Forty Lashes: The Comparison of Court Punishments in Early Modern England and Colonial Virginia

by

Renée Celeste, B.A., M.A.

A Thesis

in

History

Submitted to the Graduate Faculty
of Texas Tech University in
Partial Fulfillment of
the Requirements for
the Degree of

Master of Arts

Approved

Dr. Emily Skidmore
Chair of Committee

Dr. Gretchen Adams

Dr. Abigail Swingen

Mark Sheridan
Dean of the Graduate School

December, 2014

Copyright 2014, Renée Celeste

ACKNOWLEDGMENTS

I would like to extend my thanks to Dr. Emily Skidmore, Dr. Gretchen Adams, and Dr. Abigail Swingen who were of tremendous help throughout my research and revisions. Without them, I would not have been able to complete such a task in the amount of time that I did. Their research experience and knowledge of primary and secondary sources was invaluable for a master's student who had all the determination and ambition but desperately needed organization and a schedule. Thank you again for all of your help.

TABLE OF CONTENTS

ACKNOWLEDGMENTS..... ii
I. INTRODUCTION 1
II. CRIMINAL PUNISHMENTS IN ENGLAND IN THE LATE SIXTEENTH AND SEVENTEENTH CENTURIES.....12
III. THE VIRGINIA COLONY AND THE PUNISHMENT OF CRIMINALS, 1607-1700.....75
IV. COMPARING COURT PUNISHMENTS: EARLY MODERN ENGLAND AND COLONIAL VIRGINIA.....120
V. CONCLUSION 157
BIBLIOGRAPHY.....161

CHAPTER I

INTRODUCTION

Edward Maria Wingfield, the first President of the Council in colonial Virginia, sat imprisoned in September 1607 after three other Council members deposed him for hoarding food. Undoubtedly upset about his new position and circumstances, Wingfield complained about his time thus far in the new colony of Virginia. The Council members "had forsaken His Majesty's government set us down in the instructions" by ousting him. The Council needed to have "13 voices" in order to remove him but instead they acquiesced to a powerful "triumvirate," composed of John Ratcliffe, John Smith, and John Martin. It is not difficult to discern why Wingfield was angered by this infringement of the colony's instructions. However, he also complained about something else entirely: "this whipping, lawing, beating, and hanging…their laws and government was such as I had no joy to live under them any longer."[1] Wingfield was not the only one to point out these harsh punishments. John Smith's "Generall Historie," published in 1624, discussed the "severe punishments" used to chastise those who misbehaved or failed to work and Thomas Dale discussed using a "severe hand" on the colonists in a letter he wrote in 1613.[2] Writing around 1623 and looking back on the first twelve years of colonization, the "Ancient Planters of Virginia" agreed that Dale "made and published most cruel and tyrannous laws, exceeding the strictest rules of martial discipline" and that it was "no

[1] Edward Maria Wingfield, "A Discourse on Virginia," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 188, 190, 194, 195.

[2] John Smith, "The Generall Historie of Virginia, New-England, and the Summer Isles," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 315; Thomas Dale, "Letter of Thomas Dale," Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 767.

better than the slaughter of His Majesty's free subjects."[3]

What these colonists alluded to was not only a clear departure from the rules and instructions set down by the colony's charter, but also an issue with the brutality that some colony leaders used to inflict penalties. The significance about the severe punishments was that many colonists thought that such harshness would have never happened in England. So why did such a deviation occur? Would the colony's governance look more English once the Virginians achieved greater stability? The answers can be found throughout the colonists' narratives as well as in the Virginia court records. The problems that continued to accrue in the first twelve to fifteen years of colonization in the New World appeared to serve as justification for cruel treatment, at least in the minds of the colony's leaders. However, after these initial years in Virginia, the courts' records show that the Virginia government continued to differ in its use of punishments compared to those used by the English courts. These differences can be explained by both pre-existing dissimilarities present in the New World and differences that the colony's leaders produced themselves.

The New World, particularly Virginia, had a very different geography than that of England as well as a large population of Native Americans, both of which caused many problems for the colonists who settled there in 1607. Another issue, most likely unforeseen, was that the colony's leaders had such lofty ambitions for Virginia. The drive to acquire riches tied into some of the other problems that the colony suffered, such as the

[3] The Ancient Planters of Virginia, "A Brief Declaration of the plantation of Virginia during the first twelve years, when Sir Thomas Smith was governor of the Company, and down to this present time. By the Ancient Planters now remaining alive in Virginia," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 899-900.

lack of laborers and the increasing sickness and death of many colonists.[4] Both realities forced the leaders to realize that no work would get done, like erecting buildings or digging for gold, and their dreams for a bigger and better society were falling apart. However, I argue that these problems are exactly the reason that the colony's leaders decided to enact such harsh laws and methods of punishment, particularly in the first fifteen to twenty years of colonization. They did not want the colony to fail when there was so much to gain, or so they believed, for the English empire.

Once the colony gained some stability around 1624, it was possible for the government in Virginia and the colonists to emulate English society, as the colony's charter called for in 1606. But the colony continued to experience many differences from England, such as indentured servants, the cultivation of tobacco, and the imbalanced ratio of men and women. Such distinctions caused the colony's leaders to use harsher measures of discipline compared to English courts at the time: a higher number of lashes given to offenders, more years of service, and the eschewal of the death penalty for thieves. A high number of these cases involved women in Virginia, which is significant because of their low population numbers, although many were indentured servants. The cases of the county courts and the General Court that list these criminal offenses and punishments show exactly what types of problems that the colony experienced and how the justices chose to deal with them. What is significant is that even when the courts in Virginia and in England handled the same kind of crime, they often did not punish the offender in the same way. This disparity between England and Virginia was expressed by the General

[4] These issues are discussed in the majority of the early narratives which can be found in Edward Wright Haile's *Jamestown Narratives*.

Assembly of Virginia in 1655: the discrepancy "between them and us to be so great that wee cannot with safety follow the example … [they are] more practiced in criminall causes."[5] These perceived differences were extremely important when it came to the decisions that the court justices made in Virginia, especially for punishments.

I argue in "Forty Lashes: The Comparison of Court Punishments in Early Modern England and Colonial Virginia" that there was greater emphasis on different offenses in Virginia and in England, causing the respective courts to treat them differently because of distinct troubles in their societies. The Virginia colony's leaders concentrated much more on financial and economic issues while authorities in England constantly reiterated the need to establish security and safety. The focus on financial and economic issues tied directly into the problems that the colony had with labor, as addressed in many of the complaints of the colony's leaders, and the court cases and ordered sentences revealed this as a significant problem to solve. Even English courts, such as the Middlesex County court, established a connection between their own criminals and the Virginia colony, which desperately needed able-bodied workers for tobacco cultivation. The courts in England started to send criminals to other English colonies, such as Virginia, in the second half of the seventeenth century to work as a punishment for their crime.

The most important works directly related to "Forty Lashes" are J.M. Beattie's *Crime and the Courts in England 1660-1800* (1986), Kathleen M. Brown's *Good Wives, Nasty Wenches and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (1996), Peter Charles Hoffer's *Law and People in Colonial America* (1998), and John

[5] William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the year 1619*, Volume I (Charlottesville, VA: University Press of Virginia, 1969; facsimile reprint, originally printed 1823) 398.

Ruston Pagan's *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (2002). Beattie's work is significant in its analysis of property offenses in England and his research on the changing views towards corporal punishments. His focus on violent crimes shows how these offenses threatened the peace and stability of the community and why the court justices responded in the ways that they did. Beattie argues that the forms of punishment available to the English courts, particularly capital punishment, had a powerful influence on the decisions made by prosecutors, jurors, and judges. Since there was little recourse for those convicted of theft, Beattie shows that the English courts developed two non-capital punishments: transportation and imprisonment, which were used much more after 1650. Ultimately, Beattie argues that the increase in crime that occurred during the seventeenth century, especially property offenses, was "likely to find a response in the courts, in verdicts and sentences and efficacy of punishment," forcing the courts to enact different kinds of non-capital punishments.[6] If a death sentence was not enough to deter many criminals from committing theft and other crimes, then the courts needed to implement new tactics.

Perhaps one of the most important books dealing with the use of power through laws and the courts in colonial Virginia is Kathleen M. Brown's *Good Wives*. Brown discusses how "gender and race became intertwined components of the social order in colonial Virginia" focusing on how gender had a role in creating racial slavery and intensifying patriarchy.[7] She discusses how the beliefs surrounding women's nature,

[6] J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, NJ: Princeton University Press, 1986), 14.
[7] Kathleen M. Brown, *Good Wives, Nasty Wenches and Anxious Patriarchs: Gender, Race and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996), 1.

especially when it came to African women, helped the Virginia colonists justify white women's "place" in the home while African women were to work outside in the fields. Brown asserts that ideas of gender were important in the "regulation of laborers, the politics of community life, the legitimation of political authority, the creating of meanings for racial difference, and the changing formation of English identity."[8] White men in Virginia, especially those in positions of power, utilized notions about white females, such as their inherent inferiority, and beliefs about women of color to establish white, patriarchal rule in the colony.

Peter Charles Hoffer's *Law and People in Colonial America* is noteworthy because it relates directly to some of the reasons why England and the English colonies were different and why they had to depart from some of the traditional, common laws seen in England. Hoffer asserts that "much that was American in our first laws and courts was driven by the needs and wants of the users of the law; change in early American law came both from the top of society and from its middle parts."[9] The differences in needs between England and its colonies in the New World were apparent, but Hoffer asserts that those in positions of power also manipulated the law in order to accomplish their ideal society. Colonial American law, while different from English law because of distinct colonial needs, was also different because of the "imperfect knowledge of English law" that American lawmakers had in the first one hundred years.[10]

The study of colonial law in America and its deviations is also analyzed in John

[8] Ibid, 7.
[9] Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore: Johns Hopkins University Press, 1998), xii.
[10] Ibid, xiii.

Ruston Pagan's *Anne Orthwood's Bastard*. Pagan researches the way the courts in colonial Virginia dealt with bastardy cases and argues that illegitimate children were seen as a detriment to the Virginia economy. Pagan states that childbearing out of wedlock not only interfered with a woman's ability to work but it also became an economic problem if the mother failed to take care of her child, forcing the taxpayers to support the child financially. Bearing an illegitimate child not only brought shame upon the mother, but also corporal punishment and the penalty of serving her master an extra two years if she was a servant. Pagan argues that each colony had innovative and distinct legal systems which were "tailored to local situations" but that Virginia was a "peculiar structure" because of the economy and labor system which "accounts for many of the differences between colonial and English law."[11]

"Forty Lashes," while it agrees with the selected scholarship about the differences between Virginia and England and the Virginia courts' focus on upholding the economy, is different because it analyzes the use of punishments within the legal systems of both England and Virginia. In doing this, the reader can see why there were deviations between the two areas and how the colony's leaders in Virginia established those differences through the employment of harsh sentences. I engage with the most relevant scholarship in order to understand the reasons behind the courts' decisions; however, my comparative perspective is innovative because it illustrates how similar cultures reacted when faced with singular needs and desires, ultimately explaining the eventual divergence between the two areas. This singular problems and desires, such as England's

[11] John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2002), Introduction, 8, 9.

issues of vagrancy and the Virginia leaders' desire to establish white, patriarchal rule through laws governing servants and African slaves, are analyzed in much of the scholarship The number of these kinds of cases that appeared in the court records reveals that these offenses were significant to court authorities and the population. However, my concentration on the punishments themselves furthers the discussion about how court justices sought to achieve their goals. The attention to the differences in court punishments, and not just the obvious differences in geography and presence of Native Americans, adds another unique perspective because it shows how the colony leaders in Virginia established discrepancies between the colony and England. It is evident that when the types of punishments are compared and analyzed the objectives of both England and the colony of Virginia are magnified: colony leaders in Virginia wanted to harness the labor force to meet their goals of economic success, while English courts sought to establish security and safety. This is in agreement with the selected scholarship but it adds to our understanding of how particular societies utilized law and punishments to further their aims.

The organization of the chapters in this study is arranged in a chronological fashion starting with a discussion on English county court records from 1550–1700. It begins in 1550 so that one may gain an understanding as to what types of offenses appeared in the English courts and how justices sought to punish them. The study of the late sixteenth-century court cases will display what the typical penalties were in England in order to show what the early Virginia colonists would have expected upon landing in the New World. The discussion about the English courts and their use of discipline

throughout the seventeenth-century will serve as a direct comparison to what the colonists practiced during the same time. The second chapter studies the court cases of the colony of Virginia beginning in 1607 and ending in 1700. It follows the same pattern as the first chapter, focusing on what types of offenses appeared before the courts in Virginia and how the courts sought to penalize those who transgressed. Both chapters emphasize how historical events and social realities shaped and influenced the courts and their decisions. The last chapter is a comparative study between England and Virginia and how they have differentiated when it came to their use of punishments throughout the seventeenth century.

The primary sources that appear in this study are the Middlesex County Court records from 1550-1700 and the Proceedings of the Old Bailey from 1674-1700 for the English court records. For the Virginia courts, the county court records of Accomacke, Charles City, Middlesex, Lower Norfolk, Northumberland, Stafford, Surrey, and York have been utilized, as well as the Minutes of the Council and General Court of Colonial Virginia from 1624 to1700, the Executive Journals of the Council of Colonial Virginia from 1680 to 1699, and the Statutes at Large, which outlines all the laws of Virginia from 1619 onward. The offenses and punishments that were present from 1607-1623 in Virginia appeared in the narratives written by several colonists which were organized in Edward Wright Haile's *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony*. Another primary source is the *Records of the Virginia Company of London* edited by Susan M. Kingsbury, which outline the charter for the Virginia Company as well as its organization. These specific sources are used because they are some of the few existing

court records that span such a long period of time, especially those pertaining to England. As for the Virginia court records, I used all the existing court cases for the counties that were present in the seventeenth century, although several years of records for the Minutes of the Council and General Court of Colonial Virginia were destroyed. Haile's collection of the Virginia colonists' letters and diaries make up some of the most important primary sources pertaining to the early accounts of the colony because not many other sources existed during the first fifteen years of colonization.

The intervention of this study is in the comparative view of Englishmen and women who inhabited two different places, England and colonial Virginia, and the ways in which the courts' authority sought to deal with offenses committed by subjects. Attention is paid to the kinds of discipline that the courts used to punish criminals or offenders as well as the types of transgressions that appeared before the law. The most important part of this work is in the comparison and contrast of early modern England and colonial Virginia as it reveals that the courts practiced different tactics to penalize the same crimes. These findings matter because it shows how law and punishment for transgressions can tell us about respective cultures and societies, and ultimately points to the eventual divergence between England and Virginia.

One of the major dissimilarities between England and Virginia was Virginia's reliance on tobacco cultivation which in turn created an intense demand for a labor force. The production of tobacco had created such a unique issue that it affected much of the lives of those in colonial Virginia, particularly if one faced the legal system in Virginia. The need for a working labor force and protection of the economy was

apparent in the colony of Virginia through their harsh discipline of those who upset either one. The English courts had been influenced by their own particular issues, such as vagrancy and theft, which forced the justices to concentrate on punishing those that threatened security, stability, and control. As stated above, these problems in England eventually tied into the Virginia colony's call for more laborers, as the English courts began to transport their criminals to other English colonies so that they could be used for work. Although there were many more differences between England and Virginia, the courts' authorities in Virginia used the issues of labor and the economy to influence their decisions in a significant way and created a major disparity between the two areas. This study adds to our understanding of colonial Virginia because it shows how Englishmen and women adapted to new environments through the use of the legal system and court-ordered punishments.

CHAPTER II

CRIMINAL PUNISHMENTS IN ENGLAND IN THE LATE SIXTEENTH AND SEVENTEENTH CENTURIES

England had its fair share of problems in the late sixteenth and throughout the seventeenth century. Plague riddled the countryside and bustling cities, vagrants, rogues, and pick-pockets served as great annoyances. Poverty became more widespread, while the King or Queen could not sit comfortably on the throne without fear of rebellion from the masses. This was a "time of disruption" not only because of the proliferation of crime but also due to other major changes occurring, such as the transformation of the economy and the rapid increase in the population.[12] The law and the courts acted as a system that established a sense of control and safety, which projected from the royal government to the people at large. It was popularly understood that what England needed was order, prevention of chaos, and the protection of persons and property. It was a country that appeared to be overrun by corruption throughout all the classes, while towns' inhabitants suffered daily losses and attacks from burglars and robbers. The monarchy and Parliament agreed that extreme and often harsh measures needed to be taken to penalize the worst of the offenders and establish order throughout England. Edward Coke, an English jurist, had summed up this idea in the late sixteenth century: "law and religion were twin pillars supporting the King's throne."[13] These measures are readily seen

[12] Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (New Haven: Yale University Press, 2000), 3.

[13] Christopher Brooks, "Professions, Ideology and the Middling Sort in the Late Sixteenth and Early Seventeenth Centuries," in Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 118.

throughout the English court cases of the late sixteenth and seventeenth centuries.[14]

This chapter will explore English criminal court cases starting in the mid sixteenth century, around 1550, through the seventeenth century until 1700. I will show what kind of crimes received particular punishments, whether corporal or otherwise, and I will explain the correlations between what was happening in England and what the courts thought necessary in terms of punishments. Ultimately, I hope to look at and understand court-ordered punishments in England in order to compare it in subsequent chapters to the colony of Virginia and its court punishments. England's punishments display great organization, as most crimes received a specific kind of punishment. There are subtle differences between classes of people, however, and it is not difficult to tell that specific punishments were reserved for women and some for men, based upon contemporary beliefs about the sexes. Overall, I argue that English courts sought to punish certain crimes harshly because of an overall anxiety about security and stability during this time period.

The sources that are used within this study illustrate the type of court system and style of punishments that were present in England before the Virginia Company left for the New World. The Quarter Sessions records of Middlesex County is one of the most comprehensive set of English court records, dating from 1550 to 1709. There are also the Proceedings of the Old Bailey, the central criminal court of London and the County of

[14] Wrightson, *Earthly Necessities*, 3-4, 55, 121, 156, 195, 197, 216, 249; C.H. Firth and R.S. Rait, eds, "Acts and Ordinances of the Interregnum, 1642-1660" British-History Online. http://www.british-history.ac.uk/source.aspx?pubid=606 (accessed April 2014); Brooks, "Professions, Ideology and the Middling Sort," 118, 125, 133.

Middlesex and date from 1674 to 1700.[15] While these courts and their cases are illustrative of their respective counties or cities, secondary sources reveal that many smaller parish courts practiced similar types of punishment, especially when it came to moral offenses, such as bastardy. Another primary source utilized is the Acts and Ordinances of the Interregnum from 1642 to 1660, which outline and describe the acts passed by Parliament, as well as the Statutes of the Realm, which encompass the different legislation passed by Parliament.

Many historians have studied crime and the courts in early modern England, most notably J.S. Cockburn, J.M. Beattie, Malcolm Gaskill, and Martin Ingram. Cockburn, who edited the book *Crime in England 1550-1800* in 1977, states that studying crime was the perfect way to analyze "social standards and behavior" because it reveals what the subjects and the law saw as deviations.[16] He asserts that historians must recognize the differences between our current world and theirs, such as that in early modern England, offenses against the Church were considered sins, treasons and many felonies were punishable by death, and many smaller offenses were often left to the discretion of the court justices and their opinions.[17] This should be kept in mind when analyzing the court cases of both England and Virginia as the reader's own beliefs about the justice system cannot skew the actual beliefs held by sixteenth and seventeenth century contemporaries.

The works of J.M. Beattie, Malcolm Gaskill, and Martin Ingram all discuss the

[15] The University of Sheffield, "The Proceedings of the Old Bailey: London's Central Criminal Court, 1674 to 1913," Old Bailey Proceedings Online. http://www.oldbaileyonline.org/browse.jsp?dir=sessionsPapers&decade=167 (accessed April 2014), April 29, 1674.
[16] J.S. Cockburn, ed., *Crime in England 1550-1800* (Princeton, NJ: Princeton University Press, 1977), 2.
[17] Ibid, Introduction.

relationship of early modern Englishmen and women to the law, whether it was with ecclesiastical courts or secular courts, and how the English population reacted to criminal offenses and punishments handed down by authorities. Beattie's *Crime and the Courts* and its significance to this study have been discussed in the introduction, but it is important to point out his argument about the broad public acceptance of the criminal law and its sentences.[18] This assertion is important to "Forty Lashes" because I focus on the theory that the criminal transgressions that appeared in the Middlesex County court were issues that the English population at large saw as deserving of punishment. This is also why his attention to property offenses, which almost always included violence, is so significant because it highlights the anxiety surrounding security and safety, which I argue is the Middlesex County court's biggest problem.

Malcolm Gaskill's *Crime and Mentalities in Early Modern England* (2004).is another significant work which focuses directly on the beliefs that the English population held about certain crimes. Gaskill researches three offenses, witchcraft, coining, and murder, which came before the courts between the mid-sixteenth and mid-eighteenth centuries. He asserts that mentalities surrounding these crimes had a "bearing on historical action and are subject to change over time," especially if influenced by big forces like the Protestant Reformation and the rapid increase in population.[19] His argument about mentalities and their bearing on historical action is considerably important when applied to the legal system in early modern England. The rapid increase

[18] J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, NJ: Princeton University Press, 1986), 3, 8-14, 37-40, 75-78, 91, 140-142, 148, 162-168, 450, 451.
[19] Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (New York: Cambridge University Press, 2004), 3, 6, 8, 10-13.

in population was a huge factor in how the courts responded to certain offenses, especially vagrancy, coining, and theft, because an increase in population ultimately led to an increase in these offenses, or so the courts believed. The specific punishments for these three crimes are important to use as a gauge for other crimes and what kinds of sentences the justices ordered. It helps to reveal how the justices perceived the threat of these crimes and the level of severity towards them when it came to sentencing. His concentration on coining, which was viewed as treason, will be later linked to the actions of the Virginia colony leaders and what they perceived as treason and how they decided to sentence offenders.

Similar to Malcolm Gaskill's book in the way that mentalities shaped the legal system, Martin Ingram shows how the church courts and secular courts overlapped and dealt with similar issues in *Church Courts, Sex and Marriage in England, 1570-1640* (1987). Ingram's study focuses primarily on ecclesiastical courts in early modern England, but the offenses they handled often overlapped with the secular courts. Ingram argues that the ecclesiastical courts were not designed for retribution but relied on public punishments in order to deter others from committing offenses. He asserts that there were few who publicly disagreed with the workings of the church courts and that it actually had a large measure of popular support in how it handled marriage disputes, adultery, and fornication. Overall, Ingram argues that the church courts' activities were "either in line with the existing attitudes and expectations of honest householders in the parishes (as in the pursuit of notorious sexual offenders)."[20] His argument about public agreement is in

[20] Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (New York: Cambridge University Press, 1987), 1-12, 21, 24, 125-134, 154, 157, 163, 366-372.

accord with Beattie's own assertion about widespread agreement when it came to prosecuting criminals in the higher common law courts. Ingram's work serves as a good comparison between the church and secular courts and how the main goal of both legal systems was deterrence, even though the Middlesex County court was able to sentence certain offenders to death in order to discourage others from committing the same offense.

The work in "Forty Lashes" will build upon this historiography by focusing on specific types of crimes, such as theft, vagrancy, sexual and moral offenses, slander, and cases that involved servants, in order to outline and analyze the kinds of punishments that the courts handed down in these situations. In the third chapter, the English court cases and punishments will be looked at in a comparative study with the cases and punishments present in the colony of Virginia during the same time period, which is unique in the historiography. This is done in order to point out and understand any recognizable similarities and differences in the courts' use of discipline and what they sought to accomplish. Ultimately, I argue that the court cases in the Middlesex County court records and the Proceedings of the Old Bailey reveal that the ordered sentences focus on upholding security and safety in a world that appeared highly unstable.

Historical Context

The historical context of early modern England must be outlined in order to understand why the English courts sought to punish certain offenders with specific methods of discipline. First and foremost, early modern England was an agrarian society in the sixteenth century with only a small minority of the population living in towns.

London's population, though larger than most, was only 55,000 in 1520. England was also very socially stratified, as with most societies in early modern Europe, and status could be determined by a man's financial wealth, the ownership of land, as well as a practice of certain manners, showing how difficult it was to define even by contemporaries. Ultimately, the labeling used in social categorization was a "rhetorical device of dividing" and helped to establish superiority by using terms such as the "ruder" sort and the "better" sort.[21] This categorization was often justified by the idea of the "commonwealth," which focused upon the goal of achieving the common good or the common interest. Within this idea, society was separated by social classes or estates so that everyone knew and understood their proper duties. The clergy, the first estate, prayed for the population and "sustain[ed] Christian values."[22] The second estate included the elite, nobility, knights, esquires, and gentlemen who were called upon to defend the realm, to govern justly, and overall avoid oppression of the masses. The last estate, the common people, were required to work within their station or occupation while avoiding covetousness, fraud, idleness, and complaining about their position in life. This categorization was much more complex in actuality and some contemporaries, like statistician Gregory King who wrote *Two Tracts*, identified twenty-six different social classes that existed in English society in 1688.[23] This categorization was important to

[21] Keith Wrightson, "'Sorts of People' in Tudor and Stuart England," in Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 37.
[22] Wrightson, *Earthly Necessities,* 27.
[23] David Cressy, *Society and Culture in Early Modern England* (Burlington, VT: Ashgate Publishing Co., 2003), 29, 32; Keith Wrightson, "'Sorts of People'," 37; Wrightson, *Earthly Necessities,* 27, 28, 34, 36, 37; George E. Barnett, ed., *Two Tracts by Gregory King. (a) Natural and Political Observations and Conclusions upon the State and Condition of England. (b) Of the Naval Trade of England Ao. 1688 and the National Profit then arising thereby.* (Baltimore : Johns Hopkins Press, 1936).

those in positions of power because it legitimized their authority over the lower classes. Court judges relied on this separation because it granted them the right to execute justice as they saw fit.

The majority that lived in rural areas were labeled yeomen, husbandmen, craftsmen and tradesmen, or cottagers and laborers, all of whom worked in agriculture. Yeomen were at the top of this hierarchy because they owned land at least worth forty shillings, while the cottagers and laborers mostly relied on irregular wages from low-paying casual jobs, as well as the work of wives and children. The rural elite consisted of those in the second estate who enjoyed a large amount of land and other privileges that the commoners did not, such as the continuity of the male line through the preservation and passing down of property, as well as the accumulation of further property by marriage.[24] The dichotomy between rich and poor was present in larger towns as well, and status was often determined by a person's occupation and the fees he needed to enter a trade. The process of commercialization, which will be discussed at length later in this chapter, helped to reveal the social category of the "middling sort" who were extremely hard to define yet became largely concentrated in urban areas. A compact definition, written by historians Jonathan Barry and Christopher Brooks, identified the middling sort as "independent trading households."[25] However, some aspects of their lives blurred with both the upper and the lower classes, such as how much money the provider made and

[24] Wrightson, *Earthly Necessities,*34, 35; Cressy, *Society and Culture*, 39, 41; Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (New York: Penguin Books, 1990), 37; Steve Hindle, *On the Parish?: The Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford: Clarendon Press, 2004), 22-24; Paul Slack, *From Reformation to Improvement: Public Welfare in Early Modern England* (Oxford: Clarendon Press, 1999), 6.

[25] Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 2.

even his outward behavior.[26] This attention to the differences between the classes is important when discussing the broad changes that occurred during the sixteenth century in England. The rapid increase in the population caused drastic effects for the whole population, but it created even harsher, negative effects for those who relied on irregular wages. This led to a sharp increase in vagrancy as well as other effects that could not be stopped, such as a large migration into the urban areas and greater occurrences of theft.

The Household and Neighborhood

The most important place to learn about these differentiations in hierarchy and the skills necessary to perform a trade was the household. The household was usually under the authority of an adult male, who ensured that those within the family were "geared for work."[27] The household was usually very nuclear in nature, consisting only of one married couple and their children, but it could also include servants and apprentices who were legally and morally subordinate to the head, just as his wife and children were. Most families placed their children in work contracts, either to work as a domestic servant or as an apprentice in another household, if one's parents could afford it. Many children began service work in their early to mid-teens and served an annual contract for the household that hired them. Service was such a typical job for young men and women that it has been estimated that sixty percent of those between the ages of fifteen and twenty-four years old worked as servants in the sixteenth century. Apprenticeships were formal indentures, or

[26] Wrightson, *Earthly Necessities*, 37, 38; Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994),17; Peter Earle, "The Middling Sort in London," in Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 146, 147; Keith Wrightson, "'Sorts of People'," 34.

[27] Wrighston, *Earthly Necessities*, 30.

legal agreements, where the boy or girl was taught the trade of the household head and provided with food, drink, shelter, and clothing. The occupation that was taught was dependent on the apprentice's gender, since women were only welcomed into certain trades, as well as one's status because of the money that parents were obligated to pay to the household taking on the apprentice. Apprenticeships were different from service work in that they typically lasted several years, usually seven. The apprentice was not paid wages, like those who were domestic servants, although both were obligated to follow the rules of the household as if in their own homes.[28] The concentration on obligations for both domestic servants and apprentices was extremely important when cases of servant abuse and breach of contract appeared before the Middlesex County court and the Old Bailey. The violation of any obligations, whether broken by master or worker, determined the outcome of the case, which will be seen in the discussion on court cases later in the chapter.

Among the need for a stable occupation and home life, the other most important functions and strategies of the household in the sixteenth century, particularly in rural areas, was that of survival and dispersal, or securing the future of one's children. Most rural households were self-provisioning and relied mainly on their own production of goods in order to survive. In the sixteenth century, there were high mortality rates, the persisting presence of bubonic plague, and a life expectancy of only thirty-two to thirty-four years. The death rate was especially high in towns, where plague spread more

[28] Wrighston, *Earthly Necessities*, 30-33, 49, 58; Stone, *The Family, Sex and Marriage*, 28, 44; Christopher Brooks, "Apprenticeship, Social Mobility and the Middling Sort, 1550-1800," in Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 53, 60, 76-77; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (New York: Cambridge University Press, 1987), 126, 127.

quickly than in rural areas. The likelihood of death "engendered a mentality which valued security and stability," and provided further reasons why provision for the future well-being of the family was so important.[29] It also engendered a society that had only "transient and temporary associations," making the family experience short-lived and unstable.[30] Lawrence Stone argues that the normality of death affected attitudes of parents to their children, who might live only a short time; therefore, parents often did not develop emotional relationships to their children.[31] This failure to generate emotional ties to family members and even neighbors also created a society where casual violence was a daily threat. Stone asserts that the reason that the courts were clogged with assault and battery cases was because of the alienation and distrust prevalent in the sixteenth and seventeenth centuries. He argues that there was a "general psychological atmosphere of distance" that permeated English society.[32] If it was difficult to establish an emotional connection to another person due to the high death rate, then it made sense that the English population would concentrate on the protection of their persons and property often through violent means.[33] This is apparent in the significant number of property offenses and cases of violence seen in Middlesex County. Because of the likelihood that a person would experience violence and die at a young age, security and safety became an issue of utmost importance for both the English population and the courts.

The household members not only learned to work but also learned that it was a

[29] Wrightson, *Earthly Necessities*, 56.
[30] Stone, *The Family, Sex and Marriage*, 46.
[31] Many historians have criticized Lawrence Stone for his argument about the emotional connection between parents and their children. However, the amount of casual violence seen in the Middlesex County court records does seem to portray that there was disconnect between the English subjects.
[32] Stone, *The Family, Sex and Marriage*, 88.
[33] These arguments are seen in Wrightson's *Earthly Necessities* and Stone's *The Family, Sex and Marriage*.

patriarchal society, which was largely embedded in law. Moralists' tracts and sermons revealed their beliefs about women and their roles in society: "If ever thou purpose to be a good wife, and to live comfortably, set down this with thyself: mine husband is my superior, my better; he hath authority and rule over me; nature hath given it to him…God hath given it to him."[34] Many men used the Bible as justification for female inferiority and subordination, but they also focused on the apparent weakness of females who were "of a frail heart, inconstant, and with a word soon stirred to wrath" and needed to be placed under male authority.[35] The good wife was one who was both silent and submissive to her husband and had no public life. These beliefs affected many aspects of women's lives, such as in the discouragement of their reading and writing. The low literacy rate among women affected not only their intellectual capabilities but also their avoidance of the death penalty for theft. Reading a Bible passage to receive a lesser sentence was a benefit solely enjoyed by men until later in the seventeenth century.

