesitation in presenting her before the Justices for, 'being so drunk

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<sup>18</sup> For a discussion of the place of the alehouse in violent assaults see Amussen, S.D., 'Punishment, Discipline and Power : The Social meanings of Violence in Early Modern England', pp. 24-25; Clark, P., The English Alehouse: A Social History, 1200-1830.

<sup>19</sup> This can still be seen later in the century in a pamphlet of 1678, *An Account of the Tryal of the Woman for murdering her husband.* (London, 1678), when a woman and her husband were at the alehouse together. She alleged that although she had not consumed a lot, only a pint and a half, she was light headed. Following a dispute with her husband he hit her with a fire shovel. Following a further violent attack the woman placed the scissors that she had already picked up before her and claimed that he had run onto them. She openly confessed her deed but claimed her innocence as to her intentions. Too many other people declared that she had threatened to kill him before one one stated that she had threatened to poison him. The guilty found her guilty of petty treason and she was sentenced to be burned to death. The guilt here was squarely allocated with the female even though her husband had first threatened her life. Notions of justifiable homicide have no place in this case.

that she could not go home but was carried home upon one of her neighbours back'.<sup>20</sup> Three months earlier the villagers of Bobbington presented John Spary, gentleman, for being, 'frequently in drink and in repute to be a common drunkard'.<sup>21</sup> In both these cases excess alcohol was the root of the aggression, and in a period in which personal moral conduct was gaining significance, such behaviour was less likely to be tolerated from either gender.

On 12<sup>th</sup> July 1630, Francis Swinscoe, yeoman of Skegby, was bound by recognisance for good behaviour for 'being drunk and abusing Anne, wife of Anthony Lacy'.<sup>22</sup> Probably this was the only motivation needed to encourage Francis to settle his dispute more amicably, as there is no further record of him in the minutes. However, not all protagonists were so easily dissuaded from their course of action. Alcohol abuse was implicated in the petition that the inhabitants of Counslow put before the Stafford meeting of the sessions at Epiphany 1652. Anne Julius, wife of Thomas of Sedgely, was reported as being,

A notorious whore, common drunkard, common alehouse haunter, common sabbath breaker, common brawler and scandaliser of her neighbours, a common swearer, .... A very dangerous woman.<sup>23</sup>

Anne epitomised much that offended seventeenth-century society, as well as stealing she broke all the bounds of appropriate female behaviour. Being drunk led to a wide range of complaints being laid against Amy Hulme of Leake by various victims of her

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<sup>20</sup> SRO, Q/SR/300 Michaelmas 1657 p.11.

<sup>21</sup> SRO, Q/SR/299, Translation 1657, p.15.

<sup>22</sup> NAO, C/QSM1/74/1, Nottingham 12<sup>th</sup> July, 1630, p.34.

<sup>23</sup> SRO, Q/SR/275 Epiphany 1651/2 p.3

aggression.<sup>24</sup> Being drunk was also the main thrust of the complaints against Bridgett Fairchild, wife of Thomas, and it was stated that as a result she,

Often disquieted neighbours, sometimes not going home at all.  
So drunk till she stript and sometimes fought Dorothy the  
daughter of Ann Bottulph and threw down Ann Bottulph violently  
to the ground.<sup>25</sup>

Domestic violence was probably seriously underreported, particularly by abused husbands, as they would then be liable to ridicule and censorship by the community.<sup>26</sup> This was a clear arena for a gendered societal response which led to humiliating, shaming rituals.<sup>27</sup> Aggressive and dominant women were condemned for disrupting the gender order and men for tolerating that disruption. Wives who abused their husbands, and husbands who 'allowed' this to happen, were both subject to the more informal, community controls already mentioned. As Amussen comments, it is 'evident that gender affected the meanings given to the behaviour of women and men in all contexts...'.<sup>28</sup> Women too, had little encouragement to report marital abuse, as within common law husbands had the right to correct their wives behaviour, but as can be seen in the court records throughout the seventeenth century this was being challenged.<sup>29</sup>

An example of some of the issues that led to the mistreatment of wives can be seen in

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<sup>24</sup> SRO, Q/SR/277 Translation 1652 p. 15.

<sup>25</sup> SRO, Q/SR/280 Epiphany 1652/3 p.16.

<sup>26</sup> For a further discussion of this see Beattie, J.M., 'The Criminality of Women in Eighteenth Century England' p.87.

<sup>27</sup> For a more complete analysis of this phenomenon see Ingram, M., 'Ridings, Rough Music and Mocking Rhymes in Early Modern England', in Reay, B. ed., Popular Culture in Seventeenth-Century England, pp. 166-97, and J.M. Beattie 'The Criminality of Women' p.87.

<sup>28</sup> Amussen, S.D., 'The Gendering of Popular Culture in Early Modern England', p.67.

<sup>29</sup> Beattie, J.M., 'The Criminality of Women in Eighteenth Century England', p.86.

the petition put before the Staffordshire Justices at Epiphany 1630. Joan, wife of Richard Hodgets, blacksmith of Rowley Regis, complained,

For some relief and a warrant of good behaviour against her husband, whom she married about 14 months past. Bringing him a portion of about £40 and who has lately made assault and battery with bloodshed upon her and brought Margery Bissell, a lewd woman to live in the house and now fled from the country.<sup>30</sup>

Fortunately for Joan her petition was granted. The courts clearly did not approve of either the abuse or the immoral behaviour of her husband. The charge laid against Richard makes no reference to his inappropriate sexual conduct arising from his extramarital liaison, but accuses him of actions that were more clearly designated as masculine. As was repeatedly shown in the last chapter, culpability for sexual misdemeanours remained firmly with Margery, the other female in this case. The use of physical violence by husbands within marriage was generally accepted.<sup>31</sup> However, it is probable that the granting by the Justices of Joan's petition resulted more from the community's desire to avoid the charge that would have been incurred if Joan's husband had not supported her, than from a condemnation of his failings as a husband. In 1635, William Chadwick, yeoman of Annesley, also found himself facing the disapproval of the Justices for similar reasons. He was ordered to take back his wife and live quietly with her, having been presented for abusing and turning her away.<sup>32</sup>

In August 1606, Anthonie Peerson was presented to the church court for allowing his wife to wash hemp on the Sabbath. The record stated that,

Anthonie Peerson of chilwell beate his wife out of doores upon the

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<sup>30</sup> WSL, QS 17, Roll 19, p.59, Epiphany 1630.

<sup>31</sup> See Amussen, S.D., 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England'.

<sup>32</sup> NAO, C/QSM1/75, Nottingham 12<sup>th</sup> January 1635, p.6.

Sabbaothe daye abusinge her both in tyme of Morning and Evening Prayer in forcinge her to washe hempe upon the Sundaye before the assizes.

On 27<sup>th</sup> September 1606 he admitted 'that his wyfe did washe flaxe upon the Sabaothe daye', and was dismissed with a warning.<sup>33</sup> Anthonie's beating of his wife was not questioned as this was within the limits of acceptable physical violence allowed to control and direct one's wife. The offence committed was the abuse of the Sabbath day by working or causing his wife to work. Although male heads of families were viewed as the authority in domestic situations there were limits to which they were expected to conform.

The full details of a case that appeared before the Justices in Stafford in 1631 remain hidden, but it would appear that it is possible that the perceived abandonment of a single mother was the motivation for a series of threats and aggressive acts. Thomas Shawe and his wife Mary petitioned the court for a warrant of good behaviour against Elizabeth Wood, claiming that she was, 'of lewd behaviour and has had a bastard'.<sup>34</sup> To give weight to their case Thomas and Mary emphasised that in contrast with Elizabeth, Mary was 'of honest parentage'. Since their recent marriage Elizabeth threatened to kill and murder Mary. The level of aggression reveals either a very violent woman, or perhaps a very desperate one.<sup>35</sup> Elizabeth threatened to 'cut out her belly', and made other violent threats in front of witnesses. She also, 'violently set upon Thomas, tore his band from his neck and scratched him on the face'. She then cursed the petitioners in a

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<sup>33</sup> NAO, Transcriptions of the Proceeding of the Court of the Archdeaconry of Nottingham 1565-1675, vol. 2, by Colonel Hodgkinson, p. 276.

<sup>34</sup> WSL, QS18 Roll 24 Easter 1631 p.79.

<sup>35</sup> The difficult position of unmarried mothers has already been identified in Chapter 3 on sexual crime.

terrible manner. Despite three letters testifying to the good behaviour of Elizabeth the petition was granted on the oaths of the petitioners.

Violence within marriages frequently followed the betrayal of one of the parties by the other. The case put before the justices at Stafford at the Trinity sessions in 1630 provides a good example of this. On May 9<sup>th</sup> 1630, Thomas Smith, married, and Katherine Ropier, also married, were discovered together in a private chamber by Thomas' wife and one William Brookes. This led to blows exchanged between Katherine Ropier and Smith's wife. In an attempt to defend his lover Katherine, Smith 'hath beaten his wife to the great danger of her lyfe, she being ready to be delivered of a childe'.<sup>36</sup> Despite the fact that Smith was cited as the one inflicting the greatest damage upon his wife, the only judgement appears to have been passed in relation to Katherine. She was then committed to the common gaol, 'untill such tyme as yt shall be seene whether the said Smithes wife lyve or die'. Even though a greater level of brutality was inflicted by Smith upon his wife, Katherine was deemed responsible and therefore punishable for the disruption of marital harmony. Smith's attempts to restrain and control his wife were not viewed as conflicting with the hierarchical order even though he overstepped suitable levels of physical restraint.

The court's response to this conflict was undoubtedly gendered, with men and women being judged by different criteria. The gender of the protagonists played a significant part in the allocation of responsibility. In this case it is clear that sexual honour and appropriate behaviour were the responsibility of women. Despite the fact that Smith's wife might have died as a result of his attack, the initial conflict between Katherine and

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<sup>36</sup> WSL, QS17 Trinity 1630, p.52.

Smith's wife, and her intrusion into their marital relationship, was judged to be more significant than Smith's own violent attack on his wife. Within this case can be seen the double standard that was applied in relation to the behaviour of men and women, especially with regards to sexual matters. Smith's own infidelity, and subsequent violent behaviour towards his wife, was more acceptable than Katherine's betrayal of her own husband and her violent exchange with Thomas Smith's spouse. The lines of acceptability were clearly drawn on the grounds of appropriate sexual behaviour for men and women.

Another marital dispute escalated into a violent attack by one woman on another in 1630. The attack was the final episode in the breakdown of the relationship between Joan Bromall, of Tetnall, Staffordshire, and her husband. Joan petitioned the justices on the grounds that,

Her unthrifty husband who does not support her or her seven children, and has put what corn they have gathered into another woman's barn, and has incited Rose Cooper, an aleseller, to knock her into a ditch and put out her shoulder.<sup>37</sup>

This case involves a multitude of different issues. Firstly, the husband failed to fulfil his part of the marital obligation. He then jeopardised the community by placing a possible financial burden upon them for the upkeep of his wife and children and instigated disruption in the community by inciting Rose, an aleseller, already an individual on the margins of appropriate community life, to attack his wife and injure her. However, despite all of the above, the case was not ordered by the justices. Joan although

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<sup>37</sup> WSL, QS18 Roll 22, Michaelmas 1630, p.76.

apparently a victim, was denied the support of the authorities. Presumably it was left to the husband to arrive at a solution that was left up to his discretion.

Having already identified some of the factors that led to violence both for men and women, the propensity for physical violence and the different variants of it, according to gender, will now be considered. Through an analysis of those incidents of a violent nature it will be possible to identify male and female involvement in those acts and the circumstances which surrounded them.

### **Male and female participation in physical violence**

As can be seen from the following table, most recorded acts of physical violence in Staffordshire involved women as the perpetrator of the act, and in the case of poisoning, females in Nottinghamshire were overwhelmingly the most significant perpetrators. However, some caution must be used when considering the recorded cases of disturbing the peace. Within some of these cases it is not completely clear whether these acts referred specifically to physical and not verbal violence. Considering that males represented by far the greater number of individuals appearing before the courts generally, then the numbers of women appearing for violent crimes are quite significant. It is also important to remember that within Staffordshire women were not pursued as aggressively through the courts for sexual crimes as they were in Nottinghamshire.<sup>38</sup>

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<sup>38</sup> See Chapter Two for a more complete discussion of this.

**Table 3****MALE AND FEMALE PARTICIPATION IN PHYSICAL VIOLENCE.**

Criminal Act	Nottinghamshire		Staffordshire		Total	
	Men	Women	Men	Women	Men	Women
Disturbing the Peace *	76	47	35	136	111	183
Assault **	34	20	8	21	42	41
Poisoning***	1	9	0	1	1	10
Murder/Manslaughter	7	1	0	0	7	1
<b>Gender Total</b>	<b>118</b>	<b>77</b>	<b>43</b>	<b>158</b>	<b>161</b>	<b>235</b>
<b>Total</b>	<b>195</b>		<b>201</b>		<b>396</b>	

\* This may include some cases of verbal aggression

\*\*Includes specific acts of wounding and beating

\*\*\*Also linked to witchcraft and although it usually formed part of a murder accusation it will be dealt with separately

Against this background the fact that far more women than men were presented before the quarter session courts in Stafford for disturbing the peace is interesting. The high incidence of women appearing before the courts as perpetrators of physical violence contradicts the idealised image of the early modern woman. As has already been identified, society prescribed passive, submissive roles for women, and if they had all acquiesced then they would have been noticeable only by their absence within crimes of a violent nature. However, women did appear before the justices for crimes of assault,

disorderly behaviour, wounding and the more specific crime of murder, most commonly by poisoning.

To assess female and male propensity for violence from quantitative data alone is clearly inadequate. One reason, apart from the more obvious one of the survival of records, is the fact that the categories used within the court records are not clearly defined, or consistent.<sup>39</sup> For example a wide range of activities were designated as assault. These ranged from striking someone or merely threatening to do so, to actual assault and battery that clearly involved physical violence.<sup>40</sup> There is also some suggestion that this varied between the two counties under review. In Staffordshire it appears likely that assault, as a category, included prosecutions for disturbing the peace, or for specific acts of wounding or beating.<sup>41</sup> It could also have been used to describe attempted murder and attempted rape. It is important, therefore, not to become too focused on the quantification alone of the various crimes. In addition murder, or manslaughter, did not constitute much of the quarter session court's business as most cases of both would have been dealt with by the higher court of the assizes.

The majority of the cases appearing before the Justices, in both counties, dealt with the more general breakdown of harmonious community relations, probably just the tip of the iceberg, that had either gone beyond community control, or were not felt to be

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<sup>39</sup> For a fuller discussion of the limitations of criminal statistics see Sharpe, J.A., 'Quantification and the History of Crime in Early Modern England: Problems and Results'; Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', and Chapter One.

<sup>40</sup> Dalton, M., The Countrey Justice, (London, 1635), p.177.

<sup>41</sup> Many cases giving complete information would neatly fit into the category of disturbing the peace.

within informal jurisdiction. Because of all the above ambiguities, any quantitative analysis of prosecutions alone would have little meaning for the study of the dynamics, and relationship of, gender within violent acts. For this a more qualitative examination of those more complete cases should bear more fruit.

Of those eight cases presented before the Nottinghamshire courts and listed as murder, all but one were committed by men. Four of the murders committed by the men, involved the death of men, two of women and one of a bastard child.<sup>42</sup> All of the cases went on to be tried by the assize courts and at this point they disappear from sight.<sup>43</sup> The one case involving a woman as the alleged murderer gives little information and immediately disappears from view with the cessation of the quarter sessions in Nottinghamshire due to the onset of war.<sup>44</sup> All that is known is that one Elizabeth Stuffyn, spinster of Sturton was remanded to prison for murder. The identity of her victim or the relationship between them is not recorded so it impossible to gain any inference as to the events that led to the alleged murder.

Of the remaining seven cases the identity of two of the male victims is unknown, the other two are named but no further information is recorded. The two female victims are both recorded as being wives of other men. In such cases the husbands of the murdered women would be seen as the victims of the crime thus increasing the seriousness of the

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<sup>42</sup> By the time of the murder of the bastard child the 1624 Infanticide Statute was in place by which infanticide as a category could only apply to the murder of new-born bastards by their mothers. Other cases such as this were treated as murder.

<sup>43</sup> The corresponding assize records for this circuit are no longer extant.

<sup>44</sup> NAO, C/QSM1/77, East Retford 7<sup>th</sup> October 1642.

deed. In the final case the man was presented primarily for fathering the murdered child and previously escaping maintenance charges, not for its murder. One of the female victims was Bridgett, late wife of Richard Tomlinson. On April 1623, Thomas Freer, butcher, from Car Colston in Nottinghamshire, was bound £40 to appear at the next assizes for the alleged murder.<sup>45</sup> It was nearly another two decades before another case such as this appeared before the sessions. In January 1641 Thomas Lupton and Daniel Swift, were bound £20 each to appear at the next assizes to give evidence against William English, then in prison, for feloniously killing Jane Randall.<sup>46</sup> Again the background to this case is absent from the records. Although these are probably not the only two such cases to have been committed in this period it is unlikely that such murders were particularly common. The quarter session records, for both Nottinghamshire and Staffordshire, lack any details that could illustrate the attitudes towards such murderers and the circumstances surrounding them, but the contemporary murder pamphlets illustrate the horror generally expressed.<sup>47</sup>

At a local level, the 1629 July meetings of the Justices of the Peace, in both Newark and East Retford, saw both murder and also witchcraft cases being tried. On the 15<sup>th</sup> July John Dickinson, yeoman of Carlton-on-Trent, was bound by £50 before the Newark

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<sup>45</sup> NAO, C/QSM1/71/6, p.9, Newark 23<sup>rd</sup> April 1623.

<sup>46</sup> NAO, C/QSM1/77, Nottingham 11<sup>th</sup> January 1641.

<sup>47</sup> See *The Trueth of the Most Wicked and Secret Murthering of John Brewen*, (London, 1592), in Marshburn, J.H., ed., *Murder & Witchcraft in England, 1550-1640, as Recounted in Pamphlets, Ballads, Broad-sides & Plays*, p. 139; *The Most Cruel and Bloody Murther Committed by an Innkeepers Wife Called Annis Dell*, (London, 1606); *Sundry Strange and Inhumane Murders*, (London, 1591); *A True Relation of the Most Inhumane and Bloody Murther of Master James Minister and Preacher*, (London, 1613). It is important though to note here that such pamphlets often conformed to the accepted genre for such material and cannot be taken to express the precise attitudes towards each individual murder. What is perhaps of more value is to examine them for their form and highlight the differing approaches taken within the different categories of homicide.

sessions, to answer a charge of a suspected homicide of an unknown man, at the next assizes.<sup>48</sup> The circumstances of this case are unclear and it is difficult in this case to identify whether the community's concern was with the death of this stranger or whether Dickinson had long been a nuisance within the neighbourhood. At the same sitting the Justices issued a warrant for Katherine Browne a widow from Cromwell, to answer on suspicion of being a witch.<sup>49</sup> Two days later, on the 17<sup>th</sup> July, this situation was again seen at the East Retford meeting of the Justices. Firstly Elizabeth Tutty, widow of Mattersey, was indicted to appear before the next assizes to answer a charge of witchcraft, and for 'using certain charmes'.<sup>50</sup> Nine men and one woman were bound by recognisance to prosecute Elizabeth, who was then remanded in custody to the assizes. Also at the same meeting four men were indicted for 'feloniously killing William Nettleship'.<sup>51</sup> They too were remanded in custody to the assizes. The fate of all seven was identical as they were all remanded to appear before the next assizes, the women for a covert offence, witchcraft, and the men for murder. The weight of evidence needed to motivate a community to prosecute men appears to have been much greater than that needed to instigate prosecutions against women. It is also significant that all three women were outside of the direct control of a man, therefore representing a greater threat. Elizabeth Stuffyn was a spinster, and Katherine Browne and Elizabeth Tutty were both widows, often seen as a threat to male authority.

Spousal murder was a crime with two distinct faces. Wives killing husbands were guilty of petty treason, which brought with it a particularly barbaric punishment, that of

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<sup>48</sup> NAO, C/QSM1/73/2, p.236, Newark 15<sup>th</sup> July 1629.

<sup>49</sup> NAO, C/QSM1/73/2, p.238, Newark 15<sup>th</sup> July 1629.

<sup>50</sup> NAO, C/QSM1/73/2, p.241, East Retford 17<sup>th</sup> July 1629.

<sup>51</sup> NAO, C/QSM1/73/2, p.241, East Retford 17<sup>th</sup> July 1629.

burning.<sup>52</sup> Husbands who killed their wives were simply prosecuted for murder for which the sentence was not so barbaric. Women found guilty of this crime had defied all of the principals of hierarchical order. Men found guilty of murdering their wives had simply extended the acceptable continuum along which legitimate correction of their wives was placed.<sup>53</sup> Social order depended upon controlling society's members, and in this way male violence within the household was sanctioned as a necessary way to uphold household order, whereas female violence threatened and subverted that same social order. Therefore almost identical crimes contained completely different messages.

Susan Amussen notes that women were far more evident as the accused in familial murders than they were in non-familial ones.<sup>54</sup> One such woman was Elizabeth Hazard who in Cheapside, London, in 1659 was the subject of a pamphlet that described the 'unnatural' murder of her grandchild. The pamphlet relied on the presentation of Elizabeth's actions as being the inverse of the natural mother.<sup>55</sup> The emphasis within the pamphlet was more on the fact that a grandmother could betray her 'natural' role, than on the fact that a cruel murder had been committed. The gender of the murderer, and her prescribed role, clearly influenced the construction of this narrative significantly.

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<sup>52</sup> Campbell, R., in her discussion of the punishment for petty treason notes that the 'whole area of punishment smacks of discrimination', 'Sentence of Death by Burning for Women', p. 53. Men convicted of this crime were not burnt, only women were singled out for this particularly barbaric treatment.

<sup>53</sup> See Wiltenberg, J., Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany, for popular contemporary acceptance of husbands using physical violence to correct their wives, p.108-30.

<sup>54</sup> 7% in non-familial murders, and up to 42% in familial ones., Amussen, S.D., An Ordered Society.

<sup>55</sup> *The Unnatural Grandmother, or a true relation of a most Barbarous Murther*, (London, 1659). See also Matalene, C., 'Women as Witches', International Journal of Women's Studies, (1978), vol. 1, pp. 584, and Macpherson Bardell, K. 'Death by Devilish Demonstration', Chapter Four, for a discussion of the links between witches and the perversions of natural wife and motherhood.

Within these familial murders committed by women, 50% of their victims were children and 33% were spouses, but it must be noted that murdered wives outnumbered murdered husbands by two to one. The rarity of such cases in Nottinghamshire and Staffordshire perhaps demonstrates that few questions were asked when wives died.

As has already been noted, none of the cases in the region under study, where the accused was presented specifically for murder involved spousal murder. This is perhaps surprising, as domestic violence was a common theme in early modern society.<sup>56</sup> However, those cases which concerned the deaths of spouses in both counties under review were all judged to have been caused by poisoning, and will be examined later. Although there were few cases of wife murder, by any method, of the 28 cases of assault by men against women, presented to the justices in both counties, wives were the victims in 5 of them. Women also constituted a significant percentage of the victims in disturbing the peace cases in Staffordshire, with 4 of the 23 female victims being the assailant's wife and 1 of the victims being his mother. Although common law did allow husbands the right to correct their wives' behaviour and restrict their movements, local communities became involved when husbands overstepped the acceptable level of violence when exerting their authority over them.

The local community in the village in North Nottinghamshire, in which Francis Fenton and Jane, his wife resided, clearly felt that Francis' actions with regard to his wife had overstepped acceptable boundaries. Thus Francis found himself the subject of judicial concern in May 1607.<sup>57</sup> The justices chose to formalise the more usual informal

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<sup>56</sup> See Amussen, S.D., An Ordered Society, for a discussion on community concern with this, pp.169-170.

<sup>57</sup> NAO, C/QSM1/66/4, p.103 East Retford, 2<sup>nd</sup> May 1607.

methods of community control. It was ordered that four of Francis' male neighbours were to, 'arbitrate and determine all controversies, quarrels and discords between Francis Fenton and Jane his wife'. Had their positions been reversed it is more likely that Jane would have been prosecuted either as a scold, or that both she and Francis would have been the recipients of community action such as being cucked or ridden through the village.<sup>58</sup> One's gender, and position in the domestic hierarchy influenced the attitude of the court and the local community to the crime committed.

On the 11<sup>th</sup> July 1607 Francis Leverton was presented to answer charges of cruelty to his wife.<sup>59</sup> Later in the period another man, Lawrence Heath, labourer of Tuxford, was sent to gaol following his neighbours' intervention in his relationship with his wife, Alice.<sup>60</sup> Lawrence must have abused the limits of accepted familial control before they presented him for keeping the peace with her. There were obviously precise lines of acceptable behaviour within marriage, which he had overstepped. Wives, too, sought the support of the authorities on their own behalf when husbands threatened and abused them. In 1657 Sarah, wife of Robert Rawlins of Heawood, Staffordshire, petitioned the court for a warrant of good behaviour against her husband.<sup>61</sup> Sarah claimed that she had been,

Slandered, injuriously wronged, dangerously threatened, most basely abused and oftentime beaten by the said Robert Rawlins, her husband to the almost intolerable grieffe and trouble of minde of your petitioner.

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<sup>58</sup> Public humiliation was a common practice for dealing with wives who had usurped the 'natural' order, or for husbands who had failed to control their wives.

<sup>59</sup> NAO, C/QSM1/66/4 p.113, East Retford, 11<sup>th</sup> July 1607.

<sup>60</sup> NAO, C/QSM1/75, p. 32 East Retford 10<sup>th</sup> April 1635.

<sup>61</sup> SRO, Q/SR/299 Translation 1657 p.16.

The justices were persuaded by her argument, and granted the good behaviour order. Wives, however were not the only victims of marital problems and at times husbands too sought the Justices' intervention. The articles presented to the court against Anne Smallwood, by her husband Edward of Abbots Bromley, for her good behaviour, give an insight into a relationship that did not conform to the ideal marriage. The objections placed against her were as follows:-

Anne did within 3 months last past in the open street of Abbots Bromley assault and set upon the said Edward Smallwood, her husband. Also in the backside of her husband's house..... she the said Anne hath for divers months last lived with one William Litton of Abbots Bromley, carpenter.... Anne is very abusive to her honest neighbours both in word and deed particularly she did on or about the fifth day of September last at Abbots Bromley violently set on Samuel Cope of Abbots Bromley, tanner and pulled him by the ear.<sup>62</sup>

The court's judgement is not recorded, but it is probable that because Anne had threatened not only her husband with violence, but her neighbours as well, it is more likely that the warrant for good behaviour was granted.<sup>63</sup>

The domestic arena was clearly one that became the centre for many tensions and strains, and often presented many opportunities to express one's anger. Other individuals outside the close family also became involved in domestic murders, probably for a variety of reasons. An example of this can be seen in the following case which appeared before the sessions on 11<sup>th</sup> January 1628. Thomas Haughton, labourer from Gunthorpe, was committed on the evidence of the wife of John Waryn. She stated in her testimony that Haughton had counselled her to murder her husband, and that he,

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<sup>62</sup> SRO, Q/SR/300 Michaelmas 1657 p.8.

<sup>63</sup> It is perhaps pertinent to note that both of these examples come from the period of the interregnum, when concern with personal behaviour was intense.

'showed her the best way that she could accomplish it'.<sup>64</sup> What motives lay behind this case are not evident, but it is possible that he wanted to replace Waryn within the marital home, with his death being the only available way of doing so.<sup>65</sup>

Poisoning was judged to be a particularly heinous crime, especially when husbands were the victims, as Coke commented 'of all murder, murder by poysoning is the most detestable'. This was a crime most closely associated with women, as 'women have in all ages used poisoning more than men', primarily because its clandestine nature was judged to give it more appeal to the physically weaker sex, women.<sup>66</sup> Reginald Scot in his work *The Discoverie of Witchcraft*, wrote that,

Women were the first inventors and the greatest practisers  
of poysoning and more materially addicted and given thereunto  
than men.<sup>67</sup>

Those cases that identified poisoning as the method of murder or attempted murder epitomise the contemporary fear of the wife who failed to conform to the prescribed image of the ideal woman. Not only did she invert the 'natural' order of society by challenging her husband, she also, by 'feeding' her husband poison, inverted the role of motherhood, in much the same way as witches were frequently accused of doing. This is probably the significant factor in the close relationship between those women accused

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<sup>64</sup> NAO, C/QSM1/73/2, p.127, Newark, 11<sup>th</sup> January 1628.

<sup>65</sup> Divorce as a way of separation was not an option in this period.

<sup>66</sup> Sharpe J.A., *Crime in Seventeenth-Century England-A County Study* p.129; Dolan, F., *Dangerous Familiars: Representations of Domestic Crime in England, 1550-1700*, p. 30; Cockburn, J.S., also found that murderous wives were associated stealth and poison, 'The Nature and Incidence of Crime in England 1559-1625', p. 57;

<sup>67</sup> Scot, R., *The Discoverie of Witchcraft*. (1584, reprint Dover, New York, 1972).

of poisoning their spouses, also being accused of being witches.<sup>68</sup>

In 1641 a pamphlet printed in London discussed the case of Anne Hamton awaiting trial for poisoning her husband. The horror and fear would have been intensified in this case as Anne was also assisted in this deed by another woman, Margaret Howard.<sup>69</sup> The text first sets out the accepted place and behaviour of a good woman, continually contrasting her with women such as Anne and Margaret. The narrator builds the scene to a dramatic climax and then quickly and gently introduces the man, who was all that society demanded of that sex, but who for his troubles became her victim. Popular attitudes surrounding the links between women and the devil were drawn upon, heightening the perception that all men were vulnerable to women such as these. The narrator ends his tale with both women awaiting trial from which the outcome could only be a judgement of guilty and the subsequent death sentence.

In Nottinghamshire and Staffordshire only one woman was accused of murder without mention of poisoning, 10 women and only 1 man were accused of poisoning linked with murder. The crime of poisoning was most commonly associated with women, as the provision of food, through which any poisonous substances would be transmitted was traditionally part of a woman's role within the household. It was seen both as a less audacious crime, therefore one that was more easily committed by the 'frailer' sex, and one that presented itself as the opposite of the role of the ideal woman feeding and nurturing her family. This concern with women abusing their position as nurturers was a common theme in early modern England. Of those cases in Nottinghamshire and

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<sup>68</sup> A substantial number of those presented for poisoning were also identified as witches.

<sup>69</sup> *Murther, Murther or A bloody Relation how Anne Hamton dwelling in Westminster bigh London, by poyson murthered her deare husband*, (London, 1641).

Staffordshire where there were 10 women accused of poisoning linked with murder, four stood accused of poisoning their husbands, one stood accused of poisoning another woman, and the victims of five others were unidentified. The one man was accused of poisoning his wife.<sup>70</sup> In all of the cases where the details are known the poison was administered by way of the food.<sup>71</sup> This illustrates the concern that much of society held with regard especially to women who abused their position as those who organised and prepared the family meals. Yet as the evidence shows, women were not only capable of violence by discreet and secretive methods, they were just as likely to attack their victims by more open actions. Here we can see the boundaries between the actual and the theoretical realities of female identity.

Within Nottinghamshire poisoning cases were often linked to witchcraft cases, with both crimes being closely identified with female deviant behaviour.<sup>72</sup> They were also often within families, probably due to the ease of adulterating the food of someone within the same household. On 17<sup>th</sup> April 1640, Bridget Archer, wife of William Archer, was bound by £40 recognisance, on suspicion of placing, 'poison in her husband's broth.'<sup>73</sup> Here Bridget represents the inverse of the 'ideal woman', as portrayed in the sermons, homilies and tracts of the period. Her act would have struck fear into the souls and minds of those men in society who considered, or at least

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<sup>70</sup> Although committed by a male this case emphasises the use of poison in domestic murders.

<sup>71</sup> Dorothy Browne administered poison through 'bowls of poisoned milk' NAO, C/QSM1/67/3, 1<sup>st</sup> October, 1611, Bridget Archer through placing poison, 'in her husband's broth', NAO, C/QSM1/76, 17<sup>th</sup> April 1640, and Thomas Aynsworth through putting, 'ratsbane in pease pottage', NAO, C/QSM1/76, 5<sup>th</sup> October 1640.

<sup>72</sup> For a fuller discussion of the links between witches and food, representing the inversion of good motherhood and nurture, see Macpherson Bardell, K., 'Death by Divelish Demonstration', Chapter Four PhD Thesis, The Nottingham Trent University, (1999).

<sup>73</sup> NAO, C/QSM1/76, p.230.

required, that their wives accepted and observed their subservient position in the hierarchy. It would appear that William survived her attempts to poison him, as, it is hoped, did Elizabeth, the wife of Thomas Aynsworth, of Sutton Bonington. Thomas, a baker, was also bound by £40 on 5<sup>th</sup> October 1640, suspected of 'putting rats bane in pease pottage'.<sup>74</sup> Elizabeth was at this time 'still alive' although she was 'very ill'. The response to Thomas' attempt to murder his wife might have been harsher because he employed the feminised transgression of murder by poisoning. The particular circumstances that preceded these acts of violence are unknown, but the opportunities, especially for women, to carry out these heinous acts, and the subsequent abuse of their position in the domestic hierarchy, are clear.

A further illustration of the perceived link between murder, poisoning, witchcraft and women can be seen in the case of Sybill Gooder, of North Wheatley. Sybill was presented before the quarter sessions court at East Retford, on 11<sup>th</sup> July 1607, charged with a combination of 'poisoning, witchcraft and murder'.<sup>75</sup> Sybill was ordered to appear before the assize court. It is not apparent, from the court transcript, who Sybill stood accused of murdering, whether or not it was someone close to her. The perceived seriousness of her crime is perhaps best illustrated by the fact that seven individuals were bound by £10 each to give evidence against her at the next gaol delivery. The adverse evidence of so many of her neighbours would undoubtedly have led to her conviction. In 1609 Joan Clark, wife of Michael, labourer, also appeared before the sessions, accused of poisoning and witchcraft.<sup>76</sup> Two men, including her husband, were bound by £20 each to 'give answer' at the assizes and three other men, neighbours of

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<sup>74</sup> NAO, C/QSM1/ 73/2 Nottingham 5<sup>th</sup> October, 1640, p.261.

<sup>75</sup> NAO, C/QSM1/66/4, East Retford 11<sup>th</sup> July 1607, p.114.

<sup>76</sup> NAO, C/QSM1/67/3, East Retford 6<sup>th</sup> October 1610, p.130.

Joan's in Sturton, Nottinghamshire, were bound by £40 each to give evidence against the aforesaid Joan at a later session of the assize court.

In January 1615 Margaret Pattrick, wife of Ralph, of Worksop, was presented before the Justices at East Retford for the murder, 'by means of charms and administering poison', of Oliver Bray, clerk.<sup>77</sup> The link here between charms and murder by poison is clear. Edward Bray (probably a relative of the deceased victim), of Barrington Magna, Gloucestershire, gentleman, was bound £20 to prosecute Margaret. The history of the relationship between the Pattricks and Oliver Bray is unknown, but local community knowledge of Margaret's previous reputation must have contributed to this accusation.

One wife who was fortunate not to have been found guilty of this crime was Elizabeth Podmore. Elizabeth, a widow from Audeley, appeared before the Stafford Sessions at Michaelmas, 1610, and was accused of killing her husband, William, husbandman, with malice aforethought, at Audeley.<sup>78</sup> She allegedly gave him a drink mixed with poison, on 5<sup>th</sup> September 1610, so that he died on the following day. However, at the Trinity sessions, 1611, Elizabeth was found not guilty of treason and murder.<sup>79</sup> Without more detail it is impossible to know whether or not this was an example of judicial leniency, or whether the original prosecution was malicious.

Although few cases of murder or manslaughter appear to have been committed in these two counties in the first half of the seventeenth-century, at least as far as the quarter session records indicate, violence was not a rare occurrence. There were many instances

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<sup>77</sup> NAO, C/QSM1/69/2, East Retford 13<sup>th</sup> January 1615, pp. 80-2.

<sup>78</sup> WSL, QS1, Roll 31, Michaelmas 1610, no. 61.

<sup>79</sup> WSL, QS5, Roll 22, Trinity 1611, no. 6.

of violent interpersonal behaviour that usually fell short of murder, but that constituted a serious enough threat to harmonious community relations for neighbours and the authorities to intervene. Despite the prescribed image of the ideal woman being one who was silent, obedient and chaste, women figure significantly within the court records for acts of physical as well as verbal violence. As will be identified, physical violence did not, according to the quarter session records of Staffordshire and Nottinghamshire, appear to belong to males alone. Women participated in acts of physical violence, either alone or alongside their male counterparts, in both counties, and those women who stepped outside of the required behaviour for women in this period, were open to hostile condemnation by their neighbours and those in authority.<sup>80</sup>

The recourse to physical violence arose from a wide variety of situations, ranging from the more personal intra family situations to those wider disputes that focused on community issues. The problems and stresses that existed between communities and petty officials were a part of everyday life in early modern communities, and assaults upon constables, for a variety of reasons, were commonplace in early modern England, and were not committed by males alone. Females too, actively engaged with authority figures such as constables to express their disapproval at acts of imprisonment. Constables were frequently the recipients of local disapproval for their part in apprehending members of society who had fallen foul of the law.

