

Death, Divorce, and Desertion:  
Strategies of Survival in Abusive Marriage in Seventeenth Century England

by

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## **Author's Declaration**

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

## **Abstract**

This thesis demonstrates how seventeenth century English women in abusive marriages employed limited survival strategies to separate from their violent husbands. It explores the ecclesiastical and magisterial court systems built on deeply rooted political, religious, and cultural attitudes towards women, marriage and marital violence, using urban London cases during the last quarter of the seventeenth century as a lens through which to observe the social and legal toleration of violence in the marriage without commensurate punishment. By using cases from across the social hierarchy, what emerges is a picture of a society deeply affected by the political and religious upheaval that began in the sixteenth century and influenced cultural attitudes towards marital violence that merely reasserted earlier systems of gendered marital hierarchy even as it reframed and redefined these systems of authority. Longstanding canon law defined the possible ways women might secure a separation and survive financially without remaining in an abusive relationship through divorce or desertion by reason of cruelty that changed little over the centuries. The narrow avenues available to women also presented a third option: murder.

The limits of social toleration bound authority and the seventeenth century English toleration for violence in the family made it difficult to define and demonstrate when marital violence had crossed from legitimate methods of correction to illegitimate forms of abuse. Establishing this burden of proof was one of an abused wife's most significant obstacles in court and shaped their approach even as social ideals and perceptions of women shaped how the court viewed women. Most women never experienced excessive violence in their marriage. While these cases are exceptional, they also exemplify the deep-seated religious and socio-cultural customs that shaped normative ideals that tolerated this abuse. Despite the extreme physical, sexual, mental, and emotional assault that violated contemporary notions of reasonable modes of correction, these cases demonstrate how society, the church, and the state understood the abuse, failed to punish the violence, and at the same time allowed the violence to be a legitimate ground for women to separate themselves from abusive husbands. In this way, it is possible to use the exceptional to illuminate everyday attitudes.

## Acknowledgements

This thesis could not have been completed without the support of several incredible individuals.

First, I would like to thank my supervisor, Dr. Greta Kroeker, for her encouragement, advice, expertise, and unflagging support throughout this process. Thank you for being so generous with your time and your knowledge. Thank you also for your intuitiveness, sharp editing pen, and for knowing when to let me run with an idea (and a story!) and when to rein me in. Violence against women is not an easy topic to tackle, and your understanding of the sensitivity required to tell their stories has guided my writing and helped me to deal with the emotions that come with doing so. Your approach to women's history in the early modern era and your passion for telling these stories have shaped my outlook and approach to history. Thank you for your friendship, guidance, and always including me in a community of exceptional scholars who are just as passionate about early modern women's history and gendered violence as I am. Onward!

Second, I would like to thank Dr. Jane Nicholas for first pushing me to consider graduate studies. You believed in me more than I believed in myself and encouraged me always to be that great scholar. Thank you for the chats and advice and your unwavering support. You have always been the voice of reason and encouragement when I struggled, and your understanding of what it means to be a woman historian and a women's historian has been so valuable during this journey.

Third, I would like to thank Dr. Catherine Carstairs for agreeing to be on my committee and for helping me to connect early modern to modern women's history, the feminist movement, and how women's historians can tell a story through a gendered lens that is not subsumed by other agendas.

Finally, I offer my most profound expression of gratitude to my husband, Rich, and daughter, Michaela. I would not have started this journey without your unfailing support and encouragement and likely would not have finished without it. Thank you for celebrating with me in my excitement, commiserating with me over the atrocities committed in my cases, and holding me up during my lowest moments. Rich, you are my rock and my biggest champion; you knew I would find a way even when I couldn't see it. Michaela, thank you for taking this journey with me. You have been my friend, fellow academic, sounding board, the voice of reason, and copy editor. I am so proud to call you my daughter. It is because of the two of you that this journey continues.

## **Dedication**

In 1922, my great grandfather fell from a tree and broke his neck, killing him instantly. My great-grandmother was twenty-nine years old with two little girls, aged four and two, and a baby on the way. She lived in a closed religious community and was a deeply spiritual woman who believed in the church. However, when the church elders told her they would take over the property and family assets to administer on her behalf, she politely but firmly told them no. She never remarried, successfully managed her own affairs despite continued efforts at interference, and raised three strong and beautiful girls.

I have thought a lot about her while writing this thesis. Although she never experienced violence like the women studied in this paper, her character comes to mind. She was a strong and independent matriarch, taking control of matters that, even in the twentieth century, were expected to be handled by men. She was devout and civic-minded, active in her church and the community. She was also a loving mother, grandmother, and great-grandmother who was fiercely protective of us while also nurturing us to be excellent citizens of humanity. She had her struggles but did what needed to be done when it needed to be done.

Women have always faced challenges in keeping themselves and their loved ones safe and have had to create strategies for their survival. I hope that I have channelled my granny's compassion and grace in giving a voice to women who experienced untold horrors in their marriages. It is to her, and to women like her who worked within and without the system and survived, that I dedicate this thesis.

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## **List of Abbreviations**

### **Archival Sources**

BHO British History Online

CCA Canterbury Cathedral Archives

Eng The English Reports

LL London Lives

SM/ PS Middlesex sessions: Sessions papers - Justices' working documents

WJ/ PS Westminster sessions: Sessions papers - Justices' working documents

LMA London Metropolitan Archives

MJ/ SP Middlesex sessions records: Sessions paper

LPLA Lambeth Palace Library and Archives

Ee Court of Arches Personal Answers

Eee Court of Arches Depositions

F Court of Arches Muniment Book

G Court of Arches Excommunication Schedules

PROB The National Archives: Prerogative Court of Canterbury



## Introduction: Strategies of Survival

Survival :

- 1 a) the act or fact of living or continuing longer than another person or thing;
- b) the continuation of life or existence. 2. One that survives

- Merriam-Webster Dictionary

The Hillcrest Medical Centre in Tulsa, Oklahoma, recently published a list of survival tips to remember during a disaster or emergency: be mindful as psychology is a critical factor for survival; try not to panic; know your limits; act and don't be afraid to modify your plan; keep it simple; be aware of natural and manmade threats, and share your plan with friends and family.<sup>1</sup> This randomly chosen list of survival strategies during a disaster, written in 2022, can just as easily be applied to a seventeenth century woman's strategy for survival when escaping an abusive and violent marriage.

Anne Boteler endured fourteen years of physical, psychological, sexual, and emotional violence before fleeing with her children and taking shelter with her mother-in-law. It would take five years for her to secure a permanent separation agreement on the basis of cruelty from her husband, Sir Oliver Boteler, in the Court of Arches in 1675. For four years, Mary Hobry attempted to leave, cajole, and coerce her husband Denis to manage her violent marriage before murdering him in a fit of despair in 1688, when she dismembered the body and spread the parts around the city. Mary Gregory suffered twenty-four years of abuse and misuse from her husband Edward when in 1697, he kicked her out of the house and took up with another woman. After two years on the street, Mary was forced to petition the courts for maintenance because of desertion. There are two sides to each of these women's stories: the abuse she suffered during the marriage and the strategies she employed to survive beyond the marriage. Each applied systems of survival that included the tips listed above: they made and adapted plans, were wary of threats, shared their plans, and knew the limits of the system they lived in. Many

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<sup>1</sup> "10 Emergency Preparedness Survival Tips," *Hillcrest Medical Centre*, June 2022.

of the same strategies were required to leave the marriage. Traditional gender norms and marital expectations, including accepting a certain amount of violence between private individuals, shaped women's experience with spousal abuse. Their subservient role in the marriage and community limited their legal options as abused spouses and females in court. This thesis explores the strategies that seventeenth century English women employed to survive and escape from a violent marriage using legal systems built on deeply rooted political, religious, and cultural attitudes towards women, marriage, and marital violence to better understand the tension between the prescriptive and the reality for abused women and how society understood marital violence.

The early modern English approach to marital violence is a stark representation of the dichotomy of conflicting messages, underscored by the continuing social toleration for a man to beat his wife. Permissive social norms regarding masculine aggression, the gendered hierarchy in society and the household, the absolute right to rule, and the absence of well-defined laws against extreme familial violence created a grey area in which violence could persist without punishment. For women who experienced marital violence, the tension between women's subordination and independence is evident in the contradiction between seventeenth century conduct books, sermons, and intellectual debates, and actions in practice. The church and state idealized marriage as a loving union between partners who treated each other with respect and dignity but also supported patriarchal order and absolute male authority within the family. Many sermons and household guides counselled that good disciplinarians regulated domestic order without physical force, even as other tracts directed husbands to employ moderate physical violence as a corrective measure. In return for being good, obedient and submissive wives, the state assured women that ecclesiastical law would protect them from excessive violence. The law dictated that abused women should seek separation in the spiritual court but risked being ordered to return to cohabiting with their husbands if the judge found the abuse insufficiently excessive. Women who were assaulted or violated should cry out, display ripped clothes and bruises

or cuts, and tell their friends and family to prove they had been attacked against their will, but should be silent, docile, and compliant in everyday life and court, lest they be labelled a shrew. By the end of the seventeenth century, no legal statute in either canon or common law permitted ‘moderate chastisement’ nor was there one to define or punish ‘excessive violence.’<sup>2</sup> These contradictory stances meant that, on the one hand, ecclesiastical and common law placed husbands in authority over their wives, who should be obedient and servile, while on the other hand, in practice, women could go to court and use the abuse itself as grounds to separate even as the violence itself was not punishable. However, establishing how that violence had crossed from corrective to intolerable could be difficult. Costly legal options were available to elite women while their poorer counterparts potentially had more opportunities to mitigate their marital problems informally.

This thesis uses court cases from ecclesiastical, criminal, and magisterial court systems to examine how social standing and religious beliefs informed women’s efforts to separate from abusive husbands and the strategies they employed to negotiate the complex social and cultural systems that underpinned seventeenth century marriages. As part of London’s elite, Anne Boteler’s case was heard in the spiritual Consistory and Arches Court, the Chancery Court, the King’s Bench, and by the King himself. Her case is an excellent example of how religious ideals and canon law shaped the court systems that could both empower and limit women’s options to separate and the precariousness of her situation if a husband demanded restitution of the conjugal debt. Mary Hobry’s London murder trial represents the most extreme solution to a violent marriage: mariticide. As a French Catholic midwife living in London, Mary not only transgressed gender norms but also inflamed the city’s anxieties over morality, religion, and women’s proper role in the household. Her case was tried in the streets as

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<sup>2</sup> To this day, neither the UK nor Canada has a specific offence of "domestic violence." British legislation from the late 1990s recognized victims to allow them to sue in civil family court, and criminal law deals with criminal actions such as assault and rape. Rape within marriage was criminalized in the UK Sexual Offences Act (2003) and in 1983 in Canada.

much as in court and demonstrates the importance society placed on order and the shifting perception of a female criminal. In 1699, the London magisterial court heard Mary Gregory's petition. Without money or means, Mary's impoverishment led her to the Churchwardens and Overseers of the Poor for help. Her case, and that of three other women like her, evince increasing anxieties over poverty and the concept of women as worthy victims. These cases represent three broad paths faced by abused women in seventeenth century England: divorce, death, and desertion.

Most women never experienced excessive violence in their marriage, and while these cases are exceptional, they also exemplify the deep-seated religious and socio-cultural customs that shaped normative ideals that tolerated this abuse. Despite the extreme physical, sexual, mental, and emotional assault that violated contemporary notions of reasonable modes of correction, these cases demonstrate how society, the church, and the state understood the abuse, failed to punish the violence, and at the same time allowed the violence to be a legitimate ground for women to separate themselves from abusive husbands. In this way, it is possible to use the exceptional to illuminate everyday attitudes.

## **1.1 Theory and Methodology**

Domestic violence has always been a complicated subject. Even today, society struggles to define, mitigate, and punish marital violence. In *Woman Battering as Marital Act*, Margareta Hydén demonstrates the enduring historicity of violence between intimate partners and stresses how individuals in these relationships define their actions and words. Hydén believes that within the social framework of marriage, violence is a cultural artifact used to exert power and define roles in the marital organization, which contains a dominant and a subordinate position. Men usually define episodes as fights, implying shared responsibility for the violence, while women call incidents assaults, positioning blame on their spouse and making themselves the victim.<sup>3</sup> Some feminist

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<sup>3</sup> Margareta Hydén, *Woman Battering as Marital Act: The Construction of a Violent Marriage* (Oslo: Scandinavian University Press, 1994), 101-6.

researchers characterize this practice of dominance as something externally imputed on the husband by society, making husband and wife jointly victims of patriarchy, even if he is the one “deriving an advantage from this mode of victimization.”<sup>4</sup> Hydén rejects this as a way of “disclaiming” his action, masking his responsibility, while also agreeing that “a husband’s use of violence towards his wife, and the way she reacts to it produces a social order, and as well reflects an already existing social order in the surrounding society.”<sup>5</sup> Joan Scott’s gender theory supports this framework, which defines gender as a social and cultural construct and understands gender as a fundamental element of “social relationships based on perceived differences between the sexes” and a “primary way of signifying relationships of power” through norms and practices within and through which power is conveyed.<sup>6</sup> Women’s historian Shani D’Cruze also conceptualized a structure of patriarchy, power, and social relations that further understands sexual violence as a “critical intersection of power relations by gender, class and age,” an approach built on Stevie Jackson’s ‘sexual scripts’ that provide neutralizations of violent male sexuality. Jackson sees sexual violence as an integral part of the continuity and characterizes this as the patriarchal power relations and culture of masculinity that accepts the violence and redirects blame from abusers to the abused.<sup>7</sup> Although Hydén, D’Cruze, and Jackson focus on nineteenth and twentieth century cases, early modern historians have successfully used this framework to situate physical and sexual violence as a continuing male project of subordinating women. I use these approaches to characterize the historical continuity of intimate partner violence as a socio-cultural construct that did not defend violent behaviour but instead created a space that justifies and supports social structures that continued to allow women to be battered.

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<sup>4</sup> Hydén, *Woman Battering as Marital Act*, 160.

<sup>5</sup> Hydén, 159-60.

<sup>6</sup> Joan W. Scott, “Gender: A Useful Category of Historical Analysis,” *The American Historical Review* 91, no. 5 (1986): 1053–75.

<sup>7</sup> Shani D’Cruze, “Approaching the History of Rape and Sexual Violence: Notes towards Research,” *Women’s History Review* 1, no. 2 (1992): 377–97; Stevi Jackson, “The Social Context of Rape: Sexual Scripts and Motivation,” *Women’s Studies International Quarterly* 1, no. 1 (1978): 27–38.

Despite ideals that would mitigate and punish violence, society's willingness to legitimate domestic violence illustrates the tension between the peaceful marital ideal and the sometimes violent domestic reality. In *A New Approach to the History of Violence*, Francisca Loetz challenges historians to contextualize interpersonal violence by studying the "consequences of violence [which] allow us to construct the extent to which a society legitimates, tolerates or sanctions certain forms of violence," where violence is understood as a form of social action.<sup>8</sup> Loetz defines violence as *potestas* - a form of exercising legitimate violence, and *violentia* - serious transgression regarded as intolerable by society.<sup>9</sup> Since early modern society deemed a certain measure of marital violence acceptable, transgressing social norms was not about illegitimate or legitimate violence but rather "between socially tolerated and non-tolerated boundary crossing action."<sup>10</sup> Considering the early modern propensity to define violence within the legitimate realm of a marital relationship, I use this theory of *potestas* to contextualize the violence in my case studies and how women navigated these systems.

Finally, I consider the question of seventeenth century women's agency. Women who went to court and sued for separation or maintenance worked within a system that often gave them little control or latitude. Although women's historians continue to debate the exact nature of an early modern woman's sense of agency, the women who went to court were not rebelling against the system or attempting to revolutionize it, and to see women's actions as either having revolutionary tendencies or no agency at all lacks the subtlety required to understand the plight of a woman in an abusive marriage. Martha Howell's theory of agency does not require an exceptional rebellion against

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<sup>8</sup> Francisca Loetz, *A New Approach to the History of Violence 'Sexual Assault' and 'Sexual Abuse' in Europe, 1500-1850, Studies in Central European Histories; v. 60* (Leiden: Brill, 2015), 6-7.

<sup>9</sup> Loetz, *A New Approach*, 192. Defined as "the German Gewalt refers both to *potestas* and *violenta*. Violence as *potestas* is a form of exercising violence regarded as legitimate in a given society, such as the execution of a legally valid death penalty or (in the past or present) the beating of a wife by her husband. Violence as *violentia* is a serious physical, psychological, or symbolic boundary transgression regarded as intolerable in a given society. Its aim is to subjugate and conquer another person," which may be legitimate or tolerated. Although illegitimate, "the gravity of the boundary transgression determines whether it is regarded as violence or not, with the criteria for the gravity of the transgression being historically variable."

<sup>10</sup> Loetz, 10-11.

structure, but acknowledges that women could exhibit agency as action born out of the experience of living in an inherently unstable patriarchal structure that neither weakens, alters, nor terminates gendered hierarchies.<sup>11</sup> This theory provides the nuance required to understand the complexity of these cases. It frames each woman as one who could exert agency without attempting to change the system and used the system as it was structured to attain independence from an abusive husband.

## 1.2 An Historiographical Review

Research on the history of domestic violence began with feminist activism in the 1970s, shaped by family history and the history of violence. Beginning in the 1980s, historians explored the roots of early modern violence, seeing it shaped by political, social, and economic conditions; however, civilizing theories created simplistic approaches that assumed a natural decline in violence against women. Situating his work on divorce, Lawrence Stone believed that women's position in the family and society improved considerably with the English Divorce Act of 1857, before which women could suffer brutal violence that steadily decreased. Legal historians have better demonstrated how the legal concept of marital cruelty developed and address how “female subjection to men continued to have importance long after the right of husbands to beat their wives was rejected in the courts.”<sup>12</sup>

Fifty years of historical research on violence against women has resulted in three broader historiographical debates. Gender and family historians like Merry Wiesner-Hanks and Olwen Hufton focused on the intersection of religion, the law, and daily life as it influenced household relations.<sup>13</sup> Historians researching domestic violence have contextualized this within the greater scope of

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<sup>11</sup> Martha Howell, “The Problem of Women’s Agency in Late Medieval and Early Modern Europe,” in *Women and Gender in the Early Modern Low Countries*, vol. 217 (BRILL, 2019).

<sup>12</sup> Marianna Muravyeva, “A King in His Own Household’: Domestic Discipline and Family Violence in Early Modern Europe Reconsidered,” *The History of the Family* 18, no. 3 (2013): 229, see also John Michael Biggs, *The Concept of Matrimonial Cruelty* (London: Athlone Press, 1962); Elizabeth A. Foyster, *Marital Violence: An English Family History, 1660-1857* (Cambridge University Press, 2005).

<sup>13</sup> Merry E. Wiesner, *Women and Gender in Early Modern Europe*, 3rd ed., (Cambridge University Press, 2008); Olwen H. Hufton, *The Prospect Before Her: A History of Women in Western Europe* (London: Fontana Press, 1997).

interpersonal violence and household power dynamics.<sup>14</sup> Dobash and Dobash linked the continuation of wife beating with the patriarchal system that made man dominant and the woman subordinate, demonstrating that ideological and institutional systems upheld traditional patriarchal rule even as the community and rise of formal regulation merely limited excessive violence.<sup>15</sup> Nevertheless, historians increasingly have little to say about marital battery, especially regarding the premodern period.<sup>16</sup> Second, work on women using the law has contributed to more nuanced views on women's experiences in litigation, their lifeways and social structures, and the importance of credibility and worthy victims. Historians concerned that an over-reliance on court cases will inaccurately reconstruct voice, agency, or lifeways without contextualization have been countered by works like those of G.R. Quaife, who have masterfully demonstrated that court records can accurately define whole societies.<sup>17</sup> Work on early modern courts by historians Tim Stretton, KJ Kesselring, Barbara Shapiro, and Jennine Hurl-Eamon have been particularly adept at illuminating the legal spaces for women.<sup>18</sup> Others, such as Natalie Zemon-Davis, have demonstrated that even 'fictionalized' testimony can reveal behavioural and cultural norms and how individuals viewed their world and used cultural norms to tell relatable stories.<sup>19</sup>

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<sup>14</sup> See JA Sharpe, "Domestic Homicide in Early Modern England," *Historical Journal* 24 (1981): 29-48; Susan Dwyer Amussen, "'Being stirred to much unquietness': Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6, no. 2 (1994): 70-89; and *An Ordered Society: Gender and Class in Early Modern England* (Columbia University Press, 1993).

<sup>15</sup> Russell P. Dobash and R. Emerson Dobash, "Community Response to Violence against Wives: Charivari, Abstract Justice and Patriarchy," *Social Problems (Berkeley, Calif.)* 28, no. 5 (1981): 564-8.

<sup>16</sup> See Judith Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (University of Pennsylvania Press, 2006).

<sup>17</sup> G. R. Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick, N.J: Rutgers University Press, 1979).

<sup>18</sup> Stretton, *Women Waging Law*. See K.J. Kesselring and Tim Stretton, *Marriage, Separation, and Divorce in England, 1500-1700* (Oxford University Press, 2022); Barbara Shapiro, "Oaths, Credibility and the Legal Process in Early Modern England: Parts One," *Law and the Humanities* (2012):145-78; "Religion and the law: evidence, proof and 'matter of fact', 1660-1700," in *Law, Crime and English Society, 1660-1830*, ed. Norma Landau (Cambridge University Press, 2002); Jennine Hurl-Eamon, "Domestic violence prosecuted: women binding over their husbands for assault at Westminster Quarter Sessions, 1684-1720," *Journal of Family History* 26 no 4 (2001):435-54; and *Gender and Petty Violence in London, 1680-1720* (Columbus: Ohio State University Press, 2005).

<sup>19</sup> See Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford University Press, 1987); Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge University Press, 2002).



Additional work has sought to understand how broader attitudes towards physical and sexual violence against women were regulated by political, legal and socio-cultural norms at the state and community levels. Studies have contextualized early modern understanding of rape and sexuality through the passive victim and aggressive perpetrator, disorderly wives, the regulation of women in a patriarchal system, and how victims were characterized, recognized, supported, and (rarely) legitimized.<sup>20</sup> Many historians have demonstrated the persistence of canon law regarding the control of women's bodies. They have questioned if levels of domestic violence receded or became more private as the 'cult of civility' reshaped understandings of women in class and social spaces during the early modern period.<sup>21</sup> More recent work on masculinity has also informed the field, particularly Alexandra Shepard's work on masculine norms and what manhood meant and Joanne Begiato's work on the materiality of marital abuse.<sup>22</sup> Julie Hardwick's research on conjugal battery cases in early modern French cities uses English comparators and, although not her focus, her work reinforces that the English Anglican system operated much as the Catholic French, despite other sweeping changes.<sup>23</sup> Satu Lidman has provided an expansive European view and is one of the few gender historians to compare and contrast Protestant and Catholic States.<sup>24</sup>

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<sup>20</sup> Garthine Walker, "Rereading Rape and Sexual Violence in Early Modern England," *Gender & History* 10, no. 1 (1998): 1–25; and "Sexual Violence and Rape in Europe, 1500–1750," in *The Routledge History of Sex and the Body, 1500 to the Present*, ed. K. Fisher and S. Toulalan (London: Routledge, 2013), 431–443; Julia Rudolph, "Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought," *Journal of British Studies* 39, 2 (2000): 157–84.

<sup>21</sup> Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge University Press, 2003); Margaret Hunt, "Wife Beating, Domesticity, and Women's Independence in Eighteenth-Century London," *Gender and History* 4, no. 1 (1992): 10–33; Joanne Begiato, "Beyond the Rule of Thumb: The Materiality of Marital Violence in England c. 1700–1857," *Cultural & Social History* 15 no. 1 (2018): 39–59.

<sup>22</sup> Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford University Press, 2003), and "From Anxious Patriarchs to Refined Gentlemen? Manhood in Britain, circa 1500–1700," *Journal of British Studies* 44, no. 2 (2005): 281–95; Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex, and Marriage* (New York: Longman, 1999), and "Male Honour, Social Control and Wife Beating in Late Stuart England," *Transactions of the Royal Historical Society* 6 (1996): 215–24.

<sup>23</sup> Julie Hardwick, "Early Modern Perspectives on the Long History of Domestic Violence: The Case of Seventeenth Century France," *The Journal of Modern History* 78 (March 2006): 1–36.

<sup>24</sup> Satu Lidman, "Violence or Justice? Gender-Specific Structures and Strategies in Early Modern Europe," *The History of the Family* 18, no. 3 (2013): 238–60.

While these contributions are significant and have shaped the field, two fundamental aspects have yet to be studied widely. First, historians of marital violence have not yet fully explored the endurance and breadth with which religion infiltrated and saturated every aspect of socio-political thought throughout the early modern era, particularly in applying the law regarding marriage and women. Recent historical tendencies to narrow the time frame and focus of inquiry neglect the longer-term effects of religious upheaval that directly influenced state and social policy and attitudes towards women. Historians who do not specialize in religious history also avoid exploring the impact of doctrine and belief on law and domestic practice. Second, historical research on marital violence has focused broadly on violence in the household, the gendering of violence, and the social and legal history of crime but rarely considers sexual violence. Contemporary sociological and psychological studies argue that marital violence rarely excludes sexual violence and must therefore be considered, even in historical contexts where the evidence of such violence is much more challenging to detect.<sup>25</sup> Any examination of early modern marital violence must consider religious concepts of marital unions and conjugal obligations and how rape and sexual violence within marriage were understood. These historiographical debates contribute a robust framework for the study of marital violence that would be further enhanced with a deeper consideration of the law as framed by religious ideals and the use of violence, particularly sexual violence, as a means to maintain control and power over wives.

### **1.3 Defining Seventeenth Century Patriarchy**

In *The Creation of Patriarchy*, Gerda Lerner interrogated the relationship between ideas about gender, the social and economic forces that shape history, and the nature of female subordination.<sup>26</sup> Lerner traced the desire to control and commodify reproduction to the beginning of civilization and

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<sup>25</sup> Satu Lidman, *Gender, Violence and Attitudes: Lessons from Early Modern Europe* (Abingdon, Oxon: Routledge, 2018).

<sup>26</sup> Gerda Lerner, *The Creation of Patriarchy*, *Women and History*: v. 1. (Oxford University Press, 1986). I am oversimplifying Lerner's question, but this is the essence of her argument.

concluded that while no single event acted as a catalyst, as men learned to use sexual control as social control, this domineering attitude was replicated in slavery and class systems. Conditioning to accept women's 'natural' inferiority and subjugation became so deeply ingrained that it became invisible and shaped the actuality and ideology that is the foundation of patriarchy.<sup>27</sup> Jocelyn Hollander's 2001 sociological study echoed these findings in a modern setting when she asked how men and women perceived threats of violence.<sup>28</sup> Her study showed that "widely shared conceptions of gender associated femininity with vulnerability and masculinity with dangerousness" are so integrated into society that they seem natural and are thus "social constructs as ideal representations of feminine delicacy and male strength that influence how we see each other and ourselves."<sup>29</sup> Hollander concluded that shared ideas about women who need protecting and men who are to protect them "reaffirms the perceived reality of a world in which women's fear [of violence] is rational and expected."<sup>30</sup>

Margaret Ezell best describes early modern English views of domestic patriarchy in *The Patriarch's Wife* as a "concept of power derived from a literary source, the Bible, and codified in written documents. Patriarchalism as a practice, rather than a philosophy, however, was subject to certain demographic factors, a hidden feature of social structures."<sup>31</sup> Although normative texts treated gender as a social division, it is crucial to recognize that contemporary men and women held heteronormative views on femininity while gender seems less defined.<sup>32</sup> Twentieth century feminists

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<sup>27</sup> Lerner, *The Creation of the Patriarchy*, 10, 217-20.

<sup>28</sup> Jocelyn A. Hollander, "Vulnerability and Dangerousness: The Construction of Gender through Conversation about Violence," *Gender & Society* 15, no. 1 (2001): 84. Women are most fearful of assault by a stranger; however, statistically, are more likely to be assaulted at home by intimates. Underreporting makes it difficult to estimate accurate numbers.

<sup>29</sup> Hollander, "Vulnerability and Dangerousness": 84-5.

<sup>30</sup> Hollander, 106.

<sup>31</sup> Margaret J. M. Ezell, *The Patriarch's Wife: Literary Evidence and the History of the Family* (Chapel Hill: University of North Carolina Press, 1987), 16.

<sup>32</sup> Understandings of gender and biological sex models during the early modern era were evolving. See Thomas Walter Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Harvard University Press, 1990); Londa Schiebinger, *Nature's Body: Gender in the Making of Modern Science* (Boston, MA: Beacon Press, 1993).

historicizing the early modern patriarchy shifted its definition from the original “ruled by the father” to that which Laura Gowing states “rested on a linguistic slippage between two different meanings of the word,” that became subsumed “in the sense of feminist analysis... of a wide-ranging domination of women by men.”<sup>33</sup> Although many more recent examinations of early modern society have made corrections to this characterization, Androniki Dialati asserts that the twentieth century toxification of terms like patriarchy and its associated pervasive oppression of women have obscured the premodern era. This has contributed to the incorrect perception that a static and universal system of male domination was the single determining cause of women's subordination that is closed and all-encompassing.<sup>34</sup> Patriarchy, in short, has become a dirty word.

This assumption has been further exacerbated by more general mischaracterizations of society and culture in the early modern period. Robert Shoemaker notes that much of our accepted understanding of seventeenth century urban spaces is based on incorrect nineteenth century sociological models.<sup>35</sup> German sociologist Norbert Elias proposed a civilizing process to explain the steady decrease in violence over the last millennium. This theory persists despite more detailed and in-depth studies that have repeatedly refuted this theory in favour of a cyclical model.<sup>36</sup> In terms of domestic violence specifically, the Victorian cult of civility that recast violence as an issue only among the lower classes hid, rather than eliminated, violence in upper-class homes, which historians

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<sup>33</sup> Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, UK: Clarendon Press, 1996), 5.

<sup>34</sup> Androniki Dialati, “From Women’s Oppression to Male Anxiety: The Concept of Patriarchy in the Historiography of Early Modern Europe” in *Gender in late medieval and early modern Europe* ed. Marianna Muravveva and Raisa Maria Tovio (New York: Routledge, 2013), 20-22.