Though women were supposed to be submissive, there was not always a match between the rhetoric and reality. Some married women could be labeled as "femme sole" so that they could establish their own business relations, and there were several rich widows that were the heads of their own households. While these beliefs existed, the household practiced "mutual interdependence" and could not function without the help of both the husband and the wife.[36] Women not only commonly worked as agricultural laborers along with their husbands, sold domestic goods in order to supplement the

[34] William Whately, "The Bride Bush," (London: 1617), 36; found in Lawrence Stone's *The Family, Sex and Marriage in England*, 109.
[35] Stone, *The Family, Sex and Marriage*, 138.
[36] Wrighston, *Earthly Necessities*, 45.

family income, but also asserted dominance over their children and servants. Lawrence Stone asserts that the woman's "ability to scold" was one of her greatest powers because of the authority arrested by women in the household as well as in the neighborhood, such as in the room at childbirth. This was seen as a "privileged female domain" where solely women wielded power, and any male presence was thought to be a transgression.[37] The power of their voices was seen throughout the number of slander cases that appeared in the Middlesex County court and the Old Bailey, as well as in the punishment of ducking which will be discussed later in the chapter.

The practice of authority was not solely used by men against women but also utilized in the punishing of servants, apprentices, and schoolchildren. Flogging was the standard punishment for these three categories of subordinates, particularly in the late sixteenth and early seventeenth centuries. Whipping was performed "until the blood flowed" and was regarded by many as the only reliable method of correcting bad behavior, such as disobedience.[38] Lawrence Stone asserts that the large population of apprentices and domestic servants in London created such a distinct and recognizable adolescent subculture that they threatened order if not controlled. These servants and apprentices could be and were exposed to "almost limitless sadism" by their masters and mistresses if they failed to live up to their standards.[39] The discussion on whipping and

[37] Cressy, *Society and Culture*, 447; Stone, *The Family, Sex and Marriage*, 109, 138, 139; William Whately, "The Bride Bush," (London: 1617), 36; Wrightson, *Earthly Necessities*, 42-47, 65; Keith Wrightson, "The Politics of the Parish in Early Modern England," in Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin's Press, 1996), 13, 14, 20; B. Capp, "Separate Domains? Women and Authority in Early Modern England," in Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin's Press, 1996), 118, 125, 127.
[38] Stone, *The Family, Sex and Marriage*, 118.
[39] Stone, *The Family, Sex and Marriage*, 113, 117, 118, 120.

servant abuse is important to the analysis between the court punishments of colonial Virginia and England, particularly when it came to the amount of lashes and level of severity. The fact that most whipping in England was carried out "until the blood flowed" marks a significant difference between England and Virginia.

While it may appear that households existed in isolation and Englishmen and women failed to establish lasting relationships, many relied on their connections created with neighbors and other family members. The virtue of "neighborliness" was extremely important throughout English society because if one needed help, neighbors were typically the closest and most reliable form of assistance. The ethics of neighborliness often hinged upon proper conduct and self-regulation through avoidance of conflict. Ultimately, one needed to establish a good reputation of responsible behavior and accept limits on personal autonomy in this "economy of obligation" in order to receive help.[40]

Shifts in the Population and Economy

While it is important to uncover the lives and household economies of the English people at the ground level, there were larger and more drastic changes occurring in the sixteenth century. From 1520 to 1581 the population increased from 2.4 million to 3.6 million, a huge growth which affected English society in all areas. The larger number of consumers created more demand for goods, which in turn caused prices to steadily rise. It not only created a demand for goods, such as grains and cattle, but increased the demand for land which was thought to be the "securest form of investment."[41] Many who already owned land recognized that they could exploit the system by either holding onto their

[40] Wrightson, *Earthly Necessities,* 78.
[41] Wrightson, *Earthly Necessities*, 101.

land or raising the fines and rents on those who sought to lease land. This caused a drop in the number of people who could be labeled as landowners. Because of the greater number of people available to work, real wages decreased and ultimately created widespread poverty throughout England. There was rapid growth in vagrancy, which was most visible in urban areas where many sought to find work but often could not.[42]

The Crown recognized these problems that started to arise and sought to relieve some of the symptoms in the second half of the sixteenth century. The royal government required that justices of the peace survey the poor in each town in order to establish taxes to provide for those who needed relief. Even though this appeared to be a benevolent system, it was a very divisive subject for local authorities who sought to express "social responsibility" while at the same time excluding those deemed undeserving. Many local authorities expressed beliefs that there were separate categories of the poor: the "deserving poor" and the poor who are so because of their "own moral default."[43] Local authorities and the inhabitants normally agreed that poor relief should not be given to the idle, lewd, or drunk because they did not appear worthy of help if they did not at least try to help themselves.

Steve Hindle describes the politics of poor relief in his book *On the Parish? The Micro-Politics of Poor Relief in Rural England*. He and other historians, such as Paul Slack, concede that the formal poor relief system enacted by the Crown did alleviate poverty for a substantial portion of the population. However, those in need of relief were

[42] Wrightson, *Earthly Necessities*, 101, 121, 133, 135, 146-149; Martin Ingram, *Church Courts, Sex and Marriage*, 73, 74; Paul Slack, *Poverty and Policy in Tudor and Stuart England* (New York: Longman Inc., 1988), 45, 69.
[43] Hindle, *On the Parish?*, 146.

a much larger proportion of the population (about 20%) than those actually on relief (around 5%).[44] Parishes and towns often established their own institutions, such as workhouses, in order to solve the poverty problem, which were designed to set to work the under and un-employed, as well as reduce the number of pensioners that were on the poor relief roll. One of the most infamous workhouses was that of Bridewell in London known for its motto of setting the poor to work "in sciences profitable to the common weal."[45]

The main problem with the poor relief system was that discrimination "became the central, though never the hegemonic, idiom of charitable discourse," and excluded many poor from receiving relief.[46] Many community members shared their beliefs about the poor with local authorities who often sought to alleviate the stress of rate-payers rather than those in need of assistance. Some believed that beggars could become dangerous if they were denied some form of aid but most were of the opinion that the poor were just idle or drunkards, which is why some relief was refused to those who displayed bad behavior or appeared unwilling to work. The most common complaint from ratepayers was that of "being overcharged," creating tension between the moral duty of Christian charity and justifiable rates of relief.[47] Even though some authorities recognized that turning away those "likely to be chargeable" could force them into vagrancy, many parishes often used expulsion when a poor migrant travelled into their

[44] Hindle, *On the Parish?*, 4.
[45] Slack, *From Reformation to Improvement*, 20. Paul Slack's other work *Poverty and Policy* also discusses how the poor relief system was able to support a large proportion of the population.
[46] Hindle, *On the Parish?*, 103.
[47] Hindle, *On the Parish?*, 378.

town instead of interpreting the reasons behind their immigration.[48]

Historian Paul Slack asserts that after 1600 poor rates, relief, and vagrancy punishments became characteristic of English society. The dichotomy between the deserving and undeserving poor oversimplified the identities of those in need of assistance and made the undeserving poor into "rogues and vagabonds," which was reflected in how they were punished.[49] The 1598 Vagrancy Act defined rogues as those wandering but able persons that refused to work. Such idle people were likened to "lawless beasts" and the courts typically whipped them and sent them back to their home parish.[50] Bridewell, though first established as a workhouse for the poor, began to be overshadowed by its other role of punishing vagrants through whipping and incarceration. From 1560 to 1561 authorities at Bridewell disciplined only sixty-nine vagrants whereas in the years 1624-1625 they penalized eight-hundred and fifteen, indicating that poverty and vagrancy were seen as some of the main concerns of society in early modern England.[51] These issues appeared frequently in the English courts, particularly in the large towns surrounding London, such as Middlesex.

In order to provide for the increased demand, and hopefully to relieve some of the symptoms of poverty, many Englishmen and women intensified their efforts to increase production of food and necessary goods. Because there was a greater chance at success in

---

[48] Ibid, 13. Paul Slack's *From Reformation to Improvement: Public Welfare in Early Modern England* describes some of the calculations that statisticians made when it came to determining the exact numerical figure needed for poor relief. The average cost of feeding a pauper was thought to be about three pence a day, which would equal thousands of pounds a year in order to support the poor. It was estimated that London's poor alone required £160,000 a year in order to survive (Oxford: Clarendon Press, 1999), 94.

[49] Paul Slack, *Poverty and Policy in Tudor and Stuart England* (New York: Longman Inc., 1988), 7.

[50] Ibid, 25.

[51] Slack, *Poverty and Policy*, 70, 93.

larger towns, many began to move to the cities to find jobs or simply would drive to these bigger markets in order to hawk their wares. The population of London, Middlesex, and Surrey steadily grew throughout the sixteenth and seventeenth centuries and reached 70,000 inhabitants by 1550. Because of the decreased wages, there was a larger and more wholly wage-dependent population who could not find work every day. Keith Wrightson estimates that around half of the English population by the mid-seventeenth century fit into this category. This reveals that even though the national income doubled between 1560 and 1640, it was not evenly distributed throughout the English population. Persistent migration to cities shifted where the majority of the Englishmen and women lived and created a London population of 575,000 by 1700.[52] This large, urban town became the site of many of the social issues, such as vagrancy and theft. Such a big population in one area helped to heighten the anxiety about these crimes, which is seen throughout the court records.

Overall, English society experienced drastic changes beginning in the early sixteenth century and lasting throughout the seventeenth century. Society was already extremely stratified and became increasingly even more so as the process of commercialization, the shift to a market economy, strengthened. This social stratification was justified through many moral, political and economic doctrines by contemporaries who wished to sustain inequalities and subordination of the lower classes as well as women. There were many reasons for this, including keeping men in a superior position over women, other subordinates, and the common sort, and establishing control over an

[52] Wrightson, *Earthly Necessities,* 159, 163, 164, 172, 173, 182, 190, 191, 195, 197, 198, 221, 227, 229, 230, 235; Hindle, *On the Parish?*, 16.

unruly population. The unruly population had a significant place within the English court records which indicates authority's desire to maintain security in a disruptive world.

Cases in the English Courts

The issues experienced by the English population made up a large part of the cases seen in the Middlesex County court and the records of the Old Bailey. The English courts were supported by the monarchy, ruled over by a King or a Queen, and Parliament, which was divided into two Houses, the House of Lords and the House of Commons. England was separated into counties which were then further divided into many different parishes, hundreds, cities, and boroughs.[53] County courts existed for these established counties, such as the county of Middlesex, for which a great amount of court records still exist. The Middlesex County Court Records were known as the "Quarter Sessions" because the county justices of the peace only met four times a year to decide on trials and mete out punishments. The Old Bailey established in London typically dealt with major criminal offenses committed in London and Middlesex, and was known for producing a "crop of victims" for the gallows at least eight times a year.[54] There were several ecclesiastical courts present in the parishes, which decided on offenses such as defamation, religious excommunication and conduct, adultery, spousal abuse, the enforcement of tithes, and marriage disputes. Unlike many of the cases that appeared before common law courts, the ecclesiastical courts were not "primarily designed to exact retribution for offenses" but sought to "reform the culprit" as well as deter others from

[53] Mark Kishlansky, *A Monarchy Transformed: Britain 1603-1714* (London: Penguin Books Ltd, 1996), Chapter Two.
[54] J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, NJ: Princeton University Press, 1986), 75.

same offense.[55]

Even though there were differences between the common law courts, such as the Middlesex County Court, and the ecclesiastical or church courts, historians such as Martin Ingram point out that the similarities between the two are striking. He asserts that ecclesiastical courts could "stand proxy for much if not all of late Elizabethan and early Stuart England" because they and the common law courts represented the desire among the ruling classes for "maintenance of order and resolution of conflict" and sought to "control crime and disorder and to regulate."[56] Historian Malcolm Gaskill also argues that there was a symbiosis of religious and secular ideology that concentrated on the suppression of disorder. This desire for order, safety, security, and stability did not just come from the courts and their authorities but were prompted by the communities of people who used the courts as a resource to solve disputes. J. M. Beattie argues that there was a broad public acceptance of the criminal law which was displayed in having the offender arrested and brought to trial, since the majority of common law cases relied on the victim's efforts to right injustices. This reciprocal element of participation by both court authorities and the people at large is also discussed throughout the collection of essays in *The Experience of Authority in Early Modern England*. In his essay on "The Politics of the Parish in Early Modern England," Keith Wrightson argues that local government and the courts were supported by the "willingness of individuals and groups

[55] Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (New York: Cambridge University Press, 1987), 3, 17, 44. Information about the Middlesex County court is found in John Cordy Jeaffreson, ed., "Middlesex County Records: Volume 1-1550-1603," British-History Online. http://www.british-history.ac.uk/source.aspx?pubid=551 (accessed April 2014) and Jeaffreson, ed., "Editor's Preface of the Middlesex County Records: Volume 1-1550-1603," British-History Online. http://www.british-history.ac.uk/report.aspx?compid=65918 (accessed April 2014). J. M. Beattie discusses the Quarter Sessions in *Crime and the Courts in England*.

[56] Ingram, *Church Courts*, 24, 27, 28.

in local society to employ the resources of state power for their own particular purposes," pointing out that the vast majority probably did not complain about the discipline used by the court system.[57]

The attention now turns to the discussion of the court cases found in the Middlesex County Court and that of the Old Bailey. The crimes or offenses have been separated into different categories in order to focus on particular crimes that can be compared to the colony of Virginia. Most of the offenses that will be analyzed made up a large majority of the cases that appeared in the court records and will serve as a basis for the ways that the English courts treated offenders and reasons why.

Theft and Burglary

The crime that permeated the great majority of the court records was that of robbery. The King himself in a 1616 speech to the Star Chamber, spoke about the terrible crime of robbery and how some of the courts were "too mercifull" when it came to punishing thieves. He reminded them that "mercy is the Kings, not yours, and you are to doe Justice where trew cause is" and must remember that "what vice most abounds in a Common wealth, that must bee most severely punished; for that is trew government."[58]

---

[57] Keith Wrightson, "The Politics of the Parish in Early Modern England," in Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin's Press, 1996), 27; Malcom Gaskill, *Crime and Mentalities in Early Modern England* (New York: Cambridge University Press, 2004), 11; Beattie, *Crime and the Courts*, 37, 38; Eleanor Hubbard, *City Women: Money, Sex, and the Social Order in Early Modern London* (New York: Oxford University Press, 2012), 5; Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin's Press, 1996), 2.

[58] Early English Books Online, "His Maiesties Speach in the Starre-Chamber the XX of Iune Anno 1616 (London, England), Thursday, June 20, 1616," accessed April 2014 (http://find.galegroup.com/bncn/retrieve.do?sgHitCountType=None&sort=DateAscend&prodId=BBCN&tabID=T012&subjectParam=Locale%2528en%252C%252C%2529%253AFQE%253D%2528tx%252CNone%252C7%2529robbery%253AAnd%253ALQE%253D%2528da%252CNone%252C23%252901%252F01%252F1604%2B-%2B12%252F31%252F1700%2524&resultListType=RESULT_LIST&searchId=R5&displaySubject=

The first record that exists on the rolls for Middlesex County's Quarter Sessions is a case involving two thieves, Richard Warren, butcher, and Rychard Davyson, of an unnamed profession, who committed their crime at Pankryshe Church in 1549.[59] Warren and Davyson, on the same day, stole a "bey gelding" from Robert Pykering, a "bocher," and also stole a "light bey gelding" from John Coke, a "sadler." Warren and Davyson pleaded guilty before the court, most likely knowing that the evidence was against them, and were sentenced to be hanged.[60]

While it may seem extreme today that thieves could receive the death sentence for such an offense as stealing horses, the opinion of the courts in the records display the belief that such offenders deserved capital punishment. The Proceedings of the Old Bailey are a very good source when it comes to understanding why certain criminals received such punishments, as the recorder of the trials at the Old Bailey let his opinions be known. The clerk often addressed the reader directly and pondered how the trials and punishments could be used as a learning experience or a cautionary tale. The trial recorder of the Old Bailey believed that offenders "by their own idle or extravagant living are forced to seek out those ways and means, which either are destructive in themselves, or purchase shame and destruction in their end."[61] Those in sixteenth and seventeenth century England, particularly court authorities, believed that Warren and Davyson

---

&searchType=BasicSearchForm&currentPosition=1&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28tx%2CNone%2C7%29robbery%3AAnd%3ALQE%3D%28da%2CNone%2C23%2901%2F01%2F1604+-+12%2F31%2F1700%24&retrieveFormat=MULTIPAGE_DOCUMENT&subjectAction=DISPLAY_SUBJECTS&inPS=true&userGroupName=acd_bbcn&sgCurrentPosition=0&contentSet=LTO&&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=Z2001701278&contentSet=UBER2&calllistoContentSet=UBER2&docPage=article&hilite=y).

[59] Jeaffreson, ed., "Middlesex 1550-1603," (July 11, 1549).

[60] Ibid, (July 11, 1549).

[61] The University of Sheffield, "Proceedings of the Old Bailey," April 29, 1674.

deserved a death sentence for stealing horses, as it was "surely the most serious" of crimes because horses were not only extremely valuable but also incredibly easy to steal.[62]

Offenses such as robbery and burglary, which made up the bulk of day-to-day cases, created real harm for the English population. Both robbery and burglary were threats to peace and stability, especially in places like London where prosecutions ran at a "higher and broadly rising level" and reached crisis levels by the middle of the seventeenth century. Property offenses were thought to be a "signal of moral decay and a threat to security" because robbers often resorted to violent measures in order to steal goods, threatening the lives and property of Englishmen and women. Theft was thought to be such a serious offense that many of the victims of theft chose to file a complaint, even if it meant a possible death sentence for the accused.[63]

While a death sentence ultimately punished the criminal for robbery by taking away his or her life, a public hanging also served another purpose: to prevent other English men and women from performing the same type of crime. The use of publicity in the penalizing of offenders was thought to establish "communal discipline," as it not only scared others from committing the offense but also satisfied the community at large to know that justice was enacted.[64] The convicted thief would have been hanged at the Tyburn gallows, at least for those felons that were in Middlesex County, where a crowd would have undoubtedly been gathered to witness the event. Felons of any kind were seen as "evil-doers" and were thought to "disturb the Common-Peace." In order to

[62] Beattie, *Crime and the Courts*, 167, 168.
[63] Ibid, 6, 8, 11, 14, 40.
[64] Ingram, *Church Courts*, 3.

preserve such peace, the courts were forced to inflict "severe Penalties, not so much simply to Torture the present Malefactor, as to forewarn others from the like Crimes." It was thought imperative by the recorder of the Old Bailey that punishments "on a few may…create fear in all."[65] Such fear suggests that it was a necessity to keep control throughout English society, and protect the subjects from disorder and strife.

In the cases of theft, the recorder outlines whether or not the goods stolen came from a dwelling or from the body of a person. Both types of thieves could be hanged for these actions, whether it was only ten shillings, worth half a pound, or eighteen and a half pounds worth of goods. Even though thieves were hanged for stealing goods whose values ranged from several hundred pounds to a few shillings, value was crucial in determining whether it was petty theft or grand larceny. Grand larceny cases involved goods valued at one shilling or more, and petty theft was established when the goods only valued twelve pence or less. The value of the goods was crucial because grand larceny was set as a capital felony while petty theft was not. The courts' determination to convict those who stole goods valued at more than one shilling was most likely based off the reality that many families survived off such a sum. Some poor relief censuses determined that an average poor family required a minimum of two shillings per week in order to support themselves. If a thief stole half of this amount from a pauper family, they would likely starve to death or have to rely on the relief of their community.[66] While the connection between the value of the stolen goods and punishment did not change over time, the Middlesex County court began to utilize other non-capital forms of punishment

[65] The University of Sheffield, "Proceedings of the Old Bailey," July 17, 1674.
[66] Beattie, *Crime and the Courts*, 140; Slack, *Poverty and Policy*, 81.

for thieves after 1650, including transportation and imprisonment.[67]

The concentration on the endangerment of "life and safety, as well as property" was readily seen throughout cases concerning theft as some thieves assaulted their victims in order to steal goods, even if the amount was not significant. John Bennet and Robert Parsons beat and robbed John Atwood of only "five shillings of numbered money" and were given the death sentence in 1550.[68] The fact that thieves often broke into dwelling-houses was related to cases of theft and assault because both created a "sense of personal insecurity" at being defenseless while walking the street or in one's own home.[69] The court records are precise, most of the time, when it came to detailing the exact time that the criminal "broke burglariously" into the house of the victim. Laurence Broun stole only twenty pence worth of goods when he broke straight into the "bedchamber" of Thomas Breke, a gentleman, where he and his family were sleeping, between the hours of ten and eleven p.m. Laurence was sentenced to be hanged for this action in 1550, as it undoubtedly terrified the entire family and also equaled the value needed to be a capital felony.[70] The importance of feeling safe in one's own house was very important to the person's freedom, sanctity of private property, and protection. All of which were violated by burglars who put the inhabitants at the risk of being assaulted. The fact that most burglaries were committed at night left the home's occupants feeling

[67] Discussions about transportation to other English colonies is seen in Abigail Swingen's "Labor, Employment, Colonial Servitude, and Slavery in the Seventeenth-Century Atlantic," in Philip J. Stern and Carl Wennerlind, eds., *Mercantilism Reimagined: Political Economy in Early Modern Britain and its Empire* (Oxford: Oxford University Press, 2013), as well as Cynthia Herrups' "Punishing Pardon: Some Thoughts on the Origins of Penal Transportation," in *Penal Practice and Culture, 1500-1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths.
[68] Jeaffreson, ed., "Middlesex 1550-1603," (Dec. 15, 1550).
[69] Beattie, *Crime and the Courts*, 148.
[70] Jeaffreson, ed., "Middlesex 1550-1603," (Dec. 15, 1550).

even more defenseless.[71]

Benefit of the Clergy

Although the courts sentenced many thieves to be hanged throughout this time period, there was another sentence stipulation that could prevent an execution for those who committed theft. All one had to do was ask "for the book." If the person was able to read "like a clerk" then they could avoid the death sentence. Many of the court cases throughout the sixteenth and seventeenth century display this kind of story: two thieves commit the same crime, such as the pair of Simon Lambart and William Adams, who stole several coats, doublets, breeches, and shirts in 1551. Adams was sentenced to be hanged, while Lambart asked for the book, was able to read a passage, and kept himself from the gallows. Instead, he was branded in the hand with a mark.[72]

Further court records are clearer in outlining what happened to guilty criminals who sought the book. In 1554, Roger Longe "broke into the close" of Thomas Peychey and stole two oxen valued at fifty-two shillings and sixteen pence. When he asked for the book he was able to read and was therefore branded.[73] Although the appraised value of the goods stolen was higher than that of previous court cases, such as Moyses Bartlett who stole goods worth two shillings, Longe was able to avoid hanging.[74] It appears that the ability to ask for the book and the value of the goods stolen were not dependent on each other, since Henry Williams asked for the book even though he stole twenty-two pounds, or four-hundred and forty shillings, worth of goods from the "mansion-house" of

[71] Beattie, *Crime and the Courts*, 161, 162.
[72] Jeaffreson, ed., "Middlesex 1550-1603," (Oct. 1551).
[73] Ibid, (Aug. 29, 1554).
[74] Ibid, (January 1552).

the Lord Steward.[75] The capacity to seek the lesser sentence of branding, although still likely to be extremely painful, displays a more lenient side to the English justice system.

Another way of stating that a criminal wanted to read the book was to state that he pleaded his clergy. John Cordy Jeaffreson, the editor of the Middlesex County records, explains the meaning of the benefit of the clergy, or the *privilegium clericale*. The benefit of the clergy "exempted clerks in holy orders from criminal process before secular judges" so the ability to read like a clerk was "sufficient proof of the reader's clerical quality."[76] Historian J.M. Beattie also points out that the benefit was initially only reserved for churchmen but then was broadened to include clerks. The offender usually had to prove literacy by reading a verse from Psalms in the Bible.[77] When William Reynolds read the book like a clerk in 1556, he was "burnt on the hand," a spot where offenders typically received branding.[78] The fact that these offenders received branding on the hand displays that the court system wanted the stigma to be visible to everyone. Having the brand be visible served as a deterrent to crime but also reminded the public that the branded person had committed an offense, albeit one that received the beneficence of the court. The brand would have been difficult for the typical person to hide unless their occupation mandated that they wear gloves, but the purpose was to "mark the bodies of offenders with disgrace."[79] If the brand was placed on a body part that could easily be covered with clothing, the purpose of the brand would have been lost.

---

[75] Ibid, (1554).
[76] Jeaffreson, ed., "Editor's Preface for the Middlesex County Court Records 1550-1603," http://www.british-history.ac.uk/report.aspx?compid=65918 (accessed April 2014).
[77] Beattie, *Crime and the Courts*, 141.
[78] Jeaffreson, ed., "Middlesex 1550-1603," (March 7, 1556).
[79] Shepard, *Meanings of Manhood*, 133. See also Paul Slack's *Poverty and Policy in Tudor and Stuart England*.

Some thieves were not always so lucky when it came to branding, particularly if they had already been branded once before. Thomas Shawe, a yeoman, stole a couple of silver goblets and silver spoons from the goods of William Cockes. It does not state much more about the deed, such as where the felony took place, but Shawe presented himself as guilty and asked for the book. However, an unknown source, as the record fails to state who "pleaded for the Lady the Queen," brought forth the information that Shawe "had been burnt on the hand in former time." Shawe replied that "he was not the same person who was so burnt" so the jury looked at the Gaol Delivery roll of December 14, 1559, which proved that Shawe had been burnt on the hand on a previous occasion. Because of his previous branding, Shawe was then sentenced to hang in 1560.[80] These types of court records are plentiful in late sixteenth century and throughout the seventeenth century, and indicate several different things. Shawe was sentenced to be hanged because he had already received the mercy of the court once before, as well as the mercy of Queen Elizabeth. The detail that an unknown person "pleaded for the Lady the Queen" suggests that it was a disrespect or dishonor against the Queen that someone who had already been branded tried to seek the mercy of the court again. Another fact that the record shows is that the brand must have not lasted for very long, or at least not to the point where a person could visibly see any semblance that a brand used to be there. Otherwise the court could have easily looked at Shawe's hands in order to tell that he had been burnt before.

Although the English court system appears to have been just in offering the ability to read a passage in order to receive a lesser sentence, the same stipulation displays the inequality present throughout English society. John Crowcher, who acknowledged his

[80] Jeaffreson, ed., "Middlesex 1550-1603," (May 1559-1560).

guilt in stealing cattle in 1560, "was unable to save his neck by reading a verse;" therefore, the jury decided that "Ideo judicatum est quod suspendatur per collum," or "therefore it was adjudged that it be hung by the neck."[81] Three burglars, Paul, William, and John, asked for the book once they were found guilty in 1613, but only Paul was able to receive the benefit of the clergy, being able to read. William was unable and was then sentenced to be hanged, while John was also hanged since he had received the benefit before.[82]

The inability to read speaks loudly about English society, beliefs about the classes, and how such a failure to read affected a person's life in a significant way. One of the records from the Proceedings of the Old Bailey highlights this disparity when it came to the ability to read. In 1677, Richard Hazlegrove had asked for the book but was unable to read so he was executed. The record states that the case may seem "a little severe; but so the Law directs," and that it may serve to "admonish Parents to bestow, and Children to study at least to read well, since sometimes a man loses his life merely for want of it."[83] This information places the blame on the criminal's parents, without regards to other outside forces, such as whether they were even able to teach their child how to read.

A study on several areas of English society, including education, literacy, religious changes, as well as celebrations and crises, is David Cressy's *Society and Culture in Early Modern England.* His study of literacy argues that a vast majority of the English population were unable to sign their names, a measure he uses to determine whether

[81] Jeaffreson, ed., "Middlesex 1550-1603," (Oct. 7, 1560).
[82] Jeaffreson, ed., "Middlesex County Records 1603-25," http://www.british-history.ac.uk/report.aspx?compid=65979 (Accessed April 2014), 1613.
[83] The University of Sheffield, "Proceedings," July 11th, 1677.

Englishmen and women could read and write. In Norwich, he estimated that 85% of male laborers and 89% of women could not sign their names, while 0% of the clergy and those in the professional classes had trouble writing a signature. Much of it was a matter of education or one's occupation, since many rural laborers were not encouraged to acquire literacy if they could perform their jobs without it. Cressy admits that progress would be expected as the years progressed but this was not always so, because some years were worse or better than others. His assertion that many moralists and authors began to relate illiteracy to ignorance, idleness, and even theft is evidenced by the example displayed above.[84] Some court authorities failed to recognize that literacy was not available to everyone, or even encouraged, making the clerk's admonishment to parents appear quite arrogant as well as unfounded. However, it also reveals a clash between the social classes which was readily seen in cases such as vagrancy, robbery, and burglary.

What becomes evident throughout the research of the court cases is that only males were able to receive the benefit of the clergy, showing further inequality in English society and the court system. It was impossible for women to seek the benefit of the clergy because they could not become clerks in Holy Orders in the Protestant Church. This sort of tradition relates back to the Bible, which stated that only men were allowed to become priests or preachers, for a woman must not "assume authority over a man."[85] The prevention of women from receiving the benefit of the clergy is clearly stated in the

[84] David Cressy, *Society and Culture in Early Modern England* (Burlington, VA: Ashgate Publishing Co., 2003), 2, 5, 8, 10, 307. David Cressy also has a book entirely on literacy titled *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (Cambridge, NY: Cambridge University Press, 1980), viii + 246 pp.

[85] Bible Gateway, "1 Timothy 2," Holy Bible, New International Version, http://www.biblegateway.com/passage/?search=1+Timothy+2 (accessed April 2014).

court records: "her sex not being capable of the benefit of the Clergy."[86] J.M. Beattie states that women were only given the benefit of the clergy in 1623, though it would be seventy more years before they were on the same footing as men.[87] Such an inability to ask for the benefit caused many women to face the gallows for similar crimes committed by men. One of the only times that a woman was sentenced to be branded was if she was found guilty of being a vagrant. There were some strange cases that occurred, such as one in 1632, where a woman was branded on the thumb for stealing several goods, but this was extremely rare.[88] Two other women were branded for stealing goods that valued nine shillings, but this was seen much later in 1684.[89]

Such a blatant difference between the sexes warrants a discussion of Joan W. Scott's "Gender: A Useful Category of Historical Analysis," which focuses on the complexity of the term "gender" and its historical study, which often equated "gender" with "women." Scott asserts that the substitution of "women" for "gender" suggests that the history of women is also primarily the history of men, which rejects the idea about separate spheres. This idea argues that women solely lived private, domestic lives whereas men participated in a public arena, such as in politics and government. Scott discusses how many historians employed gender studies in order to analyze the relations between the sexes, as well as gender ideologies that existed in different time periods, but the analysis was still structured by objects of study where historians knew women to be, such as in the home instead of in politics. Scott describes the theories of those that rested

[86] The University of Sheffield, "Proceedings," May 10th, 1676.
[87] Beattie, *Crime and the Courts*, 142.
[88] Jeaffreson, ed., "Middlesex 1603-25," Dec. 5, 1632.
[89] The University of Sheffield, "Proceedings," Dec. 10, 1684.

upon the idea of patriarchy in order to understand the inequalities between the sexes. Patriarchy theorists relied on the beliefs that men saw women as inferior and in need of subordination, even though this image often did not cross over into reality. Scott argues that antagonism between men and women should not be the central facet of gender and must not always be used to explain the relationship between the two. She asserts that historians need to focus on the individual subject as well as the social organization present in society in order to "articulate the nature of their interrelationships." If one does this, there is "room for a concept of agency…to construct an identity," and allows the historian to rethink boundaries and recognize possibilities available for both men and women.[90]

Scott's analysis can be used to understand the relationships between the Englishmen and women in this time period, as well as the relationship that women and men had with the law and court systems. It would be easy to state that women's inability to receive the benefit of the clergy was due to male authoritative beliefs about the inferiority of women and that men asserted their dominance and superiority by enjoying a right that was barred from women. However, there are so many other facets within society that could explain this inequality, such as the reality that most women did not need to learn how to read. Even though this argument rests upon the reality that women were more likely to be seen within the home or in the marketplace, illiteracy was not something that solely depended on one's biological sex. A person's occupation was another factor that determined whether one could read or not, such as the estimation that

[90] Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review*, Vol. 91, No. 5 (Dec., 1986), 1067.

a vast majority of laborers were illiterate, and were not required or enforced to learn how to read and write. Such facts force the reader to adjust her thinking when it came to women's inability to claim benefit of the clergy, and how inequality did not just exist between the sexes but throughout the classes as well.[91]

Highway Robberies

Along with robbery of a person and burglary committed upon a dwelling, the other type of record that makes up a large percentage of the court cases is robberies that took place on the highways. George Turke, gentleman, assaulted and robbed Thomas Baker upon the Queen's highway "at the Stonebridge in Shordyche," and was sentenced to be hanged in 1561.[92] In 1589, John Tannett and William Sendye, both gentlemen of London, attacked Roland Bredeford, a servant, with swords and daggers upon the highway at Islington. Both of them were sentenced to be hanged, but Sendye produced the Queen's pardon at the Gaol Delivery at Newgate. What is significant about this case is that Sendye was able to produce a pardon for stealing an extremely valuable amount of goods. The list of goods that the victim was carrying is amazing in itself: "a jewel of gold with divers precious stones set therein, worth one hundred pounds; another jewel of gold with divers precious stones viz. an agget and divers dyamondes and rubyes fixed therein, worth ninety pounds; another jewel of gold with divers precious stones, worth one hundred and thirty pounds," and two-hundred and four pounds worth of other jewelry.[93]

While these sorts of details speak more about English society than the punishment

[91] David Cressy, *Society and Culture in Early Modern England* (Burlington, VA: Ashgate Publishing Co., 2003), 2, 5, 8, 10.
[92] Jeaffreson, ed., "Middlesex 1550-1603," (1561).
[93] Ibid, (April 11, 1589).

given to the two gentlemen, the court record shows the amount of danger that people on the highway faced daily. It is not difficult to recognize the importance of highways, as they were often the only set route for people to take in order to get from one town to the next. This was important for the large number of migrants coming into the cities as well as those selling goods at bigger markets. One can see the importance of these roads by looking at the court records where there were continuous requests from the townspeople that ask for the betterment of the highways, as well as many complaints of such offenders that put "one hundred cartloads of rubbish on the common highway for foot-passengers."[94] The importance of keeping the highways safe for those traveling from town to town was obviously high for the courts as they sentenced many to hang for assault and robbery performed on the roads. It seems to have been on the same level as it was for households, for persons needed to feel safe and enjoy the freedom of travel and commerce.[95]

Highway robbery was so troubling and anxiety-producing that the court justices often warned subjects to "take care how they wander late in the Evening."[96] This was not just an idle piece of advice from a justice at the Old Bailey. It was very evident just how dangerous it could be to travel on the highway and why it may have stressed the English population if they had to journey on it during the nighttime. The above case of John Tannett and William Sendye showed that the two criminals "with swords and daggers

[94] John Cordy Jeaffreson, ed., "Middlesex County Records 1667-88," http://www.british-history.ac.uk/source.aspx?pubid=554 (Accessed April 2014), April 8, 1678.
[95] Beattie, *Crime and the Courts*, 148.
[96] The University of Sheffield, "Proceedings," Sept. 9, 1675.

assaulted, beat, and maltreated" the victim in order to rob him of his goods.[97] In 1602, Simon Jackson was attacked on the highway by William Gibson who wielded a dagger. The wound that Jackson received caused him to die "instantly."[98] Many others were simply assaulted and robbed of their goods, whether the thief had a weapon or not, such as Walter Crumwell who lost several pounds worth of goods when attacked by Thomas Dennis on the highway in 1661.[99] Such evidence indicates that people not only feared the loss of their goods but also the loss of their lives. This is why such thieves who assaulted and robbed those on the highway were sentenced to death.

