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Negotiating American Youth: Legal and Social Perceptions of Age in the Early Republic

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Negotiating American Youth: 
Legal and Social Perceptions of Age in the Early Republic

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Doctor of Philosophy

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Negotiating American Youth” examines the venues in which young people and authority figures negotiated understandings of how age and communal or familial expectations affected one’s marriageability, independence and dependence, culpability, capability, and reliability in the Early Republican United States. Historians have characterized the period following the American Revolution as a progressive march toward legally uniform and modern interpretations of childhood, age, and family relationships that we might recognize today as more standardized. More specifically, historians of the Early Republic have often seized on newly codified definitions of age and independence as a means to explain changes in family relationships and perceptions or experiences of youth. “Negotiating American Youth” challenges this narrative by arguing that legal definitions of age as they related to the experiences of young people and family relationships remained incredibly variable and circumstantial well into the post-bellum period.

A wide-range of sources underpin the study as age and its significance (or insignificance) seems to appear everywhere once one looks for it. From marriage records and divorce petitions to court cases pertaining to murder, rape, fraud, and dependence, age was regularly used as a form of evidence in order to justify or undermine one’s legal argument. Although the historical record is peppered with such evidence, historians have tended to overlook the consistent acknowledgement of age in Early Republican sources. More specifically, historians have failed to see that a strict interpretation of age was recognized as important by some Early Republicans while at the same time age was a fluid category of identity for others. When legal documents are paired with personal letters and diaries, we gain a more holistic view of how age was understood. Furthermore, the significance of age was determined by the venue the individual was operating within which, as this dissertation will explore, ranged from schools, youth cultures, families, and households to courts and churches. Those doing the negotiating included young people and their parents but also lawyers, judges, legislators, clergymen, and even insurance brokers, illustrating how widespread a consciousness of age was becoming after the Revolution.

Age was a flexible and contextual form of identity— a legal and social construct— which was regularly discussed, negotiated, debated, performed, and utilized strategically throughout the Early Republican United States. To illustrate this point, the geographic and chronological parameters of this study are deliberately far reaching; regardless of regional or temporal context (North or South, urban or rural, 1775 or 1860), age was both important and unimportant to the average citizen depending on the needs of the moment.
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This Ph.D. is dedicated to my son, Ethan, whose birth, and subsequent child care costs, provided the greatest motivation of all time to finish quickly.
Introduction

On July 14th, 1808, writing from Williamsburg, Virginia, Jane C. Charlton mentioned in a letter to her close friend Sarah C. Watts that a young lady named Maria Moody had engaged in "a great deal of mischief among the Beau's" and "ha[d] had two real Lovers already."¹ Five months later, on December 4th, Jane expressed concern that Maria would "experience a sad disappointment" when she moved to Richmond because, as Jane explained to Sarah, while "a great deal" of visiting appealed to Maria, "Girls her age never appear in publick [sic], but are considered as children."² Though she was an active member of Williamsburg’s youth culture, Maria was only ten years old.³ Jane’s remarks about Maria articulate an awareness of the disparity in ideas about childhood and the significance of chronological age in determining one’s life stage within a relatively small geographic distance. Who was considered a child, and who was a young woman able to conduct social visits differed in the fifty miles between Williamsburg and Richmond. More importantly, Jane’s comments are one of many examples this dissertation draws upon to provide evidence of the flexibility and variety of interpretations of age and life stage in the Early Republican United States.

The cultural and social meanings surrounding one’s age and life stage differed greatly depending on where one lived and with whom one interacted, the

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¹ Jane C. Charlton to Sarah C. Watts, 14 July 1808. Sarah C. Watts Papers, Swem Special Collections.
² JCC to SCW, 4 December 1808.
³ What likely permitted Maria access to this youth culture at such a young age was her financial and legal status; Maria was an orphan with a legal guardian but she had inherited a great deal of wealth, including interest in a tavern and property, possibly making her financially appealing to young men as a prospective wife.
same can be said throughout the developing nation. Age, and the significance (or insignificance) it held, appears everywhere once one looks for it. From marriage records and divorce petitions to court cases pertaining to murder, rape, fraud, and dependence, age was regularly used as a form of evidence in order to justify or undermine one’s legal argument. Although the historical record is peppered with such evidence, historians have tended to overlook the pervasive acknowledgement of age in Early Republican sources. More specifically, historians have failed to see that while Americans recognized a strict interpretation of age at some moments, at the same time age was a flexible and contextual category of identity in others. When legal documents are paired with personal letters and diaries, we gain a more holistic view of how age was a critical form of identity-- a legal and social construct-- which was regularly discussed, debated, performed, and utilized strategically throughout the new nation. To illustrate this point, the geographic and chronological parameters of this study are deliberately far reaching; regardless of regional or temporal context (North or South, urban or rural, 1775 or 1860), age was important to the average citizen depending on the needs of the moment.

Rejecting a social order defined by economic and familial status, Early Republican state legislators hoped to create a uniform understanding of consent and maturity based on chronological age; hoped is the key word here, as little

4 Ann Little has also noted that “people’s specific age and birth dates were recorded in a striking number and variety in colonial-era European-language primary sources, including New England town, court, and church records, English ship manifests, French Canadian sacramental records, the records kept by religious orders in Quebec, and the sacramental records of French missionaries living in Algonquian villages.” Ann M. Little, “’Keep Me with You, So That I Might Not Be Damned’: Age and Captivity in Colonial Borderlands Warfare” in Age in America: The Colonial Era to the Present, ed. Nicholas L. Syrett and Corinne T. Field, (New York: New York University Press, 2015), 25.
changed in the first half of the nineteenth century even with the passing of laws attempting to clarify and codify age. Still, the ability to consent and reason did become of special interest to the average person following the American Revolution because of the symbolism surrounding the relationship between parent and child, independence and dependence. Age was a logical way to designate rights because it operated as an equalizer; regardless of one’s background, the age of twenty-one, for example, was a status everyone could eventually attain.

Age-based laws were enacted despite the fact that forms of civil registration, or the “compulsory systems for birth and death recording,” were not instituted until the late nineteenth century. Instead, Early Republicans relied upon “privately kept records to prove their own age and the facts of their identity.” Consequently, a conflict existed between what officials hoped would happen as a result of legal definitions of age and what actually could happen. Among other factors, age requirements depended on what communities knew or did not know about their member’s ages. This reality of Early Republican life—of either not knowing one’s exact age or having no definitive way to prove it-- both hindered

5 Although the wider public became more interested in age and consent as a result of the American Revolution, legal debates had been going on since the eighteenth century in England. See Holly Brewer, By Birth or Consent: Children, Law, and the Anglo American Revolution in Authority (Chapel Hill: University of North Carolina Press, 2007).

6 Theoretically, age operated as an equalizer regardless of race and status, too. But as Corinne T. Field demonstrates, “state governments applied age qualifications differently to male and female, black and white, enslaved and free.” Consequently, additional restrictions such as property ownership, gender, and race undercut the inclusivity of age as a marker of adult status. Corinne T Field, The Struggle for Equal Adulthood: Gender, Race, Age, and the Fight for Citizenship in Antebellum America (Chapel Hill: University of North Carolina Press, 2014), 6.

7 Shane Landrum, “From Family Bibles to Birth Certificates: Young People, Proof of Age, and American Political Cultures, 1820-1915,” in Age in America, 124.
and benefited citizens as they navigated the newly instituted legal definitions of age.

One important effect of new legislation around age was that Americans had more incentive to lie about their stage in life than ever before. To get around legal restrictions surrounding consent, young people frequently lied about their age in order to marry, enlist in the military, or enter into legal contracts. But legal adults also falsified their age to reduce their culpability in criminal suits, liability for contracts, or gain access to opportunities. For example, chronological age demarcated membership qualifications and fees for mutual aid societies that sprang up in the Early Republican period. Many of the societies, like the Abyssinian Benevolent Daughters, included age qualifications in their by-laws; in 1839, this New York African-American women’s mutual aid society specified that members must not be “under the age of 16 or over fifty.”

Meanwhile, other societies were even more specific about the significance of age to membership. This was the case with the Pike Beneficial Society (PBS), which had a fee scale based on age. Members who joined between the ages of “21 to 25 years” were to

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pay $10 per year in membership fees, those between “25-29 years” paid $15 per year, and those between “30-35” paid $25 per year.10

Mutual aid societies had a stake in knowing with certainty a member’s age because as a person’s age increased, so too did their risk level and the company’s likelihood of paying benefits. As a result, special committees investigated to determine the chronological age of potential new members. One way to do this in an era before state issued birth certificates was by searching church baptismal records. This was the course of action PBS pursued when they investigated a new member, George Flowers. George first appeared in the PBS board minutes on Christmas Day in 1820, the clerk recorded that “Mr Flowers… states he Does not Know his Age in which case C J Boulter and Harman Baugh were appointed in conjunction with G Flowers to ascertain his age by the next stated Meeting.”11 One month later, Mr. Boulter and Mr. Baugh reported back that their initial inquiry at the Dutch Lutheran Church was unsuccessful.12 George appeared in the PBS minutes one last time (regarding his age) on February 26th, 1821 with a certificate of evidence of his age which stated that: “George

10 Quote: Pike Beneficial Society of the City of Philadelphia “Constitution” (Philadelphia: Crissy & Markley), 19. Laurel Daen has mentioned the age based pricing and membership restrictions in her dissertation, “The Constitution of Disability.” She writes, “some organizations required prospective members to fall into particular age groups; the Abyssinian Benevolent Daughters of the Esther Association of the City of New York, for example, excluded new applicants “under the age of 16 or over 50.” Other societies adopted age-based pricing schemes. The Jackson Beneficial Society of Pennsylvania asked applicants “between 21 and 25 to pay four dollars for admission, those between 25 and 30 to pay five dollars, those between 30 and 35 to pay six dollars, and so on.” Daen, 182.
12 “With respect to the case of George Flowers We called on the Rev Mr Shaffer Minister of the Dutch Lutheran Church which Church he belongs to who made an Ineffectual Search but found that the record of his birth was not in that Churches Books.” See “Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843,” Historical Society of Pennsylvania, 22 January 1821.
Flowers… was born on the 17th of Nov 1766 and Baptized on the 17th of December…. Extracted from the records of the German Lutheran congregation in or near the city of Philad and given under my hand and seal at Philad the 5th day of Feb 1821.”¹³ It was determined that George was fifty-five years old and he was thereafter charged the designated entrance membership fee.

George Flowers’s story illustrates that it was not easy to specify a person’s age in the first half of the nineteenth century. It took time and a considerable amount of effort to confirm via private sources such as church records to locate this information. This was problematic given that the majority of states in the Early Republican period used chronological age as a marker of rights, capacity, and culpability.

But then, just as now, legal definitions of age have to be understood as both “arbitrary and necessary boundaries.”¹⁴ These boundaries have “always failed to account for individual variation,” but they exist because they “offer an efficient means for apportioning rights and responsibilities to young and old.”¹⁵ This dissertation argues that American citizens, legal “adults” as well as “minors,” exploited and negotiated the arbitrariness and necessity of these legally defined boundaries of age and life stage when it came to marriage, guardianship

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¹³ George Flowers reappeared in PBS minutes on January 28th and February 25th, 1839 because he was found to have breached the by laws of the mutual aid society by being a “habitual drunkard.” Consequently, his membership was revoked on March 25th, 1839. See “Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843,” Historical Society of Pennsylvania, 28 January, 25 February and 25 March 1839.


¹⁵ Field and Syrett, 3.
arrangements, and expectations of the legal concepts of dependence, culpability, and capacity.¹⁶

The example of ten-year-old Maria Moody, who at ten years old imagined herself part of the youth social scene, demonstrates that Early Republican social and communal perceptions and expectations linked to age and life stage were equally as malleable as-- and certainly more fluid than-- legal ones. This is evident when looking at guardian-ward relationships such as that of Edmund Ruffin who had widely varied experiences acting as guardian for his two sisters, Juliana and Elizabeth.¹⁷ In 1823, seventeen-year-old Juliana used legal definitions of age and capability to her advantage. Being over the age of fourteen, Juliana could request a change of guardianship and because her brother refused to consent to her marriage, she did exactly that. By contrast, when Elizabeth turned twenty-one years old in 1828 she wrote to Edmund and requested that he “forget what age and law have entitled me and act precisely as my guardian still.”¹⁸ As this dissertation will show, throughout the Early Republican period, young people and authority figures negotiated flexible and contextual understandings of how age and communal or familial expectations affected marriageability, independence, culpability, capability, and reliability.

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¹⁶ The age in which a person could consent to marriage, for example, differed significantly from state to state, and, depending on one’s gender. See Nicholas L. Syrett, *American Child Bride: A History of Minors and Marriage in the United States* (Chapel Hill: University of North Carolina Press, 2016), especially chapter one “Any Maid or Woman Child: A New Nation and Its Marriage Laws.”

¹⁷ The Ruffin guardianship arrangements are discussed more fully in chapter three of this dissertation.

¹⁸ Elizabeth Ruffin to Edmund Ruffin, undated letter, Edmund Ruffin Papers, Southern Historical Collections.
Studies of the significance of age are sporadic at best in part because the history of childhood and youth and the history of adulthood are both developing historiographical fields. Recently, historians such as Corinne T. Field, Nicholas L. Syrett, Steven Mintz, and others have pushed for the analysis of age as a serious category of historical inquiry.\(^{19}\) Age, like gender, race, and sexuality, is a social construct in that the meaning or significance a society or community attaches to chronological ages varies by time, place, and culture. As Mintz has argued, an “attentiveness to class, ethnicity, and gender shows how multiple definitions of age coexist in particular historical eras, even within a single society” and that these varying definitions can, and did, “become a source of cultural conflict.”\(^{20}\)

Points of conflict over the role age should play in granting or restricting rights and opportunities appear repeatedly throughout this dissertation. This is because the definitions, perceptions, and understandings of age are most clearly illustrated in the moments during which communities, families, and young people themselves attempted to navigate and work through their disagreements over what age meant.

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\(^{19}\) See also Corinne T Field, *Struggle for Equal Adulthood*; Nicholas L. Syrett, *The American Child Bride*; Field and Syrett, *Age in America*; Jon Grinspan’s *The Virgin Vote: How Young Americans Made Democracy Social, Politics Personal, and Voting Popular in the Nineteenth Century* (Chapel Hill: University of North Carolina Press, 2016); Sharon Braslaw Sundue, *Industrious in their Stations: Young People at Work in Urban America, 1720-1810* (Charlottesville: University of Virginia Press, 2009); Steven Mintz, *The Prime of Life: A History of Modern Adulthood* (New York: Belknap Press, 2015). Furthermore, two camps have emerged amongst scholars who study age: “those who focus on the development of age consciousness, the belief that one’s age is an important part of one’s identity; and those who have studied age grading, that is, the organization of institutions such as schools, juvenile courts, and government welfare programs around age-based criteria.” Quote: Field and Syrett, 5.

\(^{20}\) Steven Mintz, “Reflections on Age as a Category of Historical Analysis,” in the *Journal of the History of Childhood and Youth* (volume 1, issue 1), 92.
Although the use of age as a historical point of inquiry may appear to be cutting-edge now, it is not an entirely new concept. Howard P. Chudacoff broached the topic in the late 1980s in *How Old Are You?: Age Consciousness in American Culture*. Chudacoff noted that “American speech—and thus culture—abounds in expressions of age” and that “every age carries with it expectations, roles, [and] status.”\(^{21}\) But, Chudacoff argued, this was not always the case and he identified the “latter half of the nineteenth century” as the period during which “the age stratification of American society began to become more complex.”\(^{22}\)

According to Chudacoff, prior to 1850, there was little “consciousness of age” and that although “Americans had certain concepts about stages of life—youth, adulthood, old age—and about behaviors appropriate to such stages, demarcations between stages were neither distinct nor universally recognized.”\(^{23}\)

Rather, families and the communities they lived in “tended to blend together age groups” with roles being differentiated based on one’s sex rather than on one’s age.\(^{24}\) However, by the end of the nineteenth century as a result of the rise in age-graded education and the creation of pediatrics, Chudacoff argues,

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22 Quote: Chudacoff, 5. Chudacoff argues that the more complex a society is the more divided people are into specific “age groupings.” For example, “in simple societies, there may be only two or three age strata: children, adults, and elders. More complex societies contained more narrowly defined strata, such as infants, toddlers, teenagers, young adults, middle-agers, the ‘young old,’ the ‘old old,’ and so on.” Chudacoff, 4.
23 Chudacoff, 9.
24 Chudacoff, 10. One exception to this, according to Chudacoff, was in rapidly industrializing areas such as “Lowell, Massachusetts where there arose in the 1820s and 1830s a peer-based society consisting of thousands of young women who lived, worked, and learned together. Their joint activities and common experiences isolated Lowell mill workers from other age groups to a much greater extent than was common among young women in other communities.” Chudacoff, 15.
chronological age became a significant marker of identity and expected life stage.\textsuperscript{25}

Chudacoff’s early arguments regarding the insignificance of age prior to 1850 contrasts sharply with Holly Brewer’s more recent assertions that age became a hard legal (and, in turn, social) identifier of adulthood and minority that both granted and restricted rights and opportunities after the American Revolution.\textsuperscript{26} Published in 2005, Brewer’s work \textit{By Birth or Consent: Children, Law, and the Anglo American Revolution in Authority} argues that “in the seventeenth and eighteenth centuries a fundamental shift occurred in the legal assumptions about childhood, adulthood, and responsibility.”\textsuperscript{27} Centered on early modern British political and religious debates over children and authority and the “age of reason,” she explains how and why policy toward children changed by the nineteenth century.\textsuperscript{28}

\textsuperscript{25} See Chudacoff, Chapter 2. C. Dallet Hemphill has also challenged Chudacoff’s argument by insisting that a study of “New England manners support the notion that age inequality between mature adults and minors was the fundamental principle of the social order. One of the chief reasons that historians have concluded that childhood and youth were not much recognized in early America is because this society did not have social (or indeed physical) structures—whether school grades or household nurseries—to spatially segregate the different age groups. Not only did persons of different ages mingle in the daily round of work and play in one-room homes and schoolhouses, but it is also true that progress from youth to maturity was not marked by any abrupt transition. Yet so important was the principle of age inequality of the Puritans that they made sure to reinforce it through their legal and familial institutions for education, discipline, and inheritance,” C. Dallet Hemphill, \textit{Bowing to Necessities: A History of Manners in America, 1620-1860} (Oxford: Oxford University Press, 2002), 37.

\textsuperscript{26} Chudacoff acknowledged that age restrictions related to consent and marriage existed in the Early Republican period but argued that they were “rarely applied” and “often ignored.” Chudacoff, 10.

\textsuperscript{27} Brewer, 1-2.

\textsuperscript{28} Brewer, 8. Prior to the “age of reason,” Anglo and Anglo-American societies subscribed to “patriarchal political theory,” which meant that obligations did not end or begin at a particular age. Instead, “obligations depended upon status relationships” and “upon one’s rank in society.” As Brewer notes, “although rank could be partly shaped by youth, it was not the primary determinant.” The primary determinant was birthright, more specifically, “in the emerging consent-based political ideology, age played the role that birth status had formerly played in power allocation: the new political theory by definition disqualified those under
Both Chudacoff’s and Brewer’s interpretations of the significance (or insignificance) of age during the Early Republican period seem too narrowly focused. Chudacoff admits that his argument is based on “negative evidence” or the fact that “the sources [he looked at] show[ed] an unconcern with, or omission of reference to, age.” His method is inherently problematic; an argument cannot be based on the absence of proof. Chudacoff's work, however, does lay an important foundation for historians who study age consciousness in American history though his problematic use of sources necessitate further explorations of what age meant to the average person in the Early Republican period.

Brewer’s work on the other hand suffers from the opposite problem as Chudacoff by fixating on legal treatises and state statutes that explicitly defined age. These types of sources provide only a singular prescriptive voice to inform us about the significance of age in this time period. Inspired and backed by philosophical debates about age, consent, and independence, state statutes and legal treatises for the most part reflected and deferred to one another. Although there was some difference in which age was specified as the legal age of independence-- some states set the age at 18, others at 21--the reasons for the specific ages from exercising public and even private consent." By stripping away inherited status, Americans sought to do away with archaic practices of deference based on birthright. Instead, the newly formed American government wanted authority to be derived from reasoned consent and capability, two qualities one had to acquire through experience and age. Tangentially, according to Brewer, children lost out in this paradigm shift as their rights and opportunities were diminished. Brewer, 4.

29 Chudacoff, 27.
30 But perhaps more significantly, Chudacoff overlooked the mention of age in his own sources. For example, Chudacoff states that in Harvey Newcomb’s 1848 How to Be a Lady, an advice book marketed to girls, Newcomb did not “denote the appropriate age range for his readers.” See Chudacoff, 21. However, early in the work, Newcomb explicitly specifies that “the following pages [are] for girls and misses between the ages of eight and fifteen.” See Harvey Newcomb, How to Be a Lady: A Book for Girls Containing Useful Hints on the Formation of Character (Boston: Gould, Kendall, and Lincoln, 1848), 4.
differences were never explained within statute. Furthermore, state statute and legal treatises represented only the ideal interpretation of age and independence, rather than the lived reality. The application of ideas about age can only be found within the courts (via trial records) and communities (via informal sources) where day-to-day life actually played out.

“Negotiating American Youth” offers a distinct understanding of how Early Republicans reconciled newly forming legal and institutional definitions of age with their own understandings, expectations, and experiences informed by communal and familial perceptions of age. Sometimes a family’s expectations of responsibility associated with one’s age aligned with the state’s, but often a parent expected continued deference and servitude despite the fact that their child had reached the age of independence. In North Carolina Jacob Phipps sued John W. Garland for impregnating his thirty-year-old daughter in 1838.31 Although the lower court ruled in Phipps’ favor, he lost the appeal at the state Supreme Court due to his daughter’s age, demonstrating how legal definitions of age could be ignored, argued, or rigidly upheld depending on the circumstances.

What age meant in terms of responsibilities and dependence or deference speaks directly to the history of the family and the expectations surrounding the relationship between parent and child. Along with new social interpretations and expectations about the “ideal” family after the American Revolution came newly enacted legal definitions and regulations concerning family relationships. However, historians such as Michael Grossberg have taken too simplistic of an

31 Jacob Phipps v. John W. Garland, 20 N.C. 38 (1838). This example is fully discussed in chapter four of this dissertation.
approach to the study of the family, which has lead to a distorted understanding of the lived experience of nineteenth century families. More specifically, Grossberg argues in his influential work, *Governing the Hearth: Law and the Family in Nineteenth-Century America*, that the Early Republican period was the formative era of modern American family law and, in turn, modern expectations of family relationships.\(^{32}\) Grossberg traces the rise of “an American law of domestic relations,” focusing on the “general policies developed over the entire nineteenth century and followed in most states, rather than dwelling on local or temporal peculiarities.”\(^{33}\) But to only look at court cases and legal statutes that align with an anticipated trajectory of American family law reveals little about how families, parents and children, navigated these new legal definitions of independence as well as expectations associated with chronological age. The cases that fall outside of the “norm” are precisely the ones worth looking at because they tell the important story of the conflicts and debates that played out and aided Americans in reconciling traditional notions of family relationships with new expectations of legal independence once a child turned twenty-one.

Finally, this dissertation contributes to the history of gender by arguing that age was an explicitly gendered concept. Culturally embedded expectations of female dependence and male independence undermined any universal legal definition of independence based on age.\(^{34}\) For young women, reaching the age

33 Grossberg, ix.
34 Field, Grinspan, and Syrett each touch on this concept in their respective works cited previously. Field and Grinspan specifically discuss the significance of gender and age in permitting or restricting access to voting and citizenship while Syrett explores the importance of gender and age in the context of consenting to marriage.
of majority and legal adulthood offered far fewer opportunities and rights than it did for their brothers. The age of majority allowed a woman to consent for herself and be culpable for crimes. When a young man turned twenty-one he could do these things as well, but he also became a legal citizen, he could vote, and, more importantly, his independent identity did not disappear once he married. Consequently, the age of majority for most women was simply another year in their life; as this dissertation will show, single women were often considered child-like dependents by their families until they were married, regardless of their age.

This is not to say that age meant nothing to women. Instead, the opposite is true. Although legal definitions of age and independence often meant little change in their lives, specific ages did become increasingly identified with transitional stages or anticipated experiences: when they would begin and end their schooling, leave home to visit or work, be expected to dress in particular fashions, engage in informal and formal courtship, and be married. By what ages these moments were supposed to have occurred, however, varied considerably within a community, between regions, and even within families and among individuals.

Gendered impressions of age also influenced perceptions of criminality and victimhood, with young women more likely to be considered victims or not guilty (or not culpable) when on trial than their equally youthful brothers. Conversely, in a number of cases a young man below the age of culpability (fourteen) or majority (twenty-one) was tried as an adult or their consent was
legally accepted because of the perception of male maturity and independence. As a result, legal participants strategically played upon perceptions of gender and age as mutually constitutive categories of identity to win their cases.

“Negotiating American Youth” begins by considering the social impact of heightened discussion of age and life stage on young people themselves. By looking closely at social commentary regarding expectations linked to chronological age, Chapter one incorporates young people’s perceptions of themselves as adolescents into historical understandings of youth—something that few studies on the nineteenth century have done. Young people’s observations about age and youth are significant because they make it possible to see how young people self-defined generational belonging.35 While states could legislate adulthood, in reality, a person did not become an adult until they were socially recognized as such by their community as well as themselves. Ultimately, this recognition often had little to do with one’s actual chronological age and instead was determined by the situational context of a young person’s life.

Chapter two focuses on the fraught relationship between age and marriage in the first half of the nineteenth century. More specifically, this chapter examines negotiations of age and marriage in three contexts: church records, court records, and informal letters and diaries. The chapter begins with a case study using the personal records of Reverend Nicholas Collin, the overseer of

Philadelphia’s Gloria Dei Lutheran Church, in order to illustrate not only how church officials navigated social custom and legal statute to determine the proper age of consent but also how frequently young people resisted these legal definitions. The chapter then shifts to the legal arena to highlight the ways in which parents utilized the court system in efforts to legally challenge age and marriageability after their children’s marriages. It also reveals how courts often upheld status over chronological age in their rulings on youthful marriage, demonstrating a surprising flexibility in their interpretations of age, consent, and culpability. Finally, personal records, such as letters and diaries written to and from young people and their parents, demonstrate informal negotiations of age, status, and marriageability that took place on the communal level and how the outcomes of these negotiations did not always align with legal definitions of consent.

The third chapter begins to trace the influence of legal definitions of age and independence or dependence on social and familial relationships. Chapter three specifically examines guardian-ward relationships, beginning with a discussion of how guardianship was defined through legal writings and state statute in the Early Republican period. The chapter then shifts to an examination of court cases and family letters that pertained to guardianship arrangements which reveal how legal expectations of guardianship intersected and conflicted with cultural conceptions of chronological age and life stage. For example, during the first half of the nineteenth century, we begin to see custody cases questioning guardianship in relation to the best interest of the child. These were
significant and complicated cases, because Early Republican guardianship laws only mandated the proper management of one’s estate. Consequently, these cases illuminate how cultural concepts of age and childhood began slipping into the legal arena. As evidenced in legal treatises, statutes, and court cases as well as personal letters and diaries, legal and cultural understandings of chronological age and dependence often clashed.

Chapter four builds upon chapter three through a similar examination of parent-child relationships. Legally, in most states, children transitioned from the status of dependent child to independent adult on their twenty-first birthday. Yet as this chapter demonstrates through the use of family letters, a young person’s capability and dependence were negotiated within a family context regardless of the child’s chronological age. For example, Nelly Parke Custis Lewis and her husband promised their son Lorenzo a sizable inheritance at the age of twenty-three, two years after his legal adulthood, in order to extend their control over his actions. As can be seen in a number of seduction suits and loss of services cases that are discussed at length in the second half of the chapter, a number of other parents also asserted their authority and expectations of continued deference and household participation well beyond their child’s twenty-first birthday, especially when that child was female.

The fifth and final chapter explores how representations of age were used as a legal strategy in the first half of the nineteenth century. This chapter analyzes a range of court cases in which age was a critical component of the trial in order to examine how legal participants pressed the court system to challenge
or uphold legal definitions of age and, in turn, culpability, reliability, and capability. More specifically, this chapter examines criminal cases that questioned a young person’s ability to reason, consent, or confess in order to determine if they could be held liable for a crime they committed. The legal age of criminal culpability in most Early Republican states was fourteen; however, a number of cases challenged this legal boundary depending on the severity or viciousness of the crime. This chapter also looks at criminal cases where the significance of the age of the victim came into question, usually pertaining to rape cases. Sex with a child younger than ten years old was automatically considered rape; concurrently, children below the age of fourteen were considered incapable of giving reliable testimony. These legal age boundaries caused a number of problems for the prosecution of infant rape cases when the child victim was the only person who could testify to what happened. As this chapter argues, legal definitions of age were continually questioned, qualified, and negotiated during court cases regarding age related crimes.

Following Brewer and Grossberg’s leads, historians often have characterized the period following the American Revolution as a progressive march toward legally uniform and modern interpretations of childhood, age, and family relationships that we recognize today as standard. More specifically, historians of the Early Republic have seized on these newly codified definitions of age and life stage as a way to explain changes in family relationships and perceptions or experiences of youth. “Negotiating American Youth” challenges
this narrative by arguing that legal definitions of age as they related to the
experiences of young people and family relationships remained incredibly
variable and circumstantial well into the post-bellum period. The significance (or
insignificance) of age was determined by the venue the individual was operating
within which, as this dissertation will show, ranged from schools, youth cultures,
families, and households to courts and churches. Those doing the negotiating
included young people and their parents but also lawyers, judges, legislators,
clergymen, and even insurance brokers, illustrating how widespread a
consciousness of age was becoming after the Revolution. Consequently, age
has to be understood as a critical form of identity that was regularly discussed,
negotiated, debated, performed, and utilized as a legal strategy throughout the
new nation.36

A Note on Terminology:

It is important to distinguish between terms like “children” or “child” and
“youth” as historians often use the terms interchangeably. I use the term “youth”

36 Age, just like race and gender, is a performed identity—especially within the legal system
where statutes defining age were actively challenge or upheld. In her work, What Blood Won’t
Tell, Ariela Gross critically reads trial transcripts in order to “catch glimpses of ordinary
people’s, as well as lower-level legal actors, understandings of legal and racial categories and
their own places in the racial hierarchy.” (Gross, 12) As Gross points out, “legal rules passed
by high courts and legislatures had to be translated into practical action on the ground;”
consequently, “witnesses, lawyers, and litigants learned to tell stories that resonated with
juries or with government officials.” Gross’ study focuses on the “day-to-day creation of race”
seen through “the intersection of law and legal culture” but her conclusions can be similarly
applied to age and used to make sense of why legal definitions of age were upheld or ignored
depending on the case. See Ariela J. Gross, What Blood Won’t Tell: Race on Trial in America
(Cambridge: Harvard University Press, 2010) As this dissertation argues, the concept of age
was performed—was regularly played up or down—as legal participants made sense of the
new laws passed to protect and empower young people. Furthermore, with no institutionalized
or state-sanctioned way of proving an individual’s age, Early Republicans could choose when
to be very specific about age or really vague depending on what iteration would benefit them
the most in a particular circumstance.
to refer to individuals who fall under the category of non-maturity—be it legally, culturally, or socially. At the same time, individuals designated as “youths” were allowed to have public personas and engage in public activities. Those considered “children,” however, lacked any form of independence, which constrained their ability to socialize in public. As illustrated in the first example of Maria Moody, at what age a person was a “child” and at what age that same person became a “youth” varied considerably by region.

Additional legal terms that need to be defined include “infant,” “culpable,” “capable,” and “reliable.” Individuals under the age of eighteen (or twenty-one) were legally referred to as “infants.” While the term “infant” today refers to babies under the age of one year, historically the term was used in the wider sense to mean a legal child or a minor. The terms culpability, capability, and reliability might be used interchangeably. However, paying attention to subtle differences in the legal understanding yields insight into how perceptions of age were used to challenge or uphold these concepts of accountability. “Culpability” is legally defined as the “blameworthiness” of an individual, whether a person can be held accountable for their actions or events. A person’s “capability” was meant to describe a person’s mental capacity—if that person had the ability to understand the consequences of their actions, to give consent to a contract, or be “reliable” as a source. Being “reliable” meant that the person understood the consequences of lying, specifically of breaking an oath if they were to testify in court. Each of these terms—culpable, capable, and reliable—were linked to a specific age, the age of “discretion”: fourteen. Below fourteen, infants were not to
be held culpable or considered reliable; and, for most states, below the age of twenty-one, infants were not deemed capable of legally consenting for themselves.
Chapter One

“Tomorrow I am seventeen!”
Youthful Awareness of Age and Life Stage

“My Eighteenth Birthday!,” Philadelphian Isaac Mickel excitedly began his diary entry on October 18th, 1840; “I will merely remark that to day I complete my eighteenth year—one half of my life having been spent in sleep—one quarter in mischief—one eighth in eating—one sixteenth in study—and the balance—in vain! Could I live my years over again I would keep out of love, out of debt and out of newspapers.”37 This was not the first time Isaac reflected on his actions, nor the first time Isaac had noted his birthday in his diary, but it was the first time that he intentionally reflected on his life because of his age.38 What may have inspired Isaac to reflect back on his life at this particular age, eighteen? As this dissertation explores, Isaac was likely responding to the increase in conflicting messages Americans in the Early Republic were receiving regarding the significance of age and life stage.

From philosophical musings on the “true” nature of the child and advice literature targeted at youth, to legal statute setting the age of consent at twenty-one and court cases challenging legal definitions of age, nineteenth-century youth heard a cacophony of voices—from their parents, their teachers, and their communities—which must have both informed and confused them about when, how, and in what contexts their chronological age mattered. These same voices

38 For example, “To Day I enter upon by seventeenth year.” Mickel, 18 October 1839, 41.
have informed and confused historians. This chapter begins the messy work of untangling these complicated and conflicting messages by starting with the voices of the young in order to understand how young people themselves made sense of age, life stage, and generational belonging. Only through incorporating young people’s voices in histories of youth can we gain a clearer picture of how their view of age operated socially and culturally in the Early Republican period.

The archives are bursting with the personal papers of young people, from correspondence between friends, siblings, and cousins to private diaries and public commonplace books. To ignore these plentiful sources, as historians of the Early Republic have consistently done, does a disservice to the historical record. Youthful writings are full of secretive gossip, public news, advice, and self-reflective recordings of their own interactions with fellow young people. More specifically, these sources are a treasure trove for understanding how young people comprehended their own age and stage in life, the pressures they felt from their families, communities, and peers, and how they made sense of the arbitrariness of legal definitions of age. Widespread among the many diaries and letters young people left behind is a heightened awareness of age—of their own and of those around them. They were also very aware that perceptions of age as well as the experiences of youth varied considerably between communities. If contemporary young people acknowledged these differences, historians of childhood and youth need to do the same.