<sup>35</sup> Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660-1725* (Cambridge University Press, 1991), 9-13.

<sup>36</sup> Norbert Elias, *The Civilizing Process* (New York: Urizen Books, 1978); Richard McMahon, Joachim Eibach, and Randolph Roth, “Making Sense of Violence? Reflections on the History of Interpersonal Violence in Europe,” *Crime, Histoire & Sociétés / Crime, History & Societies* 17, no. 2 (2013): 5–26.

have proved began with prescriptive writing rather than any fundamental shift.<sup>37</sup> Even twentieth century domestic abuse and marital rape laws (and exceptions) are often cited as beginning in the seventeenth century, which obscures the deeply seated biblio-religious ideals about gender and marriage and the medieval and early modern interpretations of these laws.<sup>38</sup> Through these lenses, the premodern era can appear as a rigid hierarchy of class, race and gender, without room or space for equality and freedom, as understood by those contemporaries.

However, careful consideration and research reveal that domestic patriarchy, as a husband's right to rule over his wife and a wife's duty to her husband, was well established by the medieval era. Justified by scripture, sixteenth and seventeenth century prescriptive texts, sermons, and speeches reinforced this model and characterized the ideal household as the foundation of social order. As this chapter asserts, there is a tension between the prescriptive and the reality. Susan Amussen has indicated how patriarchal ideals and models shaped perceptions of women in the family and home that could not possibly work in practice as family, social, and political lives could not be compartmentalized so thoroughly.<sup>39</sup> Laura Gowing advances that normative texts were "not the principal source from which women and men worked at the meaning of sex and gender," and that even as these stock ideals were largely irrelevant in many households, violent husbands relied on the "rhetoric of household order to discipline their wives."<sup>40</sup> Rather than viewing this social order as the subsumption of women, it is essential to consider the form and process of these structures as defined by marriage. The power relationship between individuals is more complex than normative ideals or

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<sup>37</sup> Hunt, Margaret. "Wife Beating, Domesticity, and Women's Independence in Eighteenth-Century London," *Gender and History* 4, no. 1 (1992): 10–33; Muravyeva, "A king in his own household"; Foyster, *Marital Violence*.

<sup>38</sup> Henry Ansgar Kelly, "Rule of Thumb and the folklaw of the husband's stick," *Journal of Legal Education* 44, no 3 (1994): 341–65; Rebecca M. Ryan, "The Sex Right: A Legal History of the Marital Rape Exemption," *Law & Social Inquiry* 20, no. 4 (1995): 941–1001; Ruthy Lowenstein Lazar, "The Vindictive Wife: The Credibility of Complainants in Cases of Wife Rape," *Southern California Review of Law and Social Justice* 25, no. 1 (Fall 2015): 1–38.

<sup>39</sup> See Amussen, *An Ordered Society*, Chapter 4.

<sup>40</sup> Gowing, *Domestic Dangers*, 5, 27.

feminist historicizing as a system of a husband's power and a wife's oppression. Ezell asserts that the domestic patriarchal authority was "challenged, argued, and undermined by both men and women" over the seventeenth century. Although this patriarchal authority remained in place through a period of radical change, because these systems were still forming, the gaps between rigid theory and actual enforcement meant that its "degrading and restrictive nature was not immediately felt."<sup>41</sup> Further, as evidenced by the work of Ezell and others, wives and women who went to court were not ignorant, incapable or servile, but neither were they looking to revolutionize the system.

Deeply rooted inequality shaped women to accept the inferiority of their sex, just as it conditioned men to accept their dominance, making the myth a reality. However, women's inferior position did not make women powerless, and wives could exert influence that was not working to change these structures but rather to function within the existing system, albeit mainly on a private scale.<sup>42</sup> To understand this framework as one of power relationships, it is necessary to consider the society that both shaped and was shaped by these ideals. English political and religious ideas and social ordering benefitted from upholding this gendered hierarchy, even during times of dramatic change, in ways that were part of a longer continuum and uniquely framed for its time. This is not just a study of women's standing before the law but aims to explore women's experiences in abusive marriages and the strategies they could use to survive them at the end of the seventeenth century. To contextualize their experiences, it is essential first to review the era's political, religious, and social state and, importantly, the history of the laws pertaining to women.

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<sup>41</sup> Ezell, *The Patriarch's Wife*, 163.

<sup>42</sup> Mariana Muravyeva and Raisa Maria Toivo, "Introduction: Why and How Gender Matters?" in *Gender in late medieval and early modern Europe* eds. Marianna Muravyeva and Raisa Maria Toivo (New York: Routledge, 2013), 4. Muravyeva and Toivo state that "women were not necessarily more oppressed than men at a time when the majority of the population was oppressed and deprived of basic human dignity due to their social status."

## Chapter 2 : Change and Continuity

### 2.1 The Sixteenth Century: Politics and Religion

Henry VIII's break with Rome in 1534 sparked religious, political and ideological debates that would reshape the state. When Henry redefined himself as ruler of the church, compounded by Edward's subsequent evangelizing efforts, their actions forced new considerations regarding royal supremacy, order, and authority. By the 1550s, civic humanism had formed a cultural accommodation of the social meaning of religion in the "shared language of [the] 'godly commonwealth'" that informed economics, community organization, and local politics.<sup>43</sup> Mary ascended to the throne in 1553 and committed to return to Catholicism, threatening the newly established Protestantism. Her plan to marry Prince Philip of Spain raised concerns as coverture dictated a woman's land and titles would become her husband's upon marriage, which would theoretically make her Spanish husband the King of England. Parliament made Philip king in title only, and after Mary's failed pregnancies and illness, named her half-sister Elizabeth as successor. Mary's persecution of Protestants, and a reign mired with war, flooding, famine, and economic downturns, made her extremely unpopular.

Elizabeth inherited a divided nation in 1558, and although she reestablished Protestantism and instituted administrative and judicial continuity, the Virgin Queen stylized herself in masculine terms to disassociate femininity from her rulership. To unify the state, she became the supreme governor of the church, issued the Common Book of Prayers, and although she resisted involvement in religious and political upheaval on the continent, Elizabeth proved to be a powerful adversary.<sup>44</sup>

Even in its own time, the early English Reformation was acknowledged as an ongoing ideological process in which some Protestant ideas were imported whole while others seemed to be

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<sup>43</sup> Ethan H. Shagan, *Popular Politics and the English Reformation*, (Cambridge University Press, 2003), 25.

<sup>44</sup> <https://www.britannica.com/biography/Elizabeth-I/The-queens-image>

compromises to Catholic tradition.<sup>45</sup> Proposed radical reforms of the church and its courts failed during the Elizabethan era, however, Puritans, who thought the Church had not been fully reformed, argued that Anglicanism remained far too Papist. Some historians hypothesize that frequently shifting government religious policy must have confused people, “leaving them with little clear sense of whether they were supposed to be Protestants, Catholics, or some other type of Christian.” However, Peter Marshall suggests this may have crystallized religious belief, encouraging people to reflect more deeply than they had previously.<sup>46</sup> Norman Jones characterizes the English Church as one that adapted to changing attitudes, where personal religion and connections to culture and society shaped these attitudes such that, rather than one dramatic move, the Church became something more for each generation while also resembling that of previous generations.<sup>47</sup>

Ideas about social reform and social hierarchies also developed during Elizabeth's time, motivated by desires to ensure a speedy return to Protestantism, improve the economy, and reassert moral order. Although many radical projects were proposed, Paul Slack characterizes Elizabeth's reign as a mix of conservatism with a begrudging willingness to adjust for the benefit of the commonwealth.<sup>48</sup> As a new social hierarchy emerged, the ‘middling sort’ sparked an ordering of non-elites in the latter half of the century that would continue to grow and separate groups as economic gains gave merchants and landowners who were not gentry the opportunity to assume more prominent roles in the parish and to distinguish themselves from the ‘common folk.’ Keith Wrightson's work shows that social differentiation was largely absent before the mid-century, but by 1563, the Book of Homilies references “high and low” states of people, “the common sort,” and

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<sup>45</sup> Peter Marshall, "(Re)Defining the English Reformation," *The Journal of British Studies* 48, no. 3 (2009): 564–86.

<sup>46</sup> Marshall, "(Re)Defining the English Reformation," 585.

<sup>47</sup> Norman L. Jones, *The English Reformation: Religion and Cultural Adaptation* (Oxford: Blackwell Publishers, 2002).

<sup>48</sup> Paul Slack, *The Invention of Improvement: Information and Material Progress in Seventeenth-Century England*, (Oxford University Press, 2015), 56.



unflattering characterizations of the poor as unlearned, simple, weak and rude people.<sup>49</sup> By the 1580s, facing famine, plague, uncontrolled building in the city, war and navy costs, Parliament began issuing dearth and plague orders by “emergency act of the queen” which shaped the beginning of social policies promoting absolute power.<sup>50</sup> Although unpopular, desperate times deemed it necessary and over the next fifty years, absolute power would be used increasingly for public welfare.

Under the Tudors, the uncertainty that came with changes in leadership and religious tolerance, war with neighbouring states and internal conflict, and the economic instability of taxes and food shortages affected social structures and influenced the framing of a wife’s place in society. Anxiety over immigration, poverty, and the spiritual state of the country that would escalate during the seventeenth century also contributed to how early modern legal and social structures accepted or mitigated perceived transgressions of proper family ordering, how society understood marital violence, and how women navigated these structures.

## 2.2 The Seventeenth Century

When James VI of Scotland became King James I of England in 1603, he had successfully ruled Scotland and balanced Protestant and Catholic factions while controlling the Presbyterian church, however, he floundered in England. He conflicted with English Parliament, created new peers, instituted taxes to pay for his extravagances, and began to align himself with Spain. James dissolved Parliament multiple times, and although Parliament enacted emergency directives, uncertainty plagued the direction of regulations and executive enforcement.<sup>51</sup>

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<sup>49</sup> Keith Wrightson, "Sorts of People' in Tudor and Stuart England," in *The Middling Sort of People: Culture, Society and Politics in England, 1550–1800*, eds, Jonathan Barry and Christopher Brooks (London: Macmillan Education UK, 1994). See Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780*, (University of California Press, 1996); Steve Hindle, *The state and social change in early modern England, c.1550-1640* (New York: St. Martin's Press, 2000).

<sup>50</sup> Paul Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* (Oxford: Clarendon Press, 1999), 54-6.

<sup>51</sup> Slack, *From Reformation to Improvement*, 55-9.

James' son Charles ascended the throne in 1625, believing in a king's divine right to rule. Initially, parliament rarely met and acted in an advisory capacity.<sup>52</sup> Conflict rose when Charles ignored the Protestant settlement secured by Henry VIII, favoured Catholic mass, married the Catholic French King Louis XIII's sister, Henrietta Maria, and continued the war with Spain. Amid criticism for his unilateral foreign policy and personal spending, Charles dissolved parliament in 1629 and ruled for the next eleven years without calling another. Although the 1630s were relatively prosperous and Charles achieved peace with France and Spain, his religious imposition provoked a Scottish rebellion that forced him to convene parliament in 1640. When parliament condemned his Personal Rule, his failed attempt to arrest five MPs for treason set Charles in opposition with the people. With the outbreak of an Irish rebellion and the queen facing possible impeachment, Charles fled to the north of England.<sup>53</sup>

What began as an effort to curb the King's absolute power at the opening of the Long Parliament in 1640 became an increasingly radical stance that forced sides between Royalists loyal to Charles and pro-parliamentarians. Four years of civil war tore the country apart until Charles' final failed effort to regain his crown in 1648.<sup>54</sup> Oliver Cromwell overruled politicians who voted to consider negotiation, indicting Charles for high treason in January 1649. Charles proclaimed his supreme authority and refused to recognize the court. Parliament could not accept this and condemned him to death. In the first act of regicide in British history, Charles was executed on January 30<sup>th</sup>.<sup>55</sup> The execution galvanized the Scots, who crowned the king's son Charles II King of

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<sup>52</sup> Matthew White, "The turbulent 17th century: Civil War, regicide, the Restoration and the Glorious Revolution," *British Archives*, 2018.

<sup>53</sup> White, "The turbulent 17th century."

<sup>54</sup> Jacqueline Eales, "Kent and the English Civil Wars, 1640-1660." Frederick Lansberry, ed. *Government and Politics in Kent, 1640-1914*. (Woodbridge: 2001), 13.

<sup>55</sup> White, "The turbulent 17th century."

Scots. Cromwell's decisive military victory in 1651 forced Charles II to flee to France, which ended the war and gave Cromwell control of the British Isles.

Parliamentarians viewed the political revolution as an opportunity to reform the country and expected improvement across society and for all people. The reforming agenda grew more ambitious and reinterpreted access to property, power, economic, and social betterment; by 1649, the improvement of social welfare for the public good continued even as employment schemes failed to produce as expected.<sup>56</sup> Oliver Cromwell ruled Britain as Lord Protector, head of the new commonwealth, with a standing army and parliament of supporters. Those loyal to the monarchy were shut out of politics, their lands confiscated or heavily fined. The Anglican Church was deemed too Papist, and parliament shuttered churches and ecclesiastical courts. Puritans demanded strict moral codes and targeted theatres and ale houses as pits of vice. After Cromwell dissolved parliament in 1653, he ruled as a military dictator for the next eight years, implementing a foreign policy that ensured royal absolutism could never exist again. War in Ireland and Scotland and Cromwell's brutal persecution of Catholics continued until his death from pneumonia in 1658. Cromwell's son Richard tried to assume control but was deposed by his generals seven months later. When Scottish forces loyal to the monarchy moved on London unopposed, they convened a new Parliament, imprisoned Commonwealth leaders, and recognized Charles II as the rightful sovereign.<sup>57</sup>

The civil war and the interregnum represented a break from traditional English rule that was revolutionary but was by no means universally accepted or a welcomed change. When Charles II was restored to the throne in 1660, many Royalists were rewarded for their loyalty and found their pre-civil war lives returned. For many, the Restoration represented an opportunity for political and religious reform that also rejected the events since 1640. Charles implemented religious toleration,

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<sup>56</sup> Slack, *The Invention of Improvement*, 92-116.

<sup>57</sup> White, "The turbulent 17th century."

Anglican churches and courts reopened, and he fostered a more liberal attitude that allowed arts and politics to flourish.<sup>58</sup> Although he handled the plague crisis of 1665 and the 1666 Great Fire of London relatively well, Charles had an uneasy relationship with parliament, and many considered him too easily influenced by Catholic sectors. Eales notes that while the Restoration “marked a return to the pre-war status quo in terms of wealth and political power...it also left a powerful legacy of religious and political dissent amongst the wider population.”<sup>59</sup>

Although attempts to exclude Charles’ Catholic brother James from the line of succession failed, when Charles died unexpectedly in 1685, James II became king and threw politics into turmoil.<sup>60</sup> Trade contributed to healthy revenues, and James was less reliant on a nervous parliament, however, his attempts to reverse religious toleration, stack the government with Catholic supporters, and the birth of a son in 1688, pushed parliament to move against the king. Seven nobles invited William, Prince of Orange, husband to James’ eldest and Protestant daughter Mary, to invade, promising he would be welcomed unopposed by British forces. James fled to France in exile as William III and Mary II were crowned joint sovereigns in 1689.

### **2.3 The Little Commonwealth**

These changes profoundly influenced the nature of the family, shaping how the state framed structures of patriarchal authority, even as it retained long-held ideals regarding a wife's position in the household. The notion of absolute power and the resurgence of ancient philosophical teachings influenced and framed marriage as both natural and contractual.<sup>61</sup> Centralized states drew on the patriarchal family as a model that justified both its authority and the employment of violence to

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<sup>58</sup> White, "The turbulent 17th century."

<sup>59</sup> Eales, "Kent and the English Civil Wars," 5.

<sup>60</sup> The 1681 Exclusion Crisis was prompted by fears that James, a known Catholic, would inherit the throne, which opened deep divisions in parliament between the Whigs, who supported excluding James from inheriting the throne, and the Tories, who were against the bill.

<sup>61</sup> See Adrian Thatcher, *The Oxford Handbook of Theology, Sexuality, and Gender* (Oxford University Press, 2015).

ensure order.<sup>62</sup> Anglican thinking embraced and expanded on this, using the marital union as a symbol of the common good for the family, church, and state, which remained almost unchanged throughout the era.<sup>63</sup> By the beginning of the seventeenth century, the family as the ‘little commonwealth’ appointed by God proliferated in sermons, catechisms, and household manuals. William Gouge’s *Of Domesticall Duties* (1622) advised that marriage was a union of mutual love that required a hierarchal structure to preserve good social order. This was to be a compassionate patriarchy, not a tyrannical rule; a wife owed obedience to her husband as a citizen owed fealty to his king, based on reciprocal care and protection.<sup>64</sup> As God had commanded Adam to rule over Eve, so too should a husband rule over his wife, and she, as his help mate, rule over children and the household.<sup>65</sup> Properly ordered, each family member's role and duties would guarantee individual flourishing and reinforce social order for the community, church, and state.<sup>66</sup>

This thinking supported Henry VIII as head of the Church and State and continued to support absolutist rule. In the 1630s, Robert Filmer wrote *Patriarcha*, which framed Adam as the first patriarch and Charles I as his heir, whose rule was supreme and appointed by God, just as God appointed fathers and husbands as the absolute authority over the household, making their power unconditional.<sup>67</sup> These views did not go without challenge. Asking what remedy a citizen would have against an evil monarch or government, parliamentarians turned to contract theory, which dictated that by consent and mutual agreement, a wife (and citizens) owed obedience, but a husband (and

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<sup>62</sup> Muravyeva, "A king in his own household," 228-232.

<sup>63</sup> John Witte, "Sex and Marriage in the Protestant Tradition, 1500-1900," in *The Oxford Handbook of Theology, Sexuality and Gender*, ed. Adrian Thatcher (Oxford University Press, 2015), 310.

<sup>64</sup> Amussen, *An Ordered Society*, 39.

<sup>65</sup> Genesis 1:28, 2:18, 3:16.

<sup>66</sup> Amussen, *An Ordered Society*, 2–3. See Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800*; Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640*.

<sup>67</sup> Robert Filmer, *Patriarcha*.

king) owed good leadership; if a king or husband were to govern poorly, he would lose the right to possess dominion.<sup>68</sup>

Political instability, religious uncertainty, and social and moral anxieties contributed to almost a century of upheaval, making the Elizabethan Golden Age vastly different from William and Mary's Age of Toleration. This brief review is illustrative of three things: the interconnectedness of politics and religion did not end with the Reformation but amplified it; every citizen was forced to consider religious belief and the right to rule; and finally, increasing concerns over morality shaped society and the law in ways that often represented a hardening or crystallizing of norms and ideals that had been in existence for centuries.

## **2.4 Women in the Law**

The dramatic shifts in the state's right to rule, religious toleration, and proper social ordering rephrased marriage and the proper ordering of the family without redefining women's roles. Seventeenth century English political, religious, and social institutions benefitted from upholding gendered hierarchal ideals, which meant even in times of dramatic change, women's rights in the law and the household changed little. Over the sixteenth and seventeenth centuries, medieval manorial and customary systems of law declined as the state centralized, and Parliament claimed constitutional authority over the monarchy, which cemented common law.<sup>69</sup> Ecclesiastical law was built on the more egalitarian Roman civil law, and although earlier medieval periods were not a 'golden age' for women, as rationalization replaced spiritual law with common law, women's legal and economic positions deteriorated. Amy Erickson categorizes this shift as one in which "a restrictive system tightened even further."<sup>70</sup> Women could not sue or be sued in their own name and needed a man to

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<sup>68</sup> Amussen, *An Ordered Society*, 47-60.

<sup>69</sup> Amy Louise Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), 6.

<sup>70</sup> Erickson, *Women and Property*, 6, 2.

petition on their behalf in common law. However, many historians argue they possessed relatively equal access to the courts and could bring suit and be sued in the spiritual courts and Court of Requests, give evidence, act as a witness, and serve on matrons juries.<sup>71</sup> However, women always enjoyed fewer rights and privileges, and their general position relative to men changed little over the early modern era. Describing this constancy, Patricia Crawford notes, “it is fascinating to observe that although the reasons for women's necessary subordination might change, the axiomatic inferiority of women remained.”<sup>72</sup> Progress in legal systems did not represent advancement for women.

#### **2.4.1 Ecclesiastical Law**

The eleventh century division between ecclesiastical and common law had worked reasonably well as spiritual courts handled church business and ruled on moral and marital issues. The higher Court of Arches and Chancery Court heard their own cases and appeals from the lower bishops' consistory courts in each diocese. By the end of the sixteenth century, lay professionals replaced clergymen as judges and lawyers, although Puritans increasingly opposed church courts, likening them to Catholic Inquisitions.<sup>73</sup> Parliament restricted the ecclesiastical court to clergy matters in 1641 and abrogated them entirely in 1646. Although restored when Charles II took the throne in 1660, the Church and its courts never held the same unquestioning authority again. Anxieties over declining morality, sexuality, unchecked population growth, poverty and crime, and the increasing encroachment from parish authorities, parliament, and common law, diminished the spiritual court's effectiveness. Informal mediation, shifting court authority, and dueling jurisdictional issues could also contribute to significant confusion, putting women in difficult marriages at greater risk.

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<sup>71</sup> Stretton, *Women Waging Law*, 31-33; Erickson, *Women and Property*, 30. See also, Hurl-Eamon's work in *Gender and Petty Violence*; Robert Shoemaker, *Prosecution and Punishment*.

<sup>72</sup> Patricia Crawford, "From the woman's view: pre-industrial England, 1500-1750," in Patricia Crawford, ed. *Exploring Women's Past* (Sydney, 1984), 84.

<sup>73</sup> See Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge University Press), 1987.

### 2.4.2 The Feme Covert

A woman's position in law was shaped by the twelfth century canon laws of marriage formation and dissolution, property, and inheritance. A girl legally became a *feme sole* at fourteen and acquired most of the same private legal rights as men. She could consent to marry, contract a will, receive gifts, inherit and control property, enter into binding contracts, sue or be sued, and conduct business.<sup>74</sup> Concerns over retaining control of inherited property led to the formation of many statutes of abduction.<sup>75</sup> Upon marriage a woman's legal status became that of the *feme covert*. Coverture, essentially the economic exchange of the bride's portion for the husband's duty to sustain his wife, regarded man and wife as *una caro* (one flesh), and a woman lost nearly all rights of independence.<sup>76</sup> She no longer directly owned property, she could not sue or be sued, and her actions were considered the responsibility of her husband.

Twelfth century canon law considered marriage binding with evidence of mutual consent; however, Henry VIII's break with Rome led to more than a century of changes to marital law. Church closures, growing parish rule, and subsequent shifts in religious tolerance during the sixteenth century contributed to uncertainty over who was legally married and who held authority over marital unions and their dissolution.<sup>77</sup> To reassert its dominance, in 1604, the Anglican Church instituted regulations around banns, licenses, and public ceremony to legitimate marriage vows. However, the Commonwealth rule from 1649 radically reformed marriage regulation and instituted civil services officiated by the local magistrate who would register the marriage with the Parish. With the

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<sup>74</sup> Lynn Greenberg, *Legal Treatises: Essential Works for the Study of Early Modern Englishwoman*, (Aldershot, Hants, England: Ashgate, 2003), vol. 1, xx. Parliament raised the age of consent from 12 to 14 in 1653.

<sup>75</sup> Greenberg, *Legal Treatises*, vol 1, xx. Abducting and marrying a woman with property, even with her consent, was understood as the "unlawful taking of the husband's or father's property," and it was considered a felony punishable through severe monetary damages or imprisonment. This is also how rape or ravishment is linked to abduction and defined as the "carnal knowledge of a woman forcibly and against her will."

<sup>76</sup> Erickson, *Women and Property*, 100.

<sup>77</sup> See Lawrence Stone, *Uncertain Unions*.



Restoration in 1660, the Anglican Church resumed its control over marriage and required a spiritual ceremony to be legally binding.<sup>78</sup> Throughout, canon law remained firm: “all Women, in the Eye of the Law, are either married or to be married.”<sup>79</sup> These shifts also meant that women who sought separation from an abusive husband faced increasing uncertainty about who held power to grant them a legally binding separation and who held enough authority to enforce it.

### 2.4.3 Divorce and Separation

As canon marriage laws solidified under common law, so too did attitudes about divorce. By the beginning of the seventeenth century, *divorce a vicolo* vacated a marriage in cases of consanguinity, age of majority, honouring marriage contracts, infertility, impotence, and otherwise “natural frigidity.”<sup>80</sup> *Divorce a menso et thoro*, or separation of the bed and board without the right to remarry, could be granted in cases of adultery, defined as sexual intercourse between a married woman and a man not her husband, or extreme cruelty.<sup>81</sup> The perceived moral threat of adultery reached a crisis point in 1650, when Parliament passed the Immorality Statute which made adultery a capital offence.<sup>82</sup> By 1632, separation was also permitted if one was found to be not sound of mind, or if a husband failed to provide the necessaries of life or exhibited violent behaviour. Although not compelled to cohabit, they legally remained “Man and Wife.”<sup>83</sup> While cohabiting, the *feme covert* had fewer legal remedies if a husband failed to support or abuse her or their children.<sup>84</sup> *The Treatise of Feme Coverts* states, “...a Man may be sued for ill Usage of his Wife, and be ordered to pay her so

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<sup>78</sup> Greenberg, *Legal Treatises*, vol.1, xxi-xxii.

<sup>79</sup> "Preface," *A Treatise of Feme Coverts: Or, the Lady's Law Containing All the Laws and Statutes Relating to Women, Under Several Heads (1732)*, 169-170. Reprinted in *The early modern Englishwoman: Essential works for the study of early modern women*, volume 2. Eds. Betty S. Travitsky and Anne Lake Prescott (England: Ashgate Publishing Ltd), 2005.

<sup>80</sup> "Section L Of Divorce," *The Lawes Resolutions*.

<sup>81</sup> "Section XXIII Causes of Divorce," *The Lawes Resolutions*.

<sup>82</sup> Greenberg, *Legal Treatises*, vol 1, xxii. The law was little used and fell out of favour quickly.

<sup>83</sup> *A Treatise of Feme Coverts*.

<sup>84</sup> Erickson, *Women and Property*, 124, 100; Greenberg, *Legal Treatises*, xxvi.

much per Week Alimony, which was anciently called Rationabile Estoverium.”<sup>85</sup> She could have the security of peace brought against him for violent behaviour; however, a husband had the right to correct his wife’s behaviour through physical force, and any action she took against him that contravened her subordinate position would be viewed negatively.<sup>86</sup> If separated, a wife could sue for maintenance in the courts of equity, ecclesiastical courts, or manorial courts.<sup>87</sup> These courts allowed married women a considerably greater presence than common courts.

Although Protestants in Europe adopted divorce laws allowing remarriage, the Church of England held fast to canonical laws that continued to deny divorce and remarriage.<sup>88</sup> This contributed to rising anxieties over false second wives and bastard children, which prompted the Parliamentary Bigamy Act (1604) and statutes criminalizing illegitimate children.<sup>89</sup> Parliament granted the first divorce with remarriage in the landmark *Roos v Roos* (1670), but this action remained primarily for the gentry with inheritance concerns, and still required the Church to vacate the marriage. Of course, many simply separated unofficially. As Erickson illustrates, desertion was one of the only means of separation open to poor people, and she suggests that “as many as ten percent of all marriages ended in separation, mostly for reasons of limited employment and poverty.”<sup>90</sup> The Matrimonial Causes Act (1857) shifted divorce from ecclesiastical to common law but restrained cause to adultery, cruelty and desertion; it would be 1973 before divorce for marital breakdown allowing remarriage became legal.

#### 2.4.4 Maintenance

Canon law instructed men to maintain their wives during divorce proceedings as in marriage; however, separation without a spiritual court sanctioned divorce *a menso et thoro* ended a husband's

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<sup>85</sup> 12 Rep. 30. Moor 874. *Treatise of Feme Coverts*, 171.

<sup>86</sup> Amussen, "Being stirred to much unquietness," 72; Greenberg, *Legal Treatises*, xxvi.

<sup>87</sup> Greenberg, *Legal Treatises*, vol 1, xxiv-xxv. For a detailed investigation of the property laws, the four courts and women, see Erickson, *Women and Property*.

<sup>88</sup> Bernard Capp, "Bigamous Marriage in Early Modern England," *Historical Journal* 52 no 3 (2009): 539-40.

<sup>89</sup> Greenberg, *Legal Treatises*, xxii-xxiii.

<sup>90</sup> Erickson, *Women and Property*, 127.

obligation. These laws were deeply rooted in canon law and should not be seen as a developing trend toward modern rights of alimony, but Stretton does point out that allowing women to sue their husbands in their own name was an “innovative development.”<sup>91</sup> Similarly, although marriage contracts usually focused on primogeniture inheritance, increasingly ‘sole and separate estate’ agreements kept property in trust for children and wives to protect them in widowhood or in the event the marriage should collapse.<sup>92</sup> Spiritual courts could order maintenance or alimony and courts of equity and sessions of the peace could grant or uphold settlements; nonetheless decisions could be inconsistent.<sup>93</sup> If a wife deserted her husband, she risked forfeiting her right to alimony, and if a husband abandoned his wife, even a marriage settlement was no guarantee of financial security.<sup>94</sup>

Most marriages never encountered problems, and for many that did, arbitration, family and community intervention, and the woman's wish to either work things out or remain silent make accurate numbers unknowable. Nevertheless, as Erickson concludes, it is remarkable that so many women still went to court.<sup>95</sup> The inequality in marriage that remained steadfast throughout the early modern era represented the most significant hurdles for women to overcome. For women in abusive relationships, how society understood a worthy wife and victim and what constituted ‘unusual cruelty’ formed some of the greatest barriers in securing separation and maintenance.

## 2.5 A Man’s Right to Beat His Wife

The Baron may beate his Wife

... if a man beat an outlaw, a trotor, a Pagan, his billein, or his wife it is dispunishable, because by the Law Common these persons can have no action: God send Gentlewomen better sport, or better companie.