Vagrancy

Another offense which was related to theft and caused disruption in the towns was that of vagrancy. A Middlesex court case described a vagrant as anyone who "being over fourteen years of age, and strong and fit for labour, were masterless vagrants without any lawful means of subsistence." Vagrants that fit this description were to be "whipt severely and burnt on the right ear," which included both males and females.[100] Court records typically listed several names under the same bill and gave out one mass punishment. It was not always the right ear that was burned, as there are court records that also specify that the left ear be burned.[101] This sort of punishment was detailed in the statute known as "an Acte for the Punysshement of Vacabonds and for the relief of the Poor and Impotent" in 1572. Whipping would have indeed hurt tremendously and served both as a punishment for the offender, so that they may not commit vagrancy again, and as an

[97] Jeaffreson, ed., "Middlesex 1550-1603," April 11, 1589.
[98] Ibid, June 25, 1602.
[99] Ibid, January 15, 1661.
[100] Jeaffreson, "Middlesex 1550-1603," (Easter 1573).
[101] Ibid, (Easter, 1575).

example to the public to deter them from becoming vagrants. The branding on the ear served the same purpose as one on the hand since it would have been easy to notice a burn on the ear by others, who would recognize that person as a criminal. Those who had already been branded by the court for vagrancy were treated like the offenders who had already received the benefit of the clergy: the criminal had already received the kindness of the court once, and did not deserve it again, so they were sentenced to be hanged, especially if they were already over eighteen years old.[102]

Vagrants were considered a nuisance to parishes and towns since they would have most likely turned to begging or theft. These vagrants would have been a noticeable mass of people to the inhabitants of the towns and would display that the government and church was not doing all it could to relieve the poor. What makes vagrancy such a crime in the eyes of the court system was that vagrants were fit enough to make a living but seemingly chose not to do so. Such people, no matter how they became vagrants, were thought to be "particularly wicked individuals…dangerous and incorrigible" and if the courts sentenced them to death it was only to "prevent crime in the future by disabling particular offenders and terrifying other into obeying the law." This argument is similar to the opinion held about thieves, which is not surprising since most vagrants were thought to survive by stealing goods from others, as they had no means to support themselves.[103]

Starting in 1618, the courts began to punish vagrants by branding them "on the left shoulder with a great Roman R by a hott burninge iron impressed on their left shoulders." The "Roman R" stood for "rogue" and would have let the greater public

[102] Ibid, (Aug. 29, 1575).
[103] Beattie, *Crime and the Courts*, 455.

know that they had been punished for vagrancy, as well as punishing the offender with a burning hot iron.[104] The reality that vagrants did not have an occupation or a master who could have supported them forces one to believe that such people would have to get an income or subsistence elsewhere, by pick-pocketing or stealing from people and establishments. An act was created in 1657 to deal with the increased number of such "rogues, vagabonds, and sturdy beggars," since they were known to commit "divers Robberies, Burglaries, Thefts, Insurrections and other Misdemeanors."[105]

J. M. Beattie discusses vagrants in his study *Crime and the Courts in England* and how the most common punishment given to them by the courts was whipping, usually achieved at the cart's tail. In this punishment, the offender walked behind a cart, often down a specific route, and was typically whipped until their "back be bloody." This punishment was supposed to be humiliating for the offender as it was always performed in public and usually at the busiest time of day when many people would be out on the streets. It not only stigmatized the vagrant as an untrustworthy person but also hoped to prevent others from the same, which was the key component in all public discipline. Later in the seventeenth century, Beattie argues that many courts started to see these types of punishments as too harsh and ordered that they be sent to houses of correction in order to perform labor that would "better them."[106] The courts also began to use transportation as sentences for vagrants and other criminals, since it was believed that urban areas were overflowing with them. The idea of sending vagrants to prison for labor can also be seen in transporting them to the English colonies. Virginia's need for labor in tobacco

[104] Jeaffreson, "Middlesex 1603-25," Aug. 6, 1618.
[105] Firth and Rait, eds., "Acts and Ordinances," June 9, 1657.
[106] Beattie, *Crime and the Courts*, 461, 465, 492

cultivation was an important factor in the English courts' decisions to provide able-bodied people. The English courts were able to rid the towns of those who failed to work and forced them to work elsewhere for the English empire.[107]

Pardoning and Lesser Punishments

Robbers continued to receive death sentences throughout the seventeenth century even if they just had the "intention of despoiling" or pre-meditated robbing the victim of his goods.[108] It is difficult to find a court case in which burglars and robbers were not sentenced to die for their offense until the late seventeenth century. In 1670, Philip Sampson stole an "iron anchor worth twelve shillings, and twenty yards of cable rope worth twelve shillings." This crime would have previously sentenced Sampson to die; however, Sampson "consented to be transported" instead of facing the death sentence.[109] The courts increasingly used pardons like transportation in the second half of the seventeenth century, pardoning half of the offenders sentenced to die between 1663 and 1694. J. M. Beattie discusses this shift within the court system and asserts that the attempt to broaden penal options, particularly through the use of transportation and imprisonment, was due to the increase in number of prosecuted crimes in the late seventeenth century. The recognizable increase in property crimes was much more likely "to find a response in the courts," and the justices began to utilize these lesser

[107] Arguments about transportation to the colonies, vagrancy, and labor is seen in Abigail Swingen's "Labor, Employment, Colonial Servitude, and Slavery in the Seventeenth-Century Atlantic."
[108] Jeaffreson, "Middlesex 1603-25," 1612.
[109] Jeaffreson, "Middlesex 1667-88," May 19, 1670; In looking at the cases involving theft and burglary in the Middlesex County court, it is estimated that around 54% of thieves and burglars were sentenced to die for their offense. Throughout the rest of the seventeenth century, the percentage of thieves sentenced to hang was still higher than the percentage of those that received lesser punishments.

punishments.[110] If sentencing felons to die was not helping to relieve the problem of crimes such as theft, then the courts needed to change disciplinary tactics.

If criminals received lesser punishments they had the ability to ask for transportation, which was seen more readily throughout the Proceedings of the Old Bailey for which the records begin in 1674. One woman was found to have stolen a "silver cup from a 'victualling house'" and was "put by to be transported." The ability to be transported instead of receiving another sentence, such as branding or whipping, was known as the "Kings pardon for transportation" and the "mercy of the Court." Many female thieves in the trials of the Old Bailey appear to have taken this lesser sentence readily, probably because they could not receive the benefit of the clergy until later in the seventeenth century. However, those that had already received a transportation sentence before were unable to receive it again, especially if they were "notorious criminal[s]." One woman was sentenced to "take a surer Transportation by a turn at Tyburn," after she had shoplifted too many times. What is significant about the ability to be transported is that many of the offenders committed crimes that, if earlier performed, would have sentenced them to die. William Temple and William Butler were found guilty of felony by stealing fifteen pounds and ten shillings from Sarah Welsh, and were sentenced to be transported in 1684.[111] In 1608, William Spirritt stole the same valued goods from John Edgerton and was sentenced to hang.[112] This supports Beattie's theory about a more benevolent English court system in the last quarter of the seventeenth century, but also

[110] Beattie, *Crime and the Courts*, 14.
[111] The University of Sheffield, "Proceedings," April 29, 1674, Dec. 8th, 1675, Dec. 11, 1689, Dec. 12, 1677, September 3, 1684.
[112] Jeaffreson, ed., "Middlesex 1603-25," Dec. 1, 1608.

indicates to the building of the English empire in colonial America.[113]

This argument about strengthening the English empire through transporting its criminals to other English colonies is discussed in Abigail Swingen's "Labor, Employment, Colonial Servitude, and Slavery in the Seventeenth-Century Atlantic" as well as Cynthia Herrup's "Punishing Pardon: Some Thoughts on the Origins of Penal Transportation." Swingen discusses the role of slavery in England's "imperial trajectory" but also highlights the contemporary arguments that saw the colonial settlements as potential places to send England's "undesirables."[114] The fact that England was swarming with vagrants and thieves, and that the English colonies needed labor, seemed to provide the perfect reason for transporting criminals in the second half of the seventeenth century. Swingen asserts that the idea of certain people as expendable "directly contributed to creating violent systems of coerced labor in English colonies," known as indentured servitude. Transporting criminals to places such as Virginia ultimately gave the colonies a source of "forced colonial labor" and did not just serve to get rid of England's criminals.[115] These sources of labor could be utilized to build up the English empire.

Even the English population saw the potential in transportation, but in a completely different way. Several subjects were brought before the Middlesex County court to answer for enticing people and "endeavoring to transport [them] beyond the seas."[116] Such people were known as "spirit[s]" because they "spirited" away people to

---

[113] Cynthia Herrup has an article on transportation of prisoners to the English colonies titled 'Punishing Pardon: Some Thoughts on the Origins of Penal Transportation', *Penal Practice and Culture, 1500-1900: Punishing the English*. Ed. S. Devereaux and P. Griffiths. Basingstoke: Palgrave, 2004. pp. 121–37.
[114] Swingen, "Labor, Employment,"47, 49.
[115] Ibid, 51.
[116] Jeaffreson, ed., "Middlesex 1625-1667," August 14, 1654.

the ships waiting in the harbor and sold them so that they would be transported to one of the English colonies.[117] Some spirits were notorious for taking up children and young men and women in order to make money off their sale. These victims were undoubtedly used as labor in the colonies, which is indicated in the number of complaints from those who were sold against their will, as well as in the transactions that occurred.

Petty Theft and Whipping

As discussed earlier, there were other forms of theft which subjected the criminal to a lesser punishment than death, that of whipping. This was any kind theft for which the value of the goods stolen only amounted to one to twelve pence. There were some court cases in which the offender was simply fined and delivered "on the payment of the fee" being found guilty of "petty larceny."[118] Court authorities appeared to believe that this offense did not warrant such a harsher punishment as it was counted as such a low amount of money lost from the victim. Some were extremely lucky when it came to the appraisals that the court gave to the goods stolen, such as the case of Margaret Tayke, who stole a much larger value of goods than twelve pence. Just one article of clothing that she stole from Robert Whiskine was worth eighteen pence alone; the rest of the goods totaled several pounds. The jury appraised the goods at twelve pence and only required Tayke to pay a fine, completing skipping the sentence of whipping.[119] This kind of record points to possible compassion on the side of the court, as Tayke was just a spinster, and this could have been her only crime.

This idea about compassion towards women is seen in Steve Hindle's study which

[117] Ibid, December 10, 1655.
[118] Jeaffreson, ed., "Middlesex 1550-1603," Oct. 7, 1580, 1599.
[119] Ibid, April 24, 1601.

argues that those "on the parish" or the poor relief rolls were mostly women, though the majority were either widows or young married wives with children. There could be several reasons as to why a person depended upon the parish, but women comprised the majority of those on poor relief because of their inability to always support themselves without a husband. Even if they were married and both the husband and wife worked, usually as wage-dependents, female workers always received less money often for the same type of work. This was usually due to the patriarchal norms that the man of the household was supposed to be the sole provider for the family and the belief that women were inferior to men. Hindle asserts that the reality that many women were often forced to pilfer out of desperation and lack of financial support made the courts regard petty theft more sympathetically. There were so many offenders that were found guilty of petty larceny, particularly women, that the Calendar of the Middlesex Sessions Records simply listed the value of goods, the offender's name, and "to be whipped" without any further details.[120]

Female Felons

While the courts often showed compassion towards women who were found guilty of petty theft, their treatment of other female felons was quite different. Women were responsible for much of the cases of theft that appeared before the courts during this time period, either acting alone or with a mixed group of people, consisting of both men and women. Steve Hindle argues about the courts' compassion often shown to women,

[120] William Lee Hardy, ed., "County of Middlesex, Calendar to the Sessions Records: new series, Volume 1-1612-1614," British-History Online. http://www.british-history.ac.uk/source.aspx?pubid=565 (accessed April 2014) Dec. 1-2, 1612; See Steve Hindle's *On the Parish?,* Alexandra Shepard's *Meanings of Manhood*, and Paul Slack's *Poverty and Policy*.

particularly those who were extremely poor or widows. However, Garthine Walker argues that many females felons "were not general recipients of judicial clemency as is commonly assumed," which is readily seen in the sentences that the Middlesex County court gave to female thieves and those who committed infanticide.[121] Female criminals could present themselves as pregnant in the hopes of receiving a delay in their sentence, such as Alice Cowland who was found guilty of stealing goods valued at twenty-four shillings and thirty-six pence in 1549. She was reprieved because she presented herself as pregnant and found to be so.[122] This stipulation continued into the seventeenth century and prevented executions when the female was found to be "quicke with childe."[123] The courts' decisions when it came to postponing punishment for pregnant women were based on Christian beliefs about the innocence of unborn children, and the belief that killing a child, unborn or born, was "unnatural."[124] This belief was obviously utilized in the execution of women who were found guilty of killing their own children. Infanticide and the avoidance of putting to death pregnant women was also so important to the courts because of the belief that unbaptized children could not be saved by God, an important aspect of the Christian religion.[125]

---

[121] Garthine Walker "Women, Theft, and the World of Stolen Goods," in Jenny Kermode and Garthine Walker, eds., *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press, 1994), 82.

[122] Jeaffreson, ed., "Middlesex 1550-1603," (Nov. 16, 1549).

[123] John Cordy Jeaffreson, ed., "Middlesex County Court Records 1625-67," http://www.british-history.ac.uk/source.aspx?pubid=553 (accessed April 2014), June 2, 1652.

[124] The University of Sheffield, "Proceedings," Jan. 16, 1678.

[125] Gale Cengage Learning, "Summe and Substance of the Conference (Hampton Court, 14 January 1603) (London, England), Saturday, January 14, 1604," Gale Digital Collections, (http://find.galegroup.com/bncn/retrieve.do?sgHitCountType=None&sort=DateAscend&prodId=BBCN&tabID=T012&subjectParam=Locale%2528en%252C%252C%2529%253AFQE%253D%2528tx%252CNone%252C6%2529infant%253AAnd%253ALQE%253D%2528da%252CNone%252C23%252901%252F01%252F1604%2B-%2B12%252F31%252F1700%2524&resultListType=RESULT_LIST&searchId=R9&displaySubject=

Pleading pregnancy did not save the life of a woman who stole valuable goods, but rather they were only "reprieved till the delivery of her child." After delivery, the female offender would have carried out the sentence given to her for her crime. Some could certainly hope that pregnancy would delay the inevitable, allowing them to enjoy a few more months of life or allowing them to hope that the court would change their minds about the sentence. A "jury of matrons" was used by the courts in order to determine whether or not the female criminal was actually pregnant when she pleaded that she was. In 1561, when Katherine Harryson pleaded pregnancy after stealing several goods, the jury of matrons determined that she was indeed pregnant. But four months after that initial investigation, the jury of matrons found that she was not pregnant, possibly from a miscarriage or an earlier mistake. Harryson was then sentenced to be hung for her crimes.[126] The reality that the court gave a possible pregnant woman the death sentence for her deed, although she was allowed to deliver the baby, shows that the court was not necessarily always compassionate when it came to thinking about the life of the child and the mother. The chance for the mother to raise her own child was not a factor when it came to judgment, which suggests that male and female robbers were on equal footing when it came to the courts. As discussed earlier with Joan Scott's article, the idea of patriarchy should not be utilized to analyze every single aspect of the relationships between men and women. The court authorities were probably not acting

---

&searchType=BasicSearchForm&currentPosition=1&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28tx%2CNone%2C6%29infant%3AAnd%3ALQE%3D%28da%2CNone%2C23%2901%2F01%2F1604+-+12%2F31%2F1700%24&retrieveFormat=MULTIPAGE_DOCUMENT&subjectAction=DISPLAY_SUBJECTS&inPS=true&userGroupName=acd_bbcn&sgCurrentPosition=0&contentSet=LTO&&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=Z2001700842&contentSet=UBER2&callistoContentSet=UBER2&docPage=article&hilite=y) (accessed April 2014).

[126] Jeaffreson, ed., "Middlesex 1550-1603," (Dec. 11, 1561).

upon their beliefs about the inferiority and subordination of women when sentencing female offenders to the gallows. The fact that both male and female thieves received the same punishment for the same crime supports this idea.

Even though male and female thieves appeared on equal footing when it came to their punishment, the court justices often displayed what they thought about female offenders. During this time period, many Englishmen believed that females were somewhat naturally inclined to commit subversive deeds, such as crimes, because of the Biblical story of Adam and Eve. Since Eve drew Adam to commit the first mortal sin, it was thought that all women beguiled others into committing wrongdoings. Women were not only thought to be responsible for the beginning of all sin, but were believed to be the weaker sex and seen as "easily seduced…and instable."[127] The belief that "from the Female Sex sprung all our Woes and bad inclinations" was seen throughout the court records.[128] While some of the court records often describe thieves as "incorrigible and dangerous," many of the cases describing female robbers appear to be much harsher.[129] In 1676, one such woman was described as a "little confident ungrateful Slut" for robbing an old woman and was sentenced with "the honour" of following the cart "under the correction of a gentle Lash."[130] Other examples exist throughout the court records, but it is clear that such female offenders tended to upset the courts even more, especially since women were called to be subordinate to male authority.

Murder, Manslaughter and Assault

[127] The University of Sheffield, "Proceedings," Jan. 17, 1677.
[128] Ibid, August 23, 1676.
[129] Jeaffreson, ed., "Middlesex 1603-25," Aug. 6, 1618.
[130] The University of Sheffield, "Proceedings," Oct. 11, 1676.

The discussion now turns to a category of crime that often was present in cases of theft: murder, manslaughter, and assault. Some of the strangest court cases were those involving these three crimes, particularly when it came to the court's sentence for the offender. In 1561, William Murffett and John Dawson assaulted Edmund Kaye in the highway, whereby Murffett killed Kaye "by giving him in the belly with a sword a mortal blow." What is surprising about this particular case is that both of the men put themselves as guilty and then pleaded the benefit of the clergy "whereupon the book was delivered to them."[131] It seems odd that men could receive the chance of reading the book when it came to killing another person, but the emphasis for the court was in the intention of the act. Killing someone with "no malicious intent" was labeled manslaughter and those convicted could ask for the book.[132] Unluckily for Murffett, he was unable to read like a clerk and was sentenced to be hanged. Dawson was able to read and was simply branded for the offense. This was not the case for the woman in a previous case, who because of her sex, was unable to avoid the gallows for manslaughter. The difficulty in determining whether there was malicious intent or not reveals that men but not women could receive a lesser punishment for possible outright murder.[133]

The courts sentenced to death and punished many who committed murder, manslaughter, or assault simply because they threatened the lives of England's subjects. Murder was thought to be the "most heinous and crying sin" since it "usurped God's right to take life…and was a rebellion against nature."[134] It was also the first offense to be

[131] Jeaffreson, ed., "Middlesex 1550-1603," (February 1561).
[132] Beattie, *Crime and the Courts*, 91.
[133] Jeaffreson, ed., "Middlesex 1550-1603," April 19, 1588.
[134] The University of Sheffield, "Proceedings," Sept. 9th, 1675; Gaskill, *Crime and Mentalities*, 210.

removed from the benefit of the clergy in 1547.[135] Authorities shared the belief that it was imperative that subjects behaved courteously towards one another, like as in the traits of "neighborliness," but especially when the kingdom itself was at peace. Teague Warde was sentenced to be branded when he assaulted and killed Arthur Prickett "when he was in God's and the Queen's peace" in 1601.[136] Even when the assault did not end up with a dead victim the offenders were punished, such as John Gibbrishe and William Humfrey who were both fined one hundred shillings for an attack on the head borough, Henry Rumbyloe, in 1604.[137] Preventing assaults and punishing offenders was another attempt at keeping control in English society and providing safety measures for its subjects, but it also symbolized God's wrath, as was often seen in cases of infanticide.[138]

Infanticide

Both women and men were put to death for the crime of infanticide throughout the sixteenth and seventeenth centuries. Many court records state that the killing of innocent children was "at the instigation of the devil," for nothing could be more against God's will than murdering a newborn child.[139] Infanticide was believed to encompass not one but two sins: the act of killing the infant and, likely, the act of fornication. So sentencing offenders that committed infanticide not only punished the sin but also discouraged fornication. J.M. Beattie states that this crime had the possibility of being a rampant problem, especially in crowded towns such as London. The close contact of female domestic servants to their masters left them in vulnerable positions to unwanted

[135] Beattie, *Crime and the Courts,* 77.
[136] Jeaffreson, ed., "Middlesex 1550-1603," April 3, 1601.
[137] Jeaffreson, ed., "Middlesex 1603-25," 1604.
[138] Gaskill, *Crime and Mentalities,* 213.
[139] Jeaffreson, "Middlesex 1550-1603," (June 17, 1573).

attention or rape. Beattie asserts that many of these young women were normally not "lewd whores" but focused on the little hope there was in keeping their service job and the child. The threat that a young unmarried mother could be forced out on the streets with another mouth to feed was real, and particularly adverse in a society that experienced widespread poverty and high unemployment.[140] Infanticide was not an offense that was committed solely by women either, even though it was certainly easier for the mother to do so right after the baby was born. George Wright, for example, was sentenced to be hanged in 1667 for murdering his son of eighteen months, whom he threw into the river Thames.[141]

Many of the recognizances for women who committed infanticide show similarities to the records that called for the appearances of suspected witches. The courts believed that both infanticide and witchcraft were performed by women "at the instigation of the devil."[142] This could point to the belief that infanticide and witchcraft were such heinous crimes that no person could commit such an offense without being forced to by the devil. However, the important connection is that most suspected witches were only sentenced to die if the courts believed that he/she had done harm to another person, either by making the victim sick or killing them.[143] This further shows that the English courts were anxious about the safety and security of its subjects.

Sexual and Moral Offenses

As the sixteenth century progressed, the types of crimes presented in the courts

[140] Beattie, *Crime and the Courts*, 113, 114.
[141] Jeaffreson, "Middlesex 1667-88," Jan. 16, 1667.
[142] Jeaffreson, ed., "Middlesex 1550-1603," June 30, 1575.
[143] Gaskill, *Crime and Mentalities*, 34-37, 48, 54.

and the kinds of punishments began to differ greatly from those such as theft and vagrancy. One of the bills presented in the courts was that of adultery, although the vast majority of them never included a given punishment. In 1560, Thomas Rayner was delivered before the court for keeping Elizabeth Goldock "as his concubine…and lived with her in adultery."[144] Elizabeth Mychell lived in adultery with Robert Spicer "throughout five years" in 1569 while Ralfe Suertis was brought before the court for committing adultery "with Grace Suertis his wife" in 1599.[145] Edward Vaghan was asked to appear before the court to answer for "keepinge of Katherin Griste a lewd woman, he being marryed" in 1610. [146] One of the only punishments found for adultery in the Middlesex County Court records was given to Albert Atkynson who was found guilty of adultery with Jane Isloppe, wife of William Isloppe. Albert was sentenced to be carted for his offense in 1590, which involved a rather embarrassing public ride through the crowded streets of the town and could involve being whipped.[147]

Beginning in 1650 adultery was adjudged to be a felony and demanded that those found guilty of the offense "suffer death as in case of Felony, without benefit of Clergy," although this sentence was "totally ineffective." There was not a single person sentenced to death for adultery in the Middlesex County Court or in the records of the Old Bailey, and it appears that this was the standard in smaller parishes as well.[148] A bill presented in the Middlesex County Court records for adultery described it as a "detestable crime" but

[144] Jeaffreson, ed., "Middlesex 1550-1603," (Michaelmas, 1560).
[145] Ibid, (1569; Easter, 1599).
[146] Jeaffreson, ed., "Middlesex 1603-25," (Dec. 5, 1610).
[147] Jeaffreson, ed., "Middlesex 1550-1603," (May 19, 1590).
[148] Firth and Rait, eds., "Acts and Ordinances," May 10, 1650; Ingram, *Church Courts*, 259.

found the two accused members not guilty.[149] The only other adultery court record for Middlesex County that had a sentence was in 1700, and committed the woman, Mary Sellenger, to the House of Correction.[150] Adultery offenses were largely the jurisdiction of the church courts and the responsibility of the churchwardens who served in the parishes, which is probably why the Middlesex County Court does not list many. Adultery was thought to be a religious offense because it was one of the "grievous sin[s]" and made the offender "subject to Gods wrath, and guilty of damnation."[151] Husbands and wives were supposed to be loyal to one another and adultery broke the promises made during marriage. Extramarital activities were "abhorred as hateful to God and a threat to the well-being of the common-wealth." The concentration on adultery as a threat to social well-being was often tied into issues of poverty and economics. The adulterer, especially if the person was male, was thought to waste the family's goods and money on his lover and neglected his wife and children at home, who could soon fall upon the parish for relief. This argument also turns upon the norms of patriarchal manhood where the

[149] Jeaffreson, ed., "Middlesex 1625-67," 1652.
[150] William J. Hardy, ed., "Middlesex County Records. Calendar of Sessions Books 1689-1709," British-History Online, http://www.british-history.ac.uk/source.aspx?pubid=550 (accessed April 2014); Feb. 1700.
[151] Gale Cengage Learning, "Summe and Substance of the Conference (Hampton Court, 14 January 1603) (London, England), Saturday, January 14, 1604," Gale Digital Collections, (http://find.galegroup.com/bncn/retrieve.do?sgHitCountType=None&sort=DateAscend&prodId=BBCN&tabID=T012&subjectParam=Locale%2528en%252C%252C%2529%253AFQE%253D%2528tx%252CNone%252C8%2529adultery%253AAnd%253ALQE%253D%2528da%252CNone%252C23%252901%252F01%252F1604%2B-%2B12%252F31%252F1700%2524&resultListType=RESULT_LIST&searchId=R16&displaySubject=&searchType=BasicSearchForm&currentPosition=1&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28tx%2CNone%2C8%29adultery%3AAnd%3ALQE%3D%28da%2CNone%2C23%2901%2F01%2F1604+-+12%2F31%2F1700%24&retrieveFormat=MULTIPAGE_DOCUMENT&subjectAction=DISPLAY_SUBJECTS&inPS=true&userGroupName=acd_bbcn&sgCurrentPosition=0&contentSet=LTO&&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=Z2001700843&contentSet=UBER2&calllistoContentSet=UBER2&docPage=article&hilite=y) (accessed April 2014).

husband was supposed to be the provider of the family. The other problem with adultery was the possibility that the woman could bear an illegitimate child, causing shame for the man's family if he was named as the father, not only because he performed illicit sexual activity but also because he could be liable to support a mother and child that were not part of his legal family.[152]

Martin Ingram argues that the custom of shaming sexual offenders, such as carting, shows the popular attitudes about illicit sexuality and that many believed that only marriage made sex a licit activity. The punishments given to adulterers show that there were concerns to deter others from the same offense and issues about poverty and population growth. This is seen in the church courts' use of penance performed during mass to discipline and humiliate sexual offenders as well as the typical fee of eight shillings and four pence, so that illegitimate children did not become a burden for the parish. Even though Ingram asserts that cases of adultery in which a woman was the offender were a minority in the church courts, women's reputations in terms of credit and honesty were highly sensitive to sexual misconduct, rumored or not. This is evident in the use of the courts to clear a person's sullied reputation if the slanderer accused them of a sexual offense. Ingram argues that it was necessary for women to have good reputations in their neighborhood as they often depended on the help of female neighbors, such as in loaning and trading goods and in childbirth. A woman accused and convicted of adultery would have lost her respectability within the community and the available avenues that made life more practical for her.[153]

[152] Ingram, *Church Courts*, 125, 154.
[153] Ibid, 53, 57, 165, 219, 237. 258, 292.