On the macro level, legal statute and advice literature motivated young people throughout the developing United States to think strategically about their
age and their transitional stage in life. They knew that their age simultaneously protected them, restricted them, and empowered them, depending on their circumstances. Young people could lean upon their minority when trying to diminish culpability while at the same time they were motivated to inflate their age to gain access to opportunities without parental consent—like marriage and labor arrangements. But these definitions of age and ability that youth operated within and around were imposed by “adults.” Although these sources of information about youth tell us about the social construction of childhood and adulthood, they tell us little about how young people culturally defined generational belonging for themselves.

This chapter explores how young people integrated social and cultural perceptions of age to define themselves and their peers as youth. Beginning with a brief look at how young people internalized broader social messages regarding age found in law and prescriptive advice literature, it becomes clear that young people were intensely aware of specific age, indicating that it was an integral part of youthful identity. But age is, and always has been, contextual and subject to regional culture. A look at how young people identified regional differences in perceptions of age adds a layer of complexity to defining youth. This, in turn, accounts for the inconsistent application of legal statute discussed in subsequent chapters. Finally, this chapter concludes with discussion of the construction and purpose of youth culture, illustrating on the micro level how young people actively defined, included, and excluded youth within a specific, community-based context. By considering the geographies of youth cultures alongside the cultural
parameters of belonging and purpose, it is possible to gain insight into young people’s perceptions of themselves.

The messages that young people received from the state via legal statutes and prescriptive advice literature regarding age, expected maturity, and capability certainly informed and influenced youthful behavior and interaction with fellow youth. To start, they acknowledged when their specific chronological age, for better or worse, granted them access to legal definitions of adulthood and the responsibilities that came with that status. For example, on March 29th, 1842 Charles W. Plummer proclaimed in his diary “All Hail, I am 21 Years of Age today… the laws of the land declare me to be a man and a Citizen!” For Charles, his twenty-first birthday meant the ability to vote and to be acknowledged by his country as a man. Benjamin Browne Foster, on the other hand, lamented he was only seventeen the year of a presidential election, writing in 1848 “O, I have wished that I was for one year, and on this one topic, a man, a voter.” Both Charles and Benjamin acknowledged age as the key factor in granting or denying them access to voting and legal definitions of manhood.

But twenty-one was not a celebratory age for all youth. Elizabeth Ruffin

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39 One way that young people were informed about the significance of their age was through the enactment of legal statute that defined age and capability. Holly Brewer’s work, By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority synthesizes and interprets seventeenth- and eighteenth-century English political debates that inspired the incorporation of age restrictions into American legal statute following the Revolution.
40 Charles W. Plummer Diary, 29 March 1842, quoted in John Grinspan, The Virgin Vote: How Young Americans Made Democracy Social, Politics Personal, and Voting Popular in the Nineteenth Century (Chapel Hill: University of North Carolina Press, 2016), 59. Grinspan argues that elections and the recognition of the ability to vote at twenty-one offered many young man “the clear[est] path to manhood” they ever saw. Grinspan, 38
41 Benjamin Browne Foster, 11 September 1848 in Benjamin Browne Foster’s Down East Diary, ed. Charles H. Foster (Orono: University of Maine Press, 1975), 141.
acknowledged when she reached her legal majority in a much more somber, regretful tone than Charles. “This legal independence—what a mistaken notion is entertained of it: what an undesirable possession it is in my opinion,” she wrote to her brother and guardian, Edmund.\(^42\) In a second, undated letter, she even went as far as to ask Edmund, “if you would just forget what age and law have entitled me and act precisely as my guardian still… I should deem it a peculiar favor.”\(^43\) Elizabeth, because of her gender, was not granted citizenship or really anything other than the ability to consent to marriage for herself and be prosecuted to the full extent of the law. This inequality of rights was likely the reason Elizabeth was not as eager as Charles to claim her independent status.\(^44\)

As age increasingly factored into determining one's rights, opportunities, expectations, abilities, culpability, and even marriageability, Early Republican youth became increasingly aware of the significance of age, both their own and others'. Many young women and men like Philadelphian Isaac Mickel referenced their own age around sixteen and seventeen in their writings; for example, Nelly Custis recorded in 1797 “Tomorrow I am seventeen!” and Susan McDowall noted

\(^{42}\) Elizabeth Ruffin to Edmund Ruffin, 18 February 1828, Edmund Ruffin Papers, Southern Historical Collections.

\(^{43}\) Elizabeth Ruffin to Edmund Ruffin, undated letter, SHC. The letter had to have occurred sometime shortly after the first letter written on February 18th, 1828 as she was married later that year.

\(^{44}\) Another example of youth acknowledging the impact of legal statutes on perceptions of age and ability can be seen in 1810 when teenager Mary Brown wrote to her friend Margaret Steele that a young woman in her community was not old enough to give her “own consent to become an Old Mans darling.” Mary’s comments demonstrate that she understood that consent, or the legal ability to marry without parental approval, was based on biological age. Mary Brown to Margaret Steele, 10 March 1810, Steele Papers, Southern Historical Collection. Additionally, the age of consent in North Carolina in 1810 was fourteen years old according to Nicholas L. Syrett, *American Child Bride: A History of Minors and Marriage in the United States* (Chapel Hill: The University of North Carolina Press, 2016), 31.
in 1856 “with the rising sun, I will hail me sixteen.” Nelly, Susan, and Isaac likely saw these ages as transitional markers of their identity—over the age of fourteen, they were old enough to testify in court, be held culpable for a crime, request a change of guardian, but they were not yet legally recognized as independent adults capable of consent; for that (in most states) they would have to wait until they turned twenty-one.

In addition to legal statutes, many young people turned to prescriptive advice literature for direction in navigating the life stage of youth as well as guidance in understanding just when and how they were expected to transition into adulthood. Benjamin Browne Foster, for example, noted in his diary that he read *Young Man from Home*, while Isaac Mickel consulted *Principles of Politeness*. Works like these encouraged introspection and linked filial obedience, religion, and industriousness as keys to successful moral

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45 Quotes: Eleanor Parke Custis to Elizabeth Bordley in *George Washington's Beautiful Nelly: The Letters of Eleanor Parke Custis Lewis to Elizabeth Bordley Gibson, 1794-1851*, ed. Patricia Brady (Columbia: University of South Carolina Press, 1991), 32. Susan McDowall, 10 April 1856, Susan McDowall Diary, Duke. It is important to point out that these ages would also have been recognized as “old” enough or “mature” enough to be worth preserving by archivists, in turn, suggesting that a key archival issue may be at play here.

46 C. Dallet Hemphill’s *Bowing to Necessities* provides the most comprehensive examination and discussion of conduct literature in early America. According to Hemphill, “over two hundred different works prescribing proper face-to-face behavior were published or imported in northern America before 1861.” C. Dallet Hemphill, *Bowing to Necessities: A History of Manners in America, 1620-1860* (Oxford: Oxford University Press, 1999), 5. In regard to advice literature for young people, Howard P. Chudacoff has argued that these manuals, prompted by the popularity of the Second Great Awakening, represented an “attempt by clergy and lay leaders to prepare young people for a life of duty, to both God and society.” Chudacoff, 21. During the Early Republican period, there was an increase in production and circulation of prescriptive advice literature targeted at youth. According to C. Dallet Hemphill, this “flood of youthful advice was likely the author’s response—and contribution—to the decline of older institutions for controlling youth.” Hemphill, 102

47 Benjamin noted in his diary that he “read chapters 4 and 6 of *Young Man from Home*.” Benjamin Browne Foster, 7 November 1849, 229. Isaac Mickel mentions using the *Principles of Politeness* in his diary, 14 April 1841, 150.
adulthood. Many also stressed the significance of self-reliance; Titcomb’s *Letters to Young People*, for example, explained to young men that “there is no surer sign of an unmanly and cowardly spirit than a vague desire for help; a wish to depend, to lean upon somebody, and enjoy the fruits of the industry of others.” This idea that young people had to “do for themselves” to find success in life grew out of Revolutionary rhetoric, and, although many youth continued to rely on family connections for a leg up, this sentiment did inspire lower-class youth that they could move up the social ladder if they strategized their youth correctly.

Thus, young people internalized that the life stage of youth had to be navigated strategically and that even the smallest mistake could have ramifications for one’s adulthood. Author Henry Newcomb, as one example, began his advice book to young men warning that “when young people suppose it is of no consequence what they do, or how they behave, because they are young, then they do not think enough of themselves.” Rather than view their youth as a time to make mistakes, Newcomb wanted young people to be strategic from the start. Newcomb cautioned young people that “the most insignificant action you perform [in childhood and youth], in its influence upon your character, will reach through the whole period of your existence.” One could not risk making mistakes, as these mistakes could have long-term

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48 The significance of filial obedience will be discussed more fully in chapter four of this dissertation.
49 Timothy Titcomb, *Titcomb’s Letters to Young People, Single and Married, Married* (New York: C. Scribner’s Sons, 1859), 16.
50 Harvey Newcomb, *How to Become a Man: A Book for Boys Containing Useful Hints on the Formation of Character* (Boston: Gould, Kendall, and Lincoln, 1847), 8
This message, the importance of considering one’s youth carefully, prompted some young people to anxiously reflect upon their birthdays with dread. For example, in 1847 on his sixteenth birthday, Benjamin Browne Foster wrote in his diary with despair:

"Good god, is it possible that the anniversary of my birth has stolen so unawares and come so suddenly upon me? My last birthday was ushered in by my spirit with a sort of rapturous exultation far different from my present feelings. I experience a sad sensation now. Why is it, I know not. Who can tell why maturity of mind ever brings mournfulness? I am not now a boy.... And I am yet entirely undecided as to an avocation, unsettled in a business. Some laugh at me and a tell me I am but a small boy yet. A small boy! My life is already probably a quarter or a fifth gone and with what result? Leaving me ignorant, poor, fickle, wavering, without brilliancy, talents, wealth or influential friends to set me forward, nothing but my own resources, the meagre ones of-- a small boy!"

Benjamin’s comments reveal not only how he interpreted his own age and stage in life, but also how his community imposed their own perceptions. Benjamin identified himself as “not… a boy,” and scoffed at the idea that others viewed him as a “small boy;” but he did not go as far as to refer to himself as a man, indicating that he felt somewhere between the two life stages. His frustration over not yet having established himself in a career suggests that he saw himself closer to manhood than childhood. At the same time, if those within his community laughed at him and called him a “small boy” when he voiced these frustrations, as he says they did, this suggests that his immediate community did not have the same expectations for sixteen-year-olds as he did.

Although Benjamin was frustrated with his lack of progress, he clearly

52 Benjamin Browne Foster, 23 November 1847, 76.
viewed his stage in life as a time to take chances and risks as his parents would support him even if he failed. A month prior to his birthday Benjamin wrote: “I shrink to think of the time when I am twenty-one and shall have no home to fall back upon in case of disappointment, when I must do or die...”

Twenty-one was Benjamin’s definition of adulthood, and, significantly, demonstrates that he associated the legal age of adulthood with his own personal understanding of when parental support would end. Consequently, it seems that birthdays triggered anxiety for Benjamin because he viewed them in the context of being one year closer to twenty-one and in turn the adult responsibilities he did not yet see himself ready for.

Finally, Benjamin’s last comment, regarding what qualities he needed to build a career, are indicative of how he understood success and in turn, help explain some of Benjamin’s actions a few years later. According to Benjamin, he lacked “brilliancy, talents, wealth, or influential friends to set [him] forward.” Benjamin’s family was working class, which meant that wealth would not be available to him. Additionally, “brilliancy” and “talents” are qualities that one is generally born with or puts considerable effort into achieving, neither of which happened for Benjamin. He was left with cultivating “influential friends” that might help him move up in life; and as will be discussed later in this chapter, this was the strategy Benjamin pursued in his youth.

Diarist Ella Gertrude Clanton provides an excellent comparative example, as she would have been a contemporary of Benjamin’s and around the same age. On her own sixteenth birthday in 1851, Ella wrote, “How rapidly time flies!...”

53 Benjamin Browne Foster, 31 October 1847, 69.
How sad the thought makes me…How will all this end. To what end am I destined. Surely for something else than to waste the precious moments of existence as I have for the last two years. Ella commented again on her birthday two years later: “I am now eighteen and my feeling is regret—sincere regret.” The tone and content of her entries are very similar to Benjamin’s and demonstrates that this message—of the significance of youth as being a time of strategic action—was universal and applied to both genders.

Just as prescriptive advice literature prompted young people to think strategically and reflect on their actions as youth, the guidance these manuals provided on age-appropriate behavior also encouraged a judgmental awareness of other people’s ages. This was particularly true concerning individuals active in youth culture who were perceived as too young or too old. Twenty-one-year-old Harriett Manigault commented on the significance of perceived age and belonging in her diary, writing on August 12th, 1804 about a “Mr B” and a “Mr Davies,” two men who attempted to “appear younger than [they] really [were]” in order to participate in youth culture: “Mr B. I suppose, from his appearance that is about forty, but he wishes to pass for five & twenty.” Comparatively, ten-year-old Maria Moody was identified by fellow youth as too young for the youth culture of Richmond, Virginia. Although the age parameters of individual youth cultures varied by region, young people were clearly aware of the specific age of their

55 Ella Gertrude Clanton Thomas, April 4th, 1852, 102.
57 For a full discussion of Maria Moody, see the introduction of this dissertation.
peers and factored it into determining each one’s membership.  

As much as definitions of age found in legal statute and advice literature informed youth, they remained malleable guidelines that were regularly ignored and occasionally challenged as young people lived out their adolescence within their local communities, families, and peer groups. One way to see how perceptions and experiences of youth in the Early Republic were shaped by regionalism is to look at the writings of what I call “social connectors,” young people who traveled and served as links between different youth cultures. Significantly, social connectors consistently explained away peculiarities in attitude, appearance, and behavior of other youth based on regional differences rather than individual character traits. For example, Laura Henrietta Wirt told her close friend Louisa Cabell about an eighteen-year-old “girl” named Cora Livingston who visited Washington D.C., Laura’s home town, in the summer of 1824. Cora’s “dancing attracted a great deal of attention by its novelty [in Washington]. It [was] very graceful and a little theatrical,” Laura explained, “which was excused, as the style of New Orleans.”

Evidently, region so thoroughly informed one’s actions that a visiting individual’s youth culture of origin could be

58 Young people also indicated an importance of interacting with similarly aged youth. For example, Isaac Mickels excitedly noted when he was fourteen that “in the evening I went to Miss Sarah Haine’s Birth-day party—where there were twelve or fourteen young ladies (!) of my own age, in whose company I enjoyed a great deal.” (Mickel, 10 April 1837, 5) Laura Henrietta Wirt also wrote that she had “many other acquaintances of [her] own age.” Laura Henrietta Wirt, 23 June 1820, Laura Henrietta Wirt Randall Papers, Virginia Historical Society.  

59 Early Republican Laura Henrietta Wirt was an elite young woman who frequently traveled between her own “home town” youth culture of Washington D.C., Baltimore, Richmond, and as far afield as St. Petersburg, Russia. Lucky for historians, Laura was also a prolific letter writer who dutifully reported her observations of fellow youth to her close friend Louisa Cabell.  

60 LHW to LC, 3 June 1824.
identified through their behavior.

Laura spent “five weeks” in Baltimore as a visitor herself and her reflections on her experience within a different youth culture reiterate the significance of regionalism on experiences (and perceptions) of youthful behaviors and interactions. Laura summed up her impression of Baltimore as “a very agreeable place to visit at. But, for a permanent residence… [she] prefer[ed] Washington.” Laura interpreted the youth culture of Baltimore as “more sociable and intimate” than Washington’s, but also as “too little intellectual to be long agreeable.” She explained that “the girls think and discourse of nothing but dress, with the occasional relief of a little scandal. And the young men [were] pretty nearly, or quite as bad.” Laura’s comparative comments are illuminating not only for what they tell us about Baltimore, but also because she unintentionally tells us about expectations of behavior in Washington youth culture-- that it was more formal and intellectually oriented. Furthermore, she suggests that visiting young people had to learn to adapt to the differences in youth cultures in order to be accepted.

Letters from Mildred Smith and William Taylor Barry provide additional evidence of the influence (and awareness) of region as a shaper of youth culture. In a 1780 letter to Eliza Ambler, Mildred wrote “the girls [in York] are charming and very fond of [me] but they are all so much my Senior, and besides there is so much freedome and levite almost amounting to indiscretion in their conduct that I

61 LHW to LC, 26 February 1824.  
62 Ibid.
often blush for them…” Mildred’s embarrassment over the “senior” girls’ behavior suggests that her idea of appropriate youthful interactions differed from those she experienced in York. Additionally, because Mildred identified the girls she interacted with as “so much [her] Senior,” she alluded to the idea that in other youth cultures, perhaps she would not have interacted with these young women because she would have been too young or because they would have aged out of youth culture themselves.

Similarly, William Taylor Barry, a youthful visitor from Kentucky, viewed Williamsburg’s youth culture as too informal to the point of offense. On January 30th, 1804, nineteen-year-old William wrote to his older brother John, “there is a certain looseness of manners and conversation among [the girls] that I do not admire… such freedom of conduct may be altogether consistent with the strictest principles of virtue, but, I must confess it don’t meet my notions of propriety.” In a second letter, William continued: “I have not met with more than one or two girls of reading in the place; they generally see so much company that little time can be devoted to the cultivation of letters. They are not only deficient in literary attainments, but their manners are by no means as polished as I expected.”

William’s comments demonstrate an awareness that different youth cultures subscribed to different standards and expectations of youthful behavior. His judgments of Williamsburg’s young women suggest that the youth culture in Kentucky was perhaps more formal, divided by gender, and concerned with

65 WTB to Brother, 15 February 1804.
education.

Within a particular region, even a particular town, multiple youth cultures existed side by side. The two most common venues that facilitated elite youth cultures were educational institutions and cosmopolitan neighborhoods. But even within these larger, community-based youth cultures there existed sub-youth cultures that had their own requirements for membership. The purpose of youth culture was to provide a space for young people to interact, free from the direct observation of authority figures, such as parents or teachers. More importantly, these spaces of youthful interaction allowed young people to test their identities as emerging adults and to engage in informal courtship opportunities without serious consequences if they took a misstep.

Attending an educational institution in and of itself was a requirement to gaining access to many youth cultures. Several passages from the diary of Benjamin Browne Foster, when examined together, illustrate this point. Benjamin enrolled at Bowdoin College in 1851 when nineteen years old, and he took note of his fellow Freshmen classmates who ranged in age from “fifteen and twenty-five.”  

Benjamin also taught at the local schoolhouse and on the first day of classes he recorded that he had “eighty-nine scholars, from five [years] to twenty.”  

More revealing, though, are Benjamin’s repeated mentions of “Yaggers,” or local young man, that regularly got into scuffles with the students. Collectively, Benjamin’s comments provide evidence that disparate youth cultures existed even within Brunswick, Maine. Evidently age was irrelevant to

66 Benjamin Brown Foster, 29 September 1851, 309.
67 Benjamin Brown Foster, 1 December 1851, 319.
68 Benjamin’s first mention of “Yaggers” was on 31 October 1851, 315.
determining one’s belonging, as the ages of Benjamin’s peers and students were wide-ranging and overlapped. Furthermore, his recognition of an outsider group of young men, “Yaggers,” suggest one youth culture was reserved for the College students and another for local youth from the nearby town.

Benjamin’s comments about “Yaggers” and “students” demonstrate the extreme divisions that could exist within age cohorts. The individuals active in these two separate youth cultures were well known, or at least easily identified, by one another, and the rivalry between the two was so intense that acts of violence often ensued. On October 31st, 1851, Benjamin wrote about being “followed by a gang of Yaggers, who passed around the college yards with oaths, threats and defiance. At length they ventured out to the college grounds when the cry Yaggers brought a reinforcement of students and caused the insurgents to vamoose.”69 A month later, Benjamin recorded that he went out with friends and “carried a pistol in [his] breast pocket” because “the Yaggers have been horribly saucy… and we were somewhat fearful.”70 An awareness of class most likely contributed to the division between students and “Yaggers,” which generated some of the tensions amongst the city’s young residents.

By paying attention to the “things” Early Republican youth made note of or requested money for when writing home to parents while away at school, it is possible to identify on the micro-level how young people found belonging with

69 Benjamin Browne Foster, 31 October 1851, 315. I have not been able to find any origin of the word “Yagger.” It might have been a variant of a “jagger” which was someone who indulged in excessive behaviors like consuming alcohol and drugs or fighting, but that connection is purely speculative.
70 Benjamin Browne Foster, 28 November 1851, 318.
their peers within their distinctive youth cultures. Wealth allowed a young person to attend the right school, but it also allowed them to board at the right boarding-houses or pay for the latest fashions and activities necessary for acceptance. Yet wealth alone did not secure one's place in all youth cultures, as some were centered around religion or extracurricular activities such as social clubs or illicit behavior.

Seventeen-year-old William and Mary student George Blow explicitly connected the necessity of money in gaining and maintaining access to elite, youthful social circles—in his case, the youth culture of Early Republican Williamsburg. In 1805, George informed his father: “that a young man must of necessity be extravagant [sic] at this place if he wishes to associate with the best company.” “The money,” George explained, “…has initiated me into every respectable circle of this city.” George began to list out his expenses in each letter he wrote home as a way of proving he was not overspending. For example, on June 1st, 1805, George wrote: “My expenses this Quarter will be for Board $58. For room rent $6, for washing $5, shoecleaning $3, making $72 exclusive of sundry little expenses amounting in the whole to about $80 exclusive of pocket money to pay for Fruit, Clothesmending, subscription to dances.”

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71 George Blow to Father, 4 May 1805, Blow Family Papers, Swem Special Collections. In another letter, George exasperatedly declared that if his father wanted him to spend less money, then he was willing to make an “honourable retreat” from “the most polished societies of Williamsburg.” Quote: GB to Father, 10 February 1805. George, of course, was bluffing. Removing himself from the elite youth culture of Williamsburg was not an option as it would limit his ability to make important social connections and in turn reflect badly upon his family, which his father knew. Consequently, Richard Blow had no choice but to provide the funds necessary to maintain young George’s belonging among Williamsburg’s most elite youth—even if he complained to George while doing it.

72 GB to Father, 20 May 1804.
73 GB to Father, 1 June 1805.
concluded his letter by stating, “you see by this true statement that a young man is compelled to spend a large sum altho he be very prudent, there are very few students here whose Quarterly expenses amount to less than $100.” George viewed each of these expenses as “necessary for him to maintain his respectability,” which meant access to William and Mary’s elite youth culture. Services such as “washing,” “shoe cleaning,” and “Clothesmending” and goods such as “subscriptions to dances” were luxuries afforded by wealth but also seemingly necessities for a young person like George, hoping to maintain the proper appearance both physically and socially in order to be accepted amongst his elite peers.

Another necessity for the students of the College of William and Mary was

74 Ibid.
75 GB to Father, 20 March 1804.
76 The line separating necessity from want was not only debated between parents and their children, but also by the courts, which occasionally intervened when a guardian questioned their ward’s expenses. The reason courts debated the necessity of a good or service had to do with establishing financial culpability of minors. Legally, tradesmen were allowed to engage in business with a minor without their parent or guardian’s consent when the minor was purchasing or paying for a “necessity,” such as boarding or a reasonable amount of immediately needed goods or services. In an effort to protect the minor, the “burthen of proving the existence of an actual necessity lies on the tradesman, who, in regard to that, acts at his peril.” In order to determine what could be considered an “over-supply of an infant’s wants” even when the “articles [purchased] might in other respects be ranked as necessaries,” the tradesmen was obligated to “acquaint himself with the infant’s circumstances and necessities.” If it was determined the tradesmen was irresponsible by providing unnecessary goods to a minor, he would be liable for the expense. The court case, Johnson v Lines, heard in the Pennsylvania Supreme Court in 1843, provides an excellent example of disagreements over what made a good or service a necessity and how young people could find themselves in the middle of that debate. Edward Lines, a tradesman, attempted to sue David Eckert who was the guardian of John Johnson, for payment of the $1063.27 bill Johnson ran up. Johnson made the purchases while he was a minor between October 9th, 1836 and January 30th, 1838; although it is unclear exactly how old Johnson was, the court described him as “a wasteful boy” and a “young spendthrift.” The goods Johnson purchased were as follows: “twelve coats, seventeen vests, and twenty-three pantaloons… thirty-nine handkerchiefs, and five canes, with kid gloves, fur caps, chip hats, and fancy bag, to match.” Lines maintained that the goods he provided Johnson were “necessaries,” however the court ruled against him. One of each of these items could be considered a necessity, but the excessive quantities of the goods made the purchases no longer necessities. See Johnson v. Lines, 40 Am. Dec. 542, 6 Watts & Serg. 80 (1843).
securing a spot in the right boarding-houses in town. Where and from whom they rented a room could have negative or positive affects on a young person’s social opportunities. For example, although initially William Taylor Barry sought out a room in a house that kept “thirty boarders,” he soon decided it would be “disagreeable” and opted to live with Mr. Anderson instead. Because he was able to secure boarding with Mr. Anderson, William wrote to his brother that he was “fortunate... to get into a pretty good house.” Mr. Anderson ran a female academy in addition to the boarding house and was mentioned frequently in letters written by Williamsburg’s youth. The frequency with which Mr. Anderson was mentioned suggests that he served as a link between the young men of William and Mary and the young women living in Williamsburg, having possibly acted as a facilitator of youthful interactions. However, board with Mr. Anderson was not cheap, and he only took on “seven or eight boarders” at a time.

Benjamin Browne Foster was a bit more explicit about the importance of living in a “good house” in order to gain access to social mobility. In 1849, at the age of seventeen, Benjamin was working as a store clerk in Newbury, Massachusetts. At first he boarded with “the Stickneys” but opted to leave their boarding house after realizing their social connections were “mediocre” at best and that they would not be able to “introduce [him] into ‘upper circles’” like he had

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77 William Taylor Barry to Brother, 23 February 1804.
78 George Blow, Jane C. Charlton, and Julia Paguad all mentioned Mr. Anderson at some point in their letters.
79 William Taylor Barry to Brother, 6 February 1804. According to William, it cost $50 a quarter to board with Mr. Anderson in the spring of 1804; in comparison, George Blow paid only $40 a quarter to board with “Mrs. Powell” the following year. WTB to Brother, 6 February 1804 and GB to Father, 13 March 1805.
hoped.\textsuperscript{80} As outsiders, William from Kentucky and Benjamin from Maine, they needed the social capital that came along with boarding with social elites and so they saw the higher boarding costs as a necessary expenses.

Clothing was another point of access to youth culture and regular topic of young people’s letters home to parents.\textsuperscript{81} In 1833, seventeen-year-old Evelyn Byrd Pollard, away at school, wrote to her mother pleading for new clothes: “everybody is getting Spring clothes, and I think I am very much in want of some nice dresses… [but] I have not enough money to get any.”\textsuperscript{82} Evelyn wrote again three years later, “if you believe me Mama I am very badly off here for dresses, my light silk I have to wear on all occasions, and it is as dirty as can be. I should be so glad if you could send me money enough directly to get me some kind of frock, perhaps I could get a cheap silk at Levies. I am very much in want of another dress if I remain here much longer.”\textsuperscript{83}

Evelyn’s concern with wearing the same thing repeatedly and that it was “dirty as can be” was not unwarranted. Young people and parents both acknowledged the significance of appropriate dress in designating a person as a

\begin{flushendnote}
\textsuperscript{80} Benjamin Browne Foster, 30 October 1849, 225
\textsuperscript{81} Historians have established the importance of fashion as “marker of class and racial status” as well as “an indicator of age and gender. In the Old South, clothing and hairstyles functioned both as outward signs of one’s status as a young lady and as effective means of enforcing ladylike behavior.” Anya Jabour, \textit{Scarlett’s Sisters: Young Women in the Old South} (Chapel Hill: University of North Carolina Press, 2009), 33. Furthermore, this awareness of the importance of appearance was so ingrained in young people’s minds that sixteen-year-old Severn Eyre refused to leave his boardinghouse because he lacked “fashionable cloaths [sic].” Severn Eyre, 15 August 1785, Severn Eyre Diary, Virginia Historical Society. For more information on the significance of fashion in early America in general, see Kate Haulman, \textit{The Politics of Fashion in Eighteenth-Century America} (Chapel Hill: University of North Carolina Press, 2014)
\textsuperscript{82} Evelyn Byrd Pollard to Mother, 6 April 1833, Pollard Family Papers, Virginia Historical Society.
\textsuperscript{83} EBP to Mother, 17 March 1836.
\end{flushendnote}
member of the adolescent elite. For example, Margaret Izard Manigault gossiped to another parent about her neighbor “Mme Camac” because of her choice of clothing, “imagine a woman of over sixty dressed like a young person of fifteen,” she wrote. One Williamsburg youth, Jane Charleton, snidely wrote about a recently married friend: “do tell her, I mean to send her some mob caps and aprons as I expect she dresses quite in the antique stile.” Teenagers Mary and Sally Garland’s mother expressed a similar connection between fashion and age: “I expect your Dress was very hansome [sic]” she wrote to Sally, “and Mary’s suited to her age better than if it had been made showey [sic].” All three women’s comments demonstrate that certain fashions were associated with particular ages. If a person dressed in a fashion deemed too young or too old, they could elicit gossip, which might significantly affect their chances of being accepted into youth culture or elite adult society.

Because not every youth culture could be accessed with money or material goods, some youth converted to Christianity to find acceptance and belonging. For example, in 1849, fifteen-year-old Ella Gertude Clanton found acceptance among the other girls at Wesleyan Female College in Macon,

84 Benjamin Browne Foster also mentioned the importance of appropriate dress for youth of a certain class: “I presume that after I get up onto High St. which may be the means of introduction to society, I must have a new suit of wearing apparel.” Benjamin Browne Foster, 22 January 1850, 252.
86 Jane C. Charlton to Sarah C. Watts, 19 March 1809, Sarah C. Watts Papers.
87 Mother (JHG) to Sally Garland, 19 February 1819, Garland Family Papers, Virginia Historical Society. At the time the letter was written in 1819, Mary was fifteen years old.
Georgia only after she declared she had been converted and “felt how good
God [was].” Ella wrote in her diary: “when I first came here I disliked the place,
found the girls unsociable.” However, after her conversion experience, she
exclaimed “oh how happy I am now!...I believe I love all the girls. Oh my heart is
so much changed.” Once she vocalized her conversion, Ella was invited to
attend nightly prayer meetings where she made close, meaningful connections
with the other girls. Ella noted that “many of the girls ha[d] been converted,” but
whether her own conversion was sincere or calculated to gain acceptance is
unclear. Regardless, Ella’s conversion is what secured her a place in the youth
culture of Wesleyan.

George Blow’s letters provide evidence of less respectable (from parents’
perspective) ways young people found belonging among their peers through illicit
behavior. In March of 1804, George’s father accused him of drinking, gambling,
and being involved in a duel while away from home at the College of William and
Mary. George exclaimed that he was “mortif[ied]” and “surprise[d]” by the
accusations and concluded that “some vile, malicious, slanderous calumniator
[must have] been casting assertions on [his] conduct.” George “confess[ed]…
that the young men had been disappated [sic] this course” and that he had
“sometimes joined them” but promised he had always “avoided inebriation.” He
continued, “you must also know that a part of the young men have practiced
gambling,” but he had “neither won nor lost a single penny since [his] arrival.”

Whether George was being honest or simply trying to stay in his father’s good

88 Ella Gertude Clanton, 1 February 1849, 82.
89 Ibid.
90 George Blow to Father, 20 March 1804.
graces, his admission that young men at the College were drinking and gambling in their free time suggests participation in these vices translated to belonging in the College's youth culture.

Each of the above examples represents one way in which young people gained access to youth cultures, but to find belonging meant that others were excluded. Although an active member of Bowdoin College's youth culture, Benjamin's diary also reveals that he was not always included among his peers. Three years prior to his enrollment at the College, a sixteen-year-old Benjamin noted bitterly his outsider status of his neighborhood's youth culture. "I understand that the 'young people' of this place sailed in the new Mattawamkeag steamer as far as the point yesterday," he wrote, "Charles and I, of course, knew nothing about it. There is a circle of Orono society I do not enter, an 'upper ten' with which I do not fellowship."

Why Benjamin and his brother, Charles, were excluded is unclear, but Benjamin's reference to the "upper ten" implies class or wealth impeded their acceptance into the elite youth culture of Orono, Maine. Benjamin’s prior comments about "yaggers," as well as his experience as an outsider in Orono, demonstrates that although age helped establish or exclude one’s belonging in some youth cultures, it was not the only—or even consistently the most important—factor in regulating memberships.

91 Benjamin Browne Foster, 10 July 1848, 124. Charles was Benjamin’s older brother.
92 When fifteen years old, Isaac Mickel wrote about the less respectable youth he saw in Philadelphia, providing another example of disparate youth cultures within the same town. "If you walk out in the evening, at every corner you will meet a group of lads from 12 to 20," Isaac explained, "swearing, cursing each other, lying, insulting females, and using indecent and offensive expressions." Isaac frowned upon the behavior of these youth and he speculated that by "21 you [will] find them habitual drunkards and worse, at 25 they [will be] worn down by debauchery and disease." Mickel, 24 January 1838, 27.
The benefits that came along with belonging to a particular youth culture ranged significantly; however, access to information and courtship opportunities with similarly classed youth tended to be two universal purposes of these groups. A close analysis of youthful writing reveals that young people kept tabs on their fellows and made a point to know who was dating whom, who was related to whom, who boarded with whom, because by doing so, they could strategically build their social networks to benefit their immediate and adult lives. By finding acceptance, young people also found access to information that would have otherwise been shielded from the wider community.

The ability to obtain (and retain) access to information about a particular peer-group or youth culture had little to do with being in the physical space it inhabited. For example, teenager Sarah C. Watts had attended Anderson’s Female Academy located in Williamsburg, Virginia in 1807 before returning to her parents’ home in Bedford, Virginia later that same year. Through her continued correspondence with Jane Charlton and Eliza Wright, and despite her physical absence, Sarah maintained access to information about her peers, and most

93 Although this intelligence undoubtedly passed between young people through the spoken word, more significantly they relayed this “insider knowledge” through written correspondence. These letters make it possible to recreate social circles within a particular youth culture as well as see how frequently young people traveled between different youth cultures. In addition to letters, young people wrote journals which allowed them to engage in a self-conscious process of reliving and analyzing their experiences as young people participating in youth culture. Journals are an incredibly useful way to understand youthful lives because they provide insight into what young people of the past considered significant. Joan Jacob Brumberg makes a similar argument for the use of young people’s diaries in her book, The Body Project: An Intimate History of American Girls (New York: Vintage Books, 1997), xxvi. It is important to recognize the class privilege attached to being able to not only afford the supplies to write letters and in diaries but also the time. For more information on the genre of letter writing see Sarah Pearsall, Atlantic Families: Lives and Letters in the Later Eighteenth Century (Oxford: Oxford University Press, 2011); Konstantine Dierks, In My Power: Letter Writing and Communications in Early America (Philadelphia: University of Pennsylvania Press, 2011; and Lindsay O’Neill, The Opened Letter: Networking in the Early Modern British World (Philadelphia: University of Pennsylvania Press, 2014)
importantly about her fiancé, who she had left behind in Williamsburg. The letters Sarah received reveal a world of peer-moderated heterosocial youth culture and demonstrate the types of information young people gleaned through their participation and interaction with fellow youth. In addition to hearing about upcoming events, Sarah learned a great deal about formal and informal courtship, local gossip and scandals as well as heterosocial interactions occurring among Williamsburg’s young people.