But it seemeth to be very true, that there is some kind of castigation which Law permits a husband to bee, for if a woman be threatned by her husband and bee beaten, mischeived or slaine, Fitzherbert sets downe a Writ which she may sue out of Chancery to compell him to finde surety of honest behaviour toward her, and that he shall neither doe nor procure to be done to her (marke

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<sup>91</sup> Stretton, *Women Waging Law*, 145.

<sup>92</sup> Greenberg, *Legal Treatises*, xxvii; Erickson, *Women and Property*, 103, 107.

<sup>93</sup> Erickson, *Women and Property*, 107; Stretton, *Women Waging Law*, 150.

<sup>94</sup> Erickson, *Women and Property*, 124.

<sup>95</sup> Stretton, *Women Waging Law*, 151; Erickson, *Women and Property*, 128.

I pray you) any bodily damage, otherwise then appertaines to the office of a husband for lawfull and reasonable correction.

How farre that extendeth I cannot tell, but herein the sere feminine is at no very great disadvantage: for first for the lawfulness; If it be in none other regard lawfull to beat a mans wife, then because the poore wench can sue no other action for it...

- Books 3: Section VII *The Lawes Resolutions* (1632)<sup>96</sup>

The state, church, and community assumed responsibility to ensure citizens lived ordered lives and actively advocated for continued cohabitation, although in practice, neither the couple nor the community benefitted from insisting that spouses continue to live together in disharmony. Spiritual and common law judges and clergy frequently acted as mediators to achieve marital reconciliation, but in cases of extreme violence and disorder in the household, it was deemed better to let the couple live separately, if unofficially. Drew Gray's work shows that some magistrates offered separation awarding maintenance in cases of domestic violence rather than attempting to bind or punish the abusive husband. He concludes, "while this might seem to be a negligent attitude towards violence, it also suggests a pragmatic approach to a perennial problem and a crime that was extremely hard to either prosecute or stamp out."<sup>97</sup>

The circumstances that made marital violence challenging to prosecute and understanding what made spousal violence a crime is crucial to understand how women proved excessive abuse. The author of the *Lawes Resolutions* reports that in ancient times, certain crimes could dissolve a marriage, but Justinian changed these laws, making matrimony unbreakable and a woman subject to the law of her husband, according to St. Paul. The author lamented, "I cannot tell why we do not bound in dissolving of it to follow the like equitie: and for example, if a wife cannot dwell with her husband without manifest danger of the death, because he is cruell and bloody, why may not shee be separated iudicis ordinarij cognitione precedente [with the previous knowledge of ordinary judges]."<sup>98</sup>

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<sup>96</sup> *The Lawes Resolutions*, 128-9.

<sup>97</sup> Drew D. Gray, *Crime, Policing and Punishment in England, 1660-1914* (New York: Bloomsbury Academic, 2016), 204.

<sup>98</sup> "Section XXVII That no crime dissolveth marriage," *The Lawes Resolutions*.

### 2.5.1 Religious Precedent

The early English legal system was built on canonical legal precedent, particularly concerning women. Scripture formed part of these legal reasonings, as Paul dictated that a husband should love his wife as he loved his own body and Christ, but early modern law also condoned that the *Baron may beate his wife*. Early modern Englishmen debated the ambiguity in these diametrically opposed positions, although surprisingly few modern historians are willing to delve too deeply into the root of these positions. Most historians in the Anglo-American tradition point to Blackstone's *Commentaries on the Laws of England* (1778) that explained "by the old law," a man could castigate his wife with moderate correction, but Blackstone's language is more severe than that. He states that for misdemeanours, a husband was allowed *flagellis et fustibus acriter verberare uxorem* [to beat his wife severely with a set of whips and clubs], but for other infractions, only *modicum castigationem adhibere* [to apply a moderate chastisement] which fell out of favour with the Restoration of Charles II.<sup>99</sup> Writing a century later, Blackstone merely references the pre-1660 period as the "old law."

Henry Ansgar Kelly is the only historian that has investigated Blackstone's precedential references with any depth to unravel this preconception that a man may beat his wife. He shows that Blackstone does not cite clear cases of precedent but references four cases spanning the seventeenth century to corroborate that the "old law" allowed moderate correction.<sup>100</sup> While these four judgements

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<sup>99</sup> Blackstone, *Commentaries on the Laws of England*, 8th ed (1778) Vol 1, Chapter 15, 432-3; translation of Latin my own. The full passage reads: "The husband also (by the old law) might give his wife moderate correction. [1 Hawk. PC 130]. For, as he is to answer for her misbehaviour, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds [Moor. 874], and the husband was prohibited from using any violence to his wife, *aliter quam ad virum, ex causa regiminis et castigationis uxoris suae, licite et rationabiliter pertinet* [F. N. B. 80]. The civil law gave the husband the same, or a larger, authority over his wife: allowing him, for some misdemeanors, *flagellis et fustibus acriter verberare uxorem*; for others, only *modicum castigationem adhibere* [Nov. 117 c. 14 & Van Leeuwen *in loc.*]. But, with us, in the politer reign of Charles the Second, this power of correction began to be doubted [1 Sid. 113; 3 Keb. 433]; and a wife may now have security of the peace against her husband [2 Lev. 128]; or, in return, a husband against his wife [Stra. 1207]. Yet the lower rank of people, who were always fond of the old common law, still claim and exert their ancient privilege: and the courts of law will still permit a husband to restrain a wife of her liberty, in case of any gross misbehaviour [Stra. 478, 875]."

<sup>100</sup> Blackstone cites judgements made by William Hawkins (1724), Moore (1615), Keble (1674) and Levinz (1675).

demonstrate that throughout the sixteenth- and seventeenth- centuries, women could seek settlements against their husbands for alimony, separation, and binding for unreasonable correction, none of the justices defined or instructed that a husband had the legal right to use even moderate violence against his wife.<sup>101</sup> *Manby v Scott* (1659) references a statute from Edward IV (1442-1483) that stated, “For although our law makes the wife subject to her husband, still the husband cannot kill her, for that would be murder, nor can he beat her, for the wife can seek the peace.”<sup>102</sup> This refutes Blackstone's assertion that before the Restoration, husbands could beat their wives severely and demonstrates that ideas about moderation were firmly entrenched in both ecclesiastical and common law well before the 1660s. However, this does not resolve how violence against a wife was, or was not, defined in law.

Blackstone asserted that Roman civil law permitted spousal correction by referencing Simon van Leeuwen's (1625-1682) commentary on Justinian (525-565). Justinian stated that any man who struck his wife with whips or rods without reason should compensate his wife for the injury, but this would not dissolve the marriage; however, Van Leeuwen reported that interpreters of this decree “desire the husband to be permitted moderate chastisement of his wife” or if he beat her without such cause, he should be sworn to keep the peace or pay a fine.<sup>103</sup> Kelly asserts that Blackstone adopted Van Leeuwen's notion that husbands were permitted to exercise moderate chastisement. This conclusion was introduced by the late canonical commentators and “drawn from analogy to other situations in which correction was permitted,” supplanting Justinian's original intent.<sup>104</sup> Civil law says nothing about allowing severe beatings of wives but rather “stipulates that if a man should attack his wife in this way without having sufficient grounds against her for divorce, he is to be punished.”<sup>105</sup>

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<sup>101</sup> Kelly, "Rule of Thumb," 352-4.

<sup>102</sup> 1 Edward IV, 1A, quoted in *Manby v Scott* (1659); reported by Siderfin 109, 82 Eng Rep 1000 (ex.1659).

<sup>103</sup> Kelly, "Rule of Thumb," 356-7.

<sup>104</sup> Kelly, "Rule of Thumb," 357.

<sup>105</sup> Kelly, "Rule of Thumb," 357.

Medieval authorities argued that husbands did not have the right to beat their wives, but canonists developed the ‘doctrine of moderate chastisement,’ beginning with the canon Placuit, which Gratian attributed to the First Council of Toledo (400). It stated that adulterous wives should not be killed but confined to home with compelling fasts; however, by the sixteenth century Roman edition of Gratian’s *Decretum*, the summary alleges that clerics could “weaken their wives with blows and hunger.”<sup>106</sup> Thirteenth century canonists John Teutonicus, Laurence Hispanus, and Bartholomew Brixiensis were more careful to gloss Justinian’s *Si quis autem*, stipulating a husband could correct a wife but not by beating her, and if he did beat her, she had recourse in the law through separation and fines.<sup>107</sup> Thus, Blackstone’s assertion that the “old law” allowed husbands to beat their wives was both true and false. Scripture and early civil law judged that wives could be corrected but disapproved of physical punishment and made judgements for punishing violent husbands. Subsequent interpreters reshaped these principles to accommodate and better reflect contemporary social and cultural ideals of patriarchal authority and violence, a concept which will be explored further in the next chapter.

### **2.5.2 A Man's Right to Rape His Wife**

Although Blackstone’s treatise did not consider sexual violence, a similar commentary exists regarding marital rape. In the late 1660s, English judge and jurist Sir Matthew Hale wrote, “But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”<sup>108</sup> Rebecca Ryan suggests this theory allowed a husband to claim not only his wife’s body at marriage but also her right to consent, her sexual will, and her control physically and

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<sup>106</sup> Kelly, "Rule of Thumb," 357-8.

<sup>107</sup> Kelly, "Rule of Thumb," 359-60.

<sup>108</sup> Matthew Hale (1609-1676), Sollum Emllyn, William Axton Stokes, Edward Ingersoll. *Historia placitorum coronae = The history of the pleas of the crown: first published from his lordship's original manuscript, and the several references to the records examined by the originals, with notes by Sollom Emllyn*. Philadelphia: R.H. Small, 1847, 628.

mentally over her sexuality.<sup>109</sup> Most legal historians use Hale's assertion as a genesis for the modern law of the marital rape exception; however, Wagner points out that Hale wrote this opinion without citing any authority of precedent. Further, the first legal ruling citing Hale's commentary did not occur until 1888. In 1992 a judge remarked, "if Hale was merely recognizing a well-known principle of law, it is surprising that no authority is cited in support of it."<sup>110</sup> Hale's assertion entered legal doctrine without precedent, and although rarely used, twentieth century rulings using the marital rape exception enshrined it as law by using the opinion itself as precedent.<sup>111</sup>

However, this neither explains how Hale came to opine in such a manner nor how, why, or if this was a widely accepted concept for seventeenth century English citizens. Research has shown that early modern rape cases considered social class, age, marital status and reputation of the victim when determining guilt or innocence, and contemporary attitudes thought men possessed a natural propensity for aggression. Violence was an accepted part of sex that blurred the lines of consent, and with the post-Reformation shift in the regulation of sex from criminal to moral, efforts to control and punish sexual offences increasingly pushed the burden of responsibility regarding sexual misconduct on women.<sup>112</sup> Married women were considered knowledgeable in sex, and it was thought that they

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<sup>109</sup> Ryan, "The Sex Right," 947. Ryan stipulates this is not a definition of consent, but that Hale's legal theory defies legal definition and only offers to define implied consent theory; "...there still existed an unwritten presumption in and out of courtrooms that a wife, or woman in any sexual relationship with a man, generally consents to sex with her partner... This presumption lowers the threshold of consent for these women, making it difficult to establish in or out of a courtroom their independent will. This prejudice is surely the "implied consent" theory's legacy...."

<sup>110</sup> R. v. R [1992] 1A.C. 599, quoted in Anne Wagner, "Multiple Historical and Social Layers of Interpretation of Marital Rape in England," *Semiotica* 209 (2016): 48.

<sup>111</sup> Lazar, "The Vindictive Wife," 5-14; Denis Drucker, "The Common Law Does Not Support a Marital Exception for Forcible Rape," *Women's Rights Law Reporter* 5, no. 1 (Fall 1978): 181-200. Drucker concluded that twentieth century American jurists perpetuated the opinion when they upheld a doctrine without any proof of precedent; four English cases used spousal exception, but only one held that a husband could not be charged with raping his wife.

<sup>112</sup> Manon van der Heijden, "Women as Victims of Sexual and Domestic Violence in Seventeenth-Century Holland: Criminal Cases of Rape, Incest, and Maltreatment in Rotterdam and Delft," *Journal of Social History* 33, no. 3 (2000): 623-44, 632-5; Susanna Burghartz, "Tales of Seduction, Tales of Violence: Argumentative Strategies before the Basel Marriage Court," *German History* 17, no. 1 (1999): 43-56; Walker, "Sexual Violence": 431-40.



could not be raped, or at least were better able to fend off attackers, and were never considered victims of their husbands.<sup>113</sup>

In many ways, this was compounded by English common law, which as built on Roman, Salic, and Canon law and framed conjugal sex as the ‘marital debt,’ an idea well established in both Catholic and Reformation traditions.<sup>114</sup> Corinthians 7:3-6 states:

Let the husband render unto the wife due benevolence: and likewise also the wife unto the husband. The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife. Defraud you not one the other, except it be with consent for a time, that yee may give your selves to fasting and prayer, and come together againe, that Satan tempt you not for you incontinencie. But I speak this pay permission, and not of commandment.<sup>115</sup>

Paul made the purpose of marriage not specifically to procreate but to make marital intercourse legal. Later, St. Augustine distinguished that marital sex could only be blameless when concupiscence was tempered by marital good; in other words, sexual desire only became sinless when intended for procreation or by the “intention to rendering the debt exacted by one’s spouse.”<sup>116</sup> For his part, Gratian distinguished between the initiating and complying spouses that differentiated between the rendering of the debt, which was blameless, from exacting the debt because of lust, which was sinful, which Elizabeth Makowski points out, is a distinction Paul never made. Although Augustine emphasized the ongoing obligation of conjugal duty, payment of the debt could only be withheld by mutual consent as long as it did not jeopardize the conjugal rights of either partner.<sup>117</sup>

Between the twelfth and fourteenth centuries, canonical jurisprudence, influenced by asceticism, developed the concept of conjugal debt - that husband and wife equally held a duty to

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<sup>113</sup> See Garthine Walker, "(Re)reading Rape"; Dianne Hall and Elizabeth Malcolm, "Sexual and Family Violence in Europe," in *The Cambridge World History of Violence*, ed. Robert Antony, Stuart Carroll, and Caroline Dodds Pennock (Cambridge University Press, 2020), 274-91; Satu Lidman, *Gender, Violence and Attitudes*.

<sup>114</sup> Lidman, *Gender, Violence and Attitudes*, 155; Lazar, "The Vindictive Wife," 5-14. See Merry Wiesner-Hanks, *Christianity and Sexuality in the Early Modern World Regulating Desire, Reforming Practice*, (Hoboken: Routledge, 2020).

<sup>115</sup> Corinthians 7:3-6, King James Version 1611.

<sup>116</sup> Elizabeth Makowski, "The Conjugal Debt and Medieval Canon Law," *Journal of Medieval History* 3, no. 2 (1977): 100.

<sup>117</sup> Makowski, "The Conjugal Debt," 101.

“perform sexually at the request of their mate” and that sexual relations were required not only for procreation but as a “remedy for man's sinful nature.”<sup>118</sup> Throughout the early medieval period, canonists debated whether all sex was sinful, the legality of marriage, and conjugal rights. Although they continued to support the preservation of mutual consent, the “overriding sentiment was that... the duty to render the debt, even if unjustly demanded, was still binding,” particularly if there was “a genuine suspicion that the defrauded party would lapse into sin, payment of the debt necessary.”<sup>119</sup> Medieval thinkers believed sex within marriage should be given and taken with consent; however, if a man's sexual desires put him at risk of sinning, he was permitted to take it without consent because the conjugal right (to avoid sinning) superseded mutual consent. From here, it is not so far a leap to Hale’s marital rape exception.

Like most laws considering women, the legal precedent regarding using physical and sexual violence in marriage rests on religious precedent. Early canonists developed concepts regarding moderate chastisement and the conjugal debt not found in scripture, that were reinterpreted over succeeding centuries in ways that reinforced patriarchal use of force to ensure order. Throughout the early modern era, English common law, the political absolute right to rule, and concerns over moral and social order solidified these interpretations into ideals and beliefs that were never explicitly defined or codified in law. Nonetheless, it formed the basis from which women in abusive marriages had to prove their husbands crossed this extant, but ill-defined, threshold. Thus, no medieval or early modern law permitted a husband to beat or rape his wife; rather, interpreters reformulated earlier statements to reinforce current ideals, beliefs, and understandings.

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<sup>118</sup> Makowski, "The Conjugal Debt," 99-101.

<sup>119</sup> Makowski, "The Conjugal Debt," 102-9.

## 2.6 Conclusion: The Metropolis 1670-1706

The continuity and change represented by over a century of political and religious upheaval and the legal history pertaining to women and marriage form the foundation for the current study. The cases reviewed in this thesis are confined to the end of the seventeenth century and the city of London, as the last quarter of the century represents the stunning continuance of medieval concepts of marriage, a wife's role, and society's view of interpersonal violence, and encapsulates the quickening of Londoner's moral, religious, and political anxieties. Ecclesiastical courts represented the only legitimate avenue to seek a divorce, although the common law continued to encroach on this monopoly and offered alternatives to women in abusive relationships. Londoners witnessed extreme political and religious turns through absolutism, persecution, civil war, regicide, parliamentary rule, the restoration of the monarchy, revolution, invasion, and finally, toleration. They also lived through a population explosion due to waves of migration from dearth, plague, and war. Robert Shoemaker states that socioeconomic stability was disrupted after the mid-seventeenth century by uncontrolled growth, weak local government, lower class impoverishment, social segregation, and higher crime rates.<sup>120</sup> He suggests that increasing litigation was due to greater accessibility, a theory supported by Margaret Hunt, who has demonstrated that urban opportunities to participate in the community were significant in a wife's opportunity to escape an abusive husband.<sup>121</sup> Thus, the London court systems offer a valuable repository of cases representative of women's experiences using the law to separate from abusive husbands.

There is a paradox: the largely unchanging canon law formed the basis of all law dealing with women and marriage; however, shifting control between the spiritual and common courts meant that uncertainty came from who controlled the law, not how the law was applied to women. In many

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<sup>120</sup> Shoemaker, *Prosecution and Punishment*, 9-13.

<sup>121</sup> Shoemaker, *Prosecution and Punishment*, 9-13; Margaret Hunt, "Wife Beating," 12-13.

respects, this represented a narrowing of options for women as common law became more structured. Even though women were perceived as weak and impotent, they also seemed threatening, capable of “wielding mysterious power,” which created uncertainty for women in the way they approached the law and the way the law perceived them.<sup>122</sup> These case studies explore the tension between these contrasting ideals and realities. Further, in a system that condoned “the Baron may beate his Wife,” and simultaneously forbade divorce, women had to find other ways to navigate the legal system to ensure their survival.

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<sup>122</sup> Stretton, *Women Waging War*, 37.

### Chapter 3: Divorce By Reason of Cruelty

...the Crueltyes of the said Sir Oliver her husband towards her hase been so great, so frequent and so usuall even after his promising and swearing he would doo so no more and his measures to her of that nature to kill and beat out her braines if he could gett her againe and his temper or rather distemper is so violent and he of so [illegible] and raging disposicon using to sett in motion what he once contracts in his mind and threatens to doe, if shee rejoins she must be feared of her life or from being destroyed by him if she should againe returne to him by any cause whatsoever.

- Anne Boteler, Personal Response, Court of Arches, June 12, 1672.

After sixteen years of violent physical and mental cruelty, in 1672, Lady Anne Boteler appealed to the ecclesiastical Court of Arches to uphold her separation agreement from her husband, Sir Oliver Boteler. Anne had secured a judgement of separation in the lower Consistory Court of London, which Oliver contested, and he had launched a suit for restitution of conjugal rights to force her to return to him. According to Anne's personal statement, Oliver's cruelties towards her began in the first year of their marriage, when he "used her very cruelly," threatened to kill her and the children, drew his sword against her, and beat her and hurt the children. During his violent rages, the servants had to pull him off her; at other times, she managed to run away from him. She reported he had "used her with the greatest scorne and contempt that could be, vilifying and threatening her, and using her below the degree of a slave, calling her a lewd and base woman and whore." When sober, Oliver repeatedly promised he would not strike her again but then would get drunk and,

notwithstanding presently and always in the same mistrust of time broke his oath, and presently beat and struck her, and that he hath sworn and protested that he would break her heart, and knowing the tenderness and motherly love which she did beare to his and her children he hath on purpose to torment and afflict her cruelly, beat and misused them in her presence to which he did and so sayd he did it on purpose to end her and sayd that awesome way to break her heart...

Multiple times, Anne speaks of the "manifest danger" she was in and that she was often forced to flee the house to escape his rage, to "safeguard her life."<sup>123</sup>

She concluded that she respected the court and the law, but she will never return to him, that

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<sup>123</sup> LPCA, EE.3, fos.738.

“his cruelties have been so great unto her and so notorious as that shee cannot live with him without certain danger of her life and that no person can made by bond to secure her from his Cruelties” and “she neither can nor dares live with him for danger of her life.”<sup>124</sup>

### 3.1 Introduction

When Oliver’s mother, Joane, and Anne’s father, Robert Austen, contracted a marriage agreement to wed Oliver and Anne in 1656, Cromwell’s Radical Assembly was at its height. From one of the oldest elite Kentish families who could trace their ancestry back at least eleven generations, when Oliver was just eight years old, his father died fighting for Charles I in 1642. Like many elite Royalist families, Cromwell’s Parliamentarians seized their lands and stripped them of office and title. Joane married fellow Royalist Philip Warwick, and together they managed to pay the fines to regain possession of the estates that comprised Oliver’s inheritance.<sup>125</sup> The years between 1640 and 1660 were uncertain for royal supporters, and establishing religious and political alliances during the war and the Interregnum was difficult. The exclusion or expulsion of royalist gentry from the local office and the sale of confiscated land meant men of lower standings, including minor gentry, professionals, and tradesmen, could now hold public office and acquire significant land and wealth.<sup>126</sup>

In 1654, Oliver gained control of his inheritance, including at least five estates, but his ancestral political power and influence was drastically diminished. Conversely, Anne's father, Robert, a merchant, made significant land purchases throughout the 1640s, including the ancient family seat of Heronden in Kent and Hall Place in Bexley, just outside of London, in 1649.<sup>127</sup> Anne’s mother

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<sup>124</sup> LPCA, EE.3, fos.738.

<sup>125</sup> The sequestered Boteler estates were valued at £299,000 (About £25 million today). Joane paid substantial fines to regain the property. *Calendar of the proceedings of the Committee for compounding, etc., 1643-1660*, preserved in the State paper department of Her Majesty’s Public Record Office, p 1462-3.

<sup>126</sup> Eales, "Kent and the English Civil Wars," 4. Eales cautions this did not create a new class, and with the Restoration, conservative tendencies ensured most positions reverted to the ruling families.

<sup>127</sup> P.J. Tester, “Hall Place Bexley,” *Archaeologia Cantiana*. (1957) 71: 153–161.

seems to have come from a similarly wealthy, if not pedigreed background.<sup>128</sup> The Interregnum was thus a time of uncertainty for the Boteler's and prosperity for the Austen family.

When the marriage contract was signed in June 1656, Oliver was two months shy of his twentieth birthday; Anne had turned sixteen the week before. Anne's marriage portion is listed at £5,000, and the settlement stipulates that the Botelers would pay a jointure of £650 in lieu of dower and thirds.<sup>129</sup> There does not seem to have been any apparent rush to marry; their first child, daughter Elizabeth, was not born until 1660, and both families seemed stable and economically sound. Although it would be imprudent to speculate, ongoing political uncertainties would make alliances with families who had Royalist sympathies but had not been embroiled in the war and business opportunities may have factored in the match. Or, the young couple may simply have been in love.

In 1658, two years after Anne and Oliver's marriage, Cromwell died, the government crumbled, and Charles II was restored to the throne in 1660. Many parish government posts returned to the old ruling families, and Oliver's place in elite society was ostensibly reaffirmed. Charles II knighted Oliver, and he regained his father's title as the Second Baronet of Barham Court. While Charles II embraced the old money and power, he also needed monetary support, and one strategy was to knight and title new men. In 1661, the King knighted Anne's father and bestowed upon him the title of Sir Robert Austen, First Baronet of Bexley. Wealth, pedigree, and power played a significant role in Oliver and Anne's lives. Oliver looked down on Anne and her family compared to his own, and family and position would remain a source of contention throughout the marriage.

Through fourteen years of marriage, Anne endured a shocking and unrelenting torrent of cruelty at Oliver's hands, including physical, sexual, mental, and emotional abuse. He also threatened

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<sup>128</sup> John Burke, *A Genealogical and Heraldic History of the Extinct and Dormant Baronetcies of England, Ireland and Scotland*, W.Clowes, 1844, 29.

<sup>129</sup> "Marriage Settlement Tripart: Title Deeds of the Deeds Family: Saltwood 1656," *Canterbury Cathedral Archives*, CCA-U101/II/S/C10

their children and used them as pawns in his psychological torments. Anne's ineffectual attempts to reform Oliver demonstrate her limited options within the marriage and how wealth and privilege could restrict opportunities to separate herself and her children from their tormentor. Anne and Oliver also exemplify the complexity of an abusive relationship, as both seem to love and hate each other. As a woman living within the constraints of societal structures shaped by religion and politics, when Anne genuinely feared for her life and finally took the drastic action of leaving Oliver in 1670, she used every common and ecclesiastical court available to her to secure the legal right to separate from Oliver. However, Oliver also used all the resources available to try to subvert her attempts. Thus, the case of *Boteler v Boteler* illustrates not only the breathtaking abuse that could continue for years without repercussion but also the ways the ecclesiastical court's influence was contracting, how common law courts were growing in power, and how family dynamics at the wealthiest levels could have the greatest influence or none at all. The Restoration reinstated the Crown and Church, but neither regained the monopoly on the power they previously held, as magisterial and natural law increasingly took command. Social and moral controls also hardened ideals of the good wife and masculine honour. This chapter seeks to explore these shifts, as Anne used the only official channel to separate from Oliver, the ecclesiastical court, even as her case demonstrates how precarious Anne's strategy for survival really was.

### **3.2 Witness Accounts**

Twenty-two witnesses supported Anne's petition to the Court of Arches, recounting the unrelenting physical, mental, and emotional abuse Oliver used to torment Anne and their children. Some servants were in the Boteler's service for years and recalled early instances of Oliver's abuse. He took exception to her choice of dress and ripped her hood and kerchief from her neck, throwing both in the fire. Early on, when servants found her bruised and asked if she was all right, she said she had fallen and hurt herself. As the abuse wore on, Oliver no longer attempted to hide his abuse, and



Anne ceased to make excuses for him. One day she appeared black and blue, and when Oliver began raging again, she ordered the servants to take the children out of the house for fear of his rage. Once, he beat her because she had refused to drink the wine he offered her, knowing she did not drink. Alcohol fueled Oliver's rage, and although he made many promises when sober to not hit her, he would very quickly abandon his promise. The servants took to hiding knives and Oliver's sword after he brandished them at her drunkenly and once woke her with a knife at her throat.

Oliver did not seem to care who witnessed or heard his abuses. He locked Anne out of the house, kicked her out of bed, dragged her around by her clothes, and beat her for the smallest reasons. Servants witnessed him throw her against furniture and throw furniture at her. Once, when Anne was recovering after giving birth to their youngest son, Oliver took the opportunity to torment her verbally. Many witnesses describe the fierce way Oliver demeaned and yelled at Anne, calling her base and a whore. Her obedience and attention seemed of paramount importance to Oliver. He forced her to stand watch over his bed all night while he slept, wearing nothing but her shift, even when she was heavily pregnant. He also made her lay on the floor, saying he would teach her to be as humble as a spaniel. Once, when she asked him to stop yelling at her and striking her, he viciously attacked her with his fists until she fell to the ground. When asked why he did these things, Oliver replied that he would not stand for her insolence.

Over their fourteen years together, Anne was pregnant multiple times, although only three children survived. Witness testimony recounts how the children, Elizabeth, born in 1660, Philip, born in 1664, and John, born in 1665, were also targets.<sup>130</sup> Once, when Anne escaped the house, Oliver ran into the nursery, violently snatched fourteen-month-old Philip from the nurse's arms, and threatened

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<sup>130</sup> I have found evidence of another boy born a year before Philip, but he died before his second birthday. According to Lawrence Stone's account, Anne had nine children; however, this testimony only speaks of the three children. Oliver is also known to have acknowledged bastard children.

to knock his brains out before turning to look for their daughter Elizabeth, who would have been about three at the time. The servants managed to get both children and fled to Lady Warwick's house, but when they returned, Oliver had taken his frustration out on Anne, who showed signs of being struck repeatedly. He commanded the servants to disobey her orders and once dismissed all the servants when she was pregnant, forcing Anne to dress herself and the children, an unconscionable action for a lady of her station. When Elizabeth was about eight, Oliver became enraged, grabbed her, and dangled her over the open stairwell. Anne stopped the servants from trying to intervene, fearful he would kill the child. He did not drop her, but servants saw Elizabeth swollen with bruises from where Oliver had struck her with his fists the following day. Another servant witnessed Oliver hit Elizabeth until she fell to the ground and kicked John in the belly. As the children got older, he forced them to spit on Anne, strike her and call her names, and tell her they did not love her. He forced nine-year-old Elizabeth to punch Anne in the stomach while she was pregnant and told four-year-old John that if he told his mother he loved her, he would whip the boy.