Anne Barber, of Lambley, was one of many who responded to the constable with abusive language.<sup>81</sup> Anne Dawson, wife of John, baker of Mansfield, and Elizabeth Chamberlain, spinster of Mansfield, were two other women who were indicted for good

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<sup>80</sup> For a wider discussion on assault see Curtis, T.C., 'Quarter Sessions Appearances and their Background: A Seventeenth Century Regional Study'.

<sup>81</sup> NAO, C/QSM1/ 75, Newark 13<sup>th</sup> July 1636, p. 156.

behaviour. They had used contemptuous language against the constable of Mansfield when he was attempting to execute a warrant against Margery Chamberlain, widow.<sup>82</sup> She was probably a close relative of Elizabeth's. Alice Scratchard, wife of John, and Margaret Ogden, spinster, of Brinsley, were both presented on 16<sup>th</sup> April 1611, for an assault and attack on the constable. Women were just as inclined to vent their anger on constables as the men within the community. To them, as to the men, these individuals were just neighbours who temporarily had the power to arrest and detain other members of the community. As such they were liable to suffer disapproval and abuse for their actions, with no obvious gender difference when it came to venting anger at these minor members of the social hierarchy.

James Lucy and Richard Reynes, bailiffs, both experienced the anger of their local community, when in April 1615 they attempted to apprehend Roland Wilson for trespass. Forty men and women, 'notoriously and unlawfully attacked Lucy with clubs and knives', and wounded him, 'so that his life is now despaired of'.<sup>83</sup> Local support for the rescuing group was evident when they were found not guilty, by a jury. This perhaps underlines the lack of inclination for individuals to fulfil the role of constable or bailiff. Not only could it be expensive and time-consuming but could also lead them into conflict with their neighbours.<sup>84</sup> Community and interpersonal conflicts frequently erupted between neighbours as well as against those in positions of authority. From those cases presented before the Nottinghamshire and Staffordshire quarter session courts, it does not appear that there was any obvious gender difference in this

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<sup>82</sup> NAO, C/QSM1/69/2, p.108 Nottingham 13<sup>th</sup> July 1614/15.

<sup>83</sup> NAO, C/QSM1/ 69/3, p.140-1 Newark 4<sup>th</sup> October 1614/15.

<sup>84</sup> There are many examples of individuals attempting to avoid serving as constables, or for not fulfilling their duties.

participation. Women as well as men were presented for acts of physical aggression, with male as well as female victims.

In the majority of those cases classified as disturbing the peace, (see Table 3) the victims of both male and female assailants were usually female. Of the 183 females prosecuted in Nottinghamshire and Staffordshire, between 1603-1660, 51% of their victims were women, 22% were men and the gender of the remaining 27% is unknown. This trend is continued when considering the victims of the 111 male assailants for this same crime, with 73% of the victims being female and only 27% being male.<sup>85</sup> It is impossible to know whether the higher percentage of female victims indicates a propensity of the communities to prosecute attacks on women, or whether women represented a much higher proportion of those attacked. Perhaps those disputes involving male victims were brought to a conclusion more swiftly by those involved, thus avoiding the intervention of local communities and the authorities. However, when males were the victims of female family members the domestic hierarchy was seen to be under threat and necessitated outside intervention. Although providing limited figures, the suggestion from both Nottinghamshire and Staffordshire is that women and men were equally likely to be found guilty when accused of assault, regardless of the gender of their victim.<sup>86</sup>

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<sup>85</sup> Again it must be noted that some of these cases could possibly be more disputes of a verbal nature than a physical one.

<sup>86</sup> These findings are only tentative as relatively few cases indicate any eventual judgement, with most simply binding the accused over by recognisance.

When problems occurred between Richard Manners, husbandman, from Annesley, his wife Goody, and Elizabeth Wylde, widow, they were all presented to the Justices.<sup>87</sup> All three were bound by the courts to keep the peace. That the case required the judgement of the court suggests either the longevity of the dispute or a high level of aggression between the two parties. However, it appears that both parties were treated equitably, with no obvious gender bias. The courts had no compunction in dealing with interpersonal disputes when they threatened the harmonious relationships with a community. The magistrates present at East Retford on 8<sup>th</sup> October 1619 were to settle the dispute between Anne Jepson and William Hind, of Morton, and Robert Dobbs and Isabel, his wife.<sup>88</sup> That such active involvement in neighbourhood disputes was common for the Justices is apparent, and that such cases were only the tip of the iceberg is likely, with a considerable percentage of both familial and neighbour conflicts being invisible to the twentieth century eye.

Despite the evidence that the quarter session courts in Staffordshire did not appear to concern themselves as much with the sexual behaviour of women, unlike the Nottinghamshire courts, there are many examples in the Staffordshire quarter session records as to the non-tolerance of female aggressive behaviour within the Staffordshire communities. The image presented is one of equal participation on the part of women within the sphere of violence. The articles presented to the Justices in the Trinity Session, 1616, reveal the circumstances surrounding the breakdown of community tolerance towards Elizabeth, wife of Henry Linton, husbandman, of King's Bromley.<sup>89</sup>

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<sup>87</sup> NAO, C/QSM1/ 70/1, Nottingham 14<sup>th</sup> July 1617, p.75.

<sup>88</sup> NAO, C/QSM1/70/6, East Retford, 8<sup>th</sup> October 1619, p.275.

<sup>89</sup> WSL, QS 9 Roll 52 No.36 Trinity 1616.

The behaviour, which led to up to Elizabeth's appearance in court, dated from four years previous. Deeds that had perhaps been ignored or forgotten until she finally exasperated her neighbours' patience, at which point all past misdemeanours were recalled. Three years past Elizabeth had 'violently struck an ox of John Woolley of Brombley'. Four years past, 'she beat two horses of John Charles with a pitchfork', and about a year past, 'she set upon the son of John Bird of "the woodend", in King's Bromley and thrust his mouth full of cow dung'. As well as this litany of events Elizabeth had committed assaults and batteries on two neighbours as well as her father-in-law and mother-in-law. The list of her misdemeanours continued with accusations that she, 'walketh often in the night tyme with fier in her hands', and 'puts men's cattle into their neighbours' grounds'. The final accusation listed was that she was 'supposed to have plotted with one Saunders, a piper, to murder her husband'. In this final act Elizabeth had placed herself in an untenable and unacceptable position, that of being outside of the control of her husband, and threatening his life and position in society. Despite the range of accusations made against her, the case against Elizabeth was surprisingly found 'ignoramus'.

The complexity of relationships that occasionally resulted in violence can perhaps be glimpsed in the case involving Joan Smythe, late of Pipe Hill, spinster, Mary, wife of Nicholas Bull and the aforesaid Nicholas Bull. Joan, servant to Nicholas, was bound by recognisance to appear before the sessions, and meanwhile to keep the peace against Mary.<sup>90</sup> At the same sessions a petition addressed to the justices, and signed by Mary, was presented. Its contents stated that Joan, had previously,

Slandered the petitioner accusing her of incontinence with her son, and has thrown a pail of milk over her, in order to prevent

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<sup>90</sup> WSL, QS 12A Roll 57 no.8 Michaelmas 1617.

a reconciliation between her and the said Nicholas from whom she has lived apart.<sup>91</sup>

The case continued with articles being presented against Joan claiming that she had incensed Nicholas Bull against his wife and caused her to be questioned by the Dean of Lichfield with regards to her incontinency with her son. The outcome of this was that Mary was instructed to purge herself for her sin. Joan was to be held responsible for Nicholas' treatment of his wife. The articles presented by Mary stated,

Item the said Nicholas out of a wicked and inhumayne Mynd caused the petitioner his wife to be manacled with a plate and locke about her bodye in such sorte that she was in danger of her life untill she maide the same known to her neighboures whoe burst the same from about her.<sup>92</sup>

Here again the disruption was centred around notions of female sexuality. Joan drew on the accepted contemporary ideas regarding female sexuality to construct her insults. This was not the end of the conflict, for at the next meeting of the sessions Joan was committed to gaol until she could find sureties for her good behaviour.<sup>93</sup> There is no record of any prosecution of Nicholas for his mistreatment of Mary, his wife. The culpability for all of the misdeeds clearly resided solely with Joan, and although she was probably the instigator of the disputes, the guilt was not hers alone. The verdict and apportionment of blame in this case rests clearly on gendered ideas appertaining to appropriate male and female behaviour.

Some of the cases appearing before the Justices arose from malicious claims, following

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<sup>91</sup> WSL, QS 12A Roll 57 No.33 Michaelmas 1617.

<sup>92</sup> WSL, QS 12A Roll 57, Michaelmas 1617, no.34.

<sup>93</sup> WSL, QS12A Roll 58 Epiphany 1618, no.103.

ongoing disputes and conflicts between neighbours. The dispute between the Webbs and the Sheldons of Willenhall probably had some basis in truth but the particulars of which became distorted and exaggerated as feelings and tempers grew.<sup>94</sup> At the Easter meeting of the Staffordshire Sessions Ann, wife of William Webb alehousekeeper of Willenhall, was bound by recognisance to appear and keep the peace against Mary, wife of Timothy Sheldon of Willenhall, mason. The Webbs responded with a certificate from a significant number of the inhabitants of Willenhall. Sixteen men, neighbours of the Webbs, including the constable, two churchwardens and the minister all signed the certificate, stating that,

William Webb, and Anne his wife, have lived honestly and peacefully in Willenhall for the past seven years and the conviction of the said Anne for breach of peace against Mary wife of Timothy Sheldon proceeds from malice.<sup>95</sup>

Following this, articles were to be preferred by oath against Mary, wife of Timothy Sheldon of Willenhall, by William and Anne Webb and others, testifying that, 'Mary Sheldon assaults and reviles Anne Webb, and is a woman of evil repute and a disturber of the peace'.<sup>96</sup> It was this final sentence that would probably have sealed Mary's fate, for reputation, one's 'good fame and name', formed the basis of all later judgements. Even if the truth of the particular situation was unknown to Anne's neighbours her good name and Mary's reputation as a woman of evil repute provided all the 'truth' necessary.<sup>97</sup>

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<sup>94</sup> WSL, QS12A Roll 59 Easter 1620, nos. 59, 60.

<sup>95</sup> WSL, QS12A Roll 59 Easter 1620 no.33.

<sup>96</sup> WSL, QS12A Roll 59 Easter 1620 No. 34.

<sup>97</sup> See Chapter One for a more complete discussion of the importance of reputation in early modern England.

The fact that husbands were often deemed responsible for their wives' behaviour is evident in those cases where they were bound by recognisance to guarantee their wives' good behaviour.<sup>98</sup> Richard Bennett of Drayton Bassett, husbandman, was bound by £10 to ensure that his wife Joan would keep the peace towards Ann, wife of Simon Lucas, yeoman of the same parish. Simon too, was bound by £10 to ensure that Ann his wife would keep the peace towards Joan, Richard's wife.<sup>99</sup> The causes of the conflict are not evident, but it is clear that 'inappropriate' female behaviour contributed towards it. Despite the prescriptive literature, these women engaged with each other on their own terms, not those prescribed by the sermons and tracts that presented the image of the idealised woman.

Of all 10 cases presented before the Nottinghamshire justices for wounding or beating, men were the assailants.<sup>100</sup> One case involved three men beating another man. All of the three men were bound by £40 to appear at the next sessions to answer the charge. The accused all originated from the same village with the victim living nearby. No final judgement is indicated within the court records. Women also participated within acts such as this, but without exact and precise categorisation of criminal acts these could often be encompassed within the alternative categories of assault or disturbing the peace. Women represented 50% (see Table 3) of those accused of wounding and beating in Staffordshire, illustrating their equal likelihood to resort to this form of physical violence. In all of the cases involving women as the perpetrators, 67% of their

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<sup>98</sup> Although this is a commonly accepted situation for this period, there is no evidence that this in fact occurred in Nottinghamshire, where miscreant females whether married or not appeared and were judged in their own right. It appears that attitudes towards women were different in Nottinghamshire than in Staffordshire.

<sup>99</sup> WSL, QS 15B Easter 1628 p.5.

<sup>100</sup> These ten cases have been incorporated within the broader category of assault.

victims were also female, demonstrating perhaps that certain spaces within early modern life were gendered, where women engaged more with other women. Therefore they were more likely to come into conflict and dispute with other women. There does not appear to have been any clear gender differences in the way women participated in acts of physical violence, with the levels of brutality and aggression being indistinguishable from men's. It was only that the opportunity to participate in it that differed.

The construction of the ideal early modern woman denied any likelihood of females engaging in acts of a violent, aggressive nature. In contrast to this, the evidence extracted from the various court records studied would suggest that physical violence was not the prerogative of males alone, but that the circumstances surrounding the various violent acts varied according to one's gender, and opportunity. In addition the way in which wider society responded to the acts had close links to societal expectations of appropriate male and female behaviour. Jane, the wife of Thomas Parker, of Amerton, stepped outside of the appropriate model of behaviour for early modern women when she attacked Katherine Gryme, widow, at Hickson on the 20<sup>th</sup> December 1628.<sup>101</sup> Jane exhibited a level of aggression more usually associated with males. She was presented to, and found guilty by, the courts for 'assault, affray and battery with bloodshed', and because with 'malice aforethought' she, 'did strike and thruste out the left eye of the aforesaid Katherine with a firebrand'. One of the key issues in this case is that it was considered to have taken place, 'with malice aforethought'. The same distinction was employed when ascertaining whether or not causing another individual's death was classified as murder or manslaughter. That this

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<sup>101</sup> WSL, QS16 Easter 1629 p.28.

was then employed in relation to an act of violence committed by a woman increases its significance.

At the same meeting of the Justices, Jane's victim, Katherine Gryme, petitioned the court. Her petition reveals further aspects of the case, showing that Jane not only abused her, but had also entered Katherine's house to do so. This invasion of Katherine's home increased the seriousness with which the attack was viewed. Since the attack Katherine had lost the sight in one of her eyes, and 'had spent all her means in an unsuccessful attempt to recover her sight'.<sup>102</sup> Katherine therefore requested satisfaction according to the statute. This dispute could certainly have repercussions not only for Katherine, and for Jane, but also for the wider community if Katherine, a widow, looked to them for financial support.

For women the boundaries between physical and verbal violence were not always clearly defined. For example in June 1621 Jane Vaviss, the wife of Robert Vaviss of Gotham, was presented to the church court for striking a woman in the church yard. She admitted the charge claiming that, 'upon occasion of evill speeches given unto her by Hellen Smith' she struck her.<sup>103</sup> Jane clearly did not see any peculiarity in this physical response to verbal abuse, both were tools at the disposal of both men and women.

As has already been discussed in Chapter One, maintaining a good reputation was of paramount importance in early modern society. Many aspects of daily life relied upon one's good reputation being intact. As will be shown later in Chapter Five both men and

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<sup>102</sup> WSL, QS16 Easter 1629, p.52.

<sup>103</sup> Transcriptions of the Proceedings of the Court of the Archdeaconry of Nottingham 1565-1675, vol. 3, p.405, 2<sup>nd</sup> June 1621.

women used the church courts to defend their good names. However, occasionally individuals responded to slanderous reports by the use of more direct physical action. This method of defending one's good name was not the preserve of men alone. That women too responded in a more direct way can be illustrated by the case of Eleanor, wife of John Botte. On 1<sup>st</sup> June 1629, Eleanor confessed that on finding Richard Twogood asleep on the highway on the previous Wednesday she, 'fetched her daughter from the house of Mistress Agard to mark him in the ear with a pair of scissors'.<sup>104</sup> Anne Botte, her daughter, confessed the same. The dispute developed when Richard's mother Elizabeth came to help him and his sister, at whom Ann Botte was throwing stones. In response Ann took Elizabeth by the throat and kicked her. For this Elizabeth asked for a warrant of good behaviour. There is little evidence in this case that women were less inclined towards violence than their male counterparts.

## **Conclusion**

The sections of society upon which this chapter has focused are predominantly those of the lower and middling orders who might have felt less inclined to discretion and control.<sup>105</sup> Individuals who participated actively in everyday life in local communities in the early modern period would probably have been more inclined to respond instinctively to the pressures of daily life. This in turn frequently led to their participation in spontaneous acts of aggression. Their intuitive physically violent responses demonstrate no obvious significant gender bias in terms of the act itself. What can be more clearly identified are the different situations in which men and women

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<sup>104</sup> WSL, QS16 Michaelmas 1629 p.62.

<sup>105</sup> This is not because those of the upper sections of society were disinclined towards violence, but primarily because their misdeeds were more likely to have been dealt with by different means and would not have disrupted the daily life of the locality to such a great degree.

found themselves, and these were mainly as a direct response to their gendered roles in society. The allocation of certain activities and locations as specifically male and female resulted in superficially gendered responses and activities. As has been shown, both women and men were equally capable and likely to resort to violent physical acts in ways that could be classified as 'male' responses, but in fact these responses became identified as 'male' because they more accurately represented actions more typical of male spheres of life.

Men and women both experienced domestic violence as victims and perpetrators. The differences between the two were societal expectations of appropriate behaviour for men and women. This in turn led to a gendered response by individuals and those in authority, particularly towards spousal murder. From the evidence presented earlier it could be suggested that women were more inclined to use poison as a method of murdering their husbands than men were likely to use it to murder their wives. It is possible though, that both men and women had an equal propensity to use this often undetected method of ridding themselves of an unwanted spouse, but that only the unexplained deaths of husbands were identified as poisonings, and the subsequent blame allocated to their wives. This apportionment of the blame would have appeared intrinsically logical as women, especially wives, were 'known' to be potential poisoners. In this way the myth of the female poisoner would have perpetuated itself.<sup>106</sup>

From the range of cases presented before the secular courts in Nottinghamshire and Staffordshire, the motivation for acts of physical violence does not appear to be

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<sup>106</sup> This can only be a tentative suggestion as within the quarter session court records there was no occasion to report 'unsuspicious' deaths of wives. A further investigation into coroner's reports may give some indication as to whether this was likely to have occurred.

particularly gendered. Both men and women responded to marital infidelities with physical violence, but the way in which society responded to such cases reflects contemporary opinion as to the appropriate sexual conduct of men and women. In those cases where women resorted to violence in a direct confrontation of their husband's sexual behaviour, the language used to describe the event still identified female sexuality as the cause.

The high incidence of female participation in acts of violence, as assailants as well as victims, challenges any supposition that women can be seen only as victims, whether passive or otherwise. The idealised image of female behaviour denied women any participation in violent acts. However, the reality of existence in everyday life meant that both instinctive and considered responses to conflict and trouble led to immediate and premeditated acts of physical aggression on the part of women as well as men. It is evident that on many occasions women more closely resemble the violent aggressor than the passive victim, as in the case of Dorothy, wife of Thomas Bartholomew of Oakemore. In articles presented to the court for a warrant of good behaviour against Dorothy, William Morris stated that,

He fears that she will do some bodily harm to himself, his wife and children, for the following reasons:- On the 4<sup>th</sup> June she assaulted him on the highway reviling him for half a quarter of a mile. She threatened him and his family because he recently caused her husband to be arrested on a 'latitat'. She lately came from 'a far country' and upon any offence committed by her, is likely to flee 'without giving satisfaction to the law'.<sup>107</sup>

Although married, Dorothy did not accept society's identification of herself as a quiet

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<sup>107</sup>WSL, QS19 Roll 27, Trinity 1631, p.60.

and submissive woman, under the guidance and authority of her husband. Upon her husband's apprehension she had no compunction in venting her anger upon William Morris, whom she blamed for his arrest. In response to her attack William sought protection from the Justices. The most significant factor here, contributing to the granting of the warrant, was the fact that Dorothy had only recently arrived in the neighbourhood and was therefore more likely to disappear again, or was not considered to be an integral part of the community.

Society in this period was not unused to experiencing violence but murder was still abhorrent to most of society's members, especially when it drew upon methods which invoked great fear and alarm, and also when it was associated with other immoral acts. The way in which an act of violence was responded to appeared, largely, to depend on whether or not the act constituted a threat to the hierarchical social order. Wives reversing the gender order by abusing, physically or verbally, their husbands inverted this most fundamental of structures in society, and received the most aggressive responses.

This chapter has demonstrated that females engaged in physical violence on similar terms to males. The idealised construction of the passive female does not bear any relation to the reality. However, notions regarding female behaviour did influence attitudes towards female violence. This is particularly apparent in poisoning cases. As Garthine Walker comments, the 'poisoner was attributed with characteristics which were integral to a pervasive negative female stereotype - weak, foolish and wicked'.<sup>108</sup> Having considered female participation in physical violence, Chapter Five will examine

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<sup>108</sup> Walker, G., 'Crime, Gender and Social order in Early Modern Cheshire', p. 147.

the more generally accepted expression of female aggression, verbal violence, which early modern moralists and conduct book writers saw as a particularly female activity. They highlighted the perceived links between loose female tongues and female sexual immorality, and those females who subverted the gender order by scolding their husbands were judged to have also threatened their masculinity.

## Chapter Five

### 'TIS THE GUISE OF THE HARLOT TO BE FOREVER

#### BABBLING'<sup>1</sup>

#### Sexual Slander, Scolding and Barratry

As the writer Matthew Griffith wrote in 1633, 'she that is talkative, is not likely to prove either a quiet wife, or a wise [wife] for 'tis the guise of the harlot to be forever babbling'. Female restraint even in language was fundamental to the prescribed behaviour for the ideal woman, and was linked to sexual morality. As has already been discussed in Chapter Four, the period 1603-1660 was generally considered to have been facing a 'crisis of order', and this concern often focused upon order within the family. Many contemporary writers clearly identified the close relationship between order in the family and order in the state.<sup>2</sup> In this way, the family defined the ideals of the gender system as relations between husband and wife provided a model for all relations between men and women.<sup>3</sup> Within this 'crisis' the image of the disruptive argumentative female figured largely.

Verbal violence was one way in which social order came under threat. Although there can often be no absolute distinction made between verbal and physical violence, as many aggressive acts relied on both of these responses, the circumstances, the language used within, and responses to verbal violence can demonstrate both the differences and

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<sup>1</sup> Griffith M., *Bethel: Or a Forme for Families*, (London, 1633), p.261, cited in Gowing, L., 'Women, Sex and Honour: The London Church Courts, 1572-1640', p.28.

<sup>2</sup> Gouge, W., *Of Domesticall Duties: Eight Treatises*. See Amussen, S.D., 'Gender and the Social Order, 1560-1725', for a wider discussion of this.

<sup>3</sup> See Amussen, S.D., *An Ordered Society*, p. 95.

similarities between physical and verbal violence. According to James Sharpe defamation, including scolding, emerged as the dominant business in the consistory court at York between 1560-1640.<sup>4</sup> It has also been suggested that, 'the amount of litigation aroused by slander was a phenomenon of the age'.<sup>5</sup> For the purpose of this study, defamation will refer to slander which was spoken, not libel, which was written. According to Blackstone, libels were a direct threat to the public peace and in this way they were analogous to challenges to fight, however, they were also referred to by him as, 'injuries affecting a man's reputation'.<sup>6</sup>

Within this chapter the 'crimes' of scolding, barratry and defamation, focusing on sexual slander, will be considered. Individual cases of verbal violence will demonstrate many societal attitudes that can often reveal particular gender differences. Although men and women may engage equally in verbal and physical violence, the gendered construction of male and female identities which are evident within these demonstrations of aggression reveal the way in which the gender order in society functioned. Within the cases of sexual slander it will become clear as to how contemporary perceptions about female and male sexual conduct informed and directed constructions of male and female identity. The insults used by both men and women reflect common attitudes towards both genders. Through an examination of the language used, and the position of

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<sup>4</sup> Sharpe, J.A., 'Defamation and Sexual Slander in Early Modern England: The Church Courts at York', p. 8.

<sup>5</sup> Marchant, R.A., The Church Under the Law: Justice, Administration and Discipline in the Diocese of York 1560-1640, p. 62.

<sup>6</sup> Blackstone, W., Commentaries, vol. 3, pp123-125 and vol. 4, pp. 150-151, p.139.

men and women in relation to it, it will be evident that one's gender was a deciding factor in the way an insult was constructed, and responded to.

Verbal violence, often as a part of other forms of aggression, was mostly presented before the secular courts. These cases were often first dealt with by the manor or leet courts. Cases that had already been presented to such minor courts, but had not been resolved, or those that were considered necessary to take directly to a higher court of justice, appeared before the quarter session courts. The difference between the two types of prosecution appears mainly to be in the way appropriate gendered behaviour was constructed. Although most scolds were presented before the secular courts, some individuals found themselves presented before the church courts. The cases in which being a 'common scold' was the accusation saw women being presented for offences such as slander, tale-bearing, and stirring-up of strife, as well as brawling and abusive behaviour.<sup>7</sup> However, as will be shown, none of these activities was the preserve solely of women.

The majority of the cases of verbal violence that appeared before the church courts drew attention to the inappropriate sexual conduct of women. Those appearing before the secular courts saw women and men presented for similar, if not identical behaviour, with the emphasis being placed upon how appropriate that conduct was for either gender. Although the distinction between the two types of prosecution is slight the emphasis on the former relied on women defending their honour, which depended almost solely upon their sexual reputations. In contrast those cases dealt with by the

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<sup>7</sup> Ingram, M., "Scolding Women Cucked or Washed": A Crisis in Gender Relations in Early Modern England?, p.48.

secular courts condemned acts that were generally seen as disruptive, but based their condemnation upon gendered constructions of prescribed female conduct.

The secular court records reveal women participating in verbal violence in quite substantial numbers, especially within urban areas.<sup>8</sup> This may be a reflection of the numbers of women participating in this act of aggression, or it may be a reflection of societal attitudes towards them. These activities were seriously frowned upon and brought forth action by the community, either by informal responses such as a charivari and skimmington rides, or more formally by the secular or church courts.<sup>9</sup>

Most representative of the image of those accused of verbal violence is the scold. David Underdown puts forward the view that as a part of the 'crisis of order' there was a severe crisis in 'gender relations'.<sup>10</sup> His argument is based mainly on literary sources including pamphlets, ballads and plays, but he also draws on court records. It is within similar court records that this phenomenon will be examined for Nottinghamshire and Staffordshire, between 1603-1660. First, though, popular contemporary attitudes towards scolding women will be examined through contemporary literary sources and pamphlets.

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<sup>8</sup> See Underdown, D., 'The Taming of the Scold', pp.116-136.

<sup>9</sup> See Ingram, M., 'Ridings, Rough Music and Mocking Rhymes in Early Modern England'; Kent, J.R., 'Folk Justice' and Royal Justice in early Seventeenth-Century England: A 'Charivari' in The Midlands', pp.70-85.

<sup>10</sup> Jones, K. & Zell, M., 'Bad Conversation? Gender and Social Control in a Kentish Borough, c. 1450-c. 1570', p.11.

One of the famous witchcraft cases from Staffordshire in the seventeenth century involved the 'Boy of Bilson', although this eventually proved fraudulent.<sup>11</sup> The accused woman, Joan Cocke, was singled out for this accusation primarily because she fitted the stereotype of the witch. The 'possessed' boy, William Perry, on being encouraged to pretend that he had been bewitched, was instructed to accuse a woman whom he 'had heard to be accounted a *Witch*'. After the discovery of his fraudulent claim William was asked why he had chosen Joan Cocke. He answered that he 'named this woman [Joan Cocke] because she was a woman ill thought of, and suspected for such like things'.<sup>12</sup> Joan represented a disruptive non-conforming woman, who was, of a scolding humour, and was known to be disorderly because she was an 'obstinate *Recusant*'.<sup>13</sup> This image of Joan almost led to her execution, so great was the stigma that was attached to this stereotype.

This stereotype of the scolding woman was developed and defined within the pamphlets and ballads of the period. In *Poor Robin's True Character of a Scold*, the male author categorised such women.<sup>14</sup> He dedicates his work, 'To all Domineering Dames, Wives Rampant, Cuckolds Couchant, and Henpecked Sneaks, in City or Country'.

A rank scold is a devil of the Feminine gender: a *serpent*,  
perpetually hissing, and spitting of Venom.

He continues his diatribe against such a woman highlighting all of the probable ways in

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<sup>11</sup> *The Boy of Bilson*, (London, 1622).

<sup>12</sup> 'The Boy of Bilson', p. 70.

<sup>13</sup> Plot, R., *Natural History of Staffordshire*, p. 283.

<sup>14</sup> Winstanley, W., *Poor Robin's True Character of a Scold: or The Shrews Looking-glass*, (London, 1678).

which she could and would disrupt her community. He compared all women unfavourably with men,

That though every *man* be, yet many a *woman* is not,  
*A Sociable Creature*: for there is no Good humour  
Can charm her to be Civil or Agreeable.

Finally such a woman, and this included most women, had been the ruin of many a man,

Bewicht to their own Ruine by the Charms of Women, for  
their punishment contriv'd this Monster *call'd A Scold*.<sup>15</sup>

This image is crucial to an understanding of societal responses to women accused of verbal abuse, especially when their target was male. Such pamphlets as this were powerful disseminators of knowledge in early modern England. Another of the most effective mediums that reached a wide, and often illiterate audience, was the ballad.

Many ballads in this period drew upon the threat to gender order by highlighting those husbands who had been subjected to scolding by their wives. They were based on actual experiences, as can be seen in the numbers of women presented to the secular and ecclesiastical courts for subverting the gender order, which in turn made them more persuasive. These ballads in turn reinforced the links between association of scolds, ducking and cucking-stools. As Laura Gowing highlights, within this popular literature the cardinal offence of many wives was not allowing their husbands to live in peace.<sup>16</sup> For this they could legitimately be subject to physical violence from their husbands in response to their words. The 'Water Poet' John Taylor added to the literature on the 'woman question' in the late 1630s, with work such as the *Divers Crabtree Lectures*, and

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<sup>15</sup>Winstanley, W., *Poor Robin's True Character of a Scold*, p.7.

<sup>16</sup> See *A New yeares gift for Shrews*, cited in Gowing, L., *Domestic Dangers*, p. 208.

the *Women's Sharpe Revenge*.<sup>17</sup> In one of the Crabtree Lectures he discusses the generally accepted commonplace about women:

Ill fares the hapless family that shows  
A cock that's silent, and a Hen that crows.  
I know not which live more unnatural lives,  
Obedient husbands, or commanding wives.<sup>18</sup>

The effect of such ballads on the male population was probably cathartic, and the laughter they provoked would have served to reinforce the gender control within communities.<sup>19</sup> By provoking humour the ballad restated the shared values of its audience.<sup>20</sup> Also the ballads were mostly didactic, offering advice to concerned husbands on how to avoid being in the dilemma of the weak and impotent male presented in the ballad. The picture often portrayed is one of a world turned upside down. This can be seen in *My Wife Will Be My Master*, where the husband takes on the housewifely duties,

I wash the dishes, sweep the house, I dress the wholesome dyet;  
I humour her in everything, because I would be quiet.<sup>21</sup>

In this world the scolding wife has inverted the 'natural' order, both in her personality and her actions. Such images as this informed male audiences of the dire consequences if they lost control of their wives, and provided ways to avoid a like situation. It is from such popular images of scolding and vocal women that the context into which actual female behaviour must be placed can be seen.

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<sup>17</sup> Underdown, D., 'The Taming of the Scold', p.118.

<sup>18</sup> Cited in Underdown, D., 'The Taming of the Scold', p.118

<sup>19</sup> For an analysis of a range of ballads and their effect on the audience see Foyster, E., 'A Laughing Matter? Marital Discord and Gender Control in Seventeenth-Century England'.

<sup>20</sup> The audience with control and power in this instance would be male.

<sup>21</sup> *My Wife Will Be My Master*, The Roxburghe Ballads, in Chappell, W., ed., (The Ballad Society, 1871-80), vol. II, p.189.

## Scolding and barratry

Scolding was one type of verbal abuse that has been seen as gender-specific. Verbal abuse itself was clearly not solely a female activity, as many studies of defamation cases presented before the church courts have shown, but despite this, the associations between women and verbal abuse, and men and physical abuse have survived. As Garthine Walker comments, 'that vituperative women were the counterparts of physically violent men has become something of a cliché'.<sup>22</sup> During the seventeenth-century the term scold became almost exclusively applied to women, and some historians have assumed that scolding was solely a feminine activity.<sup>23</sup> This assumption denies that the distinction between barratry, a 'male' crime, and scolding was extremely blurred.

In his article on the phenomenon of scolding, David Underdown notes that Nottingham Borough Sessions had an especially high incidence of women being presented for scolding, in the early seventeenth-century. The authorities responded to the majority of those accused by ducking them, or by ordering them to be 'cucked'. For example, of the twelve women and two men presented by the jurors as scolds in 1620, eleven were ordered to be ducked, and three to be cucked. In 1621 three scolds were ordered to be ducked. Again in 1624, another eighteen individuals suffered the same punishment.<sup>24</sup> However, this is not reflected in the quarter session minutes in the surrounding rural areas of Nottinghamshire, with only 26 women and 2 men being presented as either a 'common scold' or a 'scold' between 1603-1660. Of these, 54% of those presented

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<sup>22</sup> Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', p.71

<sup>23</sup> Underdown, D., 'The Taming of the Scold', for a fuller discussion of this

<sup>24</sup> Stevenson, W.H. & Raine, J. eds., Records of the Borough of Nottingham. IV. (Thomas Forman & Sons, Nottingham, 1889).

appeared before the East Retford sessions, which covered a predominantly a wood-pasture area, 21% appeared before the Nottingham sessions, which covered an area that included both urban and arable areas, and 25% before the Newark sessions, a predominantly arable area.<sup>25</sup>

Despite the low number of presentments the high proportion of cases of scolding prosecuted before Nottinghamshire quarter session courts from the west of the county would perhaps support David Underdown's hypothesis that scolding was predominantly an urban phenomenon, or one most evident in wood-pasture areas.<sup>26</sup> It could also reflect that urban and different rural communities dealt with this problem in different ways. The more tightly controlled, and more closely observed, closed, arable, rural communities maintained order through 'the existence of social conditions conducive to the establishment and maintenance of deferential relationships between superiors and inferiors'. When order did break down the majority of such cases were possibly dealt with informally. Whereas the social systems in the wood-pasture and urban areas led to what the 'better sort' saw as a worrying degree of independence of spirit.<sup>27</sup> Both urban dwellers, and those from particular areas of the counties, were perhaps, as Quaife comments, 'free, mobile, anti-clerical and the fodder for religious and social radicalism'.<sup>28</sup> The authorities in these communities perhaps needed the more formal restrictions offered by the court systems.

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<sup>25</sup> Wrightson, K., English Society 1580-1680, p.171-2, for a discussion of the levels of social order in 'open' and 'closed' parishes.

<sup>26</sup> Underdown, D., 'The Taming of the Scold', p.116.

<sup>27</sup> Wrightson, K., English Society. 1550-1680, p.172.

<sup>28</sup> Quaife, G.R., Wanton Wenches and Wayward Wives, p.16.

Most of those accused of scolding were, according to Underdown, female, poor, widows or outsiders.<sup>29</sup> However, the evidence from Nottinghamshire and Staffordshire does not completely support this view. The majority of the women prosecuted in Nottinghamshire were married. The perceived threat from such women, especially in Nottinghamshire, appears far greater when the victim of excessive female assertiveness, was male, especially a husband. Within such cases can be witnessed the fear and anger experienced when women not only stepped outside of their prescribed roles, but also ridiculed and humiliated their spouses. Whether or not this phenomenon was on the increase in this period is not particularly relevant for this study, as what will be shown are the terms upon which women and men defamed each other, or the way in which male and female verbal abuse was constructed and carried out.

As can be seen from Table 4, of those accused of verbal abuse presented before the Nottinghamshire quarter session courts between 1603-1660 38% were male, and 62% were female. There was a lower percentage of men presented before the Staffordshire Justices, with only 23% of those accused being male with 77% being female. It is not possible to infer from this that men in Staffordshire either did not engage as much as women in verbal abuse, or that Staffordshire communities were not as concerned with male verbal violence, as were those in Nottinghamshire. However, there is a strong suggestion that in both counties there was a strong condemnation of verbal disputes engaged in by married women, who were constrained by close societal observations. This was particularly true when those married women usurped the prescribed gender order by threatening their own husbands.