Adultery was not the only type of marital, religious, or reputation-related offense presented before the courts. The Middlesex County court called for the appearances of those, such as Henry Bette who kept "companie all night with a lightwoman in Turmilstreat" in 1582, while Anne Vaughan was asked to appear to answer for being "suspected to be a lewde and incontinent woman" in 1599.[154] In 1699, Bridget Taylor was convicted solely for being "notoriously bad" and was ordered to stand in the pillory for one hour with a paper "on her breast expressing her offence."[155] Constables and churchwardens alike were ordered to bring forth those that cursed, "particularly on the Lord's Day."[156] Several others were asked to appear for spousal abuse, whether it was through "beatinge and woundinge" or "putting hir from him without anye maintenance or any lawfull cause."[157] Some were sentenced for these types of offenses, such as Christopher Morgan, who was set in the stocks for being a "common barrator."[158] What these sorts of offenses and punishments indicate is what the English subjects expected from their own neighbors. When a woman was presented for being a scold upon the complaints of "the officers and inhabitants," and for her "rayling…troublesome nature," it shows what was thought to be subversive and in need of correction.[159] Agnes Miller was accused of being "a notorious and common scoulde and disturber of the neighbours and honest inhabitants of Finchley and Fryarn Barnett." She was found guilty of this offense and was ordered to be "duckt in some pond of water." This kind of punishment

[154] Jeaffreson, "Middlesex 1550-1603," (Aug. 28, 1582; 1599).
[155] William J. Hardy, ed., "Middlesex 1689-1709," May 1699.
[156] Ibid, February 1698.
[157] Jeaffreson, "Middlesex 1550-1603," (Easter, 1593).
[158] William J. Hardy, ed., "Middlesex 1614-1615," May 24-25, 1615.
[159] William J. Hardy, ed., "County of Middlesex. Calendar to the Sessions Records: new series, Volume 3-1615-1616," http://www.british-history.ac.uk/source.aspx?pubid=565 (Accessed April 2014), Aug. 1, 1616.

was rare for the Middlesex County Court records but it sought to appease the surrounding inhabitants who hoped that Agnes' "tongue…[would be] cooled."[160] Susan Amussen discusses how scolds "brought their rejection of women's 'quiet' and obedience out of the household and into the public view."[161] Ducking scolds into a pond of water was along the same lines as the sentences of carting and the pillory because they were supposed to be public and embarrassing for the offender, who should be prevented from committing the crime again and stepping out of their ordered spheres. The sentences of carting, the pillory, and whipping were all public punishments because if "some of them be not made Examples, it will be the ruine of many."[162] These offenses were similar to those of adultery and fornication because they all upset the balance that was needed to have a safe and secure community. Adultery and fornication upset family dynamics and could create people that potentially needed poor relief, while offenses such as scolding upset the norms of what women and neighbors should be: peaceful subjects who insured stability and social control.[163]

The same arguments that were used in cases of adultery and fornication pertained to cases where women had illegitimate children as well. Even though there were not many cases of bastardy brought before the Middlesex County court or the Old Bailey, concerns about finances were clearly stated. In 1615, Tristam Warde and Sibill Taylor were both whipped for the birth of a bastard child, yet the father, Tristam, was also

[160] Laura Gowing "Language, Power and the Law: Women's Slander Litigation in Early Modern London" in Jenny Kermode and Garthine Walker, eds., *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press, 1994), 58.
[161] Susan Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1994), 122.
[162] The University of Sheffield, "Proceedings," Dec. 11, 1678.
[163] Ingram, *Church Courts*, 305.

ordered to provide sureties to the Churchwardens so that the parish did not have to keep and maintain the child.[164] This requirement protected the inhabitants of the parish from paying for the relief of bastard children and their mothers, since many of the reputed fathers did not stick around to marry the women.[165] Also, the reality that women, whether they were married or not, made lower wages than men and often could not support themselves without a husband almost guaranteed that a single mother would be listed among the pensioners receiving poor relief. The attention to keeping the poor rates down was displayed throughout the court records as many parishes disputed with one another "concerning the legal settlement" of a woman and her child. The parish that was determined to be the location of the father's or mother's place of residence had to maintain the mother and her child.[166]

Slander, Rumors, and Sedition

Some of the strangest court sentences, which should be labeled as cruel and unusual, dealt with offenses such as rumors, as in the early and rare sentence of Richard Smyth. In 1555, Smyth "seditiously and publicly uttered these words, *viz.* 'That the Quene is dead,' in disregard of the Act of Parliament…against spreading false reports respecting the said King or Queen." Smyth was ordered to be put in the pillory "in the public market-place, that both his ears be cut off within the next month, that he pay a fine of one hundred pounds to the use of the said King and Queen, and further remain in prison for three months."[167] Even without Smyth's mutilation, his sentence would have

[164] Jeaffreson, "Middlesex 1603-25," 1615.
[165] Jeaffreson, "Middlesex 1603-25," 1620.
[166] Middlesex; April 1693; Ingram, *Church Courts*, 237.
[167] Jeaffreson, "Middlesex 1550-1603," 1555.

been harsh. What is significant about having Smyth's ears cut off is that the disfigurement would have been even more prominent than a branding. It would have been easy to recognize an offender who received this punishment, which could be beneficial for a neighborhood and a government that wanted to keep tabs on these types of criminals. However, Smyth's punishment was extremely rare and makes up the only court case in the Middlesex County court and the Old Bailey where an offender's ears are cut off. The speaking of false reports, no matter what kind of message they spread, could have been a recipe for disaster, especially when keeping things under control appeared to be the number one goal of the monarchy and the court system.

Rumors, sedition, and slander make up a great portion of the court cases in the Middlesex County Court records. In 1591, Nicholas Haselwood was put on the pillory with a paper on his head that stated his offense: he had "desired and wished" the death of the Queen, which he had spoken publicly before a number of diverse people.[168] Several others were also sentenced to the pillory for cursing the Queen as well as many that were called to appear before the court for "slanderous wordes."[169] These kinds of offenders were thought to "dishonour" the victim of the slander, especially if it was directed at the sitting monarch.[170] Some avoided the pillory for their slander and were instead fined, such as Elizabeth Humphries who spoke "wicked and diabolical words" about Parliament after the Civil War of 1642.[171] Slander against the King, Queen, and the Parliament only increased during the seventeenth century and the courts began to make the sentences a

[168] Ibid, May 19, 1591.
[169] Jeaffreson, "Middlesex 1603-25," March 22, 1605.
[170] Jeaffreson, "Middlesex 1625-1667," Dec. 1633.
[171] Ibid, Oct. 5, 1642.

little more difficult. Sarah Dennis, "a mischevious and evil woman," was fined forty pounds and sent to prison for three months for calling the men of Parliament "rogues."[172]

When Charles I was executed in 1649 for his "wicked Design [to] totally Subvert the Ancient and Fundamental Laws and Liberties of [the] Nation… and [for] maintain[ing] a cruel War in the Land, against the Parliament and Kingdom," the monarchy was overthrown and a republican form of government was put in place.[173] However, slander did not cease to exist; it only became directed at a different form of government. In 1649, Paul Williams and his wife Mary were fined five hundred marks each for saying that the "Lord Lieutenant Cromwell and Collonell Pride [were] all sonnes of whores."[174] Even when Charles II was returned to the throne, court recognizances called for the appearance of those that called the King a "bastard," and those that believed that Charles I was "lawfully put to death."[175] Some were faced with large fines, such as Thomas Ludlam, who was ordered to pay a fine of one-hundred pounds for hoping that the people would execute Charles II as well.[176] Others were simply whipped instead of being put on the pillory or ordered to pay a fine.[177]

Slander offenses and punishments are important to understand as the offender pointed out what he or she believed was wrong or subversive, whether it was about their neighbor of the ruling monarch. Laura Gowing argues that slander cases allow the historian to see how English subjects "determined ideas of sexual honour … [as well as]

[172] Ibid, Jan. 15, 1643.
[173] Firth and Rait, eds., "Acts and Ordinances," January 6, 1649; May 19, 1649.
[174] Jeaffreson, "Middlesex 1625-1667," 1649.
[175] Ibid, July 13th, 1660
[176] Jeaffreson, "Middlesex 1667-88," Dec. 4th, 1682.
[177] Ibid, July 16, 1685.

the effects of insult." If a neighbor believed that her female neighbor was not following the order of society, such as by committing adultery, then the best insult to use would have been to call her a "whore." This not only stated the slanderer's beliefs about the transgression, but solidified that person's own reputation. A large reason that slander offenses came before the courts was because it was known to give "verbal and legal authority" to women, as well as a sense of power.[178] The courts would have wanted to suppress any attempt at women rising above their station because it was against the order of society. Such slander against the ruling classes could have sentenced the offenders to much worse, seeing as Charles I had been executed for his strong beliefs about Parliament. However, no one was sentenced to die in any of the records of Middlesex County or the Old Bailey for such an offense as sedition or slander.

Spreading false rumors, as Smyth did in 1555, was still an issue for the courts in the seventeenth century. However, Robert Ciprey was only sentenced to pay a fine of thirteen shillings and four pence and to stand on the pillory for two hours on three separate days in 1670. Ciprey was known to be a "seditious man of ill repute and life" and was heard saying that he knew where a secret stash of "fireballs" were in Wapping. The rumor had stirred "alarm and terror … [among] the King's lieges and subjects," which displays the power of one person's words.[179] Ciprey was lucky that he was not subjected to the same type of sentence as Smyth, who had only spread the rumor that the Queen was dead, and had not leaked information about possible weapons in the town. Since the monarchy had already been overthrown once, it was imperative that the

[178] Gowing "Language, Power and the Law" in *Women, Crime and the Courts*, 27, 28, 30.
[179] Jeaffreson, "Middlesex 1667-88," August 31, 1670.

monarch and the courts work to punish those who tried to destroy the relationship between the people and their King or Queen. The courts publicly punished those who slandered the monarchy so that England's subjects would not think it was acceptable to disrespect authority. If they disrespected authority, then government officials would lose all control throughout English society.

Servant and Apprentice Abuse and Behavior

A large part of the English court records throughout the seventeenth century dealt with servant abuse and breaches of apprenticeship contracts. Several masters were brought before the court and were indicted for abusing their servants, such as George Lorryman in 1605, who "flogged with whippes his apprentice, a certain John Woodfall, so that the said John became and still remains a lunatic."[180] While this record was extreme when it came to abuse, the maltreatment of servants and apprentices had a continued presence throughout the court records. In 1608, Thomas Kenton was indicted for "hanging a horslocke upon [the] legge" of his servant Sibbell Clarke and was ordered to discharge Sibbell from his service and pay her "the wages for ten weeks' service due to her from him."[181] Most masters were brought before the court for giving their servants "undue correccion" and were forced to discharge their servants and to give them their "apparell," which was expected at the end of their service.[182] Masters were also found guilty of "neglect[ing]" apprentices, either through refusing to teach them a trade or through failing to provide them with "wholesome food and lodging."[183] The masters that

[180] Jeaffreson, "Middlesex 1603-25," Dec. 4, 1605.
[181] Ibid, 1608.
[182] Ibid, 1614; 1609.
[183] Hardy, ed., "Middlesex 1689-1709," February 1691.

neglected their servants or apprentices were forced to lose their service.

Most of the contracts made between apprentices and masters lasted for seven years so it would have been difficult to stay with a master who continuously abused.[184] Because the parents of the male or female apprentice paid the master a specified amount of money, in order for their son or daughter to learn the certain trade, often the apprentice would receive that money back if the evidence of abuse was clear.[185] In 1690, Grace Elliott had given John Mascomb fifteen pounds to take on her son, Robert Elliott, as an apprentice but Mascomb had "inhumanly beaten" Robert. The court ordered that Robert be discharged and that Mascomb pay Mrs. Elliott the "indenture of his apprenticehood."[186] Others were not so lucky in getting their money returned but a large number were able to plead their case before the courts and win.

Servants and apprentices were even able to leave the service of their master if they so desired, such as John Miles, who wanted to "go to sea" and was allowed to by the consent of the churchwardens, who provided for and maintained John, and his master.[187] A few others were not so lucky when it came to abuse at the hands of their masters. In 1609, Edward Chaplyn was given such a hard blow to the left shoulder by "a broomestaffe," which was wielded by his mistress, that he died the following day. Allam was found guilty of manslaughter and was sentenced to be hung.[188] Both Thomas Chest

---

[184] Ibid.
[185] Wrighston, *Earthly Necessities*, 30-33, 49, 58; Stone, *The Family, Sex and Marriage*, 28, 44; Christopher Brooks, "Apprenticeship, Social Mobility and the Middling Sort, 1550-1800," in Jonathan Barry and Christopher Brooks, eds., *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (New York: St. Martin's Press, 1994), 53, 60, 76-77; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (New York: Cambridge University Press, 1987), 126, 127.
[186] Hardy, ed., "Middlesex 1689-1709," Feb. 1690.
[187] Ibid, Sept. 1693.
[188] Jeaffreson, "Middlesex 1603-25," Oct. 6, 1609.

and his wife Joan were also sentenced to be hanged for beating their maid to death.[189]

While some masters were often cruel to their servants and apprentices, the latter were also found guilty of running away, refusing to work, and disobeying their master's commands. Such was the case of Alexander Mason who performed all of the above and was committed to the House of Correction in 1681.[190] The House of Correction was an establishment which housed many different "servants apprentices and other unruly and disordered persons," so that they may "receave correccion for the better humbling of them to their dutyes…by houlding them to labour."[191] When servants deserted their master's service they were often simply ordered to return to serve the rest of the apprenticeship.[192]

The attention that the courts paid to servants and the suspected abuse by their masters shows that the courts not only displayed compassion when it came to vulnerable apprentices, but also that they understood the promise of the contract made between the two parties. As expressed earlier, an apprentice or his parents made a contract with a specified type of master so that the apprentice could learn the trade. The apprentice or his parents would pay a certain sum to the master in exchange for his or her knowledge of the trade, in the hopes that once the apprentice had served their time, they would be able to gain an occupation.[193] The same kind of contract existed for domestic servants because they worked for their masters in exchange for wages.[194] The courts punished masters who

[189] William Le Hardy, ed., "County of Middlesex 1612-1614," July 24, 1613.
[190] Jeaffreson, "Middlesex 1667-88,"Jan. 13, 1681.
[191] Jeaffreson, "Middlesex 1603-25," 1617.
[192] Hardy, ed., "Middlesex 1689-1709," June, 1690.
[193] Ibid, Feb. 1690.
[194] Ibid, Feb. 1696.

broke this promise by forcing them to lose their apprentice or servant, by which they often lost the money given to them beforehand, and would have to find another worker.

Changes Over Time

The most noticeable changes in terms of crimes and punishments that occurred in the Middlesex County court and the Old Bailey was a decrease in the number of theft cases that appeared and a greater likelihood that a felon would receive a non-capital punishment in the second half of the seventeenth century. Thieves and other criminals still received a death sentence, especially if they were notorious, throughout the seventeenth century but the number of presented thieves had dropped dramatically Between 1550 and 1603 in the Middlesex County court, there had been 121 presented cases of theft. However, between 1650 and 1700 there were only 43 presented cases of theft. One possible reason is that the population rates stabilized after 1650, creating more demand for labor, and therefore not as many people felt as desperate as they had when fewer jobs were available.[195] J. M. Beattie discusses in *Crime and the Courts* that the English courts responded to the high number of property offenses with two non-capital punishments, transportation and imprisonment. This assessment is clear in the Middlesex County court, where many more criminals were sent to the "House of Correction" or Clerkenwell, one of the prisons in the London area.[196] Even the Old Bailey records show that many more criminals, particularly thieves, were transported to other English colonies if found guilty. In 1692, Edward Kallaway was found guilty by the justices of the Old

[195] Wrightson's *Earthly Necessities* discusses the stabilization of the population in the second half of the seventeenth century.

[196] J.M. Beattie's argument about the two non-capital punishments has been discussed earlier in the chapter. As for evidence of the use of transportation and imprisonment, one can find it in the Middlesex County Court Records, edited by John Cordy Jeaffreson.

Bailey for stealing 25 shillings worth of men's stockings. Instead of receiving a death sentence Kallaway was transported, although the record does not indicate to where.[197]

Conclusion

While there are thousands more court records that could be discussed, the selected cases serve to show the typical punishments that the courts handed down for specific crimes or offenses. There were many disparities present throughout the court records, such as those who received the mercy of the court by just paying a fine for an offense that almost always called for execution. Some of the listed recognizances never turned into actual indictments or court trials, and several were discharged when they appeared to answer. Many of the court records for a number of counties, as well as some ecclesiastical court records, simply no longer exist. Because of these factors, it may be impossible to gain insight on the entirety of the English court systems, but there are certainly visible patterns in the records that do exist and the sentences that are known to have happened. It is not difficult to see that the English court tried to gain control over those that broke the standards of respectable behavior or committed crimes that threatened the lives of other Englishmen and women. Throughout the discussion of the court cases, it is apparent that England, particularly in the larger cities, suffered from certain types of crime more than others, such as theft, burglary, assault, and vagrancy. Because of their abundant number in the courts and the dramatic changes that England as a whole was experiencing, the courts focused most of their attention on maintaining security, stability, and control which is evident in the

[197] The University of Sheffield, "Proceedings of the Old Bailey," June 29, 1692.

harsh measures used to discipline these offenders. The evidence suggests that the English courts had no qualms about executing or severely punishing those that threatened the safety of the English subjects. It also implies that such measures were thought to be the most effective and so were used for several decades.

The discussion now turns to the colony of Virginia, its own crimes, and court-ordered punishments. Virginia suffered its own singular types of problems, just as England had, but would the colony's leaders react in the same way as the English court justices? The connection between England and Virginia was established in 1606 when James I signed the Virginia Company's charter. The relationship between England and Virginia would continue throughout the seventeenth century by the English courts' decisions to transport criminals to the colonies. Such an occurrence would serve as evidence for the colony's leaders' ultimate goal, but how did the leaders in Virginia accomplish their objectives at ground zero? This is the subject of the next chapter.

CHAPTER III

THE VIRGINIA COLONY AND THE PUNISHMENT OF CRIMINALS, 1607-1700

George Percy, one of the first colonists to settle in Virginia, wrote in 1609-1612 about the different trials and tribulations that the colony suffered as well as the "extreme and cruel tortures" inflicted upon some of the colonists.[198] In 1611, Sir Thomas Dale, selected as high marshal by the Virginia Company and author of "Lawes Divine, Moral & Martial," ordered several deserters who ran away to live with the Indians and thieves to be executed.[199] Percy described Dale's orders for execution: "some he appointed to be hanged, some burned, some to be broken upon wheels, others to be staked, and some to be shot to death…to terrify the rest…and some which robbed the store he caused them to be bound fast unto trees and so starved them to death."[200]

It appeared that something had gone terribly wrong with the Virginia colony within the first few years of colonization. Even within the first few months, some saw visible injustices in the legal system. Writing in September 1607, Edward Maria Wingfield, the first President of the Council in Virginia, stated that "were this whipping, lawing, beating, and hanging in Virginia known in England, I fear it would drive many well-affected minds from this honorable action of Virginia."[201] Why had the colony's

[198] George Percy, "A True Relation," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 518.
[199] Edward Wright Haile, ed., *Jamestown Narratives*: *Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998) 28, 327.
[200] Percy, "A True Relation," 518.
[201] Edward Maria Wingfield, "A Discourse of Virginia," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA:

leaders reacted to offenses with such harsh punishments?

The history of the Virginia colony from 1607-1700 is intriguing, shocking, and visibly different from the history of England during the same period. There are many reasons why the Virginia colony could not imitate England exactly in terms of institutions and other markers of civil society, but what makes the differences interesting is that the colonists repeatedly indicated a desire to create a mirror image of their homeland in the New World. Different as in terms of geography, the existence of Native Americans, the lack of good governance and a balanced ratio of men and women, as well as the reality of indentured servitude and slavery created the most obvious disparities between Virginia and England. However, one of the most remarkable discrepancies was seen in the Virginia colony leaders' use of punishments: different methods of discipline, a harsher severity toward servants, and a high number of lashes for certain offenses. The Virginia Company had extremely high expectations for success in establishing its colony, which often created disastrous results when successes did not come so easily. This chapter argues that the combination of high expectations, the different factors mentioned above, and abundance of failures forced the colony's leaders to perform actions that would not have been allowed in England, specifically in its types and severity of punishments.[202] Overall, this chapter argues that the leaders in Virginia used severe methods of discipline to ensure the survival and financial success of the colony. This was accomplished through a steady, obedient labor force and often the English courts' own compliance with

---

Roundhouse, 1998), 194.

[202] The expectations of Virginia, such as that it would be overflowing with riches to make England renowned, and the first instances of ordered punishments are present throughout the narratives that are compiled in Edward Wright Haile's *Jamestown Narratives*: *Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998).

supplying workers.

First, I will look at the historical context to highlight the differences between England and Virginia. Then I will investigate the experiences of the colonists in the court records of colonial Virginia, from 1607-1700, focusing on specific groups, such as women and servants because of their frequent appearances in the courts. The court cases that I use focus on the Virginia colonists' transgressions, such as fornication, running away/absence, theft, slander, illegitimate births, and other disorderly conduct, because they can be compared to the same sorts of offenses in England. I start by looking at the plans laid out by the Virginia Company to highlight what the Company sought for the New World in order to compare those visions to what actually happened. The problems that existed prior to and during the early years of colonization explain partly why the colony's leaders decided to implement such harsh methods of discipline and punishment.

The sources that appear in this chapter come from the surviving court records and reveal the types of punishments that the courts ordered for specific crimes and transgressions. These include the Minutes of the Council and General Court of Colonial Virginia from 1622 to 1632 and 1670 to 1676, edited by H.R. McIlwaine, and the county courts of Accomack, York, Lower Norfolk, Northumberland, Charles City, Surry, Stafford, and Middlesex, which range from 1632 to 1697, compiled and edited by Beverley Fleet. Early colonial narratives, which feature the diaries, letters, or journals of men like George Percy, John Smith, Gabriel Archer, and Edward Maria Wingfield, reveal a great deal about the ideas and opinions that many of the colonists held, especially when it came to the harsh treatments. These narratives will be used to not only build upon the

early history of the colony, but also to show that contemporaries recognized differences between the punishments in Virginia and those in England.

This chapter builds upon the scholarship of several historians who have worked on colonial Virginia, the two most prominent being Edmund S. Morgan and Kathleen M. Brown. Morgan's *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (1975) describes the tribulations that the Virginia colonists experienced, from the very first years of colonization to the American Revolution. He questions "how a people could have developed the dedication to human liberty and dignity exhibited by the leaders of the American Revolution and at the same time have developed and maintained a system of labor that denied human liberty and dignity every hour of the day."[203] Morgan describes how the English colonists used their experiences against the Irish to justify the suppression of the Native Americans, as well as the stories about the oppressive Spanish in order to portray themselves as liberators. He also outlines how the colony's leaders and elites exploited indentured servants and African slaves because of greed, yet the rebellion led by Nathaniel Bacon in 1676 forced the landholding gentry to gradually only use chattel slavery as a labor force. Once all white Virginians of all classes were united in the "devotion to freedom and equality" after the turbulent rebellion, Morgan asserts that white colonists were all able to unite together in the preservation of slavery.[204] His arguments about colonial Virginia, particularly on the subject of the treatment of servants, show how the colony's leaders enacted severe measures to ensure that tobacco production prospered.

---

[203] Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton & Company, 1975), 5.
[204] Ibid, 369.

The other study which covers a wide-ranging study on colonial Virginia is Kathleen M. Brown's *Good Wives, Nasty Wenches and Anxious Patriarchs* (1996). Brown illustrates the role that ideas of gender played in creating and justifying racial slavery and intensifying patriarchal authority in colonial Virginia. The utilization of language, the legal system, and ideas about gender helped to institute slavery and the inferior status of women as natural. Brown asserts that colonial authorities utilized domestic ideals which affected the reception of Africans in Virginia and the work assigned to them. Masters forced female slaves to work in the fields and listed them as tithables, or taxable subjects, displaying their inferiority to tax-exempt white women who were supposed to work inside the home. Brown also exposes how the ideals of manhood revealed in Bacon's Rebellion created class and racial distinctions. The colony leaders struck at Bacon's male followers and their honor by calling them rogues, judging them to be inferior to the elites. However, in order to unite the white race and prevent another rebellion, Virginia's leaders stripped black men of property ownership, gun possession, and sexual access to white women, all of which could be enjoyed by free white males. They stripped all slaves from enjoying the freedom of an Anglo-style marriage, making interracial sex and marriage illegal, and ordering executions for black males accused of rape, which legally racialized sex.

Brown asserts that men, in order to maintain authority, sought out anything that could potentially threaten their power and cracked down swiftly, especially through politics and ideas about gender. The government in place allowed Virginia's leaders to ally with other planters and the gentry, who sought to maintain their economic and social

power through the same ways. White males displayed authority through manly self-control, the use of the courts, their freedom of sexual relations with their wives or dependents, and employing the ideas of good wives, respectful children, and subdued slaves to keep and preserve their power.[205]

These works are significant to this study because of their focus on the use of the legal system in order to subordinate certain groups, such as women, servants, and African slaves. However, this study is different in the way that it focuses solely on the use of punishments, how the court authorities decided to utilize them, and how specific disciplinary tactics revealed the goals of the colony's leaders. Both Edmund Morgan and Kathleen Brown argue that the legal system in colonial Virginia was oppressive when compared to the legal system in early modern England Though, this study furthers that discussion by analyzing the punishments themselves and what they can tell us about the culture and society of colonial Virginia. For the Virginia colony, labor was extremely important to its survival and economic success. This is revealed in the types of punishments ordered by the courts and how the justices used them.

Historical Context

Many historians have discussed how the inhabitants of England experienced a number of economic, social, and political issues before the Virginia colony was established. These problems forced many Englishmen and women to explore other options in the New World. As discussed in the previous chapter, English society and the economy began to change in the sixteenth century, such as the shift from using servile

[205] Kathleen M. Brown, *Good Wives, Nasty Wenches and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996), Introduction, Chapter Three to Chapter Six.

tenants to rent-paying occupants, the enclosure of land, and the significant increase in population, which in turn increased prices due to high demand and decreased real wages because of the large amount of available workers. The population of England in the early 1520s was estimated at 2.4 million and by 1581 it was around 3.6 million, an increase of one-third. This also created more demand for land that was gradually not available and an increase in widespread poverty and vagrancy. These problems pushed the English economy to not only boost production but forced the government to think of other solutions for these problems, such as colonizing the New World.[206]

The First Years of the Virginia Colony

King James I signed the charter for the Virginia Company on April 10, 1606 which gave the explorers permission "to make habitation, plantation, and to deduce a colony." They would be held accountable to a President and Council in Virginia, consisting of thirteen people, and a Council in England, which would have "superior managing and direction" of the colony.[207] English explorers wrote about many things that they hoped for and expected in the New World. In his "Letter from Virginia," by William Brewster in June 1607, it spoke about how the explorers "promiseth infinite treasure" and that they would "see England more rich and renowned than any kingdom in all Europa."[208] Another expectation was to make Virginia as English as possible. The King ensured such a transfer of English society by promising that all colonists would enjoy "all

[206] Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain* (New Haven: Yale University Press, 2000), 99, 103, 120, 121, 138, 146-148, 163, 173, 179.
[207] William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the year 1619*, Volume I (Charlottesville, VA: University Press of Virginia, 1969; facsimile reprint, originally printed 1823), 57, 61, 74.
[208] William Brewster, "Letter from Virginia," in *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 127.

liberties…as if they had been abiding and borne, within this our Realme of England."[209] James I also hoped that the laws established in Virginia would be as "neer to the Common Lawes [of] England and the equity thereof, as may be," desiring the move to be comfortable for his subjects, as well as establishing the English empire.[210] Historian John Gilman-Kolp argues that these explorers intended to keep being English by enjoying the same class separations and legal rights that they enjoyed in England. However, problems in the New World would prevent this simple transfer from blossoming exactly according to plan, and would force the colony's leaders to deviate from English practices in many situations.[211]

The charter granted by James I seems to have anticipated a least some difficulties and differences in the New World, as it laid out what sort of punishments were acceptable for certain types of crimes. There would be a penalty for ship masters who sold the colony's goods elsewhere, as well as a disclaimer about robbery, ordering that in case of theft there would be "full restitution or satisfaction of all such injuries done." The colony's leaders were to only instill the death penalty for the transgressions such as "tumults, rebellion, conspiracies, mutiny and seditions in those parts…together with murther, manslaughter, incest, rapes, and adulteries committed…(and noe other offences) shal be punished by death." The President and the Council were to hear and determine all cases, along with a jury of twelve "honest and indifferent persons," and to decide on

[209] Ibid, 64.
[210] Warren M. Billings, *Colonial Virginia: a History* (Millwood, NY: KTO Press), 13.
[211] John Gilman-Kolp, *Gentlemen and Freeholders: Electoral Politics in Colonial Virginia* (New York: The Johns Hopkins University Press, 1998), 16.

minor cases, such as drunkenness, loitering, and vagrancy.[212] These statutes and limitations would become noteworthy for the history of the Virginia colony, because the colony's leaders soon began to instill the death penalty for offenses such as theft and deserting.

One of the greatest issues with the Virginia Company and the colony itself was that early on there were disagreements among the leaders. The problems with the Company leaders started before the crew even arrived anywhere near Virginia territory. John Smith, a victim of "intense self-promotion" and a Captain, clashed with many of the socially superior colony leaders, including Edward Maria Wingfield, the first President of the Council in Virginia.[213] Several members of the Company suspected Smith of a mutiny and kept him imprisoned on the ship travelling to the New World for thirteen weeks.[214] The different personalities and strategies of the leaders of the Company would lead to even greater problems when they arrived in Virginia, along with a host of other avoidable issues that made life there wholly different from life in England.

On April 26, 1607, the explorers arrived in Chesapeake Bay and gathered a group of men commanded by Captain Christopher Newport to explore the immediate land. Their beliefs about the differences between good and bad Indians, learned from English attempts at colonization in Roanoke, were tested when the men were attacked by some natives right away.[215] Although some had injuries, all survived and returned back to the

[212] Hening, *Statutes at Large*, Vol. I, 65, 69, 71.
[213] Alfred Cave, *Lethal Encounters: Englishmen and Indians in Colonial Virginia* (Santa Barbara: Praeger, 2011), 48.
[214] John Smith, "The Proceedings of the English Colony in Virginia," in *Narratives of Early Virginia, 1606-1625*, Lyon Gardiner Taylor, ed. (New York: Barnes and Noble, Inc., 1907), 124-125.
[215] George Percy, "Observations by Master George Percy, 1607," in *Narratives of Early Virginia*, 9-10.

ships where they opened the sealed boxes that held the list of names of those chosen by the Virginia Company to lead on the Council in Virginia. Most of the selected came as no surprise, as Newport and Wingfield were both influential leaders, but many balked at the decision to seat Captain John Smith on the Council, the young upstart who refused to listen to his superiors. The Council members chose Wingfield as their President, who denied a seat to Smith without delay, highlighting the problems existing with governance already.[216] This would continue to be a problem throughout the early years of colonization; many of the colonists' narratives spoke about the issues surrounding the government. Writing late in 1607, Francis Perkins, a colonist who arrived in one of the first ships, wrote that "there are some members of the council here who understand state affairs as little as I do," as well as John Smith who wrote that the President and Council were "for the most part discontented with one another."[217] The failure to agree on what should be done and how it should be accomplished not only caused problems when it came to planting food, erecting buildings, and surviving, but also when it came to ordering punishments for offenders.

After more exploration of the Chesapeake Bay region, the ships were anchored off the Jamestown peninsula on May 13, 1607.[218] The choice of location would later factor into difficulties regarding food, water, and survival, as Jamestown was a mosquito-infested swamp with no springs for drinkable water.[219] The problem of disease and the

[216] Smith, "Proceedings," 123.
[217] Francis Perkins, "Letter," in *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 132; John Smith, "A True Relation," in *Jamestown Narratives*, 148.
[218] Percy, "Observations," 13.
[219] William Strachey, "A True Reportory of the wrack and redemption of Sir Thomas Gates, knight, upon and from the Islands of the Bermuda; his coming to Virginia, and the estate of that colony then, and

inability to plant food, which will be discussed in the coming paragraphs, were a major reason that the government in Virginia failed to emulate English society and its legal system perfectly from a very early stage. The colony's leaders had to focus on survival and the keeping of order in an unfamiliar environment, especially if the colony was to be a financial success for the home country.

While disease was a chief factor in creating problems for the Virginia colony, the presence of Native Americans produced even more difficulties. The fact that the Virginia colonists settled on previously-claimed land reveals part of the reason why clashes occurred between the Englishmen and the Native Americans. The colonists not only tried to convert the Natives to Christianity but they also attempted to subject them to English rule. This only led to more problems, such as Indian attacks, and made it more difficult to supplant English society and maintain control. The threat of raids enacted by the Indian tribes was one of the first problems that the English colonists encountered. On one of the first few days in the New World, May 1607, several colonists who worked to build the fort were soon attacked by the Native American inhabitants, resulting in the death of two men.[220]

Complications continued to arise when Newport left the colony in order to obtain more supplies in England in June 1607 and only left behind only about thirteen weeks of provisions. The leaders continued to suffer tensions, allowing much of the colony to go into disarray and no planting was accomplished.[221] Although many early accounts of Virginia lauded its beautiful wooded areas, which were full of nuts, berries, and new

---

after under the government of the Lord La Warre. July 15, 1610," in *Jamestown Narratives*, 430.
[220] Archer, "A Brief Description," 116.
[221] John Smith, "A True Relation" in *Jamestown Narratives*, 147, 148.

types of fruit and flowers unseen in England, the colonists seemed unable to provide for themselves.[222] In some of the first encounters between the natives and the English, the natives had even shown Newport and his men how to grow corn, as well as "the manner of setting it."[223] However, the colonists failed to do so on their own and many men started to die off every single day. John Smith recounted that "the living were scarce able to bury the dead" and many suspected President Wingfield of hoarding. Within twenty-three days after their initial landfall, nineteen men had died, including Captain Gosnold, a Council member. As a result, Wingfield, the President, and Kendall, another Council member, were deposed.[224] By September 1607, forty-six members of the original one hundred and four colonists were dead. Smith blamed the colonists who would "rather starve and rot with idleness than be persuaded to do anything for their own relief."[225]

A valid answer to the question of why the colony's men were failing to feed themselves is that few of the adventurers knew how to hunt or fish or were willing to perform these duties, as fifty five out of the one hundred were gentlemen, who rather owned ground rather than worked it.[226] Edmund Morgan asserts that it was possible that because these "simple" Indians had been able to live off the land and survive, the English then refused to grow their own food, seeing that their superior technology had failed them.[227] However, many were not only unable to work the land because of ignorance but

[222] George Percy "Observations," in *Narratives of Early Virginia*, 11.
[223] Archer, "A Brief Description," 110.
[224] Percy "Observations," 20-21.
[225] Smith, "A True Relation," 148-149.
[226] John Smith, "The General History: The Third Book—The proceedings and accidents of the English colony in Virginia, extracted from the authors following by William Simons, Doctor of Divinity," in *Jamestown Narratives*, 227-229.
[227] Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton & Company, 1975), Chapter Four.

also because of sickness. Mortality was at an all time high due to the marsh water, which brought about a range of diseases and led to severe malnutrition. Even though Smith stated that God, angered with the colonists, afflicted them with "such famin and sicknes" and made them so "weake," he continued to complain of the colonists' failure to work.[228] Smith's and others' repetitive complaints about the lack of working colonists must also be looked at as a class conflict as well. Those whose writings survive were all in certain positions of power: John Smith was a Captain, and one-time President of the colony, Edward Maria Wingfield was a shareholder of the Virginia Company, and once a member of Parliament, and George Percy, like many others, had been born into a gentle family.[229] Remembering that England itself was very socially stratified and that gentlemen enjoyed certain benefits, such as authority over the lower class, it is not surprising to find such conflicts among the different classes of colonists there in Virginia, especially when the laborers did not perform their "duties."