Although the news shared through letters may seem like mundane gossip, the information provided was incredibly significant. Gossip is a key means of social communication. For example, Jane relayed news to Sarah about her fiancé, “Mr. Irvine.” “I can’t forbear telling you what I heard of him yesterday,” Jane wrote, “which is that his talents are thought superior to any in the junior class, which consists of forty, or fifty.” Jane did not specify where she had learned this bit of information about Mr. Irvine, but, by communicating it to Sarah, she continued Sarah’s access to knowledge reserved for members of Williamsburg’s youth culture. More importantly, Jane’s information may have reaffirmed for Sarah her decision to marry Mr. Irvine. It let her know that others esteemed him and his position.

94 For more information on gossip as a means of social communication in early America see Terri L Snyder, Brabbling Women: Disorderly Speech and Law in Early Virginia (New York: Cornell University Press, 2003) and Elizabeth Reis, Damned Women: Sinners and Witches in Puritan New England (New York: Cornell University Press, 1999)

95 Unfortunately, not much information exists about “Mr. Irvine” beyond the references Jane made to him in her letters because the College of William & Mary has been involved in numerous fires and as a result, most records from 1800-1810 have been destroyed. Swem special collections has created a provisional list of alumni through the use of outside records and can be found at the following website: http://swem.wm.edu/departments/special-collections/exhibits/exhibits/provlist/frame.htm According to this list, a William Irvine attended the college in 1809 and 1810. Jane first referred to him as a new student in December of 1808 so this could be the same Mr. Irvine.

96 JCC to SCW, 4 December 1808.
Similarly, Joseph Prentis, Jr., who no longer lived in Williamsburg, was able to sustain his connection to the town’s youth culture through continued correspondence with his cousin, Julia F. Pagau. Significantly, this line of communication permitted him access to intelligence regarding courtship and prospective mates. For example, on March 21\textsuperscript{st}, 1808, Julia wrote to Joseph with information about Mary Miller. “Mary has several admirers from what I can learn;” she warned, “[and] I think if you have any notion that way, you had better be in haste My Friend; or else perhaps, you may loose [sic] your chance.”\textsuperscript{97} Whether Joseph acted on this information or not is unclear, but the fact he was warned illustrates the utility of youthful social networks, even when limited by geographical distance.

It is important to remember that letters and journals circulated among family and peers which made explicit discussions of gossip regarding fellow youth difficult; consequently, young writers often had to decide which information was private knowledge and which would be public.\textsuperscript{98} Young people concealed private information in a variety of ways. For example, journal writer Sarah Duval regularly referred to the young men she confessed to having feelings for only by the first letter of their last name, sometimes going a step further and literally cutting the entire reference out of her journal. Laura Henrietta Wirt applauded a

\textsuperscript{97} Julia F. Pagau to Joseph Prentis, Jr., 21 March 1808, Webb-Prentis Papers, Colonial Williamsburg Foundation. Benjamin received similar intel on a former flame from his brother Charles who informed him that a romantic adversary was leaving town which would give Benjamin “an opportunity… to go and ‘court up’ Miss DeWitt.” Benjamin Browne Foster, 12 October 1849, 222-223.

\textsuperscript{98} For example, reading letters aloud and recirculating them by hand was a frequent past time—a form of entertainment—acknowledged by letter writers themselves.
friend’s ingenious decision to “secret a love letter in [her] shoe.” 99 Jane Charleton creatively used codenames in her letters to Sarah in order to include information about private relationships. 100 The need to hide information indicates the importance of being accepted among one’s peers because in order to have access to the information one needed to belong to the group.

Paying attention to when Jane used real names versus when she used codenames reveals important details about how public and private information regarding relationships among young people was shared. Jane informed Sarah that “Little Bat... is attached to S B, but whether it is mutual or not I cant say.” 101 It is impossible to determine who “Little Bat” was, however “S B” was most likely Sally Browne, a friend of Jane and Sarah's. Sally left Williamsburg in January 1808 but returned in March 1809. 102 Although Sally was “not much admired by the Gentlemen” in Williamsburg, “Bat appear[ed] to be entirely devoted to her.” 103 Sarah, and any of the other members of this social network, would have understood Jane's obscure references, whereas adults and outsiders would not have. Thus, assigning codenames to males as well as females, such as “S B” and “Bat,” protected budding romances from the scrutiny and potential disapproval of authority figures. Historians argue that young southern women, marriage was the most important (and, for a few, nearly the only) choice of their

99 Laura Henrietta Wirt to Louisa Cabell, 6 March 1820.
100 Anya Jabour argues that young southern women “distanced themselves from their hopeful beaux by giving them ridiculous nicknames [and] describing them in highly unflattering terms.” However, Jane's letters reveal that nicknames were used when referring to female friends as well, suggesting nicknames might have been a form of code. Either way the nicknames served a vital purpose for the group. See Jabour, Scarlett's Sisters, 129.
101 Jane C. Charleton to Sarah C Watts, 13 September 1807.
102 JCC to SCW, 10 January 1808 and 9 March 1809.
103 JCC to SCW, 9 March 1809.
adult life; Jane’s use of nicknames could be viewed as sensitive to this reality.\textsuperscript{104}

The example of teenager Nancy Shippen, active in the youth culture of Philadelphia in the late 1770s, illustrates why young people relied on the use of codenames to keep private relationships from authority figures. Nancy, like Jane, also used pet names and initials to engage in (what ended up being) a not-so-secretive courtship with a young French diplomat, Louis Otto. Nancy regularly referred to Louis as “Leander” in her diary but numerous letters were shared between the two with an assortment of code names. Louis regularly signed off is letters as “M,” “L,” “O,” “John-Wait-Too-Long,” “Damon,” “Mr. Venoni,” “J Wait-Patiently,” “Mr. Runaway,” “Mr. Reciprocity,” “Lewis Scriblerius,” and even, “Maria.”\textsuperscript{105} In turn, Louis addressed his letters to Nancy: “Miss Runaway,” “Miss Inconstant,” “Amanda,” “Julia,” “Phyllis,” and “Emilia.”\textsuperscript{106} Although the nicknames were a form of epistolary flirtation, the fact that the couple had so many may have been an additional safeguard, an intentional way to confuse anyone who may have found their letters.

However, Nancy’s parents eventually caught on to the relationship, and what happened next illustrates the need for youthful secrecy. Another man, Henry Livingston, openly courted Nancy, and her parents considered him the superior match because of his family’s wealth. Louis finally proposed to Nancy in 1781; while her parents did not outright refuse consent, they did ask that he not

\textsuperscript{104} Jabour, Scarlett’s Sisters.
\textsuperscript{106} Armes, 30.
visit Nancy for “four days.” During his imposed exile from the Shippen house, Nancy’s parents pressured her into a quick marriage with Henry Livingston, effectively ending the romantic relationship with Louis once and for all. Unfortunately for Nancy, her marriage to Henry ended disastrously. Nancy was so tortured by the relationship that she gave up custody of her beloved, infant daughter in order to get away from Livingston. In 1783 she moved back home with her parents and spent the rest of her life bitter that she had missed out on happiness with the man she considered her true love, Louis.

The sad saga of Caroline Wadleigh and Melville Fuller offers another example of the importance of keeping budding romances a secret from parents. In 1848, Caroline was sent to live in Orono, Maine with her uncle, Ira Wadleigh and his wife, Catherine, in order to become educated and “accomplished.” Catherine’s seventeen-year-old son Melville also lived at the Wadleigh home and within a few months, he and Carolina developed “a fierce, romantic attachment.” The relationship was found out and Catherine sent Melville “to Augusta for the express reason of breaking up the tender tie.” The imposed distance, however, was ineffective. Melville and Caroline not only found a way to continue their correspondence but also “met secretly at least once.” As a consequence of these transgressions, Caroline was sent back home and the courtship was permanently ended.

107 Armes, 105.
108 See Armes, 129.
109 Benjamin Browne Foster, 8 July 1849, 204. The information on Caroline and Melville’s courtship comes from Benjamin Browne Foster’s diary.
110 Benjamin Browne Foster, 17 August 1849, 217.
111 Benjamin Browne Foster, 9 July 1849, 204.
This is not to say that informal courtship was completely frowned upon and forbidden. Rather, interactions with the opposite sex were exciting yet regular and expected occurrences that filled young people’s letters. New Englander Benjamin Browne Foster recorded his daily adventures as a store clerk, student, and teacher who strategically romanced young women for his own social gain. Consequently, Benjamin’s diary provides a window into how young men processed, internalized, and even strategized their experiences with fellow youth, especially when it came to interactions with the opposite sex. Benjamin was quite transient and worked strategically for the social capital he acquired when in a new place. Born into a working class family in Orono, Maine, Benjamin moved around New England working as a store clerk for a year at a time and often wrote anxiously about the uncertainty of his future. He began his diary in 1847 when he was just fifteen, and commented occasionally on his interactions with local youth. It is important to remember that Benjamin was likely fully excluded from the elite youth culture of his hometown, Orono, Maine; hyperaware of the boundaries of belonging, Benjamin strategically maneuvered between the youth cultures he visited to ensure he would never be an outsider again. His romance-- and strategy-- filled years were between the ages of seventeen and nineteen, when he worked, lived, and loved in Newburyport, Massachusetts. Between 1849 and 1850, Benjamin fell in and out of love with

112 Young men in the early nineteenth century undoubtedly experienced privileges unique to their sex, yet they struggled with establishing themselves in elite heterosocial young society just as their female peers did. Often times, young women observed their social struggles: for example, twenty-two-year-old Harriett Manigault recalled one evening that “there were only three descent Beaux in the room... all the rest appear to be afraid of approaching the ladies.” Harriet Manigault, 12 January 1815 in The Diary of Harriet Manigault, 77.

113 Benjamin eventually enrolled in Bowdoin College at the age of nineteen and became an Episcopal clergyman but it was not always clear to himself the path he was on.
four different young women in addition to being regularly infatuated with countless others.\footnote{114}

But Benjamin did not “love” blindly, rather he took careful note of his love interests’ family or social connections and considered how the romance might be advantageous to him. For example, Benjamin first set eyes on Margaret “Peg” Spring on January 5\textsuperscript{th}, 1850 and dutifully recorded that “she is of a fine family, one of the ‘upper ten’,,” indicating that she was from a known, wealthy, and well-connected family.\footnote{115} Comparatively, on January 14\textsuperscript{th}, he wrote that he ran into Anne Chase and explained that his lack of romantic interest was because “she isn’t of the upper circle. She \textit{works} in the bookbindery.”\footnote{116} Benjamin’s emphasis on the word “works” is revealing; it implies Anne was excluded from elite youth culture and courtship opportunities because of her working class status. Yet, Benjamin worked as a clerk and was readily accepted, indicating that gendered expectations of labor and youth clearly played a role in determining belonging in Newburyport, Massachusetts.

Benjamin approached courtship as a means of advancing his acceptance and upward mobility in elite youth culture; somewhat straddling the boundary between being “in” and “out,” he was always careful not to jeopardize the place he had secured to date. This is particularly evident in Benjamin’s first (unsuccessful) attempt to court an elite young woman in Newburyport, sixteen-

\footnote{114 On January 5th, 1850, Benjamin excitedly scribbled down, ““I am just in the frenzy of the ‘teen fever’ and fall in love with every pretty girl I meet. I can think of some ten or twelve who have smote me in the eye since I have been here.” Benjamin Browne Foster, 5 January 1850, 249.}

\footnote{115 Benjamin Browne Foster, 5 January 1850, 249.}

\footnote{116 Benjamin Browne Foster, 14 January 1850, 251.}
year-old Cad Knapp. Benjamin first carefully crafted a letter to Cad, which read: “Will it offend you if I love you? I am serious. If so, I pray you tell me so.” He then tossed the letter into Cad’s lap at the end of church one day.\textsuperscript{117} “I was cautious enough to avoid date, address, or signature,” he wrote, strategically ensuring that although Cad knew who delivered it to her, no one else would if they found it, thus protecting his position if he were rejected. The next day, she had yet to respond and Benjamin retraced his steps, reassuring himself that “I don’t fear that [the letter] can be used against me.”\textsuperscript{118} Unfortunately for Benjamin, Cad did not return the feelings, “my misfortune is always to pitch upon the wrong girl,” he disappointedly wrote on February 8\textsuperscript{th}, 1850. Although unsuccessful, Benjamin’s anonymous note demonstrates one of the ways a youth might engage in informal courtship while taking care to avoid detection.

Benjamin’s interactions with another romantic interest, Margaret “Peg” Spring, are the most illustrative of how he used courtship strategically. In March, Benjamin sensed Margaret had taken an interest in him and shrewdly pursued an informal relationship in order to gain introduction to other elite young women in Newburyport, Massachusetts. Benjamin and Margaret took moon-lit walks and attended dances together, held hands, and even regularly kissed on her porch. However, when Margaret invited Benjamin in one evening to visit with her mother, he quickly declined, “No, no. I don’t go so far as that,” he wrote, “Moonlight walks are pleasant; candlelight ‘sittings up’ serious.”\textsuperscript{119} On March 31\textsuperscript{st}, Benjamin acknowledged that “the thing is getting too serious, and though I am

\textsuperscript{117} Benjamin Browne Foster, 27 January 1850, 255.
\textsuperscript{118} Benjamin Browne Foster, 28 January 1850, 255.
\textsuperscript{119} Benjamin Browne Foster, 24 March 1850, 274.
sensible of some benefits, for already Margaret has introduced me to two or three girls of rank, yet I ought to back off.”¹²⁰ For Benjamin, the courtship with Margaret was fictitious and purely strategic, but he recognized that leading her on for too long could have social consequences.¹²¹

Still, Benjamin pushed on with the charade; that is until the adults of their community began to take notice of Benjamin and Margaret’s “intimacy” and pressed Benjamin about his intentions. In April, Benjamin was confronted by Margaret’s mother and his own mother. In both responses, Benjamin called attention to his age as a way of justifying and diminishing the seriousness of his interactions with Margaret. When Mrs. Spring asked Benjamin if he loved her daughter and had interest in marrying her, he responded by stating that “on account of my youth, my situation not being permanently decided and my expectations indistinct,” he could not possibly entertain the thought of marriage.¹²² Benjamin also received a letter from his mother, chastising him for the potential damage he had done to his reputation and anger he would cause the Spring family for leading Margaret on. Benjamin wrote back, insisting “I have slight apprehensions of injuring my general reputation by the flirtation. It is too common a thing here for a person to show a girl attention and then a separation to come, especially with Maggie Spring. My youth is in my favor here,” he explained, “And I have a good excuse in her general character as a flirt for

¹²⁰ Benjamin Browne Foster, 31 March 1850, 276
¹²¹ Twenty-year-old Virginia Wilson Hankins provides an example of the frustration young women felt over not knowing if they were being toyed with or used by their suitors. “I rode with Mr. S.L. He said he liked me better every time he sees… but I bet he in truth like me? I mean—admire—respect me. Does he feel happy in my society—do I entertain him? I would like to know, – for I cannot find by his manner.” Virginia Wilson Hankins, 11 July 1863, Virginia Wilson Hankins Diary, Virginia Historical Society.
¹²² Benjamin Browne Foster, 1 April 1850, 277.
backing off.”¹²³

In the end, Benjamin broke off his relationship with Margaret without perceived injury to his own reputation-- as he predicted. The fact that their relationship continued as long as it did indicates that informal courtship was an expected part of youthful behavior-- especially in Newburyport, according to Benjamin. However, once the relationship continued on for too long or became too visible, parents intervened to ascertain intent or shut it down before things got too serious. The relationship is also illustrative of how courtship could be used strategically to move up in society. Margaret came from a good family, which meant she had connections to other elite young women that she could provide Benjamin access to. At the same time, Margaret was known as a flirtatious young woman, making her both an easy target to seduce but also provided Benjamin with an easy out once he no longer needed her for introductions. Young men were expected to “play the field,” while young women were expected to remain chaste, consequently, no one would think twice of Benjamin not wanting to marry a young woman who was known to date around.

Philadelphian Isaac Mickel offers another example of a young man who regularly strategized his way to become a more active and successful participant in his local youth culture. In 1841, eighteen-year-old Isaac confided in his diary: “I start out from home after supper, and for want of agreeable acquaintance upon whom to call, for want of friends my own age, I fetch up in public places, where looking on may lead me, as it has led others, to participating in.”¹²⁴ In another

¹²³ Benjamin Browne Foster, 11 April 1850, 282.
¹²⁴ Mickle, 16 May 1841, 169.
entry, Isaac explained he did not go to church that day because “the walking [was] so sloppy that there will be no pretty girls there,” in turn suggesting he only went to church to interact with young women.  

He was more explicit with his intentions when he stated that he and a friend, Lamuel H Davis together determined “to seek the society of ladies more” and “resolved … to become beaus wherever there [was] a belle; to be ladies’ men.” By becoming “ladies’ men,” Isaac and Lamuel, like Benjamin, hoped to gain greater popularity and in turn social success, which could lead to better marriage and career opportunities later in life.

Isaac was a prolific writer who kept careful record of every experience he had or decision he made in order to analyze it and question how it might benefit him in later life. A regular topic in his diary was his many successes and awkward fumbles when interacting with young ladies his “own age.” Between the ages of fourteen and eighteen, Isaac wrote forty-nine entries in his diary, and in twenty-five of those he mentioned these interactions. For example, Isaac recorded when a friend asked him to write a love letter for him and noted the time he “went to an evening party and dealt pretty extensively in the commodity called kisses.” By including these encounters with young women in his diary, Isaac was acknowledging them as significant to building the social capital he needed to be a successful adult in later life.

Isaac’s entries regarding interactions with the opposite sex also reveal the insecurities young men faced when interacting with young women. Every other

125 Mickel, 27 January 1839, 49.
126 Ibid.
week, Isaac's perception of himself in relation to young women changed. One week he was “dealing in the commodity called kisses,” while the next he was determined to learn how to bow correctly by reading advice literature. Writing in the third person, Isaac explained “the first bow [he] ever undertook to perform before ladies—was his last! He caught his feet in the carpet, and fell sprawling upon the floor; and since then, at introductions, recognitions, and salutations, he has never ventured beyond an inclination of the head.” Isaac concluded he was so embarrassed that he was “resolved to begin de novo… by reading Chesterfield.” Why Isaac wrote in the third person is unclear, possibly to distance himself from the ownership of the event that writing about it in the first person would have demanded of him.

Part of the reason Isaac was so concerned with making a good impression is because young people could equally enhance or injure their own as well as other's reputations and, subsequently, their positions in adult life through their participation in youth culture. Like Isaac, nineteen-year-old William Taylor Barry was explicit about what he hoped to get out of his interactions with fellow youth. William strategically moved to Williamsburg from Kentucky to attend William and Mary. While there, he noted in a letter to his brother that he planned to “extend [his] knowledge in the science of Law” but also “become acquainted with some of the first characters in Virginia, and possibly by a lucky throw of fortune

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127 Like many socially ambitious young people, Isaac turned to widely circulated-advice literature like Lord Chesterfield’s *Principles of Politeness* in an effort to learn how to “make [his] entrée into society with becoming flourishes.” Mickle, 14 April 1841, 150-151.

128 Ibid.
recommend [himself] to their favor.” 129 William hoped that the connections he would make through his participation in the youth culture of Williamsburg would “at some future date be advantageous to [himself].” 130 William saw his decision to attend school in Williamsburg as a strategic social move meant to benefit him later in life.

Just like young men, young women were strategic about their interactions with the opposite sex in order to gain what they felt was age-appropriate social leverage. For example, Harriet Manigault confided in her diary in 1815, that her and her friends were “determined to make [them]selves scarce, & oblige those young men to prize [their] company when they get it.” 131 In 1847, Sarah Duval recorded her interactions with young men and noted her carefulness of not leading a particular friend on. “I shall never say or do aught to encourage him,” she wrote, “I highly value his friendship but can never return his love.” 132 Other young women “collected” beaux as a way to strategically gain popularity, just like Isaac and Benjamin. On the inside cover of her diary, eighteen-year-old Virginian Eliza Barksdale titled a list “my boys,” which included the names “Sam Baldwin, Isaac Coles, John Bouldin, James Read, Crenshaw Miller, George Hansman.” At the bottom of the page she included an ominous warning: “all of these are my boys by right, if any body dare disputes the fact, let them come forward and do it to my face that I may give them what they deserve.” 133 Both sexes viewed

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129 William Taylor Barry to Brother, 23 September 1803.
130 Ibid.
131 Harriet Manigault, 14 July 1815, 103.
132 Sarah D.C. Duval, 1847, Sarah D.C. Duval Diary, Virginia Historical Society.
133 Eliza Barksdale, 1836, Diary of Eliza Barksdale 1836-1837, Virginia Historical Society. Anya Jabour, has commented on the strategic efforts by southern belles to acquiring “notoriety by calling attention to their desirability” because “a young woman’s popularity reflected favorably
courtship strategically, as it could leverage them into more elite social circles or even result in an advantageous marriage.

For many youth, marriage seemed like an important end goal and the end of youth culture. Marriage marked their transition from youth to adult, and many young women wrote about the interruption in youthful friendships that marriage caused. For example, Jane Charlton asked Sarah if she had seen “Mrs Ann E Callaway when she passed thro' Lynchburg” because she had “not received a letter from her for two months, and she generally answer[ed her] letters very quick.” Jane wondered if “perhaps matrimony ha[d] made as great a change in her sentiments [as] in Eliza Mayo's” and concluded her letter: “I hope it will not alter my dear Sarah.” Another unknown letter writer lamented to her friend, Virginia Early Brown, “the idea of my friend’s marrying makes me feel sad, it seems to me that when one marries, they form new connections, other thoughts and feelings occupy their minds, and this forming so many new associations, the remembrances of other friends glides impecetly [sic] from them.” Mary Telfair put it simplest: “once I had a friend I adored but she married and forgot me.”

upon her family’s reputation.” See Jabour, Scarlett’s Sisters, 133.
134 Marriage brought about many changes in a young person’s life. It physically relocated young people, which resulted in the formation of new connections and associations. Concerns about establishing themselves in adult society and starting and supporting a family were very different from advancing their education and finding a potential spouse. Jabour has touched on this topic and argues that “young women in the Old South saw marriage as a barrier to female friendship.” See Jabour, Scarlett’s Sisters, 93-94.
135 JCC to SCW, 19 March 1809.
136 Unknown to Mary Virginia Early, 19 August 1844, Mary Virginia (Early) Brown Papers, Virginia Historical Society.
Young people expressed the notion that marriage removed them from youth culture and transitioned them into “adult” society; but it also legally transitioned a person into adulthood as well. Furthermore, the legal act of marriage was transformative regardless of age. For male minors, marriage usually transformed them into legally adult men; but for adult women, marriage was transformative in that it stripped them of any legal independence they had acquired by reaching the age of majority and made them dependents again, only this time as wives.\textsuperscript{138} Writing from Texas in 1852 where the legal age to consent to marriage for women was eighteen, nineteen-year-old Lizzie Scott soberly acknowledged this reality in her diary: “a few more weeks will pass away and I will become a wife— a great responsibility. My identity, my legal existence will be swallowed up in my husband.”\textsuperscript{139} Lizzie spoke plainly about how marriage would affect her from a legal standpoint and, as seen in the examples of Charles Plummer and Elizabeth Ruffin discussed at the start of this chapter, she was not alone in recognizing how nineteenth-century laws represented transformative moments for young people.

As this chapter has shown, young people in the Early Republic actively participated in defining age and in creating the social boundaries that delineated youth from adulthood. They took their cues from advice literature and legal statute on what was appropriate behavior at what age, but they also adapted

\textsuperscript{138} Chapter three of this dissertation provides a more in-depth discussion of guardianship in the Early Republic

these prescriptive ideas to their own unique, regionalized experiences and contexts found within the youth cultures of their schools and neighborhoods. The fact that young people took time to reflect in their diaries about how they strategized, qualified, and even quantified their relationships with fellow youth demonstrates how significant youthful interactions and a sense of generational belonging was in a young person's life. But just as young people wrote actively about youthful belonging, they also wrote actively about when it was appropriate to marry and transition socially and legally into adulthood. The following chapter will explore the ways in which young people perceived the relationship between age and marriage as well as begin to incorporate the outside voices that informed and influenced youth on these topics.
In 1810, Mary Brown explained to her close friend Margaret Steele that despite being “very rich,” “an old bachelor” in her neighborhood was unsuccessful in courting a local young woman. According to Mary, this was because the young woman was not old enough to give her “own consent to become an Old Mans darling.” Mary's phrasing is significant for two reasons. First, it demonstrates that she had an awareness of the impact legal definitions of age had on the actions of young people. In this example, the law prevented a young woman from consenting to marriage. Second, her words expressed disapproval of the age difference in the match, an opinion informed by her social understanding of marriage. This dual commentary is important to acknowledge because although marriage is a legally binding contract, it was also the cornerstone of family building in early America that was regulated and evaluated by society. In other words, marriages did not exist in one realm or the other, within a legal context or social one, but within both realms simultaneously. Mary’s comments are significant because they perfectly illustrate this intersection of legal and social perceptions of age and marriageability.

In his recent book *American Child Bride: A History of Minors and Marriage* 

in the United States, historian Nicholas L. Syrett traced the origins, evolution, and
differences in American marriage laws as they restricted minors from marrying
from the colonial era to present day.\footnote{141} One of Syrett’s central arguments is that
because nineteenth-century Americans had a “functional,” “kin-based
understanding of childhood rather than one focused on age,” early statutes that
designated an age for marriage without parental consent “had less to do with the
child’s youth than that the child was somebody’s son or daughter.”\footnote{142} American
consent laws, borrowed from English statute, were meant to “enshrine filial
obedience in statute” by requiring parents to approve their children’s
marriages.\footnote{143} Americans, Syrett explains, “did not believe that there were

\footnote{141} Nicholas L. Syrett’s synopsis and analysis of the Early Republican and antebellum periods
has been particularly helpful for this chapter. As Syrett argues, marriage laws “demonstrate
the concerns (or lack of them) that colonists of different regions possessed about property,
inheritance, filial obedience, and the regulation of the young.” (Syrett, 32) According to Syrett’s
findings, influenced by the motivations of settlement, “northern colonies tended to emphasize
parental control, whereas southern colonies focused on the regulation of property through
marriage,” and middle colonies “were most likely to emphasize set ages above which children
no longer required parental consent.” (Syrett, 23) As the United States grew, new territories in
the West and Midwest tended to adopt their statutes from the original colonies and each other
which resulted in the “regional similarities” of age minimums seen between states. (Syrett, 30)
For more information see Syrett, Chapter 1 “Any Maid or Woman Child: A New Nation and Its
Marriage Laws.”

\footnote{142} Quote: Syrett, 16. The legal age restrictions pertaining to marriage were meant to act as
“preventive measures, designed to curve early marriage” and offer parents a recourse for
recouping the loss of their child’s servitude. (Syrett, 90, 93) This is evident in the fact that
youthful marriages were never nullified after the fact the way that bigamous marriages were.
(Syrett, 93) To dissolve a consummated marriage was a threat to the community as it created
“single, nonvirginal, and possibly pregnant girls.” (Syrett, 78) Furthermore, “Americans
believed that marriage could transform a child into a wife who was legally and socially an adult
because of marriage,” meaning that once a child “transformed” into a wife or husband, they
could not go back to being a child even if their marriage were nullified. (Syrett, 4)

\footnote{143} Quote: Syrett, 19. As Holly Brewer has explained in By Birth or Consent, Marriage Law
reforms linked to chronological age first appeared in England in 1753 with “An Act for the
Better Preventing of Clandestine Marriages,” popularly known as the Hardwick Act. In
response to parental concern regarding “young heirs and heiresses who married beneath their
rank,” the law enabled parents to void the marriage of their children if they were under the age
of twenty-one in addition to invalidating all clandestine marriages. By passing this act,
lawmakers raised the minimum age of marriage and required parental consent in order to give
greater control to parents, not to establish precedents regarding consent and capability.
Although the Hardwick Act established a legal precedent for limiting youthful marriage, in
reality, the law was more concerned with strengthening parental control over their children to
particular ages at which a person should go to school, start working, or get married. These things happened when a person was large enough or able enough or financially prepared enough, and those moments might come at different times for different people.\textsuperscript{144} Consequently, although laws were passed to limit the young from marrying, a disregard for age made youthful marriage common because in the Early Republic many Americans “had not yet embraced the notion that young people in their teenage years were unfit for marriage” as they did by the end of the nineteenth century.\textsuperscript{145}

Syrett’s work is critical to understanding the motivation behind marriage consent laws in the nineteenth century. Laws passed to limit youthful marriage following the American Revolution continued to bolster parental control over their children but they were also meant to reflect consent as the “basic criterion for determining marital capacity.”\textsuperscript{146} English common law specified that girls could legally marry at the age of twelve and boys could marry at the age of fourteen. However, most states passed statutes that required both sexes to have a guardian’s consent to marry until they reached the age of eighteen or twenty-one.\textsuperscript{147} As American society became increasingly concerned with linking

\textsuperscript{144} Syrett, 3.
\textsuperscript{145} Syrett, 42. Syrett argues that a rise in age consciousness at the end of the nineteenth century led to the recalibration of the understanding between age and marriage. See Syrett, Chapter 5 “My Little Girl Wife: The Transformation of Childhood and Marriage in the Late Nineteenth Century” for more information.
\textsuperscript{146} As Michael Grossberg argues in his work, Governing the Hearth, “post-Revolutionary marriage law assumed that below a certain age, children could neither physically consummate a marriage nor intellectually understand its significance.” Michael Grossberg, Governing the Hearth: Law and the Family in 19th Century America (Chapel Hill: The University of North Carolina Press,1988), 105
\textsuperscript{147} Nicholas Syrett argues that the majority of colonies/states from the seventeenth century until the 1970s had “an unequal age of marriage for girls and boys.” (Syrett, 103) According to
chronological age to the intellectual and reproductive capacities to undertake responsibilities associated with marriage—namely sexual reproduction and financial independence—the law followed closely behind, attempting to address a social concern.

Although youthful marriage remained fairly common, studies suggest that in the Early Republic the average age at marriage did rise. For young men the average age shifted from early twenties to mid-to-late twenties, and for young women the average age shifted from late teens to between twenty-one and twenty-five. The new marriage laws may have had some impact on the decline in youthful marriages but historians have also pointed to a variety of social reasons to explain this trend. For example, the education of both young men and women was of new importance in delaying marriage ages into their twenties. Additionally, antebellum men typically married at later ages than their female counterparts because it took increasingly longer to establish themselves financially and have the means to provide for a family. Historians have also

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Syrett, girls were able to give their consent to marriage without their parent’s permission earlier than boys because legislators viewed women’s only purpose as that of wife. By allowing girls to marry younger, they were allowing women to transition into adulthood quicker. See Nicholas L. Syrett, "Statutory Marriage Ages and the Gendered Construction of Adulthood in the Nineteenth Century" in *Age in America: The Colonial Era to the Present*, ed. Nicholas L. Syrett and Corinne T. Field, (New York: New York University Press, 2015), 112-113.


149 Experimenting with new forms of democratic participation, the rhetoric of the Early Republican period called for an increasingly educated citizenry. Education was also a marker of gentility that granted access to elite social circles and became a prerequisite for advantageous marriage matches later in life. For more information on the rise of education in the Early Republic see: Mary Kelley, *Learning to Stand and Speak: Women, Education, and Public Life in America’s Republic* (Chapel Hill: University of North Carolina Press, 2008); Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1997)

pointed to the concept of the “companionate marriage” ideal, which came into
vogue in the early nineteenth century as a reason for delayed marriage.\textsuperscript{151}

Rejecting monarchical relationships based on deference, Americans may have
sought relationships and marriages based on romantic love and mutual respect
between peers. This new style of marriage required longer courtships and
increased levels of maturity and reasoning to successfully select one’s ideal
mate. Additionally, marriages based on “mutual respect” implied that pairings
occur between individuals of similar age. Although the idea of finding a true
“companion” certainly may have influenced marriage choices for certain
individuals and slowed the rush to the alter, historians have shown that during
the Early Republican period the majority of elites were still making strategic
calculations before committing to marriage.\textsuperscript{152}

Despite a consensus about the statistical rise in marriage age in the Early
Republican period, historians have largely failed to consider how families and
young people themselves negotiated legal definitions of age and consent against
personal and communal expectations of marriage. For example, by focusing on
legal definitions (and statistical analyses) of age at marriage, they have
overlooked the ways in which people might have considered social and cultural
standards. Additionally, individual sentiments regarding appropriate age at

\textsuperscript{151} See Anya Jabour, \textit{Marriage in the Early Republic: Elizabeth and William Wirt and the
Companionate Ideal} (Baltimore: John Hopkins University Press, 1998)
\textsuperscript{152} See Lindsay Keiter, “Uniting Interests: The Economic Functions of Marriage in America,
marriage, or even the ability to consent to a marriage, typically accounted for class, inheritance, and individual maturity. From a legal standpoint, once a person reached the age of majority, he or she could consent to marriage; however, socially, this was not always the case. Age and the ability to consent for oneself in regards to a marriage was in constant negotiation during the Early Republic.

This chapter adds to the historiography on age and marriage, and challenges parts of it, by contributing a discussion of the complicated negotiations over age and marriage that took place within communities. More specifically, I argue that although the function of consent laws in the early nineteenth century may have been to strengthen parental rights, mention of one’s specific age repeatedly shows up in informal discussions and observations about marriage. This suggests that Early Republicans had a degree of age consciousness that historians have overlooked. To illustrate this point, I examine discussions of age and marriage in three contexts: church records, divorce cases, and diaries and letters written by and to youth.

Marriage records from Philadelphia’s Gloria Dei church demonstrate not only how church officials navigated social custom and legal definitions to determine the proper age of consent, but also how frequently young people resisted legal definitions of age in relation to ability in efforts to assert their independence. Divorce petitions highlight the ways in which parents and guardians utilized the court system in their effort to legally negotiate age and marriageability after the fact. Finally, letters and other personal records reveal the
informal negotiations of age, status, and marriageability that took place within families and peer groups and show that social definitions of age and marriageability did not always align with legal definitions of consent. Taken together, these sources provide evidence that throughout the Early Republican period, young people and authority figures carefully negotiated the significance of chronological age and capability in determining marriageability.