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<sup>29</sup>Underdown, D., 'The Taming of the Scold', p.120

**Table 4**

**APPEARANCES BEFORE THE NOTTINGHAMSHIRE AND  
STAFFORDSHIRE QUARTER SESSIONS FOR VERBAL ABUSE 1603-1660**

	NOTTINGHAMSHIRE		STAFFORDSHIRE		TOTAL	
	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
COMMON BARRATRY*	14	1	5	4	19	5
COMMON SCOLD	2	19	0	3	2	22
SCOLD	0	7	0	4	0	11
SLANDER **	1	1	0	9	1	10
LEWD & EVIL CONVERSATION	4	7	0	2	4	9
ABUSIVE WORDS	0	2	2	2	2	4
GOSSIPING	0	1	0	0	0	1
<b>GENDER TOTAL</b>	<b>21</b>	<b>38</b>	<b>7</b>	<b>24</b>	<b>28</b>	<b>62</b>
<b>TOTAL</b>	<b>59</b>		<b>31</b>		<b>90</b>	

\* There were also four men and their wives prosecuted for barratry

\*\* This includes 1 man and 1 woman prosecuted for defamation

Of those women accused of being scolds who appeared before the Justices in both counties, 66% were married, 10% were widows, 3% were spinsters and the marital status of the remaining 21% was unknown.<sup>30</sup>

One such married woman was Elizabeth Spayne, of Barnby, wife of Nicholas. Through her continually disruptive conduct she created a reputation for herself as 'scold'. She was first presented to the East Retford meeting of the Justices on the 15<sup>th</sup> July, 1608, as a 'common scold'. She then re-appeared in January, 1610, alongside Mistress Neild, wife of John. They were both labelled as 'common scolds'. Elizabeth and another women, Christine Burnett, widow of Barnby, appeared again at a later session on 13<sup>th</sup> July 1610, on the same charge. Although Elizabeth was continually presented to the courts for her bad conduct, some responsibility was allocated to Nicholas, her husband, as he was later fined 6d, possibly for his lack of control of his wife.<sup>31</sup> Elizabeth's continual disruption to community life would have firmly established her reputation as a scold.

Married woman who were accused of threatening the gender order by abusing their husbands were subject to particular condemnation. One such woman accused of verbal abuse against her husband was Isabel Nutt, wife of John Nutt of Arnold. Isabel epitomised the scolding woman by, 'being a scold in her own home'. Despite the fact that her husband John also fell foul of the law by breaking the 'assize of ale', Isabel's crime was far greater.<sup>32</sup> Her conduct was outside the bounds of the prescribed female

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<sup>30</sup> This breakdown assumes that the 3% designated as spinsters were all unmarried. However, this may not have been the case. See Wiener, C.Z., 'Is a Spinster an Unmarried Woman?', American Journal of Legal History, (1976), vol. 20, pp. 27-31. for a thorough discussion of this,

<sup>31</sup> See NAO, C/QSM1/ 67/1, p.47, East Retford 15<sup>th</sup> July, 1608; C/QSM1/67/3, p.146 and p. 178, East Retford, 13<sup>th</sup> July 1610.

<sup>32</sup> NAO, C/QSM1/ 68/3, p. 111.

role as 'passive, silent and obedient', and in her abuse of her husband she had openly contested the gender order. Another case that saw a woman abusing her husband was that of Joan Smythe. The behaviour that brought Joan before the Justices led to her husband leaving her,

First the said Joane is a woman of so unquiet behaviour  
that her husband refuseth to live with her but hath forsaken  
the country.

The list of misdemeanours continued culminating in her being, 'notoriously suspected for a witch'. She was also presented for, 'procuring many idle suits against her neighbours, - is a common scold'. In this list of misdeeds Joan fulfilled many of the stereotypical images of the disruptive, disorderly woman, made worse by the fact that even her husband could no longer live with her.<sup>33</sup> The Justices were persuaded by the petitions against Joan and granted an order for good behaviour. None of the above women ascribed to the image of a deferent woman and wife, and when the social and gender order were both threatened those in authority responded accordingly. Even in those cases where husbands and wives were both presented for misconduct the greater crimes were deemed to be the wives'.

In 1635 both John Gough and his wife Margaret were both brought before the Justices at Stafford. They both had a long list of misdemeanours against them, and both individuals were represented as being of evil and disorderly behaviour, and as representing a threat to the harmony of the community. The crimes listed against them included,

Keeping a disorderly alehouse: keeping unlawful games  
of shovelboard and cards and entertaining much children  
and servants night by night to their great discredit and

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<sup>33</sup> WSL, QS 4 Roll 16, 3<sup>rd</sup> October 1609, no. 52.

hindrance: and drinking and tippling continually both at morning and evening prayertime both on Sundays and Holy Days.<sup>34</sup>

Margaret alone stood accused of the more 'female' crimes of scolding and being of 'light carriage'. Her neighbours claimed that they, 'cannot by any means live in peace with her', as she was a woman of 'such ill-carriage'. Margaret did not conform to the housewifely image of the ideal woman. According to her neighbours she,

Will give a maid to do her worke that she may every day scold and curse with her neighbours: and upon Saint Peter's day last she came into the town and scolded two houses together at the least.

Finally Margaret was known to abuse her own husband and call him a 'cuckhold'. Although both of them had clearly exhausted the patience of the local community, Margaret had not only disrupted the neighbourhood, but had also overturned the gender order by abusing her husband and calling him a 'cuckhold', which his neighbours agreed he was. Her crime, therefore, was far greater. The key issue here was the loss of power experienced by cuckolded men. This in turn threatened the basis of household order.<sup>35</sup>

Scolding and verbal abuse by women was not only reserved for their husbands but was a part of wider community relationships. The origins of a dispute that brought Anne Duncalfe, wife of Edward, of Lapley, into conflict with Roger Turner, of Wheaton Aston, are unknown. The conflict resulted not only in their appearance before the Justices but also in the involvement of the wider community. Anne petitioned the court for Roger to be bound over. He had, according to Anne, previously charged her with

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<sup>34</sup> SRO, Q/SR/220, p.69 Michaelmas 1635.

<sup>35</sup> Gowing, L., 'Gender and the Language of Insult in Early Modern London, p.16

high treason, having without warrant earlier placed her in the stocks for 'a night and halfe a daie'. At the same sessions the inhabitants of four local communities, Lapley, Aston, Blymhill, and Brereton, put forward a petition for the punishment of Anne Duncalfe. They stated that she was a,

Disturber of the peace, and who was presented at the last great leet in the manor as a common drunkard and scold.<sup>36</sup>

They also requested the release of the bond of good behaviour against Roger Turner, which had been granted because of the 'dangerous speeches against him by the said Anne'. One hundred witnesses, both male and female, signed or made their mark on the petition. Anne had clearly offended her immediate and wider neighbourhood with her conduct. What is also evident from this petition is that initially scolding women may have been dealt with by the leet courts, or by other means, and perhaps only those women who continued in their disruptive behaviour were presented to the quarter session court.

When women stepped outside the bounds of appropriate female conduct other women as well as men became their judges. In 1632 twenty female witnesses supported the petition put before the Stafford Justices by Dorothy, 'a very honest poore woman'. In it she describes one Elizabeth Hockley, wife of Hugh of Stone (a robber by trade) as, 'a most filthy scould and ... .. disordered woman'.<sup>37</sup> These women sought, by supporting Dorothy, to distance themselves from the inappropriate behaviour of Elizabeth. By referring to her as 'a filthy scould', sexual impropriety has been included in the

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<sup>36</sup>WSL, QS12 Roll 66 Epiphany 1622, p.58 & 64.

<sup>37</sup> SRO, Q/SR/230, Roll 61, Translation 1637, no..31

accusation. As has already been shown in chapters two and three women were active in the reinforcement of appropriate female behaviour. Faced with the presentation of such behaviour those in authority responded accordingly.

The punishment of scolds is considered to have become more severe after 1550, with some areas resorting to 'cucking' the offenders, whereas in others the 'branks' or 'scold's bridle' was the preferred means of punishment. The punishment of these women appearing before Nottinghamshire or Staffordshire quarter sessions in this period, was an erratic affair. It ranged from no punishment at all to being committed to gaol or the House of Correction. One of the most illuminating forms of punishment for women found guilty of scolding was to be 'cucked'. This form of punishment led to public shame and humiliation, the purpose of which was to provide a suitable deterrent for other potentially disruptive women.<sup>38</sup> The scold's bridle was used in the West Midlands including Staffordshire by the late seventeenth-century. In 1686 Robert Plot described the use of and the rationale behind of the scold's bridle in preference to the cucking-stool.

They have such a peculiar artifice at New-Castle and Walsall, for correcting of Scolds, which it does effectually and so very safely, that I look upon it as much to be preferred to the Cucking-Stoole, which not only endangers the health of the party, but also gives the tongue liberty 'twixt every dipp.<sup>39</sup>

Plot balances his concern for the health of the victim with approval of the effectiveness of preventing speech. This method of punishment was, according to Tim Harris, 'not unknown in the South, but it was far more common in the counties north of the Trent'.<sup>40</sup>

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<sup>38</sup> Underdown, D., 'The Taming of the Scold', p.119.

<sup>39</sup> Plot, R., History of Staffordshire, (1686, reprinted 1973), p. 389.

<sup>40</sup> Harris, T. ed., Popular Culture in England c.1500-1850, p.35.

Public humiliation and shame were also an integral part of this form of punishment. That this form of punishment continued to be viewed as effective throughout the period can be seen when the authorities in Carlisle responded to a woman preaching. Dorothy Waugh, a disciple of James Parnell, was committed to prison. They placed the scold's bridle over her head. Dorothy herself described this experience stating that it,

Was like a steel cap, and my hat being violently plucked off, which was pinned to my head, whereby they tore my clothes to put on their bridle, as they called it, which was a stone weight of iron .... And three bars of iron to come over my face, and a piece of it was put in my mouth..... to keep me from speaking.<sup>41</sup>

The dual intention of silencing Dorothy and making an example of her were synonymous with the purpose of punishing scolds in this way.

In the early seventeenth-century 'cucking' was the most characteristic method for the punishment of scolds. Its usage varied according to the personalities and inclinations of those in each area that had the authority to implement its application. Despite the individual, geographical, social and political, interpretations of the act of cucking, or ducking, Stuart legal commentators avoided the localised peculiarities by stating that, 'scolds are to be ducked over head and ears into the water in a ducking-stool'.<sup>42</sup> It is unclear what the precise meaning of the term to be 'cucked' signified in the two counties under review, in each specific case. On occasions it referred to the offender being publicly displayed in the 'cucking' stool; sometimes it involved defiling them with mud or other undesirable substances; and sometimes ducking them into a pond or stream.

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<sup>41</sup> *A Relation concerning Dorothy Waugh's Cruel Usage By The Mayor of Carlisle*, Anonymous, 1656, cited in Aughterson, K., *Renaissance Woman*, p.249.

<sup>42</sup> Gardiner, R., *England's Grievance Discovered*, p. 111. cited in Ingram, M., 'Scolding Women, Cucked or Washed', p.59.

Throughout the period legal handbooks stipulated that all manors and other similar jurisdictions should provide and maintain a cucking-stool as well as stocks and pillories. The use of cucking-stools was reinforced in the homily against 'contention and brawling'.<sup>43</sup> This was also emphasised in popular literature such as ballads. Within these the identification of scolds as female is stressed. The ducking of a seventeen-year-old wife is the subject matter of *The Cucking of a Scold*.<sup>44</sup> There were many references within the quarter session records to the upkeep of the cucking-stool, frequently the suggestion was that it was in a state of disrepair, and had therefore not been used for some time.<sup>45</sup> In Nottinghamshire between 1603-1660 there were just four references in the quarter session minutes to women being cucked.<sup>46</sup>

On 10<sup>th</sup> January, 1620, an order was made that Anna, wife of Martin Sugar of Arnold, 'be dipped tomorrow in ye Cuckstool for scolding'.<sup>47</sup> Similarly in 1624 the court at East Retford issued a warrant for Grace Heefield, wife of Henry of Worksop. She had appeared on a recognisance for being a common scold, and if she did not supply adequate security she was to be committed to the House of Correction. This route was to be taken as, 'according to neighbours' evidence she had been cucked but without result'. This was probably following an earlier appearance for being a common scold in

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<sup>43</sup> Griffiths, J., ed., 'The two books of homilies appointed to be read in churches', (Oxford, 1859), pp. 145-6, cited in Ingram, M., 'Scolding Women Cucked or Washed', p. 59.

<sup>44</sup> *The Cucking of a Scold*, London, 1615).

<sup>45</sup> The stool at Southampton was in such a state in 1601, See Underdown, D., 'The Taming of the Scold', p.124. There are also many references within the Chamberlain's Accounts for the Borough of Nottingham to payments for the repair of the cucking stools; 'Item for mending the cuckstoole and cord...vjd, (1618) and 'Item for rops for the cuckstoole...iijd', (1621), in Stevenson, W.H. & Raine, J. eds., Records of the Borough of Nottingham IV 1547-1625, pp. 356, 376.

<sup>46</sup> See the case of Anne Sugar, NAO, C/QSM1/70, 4<sup>th</sup> October 1619, p. 257; C/QSM1/72, Grace Heefield, 9<sup>th</sup> April 1624, p.107; NAO, C/QSM1/72, Jane Comber, 14<sup>th</sup> July 1623, p..35.

<sup>47</sup> Copnall, H.H., Nottinghamshire County Records, p.33.

July 1619.<sup>48</sup> Henry, her husband, was no stranger to the court either. He was also involved in many interpersonal disputes, including one for being a disturber of the peace, especially against Richard and Margaret Cocks. His disrespect for the court was evident when he left it in contempt, without giving security.<sup>49</sup> However, the court's eventual resort to 'cucking' was applied only in the case of Grace.<sup>50</sup>

It was not until after the civil wars that a reference to the poor state of the cucking-stool at Southwell appears. In 1654 there was a complaint that the 'cucking-stool... for the punishment of scolding, and brawling women' at Southwell, in Nottinghamshire, was destroyed;

Said Cucking Stool in the tyme of the late warres was broken and destroyed, the want whereof hath emboldened and encouraged many lewd and turbulent women to continue in their unquiet and unpeasable behaviour to the great disquiete of their neighbours.<sup>51</sup>

This shows the perception that cucking was perceived to be an effective deterrent for scolding women. The cucking stool at Southwell was subsequently repaired, and a year later one Elizabeth Banes, spinster of Southwell, was ordered, 'to be cuckt in the Cucking Stool at Southwell'.<sup>52</sup> Elizabeth's behaviour typified that of the archetypal scold. She,

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<sup>48</sup> NAO, C/QSM1/70/5, p.250, East Retford 16<sup>th</sup> July, 1619 and C/QSM1/72/1, p.107, East Retford 9<sup>th</sup> April, 1624.

<sup>49</sup> NAO, C/QSM1/ 73/1 p.45, East Retford, 6<sup>th</sup> October 1626

<sup>50</sup> Grace's participation in community life is again illustrated in 1623 when she was the prime witness in a presentation before the archdeaconry courts for adultery. NAO, DDTS 14/26/18, 22<sup>nd</sup> July, 1623, p.132. Despite her own earlier and continued brush with authority she felt no compunction at exposing and humiliating two other members of her community. She made assurances to the court that one Robert Farrand of Worksop and one Gertrude Horsepole, had committed adultery and she herself had seen them. This in turn led to a defamation suit in which Robert Farrand presented Grace Heefield.

<sup>51</sup> NAO, C/QSM1/12 10<sup>th</sup> October 1654.

<sup>52</sup> 3<sup>rd</sup> October, 1655. Copnall, H.H., Nottinghamshire County Records, p.33.

By reason of her continuall brawling and extraordinary  
turbulent spirit doth soe daily vex and disquiet her neighbours  
that they cannot follow their callings and occasions in quietness  
to their extreame trouble and vexation.

Although this study concerns itself primarily with prosecution of scolds by the secular courts, some women accused of scolding appeared before the church courts. These courts, as has already been discussed in Chapter One, exercised a good deal of criminal jurisdiction in this period.<sup>53</sup> Between 1603 and the cessation of the church courts in 1642, 34 women and only one man, appeared before the church court in Nottinghamshire, accused of being scolds, or common scolds. Almost 87% of these appeared in the first three decades with just over 13% appearing after 1630. There does not appear to be any obvious reason for their appearance before the church courts instead of the secular courts. Perhaps it was only the most disruptive cases that appeared before the Justices. All of those appearing, did so only once and were usually punished by penance. There are no references within the church records to 'cucking' or 'ducking'.

Most of those accused pleaded not guilty, as did Alice Smithe of Clarborough, but, immediately after she began to scold those in court. Following this she was ordered to perform a penance.<sup>54</sup> The punishment of another scolding woman, Katherine Foxegale, was possibly somewhat harsher. Katherine was accused of being,

A daylie scolde and curser of her neighbours and for  
watching upon Saint Markes even at nighte laste in the  
church porche to presage by divelische demonstracion the  
death of somme neighbour within this year.<sup>55</sup>

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<sup>53</sup> It is important to note that sin and crime were frequently indistinguishable in this period.

<sup>54</sup> NAO, DDTS 14/26/20, East Retford, 15<sup>th</sup> January 1627-8, p.40, f 60d

<sup>55</sup> NAO, DDTS 14/26/11, 1608, p.111, f 69d.

For this, or her failure to appear before the court, Katherine was excommunicated, a severe punishment for the religious. This punishment might have equally been directed against her act of watching in the church porch. This was part of a death divination that was well known in much of England, and therefore closely associated to witchcraft.<sup>56</sup> Katherine's reputation would have already been damaged as between 1601 and 1603 she had been previously presented to the ecclesiastical court for fornication, and cursing and scolding.<sup>57</sup> The identification of the 'lewd and dissolute' woman with scolding, witchcraft and female sexuality are apparent in this case.<sup>58</sup>

Another situation that brought both men and women into conflict with the church can be seen in the case of the wife of Richard Pie, of Laxton. She appeared before the church court, 'for scouldinge, railing and cursing against the minister'.<sup>59</sup> A multitude of reasons could have led to her attack on him, not necessarily that she was previously of a scolding nature. One possible explanation is that this area of north Nottinghamshire was home to many Puritan families, who objected to the way the church services were conducted. What it shows is the active involvement of women in other issues outside the family home. The background to the dispute is unknown but there is no evidence of the submissive dependent woman in this or other similar responses.

When referring to the power of the church courts J.S. Cockburn states that, 'the ultimate sanction was excommunication, and so the courts lacked teeth to deal with the

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<sup>56</sup> Radford, E. & M.A., Superstitions of Death and the Supernatural, (London, 1978), p. 121, cited in Macpherson Bardell, K., 'Death by Divelish Demonstracion', p. 54.

<sup>57</sup> NAO, DDTS 14/26/7, f193d, 289d, 322d, 329d.

<sup>58</sup> For a thorough discussion of this in relation to witchcraft see Macpherson Bardell, K., 'Death by Divelish Demonstracion'.

<sup>59</sup> NAO, DDTS 14/26/15, Newark, 15<sup>th</sup> June, 1616, p.145, f 52.

irreligious'.<sup>60</sup> This perhaps points to one of the possible reasons for the prosecution of some scolding cases in the quarter session courts rather than in church courts. If excommunication was not considered as the ultimate threat then dealing with disruptive individuals through the medium of the church courts would be viewed as largely ineffectual. Following on from this then recourse to the secular authorities would have been seen as essential. It is probable that the individuals visible in the quarter session minutes had probably already exhausted the patience of their community, and recourse to the more effective secular law would have been considered to be the next step.

Having identified the behaviour that was commonly classified as scolding, a predominantly female activity, it is important to consider the crime of barratry. There are many indictments or presentments for being, 'a common barrator', or inciting to strife. A common barrator was an instigator of suits and quarrels, amongst his neighbours.<sup>61</sup> As has already been suggested, this study aims to show that verbal abuse by both men and women was not dissimilar. Only the labelling of said activities varied, and this was dependent upon the gendered construction of acceptable male and female conduct. Male participation in disruptive verbal abuse was seen as a normal part, albeit undesirable one, of male conduct, whereas similar behaviour by women, especially when it threatened the patriarchal order, was viewed in a different light. Many of the cases of scolding labelled women as deviant by using derogatory language that relied on sexual imagery to castigate them. It is clear though that the conduct of many of those accused of being scolds was not dissimilar to that of men who were presented for

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<sup>60</sup> Cockburn, J.S., ed., Crime in England 1550-1800, (London 1977), p.32.

<sup>61</sup> Copnall, H.H., Nottinghamshire County Records, p.43. It is also apparent that within Nottinghamshire this was a label that was applied solely to males.

barratry. A further complication is that sometimes men too were accused of scolding, and women were presented as common barrators.<sup>62</sup>

One case that came before the Staffordshire Justices in 1654 where the woman was prosecuted for 'scolding', clearly matches the stereotype of a 'common barrator'. Triphernia, wife of Thomas Croyden of Wolverhampton, had articles against her in which it stated that she abused several neighbours and she was furthered described as being,

Drunk, swearing, common scould and slanderer of her neighbours and disturber of the peace. Common profaner of Lord's day. Sells ale without a licence.<sup>63</sup>

It is difficult from the above statement to identify the gender of the perpetrator of the various misdeeds, other than for the fact that 'her neighbours' are mentioned and that the term scold was almost exclusively applied to women in this period. The individual offending their neighbours in this way was just as likely to have been male as female.

In Staffordshire the line between being presented for scolding or for barratry was extremely blurred, with both men and women being presented for similar behaviour, sometimes designated as scolding and sometimes barratry. Although no men in Staffordshire, and only two in Nottinghamshire, were labelled as scolds, women were just almost as likely to be accused of being common barrators as they were of being

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<sup>62</sup> Only one man was labelled as a scold in Nottinghamshire or Staffordshire for the period 1603-1660. However the term 'common barrator' seems to have been applied almost equally to men and women in Staffordshire. This follows the pattern from attitudes in Staffordshire towards sexual crime, see Chapter Two, where men and women appear to have been treated far more equitably than in Nottinghamshire.

<sup>63</sup> SRO, Q/SR/287, Translation 1654, pp.16-19.

common scolds.<sup>64</sup> Joan Smythe was described as a 'common barrator and disturber of the peace' in 1609.<sup>65</sup> Her conduct reveals that the boundaries between barratry and scolding were extremely blurred. What is clear is that this behaviour, whether barratry or scolding was unacceptable to her neighbours. Many of the barratry cases appearing before the Staffordshire Justices involved both men and women, and in all of the cases here were husbands and wives. Within these there is little suggestion of particularly gendered behaviour. In all cases the accusation was based on generally disruptive conduct.

### **Sexual slander**

Another area of verbal abuse in which it is possible to identify gender differences and the gendered construction of male and female identity, was defamation. Within defamation suits the plaintiffs sued, not so much for verbal violence experienced by them, but for the possible damage done to their reputations, and as has already been identified in Chapter One, a good reputation was key to many aspects of social life in early modern England. One's reputation was the central theme of gossip, which was an integral part of community life.<sup>66</sup> Contemporaries were aware of the evils of gossip, linking it to possible challenges to the social order.<sup>67</sup> Gossip, which began life as intimate exchanges between friends or neighbours, often entered the public arena and attacked the reputation of another. In this way defamation suits can be seen as a 'natural', almost inevitable outcome of the everyday experience of gossip.

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<sup>64</sup> See the case of Samuel Birt, NAO, C/QSM1/ 74/3, p.420, Newark 16<sup>th</sup> April, 1634, and Thomas Townrow, C/QSM1/ 72/1, p.92, Nottingham 5<sup>th</sup> April, 1624.

<sup>65</sup> WSL, QS4 Roll 16, nos. 36,51,52,53. As has already been discussed alongside this 'male' crime she was suspected as a witch and a common scold, both almost exclusively female crimes.

<sup>66</sup> Gluckman, M., 'Gossip and Scandal', cited in Sharpe, J.A., 'Defamation and Sexual Slander', p.19.

<sup>67</sup> Gouge, W., 'Of Domesticall Duties', p..251,

Those suits that brought into question notions of masculine honour, such as honesty in business, were increasingly presented before the secular courts. Only one case appearing before the church courts between 1603-1642, in which the cause of the suit is referred to, dealt with issues other than sexuality. In this case concerning Elizabeth, wife of William Hurste of Walesby, the cause of the conflict is quite clearly indicated. She was presented to the church court where she admitted that, ' she said to Mr Smithe, I am no more a drunken woman than you are a drunken vicar'. Mr Smithe either wanted to avoid exposure of his drunken conduct, or he must have considered that the presentment was punishment enough, as Elizabeth was then dismissed.<sup>68</sup> It is probable that her outburst followed an attempt by Mr. Smithe to reprimand her for her unbecoming conduct.

By far the largest percentage of cases involving defamation appeared before the church courts.<sup>69</sup> These courts dealt mainly with those cases that appertained to issues that came directly under the jurisdiction of the church, such as sexual conduct.<sup>70</sup> Therefore, most cases of defamation appearing before the church courts involved sexual slander, and it is this aspect of defamation that will be focused upon.<sup>71</sup> When examining the sexual slander cases presented before the courts in the seventeenth-century it is evident that those cases that were fought to defend the honour of women were fought on different grounds to those defending the honour of men. Central to the litigation within the

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<sup>68</sup> NAO, DDTS 14/26/17, East Retford, 14<sup>th</sup> July, 1618, p.11, f 78d.

<sup>69</sup> Haigh, C.A., 'Slander and the Church Courts in the Sixteenth Century', Transactions of the Lancashire and Cheshire Antiquarian Society, (1975), vol. 78, pp.1-13.

<sup>70</sup> As the seventeenth-century progressed some counties, including Nottinghamshire, saw more cases of sexual misdemeanours being tried at the quarter session courts.

<sup>71</sup> For a wide discussion of the reasons individuals instigated defamation suits see Martin Ingram, Church Courts, Sex and Marriage in England, 1570-1640, Chapter 10.

church courts was women's sexuality. Whether or not women fought the suits, women's sexuality informed most of them. Women and men accused other women of sexual misdemeanours, and even in those cases in which male sexual conduct was discussed the women involved were still held culpable. This can be seen in the following case. In 1631, Gervase Willimot defamed Thomas Wilson by saying to him, in public, that, 'a cobbler fucked thie mother and thou art a bastard'.<sup>72</sup> Here, Gervase's reputation was dependent on his mother's sexuality.

As the upholders of the nation's morals it was important for women to behave in an appropriate manner, as stipulated by men, and those breaking this code were frequently accused of immoral behaviour. This was one area of the legal system in which women were represented in considerable numbers, either as plaintiffs or defendants. It is probable that this is because, 'this was one of the few spheres of life in which they could possess any sort of reputation, good or bad'.<sup>73</sup> As was shown in Chapter One, one's reputation was so important that individuals felt it necessary to defend their good name in the courts. Sexual slander and the subsequent damage to one's reputation could have a significant impact on marriage opportunities, especially for women.

Even those cases that began as disputes surrounding other non-sexual issues frequently drew on sexual imagery to add weight to other insults being exchanged. Sexual insults were founded on particular language that depended on the difference between male and female conduct. Many, if not most, cases involving women involved terms such as 'whore' or 'queane'.<sup>74</sup> In turn these women saw the need to defend their honour through

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<sup>72</sup> NAO, DDTS 14/26/20, p.223, f 27d.

<sup>73</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire', p. 46.

<sup>74</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire', p.47.

the courts, especially the church courts. It is clear that when women defended their reputations through defamation suits, their primary concern was with the protection of their reputation for sexual probity, not for their adherence to the other aspects of the 'ideal woman' such as obedience, submissiveness, or being a good housewife.<sup>75</sup> These records show both women and men reiterating a construct of whoredom that was founded on the variety of sources about female honour.<sup>76</sup> These ideas, in turn, directed their insults against each other as can be seen in the following case.

In 1630 a dispute between Anne Dallie, wife of Edward, and Elizabeth Wagge, escalated and drew Anne's daughter into the altercation. Anne, speaking to Elizabeth said,

Thou art Bonie Orson's whore. Thou art a jade and a palsie  
headed whore in the parish of Strelley and in the monthes of  
June or Julie laste Paste.<sup>77</sup>

Anne, her daughter, also entered into the dispute by repeating everything that her mother had said to Elizabeth. Both the mother and daughter had responded to an attack, by Elizabeth, on the mother's reputation. Elizabeth when speaking to Anne, the wife of Edward Dallie, had stated that, 'thou art a whore I have never a childe but it is like the father'. Anne asked who her child looked like, to which Elizabeth responded, 'thou hast one like John Heywood'. All of these women drew on images of deviant female sexuality to insult each other, even when their sexual conduct was not the issue. Bonie Orson, although mentioned, is only used to construct the insult against Elizabeth. His conduct was not in question in this dispute. Keith Thomas sees this concern with women's sexuality as an integral part of the construction of one's reputation, as part of

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<sup>75</sup> Amussen, S.D., 'Gender, Family and the Social Order, 1550-1725', p. 208.

<sup>76</sup> Gowing, L., 'Women, Sex and Honour: The London Church Courts', p.21.

<sup>77</sup> NAO, DDTS 14/26/20, 12<sup>th</sup> October 1630, p.210, .f. 1.

the 'double standard'.<sup>78</sup> Martin Ingram stresses that perhaps this view is too extreme as the church stressed the culpability of both men and women for fornication and adultery. As has already been seen, despite this apparent equal allocation of blame to both men and women, the reality was that women were still held culpable.

One case of defamation that appeared before the secular courts, because it dealt not with issues of sexual morality but with a secular crime, theft, was that of John Hancocke against Ellen Barnes. At the Trinity Sessions in 1631, articles against Ellen were entered. She had allegedly spread the rumour that John Hancocke had received a stolen sheep. She also accused another man, Thomas Boughley, of taking corn from the bags that were brought to his mill.<sup>79</sup> This story was one that in the context of a period of dearth and hardship was likely to appear credible to their neighbours, and as such it was imperative for the two men to defend their honour through the courts. Honour for these two was based, not in their sexual conduct as was a woman's, but in their honesty in business. Ellen was cited as, 'a wicked woman who stirs up dissension among her neighbours'.

Another such case began with Margaret, wife of Thomas Fowell, slandering Thomas Burne by calling him a thief. Thomas Burne saw the need to defend his reputation from this stigma. To give more weight to his case, one Thomas Cowper, probably a neighbour of them both, made an oath that,

The said Margaret is a notorious whore, that she receives,  
wandering rogues, sturdy beggars and tinkers.

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<sup>78</sup> Thomas, K., 'The Double Standard', 1959, p.210.

<sup>79</sup> WSL, QS19, Roll 27, Trinity 1631, p.57.

Another neighbour, Margaret Hurst, stated that Margaret Fowell threatened to accuse Thomas Burne of having ravished her.<sup>80</sup> Even though this case was founded on non-sexual grounds, the basis upon which Margaret Fowell's guilt was constructed was her deviant female sexuality. Against such a background female accusations would have no legitimate grounds. Although contemporary ecclesiastical theorists stressed the culpability of both men and women for sexual misconduct, especially adultery, the language of the defamation suits show that such ideas had not been absorbed into popular attitudes.<sup>81</sup> As has already been identified, the defamation suits that came before the church courts were almost entirely about sex, honour and reputation, the latter two being founded very firmly around notions of sexual conduct. Defamation of women relied almost universally upon their sexual misconduct. Whereas for men, for whom there were no equivalents to such words as whore, jade or queane, defamation suits in the church courts relied on sexual insults constructed around female sexuality. Words such as cuckold, bawd or whoremaster all depend upon notions of female sexual misconduct.

The language of verbal abuse reveals much about the way in which society allocated appropriate roles for males and females, and the labels attached to any individuals engaging in verbal abuse signify the popular perceptions of those participants. Examples from the Nottingham church courts can best illustrate the language used by both men and women against other men and women. This reveals the way in which both genders structured insults. Which in turn reflects those issues that held particular

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<sup>80</sup> WSL, QS12D Roll 78, Epiphany 1625, no. 37.

<sup>81</sup> Puritan writer William Gouge noted that women's reputation should not be based on their chastity. 'Of Domesticall Duties: Eight Treatises', p.128, and the Elizabethan sermon on whoredom focused

significance for female and male identity in this period. These cases are typical in that the accusations contained within them all reflect contemporary concern with female sexual honour.

In the case of Alice Strutte against Agnes Tibshelf of Sutton in Ashfield, Agnes admitted,

That she did say to the said Alice Strutte, 'Thou art a scurvie whore, since Whitsontyde laste paste, in the fields of Hucknall of the Parishe of Sutton in Ashfield of the Archdeaconrie of Nottingham'.<sup>82</sup>

Agnes was sentenced to perform a penance and pay the costs. The way in which Agnes defined Alice's conduct as deviant conformed to that established by the many sermons, homilies and prescriptive texts of the period. A second illustration of this phenomenon can be seen in the case of Sarah Lambley and William Widdowson.<sup>83</sup> In this case William himself had publicly declared that he, 'had binne naughtie with the said Sarah'. This public declaration of his and Sarah's inappropriate sexual conduct should have posed an equal threat to both their reputations. It is unclear whether or not William's accusations were true. However, it is clear that the consequences of such a public declaration of his conduct did not threaten William's future prospects in the same way as it did Sarah's. For his public defamation William had to pay the costs of the case and to face subjection to perform a public penance. His penance though was for defaming Sarah, not for his inappropriate sexual conduct. On occasions such as this where men are prosecuted for claiming sexual involvement with a woman, their speech shows no

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completely on the male fornicator, 'Sermon against Adultery', p. 116, cited in Gowing, L., 'Women, Sex and Honour: The London Church Courts', p.29.

<sup>82</sup> NAO, DDTS 14/26/9, 13<sup>th</sup> January, 1604, p.41.

<sup>83</sup> NAO, DDTS 14/26/9, 9<sup>th</sup> June, 1604, p.118.

sign of guilt towards their sexual conduct. It is evident that men and women did not participate in illicit sexual relations on the same terms.

When publicly defaming Bridget Butler, Humfrey Jackson of Kirkby Woodhouse, also drew on many of the commonly used sexual insults. He told her that she was a, 'common curtailed whore, thou art a wedded man's whore...'. In this attack he highlighted both her commonly accepted reputation as a whore, and also her involvement with a married man, by which means she threatened the disruption of the social order.<sup>84</sup> In the same year Rosamund Mann, of Barnby on the Moor, also based her diatribe against Bridget Hill, wife of Nathaniel, on the same common perception of female sexual conduct. She accused her of being,

A filthy jade, thou art a common whore, thou laydest  
thine arse three tymes in an afternoon under another  
man's besides thine husbände. Thou art a tempting whore  
and I will prove it.<sup>85</sup>

The suggestion in this attack is that Bridget by being a 'tempting whore' proved threatening to Rosamund. To give weight to her evidence and provide it with more authenticity she provides considerable detail as to Bridget's behaviour. This characteristic is fairly common within accusations of sexual impropriety made by women.<sup>86</sup>

Anne Thornley, faced by the prospect of societal condemnation of her sexual conduct, sought redress through the church courts. Her reputation was brought into the public

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<sup>84</sup> NAO, DDTS 14/26/20, October, 1635, p.211, f 1d.

<sup>85</sup> NAO, DDTS 14/26/20, October 1635, p.212, f 1d.

<sup>86</sup> See Gowing, L., 'Gender and the Language of Insult', p.5.

arena when in 1604 Richard Mee declared in a main thoroughfare in Nottingham centre, that Anne,

Waste my whore six years since, and that these words were spoken within one monthe nowe paste and in a streete called Walsler Gate in the parishe of St. Marie in Nottingham.<sup>87</sup>

The significance of the possible damage to an individual's reputation based on one's gender is evident within such incidents as this. Richard positioned himself within this not as perpetrator of inappropriate sexual conduct, but simply as the other party present on the occasion of Anne's downfall. Again the culpability for sexual conduct was allocated solely with Anne, the female. Richard's subsequent punishment was a fine of 7s 6d, and public penance, a punishment based not on his part in this illicit sexual activity, but for putting another's reputation into question in the public arena, and disturbing the public peace.

Roger Lambe, of Farndon, also had no fears about discussing his sexual conduct publicly. When speaking of Elizabeth Stevenson, the wife of John of Heath, Derbyshire, he said, 'I have fucked her fourtie tymes'. This public declaration would have had very different consequences for Elizabeth and Roger. Her reputation would probably have been damaged irreparably, whilst his would have been unchanged. That he could speak openly in this way about his conduct reveals his secure place in the sexual system.<sup>88</sup> The key issue would appear to be, as Laura Gowing points out, that women and men had a different notion of honesty, and that the significance of sexual conduct in these two notions varied greatly.<sup>89</sup> The double standard that Keith Thomas focused upon is

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<sup>87</sup> NAO, DDTS 14/26/9, p.75, f 93d, 9<sup>th</sup> June, 1604.