All the while the colonists were dying off in 1607-1608, the colony's leaders dealt with problems of governance. Wingfield, the suspected food hoarder, had been deposed and replaced by John Ratcliffe, who Wingfield saw as forsaking the King's instructions when it came to deciding the position of President.[230] Reflecting on his imprisonment in Virginia, Wingfield's earlier thoughts spoke of the first instances of severe punishments and how knowledge of them would keep English men and women from coming over to

[228] Smith, "A True Relation," in *Narratives of Early Virginia*, 36. It is important to point out that many historians have criticized Smith's published works, especially since many of them were not published until several years later. The story of Pocahontas and her rescue of John Smith, which many historians discredit, makes it seem possible that some of his other stories have been overemphasized. Fortunately, there are other surviving narratives that can support some of his statements.

[229] Such information can be found in Edward Wright Haile's *Jamestown Narratives* and Lyon Gardiner Taylor's *Narratives of Early Virginia*.

[230] Ibid, 188.

settle.[231] Though he was certainly angered by his own treatment, he recognized early on that control was slipping out of the colony leaders' hands and that the colony was nothing like the home country. Smith's second trial, for the death of two English soldiers killed by the Native Americans during Smith's kidnapping, displays the chaotic feeling of the colony. His trial was on "the same day of his return…his hanging the same or next day, so speedy is our law there."[232] The fact that the hanging already seemed set in stone without Smith present indicates a disorganized legal system in place.

A new supply of people arrived with Captain Francis Nelson and Newport in January 1608 after "more than a half" of the colony died.[233] A large number still included gentlemen who did not know "what a day's work was," along with specific tradesmen, such as a jeweler, a perfumer, a goldsmith, and a tobacco pipe maker.[234] This indicates that the Company still expected to reap some profit from the New World and also suggests that many believed that English society had supplanted itself in Virginia, in the form of luxuries enjoyed in the home country. Smith complained about these issues, seeing that the Company members were "deluded…with such strange promises" like gold.[235] The Company not only did not bring the right type of people to work, but sent them "all sick" and half dead.[236] Smith wished for "thirty carpenters, husbandmen…well

[231] Edward Maria Wingfield, "A Discourse of Virginia," in Edward Wright Haile, ed., *Jamestown Narratives*, 194.
[232] Ibid, 196.
[233] Smith, "The General History," 247.
[234] Ibid, 251-253, 335.
[235] John Smith, "A Map of Virginia with a Description of the Country, the Commodities, People, Government, and Religion. Written by Captain Smith, sometimes Governor of the Country," in *Jamestown Narratives*, 213.
[236] Smith, "The General History," 263.

provided, than a thousand of such as we have" as husbandmen still did not come.[237] He also admitted that the names written down under the title "laborers" were "for the most part footmen" and did not perform any beneficial work.[238] Smith's complaints about the lack of workers points to the potential for a breakdown of society that might occur if they did not receive the right type of people. It also shows the intense desire for the colony to be successful for the English empire, which could only be accomplished with labor.

Because of the ever-increasing problems with the Virginia colony, Smith had to change the colony's style of governance that had come to define it. Smith established work gangs, called for four to six hours of work per day from each able-bodied colonist, and instilled severe ultimatums. If anyone did not work for the colony, they would be sent beyond the river, most likely the one named after King James I, and forever be banished from the fort.[239] Also, he called for daily firearm drills and military exercises, not only to prepare for any Indian attack, but also to get the settlers used to a strict routine.[240] Many of the colonists began to take measures into their own hands by trading goods with the Indians, specifically metal objects such as axes, in exchange for food.[241] Others decided to desert the colony in order to escape the "miseries" and sought to live with the Indians.[242] Smith's extreme threats and "severe punishments" to prevent idleness and desertion were not quite in line with the wishes of the Virginia Company, but he believed that this was the only way to get the colonists to work.[243] The Council in London must

[237] Ibid, 290.
[238] Ibid, 335.
[239] Ibid, 314.
[240] Smith, "Proceedings," 180.
[241] Smith, "The General History," 286.
[242] Ibid, 304.
[243] Ibid, 315.

have heard news of the strict measures that Smith was taking, because they re-stated the statute that martial law was only to be used in cases of "mutiny and rebellion."[244] Deserters were to be apprehended and bound over "with good sureties for the good behavior" or sent back to England. The Company ordered that deserters only be punished as the Council saw fit.[245] The fact that the Council in London reacted this way shows that there were other people bothered by what was happening, specifically when it came to punishments.

The Virginia Company and Council in London further reacted to the lack of good governance in Virginia by sending news of the reorganization of the colony's government in July 1609. This gave the Company in London full control with a Governor, Sir Thomas West, Lord De la Warre.[246] This event marked a turning point in the Company's recognition of the dire situation on the ground, as the directors appeared to see that they would have to move away from the ideal of completely duplicating English society and law in order for the colony to not only thrive but survive. The Council named Sir Thomas Gates as the lieutenant governor and Sir Thomas Dale as the high marshal, highlighting the desire for a more militarized system in order to maintain a better grasp on the situation.[247]

Although there were new leaders in the colony to implement order and keep more colonists from dying, several hundred new settlers arrived in August 1609 at a time that was too late to plant additional crops. This led to disastrous results and possibly the most

[244] Hening, *Statutes at Large*, Vol. I, 96.
[245] Ibid, 106-108.
[246] Smith, "The General History," 325.
[247] Ibid, 327.

shocking realization about some of these early Americans. The winter of 1609-1610 came to be called "the starving time" because only sixty of the five hundred colonists survived to see spring.[248] Most of the colonists died from starvation and some even resorted to cannibalism, an ironic twist of fate when recalling their previously-held beliefs about the Native Americans.[249]

The loss of more than four hundred colonists was too much for the colony's leaders. They were enraged by the activities occurring under their noses: the exchange of guns for Indian corn, the departure of many who went to live with the natives, the proliferation of thievery, as well the cannibalistic actions of a husband who ate his wife.[250] In response to a situation that seemed to be spiraling out of control and appeared nothing like the home country, the government "now changed into an absolute command" and began to execute those who committed certain crimes.[251] The man who chopped up his wife, stored her body parts in various places, and ate her slowly, was burned at the stake.[252] A rumor about a man who solely desired to run away caused him to be executed, which William Strachey, secretary of the colony in 1609, thought to be "strange and seldom heard of, I thought not to omit."[253] Many other deserters and offenders were executed by Dale, who exacted truly bizarre methods for their executions, such as the group of deserters and the thieves discussed earlier in this chapter. This was just the start

[248] Ibid, 339-340.
[249] Ibid, 340. Rachel B. Herrmann has an article on cannibalism in colonial Virginia titled "The 'tragicall historie:' Cannibalism and Abundance in Colonial Jamestown," *William and Mary Quarterly*, 3d ser., 68, no. 1, January 2011, 47-74.
[250] Ibid, 340.
[251] Strachey, "A True Reportory," 420.
[252] Ibid, 440.
[253] George Percy, "A True Relation," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*(Champlain, VA: Roundhouse, 1998), 511, 518.

of the divergence between Virginia and England when it came to ordered punishments. In looking at the narratives written by several of the colonists, they seemed to be truly shocked and disturbed to see that such a disparity had already occurred.

It seems that the immediate strategy of the colony under Dale and Gates was to achieve stability and not necessarily emulation of English society. Dale and Gates created the "Lawes Divine, Morall and Martiall," in 1610 which instilled a more militaristic and strict discipline to govern the colony.[254] The laws ordered executions for those who spoke against the Holy Trinity, slandered the King, his royal authority, or "Gods holy word." Murder, sodomy, rape, and adultery were counted as capital offenses, as they were in the charter created by the King.[255] Some punishments were extremely harsh, such as executions for failing to attend church three times in a row, stealing any kind of good, trading with the Indians, being a false witness, deserting, and even failing to report a conspiracy within one hour.[256] These punishments were significant because a person could be executed for a one-time offense, and many colonists were.

The laws also ordered severe punishments, such as whipping, for a range of lesser crimes, including disrespecting a minister, stealing goods from a dead man, and throwing "out the water or suds of fowle cloathes, in the open streete, within the Pallizadoes."[257] There were much more cruel and unusual punishments for second-time offenders of slander, who would get a "bodkin thrust through his tongue."[258] Third-time offenders for fornication were to be whipped three times a week for an entire month, and second-time

[254] Smith, "Generall Historie", in *Narratives of Early Virginia*, 302.
[255] Ibid, 10-12; Hening, *Statutes at Large*, Vol. 1, 69.
[256] Strachey, "For the Colony," 11-15, 20-21.
[257] Ibid, 11, 15, 18-19.
[258] Ibid, 10-11.

offenders of slandering the Council were sent to the galleys for a period of three years.[259] Any "disgracefull words" to any member of the colony ordered the offender to lay "tied head and feete together, upon the guard everie night for the space of one moneth."[260] If one was an accessory to killing or destroying any livestock, you would be burned in the hand, lose your ears, and whipped for a period of twenty four hours.[261]

Some of the offenses and their punishments stated in the laws make sense for a colony that was trying to gain stability, such as enacting that murder was a capital offense. The desertion of English colonists to the Indians signified failure to adapt to a new environment, and theft not only harmed the victim and their survival but also the entire colony, especially if the thief robbed from the store of food. However, ordering executions for those who deserted, committed theft, failed to attend church three times in a row, and other offenses seem extreme, especially when faced with the reality that many of the colonists were already dying: one hundred and fifty colonists died in the second half of 1611 under Dale and Gate's authority.[262]

While these offenses and punishments were written down within the "Lawes Divine, Moral and Martiall," it did not necessarily mean that all of them were enforced or had to be. The narratives written by the early colonists do not include many specific examples of offenders and their punishments but it is clear that Dale and Gates enacted some of these punishments from the range of comments present in the narratives. In

[259] Ibid, 12-14.
[260] Ibid, 14.
[261] Ibid, 18.
[262] Information about the Native Americans in the Chesapeake region and their encounters with the men in the Virginia colony appear in Cave's *Lethal Encounters*. Cave's work discusses the conflicts between the Englishmen and the Native Americans, whether it was violent or accepting, as in the English deserters.

1613, Dale admitted that had he not carried "a severe hand over them they would [have] starve[d]," while Ralph Hamor, one of the original colonists, wrote in June 1614 that "the manner of their death, may some object, hath been cruel, unusual, barbourous…what if they have been more severe than usual in England, there was just cause for it."[263] The "Ancient Planters of Virginia" in their "Brief Declaration" compared it to the "slaughter of His Majesty's free subjects" and that the colonists worked as "slaves" and suffered for "petty offenses!"[264] Even though these extremes show that there were differences of opinion when it came to the treatment of the colonists in Virginia, they also show that contemporaries saw significant differences between England and Virginia when it came to punishments.

So far it has been established that there were many differences between Virginia and England, particularly in terms of the climate and the presence of Native Americans, both of which created a number of problems and led to reorganization in governance. The chaotic environment forced the colony's leaders to enact stricter punishments because they had grandiose plans for economic wealth and the colonists failed to bring that vision to life. It is evident that many of the laws governing behavior in the colony concentrated on upholding the authority of those in positions of power, as well as maintaining a labor force What is central is that the colony's leaders focused so much of their efforts and thoughts on the topic of labor. Such a phenomenon would only increase in the coming years and beyond, which is why the discussion now must turn to two things that made Virginia incredibly different from England and would help to ensure survival and

[263] Sir Thomas Dale, "Letter from Henrico, 10 June, 1613," in *Jamestown Narratives*, 767; Ralph Hamor, "A True Discourse," in *Jamestown Narratives*, 822-823.
[264] The Ancient Planters of Virginia, "A Brief Declaration," in *Jamestown Narratives*, 900.

success: the mass cultivation of tobacco and dependence on the labor of indentured servants.

Indentured Servants and the Introduction of Tobacco

The introduction of tobacco and the increase in the number of indentured servants went hand-in-hand. The importation and planting of tobacco not only brought more indentured servants to Virginia but also affected relations with the Powhatan Indians. Edmund S. Morgan, Kathleen M. Brown, and Alfred A. Cave are just some of the many historians who agree that the introduction of tobacco into the Virginia colony influenced Virginia's eventual success. John Rolfe cultivated the first batch of tobacco in 1614, though it was not yet perfected until 1617 when the first shipment of 50,000 pounds was sent to England.[265] The introduction of tobacco into the colony would have long-lasting effects. The colonists began to acquire vast amounts of land, as the process for growing tobacco required it, and pushed many natives away from their hunting grounds.[266] The promise of land to new settlers with the headright system, which gave fifty acres of land to those who paid for their passage and for each person brought to the colony, only encouraged the absorbing of more land and increased the tensions between the English and the natives. Along with the headright system, the Company began assigning one-hundred-acre tracts to those who came before 1616 and an additional one-hundred acres to those who owned shares of the Company stock. The Company even allocated thousands of acres to government officials in the hopes of preventing the need for taxation. This also gave wealthy residents, who paid for many others to come, enormous

[265] Billings, *Colonial Virginia*, 40.
[266] Cave, *Lethal Encounters*, 104.

landholdings and created differences between those who paid their way and those who had to work the land to pay off their debt. It created a large portion of people, indentured servants, indebted to the elites who had paid for their passage and rapidly increased the need for labor on these large landholdings. Those who came at the Company's expense typically worked it off for four to seven years and gave half of their yield to the Company in London.[267]

The attraction of this endeavor, that a person could work for a few years and then acquire fifty acres for himself and for each of his family members, would draw many people to Virginia.[268] This influx of new colonists and apparent success of tobacco production resulted in the increased demands for more servants and a refusal to plant anything besides tobacco. The best grade of tobacco sold at three shillings per pound in 1619, which was the highest it ever would reach, but it was enough to keep the colonists wanting more servants in order to plant more tobacco.[269] Sir Edwin Sandys, the Treasurer in 1619, tried to curb it by ordering that each person could only plant one thousand pounds of tobacco per year, hoping to avoid overproduction and to force the farmers to

[267] Morgan, *American Slavery*, Chapter Five. See also Edmund S. Morgan's "The First American Boom: Virginia 1618-1630," *The William and Mary Quarterly*, Third Series, Vol. 28, No. 2 (Apr., 1971), pp. 169-198.

[268] Edmund S. Morgan's "The First American Boom" discusses the influx of new immigrants into the Virginia colony. He estimates that around three to four thousand immigrants came into the colony between 1618 and 1624, although not all of them were indentured servants. He discusses this on page 170 as well as in his fourth footnote. On page 177, he recounts how many Virginia colonists and even Governor Yeardley desired that the royal commission send even more servants. See Susan M. Kingsbury, ed., *The Records of the Virginia Company of London* (Washington, 1906-1935), III, 221.

[269] Smith, "Generall Historie," in *Early Narratives of Virginia*, 346. See Edmund S. Morgan's "The Labor Problem at Jamestown, 1607-1618," *The American Historical Review* 76, No. 3 (1971). Morgan states that the first shipment of tobacco produced such high prices that the colonists actually started to work harder in order to plant it. See also Edmund Morgan's "The First American Boom," 177; Kingsbury, *The Records of the Virginia Company*, III, 162.

plant other crops.[270] It appears that no one paid attention to this act as many commented on the fact that there were no staple commodities "save only tobacco."[271]

Since the colonists planted nothing but tobacco, they suffered when it came to food and the colony was still described as "utterly destitute" in 1619 when the new Governor, Sir George Yeardley, arrived with a fresh commission in April.[272] Dale's laws were thrown out and the colonists were to "be governed by those free laws which His Majesty's subjects live under England." There was to be a General Assembly held once yearly, consisting of the Governor, a Council, and two Burgesses from every plantation. The Assembly was allowed to create the laws for the colony, and its inhabitants were responsible for electing the Burgesses, creating a more representative government. The plantations, later counties, were to hold monthly courts for petty matters and the Assembly held a General Court to decide on matters of life and death.[273] The first meeting of the Virginia Assembly, which included six Council members and twenty Burgesses, met on July 30, 1619.[274]

With the introduction of the new style of government came the enactment of several new laws, as well as the first instances of written court records and orders. Some of the very first ratifications of laws came from the Company in London, but were set down by the General Assembly, included instructions against drunkenness, gaming, and "excess in cloaths."[275] As with all laws, these spoke directly to problems that the colony

[270] The Ancient Planters of Virginia, "A Brief Declaration," 891; Smith, "Generall Historie," in *Early Narratives of Virginia*, 349.
[271] The Ancient Planters of Virginia, "A Brief Declaration," 908.
[272] Ibid, 908. See also Kingsbury, *The Records of the Virginia Company*, III, 118-122.
[273] Ibid, 909.
[274] John Smith, "Proceedings of the Virginia Assembly, 1619" *Narratives of Early Virginia*, 249.
[275] Hening, *Statutes at Large*, Vol. I, 114; Kingsbury, *The Records of the Virginia Company*, III, 165.

experienced, including the blurring of class divisions. The Company in London reiterated the need to limit tobacco production, enforced the planting of mulberry trees, and asked that the colony's leaders take steps in producing salt, pitch, and tar.[276] It appears that the Company in London sought to enact measures that would not only protect servants but would ensure that work continued. Within their instructions to Governor Sir Francis Wyatt in 1621, they ordered that "all servants [were] to fare alike in the colony, and their punishment for any offences [would be] to serve the colony, in publick works."[277] The departure from Dale's laws is readily seen, such as the law that colonists only needed to pay a fine for absenting themselves from Church or disrespecting a minister.[278] However, it will be shown how the courts ordered more than just service to the colony when it came to servants' offenses. Those who threatened the success of the tobacco boom would be severely punished.

Another form of labor that was introduced into the colony was that of African slaves. The increasing number of indentured servants and African slaves would create a huge difference between colonial Virginia and England. Africans first appeared in Virginia in 1619, though they were not yet defined as chattel, which would come to define Virginia in the eighteenth-century.[279] The Virginia colonists, or those who could afford to do so, used African men and women for labor throughout the seventeenth-

[276] Ibid, 114-116.
[277] Ibid, 117.
[278] Ibid, 123, 124.
[279] Susan M. Kingsbury, ed., *The Records of the Virginia Company of London* (Washington, D.C.: U.S. Government Printing Office, 1906-1935), Vol. III, 243; Edmund Morgan's *American Slavery, American Freedom* discusses slavery and its introduction into the Virginia colony at length, as well as Kathleen M. Brown's *Good Wives, Nasty Wenches and Anxious Patriarchs* and Jennifer L. Morgan's *Laboring Women*: *Reproduction and Gender In New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004).

century and by a 1645 law "all negro men and women" were counted as tithables, or those workers on which the master paid taxes, like a kind of property. The Assembly also counted any white man from sixteen years of age to sixty as a tithable, and not white women, showing that white women and black women were not on equal planes.[280] Historian Jennifer L. Morgan discusses the distinctions between white and black servants, particularly those that existed between white and black women. This distinction can be seen in the tithable law as well as those laws that banned interracial sex. Ultimately, black and white servants and colonists living in Virginia could never be equal because African labor was free after the master paid for the initial purchase.[281] The separation between the races was not only created by law but also through English ideologies about African men and women. Englishmen, upon contact with Africans, described the women as "unwomanly" and "monstrous laboring beasts" while the men were thought to be "unnatural" because of their "physically burdensome" genitalia.[282] These ideas were shared by Englishmen and the Virginia colonists; however, those in Virginia had to put them into practice to instill "mastery" over an increasing population in Virginia of African slaves, who had no incentive to work.[283] These separations between the races,

---

[280] Hening, *Statues at Large*, Vol. I, 292; Jennifer L. Morgan, *Laboring Women*, Chapter Three.

[281] Morgan, *Laboring Women*, 73; The laws governing interracial interaction and sexual contact is discussed throughout Kirsten Fischer's *Suspect Relations*: *Sex, Race and Resistance in Colonial North Carolina* (Ithaca, NY: Cornell University Press, 2001).

[282] Ibid, 14, 15, 29; The discourse on racialized ideas has been heavily studied in works such as Peter Erickson's "Representations of Blacks and Blackness in the Renaissance," *Criticism* 35 (1993): 514-515, Lynda Boose, "'The Getting of a Lawful Race:' Racial Discourse in Early Modern England and the Unrepresentable Black Women," in *Women, "Race," and Writing in the Early Modern Period*, ed. Margo Hendricks and Patricia Parker, (New York: Routledge, 1994), 35-55. There are primary sources, such as Richard Ligon's *A True and Exact History of the Island of Barbados* (London, 1657), and Samuel Purchas' *Hakluytus Posthumus, or Purchas His Pilgrimes: Contayning a History of the World in Sea Voyages and Land Travells by Englishmen and Others*, 20 vols. (1624; reprint Glasgow: J. MacLehose and Sons, 1905).

[283] Morgan, *Laboring Women*, 73.

enacted both by law and upheld by ideas about African slaves, produced tension within the Virginia colony and appeared in many of the court cases, though largely not until after the 1650s, which will be discussed later in the chapter.

Another major difference between Virginia and England was the extremely high mortality rate in the colony, particularly in the first half of the seventeenth-century, and the imbalanced ratio of men and women. The death rate was very visible in the first decade of colonization, as described earlier, but was still present into the 1620s. An Indian attack led by Opechancanough, Powhatan's brother and successor, on March 22, 1622 killed 347 colonists, roughly a third of the entire English population.[284] This attack had the unforeseen consequence of an investigation led by the Company and the Council in London, who found that only 1,240 residents lived in Virginia before the attack, even though Sir Edwin Sandys, Treasurer and colony promoter, had obtained 3,500 colonists within a span of three years.[285] King James I reacted by dissolving the Company and placed Virginia under his control, making Virginia the first royal colony in 1624 and giving him more power to decide its future.[286]

While the King had hoped that the colony would transplant English society in Virginia and would acquire riches for the home country, the death rate was one of the key factors that separated England from Virginia. Edmund Morgan researched the number of settlers coming in to the colony at Virginia. He stated that if his calculations were correct, then 15,000 colonists who came between the years 1625 and 1640 only increased the

[284] The Ancient Planters of Virginia, "A Brief Declaration," 910; Kingsbury, *Records of the Virginia Company*, III, 613-614; IV, 186, 234.
[285] Morgan, *American Slavery*, Chapter Five.
[286] Gilman-Kolp, *Gentlemen*, 41.

population by 7,000. The death rate created so many orphans in Virginia that special court days were set aside for them in order to figure out the details of their estate, and who would serve as their legal guardian.[287] The death rate also created a great abundance of widowed women who did not stay single for long. Women's extremely low numbers compared to the general population (there were only 244 women out of 1,292 people in 1624) would have made them a valuable asset as wives, especially since their deceased husband(s) typically left their entire estates to them.[288]

Court Cases

Keeping in mind the number of differences between Virginia and England, and the issues that the colonists experienced, there will be an analysis of the colonists' encounters with the courts. While there are offenses that received characteristic punishments, those who ordered the penalties often exercised discretion and did not always hand out the same sentences, showing the flexibility of the courts. However, after the 1620s, it appeared that the county courts and the General Court of Colonial Virginia began to order more typical punishments for certain offenses, including slander/defamation, running away/absence, fornication, bearing an illegitimate child, theft, and disorderly conduct. Many of these cases involved specific groups of people, such as indentured servants and women, although it was not unusual to see the courts punish those with higher authority, such as those who held positions on the Council. The reality that indentured servants and women stood before the courts many times often reflect the white, elite male desire to

[287] Ruth and Sam Sparacio, *Virginia County Court Records, Middlesex County, 1686-1690*, Dec. 5, 1687. This is just one example of the many court cases dealing with orphans, the choice of their legal guardian, and what was done with their estate.

[288] Morgan, *American Slavery*, Chapter Six; Morgan, "The First American Boom," 180; Kingsbury, *The Records of the Virginia Company*, I, 256, 269, 566; III, 493; IV, 231.

keep their positions of power, particularly as masters and husbands. I will analyze the court cases chronologically but will also focus on specific categories, such as indentured servants and women, because of their unique experiences before the court system and within Virginian society.[289]

Indentured Servants

Harsh treatment and punishments of servants were a key element of Virginia society, mainly because they were indebted to their master for paying their passage to the New World. There are hundreds of examples within the colonial court records that highlight the prejudice of the courts and their extreme sentences when it came to punishing servants. Though it was the last time that the General Court ordered a death sentence for theft, in 1624 Daniel Francke, a laborer, was executed for stealing and killing a calf that belonged to none other than Sir George Yeardley.[290] It is difficult to ascertain whether or not Francke would have been executed for the same crime if he had not been a servant, but the attention that the court order pays to the distinction between Francke, a laborer, and Yeardley, the Governor, suggests that he was executed based on his stealing from someone of superior authority. Although not dealing directly with a servant's transgression, the case of Mr. and Mrs. Proctor and their servant, Elizabeth Abbott, which came before the General Court in October 1624, shows the worst case of servant treatment in colonial Virginia. Although several witnesses had given their accounts of the terrible whippings that Abbott had suffered at the hands of her master and

[289] Kathleen M. Brown's *Good Wives, Nasty Wenches and Anxious Patriarchs* discusses at length the way that Virginia laws and the courts upheld the position of white, male elites over indentured servants, women, and black slaves.

[290] H.R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia* (Richmond: Virginia State Library, 1979), March 1st, 1622, 4.

mistress, including up to 200-500 lashes at one time, the court never gave the Proctors a penalty. Many of the witnesses believed that her harsh treatment was the reason Abbott died alone in the woods.[291]

One of the offenses that servants committed frequently in Virginia was running away from their masters. The court records are full of examples of servants running away, which could have occurred for a wide range of reasons, including escaping harsh treatment, but the courts typically ordered the same punishment for absentee servants. A certain amount of time was added onto their time left to work and the courts ordered them to be whipped, typically stated with a specific number of lashes or "stripes." John Joyse, servant, ran away from his master and stole a canoe and a gun in July 1626. For his offense, the General Court ordered that he serve his master an extra six months, to serve the Governor for five years, and to be given thirty stripes.[292] It is clear that Joyse's sentence benefitted his master and the Governor who would enjoy his labor for several years. The court's sentence for Joyse harmed him in two ways: he not only had to serve an extra five and a half years, preventing him from becoming a freeman, but also he was extremely physically wounded, which prevented him from ever committing the offense again.[293] Culpepper, a servant, was also corporally punished with thirty lashes for killing two hogs of an unnamed owner around 1636-1637, while his mistress had to repay the owner with a young sow.[294] Another unnamed servant in 1646, received thirty lashes and

[291] McIlwaine, *Minutes*, October 10th, 1624, 22-24.
[292] Ibid, July 28th, 1626, 104.
[293] The desire to deter others from committing the same offense is seen throughout many English primary sources, such as the Proceedings at the Old Bailey, but it is evident that the publicity of punishments served to teach others a lesson.
[294] Beverley Fleet, ed., *Virginia Colonial Abstracts* Vol. XVIII Acchawmacke 1632-1637 (Baltimore: Genealogical Publishing Co., 1961), 47.

extra time for believing that he had served his full time and simply "went away from his master."[295]

Most servants, both male and female, who ran away always received extra service time, which benefitted their master. Throughout the seventeenth-century, the county courts also continued to inflict corporal punishment on servants who absented themselves from their service. A female servant in Charles City County received double time for being gone almost an entire year in the late 1650s, while another servant in the same county received twenty lashes for running away.[296] Other county courts meted out the same kinds of punishments for runaways, such as Surry County court, whose judges ordered Thomas Edwards to serve his master eight more months as well as to "have 20 lashes on his bare back."[297] Some of the punishments were extreme with the number of lashes, such as Alex Phillis who was given thirty-nine lashes for running away in 1670.[298] There was William Dixon, who not only ran away but also had beaten the over-seer, and received thirty-nine lashes.[299] Stafford County court in 1689-1691 appeared to have been a little more lenient when it came to punishing runaway servants, foregoing corporal punishment and only ordering extra service time.[300] The other offense for which servants could come before the courts was that of theft, although not many of the court cases state the status of the offender. In 1681, Elizabeth Ball, servant to Mr. Oswald Carey, stole

[295] Beverley Fleet, ed., *Virginia Colonial Abstracts* Vol. XXIV York County 1633-1646 (Baltimore: Genealogical Publishing Co., 1961), 70.
[296] Beverley Fleet, ed., *Charles City County 1655-1658, 94; Charles City County 1664-1665 and Fragments 1650-1696* (Baltimore: Genealogical Publishing Co., Inc., 1961), 14.
[297] Weynette Parks Haun, ed., *Surry County Virginia Court Records 1672-1682 Book III* (Durham, NC: Library of Virginia), 31.
[298] McIlwaine, *Minutes*, April 18th, 1670.
[299] Ibid, April 4th, 1671
[300] Ruth and Sam Sparacio, eds., *Order Book Abstracts of Stafford County, Virginia, 1664-1668, 1689-1690, 1691-1693* (McLean, VA: The Antient Press, 1987), 29.

several goods from him and received twenty-one lashes on her bare back at the "publick whipping poaste."[301] Thomas Carrington and Cornelius Mosoar, servants to Richard Robinson, stole a hog and were whipped with twenty lashes on their bare backs in 1684.[302] Middlesex County court continued to order a severe number of lashes between 1687 and 1692 for servants who ran away, four offenders all received thirty-nine stripes between these years in Middlesex County.[303]

These court cases dealing with servants tell the reader a lot about Virginia society and the economy, and what the court judges wanted: a continuing labor force. Edmund Morgan discusses how in England, servants typically only worked one year under a contract and for a wage, while in Virginia servants worked several years for the promise of obtaining land. Morgan states that "the Council in Virginia supported masters in severities that would not have been allowed in England," especially in the case of Elizabeth Abbott.[304] He argues that Virginia servants had no control over their labor, as owners often sold them without their consent, and they still had to serve out their time even if the master died. One of his key arguments was that the tobacco "boom produced, and in some measure depended on, a tightening of labor discipline beyond what had been known in England."[305] The courts' orders that gave extra time to runaway servants and those that stole from their masters and others corresponds with Morgan's assessment that

[301] Ruth and Sam Sparacio, eds., *Order Book Abstracts of Middlesex County, Virginia 1680-1686* (McLean, VA: The Antient Press, 1994), 15-16.
[302] Ibid, 79.
[303] Ruth and Sam Sparacio, eds., *Order Book Abstracts of Middlesex County, Virginia 1686-1690* (McLean, VA: The Antient Press, 1994), December 5th, 1687; Ruth and Sam Sparacio, eds., *Order Book Abstracts of Middlesex County, Virginia 1690-1694* (McLean, VA: The Antient Press, 1994), June 6th, 1692.
[304] Morgan, *American Slavery*, 127.
[305] Morgan, *American Slavery*, 129. See Beverley Fleet, *Virginia Colonial Abstracts Vol. XXV York County 1646-1648* (Baltimore: Genealogical Publishing Co, 1961), 52, for an example of a servant being sold to another master without their consent.

the wealthy planters needed a large labor force in order to profit from the cultivation of tobacco. Ordering severe physical punishments for runaways shows that the elites hoped to prevent anything that could upset tobacco production, particularly an absent servant. The tightening of labor discipline that Morgan argues was produced by the tobacco boom, and the evidence of severe disciplinary tactics, upsets the instructions by the Virginia Company in 1621 which stated that servants were to only be punished with extra time "for any offenses."[306] As I argue, both the "extra time" given to runaway servants and the high number of lashes indicates that the Virginia leaders sought to solve the problems relating to labor through harsher methods. Morgan recognized that the extra service time given to indentured servants was something unheard of in England, but did not analyze closely the use of punishments.