While his early abuse focused on overt physical attacks, Oliver could also be mentally and emotionally manipulative. Once, when he beat Anne about the breast, he said it was so she would not have marks showing. One servant recounts how he would kiss the children and then beat them. He also began to tell the servants and Anne that he wished she were dead, threatening to knock out her brains or kill her. He said that the more she loved him, the more he hated her for it and would endeavour to break her heart. He tried to turn the children against her and said he beat them to hurt her. He told one servant, I "know no other way to wear her down [but to] promise harm." Although it is unclear exactly why Oliver felt such hatred towards Anne, he told some of the servants that "if she was not my wife, I would love her." When questioned why he would so poorly treat a woman who loved him so well, he replied, "damn her, she is but too well thought of." One night he attacked her, saying he would be rid of her by bodkin or needle, or with a sword or a knife, and dragged her

through the house. Anne's maid recounts that Oliver would surely have been successful if she and another male servant had not been present to stop him. The next day Anne was so severely beaten that she could not bear to have her gown laced properly.<sup>131</sup>

Anne's piety was also a point of contention for Oliver. He frequently disturbed Anne while she prayed, pulling her from her closet, and he once threw her book of prayers in the fire. He also forced her to pray in front of him before telling her, "I hate a wife that says her prayers." As Allison Barr demonstrates, medieval sermons encouraged public acts of piety while early modern sermons advocated for private introspection.<sup>132</sup> Encouraging private devotions took women out of the public and exemplified private meditation and prayer. When Oliver dragged Anne from the private sanctity of her closet, he assaulted her and went against the church's established controls. Since the closet was a gendered space reserved for women to pray, read, and meditate, Oliver exhibited disregard for the church, a sentiment made more apparent by his taunts that he hated to hear a woman at her prayers.<sup>133</sup>

Oliver used sex as a weapon as well. A servant recounted that "when he hath intended violence to his said lady he would first kiss her, and then strike her." Once, with a servant in the hall and the chambermaid and footman in the room, he pulled Anne into his bedchamber and pulled her clothes off, saying he would lie with her in their presence. Anne refused to yield to him, and he "fell into a great rage and ranting." As Anne was frequently pregnant, she either did not or could not deny him his conjugal rights, although at least once, his violence resulted in a miscarriage, likely in 1667. He bragged to Anne, the servants, and others that he had been with several other women. Once in a rage, he threatened to disinherit Anne and the children and settle his estate on his bastard by a

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<sup>131</sup> LPCA, Eee.4, fos. 613-15, 807-8, 815-18, 821-22, 850-83.

<sup>132</sup> Beth Allison Barr, "He Is Bothyn Modyr, Broþyr, & Syster vn-to Me': Women and the Bible in Late Medieval and Early Modern English Sermons," *Church History and Religious Culture* 94, no. 3 (2014): 299; Jeanne Shami, "Women and Sermons," in *The Oxford Handbook of the Early Modern Sermon*, ed. Hugh Adlington, Peter McCullough, and Emma Rhatigan, (2012).

<sup>133</sup> See Femke Molekamp, "Seventeenth Century Funeral Sermons and Exemplary Female Devotion: Gendered Spaces and Histories," *Renaissance and Reformation* 35 no 1 Winter 2012: 43-63.

chambermaid. Oliver seems to have had at least two children outside his marriage that he acknowledged, one having been born while Anne and Oliver were still cohabiting. Dr. Scarburg treated Oliver for gonorrhoea repeatedly and told him he had to stop his whoring ways before he infected Anne, which finally came about in 1668.

The marital crisis came to a head in 1670 after Anne went to Tonbridge to cure her infection, and, despite his insistence that he had only slept with uninfected women, Oliver contracted the disease again. He called Dr. Scarburg for treatment but refused to let the doctor tell Anne, and upon her return, she slept with him and became reinfected. The two had a violent row, each accusing the other of infecting them with the pox. Oliver threatened to disinherit her and the children and swore never to share a bed with her again. He attacked Anne, striking her face, and would have continued, but his manservant and a chambermaid pulled him off. He promised to stop, saying he would never strike her again, but spent the rest of the day drinking and began raging again. He forced Anne into a room and locked her in. He told her that room was too good for her and that he should lock her in a “dark vault and give her only bread to eat and water to drink.” Anne's chambermaid testified that Oliver thought he had double-locked the door, but it was merely bolted and, fearing he would follow through on his actions, Anne let herself out of the room and down the back stairs, escaping to Lady Warwick's house, where the children were already residing. Shortly after, Oliver wrote to Anne, promising to be better, and she returned to him once more. Almost immediately, Oliver attacked and beat her black and blue before locking her in a room without food, water or fire. He told the staff that anyone who tried to help or release her would be immediately turned out. Although it is unclear how long she was locked in before she made her escape, some testimony suggests it may have been two weeks, and it was likely with the help of servants. She fled to Lady Warwick's and never returned.<sup>134</sup>

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<sup>134</sup> LPCA, Eee.4, fos. 613-15, 807-8, 815-18, 821-22, 850-83.

### 3.3 Church Court: Change and Continuity

When Anne left Oliver for the final time in the Spring of 1670, she and the children were sheltered by Sir and Lady Warwick. On March 22 that year, citing “great differences” between Anne and Oliver, Sir Philip and a friend, Sir Christopher Turner, secured an agreement for separate maintenance for Anne in either the Chancery Court or by private deed. Oliver agreed to use the revenues from specific properties to pay Anne £300 annually in trust through Philip and Turner.<sup>135</sup> It seems likely that the nominal sum gave Anne some funds while living with Joane and Philip, who provided care and protection for her and the children. At some point before 1672, Anne launched a suit against Oliver in the London Consistory Court for divorce *a menso et thoro* by reason of cruelty.

Ecclesiastical judges at the Court of Arches were learned men with “sound doctrine, good morals, and purity of conscience” appointed by the Archbishop of Canterbury, and as early as 1281, lawyers worked under oath and possessed a degree in canon and civil law.<sup>136</sup> The court was known to work slowly, and a suit in the appellate Court of Arches could be initiated by the appeal of a consistory court judgement, a request from the lower court to hear the case directly, or by the court’s intervention in the case.<sup>137</sup> Anne’s petition began in the London Consistory Court but by the spring of 1672, was heard at the appellate level. However, the Ecclesiastical Courts were not easily accessible financially. Margaret Hunt’s work on early eighteenth century spiritual court separations estimates an average divorce started at £20 - the equivalent of two years of labour wages - a significant detriment even to elite women who had little money of their own.<sup>138</sup> According to one document, Anne’s case at the Consistory Court exceeded £300, which Oliver was directed to pay when she won that

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<sup>135</sup> Eng. Rep. 23: 39; the original deed has not been discovered but is mentioned in this subsequent order.

<sup>136</sup> Norman Doe, “The Court of Arches: Jurisdiction to Jurisprudence – ‘Entirely Settled’?” *Ecclesiastical Law Journal* 23, no. 3 (2021): 325, 328-31.

<sup>137</sup> Doe, “The Court of Arches,” 334.

<sup>138</sup> Hunt, “Wife Beating,” 12-13.

judgement.<sup>139</sup> According to Stone's work, eighty-five percent of seventeenth and eighteenth century Court of Arches cases were brought by the middling sort and higher and increasingly became reserved for the elite.<sup>140</sup>

Although marriage formation and regulation were strictly under the purview of the ecclesiastical courts, the state was more willing to intervene in matters of property and money. Under coverture, all a wife's goods effectively merged with their husband's, and they became dependent on him for security and support, representing a significant issue for women in abusive marriages. Complaints rose in the sixteenth century against the medieval practice that alimony was an interim provision during litigation that would end with a divorce settlement, prompting the Elizabethan Privy Council to license the Court of the High Commission to make orders for ongoing "reasonable alimony and maintenance" for wives awarded separations on the grounds of cruelty or adultery.<sup>141</sup> With a male trustee acting on her behalf, a wealthy woman could procure a sustained maintenance agreement by private arrangement or through the Chancery Court, Court of Requests, or the Star Chamber, without a formal separation.<sup>142</sup> By at least the 1610s, even magistrates in the quarter sessions recorded judgements that awarded or upheld maintenance agreements.<sup>143</sup> In this way, Anne secured a private deed for maintenance while separated and could expect to be awarded alimony through ecclesiastical proceedings enforced by common law.

Anglican tradition adopted new Reformation thinking while retaining most of the traditional canon marriage sentiments. Early reformers like Thomas Becon, Martin Bucer, and Heinrich Bullinger influenced early English reformers who advocated for divorce in the event of marital

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<sup>139</sup> Eng Rep 23: 39

<sup>140</sup> Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford University Press, 1990), 427.

<sup>141</sup> R. H. Helmholz, *Roman Canon Law in Reformation England*, (Cambridge University Press, 1990), 77.

<sup>142</sup> Tim Stretton, "Marriage, Separation, and the Common Law in England, 1640-1660," in *The Family in Early Modern England*, ed. Helen Berry and Elizabeth A. Foyster (Cambridge University Press, 2007), 24-30.

<sup>143</sup> Stretton, "Marriage, Separation and the Common Law," 24-30.

breakdown, however, continued Anglo-Catholic influence and the competing Puritan ideals meant attempts to pass sweeping ecclesiastical reforms failed in both the 1550s and 1570s and marriage laws maintained their canonical form.<sup>144</sup> Sixteenth century Protestant thinkers advocated ideal marriage as an institution central to the stability of the commonwealth. However, they positioned it and divorce as a civil matter remaining with ecclesiastical courts — essentially, the pattern set during Henry VIII’s reign continued to enforce Roman Canon law “in so far as it was compatible with the settled customs of the country and the interests of the English Crown.”<sup>145</sup>

The public debate was never entirely settled either. English poet John Milton took up this mantle in the 1640s with tracts expounding compatibility between marriage partners and how the concept of personal liberty was paramount in maintaining and ending marriage. Using scholarly writing and scripture, Milton demonstrated that only the misinterpretation of scripture created many of the arguments against divorce.<sup>146</sup> Much of the mid-seventeenth century debate focused on the political link between marriage and the absolute right to rule; however, growing ideas of individual liberty and the free submission to subordination forced discussions over marriage, consent, and divorce. By the end of the century, arguments like those between Robert Filmer and John Locke centred more on natural law theory and less on religion.<sup>147</sup>

Criticism of the church courts’ inability to enforce rulings also plagued the English ecclesiastical law system. When church censorship ended in the 1640s, a flood of published tracts criticized the church for only seeking to preserve marriage or eluded that the Elizabethan church

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<sup>144</sup> John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, (Louisville, KY: Westminster John Knox Press, 1997).

<sup>145</sup> Helmholz, *Roman Canon Law*, 55.

<sup>146</sup> John Milton, *The Doctrine and Discipline of Divorce* (1643); for his argument against his opponents, see John Milton, *Colasterion: A Reply to a Nameles Ansver Against the Doctrine and Discipline of Divorce. Wherein the Trivial Author of that Answer is Discover'd, the Licencer Conferr'd with, and the Opinion which they Traduce Defended. / by the Former Author, J.M.* London: 1645.

<sup>147</sup> See Muravyeva, “‘A king in his own household’”; Amussen, *An Ordered Society*; Dialetti, “From Women’s Oppression”; Ezell, *The Patriarch’s Wife*.

freely allowed remarriage after separation and had become too papist. During the Interregnum, the ecclesiastical courts were completely shut down, leaving many women without official recourse. Cromwell's parliament tried to mitigate this with the short-lived Marriage Act of 1653 that allowed divorce; however, with the Restoration in 1660, ecclesiastical courts reopened, although their jurisdiction was now firmly limited to matters of the diocese and spiritual matters, which included defamation, matrimonial, and testamentary cases. The church's primary means of punishment to enforce rulings - penance and ex-communication - proved ineffectual, while real financial penalties were more effective.<sup>148</sup> The result was a spiritual system claiming jurisdiction with enforcement issues and a common law system with the strength to enforce decisions that operated under varying degrees of willingness to interfere. The stakes remained greater than simply who could authorize a marital separation. As Stretton concludes, state and church "pretend a unified voice extolling in the strictest terms the strength and permanence of the bonds of marriage" as countless patriarchal metaphors fused biblical and political thought. Neither the church nor the state could afford to publicly admit that spouses could separate since so much effort had gone into the conflation between political and spiritual authority and marriage. However, neither benefited from forcing couples to remain together and, as such, made exceptions, whereby the marriage laws could be bent so that the ideology did not break.<sup>149</sup>

### **3.4 Religion on Marriage: Subject to Scripture**

Between March 1670 and the first half of 1672, Anne launched her suit in the London Consistory Court. In May 1672, Lady Joane Warwick died, and Oliver sued Anne for restitution of conjugal rights.<sup>150</sup> After Lady Joane's death, Anne and the children stayed with her recently widowed

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<sup>148</sup> Stretton, "Marriage, Separation and the Common Law."

<sup>149</sup> Stretton, "Marriage, Separation and the Common Law," 38-9.

<sup>150</sup> Stone implies Oliver launched his suit for restitution after Joane died, prompting Anne to counter-sue against the threat of being forced to return to Oliver. However, records show that witness testimony entered into evidence for the appellate Court



sister Ursula in Bloomsbury. Oliver came to the house and told Anne, Ursula, and a maid that if he could get Anne back under his roof, he would “make her say and do anything he commanded.” In his personal statement to the Court of Arches, Oliver stated that Anne had left and returned to him multiple times and that despite Anne carrying herself “very unkind and undutifully towards this [respondent] her husband,” and despite her having left him and his house without his permission, he offered, “himself ready to reunite the said Dame Anne Boteler to his bed and board and to treat her with all due conjugal love and affection, and use her as a husband ought to use his wife.”<sup>151</sup> Oliver’s statement offers the opportunity to explore three aspects of marriage dissolution centred on Christian thought: how the subsumption of a woman into her husband and the conjugal debt factored into separation proceedings, how cruelty needed to be defined and demonstrated in order for a woman to be legally entitled to leave her husband, and how the courts viewed women as worthy victims.

### **3.4.1 Two become One: Subsumption and the Conjugal Debt**

Based on early theology and scripture, coverture identified marriage as the union of two becoming one. John Witte asserts the root of coverture lies with the first principles of authority and submission, and many contemporaries pointed to this idea as the source of the subsumption of the woman into a man and the resulting authoritarian view of a patriarchal system. In Paul’s letter to the Ephesians, like the church is subject to Christ, wives should subject themselves to their husband as head of the household. However, Paul also says, “husbands should love their wives as their own bodies. He who loves his wife loves himself. For no man ever hates his own flesh, but nourishes and cherishes it, as Christ does the church, because we are members of his body.”<sup>152</sup> The early church

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of Arches began four months before Joane’s death, and the first documentation of its involvement in the case is dated May 8, 1672. The Consistory Court had generated hundreds of pages of documentation before the Arches case, prompting this author to question the catalyst for both the suit and countersuit. However, further research is required to make this determination definitive.

<sup>151</sup> LPCA, Ee 3, fos. 745-6.

<sup>152</sup> The passage reads: “Wives, be subject to your husbands, as to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, and is himself its Savior. As the church is subject to Christ, so let wives also be subject

father Chrysostom (345-407) called wives the “second authority” who should not demand equality, but neither should the husband belittle her, while St Augustine (345-430) called marriage a partnership with an agreed order “concerning command and obedience among those who dwell together” as citizens agreed to order.<sup>153</sup> Medieval thinkers reinforced marriage as a sacrament of faith that rested on natural association and consensual contract, systematized in Gratian’s *Decretum* (1140). Peter Lombard (1150) wrote the marital union was between persons who “persevere in a single sharing of life,” while John Duns Scotus (1265-1308) subsequently glossed this definition as “an indissoluble bond between a man and his wife arising from the mutual exchange of authority over one another’s bodies.”<sup>154</sup> Medieval canon law stressed freely contracted, consensual, and legally binding marriage through solemnizing vows, and, other than rejecting it as a sacrament, Protestant confessions retained almost all canon marriage laws.<sup>155</sup>

As Protestant confessions relied more and more on scriptural sources, they looked to the Hebrew Bible as a more truthful version to translate to English than the Latin Vulgate. However, biblical Hebrew includes polygamy, concubines, and sanctioned divorce and remarriage, while having no equivalent for terms ‘woman,’ ‘wife,’ ‘man,’ or ‘husband,’ and thus “offers no immediate or consistent linguistic recognition of ‘marital status.’”<sup>156</sup> Naomi Tadmor suggests that to reconcile this with already entrenched English beliefs, sixteenth century translators “anglicized” the

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in everything to their husbands. Husbands, love your wives, as Christ loved the church and gave himself up for her, that he might sanctify her, having cleansed her by the washing of water with the word, that he might present the church to himself in splendor, without spot or wrinkle or any such thing, that she might be holy and without blemish. Even so husbands should love their wives as their own bodies. He who loves his wife loves himself. For no man ever hates his own flesh, but nourishes and cherishes it, as Christ does the church, because we are members of his body. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh. This mystery is a profound one, and I am saying that it refers to Christ and the church; however, let each one of you love his wife as himself, and let the wife see that she respects her husband.”

Ephesians 5:22-33, Geneva Bible, 1599

<sup>153</sup> Witte, *From Sacrament to Contract*, 16-21.

<sup>154</sup> Witte, *From Sacrament to Contract*, 23-26.

<sup>155</sup> See Witte, Chapters two and three for a detailed review of the transition through Lutheran and Calvinist traditions.

<sup>156</sup> Naomi Tadmor, *The Social Universe of the English Bible: Scripture, Society, and Culture in Early Modern England* (Cambridge University Press, 2010), 52.

translations, using more familiar words like wife, and relying more heavily on the New Testament and Christian tradition, to “[filter] their concepts through their own world view.”<sup>157</sup> The King James Bible (1611) acknowledges wives and mothers, and Ephesians emphasizes the secondary nature of women’s role and obscures women in their domestic role over any other.<sup>158</sup>

Clergymen wrote many sermons, homilies, and domestic guidebooks to instruct and guide married men and women in their roles and duties. “Of the State of Matrimony” (1563) was one of the officially recommended weekly homilies that continued to be used through the first half of the seventeenth century. It expounds that marriage is an institution designed for procreation and to avoid the sin of fornication and warns that the devil's wish to enter a marriage and cause disharmony could be averted through prayer and diligence, as husbands could guide and honour wives as “the weaker vessel,” and maintain a wife’s natural subjection to obey her husband.<sup>159</sup> Puritan William Gouge’s marital guidebook *Domesticall Duties* (1622), which remained popular throughout the century, advocated for companionate and loving unions in which a husband was to be a good guide and “maintain his authority for her protection” while acknowledging her inferiority. Reflecting ideas regarding absolute power and social hierarchy, Gouge put wives above and distinct from children and servants but still below her husband.<sup>160</sup> Both publications rely heavily on the biblical passages that dictate a wife's subservience to her husband's authority while also stressing the love and kindness he should show his meeker counterpart. Gouge even stipulated that a man who would neglect his duty to correct his wife, or do so in excess with violence, acted dishonourably to God and that he should “lose his authority if he behaves badly or allows his wife to rule.”<sup>161</sup>

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<sup>157</sup> Tadmor, *The Social Universe*, 53.

<sup>158</sup> Barr, ““He Is Bothyn Modyr, Broþyr, & Syster vn-to Me,”” 303-314.

<sup>159</sup> “Of the State of Matrimony,” in *Sexuality and Gender in the English Renaissance: An Annotated Edition of Contemporary Documents*, Vol. 2011, ed. Lloyd Davis (New York: Garland Pub., 1998), 24-35.

<sup>160</sup> William Gouge, *Of Domesticall Duties*, 1622.

<sup>161</sup> Gouge, *Of Domesticall Duties*, Treatise 4, Section 1:349; Section 2:4.

Oliver's petition that he would “treat her with all due conjugal love and affection, and use her as a husband ought to use his wife,”<sup>162</sup> reflected the spiritual purpose of marriage and the conjugal debt deeply rooted in religious thinking, reinforced with English ideals on the right to rule, social order, and gender roles. Although coverture placed a woman beneath her husband and reduced her financial and legal autonomy, most women found themselves in a somewhat more ambivalent situation; they worked with their husbands and in the community, and if not precisely equal and autonomous, they at least enjoyed relatively companionate marriages. The laws hardly mattered to those who did not need to avail themselves of them. For those who did, the risks could be dire.

### **3.5 By Reason of Cruelty: The Right to Separate**

The canonical texts did not specify cruelty as a basis for separation, but the canonists themselves sought to address excessive violence and reasoned spiritual separation could be granted with evidence of significant physical force or injury. Stone's extensive work reports that between 1670 and 1679, the Court of Arches heard twenty-seven cases for restitution of conjugal rights and thirty cases of separation for cause of cruelty.<sup>163</sup> An average of thirty-nine percent of matrimonial cases reached the sentencing phase. This low outcome could be due to a variety of reasons, including spiritual judges, whom Helmholz describes could be “rather heavy handed marriage counsellor(s)” who conducted mediation to end discord and change attitudes to end the cruelty, which could include securing a husband's bond to treat her fairly and return a wife to her conjugal duties, but would not force a couple to live together under threat of their physical well-being.<sup>164</sup> This was the prescriptive ideal; however, a widespread expectation existed that some violence might accompany marriage,

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<sup>162</sup> LPCA, Ee 3, fos. 745-6.

<sup>163</sup> 174 matrimonial cases represent nine percent of the 1,915 cases heard by the court that decade: Stone, *Road to Divorce*, 425.

<sup>164</sup> R. H. Helmholz, “Suits for Divorce and Incidental Marriage Causes,” in *Marriage Litigation in Medieval England*, (Cambridge University Press, 1975), 100-102. See also Stretton, *Women Waging Law*.

particularly regarding sexual consent and the absence of consent.<sup>165</sup> Additionally, the threshold for what constituted violence could vary from case to case if the judge thought a wife had provoked her husband to violence or if a husband could convince the judge that the violence had been intended as a corrective measure, and often the worthiness or innocence of the parties, all influenced judgments. These uncertainties could result in a judgement that ordered the couple to return to living together.<sup>166</sup>

Adultery had been a charge reserved mainly for men against wives who strayed until the end of the seventeenth century, when women began to charge their husbands with adultery and abuse. Although Anne had evidence that Oliver committed adultery, her suit charged for reason of cruelty alone. While witness testimony spoke of Oliver's adulterous behaviour, this was still a risky option as husbands could be bonded with sureties to bring peace to the marriage and efforts to curb elite men's sexual behaviour were largely absent among the elite.

Anne and various witnesses testified to Oliver's propensity to drink, his uncontrollable anger, and his outsized reaction to simple events; however, no one offered a motive for the violence. By all accounts, his temper was excessive, physically detrimental and, on many occasions, life-threatening. In court, however, these facts needed to serve another purpose: to show that these were not 'fights' where Anne was an active participant but unprovoked attacks that unequivocally demonstrated Oliver's blatant misuse of his authority. It was not enough to show the severity of the abuse, although, as Hunt speculates, cases that went to court likely represent the upper spectrum of severity; a wife needed to show respect for the patriarchal hierarchy and her husband's subversion of it.<sup>167</sup>

Almost all testimony relays that Anne was meek, humble, and attentive to her husband's needs.

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<sup>165</sup> See Sara M. Butler, "'I Will Never Consent to Be Wedded with You!': Coerced Marriage in the Courts of Medieval England," *Canadian Journal of History* 39, no. 2 (2004): 247–70; Hunt, "Wife Beating"; Begiato, "Beyond the Rule of Thumb"; Hardwick, "Early Modern Perspectives"; Burghartz, "Tales of Seduction."

<sup>166</sup> Helmholz, "Suits for Divorce," 101-106.

<sup>167</sup> Hunt, "Wife Beating." See also, Begiato, "Beyond the Rule of Thumb"; Hardwick, "Early Modern Perspectives."

She followed the rules, performed her conjugal duty, and even when she fled, she returned home. The same witnesses testified to Oliver's hair-trigger temper and his angry disposition. Although the phrasing could be formulaic in some instances, witnesses often offered responses that vividly described events and conveyed emotion. Multiple accounts relay the day Oliver went into the nursery in a rage and grabbed the baby Philip from the nurse's arms, and the night Oliver forced Anne to stand by his bedside all night to keep watch over him and made her bow on the floor like 'his spaniel.' Oliver often called Anne vile and a "base damned woman" and forced her to call her father a rogue and her mother a whore after he accused her of taking her family's side in a disagreement. The testimony illustrates how often Oliver humiliated and terrified Anne. Anne's personal maid for sixteen years, and the children's nurse, recount the months and years living in various households and, more often than not, that the children were living with Joane and Philip instead of under Oliver's roof. Others relayed other altercations and reported Anne fled to her sister or Lady Warwick. In all accounts, Anne was submissive and docile; all action was on Oliver's part. Anne's only resistance was when she refused Oliver sex in the presence of witnesses and when she fled from his rage.

Historians of spousal abuse speak of the kinship and neighbour networks that kept excessive violence in check. In Anne's case, her father died in 1666, and even while alive, the law still dictated that Anne belonged with her husband. Anne also had two brothers and a sister, but if Anne were to run to any of them for help, they would be obligated to return her to Oliver. Oliver's mother and stepfather, Joane and Philip, appear to be the only ones strong enough to offer support and refuge.

Hunt's work on separate spheres has shown that towards the end of the seventeenth century, elite women were increasingly withdrawing or being withdrawn into the home, while the lower classes experienced increasingly close quarters with their neighbours as populations rose in the city, making their lives more visible and observable. Although the elite began reframing violence as a condition of civility and status that displaced violence to the lower classes, moralists also masked

violence under piety; in demonizing wife beating, prescriptive literature did not rectify the violence but made it shameful and invisible.<sup>168</sup> Anne had a house full of servants who witnessed the abuse, and although power dynamics should have kept her plight behind closed doors and without interference, it did not stop the many witnesses who testified to how they intervened. Dr. Scarburgh fought with Oliver and threatened to tell Anne how she had contracted a venereal disease. The nurses and maids shielded the children and removed them from the house and out of Oliver's reach. Servants hid knives and questioned Oliver directly, asking him why he was so cruel. Most significantly, they physically intervened on multiple occasions by pulling Oliver away from Anne when he was beating her. It was likely also the servants who helped Anne escape the last time she tried to reconcile with Oliver. Furthermore, they testified on her behalf. Their accounts provide a fascinating look inside the private home, demonstrating how abuse not rectified but rendered invisible could allow marital violence to proliferate. They also provided a space where the lower rungs of society could transgress class and position in order to mitigate the violence.

Gendered attitudes also played a role, as misogynistic beliefs challenged a woman's capability to provide trustworthy testimony.<sup>169</sup> Anne's sister may have had pertinent information, but her potential motivation to support her sister may make her an unreliable witness, as credibility considered moral status, trustworthiness, reliability, and also motivation.<sup>170</sup> Although female servants were more likely to witness day-to-day interactions between the couple, it was equally important that men testify as their testimony was believed to be more objective and reliable. Oliver's manservant, footmen, and doctor witnessed significant examples of the violence, lending weight to Anne's case. However, testimony must be viewed critically. As Kane points out, to secure a separation based on

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<sup>168</sup> See Hunt, "Wife Beating."

<sup>169</sup> Bronach C. Kane, "Ecclesiastical Court Records for Social and Cultural History," *Research Handbook on Interdisciplinary Approaches to Law and Religion*, 7 (November 2019), 48-9.

<sup>170</sup> Shapiro, "Religion and the Law," 190.

cruelty, “both husband and wife need to depict their spouse’s attitude and behaviour towards them as unreasonable.”<sup>171</sup> For Anne, it was paramount that she be seen as innocent, respectful, and docile.

Theoretically, Anne could have sued Oliver for separation at any time. The ecclesiastical courts likely would have accepted Anne's story of abuse long before 1670. Women had informal routes to shame wayward husbands, publicly insulting their husband’s adultery, accusing their husband's mistresses of being a whore, and reasserting their claim to authority in the household as honourable women.<sup>172</sup> I submit that these avenues were largely closed to Anne as the wife of a powerful and controlling man. It would have been dangerous to challenge Oliver unless Anne felt she had no other choice. As Bernard Capp’s research has shown, bringing charges against a violent husband “was bound to exacerbate tensions, and there was no guarantee of a fair hearing.”<sup>173</sup> Anne’s reasons for staying in the marriage are unknowable, but her options to separate were never secure.

### **3.6 Masculine Honour**

If a judge thought the wife had provoked the violence or the husband disputed the severity of the violence, the court could find against the petition and order the couple to live together.<sup>174</sup> Oliver's statement seems designed to fit this characterization. He does not deny some level of violence but says that she provoked him, that she took her family's side in an argument “contrary to her duty,” that she “refused to be governed” by him, and carried herself “unkindley, disrespectfully and undutifully” towards him. He reported that Anne had “often provoked [him] to passions and...upon some differences happening between them... this respondent did (being herewith very provoked) spit upon her.” He told her, “he would make her observe him or to that effect,” but that all her other

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<sup>171</sup> Kane, “Ecclesiastical Court Records,” 52.

<sup>172</sup> Laura Gowing, “Language, Power and the Law: Women’s Slander Litigation in Early Modern London,” in *Women, Crime And The Courts In Early Modern England* (Routledge, 1994), 32-8.

<sup>173</sup> Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England*, (London: Macmillan, 1996), 133.

<sup>174</sup> Helmholz, “Suits for Divorce,” 105-6.



accusations, “he doth not believe to be true in any part.” The only instance he referred to directly is the accusation that he locked Anne in a room for two weeks without food or water. According to his statement, he and Anne had been fully reunited and “did lovingly live together and cohabit at bedd and board and as man and wife for severall weeks together,” before separating again as he was not “able to live in quiet by reason of the unkind answers and [disrespect] offered to him by the said Dame Anne.” According to Oliver, they reunited once more and about a week later, he “did lock the said Dame Anne into a room for a quarter of an hour and not longer and then the said Dame Anne want out of her said roome, and about a fortnight after that, went away from this respondents said house...without his permitte or consent.”<sup>175</sup>

Although twenty-two witnesses testified on Anne’s behalf, and not one spoke for Oliver, his response cast doubt on Anne’s innocence. He characterized her as undutiful and disrespectful and positioned his actions as responsibly asserting the proper authority over his wife. In this light, Oliver presented himself as a reasonable and tolerant husband who admitted that his wife exasperated him and led him to behave in less worthy ways, but certainly not beyond the norm.

Elizabeth Foyster links wifely disobedience to threats to male honour; however, Alexandra Shepard offers another interpretation which seems to align more closely with Oliver’s actions. She suggests that over the seventeenth century, moralist normative concepts of manhood as the patriarch superior over women and other men through strength, valour, and virtue, were challenged by a plurality of masculinities that muddled patriarchal concepts as a “monolithic measure of manhood.”<sup>176</sup> Her work concludes that as society reconceptualized concepts of power and manhood after the Restoration, it prompted many young men to use antipatriarchal characteristics, including libertinism, drunkenness, licentiousness, and vulgarity to express their manhood as a deliberate inversion of

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<sup>175</sup> LPCA, Ee 3, fos. 745-6.