<sup>88</sup> Gowing, L., 'Gender and the Language of Insult', p.8

<sup>89</sup> Gowing, L., 'Gender and the Language of Insult', p.3

definitely evident within disputes such as this.<sup>90</sup> This propensity for men to openly flout their sexual misdemeanours brings into question why men at other times felt it necessary to defend their sexual reputations in the church courts.

By examining the particular cases presented before the Nottinghamshire courts some tentative conclusions can be made. Of the 11 cases in which men felt it necessary to defend their names against sexual slander, all of them focused primarily on denigrating female sexuality. Four of the cases were defended in an attempt to avoid a paternity suit, and the maintenance costs that this would incur.<sup>91</sup> At the time that these cases occurred, the quarter session courts were witnessing an unusually high incidence of bastardy cases, in which strenuous efforts to allocate maintenance costs to putative fathers were being made.<sup>92</sup> Four of the men faced accusations of adultery, or fornication, with married women, which itself could have brought them before the courts as they were not only behaving inappropriately, but were also threatening the security of another man's household and hereditary line. One was accused of fornication with his maid, which could have later led to a paternity suit. The remaining two men were accused of offering married women payment for sexual favours.<sup>93</sup> Again these women were married and under the protection of their husbands. For all of these men the threat to

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<sup>90</sup> Thomas, K., 'The Double Standard', pp.195-216.

<sup>91</sup> See NAO, DDTS 14/26/16, *Humfrey Snowden v Alice Morehouse*, pp.190-1, and DDTS 14/26/16, *John Whitehead v Barbara Browne*, p.14. This case later appeared in the quarter session minutes where Barbara eventually was prosecuted for accusing three men, including John Whitehead of fathering her child. NAO, C/QSM1/70/3, East Retford 12<sup>th</sup> October, 1617, then on 28<sup>th</sup> April 1620, one of the others was proved to be the father, C/QSM1/71/1, p.42.

<sup>92</sup> See Chapter Two for a fuller discussion of this.

<sup>93</sup> See *Lawrence Hollis v Thomas Elson*, N.A.O. DDTS 14/26/18, 12<sup>th</sup> December, 1622, p.27, f 24d., and *Richard Coe and Ellin Eaton*, N.A.O. DDTS 14/26/17, 4<sup>th</sup> November, 1618, p.68, f 140d.

their reputation was not their main concern, but the possible legal and financial consequences that might have followed public disclosure.

In many of the sexual slander suits the language used contains words such as 'occupy', highlighting that men were the active participants in sexual relations. By the use of words such as this, male interest in women as property can be seen. Women are labelled as vessels to be used by men for their sexual gratification. The same inference can be taken from the use of terms such as 'use'. Again women are seen objects to be used by men and for men. When insulting Lawrence Hollis, by repeating information given to him by one Marie, the wife of John Orson, Thomas Elson claimed that,

She meaning Marie .... did saye that you the said Lawrence Hollis would have given her X11 d to have occupied her and these wordes as he saith he did speake in greate anger in the tythe barne of Whatton.<sup>94</sup>

By speaking to Thomas about this, Marie placed her reputation in a precarious position, by revealing that her honesty, located only her in her sexual conduct, was already open to question, at least in the mind of Lawrence Hollis. Humfrey Rabie also staked ownership of Cicilie Huson's body when he reported that, 'he hath had the carnall 'use' of the bodie of Cicilie Huson, wife of John', to four of his neighbours at Chilwell.<sup>95</sup> This means of expressing sexual involvement was used only by men with reference to women. Rarely, and not at all in Nottinghamshire, do women refer to their part in sexual acts in a dominant way such as this. Even on the occasions when women speak of being used, they express their part in the sexual act as passive not active. In 1606 Frances

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<sup>94</sup> NAO, DDTS 14/26/18, St.Peter's, Nottingham, 12<sup>th</sup> December, 1622, p.27, f 24d.

<sup>95</sup> NAO, DDTS 14/26/18, 11<sup>th</sup> October, 1623, p.170, f 69.

Harveyman was prosecuted for defamation as she had stated that, 'he hath used me he is a whoremaster and hath committed fornication with me'.<sup>96</sup>

Another feature of the construction of sexual slander was the frequent references to sexually transmitted diseases. In the suit for defamation brought by Katherine Blanterne, William Ludlam admitted that he said to the plaintiff,

Thou art a verie baggadge and a scomme of the town and she is in the town that tolde me that a man out of the gaole met thee at the bridge and burned thee, and thou art a burned arsed whore.<sup>97</sup>

Phrases such as 'burned arsed whore', 'pepper-like jade', and 'curtailed whore' all referred to the effect of the pox on these women, and eventually on men if they engaged in illicit sex with them. Defamers emphasised their derogatory comments regarding other's sexuality by referring to the various forms of sexually transmitted diseases. As Laura Gowing comments, men were not subject to such grotesque descriptions of their members. 'In the language of abuse, men's genitals were objects of desire, women's were objects of repulsion'.<sup>98</sup> Although the original fault could be seen to lay with 'the man out of the gaole', his place in the hierarchy is by definition lowly, as he was already designated as criminal, and by association Katherine absorbed both his and her deviancy. Women also referred to other women in this way. In 1606 Prudence Healinge, when speaking of Mary Jennings stated that she,

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<sup>96</sup> NAO, DDTS 14/26/9, 2<sup>nd</sup> May, 1606, p.146, f 166d.

<sup>97</sup> NAO, DDTS 14/26/9, 3<sup>rd</sup> March, 1604, p.112.

<sup>98</sup> Gowing, L., Domestic Dangers, p. 82.

Heard that a boye that drew wine at the signe of the castle  
before his death said that she, the said Mary Jennings had  
burned him.<sup>99</sup>

Continuing the same theme of burning, George Walker, alias Else, referred to Margaret Calton as, 'a jade and a pepperlike jade'.<sup>100</sup>

As has been shown women, as well as men, used images of deviant female sexuality to construct accusations against other women. A combination of a need to conform to the expected image of the 'good woman', and an unconscious inculcation of the ideas about female uncontrolled sexuality, probably led to accusations by women of other women in a desire to distance themselves from anyone who was not conforming. At the Trinity quarter sessions meeting in 1630, the inhabitants of Leeke, Staffordshire, entered a petition against Isabel, wife of William Foarde of Leeke. In it they stated that Isabel,

A woman of lewd life and conversation, who was presented  
in the court of Leeke as a breeder of dissension has lately  
slandered certain honest gentlewomen of the town saying,  
'that some of them have been lately layde of the French Pocks  
with many other odious termes'.<sup>101</sup>

The petition emphasises the difference between Isabel, a 'lewd woman' and the other 'honest gentlewomen', one representing the image of the ideal woman, and the other the inverse.<sup>102</sup>

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<sup>99</sup> NAO, DDTS 14/26/9, 14<sup>th</sup> March, 1606, p.188, f 161d.

<sup>100</sup> NAO, DDTS 14/26/10, 8<sup>th</sup> June, 1605, p.59.

<sup>101</sup> WSL, QS17 Roll 21, Trinity 1630, p58.

<sup>102</sup> This mirrors the approach taken in accusations of witchcraft, where the witch was contrasted with the 'ideal woman'. For a wider discussion of this see Macpherson Bardell, K., 'Death by Divelish Demonstracion', chapter one.

Plaintiffs in defamation cases against women frequently relied on representing the defendants as 'lewd' and 'dissolute' women. When John Stafford petitioned the Justices at Michaelmas, 1617, for a warrant of good behaviour against Frances Barnett, he opened his petition with reference to Frances' deviant sexuality. He stated that she had,

Been a lewd woman for fourteen years; defamed with Mr. Rocke, minister there, and has been committed to the House of Correction for slandering her neighbours..<sup>103</sup>

Another woman Anne Kenderdyne, otherwise Tranter, was presented to the court primarily for slander. She slandered one John Brume,

That he had stolne certaine cloathes of Mr Fowke of Brewood which is now proved to the contrarie and she got money of Mr. Fowkes servants to goe to a wise man and went and got a boy to write a note and said yt the wizard had written it, and affirminge by the note that the said Brume had stolen them... she did slander one Grace Wilkes that she had kild her first husband... she miscald one Isabell Hodgson and cald her carted whore.. shee slandered on Elizabeth Sanford for stealinge malt.. shee slandered one William Roberts for stealing fish out of Mr.Fowkes mill poole..shee is an evsinge dropper and lies harkening under men's walls in the night tyme.<sup>104</sup>

Within this Anne drew on stereotypical images of male and female deviancy knowing that these were more likely to be accepted as the truth. Of the two men and one woman accused of theft, one man stole fish from a mill pool and the woman stole food. She accused one of the women of murdering her husband, a crime already identified as petty treason and subject to a barbaric punishment. One woman was labelled a carted whore, not only drawing on contemporary constructions of female sexuality, but also referring to the punishment of carting through the village which was meted out to deviant

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<sup>103</sup> WSL, QS12A Roll 58, Michaelmas 1617, p. 63.

<sup>104</sup> WSL, QS12D Epiphany 1624, Roll 74, no.34.

women.<sup>105</sup> For this Anne was described as a 'dissolute woman'. An equivalent description for males behaving in this way did not exist. This particular case came within the jurisdiction of the secular courts rather than the ecclesiastical courts because the subject matter was predominantly theft and murder, even though she had called Isabell Hodgson 'a carted whore'. The writ of good behaviour was granted.

One of the methods women used to defame other women was to use their own virtue as a comparison with the individual they were defaming.<sup>106</sup> In this way Anne the wife of William Wade, of Mansfield, distanced herself from the disreputable conduct of Alice Wood, wife of Robert Wood. Anne said to Alice,

I never gotte £3 of a journiman and made him leape out at a chamber windowe. To whom the said Alice said, who did soe and then the said Anne replyed to her the said Alice, you did so there bie meaning that she the said Alice Wood had committed fornication or adulterie and in that sence did the witnesses who heard the same understand the same words to be spoken.<sup>107</sup>

In this way Anne insulted Alice, accusing her of prostitution, and by declaring her disapproval of Alice's conduct she framed herself as the ideal woman at the same time. The geographical location of Alice's sexual encounter was fairly typical of those usually referred to by women, when defaming other women in this way. A breakdown of the locations referred to by male and female defamers, in cases of sexual slander, shows clear gender differences. Of the cases in which men refer to sexual misconduct, where the location is mentioned, 71% mention a location that was not only outdoors but was

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<sup>105</sup> See Chapter Four for a discussion of attitudes towards spousal murder., and chapter one for attitudes towards female sexuality.

<sup>106</sup> See Gowing, L., 'Gender and the Language of Insult', p.9 for a fuller discussion of this.

<sup>107</sup> NAO, DDTS 14/26/20, 12<sup>th</sup> October 1630, p.211, f.1.

also well away from the home. Richard Tailer's account was similar in form to many others given by men. He said of Isabel Ridley, that,

He heard that she, 'meaning her' was occupied in a close  
by Edward Slynehead as she went to Retford and as  
she came backe agayne.<sup>108</sup>

Of those in which women refer to the location only 18% are away from the home. The others all refer to sexual activities that took place in the home. There are references to being seen in bed, in the parlour and in the defendant's own chamber.<sup>109</sup> It is unlikely that it is coincidental that women were much more likely to observe those activities that occurred in or close to households, and that men witnessed those that were further away. This reflects the areas that men and women normally occupied, showing that space was very clearly gendered in early modern communities, particularly rural ones. It is also possible that female voices only carried sufficient authority when they spoke about events that occurred in their designated space, or that females placed more importance on particular areas such as the home and were more offended by lewd behaviour that occurred in female designated areas. Women, whether geographically or psychologically, were more attached to the domestic arena, despite their interaction with the wider community through work and the marketing of their goods. By examining the various locations described in sexual defamation cases it is possible to identify the 'boundaries of female social or mental space'.<sup>110</sup>

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<sup>108</sup> NAO, DDT S 14/26/9, p.168, f 186. This case can also be seen to illustrate the perceived need for women to be kept close to the home.

<sup>109</sup> See NAO., William Muggleston v Anne Henson, .DDTS 14/26/9, p. 222: William Towle v Anne Wood, DDTS 14/26/18, p.10: Alice Wood v Anne Wade, DDTS 14/26/19, p.211.

<sup>110</sup> For a further discussion of this see Steve Hindle, 'The Shaming of Margaret Knowsley', p. 393.

The ecclesiastical court's response to these cases was to respond with punishments that ranged from performing a penance, often before the congregation in church at the time of a service, which afforded the maximum amount of humiliation and public knowledge of the deed. As Martin Ingram notes, 'the use of the public penance signified also that defamation was conceived to be a public offence as well as a private injury'.<sup>111</sup> Sometimes this was accompanied with the guilty party paying costs as well. Occasionally only the payment of costs was ordered which, in Nottinghamshire, ranged from 4s to 16s. Both men and women received the full range of punishments against them with no apparent gender bias.<sup>112</sup> However, the opportunity to commute the penance to a fine was mostly offered to males. This could primarily be based on their potential to pay, or the perceived need to shame women which would then act as a deterrent for other women. On the 14<sup>th</sup> March 1639, George Cam of Tuxford, was able to persuade the church court to keep his sexual indiscretion private. He was presented for,

Incest with Elizabeth Talbott his wife's [then deceased] sister's daughter. Afterwards, on account of his great sorrow for his offence and because he was desirous of marrying as soon as possible a certain honest woman whose mind would be alienated from him if he performed a solemn penance in the open church, his penance was commuted for a payment of twenty pounds.<sup>113</sup>

In this case the justices were prepared to keep secret Cam's sexual misconduct because it posed no threat to the gender order in society, the situation would have been very different if the guilty party had been female.

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<sup>111</sup> Ingram, M., *Church Courts. Sex and Marriage in England, 1570-1640*, p.294.

<sup>112</sup> It is necessary to note here that only a small proportion of the cases give details of the eventual punishment, so this can only be a tentative conclusion.

<sup>113</sup> NAO, M463, vol. 3, p..526.

## Conclusion

The persecuted scold is currently being used alternatively to represent both a powerful figure of patriarchal oppression, and a symbol of female power. Miranda Chaytor and Jane Lewis equate the early modern attack on scolds with the oppression of female modes of power, including, 'cursing,... mocking and scolding'.<sup>114</sup> The implication of this statement is that women's powers of expression were deliberately restricted to make them stay within their prescribed subordinate position. Scolding reflects women contesting their prescribed passive roles and demonstrating their assertiveness. It appears that society was particularly concerned about women adding to the perceived threat of disorder by challenging their prescribed roles. This is shown most clearly when women were prosecuted for being a scold within their own homes.<sup>115</sup> In this way patriarchy, already feeling threatened, was further weakened.

Those women accused of being scolds were alternatively described as being disorderly, lewd, wicked or of evil behaviour. These same labels, though, were also applied to men who disrupted their local neighbourhood. The main difference between the two sexes appears to have been that for women this type of behaviour was frequently condemned as being unwomanly, or being inappropriate conduct for women. Men on the other hand, were condemned primarily for the disruption and threat to order that they presented. Both men and women were labelled as 'common barrators', for similar conduct, especially in Staffordshire, and if there were any significant differences between scolding and barratry, they were not dependent upon which gender participated

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<sup>114</sup> Miles, R., *The Women's History of the World*, pp.79-80

<sup>115</sup> See Isabel Nutt in NAO, C/QSM1/ 68, p.111, 5<sup>th</sup> October 1612.

in the act, but more importantly on whether the conduct was seen as female deviancy or male deviancy. The suggestion is that the expectation was that men would not conduct themselves in a way that could be labelled as scolding which carried with it the greater approbation from the community and those in authority.

It does not appear that women resorted to verbal violence as the only appropriate method of attack open to them. Some women appear to have been willing to resort to physical violence in the same ways as their male counterparts, albeit not as frequently. The close association between a loose tongue and loose morals led to a gendered response to verbal abuse. Those women accused of scolding represented a threat to both order in the community and to the patriarchal order. Both men and women constructed insults around notions of female culpability for sexual conduct, and a significant amount of the church court's time was spent dealing with such cases. The high incidence of women defaming other women with regards to their sexual conduct illustrates the role that women in early modern England played in controlling and defining other women's behaviour. As brokers of gossip and makers and breakers of reputations, they participated actively in the process by which both women and men eventually appeared before the ecclesiastical and secular courts. The contemporary male view was that women did this because they were unduly addicted to 'tittle tattle'.<sup>116</sup> Which in turn was something that their male counterparts objected to as it distracted them from their prescribed duties. Another possibility is that this was the only way that women could gain any access to power, which was denied them in most other areas of their lives. What this illustrates is that, 'a patriarchal social structure divides women. Dependent for their livelihood on the goodwill of men, most women will not only conform, but also

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<sup>116</sup> Ingram, M., 'Scolding Women Cucked or Washed', p.49.

attack women who by their non-conformity threaten the security of conformist women'.<sup>117</sup>

As has already been noted, it is clear from the language used within the defamation and scolding cases that women's sexual conduct was the main focus of the majority of them. As Laura Gowing notes, whilst the language of the law of the church, as well as the homilies and sermons, held both men and women equally responsible for illicit sex, 'the idiom of slander holds women entirely responsible for it'.<sup>118</sup> There do not appear to have been any male equivalents for words such as whore, jade and queane, with no words that would express condemnation of male sexual misconduct.

Ordinary men and women show from their defamation cases that they absorbed the contemporary attitudes towards female culpability for sexual conduct. However, the punishment meted out to men and women for sexual slander would suggest that the ecclesiastical authorities in Nottinghamshire, were pursuing a more equitable attitude towards sexual responsibility, with both men and women punished in very similar ways for defaming another with sexual slander. This could have perhaps signify that those in authority in Nottinghamshire were attempting to reform the conduct of those middling and lower orders, as can be seen in the authorities attitude towards reforming immoral conduct.

As was shown in Chapters Two and Three, significant numbers of both men and women were presented before the church courts in Nottinghamshire for incontinence, pre-

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<sup>117</sup> Lerner, C., Witchcraft and Religion: the Politics of Popular Belief. (Basil Blackwell, Oxford, 1984), p.86.

<sup>118</sup> Gowing, L., 'Language, Power and The Law', p.28.

marital sex, fornication and adultery and there was a particularly harsh attitude evident in the quarter session courts towards parents of bastards.<sup>119</sup> This particularly intense programme, of what looks like moral reform, perhaps explains why men as well as women felt the need to go to the trouble of initiating defamation suits to defend their sexual reputation even though such behaviour was common, and generally accepted, amongst their peers. Perhaps this was to forestall any presentment of their alleged behaviour to either the church or secular courts. As has already been identified, maintaining a good reputation was crucial in underpinning many other aspects of life in early modern England.

As has been demonstrated, a gender analysis of verbal violence is crucial to an understanding of the occasion of, and the responses to, verbal violence. Scolding women threatened the patriarchal order by behaving in ways that were not appropriate to their gender. However the story is not clear-cut as many women behaving in similar ways did not arouse the same feelings of fear and hostility. Individual circumstances must have influenced the reactions around disruptive women, and these are usually 'hidden from history'. The way sexual slander was constructed clearly shows attitudes towards male and female sexuality, and the constraints that women found themselves under. By examining individual cases the circumstances of female existence can be glimpsed. Their position and the way in which they claimed the right to power reveals the way they negotiated a more comfortable position within the restrictions of a patriarchal society that attempted to confine their freedom and define their behaviour.

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<sup>119</sup> Although as has been shown for men this usually meant financial impositions, and for women incarceration or physical punishment.

In a society that valued and relied on good reputations, then, in interpersonal disputes verbal violence was more damaging than physical violence which made defamation an extremely powerful tool of aggression. Therefore the recognised propensity for women to resort to verbal violence in preference to physical violence probably owed more to whom the targets of their abuse were rather than their less aggressive natures. Women in early modern society would have spent a large proportion of their day in the company of other women, so it was most likely that other women were their targets. As female reputation was constructed around notions of sexuality then sexual defamation was the most effective means of attack. Women as aggressors would not have had the same authority to attack the reputations of men as these were predominantly constructed around notions of honesty in business. However, when they did defame men it was still more likely that they used insults based on female sexuality as this was their area of authority. Therefore as women mostly came into conflict with other women, and women were most vulnerable to verbal abuse based on their sexuality it follows that women resorted to verbal violence more often than they did to physical violence. This does not mean though that women did not use physical violence but that the ideological and geographical constraints upon their lives made it more likely that they participated in verbal violence.

In all of the previous four chapters it has been possible to identify female participation as both passive and active, even if the choices made by them were constrained to a significant degree. In the following chapter females as the recipients of male sexual violence will be considered. It will be possible to identify to what degree the perceptions about female sexuality and female passive behaviour informed the perpetrators of sexual violence and the responses of those in authority.

## Chapter Six

### SEXUAL VIOLENCE- INCLUDING RAPE AND ATTEMPTED

#### RAPE

This chapter will examine accusations of rape or sexual violence against women. The wider societal acceptance of female culpability for sexual misconduct made it difficult for any woman to successfully claim that a man had forced her into sexual intercourse against her will. Perceptions about female sexuality placed women as the tempters or aggressors in sexual acts and made a nonsense of male culpability. As has already been expressed, the social construction of gender set the context against which personal interaction was judged. Early modern women were seen as sexually active, sexually culpable, and yet still subjected under male domination. Early modern society appears not to have had any difficulty with this contradictory image of womanhood, and every individual case was assessed within extremely permeable boundaries. The legal response to rape placed rapists, or attempted rapists outside the law, but the ideology that informed society about male and female identity and conduct permeated popular attitudes far more successfully. How far this directed community and official responses to male sexual aggression will be shown in the following chapter.

Rape carried the death penalty and thus it was mainly tried before the assize courts.<sup>1</sup> However, in the seventeenth-century many adult women prosecuted men for rape and attempted rape at the quarter session courts, and it is in these cases that we can identify

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<sup>1</sup> Unfortunately these records have not survived for Nottinghamshire for this period, and the only extant assize records for Staffordshire cover 1636-42 and 1656-60.

the response of the authorities to rape cases.<sup>2</sup> Cases of attempted rape or excessive sexual violence were also presented to the church courts as a lesser crime. Sexual violence will be the term usually employed throughout this chapter, because many cases of sexual violence were not prosecuted as rape before the secular courts, but were alluded to in cases presented before the church courts under the guise of sexual incontinence or as part of a defamation suit.

Rape, and its 'lesser' variations, particularly highlight the gendered construction of both masculinity and femininity. This is an act of sexual aggression through which a female is forced into a position by which her chastity is lost. As has already been examined in Chapter One, female reputation was dependent on sexual probity and once a public declaration that a woman had been raped was made then her sexual conduct was thenceforth in question. In an attempt to assess the role of gender within such acts of sexual aggression, ranging from 'attempting someone's chastity' to rape itself, it is necessary to identify and assess how perceptions about gender constructed appropriate behaviour for men and women. Within rape power was a defining component, and that power can be identified simplistically as physical strength, but more subtly it can be seen within the power relations between the two sexes located within the patriarchal structure.

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<sup>2</sup> Bashar, N., 'Rape in England between 1550 and 1700', p. 39.

Susan Brownmiller sees rape as a tool by which men keep, 'all women in a constant state of intimidation'.<sup>3</sup> Marianne Hester, whilst largely agreeing with Brownmiller, objects to her identification of rape as male violence.<sup>4</sup> Hester finds this distinction between violence and sex a false one, for she feels that,

What women experience as violence, then, (in accordance with the dominant male definition and construction of the term), is actually normal heterosexual sex: not only do rape and normal heterosexual relations have common characteristics, but they are part and parcel of the same act of sexual activities.<sup>5</sup>

Whether or not this interpretation of heterosexual sex is a realistic one, to employ it in relation to early modern England is anachronistic. Whilst not wanting to dispute that rape is, as Hester states, sexual violence, there is no evidence within the secular or church court records for Nottinghamshire or Staffordshire to suggest that early modern women identified consensual sex as a violent act against their person. Both Brownmiller and Hester's interpretation of rape assumes that rape is always a function and consequence of patriarchal domination. Susan Amussen, in her work on early modern masculinity, asserts that although many modern observers identify a close relationship between manhood and sexual prowess, 'violence was not strongly linked to sexuality in early modern ideas of manhood'.<sup>6</sup> Although few cases of rape were ever reported, those cases that were will be examined. From this it should be possible to identify whether there is any evidence for seeing rape as a tool of male domination, or whether rape

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<sup>3</sup> Brownmiller, S., Against Our Will: Men, Women, and Rape. (Secker & Warburg, London, 1975), pp. 14-15. See Shorter, E., 'On Writing the History of Rape', Signs, (1977), vol. 3, pp. 471-82, for a critique of her work.

<sup>4</sup> Hester, M., Lewd Women and Wicked Witches, pp. 60-76.

<sup>5</sup> Hester, M., Lewd Women and Wicked Witches, p. 66.

<sup>6</sup> Amussen, S.D., 'The Part of a Christian Man', Political Culture and Cultural Politics in Early Modern Europe, p.217.

should be viewed as an extension, however aggressive and unwarranted, of male sexual activity.

Rape featured heavily within English Statute law from Anglo Saxon times, due mainly to a concern with the protection of male property.<sup>7</sup> From at least the thirteenth-century onwards statutes placed rape and abduction side by side.<sup>8</sup> Whether or not the woman had been raped was irrelevant as the main aim of these statutes being to protect male property, rather than to guard women's rights. By the beginning of the seventeenth-century the legal view of raped changed. Earlier statutes of 1555 and 1597 treated abduction and rape separately, with rape emerging as a crime not against property but against the person, although the view of women as property still pervaded everyday life.<sup>9</sup>

By the beginning of the early modern period the laws surrounding rape were ostensibly very severe, and men who raped were severely castigated. A statute of 1576 had removed the benefit of clergy from rape and burglary offenders. Prominent figures within the law supported this hardening of attitudes towards rapists. Michael Dalton, a seventeenth-century lawyer, citing Sir Francis Bacon, declared that,

If a Woman kill him that assaileth her to ravish her: This is justifiable by the Woman, without any pardon.<sup>10</sup>

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<sup>7</sup> For an in depth discussion of this see, Bashar, N., 'Rape in England between 1550 and 1700', pp.29-30; Post, J.B., 'The Ravishment of Women and the Statute of Westminster', ed. Baker, J.M., Legal Records and the Historian. (Royal Historical Society, London, 1978), pp. 150-164; Post, J.B., 'Sir Thomas West and the Statute of Rapes, 1382', Bulletin of Historical Research. (1980), pp.24-30.

<sup>8</sup> Bashar, N., 'Rape in England', p.30.

<sup>9</sup> Bashar, N., 'Rape in England', p.41.

<sup>10</sup> Cited in Bashar, N., 'Rape in England', p.32.

Despite the views in law against murder and female subordination, rape was considered serious enough to justify killing. Sir Matthew Hale reiterated this view, but warned that rape was 'an accusation easily to be made and hard to be proved'.<sup>11</sup> The editor of *The Lawes Resolutions of Women's Rights*, devoted space to a discussion of rape as a part of the issues surrounding women's rights. However his discussion observed the position according to the laws of the period, not according to female experience.<sup>12</sup> Virgins, widows or single women were to, 'prosecute the felon to death, and the king's pardon (it seemeth) cannot help him'.<sup>13</sup> Married women could only appeal through their husbands. Even with this statute in place, and the evidence in law that rape would be punished severely, in reality a completely different picture of rape and punishment emerged, in which few cases were prosecuted (see Table 5).<sup>14</sup>

The absence of a large number of cases could mean that rape did not occur but this is not likely. Even so the statute did not represent state condemnation of male violence against women, but condemnation of this particular act of theft. For in the late sixteenth and early seventeenth-century rape was still seen primarily as theft of male property, and the married woman or the daughter protected by a family, both females being owned by a male, represented this male property.

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<sup>11</sup> Cited in Capp, B., 'The Double Standard Revisited', p.93.

<sup>12</sup> Bashar, N., 'Rape in England', p.33.

<sup>13</sup> Edgar, T. (T.E.), 'The Lawes Resolutions of Women's Rights', (First Edition, 1632), in Aughterson, K. ed., *Renaissance Women. Constructions of Femininity in England*, p.157.

<sup>14</sup> Bashar, N., 'Rape in England between 1550-1700', p.33.

**Table 5**

**CASES OF SEXUAL VIOLENCE IN STAFFORDSHIRE AND  
NOTTINGHAMSHIRE QUARTER SESSION AND ARCHDEACONRY COURT  
RECORDS, 1603-1660<sup>15</sup>**

	<b>Nottinghamshire Quarter Sessions</b>	<b>Staffordshire Quarter Sessions</b>	<b>Nottinghamshire Archdeaconry Court</b>	<b>Total</b>
Rape	7	3*	0	10
Attempted Rape	0	5	0	5
Attempting Chastity**	0	0	21	21
Assaulting & Ravishing	0	1	0	1
<b>TOTAL</b>	<b>7</b>	<b>9</b>	<b>21</b>	<b>37</b>

\*This includes a girl of five years old.

\*\* It is not always clear whether this implies physical aggression, or whether this denotes an attempt on the part of the male to persuade the female into incontinent behaviour. Although even in those cases where unwanted physical attention is obvious the court's response was no different.

In 1626 one John Russell, bondwareman of Longdon, Staffordshire, was presented to the court at Stafford for 'breaking into the cowhouse of Henry Jackson at Longdon and for assaulting and ravishing his wife'.<sup>16</sup> The victim in this prosecution was identified as Henry, not his wife Elizabeth, despite Russell's sexual attack upon her person. Elizabeth appears to rank alongside the cowhouse in significance. The presentment was found to be a true bill. This image of women as property can also be seen in the case brought

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<sup>15</sup> The archdeaconry records for 1603-1641 for Nottinghamshire are the only church records included in this table.

<sup>16</sup> WSL, QS13, Roll 6, Trintiy 1626, p.23.

before the quarter sessions held at East Retford, Nottinghamshire, in which Thomas Burton was brought to trial, by Richard Olliver, to answer charges of assault and rape against Richard's wife, Francis.<sup>17</sup> In this way the rape of a woman was not only a violent sexual act, but also a violation of another man's property rights, perhaps the most important feature. As Chaytor states, 'she is neither victim nor perpetrator, only goods that were seized'.<sup>18</sup> As Thomas Edgar put forward,

Women are understood either married or to be married... A woman as soon as she is married is called covert, in Latin *nupta*, that is veiled, as it were, clouded and over-shadowed, clearly defining women as property.<sup>19</sup>

Miranda Chaytor notes that accusations of rape were never brought either by widows, or on their behalf, as they were no one's property. She highlights the fact that there were no available narratives through which they could speak.<sup>20</sup> To a large extent this is representative of the situation in Nottinghamshire and Staffordshire, except for one case within Nottinghamshire where there was one reported case of the rape of a widow. However, firstly the widow herself did not report the rape, although she must have discussed it with someone, and secondly, and perhaps more significantly, the rape formed a part of a wider case involving other misdeeds on the part of the alleged rapist.<sup>21</sup>

By the mid-seventeenth-century this concept of rape began to change, women could now bring charges of rape, whereas earlier the husband alone could appeal.<sup>22</sup> As rape began to be seen as a crime against the person, not property, then the courts treated it more

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<sup>17</sup> NAO, C/QSM1/70/3, East Retford 17<sup>th</sup> July, 1618, p.166.

<sup>18</sup> Chaytor, M. 'Husband(ry): Narratives of Rape in the Seventeenth Century', p.385.

<sup>19</sup> Edgar, T., 'The Lawes Resolutions of Women's Rights', p.395.

<sup>20</sup> Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century', p.385.

<sup>21</sup> NAO, C/QSM1/72/1, Newark, 12<sup>th</sup> January 1625, p.156.

<sup>22</sup> Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century'.

leniently. No longer were they prosecuting solely on behalf of other males but also on behalf of females. From this point onwards the main issue became sexuality, not property, and did not focus on the crime of rape itself, but on the sexual reputation of the victim.<sup>23</sup> Only those women secure in their place in society probably had the courage to make accusations of rape. They needed good reputations, based on their sexual probity, and good credit amongst their neighbours, for without this they would not be believed.

As has already been noted, females who made accusations of rape risked bringing their own sexual behaviour into question, and they may have been inclined to stay silent. Victims of rape often found that revealing that they had been raped was doubly traumatic, as any trial of a rapist would focus predominantly upon the female victim's sexuality. Therefore female victims frequently concealed the fact that they had been raped. The woman who brought her rape into the public domain not only exposed herself, and brought her conduct into question, but also potentially brought shame upon her family.<sup>24</sup> Despite this some women either felt secure enough to pursue such a difficult action, or felt the need to demand justice from their attacker. For some of these women the consequences of exposing their attacker would have been significant, as in the case of servants raped by their masters, by whose exposure they risked their livelihood.<sup>25</sup> Also

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<sup>23</sup> Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century', p.396. Although in contrast to this Bashar, N., suggests that the emphasis was more on the man's character than the women's, indicting that the woman's violation was irrelevant, see 'Rape in England', p.38-9.

<sup>24</sup> See Chaytor, M., 'Husband(ry): Narratives of Rape in the Seventeenth Century', pp.378-407.

<sup>25</sup> See Alice Green and Philathes Fitzandrolph, NAO, C/QSM1/68/3, Nottingham, 4<sup>th</sup> October, 1613, p.177, although Alice was freed from her service to protect her it would have left her without wages at a time when the need to support herself was paramount.

the actions which a woman was supposed to take after being raped placed further stresses upon them. Popular custom denoted that a woman had to cry out in order to claim that she had been raped.<sup>26</sup> She was to disclose the rape immediately, if not then it was perceived to be no more than a malicious accusation, and she was also to reveal her, 'garments torne and any effusion of blood.'<sup>27</sup> Sometimes the woman concerned may have initially disclosed the rape to her friends or family, but later decided not to continue with the prosecution.

When Alice Dumkyn, spinster, was raped by William Vickers of Over Langwith, this was the course of action taken by her.<sup>28</sup> Vickers was bound by recognisance to appear before the court to answer the charges of rape laid against him. Two men, one Francis Marlowe, cooper, and one Matthew Pease, labourer, of Langwith and Nether Langwith respectively, were bound by £10 to give evidence against him. The case against him was unable to proceed as neither Alice, nor Elizabeth Dumkyn, probably her mother, failed to appear to prosecute Vickers for the alleged rape of Alice, which led to a warrant for their contempt.<sup>29</sup> It is possible that the original claim had been malicious, but it is more likely that given the difficulties facing women when making rape allegations that they chose not to pursue the original claim. Many other victims of rape probably made this decision much earlier and chose not to reveal their experience to the wider community. As has already been noted, the distinction between female culpability within normal heterosexual relations and their culpability within rape was extremely blurred.

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<sup>26</sup> Amussen, S.D., 'The Part of a Christian Man', p.218.

<sup>27</sup> Bashar, N., 'Rape in England between 1550 and 1700', p.35.

<sup>28</sup> NAO, C/QSM1/75, East Retford, 21<sup>st</sup> April, 1637, p.236.

In any period in history, rape is a difficult crime to explore fully. The discourse that surrounds rape has for a long time depended on the 'dichotomy of female chastity or unchastity, defining rape not as the violation of a woman's body but as the theft of her virtue'.<sup>30</sup> The fact that the woman's sexual behaviour was the main concern of the courts clearly demonstrates the problems that women faced when making accusations of rape. Whether or not consent was given, which should have been the main focus of the prosecution, was not significant unless the female victim's chastity, prior to the alleged assault, was assured. In order to avoid this focus on female sexuality, and therefore culpability, women's narratives about rape defined it in terms of male violence, not sex.<sup>31</sup> This developed from two main factors, firstly within the early modern period there was no available language to denigrate male sexual behaviour, unlike the rich language used to construct female sexuality around the notion of sin and whoredom. Secondly, for women all discussions about sex, even sexual attacks upon their person, were, as Walker notes, 'confessional and implicative'.<sup>32</sup> Reporting rape through the use of sexual language was counterproductive for the women involved. As has already been discussed responsibility for sex had been feminised to such a degree that use of such language denied women access to making accusations of rape against men. By constructing their accusations around male violence, rather than sexuality, they were able to distance themselves from responsibility for the act.<sup>33</sup>

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<sup>29</sup> NAO, C/QSM1/75, East Retford, 21<sup>st</sup> April, 1637, p.239.

<sup>30</sup> Clark, A., *Women's Silence Men's Violence*, p.128.

<sup>31</sup> Walker, G., 'Rereading Rape and Sexual Violence in Early Modern England', pp. 5-8.

<sup>32</sup> Walker, G., 'Rereading Rape and Sexual Violence in early Modern England', p.5.

<sup>33</sup> Also by associating the perpetrator of a rape with other accusations of 'deviant sex', as in the trial of the Earl of Castlehaven, then the emphasis shifts from female culpability to male culpability. For a full discussion of the case and trial of the Earl see Herrup, C., 'The Patriarch at Home: The Trial of the 2<sup>nd</sup> Earl of Castlehaven for Rape and Sodomy', pp.1-18.