Disorderly Conduct

There were many offenses committed in colonial Virginia which cannot be placed within a single category or tied to a specific group of people. These are the offenses that I will label as "disorders" because that is typically how the courts labeled such behavior, which included defamation, drunkenness, swearing, sedition, fornication, and theft. Most of these offenses received punishments that were to be performed in public spaces in order "to deter the like offenses for the future," like the whippings that runaway servants received.[307] Slander was an especially important offense to punish publicly because defamation could ruin "the good name and fame" of the victim.[308]

[306] Hening, *Statutes at Large*, Vol. I, 117.
[307] H.R. McIlwaine, ed., *Executive Journals of the Council of Colonial Virginia*, Vol. I (June 11, 1680-June 22, 1699) (Richmond: Virginia State Library, 1925), 120.
[308] Ruth and Sam Sparacio, eds., *Middlesex County, Virginia 1686-1690*, 14.

Some of the harshest punishments that the courts ordered for slander occurred in the first two decades of colonization, a period that was chaotic, full of failures, and when authority had to be wielded with extreme measures to instill order. In 1624, the General Court ordered Richard Barnes, a soldier, to face running the gauntlet for slandering the Governor and Council, have his "tongue bored through with an awl," as well as being "kicked down and footed out of the fort and banished."[309] The next year John Heney slandered the good name of Captain Tucker by saying that he was the cause of Robert Leyster's death, and the General Court ordered that Heney receive sixty stripes, pay one-hundred weight in tobacco to Captain Tucker, as well as ask forgiveness and stay in jail until he gave "security for his good behavior."[310] What is important about these cases is that the slander was directed at someone of superior authority, such as the Governor, those on the Council, and a Captain. Simply disagreeing with the actions of the Council and the General Court could cause one to be severely punished, such as Thomas Hatch who believed Richard Williams was wrongfully put to death for "buggery" and was ordered by the General Court to be "whipped from the fort to the gallows and back again, set upon the pillory, lose one of his ears, [and to serve] Sr. George Yardley for 7 years beginning that day."[311] While these are certainly some of the most extreme punishments given for disorderly conduct, the courts ordered them at a time when those in charge probably did not have a good grasp on authority and not that much experience within the legal system. Anyone who questioned authority was to be severely punished because it was thought it would prevent others from doing the same.

[309] McIlwaine, *Minutes*, May 10th, 1624, 14.
[310] McIlwaine, *Minutes*, May 10th, 1624; November 21st, 1625.
[311] Ibid, *Minutes*, 93.

Slander and other disorderly conduct was also punished by ordering one to lie "neck and heels," where the offender was confined to a specific spot by restraints on his neck and heels.[312] The court could order that the slanderer acknowledge his fault in public and ask forgiveness of the victim.[313] Others guilty of disorder were required to pay a fine, such as Henry Gainye who paid three-hundred pounds of tobacco for drunkenness in 1627.[314] Thieves often received whipping as a punishment, such as John Tios and Thomas Hall, who received forty stripes for stealing unknown goods of William Mills.[315] Even those guilty of petty theft received a large number of lashes, such as Gyles Harrod who stole two hens and received thirty stripes "tied to the gallows."[316] Some thieves were much luckier and only had to pay restitution, probably because they could, such as the unnamed offender that paid one barrel of corn for stealing a canoe.[317] Rebels who followed Nathaniel Bacon during the Rebellion in 1676 were brought often before the courts, particularly Surry County court, for causing sedition and also committing burglary and theft. Jon Skinner, along with his wife, were each given twenty lashes for "tending to sedition or mutiny," an offense which earlier in the century would have called for an execution.[318]

Many of these offenses and their punishments focused around the need to instill control and to prevent "disorder," probably because the memory of chaos in the first two decades of colonization was still fresh. A lot of the language surrounding social control

[312] Ibid, 54-57.
[313] McIlwaine, *Minutes*, January 17th, 1625.
[314] McIlwaine, *Minutes*, January 10th, 1627.
[315] Ibid, February 7th, 1628.
[316] Ibid, April 8th, 1629.
[317] Fleet, *Acchawmacke 1632-1637*, 4.
[318] Haun, ed., *Surry County Virginia Court Records*, 67-68.

and order was found throughout early modern English court cases, as described in the first chapter, and was likely transferred to the Virginia colony. Keith Wrightson argues that England's high mortality rate and the threat of bubonic plague in the early sixteenth-century "engendered a mentality which valued security and stability" first and foremost in order to have a successfully running social system.[319] This appears to be the case in the Virginia colony, which was geared toward keeping the elites in a position of power by disciplining anyone who questioned or slandered them, and punishing those who disrupted the success of others, such as thieves who were most likely not in the upper class.

Even though there were many differences between Virginia and England, there were some similarities, especially when it came to ideas, like those held by English men about the inferiority of Africans and the idea that social control and order was imperative. Another similarity between England and Virginia were ideas and beliefs about women. I will turn the discussion towards female offenders because the imbalanced ratio of men and women, as well as the presence of a large group of female indentured servants, created a key difference between England and Virginia.[320]

[319] Wrightson, *Earthly Necessities*, 56.

[320] Keith Wrightson's *Earthly Necessities* discusses social control and order throughout his book, focusing on the need for stability in a country that was dealing with rapid growth in population and increased demand for goods, which in turn forced them to increase production. His discussion on the roles and strategies of the family members shows that English society was very ordered so that the family system would run smoothly, or survive; Kathleen M. Brown's *Good Wives* also discusses social control in chapter three, focusing on keeping women under the authority of men; David Cressy's *Society and Culture in Early Modern England* (Burlington, VA: Ashgate Publishing Co., 2003) also serves as a good book that discusses the social order in Elizabethan and Stuart England.

Female Offenders

Kathleen M. Brown describes the way that the leaders of the Virginia colony utilized notions of gender and race in order to give more power to themselves. While Brown does not delve into the specific types of punishments and what they indicated about Virginia's government and society, she does discuss the popular notions about women that existed throughout the late sixteenth and early seventeenth centuries. She states that males tended to think that women were the weaker sex, physically and morally, and needed a male figure, whether a father, husband, or master, to ensure their protection from harm and keep their chastity intact. Because all women derived from Eve, who caused the fall of all mankind, they had to suffer through childbirth and males had to watch them carefully, as they were prone to temptation and could easily beguile and mislead. Women were expected to perform domestic work within the home, as the public life was often dangerous and dishonest, and take care of the children.[321] Good women and wives made sure that the men in their lives ate well and lived comfortably. The family was a "domestic Kingdom, a monarchy" over which the father had ultimate control, since males were thought to be wiser and stronger.[322] Through these gendered expectations men were able to justify the order of things and many institutions, such as the law, church, and the surrounding culture, helped them support these ideas.[323]

The courts and society helped to create many categories into which many bad

[321] Brown, *Good Wives*, Chapter One, 19, 24.
[322]Richard Brathwait, *The English Gentleman* (London, 1630), 87; Joseph Swetnam's *The Arraignment of Lewde, Idle, Froward, and Unconstant Women…* (London, 1615), in Katherine Usher Henderson and Barbara F. McManus, eds., *Half Humankind: Contexts and Texts of the Controversy about Women in England, 1540-1640* (Chicago: University of Illinois Press, 1985) is a great primary source when it comes to the attitudes that existed about women.
[323] Brown, *Good Wives*, 15.

women fell. Deviant women were defined as those who were revealed to be probable witches, those who participated in premarital sex or were accused of adultery, as well as loud women who quarreled with others, especially social superiors. Certain women were vulnerable to such charges, such as midwives and widows, who either had a sense of power or the absence of a man in her life. It was understandable why many wished to stop these disorderly women, as witches were thought to perform maleficium and caused bad things to occur, such as famine, disease, and the death of livestock or people. The courts punished other women because they overstepped their boundaries, or harmed family relations and reputations, principally if it upset the head of the household.[324] Neighbors helped to shame others that committed offenses, such as publicizing the event through gossip or making sure the churchwarden knew. Such incidents display that women often sought conformity and keeping the social order intact.[325]

While the court records in colonial Virginia display many of these ideas about women and how men sought to keep them under their authority, Joan Scott's "Gender: A Useful Category of Historical Analysis" reminds historians that they should not depend so deeply on the theory of patriarchy to understand the relationship between men and women. As stated in the previous chapter, Scott asserts that both women and men had avenues of agency in order to break down barriers, whether it was class or gender-related. Throughout this chapter, court cases dealing with women will be analyzed; however, not all of the cases which involved a female offender were because of the ideals of male

[324] Ibid, 27-30.
[325] Ibid, 29-30; Clara Ann Bowler's "Carted Whores and White Shrouded Apologies: Slander in the County Courts of Seventeenth-Century Virginia," *Virginia Magazine of History and Biography*, LXXXV (1977) discusses the participation of the community when it came to punishing transgressions.

superiority.[326]

Most of the court cases that involved women dealt with offenses such as slander, fornication, scolding, and bearing an illegitimate child, often a "mulatto [child]."[327] While some of the men who committed the offenses with the women were punished, it is important to place women in a different category because some of the punishments were only ordered for women. For example, ducking or towing, where the offender sat upon a makeshift stool over a body of water and was repeatedly dunked into the water or they were tied to the front or back of a boat and were towed through the water. Women in colonial Virginia committed some of the same offenses as men, such as theft and running away, but often they were disciplined more severely with corporal punishments when it came to fornication and "bastardy," often because they could not pay a fine due to their status, and not necessarily just because of their sex.

A clear example of the punishment of ducking or towing, solely ordered for women in the Virginia colony, is the case of Margarett Jones who "scratched and bloodied the face" of John Butterfield in 1626. The General Court ordered that Jones be "towed or dragged at a boat's stern in the river from the shore unto the *Margarett and John* and thence to the shore again."[328] It was of extreme consequence that the boat that Jones was towed to possessed the same exact names of the plaintiff and defendant. While the court record failed to include why Jones attacked Butterfield, it is worth noting that Jones attacked a man who automatically enjoyed authority over her, and in her

[326] See Joan W. Scott's "Gender: A Useful Category of Historical Analysis," *The American Historical Review, Vol. 91, No.5* (Dec., 1986), pp. 1053-1075.
[327] Weynette Parks Haun, ed., *Surry County Virginia Court Records (Order Book 1671-1691) Book IV* (Durham, NC: Library of Virginia), 51.
[328] McIlwaine, *Minutes*, October 10th, 1626, 119.

punishment the courts upheld male supremacy.[329] Other women were towed and ducked for the offense of "scolding, railing, and falling out with many," such as Amy Hall, who was towed around the *Margaret and John* and ducked three times.[330] Slander was another offense which caused Joane Butler to be "drawen over the Kings Creeke at the starne of a boate" for calling Marie Drew a "common cunted hoare."[331] Anne Williamson and Anne Stephens both were to be ducked and to ask public forgiveness of John Waltham and his wife, for saying that he had "monthly courses as women had."[332] No males were ever ducked in Virginia within this time period, at least none that were recorded. It worked well to literally drown out women's loud voices and keep them in their place. Brown argues that female speech such as this was an "alternative [form] of power," which women could use to disrupt powerful men or establish their good behavior in smearing the reputations of other women. Therefore, it needed to be controlled.[333]

Women were not just ducked or towed for offenses regarding their speech and voices but were often given many lashes for "scandaliz[ing] and defame[ing]" the good name of others.[334] Alice Robins said that Mary Hudson was "as badd as anie salte Bitch" and received twenty lashes on her back in the Accomacke County court in 1637.[335] The Northumberland County court even threatened to give Mrs. Mary Calvert, a respected married lady, thirty lashes on her bare shoulders for slandering the colony's leaders.[336]

---

[329] Kathleen M. Brown, *Good Wives*, Chapter Three; Jennifer L. Morgan, *Laboring Women*, 73.
[330] McIlwaine, *Minutes*, September 10th, 1627.
[331] Fleet, *Acchawmacke* 1632-1637, 18.
[332] Ibid, 84, 87.
[333] Brown, *Good Wives*, 95, 99.
[334] Fleet, *Acchawmacke, 1632-1637*, 85.
[335] Beverley Fleet, *Accomacke County Court Records 1637-1640* (Baltimore: Genealogical Publishing Co., Inc., 1961), 34.
[336] Ibid, 39.

While her husband paid the 1,000 pounds of tobacco to keep her from being whipped, the fact that the court commanded the same punishment that was usually reserved for women of a lower class speaks volumes about the court's attempt to smear her good name, and a willingness to go after all women for the sake of patriarchy.

Another clear example of severe punishments suffered by women that also suggests injustice within the Virginia court system is seen in the case of Alice Thornbury and Ann Snoade. In 1627, Alice was brought before the court for beating Ann and causing her to miscarry. While Alice received forty stripes for her offense, the General Court threatened to whip Ann as well if she and Alice "br[oke] their good behavior." If they did break their good behavior, they were to be whipped three different times within three days.[337] While this threat was probably heeded by both Alice and Ann, it is significant that the courts warned Ann that she could be punished, although the court record does not suggest that Ann committed any offense.

Along with slander and scolding, women appeared a number of times in the court records for the act of fornication and having an illegitimate child. In 1627, Joan White, along with her sexual partner John Phillips, received forty stripes for committing fornication and "having a bastard."[338] The Churchwarden in Accomacke County brought John Holloway and Cath[erine] Joanes before the county court to present them for fornication in the late 1630s. While Holloway was ordered to acknowledge his fault in church and to pay two-hundred pounds of tobacco, Joanes was ordered to have thirty

[337] McIlwaine, *Minutes*, July 3rd, 1627.
[338] Ibid, October 11th, 1627.

lashes on her back.[339] This not only suggests that the court wanted to punish both Holloway and Joanes for their misdemeanor but also shows that certain avenues of redress were not always available to women because of their status.

Women who bore illegitimate children appeared in the county courts of Virginia frequently. Most of them, especially if they were indentured servants, had to serve extra time for their master. This shows that the courts and the law continued to uphold the desires of masters, who were often negatively affected by a servant who bore an illegitimate child. Masters lost the time of their service to allow the pregnant servant to lie in; therefore, losing potential profit off her labor. The courts typically ordered that women serve double time if they bore a "bastard child," such as Elizabeth Turner, whose lover was only required to "do penance before the congregation."[340] Women who had bastard children were often whipped, such as Elizabeth Heath who was ordered to serve double time and receive "corporall punish'mt" in 1655.[341] In the second half of the seventeenth-century, some county courts offered a choice to women with illegitimate children that they could either pay five-hundred pounds of tobacco or be given twenty lashes. Sometimes men stepped forward and confessed "judgment for payment as security" so that the parish would not be liable to support the woman and her child.[342] This same clause appeared in later court cases, such as in Surry County in 1677, where either the master or the male offender "save[d] the county harmless by providing security

[339] Fleet, *Accomacke County* 1637-1640, 46.
[340] Fleet, *York County Vol. XXVI 1648-1657*, 82.
[341] Beverley Fleet, *Charles City County Court Records, 1664-1665 Fragments, 1650-1696* (Baltimore: Genealogical Publishing Co., Inc., 1961), 45.
[342] Fleet, *Charles City County*, 53-54.

for the bastard child."[343]

White women who bore "mulatto bastard[s]," an offense that increased in number in the 1680s, always received corporal punishment.[344] The women presented before the Surry County court in the 1680s received lashes on their "bare back[s]," ranging from sixteen to thirty stripes, for the offense of "bastardy."[345] The earlier description about the English perceived ideas about African men influenced these punishments greatly, but Kathleen Brown asserts that punishing interracial unions was to prevent the blurring of "racial distinctions and [the] increase [of a] free black population."[346] If white women bore children of mixed race, the children would become free subjects, unlike black women's children with white men, as stated in an act of the Assembly in 1662.[347] The courts needed to instill stricter punishments regarding interracial unions because of the increased need for slave labor after Bacon's Rebellion.[348] The county courts continued to whip women that bore bastard children into the late 1690s, as seen in the Middlesex County court.[349]

Conclusion

In a society that was brimming with problems, such as Native American attacks, runaway servants, theft, illegitimate births, and issues tied to slaves, punishing those who disrupted order was seen as a good method of discipline. Some of the ideas in the Virginia colony, such as those about social order and control as well as beliefs about

[343] Haun, ed., *Surry Book III, 1672-1682*, 67.
[344] Haun, ed., *Surry Book IV, 1682-1691*, 51.
[345] Ibid, 44, 51, 59, 64, 84.
[346] Kathleen M. Brown, *Good Wives*, 187.
[347] Hening, *Statutes at Large*, Vol. II, 170.
[348] Kathleen M. Brown, *Good Wives*, 187.
[349] Ruth and Sam Sparacio, eds., *Middlesex County 1690-1694* and *Middlesex County 1694-1697*.

women and Africans, were not that different from the rhetoric used in England. A lot of the times England and Virginia brought people before the courts for the same type of offenses, like theft, illegitimate births, and issues surrounding servants/apprentices. However, even with these similarities, the Virginia colony was a completely different world than that of England and it was visibly displayed throughout the court records.

The early Virginia colonists had big dreams about a land that was overflowing with gold and commodities that could be sold to make England more rich and renowned than any other country. These dreams were dashed upon landing on Virginia soil. The colonists lowered their expectations, but still believed that they could supplant English society in the New World. The presence of Native Americans, disease-ridden swamps, and the inability of many of the first colonists to work the land, were some of the many reasons that the settlers failed to even erect buildings or plant food, causing widespread starvation and death. The tensions between the colony's leaders kept Virginia from any sort of order, and even the commands of John Smith, Thomas Dale, and Thomas Gates did not save the floundering colony.

The introduction of tobacco, which helped to boost the economy, only created more differences between England and Virginia. It produced a need for a labor force, which was found by recruiting Englishmen and women to the New World. They would work the land for the wealthy planters that paid their passage and soon be able to have their own landholding. The profit made from selling tobacco to the home country caused the Virginia colonists to exclusively plant tobacco and it helped to enact stricter laws governing indentured servants in the hopes that the courts would order more service time

as their punishment, giving wealthy planters their extra years of labor and more profit.

The imbalanced ratio of men and women and the high mortality rate was another stark difference between Virginia and England. Because of this imbalanced sex ratio, it often gave women a sense of power when it came to selecting a husband, as well as authority over their estates, especially if they died without children. The courts focused a lot of attention on the women in Virginia, particularly because a large portion of them were indentured servants and were greatly needed for labor. If they committed any offense which disrupted the success of the white, male elite, such as through illegitimate births, running away, and slander, the courts were there to uphold male supremacy and economic success by ordering severe punishments.

The reality of slavery created one of the biggest differences between Virginia and England and the government in Virginia was forced to create different laws, unseen in England, which monitored slave labor as well as the interactions between the races. The presence of African slaves created problems of a possible free black race, if white women and black men bore children. The laws and the courts of Virginia made sure to severely punish those who sexually interacted with slaves, which increasingly became only white, female indentured servants.

All of these issues, as described throughout the chapter, created the differences between England and Virginia both within greater society, which was reflected in the legal system. The Virginia leaders' hopes for a new country exactly like England were damaged as soon as they arrived on Virginia soil, because immediate problems forced them to enact stricter rule and order cruel and unusual punishments in order to survive

and have a successful colony, accomplished through labor. Overall, the attention that the courts and colony leaders paid to such harsh penalties suggests that the Virginia colony concentrated its efforts on economic success and believed that severe discipline was the only effective way to establish the English empire.

CHAPTER IV

COMPARING COURT PUNISHIMENTS: EARLY MODERN ENGLAND AND COLONIAL VIRGINIA

Even though early modern England and the colony of Virginia shared similar beliefs and values, my research indicates that their legal systems differed significantly when it came to court punishments. Virginia's leaders relied on methods of discipline far more severe than those used in England for crimes of the same or similar nature. Around 1625 the colony's courts took a more lenient stance on offenses such as theft; however, indentured servants saw a stark increase in the number of lashes they received, in addition to extra years of service for running away. These alterations in punishments are in direct correlation to the changing environmental and economic needs of the new colony. England and Virginia were alike in that they both had more severe consequences for particular crimes, such as theft in England and running away in Virginia. However, determination of which crimes carried harsher punishments was left to the discretion of the court leaders who had the colony's best interests in mind.

This chapter is organized according to the main differences in court punishments, such as capital punishment and the treatment of servants, between early modern England and the colony of Virginia. The English court sentences, beginning in the 1550s, and those in Virginia in the 1600s will be outlined as to serve as a means of comparison. Within the categories of penalties, I will discuss not only their differences along a chronological timeline but will also argue possible reasons for the deviations. Any similarities between Virginia and England, such as the popular ideas shared by inhabitants, will also be addressed because these parallels make the disparities in court

punishments all the more interesting. The central argument of this chapter is that Virginia differed from England in its disciplinary methods because of the Virginia leaders' ambition for financial success, which relied on an obedient labor force. Even when England and Virginia overlapped in terms of similar crimes or offenses, the colony's leaders concentrated much more on economic success whereas English authorities focused more on security and safety, although these things are not mutually exclusive. Both places shared ideas about how to deter crimes, instill control and order, and maintain stability; however, Virginia had to rely on harsher tactics in order to survive and adapt to a new environment, or so the colony's leaders thought.

This study builds upon the scholarship of previous historians, such as Kirsten Fischer, John Ruston Pagan, and Peter Charles Hoffer. Kirsten Fischer discusses the different methods that colonial leaders in North Carolina used to justify racial and class distinctions, whether it was through legal or extralegal means. She argues that the presence of Quakers and Native Americans in North Carolina made traditional gender norms difficult, since both Quaker and Native American women had greater avenues for independence and authority than most English women. The authorities in colonial North Carolina had to reiterate the "degraded" physical qualities of Native Americans to redefine sexual relations between the English and the Indians and make intermarriage illegal. This was done not only to "defend" the white race but also to support patriarchal power. This same argument was used to punish women who had illicit relationships, especially interracial ones, and the courts distinguished racial difference by disciplining those who interacted with African slaves or free people of color. Fischer argues that the

courts made further distinctions by physically marking blacks' bodies through violent acts. This study is important for the ways in which it uncovers how Anglo men and even women were able to maintain white, male superiority in colonial society.[350]

John Ruston Pagan also deals with the ways that Englishmen sustained patriarchal authority in colonial America, but also with how they supported economic endeavors through the legal system in colonial Virginia. Pagan examines the bastardy case of Anne Orthwood who appeared before the colonial Virginia courts and discusses why the courts sought to punish white female servants who bore illegitimate children. As discussed in the introduction, Pagan argues that illicit childbearing interfered with a woman's ability to work and became an economic problem if the taxpayers had to support the woman and her child. He asserts that the law in Virginia was distinct from English common law because of their unique bastardy laws. Pagan's work is important because it reveals how the Virginia court system defended the interests of the landed class by creating a new method of punishing those who bore illegitimate children, particularly in ordering extra time for servants, which was unlike English law.[351]

A study which focuses on the more general distinctions between the court systems of Virginia and England is Peter Charles Hoffer's *Law and People in Colonial America* (1998). Hoffer points out some of the variations between the court systems in colonial America and the court systems in England before and after colonization of the New World. He highlights some of the differences that he found when it came to law in

[350] Kirsten Fischer, *Suspect Relations: Sex, Race and Resistance in Colonial North Carolina* (Ithaca, NY: Cornell University Press, 2001), Introduction, Chapters Two-Chapter Five.
[351] John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2002), Introduction, Chapter One, 147.

Virginia and that in England, such as the Virginia leaders' lack of experience when it came to law, and their reliance on "book law" which came from the high-court decisions in England. While England's source of law was based on common law, many of the earliest colonies in America were created through charters, which often laid out the parameters of government and established differences from the beginning.[352] Hoffer's study on those broad differences reveals some of the reasons why Virginia deviated from English standards of punishments, such as the lack of experience when it came to governance. His work is also important because it does not only focus on Virginia but other colonial governments and their distinct features.

This work is in agreement with these historians, particularly in terms of the ways in which the Virginia government sought to support the economic interests of the colony. However, this study focuses instead on how Virginia's leaders used methods of punishment and discipline to keep a labor force working for the colony. This was accomplished through harsher measures as well as the elimination of standard English penalties, such as capital punishment for theft. The discussion of differences between Virginia and England is similar to that of Peter Charles Hoffer, but this study will show how the two places deviated even further through their use of discipline.

Capital Punishment

The category of capital punishment deals with any court-ordered or government-sanctioned sentence that condemned the offender to death, whether it was done quickly through a hanging or dragged out to make the criminal suffer. Either way, capital

[352] Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore: The Johns Hopkins University Press, 1998), xii, xiii-2.

punishment was a normal occurrence in early modern England and the Virginia colonists would have likely seen at least one public hanging in England before they travelled to the New World. J.M. Beattie's *Crime and the Courts in England* states that the Old Bailey criminal court in London held public hangings at least eight times a year, while most other counties held them twice a year.[353] Most Englishmen and women had come to expect the normality of capital punishment, particularly for thieves and burglars.

The regularity with which the English courts dealt with capital crimes was seen through the hundreds who appeared before England's Middlesex County court in the second half of the sixteenth-century. Sixty years before Virginia became a colony, English courts sentenced its subjects to death for seemingly petty crimes, at least by modern standards, stringing them up at the gallows. A convicted criminal in England expected to face the noose for any type of theft where the stolen goods were valued at more than twelve pence, or equal to one shilling. Burglary was defined as breaking into someone's home, which normally always included theft of the owner's goods, or at least the intent to steal their goods. As discussed in the first chapter, the main danger of robbery was that there was likely to be a scuffle between the offender and a victim, resulting in an assault charge as well. The threat of an assault was very real for the victims of burglary because sometimes thieves broke straight into the victim's bedchamber, such as what happened to Thomas Breke and his family "being in bed" when Laurence Broun entered their home.[354] Even though the Middlesex County court sentenced to death all types of thieves

[353] J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 75-78.
[354] Middlesex County Court Records 1550-1603; http://www.british-history.ac.uk/report.aspx?compid=65919; December 15, 1550.

and burglars, offenders had the option of the benefit of the clergy which allowed them to receive a lesser punishment, typically a branding. However, if the offender had already been branded "so burnt in the hand on a previous occasion" then they were sentenced to be hanged.[355] Those who failed to read a passage from the Bible were "unable to save [their] neck" and the court sentenced them to be hanged as well.[356] Women could prevent a speedy execution by "plead[ing] her pregnancy," but if the "jury of matrons" investigated and found that the woman was indeed not pregnant then she was sentenced to be hung, on similar footing with male thieves.[357]

An Englishman or woman in the late sixteenth century could also expect to be hanged for outright murder, infanticide, as well as rape. The capital crime of becoming an ordained Catholic priest, while more prevalent throughout England in the seventeenth century, was seen as the greatest treachery in contempt of the crown, and called for one of the most gruesome punishments: the sentence to be drawn and quartered. This penalty required that the offender be hanged, and while still alive, dismembered and gutted through the stomach. While not discussed at length in the first chapter, the first instance of this crime and punishment in the Middlesex County court occurred in 1588 when William Hartley was ordained a priest "against the form of the statute."[358] By 1605, only two people, Thomas Marshall and Roger Newton, had been executed in the same manner but for the counterfeiting of money. The courts dealt with more counterfeit throughout the seventeenth-century, even though the majority of Englishmen and women believed it was

[355] Ibid, May 1560.
[356] Ibid, October 7th, 1560.
[357] Ibid, 1564.
[358] Ibid, Michaelmas, 1588.

not a crime because it did not offend Christianity and the punishment had justifications which could be found in the Bible, like infanticide did.[359]

It is important to show that a death sentence was considered normal for certain transgressions in order to illustrate that the Virginia colonists expected this from their experiences with the English legal system. By looking at the Middlesex County court records in the years 1550-1607, I have collected statistical data from the 121 cases involving theft. This offense not only made up the vast majority of the court cases but also was one of the few capital crimes in this time period. Of the 121 cases of theft, twenty-eight of the cases also involved burglary and twenty of the cases involved assault. There were 183 persons who were implicated in these cases and the Middlesex County court sentenced 99 of them, or about 54 percent, to hang. The other 81 perpetrators received lesser sentences, such as a whipping for petty theft or a branding if they received the benefit of clergy, or were pardoned or acquitted based on little evidence. This information is important to take into account because it indicates that being sent to the gallows for theft was not abnormal. Differences in the details of the cases are always to be considered, such as the value attached to the goods, and if the criminal burglarized the home or assaulted the victim. However, it is noteworthy that the courts sentenced people to hang for theft of goods valued from only two shillings to amounts as large as several hundred pounds.[360]

Even though the first settlers in Virginia had come to expect that thieves in particular would be sentenced to death, their charter for the colony in the New World

[359] Gaskill, *Crime and Mentalities*, 127-129, 135.
[360] Ibid, January 1553.

specifically said that robbers should be punished by making "full restitution or satisfaction of all such injuries done."[361] Only "tumults, rebellion, conspiracies, mutiny and seditions in those parts…together with murther, manslaughter, incest, rapes, and adulteries committed…(and noe other offenses) shal be punished by death."[362] The first known instance of capital punishment in the Virginia colony occurred around September 1608 when it was rumored that Captain George Kendall was the leader of a mutiny and the Council ordered that he be shot to death.[363] While this punishment was in agreement with the rules set down for the colony, Edward Maria Wingfield complained about other "whipping, lawing, beating, and hanging in Virginia" that had occurred, although these instances were not recorded. The statutes that specified who was to be put to death would soon be ignored by the colony's leaders. The next recorded case of capital punishment was in the winter of 1608 when two men had "sought to live with [the Indians] to escape miseries of colony" and were to be put to death.[364] In response to this, the Council in London stated in May 1609 that martial law was only to be used in cases of rebellion or mutiny and "knowing these thing have grown" that the Council in Virginia should apprehend deserters of the colony and "bind them over with good sureties for their good behavior…or to remand and send them back [to England]."[365]

---

[361] William Waller Hening, *The Statutes at Large, Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the year 1619* (Charlottesville, VA: University Press of Virginia, 1969), 65.
[362] Ibid, 69.
[363] John Smith, "A True Relation," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 154.
[364] John Smith, "The General History," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 304.
[365] Hening, *Statutes*, 106-108.

The Virginia Company's Council in London and their interruption in the affairs of the colony signified that changes in the style of government and discipline had already been enacted and practiced, disregarding the instructions set down. Several of the colonists bemoaned that many more settlers went to live with the "savages" and that the colony's leaders, particularly Sir Thomas West, Sir Thomas Gates, and Sir Thomas Dale, made sure that future deserters would be executed in a manner of different ways.[366] As described in the second chapter, Dale sentenced several deserters to be hanged, burned, broken upon wheels, staked, or shot to death in the summer of 1610. Those who stole food were starved to death by being chained up.[367] Dale intended that these executions would "terrify the rest."[368]

Although there were many problems happening in the colony, such as the failure to perform "necessary duties," the continued search for gold, theft of the storehouse, and the high number of desertions to the Natives, Dale had used types of punishments unheard of in the English courts, at least in the analyzed cases recorded in Middlesex County court.[369] While some of the cases are not quite comparable because desertion was not brought before the Middlesex County court in the late sixteenth and early seventeenth centuries, it is significant that Dale would use such methods of execution for desertion and theft. There were no convicted thieves in the Middlesex County court from 1550-1600 who were starved to death in the manner of the Virginia colonist that stole from the

[366] Gabriel Archer, "Letter," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 352.
[367] George Percy, "A True Relation," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 517-518.
[368] Ibid, 518.
[369] Sir Thomas Dale, "Letter," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 521.

colony's storehouse. These slow, torturous executions mirrored the capital punishments of ordained Catholic priests or forgers of counterfeit coins. Convicted priests and counterfeiters experienced agonizing deaths because their offenses were labeled as treason and were "against the form of the statute."[370] Although the English courts hanged thieves that stole goods valued more than one shilling, the Virginia Company's charter specifically stated that robbery was not included in offenses punished by death. This was probably due to the unlikelihood that theft would have occurred on the same scale as it did England's urban areas, meaning that it was not as significant a problem; therefore, the Virginia colony could instead use their labor. Also in the charter, those that deserted were to solely be apprehended and bound to give sureties for good behavior, with no mention of potential execution.