Pennsylvania, like many states in the Early Republic, required written parental approval for all marriage applicants younger than twenty-one years of age.153 This legal mandate prompted Reverend Nicholas Collin, the overseer of Gloria Dei, Philadelphia’s most popular church for weddings, to keep detailed records of those he married and those he refused in an effort to protect himself from action by angry guardians who had not approved the betrothal of their dependents.154 Beginning in January of 1794, Collin set aside a portion of the marriage register for a section he titled “Remarkable Occurrences Concerning Marriage,” where he explained his reasoning for refusing to marry particular

153 Nicholas Syrett points out that although Pennsylvania had an equal minimum age for consent for men and women, in reality their minimum age for marriage with parental consent was still unequal, with girls being able to marry with consent at 12 and boys at 14. See Syrett, “Statutory Marriage Ages and the Gendered Construction of Adulthood in the Nineteenth Century,” in *Age in America*, 119.

154 In the Early Republican period, Gloria Dei Church, also called “Old Swedes’ Church,” was Philadelphia’s most popular location for weddings because it was considered “especially lucky” to be married at the Lutheran temple. Reverend Nicholas Collin oversaw some three thousand marriages during his tenure at the church. For more information on Gloria Dei Church, see: Susan Klepp and Billy G. Smith, “The Records of Gloria Dei Church: Marriages and “Remarkable Occurrences,” 1794-1806” in *Pennsylvania History: A Journal of Mid-Atlantic Studies*, Vol. 53, No. 2 (April, 1986), pp. 125-151. Collins explained the reason he created the “Remarkable Occurrences” section was because “the continuance of licentious manners and defective laws renders necessary the recording of such incidents as may prove the prudence of my conduct against blame for cases against which no caution can secure, and also to instruct my successor on the rules of proceeding.” Reverend Nicholas Collin, “Remarkable Occurrences,” in *Pennsylvania History*. 
couples. Collin’s records are significant for two reasons. First, these records offer a unique perspective on how church officials understood legal definitions of age, consent, and marriage in the Early Republican period as well as how some officials took it upon themselves to negotiate social perceptions of class and age to determine one’s marriageability regardless of the law. Read another way, Collin’s records also show how young people made sense of the legal restrictions concerning consent and marriage and attempted to negotiate or assert their own independence in efforts to get around marriage laws. Despite a couple’s insistence or the legal statute, in these cases, Collin was the ultimate authority in determining who actually had the capacity to marry and who did not.

Collin included illuminating passages in which he referenced age or lack of consent. Although actual and perceived youthfulness certainly factored into

155 Historians have used these records to establish understandings of the "conditions and attitudes towards marriage and personal relationships" among Philadelphians in the Early Republican period. Richard Godbeer and Clare Lyons, specifically, have used Collin’s records to establish the frequency of premarital sexual activity and irregular marriage practices among the lower classes. Katie Jorgensen Gray briefly mentions Collin’s records in her chapter on youthful autonomy. Gray points to Collin’s records to show evidence of how some genteel young people attempted to assert their independence by marrying without parental consent. Her larger point is that Collin’s records “are indicative of a larger cultural tension over the degree of deference owed by the younger to the older generation.” (Gray, 96). See Richard Godbeer, Sexual Revolution in Early America (Baltimore: John Hopkins University Press, 2004); Clare A. Lyons, Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830 (Chapel Hill: University of North Carolina Press, 2006); and Katherine Jorgensen Gray, “Mixed Company: Elite Youth and Heterosociability in Philadelphia, 1750-1815,” Ph.D. Dissertation, John Hopkins University, 2011.

Between the years 1794 and 1806, Collin turned away four interracial couples, seventeen couples due to drunkenness, two because he suspected they already had a spouse, and fifteen because they showed up late at night. He also recorded instances of children out of wedlock, attempts by couples to receive antedated marriage certificates, and the physical altercations he got in over his refusal to marry these individuals.

156 This is some what surprising given that most clergy would be interested in avoiding immorality that might occur outside of marriage if they refused to perform the ceremony than to be tried for breaking state statute as Collin was.

157 Between January 1794 and 17 November 1818, Collin made hundreds of entries in his “Remarkable Occurrences” database. However, the bulk of his comments fall between January 1794 and December 1806. Collin’s comments are sporadic and inconsistent; some
Collin’s reason to refuse a marriage, he also denied pairings based on the suspected elite status of those he encountered and because of large age disparities. Of 170 denials that took place during these twelve years, Collin mentioned relative or specific age in 56 percent (96 out of 170) of his entries. Collin’s care to verify age, and thus an individual’s ability to consent, in these requests for marriage demonstrates how strictly he interpreted the law and its minimum age requirement. In other words, he was inflexible in his belief that a person could not consent before they reached the age of twenty-one. At the same time, just because a person was twenty-one did not mean Collin automatically allowed them to marry. Instead, Collin was influenced by a variety of factors including class, family, and religion when he judged a legal adult’s years he wrote every week or month while others he wrote a sentence at most for the entire year. Even so, the frequency with which he wrote about age, consent, and class between 1794 and 1806 makes it possible to come to statistical and anecdotal evidence of how he understood the three as related to marriageability as well as how they factored into his decision to deny a marriage request.

For example, there were two cases in which Collin denied a marriage because of a disparity in age. Although in both cases, parental consent was missing as well, by highlighting the age difference, he suggested the disparity factored into his decision. On May 13th, 1795, Collin noted that “A man about 50 years old came to bespeak marriage with a girl of 18. I advised [sic] him to consider better of it,” and as a result, the man “did not return.” A few years later, on November 10th, 1801, “A couple… were refused because the girl, not quite 18, had no certificate from her parents, and the man was also of very disproportionate age, probably 60.”

In 42% (60 out of 144) of cases, Collin gave a chronological age, while in 58% (84 out of 144) of cases he gave a relative age, meaning he described a person or a couple as “young,” “mature,” “middle-aged,” etc. Collin listed the perceived and factual chronological age for sixty individuals, thirty-three women and twenty-seven men. He listed relative age eighty-four times total with a break down of twenty-six women, thirty-two men, and twenty-six couples. On the surface, these numbers break down roughly equal between the sexes which suggests that Collin paid equal attention to recording the age of men and women he refused to marry. However, of the thirty-three women Collin ascribed a chronological age to, twenty-five (76%) were under the age of twenty-one while only three (11%) of the twenty-seven men were. This significant difference might be accounted for by the fact that it was more socially acceptable for women to marry at a younger age than men.

Pennsylvania court records from the early nineteenth century are full of cases of parents suing clergymen for marrying their minor children without their consent. The frequency in which these cases were tried demonstrate not only that parents took their right to withhold consent seriously but also how strictly the state took definitions of consent in relation to chronological age as parents usually won. This reality explains why Collin erred on the side of caution and turned away anyone he suspected was a minor.
ability to consent to a marriage.

Appearance or visual perception of age factored heavily into Collin’s decision to grant or reject a marriage. For example, he described “a girl between 20 and 23, to appearance,” “a young girl, in appearance 17 but [the groom] said 20,” a “young woman about 19 years old,” a “young man, by his account past 20,” and recorded instances in which “the bride looked very young,” a bride had a “good but young appearance,” and a young woman who insisted she was “twenty-one, but looked younger being also small.” One couple he “refused for want of better evidence, she seemed to be of age,” he explained, but he was not convinced enough to take the risk of marrying the pair. Collin’s decision to include qualifying terms like “in appearance,” “looked,” “about,” and “by his own account,” demonstrates his awareness of how difficult it could be to determine one’s actual chronological age. Consequently, Collin consistently erred on the side of caution and refused any individual he perceived as being possibly underage unless he or she produced explicit parental consent.

Collin’s careful notes on how old individuals looked also suggests the frequency with which young people attempted to lie about their age or circumstances in order to marry and circumvent parental permission, a reality that irritated Collin. One of the most popular justifications young people used to

162 Collin, “Remarkable Occurrences,” 2 November 1795. There were two other instances in which Collin suspected the couple might be telling the truth about their age but still denied the marriage because of his uncertainty—May 13th, 1796: “Young though possibly of age...” and February 16th, 1806: “Bride might be as she said 21...”.
163 Collin used the term “about” twelve times before listing a specific age. For difficulty of proving age in the Early Republican period see Shane Landrum, “From Family Bibles to Birth Certificates: Young People, Proof of Age, and American Political Cultures, 1820-1915,” in Age in America, ed. Syrett and Field.
assert their independence and “adult” status was that they had “no parents,” which was meant to suggest they were financially responsible for themselves. For example, on October 13th, 1800, “a young couple, he 16 years, and she 1 or 2 years less, made earnest sollicitation [sic] to be joined.” Collin explained that “they pleaded their independence of both parties, her parents being dead, his father also, and his mother in the West Indies.” This was the youngest couple Collin identified by chronological age. Part of the reason he denied them was because the bridegroom had a brother whom Collin knew was “a public officer of respectable character.” Collin attempted to explain to the pair “the necessity [he] was under to seek information from their next friends or kindred” as sixteen was simply too young to consent to marriage, even if the individuals had established their independence. Regardless of parental death or absence, so long as there was a next of kin older than the pair marrying, Collin demanded their permission before moving forward.

Collin’s comments in moments of frustration demonstrate some young people’s resistance to legal definitions of age in relation to consent and capability. For instance, on July 29th, 1797, Collin “refused” a “middle age” man and a “woman about 20” who claimed she had “no parents” because he suspected they were “probably runaways.” After recording the encounter, he continued on in frustration, noting that “similar cases happen not seldom: young

164 There were a total of nine times young people claimed their parents had died as a means of justifying their agency to marry; 12 July 1794; 24 April 1795; 13 May 1796; 29 July, 1797; 2 July 1800; 13 October 1800; 18 July 1805; 4 August 1806; 28 October 1806.
165 Collin, “Remarkable Occurrences,” 13 October 1800
166 Occasionally, young people outed themselves, for example, on 12 July 1794, Collin noted that a “man of mature age” came to marry a bride who was an “orphan,” however, “she confessed that her father was living; [and they] were refused.”
girls, some 15, coming with improper men, as strangers, etc., insisting on their
capacity and right of choosing for themselves."\textsuperscript{168} Several years later he
complained after refusing a “young couple because she had no certificate from
her father,” explaining that “they thought [his refusal was] very odd, as many
others, having no idea of parental authority.”\textsuperscript{169} By “insisting on their capacity and
right of choosing,” as Collin points out, young men and women were
acknowledging legal debates and insisting that the age of twenty-one as a
marker of ability was arbitrary and should not apply equally to all, especially
when it came to marriage. The rhetoric of companionate marriage paired with the
reality that young people increasingly ventured into new careers independent of
their families may have been a few of the reasons some young people no longer
understood (or appreciated) why parental consent was required.

Other times, young people insisted on the negligence of their guardians as
a justification for making their own choice. For example, on July 2\textsuperscript{nd}, 1800, Collin
recorded an instance when “a captain of a small vessel, Bostonian, came… with
a genteel girl, 20 years old.” He explained that the “girl” insisted “that her parents
were both dead” but “that her step-father was living and took no care of her,”
causing her to have to keep “house for a gentleman.” Collin noted that he tended
to believe her but ultimately “ventured not to marry her for fear that her father
might be one of the Gibs in the city.”\textsuperscript{170} Similarly, on October 9\textsuperscript{th}, 1804, “about 8
in the morning, a girl aged eighteen, came [to be married]… She acknowledged
having a guardian, but said that he was a man of despicable character and now

\textsuperscript{168} Ibid.
\textsuperscript{169} Collin, “Remarkable Occurrences,” 15 July 1804.
\textsuperscript{170} Collin, “Remarkable Occurrences,” 2 July 1800.
in jail for debt. I nevertheless declared that he must be heard, and the wedding in
the mean time postponed.”  

Ten young couples pleaded with Collin to overlook the lack of a parent’s or
guardian’s consent and marry them secretly. Unsurprisingly, Collin always
refused, but the reasons young people cited for needing a secret marriage,
specifically family disapproval, are significant because they demonstrate the
continued active role parents played or attempted to play in making decisions
regarding their children’s marriage. Families disapproved of marriages for a
variety of reasons, sometimes because of the groom’s inability to provide
financially for a family and other times because of the social inequality of the
match. For example, on February 13th, 1804, Collin recorded that “A young man
came… he said that he was about 25, in mercantile business: she about 19, from
Maryland, having a mother there… but that they must get married secretly,
because he was not able at present to support her in the stile [sic] to which both
had been accustomed.” In Maryland, the legal age of consent for a young
woman was sixteen years old. By including the young woman’s home state, the
couple was attempting to argue that they both met the age of consent—a fact
that Collin did not try to dispute. He easily could have given the excuse that the
age of consent for both sexes in Pennsylvania was twenty-one. Instead, Collin
sided with the parents, refusing to marry the couple because of the groom’s

171 Collin, “Remarkable Occurrences,” 9 October 1804. Another example can be seen May 13th, 1796, “a young man… denied because a nephew of a respectable person in town whom I would first consult. The young man said that his uncle never had any regard for him because a poor lad.”
172 Collin, “Remarkable Occurrences,” Collin recorded propositions for “secret marriages” ten
times: 8 January 1794; 23 May 1795; 29 October 1801; 13 February 1804; 1 November 1804;
1 January 1805; 29 June 1805; 17 February 1806; 24 May 1806; 6 September 1806.
financially dependent status, demonstrating the significance of status over legal definitions of age and independence.

The fact that young people attempted to obtain “secret marriages” is evidence of one way in which youth resisted parental authority in order to secure what they considered a right: their ability to choose who and when they would marry. In the summer of 1805, a “young man came and requested secret marriage because her parents withheld their consent on account of his inability to support her.” In this circumstance, the youth provided a solution for the problem that prevented her parents from consenting: “he proposed going to Kentucky for employment, where his trade of Portrait Drawing had been represented to him, by some persons from there, as profitable.” In 1806, a twenty-year-old groom “who [was] the son of a rich man” hoped to secure a “secret marriage” to “a deserving but not moneyed girl” who was 18. Evidently the family disapproved and refused to offer consent because of a perceived social inequality of the match. Presumably all three couples discussed could have proceeded with a marriage had they waited until either the groom became more established financially or they had reached the age of consent, but their unwillingness to do so demonstrates how young people disagreed with their families about wanting independent control of their own lives.

174 For examples of premarital sex as justification for “secret marriage” see: January 1st, 1805: “The intended bridegroom, 27 years old, told me in private of his premature intimacy with his future bride and of his firm resolution to conceal the time of wedlock from the parents, to save her reputation” and October 13th, 1800: “The male witness had… privately… apprized me of a premature connection.”
175 Collin, “Remarkable Occurrences, 29 June 1805
177 Katie Jorgensen Gray argues that in elite Philadelphia, “young people and adults carefully negotiated a measured independence in youth” that permitted young people to have greater
The fact that young people used terms like “capacity” and “right to choose” in pleading for their marriages to be sanctioned demonstrates that young people attempted to assert their own interpretations of age and consent. Chronological age meant less than experience or situational reality to these youths. Rather than willingly adhere to an arbitrary age at which they legally were deemed “adults” capable of reason, these engaged couples insisted that capacity and consent should be determined by individual circumstance. If these “minors” provided for themselves financially and lived in independent households or had degenerate guardians, why should they be obligated to obtain someone else’s consent? Furthermore, those who found their independence before the age of twenty-one were usually lower-class youths, and in many ways a youthful marriage would benefit them economically.

Collin’s unwillingness to concede that those below the age of twenty-one were capable of consent, regardless of circumstance, illustrates how strictly he deferred to the legal requirements. The sole reason he refused to marry the above couples was lack of parental consent. Of the ninety-six denials in which Collin mentioned age, he specifically stated that he denied the marriage because of lack of consent from one or more guardians seventy-eight times (81 percent of the time when age was referenced, 46 percent of all denials between 1794 and 1806). These statistics reveal both how seriously Collin adhered to the autonomy in marriage decisions. At the same time, parents would and did step in if their children made the wrong choice. (Gray, 44) For a fuller discussion, see Gray, Chapter 1 “This Extraordinary Degree of Liberty: Mixed-Sex Friendship Circles, Courtship, and Generational Autonomy.”

178 Collin specified the marriage was denied because of a lack of consent from the mother seven times (9%), a lack
Pennsylvania law requiring parental consent to marry minors but also how frequently young people attempted to get around it.

However, for Collin, a lack of parental consent was not always tied to a youthful age, and his entries regarding these cases demonstrate how chronological age and consent could still be defined and circumscribed by social factors. Although according to Collin and the state of Pennsylvania, one could under no circumstance consent to marriage below the age of twenty-one, turning twenty-one did not automatically give one the ability to marry, suggesting that social expectations of familial deference continued into the Early Republican period.\textsuperscript{179} In six cases, Collin denied the marriage based on the individual’s religion or family’s status. For example, in September 1795, Collin noted that he turned away a couple who were “both of age” because “she was a Friend and could not produce an open certificate thereof from her mother, it being against the statues of that denomination.”\textsuperscript{180} On February 12\textsuperscript{th}, 1797, Collin described a couple who “came alone,” were of “decent appearance and mature age; he about

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of consent from a master ten times (13%), a lack of consent from both parents fifteen times (19%), a lack of consent from a non-described guardian—the couple had no “certificate” proving they could marry on their own consent-- twenty times (26%), and because of a lack of consent from the father twenty-six times (33%). Occasionally, parents took it upon themselves to ensure their children failed at marrying without their consent. For example, Collin’s very first entry, on January 2nd, 1794 stated that sixteen-year-old Jane Fletcher’s mother went down to the church to explicitly “forbid the bans” her daughter intended to propose with a “very young tradesmen.” Seven years later, on May 11th, 1801, “a woman came in the afternoon.… to prohibit the marriage of her daughter with a seaman. She said that said daughter had, at the age of 15, been married by Mr. Turner to one Starke, a kind of Doctor, without her knowledge.” Collin then explained, “in the evening a young couple came to get married, after previous notice given in the afternoon.” He denied the couple because “on examination I found the woman’s name to be Starke, and that she, on close examination, hung her head and would not give sufficient information.” Collin, “Remarkable Occurrences,” 11 May 1801. Perhaps still angered by her daughter’s initial betrayal at fifteen, this mother was not going to allow her child to disobey her a second time.

\textsuperscript{179} See Chapter four of this dissertation for a full discussion of the negotiations that took place between parents and their children over independence and familial deference.

\textsuperscript{180} Collin, “Remarkable Occurrences,” September 1795
30, she about 24.” However, Collin denied the marriage because “the bridegroom hesitated on pretense that her parents had not consented,” demonstrating that socially, parental consent remained a critical factor in the decision to marry. In each of these cases, the minimum chronological age was met but social factors such as religion and parental blessing prevented Collin from ordaining the marriage. With these two cases, Collin demonstrated a flexibility—albeit only in the direction of an even more restrictive interpretation—in his perception of age and consent: chronological age was only one factor that Collin took into consideration when determining one’s ability to consent to a marriage; religion, relationship with parents, and class equally influenced his understanding of one’s ability to marry.

Social class often determined Collin’s decision to grant or deny a marriage when both parties were over the age of consent. For example, four of the times Collin denied marriage were because he either knew or suspected that despite the couple’s age, their elite families might disapprove of the union. For example in August of 1806, Collin recorded a confrontational encounter with “a young couple [who] came with two young persons as evidences.” Collin explained that he “told [the groom] that as he was of a good mercantile family, [he] would first speak to his mother. This [the groom] refused, saying that he was...

182 For example, on October 28th, 1805: “A young man, of respectable merchant family, proposed getting married to a young woman, whose family had long been intimate with his, privately, but said that the match would be agreeable to his parents. Refused.” And January 1800: “Thomas Snowden proved to be a son of _____ Snowden, in Philadelphia…His bride had assumed a false name, proving to be the daughter of _____.... I declared to him that the marriage was undoubtedly false.”
his own master and could, if he chose, kill himself to-morrow." Although melodramatic, the groom’s response demonstrates the level of frustration young people might have felt when their right to consent was denied and perhaps also illustrates why many young couples lied about their circumstances in efforts to get around the requirement for parental approval.

Just as many young people pled their cases concerning age and marriageability to Collin, others sought to dissolve undesirable marriages. Divorce was legal in most states during the Early Republican period. The most common (and acceptable or expected) reasons a person requested a divorce was due to adultery, abuse, and/or abandonment. However, as the nineteenth century progressed, a new reason was regularly cited: age, or rather the argument that a person was too young at the time of their marriage to have fully comprehended their actions and truly have consented to the marriage. Parents were usually involved in filing these divorce petitions. Sometimes they filed on

183 Collin, “Remarkable Occurrences,” August 1806. Another example, on May 13th, 1796, “A young man... young though possibly of age, [was] denied because [he was] a nephew of a respectable person in town whom I would first consult.”
184 According to Lindsay Keiter, “There were two types of divorce in early America, adopted from the English legal system. Divorce a mensa et thoro, “from bed and board,” was a legally sanctioned separation, which allowed the couple to live and administer their finances separately while remaining legally married. A vinculo matrimonii was an absolute divorce, which ended the marital relationship and permitted the innocent (but not the guilty) spouse to remarry. Most of the British North American colonies, including Pennsylvania and Virginia, offered both variants of divorce. Initially, divorce proceedings were handled by the general assemblies, and most early petitions were brought by men whose wives were guilty of adultery. South Carolina was singular in that it refused to grant absolute divorces for any reason, on the grounds that they lacked an ecclesiastical court, but did permit separation agreements to be filed with the Secretary of State and suits for separation and alimony in courts of chancery. After the American Revolution, Pennsylvania and Virginia were among the states that expanded access to absolute divorce, though the procedure remained expensive and onerous enough to discourage many applicants. South Carolina alone remained steadfast in its refusal to recognize absolute divorce under any circumstances.” Keiter, pages 216-217. For more information on divorce, see also Glenda Riley, Divorce: An American Tradition (New York: Oxford University Press, 1991).
behalf of the child, which was a strategic choice meant to underscore their child’s continued dependent status. Other times, they filed against their child’s wishes in an attempt to challenge the child’s ability to act as an adult without their permission. Like church records, then, court cases involving the dissolution of marriages provide insight into the ways in which legal definitions of consent both intersected with and challenged social perceptions of age. Furthermore, these sources show how some parents utilized new legal definitions of consent strategically to undermine the validity of their child’s marriage.

Four divorce petitions were filed in Virginia between 1780 and 1860, three of which referenced either chronological or conceptual age as a justification for divorce or plea for leniency. The first was filed by a young woman named Catherine Snyder. Fathers David Brown and Job Stanbery filed the other two petitions on behalf of their daughters, twelve-year-old Susannah and twenty-year-old Virginia. Because Susannah and Virginia were both of legal age to marry with parental consent, justices upheld the marriages. Furthermore, as Nicholas L. Syrett has argued, consent statutes were designed to prevent early marriage, not dissolve it, as doing so would create “single, nonvirginal, and possibly pregnant girls.” Even so, Brown’s and Stanbery’s petitions, when compared, reveal the complicated relationship between legal definitions and social perceptions of chronological age and marriageability often overlooked by historians.

Catherine Snyder filed her own divorce petition in 1817 and in it she attempted to employ new legal understandings of age and marriage by

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185 Syrett, American Child Bride, 78.
referencing her youth as a plea for leniency. The petition stated that she married James Black in February of 1812 with the “consent of her parents.” However, after a year of marriage Catherine learned that James had been “married prior… to a woman who was living” out of state. After he was exposed for his “offense of Bigamy,” James “abandoned” Catherine and she never heard from him again. Five years later, Catherine remarried without realizing they needed to secure a proper divorce, ironically resulting in a charge of bigamy against her. Her petition concluded by pleading with the judges to not “close the door against her” and to grant her a divorce from Black and dismiss the bigamy charge so that she would not “fall a youthful victim to the penalties of a law which she did not know excist [sic].” Catherine’s decision to refer to herself as a “youth” in her final plea for the divorce is significant because it shows that the status of “youth” was linked to immaturity and a lack of culpability that in turn could affect one’s perception to a court.

David Brown filed a petition May 29th, 1784 requesting that the marriage of his twelve-year-old daughter Susannah to Peter Hopwood, her teacher, be dissolved. Although legally Hopwood should not have been able to marry Susannah without Brown’s consent, he did so with the help of a “Lutheran school master” named Peter Mishler. Brown crafted his testimony in a way to highlight Susannah’s chronological and developmental immaturity in contrast with the way that Hopwood’s seniority allowed him to manipulate the sequence of events that led to their marriage. Brown testified that Hopwood began teaching Susannah when she was “a child of little more than eleven years of age.” He began to

186 Shenandoah County Virginia Divorce Petition, Catherin Snyder, 1817.
manipulate Susannah right after she turned twelve, suggesting his awareness of marriage law. Because Susannah was set to inherit land and money from her father and Hopwood was poor, it was a “profitable arrangement for him.”

Susannah explained to her father that:

after she went to school Hopwood [treated] her with severity, gave difficult tasks and confined her to the house while the other scholars went to play under the pretense that she had not done her tasks[,] after sometime he spoke kindly to her and told her if she would promise to marry him he would [treat] her kindly which to prevent his severe punishment she did promise being then in her twelfth year.

Brown hoped including this information in the petition would demonstrate that Hopwood was able to manipulate Susannah only because she was a child. As her teacher, he had authority over her and he wielded this authority by arbitrarily punishing Susannah until she “promised to marry him.” But this authority came from a teacher-student or adult-child relationship; he kept her from playing with the other children and required her to do unnecessary schoolwork—things he could not have done with an adult or mature individual.

A few months later, Hopwood raped Susannah when her parents were out of town and then forced the girl to marry him by threatening to expose her. Brown testified that:

after having perpetuated the crime [Hopwood] informed her if it ever came to the knowledge of her parents they would treat her with cruelty and contempt and make her a waiting ma[i]d for her sister and if she did not marry him he would publish her to the world and that she would be

187 Frederick County, Virginia, Legislative Petitions, Divorce Petitions, David Brown, 29 May 1784.
188 Holly Brewer discusses this case at length in By Birth or Consent, however, Brewer focuses on the fact that Susannah was unable to testify because of her age while at the same time her marriage was upheld because she was legally old enough to marry. In other words, Brewer uses Susannah’s case as an example of a transitional moment in the court systems in which legal definitions of childhood were still being worked out. See Brewer, 150-155.
189 Fredrick County Divorce Petitions, David Brown, 29 May 1784.
Brown intentionally included this evidence in the petition to demonstrate Hopwood clearly planned to manipulate Susannah and, again, depended on her immaturity as a child. His threats, that her parents would shun her, that she would be forced to be a "maid for her sister," that the devil "would get her," were ones only perhaps a child or a very vulnerable person would believe. Thus, Hopwood's rape of Susannah was a calculated one. Rather than attempt to silence Susannah, as most rapists would, Hopwood threatened to expose her, which suggests that marriage--not sex with Susannah--was Hopwood's end goal. This act of violence, then, which came after months of emotionally abusing the girl, was the catalyst meant to force her consent to the marriage.

Ultimately Brown lost his case, ironically, because Susannah was deemed too young to testify on her own behalf; as a result, Hopwood could never be convicted of the rape. As Holly Brewer argued in discussing this case, the fact that Susannah was caught between being legally old enough to marry yet deemed too young to be a reliable witness does demonstrate a transitional moment in the Virginia court system in which justices were legally defining capacity in relation to age. However, by focusing on Brown's testimony and his repeated use of Susannah's chronological age as well as examples of Susannah's conceptual age or inability to reason and therefore consent, it becomes clear that he attempted to first establish that Susannah was

190 Fredrick County Divorce Petitions, David Brown, 29 May 1784.
191 See Brewer, 150-151.
manipulated into the marriage and then second, that she was too young to marry at all. This is in turn one example of how parents attempted to use both social perceptions of age along with new legal definitions of consent and dependence to challenge the validity of their children’s marriages.

Job Stanbery attempted a similar approach in his 1839 petition for the divorce of his twenty-year-old daughter, Virginia, from her “remorseless villain” of a husband William A.R. Crawford. When Virginia was sixteen years old, she traveled to “New Orleans under the protection of her aunt and several other relatives and friends” where she met William.\footnote{Ohio County, Virginia Divorce Petition, Job Stanbery, 5 December 1839.} According to Stanbery, William “was apparently a gentleman in all the requisites of such a character.” William also had “respectable connections and reputed wealth,” which led Stanbery to believe he was a suitable marriage prospect for his daughter. Consequently, he consented to the union. Within two years of the marriage, however, Stanbery learned of William’s fraudulent behavior all over the South and quickly moved to secure a divorce for Virginia before the marriage might further damage her reputation and standing in society.

Stanbery concluded his petition by stating that it was “the most lamentable situation” and that Virginia was “the innocent victim to the treachery of a remorseless villain.” He pleaded for the court to dissolve the marriage as Virginia had already suffered too much with “the whole prospect of life [now] blackened and overcast in the very spring time of youth.” He continued that she had been “deceived and misled by craft and scheming that successfully played upon men of mature years versed and of privilege in the ways of the world, she gave her
trust her confidence and love [at] the tender age of seventeen years.” He explained that it was the fault of her “guardians and protectors” for being deceived by William, not the “innocent” “child” that was Virginia. “The prayer of your memorialist,” he concluded, “is that of a father for the release of a cherished child from bonds that have caused her ruin yet left her pure and innocent.”

By repeatedly referencing Virginia’s “guardians” and “protectors,” Stanbery was setting Virginia up as a child, someone who needed protection from adults, and because she was under the age of twenty-one, this was technically true at the time. However, he also used this reality to distance Virginia from the responsibility of the marriage—she had not really made the decision for herself, her father had. Yet once Virginia was married she was a legal adult and under the control of her husband. By filing the divorce petition on her behalf, Stanbery was signaling to the court that although Virginia was now twenty, he still considered himself her guardian and she his child in need of protection. More interesting, though, is that family records place Virginia’s birth in 1817, which would mean she was twenty-two at the time of the divorce petition. Yet, Stanbery specifically states that Virginia was married in 1836 “at the tender age of seventeen,” meaning that she was only twenty at the time of the divorce petition. Stanbery may have intentionally misrepresented Virginia’s age in order to make her legally a minor based on her chronological age in hopes that it would encourage the court to grant her a divorce.

Stanbery attempted to paint Virginia as an innocent child, too young to know what she had gotten herself into and, in turn, too young to really have been

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193 Ohio County Virginia Divorce Petition, Job Stanbery, 5 December 1839.
married; his tactics, however, were unsuccessful. Although the court agreed that it was unfortunate that Virginia’s husband turned out to be a criminal (which landed him in jail for five years), she chose to marry him and had to live with her decision. Though Virginia may have legally been a minor at the time of the marriage, she had received parental permission—a fact that could not be overlooked. Clearly Stanbery thought Virginia was old enough to marry when he first consented, however, once he realized who he let her marry, his attempt to misrepresent her age and maturity to the court reveals how parents might see age as a tactic when trying to secure an advantageous outcome.

When analyzing Brown’s and Stanbery’s divorce petitions side by side, we see two examples of parents attempting to negotiate legal perceptions of age and marriageability after the fact. Although Susannah’s and Virginia’s reasons for marriage and subsequent divorce petitions were completely different, the fact that their fathers filed for them was meant to send a message to the courts that they were dependent children, not adults, despite the fact they were now wives. This is especially significant when taking into consideration that Catherine Snyder filed her own divorce petition despite being in a somewhat similar situation as Virginia in that she married at a legal age and with her parents’ consent. Both Brown and Stanbery repeatedly referenced chronological and developmental age as a way to limit their daughters’ perceived abilities of consent and culpability in the marriages. Susannah was clearly manipulated in a way only a child could be, while Virginia simply followed the advice of her guardians as a good child would.
Susannah’s and Virginia’s divorce petitions are significant because they provide evidence of parents attempting to intervene on their children’s behalf. On the other end of the spectrum were cases in which parents or guardians tried to dissolve youthful marriages and reassert control over their wayward, minor children. One final court case heard in 1844 in Pennsylvania demonstrates how parents attempted to utilize legal definitions of consent and age to challenge their children’s marriages after the fact. It also provides another example of how young people used marriage to claim their independence as well as how legal definitions of consent and capability were not as rigidly enforced as previously assumed. In 1843, legal minor Juliann Bertron married Richard Welch, a man she had known for only “three or four days,” without her father’s consent. Once Juliann’s father found out, he quickly brought a suit against the justice of the peace who performed the marriage, Washington Stansbury. In his plea, Moses Bertron argued that Stansbury “maliciously, illegally, and contrary to... The Act preventing clandestine marriages... marr[jied his] daughter (Juliann Bertron), under the age of 21 years, to one Richard J. Welch, without [his] consent being previously obtained.” Bertron insisted that, “By reason of which malicious and

194 Stansbury v Bertron is discussed by Nicholas Syrett in his essay, “Statutory Marriage Ages and the Gendered Construction of Adulthood in the Nineteenth Century” in Age in America. Syrett uses the cases to argue that lawmakers’ decisions to lower the age of consent for women unintentionally raised the rights of husbands over the rights of fathers. See Syrett, Age in America, 109-111.

195 Stansbury v Bertron, 7 Watts & Serg. 362 (1844). The hastiness of Juliann’s marriage suggests she might have sought out the marriage as a way of claiming her independence and escaping her father’s drunken neglect, demonstrating one way that young people used marriage to claim adult status earlier than the law intended.

196 The ability to be sued by parents or guardians of young people under age is exactly one of the reasons why Reverend Collin was so cautious in deciding who he would marry.
illegal conduct… [he had] sustained material injury and damage." Once Juliann married, her father no longer legally controlled her. By highlighting the fact that she was married without his consent and that she was under the age of 21, Bertron attempted to use the legal definitions of age and consent to dissolve the marriage and reclaim what he had lost: the right to his daughter’s labor.

Bertron lost the case because of Juliann’s testimony, in which she described Bertron as a “drunk” who “frequently turned her out of doors with her mother,” forcing the two to regularly “sleep in the stable.” Additionally, Bertron had on more than one occasion, “told [Juliann] to go about her business, and do for herself.” The court determined that “a father who turns his daughter out of his house… thereby relinquishes his paternal rights in relation to her person, absolves her from filial allegiance, and deprives himself of a right of action under the statute against marrying minors without consent of their parents.”

The court’s verdict demonstrated a startling adjustability in legal definitions of consent and age but also a consistency in upholding marriages that had already taken place, regardless of their legality. They acknowledged that Juliann was under the legal age of consent, however, due to her circumstances. Because her father was inadequate as a guardian, they determined that she was independent enough to consent to a marriage.