When Dorothy Sindall accused William Alsworth, husbandman, of attempted rape, she chose to emphasise the force by which he detained her in his house for a day and a night, rather than his attempted rape of her.<sup>34</sup> Accusing Alsworth of using physical violence to hold her against her will was a much more effective means of placing him outside of the law than was dwelling on his sexual violence against her. Dorothy would experience no threat to her reputation as a result of William's attempts to detain her against her will, whereas had she dwelt primarily on the rape, open discussion of her sexuality would have placed her in a difficult position. As Catherine MacKinnon notes when referring to modern rape law, 'rape is a sex crime that is not regarded as a crime when it looks like sex'.<sup>35</sup> This interpretation although based on modern rape law is applicable to the early modern period, where a discussion of sex by a woman immediately implicates the woman herself.

Alice Cooke, wife of James Cooke of Sheen, yeoman, when accusing one Ralph Sleogh, gentleman, of Broadmeadow Hill in Sheen, relied both on the physical violence and force of his attack and the noise she made when crying out on being assaulted. Alice declared that,

One Ralph Sleogh ... jumped off his horse, ran into the house. Ralph laid violent hands upon her this informant and thrust her backwards to the table board in the said house and there violently offered to force her that he might have had his pleasure and carnal knowledge of her body holding her hands so that she the informant could not any way help her self against his violence but by making of an outcry being in a town upon which he the said Ralph let her this informant go saying then to her the informant thou dirty Jade I would not for anything in the world that anybody should hear of it

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<sup>34</sup> NAO, C/QSM1/77, Nottingham 4<sup>th</sup> October, 1641.

<sup>35</sup> MacKinnon, C.A., *Towards a Feminist Theory of the State*, (Harvard University Press, Cambridge, Massachusetts & London, 1989), p. 172.

upon which she this informant ran forth of the house leaving  
him the said Ralph Sleogh in her said house....<sup>36</sup>

The violence that Ralph used is interspersed with the idea of male pleasure and carnal knowledge of her body. Sexual violence was not perhaps a fundamental aspect of masculinity in early modern England, but physical violence as a means to an end was a not uncommon part of heterosexual relationships. Alice fulfilled the requirements of a rape accusation by crying out, and in turn Ralph relied on the construction of female sexuality to label her as deviant. As Walker states, 'these gendered constructions of culpability not only made speaking about sex dangerous for women: they also positively advanced male denials of illicit sex'.<sup>37</sup>

There were numerous cases presented before the courts in which men were accused of attempting the chastity of females, but prosecution only followed in isolated cases. These accusations appeared mainly before the ecclesiastical courts and were often the reasons for defamation cases. On the 28<sup>th</sup> February, 1606, Michael Graye accused Mary Mosse, wife of William, of saying in public that he had come to her house in the night, had struggled with her and would have ravished her, which he denied.<sup>38</sup> The court ordered Mary to do penance and pay costs. It impossible to know whether or not this was the correct judgement, but, 'male judges and juries were loath to punish in any way other males for any sexual offence against females'.<sup>39</sup>

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<sup>36</sup> SRO, Q/SR/307, Translation 1659, p.27.

<sup>37</sup> Walker, G., 'Rereading Rape and Sexual Violence in Early Modern England', p.5.

<sup>38</sup> NAO, DDTS 14/26/9 28<sup>th</sup> February, 1606 St.Peter's, Nottingham, f 160d, p.216.

<sup>39</sup> Bashar, N., 'Rape in England between 1550 and 1700', p.40.

Within the archdeaconry records for Nottinghamshire, between 1603-1642 there are twenty-one recorded instances of men 'attempting the chastity' of a woman. In the six cases in which the woman was married, four of the men pleaded not guilty and were ordered to purge themselves and the other two men were excommunicated, although in the case of one of the men this was primarily for non-appearance before the court.<sup>40</sup> One of the men accused of attempting the chastity of a married woman Grace Grainger, was Thomas Walker of Chilwell.<sup>41</sup> He admitted the charge but stated that it was done at the instigation of her husband Christopher. The motivation for this was the suspicion that Christopher had of his wife. He offered Thomas the price of a horse to know whether his wife was 'honest or not'. Grace's honesty was still in doubt even after this. Thomas for his part in this was ordered to purge himself, but there is no mention of any punishment for Christopher, Grace's husband.

Gilbert Orsop, the other man to be excommunicated, had attempted the chastity of Dorothy, his son's wife, and later appeared for the crime of incest.<sup>42</sup> The public attitudes towards incest probably led his excommunication rather than his attempt on Dorothy's chastity.<sup>43</sup> Of the remaining fifteen cases the marital status of only two women can be identified. These two women were both widows, and of the two men accused of

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<sup>40</sup> NAO, DDTS, 14/26/ 11, 1608, Roland House and the wife of ... Eldershawe.

<sup>41</sup> M 462, Transcriptions of the Proceeding of the Court of the Archdeaconry of Nottingham 1565-1675, vol. 2, p. 251.

<sup>42</sup> NAO, DDTS, 14/26/17, p. 14<sup>th</sup> July, 1618, p.12.

<sup>43</sup> 'An Act for Suppressing of the Detestable Sins of Incest, Adultery and Fornication', 10<sup>th</sup> May, 1650, Firth, C.H., & Rait, R.S., eds., Vol. II. Acts and Ordinances from 9<sup>th</sup> Feb. 1649 To 16<sup>th</sup> March 1660. For a wider discussion of early modern attitudes towards incest see Ingram, M., Church Courts, Sex and Marriage in England, 1570-1640, pp. 246-9; Johnsson, M., 'Defining Incest by the Word of God: Northern Europe 1520-1740', pp. 853-67.

'attempting their chastity', one was excommunicated and the other was ordered to perform a penance, and was then dismissed. A more severe punishment might have been expected from this case as on first being presented Sitha Ellis of Mansfield denied 'that he had attempted the chastity of any woman'.<sup>44</sup> On being presented again for the same action he admitted 'that he forgetting himself did solicit Widowe Cusse to have carnall knowledge of her bodie', therein still denying the charge of attempting her chastity, but admitting the lesser sin of soliciting her for illicit sexual relations.<sup>45</sup> For this Sitha was ordered to perform a penance and was then dismissed. Sitha had successfully restructured the act from one of sexual violence to one that was viewed as being located within the 'normal' bounds of male sexual conduct. He deftly trivialised his offence by couching it in humble language, claiming only to have 'forgotten himself', a deed that is difficult to frame within the violent aggression of an attempt on a woman's chastity. His gender allowed this negotiation from violence to a momentary aberration, in a way that was denied to females in the early modern period.

The response of the courts to the other thirteen cases, in which the marital status is unknown, was equally diverse. The four men excommunicated had failed to appear before the court, three men pleaded not guilty and were ordered either to purge themselves or perform a penance. The outcome is unknown in five cases and one man was dismissed. This last man had already been presented for attempting the chastity of another woman and had failed to appear for this sin. However, this previous presentment

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<sup>44</sup> NAO, DDTS, 14/26/17, p.48, 1618.

<sup>45</sup> NAO, DDTS, 14/26/17, p.61, 27<sup>th</sup> October, 1618.

did not deter the court from dismissing this second accusation and releasing him from a judgement.<sup>46</sup>

This official leniency towards men who were judged to be guilty of attempting the chastity of a woman is witnessed in the case of George Attenborowe, presented before the archdeacon's court in St. Peter's Church, Nottingham. Even after admitting that he had attempted the chastity of Elizabeth Bostocke, but denying that he had ever carnally known her, the courts felt that his deeds only required him to purge himself.<sup>47</sup> The suggestion here is not that the church courts condoned male sexual misconduct, but that as their identity was not formulated in this way the act was not construed as a breakdown of appropriate moral conduct, and was not deemed to require a harsh punishment. In none of these cases were the men labelled in sexual terms, as women accused of similar crimes would have been. As has already been identified male honesty was not constructed in this way.<sup>48</sup>

Little can be glimpsed in these accounts of the actual circumstances of the event. The women involved were generally situated as names only, sometimes as someone's daughter or wife, devoid of any real personal identity which could be substantiated by their own accounts of the attempt on their chastity. Few women's voices speak directly to us from the court records. One who did was Dorothy Richards of Strelley, who appearing before the church court claimed that, 'William Wagg did attempt the chastity

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<sup>46</sup> NAO, DDTS, 14/26/11, Godfrey Tattershall, 1611; and NAO, DDTS 14/26/12, Godfrey Tattershall and Elizabeth Marckson, 1612.

<sup>47</sup> NAO, DDTS 14/26/9, 9<sup>th</sup> March, 1605, f7, p.24.

<sup>48</sup> See chapter one for a discussion on the gendered basis of reputation.

of her in her house in Strelley'.<sup>49</sup> A more unusual and complete account appears within the Staffordshire quarter session order books. At Easter 1631, Anne Milton, servant to John Clenson of High Town recounted the story of her attack by William Horton, gentleman, of Shredicote.<sup>50</sup>

When riding on her master's business at about five in the afternoon between Chillington and High Town she was overtaken by William Horton, who questioned her, 'where she dwelt; what way she rode; all which she told him; Then he asked her to ride with him, his way by Aston; which she denied; Then said he to her, kiss me; and I will let you go; which for leave, and to be rid of him, she did. Afterwards he came galloping up and demanded to have bodily pleasure of her, which she refused, till at last he threw her backward into a miry lake, and upon her outcry Henry Perkes came to her rescue.

For this attack on Anne an order of good behaviour was granted against William Horton. Perhaps this was more than she could have hoped for had Henry Perkes not witnessed the attack. Had he not become involved in the drama this case may not have entered the court records at all. Within this Anne fulfilled the first of the designated requirements for an accusation of rape, she cried out and attracted attention, and Perkes' intervention prevented any further assault on her body. The legitimacy of her complaint is further aided as when it occurred she was on her master's business, so indirectly William Horton had also offered offence to him. The most significant aspect of this account is the way in which William Horton saw his actions. For him his desire to have 'bodily pleasure' of Anne appears to have been simply an extension of male sexual desire.<sup>51</sup> His status both

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<sup>49</sup> NAO, DDTS, 14/26/19, 15<sup>th</sup> July, 1626, St.Peter's, Nottingham, p.205.

<sup>50</sup> WSL, QS18, Roll 24, Easter 1631, p.47.

<sup>51</sup> This attitude could be seen to support Hester's point that heterosexual sex and rape are part of the same act of sexual activity, see Lewd Women and Wicked Witches.

as a male and a gentleman would have left him in no doubt as to his rights and Anne's obligations. Fortunately for Anne not all men supported this attitude.

The impression gained from these cases is that the court was attempting to set appropriate standards of sexual conduct for the community, but that it viewed these attempts by men against the chastity of women as an integral part of everyday sexual conduct, albeit one that it wanted to eradicate. There is no inference that within these cases the court clearly identified men as aggressors and women as victims, but that both were equal protagonists within illicit sexual activity. In one final case of attempted sexual violence presented within the church court, the two individuals accused of encouraging the deed were a man and a woman. On the 5<sup>th</sup> December, 1640, one Philip Sympson and one Margaret Caly of Screveton were presented to the church court at St. Peter's in Nottingham.<sup>52</sup> They were accused of,

Abusing a sorry simple woman, the one holding her downe  
on a heape of strawe, one by the armes and the other by the  
legges and most shamefully spreading them and drawing  
a fellow to them to have abused her.

Both Philip and Margaret made assurances on oath that they were not guilty and were dismissed with a warning. Whether or not, as a simple woman, the abused woman was not considered worthy of protection, or whether the court felt the case to be false is impossible to tell. The links between violence and sexual activity are evident in this case. It is also clear that a woman was willing to subject another woman to this ordeal.

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<sup>52</sup> NAO, DDTS, 14/26/21, 5<sup>th</sup> December, 1640, p.102.

As has already been noted, rape was judged to be a felony, and as such was subject to presentment before the assize judges. As these records do not survive in sufficient enough numbers for Nottinghamshire and Staffordshire rape and associated sexual violence will be now be examined through the medium of the quarter session courts, where increasingly during the seventeenth-century rape was presented. Sexual violence was presented to the courts in both counties. Interestingly though, given the low numbers of bastardy cases presented before Staffordshire quarter session courts, it is there that the more significant numbers of sexual violence by men against women can be seen. However, cases of sexual violence were prosecuted at different times within the two counties. In Nottinghamshire sexual violence is not visible in the quarter session records until the end of the first decade of the century, and is not consistently presented until the 1630s in Staffordshire.

Of the fourteen cases of sexual violence presented to the quarter session courts in both counties, servants were the victims in at least four of them. That these were probably only a small percentage of the actual cases can be assumed, given the difficulties of accusing any man of rape and particularly of accusing one's master or his son of this crime. Many cases only came to light because other problems developed from the attack. This again highlights the vulnerable position that servants often found themselves in, located as they were away from home and the subsequent protection of their fathers, and in close proximity to the males in the household in which they resided. Masters could legitimately use force to discipline their households, but this same force could be used illegitimately to force their servants to have sex with them.<sup>53</sup>

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<sup>53</sup> See Amussen, S.D., for a discussion of the place of violence in early modern England, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', pp.1-34.

The attempted rape of a young female servant of Sir Francis Leake only came to light because Thomas Oliver and William Pashley assaulted Richard Ridge 'for defending and rescuing her from their mistreatment and ill usage'.<sup>54</sup> Both men were ordered to be stocked for two hours, one at Farndon and the other at Hawton, not for attacking the girl but for assaulting Richard Ridge. Their crime was only brought into the public arena as the motivation for the physical violence perpetrated by them on Richard. The young servant girl was nameless and of little significance within this drama, other than for being the catalyst for this attack.

Alice Green, of Kirkby in Ashfield, servant to James Fitzrandolph, gentleman, of Langton Hall, Kirkby in Ashfield, was far more visible within the quarter session records than this. On 4<sup>th</sup> October 1613, Alice was bound by recognisance to appear to prosecute Philathes Fitzrandolph, gentleman, James Fitzrandolph's son, for committing a rape on her.<sup>55</sup> Alice was referred to as a spinster, and her surety was one Richard Green, possibly her father, brother or husband. Whichever it was she was firmly linked to a male and as such she could be seen as either male property, or coming under male protection. The wider implications of this assault on Alice can be inferred from the continuing court case. James Fitzandrolph was ordered to keep the peace, especially towards Richard Green. The inter-familial conflicts that would often have occurred following disputes such as this would have greatly concerned those sections of society that sought to maintain order and harmony within the community. That a gentleman should be involved in such a dispute is not exceptional especially given the circumstances, of a master/servant

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<sup>54</sup> NAO, C/QSM1/68/3, 10<sup>th</sup> July, 1610, p.39.

<sup>55</sup> NAO, C/QSM1/68/3, 4<sup>th</sup> October, 1613, p.175.

relationship. The results of the case are unknown as it was later referred to the assize court.<sup>56</sup>

The sympathies of the court appear to have rested with Alice. They ordered that she was to be freed from her service, an unusual response in a period usually renowned for ordering masters and mistresses to take back dismissed servants until their allocated time was up. The justification for this was,

By reason of the rape committed on her by the son of the above. She is to take her clothes and wages this next week from Langton Hall.<sup>57</sup>

The court evidently accepted the accusation brought by Richard Green, which carried more weight than it would have done if Alice had been alone, without male support. Accordingly a number of cases within the court records suggest that rape, and the possible subsequent pregnancy, occurred within such unequal power relationships of master and servant, but few such cases were explicitly brought before the courts.<sup>58</sup>

Another factor that limited the number of all rape cases to be brought before the courts, was the generally held belief that conception proved consent.<sup>59</sup> Early modern notions

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<sup>56</sup> NAO, C/QSM1/69/1, Nottingham 10<sup>th</sup> January, 1614, p.4.

<sup>57</sup> NAO, C/QSM1/68/3, 4<sup>th</sup> October, 1613, p.177.

<sup>58</sup> The dilemma faced by female servants regarding the exposure of the rape publicly can be explored in the case of Margaret Knowsley, whose position in the patriarchal structure turned the disclosure of sexual violence committed by Stephen Jerome, preacher, into an attack on her sexual reputation. For a full discussion of the case see Hindle, S., 'The Shaming of Margaret Knowsley: Gossip, Gender and the Experience of Authority in Early Modern England', pp. 391-419.

<sup>59</sup> See Wiesner, M.E., Women and Gender in Early Modern Europe, p.47; Bashar, N., 'Rape in England', p.36.

about the female body meant that pleasure and therefore consent was necessary for conception to occur. As the contemporary Thomas Edgar stated,

If at the time of rape supposed, the woman conceive childe,  
there is no rape; for none can conceive without consent.<sup>60</sup>

This attitude more than any other probably reduced the number of accusations for rape. In his study into seventeenth-century crime, James Sharpe found that no girls who were presented for bastardy, claimed that their pregnancy had followed rape. However, as has already been identified, this was not surprising as it was viewed that pregnancy meant orgasm, orgasm meant consent, and consent cancelled out rape.<sup>61</sup>

One such case that did appear before the Staffordshire Justices was that of Margaret Trusberie. Within this account Margaret demonstrated the level of violence perpetrated by John Moore upon her body. The account was authenticated by the evidence of a midwife and other good women. They confessed that,

Margaret Trusberie who in the extremities of her travail affirmed upon the faith of a Christian - one John Moore of Horninglow, her master's son, who threw her down in an entry by force had bruised her head - verie sore with the fall, had abused her bodie and when she supposing her selfe to be with child came unto him desiring him to take some other order that they might not be shamed he bade her buy two pounds worth of rats bane said that would make the end of all matters. And often afterwards would strike her on the great bellie to destroy the childe. And that this is Truth and nothing

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<sup>60</sup> Edgar, T., 'The Lawes Resolutions of Women's Rights', p.395.

<sup>61</sup> Sharpe J., Crime in Seventeenth Century England. However, Wrightson, K., found that between 14 and 23 per cent of all women bearing bastards in Essex and Lancashire named their master or someone 'in a magisterial position', as the father, 'The Nadir of English Illegitimacy in the Seventeenth Century', Bastardy and its Comparative History, ed. Laslett, P., Oosterven, K., & Smith, R., (Cambridge University Press, Cambridge, 1980), pp. 176-91.

but the truth, the said midwife will ... to make oath.<sup>62</sup>

Despite the common assumption that a pregnant woman cannot have been raped this case was prosecuted through the quarter session court. The outcome of this case is not known, but clearly, within Staffordshire, it was not incomprehensible that rape led to pregnancy.

The rape of women by men, more than any other crime, can be identified as gendered. The way in which society responded to this act focused attention on contemporary perceptions about female and male identity more clearly than the act itself. The construction of what it was to be female and male informed attitudes that in turn formulated ideas on participation, willing or otherwise, in sexual relations. The construction of the female as sexually voracious located her as a willing and needy partner in any sexual activity. That is, unless the female concerned was either a virgin, usually young and under the protection of a father. Or, equally protected by a male, if they were married. For such categories of women rape signified the theft of their chastity and devalued their worth in the marriage market.

Attitudes towards rape were complex and were continually influenced by other factors. Although Quintence Loryman, staymaker of Holme, was presented to the court for, amongst other misdeeds, 'his daily attempts to violate the chastity of Margaret, widow of Edward Padgett', this was submitted as further proof of his 'evil way of life'.<sup>63</sup> His attempts on Margaret's chastity, a woman whose status as a widow already placed her

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<sup>62</sup> SRO, Q/SR/242, p.9.

<sup>63</sup> NAO, C/QSM1/72/1, Newark, 12<sup>th</sup> January, 1625, p.156.

sexual conduct under suspicion, were subsumed under a wide ranging account of his misbehaviour. Margaret was just one element in his threat to order and harmony within the community.

Those women most likely to be able to prosecute for sexual violence against them were either married, whereby their husbands would prosecute, or if the attack was witnessed by other men. Of the 16 cases presented before Nottinghamshire and Staffordshire justices between 1603-1660, eight cases depended on the evidence of males. In five cases men were prosecuted for the attempted rape or rape of other men's wives, or daughters, and in the other three cases, one involved discovery by a man of a child being raped, and the other two involved the rescue of the women by men. However, little is known about the eventual prosecution and punishment of any of the attackers, other than that two of the above men had an order for good behaviour granted against them.<sup>64</sup> This punishment appears to be at odds with the sentiments expressed both in the statutes that had removed the benefit of clergy from rape, and also those expressed in contemporary works such as those mentioned earlier.

The rape of children was the most straightforward of rape cases to prosecute. Here the assumption of female culpability for sexual conduct was irrelevant. Children were not implicated in this way within sexual acts, and in this way were protected from the guilt usually associated with females and illicit sexual conduct. Child rape was the one form of rape that was identified in terms of male culpability for the deed, and lacked the usual

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<sup>64</sup> WSL, QS 18, Roll 24, p.47, Easter 1631; SRO, QS20, Roll 32, p.49, Michaelmas, 1632. In Nottinghamshire a judgement was recorded in only one case in which Philathes Fitzrandolph was ordered to appear before the assize courts, NAO,C/QSM1/69/1, p.4, Nottingham 10<sup>th</sup> January, 1614.

discussion of female sexuality.<sup>65</sup> One's gender, in cases of child-rape, was submerged beneath the significance of age. As stated in a pamphlet of 1678, it was to be, 'death by the law to have carnall knowledge of any Female childe under Ten Years of age even with her consent'.<sup>66</sup> Adulthood came early in early modern England. However, even in cases of child rape where the evidence against the man was strong, juries were still occasionally reluctant to condemn the man.<sup>67</sup>

Within cases of child rape legitimacy was still given by male information as to the crime committed. At Epiphany 1657, Robert Jordan of Eccleshall provided information for the court regarding the rape of Mary Harbey, aged five years.<sup>68</sup> He said that,

Upon Monday the third day of November, about eight of the clock in the morning, he came to the Watermill at Eccleshall to fetch home three strikes of Malt of his owne which was left there to be ground; And that finding no bodie in the Mill he went to the back... and returning presently againe he went up into the Miller's chamber over the mill where he sawe the Miller John Price lying on his face upon the bed and one Mary Harbey (a young girl of the age of

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<sup>65</sup> However, even in the case of the rape of a girl of under ten years of age by her own father, the case is related in terms of them having carnal knowledge of each other, partly implicating her in the sexual act, *A Relation of the Wicked Life and Impenitent Death of John Flood, Who Raped His Own Childe*, (London, 1637). Flood denied the charge placing the blame upon his wife of whom he said, 'three years she was conspiring to work his downfall, which now by her was effected'. His claim was ignored and he was executed.

<sup>66</sup> In the case of the rape of his master's daughter, a girl of between eight and nine years of age, Steven Arrowsmith, apprentice, also subverted the class order, *The Confession and Execution of the Two Prisoners that Suffered at Tyburn, on Munday the 16<sup>th</sup> December, 1678*, (London, 1678).

<sup>67</sup> See *The Confession and Execution*, p.91. Also in the case of the priest found guilty of repeatedly abusing a girl of nine years, half a dozen midwives checked her and eventually he was found guilty. However, his punishment was merely to pay a fine of five hundred marks for this, but he then went on to be tried for being a 'popish priest', *A Full and True Relation of Two Very Remarkable Tryals at the Quarter-Sessions of the Peace*, (London, 1680).

<sup>68</sup> SRO, Q/SR/297, Epiphany, 1657, p.27.

five years or thereabout as he this informer guesseth) lying on the same bed under him with her clothes up. But whether the said Price had then carnall knowledge of her bodie he this informer knoweth not; only he saith that when reproached the said Price came off the bed from her and said she was too young and laughed. And she the said girle slipped off the bed also and looked verie pitifully as if she had cried. And further he doth not depose.

Jordan had clearly disturbed John Price in his attempt to rape the girl, although he had already caused her considerable distress. As Price himself alluded the girl was far too young to be engaging in sexual relations. Her youth was then used by him as a fundamental part of his claim to innocence.

### **Conclusion**

Within the early modern period it would be wrong to view rape simply as a sexual crime, or as an overt demonstration of physical violence. Rape was one manifestation of a patriarchal structure that situated women both as subordinates and therefore dependent, but also as the aggressors in sexual activity. It does not appear, though, to have been an organised instrument of male domination of women, but rather as one facet of female subjection. Probably the most accurate way to view rape is as a violent sexual act situated at one end of the continuum of normal heterosexual relations, within a patriarchal society.

It is impossible to assess the conviction rates of men accused of rape, as the assize records, where the majority of rape cases would have been tried, for Staffordshire and

Nottinghamshire for the period 1603-1660 are no longer extant.<sup>69</sup> Evidence to support a rape accusation has always been hard to find, and within a patriarchal structure that located responsibility for sexual misconduct with women, to upturn this attitude and lay the blame on men would have been extremely difficult. A guilty verdict for rape became increasingly rare as the seventeenth-century progressed.<sup>70</sup> This in turn would have made the decision to prosecute more difficult. Even for those found guilty by the quarter session courts the punishment was only a fine.<sup>71</sup> Although the law and society appeared to conspire against women, discouraging them from reporting sexual violence against them, a small number still did so. Often, as within Nottinghamshire and Staffordshire, this was aided by the evidence and support of one or more men.

It is important within a work on the role of gender, not to ignore the possible implications for men within rape accusations. In his work on the vulnerability of male sexual reputation to false accusations by women, Bernard Capp identifies rape accusations as one means by which 'some women (and their associates) might seek to take advantage of male concerns over sexual reputation'.<sup>72</sup> However, he accepts the difficulty of securing a conviction for rape except when the victim was a child. Despite this difficulty some men were subject to malicious accusations of rape or sexual violence. This may have contributed to the reluctance of courts, and male juries to find other men guilty of rape.

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<sup>69</sup> Prosecution rates within counties for which the records survive indicate that most men charged with rape were 'acquitted, 'not guilty', reprieved, not captured and described as 'at large', or released without trial', Bashar, N., 'Rape in England', p.34.

<sup>70</sup> Bashar, N., 'Rape in England', p.35.

<sup>71</sup> Bashar, N., 'Rape in England', p.39.

<sup>72</sup> Capp, B., 'The Double Standard Revisited', p.92.

Judging from the attitudes of those men accused of rape or attempting a woman's chastity, it is more likely that they were unable to identify the distinction between 'normal' heterosexual relations and those which assumed a greater level of male violence and unwilling participation on the part of the female involved. Established ideas regarding female sexual appetites and the early modern belief that conception only followed orgasm, and therefore female sexual pleasure, all informed perceptions about female sexuality.<sup>73</sup> In addition, as has already been identified, an individual's established reputation provided a background against which any later conduct would be judged.

At Epiphany 1625, Margaret, wife of Thomas Fowell was taken before Harvey Bagot and Francis Kynnersley, Justices at Stafford. In a dispute between Margaret Fowell, Thomas Cowper and Thomas Burne, a long series of threats, insults and counter insults were exchanged, during which Margaret threatened to accuse Thomas Burne of having ravished her. In this instance the men involved appear to have been as much at fault for the conflict as Margaret was, but Margaret's threat to implicate Burne in a sexual assault reveals the ease with which this could be done. Although as has already been noted such an accusation had serious implications for the accuser. However, if the two men are to be believed Margaret's sexual reputation was already in disrepute and would not have suffered more from the disclosure of the assault into the public arena.<sup>74</sup> The counter accusation made by the two men regarding Margaret's sexuality, whether true or false,

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<sup>73</sup> Women who had earlier accused men of rape and then became pregnant, in early modern eyes proving them to be liars, would have altered perceptions about the authenticity of any later accusations of rape by other women.

<sup>74</sup> WSL, QS12D, Roll 78, Epiphany 1625, no. 54.

indicates the way in which women were exposed to such accusations when bringing rape cases and therefore their own sexual culpability into the open.<sup>75</sup>

In 1642 Thomas Simcox of West Bromwich petitioned the court against an accusation of rape made by Catherine, wife of Thomas Salt. Thomas Simcox, in claiming his innocence against an accusation made by Catherine to her neighbours of his rape of her, relied on his assertion that Catherine, as a woman who had already had two bastards, was not to be trusted on issues concerning her sexuality.<sup>76</sup> In his defence Thomas depended more on Catherine's previous reputation than on the presentation of a watertight alibi. Thomas could probably rely on the fact that a rape accusation made by a woman of dubious reputation would not have any value.

Capp, in highlighting the severe consequences of a rape accusation, both for the man if he was subsequently found guilty, and for the woman whose reputation was henceforth brought into question, also suggests that in many cases both parties sought an informal settlement.<sup>77</sup> Those cases appearing in the church court records may represent this process in the making. Accusations directed against men of 'attempting the chastity' of a female, may have exerted sufficient pressure on the men involved to establish grounds for informal settlements. This perhaps explains the apparent absence of a criminal prosecution through the secular courts following an earlier presentment by the church

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<sup>75</sup> Amussen, S.D., discusses the way in which men could bring social as well as gender power to discredit women who alleged rape, 'The Part of a Christian Man', p.219.

<sup>76</sup> SRO, Q/SR/251, Translation, 1642, p.43.

<sup>77</sup> Capp, B., 'The Double Standard Revisited', p.92.

courts. As Capp notes, the church court presentments had probably activated the 'informal mechanisms of conciliation and arbitration'.<sup>78</sup>

What is clear from this necessarily limited research into rape is that it cannot be dismissed as the action of an isolated, sick, psychopathic individual, it must be located within the normal patriarchal structure of society.<sup>79</sup> It should not be viewed as a trivial act but one that epitomises the gendered construction of masculinity and femininity. The difficulties that women faced when wanting to report rape, the way in which ideas surrounding female sexuality, and the early modern conception of the body all construed to make rape almost invisible. Not only did their biological gender make women the victim in almost all instances of sexual violence, the social construction of the female implicated women within any sexual offence. However, within the seventeenth-century quarter session records there is no evidence to support the eighteenth-century phenomenon whereby the threat of rape was used as a justification to keep women off the streets to protect them. Female agency does not seem to have been curtailed in the way it later was, by means of the fear of rape attacks.<sup>80</sup>

Capp sees rape accusations as one of the few ways a woman could seriously damage a man, threatening his reputation and even his life, whilst acknowledging the severe consequences incurred by women by bringing their rape into the public arena.<sup>81</sup> In this way rape and rape accusations can be seen as a pivotal point upon which female and

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<sup>78</sup> Capp, B., 'The Double Standard Revisited', p.93.

<sup>79</sup> For further comment on this see Porter, R., 'Rape-Does it Have a Historical Meaning?', p.216.

<sup>80</sup> See Clark, A., *Women's Silence, Men's Violence*; Hitchcock, T., *English Sexualities, 1700-1800*, (Macmillan Press, Basingstoke and London, 1997), p.101.

<sup>81</sup> Capp, B., 'The Double Standard Revisited', p.96.

male reputation rested. In most circumstances the only victor, whether guilty of rape or not, would be the male. Occasionally women, whilst risking all, were able to situate themselves as agents. In this way they could act, either for their own protection or as survivors in a patriarchal system that constrained female language and conduct to such a degree as to make it almost impossible for them to successfully pursue a rape accusation through the courts.

In his work on rape, Porter questions whether or not rape has been a significant force in gender relations, and whether it was instrumental in the subjection of women.<sup>82</sup> From this investigation it would appear that rape was not a function of the patriarchal domination of women. Closely related, but different, it appears that sexual violence functioned in the way it did as a result of the already existing structure of patriarchy. The gendered perceptions of femininity directed attitudes towards women, which located them as subservient, submissive and prone to sexual misconduct. These perceptions allowed some men to pursue their instincts without any recourse to self-criticism. Rape was one aspect of an unequal relationship between men and women in which the victim was also the guilty party.

Through this examination of the instances of sexual violence, albeit one that has been restricted by the availability of evidence, it is apparent that the gendered construction of female identity placed women in an impossible situation with regards to sexual violence. To be female was simultaneously equated with sexual culpability and therefore to construct a male sexual attack on this basis shifted the blame directly onto themselves.

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<sup>82</sup> Porter, R., 'Rape - Does it Have an Historical Meaning?', p.224

Women by their perceived sexual licentiousness were rarely acknowledged as the victims in sexual exchanges, however violent. Only as the property of men, either as daughters or wives, had they the authority to challenge male sexual aggression, and even then this was usually done on their behalf. Although it must be restated that some women did prosecute on their own behalf.

For women, whose reputation depended upon their sexual honesty, a declaration of the violation of that honesty, would have implicated themselves in their own downfall. For these female victims, rape, whether brought into the open, or kept secret, highlighted their position as subordinated but sexually culpable members of society. As has already been identified in bastardy and infanticide cases, females were to be held guilty on grounds that applied solely to female activities. In this way the social construction of gender located women in a position of double subordination within sexual violence, physically weaker but seen as sexually responsible.

This chapter has identified the vulnerability of females as victims of sexual violence. Usually physically weaker than their attackers, and vulnerable to the gendered perceptions regarding culpability for sexual misconduct, they were placed in an impossible situation. By reporting an attack they brought their own sexuality into the public arena and by doing so became implicated in the act. In Chapter Seven it will be possible to identify whether the construction of early modern females as sexually licentious, whilst still being submissive and dependent upon men, can be seen within female participation in property theft and the world of stolen goods.

## Chapter Seven

### WOMEN AND MEN IN THE WORLD OF STOLEN PROPERTY

This chapter seeks to analyse the role of gender in shaping the nature and extent of both male and female involvement in crime against property, and attitudes towards this. Petty larceny was prosecuted mainly before the quarter sessions courts with grand larceny being referred to the higher jurisdiction of the assize courts. However, throughout the seventeenth-century many cases were dealt with by the quarter session courts that should have been referred to the higher court. The value of the goods stolen was one aspect in the categorisation of the severity of the crime, with grand larceny being treated more harshly than the lesser offence of petty larceny. The distinction between the two crimes lay in the value of the goods stolen. Grand larceny, which involved the theft of goods valued at more than one shilling, was classified as a felony and was punishable by death unless clergy was granted.<sup>1</sup> Petty larceny involved the theft of goods valued at less than one shilling and was punishable at the justices' discretion, and often resulted in the offender being whipped.

Although property crime constituted the most common type of prosecution for serious crime in early modern England, little is known about the role of gender in crimes of theft, receiving and the detection of stolen property.<sup>2</sup> Many historians have noted that the available evidence suggests that female participation was limited to less significant

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<sup>1</sup> This was not available to women until 1623, and not all thefts were clergyable such as horse-stealing and burglary, Beattie, J.M., *Crime and the Courts in England, 1660-1800*, pp. 142.-144.

<sup>2</sup> Beattie, J.M., 'The Pattern of Crime in England', pp.73-78.

crimes, such as petty theft.<sup>3</sup> It will be shown here that women had different patterns of criminal activity, both in the type of goods they stole, and in their choice of partners. If, as has already been demonstrated, the spheres of life that males and females were supposed to have occupied were clearly gendered, then they would definitely display distinct modes of criminal behaviour. Even when driven by the same needs and motives, these instincts would find expression in differing ways. Wiener suggests that, 'deviant men and women in Elizabethan England displayed clearly distinct modes of criminal behaviour', and for her this distinction is grounded on the different psychological traits that males and females exhibited.<sup>4</sup> Walker, too, suggests that men and women had different patterns of criminal activity, including the type of goods stolen and the gender of the partners chosen.<sup>5</sup> However, there the similarity ends, for Wiener this difference is typified by the subsidiary, dependent role of women in property theft, whilst for Walker any difference owes more to female participation in different spheres of life to males.

Previously women have been seen as insignificant because they represented only a small minority of those prosecuted. In this way quantitative evidence alone designates women as insignificant actors within property crime. As Walker comments, a methodology that relies on quantification alone has been exacerbated by the way gender has been seen in binary opposition.<sup>6</sup> Female participation in property theft, based on this perspective has not been considered worthy of examination and the reality and experience of female criminality has been ignored. Females were frequently at the centre of social interaction in their neighbourhoods and any level of participation should

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<sup>3</sup> Wiener, C.Z., 'Sex Roles and Crime in late Elizabethan Hertfordshire', pp 38-60.

<sup>4</sup> Wiener, C.Z., 'Sex Roles and Crime in late Elizabethan Hertfordshire' p.39

<sup>5</sup> Walker, G., 'Women, Theft and the World of Stolen Goods'.

<sup>6</sup> Walker, G., 'Women, Theft and the World of Stolen Goods'.

not be trivialised. The dynamics of gender within the world of property crime can only be examined through the application of a more fluid approach.<sup>7</sup> An examination of the different concerns of males and females, and the way in which space was gendered, allowing for differing opportunities, can inform our understanding of both male and female participation in property crimes.