<sup>176</sup> Foyster, “Male Honour, Social Control”; Shepard, “From Anxious Patriarchs.”

norms.<sup>177</sup> In this light, Oliver's actions seem to be that of a young man rebelling against the prescriptive norms of society, although his extreme violence exceeds even this categorization.

In his review of the case, Lawrence Stone remarks that it is striking that the Court of Arches still took years to reach a decision in a clear-cut case with such overwhelming evidence.<sup>178</sup> Although the court was notoriously slow, I would assert a more nuanced interpretation here. Despite zero witnesses for the defence, the astonishing violence evidenced in testimony, and the fact that Oliver's own family sided with Anne, Oliver's word potentially held more weight than Anne's. Not just because he was a powerful and wealthy man, but because, in a hierarchal society that placed a husband so firmly over his wife, his testimony automatically and disproportionately held more weight. As Bernard Capp remarks, "Even women suing for legal separation on the grounds of marital cruelty knew they were likely to be branded as shrewish and disobedient, and always took care to stress that their own behavior had been modest and dutiful."<sup>179</sup> In going to court, Anne risked being ordered to return to Oliver, despite her protests and the evidence indicating otherwise.

### **3.7 Dueling Courts**

As the case ground its way through the Court of Arches, Oliver used every means possible to circumvent the maintenance agreement from 1670 and the Consistory Court ruling in 1672. In a petition to the Court of Arches, Oliver's lawyer asked for a writ of prohibition from the alimony awarded to Anne in the London Consistory Court, noting that he had already signed a deed in the Chancery to the maintenance of £300 annually. The Arches disallowed this plea, stating that as a trust from the Chancery, "this Court can take no notice of it" and further remarked that the amount was too small given the size of Oliver's estate. The prohibition was denied and upheld the Consistory Court's

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<sup>177</sup> Shepard, "From Anxious Patriarchs" See also, Linda A. Pollock, "Rethinking patriarchy and the family in seventeenth-century England," *Journal of Family History* 23, no. 1 (1998): 3-27.

<sup>178</sup> Lawrence Stone, *Broken Lives: Separation and Divorce in England, 1660-1857* (Oxford University Press, 1993), 37.

<sup>179</sup> Capp, "Separate Domains," 133.

alimony judgement of £400 annually.<sup>180</sup> Either subsequently or simultaneously, Oliver went to the King's Bench for a writ of prohibition, asking for relief from the original maintenance deed. Oliver claimed that being sued for alimony at the Court of Arches while already having a trust deed for separate maintenance, he should not be subject to alimony, which the Spiritual Court refused to admit. The King's Court denied the prohibition, citing it had no jurisdiction over the Chancery Court decisions, where the trust had originally been certified. Further, the issue of alimony was under the Ecclesiastical Court's jurisdiction, which would consider the Chancery Court settlement when evaluating alimony. In its judgment, The King's Bench judgement cites multiple cases of precedent in its decision, stating "courts of law are in the daily practice of noticing trusts although they may have no jurisdiction to enforce the execution of them," that the Chancery could decree alimony, that "deeds of separation are not pleadable in the Ecclesiastical Court as a *bar* to its proceedings," and there is precedent to their validity in equity or at law."<sup>181</sup> In other words, Oliver tried to use the spiritual and common law courts against each other, and while the courts acknowledged precedent that allowed both courts to make judgements regarding maintenance, neither would be used to subvert rulings.

Oliver's attempts to minimize the amount he was liable to pay in alimony illustrate how the lines between the church and state rule could blur. Common law writs of prohibition or deeds of maintenance were not necessarily accepted or negated by the ecclesiastical courts, but they could be. Common lawyers argued writs were about money, not marriage, while the ecclesiastical courts continued to award alimony but struggled to enforce them.<sup>182</sup> According to the Consistory Court ruling, Oliver was excommunicated for his failure to pay maintenance, but this does not seem to have motivated him to comply. After failing to secure writs of prohibition in either jurisdiction, Oliver

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<sup>180</sup> LPCA F.8 fos. 132; Eng. Rep. 2916: 3 Keb 187; 84 ER 667 (B); A writ of prohibition asks for relief from a judgement.

<sup>181</sup> Eng. Rep. 104: Freem KB 282; 89 ER 203 (B)

<sup>182</sup> Helmholz, *Roman Canon Law*, 77-9, Stretton, "Marriage, Separation and the Common Law," 19-21.

appealed to the King himself, who ordered a committee led by the Lord High Chancellor to confer on these matters. Anne and Oliver agreed to submit to Charles II's judgement and, "after a full hearing of both parties... his majesty was pleased to give order unto them," to uphold the alimony. Despite this judgment, Oliver "fell from these terms of agreement," and when the King was informed, he ordered, "his Majesty is pleased to leave his said Lady at Libertie to take her remedy against [Oliver] in such manner as the Law doth direct."<sup>183</sup> Anne had a separation agreement from the Consistory Court of London, a deed from the Chancery Court, and the King's own will that she should be entitled to maintenance and separation. Nevertheless, somehow Oliver still did not fulfill his obligations.

In the fall of 1673, Turner and Philip returned to the Chancery Court, suing Oliver for non-payment of the original maintenance deed from 1670. They charged that the deed stipulated Anne was to be paid £300 annually in trust to the Trustees out of rents from certain houses owned by Oliver, but when the trustees attempted to collect the rent, the tenants refused to pay. Lord Shaftsbury and Secretary Coventry were assigned to the case and found that the original deed held. In addition to owing arrears and reaffirming the £300 annually, Oliver was also liable to pay an additional £80 annually to maintain his daughter, Elizabeth. In exchange for Oliver's compliance, the court ordered that the trustees "execute a Counterpart to such Deed of separate Maintenance, and a perpetual Injunction to stay all Proceeding in the Ecclesiastical Courts, and in the Delegates, for Alimony." They further decreed that Oliver "consent to a Sentence of Separation in the Spiritual Court, and thereupon the Ex-communication he lies under to be absolved" and that "Sir Oliver not to disturb the said Anne in her person, or meddle with any Goods she shall acquire during the Separation, or which she call use for her Conveniency."<sup>184</sup>

Two items of interest arise from this decree. First, the court declared that if Oliver agreed to

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<sup>183</sup> LPCA F8 fol. 132.

<sup>184</sup> Eng. Rep. 23: 39.

the original maintenance agreement and acknowledged the Consistory Court judgement, Anne would agree to drop the suit in the Court of Arches. Since the case proceeded, it can be assumed that Oliver disagreed. Second, instructing Oliver to “not disturb... Anne in her person” indicates that Oliver had not left Anne alone since she left him. His actions at court, his refusal to pay maintenance, and his own words in his personal response confirm that Oliver was not satisfied with living quietly apart.

### **3.8 Conclusion**

In 1670, Anne was thirty years old. After fourteen years of marriage and abuse living with Oliver, she fled with ten-year-old Elizabeth, six-year-old Philip, and five-year-old John to take refuge with her mother- and father-in-law.<sup>185</sup> When Joane died, Anne likely went to live with her widowed sister in London, supported financially by her father-in-law until the court reached its decision. In 1675, the Court of Arches delivered its sentence. Judge Robert Wyseman found in favour of Anne’s petition for divorce *a menso et thoro* on the grounds of cruelty and inhumane treatment, granting Anne’s separation from cohabitation and suspending all conjugal rights.<sup>186</sup> The church court had little to say and few means to enforce any financial decision related to Anne’s petition. Anne, represented by male family members and friends, relied on the Chancery Court to secure her financial future. Herein, Anne's case demonstrates how only a legal separation from the ecclesiastical court could secure her right to live separately from Oliver and deny his petition for the restitution of his conjugal rights; however, it was equally vital that the common law courts enforced the financial agreement. In contentious cases like these, it was only with the support of both systems that Anne could find physical and financial security and separation from an abusive husband.

After these decrees, Anne disappears from the record. Elizabeth almost certainly stayed with

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<sup>185</sup> Lawrence Stone reports that four Boteler children lived into adolescence, but I can find no record of a fourth child born to Anne. Oliver did have children with another woman, also named Ann, which has caused confusion in the records.

<sup>186</sup> LPCA B8/183.

her mother; however, as male heirs, Philip and John may have lived with Oliver, as was his right to demand. Anne died in June or July 1684 and is listed as living in Southampton Street, Bloomsbury, at the time of her death.<sup>187</sup> Elizabeth reportedly died without marrying, and Philip and John became politicians and businessmen, often working together. Philip succeeded Oliver after his death in 1689 as the third Baronet of Barham Court and had one son of his own, who died without children.

Interestingly, predating the breakdown of his marriage, Oliver had a long-term relationship with another woman, with whom he had a daughter, Joane, born in 1665, and a son, christened Oliver Boteler, at the family seat in 1678.<sup>188</sup> Oliver married his long-time mistress and mother of his younger children, Ann Uphill, six months after Anne died, on December 15, 1684.<sup>189</sup>

Anne's story is sensational but should not be sensationalized. As part of the upper echelons of society, Anne and Oliver availed themselves of every court, spiritual and common, and their case even came to the attention of the King himself. While the lives of the elite should not be mistaken as representative of the common experience, and access to wealth gave both the ability to use the court system in a way most of society could not afford, the abuse Anne suffered had nothing to do with her station in life. Further, the immense documentation that results from cases like these offers historians better insight into social attitudes and court functioning.

In his review of the case, Lawrence Stone remarks that there was nothing uncommon about the cruelty Anne suffered.<sup>190</sup> I disagree. Anne suffered sustained abuse that was exceptional and breathtaking in its senselessness and cruelty, and the depths to which Oliver seemed to revile her and the children is shocking. Violence in marital separation cases was not uncommon precisely because a

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<sup>187</sup> *London, England, Church of England Baptisms, Marriages and Burials, 1538-1812.*

<sup>188</sup> Ann Uphill's will specifies both children as that of her and Oliver's own blood, *The National Archives* PROB 11/538/183; Baptism records for Oliver list Ann Uphill as the child's mother and Oliver as the father. England, Select Births and Christenings -2:1R5J4PC

<sup>189</sup> *Westminster, London, England, Church of England Baptisms, Marriages and Burials, 1558-1812.*

<sup>190</sup> Stone, *Broken Lives*, 37.

case would not be heard without evidence of abuse. It was the only way a wife could secure a spiritual separation from her husband in the seventeenth century. As Margaret Hunt points out, less severe cases never went to court, and more severe cases appear in the Coroner's Court.<sup>191</sup> All cases needed to meet a threshold of excessive cruelty; however, Anne's is certainly more brutal than most. She had secured a spiritual separation from the Consistory Court of London and, by the King's decree, had won a judgement against Oliver for maintenance and security of her person from being accosted by Oliver. This did not mean Anne lived securely while awaiting a verdict.

Many people knew of Anne's plight and did what they could to help her. Despite prescriptive literature that said otherwise, the legal and religious system supported a culture that not only allowed Oliver to abuse and torment Anne for years but also made it almost impossible for her to escape. Anne was a seventeenth century Englishwoman who was devout and loved her children but also loved her husband despite his atrocities. As a wife and mother, Anne was told by the church and the state that it was her duty to remain married and live within the constraints of a society influenced by cultural and institutional constructs. Despite these barriers, Anne finally took drastic action and used the law when she could tolerate it no more and genuinely feared for her life and her children's lives.

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<sup>191</sup> Hunt, "Wife Beating," 13.

## Chapter 4: Separation by Death

...she should be carried from thence to the Place from whence she came, and thence be drawn to the Place of Execution, and there be burnt with Fire till she is dead.

- Mary Hobry Old Bailey Sentencing, February 22, 1688.

### 4.1 Mary's Confession

Mary Desermeau was a French Catholic midwife living in London with her teenage daughter, Mary, and nine-year-old son, John, when she married Frenchman Denis Hobry in about 1683.<sup>192</sup> They wed in a "Solemn Marriage of the Church," but shortly after, Denis began denying the marriage, cursing her, and becoming enraged when she "would not submit to a compliance with him in Villanies contrary to Nature."<sup>193</sup> After three months of beatings, "revilings," and fearing for her life, Mary moved out but lived close by for the next four months before Denis disappeared to France.<sup>194</sup> Over the next two years, Denis was mainly away, but he returned to England three or four times, finding Mary and convincing her to let him move in before beginning the cycle of abuse and leaving again. Approximately two years into the marriage, he reappeared with promises to be a good husband, saying he desired to live with her again and had confessed his sins to God that he would be "another man." Mary relented on the condition that Denis declare his reformed intentions before her priest, Father Gaspar, and two witnesses, which was recorded in the register. Two or three days after this, he began his old patterns again. For the next two months, he regularly beat and abused Mary until he disappeared back to France. This time, Denis took all her clothes and belongings with him.<sup>195</sup>

Three months later, he was back with the same promises, and the cycle of abuse, forgiveness,

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<sup>192</sup> Mary's name is variably spelled Hobry, Aubry or Aubrey, and Desermeau or Desermo. While Desermeau is almost certainly the correct spelling, Aubry has distinct French roots; however, many contemporary accounts use Hobry. For consistency, I have elected to use Hobry.

<sup>193</sup> Mary was likely referring to anal intercourse [see footnote 200]; however, this could also reference any sexual act that was not penile-vaginal penetration.

<sup>194</sup> It is not clear what Denis did for employment; however, his frequent trips to France may indicate he was a trader.

<sup>195</sup> Roger L'Estrange, "The Examination of Mary Hobry, of the Parish of S Martins in the Fields, taken Feb. 4. 1687/8," *A Hellish Murder Committed by a French Midwife on the Body of Her Husband Jan 27 1687/8*, 1688. Bodleian Library, University of Oxford, Ref Ashm. 739(19). London.



and leaving continued for the next two years. Desperate at the situation, Mary begged Denis to agree to a final separation, which he “refused with Outrages of Language and Actions, telling [her] he would be the Ruine of her.” Mary felt she was “without Remedy, in a Distraction of Thoughts” and had now contracted a sexually transmitted disease from Denis due to his “dissolute course of life.” She fantasized about leaving Denis behind for some other part of the world or killing him or herself. Once, in a rage, she told him directly that she would kill him if he continued this way, but afterward, she was mortified at her words and thought God’s grace diverted her from such actions.<sup>196</sup>

Mary moved into lodgings on Castle Street in St Martins in the Fields, London, under the roof of Mr. Tobias Hope and his wife Mary, in October or November 1687. Denis appeared on her doorstep at the end of November, and the violence once more escalated quickly. Twice over the next two weeks, Mary took out a knife over Denis’ sleeping body but restrained herself. The following day, she told him of the “resolution she had taken over night to kill him in his bed,” but he dismissed her, saying she would not dare. Shortly after the second proclamation, Denis left for France. The night before his departure, she told him to use the time in France to think about his state and improve himself, “for when you come back again, if you Treat me as you did formerly, I do not know what Extremities you may provoke me to.” He responded with “dreadful Oaths, that he would be a good Husband to her.”<sup>197</sup>

Denis was gone for about four weeks before reappearing in the middle of January 1688. Mary said she welcomed him if he had changed his course of life. He demanded that he would “upon condition you will put me in Cloaths, and furnish me with what I want,” since he had spent his earnings already. When Mary told him she hadn’t the money, he said, “If you do not do as I say, I will be a worse husband to you than ever I was.” She said she didn't know what to do with him, that his

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<sup>196</sup> L’Estrange, “The Examination of Mary Hobry.”

<sup>197</sup> It is unclear if the oaths were dreadful because he was being sarcastic or if Mary meant something else.

“barbarous usages had made her mad,” yet she relented and let him back in.<sup>198</sup>

According to Mary, two weeks later, on Thursday, January 26, Denis was out when Mary went to bed alone at about ten, leaving the door open for him. At five in the morning, Denis returned home drunk and in an agitated state and woke Mary by punching her in the stomach. She told him he was drunk and accused him of being with “base” company. He replied he had been with “Bougres and Rogues, that have made me Mad, and you shall pay for it.”<sup>199</sup> Denis hit her again on the breast, causing Mary to cry, and squeezed her in his arms until she couldn't breathe. He attempted to force upon her “the most unnatural Villainies,” and when she resisted, he “acted such a force of violence upon her body... as forc'd from her a great deal of Blood.” She cried out for the landlady's help but received no response and tried to rise to call to the neighbours, but Denis threw her on the bed and “bit her like a dog...”<sup>200</sup> Mary asked him, “am I to lead this Life for ever?” Denis replied, “Yes, and a worse too, ere it be long, you had best look to yourself” before, according to Mary, he fell asleep.

Battered, assaulted, and bleeding, Mary recounts how she thought: “What will become of me? What am I to do! Here am I threatened to be murder'd, and I have no way in the World to Deliver myself, but by Beginning with him.” With this, she seized upon one of Denis's garters, a pack-thread, “put it double about his Neck *et la noun en servant de toute sa force*, and so tied it, and drew it as hard as she could, *de sorte qu'il en estoit Estrangle dans un quart a heure, sans beaucoup Resistance.*” Mary choked Denis for fifteen minutes but was immediately repentant and removed the pack thread and tried to revive him with Brandy, to no avail.

Mary left the body in her room for the next three days before getting her son John on Monday,

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<sup>198</sup> L'Estrange, “The Examination of Mary Hobry.”

<sup>199</sup> The French term *bougres* was used during this time to indicate a sodomite, from the Old French *bogresse* “person who indulges in unnatural debauchery” dating to 1260.

<sup>200</sup> L'Estrange's account of this testimony reads “...bit her like a Dog, &c. —” as though Mary had more to say in this vein, but L'Estrange elected not to record it.

the morning of January 30<sup>th</sup>. John, now thirteen, worked as an apprentice with Monsieur de Bois, a weaver in the Strand, where Mary told him an Englishman was at her house and needed John to translate. Mary showed John the body, made him swear to secrecy, and told him she had no money to run away and that she could “think of no way better than to cut off the Quarters, and disperse the Parts in Several Places” so the body could not be identified. John didn't want to handle the body, so at about four that afternoon, Mary began dismembering the body by herself. By eight that evening, wrapping the parts in linen, she carried each piece out separately hidden in her petticoat, disposing of the torso in the dung hills in Parkers Lane, and with two more trips, disposed of the legs and arms in the House of Office (privy) at the Savoy on the shore of the Thames, with John acting as a lookout. With only the head remaining, John suggested throwing it in the river, but Mary was afraid it would be found and cast it instead in the House of Office of a friend, fringe maker Mr. De Fresneau, who lived adjacent to the Savoy.<sup>201</sup> Unfortunately for Mary, the immediate discovery of the body parts became a sensation and quickly led authorities to suspect Mary.

#### **4.2 Religious and Political Anxiety**

Two men found the dismembered torso in a London alley on a dung heap in the street at about ten on the evening of January 30, 1688. The arms and legs were found early the following day at the Catholic Church at the Savoy. The body was initially reported as a missing Reverend, and rumours spread quickly through the city, fueled by fears of Popish plots and larger political conspiracies.<sup>202</sup> The city was already in turmoil with talk that James II would reinstate Catholicism forcibly, and although the 1678 Popish Plots to assassinate Charles II and put James II on the throne had been proved false, the idea of a Catholic king was troubling for many citizens and parliamentarians. When Charles died without resolving the issue of succession and James ascended the throne in February

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<sup>201</sup> L'Estrange, *A Hellish Murder*, 30-36.

<sup>202</sup> *Publick Occurrences Truly Stated*, 21 Feb. 1688, *Seventeenth and Eighteenth Century Burney Newspapers Collection*.

1685, tensions quickly mounted that following summer, as James viciously put down Protestant rebellions, installed loyal Catholics in military positions, and prorogued Parliament in November, never to call another. Tensions escalated as James moved to put more Catholics in high offices and quash opposition to his policies. In April 1687, James issued the Declaration of Indulgence, suspending laws against religious dissenters of Catholic and Protestant faiths.<sup>203</sup> It is unclear whether he intended to reinforce genuine religious toleration or establish Roman Catholicism as the only state religion, but news in November that his Catholic queen was pregnant inflamed Protestants over the possibility of a Catholic succession.<sup>204</sup>

On February 21<sup>st</sup>, *Publick Occurrences Truly Stated*, a short-lived weekly paper, published a piece about the murder “to [defeat] the designs of the Faction, who were busily turning it to the disadvantage of the Government, and scaring people, as if it must needs be Acted on some Religious score.” To contradict the rumours, it reported that a Catholic wife had killed her Catholic husband “on private malice,” and although it was “one of the most surprising Butcheries that has been heard of in the Age,” the wife, her children, and accomplices were in custody awaiting trial.<sup>205</sup>

That this was, in fact, a case of private malice demonstrates the devastating results for an abused woman with limited choices, which makes it no less a reflection of the state of political, legal, religious, and social attitudes in England at the beginning of 1688. A French Catholic midwife living and working in London murdered her husband and tried to cover up the crime by dismembering and disposing of the body throughout the city. On the one hand, although her religion and nationality had no direct bearing on the crime, Londoners could assuage their fears over escalating violence in the city by dismissing Mary as the ‘other.’ She was a foreigner but so was her victim. On the other, Mary

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<sup>203</sup> “Declaration of Indulgence of King James II, April 4, 1687,” <http://www.jacobite.ca/documents/16870404.htm>

<sup>204</sup> [www.britannica.com/biography/James-II-king-of-England-Scotland-and-Ireland](http://www.britannica.com/biography/James-II-king-of-England-Scotland-and-Ireland)

<sup>205</sup> *Publick Occurrences Truly Stated*, 21 Feb. 1688, *Seventeenth and Eighteenth Century Burney Newspapers Collection*.

transgressed the social ordering of the family, which could not be tolerated in a society that built its political model on the little commonwealth. Mary needed to be an example, warning other women and men that respecting authority and living a properly ordered life was paramount.

Mary chose the most extreme means of escaping a violent marriage, and although her actions were shockingly violent in their own right, her case shows how few options were available to women in abusive relationships. Mary represented a subversion of the natural order as a primary income earner, a strong woman who fought back, and crucially, as a husband killer. Mary's case offers a study of how the law approached women as victims and criminals and illustrates how society viewed women as capable or culpable of committing a crime. Through the detailed testimony of many people who knew Mary and Denis and multiple publications about the case, this chapter explores how prescriptive writing framed women who killed as subversive and evil and used these cases to reinforce the ideal of the good wife. It also affords the opportunity to examine how neighbours and kin could ignore, mitigate, or support domestic violence and how perceptions of gender and 'worthy women' could characterize violence as legitimate or illegitimate.

#### **4.3 A Series of Missteps: Witness Testimony**

When Mary was arrested, Roger L'Estrange was employed to take witness testimony.<sup>206</sup> After she pled guilty and there was no trial, he published the accounts shortly after Mary's sentencing on February 22<sup>nd</sup> to quell the "spiteful and groundless shams and misunderstandings" that the murder had been politically or religiously motivated and "rectify the misapprehensions" by "setting forth [the] matter of fact just as it was."<sup>207</sup> L'Estrange argued that contrary to fanciful ideas, Mary murdered her husband for personal reasons. Although convoluted, the testimony is extraordinarily detailed, and it is

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<sup>206</sup> Sir Roger L'Estrange was one of the earliest English journalists, an ardent Royalist, and appointed surveyor of the imprimery, which meant he acted as censor. Knighted in 1685, he was a prolific writer and polyglot. When James II lost the throne, L'Estrange lost his official post and would only work on translations of ancient authors.

<sup>207</sup> L'Estrange, *Hellish Murder*.

possible to fill in many details about Mary's activities between the murder and her confession.

On the last day Denis was alive, Thursday, January 26<sup>th</sup>, Philip Yard saw Mary and Denis at her daughter's house, where he saw Mary "fall into a violent passion against her Husband" and threaten to kill him. Yard knew the couple well and testified he repeatedly heard the two fighting and that Mary called Denis a dog and drunken villain, saying "I must kill him, and will kill him, though I be Hang'd for't." Before parting ways that day, Yard said Mary asked him to "take no notice of any thing she had said, whatever should happen."<sup>208</sup>

Mary confessed she had strangled Denis in the early hours of Friday morning and left the body in bed. Witness testimony reported that on Saturday, Mrs. Hope, the landlady, came into Mary's chamber and asked why Denis was still in bed. Mary told her he had been out late and to let him sleep. Desperate to dispose of the body, Mary went to her cousins, Denis and John Favet and begged them for help, but they reportedly replied that "for the whole World they would have nothing to do in't," and she left them crying.

On Sunday, Philip Yard began asking if anyone had seen Denis and became concerned Mary had done something. He went to the Hobry's lodgings, but no one was home, and the landlord said they had not seen Denis in days. The body still in the house, Mary went to her friend Margaret Vasal just after Mass and asked if she could stay for dinner as she loathed to go home "because there was some body she had no mind to see." At first, Mary told her she was leaving town to assist in a birth but quickly broke down. She had a copy of a Catholic prayer book, telling Margaret it was the first gift Denis had given her and that now he had threatened to "dispatch" her in the next few days. Swearing Margaret to secrecy, Mary confessed she had strangled Denis. She begged for advice and confessed that she was "lost" and "mad," but Margaret, appalled, told her to leave, that she would

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<sup>208</sup> L'Estrange, *Hellish Murder*.

have nothing to do with it, whereby Mary left crying.

On that Monday morning, Mary enlisted John's help, and by around eight that evening, the two disposed of the body parts and finished around ten, having deposited the head at Mr. De Fresneau's House of Office before returning home. However, sometime between nine and ten that night, two men discovered a "Person lying Murdered" in Parkers Lane and went to the next alehouse to tell what they had seen. They sent for the Constables, who found the trunk of a man's body wrapped in an old cloth lying against a coach maker's door on a small dunghill. The body was moved to the Coach and Horses in Parkers Lane and laid out. Early Tuesday morning, when the legs and arms were discovered at the Savoy's House of Office, they were promptly taken and laid out with the torso. Some "persons of judgement" who examined the body reported minor wounds found on the body were not mortal but likely to conceal identifying marks and believed the dismemberment had been done within the previous twenty-four hours. Thousands flocked to see the body, and a search for the perpetrators set out with "cries so loud for Vengeance."<sup>209</sup>

Late Tuesday morning, Mary's daughter came to see her mother at her lodgings. Mary paid Mrs. Hope eight shillings of the twelve she owed for rent and asked for a pair of sheets, but Mrs. Hope put her off. Mrs. Hope would later testify that when she asked if they had seen the murdered body and they said they had not, she told Mary that she had heard Mary and Denis fighting - "taking notice of a very outrageous Quarrel betwixt them" and warned Mary she better not think she could take drastic action against him - "Advis'd the Woman to have a care what she did to her Husband, being affraid it might go further."<sup>210</sup>

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<sup>209</sup> *A True and Full Relation of a most Barbarous and Inhuman Murder Committed upon the Body of a Man found in Parkers-Lane, Near Little-Queen-Street, on the 30th of January, between the Hours of Nine and Ten at Night: Giving an Account how the Salvage Murderers had most Cruelly Mangled the Said Corps, and how several Parts Thereof were Dropt in the Thames at the Savoy, and Carried Thence to the Coach and Horses, Where the Body itself was Laid at its Taking Up.* London: 1688.

<sup>210</sup> This is an excellent example of testimony that reframes events after the fact. By testifying after Mary had been arrested for murdering Denis that she had warned Mary not to take drastic action, Mrs. Hope implies she had the foresight to suspect

On Wednesday, Mary was out of the house when Philip Yard came again looking for Denis and asked the landlords to unlock the door, saying he was worried that Denis “might have carry’d some of the goods into France,” but the Hopes could not open the door, as Mary had the key. Yard went to Mary's daughter's house, where he found them both in the street. He confronted Mary about her words the previous Thursday and asked if she “had done as you said you would?” He told her that people were looking for her husband, and he hoped Denis was not the mangled body that had been found. She said Denis was not that body, and when Yard pressed, she said she did not want to say more in the street and to give her a few days, then she would tell him more. When they parted, she told him, “*Bouche Closez* [Not a Word].” That same day, the surgeon James Lorraine stopped at the house looking for Denis and left his mark in chalk on the door. Mary found Lorraine later that day and told him Denis was hiding over a warrant, and Lorraine offered to help him with it. Mary said she would talk to Denis and let the surgeon know.

On Thursday morning, Mary went back to Margaret Vasal’s home. When Margaret asked if Denis was the body cut up, Mary said no, the body found in pieces was a gentleman, and two of Denis’ friends had buried Denis for her. Margaret found this hard to believe, but Mary told her she would tell her where the body was buried in three or four days. Mary then visited Joan Rippault and told her she had borrowed fifty guineas from her cousins and, with their help, had got Denis drunk and put him on a ship bound for the Indies. Mary then met again with the surgeon James Lorraine and told him Denis had gone to the Indies never to return. Around five in the afternoon, Mary went to Maria Anne Rippault’s lodgings with the younger Favet brother, where Favet confirmed the story that Denis had gone to the Indies to bring them back diamonds. According to Marie Anne, when they left,

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Mary was capable of committing the crime. As will be explored shortly, Mrs. Hope, in particular, may have been more knowledgeable about the crime than she let on but shaped her testimony to infer she was intuitive but not complicit. The witness may simply have wanted to contribute to the story and embellish for the audience.



Mary told her the two were going home to the house on Castle Street. Instead, Mary went to the house of John Izember in Phoenix Alley to check on his wife. Mary had delivered multiple babies over the previous five years for Mistress Izember and had been checking on the woman for the last two weeks due to an early labour scare. Mary asked if she could stay the night as she did not want to go home.<sup>211</sup> Mary had supper with the family and prepared for bed around eleven.

Meanwhile, Philip Yard and Julian Coze were in a tavern owned by James Richards, talking about the dismembered body. Yard told them they would never see the Parisian [Denis] again, that “the woman [Mary]...has as good as Own’d it.” Since Yard had been unable to locate Denis for some days and found Mary’s words suspicious, they decided to go to the Constable. Constable Henry Fuller agreed Mary should be “apprehended [on] the suspicion” and, taking Yard and Coze, went to Mary’s lodgings in Castle-street but discovered she had gone to Phoenix Alley.