Juliann’s court case represents how circumstantial legal definitions of age and consent could actually be as the court determined it was better to interpret the ability to consent, and legally act as an adult, on a situational basis than to

197 Stansbury v Bertron.
198 Ibid.
199 Ibid.
base consent strictly on chronological age. Juliann’s status as a neglected minor who was forced to be independent was more important than the fact that she was below the legal age of consent. This willingness to overlook chronological definitions of consent by the courts might suggest why so many young couples attempted to marry in the Gloria Dei church without parental approval. If courts occasionally adapted their interpretation of legal definitions of consent and marriage, perhaps church officials would as well.

Just as parents negotiated the maturity, culpability, and capability of their children in court cases as discussed above, young people wrote frequently about their perceptions of chronological age in their letters about courtship and marriage. Their words, just as much as their parents’ actions, reveal that determining the appropriate age at marriage was a complicated, personal decision. Regardless of the individual’s age, marriage represented the end of childhood and youth, the formal and permanent transition into one’s adulthood. And young people were intensely aware of this reality, causing some to delay marriage as long as possible to extend their stay in adolescence while others rushed to the altar to gain legal adulthood despite their youthful chronological ages. Clearly, the age at which one married was a personal choice, one which weighed the priority to get married or be legally tied to a particular individual against perceptions of life stage, maturity, and the opportunity to gain access to wealth or status.

200 Chapter five explores more fully the relationship between age and legal definitions of maturity, culpability, and capability within the nineteenth century court system.
201 Anya Jabour argues in Scarlett’s Sisters that “most young southern women seem to have done their utmost to prolong their single years and to delay the inevitable outcome of marriage.” Jabour, 116.
As the first chapter showed, young people were often hyper-aware of age, both their own and others’. Many young women and men referenced their own age around sixteen and seventeen in their writings, the age in which they began to seriously engage in courtship and consider marriage. At the same time, the older a person who remained unmarried was, the more unsolicited advice they received regarding the subject. “You are growing older every day,” William Ball warned his twenty-one-year-old brother Isaac, “therefore get married as soon as You can.” Sixty-four-year-old Anne Lewis Hardeman offered similar advice and urged her niece Adelaide: “get married before you get old.” “Take my warning,” she continued, “here I am left without any resource-- & feel that I am a dreg to everybody.” Anne was perpetually single, having missed her chance to marry in her twenties. She knew that this reality resulted in her life-long dependent status upon her family, which she regretted. Anne feared the same would happen to Adelaide if she did not marry soon.

Advanced age not only caused one to potentially “miss out” on marriage all across the country, it also apparently made those who did marry at an older age self-conscious. For example, in 1812, Mary Pearson lamented to her future husband that they were marrying on the “wrong side of 30.” Alta Californian Abel Stearns, who took a bride twenty-nine years his junior requested that their marriage banns not be published because he “wish[ed] to avoid the ridicule

202 See a fuller discussion of young people reflecting on the significance of their own ages in Chapter one.
203 William Ball to Isaac Ball, 24 November 1806, Ball Family Papers.
204 Anne Lewis Hardeman to Adelaide Stuart, 21 November 1867, John Bull Smith Dimitry Papers, 1848-1922, 1943, Duke.
which might arise among the idle young because of the disparity in years, she being 14 years old and I being 40.” Stearns was actually forty-three at the time of the marriage, which means he worked to not only obscure the age disparity in his marriage from the public, but also the truth of his own age. This was Stearns’ first marriage and clearly he was insecure about his own age, but whether it was because of his bride’s youthfulness or because he was an “old” groom is unclear. Either way, Mary and Abel’s writings suggest that there was a stigma associated with advanced age and one’s first marriage. More importantly, this awareness seemed to transcend regional cultures and cause real anxiety for some individuals.

Part of this anxiety over age and marriage was likely inspired by prescriptive advice literature targeted at young people. Harvey Newcomb’s A Young Lady’s Guide to the Harmonious Development of Christian Character, for example, advised young women that they should look for a husband “nearly of

206 Abel Stearns to Narcisco Duran, 29 April 1841 quoted in Syrett, American Child Bride, 43.

Another example can be seen in a letter from Ralph Izard to his brother Henry Izard regarding the marriage of their sixteen-year-old sister Georgina to forty-year-old Joseph Allen Smith, “there will be some laugh at a marriage so disparate in age.” Ralph Izard to Henry Izard, 7 March 1809, The Ralph Izard Papers, South Carolinian Library.

207 Abel was not alone in obscuring his age in hopes it would extend his access to ideal marriage prospects a bit longer. For example, on December 15th, 1835, an unknown diarist exclaimed “Oh Birth day! Oh dear how they do throng upon one another... I won't say how old for fear this document should witness against me." Unknown, 15 December 1835 in An Evening When Alone: Four Journals of Single Women in the South,1827-1867, ed. Michael O'Brien (Charlottesville: University of Virginia Press, 1993), 125. Although the diarist's exact identity is unknown, her life is well documented. She was most likely in her late twenties or early thirties and worked as a governess at Selma Plantation. Through her comments about interactions with young men and potential courtships, it is clear she was actively looking for a husband and that age factored in to her mind regarding her own marriageability. For more information on how we know about the Selma Plantation diarist's life despite not knowing her identity, see O'Brien, An Evening When Alone, 17-20.

208 As Syrett argues in his discussion of Stearns, “it did not appear that [his fiancé’s] youthfulness was the issue” as she was over the age of eligibility (eleven) for marriage according to the Catholic Church and marriages between young Mexican women and older Euro-American men was fairly common to the region. Syrett, American Child Bride, 43.
[their] own age.” If her husband were too young, especially younger than herself, she would be “tempted to look upon him as an inferior.” Similarly, according to Newcomb, a marriage between a young woman and an elderly husband was “improper” and “contravene[ed] the order of nature.” “The idea of marrying a man advanced in years,” he wrote, “[sh]ould be sufficiently revolting to the feelings of a young female to deter her from it.” Specifically, because if her husband were too old, she would find herself having to act as “a daughter and nurse” rather than a wife.” Newcomb’s advice, then, suggests that the age of one’s spouse was like porridge; it needed to be just right. Furthermore, as this advice literature instructed young people on what age their spouses should be, it sent a message that their own age at marriage mattered, too, as others were using it to gauge their suitability as a partner.

Timothy Titcomb’s *Titcomb’s Letters to Young People, Single and Married* differed from Newcomb’s advice in that he was more concerned with individuals marrying too young. Titcomb stressed the importance of self-awareness, or “knowing oneself” before selecting a spouse. He provided chronological ages as rough markers of when a young man or woman would most likely achieve the level of maturity necessary to ensure a successful marriage, interestingly, both above the age of legal consent. He advised young women that below the age of twenty she should “have nothing to do with beaux, nothing to do with thoughts of and calculations for marriage, nothing to do but to become, in the noblest way, a

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210 Newcomb, 301-302.
211 Newcomb, 302.
woman.” Young men needed to wait even longer as “before a man is twenty-five years old he does not know what he wants himself.” Without the level of maturity Titcomb prescribed, young people might marry for the wrong reasons and find themselves trapped in an unhappy marriage. This was particularly true for men who, Titcomb asserted, continued to “grow and mature” in ways after marriage that women did not due to a wife’s preoccupation with “family cares.” “In ten years from the date of his marriage,” Titcomb explained, a young man “becomes, in reality, a new man. Now, if he was foolish as to marry a woman because she had a pretty form and face, or sweet eyes, or an amiable disposition, or a pleasant temper, or wealth, he will find that he has passed entirely by his wife, and that she is really no more of a companion for him than a child would be.”

Anxiety over one’s advancing age and decreased marriageability was not unfounded as young people did regularly express a cultural bias against older men and women. For example, in 1857, Susan McDowall expressed disgust that an “old bachelor of 36” would visit herself, “a girl of sixteen” while twenty-nine-year-old Mary Starnes was similarly offended when an “old widower 60 years old” attempted to court her. But young people did not only write about their own experiences of being courted by “old” men, they also commented on others’ experiences. The letters of Laura Henrietta Wirt, the out-spoken and

212 Timothy Titcomb, Titcomb’s Letters to Young People, Single and Married (New York: C. Scribner’s Sons, 1859), 99.
213 Titcomb, 28.
215 Ibid.
cosmopolitan young woman active in the elite social circles of early-nineteenth-century Washington D.C. discussed in chapter one, are filled with line after line about her unique perspective on age, courtship, and marriageability. Laura’s letters offer an opportunity for a small scale, intensive study of how one young woman interpreted and internalized the significance of age at marriage.

In an 1823 letter to her close friend Louisa Cabell, Laura discussed Catherine Bacoamin, an individual who had begun to age out of youth culture and potentially the marriage market. Laura described Catherine as her “best friend” and then explained that “altho she is twenty-seven, that does not depreciate her the least in my eyes. I should never have supposed she was more than twenty, unless she had told me herself.” A few months later, Laura wrote again about a “Miss Goodwin” who was “a fine, intelligent, accomplished woman.” “She is still young,” Laura explained, “and attractive enough to eclipse all the competitors she would find in Baltimore. She cannot be more than twenty-six or twenty-seven I should think, and does not look older than twenty-three.”

By specifying that Catherine and Miss Goodwin were in their later twenties, Laura suggested that they were growing too old for youthful circles, and, more importantly, the prospect for an advantageous marriage. But in both cases she also explained that these women appeared to be in their early twenties,

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217 Laura Henrietta Wirt was one of the more prolific identifiers of age that I have found, particularly in her letters to Louisa Cabell. Active in the youth culture of early-nineteenth-century Washington DC, Laura began writing at the age of sixteen and wrote regularly about her interactions with fellow youths. In her letters to Louisa, Laura, like many antebellum letter writers, designated unmarried women as “young ladies,” “Miss,” or “Belles” and specified when a gentlemen was a “young man” or “old.”

218 Laura Henrietta Wirt to Louisa E Cabell, 20 August 1823, Laura Henrietta Wirt Randall Papers, Virginia Historical Society.

219 LHW to LEC, 26 February, 1824.
suggesting some flexibility based on perception and appearance in determining youthfulness and, consequently, marriageability.

Laura’s letters also reveal an awareness of the other end of the spectrum, individuals who were perhaps too young to marry. Although it was generally expected that most people would officially enter youth culture and could entertain the prospect of marriage around the age of eighteen, this did not mean that all were ready for marriage and the status of adulthood that came along with it. For example, in August of 1823, Laura wrote a letter to Louisa from St Petersburg in which she explained that she had the “honor of dancing with the richest man (or rather, Boy, for he is only eighteen).” By specifying that her dance partner should really be considered a “boy” despite his wealth and status, Laura suggested to Louisa that eighteen was too young to be considered an eligible marriage partner. Two months later, Laura wrote more explicitly the ways that age affected marriageability in her discussion of young man named Christopher Greenup. “He is a charming fellow and I love him with all my heart,” she wrote, “but really, if he were four or five years older and established in his profession, I believe I should love him in good earnest.” It is unclear how old Christopher was at the time she wrote about him, but for twenty-year-old Laura, he was too young and not well enough established to be considered an appealing suitor.

Laura expressed a similar judgment about the relationship of chronological age, social belonging, and marriageability when she wrote to Louisa in 1824

220 LHW to LEC, 20 August 1823.
221 LHW to LEC, 26 October 1823.
about Cora Livingston, an eighteen-year-old "belle." Laura explained to Louisa that Cora was well educated, “fashionable,” and her “manners [were] elegant and highly polished.” By identifying Cora’s positive traits, Laura communicated to Louisa that Cora belonged in the same social circles and youth culture as themselves. These same positive attributes that secured Cora a place in youth culture would have also made her an ideal prospective wife for any elite Southern gentlemen. Yet Cora’s maturity was questionable: Cora’s “character,” Laura explained, was “the most simple and naïve possible.” Cora was also “distrustful of herself and look[ed] continually to her mother for support.”

A similar example of linking age and experience in determining marriageability can be seen in 1853 when Alice Winston Cabell gossiped to her cousin about an acquaintance. “It was reported that Nannie Read was to be married soon,” she wrote, “but I have heard nothing of it lately, she is very young and has been very little into company as yet so I hardly expect it so.”

Although Cora was eighteen, old enough to participate in “society” and legally be married, Laura’s comments (and Alice’s) demonstrate that young people believed that chronological age often indicated one’s maturity and in turn their marriageability. Laura reiterated this idea about the relationship between maturity and the progression of chronological age in July of 1820 and again in an undated letter. A young woman named “E[liza].C.” and Louisa’s “cousin Ed” were engaged to be married but broke off the courtship rather quickly. “I cannot blame

222 LHW to LEC, 3 June 1824.
223 LHW to LEC, 3 June 1824.
224 Ibid.
225 Alice Winston Cabell to Cousin, 5 January 1853, Early Family Papers, Virginia Historical Society.
Eliza,” Laura explained, “I believe she was too young and inexperienced to know her own feelings.” Laura’s description of Eliza as “too young” and “inexperienced” were meant to justify the “young girl’s” inability to go through with a marriage. Expressing a similar sentiment in an undated letter, Laura wrote: “Two years... make a great difference in the maturity of a young girl's judgement [sic].” Clearly Laura had a sophisticated sense of age consciousness that informed her opinions on the appropriateness of marriage for certain individuals.

Finally, Laura, and young people like her, often expressed distaste for large differences in age between spouses, indicating that Abel Stearns was right to worry that “idle young” might gossip about the age difference between himself and his bride. Sometimes letters writers were specific and listed the age difference of couples while other times they were vague and referenced the difference of life stage between spouses. For example, in 1823, Laura wrote about “Ct. Bioldingen” who “brought back a wife who is at least twenty years younger than himself, if not thirty. Prodigious!” she exclaimed. She also wrote about a young woman named “Zeniede” and “that old (forty seven!) husband of...

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226 LHW to LEC, 16 July 1820.
227 LHW to LEC, Undated.
228 There are certainly examples in which letters writers seemed less concerned about marriages with large age disparities. For example, in 1796, Eleanor Parke Custis stated “Uncle Edward Calvert is to be tied the first of March to a very amiable, handsome girl of eighteen.” In the same letter, Nelly informed Elizabeth that her eighteen-year-old sister Eliza married forty-year-old Thomas Law. Eleanor Parke Custis to Elizabeth Bordley in George Washington's Beautiful Nelly: The Letters of Eleanor Parke Custis Lewis to Elizabeth Bordley Gibson, 1794-1851, ed. Patricia Brady (Columbia: University of South Carolina Press, 1991), 25. Nelly also referred to a marriage between a widower with four children who was “38, at least” and a “young Lady of 16.” EPC to EB, 15 January 1823, 131. In none of these mentions did Nelly seem particularly concerned about the age differences of the spouses. Similarly, William Taylor Barry informed his brother about a marriage between thirty-one-year-old “Isham Talbot [and] Peggy Gerrard, a girl about fifteen.” William Taylor Barry to Brother, 17 March 1804, William Taylor Barry Papers, Filson Historical Society.
hers.” Twenty-one-year-old Georgian Maria Bryan wrote to her sister in 1829, describing their twenty-nine year old cousin's wife as “a young childish creature of sixteen.” Twenty-year-old Elizabeth Ruffin, however was more general about her disapproval. In 1827 while on a visit to Saratoga Springs, Elizabeth noted with disgust in her diary that she had interacted with “some of the oddest and most ill-matched couples; young husbands groaning under the galling rein of an old wife... young wives [who attempted to] mak[e] their old husbands look suitable and young.” In each of these letters, writers highlighted age disparities as one way of expressing their criticisms of the marriages.

The increased awareness of marriage consent statutes as well as how these laws defined capability and maturity by age likely prompted the negative attention and disapproval of large age disparities we see in advice literature and personal papers. Yet young people still married spouses much older than themselves, usually because of the opportunities that marriage provided. As mentioned at the start of the chapter, marriage brought with it new responsibilities in life, especially a transition in one's legal status— from child to adult. This caused some youth to use marriage as a vehicle to early adulthood. *Stansbury v. Bertron*, discussed earlier, was one clear example of a young person seeking out marriage to escape filial dependence. But marriage was also viewed by both parents and young people as an achievement. Finding the right spouse could have significant consequences for not just the person getting

229 LHW to LEC, 20 August 1823.
231 Elizabeth Ruffin Cocke Diary, 14 August 1827 in *An Evening When Alone*, 84.
married but their entire family as well. Consequently, a spouse’s age, although an important factor, was only one among many that individuals had to consider when choosing a husband or wife.

Many young women, and a few young men, articulated their understanding of how marriage would transform their lives. For example, Eleanor Parke Custis’s discussion of her own marriage reiterated this theme of a reorientation of identity from “young person” to “adult.” Nelly highlighted the identities that would come from her marriage, she would transform into a “wife” and “mistress” of her own home. “Cupid... took me by surprise” she explained, ... I had made the sage and prudent resolve of passing through life, as a prim starched Spinster [when Cupid] called in Lawrence Lewis to his aid.” Nelly explained that she resisted the romance for sometime before she “was obliged to submit & bind [herself] to become the old fashioned thing called a Wife.” She went on to add “you may expect a letter from Mrs Lawrence Lewis soon” and “I indulge the pleasing hope that I shall one day... have the happiness of seeing my Dear Betsy in a House of which I shall be the mistress.”

Other youths, such as twenty-two-year old Thomas Jefferson Withers and seventeen-year-old Martha E. Foster, wrote more explicitly about the transition they would undergo after marriage, changing from children to adults regardless of chronological age. In 1826, Thomas lamented to a friend that marriage meant that “boyish trifles are to yield to the scenes of manhood.” Two decades later,

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232 EPC to EB, 3 February 1799, 59.
233 EPC to EB, 3 February 1799, 59.
234 Ibid.
235 Thomas Jefferson Withers to James Henry Hammond, 8 June 1826, Hammond Family
Martha wrote in her diary: “I am continually haunted with the idea of being married. To change from a girl to a woman.” She saw this transition as one-directional; once she was married, she would “take a step which [could] never, never be recalled.” Of course a marriage could end in either divorce or widowhood, but their transitions from “child” to “adult” could never be undone. Although legally Martha was still a minor in the state of Alabama, because she was only seventeen, her statement that once married she would become a “woman” demonstrates that marriage status superseded chronological age in determining one’s position as an adult or as a child.

In each of these discussions of marriage the writers expressed a hesitancy of leaving behind childhood, however, many young women sought out marriages as way of escaping their dependent status as a child. Lizzie Scott, the nineteen-year-old young woman who had confided in her diary about her eagerness to marry as a way to escape her parents' household and become a wife discussed in chapter one provides one such example. Lizzie knew that in order for herself to be taken seriously as an adult, her newly formed family of husband and wife would need to be financially independent. Consequently, Lizzie

Papers, South Carolinian Library.
236 Martha Foster, 1847 in Our Common Affairs, 107.
237 Quote: Ibid. Jane Charlton's letters to Sarah Watts also illustrate this perception of marriage as transitional to one's identity. One of Jane and Sarah's friends, Eliza Wright married Thomas Mayo in July of 1808. Eliza had been a fellow student at the LeRoy Anderson Female Academy up until her marriage. “I should like of all things to see Eliza Mayo since she has become a matron,” Jane wrote. Jane regularly referred to her unmarried friends as “girls,” by identifying Eliza as now a “matron” after her marriage she was acknowledging a change in Eliza's status as now an adult. JCC to SCW 19 March 1809.
238 The main motivation behind wanting to leave behind her status as a child was to leave behind her relationship with her parents. Lizzie wrote often about the times in which her parents verbally abused her and threatened to physically abuse her. She saw her parents’ marriage as an unhealthy one, with her father continually cheating on her mother and her mother taking her anger out on Lizzie and her siblings. For more information on Lizzie Scott, see Anya Jabour, Scarlet’s Sisters
agonized over her future husband’s ability to provide for the couple after marriage, causing her to delay the marriage twice before finally going through with it.\textsuperscript{239} “Will is poor,” she wrote, “Pa and Mother seem to have a great many fears that we will come to them, to be supported by them. But no, I would suffer in penury and want all my life before I implore their aid.”\textsuperscript{240} She reiterated this fear again on April 14\textsuperscript{th}, 1852, confessing: “I have a thousand misgivings whether I should marry or not. Will is a new beginner in the Law and may not get practice and I must have something to live on... I will not be dependent on my parents. Never! Never!”\textsuperscript{241}

Sarah Starnes offers an additional example of this strategy. In 1845, Mary informed her friend that her older sister Sarah was “tempted to accept” an offer of marriage to a widower with children because “she [was] tired of a life of dependence” and wanted to “get a home of her own.”\textsuperscript{242} (Both Mary and Sarah were orphaned and lived with their older brother William.) When a young woman married, her dependent status shifted from that of her guardian to her husband; to suggest that by marrying, Sarah would no longer be a dependent, Mary was saying that what Sarah wanted was to become an adult with “a home of her own” and no longer be a child. Sarah ultimately turned down the proposal because she

\textsuperscript{239} Lizzie and Will were engaged twice before their final engagement than resulted in marriage. See Lizzie Scott Diary, 20 March 1852 in A Rebel Wife in Texas: The Diary and Letters of Elizabeth Scott Neblet, 1852-1864, ed. Erika L. Murr (Baton Rouge: Louisiana State University Press, 2001), 27.
\textsuperscript{240} Lizzie Scott Diary, 3 April 1852.
\textsuperscript{241} Lizzie Scott Diary, 14 April 1852 and again on 10 May 1852. “I am so proud that my days are nearly at end here... when I am married, I want nothing from [my father]... I'll work my finger nails off before I'll be dependent on him and if Will and I do seppperate[sic], I'll never come back... I'll support myself.” Lizzie Scott Diary, 10 May 1852.
\textsuperscript{242} Mary E Starnes to Sarah J Thompson, 9 October 1845 in Our Common Affairs, 183.
had “concluded six children [was] most too many to begin housekeeping with.”\textsuperscript{243}

The examples of Sarah Starnes and Lizzie Scott demonstrate how young women weighed the opportunity of becoming a wife, and in turn an “adult,” against the status of their potential husbands. In Sarah’s case, the ability to become a wife and an adult could not justify becoming a stepmother to six children; however, in Lizzie’s case, marriage, even with the prospect of poverty, was more attractive than remaining a dependent in her parents’ household. Lizzie became so motivated to leave her parent’s household that she began to brainstorm ways she might contribute so that she could ensure the marriage’s financial success, listing things she could sell as well as where she might teach school to ensure additional income.\textsuperscript{244} Lizzie was aware of the seriousness in marrying Will and by thinking through back up plans if Will were not able to provide for their family, she was being thorough in her decision making. Lizzie’s back and forth during the engagement demonstrates that youth understood the consequences of their actions in moving forward with a marriage, especially one without parental consent.

Widowerhood was another status that was often discussed in tandem with age. Some young women saw the advantage of marrying a widower with wealth, regardless of age difference, because it meant they could become a wife and an adult. In 1815, Martha Brandon Osgood Genet articulated this sentiment to her nineteen-year-old sister, Susan Osgood: "My love to aunty W + tell her I do not join with her in advising the girls not to get married, for I advise them just the

\textsuperscript{243} Ibid.
\textsuperscript{244} Lizzie Scott Diary, 3, 9, and 15 May 1852.
contrary—to get married as soon as possible, even if it is to a widower with five children. Martha had followed her own advice, marrying a widower twenty-four years older than herself. Between Martha’s words and actions, it is clear that she was willing to accept her husband’s older age and status as a widower because obtaining the status of wife was of first priority to her, especially given that she was nearing thirty.

Mary Baker’s 1859 letter to her friend Mary E. Compton further illustrates the benefits of marrying a widower and highlights the negotiation of statuses, including age, in determining one’s marriageability. “I have picked out such a nice beaux for you when you visit me, he is a widower with four little boys,” Mary Baker wrote, “but do not think from this he is very old for he is only thirty four or five.” According to Mary Baker, he was “very handsome... he has a beautiful residence ten miles from St Louis and is considered well off.” She continued, “excuse me for recommending a widow to you but widowers... take better for they have wealth.” A similar listing of statuses can be seen in Anne Addison Carr Conrad’s letter to her sister-in-law in 1841, relaying news of a marriage between Roberta E Young and “Genl. [Albert Gallatin] Brown.” Conrad described the twenty-eight-year old Brown as a “member of Congress from Mississippi, [a] young widower without children, handsome, rich, and clever.”

Both Baker and Conrad’s letters highlight the significance of age and

245 Martha Brandon Osgood Genet to Susan K Osgood, 29 January 1815, Field-Osgood Family Papers, 1702-1938, Library of Congress.
246 Martha Brandon Osgood Genet married her husband, a widower and diplomat Edmond Charles Genet. Martha was 27 when she married, Edmond was 51.
247 Mary Baker to Mary E. Compton, 21 April 1859, The Compton Family Papers.
248 Ibid.
249 Anne Addison Carr Conrad to Elizabeth W. Powell Conrad, 7 January 1841 in Our Family Affairs, 60.
status in designating someone as an appropriate suitor. Furthermore, both widowers’ numerous statuses show the nuanced judgments young people made in determining marriageability. Mary Baker, for example, began her introduction of the widower by indicating his single status, his status as a father, and then his chronological age. Next, she commented on his appearance, his wealth, and then lastly, reiterated his wealth. The significance of the ordering of his statuses tells us about what Mary Baker, and perhaps young women like her, prioritized in looking for a husband. Age was clearly important to her, and presumably Mary Compton, since she knew to specify that despite his status of a widower and a father of four, he was not “very old” as one might assume.

For Mary Baker and Mary Compton, mid-thirties evidently was an appropriate age to still socialize and possibly court young women active in youth culture even though for young women, such as Susan McDowall discussed earlier, it was much too old. Mary Starnes, repulsed by the “old widower,” went on to marry a different widower with several children, one only two years older then herself, further demonstrating the negotiation that went on over statuses and age in determining marriageability. Women did not always find the status of widower and father appealing in a prospective mate; however, young women could overlook these statuses so long as the prospective suitor was still relatively “young” and wealthy.

Although less common, ambitious young men also strategically pursued marriages with widowed women. New Orleanian teenager Charley Bradbury received a scathing letter from his older brother Cornelius in 1836 when he heard
news of Charley’s engagement to “a widow—with 2 Children,” Mary Anne Taylor Hamilton.\textsuperscript{250} Cornelius disapproved of Charley’s age and motivation for the marriage, writing angrily, “I am really astonished, not however at your folly & madness, but that a woman… sanctioned any advances from You, (a lad in your teens).”\textsuperscript{251} Cornelius continued:

“A widow too, said to be rich, true, but what signifies that to you, I know that with you, that is the moving string, the ground attraction. What signifies her fortune to you, do you suppose that her money is to be at your control? No Sir if she has any, she will understand your motive & your rations in the article you will find very soon meted out to you. Suppose she dies, where is her fortune? Not at your Controul I guarantee—and where is our gentleman then? A Widower—a poor Gentleman—a poor Widower—out of business, out of funds—out of employment—out of habits of business & out upon the World... Marry and your fate is seal’d. You never rise in the World if at this time & under the circumstances. There is time for all things. Think of this.”\textsuperscript{252}

To be clear, Cornelius was not concerned with Charley’s strategy of using marriage as a means of benefiting himself financially. Rather, he thought that Charley was too young and inexperienced to do it well. Cornelius delivered a final insult to Charley via his wife, Sarah, “she had not thought you among all the Bradburys were one who would be willing to place your dependence for daily support upon a woman.”\textsuperscript{253} This statement gets at the heart of Cornelius’s problem with the marriage. Because Charley had yet to establish himself financially as an independent man, he would be dependent upon his wife's money to do so, undermining his status within the community as well as his

\textsuperscript{251} CSB to CWB, New Orleans, 15 May 1836, in Madeline, 17.  
\textsuperscript{252} Ibid.  
\textsuperscript{253} Ibid.
position of authority within the marriage.

For Charley, the marriage was a clearly strategic decision. Consequently, despite Cornelius’ warnings, Charley went through with the marriage on February 12th, 1837. As his brother guessed, love was not what drove Charley down the aisle. Circumstantial evidence suggests that Mary Ann was a “chronic invalid” and Charley expected her to die young, or, at the very least, be incapable of making financial decisions with her late husband’s money. Additionally, Charley had a long-term mistress, Madeline Selima Edwards, who wrote regularly to him and “raised the possibility of [Mary Ann’s] early death several times.” In the end, Charley’s strategy worked and he lived out the majority of his life economically secure and free to spend his wife’s money as he pleased.

Single youth were not the only ones to actively negotiate for their beliefs regarding age at marriage; parents also regularly considered chronological age as an important factor in the marriageability of their children. Sometimes parents supported youthful marriages if they were between equally matched youths. Other parents had more fixed expectations of when their children would marry and were unwilling to negotiate. Because perceptions of age and marriageability were deeply personal, parents disagreed regularly over their expectations— with their children, with other parents, and with the courts. Like the court cases mentioned previously, letters written among parents pursuing or rebuffing their children’s marriage prospects demonstrate that parents, like young people, regarded age as only one among many factors to consider when deciding to

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255 Upton, 334.
256 Ibid.
consent to their children’s marriages or not.

Historians have argued that in the Early Republic, young men typically married at increasingly later ages because of the need to advance themselves professionally before starting families. For elite men, wealth made marriage available whenever their parents deemed it appropriate. For example, in 1813 Thomas Massie composed a letter to James Steptoe, the father of his future daughter-in-law Sally, explaining that his son William was not to “marry before he arrived at twenty-one.” However, because Massie “believe[d William] was to be sincerely enamored with [Steptoe's] daughter,” Thomas would “establish” William immediately in order to secure the marriage.\textsuperscript{257} William and Sally married shortly after Thomas Massie’s letter, when William was eighteen and Sally was fourteen.

Thomas Massie's letter demonstrates that despite growing efforts to legally restrict youthful marriages, economic status could still supersede chronological age in determining one’s marriageability and access to marriage.\textsuperscript{258} It also shows that some parents were willing to overlook their own feelings about age and marriage if it meant making an advantageous match for their children. This was the case with the Hughes Family; Amanda M. Hughes wrote to her fifteen-year-old daughter Mary Hughes in 1857 about Mary’s sister Ellen. Ellen was seventeen and had recently married twenty-four-year-old widower and father, Andrew J. Allensworth. “Ellen left yesterday to go housekeeping,” their mother wrote, and although she hoped for Ellen’s “happiness,” she felt “much

\textsuperscript{257} Thomas Massie to James Steptoe, 25 [Unclear Month] 1813, Massie Family Papers, Virginia Historical Society.
\textsuperscript{258} See Keiter for a more thorough discussion of the negotiations of finances in marriage decisions.
anxiety about” Ellen leaving home. “[S]he is so young, so child like,” she explained; yet despite the concern over Ellen’s age and maturity, their mother continued “I think it will be the best for her.”

Like Thomas Massie, Alice Izard wanted her daughter, Georgina, to wait until she turned seventeen before marrying forty-year-old Joseph Allen Smith but ultimately she agreed to an earlier marriage because of the opportunity she perceived it to be. Alice first reported the engagement on March 5th, 1809 to her son, Ralph. “I have given my consent to their union,” she wrote, “the difference of age is great, & as I told him yesterday, he must be a father, as well as a Husband to her. His answer was yes, he would study to be everything that could conduce to her happiness.” The fact that Alice acknowledged both the age disparity and the difference in levels of maturity indicated by the need for Joseph to act as a parent to Georgina, demonstrates that parents also viewed age as one of many statuses to consider in marriage prospects. The reason Alice agreed to a speedier marriage likely had to do with an accident, a nasty fall from a horse that crippled Georgina’s health. Alice explained to Ralph that Joseph “was devotedly attached” to Georgina and given the uncertainty of Georgina’s future health (and in turn marriage prospects), Alice may have been motivated speed up the wedding up to capitalize on this devotion before Joseph reconsidered.

Other parents were less flexible in their opinions about age and marriage, revealing highly individual interpretations of appropriate age for marriage. Lorenzo Lewis, for example, was set to inherit his family’s estate when he turned

259 Amanda M Hughes to Mary Hughes, 12 January 1858 in Our Common Affairs, 77.
260 Mother Alice to Son Ralph, 5 March 1809 in Ralph Izard Papers, South Carolinian Library.
twenty-three.²⁶¹ Lorenzo would legally become an adult once he turned twenty-one, however, the Lewises believed the extra two years would allow Lorenzo to finish his education and became mature enough to run the estate. According to his mother, Eleanor Parke Custis Lewis, by the age of twenty Lorenzo was “so susceptible... [to] continually falling in love with someone” that his parents were forced to intervene.²⁶² She explained to a close family friend: “at 17 1/2 he was actually engaged to be married.” Even more concerning was that “the damsel [was] 3 years older & resolved to marry him.” Instead of letting him make the mistake of marrying at too young an age, Nelly explained that they “sent him to N[ew] E[ngland]-- & when he reflected how painful it was to us, he wrote to her & they released each other.”²⁶³ Although the Lewises were in a position to settle their son before he reached twenty-three, they chose not to. His mother implied it was because Lorenzo was too young in their eyes, but it may also have been because they disagreed with the match. Regardless, they expressed a need for Lorenzo to become more mature before he married, which would take time, experience, and a full education.

Because most viewed marriage as their “destiny,” young people and their parents had to make decisions about what statuses were most important to them in finding a spouse.²⁶⁴ Age was always a central concern in determining marriageability, but other factors including personal maturity, wealth or the ability to provide, and the status of widow or widower and parent were equally

²⁶¹ Eleanor Parke Custis Lewis to Elizabeth Bordley Gibson, 7 May 1823, 135-136.
²⁶² EPCL to EBG, 15 April 1824, 147.
²⁶³ Ibid.
²⁶⁴ Jabour, Scarlett's Sisters, 155.
important. By incorporating informal discussions of age and marriageability that took place on the communal level into wider understandings of legal definitions of consent and culpability, it becomes clear that Early Republican perceptions of appropriate age at marriage were constantly negotiated and determined on an individual and familial basis.

Consistent references to chronological or conceptual age in relation to the rejection, formation, or dissolution of a marriage show that legal definitions of consent did not always align with social perceptions of one’s marriageability. Legally, young people could not consent to marriages before the age of eighteen or twenty-one, and historians have attributed these changes in legal definitions of consent to the rise in marriage age over the early nineteenth century. Age at marriage could be problematic because a person was too young, but it could be equally problematic because a person was too old. Age in relation to marriageability could also be overlooked when a variety of other statuses including class, family relationships, economic resources, religion, age disparities, etc., were factored into one’s circumstances. This was not only true within communities, as seen in letters and diaries with passages about marriage and courtship, but also on the state and institutional levels, as seen in the Gloria Dei church records and court cases discussed earlier in the chapter.