Although the primary aim of this study is not to demonstrate the relationship between property crime and economic circumstances, it would be wrong to ignore these issues, as these circumstances affected the extent and type of crimes committed. One's gender affected one's role and position in society, both in social and economic terms and therefore the opportunity and need to steal certain items. This chapter will firstly consider the nature and value of goods stolen by males and females. Much past interpretation has assumed that the social and economic position of women was derived solely from the men to whom they were related, making them both dependent and insignificant.<sup>8</sup> This chapter will examine whether or not this was true within property theft in Nottinghamshire and Staffordshire. It will then go on to consider societal responses to male and female theft and to demonstrate that this does not appear to have been dependent upon gender. Finally female participation in receiving, distributing and the recovery of stolen property will be considered. This must all be considered within the context of the seventeenth-century attitudes towards property theft.

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<sup>7</sup> Walker, G., 'Women, Theft and the World of Stolen Goods', p 99.

<sup>8</sup> For a contrasting opinion see Walker, G., 'Women, Theft and the World of Stolen Goods'.

At the beginning of the early modern period local communities probably accepted small scale pilfering to some degree.<sup>9</sup> As early modern society experienced rapid population growth and the accompanying inflation, the perception grew that theft provided a more serious threat to society than ever before. Although, many historians are loath to accept a direct link between the economy and property crime Lawson notes that numerous studies point to an increase in all criminal prosecutions, especially for property crime, by end of sixteenth century, a period that had witnessed serious hardships and dearth.<sup>10</sup> This could, of course, reflect increased prosecution only, but the economic situation would suggest that society was experiencing increased levels of property theft.

This in turn led to a great concern in this period with the growth of a 'criminal class', vagrants and the poor.<sup>11</sup> This can be clearly identified within a Statute of 1601, which was intended,

To avoid and prevent divers misdemeanours in lewd and idle persons" against "the unlawful cutting or taking away of corn and grain growing, robbing of orchards and gardens, digging up or taking away fruit trees, breaking of hedges, pales or other fences, cutting or spoiling of woods or under-woods standing and growing, and such like offences."<sup>12</sup>

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<sup>9</sup> Wrightson, K., 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England', in Brewer, J. & Styles, J. eds., An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries, (Hutchinson, London, 1980, p.30.

<sup>10</sup> Lawson, P. 'Property Crime and Hard Times in England, 1559-1624', Law and History Review, (1986), vol. 4, p. 95; See studies by Samaha, J., Law and Order in Historical Perspective :The Case of Elizabethan Essex, p.19; Cockburn, J.S., 'The Nature and Incidence of Crime in England 1559-1625: A Preliminary Survey', p. 53, Wrightson, K., English Society 1580-1680 p. 162. Sharpe, J.A., Crime in Seventeenth Century England: A County Study, p.214.

<sup>11</sup> Sharpe, J.A., 'The History of Crime in England c 1300-1914', British Journal of Criminology, 28, 1988, p.127

<sup>12</sup> 43 Eliz. Cap. 7.

Within this statute petty crime was viewed as acting as an encouragement to the maintenance of idleness. A combination of poor harvests, and other factors, that affected food supply inevitably most severely affected those nearest to the poverty line, including single unsupported women.<sup>13</sup>

A society that lived under the constant threat of dearth, which was widely viewed as a significant threat to social order, inevitably witnessed an increase in tensions within local communities, thus placing the traditional social relations under considerable pressure. Walter and Wrightson suggest that early modern society's fears that hunger led to crime and disorder encouraged a propensity to prosecute theft.<sup>14</sup> Under this pressure, whether real or imagined, local communities responded more aggressively to those acts which formerly would have often been accepted as customary rights. Acts such as gleaning and woodstealing were redefined as theft, demonstrating a shift in social attitudes. Poor harvests of the period saw society in crisis, especially in 1600-2, 1607, 1612-17, 1620-4, and 1630-1, although the problems for society at large in these periods were not as critical as they had been in the late sixteenth century. The economic depression of the years 1620-1624 is thought by some historians to have led to an economic breakdown within society.<sup>15</sup> In 1623, at the height of a food crisis, following the poor harvest, Sir William Pelham reported that in Lincolnshire,

There are many thousands.... Who have sold all they have even to their bed straw and cannot get work to earn any money.... And the other day one stole a sheep who for mere hunger tore a leg

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<sup>13</sup> It is possible to see the effects of this when examining many witchcraft accusations. For a more extensive discussion of this see Macpherson Bardell, K., 'Death by Devilish Demonstration'

<sup>14</sup> Walter, J. and Wrightson, K., 'Dearth and the Social Order', p.39.

<sup>15</sup> Supple, B.E. Commercial Crisis and Change in England 1600-1642, (Cambridge University Press, Cambridge, 1959), p.52.

out, and did eat it raw.<sup>16</sup>

The increase in the prosecution of theft within the quarter session records, suggests that the late 1620s onwards witnessed either a breakdown in community tolerance, or an increase in the instance of theft itself.<sup>17</sup> The increase in riots, breaking down of hedges and into enclosures, preceded the response of local communities, which was not only to harden its attitude towards the poorer members of society, but also to put in place measures to control the distribution of food. The grain shortages experienced by much of the country in 1630-31 were met by similar responses.<sup>18</sup> Those in authority, in accordance with the Books of Orders, sought to suppress, 'all superfluous maltsters and alehouses', in an attempt to free more corn as food.<sup>19</sup> Evidence of this can be seen within the quarter session minute books. In Nottinghamshire the problem was eased by the navigability of the Trent, which enabled corn to be brought in from other more remote areas of the country where prices were not so great.<sup>20</sup>

In conjunction with poor harvests much of the seventeenth-century witnessed localised plague, increasing the already mounting pressure in individual geographical areas. In the 1620s, demobilisation at the end of war led to large numbers of returning soldiers who swelled the numbers of those who were without work, a fixed abode and independent financial support. The economy, already hard pressed, was neither flexible

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<sup>16</sup> 'Lincolnshire Notes and Queries, 1,1,1888, pp 15-16 in Thirsk, J. & Cooper, J.P. eds., Seventeenth-Century Economic Documents. (Clarendon Press, Oxford, 1972), p.24.

<sup>17</sup> Nottinghamshire Quarter Session Minutes and Staffordshire Quarter Session Rolls.

<sup>18</sup> Walter, J. & Wrightson, K. eds., 'Dearth and the Social Order in Early Modern England', p. 26.

<sup>19</sup> Public Record Office S.P. 16/187, no.28, in Seventeenth-Century Economic Documents, p. .36.

<sup>20</sup> Beckett, J.V., The East Midlands from AD 1000, p. 151.

enough nor dynamic enough to absorb the returning servicemen. In addition the increase in migration in times of crisis in turn led to an increase in petty theft, especially in those situated close to good road links, such as the Great North Road, and Ermine Street, the principal route to York from Hertfordshire. Having set the context for property theft the nature and value of goods stolen by males and females will now be considered.

### **Male and female participation in theft**

In Nottinghamshire, for the earlier part of the period under review, the records do not usually declare the nature and value of the goods stolen, either by males or females, although the information for Staffordshire is more complete. From the beginning of the 1630s more complete descriptions of the items stolen and their value is available. Therefore, this section draws most on evidence from the latter half of the study for Nottinghamshire and the whole of the period for Staffordshire. What is clear is that throughout the period females were active in property crime, and that the communities and justices responded equally vigorously to both genders. Both of these aspects will be examined more fully later in this chapter.

As has already been noted, females are often considered to have stolen goods of a lower value than their male counterparts, and an examination of the quarter session records of Nottinghamshire and Staffordshire will demonstrate whether this was the experience in those counties. Both Beattie and Sharpe note that women stole items of a lower value than their male counterparts, thus confirming their subordinate, less significant position within the criminal activity of theft.<sup>21</sup> Wiener suggests that women were less daring

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<sup>21</sup> Beattie, J.M., 'The Criminality of Women in Eighteenth-Century England', pp.80-110; Sharpe, J.A., *Crime in Early Modern England 1550-1750*, p.109. However, for a contrasting approach see Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', p.176.

than men when involved in property theft, and that the goods stolen by them were not worth as much, but this could be because, as has already been discussed, they stole goods that directly related to their sphere of life.<sup>22</sup> Those household items, that women are most frequently associated with stealing, carried a high intrinsic value to the women who stole them, probably, even, a far greater value than items of a higher financial worth. The possible low financial value of these goods should not be seen as evidence of the triviality of female theft, but as evidence both of their concerns, and their opportunities, for both the theft and disposal of such goods.<sup>23</sup> It is yet more evidence for the different worlds that men and women inhabited. Any approach to theft, which designates the theft by women of clothing or food such as poultry as trivial ignores the relevance of these items for women and men in early modern society. Clothing constituted the largest single category of household expenditure after food and food production.<sup>24</sup> So the theft of items of this nature and importance which constituted a substantial part of household economic spending, should be viewed as significant within early modern life.

One of the most obvious problems with qualifying female participation in property theft as insignificant based solely on the financial value of the goods stolen, is that this

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<sup>22</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire' p.42, in which she identifies female behaviour as less daring, more dependent and venturesome.

<sup>23</sup> An analysis of early modern wills, by Erickson, A.L., reveals that women had a greater interest in clothing and its distribution than did men, even when its value was relatively small. 'Common Law versus Common Practice: the Use of Marriage Settlements in Early Modern England', *Economic History Review*, (1990), vol. XLIII, pp.21-39.

<sup>24</sup> Weatherill, L., 'Consumer Behaviour, Textiles and Dress in the Late Seventeenth and Early Eighteenth-Centuries', *Textile History*, (1991), vol.22, p.298.

approach ignores the reality of everyday existence for both males and females. If the majority of female theft involved items of a lower value than male theft, this holds more significance for an explanation of the different social experience of males and females, than for female lack of audacity or bravery in carrying out crimes of this nature. Property theft was, and still is, most likely to occur in the environment that the thief normally occupied. For males in the early modern period this location was usually outside of the home, perhaps within the sphere of work, in animal husbandry or within industry. Males also had more opportunity within early modern society to be abroad at hours that would have been deemed inappropriate for females. The more usual female environment would have been closer to home, either within their own or their neighbours' homes and in the case of domestic servants, in their employers' homes, or within the market place, a space within which females were particularly involved.<sup>25</sup>

This approach, which categorises the theft of items of a lower financial value as insignificant is inappropriate. It must also be remembered that court records reveal the prosecution of criminal acts rather than the occurrence of crime itself.<sup>26</sup> Therefore, it is possible that women were not prosecuted as often for their involvement in acts of theft as their male counterparts.<sup>27</sup> However, research carried out for this study does not suggest that this was the case. As has already been shown, women, both married and single, frequently appeared before the courts accused of the theft of a wide variety of

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<sup>25</sup>In his study into crime in the late seventeenth and eighteenth-century Beattie, J.M., notes that servants and employers often were at variance over what servants might and might not legitimately take as part of their legitimate payment, *Crime and the Courts in England, 1660-1800*, p.174.

<sup>26</sup> Lawson, P., 'Property Crime and Hard Times in England 1559-1624', p. 97.

<sup>27</sup> Married women especially are often assumed to have been protected from such accusations as they stood not as individuals but as *femmes couvertes* under the authority of their husbands.

items, ranging from livestock, including poultry, sheep and horses, to clothing and household utensils.

Within the records examined for this study there were only a minority of cases that included the value of the goods stolen, but within those cases in which the figure was stated there is little gender difference apparent. The only clear difference is that no men were prosecuted for thefts where the items were clearly valued at under 1s, whereas two women were listed as stealing items valued under 1s. The sample of cases containing this information, from which these figures are taken, is too small to be representative of the complete range of property theft. A clearer indication of the value of items stolen by males and females must be deduced from the information given as to the nature of these goods. When considering the nature of the goods stolen it is evident that both males and females stole goods of a high monetary value, even though females were most often prosecuted for the theft of clothes and household linens (see Table 6).

The following table lists the range of stolen goods that were listed in the quarter session records for Nottinghamshire and Staffordshire from 1603-1660. Although this can only give a partial insight into the nature of goods stolen, there is no reason to assume that this is not representative of the full range of stolen items within these two counties. The theft and ensuing sale of large livestock, such as cattle and horses, was generally carried out by males not females.<sup>28</sup> This was primarily because males had more opportunity to engage in the theft and disposal of large animals, as it was more likely to come within

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<sup>28</sup> Sharpe, J.A., Crime in Seventeenth Century England- A County Study. p.98.

their everyday experience of work. Not, as has been suggested by some historians because women were less brave or audacious when involved in theft.<sup>29</sup>

**Table 6**

**NATURE OF GOODS STOLEN BY MALES AND FEMALES**  
**IN NOTTINGHAMSHIRE AND STAFFORDSHIRE 1603-1660**

Goods stolen <sup>30</sup>	Nottinghamshire.		Staffordshire		Total	
	M	W	M	W	M	W
Food	3	2	—	1	3	3
Corn, wheat etc.	1	4	—	—	1	4
Large livestock*	18	1	6	5	24	6
Small livestock**	3	2	—	1	3	3
Clothes	8	15	14	29	22	44
Household linens	2	8	3	13	5	21
Household goods	—	2	2	1	2	3
Money	5	2	—	—	5	2
Hay, timber	9	3	1	2	10	5
Tools	1	—	—	—	1	—
Miscellaneous	1	2	2	3	3	5
<b>Gender Total</b>	51	41	28	55	79	96
<b>Grand Total***</b>	92		83		175	

\*Including horses, cattle and sheep.

\*\* Including poultry and rabbits.

\*\*\*These figures only represent a proportion of those being prosecuted for property theft in both counties (see Table 7), as the nature of the goods stolen was not always recorded.

<sup>29</sup> Beattie, J.M., *Crime and The Courts in England 1660-1800*, pp 237-43; Sharpe, J.A., *Crime in Early Modern England 1550-1750*, p.109.

<sup>30</sup> These categories are based on those previously employed by Garthine Walker in research into the gendered meanings of property theft in 'Women, Theft and the World of Stolen Goods'.

Horse theft was viewed as the most heinous of thefts and resulted in harsher penalties. It came within the category of crimes that did not have benefit of clergy.<sup>31</sup> All of the cases of horse theft, that came before the justices in this study involved male thieves. On 6<sup>th</sup> October 1626, Giles Tompkinson, of Walkeringham, labourer, was indicted, 'on suspicion of stealing a horse of a black colour and a horse of a bay color the property of a man unknown.'<sup>32</sup>As all cases of horse stealing should have been, this case was referred on to the assizes.

According to Sharpe, the most common form of theft indicted at both the quarter sessions and the assizes was sheep theft, however the prosecutions that appeared before the courts in Nottinghamshire and Staffordshire do not confirm this.<sup>33</sup> Within those cases of sheep theft which appeared before the justices in Staffordshire, and to a lesser degree in Nottinghamshire, both men and women were prosecuted for the theft of sheep. In 1631 William Banes, labourer, and Mary Harwood, widow, currently then in prison, were sentenced by the justices to appear before the assizes for stealing three lambs belonging to Richard Wright.<sup>34</sup> Both William and Mary admitted the theft. In 1646 at Easter, Elizabeth Padley, of High Lane in Norton in the Moors, spinster, confessed to the theft of two sheep belonging to Jeffrey Babbe.<sup>35</sup> Admittedly this theft took place in a period of intense personal hardship for many people in central England, with the area having been at the heart of war since 1642.

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<sup>31</sup> Sharpe, J.A., *Crime in Early Modern England 1550-1750*, p.67.

<sup>32</sup> Copnall, H.H., *Nottinghamshire County Records*, p.37.

<sup>33</sup> Sharpe, J.A., *Crime in Seventeenth Century England- A County Study*, p.92.

<sup>34</sup> NAO, C/QSM1/74/2 East Retford 15<sup>th</sup> July 1631.

<sup>35</sup> SRO, Q/SR/258 Gaol delivery Easter 1646.

From those cases presented before the Nottinghamshire and Staffordshire justices it is evident that both males and females were involved in the theft of small livestock such as rabbits and poultry. However, it was predominantly males who were prosecuted for the theft of rabbits by hunting. Most females involved in rabbit theft were part of a larger group that contained mainly males.<sup>36</sup> Poultry was most often stolen by the village poor, and many of those appearing before the courts for their theft were female.<sup>37</sup> At one meeting of the sessions in 1631, there were two separate instances of stolen poultry. Firstly Joan, wife of Solomon Barnes, miller, of Farndon, admitted the theft of two hens and two pounds of feathers, both items clearly located within the acknowledged female sphere of life.<sup>38</sup> For this Joan, not her husband, was to be whipped, showing the court's identification of her as an independent woman. The fact that Joan, the wife of a miller, usually one of the more financially secure members of society, needed to steal highlights the fact that the harvest crisis in this year was severe. Secondly William Whyte, of Caunton, labourer, was bound £20 to appear for the theft of a cockerel, property of Richard Hawes, clerk.<sup>39</sup> Both individuals appear to have been responding in a similar fashion to the hardships of the early 1630s. In comparison to other types of theft, few cases of the theft of small livestock were prosecuted in either county for this period. The recorded cases of female participation in the theft of livestock appears insignificant in comparison to their involvement in the theft of clothing and household linen (see Table 6).

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<sup>36</sup> See NAO, C/QSM1/68/2 East Retford 18<sup>th</sup> January, 1610-11, p.71; C/QSM1/69/1 Nottingham 13<sup>th</sup> January, 1616, p.37.

<sup>37</sup> Sharpe, J.A., *Crime in Seventeenth Century England - A County Study*, p. 99.

<sup>38</sup> NAO, C/QSM1/74/2 Newark 20<sup>th</sup> April, 1631, p.129.

<sup>39</sup> NAO, C/QSM1/74/2 Newark 20<sup>th</sup> April, 1631, p.129.

Within Essex, Sharpe found that within thefts of clothing and household linen, usually minor larcenies, only 30% of those charged were women.<sup>40</sup> Within the Nottinghamshire and Staffordshire quarter session records, a much higher percentage of those accused of the theft of clothing and household linens were female. Within these two counties the reverse was true. Over 70% of those accused of the theft of clothing and household linen were women. Taking into account the fact that female participation in property theft was less than male participation, females accounted for only 39.5% of the total number of individuals prosecuted for property theft. Of all the thefts committed by women 46.3% were thefts of clothing and 22.1% thefts of household linen. In comparison only 27.8% of male theft was the theft of clothing, (although clearly this figure is not insignificant), and only 6.3% of male theft involved household linen,(see Table 6). This female concern with clothing and household linen is one that has frequently been dismissed as trivial, and one which has led to female thieves being seen as opportunist and petty.<sup>41</sup> The theft of clothing was seen by some contemporaries as a desire to emulate their betters, with perhaps some suggestion of suitable clothing being a significant part of the construction of an appropriate reputation. A further consideration was their need for clothing based on necessity, and also the potential for resale within the second-hand clothes market, which will be addressed later.

When considering the likelihood of females to steal clothing, it is impossible to ignore the significance of the relationship between goods stolen and the female role in society. As female freedom was supposedly more restricted than male freedom, they were more

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<sup>40</sup> Sharpe, J.A., *Crime in Seventeenth-Century England- A County Study*, p.101.

<sup>41</sup> Walker, G., 'Women, Theft and the World of Stolen Goods', p. 88.

likely to inhabit different spheres, and were therefore more likely to commit certain types of crime due to these restrictions. Just as space was gendered in early modern society, so too was property theft.<sup>42</sup> So what was stolen tells us less about whether or not women were as brave or audacious as men as thieves, and more about societal structures and opportunity. It is evident that female theft must be viewed in its wider societal context, in which women stole goods that concerned them in everyday life, and goods that were more easily accessible within their sphere given the opportunity. Women were more able to sell clothes and household linens, and men more able to sell large animals because these items belonged to the gendered space that each inhabited. Looked at from today's perspective we would not be surprised at the high incidence of theft from one's own work environment rather than theft from a neighbouring occupation. Opportunist thefts would occur most often in the sphere that the perpetrator usually occupied. For most women this would be within the domestic sphere, as this was where most women spent the majority of their time.

In 1654, Elizabeth Silvester, spinster, was accused of stealing a sheet, although she denied this, claiming that,

The sheet which she is charged to have stolen was by her found in a bush as she went between Loxley and Bramshall yesterday, that she tooke the sheet with her to Bramshall Parke where she lay all night, but that she stole the same she doth flatly deny.<sup>43</sup>

This is probably an interesting variation on the truth, as it was quite common for washing to be dried on hedges. Henry Edge of Brampton, confirmed the theft of a flaxen sheet from his master, Henry Harding, and both he and Henry identified the sheet

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<sup>42</sup> The space that females and males were able to occupy was clearly defined, although females frequently had to go beyond their designated space into male space whilst carrying out work duties.

<sup>43</sup> SRO, Q/SR/285 Epiphany 1654 p.20.

found in Elizabeth's possession as his. Whether stealing washing from hedges, or linen from within houses, this behaviour is clearly located within the everyday experience of most women, especially in rural areas.<sup>44</sup> For men, whose lives allowed them greater access to a wider range of arenas and more scope to be abroad at different hours of the day and night to their female counterparts, the instinct or need to steal could express itself in different ways.

Elizabeth Alvey demonstrated the concern that women had with items of clothing, or household goods, when she stole the following from one Anne Gardus; one waistcoat, one safeguard, one and a half yards of linen, one handkerchief, three coifs, three crossclothes, one apron, one singlet, one purse, and eighteen pence in cash.<sup>45</sup> The total stolen was valued at 10s. For a theft of this value Elizabeth should have been tried for grand larceny, which was punishable by death. The court clearly recognised the seriousness of her crime as she was ordered to appear before the assizes. Anne had already been a victim of a theft of items of a lesser value when Joan Sare, of Langar, stole a petty coat from her. Joan too, despite having stolen much less than Elizabeth, although still valued at over 1s, was indicted to appear before the same assizes. Due to the non-survival of the relevant assize records neither Elizabeth's nor Joan's fate is known. Whilst the items stolen by Elizabeth, being mainly clothing, do fit into the accepted notion of females stealing items of lesser value, this theft was neither trivial nor insignificant. Opportunity rather than audacity would appear to have been a more likely motivating factor in this incident, as these were all goods whose purchase or acquisition would have come within the usual sphere of female activity, and were also

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<sup>44</sup> See also Lane, P., 'Work on the Margins: Poor Women and the Informal Economy of Eighteenth and Early Nineteenth-Century Leicestershire', p. 92, for a continuation of this in a later period.

<sup>45</sup> NAO, C/QSM1/77, Nottingham 4<sup>th</sup> October, 1641.

items that females would have been ideally located to resell amongst their female dominated networks of friendship.<sup>46</sup>

Walker notes that within Cheshire women's thefts tended to be more piecemeal than men's, and there are some examples of this within Nottinghamshire and Staffordshire.<sup>47</sup>

In 1620 Margaret Bassett, otherwise Crosse, spinster of Chorley, was presented for theft. She had stolen one linen cloth wrought with silk worth 8s, two fowls worth 12d and a pair of handcuffs worth 6d, all being the property of Dorothy Lydgett from the house of John Lynacre, Gentleman at Chorley, on 1<sup>st</sup> May 1619.<sup>48</sup> In a similar fashion in 1656, Elizabeth Smith of North Leverton, was indicted for the theft of seven yards of cloth and various other items. The case of Anne Smith, wife of Francis Smith, West Bridgford, is typical of the type of petty theft which both males and females carried out. Ann took advantage of a local disaster when she stole clothing from a household that was still recovering from the plague.<sup>49</sup> Either her fear of the plague was not particularly great, or perhaps her need or desire for money or clothing, was far greater. Whichever it was, her need or greed was greater than the fear that could accompany such illnesses. Ann was later sentenced to be stocked, stripped and whipped.

It was not only females who were prosecuted for the theft of clothing. John Hardy was only one male, amongst others, to be prosecuted for the theft of clothing. In April 1636, John was prosecuted for the theft of nine shirts and one sheet belonging to Roger Robinson, who was then bound £40 to prosecute John at the assizes. Four other males

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<sup>46</sup> Females as receivers and traders in stolen or second hand goods will be examined in more depth later.

<sup>47</sup> Walker, G., 'Women, Theft and the World of Stolen Goods' p.87

<sup>48</sup> WSL, QS10 Roll 61, Michaelmas 1620, p.32-3.

<sup>49</sup> NAO, C/QSM1/76/2 Nottingham 18/01/1637/8 p.5

were bound £10 each to give evidence against the said John.<sup>50</sup> Even though this involved the theft of clothing, usually identified as being a female concern, this theft appears to have taken place within a male dominated sphere, which excluded females even as witnesses. Perhaps the boundaries of male and female space were not as clearly defined as has generally been accepted.

Females were frequently indicted to appear before the justices for the theft of wool and cloth, both raw materials that they in turn could convert into useful items of clothing or household linens. In 1632, William Bee of Cromwell was bound to prosecute Jane Willson at the assizes for stealing 'divers Skeanes of yarne' from him.<sup>51</sup> Instead of being bound over to appear at a later court, the theft was considered serious enough, or Jane was not considered reliable enough, nor financially secure enough to pay a recognisance, that she was immediately committed to prison. Mary Huttam and Jane Cassam, having appeared before the Justices at the Nottingham quarter sessions, were both sentenced to appear at the next meeting of the assizes. Both were in custody for stealing wool from the bodies of Gervase Rossell's sheep.<sup>52</sup> Gervase, a gentleman from Ratcliffe-on-Trent, was bound £20 to prosecute both women. All of these women can be seen to be stealing within their usual sphere of life, as many females were involved to varying degrees with the spinning of wool into yarn. A further example of females stealing goods from their accepted sphere of life, was Margery, wife of Edward Charles, otherwise known as Creswall, of Almyngton. She was bound by recognisance to appear for the theft or receiving of a yard and a quarter of woollen medley cloth from Robert

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<sup>50</sup> NAO, C/QSM1/75, Nottingham 25<sup>th</sup> April 1636, pp. 116-7.

<sup>51</sup> NAO, C/QSM1/74/2, Newark 11<sup>th</sup> July 1632, .p. 252.

<sup>52</sup> NAO, C/QSM1/73/2, Nottingham 13<sup>th</sup> April 1629, p.215.

Poole of Almyngton.<sup>53</sup> This category of theft should be viewed, not as trivial, but as a natural extension of female daily lives.

Walter and Wrightson, in an analysis of goods stolen in years of harvest failure, revealed that theft of foodstuffs 'rose and fell with prices'.<sup>54</sup> Perhaps if women stole goods mostly within their sphere, this would have been confirmed by an increase in prosecutions of women, in Nottinghamshire and Staffordshire, for the theft of food in those periods. In fact within neither of the counties does the prosecution for theft of foodstuff figure very highly at all. It is impossible from the available evidence to either confirm or dispute this notion. Even though there is clear evidence of an increase in prosecution for theft of a wide range of commodities in the period following the crises of 1614, 1623-4, and 1630-1, within Nottinghamshire and Staffordshire, this increase is equally distributed between both males and females. Closer analysis of those cases that list the items stolen show that in the earlier period men and women were equally liable to steal food, and in the period following the 1630-1 crisis prosecution for theft of all kinds rose dramatically. These thefts ranged from foodstuffs, which might more easily be identified as coming from the female, domestic sphere, such as grain, dough, and poultry, to the more commonly accepted targets of male thieves, such as cattle and sheep.<sup>55</sup>

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<sup>53</sup> WSL, QS19 Roll 28, Michaelmas 1631, pp.32, 40.

<sup>54</sup> Walter, J. & Wrightson, K., 'Dearth and the Social Order in Early Modern England', p. 24.

<sup>55</sup> See cases NAO, C/QSM1/74/2, Newark 12<sup>th</sup> January 1631, pp.102-103; C/QSM1/74/2, East Retford 14<sup>th</sup> January 1631, pp.110-111; and C/QSM1/74/2, Newark 20<sup>th</sup> April 1631, pp.129.

In 1631, Mary Morton of Bathley, spinster, confessed to the Justices at Newark as having stolen dough.<sup>56</sup> A petty crime, but one that perhaps reveals the dilemma that Mary faced, single and possibly unsupported, in a period that faced increasing hardships and reducing charitable support. Having confessed, Mary received the standard punishment of stocking, stripping and whipping. The case of Ann Riley, spinster of Cottam, prosecuted for milking a cow without permission, also displayed, not an example of a trivial theft committed by a female, but a perpetrator of a theft of necessity.<sup>57</sup> For her crime Ann was punished by being stocked and whipped. Not too severe a punishment in this period, but one which it was hoped would demonstrate to others that this kind of petty theft was not acceptable.

This type of crime involving the taking of foodstuffs continued throughout the period under review. In 1656 Ursula Fittiplace, of Sutton Bonnington, was ordered to appear at the assizes for the theft of four stalks of unwinnowed barley, part of the goods and chattels of one George Barton.<sup>58</sup> This type and level of theft would probably have been dealt with more informally earlier in the seventeenth century, but with the gradual breakdown of community tolerance prosecution became a more usual response, although there were still relatively few cases such as this prosecuted.

The stealing of timber is one of those crimes that has sometimes been designated as a 'social crime'. Taking wood was formerly viewed as a right but gradually it was more frequently prosecuted by the courts. Both men and women saw the need to steal wood

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<sup>56</sup> NAO, C/QSM1/74/2, Newark 12<sup>th</sup> January 163, p.102.

<sup>57</sup> NAO, C/QSM1/75, Newark 7<sup>th</sup> July 1635, p. 75.

<sup>58</sup> NAO, C/QSM1/12, Nottingham, 14<sup>th</sup> April 1656.

and were punished on similar terms for this crime by the courts.<sup>59</sup> On 13<sup>th</sup> April 1610, Katherine, wife of Richard Hardy, of Norwell, appeared before the Newark quarter sessions, for the theft of 10 'Ash Poules' from the wood of Fulk Cartwright. For this theft Katherine was to pay Fulk 2s before the following Sunday or be whipped. Part of the issue here was that Fulk Cartwright had been a Justice of the Peace since 1607 and as such was a respected member of the community.<sup>60</sup> Later in 1612 three men and two women were charged with 'stealing timber from Flintham Wood, the property of William Cooper Esq.'<sup>61</sup> As a punishment they were to pay 3s 4d each, and those unable to find the money were to be stocked for two hours on the following Sunday, then stripped and whipped by the constable at Kneeton. No longer tolerated within the communities, those found guilty were subject to punishment. In both of these cases the crime appears to have been viewed as petty rather than grand larceny, despite the value of the goods, thus reducing the severity of the punishment.

Theft with violence, which was classified as robbery and was without benefit of clergy, seems to have been a rare offence, or at least one that was rarely prosecuted through the formal court system. Violence and theft do not appear to have gone together very often. This is perhaps surprising in an age known to have a predilection for violence.<sup>62</sup> Burglary and housebreaking were more common crimes. Burglary was a term loosely used to denote all forms of theft involving entry into a house, but which really should

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<sup>59</sup> It is possible though that the punishment meted out to the three men and two women who stole from Cooper could be viewed as being gendered as the likelihood of the women being able to pay the fine was slight and therefore they would have been subjected to the more public punishment of stocking, stripping and whipping.

<sup>60</sup> Copnall, H.H., Nottinghamshire County Records, p.8.

<sup>61</sup> NAO, C/QSM1/68/3 Newark, 13<sup>th</sup> January 1613, p. 133.

<sup>62</sup> Sharpe, J.A., Crime in Seventeenth-Century England -A County Study, p. 104.

have applied only to those carried out at night time. This was viewed as more serious than simple theft, because it took place at night, and in the home of the victim, thus violating them to a greater degree.

Burglary is seen by some historians, including Sharpe, as being a predominantly male activity.<sup>63</sup> If this was true then this was probably due the greater existence of freedom of opportunity available to men, and more limited freedom available to women. Despite the limits of time and space placed upon females, married women had more opportunity to be abroad in the night-time if they accompanied their husbands. Richard Clarke, labourer from Lenton, in Nottinghamshire, and his wife, were both accused of breaking and entering into the dwelling house of one Nevill of Grove, gentleman, but on Nevill's certification that they were not guilty, because another felon had been found guilty, they were to be released from gaol.<sup>64</sup> Even though they were later found innocent, it was readily accepted that Richard's wife would be out breaking and entering. This was perhaps because she was not alone but accompanying her husband.

Some females though broke with proprieties and went abroad at night alone, risking condemnation and the ruin of their reputations. Margaret Bassett broke into the home of John Lynacre, Gentleman, at Chorley, in the night time on 20<sup>th</sup> October 1617, stealing a wide range of items.<sup>65</sup> Her audacity or need was confirmed when two years later she broke into the house again at night time and stole goods belonging to Dorothy Lydgett, his wife's daughter.<sup>66</sup> Margaret's fate is not recorded but Cynthia Herrup suggests that

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<sup>63</sup> Sharpe, J.A., *Crime in Seventeenth-Century England -A County Study*, p. 107.

<sup>64</sup> NAO, C/QSM1/73/2, Newark 14<sup>th</sup> January 1630, p.205.

<sup>65</sup> WSL, QS10 Roll 61, Michaelmas 1620, p. 33.

<sup>66</sup> WSL, QS10 Roll 61, Michaelmas 1620, p..32.

many recidivists escaped the penalty of death, because 'their booty was modest, and many were established, albeit marginal, local residents'.<sup>67</sup> It is possible that as Margaret had broken into the house twice at night and had stolen fairly substantial items that she would have been referred to the assize court to await appropriate sentencing.

Despite the connection between burglary and males, females did commit this crime, and in the 1630s in Nottinghamshire there are more cases citing females as 'burglariously breaking into' a dwelling house and stealing.<sup>68</sup> In April 1629, Edward Alcock, of Newton, and Roger Campyon, of Ratcliffe, were both bound £10 each to prosecute one Joan Laughton, then in custody, for 'burglarously breaking into the dwelling house of Edward Alcock and stealing one candlestick'.<sup>69</sup> The item stolen by Joan could be seen as one which was located within her usual domestic sphere, and as such was an item she desired, but it is equally probable that its resale value was of a more immediate interest to her. The theft of a silver spoon by Anne Somner of Elston, could perhaps be related more to the fact that it was a valuable item that could in turn be exchanged for other more necessary goods, or money, than it was to the fact that it was an item which came within the normally accepted range of female spheres.<sup>70</sup>

Although Ann Griffiths denied her involvement the following case highlights some of the parameters of female interaction and networks, which can be interpreted in different ways. At the gaol delivery at Stafford in 1637, Ann was charged with,

The breaking and robbing of the house of Richard Grafton

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<sup>67</sup> Herrup, C.B., *The Common Peace*, p.182.

<sup>68</sup> It is impossible to know whether this was a reflection of the economic difficulties of the period or whether it reflects a more aggressive prosecution rate,

<sup>69</sup> NAO, C/QSM1/73/2, Nottingham 13<sup>th</sup> April 1629, p.215.

<sup>70</sup> NAO, C/QSM1/70/5, Newark 17<sup>th</sup> April 1619, p.272.

of Sutton, Salop, husbandman, saith that she is not .... guilty thereof. And being further questioned where she had the clothes found upon her which were taken out of the dwelling house of the said Richard Grafton saith that she had the same of one Alice Jackson whom she met with on the highway and further is not affirmed.<sup>71</sup>

Although it is impossible to be positive that Ann stole the clothes, female involvement in this theft is almost certain. There is little evidence in any of the above cases of the timid, dependent female.

Evidence from the Nottinghamshire quarter session minutes for 1631 supports the view that females stole goods most closely related to their daily social experience.<sup>72</sup> Of the nineteen thefts in which the items stolen were listed, ten men stole livestock including sheep and cattle, one man and one woman stole poultry, two men stole from their workplaces, and two women stole food and clothes. The other two women stealing money and feathers, items which again came within the accepted sphere of female existence. This small sample is not meant to suggest that females did not steal goods such as sheep or horses, but perhaps that the opportunity for such thefts was outside of their normal daily experiences, whereas the opportunity for the theft of clothes, foodstuffs and money arose more frequently. 1631 is probably atypical only in as much as the extant records allow an examination of the goods stolen, and in the fact that it was a period of economic crisis.

As has been shown, males and females were prosecuted for a wide variety of property thefts. Although there is strong quantitative evidence that females were more likely to

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<sup>71</sup> SRO, Q/SR/225, Epiphany 1637, p.44.

<sup>72</sup> This year was chosen as it was a year in which there was unusually detailed information provided, stipulating which goods were stolen.

steal clothes and household linen than other goods, this did not exclude either males from stealing goods within this category, or females from participating in the theft of livestock, grain or other goods. This highlights the fact that the gender boundaries, in relation to goods stolen, were more blurred than is often supposed. Having examined the nature and value of goods stolen by males and females, their criminal associations when committing property thefts will be now be considered.