Someone knocked on the Izember’s door at just eleven, asking for the midwife. The Mistress had to be called to unlock the door, and with two servants and Mary in the room, opened the door to the Constable brandishing his staff and Philip Yard demanded Mary tell them where her husband was. She replied, “she had not seen him since the Thursday before when she left him in Bed.” Here, two servants’ testimonies diverge. In one telling, the Constable took Mary into custody, and when the Mistress asked Mary what was going on, she replied “*quelque drollerie* [some little waggery]” and that Denis was a vagabond who left for months at a time and how was she to know where he was. In the other version of the arrest, Mary said she left Denis in bed, and Yard retorted, “if she left him in Bed, it was with his Arms and Legs cut off!” and Mary gave up, asking them not to make a noise but go civilly with her. Both servants agreed that Yard told the household he had been in Mary’s rooms,

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<sup>211</sup> One of the Izember’s servants testified Mary didn’t want to go home as she “did not know what occasion there might be for her,” while another said she “desired she might stay there All Night; being Under some Disappointment at home.” Mr. Izember remembers Mary saying she “did not care for lying at home that night.”

found blood in the bed, and swore she had dismembered the body there.<sup>212</sup> The servants said Mistress Izember called Mary a “*Villaine*, guilty of a black crime” and attested that if she knew such things, she would never have let Mary enter her door. One servant reported that as Mary was carried away, she said, “No Madam, I am innocent,” and the Mistress replied, “I believe I shall never see you again.”<sup>213</sup> From the house in Phoenix Alley, the men delivered Mary to the Gate House since it was almost midnight, and they could not find a justice of the peace awake at that hour.

On Friday morning, February 3<sup>rd</sup>, Mary was brought before two Justices of the Peace and asked her what had become of her husband. She said she could not tell him, but he should ask Philip Yard. James Lorraine was also present, and told the justices that Mary had once told him, she would “give a good deal to have [Denis] Drown’d or Kill’d.” The surgeon knew Denis to have a scar on the hand, and went with one of the justices to the Bone House where the body lay, identified the scar, and confirmed the body was that of Denis.

With Mary in custody, Roger L’Estrange began interviewing witnesses that day. He questioned Philip Yard, James Richards the victualler, John Izember, and his servants.<sup>214</sup> He also spoke with the landlady, Mary Hope, who was very vague and said she had not seen Denis for ten or twelve days. She claimed that a week earlier, she had asked after Denis, and Mary’s daughter told her that Denis had a warrant and would go to New England and that in the meantime, her mother should stay away until he was gone. She said Mary had told her the previous day (Feb 2) that Denis was now gone, and she had returned to lodge there again. Mary Hope’s daughter, Elizabeth Beech, confirmed her mother’s account and added the recent discovery of a lock put on the door to Mary’s rooms, where

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<sup>212</sup> Philip Yard himself does not speak to this, so it could be the servants were embellishing their account based on what they had heard after Mary’s arrest and before they were questioned some days later.

<sup>213</sup> Mistress Izember was never questioned, possibly because of her imminent labour. Her husband testified he only knew what his wife had told him but doesn’t elaborate; the words she was reported as having spoken come from her servants’ testimony.

<sup>214</sup> In the subsequent days, L’Estrange also spoke with Julian Coze and Constable Henry Fuller.

there had only been a bolt before.

Mary's children were both questioned February 3<sup>rd</sup>. Her daughter said she had been to see her mother Monday morning but had not seen her stepfather for two weeks. On Tuesday, she was at Mary's again around noon when they heard a commotion in the street that a dead body had been found and how it was a sad thing. She denied Mrs. Hope's statement that she had given Denis money or told her mother not to appear until Denis was gone. She testified that her mother did not lodge anywhere else but had spent a night or two in Phoenix Alley. John repeated the story Mary had given to his master: on Monday morning, Mary asked John to come to translate for her. He said the man never came, so he went to Covent Garden until seven or eight at night, spoke to no one, went back to his mother's and saw her for about fifteen minutes before sleeping in a stall by the Rose Tavern all night. The next morning, he saw his mother at her lodgings and his sister in the street.

L'Estrange interviewed Mary on February 4<sup>th</sup> in private and laid out all the testimony he had gathered before questioning her. L'Estrange reports that "she gave herself for Lost, without any Hope, either of an acquittal, or of a Pardon," so she told him everything, as outlined in her confession. She testified that her daughter knew nothing and that when she came to her house Tuesday asking where Denis was, Mary broke down and confessed, swearing her daughter to secrecy. On February 5<sup>th</sup>, L'Estrange re-examined the children. He told them he knew John had been to his mother's and had seen the body; this time, both were more forthcoming with their answers. Mary said she heard Denis threaten her mother with death several times, and her mother had told her this many times, but she never heard her mother talk of killing her husband. She had not seen her stepfather's body, nor did she know of any violence against him, but her mother had been "very much disordered in her mind for about a week last past." John repeated his sister's assertions about the abuse and that his mother had remarked to him repeatedly that Denis had threatened her several mornings "when he had been all night at a Debauch." He confirmed Mary had shown him the body Monday morning, and asked

him to help her. When he asked her why she did it, Mary told him she was “continually in fear of [Denis].” She begged John to help her “quarter the body,” which he refused, and left the room while she dismembered the body alone. He also refused her request to help carry the parts to dispose of them, and although he did not want to, he accompanied her. His testimony confirmed the disposal locations, including the head, which had not yet been retrieved. He also testified that Mary had told him that should the murder be discovered, and she arrested; he would be fine since he had touched nothing. After disposing of the body, John reported that Mary went home and went to bed. Finally, L’Estrange asked John if he knew how Denis had died; he replied he heard some say he died by a wound or of natural causes, but no charge against his mother.<sup>215</sup>

With these confessions, the High Constable Thomas Harris ordered the Night Men to search Mr. de Fresneau’s House of Office, where they found the head wrapped in cloth. Beadle Anthony Matson testified that upon retrieving the head, he took it to his house to be washed before delivering it to the St. Giles Bone House. On February 6<sup>th</sup>, Mary Hope and another man went to St. Giles and confirmed it was the head and face of Denis Hobry. Mary’s daughter, son, and the two men who had initially found the body were arrested between February 3<sup>rd</sup> and 7<sup>th</sup>. The Coroner’s Inquest met on February 8<sup>th</sup> and acquitted the two men and her daughter but held Mary for murder and son John for accessory after the fact.

Over the next two weeks, L’Estrange interviewed acquaintances who reported that in the weeks before the murder, Mary had plans for her and her daughter to marry two brothers named Favet, but Denis had returned, spoiling their plans. John and Denis Favet were arrested and faced accessory charges before and after the fact. The three women who implicated the Favets also testified that over

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<sup>215</sup> To be clear, John testified that when he arrived at his mother’s house, she told him Denis was dead - not that she killed him - and John asked why she did such a thing when he saw the body in the bed. It could be construed that John was asking why she had left the body there for three days, not why she had killed him.

the preceding six months, Mary had said she would kill Denis, strangle him and throw him in the Common-Shore but that she would have to cut him to pieces to make him fit. L'Estrange also interviewed some of Denis' friends who reported him a "Debauchee to the Highest degree, but Drunk or Sober, without any malice."

#### 4.4 Trial by Public Opinion

Roger L'Estrange published Mary's confession and the testimony of eighteen witnesses in a thirty-nine-page document. Murder news was popular, and Mary's sensational case inspired news ballads and cheap pamphlets spun from L'Estrange's more expensive account of official testimony. Crime and trial news publications were not official court documentation but sold as entertainment; however, whether written for popular or learned consumption, rhetoric and ideological content reflected societal assumptions.<sup>216</sup> Randall Martin and Frances Dolan have written about Mary's case and characterize L'Estrange's publication mainly as a popular account designed to tell an intriguing story to a buying public.<sup>217</sup> I submit, however, that L'Estrange intended to inform with fact, even if the information was relayed in a popular voice or medium. As Emsley, Hitchcock, and Shoemaker demonstrate, the Old Bailey proceedings were not retained as official court documentation except as publications in the *Proceedings* - inexpensive, popular pamphlets.<sup>218</sup> Emsley et al. note that "although initially aimed at a popular rather than legal audience, the material reported was neither invented nor significantly distorted," and while not complete transcripts, "there is no reason to question the

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<sup>216</sup> Randall Martin, *Women, Murder, and Equity in Early Modern England*, (New York: Routledge, 2008), 39. See Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany*, (Charlottesville and London: University Press of Virginia, 1992).

<sup>217</sup> See Frances E. Dolan, *Marriage and Violence: The Early Modern Legacy* (Philadelphia: University of Pennsylvania Press, 2008) and "Battered Women, Petty Traitors, and the Legacy of Coverture," *Feminist Studies* 29, no. 2 (2003): 249–77. Dolan suggests L'Estrange's account may be fictionalized, much the way other pamphlets were, partly because she notes Mary's testimony is recorded as vacillating between first and third person.

<sup>218</sup> The *Proceedings* are the only surviving records of London criminal trials between 1678 and 1729 and have been used extensively by historians as primary source evidence. Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - Publishing History of the Proceedings," *Old Bailey Proceedings Online*.

accuracy” of these accounts, particularly when combined with examinations taken prior to trial.<sup>219</sup> L’Estrange seems to have served as the court examiner in Mary’s case, and while his publication includes commentary in the introduction and conclusion, the body of the text is formatted as “enformations” taken under oath. This content seems to mirror the summary given in the *Proceedings* from the Old Bailey, other news reports, and the arraignment report, making it reasonable to assume the contents of his publication are likely accurate.<sup>220</sup> With no detailed court transcript to compare it to, L’Estrange may have used his knowledge to craft the account this way for entertainment sake; however, he reports that he took all testimony in a public room with many witnesses, which adds to the veracity of his account.

The witness testimony demonstrates how witnesses might also tell a story that reflected social norms and expectations as much as they told the truth. Randall Martin contends the female witness accounts reveal the intimacies of Mary’s life while the men seem to have been called on merely for the authority of being men.<sup>221</sup> I disagree. While the combined testimony shows how far-ranging Mary’s work took her and how involved she was in the community, other than Margaret Vasal, the women’s testimony is least revealing. Mrs. Hope seems oddly vague for a landlady acquainted with her tenant for some months (she did not know Mary’s name or how long she had been there, or when she saw anyone), yet she clearly remembered the conversation she had with Mary and her daughter. Her vagueness might be explained in light of Margaret Vasal’s testimony, which stated Mary told her the landlady had seen Denis’ body lying in bed the day after she killed him. It is possible that Mrs. Hope wanted to distance herself from being implicated. Mary’s three friends implied a romantic

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<sup>219</sup> Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - The Value Of the Proceedings as a Historical Source," *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 7.0)

<sup>220</sup> L’Estrange served as Royal Commissioner, empowering him to call witnesses and take evidence under oath, most notably during the Popish Plots in 1684, when he debunked Oates’s conspiracy. See George Kitchin, *Sir Roger L’Estrange: A Contribution to the History of the Press in the Seventeenth Century*, 1913.

<sup>221</sup> Martin, *Women, Murder, and Equity*, 78.

relationship between Mary and one of the Favet brothers. Killing your husband to be with your lover was a prevalent theme in earlier cases of matricide that had been widely published and talked about; Alice Arden's case a few years earlier had become quite famous.<sup>222</sup> Interestingly, the Favet brothers were never interviewed; or if they were, it was not recorded, and no one else seemed to know of or report on this potential romantic relationship. Possibly, Mary was trying to leave her husband to take up with a lover, or it could be that witnesses were delivering a familiar story that fit with cultural ideas about promiscuous women that would resonate with the audience.<sup>223</sup> Martin contends that Marie-Anne Rippault quickly noticed that Denis had disappeared, but Marie-Anne only knew Denis had gone to the Indies because Mary had told her mother that morning. It was Denis' friend Philip Yard who suspected something almost immediately. Finally, in their first interview, both Mary's children revealed nothing, attempting to protect their mother, and only admitted what they knew when confronted with Mary's confession. Then both offered evidence that could explain Mary's motive by highlighting the violence in the marriage.

Further analysis of the testimony reveals something about social attitudes towards privacy, sexual assault, and moral regulation of vice. Mrs. Hope mentioned a lock on the door, and Mary stated she left the door unlocked for Denis the night of the murder. When the Constable came for Mary at the Izmember's, the Mistress of the house had to come and unlock the door. Garthine Walker has demonstrated that women controlled domestic spaces and attained and maintained status through them. Blocking doors or entering the home uninvited was often characterized as a violation of domestic space and could give a sense that "moral and physical boundaries had been breached."

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<sup>222</sup> See Frances Dolan, *Marriage and Violence*; Martin J. Wiener, "Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869," *Journal of British Studies*, 40, no 2. (2001); 184-212; M. Rebecca Livingstone, *Unsettled Households: Domestic Homicide in Seventeenth-Century England*, (Unpublished Dissertation: 2007).

<sup>223</sup> On narratives as a means of contextualizing experience, see Gowing, *Domestic Dangers*; Barbara J. Shapiro, "Oaths, Credibility and the Legal Process in Early Modern England: Part Two," *Law and Humanities* 7, no. 1 (2013): 19-54.

Mistress Izmember held a station that gave her the right to secure her domain; however, Mary's locked door in a rented space at a time when "personal and social boundaries were interchangeable" implied secrecy and made her actions suspect.<sup>224</sup> Mary also stated in her confession that during Denis' assault, she cried out to her landlady and tried to go to the neighbours. In rape cases, this cry for help, or 'hue and cry,' implied a lack of consent when a crime occurred. In such cases, reaching out or fleeing to neighbours also offered physical evidence of violent transgressions.<sup>225</sup> Mary spoke of Denis' drinking, anger while drunk, and his proclivity for violent sex, which follows a familiar pattern explaining men's bad behaviour; however, no one, not even her children, supported her testimony directly. Only Denis' friends, interviewed informally after the trial, mentioned Denis' bad behaviour but framed it as normal masculine activity and that he always did so with good spirits.

Most report how Mary complained and plotted, and while that does not mean Mary was being untruthful, this could be indicative of the interrogation process; if a question were not asked, it would be a question not answered. It could also reflect how witnesses might have believed Mary was guilty and wished to be helpful by framing information that supported what they thought they knew about the events. The narratives of events are presented as first-person accounts that corroborate Mary's confession and do not question Mary's guilt. It is impossible to know how people might have described her before her crime and whether the murder obscured their perceptions; however, these accounts provide a space to explore how Mary's contemporaries viewed her when she transgressed social norms and how that narrative supported the existing social perceptions and cultural biases.

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<sup>224</sup> Walker, *Crime, Gender, and Social Order*, 53; see also Joanne Bailey, "'I Dye [Sic] by Inches': Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England," *Social History (London)* 31, no. 3 (2006): 273–94.

<sup>225</sup> For further discussion on women's efforts to show lack of consent and demonstration of physical evidence in rape cases, see Garthine Walker, "Sexual Violence and Rape in Europe"; Julie Hardwick, "Early Modern Perspectives."



#### 4.5 Subversion of ‘Natural Order’

Above all else, Mary represented a subversion of natural order to her contemporaries, not only as a disorderly woman but as a foreigner, Catholic and midwife. Although many foreigners and Catholics lived in London, and many women were midwives, these characteristics feature in the pamphlets and contribute to her characterization as the ‘other.’ The first report upon discovery of the body mentions the precise way the limbs were removed at the joint and the removal of identifying marks from the torso. These attempts to disguise the body speak to anatomical skill and knowledge, and something more sinister in the efforts to conceal identification. Publications highlighted these characteristics and enriched the view of her as an unnatural wife and woman.

As in the case of Anne, women could be regarded as challenging the natural order of the household and, by extension, the realm by refusing to submit to her husband’s authority. In Mary’s case, she subverted the natural hierarchy in many ways. When Denis asked her to do something unreasonable, Mary refused, set conditions for her compliance, and most egregiously, talked about her husband in a derogatory manner to neighbours and friends. In addition, the couple fought publicly and in the street, making their marriage disorderly in the view of the community. As Mary Ezell outlines, the ‘good wife’ is a domestic partner who seeks harmony by supporting her husband and governing the household.<sup>226</sup> Although Denis’ excessive violence could be viewed as “striking at the heart of social order,” Mary’s violence during the marriage was a transgression of both gendered and social order.<sup>227</sup> In addition, Mary’s work as a midwife excluded Denis and took her out of the household, and with their frequent separations and her children gone, Mary represented a single working woman supporting herself, which drew certain suspicion of its own.

Gossips, outspoken women, and women who tried to rule equally, or even more egregiously,

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<sup>226</sup> Ezell, *The Patriarch’s Wife*, 36-42.

<sup>227</sup> Walker, *Crime, Gender and Social Order*, 49-53.

rule over their husbands were cast as scolds who needed to be reined in to accept their position in society and the marital hierarchy. As Amussen and Walker have demonstrated, people valued good conduct in the family, which was never entirely a private matter, and wives who complained were viewed as “notionally overstepping the boundaries of orderly behaviour.”<sup>228</sup> Witness testimony described Mary's active involvement in fights in the marriage and showed how Mary's words and actions demonstrated her lack of respect for Denis and his authority. She called him names and complained to many others about him; however, no one mentioned evidence of excessive violence other than Mary's account. Presented this way, Mary was not the ‘good wife,’ obedient, supportive and undemanding, and Denis was merely a rogue, perhaps with bad habits. With no mention of excessive violence on Denis' part, the couple could be seen as operating within societal parameters that accepted a certain amount of violence between spouses that did not warrant intervention.

#### 4.6 The Trial

On February 22<sup>nd</sup>, Mary was arraigned in the Old Bailey for Petty-Treason and Murder. The Indictment was read to her through an interpreter:

For that she the said Mary Aubry, Wife of Dennis Aubry, not having the Fear of God before her eyes, but being moved and seduced by the Instigation of the Devil, the 27th of January, in the third Year of our Sovereign Lord the King, at the Parish of St. Martins in the Fields, in the County of Middlesex, did make an Assault upon Dennis Aubry her Husband, Feloniously, Wilfully, and Traiterously; and that the said Mary Aubry, with a piece of Pack-thread which the said Mary Aubry then and there had, about the Neck of the said Dennis Aubry, feloniously, wilfully, traitorously, and of Malice aforethought, did put, and then the said Mary Aubry; with the Pack-thread aforesaid, the said Dennis thy Husband, feloniously, wilfully, and with malice aforethought, then and there did it choak and strangle; of which said choaking and strangling of the said Dennis, the said Dennis then and there instantly died. So that thou the said Mary Aubry, the same Dennis thy Husband, in manner and form aforesaid, feloniously, wilfully; traitorously, and of malice aforethought, didst kill and murder, against the Peace of our Sovereign Lord, his Crown and Dignity.<sup>229</sup>

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<sup>228</sup> Amussen, “Being Stirred,” 73; Walker, *Crime, Gender and Social Order*, 64.

<sup>229</sup> February 1688, trial of MARY AUBRY Dennis Fanet John Fanet John Desermo (t16880222-24) *Old Bailey Proceedings Online*.

She pleaded guilty to this felony murder and treason.<sup>230</sup> The court advised her that with a guilty plea, she “must suffer for it, but the court was willing to allow her to go to trial,” but Mary held firm.<sup>231</sup>

Immediately after Mary’s hearing, Dennis Favet, John Favet, and Mary’s son, John Desermeau, were indicted as accessories for concealing the murder and harbouring and relieving Mary. A jury of half aliens<sup>232</sup> was impanelled, and the King's council laid out the facts: Mary had made several resolutions to kill Denis and finally did so on January 27, strangling him after he came home drunk, waited until Monday and brought her son home and then dismembered and disposed of the body and confessed upon inquisition. The Proceedings reports that witnesses were called and sworn. The sum of evidence was that the prisoners said they had sent the deceased to the Indies to fetch diamonds, “but all that was given in Evidence, being not full as to the Fact, the Court did not look upon it to be sufficient proof that the Prisoners at the Bar were either aiding, assisting, or abetting in the said Murther, the Evidence grounding their Discourse chiefly upon what the Wife of the Deceased had said to them, they were brought in, Not Guilty.”<sup>233</sup> John was acquitted and free to go, while the Favets were to find sureties for good behaviour. The Court pronounced judgement and sentenced Mary to be “drawn to the Place of Execution, and there be burnt with Fire till she is dead.”<sup>234</sup>

In his postscript, L’Estrange notes that witnesses were questioned in public, while Mary was questioned in private “for fear of any unseasonable discovery of what she might declare.” He found

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<sup>230</sup> Mary would have appeared in court by herself as defence lawyers were excluded from felony cases until the 1730s. It was believed the judge was capable of looking out for the defendant's interests. See Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Trial Procedures," *Old Bailey Proceedings Online*.

<sup>231</sup> Even with a confession, going to trial would allow for the possibility of a reduced sentence or pardon, although unlikely in Mary's case. A guilty plea left no room for flexibility in punishment, and with both petty treason and a murder charge, only one sentence was available: death.

<sup>232</sup> Although not common, since all three men were French, the court offered them a jury of their peers consisting of six citizens and six of their countrymen; this jury was known as half alien, or 'half-tongued.'

<sup>233</sup> February 1688, trial of MARY AUBRY Dennis Fanet John Fanet John Desermo (t16880222-24), *Old Bailey Proceedings Online*. As many as fifteen or twenty trials were heard in a day. Juries would hear the trials in batches of up to six and then consider their verdicts. Although the witness testimony for this trial has not been preserved, the jury found it insufficient, primarily because it was based on what Mary had told them, not what they had witnessed themselves.

<sup>234</sup> February 1688 (s16880222-1). *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 8.0).

her confession truthful but hard to believe she acted alone and suspected John or someone else helped with the disposal, questioning how a woman could have managed the body alone. L'Estrange concluded that with Mary's guilty plea, she was left to suffer her lot alone, "but if she had stood her Tryal, so that the Evidence against her had been left to take its Course, it would not have gone much better with some of her Companions, than it did with the Miserable Creature her self."

L'Estrange's final comment highlights a few points. If Mary had gone to trial, and if there had been some basis to the allegations that Mary was having or planning a relationship with one of the Favet brothers, it would have opened them to further scrutiny. Also, L'Estrange was not alone in his suspicions that Mary could not have disposed of the body by herself; a trial avoided further investigation into her son John. Mary had been indicted for a jury trial with a True Bill sworn out against her, but the testimony was not examined because she pleaded guilty. As the King's council stated in court during the trial of the Favets and John, there was not enough evidence to convict them as accessories, so even though they faced a trial by jury, the jury took direction from council.<sup>235</sup> Mary's confession made the abuse the motive as a crime of passion and enabled her to protect her children and her friends from being convicted as accessories.

#### **4.7 Petty Treason, a Wife as Murderess, and Self Defence**

While it is impossible to know actual numbers, many more early modern men were tried for killing their wives than wives for killing their husbands. Nevertheless, matricide was more shocking and vilified precisely because women were cast as the weaker and meeker sex.<sup>236</sup> Following the

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<sup>235</sup> See Gray, *Crime, Policing and Punishment*, Chapter 11 for a detailed review of how the courts functioned.

<sup>236</sup> Between 1674 and 1700, thirteen men faced charges of murder for killing their wives. Three cases reported a history of abuse, four said their wives were scolds, whores, or hard to live with, five seem to have pre-planned the murder, and only one stated he did not intend to kill her. Two were found not guilty, and the rest were sentenced to death. During the same period, five women, including Mary, were charged with petty treason (none were charged with murder or manslaughter). Two, including Mary, were found guilty and burned, two sentenced to manslaughter, and one acquitted. See also Sharpe, "Domestic Homicide in Early Modern England"; J. S. Cockburn, "The Nature and Incidence of Crime in England 1559-1625," in *Crime in England 1550-1800*, ed. J. S. Cockburn (Princeton University Press, 1977); K. J. Kesselring, "No Greater Provocation? Adultery and the Mitigation of Murder in English Law," *Law and History Review* 34, no. 1 (February 2016):

analogy of the household as the little commonwealth, murdering the patriarch was akin to a citizen killing his king; this represented treachery against the very fabric of a social order based on the duty of obligation, subjection to the hierarchy, and allegiance to the patriarch. As Matthew Hale wrote in his *History of the Pleas of the Crown*, “If the husband kill the wife it is murder, but petit treason, because there is subjection due from the wife to the husband, but not *e converso*.”<sup>237</sup>

The charge of petty treason rested on premeditation, not motivation. Sudden provocation, accident or self-defence could reduce the offence to murder or manslaughter and even result in an acquittal. In 1695, Parthenia Owen was acquitted after being charged with petty treason when her husband died from an infection after she bit him during a fight.<sup>238</sup> In 1698, Elizabeth Flower was charged with petty treason after her husband threw a poker at her, and when she threw it back at him, it hit him in the head, causing injury from which he died six days later. Elizabeth's sentence was reduced to manslaughter, as there was no premeditated malice, and they were otherwise known to be a loving couple.<sup>239</sup> Sometimes provocation was not a defence. Joyce Hodgkis was fighting with her husband when he threatened her with a knife, which she took and fatally stabbed him in the leg, after which he died immediately. She admitted to the fight and said he had threatened her but claimed he had stabbed himself. The jury, as “the fact was very plain,” did not believe her. She was found guilty and sentenced to death by burning.<sup>240</sup>

Although comparing these cases without knowing all the details is complex, the violence exerted and the wife’s demeanour and remorsefulness afterward may have influenced sentencing.

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199–225; Andrea McKenzie, “‘His Barbarous Usages,’ Her ‘Evil Tongue’: Character and Class in Trials for Spouse Murder at the Old Bailey, 1674–1790,” *American Journal of Legal History* 57, no. 3 (1 September 2017): 354–84.

<sup>237</sup> Matthew Hale, *The History of the Pleas of the Crown*, 1:381. Written in the 1680s, Hale is repeating what had already been established in law since 1352. 25 Edw. 3, St. 5, c. 2.

<sup>238</sup> May 1695, trial of Parthenia Owen (t16950508-12), *Old Bailey Proceedings Online*. Mr. Owen lingered for four months, during which time his wife nursed him “very Kindly.”

<sup>239</sup> May 1698, trial of Elizabeth Flower (t16980504-11), *Old Bailey Proceedings Online*. Her sentence was to be Burnt in the Hand.

<sup>240</sup> September 1714, trial of Joyce Hodgkis, (t17140908-35), *Old Bailey Proceedings Online*.

Shapiro calls this the “practice of ‘pious perjury’” where jurors placed greater importance on “truthful verdicts,” including appropriate punishment and disregarding testimony if a guilty verdict seemed unreasonable.<sup>241</sup> Rebecca Livingstone reviewed forty-one petty treason cases and asserted that over the seventeenth century, where women who killed their husbands had once primarily been cast as secretive and passive but highly sexualized women, the focus shifted to women who were engaged in “an open contest for control of the household.”<sup>242</sup> As the assumption that women only killed their husbands for sexual reasons that were ultimately motivated by another man recast these actions as a representation of the culmination of the wife’s prior transgressions against patriarchal authority, the perception of guilt could rest on how a woman had conducted herself throughout the marriage. If a wife could demonstrate herself to be an otherwise loving and obedient wife, she might be forgiven for her transgression. Women like Mary, who planned or thought of killing or were not model wives, faced more scrutiny despite their abuse.

Had Mary gone to trial, the question is not whether she would have been found guilty but whether the charge of petty treason could have been reduced to allow her to keep her life. Frances Dolan and Matthew Lockwood demonstrate that over the seventeenth century, notions of civil disobedience and a citizen’s right to contravene the monarch if he broke the law coincided with changing ideas surrounding domestic authority and the softening of prosecution against petty treason cases.<sup>243</sup> By this reasoning, if Mary could prove Denis had violated his duty as a husband and that her actions resulted as a defence from his actions, then the judge or jury might interpret events to find Mary guilty of a lesser offence. After the Restoration, “wife beaters” were increasingly demonized,

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<sup>241</sup> Shapiro, “Oaths, Credibility and the Legal Process”: 39. This does not imply a disregard for the law, as English judges and jurists were particularly conscientious in upholding the law.

<sup>242</sup> Livingstone, *Unsettled Households*. See also Wiener, “Alice Arden to Bill Sikes”:184-212.

<sup>243</sup> Frances E. Dolan, *Dangerous Familiars: Representations of Domestic Crime In England, 1550-1700*, (Ithaca: Cornell University Press, 1994), 89; Matthew Lockwood, “From Treason to Homicide: Changing Conceptions of the Law of Petty Treason in Early Modern England,” *The Journal of Legal History* 34, no. 1 (2013), 45. See Walker, *Crime, Gender and Social Order*; Sharpe, “Domestic Homicide.”

and men were held liable for their actions; however, as Garthine Walker has demonstrated, gender codes also increasingly emphasized feminine passivity and meekness, making it more difficult to frame any female violence as legitimate.<sup>244</sup> K.J. Kesselring's work also shows how men were perceived as hot-blooded and capable of passionate manslaughter, whereas women were viewed as cold-blooded, making them seem more susceptible to committing pre-planned, heinous crimes. Shifting attitudes meant increased suspicions regarding women's actions resulted in higher indictment rates when women committed murder with a higher probability of being sentenced to death.<sup>245</sup>

Even if Mary had been tried for murder instead of petty treason, her actions did not support a plea for self-defence. Homicide resulting from a fair fight was perceived as "male force meeting roughly equal force," whereas using a weapon against an unarmed opponent who merely used bodily force and attacking from behind were indications of "excessive retaliation" that failed to meet the social and legal threshold for self-defence.<sup>246</sup> Mary strangled Denis with a garter from behind while he was unconscious, and she admitted to thinking about it before taking action. Even by today's standards, these factors would make it difficult to argue self-defence, even considering the abuse and violence.<sup>247</sup> Finally, a trial would consider the shocking disposal of the body. Testimony describes Mary's panic and desperation and her "disordered" mind, but she still dismembered the body and distributed the parts around the city at waste disposal sites. Even if Denis' abuse had been accepted as a motive for her violence, Mary's subsequent actions removed all possibility of a plea of self-defence.

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<sup>244</sup> Walker, *Crime, Gender and Social Order*, 49-50, 73-4, 96.

<sup>245</sup> K. J. Kesselring, "Bodies of Evidence: Sex and Murder (or Gender and Homicide) in Early Modern England, c.1500–1680," *Gender & History* 27, no. 2 (August 2015), 246-256. Kesselring ties this to Galen's notions of temperature and his medical understanding of differences between men and women.