Recent studies on marriage and age have established that an important shift occurred after the Revolution in which chronological age became increasingly associated with life stage and capability, both legally and, eventually,
culturally. One final court case illustrates this point most effectively. In 1836, Frances Nixon married Robert Wood without her guardian’s consent. Two years later, Robert sued Frances’ guardian on her behalf, arguing that because they had been “lawfully intermarried,” the guardian was required to “deliver... all the goods, effects, and property, belonging to [Frances]," which he had yet to do.²⁶⁵ Frances’ guardian argued that because “at the time of the intermarriage, the said appellants were minors and still are such," they legally required a guardian to manage their estate. However, according to statute, “the powers and duties of... guardian[s], over the person and estate of the ward shall cease... at the age of 21, or be lawfully married.” Consequently, the court ruled in favor of Frances and Robert; although by definition of law both were still minors, their married status superseded their chronological ages, transforming them both into legal adults deemed capable of managing their own estate.

By looking at institutional and state records as well as informal sources like letters and diaries, it becomes clear that conceptions of age, status, consent, capability, and marriageability were continually negotiated and redefined to serve different circumstances. Whether it was a thirty-year-old man hesitant to marry his twenty-four-year old bride without her parent's consent, a minor who married to escape her drunken father, or a person who was perceived to have aged out of marriage prospects, these examples demonstrate how fluid conceptions of age remained and how unrepresentative legal definitions of consent were of social understandings about marriageability. *Wood and Wife v. Henderson* represents an excellent transitional point as it illustrates how legal definitions of age,

²⁶⁵ *Wood and Wife v Henderson*, 3 Miss. 893 (1838).
dependence, and the need for a guardian intersected with an ability to consent to marriage. If one was deemed capable of consent, then that same person was capable of legal adulthood and no longer needed a guardian; consequently, guardianship arrangements, the subject of the next chapter, could be challenged legally and negotiated socially in the same fashion as marriage.
Chapter Three

“Forget what age and law have entitled me”: Guardians, Wards, and Age

Shortly after her twenty-first birthday, Elizabeth Ruffin lamented to her brother and legal guardian, Edmund Ruffin: “This legal independence—what a mistaken notion is entertained of it: what an undesirable possession it is in my opinion.” In a second, undated letter, she broached the subject again: “if you would just forget what age and law have entitled me and act precisely as my guardian still… I should deem it a peculiar favor.” Elizabeth’s request demonstrates that she—like the young couples who asserted their right to consent to marriage in the accounts of Reverend Collin discussed in the previous chapter—was both aware of and challenged the laws that defined the age of dependence and capability as twenty-one. Furthermore, Elizabeth’s assertion that she felt the age of twenty-one was too young to be independent and without a guardian illustrates the disjunction that could exist between cultural and legal expectations of age and dependency in the Early Republic.

The cultural and legal relationship between guardian and ward in the first half of the nineteenth century has been left largely unexplored by historians.

266 Elizabeth Ruffin to Edmund Ruffin, 18 February 1828, Edmund Ruffin Papers, Southern Historical Collections.
267 Elizabeth Ruffin to Edmund Ruffin, undated letter. The letter had to have occurred sometime shortly after the first letter written on February 18th, 1828 as she was married later that year.
268 Another less explicit example of young women maintaining guardians after the age of twenty-one can be seen in a 1798 letter written by Nelly Custis to her friend Eliza Bordley. Eliza explained that “Miss Portia Lee” who was a distant relative of herself was visiting. Nelly described Portia as “a very fine sensible Woman” and then explained: “she will return to her Guardians next week.” Nelly regularly designated the individuals she spoke of as “young” or “youth,” and the fact she chose to refer to Portia as a “woman” is revealing. It suggests a level of maturity on Portia’s part yet this maturity is contradicted when Nelly specifies that Portia has “Guardians.” According to genealogical records, Portia was twenty-one years old at the time of her visit and she had been orphaned at the age of eighteen. Eleanor Parke Custis to Elizabeth Bordley, 1 July 1798.
Scholars have established the legal parameters of guardianship relationships prior to the Revolution and how these relationships changed to become more uniform (and modern) by the end of the nineteenth century, but little has been written about the period in between.\textsuperscript{269} Although the law of guardianship was becoming more uniform during the second half of the nineteenth century, the requirements and expectations of formal guardians varied significantly from state to state. Much of the variation had to do with the fact that American law was derived from English common law, which was “locally variable in nature.”\textsuperscript{270} Such legal variation allowed for each state (initially colony) to shape their laws to bolster the economic, social, and demographic qualities unique to their location.\textsuperscript{271} But by ignoring the significance of guardianship relationships from both a legal and a cultural perspective, much is lost in understanding how age, dependence, and capability were mutually constructed within the individual circumstances in the Early Republic.\textsuperscript{272}

\textsuperscript{269} For example, Holly Brewer’s work, \textit{By Birth or Consent} has laid an impressive groundwork for understanding how English definitions of guardianship evolved over the course of the seventeenth and eighteenth centuries to inform American law in the Revolutionary era, see Holly Brewer, \textit{By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority} (Chapel Hill: University of North Carolina Press, 2005), specifically Chapter 7 “Emergence of Parental Custody: Children and Consent to Contracts for Land, Goods, and Labor.” Michael Grossberg’s \textit{Governing the Hearth} also includes a section on how American legal enactments regarding guardianship became more uniform and inclusive of mothers as guardians by the end of the nineteenth century, see Michael Grossberg, \textit{Governing the Heart: Law and Family in Nineteenth Century America} (Chapel Hill: University of North Carolina Press, 1985), specifically: Chapter 7 “Custody Rights: Who Gets the Child?”


\textsuperscript{271} Pearson, 33.

\textsuperscript{272} Additionally, when legal and cultural discussions of guardianship-ward expectations are discussed in tandem, it becomes clearer what traits or characteristics caused someone to be considered a “good” or “ideal” guardian and conversely, what made someone a “bad” or “unfit” guardian.
Chronological age linked to perceptions of maturity and life stage operated as a baseline for guardianships; however, as was the case with marriage, other factors and statuses could and often did mitigate age as an absolute boundary. American laws of guardianship, like the English customs that proceeded them, had focused on the protection of personal or real property; Early Republican statutes mirrored those traditions. However, debates surrounding the connection between intellectual capacity and chronological age gave birth to new ideas about childhood. Reformers argued that children needed to be morally guided and protected during this influential stage in life in order to ensure they would become virtuous adults. Although statutes remained concerned with the economic conditions of guardianship, these new cultural concerns of childhood infiltrated the court system and represent the start of the shift toward modern notions of guardian-ward relationships that appear at the end of the nineteenth century.

This chapter begins with a survey of legal treatises and law dictionaries published in the United States at the start of the nineteenth century. American concepts of guardianship in the eighteenth and nineteenth centuries were derived from English legal practices but, as American legal scholars were eager to point out, differed in significant ways. The chapter then shifts to a discussion


274 The English Law of 1660 set into motion an increasingly well-defined understanding of custody and guardianship for children under the age of twenty-one. Prior to 1660, only children who were heirs had guardians, and those guardianships were established with the sole purpose of protecting the transition of land; meaning society was not concerned with the
of court cases to explore how American lawyers actively debated guardianship-ward relationships. More specifically, this chapter looks at cases that appeared in the state Supreme Courts of Delaware, Pennsylvania, Virginia, North Carolina, Washington DC, and Maryland between 1775 and 1860. The vast majority of these cases dealt with financial settlement disagreements between ward and guardian; however, a number of cases considered and discussed the reassignment of guardians, issues of consent, and the culpability of wards. The fact that guardianship cases appeared with relative frequency at the state Supreme Court level demonstrates how seriously guardianship responsibilities were taken.

Guardians and wards sorted out their differences within the court system; however, they also attempted to reason with one another through less public welfare of the child. According to Holly Brewer, the Law of 1660 “marked a pivotal transition in legal norms about guardianship and custody.” The Law established “the father’s right to designate a guardian for all of his children until age twenty-one, extended the institution of guardianship to cover most fatherless children, lengthened the span during which most guardianships lasted, gave fathers more power, and set a more uniform principle of custody.” (Brewer, 250) By the mid-eighteenth-century, the American colonies began following English precedent of guardianships being appointed by fathers and lasting until twenty-one, but children with guardians were mostly still heirs. (Brewer, 254-255) According to Brewer, guardians, unlike parents and masters, had less control of their child wards. Guardians were required to post a bond for the management of the ward’s estate and special orphan courts supervised the physical, financial, and emotional treatment of their wards. Masters had the most control over their wards, like parents they were able to legally “chastise” children for bad behavior. Furthermore, once children reached the age of fourteen, they could leave a parent or guardian and choose new ones, children could not however chose to leave a master until the term of their contract was up. Given that most elite orphans had guardians and most poor orphans had masters, we can see how custody arrangements and the ability of minors to assert their independence were subject to class inequalities. (Brewer, 258-260) For more information on the history of Anglo guardianship practices see Holly Brewer, By Birth or Consent—Chapter 7. Justices of the peace usually bound out orphan children who were not heirs until they reached the age of eighteen or twenty-one; more children were given masters than guardians. For more information on poor orphan children and master relationships see Ruth Wallis Herndon and John E. Murray, Children Bound to Labor: the Pauper Apprentice System in Early America (New York: Cornell University Press, 2009).

275 Based on my total calculations about 2,166 cases exist that mention guardianship in some respect between 1775 and 1860; Delaware had 128, Pennsylvania had 804, Virginia had 351, Washington D.C. had 45, Maryland had 245, and North Carolina had 593.
means. This chapter concludes with a discussion of personal letters and diaries written in the Early Republican period regarding guardianships to see how young people attempted to informally redefine or renegotiate their dependent relationships despite age-based legal restrictions. These relationships were not always positive, and the historical record is full of the sometimes complicated, sometimes unorthodox arrangements that existed between guardians and their wards. As Elizabeth’s request that her brother continue acting as her guardian demonstrates, chronological age, legal status, and personal expectations of dependence were continually negotiated in the early nineteenth century on a case-by-case basis, especially in regards to guardianship-ward relationships.

The work of John Bouvier and Tapping Reeve regarding American guardianship law are two of the earliest examples of legal commentary on the American law of descents and their works reveal much about precedents and deviations from English legal practices. According to Reeve’s 1825 *A Legal Treatise on the Law of Descents in the Several United States of America*, American practices quickly evolved from their aristocratic English antecedents: “having rejected the English law of descents,” Reeve explained, “each state passed laws to regulate the descent of real property for itself; all of them differing greatly from this branch of the common law of England, and each state differing from the others.”

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276 John Bouvier and Tapping Reeve were two of the very first American legal scholars. The “law of descents” determined the legal transmission of property of the deceased based on family relationships.

277 Tapping Reeve, *A Treatise on the Law of Descents in the Several United States of America*
guardianship and the lack of uniformity in legal practices regarding laws of
descents that Bouvier and Reeve explained a similar lack of uniformity in legal
constructions of guardianship-ward relationships in the United States during the
same time period.

The biggest discrepancies between English and American laws of
guardianship were derived from these differences of inheritance practices and
more specifically who was considered an “heir.” For example, according to John
Bouvier’s legal dictionary, *A Law Dictionary Adapted to the Constitution and
Laws of the United States of America*, there were hypothetically five types of
guardian in nineteenth-century America: “guardians by nature; guardians by
nurture; guardians in socage; testamentary guardians; and guardians ad litem.”
Testamentary guardians and guardians ad litem were appointed by the court
system; testamentary guardianships “extended to the person, and real and
personal estate of the child” while guardians ad litem were appointed to defend
“infants… with action[s] brought against [them].”

Guardians in socage, nature, and nurture were concepts derived from
English law, but as Bouvier pointed out, guardianship in socage never took root
in America. Consequently, these types of guardianship became either obsolete,
or their definitions were changed to suit American practices. In English law, the
“guardian in socage is the guardian of the person of the ward, as well as of his
estate,” however, a “guardianship in socage can scarcely exist in any part of the

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278 John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of
the American Union and of the Several States of the American Union*, 2 Volumes, Volume 1,
United States; for it is a necessary qualification, that the person entitled should not be able, by possibility, to inherit the estate.\textsuperscript{279} Bouvier elaborated on this by stating “this species of guardianship has become obsolete, and does not exist in this country; for the guardian must be a relation by blood who cannot possibly inherit, and such a case can rarely exist.”\textsuperscript{280} The initial purpose of this type of guardianship in England was to protect the ward and his inheritance (which could include a royal title) by avoiding a conflict of interest. More plainly put, if the guardian could never inherit the ward’s estate or standing, the guardian would not have an incentive to “disappear” the ward. With no invested interest in what happened to the ward, it was assumed the guardian would do what was in the best interest in the ward’s person and inheritance.

Guardians by nature and nurture were two types of guardianship that “extended only to the person.” In England, “only the heir apparent, and not the other children; not even the daughters, when there [were] no sons” were given guardians by nature.\textsuperscript{281} Conversely, all other “younger children; not the heir” were given a guardian “by nurture.” According to Reeve, guardianship by “nature extends only to the heir. It follows… that in the United States, it must extend to all the children; for they are all heirs. What the eldest son is in England, all the children are here.” Consequently, “there can be no room for… [a guardianship by nurture] in our country; for all children are heirs, and subjects of the guardian by

\textsuperscript{279} Tapping Reeve, \textit{The Law of Baron and Femme; of Parent and Child; of Guardian and Ward; of Master and Servant; and of Powers of the Courts of Chancery; with an Essay on the Terms, Heir, Heirs, and Heirs of the Body} (New Haven: Printed by Oliver Steele, 1816), 313.
\textsuperscript{280} Bouvier, Volume 1, 453.
\textsuperscript{281} Reeve, \textit{The Law of Baron and Femme}, 315.
nature." Bouvier reiterated this idea by explaining that in the United States, guardians “by nurture” had “become obsolete.”

In addition to highlighting differences between types of guardianships in English and American law, Reeve and Bouvier tell us much about the ideal relationship that would exist between guardian and ward in the Early Republican period. More specifically, both authors help clarify for modern readers what made someone fit to be a guardian. According to Bouvier, guardianship was defined as “the power or protective authority given by law, and imposed on an individual who is free and in the enjoyment of his rights, but which his weakness on account of his age, renders him unable to protect himself.” Guardians were “divided into guardians of the person... and guardians of the estate” and they were to “perform the duties imposed upon him by his office.” Guardians were to be “capable,” and therefore an “idiot [could not] be appointed guardian.”

Additionally, guardians were to “stand in the place of the father,” with the relationship between guardian and ward mimicking that of “parent and child.”

282 Ibid.
283 Bouvier, Volume 1, 453.
284 Historians have said little about what made for a good guardian other than that they were traditionally male and appointed by fathers in eighteenth and early nineteenth centuries. See Brewer, By Birth or Consent and Grossberg, Governing the Hearth.
285 Bouvier, Volume 1, 453. Conversely, a ward was defined as “an infant placed by authority of law under the care of a guardian... while under [this] care... the ward [was] under the subjection of his guardian, who stands in loco parentis.” Bouvier, Volume 2, 484. More plainly put, guardians were to protect “infants,” or generally those under the age of twenty-one years, and wards were to defer to their guardians as they would their parents.
286 Bouvier, Volume 1, 452. A guardian of the person was one who had been “lawfully invested with the care of the person of an infant whose father [was] dead,” and a guardian of the estate was one who had been “lawfully invested with the power of taking care and managing the estate of the infant.” Bouvier, Volume 1, 452. One individual could be appointed the guardian of both the person and the estate, whether a ward had two separate guardians (one of the person and one of the estate) or one of both was usually a matter of family preference.
287 Bouvier, Volume 1, 452. According to Bouvier, an “idiot” is defined as “a person who has been without understanding from his nativity, and whom the law presumes never likely to attain any.” Bouvier, Volume 1, 476.
Consequently, guardians could only be appointed to “an infant whose father” had died. Although a guardian should act as a father, he was not “entitled to the ward’s services” nor was he “bound to maintain him out of his own estate” as a father was.\footnote{Bouvier, Volume 1, 452.} Reeve added to this definition by clarifying that guardians could be removed from their position “for any abuse of the ward, as well as for misconduct respecting his estate; also, when any event renders him incompetent to manage the concerns of the ward, as lunacy, gross intemperance, or other profligate immorality, or bankruptcy.”\footnote{Reeve, \textit{The Law of Baron and Femme}, 323. Because guardians were expected to competently manage the inheritance of their wards, the law required the guardian to be solvent in their own affairs. A bankrupt guardian was seen as a conflict of interest, not only because the bankruptcy demonstrated a lack of financial competency but also because their dire financial situation might have swayed them to take advantage of their ward through manipulation or theft.}

Gender factored into early constructions of guardianship law via conceptions of dependence, capability, and chronological age. These gendered biases affected both the guardian and the ward. Due to their sex and marital status, adult women were limited in their ability to act as guardians, even for their own children. For example, according to Reeve, “if there are several [potential guardians], who are next of kin, both males and females, the males are entitled to the guardianship, in preference to the females.”\footnote{Reeve, \textit{The Law of Baron and Femme}, 312-313.} Bouvier added that “when the father dies without leaving a testamentary guardian, at common law, the mother is entitled to be the guardian of the person and estate of the infant until he arrives at fourteen when he is able to choose a guardian.”\footnote{Bouvier, Volume 2, 152.} While both Reeve and Bouvier made clear the gendered bias regarding choice of male over female guardians, the law did not account for the complexities of female guardians' ability to perform their duties effectively. Women’s roles were often viewed through a narrow lens, highlighting the social and legal constraints placed on their actions.
female guardians, neither explained why this bias exists-- most likely because they felt the reasoning was self-evident.\footnote{292}

The reason male guardians were preferred over female guardians was because of the legal identity of coverture women assumed once married. Moreover, culturally women were expected to marry or remarry after they were widowed.\footnote{293} State statutes were more explicit about this point. In Virginia, for example, mothers could obtain guardianship of their children upon the father’s death “so long as she remain[ed] unmarried.”\footnote{294} A like provision existed in the District of Columbia as well.\footnote{295} When a female guardian married, she lost her legal independence and her identity became literally “covered” by that of her husband. To the courts, this dependent identity made a woman an unfit guardian and required a reassignment of guardianship for the ward. Female guardians, especially mothers, could request that their new husbands assume their guardianship roles; however, courts did not always grant these requests.\footnote{296}

\footnote{292}This may be because they expected their readers to already know that women did not have legal rights.
\footnote{293}Although it was a cultural expectation that women would remarry, not all women did; and, in fact, the rate of remarriage was lower for women than for men. See Karin Wulf, \textit{Not All Wives: Women in Colonial Philadelphia} (Philadelphia: University of Pennsylvania Press, 2000).
\footnote{296}As the nineteenth century progressed, some states began offering mothers more opportunity in guardianship decisions and custody arrangements. According to Michael Grossberg, after the American Revolution, fathers continued to be considered the proper legal guardians of their children and that children should be distributed as men saw fit. Even when a mother managed to secure guardianship of her children, most states had laws that placed special restrictions on her authority. Compared to fathers, mothers had fewer claims to their children’s services, less control of their property, and inferior custody rights. Because the law made custody dependent on support, and the general assumption was that widows lacked financial independence, their potential to be considered fit guardians was undermined. It was not until the mid-nineteenth century that judges began to rewrite guardianship laws to not only circumscribe paternal power but also to enhance maternal authority. See Grossberg, \textit{Governing the Hearth}, 242.
Early Republican constructions of gender also influenced the opportunities and expectations of wards. For example, female wards had more opportunity to make life choices at younger ages than their brothers because of their assumed future position as wives.\textsuperscript{297} According to Bouvier, fourteen for boys and twelve for girls were considered to be “the age at which children… ha[d] discretion,” or the “ability to know and distinguish between good and evil, between what is lawful and what is unlawful.”\textsuperscript{298} In addition to “having discretion,” the law saw these ages as linked to puberty. Marriage was associated with the ability to reproduce and because girls entered puberty earlier than boys, it only made sense that they could agree to marriage sooner.\textsuperscript{299} Underlining this gendered distinction regarding age and capability as well as the assumption that females would marry quickly is the fact that Bouvier included in his dictionary a term “anni nubiles” which is defined as “the age a girl becomes by law fit for marriage, which is twelve.”\textsuperscript{300} No such term exists to describe the time in life in which a boy becomes “fit for marriage.”

Once children reached twelve or fourteen, depending on their gender, they could be legally married with a parent’s or guardian’s consent.\textsuperscript{301} However, as

\begin{footnotes}
\footnoteref{297} See Kerber, Republican Motherhood; Anya Jabour, Scarlett’s Sisters.
\footnoteref{298} Bouvier, Volume 1, 329. Reeve states “A male infant cannot elect, until he has arrived at the age of fourteen years; for then, it is said, he arrives at the age of discretion. And, for the same reason, I should suppose a female might elect at the age of twelve years; for then, it is said she has arrived at the age of discretion; and it seems to be a very proper time for her to be under the protection of some discreet person.” Reeve, Law of Baron and Femme, 316-317.
\footnoteref{299} Bouvier made this point clear in his legal dictionary, “Males… at 14 enter the age of puberty… Females… at 12 enter puberty.” Bouvier, Volume 1, 65.
\footnoteref{300} Bouvier, Volume 1, 79.
\footnoteref{301} Although theoretically girls could challenge their guardianships two years before their brothers, as the court case Lee’s Appeal points out, “fourteen was considered the age of legal discretion for males, and twelve for females, but there seems to have been no distinction made between the sexes in respect to the exercise of this act. By the common law, the guardian for either sex continued until the age of fourteen.” Appeal of Lee, 27 Pa. 229 (1856).
\end{footnotes}
discussed in chapter two, the age of majority varied between states.\textsuperscript{302} For example, both North Carolina and Virginia law established that “every orphan, who hath no estate… shall by order of the court… be bound apprentice by the overseers of the poor, until the age of twenty-one years if a boy, or of eighteen years if a girl.”\textsuperscript{303} Interestingly, by allowing young women to legally consent to marriage earlier than boys, lawmakers were empowering themselves as husbands while at the same time limiting themselves as fathers. Essentially, the legal difference was meant to expand and facilitate the opportunity for adult males to gain access to land via marriage rather than provide opportunity to women.\textsuperscript{304}

Still, for women, marriage expanded their opportunities as wards. According to Reeve, “if a female ward marr[ies], the guardian’s power must cease,” especially if the female ward “marrie[s] an adult; for such husband has a

\textsuperscript{302} According to Nicholas L. Syrett, girls were able to give their consent to marriage without their parent’s permission earlier than boys because legislators viewed women’s only purpose as that of wife. By allowing girls to marry younger, they were allowing women to transition into adulthood quicker. Syrett, “Statutory Marriage Ages and the Gendered Construction of Adulthood in the Nineteenth Century” in \textit{Age in America}, 112-113.

\textsuperscript{303} Quote: \textit{Revised Code of the Laws of Virginia Being a Collection of All Such Acts of the General Assembly, of a Public and Permanent Nature, as are Now in Force; with a General Index} (Richmond: Printed by Thomas Ritchie, 1819), 410. Interestingly, Maryland was an anomaly amongst the states because their gendered age gap was initially the largest and because it was updated in 1840. In 1804, Maryland specified that “whenever land shall descend… to a male under the age of 21 years, or to a female under 16” the orphans’ court can appoint a guardian “until the age of 21 years (if male) and until the age of 16 (if female) or marriage.” \textit{A Digest of the Laws of Maryland Being a Complete System (Alphabetically Arranged) of All the Public Acts of Assembly, Now in Force and of General Use. From the First Settlement of the State, to the End of November Session, 1803, Inclusive} (Washington: Printed by J.C. O’Reilly, 1804), 115. By 1840, the law had been updated to state, “the guardianship of all females shall exist and continue until the time when such female shall attain to the age of eighteen years, or to be married.” \textit{The General Public Statutory Law and Local Law of the State of Maryland, from the Year 1692 to 1839 Inclusive: With Annotations Thereunto, and a Copious Index} (Baltimore: Printed by John D. Toy, 1840), 993.

\textsuperscript{304} Syrett, 110.
right to her person, with an uncontrollable right to her property."#305 If a female ward married a minor, her identity still became subsumed under his. However, if a male ward with an estate married, “marriage does not vary his situation. His guardian retains his usual power over his estate; and if he married a female ward, as her property has become his, his guardian’s power extends to that also.”#306 In other words, marriage terminated a female’s need for a guardian, while it had no impact on a male’s guardianship arrangement.#307

Although many state statutes included provisions in their guardianship codes that terminated female guardianships after marriage, court cases that contested such terminations still occurred. In Pennsylvania, in particular, numerous suits arose after the passage of the “Act to Secure the Rights of Married Women” in 1848. The Act’s main goal was to protect married women's property rights and it declared that all “property which may be owned by or belong to any single woman, shall continue to be the property of such woman, as fully after her marriage as before.”#308 More importantly, the law specified that a

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307 State statutes reiterated these gendered expectations regarding marriage and transfer of status. For example, Pennsylvania’s codes stated: “the marriage of a female ward terminates the guardianship, though she still be in her infancy.” *A Digest of the Code and Acts Passed by the Legislature between the 7th Day of April 1830, and the 16th Day of June 1836, Forming with Purdon’s Digest of 1830, a Complete Digest of the Laws of Pennsylvania, to the Present Time* (Philadelphia: Printed by James Kay, 1837), 252. Delaware specified in their 1829, *Laws of the State of Delaware* that “guardianship [would] continue to males, till their age of twenty-one years, and of females till their age of twenty-one years or marriage.” *Laws of the State of Delaware to the Year of Our Lord, One Thousand Eight Hundred and Twenty Nine, Inclusive (rev. ed.),* (Wilmington: Printed by R. Porter and Son, 1829), 422. Similarly, but with defined ages, Washington D.C.’s *Revised Codes* of 1857 proclaimed that guardianships would continue “until the infant, whether male or female, attains the age of twenty-one years; provided, however, that the marriage of any female ward over eighteen years of age, to a person of full age, shall operate as a legal discharge of her guardianship.” *The Revised Code of the District of Columbia…*(1857), 306.
308 Furthermore, any property left to a married woman “during coverture… shall be owned, used and enjoyed by such married woman as her own separate property.” *The General Laws of
married woman had to willfully “consent” to transfer her property to her husband and it had to be proven that “such consent was not the result of coercion on the part of her said husband, but that the same was voluntarily given and of her own free will.”

The law created issues for the Pennsylvania courts regarding female wards’ ability to terminate guardianships upon marriage and to consent to the transfer of their property. An 1849 Pennsylvania Supreme Court decision, Appeal of Albert S. Cummings, provides an excellent example of how courts resolved such conflicts. Albert S. Cummings married his infant wife, Louisa, and argued that as a result of the marriage, “the relation of guardian and ward ha[d]… been dissolved and that he [was] entitled, in virtue of his marital rights, to assume the care and management of his wife’s property.” More importantly, he insisted that “Louisa [was] willing and desirous that he should take charge of her property… as [was] witnessed by her written consent.” The trial court rejected his claim on the grounds that Louisa was a minor and incapable of giving consent to transfer her property despite her change in marital status.

The Pennsylvania Supreme Court affirmed that judgment and it made clear that the statute was meant to keep married women’s property separate from their husband’s: “although the application is stated to be made with the appropriation and consent of his wife… it is very obvious her assent gives no additional validity to the claim, for, being a minor, she is incapable of giving

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309 The General Laws of Pennsylvania…(1849), 1124.
310 Appeal of Albert S. Cummings, 11 Pa. 272 (1849).
Consequently, the state Supreme Court held that the testamentary guardian should retain control of her estate “until she acquires by time a legal capacity to act for herself.” Perhaps most significant about their ruling was their declaration that because of the new Act, there was no longer a “difference between male and female wards” who inherited property and married as minors: both required a guardian to maintain their estates until they reached the age of majority.\textsuperscript{312}

As can be seen in the \textit{Appeal of Albert S. Cummings}, around the mid-nineteenth century, states began to move toward a more uniform expectation of guardianship-ward relationships that disregarded gender. Part of the reasoning for these changes had to do with new republican definitions of family, childhood, and marriage.\textsuperscript{313} Marriages were \textit{meant} to be more egalitarian and children were to be nurtured and sheltered from the outside world until they became adults. Although this was certainly not the case for all (or possibly even most) families, this rhetoric increasingly influenced first, court rulings and eventually, legal statute. Consequently, the rising concern for child welfare encouraged the later legal innovation that equalized guardianship-ward relationships between the genders.

Early Republican state statutes fluctuated on how gender affected guardianship-ward relationships, however, when it came to defining guardianship responsibilities, they adhered rather closely to definitions of guardianship found

\textsuperscript{311} Ibid.
\textsuperscript{312} \textit{Appeal of Albert S. Cummings}.
in legal dictionaries and legal treatises of the time. Virginia, Pennsylvania, Delaware, Washington DC, and Maryland early Republican statutes all defined guardianship responsibilities based on the need to protect the estates of their wards. North Carolina law explicitly defined guardianship in relation to the wellbeing of the ward. As early as 1773, North Carolina statutes allowed the courts to appoint a new guardian when original guardians were found to “abuse the Trust reposed in [them], by misusing the Child or Children so committed to [their] Tuition… in being about, or intending to marry such child or children in disparagement, neglecting the care of their Education suitable to their” social standing.314

While North Carolina was the only state to include concern for the welfare of the ward in guardianship statutes, occasionally courts heard cases which attempted to reassign guardianships based on complaints of moral child endangerment or considerations for the ward’s emotional wellbeing. Two examples are David B Hitchin’s Case argued in the Orphan’s Court in Delaware and Nicholson’s Appeal ruled on by the Pennsylvania Supreme Court. Both illustrate how social expectations of guardianship could clash with legal definitions and, in turn, how malleable legal constructions of guardianship could be.315

315 By the end of the nineteenth century, most states had moved to a unified understanding of childhood in relation to chronological age and the role guardians should play in protecting the welfare of the child in addition to their inheritance, with most states considering a guardian as “unsuitable whenever he is incapable for any reason to protect his ward.” It was expected guardians would “protect the[ir] ward[s] against immoral and vicious influences” as well as “inculcate habits of sobriety and industry upon his ward, and to superintend [the ward’s] education.” Consequently, courts could take into “consideration the mental condition and
In Delaware’s *David B Hitchin’s Case*, filed in 1819, a custody dispute developed between the surrogate parents of Hitchins and his uncle, Peter Hitchins. According to court testimony, David lost both of his parents when he was only a few weeks old. Presumably neighbors or friends of Hitchins’s parents, Charles Smith and his wife quickly took the baby in and acted as his parents. Smith attempted to secure guardianship of David because he “and his wife had formed a strong attachment to the child… and it [was] presumed the child was equally attached to them.” Because Smith could not secure the bond necessary to ensure his guardianship, David’s uncle, Peter Hitchins, challenged a lower court decision giving them custody of the child.

The uncle ultimately won the guardianship case but, as the court explained, “with the utmost reluctance by the court.” Legally, Peter was entitled to the guardianship as David’s uncle and he had the financial ability to secure the bond. However, the court knew that David, who was now four years old, had “from the time [he] was six or eight weeks old always lived with Smith,” and that reassigning guardianship might be emotionally damaging to the child. The Chancellor of the court concluded his ruling by stating, “he would not have removed Charles Smith from the guardianship, if the law had not obliged him.”

While the court ultimately followed the legal requirements for guardianship, it is

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316 *David B Hitchin’s Case*, 2 Del. Cas. 468, (1819).
317 The lower court had awarded Smith custody in 1816 after he gave a guardian bond. However, it was quickly determined both his surety, Sovereiga Davis and himself were “insolvent and lacked sufficient security.” The court then requested that at the next Orphan Court meeting, Smith was to provide “other and better security” but Smith could not comply.
318 *David B Hitchin’s Case*, 2 Del. Cas. 468, (1819).
evident that judges were reluctant to do so; demonstrating how social concerns linked to child welfare were creeping into legal negotiations of custody laws.

A similar custody case concerning the emotional wellbeing of children and guardianship occurred in Pennsylvania in 1849 between a legally appointed guardian, Andrew Nicholson, and the biological family of his five wards. According to the wards’ maternal uncle, E.B. Ward, “two of the children were then in his family, he having assumed the expense and care of their maintenance and education. That one other of the children was residing with the guardian, and two others in the family of [another] uncle in Erie County.”\(^{319}\) Ward insisted that Nicholson should be relieved of guardianship duties because he “had not discharged his trust, as related to the mental and moral culture and the pecuniary interests of the children.” Additionally, “one female [ward], who resided with [Nicholson], was employed in domestic services unsuitable to her condition and tender age, and that her education was neglected; and that he had refused to allow her to receive clothing purchased by [Ward (the uncle)] for her use.” Ward, as well as the rest of the biological family, were concerned “knowing that the children were not enjoying the care and attention they ought to have” and so they pleaded with the court to reassign guardianship to Ward.\(^{320}\)

The trial judge removed Nicholson as guardian of two of the minors, illustrating how flexibly the law could be enacted. Interestingly, the two children he lost custody of were both females. State Supreme Court justices sided with the lower court, saying that although they did not believe Nicholson intentionally

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\(^{319}\) Appeal of Nicholson, 20 Pa. 50 (1852).

\(^{320}\) Appeal of Nicholson.
harmed his wards, they felt that “he seem[ed] to have utterly misunderstood his
duty.” Justices concluded: “it was surprising that he was not removed from the
whole trust,” because although he may not have intentionally injured his wards,
“it matters little to an orphan child whether his interests [were] sacrificed and his
prospects blighted by well-meaning ignorance or by willful malice. Either is within
the definition of misconduct, a word which applies not to the motive but to the
act.” The fact that justices were concerned solely with the children’s day-to-day
lives, such as access to proper education and family, demonstrates how newly
forming cultural expectations of child welfare were increasingly creeping into
court cases and undermining legal definitions of guardianship responsibility by
the mid-nineteenth century.

Together, the two cases demonstrate how cultural interpretations of
emotional dependence and moral responsibility began to influence Early
Republican legal thought. The rulings that came out of both courts acknowledged
that the overall “well-being” of a child factored into a proper guardianship-ward
relationship. This is significant because, legally, and despite the four decades
separating these cases, guardianship responsibility in Delaware and
Pennsylvania only mandated proper estate management on behalf of the ward.

321 The court also stated they were unsure why Nicholson rejected the biological family’s help, speculating that perhaps “his decision may have been caused by his reluctance to part with them, by a desire to retain their services, or by the mistaken opinion that a thorough education would injure them… either way he was wrong.” *Appeal of Nicholson.*

322 Because of the nature of the appeal, the court could only uphold the lower courts decision, not reassign guardianship of the remaining three wards.