**Table 7**

**CRIMINAL ASSOCIATION IN PROPERTY THEFT IN  
NOTTINGHAMSHIRE AND STAFFORDSHIRE, 1603-1660**

Category	Notts.		Staffs		Total	
	M	W	M	W	M	W
Alone	151	109	15	35	166	144
With men*	63	163**	6	21	69	184
With women*	304**	41	10	10	314	51
Total	518	313	31	66	549	379

\*This sometimes included more than one man and woman within one case.

\*\* These figures are for numbers of individual males or females, where sometimes more than one male or female was involved in one case.

Women in early modern society were seen as being dependent upon a male authority figure, usually either a father or husband.<sup>73</sup> Based on the acceptance of this notion, females, 'have been seen as dependent criminals in accordance with their supposed

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<sup>73</sup> See Chapter One for a discussion on the place of women in early modern England.

social role'.<sup>74</sup> In contradiction to this idea, those cases presented before the quarter sessions in both counties indicate that females frequently worked either alone, or together with other females. As can be seen in Table 7, above, the percentage of women involved in property crime who acted alone is far greater than that of men acting alone, with 38% of women acting alone and only 29% of men.<sup>75</sup> This could be explained by the fact that many women committed opportunist thefts that were not premeditated.

Although more women acted with other men (48.5%), than acted with other women (13.5%), if those cases in which more than one woman acted with one man were excluded then the percentage of women acting either alone or with other women increases significantly. Most women in this study either acted alone, with other women, or within groups where women outnumbered the men. As has already been seen, Joan Laughton of Shelford, spinster, was clearly acting independently when she broke into the home of one Edward Alcock, of Newton (an adjacent village) from where she was accused of stealing a candlestick.<sup>76</sup> Joan stood accused of 'burglariously breaking into a dwelling house', a crime which is predominantly attributed to male thieves. There is little evidence of the dependent female here.

When women were questioned, their stories often cited other women as accomplices, so female criminality cannot be seen only as dependent on male criminality. Women were frequently accused together either as thieves or accessories to the theft. Their own

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<sup>74</sup> Walker, G., 'Women, Theft and the World of Stolen Goods', p.83.

<sup>75</sup> This is contrary to Wiener's findings who suggests that females primarily appeared before the courts as accessories, or with other individuals, usually relatives, unlike males, who she identifies as acting alone

<sup>76</sup> NAO, C/QSM1/73/2, Nottingham, 13<sup>th</sup> April 1629 p.215.

female networks are evident. In 1615, at Stafford quarter sessions, Susanna Fishe and Mary Sherwood were together found guilty of the theft of a piece of linen, containing about 18 yards.<sup>77</sup> They were both sent to the keeper of Stafford gaol. These two women had together stolen goods that can clearly be located within a female designated space, that of clothing, also an area of production for early modern females, and had conducted this crime without the assistance of a male.

Elizabeth Bennett and Elizabeth Jackson, whilst in Stafford gaol, petitioned the justices for their release. They had previously been found guilty of breaking into the mill of one Mr Kennick of Sidwaye Lane simply because they were found near to Madeley about three miles from the mill.<sup>78</sup> Their conviction, based merely on circumstantial evidence, suggests that the concept of independent female thieves acting without male guidance or support was not totally alien to early modern society. It may be that these two women were strangers to the neighbourhood, and that this in fact helped in the decision to find them guilty. Had society not been able to conceive the notion of an independent female thief, this alone would probably not have been sufficient evidence to convict them.

Even in thefts in which women acted alongside men, female dependency cannot necessarily be assumed. In fact in the two cases of theft for which Margaret Bassett, alias Crosse, alias Chorley, widow, appeared before the court in Staffordshire, Margaret could be judged to be the prime instigator of the thefts.<sup>79</sup> As has already been seen Margaret broke into John Lynacre's house twice. Firstly alone, and then with one Thomas Haycocke she had entered Lynacre's house at night and had stolen goods of

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<sup>77</sup> WSL, QS8 Roll 47, Easter 1615 no. 39.

<sup>78</sup> WSL, QS14 Roll 6, Trinity 1626, p.42.

<sup>79</sup> WSL, QS 10 Roll 61, Michaelmas 1620, pp.32-3.

considerable value. Although there is nothing within the details of the case to illustrate which one of them had instigated the theft, and therefore had had control of their activities, it seems reasonable to assume that Margaret cannot be seen as a subordinate, dependent female thief.

Joan Bennyon, widow, of Penkridge, typifies much that early modern society feared when females stepped outside of the normal patriarchal structures. Far from being the quiet, passive, submissive female of the conduct books, everything that she stood accused of represented a complete inversion of the ideal woman. In 1623 Joan was bound £20 at the Trinity meeting of the quarter sessions at Stafford to appear for her part in receiving and detaining stolen goods, amongst other misdemeanours.<sup>80</sup> At the Epiphany meeting of the quarter sessions a petition was presented before the justices from the inhabitants of Brewood, listing the range of crimes committed by Joan that had eventually exhausted the patience of her neighbours.<sup>81</sup> Her neighbours stated that,

The said Bennyon is of evil behaviour and a common receiver of stolen goods, in whose house have been found the following:- part of goods stolen from a house at Tipton about six years since: certain apparel stolen from the servants of Thos. Lord Bishop of Coventry and Lichfield about two years past: pairs of shoes stolen from the shop of Roger Hodgson of Brewood about a year past: goods stolen from the house of Walter Brindley of Lapley about six months past. The stealers of divers horses, geldings and mares have been received in the house of the said Bennyon.<sup>82</sup>

Probably having already failed to control Joan's behaviour by more informal methods, her neighbours sought recourse to a higher authority, the justices of the peace, via the quarter session courts. The image of Joan revealed in this petition is not of a female dependent on a male figure within these crimes. The perception of her is one of a

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<sup>80</sup> WSL, QS 12B Roll 72, Trinity 1623, no. 47.

<sup>81</sup> WSL, QS 12B Roll 77, Epiphany 1624, p.133.

<sup>82</sup> WSL, QS 12D Roll 77, Epiphany 1624, p.133.

woman whose behaviour broke all the appropriate boundaries of the period. Her crimes were not committed as a momentary aberration but were part of a lifestyle in which she was well established. She herself stole, she encouraged others to steal, and was happy to receive stolen goods, and equally to harbour known criminals. This was a female with apparent control of, and authority over, her own life. It could also be argued that as a widow her income may not have been sufficient for her to be self-reliant, and one method of supplementing this may have been for Joan to steal, receive and sell stolen goods. Community attitudes towards recidivists were surprisingly fairly tolerant, providing that they were established, albeit marginal local residents.<sup>83</sup> It was probably only when Joan became involved in horse stealing that community tolerance was exhausted.

Married women were supposedly subsumed under the legal identity of their husbands, but the courts' judgements, when finding women guilty of property theft clearly reflect the court's acceptance of them as individuals in their own right. As such they could therefore be punished for the crimes in which they participated. In 1625 the justices at Nottingham found Elizabeth Masland, wife of Thomas, liable to be held responsible for her own actions, and duly sentenced her to be stocked for 1 hour for petty larceny in her home parish of Caythorpe.<sup>84</sup> The authorities did not see Elizabeth as dependent on Thomas, her husband, or his fate following her criminal activities would have been to receive punishment alongside her.

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<sup>83</sup> Herrup, C., *The Common Peace*, p.182.

<sup>84</sup> NAO, C/QSM1/72/1, Nottingham, 3<sup>rd</sup> October 1625, p. 227.

Married women sometimes accompanied men other than their husbands in acts of larceny, sometimes as thieves, and other times as accessories. As did Jane Horderne, of Rushton, now wife of Ranulph Nixon, who alongside Ralph Goodfellow, also of Rushton, stole three white wethers, worth 6s each, from Robert Allen.<sup>85</sup> Both Jane and Ralph were proved guilty of the aforesaid crime. These instances cannot be seen as females being dependent upon men in the same way as historians have often assumed that wives were upon their husbands. These cases reveal the networks in communities, through which males and females interacted. An independence of thought is clear here with married women becoming involved in activities outside their marital home without their husbands.

Many women acted as accessories either during the crime or after it. From the available evidence it would appear that women were more likely to act as accessories than men, but in only a minority of cases were women acting as accessories to men, mostly they acted alongside other women. In many of those cases in which women were listed as accessories, they were often involved in the receiving and selling of the stolen goods, which will be considered in more depth later. In this way they located themselves not, as has often been assumed, in a dependent position in relation to men, but instead revealing a more in-depth knowledge of the workings of the second-hand market on the part of females.<sup>86</sup>

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<sup>85</sup> WSL, QS4 Roll 17, January 1610, p.42.

<sup>86</sup> Women conducted most of the business in the legitimate market place and so had the experience and contacts necessary to engage in illicit trading. For a wider discussion of the role of women in trading see Wiesner, M.E., 'Spinning Out Capital: Women's Work in the Early Modern Economy', in Bridenthal, R. & Koonz, C., Becoming Visible - Women in European History, (Houghton Mifflin, Boston, 1977), pp. 237-8.

Men too, acted as accessories to theft, but not always with other men. In 1622, Richard Laughton, of Ossington, victualler, was found guilty of acting as an accessory to Anne Marshall and Jane Willson, both spinsters.<sup>87</sup> All three were subsequently stocked, stripped, and whipped, the standard punishment for this crime. It is probable, given Richard's occupation that his part in this crime was similar to that taken by many female accessories, that of a receiver and seller of the stolen goods. Although it is evident that men also acted as receivers of stolen goods, they do not appear to do this in the same numbers as women.<sup>88</sup>

It would appear from the available evidence that within Nottinghamshire and Staffordshire, women, although on occasions acting alongside men, did not fit the image of the dependent female. They were active participants both in the planning and participation of property theft. Their knowledge of local society, especially the female culture, would have been invaluable in ascertaining who held what goods, what opportunities there were for theft, and how the second-hand stolen goods market operated. Having demonstrated that the distinction between male and female perpetrated theft does not appear to differ significantly according to gender in its dependence or audacity, society's response to these thefts will now be considered.

The notion that females 'reaped informal protection from the relative lenience of law-enforcement officials towards their sex' is one that this study into crime in

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<sup>87</sup> NAO, C/QSM1/71/5, p.235.

<sup>88</sup> The data is insufficient to confidently assess the level of male participation as receivers, but a tentative summary would be that of the number of receivers implied only approximately 20% would have been male.

Nottinghamshire and Staffordshire finds difficult to sustain.<sup>89</sup> It is often difficult to identify the real value of the goods stolen by males and females within the court records. However, there is considerable evidence that the prosecution for grand larceny crime was frequently reduced to petty larceny for both genders, with the punishment being reduced from capital punishment to stocking, stripping and whipping, but on other occasions the perpetrator was still sent to the assizes.

As has already been identified, this period had witnessed rapid and severe inflation, and a charge of grand larceny could encompass the theft of many everyday goods. Goods which those individuals in society who were experiencing severe poverty would have needed to obtain for their survival. Many courts, including both jurors and justices, in an attempt to show leniency often reduced the value of the goods stolen to below one shilling, thereby reducing the severity of the punishment. As Richard Gough comments in his account of Myddle;

Hee was a sort of a silly fellow, very idle and much given to stealing of poultry and small things.... At last he grew unsufferable,.... hee was at last imprisoned,... The Judge, seeing him a silly man, told the Jury that the matter of fact was soe fully proved that they must finde the prisoner guilty, but they would doe to consider of the value, and thereupon the Jury found him guilty of felony to the value of eleven pence.<sup>90</sup>

Many of the cases in Nottinghamshire where the sentence was reduced from grand to petty larceny do not give explicit information. In most cases the original prosecution labels the crime as grand larceny, and on the second appearance when the judgement of

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<sup>89</sup>Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire', p.39.

<sup>90</sup> Gough, R., The History of Myddle. 1979, p.p.145-6. Also see J.A.Sharpe Crime in Early Modern England 1550-1750, pp. 67-68.

the court was given the charge was reduced to petty larceny and the relevant punishment ascribed.<sup>91</sup>

Whether or not this apparent leniency was demonstrated equally between the sexes can only be demonstrated within Nottinghamshire as the surviving records for Staffordshire do not lend themselves to this interpretation. Before 1614 there are no obvious examples of the court reducing the crime of theft from grand to petty larceny. After this period until 1641 there were 36 cases. Of these 28 involved males, who had stolen livestock amongst other items, and eight involved females. This may reflect the nature and value of the goods stolen rather than providing evidence of the court's leniency towards males. However, there is no evidence here of the supposed leniency towards females.

As can be seen there is some evidence of a reluctance to prosecute which tempered the attitudes of local communities. This was not only because prosecution was an expensive process, but also because the law could be especially harsh in its treatment of thieves, thus many cases did not come to court. Between 1603-1660 in Nottinghamshire, 5.4% of men prosecuted had their charge reduced from grand to petty larceny, whilst only 2.6% of women benefited in the same way. Walker, too, found that in Cheshire women were not the recipients of judicial leniency as is often assumed.<sup>92</sup> The likelihood of being acquitted by the jury for property theft was dependent on many different factors. The leniency of the jury or justices alone is only one aspect of this. Although between

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<sup>91</sup> See NAO, C/QSM1/72/1, Nottingham 14<sup>th</sup> July, 1623, for an example of this in which 1 woman and 5 men stood accused of a felony and larceny, and were found guilty of petty larceny for which four of them including the woman were whipped and the other two were sent to the House of Correction.

<sup>92</sup> Walker, G., 'Women, Theft and the World of Stolen Goods' p. 82.

1603-1660 more men than women were acquitted, this cannot be read as judicial leniency towards men. Without considering the circumstances of each individual theft, the value of the goods taken and the circumstantial background to each case it is impossible to identify the crucial motivating factor that led to the acquittal. Statistics alone provide no more than a superficial glimpse into this aspect of criminal prosecutions. Laurence suggests that the sentence was more likely to be mitigated if the item stolen was for use rather than resale.<sup>93</sup> However, there is no clear evidence from this study to support this notion, as both men and women appeared before the courts for the 'milking of cows' and were all found guilty.<sup>94</sup>

For those found guilty of petty theft by the quarter session courts the punishments ranged from fining, most often reserved for men, incarceration, either in gaol or the House of Correction, or corporal punishment.<sup>95</sup> It is impossible to examine the punishment of those found guilty in Staffordshire, due to an absence of appropriate records, but by examining the punishments meted out to men and women by the Nottinghamshire justices it is possible to identify whether or not one's gender affected the punishment received.

As can be seen from Table 8, between 1603-1660 in Nottinghamshire, for both men and women the most common punishment for petty theft was stocking, stripping and whipping, which constituted 54.1% of all punished women and 48.8% of all punished men.

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<sup>93</sup> Laurence, A., *Women in England 1500-1760*, p. 269.

<sup>94</sup> For examples see NAO, C/QSM1/69/2, Newark 12<sup>th</sup> July 1615, p.116; C/QSM1/74/2, Newark 12<sup>th</sup> January, 1631, p.102; SRO Q/SR/278, Michaelmas 1652, .p. .25.

<sup>95</sup> Fining was most often applied to men as they were more likely to be able to pay.

**Table 8****PUNISHMENT OF PROPERTY CRIME IN****NOTTINGHAMSHIRE, 1603-1660**

Punishment	1603-1620		1620-1640		1640 –1660*		Total	
	M	W	M	W	M	W	M	W
Fined	1	0	0	0	0	0	1	0
Branded	1	0	0	0	0	0	1	0
Prison/gaol	0	0	0	1	1	0	1	1
H of C**	6	0	22	13	2	0	30	13
Stocked	4	8	17	14	0	1	21	23
Whipped	14	7	92	47	1	2	107	56
W, S, Str.***	97	49	67	67	12	9	176	125
To Assizes	5	2	19	10	0	1	24	13
<b>Gender total</b>	128	66	217	152	16	13	361	231
<b>Grand total</b>	194		369		29		592	

\*The records cease after 7<sup>th</sup> October 1642 until 4<sup>th</sup> October 1652

\*\*House of Correction

\*\*\*Whipped, Stocked and Stripped

This usually occurred in a public place, with the local constable administering the punishment. Whipping alone, often at the gaol or prison door, was the next most common form of punishment, involving 24.2 % of punished women and 29.6% of punished men.<sup>96</sup> The late 1620s saw more men punished away from public sight,

<sup>96</sup> This form of punishment was denounced by the Levellers as 'fit only for a slave or bondman', Hill, C., Society and Puritanism in Pre-revolutionary England, (Secker and Warburg, London, 1964), p. 387.

usually in or at the gaol by the keeper.<sup>97</sup> Perhaps shame was no longer seen as a sufficient deterrent for men, but females were still being stocked, stripped, and whipped in the community by constables. In 1628 Margaret Wynter, who was guilty on her own admission, was ordered to be stocked, stripped and whipped at Flintham by the constable.<sup>98</sup> In the same year Anne Exone, again guilty on her own admission, suffered the same fate at the hands of the Newark justices, and was ordered to be publicly whipped by the constable at Hawton.<sup>99</sup> Stocking, as both a punishment and a deterrent to others, appears to have continued after the civil wars, as can be seen when Susan Tym, wife of John Tym of Laneham, was found guilty of petty larceny.<sup>100</sup> Susan was convicted of stealing one child's blanket, and was later sentenced to be stocked for three hours at Laneham with the stolen blanket, being the focus of her shame, displayed before her. In sharp contrast to this the same sessions found several men guilty of crimes such as stealing sheep, a crime of grand larceny, classified later by the court as petty larceny, for which they only received a similar punishment to Susan.

In both counties the 1630s saw greater numbers of both males and females being referred to the assizes for theft, with a significant number of these being married women. In Staffordshire this apparent hardening of attitudes towards thieves appears to have been evident within criminal prosecutions of all types, including violence and sexual crime. It is possible that this was as a direct response by the justices to Charles I's Books of Orders.<sup>101</sup> In Nottinghamshire, a county already showing a great concern with

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<sup>97</sup> NAO, C/QSM1/73/2, Nottingham, 26<sup>th</sup> April 1628, p.151.

<sup>98</sup> NAO, C/QSM1/73/2, Nottingham, 14<sup>th</sup> July 1628, p.166.

<sup>99</sup> NAO, C/QSM1/74/3, Newark 16<sup>th</sup> July 1628, p. 172.

<sup>100</sup> NAO, C/QS,M1/13, East Retford 16<sup>th</sup> July 1658.

<sup>101</sup> For an in depth analysis of the effectiveness of these books on enforcing social policy on the localities see Slack, P., 'Books of Orders: The Making of English Social Policy, 1577-1631', Transactions of the

property theft, amongst other crimes, this could have been a direct response to the economic crisis of the period.<sup>102</sup>

Beattie suggests that the number of married women committing crime was very seriously underreported because of the assumption that wife could not be held responsible for illegal acts done in company of husband, as it was seen that she had acted only under coercion.<sup>103</sup> However, within Nottinghamshire and Staffordshire quarter session records, many married women were prosecuted for their deeds. It is impossible though to know what, if any, percentage of married women avoided prosecution by their situation as *femme couverts*. Evidence from a limited number of cases reveals that in some cases where both the husband and the wife stood accused, only the wife was found guilty. It could be that the husbands of female thieves were also brought before the courts, not perhaps with the intention of always finding them guilty, but to stress the role of the husband in controlling the wife, and perhaps to make an example of them to other lax males. The use of the term 'spinster' in this period, also makes this a difficult category to quantify. There are numerous instances where women are listed as both married and spinster, presumably an occupational category.<sup>104</sup> There are probably equally as many cases in which the term spinster is used signifying either the woman's marital status or her occupation. This clearly leads to some uncertainty as

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Royal Historical Society, (1980), vol. 30, pp. 1-22, and Quintrell, B.W. 'The Making of Charles I's Book of Orders', *English Historical Review*, (1980), vol. 95, pp. 553-72.

<sup>102</sup> Much of the country had suffered hardships for the previous two years, Walter, J. & Wrightson, K., 'Dearth and the Social Order', p. p.35.

<sup>103</sup> Beattie, J.M., 'The Criminality of Women in Eighteenth Century England', p.95.

<sup>104</sup> See Wiener, C.Z., 'Is a Spinster an Unmarried Woman?', for a discussion of the use of the category spinster as a way for the courts to present married women in their own right not under the auspices of their husbands.

to the marital or occupational status of a number of those women presented before the courts.

There is little evidence within Nottinghamshire to suggest that married female thieves were seen as constituting a legal part of their husbands before the law in cases of property theft, where they were the perpetrators of that theft. Both Anne, wife of Thomas Watmough of Tuxford, who stood accused of theft, and Christobel, wife of John Kellsey of Tuxford, who stood accused of being an accessory to the theft, were prosecuted independently of their husbands.<sup>105</sup> Both women were ordered to appear before the next assizes and until that time were ordered into prison. There is no record of any action taken by the courts against the husbands of these women.<sup>106</sup> This propensity to refer cases on to the assize courts also applied to those prosecuted as accessories. In 1630, Mary Ridge wife of William Ridge of Hockerton, was to be tried at the assizes on suspicion of being an accessory to theft.<sup>107</sup> There is no suggestion that Mary's husband was to be held responsible for her actions.

Men and women often stole together (see Table 8), and when caught both of them were frequently punished, with no apparent gender difference. In 1621, two men and one woman were prosecuted for committing theft together, Thomas Taylor, Richard Sawood, and Sence Golland. Of these three only Sence was immediately sentenced to be stocked, stripped and whipped.<sup>108</sup> The males both pleaded not guilty, and Taylor was acquitted by the jury, but Sawood eventually suffered the same fate as Golland.

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<sup>105</sup> NAO, C/QSM1/74/3, East Retford, 13<sup>th</sup> July 1632, p.268.

<sup>106</sup> There are many other examples of married women prosecuted independently, and not their husbands.

<sup>107</sup> NAO, C/QSM1/74/1, Newark 7<sup>th</sup> April 1630, p.19.

<sup>108</sup> NAO, C/QSM1/ 71/3, East Retford 20<sup>th</sup> July 1621, p.141.

Unfortunately it is impossible to know whether Golland pleaded not guilty or guilty. Possibly this was not the first time she had offended the local community, and therefore had little chance of lenient treatment, but whatever the facts, the result is not suggestive of a society which was more lenient in its treatment of women.

Margaret, wife of William Harle, was presented before the Staffordshire justices at Epiphany 1625, for the theft of eleven pigs valued at 40s.<sup>109</sup> Alongside her two men were also presented. The men were found guilty and were first branded upon the hand and then sent on to the House of Correction until the next gaol delivery. Margaret, though, was found not guilty of the crime and was released. Perhaps on this occasion Margaret was the recipient of the court's leniency, possibly as a direct result of her gender. However, an isolated case such as this does not provide a detailed enough picture of the attitude of both the jury and the justices. Earlier in the period, in 1619, the theft of the silver spoon, by Anne Somner of Elston, should have been one of grand larceny, but as frequently happened, both with males and females, the value of the item was reduced to allow the crime to be punished less severely.<sup>110</sup> As with the majority of those females found guilty of petty larceny Anne was sent to be publicly whipped at Elston.

In 1626, Katherine Addams and Margery Allen petitioned the justices for leniency from Stafford gaol, but their petition was rejected, even though the two women had not been a threat to Staffordshire society. Both women had been pursued by hue and cry from Lenton near Nottingham, an area notorious for being the den of thieves and receivers.<sup>111</sup>

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<sup>109</sup> WSL, QS11, Gaol Delivery Epiphany 1625, f 36b.

<sup>110</sup> NAO, C/QSM1/70/5, Newark 17<sup>th</sup> April 1619, p.272.

<sup>111</sup> WSL, QS15A Roll 3, Epiphany 1626, p..52.

The attitude of the court might have depended more on the fact that they were outsiders and as such were not as likely to get a sympathetic hearing. Even when the plight of those found guilty of theft was obvious, judicial leniency did not automatically follow. The difficulty of being a widow with six young children to support clearly acted as a motivating factor to commit theft for Margaret Mason. Despite the background to the case, following the theft of one heifer from Richard Batte of Kingswinford, Margaret was sent to the assizes.<sup>112</sup> However, the court was to some degree sympathetic and granted her bail. Sadly the eventual outcome of the prosecution is unknown, but at least in the short-term the justices showed some awareness of her problems, or perhaps the realisation that her young children would otherwise need financial support influenced their decision.

Elizabeth Alvey, stealing a wide range of goods from Anne Gardus, valued at 10s, should have been prosecuted for grand larceny, which was punishable by death.<sup>113</sup> The court clearly recognised the seriousness of her crime as she was ordered to appear before the assizes. Due to the non-survival of the relevant assize records Elizabeth's fate is unknown. Perhaps the charge was not reduced in this instance as Anne had already been a victim of a theft of items of a lesser value when Joan Sare stole a petty coat from her. Joan too, although stealing items of a much lower value than Elizabeth, was indicted to appear before the same assizes.

Both the community's, and those in authority's, response to men and women

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<sup>112</sup> WSL, QS19 Roll 29, Epiphany 1632, p.42.

<sup>113</sup> NAO, C/QSM1/77/1, Nottingham 4<sup>th</sup> October, 1641.

committing theft appears to have been as diverse as the crimes themselves. There is no evidence of judicial leniency *per se* for women, or for men, but there are isolated cases in which leniency was shown to both genders. The numbers of females who were whipped, or stocked, stripped and whipped in the period between 1620-1640, increased proportionately far more than the numbers of males (see Table 8).<sup>114</sup> This was perhaps related more to the types of crimes that females were committing rather than their gender, so in this way the responses were perhaps more gender related rather than gender specific. Having considered female and male participation in theft, their role in receiving and distribution of stolen goods will be examined.

### **Receiving, redistribution and recovery of stolen goods**

As has already been demonstrated, females were active in the theft and receiving of stolen goods, as well as the harbouring of thieves. Joan Bennyong of Penkridge was one such female who stood accused of a variety of transgressions, including the harbouring of suspected thieves. This was confirmed by one Mr. Moreton of Engleton who,

Found there two suspicious persons in company of one Joanes of Ivetos Haye, who were brought before Mr. Fowke but dismissed for want of sufficient proof of felony, and yet afterwards they were pursued with hue and cry for another theft. One Biddle and one Miles, who stole a nag from John Mayne, were harboured in the said house for ten days.<sup>115</sup>

The link in the minds of contemporaries between theft, receiving and the harbouring of suspected felons was strong. So too, was the link between receiving thieves and receiving stolen goods.<sup>116</sup> An important element within property theft was receiving and

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<sup>114</sup> However, both genders experienced a significant increase in punishment of this type, with females seeing an increase of 104%, and males seeing an increase of 43%.

<sup>115</sup> W SL, QS12D Roll 77, Epiphany 1624, p.133.

<sup>116</sup> Walker, G., 'Women, Theft, and the World of Stolen Goods' p.92.

redistribution of those same goods. Not all stolen goods were stolen for personal consumption, thus for so many individuals to be involved in property crime there must have been a market for stolen goods. Even though the court records do not focus heavily upon the receivers of stolen goods, in those cases where they do appear those individuals were often female. This is not, as Wiener suggests, because receiving was a more dependent act, but because this was an area in which females had more knowledge and authority. Wiener suggests that men were more venturesome and travelled to steal, and that women did not, but again males had more opportunities to travel within everyday life than women, so this does not automatically denote a particular level of bravery on the part of males.<sup>117</sup>

More women appeared before the Nottinghamshire quarter session courts as accessories than did men. Only 34.6% accused as accessories were men and 65.4% were women, and this was often after the theft had taken place. To be labelled as an accessory frequently signified their involvement, not in the actual theft itself, but as the individual who was active in the redistribution of the stolen goods. This could, therefore, reflect the high percentage of females involved in receiving and disposing of the goods, demonstrating female knowledge of the market for stolen goods, especially those involved in petty thefts which probably included many household goods. This role perhaps reflects the fact that women's role in theft was often one of intelligent participation and anticipation of market and community needs rather, than as has often been suggested, that females were trivial opportunist thieves.

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<sup>117</sup> Wiener, C.Z., 'Sex Roles and Crime in Late Elizabethan Hertfordshire' pp. 42-3.

As has already been noted the role of the receiver in property theft has been judged to be insignificant and subsidiary.<sup>118</sup> This is partly due to the fact that so few individuals were prosecuted for this crime by the courts, as until 1691 there was no effective statute against receiving.<sup>119</sup> Receiving as a crime was often invisible within the court records as they were frequently described in the court records simply as accessories. An example of this process is Enoch Dobson, tailor, who, in May 1641, was bound by recognisance to appear for being an accessory to a theft committed by Mary Jenkinson, spinster. By October 1641 the charge of accessory had been more clearly defined as being one of receiving 'a mantle stolen by Mary Jenkinson'.<sup>120</sup>

The consequence of this in early modern England was not insignificant, as can be seen by the way in which early modern individuals defended themselves in court within defamation cases in which they were labelled as receivers. These cases reveal female and male involvement in handling stolen goods, and the significance they placed on this, which in turn led them to defend their good name. Ellen Hutchins presented Margaret Grice before the courts, claiming that she had called her, 'a receipter and her children Theives'.<sup>121</sup> Similarly, John Hancocke viewed the accusations against him as serious enough to go to the expense of clearing his name when Ellen Barnes spread rumours about him. Hancocke stated that Barnes was,

A wicked woman who stirs up dissension among her neighbours.  
she has given out falsely that John Hancocke of Slynne has  
received a stolen sheep. She goes from town to town reporting that  
Thomas Boughley of Brockton had given his man Thomas Askewe

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<sup>118</sup> Walker, G., argues against this perception of the subsidiary receiver in the chain of property theft in 'Women, Theft and the World of Stolen Goods'.

<sup>119</sup> Beattie, J.M., Crime and the Courts in Early Modern England, pp. 189-90.

<sup>120</sup> NAO, C/QSM1/77, East Retford, 7<sup>th</sup> May 164, and 8<sup>th</sup> October 1641.

<sup>121</sup> Walker, G., 'Women, Theft and the World of Stolen Goods', p.91.

6d a week to steal corn from the bags which were brought to his mill.<sup>122</sup>

Some locations, including alehouses, were seen by contemporaries as places that harboured the less desirable elements in society and were identified as places to dispose of stolen goods. William Whyte, alehouse keeper, fits perfectly into the stereotype of the archetypal receiver. The information and petition presented against him at Stafford in 1614, stated,

That he keeps a disordered house and that he and his wife are receivers of felons and of stolen goods; therefore it is requested that 'the Good Behavyor' be granted against him.<sup>123</sup>

His occupation ideally situated William and his wife at the centre of the local community. Women too, were heavily involved in the brewing trade, both licit and illicit, and as such they were in a good position to use their premises and their contacts to participate, often undiscovered, at the hub of the distribution centre of stolen property. This in turn brought the receiving and distribution of stolen goods within the domain of many women as well as men.<sup>124</sup> The contemporary perception of alehouses as 'dens of iniquity' is reflected in the number of cases where individuals were presented for entertaining in their houses out of hours, even in those cases which were not overtly linked to theft.

One of the many complaints against Joan Bennyon, in a petition sent to the justices in 1624, was that she was, 'a common receiver of stolen goods, in whose house have been

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<sup>122</sup> WSL, QS19 Roll 27, Trinity 1631, p..57.

<sup>123</sup> WSL, QS7 Roll 42, Epiphany 1614, no. 35.

<sup>124</sup> For a further discussion of the role of alehouses within theft see Sharpe, J.A., Crime in Seventeenth Century England – A County Study, p. 112; Clark, P., The English Alehouse: A Social History 1200-1830, pp. 145-7.

found the following....', followed by a long list of stolen property.<sup>125</sup> Men too, found themselves accused of this crime, William Roberts, of Derbyshire, was bound £20 to answer for receiving stolen goods belonging to Edward Standish, of Newark, mercer, stolen by his apprentice.<sup>126</sup> Although possibly not thieves themselves, a considerable number of the community in their desire to better themselves did not turn from receiving of stolen goods, possibly feeling able to distance themselves morally from the criminal act itself. This ability of the human mind to differentiate between theft and the 'legitimate' purchase of goods, clearly helped to fuel the market for stolen property.

Theft by servants was of particular concern to many members of society, and those encouraging them were viewed with suspicion, for without these markets for their stolen goods the incentive to steal would not have been so great. Katherine Dodworth, victualler, found herself presented for entertaining servants in her house out of hours.<sup>127</sup> In this situation Katherine was seen as providing the vital link between the servants, who wanted to sell the possible stolen possessions of their masters, and the willing consumer. She was at the very least guilty of encouraging disruption to the social order and hierarchy. Mistresses and their servants sometimes collaborated together in the acquisition and disposal of stolen goods as in the case of the wife of Thomas Browne, Sutton-on Trent, who was presented for receiving a neighbour's stolen goods from her

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<sup>125</sup> WSL. QS 12D Roll 77, Epiphany 1625, p133.

<sup>126</sup> NAO, C/QSM1/74/3, Newark, 2<sup>nd</sup> October 1633, p.371.

<sup>127</sup> NAO, C/QSM1/66/3, Nottingham, 28<sup>th</sup> April 1607, p. 94.

servants.<sup>128</sup> It is evident that in early modern England both men and women were involved in the grey world of second-hand illicit consumables.<sup>129</sup>

According to Lemire fashion inspired the theft of clothing, as is evidenced in the fact that clothing and household linen constituted the principal sort of property theft in the early modern period.<sup>130</sup> The resale of these stolen goods could readily be incorporated into the market for legitimate second-hand goods.<sup>131</sup> Pawnbroking was commonplace in this period, so the disposal of stolen clothing was fairly straightforward.<sup>132</sup> It provided an essential credit system for a large section of society, and can be seen as an essential element in the survival of the poorer sort, especially in times of difficulty, such as famine and plague. As has already been noted, female participation in credit dealings in the community was well known, and the involvement in the illicit buying and selling of second hand goods was a natural extension of this trade.<sup>133</sup> That there was a market for second-hand goods is not in dispute, but how this was supplied and by whom is open to debate.<sup>134</sup> Theft and the second-hand trade were closely linked, not just retrospectively

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<sup>128</sup> NAO, C/QSM1/72/2, Newark, 13<sup>th</sup> July 1625, p.197.

<sup>129</sup> Both Lane, P. 'Work on the Margins', p. 92, and Lemire, B., 'The Theft of Clothes and Popular Consumerism in Early Modern England', Journal of Social History, (1990), vol. 24, pp. 267, 263, found this to be true.

<sup>130</sup> Lemire, B., 'Peddling Fashion: Salesmen, Pawnbrokers, Tailors, Thieves and the Second-Hand Clothes Trade in England', Textile History, (1991), vol.22, p. 77.

<sup>131</sup> See Roberts, M., 'Women and Work in Sixteenth-Century England', pp.93-5.

<sup>132</sup> Lemire, B., 'Peddling Fashion: Salesmen, Pawnbrokers, Tailors, Thieves and the Second-Hand Clothes Trade in England', p.78.

<sup>133</sup> Paper given by Dr.A. Mitson at The Forward Symposium at The Nottingham Trent University 22<sup>nd</sup> May, 1998.

<sup>134</sup> For the extent of the legitimate second-hand trade see Lemire, B. 'Consumerism in Pre-industrial and Early Industrial England: The Trade in Second-hand Clothes', Journal of British Studies, (1988), vol. 27, pp. 1-24; Spufford, M., The Great Reclothing of Rural England: Pettv Charmen and their Wares in the Seventeenth Century, (Hambledon Press, London, 1984). On stolen clothes see Beaattie, J.M., Crime and

but in the eyes of contemporaries as well. That the market for goods increased the likelihood of property theft is evident in the prosecutions for buying stolen goods.

In April 1624, the Newark Justices issued a warrant for two women, Anne Elliot and Anne Moore, and one man, John Storre, to appear for buying hemp stolen by John Hames and Anne Hartley. Before this, in January 1622, the wife of John Gryme, petty chapman, had been presented, alongside John Merryman and his wife, for buying goods stolen by William Johnson.<sup>135</sup> For Gryme's wife this act was probably a natural extension of their role as purveyors of everyday goods. How far it is fair to say that this act was a dependent act, depends on one's interpretation of the market driving the act of theft, or the act of theft driving the market. To differentiate between the two is difficult, as in reality the two were so closely interrelated as to be indistinguishable from each other.

The stories that were told with regard to possession of stolen property can often give valuable insights into social interaction within a community. In 1617, Nicholas Gryme, of Hopton, accused of the theft of pieces of red leather discovered in a coffer in his bedchamber and upon the tester of his bed, was unable to account for them being there.<sup>136</sup> Disclaiming any knowledge of the red leather his only defence was that it could have lain there for as long as seven years as he seldom looked there. His wife Mary constructed a more likely excuse, claiming that the red leather was given to her daughter

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the Courts in England, 1660-1800, pp.188-90; Walker, G., 'Women, Theft and the World of Stolen Goods', in Kermodé, J. & Walker, G. eds., Women, Crime and the Courts in Early Modern England, pp. 81-105; Lemire, B., 'Peddling Fashion: Salesmen, Pawnbrokers, Tailors, Thieves and the Second-hand Clothes Trade in England, c. 1700-1800', pp. 67-82

<sup>135</sup> NAO, C/QSM1/71/3, Nottingham 7<sup>th</sup> January 1622, p.173.