<sup>246</sup> Walker, *Crime, Gender and Social Order*, 141.

<sup>247</sup> As Dolan states in *Family and Violence* (72-3), even today, the use of the modern battered wife syndrome as a defence in murder trials requires a "worthy victim" to invite sympathy and acquittal to prove their helplessness to legitimize their status as victim and not a premeditated murderer.

#### 4.8 Popular Culture - A Restoration of Order

Mary's sensational case fueled quite a few pamphlets. *A Warning-Piece to All Married Men and Women* took Mary's confession almost word for word and published it as a poem, ending with the warning, "For God will not let Murtherers go clear. She is now Burn'd and beggs of all Mankind and Women too, Wisdom by her to find."<sup>248</sup> In the poem *Epilogue to the French Midwives Tragedy*, the author Elkana Settle waxes on about evil before stating that had Mary been a young girl trapped in a dungeon by some old jealous miser, starved and enslaved, she might be forgiven running to a lover or even poisoning or stabbing her jailer. However, Mary ambushed a sleeping husband with a vengeance and mangled the body like a Sorceress, and therefore deserved "the wanton flames."<sup>249</sup> *A Cabinet of Grief* takes L'Estrange's account and writes in the first person, as though Mary is narrating, with her "desire to leave the world this following treatise." Although the pamphlet explains how Mary suffered from Denis' abuses, it warns, "from my unhappy destiny let every man and wife be warned let not sin and Satan provoke your passions, but learn to live in love and unity one with another, for where it is otherwise, there is little hope of a happy life, or a blessing from God, as I by sad experience know full well." The piece does illustrate that Denis had repeatedly stolen everything she had earned "by my industrious care," only to return with promises to amend his life once he had spent it all. Denis was "running on in this race of wickedness" but Mary's thoughts of ridding herself of Denis were the "times the Devil was busie with me" and giving way "to the temptation, the which has proved the ruine of us both: my unhappy Husband has fall'n by my hand of cruelty, and now I for this bloody fact do wait for my just punishment; which is, to end my days in flames, in view of

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<sup>248</sup> *A Warning-Piece to all Married Men and Women being the Full Confession of Mary Hobry, the French Midwife, who Murdered her Husband*. [Pamphlet]. At: Place: Bodleian Library, University of Oxford. Ashm.g.15/5 (134).

<sup>249</sup> Settle, Elkana, 1648-1724. *Epilogue to the French Midwife's Tragedy Who was Burnt in Leicester-Fields, March 2, 1687/8, for the Barbarous Murder of Her Husband Denis Hobry* / this may be Printed, R.P. London: 1688.



thousands that will be there to see my end.”<sup>250</sup>

Mary’s plight might have provoked sympathy had she not so maliciously killed Denis and disposed of the body. Sharpe contends the primary function of these publications was to entice, entertain, and make money, but they also reflected social values and reinforced the ideal ordering of the family.<sup>251</sup> Morally, Mary had transgressed far beyond the norm and served as a warning to both men and women about what might happen if they strayed from the proper ordering. The perceived frequency with which violent wives killed their husbands far outweighed the reality, however Amussen asserts that even a few transgressions were too great a threat to social order.<sup>252</sup>

*A Cabinet of Grief* concludes with a poem and moral message recounting her misdeeds:

Though he to Wickedness was bent,  
And show’d himself so cross and grim,  
I own this was no Argument  
That I, alas should Murder him.

But Sin and Satan so took place,  
By living is from time to time,  
For want of Gods preventing grace,  
I did commit this horrid Crime.

When Man and Wife lives at discord,  
they may expect both fear and dread,  
For there’s no Blessing from the Lord,  
Where such a Wicked life is led.<sup>253</sup>

Mary represented the most significant threat as a disorderly woman and murdering wife; however, her death restored order and warned married men and women to behave.

## 4.9 Death

Once Mary was sentenced, she was taken to the County Gaol of Newgate until her execution.

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<sup>250</sup> *A Cabinet of Grief: Or, The French Midwife’s Miserable Moan for the Barbarous Murther Committed upon the Body of her Husband*, 1688, Bodleian Library, University of Oxford.

<sup>251</sup> Sharpe, “Domestic Homicide,” 40.

<sup>252</sup> Amussen, “Being stirred to much unquietness,” 76.

<sup>253</sup> *A Cabinet of Grief*.

The arraignment report published in *An Account of the Manner, Behaviour and Execution of Mary Aubry* states Mary was “much afflicted” and melancholy, avoiding the multitudes of people who came to see her out of curiosity, but that she was “sensible” both before and after the warrant was signed for her execution. At ten o’clock on the morning of March 2<sup>nd</sup>, sheriff’s officers took her from Newgate to Leicester Fields on a sledge, where a stake had been erected on the north side of the square. Arriving at about 10:30, Mary appeared penitent and sorrowful, raising her eyes and hands to heaven and praying to herself. Half an hour after her arrival, as she was being taken out of the sledge, she spoke with someone who may have been one of her children, although the account does not specify their identity. It was reported, however, that she was seen expressing sorrow in her carriage and gestures in such a way that her penitence was evident to spectators. Mary was led to the stake, set upon a stool, and had a noose fastened to the stake put over her neck. “The stool being taken away, she hung there for near the space of a quarter of an hour, in which time, the Bavins and Faggots were Piled about her, and at the Expiration thereof, Fire set to them, which consumed her in about half an hour more to Ashes, &c.”<sup>254</sup> To avoid an element of torture, it was common that the condemned be “deprived of sensation by strangling” before the fires were lit.<sup>255</sup> Although fire was the ultimate punishment designed to prevent her body from being buried in consecrated ground, it is gruesomely ironic that Mary suffered the same fate of strangulation with which she dispatched Denis.

#### **4.10 Conclusion**

Mary’s confession depicted a wife who lived in constant fear of violence, underscored by the

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<sup>254</sup> *An Account of the Manner, Behaviour and Execution of Mary Aubry, Who was Burnt to Ashes, in Leicester Fields, on Friday the 2d Day of March, 1687 for the Barbarous and Inhumane Murther, Committed on the Body of Dennis Aubry, Her Husband, in the Parish of St. Martins in the Fields, on the 27th of January Last. and the Same Day, Daniel Sconley was Executed at Tyburn.* London: 1687.

<sup>255</sup> See Ruth Campbell, “Sentence of Death by Burning for Women.” *Journal of Legal History* 5, no. 1 (1984): 44–59; Simon Devereaux, “The Abolition of the Burning of Women in England Reconsidered,” *Crime, History & Societies* 9, no. 2 (2005): 73-98.

knowledge that even when Denis deserted her, he would one day show up again on her doorstep. Her efforts to improve her marriage failed, and in her torment, she took the most drastic action to separate from him permanently. However, the state of her marriage and her motives were eclipsed by her subsequent shocking actions. J.A. Sharpe and France Dolan have discussed the descriptive nature of L'Estrange's account and remark that the detail exceeds the norm even of that period.<sup>256</sup> While this did not normalize the violence she experienced, her audacity to murder Denis, dispose of the body, and then lie about it, occupied everyone's focus and seemed to have marginalized the abuse.

Mary presented herself as the victim of enduring violence that was too much to bear; however, unlike Anne Boteler, she had no witnesses to testify on her behalf or to mitigate the abuse. Mary faced further isolation from support as a foreign citizen and Catholic in a Protestant London fraught with concerns over stability threatened by the potential imposition of Catholicism. She also represented a threat to the community and the greater social order with her unruly behaviour and most egregious acts. Friends reported they cautioned Mary to watch her behaviour, but no one seems to have believed intervention was necessary. When it was believed the community knew what was happening in neighbouring households, no one seemed to have intervened or thought afterwards that intervention was necessary. Whether the abuse never happened as Mary described, was not observed, or was simply no longer the focus after the murder, is impossible to know. Mary's case fascinated and appalled the city, and ultimately, her desperation as a motive to murder was eclipsed by her actions in murdering her husband and disposing of the body. Whether Mary had suffered horribly or had been a 'good wife' and loving partner, her reputation and honour as both a woman and a wife mattered more than motive. The barbarity of her choices after the fact cast Mary as evil and subversive, unworthy of mercy or pity by the public and the courts, consigning Mary to no other possible sentence but death.

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<sup>256</sup> See Dolan, *Marriage and Violence*; Sharpe, "Domestic Homicide."

## Chapter 5: Desertion and the Destitute Wife

### 5.1 Economic Concerns

#### 5.1.1 “In greate necessitie”: The Case of Mary Gregory

Mary and Edward married sometime around 1675 and lived in the parish of St. Paul Shadwell, just east of London on the River Thames. Edward worked as a lighterman, poling the barges that carried goods on the Thames. The couple had eight children, but only two, a son and a daughter lived to adulthood. Throughout their marriage, Edward beat and misused Mary to the point where she became disabled and physically unable to work. By the beginning of 1698, Edward had taken a mistress, Isabell Barbour, who had no means of income and may have been homeless or a prostitute whose husband was away at sea. Edward moved Isabell into the house, turned Mary out onto the streets, and refused to give her any of her clothes or money.

It is unclear how Mary managed to live day to day for the next fifteen months as she was unable to work; however, her plight escalated in March 1699, when the courts sent Edward to Newgate Prison for “Swearing an indictment against his daughter” and sent Isabell to the Bridewell. They blamed Mary for their troubles when they were released shortly after. They threatened her life and spread rumours that she was a witch and even endeavoured to raise a committee of people to stone her, claiming she had bewitched many people to death.

In May 1699, being “very poor and now exposed to great necessity and hardship,” Mary petitioned the Justices of the Peace at the Middlesex Quarter Sessions in London to consider her situation, that she “may be relieved as yor Worships shall think meete.” The court granted Mary a warrant which she served to Edward in the presence of a Constable. Edward responded by striking her with such force that she lay in the street, “deprived of her senses” for some time. Mary subsequently reported to the court on July 10<sup>th</sup> that the assault kept her in bed for a week afterward, “suffering greatly,” and when their son tried to intervene, Edward seized the boy’s coat, which was his means to

his livelihood. Mary stipulated she had no means to pay for a lawyer to plead her case for her and begged the court to take pity on her. She asked to be relieved from “such hard usage [by] her said husband” and awarded maintenance in any manner the court should see fit. Following this appeal from Mary, Edward gave sureties<sup>257</sup> that he would appear before the court, but he continued to refuse Mary's maintenance.

By October, Edward still refused to support Mary, and the Justices ordered the Churchwardens and Overseers of the Poor of St Paul Shadwell Parish to step in and pay four shillings a week towards her relief and maintenance until further orders from the court. At the December 1699 Middlesex Sessions, the Churchwardens of St Paul Shadwell Parish contested their ongoing support to Mary. They proclaimed they had abided by the court order to pay four shillings per week but found the amount excessive, and as the parish experienced an increase in responsibilities for the poor, the burden was significant. The churchwardens had found a nurse who would keep Mary and only charge the Parish two shillings a week, but Mary “absolutely refused” and insisted on the total allowance ordered by the court. Meanwhile, Edward found himself back at Newgate and expected to be released at the December Sessions, when Edward theoretically should have been able to pay for Mary’s maintenance himself. The Churchwardens argued Edward should be held in prison until he gave securities that he would assume responsibility for his wife. Once more, Mary told the court she feared her husband’s barbarous abuse and that his “inhumane carriage towards her by stomping upon and beating” had broken something within her and “in great dread and feare of her life by his ill usage towards her,” she was convinced that without the court’s support she would perish. She reported that, but for the kindness of neighbours, she would have perished from Edward’s continued refusal to

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<sup>257</sup> Defendants could give sureties or securities as financial bonds promising to behave or make a court appearance. Similar to modern bail, they could also make this bond in the form of a friend or upstanding citizen promising to pay a sum if the defendant broke his oath.

support her, and prayed the court would order her husband reasonable maintenance.

The Justices ordered Edward Gregory to appear before the court the following Thursday to answer the charges brought by the Churchwardens and demanded Edward show cause why he continued to refuse Mary maintenance, making her the parish's responsibility. Mary and all other persons concerned with the case were to attend court to "hear and abide the order and direction of this court." The court also ordered the parish to continue to pay Mary two shillings a week until further order and to take their security of Edward.<sup>258</sup> No document remains on whether the court ordered Edward to pay maintenance or if he complied. The case may have persisted, and the documents have been lost, they may have come to some out-of-court agreement, or Mary may have simply given up. The parish may have continued to pay her maintenance, or something else entirely happened to resolve the matter out of court.<sup>259</sup>

After the breakdown of a marriage, the absence of divorce options forced individuals without the means for self-sufficiency or familial support to create new strategies to ensure their survival. Abandoned wives faced physical and financial hardship, making the possibility of destitution very real, and the state and society approached these issues from a financial and moral perspective.<sup>260</sup> Deeply rooted medieval ideas of the common weal and parish responsibility for their members grew during the sixteenth and seventeenth centuries and attempts to deal with increasing social anxieties over poverty, population, and declining morals prompted the Old Poor Law (1598) legislation and subsequently reshaped how parishes approached cases of abandoned women. Rationalizing that these were financial concerns, common law magistrates often acted as informal mediators, routinely ruled

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<sup>258</sup> MJ/SP/1699/05/004, MJ/SP/1699/07/007, MJ/SP/1699/12/005, MJ/SP/1699/12006, MJ/SP/1699/12/059, SM/PS/1699/05/07, SM/PS/1699/07/07, SM/PS/1699/12/11, SM/PS/1699/12/12, SM/PS/1699/12/13

<sup>259</sup> Robert B. Shoemaker, "Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice," *Archives (London)* 20, no. 90 (1993): 145–57. Shoemaker has demonstrated that most conviction certificates are missing from the Middlesex Records, so even if Edward had been convicted, no record is likely to remain.

<sup>260</sup> Erickson, *Women and Property in Early Modern England*. Erickson suggests that up to ten percent of marriages in early modern England ended in separation, usually due to limited employment and poverty.

on cases of marital breakdown and desertion leading to destitution and passed judgment on maintenance and Poor Relief payments. Moral reformers also sought to influence familial and sexual relationships and minimize immoral behaviour by punishing individuals who tried to take up new relationships in the absence of clear divorce options. This chapter reviews the cases of Mary Gregory and three other women who faced similar fates of destitution, who petitioned the quarter session courts without any means to pay for a lawyer or their support after their husbands deserted them, often for other women. Their cases offer the opportunity to examine how women could petition the lower common law courts, not for an official separation but maintenance alone, and the alternatives available to them financially when their husbands refused to support them. It also looks at how the law and the parish perceived them and how evidence of cruelty was still required to secure maintenance, even as the court did not mitigate the abuse. These women went to court to save themselves, not from the abuse, but from destitution or even death.

### **5.1.2 The Common Law and Justices of the Peace**

Common law dictated that a feme covert could expect her husband to sustain her during the marriage, and if he deserted his wife, she could sue her husband in ecclesiastical court for a legal separation. She could also ask a male family member or friend to represent her in the chancery court for maintenance. Without a firm structure around the application of the law, precedent became increasingly important and noted jurists published annual reports and legal treatises detailing case rulings.<sup>261</sup> Three treatises published over the century specifically addressed women in the law. *The Lawes Resolutions on Womens Rights* (1632) was a practical handbook that detailed the law, legal precedent, and annotated case studies and included sample forms for settlements and judgements concerning women in marriage and widowhood.<sup>262</sup> *Baron and Feme* (1719) and *A Treatise of Feme*

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<sup>261</sup> Greenberg, *Legal Treatise*, vol.1, xiv.

<sup>262</sup> Stretton, *Women Waging Law*, 48. Stretton argues that “the fact that its author and publisher felt that the laws affecting

*Coverts* (1732) essentially replicated the earlier text but also included sample settlement forms for marriage and widows' trusts, a woman's will, a maintenance agreement, and an agreement that a wife considered divorced would not seek maintenance.<sup>263</sup>

Guides were explicitly written for Justices of the Peace who were not formally educated in the law but were citizens elected to the office for a one-year voluntary term.<sup>264</sup> London city justices sat on the bench of judges in the quarter sessions, formed grand juries in the assizes courts, and served as local justices in their parish. Tasked primarily with maintaining local order and community relations, they ruled on day-to-day cases regarding commerce, poor law, petty violence, and interpersonal disputes. William Lambard's *Eirenarcha* (1619) expounded the justice's need to uphold the peace, learn the law, and dispense lawful judgement and punishment with the following goals in mind: to amend the offender; to make an example that others might not offend; to maintain the authority and credit of the party offended; and finally, to incarcerate wicked men so that the good can live in better security.<sup>265</sup> Although corporal punishment was a possibility, most judgements were limited to fines or demands of sureties of the peace - an oath to solemnly swear to hold the peace against a bond of goods or money or be arrested.<sup>266</sup> Regarding spousal violence, Lambarde advised, "The wife, if she be threatened to be killed, or to be outrageously chastised, by her husband, may with good reason demand the Peace against him. And I do not doubt but a Justice may in such a case command it upon his own discretion."<sup>267</sup> By 1666, Michael Dalton's *The Countrey Justice* reflected the increasing

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women warranted an entire volume remains significant," and that by the standards of the day, this author was a moderate.

<sup>263</sup> *Treatise of Feme Coverts*, 201-264.

<sup>264</sup> Candidates were required to be landowners of "good character, common sense, and an ability to listen and be impartial." Justices in the countryside were from the patrician class and worked few hours; in the city, the elite's preoccupation with their own business and increased demands on the courts meant the pool broadened to include lesser gentry, professionals, and even the clergy, as candidates for justices. See Gray, *Crime, Policing and Punishment*.

<sup>265</sup> William Lambarde, 1536-1601. *Eirenarcha: or of the office of the iustices of peace in two bookes: gathered. 1579.* (London: Ra: Newbery, and H. Bynneman, by the ass. of Ri. Tot[tell] & Chr. Bar[ker], 1581), 67. Twelve editions of the *Eirenarcha* were published between 1581 and 1619.

<sup>266</sup> Lambarde, *Eirenarcha*, 68, 83, 84-5.

<sup>267</sup> Lambarde, 87-88.



concerns regarding the poor, vagrancy, crime, and regulation of moral behaviour; however, the laws about wives remained largely the same. A wife could ask the justice to demand a surety of peace against their husband if “he threaten to kill her, or outrageously to beat her, or if the wife hath any notorious cause to fear that he will do so,” and a husband could demand a surety against his wife if he found her to be a “shrew.”<sup>268</sup> In 1704, William Nelson's *The Office and Authority of a Justice of the Peace* refined and expanded on many interpretations of laws concerning women; however, guidelines regarding spousal abuse remained the same.<sup>269</sup>

By the end of the seventeenth century, the Middlesex Quarter Sessions operated six days a week and employed over one hundred justices. Many justices conducted business in their own homes, taverns or other meeting spaces, including administrative tasks and pre-trial examinations to question witnesses, take depositions, issue warrants, and commit defendants to jail to await trial. This practice began quite early in Middlesex, perhaps because of the sheer volume of cases, and even went so far as to deliver immediate summary justice without a jury for minor cases such as common assault, drunkenness, and apprenticeship disputes. Londoners' reliance on the legal system contributed to its effectiveness, as metropolitan law clerks and justices worked efficiently to ensure penalties were carried out.<sup>270</sup> Although crimes had to be prosecuted through the court, justices spent much of their time mediating between individual combatants involved in some kind of assault, domestic violence, slander, or verbal threats. If mediation failed, justices could bind the defendant by recognizance to hold the peace and behave properly or face a fine, a short stay in prison, or arbitration to secure a settlement between parties, avoiding the expense of a full trial, which also kept the courts free for

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<sup>268</sup> Michael Dalton, *The Country Justice; containing the practice of the Justices of the Peace as well in as out of the Sessions*, (London, 1666), 198. Fourteen editions were issued between 1618 and 1742.

<sup>269</sup> William Nelson, *The Office And Authority of a Justice of Peace* (London: Printed by the assigns of R. and E. Atkins, esqrs., for C. Harper, 1704), 82, 217, 285.

<sup>270</sup> Hurl-Eamon, *Gender and Petty Violence*, 8. Most justices took their work seriously and paid close attention to the law. Norma Landau has shown that illicit activity was dealt with swiftly, and unscrupulous justices were promptly removed from office. Norma Landau, *Law, Crime and English Society, 1660–1830*, (Cambridge University Press, 2002), 46-57.

offences requiring a jury trial.<sup>271</sup> Grey estimates that about one-third of justice's cases were comprised of these types of civil disputes between individuals, and in his examination of justices' diaries and notebooks, Steve King concluded that “the magistracy had a flexible approach to the law and exercised considerable discretion in its application.”<sup>272</sup> With their legal authority and social superiority, justices were central to influencing the shape of prosecution and could apply sentencing measures very differently. Robert Shoemaker compared individual justice’s sentencing habits and determined that some favoured and encouraged mediation and informal settlements between individuals; some favoured houses of correction for immediate punishment; and some concentrated on social control and primarily heard ‘victimless crimes’ of vice, drunkenness and vagrancy.<sup>273</sup> While justices were regulated and adhered mainly to the law, individual concepts of the purpose of punishment could vary people's experience with the system.<sup>274</sup>

### **5.1.3 “Suffer to wander the Streets”: The Case of Sarah Graves**

On January 13th, 1690, Sarah Graves petitioned the court to locate her husband Anthony, who had abandoned her, and to secure maintenance. Justices Theo Ettson and John Ward issued a city-wide bench warrant for Anthony Graves and his father, John, to appear before the court and explain why they “suffer her to wander the streets.” The warrant stipulated that if either Sarah's husband or father-in-law were found while the court was still in session, they were to be brought before the court immediately; otherwise, they were to find sureties for their appearance at the next session. Although unable to locate Anthony, Constables found John Graves that day. He confirmed to the justices that Anthony had abandoned Sarah but contested his responsibility towards her. Justices Buck and James

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<sup>271</sup> Shoemaker, *Prosecution and Punishment*, 24-6; “Administrative History, Middlesex Sessions of the Peace: Summary Jurisdiction,” *London Metropolitan Archives*.

<sup>272</sup> Gray, *Crime, Policing and Punishment*, 204-9.

<sup>273</sup> Shoemaker, *Prosecution and Punishment*, 225-33; Shoemaker compared Middlesex judgements in the 1660s and 1720s.

<sup>274</sup> Shoemaker, *Policing and Punishment*, 233.

questioned Sarah, John Graves, and his wife to determine the differences between the young couple and his parents and concluded that in Anthony's absence, his father was responsible for Sarah's welfare and ordered John Graves to pay Sarah two shillings weekly until he produced Anthony.<sup>275</sup> Two weeks later, Sarah reported to the court that her father-in-law had agreed to the order but refused to pay. The court issued a warrant for John to answer why he had defied the order.<sup>276</sup>

Unfortunately, like Mary's case, the conclusion to Sarah's case is missing from the records, but what we know illustrates how efficiently the justices questioned plaintiffs and defendants, made decisions and worked with constables to bring people before the justice. The initial justices stipulated the defendants could be brought before any magistrate sitting that day, to be dealt with "accordingly to Justice," demonstrating the expectation that the law would be upheld equally among justices.

#### **5.1.4 The Poor Petitioner: Going to Court**

It cannot be overlooked that Mary, Sarah, and women like them petitioned the court in their own names. Coverture barred women from initiating a suit alone, but in practice, magistrates were more interested in finding equitable solutions than adhering to this aspect of the law. In cases of desertion, a wife could petition the court by demonstrating physical abuse and financial neglect to ask "magistrates to legally force their husbands to uphold their patriarchal responsibility to provide for their families."<sup>277</sup> In consideration of these cases, the magistrate's goal was twofold: to uphold the patriarchal structure of reciprocity that demanded a wife owed obedience in exchange for protection and provision and to compel men to uphold their financial responsibilities so that no member of his family would be a burden on taxpayers by using poor relief.<sup>278</sup> This kind of judgement was not seen

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<sup>275</sup> *The Countrey Justice* instructs that "the father also may be compelled to allow maintenance to his sons wife (the husband being absented)" and cites precedent to such, 114.

<sup>276</sup> MJ/SP/1690/01/018, MJ/SP/1690/02/005, SM/PS/1690/01/33, SM/PS/1690/01/34, SM/PS/1690/02/10, BHO "Sessions Books: 1690," p.1.

<sup>277</sup> Lindsay R. Moore, *Women Before the Court: Law and Patriarchy in the Anglo-American World, 1600-1800* (Manchester University Press, 2019), 82-3.

<sup>278</sup> Moore, *Women Before the Court*, 82-86.

as a deviation from existing law and was by no means a new option for deserted spouses. Sara Butler's work on medieval husband desertion demonstrates that from the fourteenth century, spouses could use the ecclesiastical, manorial, and royal common law courts for assistance in securing maintenance from delinquent husbands.<sup>279</sup> By the seventeenth century, the manorial courts' customary laws had given way to the common courts, while economic restraints in parish poor relief coffers motivated many justices to act swiftly in the quarter sessions.

Although the present consideration is focused on the final legal strategies women used to survive permanent separation from abusive husbands, rarely was this the first step women took. Just as Anne Boteler left Oliver and returned to him quite a few times and negotiated promises from him to stop drinking and keep his temper, and Mary Hobry made Denis promise to be a better husband, even making him swear it to the priest, the courts offered a similar option as well. Known as recognizances, magistrates could order defendants to put up a surety to behave or correct their errant behaviour for non-criminal acts such as breaking the peace, defamation, offences of vice, and being disorderly, or else face fines or even jail time after a plaintiff made a complaint.<sup>280</sup> Jennine Hurl-Eamon argues that women could be very successful using the quarter session court recognizances to bind misbehaved or wayward husbands to these sureties of the peace.<sup>281</sup> Margaret Hunt questions how effective such efforts were, pointing out that "men seldom bothered to deny they beat their wives" and frequently shifted the focus to a wife's disobedience as justification for the violence.<sup>282</sup> Although recognizances were slightly different from the petitions Mary and women like her used to ask for maintenance, their use to force husbands to behave better could be similar.

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<sup>279</sup> Sara M. Butler, "Runaway wives: husband desertion in medieval England," *Journal of Social History* 40, no. 2 (2006), 338-9. Butler demonstrates that the financial security of even a bad marriage could be preferable, while others were equally determined to escape a bad marriage.

<sup>280</sup> See Robert Shoemaker, *Prosecution and Punishment*, Chapter 5.

<sup>281</sup> Hurl-Eamon, "Domestic violence prosecuted," 435-54.

<sup>282</sup> Hurl-Eamon, "Domestic violence prosecuted"; Hunt, "Wife Beating," 18.

In Mary Gregory's case, Edward actively refused to support Mary and seemed engaged in a campaign to discredit her in the eyes of the community, calling her a witch. He also continued to assault Mary during their separation physically. While a recognizance might work to correct misbehaviour, Mary did not want Edward to behave in their marriage. She wanted him to live up to his financial responsibilities after he deserted her, and she sought the court's help to accomplish that. Binding Edward to keep the peace would not have provided Mary with food and shelter, and his use of extreme physical violence makes it likely that these steps would have been ineffective. Ultimately, the courts offered options for relief that still condoned a husband's violent behaviour, which was a dangerous situation for women who faced extreme or excessive brutality.

#### **5.1.5 "His barbarous misuse": The Case of Mary Staples**

Mary Staples tried to bind her husband for peace, not once but twice. Although the initial instance is lost to time, in June 1690, Mary asked the Middlesex Sessions of the Peace to continue to bind her husband Joseph, a butcher in the Limehouse Hamlet of Stepney Parish, to keep the peace. Things either did not get better or did for a while and then deteriorated because, in 1696, she filed a petition against him for having been "inhumanly neglected and ill-treated." In July, Joseph asked the Middlesex Court to annul the indictment against him because his wife was "extremely volatile." The two may or may not have been living separately by this point, but in September, the court ordered Joseph to pay Mary an unspecified weekly pension and that "for the future, he do behave peaceably towards her." Joseph refused to pay, so the Churchwardens of Limehouse stepped in to cover Mary's expenses. By October, Joseph was committed to New Prison without bail for "contempt in refusing to obey an order to pay to the Churchwardens... [three shillings] weekly towards the maintenance of Mary, his wife, whom he has barbarously misused, and turned out of doors." In December, Mary petitioned the Middlesex Sessions directly. She stated it had been eight years since Joseph had turned her out of his house "without any just or reasonable cause," but they seem to have remained in each

other's lives, as he had "lately and several time before barbarously and inhumanly beat and misused" her, neglected her and refused her maintenance. She mentioned two court orders for Joseph to pay her three shillings weekly and to pay the arrears for failing to comply with the original order. Joseph agreed to the Middlesex judgement, then subsequently took his case to the Court of King's Bench at Westminster, which, as an appellate court, quashed the Middlesex Court order for insufficiency; however, Mary was neither present nor informed of the ruling.<sup>283</sup> She pleaded to the Middlesex court that she was often sick and could not work, and Joseph threatened her ruin, in addition to having spoken most disrespectfully of the court. Sensing that Joseph would never pay her maintenance, she asked the magistrates to order the Churchwardens of Limehouse to continue her weekly pension; the court agreed and ordered a weekly payment of three shillings until further orders from the court. Five months later, at the May 1697 sessions, the court ordered the Churchwardens to appear in court to show cause why they refused to pay Mary Staples' pension. Although the churchwardens' response is missing from the record, the parish was ordered to pay Mary arrears of two shillings a week and subsequently pay a weekly sum of one shilling, sixpence.<sup>284</sup>

Mary and Joseph's case illustrates three things. First, the altercations between Mary and Joseph had been ongoing for years, seemingly without resolving their ability to live together or apart. While only a single case, it highlights the argument that recognizances to bind husbands to be better could be insufficient to resolve abuse. Second, if Joseph had turned Mary out of doors years earlier, it is unclear how she supported herself until 1696. She may have found occasional work, as it seems unlikely Joseph contributed to her care, or only intermittently and then stopped, prompting Mary's

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<sup>283</sup> Quarrels over jurisdiction could complicate the judicial process and continue to impact historians' efforts to locate the narrative of cases. For an in-depth review, see Shoemaker, *Prosecution and Punishment*; Tim Stretton, *Marital Litigation in the Court of Requests 1542-1642* (London: Cambridge University Press, 2008).