323 *Appeal of Eichelberger* is an additional case that suggests judges and justices were considering the moral well-being of a ward when reassigning or assessing guardianship. In Pennsylvania in May of 1835, where the state Supreme Court ruled that John Smyser, guardian of George F. Eichelberger, endangered his ward by establishing the minor in the “business of a tavern-keeper.” According to the court, this was a “risk” to the ward because the profession required “habits of temperance to have been previously formed and established” which an infant could not have acquired. *Appeal of Eichelberger,* 4 Watts 84, (1835).
Although *David B Hitchins’ Case* adhered to the law of guardianship-ward relationships by choosing the guardian who was most capable of managing the ward’s estate financially, the court’s reluctance to do so suggests changes were beginning to occur in basic definitions of child welfare. The ruling of *Nicholson’s Appeal* and cases like it, help explain how guardianship and custody law eventually changed by the end of the nineteenth century to place the child’s emotional well-being over that of their inheritance.

The priority of the courts was to ensure that guardians protected the financial interests of their wards; however, they were also concerned with guardians fulfilling basic legal, social, economic, and moral duties. Consequently, there were two ways in which courts ensured that guardians were held accountable. The first required the guardian to have regular contact with the courts and provide records of a ward’s estate for review. State laws varied on how often guardians had to check in; for example in 1819, Virginia and Washington D.C. law required guardians to check in “once in every year” while Pennsylvania law dictated “once in three years.”  

Nearly every state in the mid-Atlantic region required guardians to have a “separate book” for keeping track of the ward’s estate. The purpose of these mandatory review of records was to ensure that guardians were not only successfully managing a ward’s wealth, but also spending the proper amount on the “maintenance and education of the orphan [with] regard being had to the future situation, prospects, and destination

of the ward." If guardians were found to have “mismanaged” the estate or “neglect[ed] to educate or maintain” the ward, the courts could (and would) discharge them and assign a new guardian.  

Occasionally, courts intervened too late as was indicated in the case of Hardy H. Boyett v. James R. Hurst, Adm’r. heard in the Supreme Court of North Carolina in 1854. The purpose of the trial was to force the guardian to provide a detailed report of why at the end of the guardianship, he claimed his ward owed him $500. The trial transcript also provides a look at how guardians sometimes failed their wards. In 1842, James K. Hill became the guardian for eighteen-year-old Hardy H. Boyett, an illiterate young man who owned two tracts of land and between fifteen and twenty slaves. If his estate had been properly managed and his person properly cared for, Boyett should have come into his majority as an educated and wealthy young man. Instead, Hill allowed Boyett to do as he pleased, including manage his own inheritance, which ended in the loss of the estate. Moreover, Boyett got married and had two children during his infancy. Justices were outraged at Hill’s negligence and declared that “the purpose of the law in requiring guardians to be appointed, has failed of its object.”

Once wards turned twenty-one all states required guardians to provide a full account of the estate and to begin the process of transferring it into the ward’s care. However, courts recognized that simply turning twenty-one did not automatically make a person capable of understanding the intricacies of their

325 Code of Laws for the District of Columbia (1819), 12.
326 The Revised Statutes of North Carolina Passed by the General Assembly at the Session of 1836-7 (Raleigh: Turner and Hughes,1837), 311.
327 Hardy H. Boyett v. James R. Hurst, Adm’r, 1 Jone Eq. 166 (1854).
inheritance and determining whether their estate was managed correctly. The Pennsylvania Digest of Codes explicitly stated that “the law looks with a jealous eye upon settlements made by infants soon after their arrival at age, and before they were fully acquainted with their affairs.” One case, Say’s Executors v. Barnes, illustrates this point and provides another example of how legal and social expectations of guardianship-ward relationships were negotiated within the court system.

In 1818 a Pennsylvanian, Barnaby Barnes, sued the estate of his guardian, Benjamin Say, arguing that his account was settled too hastily and he had not received the full interest the estate had accrued while it was under Say’s management.328 According to Barnes, “he was at the time in very delicate health, and was advised by his physician, that it was necessary to try the effect of a milder climate.”329 “On arriving at age,” Barnaby explained, “he was anxious to come to a settlement with his guardian, in order to procure money to bear his expenses abroad [and his] guardian appeared equally anxious for the settlement as he was at the time laboring under a consumption which he died in about twenty months after that period.”330 At first, everything seemed to be handled correctly, Barnaby testified: “the account which [Say] exhibited was admitted to be fair and honest, but the interest during this long minority was the subject on which a difference of opinion arose.” Even so, they eventually came to an

328 Say took guardianship of Barnes and his younger sister in 1795 until Barnaby was of “full age” in August of 1811.
330 Ibid.
agreement and on “23d November 1811, the account was settled, the papers delivered… and the balance of cash paid to him [in full].”331

Anxious to leave for Europe to recover his health, Barnaby chose to “not make a final settlement” for his sister’s account, deciding that it should “be adjusted when she should arrive at age.”332 While away, his sister’s account was settled and “under the direction of auditors,” she was “allowed more interest than had been allowed” her brother. Barnaby quickly “wrote a letter to Mr Say, in which he complained the settlement between them had been made with reluctance on his part, and at the time when he was ignorant of his rights, and at the same time informed him that he was willing to abide by the principles on which his sister’s account had been settled.”333 Say died before they could come to a new agreement and Barnes was forced to sue Say’s Executors. Ultimately, the court agreed with Barnes and awarded him a new settlement with the correct interested calculated.

Legally, wards were entitled to their inheritance as soon as they turned twenty-one, however, as the above case illustrates, there was an expectation that guardianships would end gradually. The ruling on Say’s Executors v. Barnes, heard by the state Supreme Court, reveals how justices negotiated legal rights and against other expectations related to age, maturity, and capability. Legally an infant became an adult as soon as they turned twenty-one, and justices

331 Say v. Barnes.
332 Ibid.
333 Ibid. Barnaby did concede that “he had received a tolerate education, and after having left school, was placed in the counting-house of Messrs. Warders, merchants of [Philadelphia].” However, “his ill health prevented him from acquiring the usual knowledge of merchants’ accounts,” even though “he understood common arithmetic and could calculate interest.”
acknowledged that it was the legal right of the ward and guardian to settle the account as soon as this happened. However, justices also asserted their opinion that “settlements made with [wards] soon after coming to age” were problematic because “it should always be remembered that when a young man comes of age, he must necessarily be ignorant of his affairs, and the information which he receives must come principally from his guardian.”334 In other words, the age of twenty-one as a marker of maturity and capability of understanding was somewhat arbitrary and guardians were expected to assist wards in transitioning into their adult status as controllers of their inheritance.

Another, more explicit example of a guardian taking advantage of a ward when settling accounts can be seen in Waller v. Armistead’s Adm’rs. The case was tried in Virginia in 1830, twenty years after the original deception. Robert Armistead became the guardian of his sister, Lucy, in 1792, and continued until she married Aylet Waller in 1801. According to Lucy, “Robert… made no settlement of the accounts of his guardianship, or agency for his sister, and he retained in his own hands the estate she was entitled to, though she had attained to full age.” Furthermore, “on the very day of her marriage, a few minutes before the ceremony… in the absence and without the knowledge of her intended husband,” Robert pressured Lucy into signing two contracts. The first, “without exhibiting any account, or stating in particulars,” established that Lucy “acquitted [her] brother of all demands, and acknowledged full satisfaction of whatever he might owe her.”335 The second contract, “which had also been prepared by her

334 Say v. Barnes  
335 Waller v. Armistead’s Adm’rs, 29 Va. 11, 21 Am. Dec. 594 (1830).
brother, but which was not explained to her, nor did it appear that she had any knowledge of its contents or object” was “purported to be a deed of gift, in consideration of natural love and affection, to her nephew John D. Armistead,” Robert’s son. The deed relinquished “all her right, title, interest, and proportion, of the proceeds of the sale of the tract of land” she had inherited.336

Due to the circumstances surrounding the settlement of her account, justices ruled that Lucy’s guardian had taken advantage of her and voided the deeds.337 Although the case occurred decades after Lucy was wronged, the ruling contributes to our understanding of how Early Republican justices interpreted the role of guardian and ward. Guardians were expected to act as protectors of their ward’s best interests—both financially or morally. Wards, by virtue of their age, lacked the capacity to navigate basic adult responsibilities and had a diminished capacity. As a result, wards, like Lucy, were never held accountable when their actions were detrimental to themselves. Consequently, courts carefully monitored guardians in an effort to weed out those who might manipulate their wards for their own gain.

The other way in which courts ensured that guardians fulfilled their legal and social obligations was to allow wards over the age of fourteen to have a say in who was appointed their guardians.338 For example, in Pennsylvania in 1854, 336 Ibid.
337 According to the court record, justices explained that “the time selected for the execution of the deed, a few minutes only before the marriage; the absence of all proof of any previous intention of Miss Armistead to execute any such deed; the absence of proof that she had, at the time it was executed, any knowledge of its character or object; added to the care with which it was concealed from her friends, and particularly from her intended husband, who was then in the house; combine to stamp it with the foulest fraud.” Waller v. Armistead’s Adm’rs.
338 If the ward did not challenge the guardianship after the age of fourteen, it remained intact until the ward reached the age of twenty-one.
nineteen-year-old Sarah Ferguson requested that her guardian, George Arthurs, be removed because “she and her guardian were not on good terms, which rendered it impracticable to have any amicable communication with him, which was essential to her interests and welfare.”339 Arthurs insisted, “he had managed the estate well, and alleged that there was no bad feeling on his part towards his ward.” Initially, the “court refused to dismiss the guardian, because no reasons had been shown for his dismissal.”340 However, the ruling was contested on the grounds that it was “the naked legal right of the ward to choose her guardian at any time after she arrived at the age of fourteen years.” Consequently, the appeals court approved the request and appointed Joseph S. Morrison as Sarah’s new guardian, setting aside the lower court’s ruling.

While most wards could challenge their guardianships once they turned fourteen, in certain states, this was only the case when the parent had assigned the guardianship via their will. In Pennsylvania and Maryland, when orphan courts assigned guardianships, their appointments remained until the ward reached their majority. Yet, even in circumstances or states in which wards over fourteen could challenge their guardianships, they were not always successful in doing so. This inconsistency of allowing infants to change guardians demonstrates the flexibility courts had when interpreting the law regarding guardianship-ward relationships as well as the legal rights of infants: Mauro v Ritchie illustrates this point.

339 Appeal of Arthurs, 1 Grant 55, (1854).
340 Ibid.
In May of 1827, the Washington DC’s Circuit Court heard the case *Mauro v Ritchie*. The case contested the ability of an “infant” over the age of fourteen to choose their own guardian.\(^{341}\) The orphan court’s ruling initially granted fourteen-year-old John Ott’s request to switch from his court appointed guardians, Joseph Forrest and Philip Mauro, to his own choice, John Ritchie. However, Mauro and Forrest requested an appeal of the decision, which the Circuit Court granted. The Circuit Court ruled that guardians assigned via orphan courts remained until the infant reached their majority. The ruling itself, however, is less revealing than the explanation that accompanied.

The language used in the ruling of *Mauro v Ritchie* demonstrates how social conceptions of age could inform legal decisions regarding the rights of wards. According to the ruling, “the age of fourteen, the infant begins to be restless and ungovernable, and the salutary restraints of the guardian are irksome. The infant is apt to think his guardian penurious and tyrannical. He wants greater indulgences; and there are always artful and insinuating men enough, who are eager to grasp all the property they can lay hold of; and who, taking advantage of these dispositions in the infant, will stimulate his restlessness, excite his suspicions, undermine the authority of the guardian, and

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\(^{341}\) A similar case can be seen in the 1828 Washington DC Circuit Court Case, *Smoot v Bell*, the court rejected fourteen-year-old ward’s petition to remove George H Smoot as his guardian and replace him with Gideon Bell. According to Washington DC’s state statutes, “any infant for whom the court has appointed a guardian while under the age of fourteen years, may... nominate... his own guardian.” However, as the court noted in its ruling, Smoot was appointed guardian of his ward in Maryland. As a result, it would remain in place because “by the law of Maryland, the guardian appointed by the orphans’ court is appointed until the infant arrive at the age of twenty-one, and the infant has no right, at the age of fourteen, to choose another.” The Washington DC Circuit Courts willingness to uphold Maryland’s guardianship laws despite the fact it conflicted with their own demonstrates the legal flexibility that existed in interpretations of guardianship-ward relationships.
finally prevail on the infant, in his simplicity, to place his property in his hands.” Consequently, the court concluded that “the chance of evil resulting from the infant’s right of election, seems greater than the chance of good; and the choice of the court is more likely to be judicious than that of the infant.”342 In other words, the court viewed the age of fourteen as particularly problematic. Infants were of an age they considered mature enough to make decisions for themselves, yet were realistically still naïve enough to be taken advantage of. Although it had long been the practice of allowing fourteen year olds to have a say in their guardianship arrangement, the courts were beginning to view this as risky to the ward.

Guardians’ actions were not only policed by the legal system; communities also paid close attention to the relationship between guardian and ward. Henry Lee IV, the scion of the Lee family of Virginia, and his illicit relationship with his ward and nineteen-year-old sister-in-law, Betsy McCarthy, became a famous example of a community’s response to a guardianship gone wrong.343 In 1820, Betsy became pregnant with Lee’s child and fled to a relative’s house, which made the affair public. In addition to the affair, it was discovered that Lee had squandered Betsy’s funds while he controlled her inheritance. Lee failed as a guardian on the two most important responsibilities: protecting his ward

342 Mauro v. Ritchie, 16 F. Cas. 1171, 3 D.C. 147 (1827).
financially and morally. Consequently, the Virginia court system stripped Lee of his guardianship and proclaimed “Henry Lee hath been guilty of a flagrant abuse of his trust in the guardianship of his ward Betsy McCarty.”

Henry’s removal from the guardianship was not the only punishment he faced for his actions; he was also socially shamed and politically ostracized. His community’s reaction demonstrates how seriously Early Republican society took the responsibilities of guardians. Henry faced years in chancery court and eventually lost his family’s estate, Stratford, as Betsy and her advisors sued to reclaim her mismanaged inheritance. He also damaged his entire family’s reputation and destroyed his own. More than a decade later, he lamented to a friend that the affair had caused “some [to] persecute and others [to] desert me.” Henry expressed frustration that he was rejected from politics and was convinced that his public shaming stemmed from committing adultery and a misinformed Virginian statute that defined sexual relationships between in-laws as incest. However, as Henry himself pointed out, “Mr. Jefferson” and numerous other “married gentlemen” politicians had affairs, which were “known to [have] occur[ed]” without “consequence.” It was Henry’s additional sins of corrupting and taking advantage of his ward that resulted in such severe ostracizing.

Although American laws of guardianship were derived from English precedents focused on protecting inheritance, as the nineteenth century

344 Westmoreland County Court Records, 27 February 1821.
345 Thomas, 40.
346 For example, a decade after the affair, Eugenia Calvert’s father objected to her marriage to Lee’s nephew, Charles Henry Carter because he feared the scandal might damage her reputation. (Glover, 130.)
348 Ibid.
progressed legal rulings on the expectations of guardian-ward relationships were increasingly influenced by new conceptions of age, capability, and dependence. American courts and eventually states began to revise their ideas about what made for a “good” guardian and how gender factored into guardian and ward rights. There remained significant flexibility in how guardianship was interpreted throughout the nineteenth century. Consequently, in order to understand how expectations of guardianship evolved, it is necessary to explore discussions and negotiations of guardianship that occurred within families and communities as well as between guardians and wards.

Occasionally, fathers passed away without designating a guardian. Usually, a guardian would be assigned in the orphan court, however, some families took it upon themselves to informally decide upon a guardian for their underage kin. This was the case for nineteen-year-old Thomas Eugene Massie; letters passed between his uncle, William, and his older brother, Henry, shed insight on how families discussed proper guardianship as well as how cultural expectations conflicted with legal ones over what made a good guardian. Thomas and Henry’s father died sometime in late 1840 and Henry, twenty-five at the time, quickly assumed he would become his brother’s guardian. But his actions surrounding the potential guardianship suggested he lacked the experience, maturity, and legal know-how to successfully take on the position. In January of 1841, Henry wrote to his uncle informing him that he had “qualified as Tom’s guardian” and asked for “rec’t for the legacy” as William was the executor of the will. But William questioned whether this was possible. “Are you certain
you have proceeded in the right way?],” he wrote, “your [sic] no lawyer & do not pretend to know much about such matters.” William continued, “it appears to me that the ward has authority to go into court & chose his own guardian, nor am I certain that the court can under such circumstances legally appoint a guardian without his being chosen by the ward… prudence requires that the law in such cases be complied with before the legacy can be paid.”

More concerning to William, however, was Henry’s attempt to claim a “rec’t dated the 31st of Dec 1840, some 15 days before [he] could have possibly have held any authority to write such a rec’t.” This mistake, at the very least, signaled to William that Henry had most likely not secured the legal designation of guardian and that he fundamentally did not understand how the legal system worked when it came to settling estates and establishing guardianships. It might also have raised concerns over whether Henry was attempting to take advantage of his brother and potential ward. Consequently, William insisted that Henry needed to provide the “certificate of the clerk of the court in which you qualified showing that you had qualified as guardian” before he was willing to issue the legacy. At no point did William outright say that Henry was not qualified to be a guardian, but his letter implied that Henry lacked the maturity and competency to be able to successfully take up the job.

350 Ibid; In a follow up letter, dated 23 February 1841, William confirmed Henry had failed to legally secure the guardianship: “I laid the subject yesterday before Mr Claibourne… his answer was that an infant 14 years old was by law authorized to go into court & choose his guardian and as his clerks certificate does not specify that Tho’s E Masse appeared in court & chose you as his guardian, I as executor can’t pay the legacy except at my risk.” William Massie to Henry Massie Jr, 23 February 1841.
351 Evidently, Henry picked up on this implication as well, in a follow up letter, dated February
From a legal standpoint, Henry was qualified to be Thomas’s guardian; he was twenty-five, over the age of majority, and an independent male relative. However, as William’s comments show, Henry’s lack of judgment and legal knowledge regarding guardianships was concerning. If Henry did not know he had to have Thomas legally request him as a guardian, how would Henry be able to manage Thomas' estate competently? One did not need to be a lawyer to be a guardian, but William’s comments demonstrate that a successful guardian had to have at least a basic understanding of how the law operated and how to operate within the legal system. Henry’s ignorance of the law might have been due to his youthful age. At only twenty-five years old and having never studied law, he simply lacked the life experience to be an effective guardian. At the same time, it is important to note that among the reasons the Reeve and Bouvier, wrote their guides was to instruct readers whether they be judges, lawyers, or laymen.

Not all guardianships were formalized in law. Some guardianships were purely informal arrangements meant to provide opportunities for youth away from home. Letters between parents and temporary guardians appointed to oversee children while they were away at school add to our understanding of what made a good guardian from a social and cultural perspective. Such informal guardians

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23rd, 1841, William apologized to Henry: “You say… my letter… caused you much pain. I am sorry that it did… You seem to think I doubted your assertion of having qualified as Tom’s guardian. I neither doubted it nor did I intend to innumerate a doubt.” William Massie to Henry Massie Jr, 23 February, 1841.

352 Darcy R Fryer has discussed the significance of informal guardianship arrangements in her essay “‘Improved’ and ‘Very Promising Children’: Growing Up Rich in Eighteenth Century South Carolina” in Children in Colonial America, ed. James Marten, (New York: New York University Press, 2007). Fryer argues that affluent eighteenth-century Carolinian families engaged in “extensive parenting” or “networks of formal and informal guardians… to help bring up their children.” These guardianship arrangements were “fluid and flexible,” meant to “provide stability for children should their parents die before they were grown, [and] allow youths living on the margins of the British empire to maximize their education, professional, and travel opportunities.” (Fryer, 105 and 110)
were meant to “provide additional guidance” and act as surrogate parents.\textsuperscript{353} For example, Alexander Morson asked a friend in New Haven to “advise, council & direct” his son who was away at school at Yale; “in every want act towards him as a Father,” he requested.\textsuperscript{354} Nelly Custis asked her close friend Elizabeth Bordley Gibson if her husband would be willing to take on her son, Lorenzo as a “student of Law.” In addition to training Lorenzo in a future career, the arrangement would work as a social guardianship as well. “We think that Mr G’s example & advice as to Law, & reading, & morals, & conduct, w[ould] be of a lasting advantage,” she explained. Furthermore, the “society of [Elizabeth] & other female friends” in Philadelphia would make Lorenzo “emulous to improve that he may be a more agreeable companion.”\textsuperscript{355} Both Alexander Morson and Nelly Custis wanted their children to benefit from relationships with their informal guardians, demonstrating the expectation that these guardians would be moral, positive influences, and invested in their wards’ education and future.

Wards had their own expectations of what constituted a good guardian. Philadelphian Isaac Mickle expressed frustration in his diary over his legal guardian’s lack of attention.\textsuperscript{356} In the Spring of 1841, at the age of eighteen, Isaac decided to “do for [him]self what the business of my uncle and guardian will not afford him time to undertake.” He explained, “for a year back it has been fixed that I should read law; for a year back my guardian has delayed to see to

\textsuperscript{353} Glover, \textit{Southern Sons}, 48.
\textsuperscript{354} Alexander Morson to unknown, 2 July 1819, Arthur Alexander Morson Papers, Southern Historical Collection.
\textsuperscript{356} After Isaac’s father died, his uncle, Captain John Mickle became his legal guardian despite the fact Isaac’s mother was still alive.
procuring me a place; and for a year back, in consequence, I have led a life of uncertainty and unpleasantness.” Unwilling to wait on his guardian any longer, Isaac proclaimed April 2nd as the “Day [he] resolved to end [his] perplexity; and so called upon Colonel Page, introduced [him]self, and asked [Colonel Page] if he was willing to receive a student at law.” After arriving at Colonel Page’s office, Isaac quickly realized his mistake by coming alone, unprepared and without advice from his guardian. Isaac guessed that his “dress… had some part in prompting” an initial rejection from Colonel Page. “I had neglected my toilette most unpardonably,” Isaac explained, “I had on my oldest pantaloons, a vest frayed with hard service, and a shirt by no means the cleanest that ever was.” Realizing that Colonel Page mistook his poor dress for “poverty [and] from my poverty, a brainless head,” Isaac quickly alerted Page that he had a guardian, thus establishing his elite status. Isaac recorded in his diary that “when I mentioned ‘Captain Mickle, John W Mickle of Camden,’ the negotiation received a new face. ‘O yes,’ said he, ‘I know him, know him well—very well! Call again, and bring him with you.’”

Isaac’s experience is revealing because it demonstrates the social utility of a guardian. Although it was not legally required, Isaac expected his guardian to be more involved in his future and was disappointed when his guardian failed to act on his behalf despite his persistent requests. However, even without this explicit form of assistance, Isaac quickly realized how he benefited from his guardian’s positive reputation and social connections. Colonial Page admitted

357 Mickle, 2 April 1841, 141-142.
358 Ibid.
Isaac as a law student only after his guardian’s name was revealed. From a legal perspective, Isaac’s guardian did everything expected of him and managed Isaac’s estate well. Yet Isaac’s frustration illustrates how the social expectations of guardians and wards had to be negotiated when they did not always align.

Another example of the social and legal negotiations that occurred between guardian and ward can be seen in their disagreements. “Bad wards” frustrated their guardians with the implications of their disagreements. Sometimes these disagreements appeared in the legal record and other times they played out in long sagas via letters, as was the case with Edmund Ruffin and his sister and ward, seventeen-year-old Juliana Ruffin as well as William Page and his ward, Benjamin Carter. Together these examples illustrate how guardians internalized and struggled with their positions as individuals tasked both legally and socially with protecting the young people under their care.

Between 1822 and 1823, Juliana wrote four letters to Edmund, first asking permission to marry and then informing him that she changed guardians. Juliana understood that her father designated Edmund as her guardian, but she also knew that once she turned fourteen, her choice superseded that of her father’s and she attempted to use this legal reality to her advantage. In her first letter, Juliana appealed to Edmund’s emotions and pleaded for his permission to marry Carter Harrison Coupland, most likely knowing it was better to work things out with her brother than to go to court and change guardians, which might alienate her from the Ruffin side of her family. Initially full of flattery, her letter informed Edmund that she was excited with “the truly gratifying idea that the Brother whom
[she] so affectionately loved and esteem[ed would] approve [her] choice” for marriage.359 She explained that she was “determin[ed] to marry Mr Coupland” and that the marriage needed to happen quickly as he was leaving the state in the next few weeks. At the same time, she made clear that if Edmund did not give his “consent,” she would find other means of marrying Coupland. She concluded the letter with one final plea, but more importantly with a threat: “If thy bosom retains any traces of affection and feeling for thy sister… oh grant [her wish] and force her not to do that at which every felling of her heart revolts, oh! drive her not to the only resources left of accomplishing her purpose…”360

Edmund forbade the marriage, most likely because Juliana’s intended husband was ten years older, in debt, and would be the only one of the two to benefit financially from the marriage. Angered by Edmund’s decision, Juliana carried through with her threat. A few months later, Juliana wrote a brief letter to Edmund notifying him that “it has been ascertained beyond a doubt that I can choose another guardian. Tomorrow… I shall go to court and choose Cousin Walter Cocke who will be here this evening to accompany me.”361 Juliana’s decision to change guardians once her brother refused to consent to the marriage illustrates that wards understood their legal rights once over the age of fourteen. Furthermore, Juliana’s choice of Walter Cocke was a calculated one. Cocke was slightly older than Edmund and a family member, so he would seem to be an acceptable new choice. However, Walter was also married to Carter

359 Juliana Ruffin to Edmund Ruffin, Undated, Circa 1822, Edmund Ruffin Papers, Virginia Historical Society..
360 Ibid.
361 Juliana Ruffin to Edmund Ruffin, Undated, Circa 1823.
Coupland’s sister. This reality combined with the fact that Walter was related to Juliana via her mother, and so more loyal to Juliana than Edmund, explains why he was so favorable to the match. By allowing Juliana to marry Carter, Walter was facilitating an inheritance transfer from the Ruffin side to the Cocke and Coupland families. This had been part of Edmund’s fear and reason for refusing the marriage.

Shortly after the guardianship was transferred, Juliana and Carter married. Unsurprisingly, Edmund was furious and doubted the legality of Juliana’s actions. Edmund explained to Juliana’s mother that he was fairly certain that “the last court in appointing a new guardian to my sister was without legal authority. I now am induced to believe that it can have no effect.” He continued, “I shall seek the best advice of the subject, if my opinion prove correct, [I] shall contest the point before the next court.” Edmund was concerned with the legality of the guardian reassignment because of the resulting marriage and property transfer. He explained that if he was right, if Juliana’s guardianship reassignment was “without legal authority,” then “a legal marriage in this state cannot take place.” He continued, “even if that can be effected, if I have the right, I shall retain the property in my possession until my sister is of age—this will prevent it being wasted & secure it to herself, instead of the heirs of her husband.” He concluded his letter with “please give this notice to my sister.”

Edmund’s letter demonstrates that his greatest concern in retaining the guardianship of Juliana was in retaining control of her inheritance until she “[was]

362 Edmund Ruffin to Rebecca Cocke Ruffin, 23 March 1823.
363 Ibid.
of age.” Edmund’s acknowledgment that once Juliana turned twenty-one, she was a legal adult, entitled to choice and her inheritance, suggests he adhered to legal definitions of age rather strictly. However, until she reached that age, Edmund saw it as his “duty” to protect his sister and her best interests, not give in to her demands. Juliana understood her legal rights as a ward, and, since she was over the age of fourteen, she used them to her advantage. Although Edmund attempted to block the reassignment, legally Juliana was in the right and so he failed.364

Another example of a “bad ward” can be found in the letters of William Page regarding his ward, Benjamin Cater. Like Isaac Mickle, discussed earlier, Benjamin expected his guardian to help establish him in his career. In 1814, Benjamin demanded, “Procure me a place in a Counting house or whole sale store, without a further procrastination.”365 Benjamin had a long history of challenging Page and demanding things of him. Page struggled with his responsibility of raising Benjamin “as [he] would [his] own child” and continually expressed disappointment upon finding out about Benjamin’s bad behavior while he was away at school.366 Yet Page never relinquished his responsibility, even upon finding out that Benjamin “charged coats [to his account] that he resold to classmates for pocket money” and “impregnated a servant in his boarding house.”367 The commitment that some guardians felt to their wards, despite the

364 Subsequent letters between Juliana and Edmund revolved around the sale of her property to pay her husband’s debts until she ended up broke and with nothing, Edmund’s ultimate fear. See Edmund Ruffin Papers, Virginia Historical Society.
366 William Page to Benjamin Carter, 12 May 1813
367 Glover, 49.
constant frustration they might have felt, illustrates that guardianship was not always a simple legal relationship but had significant social and familial sentiments attached to the responsibility.

Finally, often overlooked in the historical scholarship on youth is the fact that guardianships occasionally shifted from a legal to a social necessity. Although wards may have been adults under the eyes of the law, they could still be considered dependents socially. Charles Carroll of Homewood represents an early example of this phenomenon. Charles Jr. was the heir to the Carroll family fortune, but he was also a violent alcoholic whose reputation increasingly preceded him in Baltimore society. For example, Charles Jr. was said to “drink between one to two quarts of brandy a day, besides wine,” he began drinking “as soon as he w[oke], and at night, the effect [wa]s never off.”368 Charles Jr.’s situation was so hopeless that one night he resorted to drinking “cologne water” when he ran out of proper alcohol.369 Charles Jr.’s perpetual drunkenness not only prevented him from carrying out the responsibilities of a patriarch, it also caused him to become violent towards his family and act out in public.

Charles Jr’s conduct concerned his family, largely because his actions threatened them socially. Despite being in his forties with a wife and children of his own, because of erratic and socially unacceptable behavior, Charles Jr. was stripped of his ability to act as a patriarch and adult, rendering him a symbolic child in need of a social guardian. After Charles Jr’s wife and children moved out of the home, his father hired handlers, Captain James Craig and his wife. In

368 John E Howard to Benjamin Chew, 21 June 1814, Chew Family Papers, Historical Society of Pennsylvania. 369 Margaret Howard to Benjamin Chew, 10 March 1816.
1816, Charles Sr. sent “directions” to Captain Craig, explicitly stating that he “place[d Charles of Homewood] under [their] direction & controul [sic].” The Craigs were to help Charles Jr. control his “fatal vice of ebbriety [sic]” by ensuring the “total abstinence from all fermented liquors” and restraining him from “ardent spirits, either, eau de Cologne, wine & strong beer.” The instructions continued, “he must not give dinners; or entertain company… [and] he must be prohibited from the indulgence of high seasoned dinners.”

The example of Charles Carroll of Homewood is revealing as an example of how families (and communities) were more concerned with capability then chronological age when it came to ascribing status and responsibility. The ability to care and consent for oneself often correlated with chronological age, but sometimes it did not. As the nineteenth century progressed, the legal system increasingly acknowledged this reality and expanded its definition of guardianship to protect not only those with the inability to possess discretion based on chronological age, but also those who were seen to lack the ability based on mental capacity.

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370 Charles C Carroll to Captain James Craig, 11 June 1816, Donohue Rare Book Room. In exchange for watching over Charles Jr., the Craigs would receive $1500 a year and board at Homewood. (CCC to Captain Craig, 15 June 1816.)
371 Ibid. Evidently the arrangement initially worked as four years later Captain Craig wrote to Charles Sr. requesting his final payment, reminding him that the Craigs had been “instrumental in restoring [his] son to [him] and society.” James Craig to CCC, 11 January 1820. The rehabilitation of Charles Jr, however, was short lived as he died in 1825 “hopelessly addicted to alcohol.” Ronald Hoffman, *Princes of Ireland, Planters of Maryland: A Carroll Saga, 1500-1782* (Chapel Hill: University of North Carolina Press, 2000), 389.
Charles Carroll of Homewood was stripped of his status as a functioning adult and assigned a social guardian by his family because his addiction to alcohol caused him to be incapable of fulfilling the duties ascribed to his life stage as a husband and father. By contrast, Elizabeth Ruffin requested her legal guardianship remain intact despite reaching her majority and turning twenty-one. Both examples demonstrate how capability and personal preference trumped chronological age when negotiating guardianship arrangements outside of the court system. This social flexibility in perceptions of life stage, dependence, and chronological age increasingly bled into the court system, altering legal expectations and understandings of guardianship-ward relationships. Although the Early Republican period began with legal definitions of guardianship concerned only with the protection of the ward’s inheritance, by the end of the nineteenth century, they had expanded to accommodate newly formed cultural ideas of children’s vulnerability.
Chapter Four

“Attend to the advice of your mother”: Parental Assertions of Control

In 1840, Alexis de Tocqueville published the second volume of his study of American society, *Democracy in America*. In it, de Tocqueville dedicated a chapter to explaining “the influence of democracy on the family.” He interpreted American families as fundamentally changed by the democratic revolution and wrote that “it has been universally remarked, that, in our time, the several members of a family stand upon an entirely new footing towards each other.”

More specifically, “that the distance which formally separated a father from his sons has been lessened; and that paternal authority, if not destroyed, is at least impaired.” Rather than a relationship built on “deference,” “fear,” and the expectation of a “social bond,” American relationships with their children were based on “intimacy,” “affection,” “tenderness,” and a “natural bond.” De Tocqueville labeled this new family formation “the democratic family.”

The concept of obedience is antithetical to the democratic family model as depicted by de Tocqueville, and yet obedience of children was a regular theme of middle- and upper-class Early Republican parenting advice literature. “Children should be obedient—must be obedient, habitually and cheerfully so, or they cannot be well educated in any respect” announced the 1834 parenting advice.

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373 Volume 1 of Alexis de Tocqueville’s *Democracy in America* was published in 1835.
375 De Tocqueville, 233.
376 De Tocqueville, 236, 237.
377 De Tocqueville, 237.
manual, *A Father’s Book.* Similarly, *Letters to Mothers*—published in 1838 just two years prior to de Tocqueville’s assertion of the “democratic family”—instructed mothers to “watch for the time your little one first exhibits decided preferences and aversions. The next letter in the alphabet is obedience...Establish your will, as the law,” the author warned readers, “Do it early, for docility is impaired by delay.” The very concept of obedience mandates a one-directional power dynamic where the parent has complete authority over the child. Consequently, the correlation between children’s obedience with “good parenting” that advice manuals stressed directly contradicted de Tocqueville’s assertion of the prevalence of the democratic family model. In turn, this raises important questions about how Early Republican families actually functioned.

Still, some historians have found de Tocqueville’s interpretation of the newly affective Early Republican family persuasive, arguing that “by the end of the eighteenth century and the beginning of the nineteenth, the American family had been transformed from a public institution whose functions were primarily economic into one whose major role was to rear children and provide emotional support for its members.” The Early Republican period has been identified by

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379 L.H. Sigourney, *Letters to Mothers* (Hartford: Hudson and Skinner, 1838), 35. Additionally, although corporal punishment as a means of ensuring obedience was meant to be used sparingly, authors of advice literature never took it off the table and encouraged parents to strike their children if necessary. Dwight, 116.
historians as a transitional time for family relationships, and, when compared to colonial families, Early Republican families have been described as more “private,” “sentimental,” and “child-centered.” Substantial evidence exists to show that an ideology of the democratic family was certainly present and influenced the day-to-day as well as long-term decisions families made. Susan Klepp, for example, has shown a rise in family planning and lowered birth rate at the turn of the century, while Linda Kerber has discussed the increased focus on children's education.