<sup>136</sup> WSL, QS12A Roll 57, Michaelmas 1617, no. 44.

Margaret 'to laie up', and the piece of black leather had been found in her husband's barn where they were accustomed to lodge poor people.<sup>137</sup> The story expanded with Margaret's contribution, who claimed,

That the piece of red leather was delivered to her on Friday week to keep for Margaret Chittell and that the gown cloth was her grandmother's and was ripped to make apparel for her father. She does not know how the pillow-beer, waistcoat and napkin came into the house.<sup>138</sup>

Within this story it is possible to identify, perhaps not the truth about the theft of the red leather and the other items, but the way in which female society conducted itself in relationship to clothing. The examination of Margaret Chittell, widow, of Co. Chester, added a further angle on the life, and distribution, of the red leather.<sup>139</sup> In her account she reveals the informal networks that existed for the buying and selling of goods in early modern society. According to Margaret she purchased the red leather, from a man she met,

On Friday week .... at 'the Lawne' in Hopton, who asked her to buy a piece of red leather for 6d and when she demanded its use he said that 'it would make her a paire of bodies' she therefore bought it and delivered it to Margaret Gryme until it should be called for.

These women between them had constructed a narrative which, whether true or not, provides an insight into the world of female interaction within the clothing and property markets. That cloth or leather was bought from one of a variety of sources, and that it would be stored until it was required at a later date, is almost certainly not in question. There would have been little point in any of those involved fabricating a story that would not have carried the weight of authenticity and reality.

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<sup>137</sup> WSL, QS12A Roll 57, Michaelmas 1617, no.43.

<sup>138</sup> WSL, QS12A Roll 57, Michaelmas 1617, no.45.

<sup>139</sup> WSL, QS12A Roll 57, Michaelmas 1617, no.46.

Those areas closest to large urban markets, as would be found in cities such as London, experienced theft of goods which were taken with a view to resale, whereas the more remote rural areas experienced more theft of goods for personal use, than for resale.<sup>140</sup> However, receiving and selling of stolen goods was still endemic in rural areas, but the goods stolen often reflected more personal use such as clothes and household implements. In Nottinghamshire the geographical location of some of the perpetrators of theft suggests that their role was one of receiver/distributor. Valentine Greensmith, spinster of Lenton, in South Nottinghamshire, could have been one of these.<sup>141</sup> Valentine lived in an area that was generally viewed by local contemporaries as housing the more dubious members of society, and the men with whom she stood accused of theft were all located in Mansfield, a distant area in the north of the county of Nottinghamshire.<sup>142</sup> Contemporaries considered Lenton as an area where, 'many abuses and evil deeds are permitted and cut-purses, vagabonds and ill-conditioned persons run hitherto continually...'.<sup>143</sup> It is likely that Valentine was involved after this crime had taken place, perhaps as the receiver and trader in stolen goods. For her part in this crime Valentine spent six months in the House of Correction before she was released. Lenton was also the home of Thomas Porter, labourer. Thomas was brought before the Justices at Newark in 1615, on suspicion of receiving stolen horses.<sup>144</sup> In both of these cases the gender of the accused was probably not the deciding factor in their prosecution, but the locality in which they both resided, and its links with harbouring thieves and selling

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<sup>140</sup> Beattie, J.M., Crime and the Courts in England 1660-1800, pp. 183-189.

<sup>141</sup> NAO, C/QSM1/71/3, Nottingham, 13<sup>th</sup> January 1622, p. 249.

<sup>142</sup> Copnall, H.H., Nottinghamshire County Records, p.17.

<sup>143</sup> Copnall, H.H., Nottinghamshire County Records, p. 17.

<sup>144</sup> NAO, C/QSM1/ 69/1, Nottingham 17<sup>th</sup> April 1615, p. 86.

stolen goods. Their reputations depended more on their assumed lifestyles than on their previous conduct.

Women, and men, as receivers and disposers of stolen property were crucial to the furtherance of such criminal activity as theft. Such active participation by females can only be viewed as a dependent, trivial activity when it is seen through the perception of the gender category of female as the insignificant, submissive other. Female involvement in crime was just as real as male involvement and should not be dismissed because it was different. Those acting as receivers of stolen goods should not be viewed as occupying a dependent, insignificant role, just one that was often situated within the female sphere. At other times in society the receiver and distributor of stolen property would be viewed not as the dependent, insignificant other, but as the likely orchestrator of the crime.

Having examined the participation of women firstly as thieves, and secondly as receivers of stolen property, it is important to consider their relationship to the goods in question. As Walker comments, 'women were often engaged in quasi-official activity in the return or custody of stolen goods'.<sup>145</sup> Women were active within female networks of social transmission both as the breakers of the law, and as the informal agents of its enforcement. This involvement must be viewed as one way in which women held and demonstrated power within the community. As has been seen in earlier chapters, female involvement in policing their neighbours' behaviour gave them a rare opportunity to hold power and move, ostensibly, from a submissive to a more dominant role.

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<sup>145</sup> Walker, G., 'Women, Theft and The World of Stolen Goods' p. 98.

Even though early modern society appears to have deemed females as property themselves with few independent rights, the evidence provided through wills and court records, amongst other sources, does not confirm this view.<sup>146</sup> Women clearly identified closely with their possessions, especially those that they brought into a marriage. Through wills we can see their concern with their distribution on their death, and it is obvious that they saw female ownership of goods as important. As Walker notes, 'women regularly came before the courts for having vehemently protected property they deemed to be theirs, even though it technically belonged to their husbands'.<sup>147</sup> Significantly women rather than men went to court about such stolen goods, and even though on marriage all of their goods legally became the property of their husbands, women still regarded them as theirs.

One woman who took an active part in locating stolen goods and exposing the culprits was the wife of one Thomas Traunter. On his advice she sought out the constable, Humfrey Browne, to search the house of one Richard Saunders. On overhearing her complaint against him, Saunders violently threw her down onto a stony place almost maiming her. On her insistence Browne attempted to search Saunder's house without success, as he was met with a similar level of violence.<sup>148</sup> The constable had no problems identifying her claim to search for the property as legitimate, and the apparent lack of success in locating the stolen goods does not diminish their significance of her attempts to retrieve them.

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<sup>146</sup> For a fuller examination of this see Erickson, A.L., Women & Property in Early Modern England.

<sup>147</sup> Walker, G., 'Crime, Gender and Social Order in Early Modern Cheshire', p. 90.

<sup>148</sup> Burne, S.A.H., The Staffordshire Quarter Session Rolls, Roll 2 Michaelmas 1603, p.45.

A further way in which women were active in the retrieval of stolen goods was as witnesses against the accused felons in the courts. They were regularly indicted to appear before the courts, as witnesses, to give evidence in cases of theft. Mary Howson, of Tuxford's, involvement in the community clearly gave her the authority to acknowledge the guilt of James Smyth who was then in prison for stealing grain.<sup>149</sup> Her standing within that community must have been fairly reputable or her opinion would not have been valued.<sup>150</sup> When Mary Huttam and Jane Cassam of Ratcliffe on Trent, who stole wool from the backs of Gervase Rossell's sheep, were sentenced to be prosecuted at the assizes by Rossell, another female, Dorothy Stamp of Lenton, was bound for the sum of £10 to give evidence against them. Thus demonstrating the authority that women could claim for themselves. It was also one way in which females could demonstrate their power as agents in the detection and prosecution of such crimes.<sup>151</sup> Women often appeared as witnesses against those who had stolen goods that they perceived as theirs, not as belonging to their husbands.

## **Conclusion**

It can be seen that in some ways gender did shape the nature and extent of male and female involvement in property crime. As has been identified, women more often stole clothing or household goods, but this was not to the exclusion of other types of property theft, such as large livestock. This emphasis on the theft of smaller, more commonplace, items for daily usage is linked more to the spheres that females occupied than to their lack of bravery or audacity. Individual freedom of opportunity, not personality was the more significant difference between the genders.

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<sup>149</sup> NAO, C/QSM1/74/3, East Retford, 11<sup>th</sup> January 1633.

<sup>150</sup> Reputation, as was identified in Chapter One, was crucial to legitimate one's behaviour in this period.

<sup>151</sup> NAO, C/QSM1/73/2, Nottingham, 13<sup>th</sup> April 1629, p.215.

The approach that designates women's participation in petty theft as insignificant ignores the different experiences of women and men in early modern society. Women were constrained by their social and economic position, but still managed to negotiate a place within those constraints. They defended property that was legally acknowledged to belong to their husbands.<sup>152</sup> They stole goods that are frequently identified as insignificant, because they held a low financial value, but which were important in the spheres of life occupied by women, and which significantly, were goods to which they had easy access within those same spheres of life. Finally they received and sold goods, especially those that were located within their social networks.

There is no evidence within either Staffordshire or Nottinghamshire in this period to suggest that females were treated more leniently than males for property crime. Both juries and justices responded to both genders in diverse ways. Female participants in property crime were no more a homogenous group than were male participants, and were therefore subject to the same external factors when attitudes and judgements were formulated. Had females within these two counties presented themselves as the submissive, dependent other, as implicated in other studies on women and crime, then perhaps those in authority would have responded differently. Attitudes towards both genders does not appear to have had an impact on the way in which males and females were punished, with both being punished in greater numbers between 1620-1640.

In the earlier part of the seventeenth-century local communities exhibited a greater level of toleration for the theft of petty foodstuffs, and for those crimes which were often

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<sup>152</sup> In her study on Women & Property in Early Modern England, Erickson discusses the way in which women maintained property as theirs throughout their marriage, even if legally it belonged to their husbands, during their lifetime.

viewed as customary rights such as gleaning.<sup>153</sup> As the attitudes towards such crimes hardened then it was perhaps inevitable that individuals committing crimes of this nature were subject to harsher punishments. As it was often the poorer members of society who were involved in this type of theft, there was a large preponderance of females amongst them. Within both Nottinghamshire and Staffordshire females exhibited the same propensity to instigate and commit crime as their male counterparts. As has been identified, both men and women were more likely to act alone, than with others and both were more likely to act with others of their own gender than in mixed gender groups. In this way it is impossible to label female involvement in property crime as dependent or trivial.

To assess female criminal activity simply by quantifying those cases appearing in the quarter session minutes ignores those activities equally involved in property crime in which women were also active. It is important therefore to be aware that the actual theft of the goods was only one part of the total process, and female involvement in it does not provide the full picture of their involvement and dealings in the world of stolen goods. An approach that employs both qualitative information from individual examples, and a quantitative approach in conjunction is better able to identify the role of gender within any aspect of society including the world of property crime. In this way the networks of women, clothes and household goods are evident and were clearly gender related, but not gender specific. The theft of clothing should not be viewed as trivial, as clothes were worth a lot of money and represented the largest single category of household expenditure after food.<sup>154</sup> Many of the women prosecuted for theft appear

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<sup>153</sup> Sharpe, J.A., *Crime in Seventeenth Century England - A County Study*, p.100.

<sup>154</sup> Weatherill, L., 'Consumer Behaviour, Textiles and Dress in the Late Seventeenth- and Early Eighteenth-Centuries', p.298.

to have been involved in a predominantly female culture, as can be seen in the narratives frequently constructed by women to counter the accusations that involve them with other women. Thus gender did play a significant role in the nature and extent of criminal prosecutions of property crime, but not, as has often been assumed, in a way which designated female participation as insignificant and trivial.

Having examined female and male participation in crimes of a sexual nature, crimes of violence, both physical and verbal, sexual violence against women and crimes against property, whether as thieves or receivers and purveyors of stolen goods, it is now possible to draw some conclusions as to the role and significance of gender within this range of social experiences in early modern society using the experiences of Nottinghamshire and Staffordshire.

## Chapter Eight

### CONCLUSION

This thesis set out to examine the role of gender in criminal activity and to explore the relationship between gender and social order. By considering different aspects of criminal conduct it has been possible to identify through a gender perspective key concepts within early modern attitudes towards males and females over a broader, more diverse, range of crimes than has previously been examined. This thesis also covered a greater time period than has been analysed in any earlier, similar studies, and also drew on two counties. The thesis has demonstrated that by employing this perspective a deeper understanding of female participation in crime can be gained. It has also been possible to identify social, political, religious and economic factors that defined appropriate conduct and desirable spatial confines for women. These in turn directed female behaviour in such a way as to make it appear fundamentally different to male behaviour, which has created a false impression of early modern male and female identity that gives no consideration to the differing freedom of opportunity available to males and females.

The constraints upon females considered here were not fixed either in time or space but are variables that make gender an ahistorical category, and by examining criminal prosecutions from a gender perspective it has been possible to identify some of the workings of early modern patriarchy. This has not proved to be a fixed entity but one with extremely mutable boundaries open to change and influence from many different areas. The questions that have been asked of female participation in early modern crime varied according to the crime studied. Issues of sexuality and early modern notions of

female culpability were key to the examination of female participation in sexual crime. The 'double standard', which Keith Thomas identifies as crucial to an understanding of sexuality, affected several of the crimes under investigation.

This thesis proposes that the criminalisation of female behaviour in the early modern period substantially depended on the perception of female culpability for sexual misconduct. This notion informed prosecutions of sexual crime, including fornication, incontinence, adultery and from this rape, bastardy and infanticide. Crimes of physical and verbal violence depended to some degree on this concept with insults frequently being formed around these ideas. However, in crimes of physical violence and particularly within property theft the physical locations of male and female spheres of life had a greater impact on criminal behaviour.

In Chapters Two and Three male and female participation in illicit sexual acts have been considered with the development of this into infanticide. It has been demonstrated that early modern society constructed male and female identity in different ways. Thus when female conduct challenged the notion of women as chaste then they were the ones held culpable. Through a qualitative analysis of individual cases rather than a consideration of the aggregates of sexual crime a deeper insight into the workings of personal relationships has been gained, and the boundaries of appropriate conduct have been identified. The different attitudes towards males and females who engaged in sexual misconduct are particularly evident within the different punishments allocated for sexual crimes. It is important to note though that however society viewed female sexuality, women still actively participated in sexual acts, although this participation was sometimes unwilling.

In Chapter Three the crimes of bastardy and infanticide have been considered to identify whether the response of the authorities remained consistent with that of the previous chapter, when the conduct threatened the social and economic order by the production of an illegitimate child. Consideration has also been given as to whether the response of the authorities towards bastard bearers contributed towards the destruction of the said illegitimate children by their mothers. Within bastardy societal condemnation was based primarily on economic grounds, but the subsequent attitudes of those in authority identified the 'lewd and dissolute' women as the cause of the problem. This thesis has also argued that infanticide was an understandable response to early modern attitudes towards female sexuality. The threat of public exposure, the economic difficulties and the subsequent censure for bearing illegitimate children for some young women proved to be too much to face. Their response was to end the life of their new-born child and dispose of it without public exposure. As has already been identified, this decision may not have been consciously made, but resulted from the internalisation of the social pressure which had increased during the seventeenth-century.

Within Chapters Four and Five male and female recourse to physical and verbal violence was examined, and the bearing of sexual difference on the forms that this violence took was considered. Contrary to suggestions that females were submissive and were not prone to physical violence the evidence from both Nottinghamshire and Staffordshire would contradict this. The various responses appear to have depended more on the situation and the location of the occasion rather than the gender. Women did participate in physical violence given the provocation and opportunity, but drew more usually on verbal violence especially when this incorporated sexual slander. This was dependent more on their area of knowledge and the usual gender of their

victims. As has already been noted, women were especially vulnerable to accusations of sexual impropriety and any argument between women would draw on this weapon as being the most effective. However, this does not mean that women did not resort to physical violence. In spousal murders the gender of the perpetrator and the victim coloured the court's judgement towards the aggressor. To murder one's husband threatened not just the appropriate social and moral order, it threatened the gender order upon which society was founded. Therefore, in this case the gender of the protagonists rather than the deed was the deciding factor in the judgement and attitude of the court. Poisoning as a crime was feminised and was almost exclusively identified as a female perpetrated homicide, in which the female was represented as the inverse of the ideal wife and mother.

Within verbal violence there were two main themes. Scolding and barratry which are often seen as male and female responses of the same kind, and sexual slander through which insults were constructed and reveal images of ideal and inappropriate conduct. Scolding has been identified as a female crime, with women contesting their prescribed passive roles. Their prosecution indicates societal concern with women who were attempting to contest their position. However, the behaviour suggested in the scolding prosecutions was not dissimilar from that in the barratry prosecutions, the prime difference being the gender of the protagonists. There is, though, some suggestion that there was a difference with perhaps the stance of the scolding individual, with scolds generally accepting their subordinate position whilst still challenging it. Behaviour which fitted into this category may have been identified predominantly as scolding, whereas behaviour that was generally disruptive on more masculine grounds was categorised as barratry, whether carried out by a female or a male. The natural

progression from this was that males who transgressed the normal gender boundaries, and were accused of scolding would be more harshly responded to than those who conformed with societal expectations of male behaviour.

Within defamation cases the early modern ideological perceptions of the sexuality of early modern females can be witnessed. As has already been noted, it is clear from the language used that female sexual conduct was the main focus of the majority of them. Both males and females drew on the assumption that women were responsible for illicit sexual activity, and the language of such cases constructed the insult, whether applied to males or females, around notions of female sexuality. This assumption relied significantly on the religious ideology expounded weekly from the pulpits of churches. Despite the obvious suggestion within the laws of the church, the homilies and the sermons, within Nottinghamshire the response of the church courts for sexual crime appears to have been more equitable than that of the secular courts.

Within Chapter Six the prosecution of sexual violence including rape has been examined. These crimes bring together the sexual crimes and the physical violence of the previous chapters. Heterosexual rape, more than any other crime considered, appears to represent the subjection of women for the needs of men. Women in such circumstances should be viewed as victims of male dominance. However, female culpability for sexual behaviour informed even these instances of sexual aggression, and although men were at times vulnerable to malicious accusations, the circumstances that women faced indicate that they were simultaneously culpable and the victims. For many of the men involved the level of sexual aggression was merely an extension of 'normal' heterosexual relations. Rape or sexual violence was only usually condemned

by the courts when the perceived victim was a father or husband. In these cases rape was construed as an attack upon the male, frequently identified as an assault on male property.

The final chapter considered the role of females in property theft. Usually seen as dependent, trivial, opportunist thieves, it is evident that females participated on equal terms with males. Contrary to many assumptions made about female involvement, they showed themselves able and ready to steal a wide variety of goods. The most obvious similarities and differences according to gender was the likelihood of both males and females to steal goods which formed a part of their daily sphere of life. For females this usually meant clothes or household linens, and for males livestock or tools predominated. These differences reflect the propensity of both genders towards opportunist thefts. The suggestion that females were always dependent thieves is misleading as an analysis of the court records shows that females were in evidence as the instigators of theft and even when they stole alongside others their associates were not necessarily male, and even if they were then their relationship to them was not necessarily dependent. What is especially significant in property theft is the response of those in authority. In comparison to the treatment of females within the other crimes considered then the courts' responses to those engaged in property theft do not appear to have been based upon the gender of the perpetrator. When differences were apparent that appear to reflect the gender of the accused this usually relied more on the items stolen than the gender of the thief. In this way the responses were gender related not gender specific.

Having considered the role of gender within crime it is important to analyse the

implications of this for male and female identity and behaviour in early modern society. From the research conducted for this thesis it is apparent that to be male and female had completely different connotations. Although this statement is not revolutionary it is necessary to emphasise this point in relation to the crimes under consideration. Males and females for a substantial part of their day occupied different physical spaces but more importantly for this investigation they occupied different psychological spaces too. Society constructed male and female identity in opposition, with males representing dominant, aggressive, authoritarian figures whose reputation and honour were founded primarily on masculine attributes. These attributes were structured in relation to their dependants; their servants, their children and their wives. Control of these dependants was crucial to their credibility and for any of their inferiors to question this authority threatened their position in the community. There was little or no condemnation of male sexuality unless it directly threatened the social or economic structures, or another male's position.

The inverse of this was true for females. Their identity was circumscribed by societal expectations that they conform to the prescribed notions of the ideal woman. This ideal woman was passive, silent, chaste and obedient, all personality traits that excluded their participation in any of the crimes under review. Only within property crime as the dependent other to their husbands could they hope to achieve any degree of conformity to their prescribed subordinate role. Clearly the women in this study did not conform to this image but contested their place in the social order. This may have been more a case of negotiation rather than outright conflict without any conscious effort being made to dispute their place.

Already alluded to within the thesis have been the differences both over time,

throughout the period 1603-1660, and to the different experiences of males and females in Nottinghamshire and Staffordshire. Several factors may have influenced these changes and although some of these affected both counties some were probably more localised. Communities and the authorities in Nottinghamshire, although fairly aggressive in their response to female sexual crime, became more vigilant after the civil wars. This however was part of a wider attempt to re-establish the status quo and impose a more moral order on society in totality. In Staffordshire where a less stringent approach to female sexuality is evident this hardening of attitudes began to occur earlier. Following the circulation of Charles I's Book of Orders in 1631 the rate of presentments before the quarter session courts rose noticeably. It is possible that this simply reflected a rise in formal prosecutions in preference to informal ones, but the language and judgements given by the court appears to suggest more active attempts to enforce the gender order. The move in the 1650s to secularise crimes which previously came under the ecclesiastical authorities, was unable to be sustained primarily because the severity of the penalties was too great.

The seventeenth-century in Nottinghamshire witnessed a move from shaming punishments to incarceration with corporal punishment for women, especially with regard to bastard bearers. This attitude towards female sexuality is evident within the court records in Nottinghamshire where even those females whose bastard child had died, and therefore did not threaten the economic structures, were punished far more harshly than the putative father. In contrast Staffordshire exhibited a far less hostile response to bastard bearers, except in those cases where women were designated as beyond the 'normal' structures of society. Only those women who offended sensibilities on a variety of grounds were castigated for producing illegitimate children. This

more sympathetic response did alter as the seventeenth-century progressed with women being presented for bastardy not just for the allocation of support and maintenance. Again this change followed the issuing of the Book of Orders in 1631 and was particularly noticeable around the period of the civil wars. Even then the approach was less gender specific than that evident in Nottinghamshire.

In common for both counties was the national experience of population growth and attendant poverty, both counties experienced several bad harvests throughout the early decades and attitudes towards property theft were affected by this. This probably led to harsher attitudes towards individuals who threatened the economy. This can be seen in attitudes towards bastardy and property theft. Although even within these crimes differences are evident between the responses of the two counties. The impact of reforming religious attitudes appears to have affected Nottinghamshire and Staffordshire differently coupled with the imposition, from resident gentry in Nottinghamshire, of a higher moral standard. This reformation of morality appears to have been more closely associated with those areas with a high Puritan presence, such as Nottinghamshire. Staffordshire, as has already been noted had a greater survival of Catholicism, except for a few Puritan hotspots, and the gentry families do not appear to have had, or desired, as tight a control on the lower orders. What is evident in Nottinghamshire was an attempt by the 'better sort' to impose their standards of morality on the lower orders. The Puritan reformation of manners appears to have been implemented there much earlier than in Staffordshire. This attempt to reform the manners of the inferiors in society was directed at both genders, but as women were the ones popularly held responsible the impact of this would have been greater on them. As Joy Wiltenberg states, 'The early modern drive for public morality was linked both to

a wider movement to suppress social disorder and to a wider attempt to restrict the power of women'.<sup>1</sup>

A further influence on the attitudes towards female and male identity would have been fairly uniformly experienced within both Nottinghamshire and Staffordshire. The civil wars raged intermittently throughout the Midlands throughout much of the 1640s, and even after it had ceased society suffered from its effects in many different ways. One effect was a desire to return to the *status quo*. Part of this was a desire to return to old familiar structures of order and hierarchies within which the majority of females were to be once again subsumed under the identity of their husbands. The wars had brought a new independence for women with many of them crossing old gender barriers through their involvement, directly or indirectly in the wars.<sup>2</sup> Patricia Crawford noted that the experience of the civil wars enhanced female confidence.<sup>3</sup>

It has been demonstrated throughout this thesis that one group of females was especially vulnerable to the unequal imposition of the gender order. Their social status as well as gender made young female servants the most vulnerable within the patriarchal order. Female servants were vulnerable to the unwanted sexual attentions of their masters or

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<sup>1</sup> Wiltenberg, J., Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany, p.17

<sup>2</sup> See Thomas, K., 'Women and the Civil War Sects', Past and Present, (1985), vol. 13, pp. 42-62; Mack, P., 'Women as Prophets During the English Civil War', Feminist Studies, (1982), vol. 8, pp. 19-45; Higgins, P., 'The Reactions of Women, With Special Reference to Women Petitioners', in Manning, B. ed., Politics, Religion and the English Civil War.

<sup>3</sup> Crawford, P., 'The Challenge to Patriarchalism: How did the Revolution affect Women?', in Morrill, J., Revolution and Restoration, pp. 112-28. However, other historians believe that women not directly involved in the wars were not affected, see Durston, C., The Family in the English Revolution, pp. 161-4; Houlbrooke, R., The English Family, 1450-1700, pp. 34-5; Thomas, K., 'Women in Civil War Sects', pp.42-62.

their masters' sons, and were often dismissed by those same employers, on whom they depended for their livelihood, if they became pregnant. Society then compounded this ill treatment by castigating them for the often inevitable consequences of their actions, a bastard child. Bastardy almost without exception in Nottinghamshire became a female crime, which in turn would have contributed to the incidence, largely unquantifiable of infanticide. This deed was seen as the epitome of the breakdown of appropriate female conduct and was categorised as a crime that only single females could commit.

The institutionalised subordination of women in early modern England is a commonplace, but within this women frequently managed to negotiate their own more comfortable position in society. By examining female participation within crime it was possible to witness this negotiation in action. Even within the two counties under investigation, differing attitudes are apparent, and on a broader scale, although all areas were similarly affected and constrained by national policies, individual areas and communities responded differently. It is by examining not only the individual community responses, but also the variety of responses to differing modes of behaviour that it is possible to identify the ways in which the relationship between gender and social order was expressed. It has also been evident that women were frequently involved in their own subjection imposing the same restrictions and ideology upon other women within society. As has been shown there were many reasons for this, but it shows how deep-rooted the gendered construction of appropriate conduct for both genders was.

Through an approach to the court material that sought to examine the circumstances, constraints and implications of female crime in addition to merely quantifying it, a

far greater insight into the relationships between males and females has been gained. Through an exploration of both secular and ecclesiastical sources, as well as the more sensationalised pamphlets and ballads, a more complete range of attitudes and influences has been examined. In this way the relationship between popular ideology, religious influences and the increasing influence of secular law have been identified. By examining female experience in two different counties exhibiting a range of both similar and differing features, the variability of female experience is evident. The reasons for this, although alluded to, have not been fully explored, as they are outside the remit of this thesis. However, these differences indicate directions for further research.

Further county studies based on similar lines would be able to test some of the theories put forward in this study, and would be able to incorporate some of the ideas and findings of this study. It might also be fruitful to test some of the findings against a range of smaller areas such as individual parishes within one county, to attempt to isolate the variety of differences that contributed to differing attitudes and approaches. Equally a more detailed social, economic, political and geographical study of Nottinghamshire or Staffordshire would provide a context into which female experience in these two counties could be placed and compared. However, within any attempts to compare experience in different counties it is imperative to remain aware that what is being examined is usually dissimilar material, as it was in Nottinghamshire and Staffordshire. Any analyses must therefore be tentative with provisos that the deciding factors in difference may relate more to the sources than actual experience. There has been some suggestion of change over time and this could be further explored by moving the boundaries of a comparable study both backwards into the sixteenth-century,

and forwards into the eighteenth-century.

Chapter Six in particular demonstrated the links between physical violence, female subjugation and societal condemnation of female sexuality. More studies into rape and the 'lesser' forms of sexual violence need to be undertaken through the prism of female depositions to enable us to understand this relationship. Also studies into rape that covered a greater time period which spanned the seventeenth and eighteenth-centuries would be able to assess the changing responses as medical knowledge grew and ideas about the male and female bodies altered perceptions about the relationship between orgasm, consent, pleasure and pregnancy.

As stated at the beginning of this thesis the aim was to explore the role of gender within criminal prosecutions, however, it is clear that the focus throughout has been on females in relation to males. Having examined the relationship between early modern perceptions of the ideal woman and crime, it would be fruitful to explore male crime in relation to early modern ideals of masculinity. Indications within this thesis suggest that men who crossed the gender boundaries were also castigated by society. Those men prosecuted for scolding were probably prosecuted primarily for exhibiting female characteristics than for disrupting the social order. It is also possible that those men accused of witchcraft had also exhibited female behaviour and as such were subject to the same treatment as female witches. Finally, this thesis has demonstrated the need for a gender analysis to gain a thorough understanding of the relationship between gender, crime and social order, which would otherwise be denied.

## APPENDIX ONE

The construction of a database was essential to enable the large volume of information to be handled effectively. As there were over 6,000 cases, most of which involved at least two individuals, it was clear that this quantity of information would have been difficult to analyse using manual methods such as index cards. It was also possible to ask a wider range of questions using a computerised database. Each entry was necessarily large as the range of fields needed to determine the role of gender in criminal activity and prosecution was quite broad. The fields include the more obvious ones such as the source reference, database reference, date, court, crime, nature of prosecution, surname, Christian name and alias, sex, occupation, marital status and spouse's name and occupation. Then more specific fields relating to the crime were necessary, including; details of the case, the judgement of the court, the punishment, general remarks and other parties involved in the case. Some categories were not included in the database even though they could have been fruitful. This range of categories include geographical details, as these are notoriously imprecise, and time, as this thesis, whilst making references to change over time, has not particularly focussed upon the effects that time had upon criminal conduct or attitudes towards it. Whilst it was occasionally implied within the available data rarely were there any absolute indications as to the age of those referred to, thus making this another category which might have informed the analysis but one which it was impossible to include. On a smaller study perhaps focusing on one or two communities it might be possible to extract this extra information from a wider range of sources thus benefiting the overall analysis.

This range of fields enabled particular questions to be asked of the data. It was possible to identify recidivists, both within the same crime and within other areas of criminal activity. For example Katherine Foxgale appeared both within the ecclesiastical courts for scolding and 'divination' on one occasion, and within the quarter session courts for scolding. Grace Heefield also appeared before the quarter sessions on numerous occasions; alone, with other women and alongside her husband Henry, all of which are more easily visible through the use of the database.<sup>1</sup> The relationship between the ecclesiastical court and the quarter session courts, in Nottinghamshire, can be identified and many individuals who first appeared before the church courts later went on to appear before the quarter sessions. In this way the history of the individual cases and the differing power and authority of the two courts can be seen. Mary Heapes in 1622 appeared before the quarter session courts for bastardy. For this she was sent to the House of Correction for one year, but the father Ambrose Elsam's only punishment was to financially maintain the child. The history to this case, which allows a far greater insight into the unequal workings of patriarchy, might have remained invisible without the use of the database. However, through its use it has been possible to identify that Mary, who worked as a maid for Ambrose, had already appeared before the church courts for incontinence, after which Ambrose had promised to marry her, had the banns read, and then on her pregnancy abandoned her.<sup>2</sup> Throughout this thesis many other such situations, which have in turn informed notions of the role of gender in criminal activity, have been made visible primarily through the use of the database. Thus, even though its construction was relatively time-consuming, its eventual application justified the time spent.

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<sup>1</sup> Chapter Five, pp.210 & 212-3.

The range of biographical details enabled associations between status, occupation and gender to be analysed in relation to crimes committed, punishments and judgements delivered. By being able to identify individuals and family groups who have been presented to the courts over a period of time, sometimes for different crimes, contextual information was gained by which to analyse the attitudes towards that individual or group. For example harsh punishments dealt out to those who repeatedly offended society's moral codes reflect a different attitude than might be suggested if each crime was viewed in isolation.

Finally, although not primarily used for a quantitative analysis it has been fruitful to use the database to identify issues such as the punishment rates of males and females prosecuted for the same crimes, and also to compare the suggested dependency of females in property theft, amongst other issues.<sup>3</sup> In this way the unequal attitude suggested in the language of the courts has been reinforced by a quantitative analysis of the data, and notions surrounding female dependency have been questioned. As has been demonstrated the value of a computerised database within a study such as this, which involved large quantities of data, is particularly valuable. Issues, which would probably have remained hidden, have been exposed and subjected to analysis, strengthening the research process.

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<sup>2</sup> See Chapter Three, p.114.

<sup>3</sup> See Chapter Three on bastardy, and Chapter Seven on property crime.

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Q/SR/223	Trinity 1636
Q/SR/224	Michaelmas 1636
Q/SR/225	Epiphany 1636/7 Gaol Deliveries

Q/SR/226	Epiphany 1636/7 Alehouse Recognisances
Q/SR/227	Epiphany 1636/7
Q/SR/228	Easter 1637
Q/SR/229	Easter 1637 Alehouse Recognisances
Q/SR/230	Trinity 1637
Q/SR/231	Michaelmas 1637
Q/SR/232	Epiphany 1637/8
Q/SR/233	Easter 1638
Q/SR/234	Trinity 1638
Q/SR/235	Michaelmas 1638
Q/SR/236	Epiphany 1638/9
Q/SR/237	Easter 1639
Q/SR/238	Easter 1639 Alehouse Recognisances
Q/SR/239	Trinity 1639
Q/SR/240	Michaelmas 1639
Q/SR/241	Epiphany 1639/40
Q/SR/242	Easter 1640
Q/SR/243	Trinity 1640
Q/SR/244	Michaelmas 1640
Q/SR/245	Epiphany 1640/1
Q/SR/246	Easter 1641
Q/SR/247	Trinity 1641
Q/SR/248	Michaelmas 1641
Q/SR/249	Epiphany 1641/2
Q/SR/250	Easter 1642
Q/SR/251	Translation 1642
Q/SR/252	Michaelmas 1642
Q/SR/253	15 <sup>th</sup> November 1642 only
Q/SR/254	Epiphany 1642/3
Q/SR/255	Michaelmas 1645
Q/SR/256	14 <sup>th</sup> October 1645 Gaol Delivery
Q/SR/257	14 <sup>th</sup> October 1645
Q/SR/258	Epiphany 1645/6

Q/SR/259	Easter 1646
"	Easter 1647
Q/SR/260	Translation 1647
Q/SR/261	Michaelmas 1647
Q/SR/262	Easter 1648
Q/SR/263	Translation 1648
Q/SR/264	Michaelmas 1648
Q/SR/265	Epiphany 1648/9
Q/SR/266	Translation 1649
Q/SR/267	Michaelmas 1649
Q/SR/268	Easter 1650
Q/SR/269	Translation 1650
Q/SR/270	Michaelmas 1650
Q/SR/271	Epiphany 1650/1
Q/SR/272	Easter 1651
Q/SR/273	Translation 1651
Q/SR/274	Michaelmas 1651
Q/SR/275	Epiphany 1651/2
Q/SR/276	Easter 1652
Q/SR/277	Translation 1652
Q/SR/278	Michaelmas 1652
Q/SR/279	Michaelmas 1652 Petitions of maimed soldiers
Q/SR/280	Epiphany 1652/3
Q/SR/281	Easter 1653 Petitions of maimed soldiers
Q/SR/282	Easter 1653
Q/SR/283	Translation 1653
Q/SR/284	Michaelmas 1653
Q/SR/285	Epiphany 1653/4
Q/SR/286	Easter 1654
Q/SR/287	Translation 1654
Q/SR/288	Michaelmas 1654
Q/SR/289	Epiphany 1654/5
Q/SR/290	Easter 1655
Q/SR/291	Translation 1655

Q/SR/292	Michaelmas 1655
Q/SR/293	Epiphany 1655/6
Q/SR/294	Easter 1656
Q/SR/295	Translation 1656
Q/SR/296	Michaelmas 1656
Q/SR/297	Epiphany 1656/7
Q/SR/298	Easter 1657
Q/SR/299	Translation 1657
Q/SR/300	Michaelmas 1657
Q/SR/301	Epiphany 1657/8
Q/SR/302	Easter 1658
Q/SR/303	Translation 1658
Q/SR/304	Michaelmas 1658
Q/SR/305	Epiphany 1658/9
Q/SR/306	Easter 1659
Q/SR/307	Translation 1659
Q/SR/308	Michaelmas 1659
Q/SR/309	Epiphany 1659/60
Q/SR/310	Easter 1660
Q/SR/311	Michaelmas 1660

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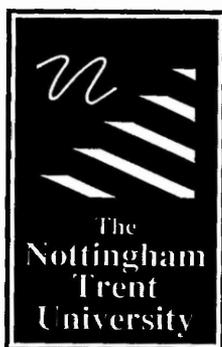
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