There were several reasons why Dale might have felt the need to enact such "cruel, unusual, [and] barbarous" methods in order to ensure the survival of the colony.[371] The organization of the colony appeared to be falling apart with desertions, theft of food from the storehouse, the inability or unwillingness to plant food, the high death rate, disagreements that still existed between the colony's leaders, and the presence of Natives who still enacted attacks against the colonists. What is significant is that Dale treated the offenses the same as those labeled as treasonous in England, and he might have believed they were. Stealing from the storehouse threatened the lives of the other colonists, who were already dying at a high rate, and desertion, when unpunished, allowed others to

[370] Middlesex County Court Records 1550-1603; Michaelmas, 1588.
[371] Ralph Hamor, "A True Discourse," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 823.

believe that it was an option and could have ended in the complete failure of the whole colony. The fact that murderers who threatened the lives of Englishmen and women, were simply hanged by the courts in England and deserters and thieves in Virginia were torturously executed shows that both places had different views about the problems in their societies.[372] A thief in England, especially if one could read, could be given the option of a lesser punishment for the offense, which was not available in Virginia.

The differences in punishments between England and Virginia in this period are also a result of those in charge of ordering the sentences for convicted offenders. For a large part of the harshest punishments in the Virginia colony, West, Gates, and especially Dale were in charge of enacting the law, which was actually created and instilled by all three (*Lawes Divine, Morall and Martiall*). As described in the first chapter, the English court system was highly organized and followed statutes written into their laws. The English courts followed precedent when it came to sentencing offenders, yet the punishments given out in Virginia had been ordered by a few men seeking to establish control.

While the Virginia colonists lived under the command of West, Gates, and Dale, the Middlesex County court in England continued to hang thieves from 1608-1624. For example, three culprits who committed burglary were sentenced to hang just for the "intention of despoiling" the owner of his goods.[373] Larger groups of thieves appeared on the court rolls for burglary and theft and were all sent together to the gallows, such as the

[372] J.M. Beattie's *Crime and the Courts in England 1660-1800* and Malcom Gaskill's *Crime and Mentalities in Early Modern England* discuss the reasons that the courts wanted to punish certain criminals. Keith Wrightson's *Earthly Necessities* helps to show how certain problems, such as robbery, burglary, and vagrancy, became big problems, especially for urban areas.

[373] Ibid, 1612.

five robbers who stole a large amount of valuable goods from the King himself.[374] This particular court sentence should not come as a surprise, because simply becoming an ordained priest was counted as contempt of the crown. Among the fifty-two cases of theft in Middlesex in 1608-1624, there were ninety-seven perpetrators. The Middlesex County court ordered nineteen of the thieves to be branded since they used the benefit of clergy. Thirty-eight offenders were either liberated, acquitted, at large, found pregnant, or ordered to be whipped for petty theft. The courts ordered that thirty-one of the thieves be hanged, which added up to about thirty-two percent of the total offenders, indicating that hangings remained prominent in this time period. In addition, ordained Catholic priests and counterfeiters continued to receive the death sentence.

Though not discussed at length in the first chapter, another capital crime during this period was witchcraft. While only one woman was indicted and sentenced to death for witchcraft in the years 1550-1607 in Middlesex, two women were suspected of being witches and sentenced to be hanged in 1615 for it. The first woman, Elizabeth Rutter, was believed to have killed three different people with her "inchauntmentes charmes and sorceries."[375] The second woman, Agnes Berrye, was a widow who "practised certain wicked and devilish arts" and was also presented and sentenced to die for killing Grace Halsey.[376] What is important about these witchcraft accusations is that the women were accused of supposedly harming others, whether it was people or livestock, which was a significant factor as to whether the women would be executed.[377] This crime was very

[374] Ibid, April 9, 1619.
[375] Ibid, March 29, 1615.
[376] Ibid, 1615.
[377] Malcolm Gaskill's *Crime and Mentalities* has two chapters related to ideas and beliefs about witchcraft,

similar to theft and burglary because all three crimes had the potential for violence, sometimes ending in the death of the victim. This further indicates that the English courts concentrated on sentencing those who threatened social stability and safety to death.

Much of the period in Virginia between 1608 and 1624 has been discussed above, yet there are several changes that occurred that also need to be addressed. Some of the colonists, like Ralph Hamor, excused Dale's actions while he was still in charge because there was "just cause for it."[378] Dale stayed in Virginia until 1616 and left the buildings "much ruined" and the people in "rags," according to colonist John Rolfe.[379] As discussed in the second chapter, leadership passed through several hands until Sir George Yeardley arrived in 1619 with a new commission from the Virginia Company, which threw out the laws that Gates, West, and Dale had enacted.[380] The commission created greater organization, unlike the colony under the "Lawes," and stated that a general Assembly be held once yearly, which consisted of a Governor, a Council, and two Burgesses from each plantation. There would also be monthly courts in the counties which dealt with petty matters.[381] When the Assembly first met in 1622, tit formulated an "answer" to discuss what had happened in the colony in order to be able to move forward. Assembly members stated that the colonists had been "mercilessly executed, oftentimes without trial or

---

witches, and sending them before the courts.

[378] Ralph Hamor, "A True Discourse," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 823.

[379] John Rolfe, "Letter to Sandys," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 888.

[380] The Ancient Planters of Virginia, "A Brief Declaration," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 908-909.

[381] Ibid, 909.

judgment" and that many were forced to desert the colony or steal because of extreme hunger. They reminisced that one man was tied to a tree and starved to death for stealing two to three pints of oatmeal.[382] This meeting of the minds between the colony's leaders started a significant change in Virginia, and it was visibly seen in the last execution of a colonist for theft in March 1622, even while English courts continued to hang their convicted thieves.[383]

Part of the reason that Virginia deviated from England in its treatment of thieves, I argue, was that Virginia's need for labor trumped the desire to punish offenders of theft. England, particularly the big urban areas such as London, which included Middlesex County, suffered from hundreds of cases a theft, as seen in the discussion above. Many historians of early modern England discuss the problems that London suffered, such as constant problems of vagrancy and theft.[384] Those were the greatest issues in urban areas of England and the courts sought to sentence thieves to death in order to deter others. It could be argued that because the death rate was so high in the Virginia colony, they could not use capital punishment against thieves; it was not conducive to the environment. Though gloomy, the evidence in the Middlesex County courts suggests that London was able to afford putting to death their convicted felons because of the high number of theft cases or rather, because of the high rates of population growth. The perception was that the rapidly increasing population and high unemployment almost guaranteed that there

[382] The General Assembly, "Answer," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 912-913.

[383] H.R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia* (Richmond: Virginia State Library, 1979), March 1, 1622.

[384] Keith Wrightson's *Earthly Necessities: Economic Lives in Early Modern Britain* is one of the great works that discusses the changes in England's economy, which was largely attributed to the rapid increase in the population.

would be more vagrants, thieves, and burglars. The chaotic society of England's urban areas reveals why the English courts were more focused on dealing with issues of security, safety, and stability instead of problems with the labor force.

Whereas England's major problems centered on theft, burglary, and assault, the Virginia colony had suffered so many failures in the early years of colonization that their greatest desire was economic stability. The constant reiteration throughout the Statutes at Large that the colonists must plant mulberry trees, work to produce salt, pitch, tar, and not plant more than one-hundred pounds of tobacco per head reveals aspirations for a large labor force and financial success. They could not afford to put any more people to death when they already were dying by other factors. The statement that "all servants to fare alike in the colony, and their punishment for any offences is to serve the colony, in publick works" reaffirms this outlook.[385]

The years 1625-1650 in the English courts saw more people hanged for robbery and burglary, the crimes that took up the majority of the court cases, including a man that stole one thousand and nine hundred pounds in numbered money from the Speaker of the Parliament and Master of the Rolls.[386] However, this period also saw an increase in the crimes of treason, including forging fake coins and becoming a Catholic priest. All five of the culprits that were brought before the court for these two crimes were drawn and quartered in the same, organized manner as all of the previous offenders.[387] One woman, Margaret Powell, was sentenced to be hanged simply for "receive[ing], harbour[ing], comfort[ing] and maintain[ing]" Thomas Bullaker who was known to have been an

[385] McIlwaine, ed., *Statutes*, 114-117.
[386] Middlesex County Court Records 1625-1667; 1649
[387] Ibid, 1625-1650.

ordained priest.[388]

During the same period in Virginia, there were very few cases where the courts sentenced offenders to death. William Reade, a colonist, was found guilty of manslaughter by the General Court in 1629 and said "that he ought not to die" for it and demanded his benefit of clergy. The case of William Bently two months later mirrored Reade's case exactly and Bently was "delivered upon his clergy."[389] This was typical of manslaughter cases in England since 1550 and throughout the same period.[390] The General Court sentenced William Matthewes, servant, to be hanged for "petit treason," or for murdering his master, and also Margaret Hatch who was found guilty of killing her child in 1633.[391] While there were no infanticide cases brought before the Middlesex County court during this period, several women and men had been sentenced to death for it in the late sixteenth and early seventeenth centuries in England.

Cases of theft between 1650 and 1676 in the Middlesex court was markedly decreased compared to the court records of previous years. Throughout this time there were only fifteen cases of theft. While not all of the culprits were sentenced to be hanged, the courts gave out death sentences in twelve of the fifteen cases that were presented before the Middlesex County court. While there are other surrounding factors that explain such a large decrease in the amount of robbery and burglary, such as general population decline, it is significant that the English court system still meted out a high percentage of

[388] Ibid, October 5, 1642.
[389] McIlwaine, ed., *Minutes*, January 22, 1628/1629 and March 5, 1628/1629.
[390] J. M. Beattie's *Crime and the Courts* discusses the difference between murder and manslaughter, which was important when it came to sentencing offenders. Manslaughter was treated differently since it was defined as having no malicious intent.
[391] Hening, ed., *Statutes*, 146, 209.

executions in the midst of an environment that saw a decrease in cases of theft.

The Minutes of the General Court in Virginia from around 1632 to 1670 have been destroyed so I am unable to analyze any records that could have shown instances of capital punishment. The Statutes at Large, the laws governing the colony, sometimes outlined capital offenses and their punishments but there were none described in the period from 1650 to 1676. The Assembly, in charge of creating the laws, did state in 1655 that there were to be no criminal cases tried in county courts, even though "we confesse the same to be done in England." The "disparity between them and us to be so great that wee cannot with safety follow the example…[they are] more practiced in criminall causes."[392] This admission of differences between the Virginia colony and England suggests that the colony's leaders not only recognized the dissimilarity between the home country and their colony, but also that they might not have felt comfortable handing down a death sentence. Some of the only known death sentences that occurred during this time period were after Bacon's Rebellion when Governor William Berkeley, largely on his own, started to hang several of the well-known leaders who followed Bacon's orders.[393] This is similar to Sir Thomas Dale's control of capital punishment in the 1610s because many colonists had written about Dale's monopolization of violence.

Treason offenses made up the majority of the capital crimes in the Middlesex Court from 1676 to 1688. Throughout these years, there were only twenty-two cases where the culprits received the death penalty, and most of them did not involve theft.

---

[392] Hening, ed., *Statutes*, 398.

[393] Edmund S. Morgan, *American Slavery, American Freedom* (New York: W.W. Norton & Company, 1975), 273; McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia* (Richmond: Virginia State Library, 1924), 454-455; Coventry Papers, LXXVIII, 19, 170-173, 389.

However, the Proceedings of the Old Bailey from 1674 to 1689 show that many robbers and burglars still received a death sentence in England, even though the courts began to offer the lesser punishment of transportation in 1674.[394] The death sentence almost completely disappeared from the Middlesex County court punishments throughout the years 1689-1700. There are such limited examples of death sentences in the Middlesex County court, particularly for crimes that had almost always received a hanging, that there is not a large discussion on their capital punishments that can be analyzed for this time period. The Old Bailey records of 1690-1699 show thirty-five cases of theft brought before the court and only eleven had an ordered death sentence. The Old Bailey ordered whipping, branding, transportation, and even military service for the other twenty-four offenders.[395] This has been recognized by other historians of early modern England, such as J.M. Beattie, who argues that the courts were responding to a change in beliefs about punishments. Recognizing that there were not that many options for those convicted of capital offenses and that the system was not very effective in deterring crime, the courts attempted to broaden the penal options by sentencing offenders with transportation to English colonies and imprisonment.[396] It is also telling that many of those who received transportation as a punishment were sent to the Virginia colony, where indentured servants were increasingly desirable in helping with tobacco production. Such facts link the problems of vagrancy and unemployment in England directly to the issues of

[394] The Proceedings of the Old Bailey; http://www.oldbaileyonline.org/browse.jsp?path=sessionsPapers%2F16740429.xml; April 29th, 1674.

[395] Proceedings of the Old Bailey, beginning January 15th, 1690; http://www.oldbaileyonline.org/browse.jsp?path=sessionsPapers%2F16740429.xml; January 16th, 1693.

[396] J.M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, NJ: Princeton University Press, 1986), 450-451. Also see Paul Slack's works, such as *Poverty and Policy* and *From Reformation to Improvement*. Many historians recognize that criminals' labor could be better harnessed or that they could be rehabilitated.

servitude and labor in the colonies and show that England's quest for empire in the New World was further taking shape.[397]

At the same time in Virginia, the colonists received a new commission of leaders, including Colonel Francis Moryson, Colonel Herbert Jeffrys, and Sir John Berry, to restore order in Virginia after Bacon's Rebellion and for Jeffrys to take Governor William Berkeley's place.[398] The Minutes of the General Court do not exist for the period after 1676 because of this newly established commission but the Executive Journals of the Council of Virginia, 1680-1699, show that the only person sentenced to die was a woman who "murder[ed] her bastard child" in 1694. Two men were condemned to die for murdering a member of the House of Burgesses, yet were seen as "objects of mercy" and were reprieved.[399]

All of these examples of capital punishment show the standard sentences for capital offenders in early modern England and the death sentences that the colony's leaders handed down in Virginia. When looking at the colony of Virginia in the early years of colonization (1607-1624), it is apparent that Virginia's leaders recognized different social needs and desires than that of the home country so they acted accordingly. The colony's leaders sentenced to death those who threatened the financial success of the colony, such as deserters and thieves. I argue that they relied on different and more severe types of capital punishments because of increasing problems in the colony, which

[397] Cynthia Herrup's "Punishing Pardon," and Abigail Swingen's "Labor" discuss the relationship between transportation and servitude in the colonies. See also Ted McCormick "Population: Modes of Seventeenth-Century Demographic Thought" *Mercantilism Reimagined: Political Economy in Early Modern Britain and its Empire* (Oxford: Oxford University Press, 2013).

[398] Morgan, *American Slavery, American Freedom*, 272; Coventry Papers, LXXVII, 262; Hening, *Statutes* Vol. II, 424-426.

[399] H.R. McIlwaine, ed., *Executive Journals of the Council of Colonial Virginia, Vol. I* (June 11, 1680-June 22, 1699) (Richmond: Virginia State Library, 1925), 272.

damaged the leaders' ambitions about empire. The other significant difference between England and Virginia was found between 1622 and 1700; Virginia stopped sentencing thieves to death during this period because of the need for labor and relied on other methods, which will be the subject of the next category.

Whipping and Servants

This next punishment, whipping, was so commonly used by the courts in Virginia to punish indentured servants that the two categories cannot be easily separated. Not only were there differences between the usage of whipping as a punishment and the treatment of servants in England and Virginia, but also in the number of lashes ordered. I will analyze the punishment of whipping and how the courts treated servants in the same manner that I discussed capital punishment, working along a chronological timeline, and will also discuss possible reasons for the visible differences between Virginia and England.

Between 1550-1607, the Middlesex County court in England ordered several vagrants to be "whipt severely, and burnt on the right ear" due to their lack of work, or as in the case of Alice Arthur who had "departed from the service of the said John Naylor against [her master's] will" in 1572.[400] The record does not specify more than that but several more "masterless vagrants without any lawful means of subsistence" were whipped and burnt on their right ear.[401] The latter court record is telling as to why the English courts wanted to punish those convicted of vagrancy. Judges felt that without work, the frequency of criminal activity would increase as a result of people stealing to

[400] Middlesex County Court 1550-1603, Michaelmas, 1572.
[401] Ibid, Easter 1573.

meet their needs. Keith Wrightson discusses the issues surrounding the increase in wage-dependency and how many of these dependents were concentrated in the towns. With such a large population dependent on day-to-day wages, it was not surprising that there were a sizable group of "vagrants" located in London and the surrounding areas.[402]

As discussed earlier, the courts did not always sentence thieves to death, especially if the value of the goods stolen did not equal one shilling. Thieves who stole goods valued below one shilling, called petty larceny, were ordered to Bridewell, one of the few institutions established so that "youth may be accustomed and brought up in labor and work, and then not like to grow up to be idle rogues," and whipped there.[403] Even if an offender did not commit petty larceny, a person could be sent to Bridewell "to be corrected and set to worke" just for seeming like "a daungerous person readye to do anye mischiefe."[404] Such corporal punishments were intended to "stigmatize and dishonour" the offender so as to deter them from committing the same crime.[405] The focus on preventing serious crimes by disciplining vagrants was connected to judges' awareness that the most problematic issues were those that threatened security and safety.

---

[402] Wrightson, *Earthly Necessities*, 148. Steve Hindle's *On the Parish: the Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford: Clarendon Press, 2004) has a chapter on "shift work" which was used by the poor and wage-dependents to survive. Hindle argues that shift work also included such things as begging and stealing so that their families could survive. Paul Slack's *Poverty and Policy in Tudor and Stuart England* (New York: Longman Inc., 1988) discusses the problems of vagrancy and the established poor relief in England. He argues that vagrants were seen as the undeserving poor, and were therefore excluded from receiving poor relief as well as excluded from receiving alms from ordinary, charitable subjects. Another important piece of work on the masterless is Paul Griffiths' "Masterless Young People in Norwich, 1560-1645."

[403] Paul Griffiths, "Masterless Young People in Norwich, 1560-1645," in Paul Griffiths, Adam Fox, and Steve Hindle, eds., *The Experience of Authority in Early Modern England* (New York: St. Martin's Press, 1996), 150-151; T. Hitchcock's 'Paupers and Preachers: The SPCK and the Parochial Workhouse Movement' is another source that describes the use of workhouses in order to reform the poor and masterless; Middlesex County Court 1550-1603, April 4, 1576.

[404] Middlesex County Court 1603-1625, 1608.

[405] Beattie, *Crime and the Courts*, 456, 457, 461-465.

Like capital punishment, whippings of certain offenders, especially in a public setting, came to be expected by the Virginia colonists. Though there are no specific examples of the colony's leaders whipping convicted colonists until the 1620s, it is known to have happened in the first few years of colonization from the written narratives and the enactment of "Lawes Divine, Morall and Martiall." Edward Maria Wingfield, the first President of the Council, was one of the first to complain about all the "whipping, lawing, [and] beating" happening in the Virginia colony.[406] The "Lawes" governing the colony, however, must be taken cautiously since there are no detailed examples of the punishments outlined in the laws. One of the laws stated that fornicators were to be whipped every single time they committed the act, and if they were found guilty of fornication a third time they were to be whipped three times a week for a solid month and to ask forgiveness of the colony's leaders.[407] The church courts in England, which often handled sexual offenses such as fornication, typically ordered these offenders to perform public penance, which was thought to heal the soul of the offender as well as to discourage others.[408] Even though humiliating, public penance would have been a much less physically painful sentence.

The sharp increase in the severity of punishments for repeat fornicators provides insight into what the colony's leaders thought about the act. Also, given that there was such a skewed sex ratio in Virginia, there was great potential that these punishments were

[406] Edward Maria Wingfield, "A Discourse," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 194.
[407] William Strachey, "Lawes Divine, Morall and Martiall," in Edward Wright Haile, ed., *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617* (Champlain, VA: Roundhouse, 1998), 29.
[408] Martin Ingram, *Church Courts: Sex and Marriage in England, 1570-1640* (New York: Cambridge University Press, 1987), 1-7, 10-12, 21-24, 27-57.

directed at the few women present in the colony.[409] White men in Virginia could have sexual relations with the Native American women and expect little to no punishment.[410] However, if an Englishwoman committed fornication there could be unwanted, illegitimate children who would be supported by the already-floundering colony. The colony's leaders displayed anxiety that such offenses would create more problems, such as more mouths to feed with little food available.

While there are no specific examples of whipping in the first fifteen years of colonization in Virginia, in England the Middlesex County court lists plenty of cases where they ordered petty thieves and other offenders to be whipped in the years 1608 to 1625. For example, the Middlesex County court ordered a couple to be whipped at St. Giles-in-the-Fields for bastardy in 1615. The man, Tristram Warde, put in good sureties to the churchwarden to save "harmles that parishe from the keepinge of that childe." The public punishment was to discourage like-minded people, especially the poor, from committing the same act if they did not want to be publicly whipped.[411] Punishing offenses like fornication and bastardy have been studied heavily, particularly by historians that study poverty and poor relief in early modern England, such as Steve Hindle and Paul Slack. Ultimately, such sentences were intended to deter unmarried persons and the poor from committing fornication so that the poor relief rate-payers did

[409] Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996) 2, 66, 75. Brown states that during the first five decades of settlement, the "colony bore the dubious distinction of having the most lopsided sex ratio on the British North American mainland," p. 2. She also asserts that this imbalanced sex ratio created a higher bastardy rate in Virginia than was known in England.

[410] Ibid, 66. Brown discusses how Native American leaders provided their women to the Englishmen as a "political gesture."

[411] Middlesex County Court 1603-1625, 1615.

not have to extend more money to the poor of the parish.[412] This court record indicates similar attitudes between the colony's leaders and the court authorities in England. Both felt the need to punish those who committed fornication and bore bastard children because it affected a community financially. However, I argue that fornication and bastardy would have negatively affected the economy of Virginia more so than in England. England not only had a larger population that could support the poor members of society, but also had greater number of resources in order to support itself economically.

In the same period, the English courts began to deal more with apprentices and servants, as well as vagrants. Some masters were brought before the Middlesex County court for extreme mistreatment of their servants, such as Thomas Kenton who made his servant wear a "horslocke upon her legge" in 1608. The court ordered that the servant, Sibbell Clarke, be discharged from his service and receive her ten weeks' wages due to her.[413] An apprentice was also discharged from his master in 1609 because the master had not "maynteyned him with sufficient apparel as an apprentice ought to have, but kepte him full of lyce."[414] Also in 1609, the Middlesex County justices actually sentenced Mary Allam to death for beating her servant so harshly with a broomstick that he died from his wounds.[415] Masters and mistresses were not always the offenders. Sometimes the servant or apprentice was punished for running away, such as John Ratee who was ordered to the

[412] Steve Hindle's *On the Parish? The Micro-Politics of Poor Relief in Rural England c. 1550-1750* discusses the problems of poor relief and the politics of the parish in deciding who were the deserving and the undeserving poor.
[413] Middlesex County Court 1603-1625, 1608.
[414] Ibid, 1609.
[415] Ibid, October 6, 1609.

House of Correction until he became bound for his future good behavior in 1624.[416]

Though the colonial narratives do not specify any particular cases involving whippings of servants in the first two decades in Virginia, these two categories would soon make up the vast majority of the court cases in the colony. As described earlier, once the colony received the new commission in 1619 it stated that all "servants [were] to fare alike in the colony, and their punishment for any offences is to serve the colony, in publick works."[417] The first case dealing with an indentured servant in the Virginia colony was that of John Upton, who had absented himself from his service to Mr. Persey for eight months in 1625. Upton was ordered by the General Court to perform an extra eight months of service, including the time left on his indenture, to make up for his absence.[418] While this was in agreement with the statutes governing the colony, extra service and a specific number of lashes soon became the standard for runaway servants after 1624.

Even though the Middlesex County court in England whipped more offenders for petty theft, bastardy, and riotous behavior between the years 1625 and 1667, there was visible decrease in its use. Rioters carrying "swords, linckes and torches lighted and with trumpettes sounded, to the great terror and dread of the King's lieges and subjects" were ordered to pay a fine of three shillings and four pence each, instead of a public whipping behind the cart's tail, as was seen in a previous case.[419] Those who spoke slanderous words about Parliament were also fined, such as the £40 fine ordered from Sarah Dennis

[416] Ibid, 1624.
[417] Hening, *Statutes*, 117.
[418] McIlwaine, *Minutes*, April 19, 1625.
[419] Middlesex County Court 1625-1667, January 12, 1636.

who wished a "pox" on the Lords of Parliament in 1643.[420] This was serious offense, specifically after the Civil War. While this was completely impossible for most people living in London, with a large population that was wage-dependent, the offenders most likely were imprisoned until they could pay or afford bail.[421] However, this decrease in the use of whipping for convicted offenders is significant when compared to Virginia's court cases in the same time period.

All of the cases that ordered whipping in England did not outline much about the punishment other than that the offender "be whipt" or "be severely whipt." However, some cases did specify the type of whippings given to offenders, such as the case of William Horlocke and George Harwood who were convicted of trespassing on enclosed land in 1660. The Middlesex County court ordered that the two men "be strip'd naked from the middle of the body upwards, and there openly be whip'd until their bodyes be bloudy."[422] While whipping is certainly painful no matter how many lashes a person receives, only a few lashes would be needed in order to make a person bleed. In *Crime and the Courts*, J.M. Beattie discusses the lack of a specific number of lashes ordered in the Surrey or Sussex County courts. He compares this observation to the work of Joanna Innes who studied the Cambridge quarter sessions and found that they specified the number of lashes given to offenders: "the number varied between two and twelve in the period 1763-74." Though Innes' findings are from the second half of the eighteenth century, this meticulous analysis is important when comparing the sentence of whipping

[420] Ibid, January 15, 1643.
[421] Beattie, *Crime and the Courts*, 456-465; Keith Wrighston's *Earthly Necessities* describes the increase in a wage-dependent population during the early modern period in England.
[422] Middlesex County Court 1625-1667, 1660.

in England and the court-ordered whippings in Virginia. It gives some insight into a specific number of lashes used in England and the number is low in comparison to the high number of lashes ordered by Virginia's court justices.[423]

Virginia court cases in the same time period almost always ordered a very specific number of lashes for offenders. The first case that specified a set number of stripes was in 1625 and involved Edward Smith who falsely accused two people of killing the hog of George Graves. Because he was the only witness and there was no proof, he was to be given "thirty stripes" for trying to slander their reputations.[424] John Heney was given sixty stripes in 1625 for accusing a Captain Tucker for the death of Robert Leyster, and even required to pay Tucker one-hundred pounds of tobacco.[425] A servant, John Joyse, that had run away with a stolen canoe and gun was not only required to serve his master an extra six months and the Governor for five years, but was given thirty stripes for the offense in 1626.[426] John Ewins was whipped a total of eighty times for committing fornication with Jane Hill in 1627.[427] Others received forty stripes for assault, forty stripes for fornication, forty stripes for theft, and thirty stripes for petty larceny.[428] These were all cases handed down by the General Court in Virginia, but the county courts also ordered a specific number of lashes to offenders. The Accomack County court ordered that Culpepper, a servant, to be given thirty lashes for killing two hogs, and that Francis

[423] Beattie, *Crime and the Courts*, 462. In Beattie's *Crime and the Courts* he discusses the lack of a specific number of lashes ordered in the Surrey or Sussex County courts. Joanne Innes also found specific numbers in the Norfolk quarter sessions in the eighteenth-century as well, which were similar to the Cambridge quarter sessions.
[424] McIlwaine, ed., *Minutes*, April 19, 1625.
[425] Ibid, August 29, 1625.
[426] Ibid, July 28, 1626.
[427] Ibid, February 19, 1627.
[428] Ibid, July 3, 1627; October 11, 1627; February 7, 1628; April 8, 1629.

Millicent have thirty lashes for slandering the name of Mary Jolly.[429] John Jones was given a total of seventy lashes for accusing Mr. Burdeck of bastardy in 1637.[430] Some of the county courts even indicated that the offender be whipped "on bare shoulders."[431]

As discussed in the second chapter, there were many reasons why the Virginia justices wanted to discipline those that slandered others or committed fornication. Overall, it is apparent that the courts in Virginia specified a higher number of lashes than would have probably been seen in England. The group that was most affected by lashings were servants, who not only received a high number of stripes but also received more service time if they ran away. In the 1650s, it became common for the courts to order double service time for runaway servants or for those that had illegitimate children.[432] Servants also suffered a number of other issues, such as an abusive master or mistress, and faced possible rape if they were female. In the 1650s, Jane Latham was forced to return to her master to perform service, while her master was ordered to "avoid striking her until next court."[433] Other masters were given the same admonition: do not abuse your servant again or they will be set free.[434] John Prise ran away from Mr. and Mrs. Hoe because of "sad stripes that appeared upon his Body given him by his Mrs. Susanna Hoe"

[429] Beverley Fleet, *Virginia Colonial Abstracts* Vol. XVIII Acchawmacke 1632-1637 (Baltimore: Genealogical Publishing Co., 1961), 47, 85.
[430] Beverley Fleet, *Virginia Colonial Abstracts* Accomacke County 1637-1640 (Baltimore: Genealogical Publishing Co., 1961), 35.
[431] Beverley Fleet, *Virginia Colonial Abstracts* Vol. II Northumberland County Records 1652-1655 (Baltimore: Genealogical Publishing Co., Inc., 1971), 62.
[432] Beverley Fleet, *Virginia Colonial Abstracts* Vol. XXVI York County 1648-1657 (Baltimore: Genealogical Publishing Co., Inc., 1971), 82-83.
[433] Beverley Fleet, *Virginia Colonial Abstracts* Lower Norfolk County 1651-1654 (Baltimore: Genealogical Publishing Co., Inc., 1971), 22.
[434] Beverley Fleet, *Virginia Colonial Abstracts* Charles City County 1661-1664 (Baltimore: Genealogical Publishing Co., Inc., 1971), 34.

and died.[435]

The reasons for punishing servants in Virginia has been analyzed in the second chapter, but it is important to reiterate that Virginia servants had indentures that they had to serve in order to repay the debt used for their travel to the New World. If they did not serve out their time they would have potentially enjoyed a free pass to a new life, which was certainly tempting for many and a good reason to run away. In order to discourage servants who ran away, the judges felt that it was necessary to discipline them harshly with corporal punishment if the threat of extra time was not enough.[436]

When looking at the court-ordered whippings in colonial Virginia and those of Middlesex County court in England in this time period, it is hard to determine with utmost certainty which courts were more severe. The lack of a specific number of lashes in England could point to unfairness as it left the offender "at the mercy of a vile executioner" who had the power "to make that whipping as severe or as favourable as he pleases."[437] The offender's journey behind a cart's tail could also be either long or short, depending on the speed of the cart, which also determined the number of times he/she was whipped.[438] The specific number of lashes ordered in the Virginia courts could be seen as a limit on possible brutality, yet the fact that some of the Virginia courts ordered forty to eighty lashes for convicted offenders suggests that a certain level of brutality had already been reached.

---

[435] Ibid, 36.

[436] Kathleen M. Brown's *Good Wives, Nasty Wenches and Anxious Patriarchs* discusses the issue of power in colonial Virginia and how the law was used by colony leaders to ensure that women, Africans, and laborers stayed in a deferential place, such as indentured servants that were indebted to their masters, so that Virginia elites could enjoy a higher status and economic security from the labor of these people.

[437] Beattie, *Crime and the Courts*, 462. This statement comes from one of Beattie's sources (*State Trials*, vol. I, p. xi), a quote from Sollom Emlyn in 1730.

[438] Beattie, *Crime and the Courts*, 461-464.

The Middlesex County court of England between the years 1667 and 1688 began to use different penal options, such as transportation, imprisonment, and fines, for the crimes of theft, assault, riot, and vagrancy, as described earlier. The few criminals that were whipped had committed petty larceny or had performed other illegal acts, such as buying and selling items that were limited to established "linen-drapers." The Middlesex County court ordered that the two men convicted of this "deceit" be whipped until their bodies should be bloody, again another example of the limit to how many lashes they received.[439] The Old Bailey in London, whose recorder was known for his great attention to detail, was a little more forthcoming when it described the punishments for its offenders, such as the four criminals that received the "correction of the gentle lash" behind the cart's tail.[440] Several other court records throughout this time period in the proceedings of the Old Bailey reiterate that the offenders would receive "the gentle lash" even though it might be labeled as such because the criminals could have received the death sentence.