<sup>284</sup> MJ/SP/1690/06/003, MJ/SP/1696/07/014, MJ/SP/1696/09/032, MJ/SP/1696/12/006, MJ/SP/1697/05/019, SM/PS/1696/12/10, SM/PS/1696/12/11, SM/PS/1697/05/11, BHO "Sessions Books: 1696," p. 146, 158; "Sessions Books: 1697," p. 35.

petition. Joseph also seemed indignant at continually being brought before the court and actively participated in his defence while also purportedly speaking ill of the courts. Mary also reported she suffered at Joseph's hands, as she was "barbarously misused" in an ongoing manner, indicating the two remained in proximity. Joseph's attempt to dismiss Mary's first suit as she was "volatile" hints at how husbands could turn suits against their wives, blaming women's actions or words for causing their husbands to misbehave. Although the first suit is not detailed, it is possible that her early attempts escalated the violence. A wife risked exacerbating tensions by bringing charges against her husband and was just as likely to be blamed for the abuse as to be found the innocent victim.<sup>285</sup>

It is impossible to accurately quantify the number of women who experienced violence in their marriages, as the number who went to court represents what is broadly accepted as a vast underreporting throughout history. My work in the Middlesex Quarter Sessions supports the theory that many women, particularly from the lower echelons of society, did not go to court to sort out their troubles. In a city approaching a million residents, between 1690 and 1715, the four cases reviewed here are the only petitions found in the Middlesex Sessions record dealing with husbands who turned their wives out, three of which deal with abuse. Magistrates and clergy mediated many interpersonal disputes informally, but family members, friends, and neighbours might also intervene. Although Hurl-Eamon and other historian's work in the Westminster Quarter Sessions and Chancery Court have better contextualized the violence women experienced and their strategies in court to mitigate it, more research incorporating parish records would provide a more nuanced and detailed examination.

### **5.1.6 Economic Concerns: The Old Poor Law**

In the 1697 case of Mary Staples, the court ordered the Churchwardens and Overseer of the Poor of Limehouse Parish to pay her maintenance and that failure to comply would be "att their

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<sup>285</sup> Bernard Capp, "Separate Domains? Women and Authority in Early Modern England," in *The Experience of Authority in Early Modern England*, eds. P. Griffiths, A. Fox, and S. Hindle (London: Macmillan, 1996), 133.

peril.”<sup>286</sup> When the court made a similar order to the St Paul’s Shadwell Parish in 1699 after Mary Gregory had established that her husband refused to support her, the Churchwardens contested the order, citing an increase in demand for care and financial responsibilities that exceeded their capacity. By the end of the seventeenth century, Elizabeth I’s *Acte for the Reliefe of the Poore* (1601), also known as the Old Poor Law, had been refined and implemented across the nation with a property tax to raise funds administered by Churchwardens and the Overseer. The money was used to find apprenticeships for orphans and house the infirm and elderly, but most frequently, giving a weekly pension or short-term relief as cash payments was easiest.<sup>287</sup> The system was overwhelmed with requests for aid, forcing administrators to seek alternative measures or to try to avoid paying at all.

The Old Poor Law had its roots in medieval ideals of charity for the poor, and parochial poor relief extended back to at least the fifteenth century. After Henry VIII dissolved monasteries in 1536, charity for the poor and infirm gradually moved from a traditional voluntary system to a state-enforced tax collected and administered at the parish level. Increasing government centralization supported Christian humanist beliefs that social welfare, administered by public authority, should reform medieval concepts of idleness and the perceived dirt, disease, and undisciplined nature of the poor.<sup>288</sup> The Black Death (1348-9) caused labour shortages and wage spikes and contributed to concerns regarding vagabonds, prompting several parliamentary Acts to force employment and curb begging. The 1388 Statute of Cambridge introduced restrictions on individual movement to keep each “Hundred” or county responsible for its own impotent poor and to keep people from wandering.<sup>289</sup> Subsequent legislation condemned and prosecuted vagrants and beggars, required Churchwardens to

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<sup>286</sup> LMSMPS500460011

<sup>287</sup> “Origins of the Old Poor Law,” *Workhouse.org.uk*. The Old Poor Law would remain in force with only minor refinements until the New Poor Law in 1834, see Paul Slack, *The English Poor Law, 1531-1782* (Cambridge University Press, 1995).

<sup>288</sup> Slack, *The English Poor Law*, 7-9.

<sup>289</sup> Often regarded as the first English poor law, a lack of enforcement limited its effect. “Origins of the Old Poor Law.”



collect alms for distribution, elected Overseers annually to erect cottages and provide or find work for the poor (which would become the basis for the workhouse), and punished the able-bodied who refused to work.<sup>290</sup> Justices acted in a supervisory role, hearing appeals against parish decisions.<sup>291</sup> Refinements to the Old Poor Law, including the Settlement Act (1662) and amendments in 1691 and 1697, attempted to confine the responsibilities of the parish only to its residents.<sup>292</sup>

Some historians argue that these laws responded to bad harvests, population growth, high inflation levels, illegitimacy, crime, and vagrancy. Paul Slack sees a more complex web of social and economic factors at play and contends that economic challenges, population pressures, public attitudes inspired by humanism, Protestantism or puritanism, and the political ambitions of the government and local elites who wished to control their inferiors — essentially who should assist the poor and in what way — prompted English Poor Laws.<sup>293</sup> K.D.M. Snell argues that poor law was always about the rights of the impotent or poor to claim poor relief, which had been in practice long before the statutes; people valued their social relationships and community belonging, and parishes tried to protect their ratepayers from excessive entitlement while also guarding against vagrancy and protecting their citizens.<sup>294</sup> However, Wrightson counters that elements of patronage took rank and gender into consideration, which “identified and isolated the poor as a group: stressing their otherness; markedly reinforcing the moral differentiation of the deserving and the undeserving.”<sup>295</sup>

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<sup>290</sup> “Origins of the Old Poor Law.”

<sup>291</sup> Slack, *The English Poor Law*, 9-11.

<sup>292</sup> The 1662 *Act for the better Relief of the Poor of this Kingdom* (13&14 Car. II c.12), also known as the *Settlement Act*, enforced residency requirements for entitlement to poor relief; the *Act of 1691* (3 William & Mary c.11), stipulated eligibility rested on gainful employment for a year, by being apprenticed, or marriage for a woman; the 1697 *Act For supplying some Defects in the Laws for the Relief of the Poor* (8&9 Will II c.30) issued settler certifications but rarely enforced the requirement that recipients wear badges identifying their state of relief. See K.D.M. Snell, “Pauper Settlement and the Right to Poor Relief in England and Wales,” *Continuity and Change* VIII, no. 3 (1991):377-8, 384-401.

<sup>293</sup> Slack, *The English Poor Law*, 3-6.

<sup>294</sup> Snell, “Pauper Settlement”:377-8, 398-401.

<sup>295</sup> Keith Wrightson, “The Politics of the Parish in Early Modern England,” in *The Experience of Authority in Early Modern England*, eds. P. Griffiths, A. Fox and S. Hindle (Basingstoke: Macmillan, 1996), 14. See S. Macfarlane, “Social Policy and the Poor in the Later Seventeenth Century,” in *London 1500-1700: The Making of the Metropolis*, eds. A. L. Beier and Roger Finlay (London: Longman, 1986).

By 1700, the poor laws were universal, and although attempts were made to standardize rates, the amount could largely depend on social status and perceived moral worth as much as need. Able-bodied men shortly out of work and respectable widows fallen on hard times would merit more than average; however, overseers held considerable social control and could make unilateral decisions.<sup>296</sup> Since the overseers were from the parish, it was assumed that the management of their neighbours would be personal. However, rising costs from new tax rates, increased expectations of entitlement, an aging population, and a demographic increase without commensurate employment increase meant that by 1700, between one and ten percent of the population was receiving benefits.<sup>297</sup> From the 1660s onward, efforts to cut costs redefined who was eligible and who was genuinely deserving.

Economically, this brings context to Mary Gregory and Mary Staples' accounts. In their petition to the court, the Churchwardens of St. Paul Shadwell found a way to save money through the nurse who would house Mary Gregory for only two shillings, but she refused and demanded the original four shillings ordered by the court. Similarly, in Mary Staples' case, the Churchwardens of Limehouse failed to pay, and the court awarded Mary arrears and ongoing maintenance. Even in Sarah Graves' case, where her father-in-law was ordered to pay her maintenance, the court and the parish were anxious to secure funding from other sources, alleviating the parish's responsibility.

## 5.2 Moral Concerns

### 5.2.1 "The pretend wife": The Case of Mary Passwater

By Statute, it is Felony for a Man or Woman... to marry a second Wife or Husband, the first being then living: But if either a Husband or Wife, shall be beyond the Seas, or be absent in England, the Space of Seven Years, and the one of them not know whether the other be living with that time, it is not Felony to marry again. I Jac. I c.II.

- Treatise of Feme Coverts<sup>298</sup>

Although Parliament granted the first divorce in 1670, remarriage once the Church had vacated

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<sup>296</sup> Slack, *The English Poor Law*, 17-19.

<sup>297</sup> Slack, *The English Poor Law*, 20-26.

<sup>298</sup> *Feme Coverts*, 47.

the first was expensive and almost exclusively used by titled gentry with lineages to preserve. Unofficial separation, whereby the two spouses simply moved on with their lives, was often the only option for poorer people. As the Church of England and Elizabethan parliamentarians remained steadfast on church doctrine, moral concerns over adultery and false second wives prompted the Bigamy Act (1604) and the short-lived Adultery Act (1649), which made sexual offences and remarrying while the first spouse knowingly still lived a felony.<sup>299</sup> Statutes also criminalized illegitimate children as the maintenance of bastard children increasingly fell to the parish.<sup>300</sup>

When Mary Passwater petitioned the court in 1706 for relief from the parish for maintenance for her and her children after her husband James deserted her and took up with another woman, the court seemed as interested in prosecuting James for having a “pretend wife,” Ann, as securing maintenance for Mary. James had at least one child by a first wife; her whereabouts were unknown, several children with Mary, and several more with Ann. Mary could prove her legal marriage to James with witness affidavits and that they had lived together for several years before he turned her and her children out and took up with Ann. James refused her maintenance, and Mary accused both James and Ann of being directly or indirectly responsible for continued assaults against her. She may have been employed as a housekeeper after James turned her out, but by July 1706, due to an “[indisposition] of body” that forced her to sell all her belongings, Mary begged the justices to consider her “sad and deplorable condition” and hold James accountable. The court ordered St. Paul Covent Garden Parish to provide Mary relief until James was secured for maintenance, but the Churchwardens refused. According to Mary, when she presented the order, she was “violently assaulted” by some persons she believed to be operating at the request of James. Fearing she was “in

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<sup>299</sup> Capp, “Bigamous Marriage in Early Modern England”: 539-40; Martin Ingram, “Reformation of manners in early modern England,” in *The Experience of Authority in Early Modern England*, eds. P. Griffiths, A. Fox and S. Hindle (Basingstoke: Macmillan, 1996), 50,66.

<sup>300</sup> Greenberg, *Legal Treatise*, vol 1. xxii-xxiii.

danger of her life,” she went to the Churchwardens in the parish of St Martins in the Fields, who supported her. The court ordered the Churchwardens of St. Paul Covent Garden to explain in court why they were not providing relief and also ordered James and Ann to appear to answer to charges of assault against Mary. Although the decision in Mary’s appeal is missing, by December 1707, James had been indicted for “Felony in Marrying a Second wife the first being alive.”<sup>301</sup>

Mary Passwater was turned out after suffering her husband’s abuse while a new woman took up residence; however, the ‘false wife’ participated in continued altercations between the legitimate wife and husband. Faramerz Dabhoiwala contends that the popularity of clandestine marriages and long-term adulterous relationships could result in struggles between the wife and mistress and that an unknowable number of cohabiting couples who were not legitimately married could do so for any number of years without being called to account unless the adulterous man’s deserted family “threatened to become a charge to the ratepayers.”<sup>302</sup> This seems to have been the case for Mary Passwater and her children. Unlike desertion cases where the husband simply disappeared, James and Mary continued to live locally to each other, and while James lived with Ann, Mary was supported in some way, either through employment or with help from James. Although it is impossible to know the details, it seems James was only held accountable for having this second wife when Mary was driven to court by destitution. Bernard Capp demonstrates that bigamy was a moral concern for society, but while some bigamists cohabited secretly or married without divulging a previous marriage, many believed remarriage was permitted after divorce *a mensa et thoro*, innocently or ignorantly of the law, even claiming ministers had advised them remarriage was permitted.<sup>303</sup>

Although Mary called Ann the “false wife” in her petition, it seems James Passwater tried to live with

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<sup>301</sup> MJ/SP/1706/07/003, MJ/SP/1706/08/012, MJ/SP/1707/12/007, SM/PS/1706/07/04, SM/PS/1706/08/19, SM/PS/1706/08/18, WJ/PS/1707/12/07

<sup>302</sup> Dabhoiwala, “The Pattern of Sexual Immorality,” 90-92.

<sup>303</sup> Capp, “Bigamous Marriage,” 543-5.

Ann as his lawful wife legitimately; whether they thought this was permitted is unknown. By characterizing Ann as a false wife and providing proof of her legal marriage to James, Mary used appropriate language and evidence demonstrating her knowledge of the laws and social attitudes around bigamy. This is not proof that this information was general knowledge, but the case illustrates how shifting rules around what made a marriage legitimate could confuse, and also the unstructured space afforded to poor people to conduct their private lives in ways that did not uphold the law, at least until they came to the authorities attention.

### **5.2.2 Moral Anxieties: The Society for the Reformation of Manners**

James Passwater and Ann were summoned to court to answer charges of assault against Mary Passwater, and James was indicted on the charge of bigamy. Conversely, returning to our first case and Edward Gregory's affair with Isabell, whose husband was at sea, seems to leave no doubt that the two were not trying to pass as husband and wife, secretly or openly. The community seemed to know that Isabell was married and that her husband was away while she and Edward pushed Mary out of the house and took up together. Further, Isabell was described as an “idle person,” which may imply she was either unemployed or working as a prostitute, and was sent to the Bridewell, a house of corrections for women that specifically targeted moral offences. Moral reform of the poor was always central to the Poor Laws, and Puritan ideals about honest work, godliness, and abstinence from vice proliferated as anxieties over poverty, vagrancy, immigration, and overpopulation plagued London.

Throughout James II's reign, fear of popery grew, and puritans began to meet for devotion and instruction and to discuss strategies to deal with the immorality they saw growing around them.<sup>304</sup>

After James fled to France in exile and William III and Mary II were crowned joint sovereigns in 1689, a new Bill of Rights stabilized the political climate in the country, although religious and moral

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<sup>304</sup> TC Curtis and WA Speck, “The societies for the reformation of manners: a case study in the theory and practice of moral reform,” *Literature and History* vol 3 (1976), 45.

concerns continued, particularly in the city. Anxious to restore equilibrium to the religious factions, William initiated the Toleration Act, which Parliament passed in 1689, guaranteeing dissenters the freedom to worship publicly as long as they pledged allegiance to the king.<sup>305</sup> In 1690, the First Society for the Reformation of Manners formed in London to battle idleness, leisure and vice, and to resolve the best way to enforce laws against houses of lewdness and debauchery, drunkenness, swearing, cursing, and profanation of the Lord's Day.<sup>306</sup> When Justices refused to implement rules against immorality, the Society persuaded Queen Mary to write a letter to the magistrates of Middlesex in July 1691, requiring them to enact these laws.<sup>307</sup>

First Society members believed a more zealous version of Christian thought that the community was being destroyed by rampant sin and an increasing descent into vice. This was not new or particularly controversial, but their belief that the non-enforcement of laws allowed this to happen and their efforts to implement change were much more controversial. They argued that community activity needed to be regulated, and their moral obligation was to “intervene actively in the lives of others,” not only informing and living by example but through enforcement.<sup>308</sup> The group instituted and governed workhouses and charity schools, closed theatres, and published annual Black Lists of keepers of bawdy houses and nightwalkers. Curtis and Speck's work on the Societies demonstrates that the group was relatively small and accused of being elitist; they struggled with enforcement and targeted the lower classes for lewd and disorderly behaviour, believing that the elite was not necessarily more respectable but “could practice their immorality more discreetly.”<sup>309</sup> This echoes Margaret Hunt's work that shows how moralists increasingly redistributed characteristics such as

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<sup>305</sup> Toleration Act (1689). <http://www.jacobite.ca/documents/1689toleration.htm>

<sup>306</sup> For a thorough review, see Ingram, “Reformation of manners”; MacFarlane, “Social policy and the poor.”

<sup>307</sup> Faramerz Dabhoiwala, “Sex and Societies for Moral Reform, 1688–1800,” *The Journal of British Studies* 46, no. 2 (2007): 297-302; Curtis and Speck, “The societies,” 45-6.

<sup>308</sup> Curtis and Speck, 49-56.

<sup>309</sup> Curtis and Speck, 56-61; Dabhoiwala, “Sex and Societies,” 302-307.

idleness and a propensity for vice and violence to the poor, insisting that elites had experienced an enlightenment of manners and sensibility.<sup>310</sup>

This brings up an interesting comparison between Oliver Boteler and James Passwater. Even though he had a legal separation from Anne, Oliver was still not entitled to live with another woman, but that did not prevent him from living with his mistress and openly acknowledging his children with her as his own. By all accounts, Oliver was also lewd, visited houses of debauchery, and engaged in vice and drink, yet was not held accountable for any of those actions any more than he was for his abuses against Anne and their children. Conversely, James Passwater lived with his mistress and was not only jailed for it and charged with assault against Mary but so was his ‘false wife.’ Like Hunt, Slack asserts that idleness and leisure were characterized as vices of the poor that proliferated after the Restoration and attacks relating to these moral transgressions were confined to these groups.<sup>311</sup>

Seventeenth century English society progressively shifted into a hierarchy of the ‘poor,’ the ‘middling sort’ which included trades, guildsmen, and business owners, and varying levels of elite society, shaped by economics and perceived moral and cultural traits. The social elite viewed the ‘poorer sort’ as more likely to resort to violence or generally act in a more boorish fashion, and laziness and vice were increasingly linked to individuals needing parish assistance.<sup>312</sup> However, Edward Gregory was a lighterman, Joseph Staples a butcher, and James Passwater, a tailor. As tradesmen, all three had lived in their respective parishes for some years, and it is reasonable to assume they had spent their lives working at these jobs and were likely guild members. They were not young men; the records report the Gregorys and the Passwaters had grown children, and the Staples had been married at least ten years. Morally, adultery and desertion were bad behaviour, just as was

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<sup>310</sup> Hunt, *Wife Beating*.”

<sup>311</sup> Slack, *The English Poor Law*, 31-36.

<sup>312</sup> See Ingram, “Reformation of manners,” 47-88; MacFarlane, “Social policy and the poor.”

the abuse each man inflicted on his wife; however, socially, these men were not representative of the young vagrants or criminals whom the Society often targeted with their reforming efforts. In addition, each woman could show that she had been a contributing member of her parish society for years, entitling her to poor relief when she needed it. Therefore, the concern was not whether these women were entitled to relief from the parish but whether they were entitled to support at all.

### **5.2.3 Women Worthies and The Worthy Victim**

Court documents could be highly formulaic, and it is commonly understood that court records are affected by the distortion of power structures, self-serving representation and testimony delivered in a familiar way that can obscure voice, intent and agency; however, this should not imply the original intent in testimony is wholly lost. Many of these women's petitions use similar language, indicating "barbarous" and "inhumane" ill-treatment and cruelty, that their husbands "turned them out of doors" "without necessities," and they were "for great want" and in need of assistance. Both husbands and wives could be guilty of resorting to extreme portrayals of negative gender stereotypes to make themselves look better in court, but descriptions of events likely still retained the essence of truth, and the use of the familiar helped create identifiable stories.<sup>313</sup> Mary Gregory describes Edward's attempt to have her stoned as a witch, how his "hard usage having disabled her from working" and when he "struck her down on the ground where she lay deprived of her senses," how she "suffer[ed] greatly." Conversely, the Churchwardens claimed that when they found a nurse to keep Mary, she "absolutely refused," implying perhaps that she was ungrateful or entitled. Sarah Graves was left "wandering the streets" while her in-laws tried to argue they had no responsibility for her. Mary Staples said her husband "threatened [her] with ruine," while he said she was "extremely volatile." These women presented themselves as victims of abuse that resulted in lameness and an

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<sup>313</sup> Stretton, *Women Waging Law*, 13-19; Hurl-Eamon, *Gender and Petty Violence*, 125; Kane, "Ecclesiastical Court records," 46.



inability to work, and as humble petitioners, they asked the justices to take pity on their poor condition and render judgement as they saw fit.

By the end of the seventeenth century, women's silence was increasingly seen as a virtue. Valerie Frith suggests these standards of male and female conduct based on gender ideology were viewed as "instrumental to the preservation of the existing order," and asks if women who stepped outside these boundaries may have contributed to the increasing propaganda of silence and docility as the measure of a worthy woman.<sup>314</sup> As the prospect of powerful or independent women who spoke their mind in court alarmed moralists, women could be characterized in court as "shrewd, manipulative, and well versed in the law," while others were "ignorant, incapable and easily led," which women could also use to manipulate and present themselves more favourably.<sup>315</sup> After the Restoration, women were expected to retreat to the home, and in the cases I have examined here, successful petitions primarily relied on a woman's ability to cast herself not as assertive but as a passive and worthy victim. To receive assistance, women presented themselves as living within the patriarchal norms; admitting any resistance was to invite accusations of provocation.<sup>316</sup> Women were cast as virtuous or wicked, not for going to court, but for how they went; they should not be too loud or aggressive, say little, and trust their affairs to a man.<sup>317</sup>

Women could also be savvy litigators. In her petition to ask the court to force her father-in-law to pay her maintenance, Sarah Graves reminded the court that Justices Buck and James had already ruled that her differences with her in-laws had no bearing on their obligation to pay maintenance since their son had abandoned her. In a similar appeal to uphold the previous court order to pay

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<sup>314</sup> Valerie Frith, *Women & History: Voices of Early Modern England*, (Toronto, ON: Coach House Press, 1995), xx-xxi.

<sup>315</sup> Stretton, *Women Waging Law*, 151-4. Conversely, Chaytor's early work shows how women unversed in the law could damage their own cases; Miranda Chaytor, "Husband(Ry): Narratives of Rape in the Seventeenth Century," *Gender & History* 7, no. 3 (1995): 378-407.

<sup>316</sup> Hunt, "Wife Beating," 24.

<sup>317</sup> Stretton, *Women Waging Law*, 51-5.

maintenance, Mary Staples reported that her husband Joseph not only had the Middlesex court order overturned in the King's Bench Court but that he “hath also spoke very undecent words of this [worshipful] Court.” Even in Mary Gregory’s case, although the parish had found a nurse to care for her for two shillings a week, she refused and demanded the four shillings the court had initially awarded her. It seems disappointing not to have found a significant shift in legislation or women's rights, but perhaps, in a system where women were so limited, we should applaud the fact that women could represent themselves in court against their husbands as the first step toward later progress.

### **5.3 Conclusion**

All four women were longtime residents of their parish, being without money, clothes, or income, ill or ailing, without housing, and describing themselves as “deprived,” “a deplorable case,” or “a poore impotent person.” The petitions submitted to the Middlesex justices were all approved for maintenance payments; however, there is little evidence that these wayward husbands continued to live up to their responsibilities. Further, the Overseers of the Poor contested their responsibility. Mary Gregory had grown children, and Sarah Graves had her father-in-law, whom they could presumably look to first, and both Mary Staples and Mary Passwater had clearly been deserted. Under the laws regarding marriage and separation, this entitled them to maintenance by their husbands and the parish in case of their husband's delinquency. However, their entitlement still rested less on their condition as abused wives than on their ability to present themselves as worthy victims.

Mary Gregory, Sarah Graves, Mary Staples, and Mary Passwater could use the court to hold their husbands accountable for deserting them and failing to maintain their financial responsibility. Although they could use the abuse as justification for fearing for their life and, by extension, for fearing to return to him, the abuse itself was not punishable. In a system that left women few options, each found a way to demand support, even after they spent years living with abuse.

## Chapter 6: Conclusion

In *The Experience of Authority in Early Modern England*, Paul Griffiths asserts that authority is “the power or right to define and regulate the legitimate behaviour of others” that perpetuates existing ideologies and preserves power structures.<sup>318</sup> Seventeenth century prescriptive writing advocated for an idealized companionate marriage while focusing on the right to rule, structures of authority, and the proper ordering of society. These ideals were based partly on canon law, scripture, and Christian beliefs of charity, and partly on the unique path the English took in religious, state, parish, and societal organization, that grew out of a much earlier tradition. This created a culture that justified and supported social structures that allowed wives to be battered.

Political, religious, and legal upheaval throughout the century reasserted systems of marital hierarchy and societal toleration of violent behaviour that had been in place for centuries, even as it reframed and redefined these systems of authority. In the second half of the seventeenth century alone, English citizens witnessed Cromwell's Commonwealth rule, the Restoration, the Glorious Revolution, the return of a Catholic king, and the invasion of the Dutch prince William to restore Protestant rule. They lived through the Church and Church Courts' closure and reopening, the decline of monarchal and ecclesiastical supreme rule and the rise of the parish magistrates' and churchwardens' powers. They experienced, and maybe felt, the rising anxiety of the Puritan moral crisis, feared the Popish Plots and despaired at London's increasing population and vagrancy. Women more acutely felt the effects of being marginalized by a hierarchy in the family and society, though precisely how this affected them is a question historians continue to ask. Rules around marital separation expanded and contracted as increasing surveillance and regulation left less room for

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<sup>318</sup> P. Griffiths, A. Fox and S. Hindle, *The Experience of Authority in Early Modern England*, (Basingstoke: Macmillan, 1996), 1.

informal marriage and separation arrangements. Laws regarding self-defence and biological understandings of men and women also restricted and expanded women's rights in criminal court over the century. Moral anxieties prompted increased focus on the proper ordering of the family but often diminished the role of women, even as moral reforms made the lower classes and lower class women, in particular, less worthy of social concern and protection.

Much like prescriptive writing, the law reflected the ideal, not the whole reality. Coverture remained stubbornly intact in English law throughout the early modern era. Ministers wrote sermons attacking women who were too public, too vociferous, too brash and outspoken. Concerned citizens coped with the perceived loss of tradition and traditional moral values by trying to control social order and judging individual behaviour. The difference between prescribed ideals written and advocated by men (and some women) and the reality of lives lived does not imply that the social, legal, and religious controls exerted over women were not effective nor that they failed to control the sphere in which women lived. Similarly, court cases tell us about women who stepped out of bounds from the prescribed ideal but are not suggestive of all women's experiences. Many women enjoyed happy, or at least non-combative, marriages and never needed the courts; thus, petitions and lawsuits cannot represent an entire society. The women examined here are a product of their time, influenced by the political, religious, legal, social, and gendered structures that exist because of that which came before them and lived as agents within the structures that shaped their beliefs and outlook on life, and society.

The violence these women experienced was not insignificant, but neither was it punishable. The abuse they suffered arguably exceeded the accepted level of correction a man was entitled to wield over his wife but defining what was socially tolerated was difficult. This was complicated by masculine anxieties that redirected the focus from conversations about wife battery to analyzing feminine words and actions to curb and marginalize the problem without remediating the actual issue.

Seventeenth century English attitudes about marriage and separation, responsibility for a spouse, and community responsibility to its members, have often been framed as a post-Reformation movement or even a post-Restoration movement based on morality and reforming beliefs. The common law legal system, the ecclesiastical laws governing marriage, separation, and maintenance, and the laws governing poor relief remained breathtakingly consistent throughout the early modern era and marginalized women's rights to marriage free from abuse and tyranny.

Authority was also bound by the limits of acceptance by the people. In some respects, seventeenth century women had more freedom than in subsequent centuries, which narrowed women's participation in public life and silenced voices of dissent toward the end of the century. However, Griffiths contends that early modern people defended their rights and liberties in many ways, including the pursuit of legal action whereby they were "often able to create their own spaces, identities and experiences within existing ideas and structures of authority."<sup>319</sup> The laws governing women seem overbearing; however, the women considered here demonstrate how some women in abusive marriages could develop their own strategies to separate themselves from their violent husbands, sometimes using the court system and sometimes without it. Women were expected to marry and remain subservient to their husbands but did not always do so and could use the ecclesiastical and common law courts to maintain themselves, despite the oppressive and narrow avenues available. None of these women sought redress or punishment for the violence they endured in their marriages; rather, they used evidence of the violence to separate themselves from abusive husbands and establish their worthiness as victims, deserving the means to live separately in a time when divorce was not an option for them. Where cruelty was the only legitimate reason to leave your husband, these women used magisterial and ecclesiastical court systems in their strategies of survival

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<sup>319</sup> Griffiths, 5-7.

to navigate violent relationships in a system that valued marital union over marital safety.

These cases demonstrate the options open to women from the elite and middling sort and the avenues available to women from the lower ranks of society. They offer a stark example of the drastic steps some women took when it seemed they were out of options. I submit that, much like today, domestic relationships of abuse have their own language. The women in each case endured the violence but did not stay silent. They spoke with neighbours, reached out to family for help, went to the courts and the church for assistance, and finally took definitive action of their own. These women can be viewed as a reflection of their society. They worked both within the domestic system they found themselves in and without it, much as they worked within the legal, religious, and social systems in which they found themselves and outside of it. The endurance of marital violence that was an acceptable part of family life was supported by the community and the state politically, legally, and religiously, despite all prescriptive literature and idealizing to the contrary. It was also the space within a still forming system that gave women narrow avenues to negotiate for themselves. These were not radical women seeking to change the system or worldviews regarding marital violence. Just as many women today are not doing that, these women show that despite the violence they experienced and the limitations the law and social ideals placed on them, they were still willing to hold their husbands accountable - not for their violent actions - but for the right to live without them while financially supported. These were not strategies to change a violent system of marriage but strategies of survival to separate themselves from abusive husbands. They were sometimes successful and sometimes not.

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