There are many more examples of severe lashes and extra service for servants who ran away from their masters or were convicted of having an illegitimate child throughout the 1660s to the late 1680s in Virginia. During this time period, many women suffered a large number of lashes and extra time for "deliver[ing] a mulatto bastard," such as Mary Poore who received thirty stripes for her offense in the 1680s.[441] The reasons behind such a harsh punishment for committing fornication with an African slave have

[439] Middlesex County Court 1667-1688, April 7, 1684.
[440] The Proceedings of the Old Bailey, December 12, 1674.
[441] Beverley Fleet, *Virginia Colonial Abstracts*, Surry County, Virginia, All Records, Book Four 1682-1691, 84.

been discussed in the second chapter, but it shows another deviation between the colony of Virginia and early modern England. There are no court cases in the Middlesex County court in England or the Old Bailey which describe fornication between a white female servant and an African slave. The sexual relations between white women and slave men in Virginia was due to the increase of chattel slavery, which was not practiced in England. This not only produced a difference between Virginia and England but also created another avenue for the colony's leaders to punish indentured servants, other colonists, and women for an offense unseen in the home country. However, it also provides further evidence that the colony's leaders punished offenders in order to keep an established labor force, which was increasingly comprised of slaves after the 1670s. If white women had children with male slaves, then their mulatto child could one day become free instead of a slave that served for life. It was also important to Virginia's leaders that the white colonists and black slaves did not mix because of racial ideas surrounding the inferiority of African men and women.[442]

The records of the Middlesex County court in England from the years 1690 to 1700 are filled with cases relating to apprentices and the abuses they suffered from their masters or mistresses. What is significant is that the vast majority of cases where the apprentice complained of severe abuse or their master's failure to provide a sufficient diet, the court ordered that the master discharge the apprentice and sometimes even give their fee back so that they may find another apprenticeship. These records suggest that the

[442] Edmund S. Morgan, *American Slavery, American Freedom*: *The Ordeal of Colonial Virginia* (New York: W. W. Norton & Company, 1975), Chapters Fourteen and Fifteen; Kathleen M. Brown, *Good Wives, Nasty Wenches*, Chapter Four and Chapter Six; Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, N Y: Cornell University Press, 2001), Chapters Four and Five.

Middlesex County court was usually on the side of the apprentice, believing that they had truly been abused, and needed to be discharged from such conditions.[443]

Servants and apprentices in England, while wholly different from those in Virginia because of wages and skills, suffered some of the same abuses as those servants in Virginia, such as mistreatment, and were often tempted to run away. Comparing the treatment of servants in Virginia and those in England, it is not difficult to see that servants who ran away in Virginia were severely punished while that was not the case in England. An apprentice that ran away from his abusive master in England had his "indentures of apprenticehood be cancelled" while James Boile, a servant in Virginia, received thirty-nine lashes for running away.[444] Other examples described earlier showed that often the Virginia servant was forced to return and stay with an abusive master, who usually received a warning not to beat them again. This difference was often due to disparities between the indentures of the two workers. Apprentices in England made contracts with their masters that limited both the apprentice and the master to certain obligations, such as sufficient food and clothing, and domestic servants typically served on a yearly basis for their employer who paid them a certain wage. Both of these English workers had certain expectations from their employers or masters, so if their master failed to uphold their end of the bargain, they had all the right to terminate the contract.[445] This was not the case for Virginia's indentured servants who had to work off a debt for several years and were often forced back into service against their will. The fact that the English

[443] Middlesex County Court 1689-1709.
[444] Middlesex County Court 1689-1709, December 1695; Sam and Ruth Sparacio, *Order Book Abstracts of Middlesex County, Virginia, 1690-1694* (McLean, VA: The Antient Press, 1994), June 6, 1692, pg. 47.
[445] Keith Wrightson, *Earthly Necessities,* 33, 42, 50.

courts ordered several masters and mistresses to release their servants or apprentices, often because of abuse, shows that the court authorities concentrated more on maintaining the well-being of the servants, unlike the leaders in Virginia who desired to maintain a labor force.

Punishment of Disorderly Conduct and Female Offenders

When it came to the offenses labeled as disorderly conduct, such as slander, defamation, drunkenness, and scolding, and those cases which involved female offenders, the English courts and those in Virginia reveal some interesting similarities and disparities. The analysis of these punishments will not be discussed at length like the death sentence, the treatment of thieves and servants, and whippings because there are fewer court records available that dealt with these offenses.

As discussed on England, male and female offenders that committed theft, assault, and burglary appeared to be on equal footing in England because both sexes appeared before the courts for the offenses and were sentenced to be hanged. Even women who were pregnant were given the death sentence, after they gave birth to their child, if they committed theft or burglary.[446] However, men were able to enjoy the "benefit of the clergy" because of their sex, and the fact that men had always served as clergy members and clerks. As also shown before, women were not only discouraged from learning how to read because of their sex but also because of their occupations. This same argument was used for men of lower classes, who did not need to read if their occupation did not encourage it. A yeoman or husbandman could learn how to perform their trades without being literate. The fact that some men were discouraged from learning how to read and

[446] John Cordy Jeaffreson, ed., "Middlesex 1550-1603," (Dec. 11, 1561).

write shows that it was not necessarily sex-related but class-related.[447] In analyzing the cases that involved females and theft in Virginia, most of those who committed the offense were indentured servants. Some even committed the crime alongside their fellow servants, who could be either men or women. One such case shows that all the offenders, both men and women, received equal extra service time for their deed.[448]

However, female indentured servants in Virginia did experience injustice because of their sex, particularly in cases of fornication and bastardy. Even though there were not many cases of bastardy that appeared before the Middlesex County court in England, and even fewer that received a punishment, the few that were recorded reveal that the offenders were whipped and ordered to "provide sureties to the Churchwardens."[449] As discussed under the category of whipping, the Virginia courts often handed down a very specific number of lashes to be given to offenders. This was not just the case when it came to runaway servants but also for those who committed fornication or bore bastard children. Joan White and John Phillips both received forty lashes for committing fornication and bearing a bastard child in 1627.[450] However, other court records reveal that there could be a class and gender difference when it came to punishments. John Holloway was ordered to pay a fine for committing fornication with Cath[arine] Joanes, while Joanes was ordered to have thirty lashes.[451] This could be class-related, since Holloway was able to afford such a fine, while Joanes was not. But the class distinctions

[447] David Cressy, *Society and Culture in Early Modern England* (Burlington, VA: Ashgate Publishing Co., 2003), 2, 5, 8, 10, 307.
[448] Ruth and Sam Sparacio, eds., *Order Book Abstracts of Middlesex County, Virginia 1680-1686* (McLean, VA: The Antient Press, 1994), 15-16.
[449] John Cordy Jeaffreson, ed., "Middlesex 1603-25," 1615.
[450] McIlwaine, *Minutes*, October 11th, 1627.
[451] Fleet, *Accomacke County* 1637-1640, 46.

also heavily relied on gender differences: as the sole providers of the family, men were supposed to support the family financially, while women often only contributed to the household economy through their domestic work.[452]

The major punishment that was solely ordered for female offenders was that of ducking or towing, as described in an earlier chapter. The English courts and the authorities in Virginia ordered women to be ducked or towed through a body of water if they were known to be "a notorious and common scoulde and disturber."[453] Two women were ducked or towed in Virginia for either scolding or committing assault in 1626.[454] This offense was so rarely seen in either the Middlesex County court or the courts in Virginia that it is difficult to analyze it in a broader way. However, it is noteworthy that both courts showed that it was solely a sentence reserved for women. The Virginia courts ordered ducking for women that scolded or slandered because their voices served as an "alternative [form] of power."[455] Women could disrupt the success of powerful men and ruin their reputations through such acts as bastardy accusations. In England, the language of "neighborliness" revealed that slander and defamation worked to upset the dynamics of a peaceful neighborhood than it damaged economic success.[456] The reality that there was an imbalanced ratio of men and women in Virginia suggests that they were conspicuous and therefore, there was potential for women to wield a greater amount of

[452] Kathleen M. Brown's *Good Wives, Nasty Wenches, and Anxious Patriarchs* shortly discusses the class and gender distinctions throughout the courts in a footnote. She asserts that while such differences were class-related, the social hierarchies often depended on one's sex. See also Keith Wrightson's *Earthly Necessities* which outlines the contributions towards the household economy.
[453] Laura Gowing "Language, Power and the Law: Women's Slander Litigation in Early Modern London" in Jenny Kermode and Garthine Walker, eds., *Women, Crime and the Courts in Early Modern England* (Chapel Hill: University of North Carolina Press, 1994), 58.
[454] McIlwaine, *Minutes*, October 10th, 1626, 119.
[455] Brown, *Good Wives*, 95, 99.
[456] Wrightson, *Earthly Necessities,* 78.

power than women in England. Because of these low numbers, white men in Virginia believed that they needed to control them.

Conclusion

Geography, the presence of Native Americans, and the use of chattel slavery are all differences that many people can point out to describe the dissimilarities between the Virginia colony and early modern England. Those who have studied more about the colony tend to argue that there was a clear lack of organization in Virginia compared to the established institutions in England, and unforeseen issues arising from their Virginia environment. In addressing all of the problems present in both Virginia and England, it does not seem all too surprising that the colony's leaders had to enact strict measures in order to survive and that the English courts had to sentence many to death for threatening the safety of its subjects. Once the Virginia colonists had gotten through some of the toughest years, there was greater governmental organization, such as an established Assembly, Council, and a Governor, which seemed much more like the customary establishments in the home country. However, the differences in punishments between Virginia and England continued to deviate from one another, even when they experienced similar events.

Many of these differences existed from the start of colonization, such as the use of indentured servants, the introduction of tobacco, and the use of African slaves. It was also indicated in the small number of surviving colonists, while many of England's problems had arisen from a rapidly increasing population. This small Virginia population produced a need for more people to serve as laborers in the growing tobacco fields, a large part

Virginia's economy, and was achieved by more indentured servants. This created one of the biggest differences between Virginia and England, as the colony's leaders had to enact harsher measures to ensure that the laboring population continued to pay off their debts by working. On the other side of the world, the over-populated home country sought to instill safety and security measures instead of focusing on the overall economy.

The small population and the need to have a large labor force also produced another difference between England and Virginia, the eschewal of the death sentence for theft. The Virginia colonists, throughout much of the first half of the seventeenth-century, had suffered from a high death rate and the colony's leaders could not afford to put to death potential workers, unlike England whose urban areas were too crowded and full of masterless people. Though Virginia continued to use capital punishment in cases of infanticide and murder, the courts' last recorded death sentence for theft occurred in 1622.

It is not my intention to determine which area was better or worse, as they both had their highs and lows. The Virginia courts stopped sentencing people to death for theft a long time before England ever did, yet the English courts treated servants and apprentices much better than the colony's leaders did in Virginia. The significance is that although both places had similar issues, as well as distinct ones, they had different approaches to population, labor, and the political economy. This was readily shown in the different methods that Virginia's leaders used to control and regulate the colony's issues.

CHAPTER V

CONCLUSION

Edmund Morgan writes in *American Slavery, American Freedom* that the tobacco "boom produced, and in some measure depended on, a tightening of labor discipline beyond what had been known in England."[457] His argument explains some of the major differences between England and Virginia's use of punishments, pointing out that Virginia's reliance on tobacco cultivation created one of the biggest dissimilarities between the two places, such as the need for a large labor force. Even though there were many more distinctions between the two cultures in the form of separate needs and singular shared experiences, the production of tobacco created such a unique issue that it affected much of the lives of those in colonial Virginia. However, just as the tobacco economy affected much of society in Virginia, the rapid increase in the population in England was a major influence in the courts' sentences of certain offenders, especially in the first half of the seventeenth century.

The need for a working labor force and protection of the economy was apparent in the colony of Virginia through their harsh discipline of those that upset either one. England's most significant problem derived from its large population, which ultimately created an abundant amount of migrants, vagrants, and thieves. This heavily influenced the English judges' decisions, especially in urban areas such as London and the surrounding area, and forced them to reiterate the need for security, stability, and control. Even though these were singular issues, when the crimes and offenses are compared there

[457] Edmund S. Morgan, *American Slavery, American Freedom* (New York: W.W. Norton & Company, 1975), 129.

are many similarities, which makes the differences in punishments all the more interesting. Both were dealing with potential and existing work forces, which was readily seen in the Virginia courts' punishment of servants and even in the English courts' punishment of transportation. The English courts' use of transportation was not only related to its own issues of vagrancy and unemployment but also related to the need of servants in the Virginia colony, which correlated to England's own desire to spread its empire. Other similarities between England and Virginia surrounded their issues of sexual and moral offenses, slander, assault, and theft. The important difference is in the courts' main focus on achieving separate things, a prosperous economy or the safety of the citizens, and achieving them in different ways, which is reiterated throughout the court cases and the decisions of the authorities.

The other major difference between the two places occurred within the first fifteen years of colonization, yet still focused on the difference between financial success and overall security. I argue that the grand ambitions of the first colonists, the realization that such things as gold and jewels did not exist in Virginia, the presence of angry Native Americans, and a ship full of laborers that did not work or were unable to work created an even greater determination within the colony's leaders to not have this the colony's endeavor fail. Any colonist who stole from the storehouse or attempted to desert the colony to live with the Natives was executed harshly, often in a manner that mirrored the gruesome torture of those convicted of treason in England. This shows that those in charge in Virginia saw theft and desertion differently within their first seventeen years than leaders in England did at the same time. It was a matter of potential financial failure

and not a focus on security and safety.

Virginia's elimination of the death penalty for theft after 1624 reveals that the colony's leaders continued to concentrate on building up a labor force for the cultivation of tobacco. However, England, suffering from an increase in property offenses, was able to afford executing thieves and burglars in the seventeenth century because of the rapidly growing population of poor vagrants. Virginia had already lost a large percentage of their colonists to disease, starvation, and Indian attacks, and in such a short amount of time that it had no need to rid its population of undesirables.

There were some similarities between Virginia and England, such as the court cases that involved illegitimate children, because both societies believed that illegitimate children could become a drain on finances and would have to be supported by the community's taxes. Although any woman could be found out and convicted of bastardy, from elite females to domestic servants, the law was much harsher on female indentured servants in Virginia than it was on female domestic servants in England. The Virginia and English courts both whipped those convicted of bastardy, but the Virginia courts gave an extremely high number of lashes compared to English courts, as well as extra years of service. In both places, pregnant single women were viewed as economic problems but those in Virginia had done something worse. They had broken a contract, which would force the master to find another worker, who were plentiful in England but expensive and hard to find in Virginia.

Some of the differences between England and Virginia are difficult to compare, such as the introduction of African slaves into the Virginia economy, which created the

possibility of racial-mixing and illegitimate mulatto children. England also handled the issues of counterfeiting coin and the ordaining of Catholic priests, both which were labeled as treason by the English courts and completely non-existent within the Virginia colony. These distinctions highlight the different problems that each place had and how they could influence the decisions of the courts when it came to discipline. Virginia and England had to define their most important issues and decide how they should be punished in order to deter others and maintain control.

The major differences between Virginia and England are often easy to point out, and many historians have focused on the individual qualities of both places. However, the attention to the use and types of punishments are not always looked at so closely or from a comparative viewpoint. This study adds to our understanding of colonial Virginia because it shows how Englishmen and women adapted to new environments in a different sort of way. It can also serve to further push historians to look at punishments and how they were practiced by authorities. The comparative perspective can be utilized to study court discipline in other areas, especially where similar cultures reside. Ultimately, I argue that these findings are significant because it shows how law and punishments for offenses can tell us about respective cultures and societies, and ultimately points to the eventual divergence between England and Virginia.

BIBLIOGRAPHY

Amussen, Susan. *An Ordered Society: Gender and Class in Early Modern England*. New York: Columbia University Press, 1994.

The Ancient Planters of Virginia. "A Brief Declaration of the plantation of Virginia during the first twelve years, when Sir Thomas Smith was governor of the Company, and down to this present time. By the Ancient Planters now remaining alive in Virginia." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Archer, Gabriel. "Letter." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Barnett, George, ed. *Two Tracts by Gregory King. (a) Natural and Political Observations and Conclusions upon the State and Condition of England. (b) Of the Naval Trade of England Ao. 1688 and the National Profit then arising thereby.* Baltimore: Johns Hopkins Press, 1936.

Barry, Jonathan. "Bourgeous Collectivism? Urban Association and the Middling Sort." In *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, edited by Jonathan Barry and Christopher Brooks, 84-112. New York: St. Martin's Press, 1994.

Barry, Jonathan and Christopher Brooks, eds. *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*. New York: St. Martin's Press, 1994.

Beattie, J.M. *Crime and the Courts in England 1660-1800*. Princeton, NJ: Princeton University Press, 1986.

Bible Gateway. "1 Timothy 2." Accessed April 2014 http://www.biblegateway.com/passage/?search=1+Timothy+2.

Billings, Warren M. *Colonial Virginia: a History*. Millwood, NY: KTO Press, 1986.

Boose, Lynda. "'The Getting of a Lawful Race:' Racial Discourse in Early Modern England and the Unrepresentable Black Women." In *Women, "Race," and Writing in the Early Modern Period*, edited by Margo Hendricks and Patricia Parker, 35-55. New York: Routledge, 1994.

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

Brathwait, Richard. *The English Gentleman.* London, 1630.

Brewster, William. "Letter from Virginia." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

British History Online. "Acts and Ordinances of the Interregnum, 1642-1660." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=606.

British History Online. "County of Middlesex, Calendar to the Sessions Records: new series, Volume 1-1612-1614." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=565.

British History Online. "County of Middlesex. Calendar to the Sessions Records: new series, Volume 3-1615-1616." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=565.

British History Online. "Editor's Preface of the Middlesex County Records: Volume 1-1550-1603." Accessed April 2014. http://www.british-history.ac.uk/report.aspx?compid=65918.

British History Online. "Middlesex County Court Records: Volume 1, 1550-1603." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=551.

British History Online. "Middlesex County Records 1603-25." Accessed April 2014. http://www.british-history.ac.uk/report.aspx?compid=65979.

British History Online. "Middlesex County Court Records 1625-67." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=553.

British History Online. "Middlesex County Records 1667-88." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=554.

British History Online. "Middlesex County Records. Calendar of Sessions Books 1689-1709." Accessed April 2014. http://www.british-history.ac.uk/source.aspx?pubid=550.

Brooks, Christopher. "Apprenticeship, Social Mobility and the Middling Sort, 1550-1800." In *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, edited by Jonathan Barry and Christopher Brooks, 52-83. New York: St. Martin's Press, 1994.

Brooks, Christopher. "Professions, Ideology and the Middling Sort in the Late Sixteenth and Early Seventeenth Centuries." In *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, edited by Jonathan Barry and Christopher Brooks, 113-140. New York: St. Martin's Press, 1994.

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

Capp, B. "Separate Domains? Women and Authority in Early Modern England." In *The Experience of Authority in Early Modern England*, edited by Adam Fox, Paul Griffiths, and Steve Hindle, 117-145. New York: St. Martin's Press, 1996.

Cave, Alfred. *Lethal Encounters: Englishmen and Indians in Colonial Virginia*. Santa Barbara: Praeger, 2011.

Cockburn, J.S., ed. *Crime in England 1550-1800*. Princeton, NJ: Princeton University Press, 1977.

Cressy, David. *Society and Culture in Early Modern England.* Burlington, VT: Ashgate Publishing Co., 2003.

Dale, Thomas. "Letter from Henrico, 10 June, 1613." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Dale, Thomas. "Letter of Thomas Dale." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Earle, Peter. "The Middling Sort in London." In *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, edited by Jonathan Barry and Christopher Brooks, 141-158. New York: St. Martin's Press, 1994.

Early English Books Online, "His Maiesties Speach in the Starre-Chamber the XX of Iune Anno 1616 (London, England), Thursday, June 20, 1616." Accessed April 2014. (http://find.galegroup.com/bncn/retrieve.do?sgHitCountType=None&sort=DateAscend&prodId=BBCN&tabID=T012&subjectParam=Locale%2528en%252C%252C%2529%253AFQE%253D%2528tx%252CNone%252C7%2529robbery%253AAnd%253ALQE%253D%2528da%252CNone%252C23%252901%252F01%252F1604%2B-%2B12%252F31%252F1700%2524&resultListType=RESULT_LIST&searchId=R5

&displaySubject=&searchType=BasicSearchForm&currentPosition=1&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28tx%2CNone%2C7%29robbery%3AAnd%3ALQE%3D%28da%2CNone%2C23%2901%2F01%2F1604+-+12%2F31%2F1700%24&retrieveFormat=MULTIPAGE_DOCUMENT&subjectAction=DISPLAY_SUBJECTS&inPS=true&userGroupName=acd_bbcn&sgCurrentPosition=0&contentSet=LTO&&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=Z2001701278&contentSet=UBER2&callistoContentSet=UBER2&docPage=article&hilite=y).

Early English Books Online, "Summe and Substance of the Conference (Hampton Court, 14 January 1603) (London, England), Saturday, January 14, 1604." Accessed April 2014. (http://find.galegroup.com/bncn/retrieve.do?sgHitCountType=None&sort=DateAscend&prodId=BBCN&tabID=T012&subjectParam=Locale%2528en%252C%252C%2529%253AFQE%253D%2528tx%252CNone%252C8%2529adultery%253AAnd%253ALQE%253D%2528da%252CNone%252C23%252901%252F01%252F1604%2B-%2B12%252F31%252F1700%2524&resultListType=RESULT_LIST&searchId=R16&displaySubject=&searchType=BasicSearchForm&currentPosition=1&qrySerId=Locale%28en%2C%2C%29%3AFQE%3D%28tx%2CNone%2C8%29adultery%3AAnd%3ALQE%3D%28da%2CNone%2C23%2901%2F01%2F1604+-+12%2F31%2F1700%24&retrieveFormat=MULTIPAGE_DOCUMENT&subjectAction=DISPLAY_SUBJECTS&inPS=true&userGroupName=acd_bbcn&sgCurrentPosition=0&contentSet=LTO&&docId=&docLevel=FASCIMILE&workId=&relevancePageBatch=Z2001700843&contentSet=UBER2&callistoContentSet=UBER2&docPage=article&hilite=y).

Erickson, Peter. "Representations of Blacks and Blackness in the Renaissance." *Criticism* 35 (1993), 499-526.

Fischer, Kirsten. *Suspect Relations: Sex, Race and Resistance in Colonial North Carolina*. Ithaca, NY: Cornell University Press, 2001.

Fleet, Beverley, ed. *Virginia Colonial Abstracts Vol. XVIII Acchawmacke 1632-1637.* Baltimore: Genealogical Publishing Co., 1961.

Fleet, Beverley, ed. *Accomacke County Court Records 1637-1640.* Baltimore: Genealogical Publishing Co., Inc., 1961.

Fleet, Beverley, ed.*Charles City County Court Records, 1664-1665 Fragments, 1650-1696.* Baltimore: Genealogical Publishing Co., Inc., 1961.

Fleet, Beverley, ed.*Virginia Colonial Abstracts Lower Norfolk County 1651-1654*. Baltimore: Genealogical Publishing Co., Inc., 1971.

Fleet, Beverley, ed. *Virginia Colonial Abstracts Vol. II Northumberland County Records 1652-1655*. Baltimore: Genealogical Publishing Co., Inc., 1971.

Fleet, Beverley, ed. *Virginia Colonial Abstracts Vol. XXIV York County 1633-1646*. Baltimore: Genealogical Publishing Co., 1961.

Fleet, Beverley, ed. *Virginia Colonial Abstracts Vol. XXV York County 1646-1648* . Baltimore: Genealogical Publishing Co, 1961.

Fleet, Beverley, ed. *Virginia Colonial Abstracts Vol. XXVI York County 1648-1657*. Baltimore: Genealogical Publishing Co., Inc., 1971.

Fox, Adam, Paul Griffiths, and Steve Hindle, eds. *The Experience of Authority in Early Modern England*. New York: St. Martin's Press, 1996).

Gaskill, Malcolm. *Crime and Mentalities in Early Modern England*. New York: Cambridge University Press, 2004.

The General Assembly. "Answer." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Gilman-Kolp, John. *Gentlemen and Freeholders: Electoral Politics in Colonial Virginia*. New York: The Johns Hopkins University Press, 1998.

Gowing, Laura. "Language, Power and the Law: Women's Slander Litigation in Early Modern London." In *Women, Crime and the Courts in Early Modern England*, edited by Jenny Kermode and Garthine Walker, 26-47. Chapel Hill: University of North Carolina Press, 1994.

Griffiths, Paul. "Masterless Young People in Norwich, 1560-1640." In *The Experience of Authority in Early Modern England*, edited by Adam Fox, Paul Griffiths, and Steve Hindle, 146-186. New York: St. Martin's Press, 1996.

Haile, Edward Wright, ed. *Jamestown Narratives*: *Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*. Champlain, VA: Roundhouse, 1998.

Hamor, Ralph. "A True Discourse." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Haun, Weynette Parks, ed. *Surry County Virginia Court Records, Book I-IV*. Durham, NC: Library of Virginia.

Hening, William Waller, ed. *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the year 1619, Volume I and Volume II*. Charlottesville, VA: University Press of Virginia, 1969; facsimile reprint, originally printed 1823.

Herrup, Cynthia. "Punishing Pardon: Some Thoughts on the Origins of Penal Transportation." In *Penal Practice and Culture, 1500-1900: Punishing the English*, edited by Simon Devereaux and Paul Griffiths, 121-137. Basingstoke: Palgrave, 2004.

Hindle, Steve. *On the Parish?: The Micro-Politics of Poor Relief in Rural England c. 1550-1750*. Oxford: Clarendon Press, 2004.

Hoffer, Peter Charles. *Law and People in Colonial America*. Baltimore: Johns Hopkins University Press, 1998.

Hubbard, Eleanor. *City Women: Money, Sex, and the Social Order in Early Modern London*. New York: Oxford University Press, 2012.

Hughes-Dayton, Cornelia. *Women Before the Bar: Gender, Law and Society in Connecticut 1639-1789*. Chapel Hill: University of North Carolina Press, 1995.

Hull, N.E.H. *Female Felons: Women and Serious Crime in Colonial Massachusetts*. Chicago: University of Illinois Press, 1987.

Ingram, Martin. *Church Courts, Sex and Marriage in England, 1570-1640*. New York: Cambridge University Press, 1987.

Ingram, Martin. "Reformation of Manners in Early Modern England." In *The Experience of Authority in Early Modern England*, edited by Adam Fox, Paul Griffiths, and Steve Hindle, page numbers. New York: St. Martin's Press, 1996).

Kingsbury, Susan M., ed. *The Records of the Virginia Company of London, Vol. III* Washington, D.C.: U.S. Government Printing Office, 1906-1935.

Kishlansky, Mark. *A Monarchy Transformed: Britain 1603-1714*. London: Penguin Books Ltd, 1996.

Ligon, Richard. *A True and Exact History of the Island of Barbados*. London, 1657.

Old Bailey Proceedings Online. "The Proceedings of the Old Bailey: London's Central Criminal Court, 1674 to 1914." Accessed April 2014. http://www.oldbaileyonline.org/browse.jsp?dir=sessionsPapers&decade=167.

McIlwaine, H.R.,ed. *Executive Journals of the Council of Colonial Virginia, Vol. I (June 11, 1680-June 22, 1699).* Richmond: Virginia State Library, 1925.

McIlwaine, H.R.,ed. *Minutes of the Council and General Court of Colonial Virginia*. Richmond: Virginia State Library, 1979.

Morgan, Edmund S. *American Slavery, American Freedom: The Ordeal of Colonial Virginia*. New York: W. W. Norton & Company, 1975).

Morgan, Edmund S. "The First American Boom: Virginia 1618 to 1630." In *The William and Mary Quarterly* 28, No. 2 (1971), 169-198.

Morgan, Edmund S. "The Labor Problem at Jamestown, 1607-18." In *The American Historical Review* 76, No. 3 (1971), 595-611.

Morgan, Jennifer L. *Laboring Women*: *Reproduction and Gender In New World Slavery*. Philadelphia: University of Pennsylvania Press, 2004.

Pagan, John Ruston. *Anne Orthwood's Bastard: Sex and Law in Early Virginia*. New York: Oxford University Press, 2002.

Percy, George. "Observations by Master George Percy, 1607." In *Narratives of Early Virginia, 1606-1625,* edited by Lyon Gardiner Taylor. New York: Barnes and Noble, Inc., 1907.

Percy, George. "A True Relation." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Perkins, Francis. "Letter." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Purchas, Samuel. *Hakluytus Posthumus, or Purchas His Pilgrimes: Contayning a History of the World in Sea Voyages and Land Travells by Englishmen and Others*, 20 vols. 1624; reprint Glasgow: J. MacLehose and Sons, 1905.

Rolfe, John. "Letter to Sandys." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617,* edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Scott, Joan W. "Gender: A Useful Category of Historical Analysis." *The American Historical Review* 91, No. 5 (1986), 1053-1075.

Shepard, Alexander. *Meanings of Manhood in Early Modern England*. New York: Oxford University Press, 2003.

Slack, Paul. *Poverty and Policy in Tudor and Stuart England*. New York: Longman Inc., 1988.

Slack, Paul. *From Reformation to Improvement: Public Welfare in Early Modern England*. Oxford: Clarendon Press, 1999.

Smith, John. "The Generall Historie of Virginia, New-England, and the Summer Isles." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617*,edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Smith, John. "The Generall Historie of Virginia, New-England, and the Summer Isles." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617*,edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Smith, John. "A Map of Virginia with a Description of the Country, the Commodities, People, Government, and Religion. Written by Captain Smith, sometimes Governor of the Country." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Smith, John. "The Proceedings of the English Colony in Virginia." In *Narratives of Early Virginia, 1606-1625*, edited by Lyon Gardiner Taylor. New York: Barnes and Noble, Inc., 1907.

Sparacio, Ruth and Sam Sparacio, eds. *Order Book Abstracts of Middlesex County, Virginia 1680-1686*. McLean, VA: The Antient Press, 1994.

Sparacio, Ruth and Sam Sparacio, eds. *Order Book Abstracts of Middlesex County, Virginia 1686-1690*. McLean, VA: The Antient Press, 1994.

Sparacio, Ruth and Sam Sparacio, eds. *Order Book Abstracts of Middlesex County, Virginia 1690-1694 and 1694-1697*. McLean, VA: The Antient Press, 1994.

Sparacio, Ruth and Sam Sparacio, eds. *Order Book Abstracts of Stafford County, Virginia, 1664-1668, 1689-1690, 1691-1693.* McLean, VA: The Antient Press, 1987.

Stone, Lawrence. *The Family, Sex and Marriage in England 1500-1800.* New York: Penguin Books, 1990.

Strachey, William. "For the Colony in Virginea Britannia: Lawes Divine, Morall and Martiall, etc." In *Lawes Divine, Morall and Martiall,* edited by David H. Flaherty. Charlottesville, VA: University Press of Virginia, 1969.

Strachey, William. "Lawes Divine, Morall and Martiall." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Strachey, William. "A True Reportory of the wrack and redemption of Sir Thomas Gates, knight, upon and from the Islands of the Bermuda; his coming to Virginia, and the estate of that colony then, and after under the government of the Lord La Warre. July 15, 1610." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: the First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Swetnam, Joseph. *The Arraignment of Lewde, Idle, Froward, and Unconstant Women.* London, 1615.

Swingen, Abigail. "Labor, Employment, Colonial Servitude, and Slavery in the Seventeenth-Century Atlantic." In *Mercantilism Reimagined: Political Economy in Early Modern Britain and its Empire*, edited by Philip J. Stern and Carl Wennerlind, 46-73. Oxford: Oxford University Press, 2013.

Walker, Garthine. "Women, Theft, and the World of Stolen Goods." In *Women, Crime and the Courts in Early Modern England*, edited by Jenny Kermode and Garthine Walker, 81-105. Chapel Hill: University of North Carolina Press, 1994.

Whately, William. "The Bride Bush." London: 1617.

Wingfield, Edward Maria. "A Discourse on Virginia." In *Jamestown Narratives: Eyewitness Accounts of the Virginia Colony: The First Decade: 1607-1617*, edited by Edward Wright Haile. Champlain, VA: Roundhouse, 1998.

Wrightson, Keith. *Earthly Necessities: Economic Lives in Early Modern Britain*. New Haven: Yale University Press, 2000.

Wrightson, Keith. "The Politics of the Parish in Early Modern England." In *The Experience of Authority in Early Modern England*, edited by Adam Fox, Paul Griffiths, and Steve Hindle, 10-46. New York: St. Martin's Press, 1996.

Wrightson, Keith. "'Sorts of People' in Tudor and Stuart England." In *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, edited by Jonathan Barry and Christopher Brooks, 28-51. New York: St. Martin's Press, 1994.