Yet to suggest that all families switched to this model or even that individual families consistently acted within this framework, is a misconception; the notion of the “democratic family” was more of a nascent ideal that appealed to few rather than a universal reality. The “traditional” colonial family model, based around deference and hierarchy—two concepts challenged and reshaped by the sentiment of the American Revolution—continued to influence the dynamics of Early Republican families. This is not to say that the American Revolution did not have ramifications for parent-child relationships. It did, but age and consent laws meant to protect minors, empower legal adults, and redefine family relationships were often ignored as often as they were acknowledged.


382 See Susan Klepp, Revolutionary Conceptions and Linda Kerber, Republican Motherhood.

383 The legal parameters of the relationship between guardian and ward held firmer than that between parent and child. Like guardians, parents were supposed to relinquish their control
Gender (of both parent and child) factored heavily in to how parents and their children negotiated the nature of their relationship. Shaped by the traditional family expectations of female dependency, the law also reinforced hierarchical relationships between daughters and their parents. To start, many states had unequal ages of legal independence depending on gender, with girls reaching legal adulthood before their brothers. In theory, these gendered age differences were based on the understanding that girls reached puberty two to three years earlier than boys and so were ready for marriage that much earlier as well. However, as historian Nicholas L. Syrett has pointed out, the lower age of consent for women also “served to move girls more smoothly as dependents between different men’s households and to ensure that a male head of household always governed their property.”

Young women, then, were never expected to attain full independence as reaching the age of adulthood offered them no rights or opportunities other than the ability to consent to contracts, specifically marriage. Instead, daughters were supposed to marry by the age of legal adulthood and be subsumed under their husband’s identity or remain at home as dependents (and servants) of their families until their inevitable marriage. Although evidence of this reality exists anecdotally in family papers, the prevalence of seduction suits and loss of services cases filed by parents regarding their adult daughters demonstrate how

over their children once they reached the age of twenty-one. However, many parents utilized a number of tactics—legal and social— to maintain authority over both their minor and adult children. Early Republican parent-child relationships existed on a spectrum, with many parents struggling to reconcile newer definitions of family with traditional expectations of filial obedience.

384 Nicholas Syrett, American Child Bride, 17.
serious families were about the continued deference and dependence of female family members. Legally, these women were adults, yet family members, as well as the jurors and justices involved in these cases, believed there was the opportunity for legal redress when adult daughters fell pregnant outside of marriage. Early Republican parent-child relationships demonstrate how capability and dependence were negotiated within a gendered, family context, regardless of the child’s chronological age.

This chapter is divided into three sections. The first provides a survey of prescriptive advice literature and legal writings to gain insight into the gendered messages parents (and children) received on the “ideal” social and legal contours of parent-child relationships. The second section examines family letters between parents and children in order to test how reflective advice literature actually was of these relationships. More specifically, letters provide an intimate look at the compromises and ultimatums parents made when dealing with their children’s challenges to expectations of deference, dependence, and autonomy—as well as how the gender of the parent or child influenced the outcome of these negotiations. Some parents certainly internalized the

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385 As John Sweet has explained, “seduction claims had emerged from the law of servitude. They recognized the loss a master might suffer if another individual improperly ‘seduced’ away one of his servants. By patriarchal conventions of Anglo-American law, the right of a master or mistress to the labor of their servant trumped the right of another employer to offer that servant a more attractive opportunity. Similarly, a household head had a right to the labor of any minor children living under his roof, and also the labor of his wife. All of these dependent members of his household could be technically construed as his ‘servants.’ Thus, according to the logic of seduction suits, [daughters were] regarded as [their] father’s servant. The damages he supposedly suffered were, therefore, a result of his being deprived of her services” usually as a result of pregnancy. John Sweet, “Rape, Recourse, and the Law of Seduction in the Early Republic,” a paper presented to the Omohundro Institute for Early American History and Culture Colloquium, November 29th, 2016, pages 11-12.

386 For example, due to new legal definitions of independence, some parents struggled to maintain an authoritative influence over their emboldened children while they were away from
messages they received from “experts,” but most weighed these suggestions against their own familial needs and expectations of their children. These letters, then, tell a story about the plurality of family relationship styles which undermines the claim of the Early Republican “democratic family.”

The third and final section of this chapter drives this point home with a discussion of seduction suits and loss of services cases that were tried and appealed in the first half of the nineteenth century in order to highlight how parents regularly challenged legal definitions of age and independence, especially when an illicit pregnancy caused the loss of an adult daughters’ labor. Most of the time, the courts backed parents and upheld community expectations of female dependence. However, a number of cases exist where rulings strictly upheld newer legal definitions of parenthood, age, and independence regardless of gender, diverging significantly from “traditional” and familial expectations. The court cases discussed are significant because they provide hard evidence of the way in which some families disregarded statutes assigning an age to the status of adulthood, while other families and individuals attempted to utilize legal definitions of age and dependence to their advantage. Traditional expectations of female dependence complicated new legal definitions of age and independence which, in turn, influenced (and were influenced by) specific parent-child relationships.

The turn of the nineteenth century ushered in a renewed discussion and

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home. Concurrently, many parents maintained control of their adult children through their purse strings.
inspection of family relationships, this time within the new American national context. Prescriptive literature and state laws attempted to shape the relationship parents would have with their children, acting to increase anxiety and attempt to quell the anxiety of a new nation who had rebelled against its own parent, mother England. If children could be raised “correctly” and guaranteed independence, then they would become ideal citizens, perfectly poised to take over the task of steering America towards the path of enlightened governance and civic participation. De Tocqueville’s perception of family structures was thoroughly intertwined with his understanding of the form of society they existed within. As a result, he failed to see the plurality of family types that could exist within the Early Republic; and, most importantly, that many families maintained traditional deferential relationships between parent and child after the Revolution.

Perceived social changes related to work and mass production brought on by the industrial revolution offered evidence to bolster de Tocqueville’s interpretation of the “new” American family model. The new middle-class aspiration was for labor to be the realm of adult males, it was to take place outside of the home and be based on wages. Concurrently, parenting styles were to shift from “extensive,” where a larger number of children were overseen by family and neighbors, to “intensive,” where parents, specifically mothers, focused on the care and nurturing of their own children exclusively. Consequently, as

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literacy rates soared and printed materials proliferated, middle-class parents increasingly sought out parenting advice from a rising class of "professionals."\textsuperscript{389} Although parenting advice manuals date back to the seventeenth century, historians have identified the nineteenth century as the start of a golden age for these types of publications as "educators, physicians, and clerics issued a torrent of books, pamphlets, and magazine articles on child rearing."\textsuperscript{390} As a result of these publications, middle-class parents were the targets of an "intensified sense of responsibility for the proper upbringing of their children."\textsuperscript{391} This was especially true for mothers, who were increasingly singled out as responsible for the "primary socialization and education of children."\textsuperscript{392}

Advice literature contributed to the anxiety parents felt. However, as historian Julia Grant argues, these publications had a wider societal impact as they also "presented diverse approaches to rearing children that set the framework for future debates about the nature of the child."\textsuperscript{393} "Rationalists," inspired by the late seventeenth century philosophical writings of John Locke, believed that children should be "systematically disciplined and educated if they [were] to become civilized adults."\textsuperscript{394} Those who favored the eighteenth-century writings of Jean-Jacques Rousseau, known as "romantics," wanted to "preserve children's innocence and natural virtue, which they saw as threatened by industrial society."\textsuperscript{395} Romantics opposed any kind of routine or structure while

\textsuperscript{389} Grant, 15.  
\textsuperscript{390} Grant, 14.  
\textsuperscript{391} Ibid.  
\textsuperscript{392} Grant, 21. See also, Linda Kerber, Republican Motherhood.  
\textsuperscript{393} Grant, 16.  
\textsuperscript{394} Ibid.  
\textsuperscript{395} Ibid.
rationalists “sought to tame children and prepare them for their future role as adults.”\footnote{Ibid.} In reality, romantic and rationalist perspectives of childhood represented two sides of a spectrum, with most parents (and many advice manuals) falling somewhere between the two child-rearing approaches.

De Tocqueville’s writings also offer an example of the types of messages Early Republicans received regarding how new legal definitions of age, capability, and dependence were \textit{supposed} to shape their family relationships.\footnote{De Tocqueville’s perception of the American parent-child relationship also provides, at its most basic, an interesting insight into how a foreigner interpreted Early Republican American families.} De Tocqueville’s passage on the influence of a democratic system on the relationship between father and son is particularly revealing. For example, de Tocqueville wrote:

\begin{quote}
as soon as the young American approaches manhood, the ties of filial obedience are relaxed day by day: master of his thoughts, he is soon master of his conduct. In America, there is, strictly speaking, no adolescence: at the close of boyhood, the man appears, and begins to trace out his own path. It would be an error to suppose that this is preceded by a domestic struggle, in which the son has obtained a sort of moral violence the liberty that his father refused him. The same habits, the same principles, which impel the one to assert his independence, predispose the other to consider the use of that independence as an incontestable right. The former does not exhibit any of those rancorous or irregular passions which disturb men long after they have shaken off an established authority; the latter feels none of that bitter and angry regret which is apt to survive a by-gone power. The father foresees the limits of his authority long beforehand, and when the time arrives, he surrenders it without a struggle: the son looks forward to the exact period at which he will be his own master.\footnote{De Tocqueville, 234.}
\end{quote}

De Tocqueville’s description of the father-son relationship mirrored that of the democratic government America had established: power was limited and
transferred peacefully once the child reached a certain age. For de Tocqueville, family relationships were microcosms of the societies they lived in. Comparatively, he explained that “amongst aristocratic nations, social institutions recognize… no one in the family but the father; children are received by society as his hands; society governs him, he governs them.” This deferential, one-way relationship between the father and children continued regardless of the child’s age. According to de Tocqueville, this resulted in a strained relationship between parent and child, one in which the love the child had for their father was always “tempered with fear.” Furthermore, interactions between parents and children were “always correct, ceremonious, stiff, and so cold that the natural warmth of the heart can hardly be felt.” De Tocqueville argued that “in proportion as manners and laws become more democratic, the relation of father and son becomes more intimate and more affectionate.”

De Tocqueville also wrote about his perception of the effect democracy had on the “female character;” and his description of American daughters suggests that, from his perspective, young women were raised with the same democratic values and expectations as their brothers. “Long before an American girl arrives at the marriageable age,” de Tocqueville wrote, “her emancipation from maternal control begins: she has scarcely ceased to be a child, when she already thinks for herself, speaks with freedom, and acts on her own impulse.” De Tocqueville’s word choice was significant, “emancipation” and “freedom” were

399 De Tocqueville, 235.
400 De Tocqueville, 236.
401 De Tocqueville, 237.
402 Ibid.
403 De Tocqueville, 241.
loaded terms, especially in the Early Republican period. Employing the use of these terms in his discussion of young American women indicates how idealized de Tocqueville’s perception of the relationship between gender, dependence, family, and youth was. In reality, women had no legal rights and were perpetually dependents, even after they became legal adults.

By relating fathers to sons and suggesting that young women slipped away from “maternal control,” de Tocqueville indicated a gendered expectation of who parented who—fathers were to parent sons, and mothers were to parent daughters. Gender did factor in the construction of parenting roles and the treatment of children as articulated in advice literature, but it was in the context that mothers had certain roles, fathers had other roles, and daughters and sons had to be parented differently due to their temperament and sex. For example, mothers were expected to run the family household, provide the majority of childcare and education, and act as a moral compass for their sons and daughters. Fathers were expected to be the financial provider as well as a moral compass. Despite gendered differences, parenting advice literature urged both mothers and fathers to take active, equal roles in their sons’ and daughters’ lives. Theodore Dwight Jr., author of the *The Father’s Book*, conceded that “although so large a share of the care of children devolves upon the mother, let the father be careful not to underrate his own duties or influence.”

L.H. Sigourney, the author of *Letters to Mothers*, asserted: “Let mothers beware of adopting the opinion, that though they may do much for daughters, yet sons are beyond their

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404 Dwight, iii.
control. This is a false, and fatal conclusion.\textsuperscript{405}

Mothers and fathers were advised of the particular difficulty teenage boys could pose to parental authority, demonstrating a gendered perception of adolescence that may have shaped how parents interacted or expected to interact with their sons. Sigourney warned mothers that because of “society” and “innate consciousness of being born to bear rule” sons “will sooner revolt from the authority of woman” than their sisters.\textsuperscript{406} Consequently, mothers needed to work harder and “begin earlier” to gain (and maintain) authority over their sons.\textsuperscript{407} Mothers were not alone in dealing with difficult young men, fathers were also instructed to pay attention to how and with whom a son’s time was spent in order to restrict a young man’s interactions with “company who mislead him.”\textsuperscript{408} “The father must sustain his authority and control over his son,” \textit{The Father’s Book} instructed, “or he will expose himself and his family to a thousand evils.”\textsuperscript{409} The advice to mothers and fathers regarding handling their teenage boys was essentially the same: they needed to maintain dominance over their sons at all times, which was a much harder task for mothers because society undermined female authority.

Daughters, on the other hand, were described as having more “pliant” temperaments and were naturally more productive than their brothers.\textsuperscript{410} Dwight argued to fathers the importance of putting children to work, explaining that

\begin{footnotesize}
\begin{enumerate}
\item Sigourney, 123.
\item Sigourney, 122.
\item Ibid.
\item Dwight, 118.
\item Ibid.
\item Sigourney, 122.
\end{enumerate}
\end{footnotesize}
“daughters are usually better furnished on this score than sons: that is, they may more easily find useful employments and healthful exercise.” Daughters efficiently incorporated “needlework and knitting” into their nightly routines, “without interrupting conversation and reading,” while boys were more apt to engage in mischief in their free time. Sigourney also urged mothers to teach their daughters the domestic arts and encourage them to contribute to the household labor as early as possible.

Advice literature targeted at youth contradicted de Tocqueville’s assertion of the democratic family model and sheds light on the message children received about the anticipated relationship they should have with their parents. Harvey Newcomb’s How to Become a Man and How to Become a Lady each contain a chapter entitled “Filial Piety;” the first several pages of which are identical. Newcomb appears to have been a “rationalist,” as he instructed both sons and daughters to “honor” their parents through “obedience” and “submission to [their] authority.” Newcomb’s works were religiously rooted, and he likened the relationship between parent and child to that between God and man; “to disobey parents is to disobey God,” he wrote, as “God gave parents authority over children.” This religious bent to his work explains the traditionalist insistence on children’s obedience and submission to parental authority; like Sigourney and

411 Dwight, 105.
412 Ibid.
413 Sigourney, 157
Dwight, at no point did Newcomb write about the “mutual respect,” “affection,” or “intimacy” that de Tocqueville had defined the new democratic family by. Although Newcomb specified that his work was geared toward children between the ages of eight and sixteen, he never suggested that this deferential, one-way relationship should end once a child reached their majority.

In his advice to youth, Newcomb indicated that sons and daughters were expected to have different types relationships with their parents because of their gender. Although Newcomb literally copied the first several pages of his advice on “filial piety” from one of his books to the other, he concluded each chapter by addressing the genders separately. In How to Become a Man, Newcomb linked the importance of obedience as a child to a man’s success as a citizen. He suggested, however, that it was more effective to convince a parent to discipline a child than to convince a child to obey his parent. “Nothing has, perhaps, a greater influence upon the character of the man than the trait of [obedience.]. The boy that is obedient and submissive to parental authority will make a good citizen. He has learned to obey, from his childhood; and he will be obedient to the laws of his country; he will be respected in society, and may rise to posts of honor. But the disobedient boy, who is turbulent and ungoverned at home, will make a bad member of society.”

But Newcomb knew his audience, which were anxious, ambitious, and motivated youth; by linking filial obedience to productive citizenship and manhood, he was right on target in his effort to control the youthful behavior of young men with middle-class aspirations.

416 Harvey Newcomb, How to Become a Man: A Book for Boys Containing Useful Hints on the Formation of Character (Boston: Gould, Kendall, and Lincoln, 1847), 36.
Newcomb also addressed the issue of defiant sons seen in *A Father’s Book* and *Letters to Mother*, in turn, underscoring Early Republican gendered perceptions of adolescence and parental authority. “Boys of certain age are frequently disposed to show their importance,” by challenging parental authority, he explained, “this is particularly the case with respect to the authority of the mother; they feel too big to be governed by a woman.”

“I can scarcely think of anything more unmanly than this,” he continued. Newcomb’s decision to include this message specifically to young men indicates how common it was for sons to take their mother’s authority less seriously as they grew older. As suggested in Sigourney’s *Letters to Mother*, young men were taught that they would be the head of their households with absolute legal and social authority over their wives. This reality sent a conflicting message to sons about when their position of male dominance would begin and when their submission to women as their mothers would end. Newcomb’s insistence that filial obedience meant submission to both fathers and mothers was an important attempt at equalizing the authority of parents regardless of gender.

In *How to be a Lady*, Newcomb took a different approach and appealed to daughters via their appearance and social reputation. “Filial piety adds a peculiar charm to the female character; while the want of it, in females, makes them appear like monsters.” He continued that “disobedience,” makes young women

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417 Newcomb, *How to Become a Man*, 35. Newcomb identified widows as particularly vulnerable to this type of relationship with their sons, “without a father,” he wrote, boys “take advantage of the widowhood of their mother [and] resist her authority.” Newcomb, *How to Become a Man*, 35.

418 Newcomb, *How to Become a Man*, 35.

419 Newcomb, *How to Become a Lady*, 35.
“appear very unlovely… No matter how beautiful she is—this defect will be a black spot on her pretty face… no matter how genteel she may be in her behavior to others—the first step in gentility is respectful obedient carriage toward parents,” he warned. Clearly, Newcomb thought a young woman’s goal should be to find a husband and nothing else; and in reality, girls did not age into citizenship the same way boys did, so to link filial obedience to a concept of independent “womanhood” would not have made sense. Consequently, for Newcomb the best way to control a daughter’s behavior towards her parents was by linking filial obedience to one’s attractiveness as a prospective wife.

Along with parenting advice literature, legal literature was an easily accessible and widely read medium that informed Early Republicans on the “proper” parent-child relationship. As American laws sprang up to both limit and bolster parental control over minor children, legal dictionaries and treatises written for laymen proliferated along with them. John Bouvier’s A Legal Dictionary Adapted to the Constitution and Laws of the United States… and Tapping Reeve’s The Law of Baron and Femme; Of Parent and Child are two such works that defined the terms “mother,” “father,” “child,” and “parent” within a legal context. Through these publications and others like them, Early Republican legal scholars helped institutionalize, codify, and redefine the intimate relationship between parent and child to that of a technical one—a relationship that could be objectively put on trial and ruled upon within the court system.

John Bouvier’s A Legal Dictionary, first discussed in the previous chapter, provides insight into how family relationships were legally defined. Bouvier
defined a father and a mother as simply “a man [or woman] who has a child.”\textsuperscript{420} Conversely, a “child” was “the son or daughter in relation to the father or mother.”\textsuperscript{421} Bouvier defined the phrase “in relation” to mean a relationship “by blood or by marriage,” which implied that a biological relationship between parent and child usually existed but that it was not necessary.\textsuperscript{422} The mortality rate in the Early Republic remained relatively high, which made stepparents common.\textsuperscript{423} As historian Lisa Wilson has noted, stepfathers, specifically, “had no legal obligation to support the offspring of another man, though he could choose to take on the role and act in loco parentis.”\textsuperscript{424} Similarly, although stepmothers had no obligation to their stepchildren, during the “antebellum age of reform... a good stepmother could become a new mother, raising her stepchildren with the memory of their mother intact.”\textsuperscript{425}

The difference between a mother and father, according to Bouvier, had to do with primary control and financial responsibility regarding the child. A father’s duties included “maintaining and educating [his children] during their infancy,” regardless of whether the child had an outside inheritance from which he could support himself. This was not the case for mothers, as they were only obligated to provide for their children so long as the children could not provide for

\textsuperscript{421} Bouvier, Volume 1, 174.
\textsuperscript{422} Bouvier, Volume 2, 338.
\textsuperscript{423} See Lisa Wilson, \textit{A History of Stepfamilies in Early America} (Chapel Hill: The University of North Carolina Press, 2014), 2. Wilson has noted that “studies of various locations in early modern Europe and North America have found that between 20 and 40 percent of marriages were remarriages.” Wilson, 3.
\textsuperscript{424} Wilson, 6-7.
\textsuperscript{425} Wilson, 7-8.
themselves. In turn, a man’s rights as a father were “to have authority over his children to enforce his lawful commands, and to correct with moderation his disobedient children.” Additionally, until the age of twenty-one, fathers were “entitled to the services of his children.” According to Bouvier, “during the joint lives of the parents, the father is alone responsible for the support of the children; and has the only control over them, except when in special cases the mother is allowed to have possession of them.” Bouvier reminded audiences that if a father died, the mother gained legal control of their minor children but she was limited the same way a guardian would be.

This difference in parental responsibility reflects the assumption that women were expected to be perpetual dependents and so not able to support families on their own. As Michael Grossberg explains, “prerepublican Anglo-American law granted fathers an almost unlimited right to the custody of their minor legitimate children. Moored in the medieval equation of legal rights with property ownership, it assumed that the interests of the children were best protected by making the father the natural guardian and by using a property-based standard of parental fitness.” In most states, women could not own property, and thus, they were unfit parents compared to fathers. As custody was dependent on support, and widows were assumed to be “drains on the community,” guardianship was rarely granted to mothers even in the event of the

426 Bouvier explains that mothers were “compelled, when she has sufficient means, to support” her children. “But when the child has property sufficient for his support, she is not, even during his minority obligated to maintain him.” Bouvier, Volume 2, 152.
427 Bouvier, Volume 1, 401.
428 Bouvier, Volume 2, 152.
429 For a further discussion of guardianship and age, see chapter three of this dissertation.
430 Grossberg, 235.
father’s death. \textsuperscript{431}

Interestingly, both parents were responsible for the financial support of adult children if they became “chargeable to the public.” The same expectation held for adult children with regard to support for their indigent parents; this mutual responsibility demonstrates one of the ways in which legal definitions of age, dependence, and independence were arbitrary. \textsuperscript{432} A parent’s financial responsibility to their child was expected to end once their child turned twenty-one and, in-turn, a parent’s legal ability to benefit from their child’s service ended at the same age. Yet poverty could extend these obligations in perpetuity, illustrating how traditional expectations of parent-child relationships continued well into the nineteenth century irrespective of any statutes which declared independence.

Bouvier echoed Tapping Reeve’s 1816 publication, \textit{The Law…. On Parent and Child}, which goes into much more detail on the expected legal responsibilities of parents after the Revolution. Reeve explains that parents were to provide for their infant children because “whoever is the instrument of giving life to a being incapable of supporting itself is bound by law of morality to support such being, during such incapacity.” \textsuperscript{433} “When such incapacity ceases,” he continued, “the obligation is to end.” \textsuperscript{434} In order to “prevent uncertainty on this subject, the law has fixed the time of minority until the child arrives at the age of

\textsuperscript{431} Grossberg, 242.
\textsuperscript{432} See Bouvier, Volume 1, 401 and Bouvier, Volume 2, 152.
\textsuperscript{433} Tapping Reeve, \textit{The Law of Baron and Femme; of Parent and Child; of Guardian and Ward; of Master and Servant; and of Powers of the Courts of Chancery; with an Essay on the Terms, Heir, Heirs, and Heirs of the Body} (New Haven: Printed by Oliver Steele, 1816), 283.
\textsuperscript{434} Ibid.
21 years.” Yet, if the child is “unable to maintain himself at the expiration of that period,” the parent is “liable for his support.” Reeve explained that “this duty of supporting adult children [was], in England, enforced by a statute of Eliz.; and similar statutes [had] been enacted in most, if not all the States in the Union.”

Reeve also provided a more thorough discussion of the right of the father to “correct with moderation his disobedient children.” Reeve explained that “the parent has a right to govern his minor child; and as incident to this, he must have power to correct him.” If a parent failed to discipline his child, then he risked allowing his child to become “a victim of vicious habits” who would become a “nuisance to the community.” Legally, then, parents were expected to discipline their children to keep them from becoming moral drains on their community the same way parents were excepted to be financially responsible for their adult children to keep them from draining community resources. However, Reeve acknowledged that what constituted “reasonable” forms or levels of discipline and what would be considered extreme or “unreasonable” was a matter of opinion that had to be negotiated within the legal system. Furthermore, according to Reeve, children had “rights which the law [was supposed to] protect against the brutality of a barbarous parent.” Reeve published in 1816, however, it was not until 1874 that the first case regarding child abuse was heard.

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435 Ibid.
436 Reeve, 284.
437 Ibid.
438 Quote from Bouvier, Volume 1, 401.
439 Reeve, 288.
440 Ibid.
441 Ibid.
within the court system, demonstrating the lapse that existed between discussion of children’s legal rights and the actuality of them being enforced or strictly upheld.  

This offers another example of the disconnect between what legal statutes said and what the courts actually did.

Prescriptive advice literature is useful to illustrate the conflicting messages that Early Republicans received about what the ideal relationship between parent and child should look like. The democratic revolution as reflected in legal statute and de Tocqueville’s *Democracy in America* indicated to parents and children that minors gained rights and control over their own lives as they aged. At the same time, advice literature instructed readers, both parents and children, of the importance of “filial obedience,” indicating an expectation that traditional family relationships of deference were to continue regardless of revolutionary rhetoric. Although advice literature does explain some patterns of interaction between parents and their children seen in family letters, it was only advice—and advice targeted at middle-class families at that. Parents continued to mold their relationships with their children as they saw fit.

A close reading of family letters and the relationships that existed between parents and children challenges de Tocqueville’s (and historians’) assessments of Early Republican family dynamics. Furthermore, gender (of both the parent and child) influenced the nature of the relationship between progenitor and offspring. For example, mothers worriedly wrote advice to both sons and

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442 In 1874, the New York Supreme Court heard the first child abuse case concerning the abuse of a ten-year-old girl, Mary Ellen Wilson. For more information, see Eric A. Shelman, *Out of Darkness: The Story of Mary Ellen Wilson* (New York: Dolphin Moon Publishing, 1999).
daughters about the importance of inner character and outer reputation while fathers wrote most often about finances and obligations. The difference in the tone and topics found in letters from mothers versus fathers suggests de Tocqueville was both right and wrong about the “democratic family” model. The relationships between mothers and their children did appear more “intimate” and egalitarian. However, this was certainly not the case between fathers and their children; fathers continued to fixate on financial obligation and control, possibly because traditional aristocratic family models had taught them to.

De Tocqueville’s perception of parent-child relationships was based on a literal interpretation of American law, as legally, a “child” transformed into an “adult” overnight on his or her twenty-first birthday: “in America,” he wrote, “there is, strictly speaking, no adolescence: at the close of boyhood, the man appears.” However, state statutes which defined age and status were incredibly fluid and inconsistently followed. Socially, the transition from childhood to adulthood most certainly included a period of “adolescence” in which parents attempted to guide their children through the tenuous years of youth. Because adolescence is a socially and culturally constructed stage of life, it could, and often did, extend well beyond legal adulthood, as will be seen in many of the cases discussed at the end of this chapter. More importantly, as suggested in advice literature, gender—of parent and child—significantly influenced familial perceptions and expectations of dependence and deference.

It is important to note, however, that for particularly motivated or less fortunate youth, adolescence could end before legal adulthood. For example,

443 De Tocqueville, 234.
parental death or family financial hardship could push a young person to be financially responsible for themselves. Philadelphian Reverend Collins, discussed in chapter two, recorded a number of legal minors who insisted on their independence and right to consent to their own marriages because their parents had died.\textsuperscript{444} Alternatively, some young people, once away from home and the watchful eyes of their parents, found their taste for independence too intoxicating to give up. This was the case for twenty-year-old John Coffee and his fifteen-year-old brother Alexander, who both quit college against the wishes of their family to start their independent lives in 1836.\textsuperscript{445} Due to a multitude of factors, all of which were out of parental control, young people transitioned out of the stage of adolescence and made their way to adulthood before and after the age of twenty-one, as well as with and without their families’ approval.

Through a close look at a number of Early Republican family papers that contain correspondence between parents and children, it is possible to identify common topics and strategies parents employed to influence their “adolescent” children’s decision-making via letter writing. Because mothers seemed to be most concerned with their children’s inner character and outer reputation while they were away from home, they often cited the vulnerability of youth as a justification for imposing their advice. Fathers, comparatively, seemed most

\textsuperscript{444} See chapter two of this dissertation. Collin recorded one particular example on October 13th, 1800, “a young couple, he 16 years, and she 1 or 2 years less, made earnest sollicitation [sic] to be joined.” Collin explained that “they pleaded their independence of both parties, her parents being dead, his father also, and his mother in the West Indies.” Collin, “Remarkable Occurrences,” 13 October 1800.

\textsuperscript{445} Their nineteen-year-old cousin Eliza wrote to their shared Grandmother in 1836, “Sorry to hear of John & Alex quitting college. I expect they had no earthly excuse, just wanted to take a frollick.” Eliza D. Eastin to Grandmother, 1836, Our Common Affairs: Texts from Women in the Old South, ed. Joan E. Cashin, (Baltimore: John Hopkins University Press, 1996), 53.
invested in their child’s spending habits and often utilized the restriction of financial aid and physical goods or resources as a method of control that could easily extend beyond legal adulthood. Interestingly, both mothers and fathers alluded to and provided evidence of having sources who informed them of their children’s appearance and behavior. The intentional anonymity of these surveillance reports aided parents in maintaining control over their children’s behavior while away. Finally, when looking at these letters collectively, they provide evidence of the plurality of filial relationship types, complicating any easy assumptions about the sentimental, democratic family.

Acknowledging the excitement of being away from home for the first time, apprehensive mother Jane Henry Garland advised her two teenage daughters, eighteen-year-old Sally and fifteen-year-old Mary, to “not let the amusements of Richmond ingross too much of your precious time.”\(^{446}\) “Endever to improve in virtue and knowledge… [and] find time for solid improvement.”\(^{447}\) Jane’s reminders to focus on the task of “improvement” were not groundless. Many young people found being away from the watchful eye of their parents to be excitingly liberating and full of potential distractions. As twenty-four-year-old Sallie Graydon warned her teenage cousin Lou Madden, who was away at school, at the top of the list of distractions were interactions with the opposite sex. “Do not think too much about the beaux,” Sallie wrote, “wait until you are done going to school… some girls you know when in love with a young man can

\(^{446}\) Jane Henry Garland to Sally and Mary Garland, 4 February 1819, Garland Family Papers, Virginia Historical Society.

\(^{447}\) Ibid.
study nothing else.”[^448] This mixture of excitement, freedom, distraction, and youth made parents nervous. It sent many mothers in a writing tizzy, hoping they could continue to shape their children’s inner character and protect their outer reputation through the advice they provided by way of mail.

Widowed mother Mary Eppes Cocke articulated the stress and concern many antebellum parents, especially mothers, experienced while their children were away. For example, on October 6th, 1840, Mary sent the first of several letters to her sixteen-year-old son, Richard, who was attending the University of Virginia.[^449] “Attend to the advice of your mother,” Mary begged, “who feels all the anxieties for a dear son at College for fear of his morals being corrupted.”[^450] The mother of Sarah C. Watts, a young woman who attended LeRoy Anderson’s Female Academy in Williamsburg, Virginia, expressed a similar sentiment as Mary Eppes Cocke: “[I] feel a thousand fears, and anxieties, which I never experienced, till at so great a distance from you. Nothing but the improvement of your mind, could have reconciled me, to so long a separation, particularly at your

[^448]: Sallie Graydon to Lou Madden, 1859 in *Our Common Affairs*, 158. Similarly, William Taylor Barry confessed to his older brother the distraction that interacting with young women could be, writing “I feel very little embarrassment in entering the company of ladies here, I spend a good deal of my time in that way. It sometimes encroaches on my studies…” William Taylor Barry to Brother, 6 February 1804, William Taylor Barry Papers, Filson Historical Society.

[^449]: Born in 1824, Richard was the only child and sole heir of Benjamin Cocke and Mary Eppes Cocke. When he was sixteen, while away at the University of Virginia, Richard legally changed his last name (at the request of his mother) to Eppes so that her ancestral lands that he was set to inherit would remain associated with the family name. Richard’s mother died in 1844, leaving the twenty-year-old her entire fortune which included extensive property in the form of land and slaves. It is also important to note that Richard Eppes is well known as a prominent antebellum planter and civil war surgeon whose diaries have been cited numerous times in works on nineteenth-century Virginia. However, he was also a teenage boy at one point in his life and the letters between himself and his mother while he was away at the University of Virginia provide one example of the types of relationships that existed between mother and son. A basic biography of Richard Eppes can be found in the Library of Virginia’s online Dictionary of Virginia Biography: http://www.lva.virginia.gov/public/dvb/bio.asp?b=Eppes_Richard_1824-1896.

time of life, when a Mother’s presence is so necessary.” As can be seen, attending schools or visiting extended kin far from the family home was an expected part of elite Early Republican adolescence for both young men and women, however, this physical distance was also a serious source of anxiety for parents.

Parents fears were not unwarranted. The most common concerns surrounded their children’s potential involvement in debt, dueling, illicit sex, and/or pregnancy. Consequently, mothers often recounted negative examples of behavior in hopes that it would influence their children to make better social and character choices. For example, Mary Eppes Cocke mentioned a friend of Richard’s who had gotten himself into trouble with debt. Mary prefaced her news with: “I think you young men behave very badly in spending so much money.” She then explained to Richard that, “He had not any business to get in debt for I am sure he was allowed enough money for his expenses or his Father wouldn’t

451 Mother to Sarah C. Watts, 4 April 1807, Sarah C. Watts Papers. Another example: Jane Henry Garland wrote, “I hope you will keep in mind that decorum so necessary in the conduct of a female and not let me have to regret that you have been so long absent from the eye of a mother whose happiness principally consist in the happiness and respectability of her children.” JHG to Sally and Mary, 19 March 1819, Garland Family Papers.
452 In fact, it was a necessary experience meant to extend a young person’s social network as a way of increasing their potential marital and career opportunities. For more information, see chapter one of this dissertation. For a discussion of young women in the south living away from home, see Jabo, Scarlett’s Sisters; for a discussion of young men in the south living away from home, see Lorri Glover, Southern Sons: Becoming Men in a New Nation (Baltimore: John Hopkins University Press, 2010); for a discussion of vacationing youth, see Charlene M. Boyer Lewis, Ladies and Gentlemen on Display: Planter Society at the Virginia Springs, 1790-1860 (Charlottesville: University of Virginia Press, 2001).
453 The trope of the fallen youth, of a young person who made bad choices that had lasting impacts on their future or family reputation, was pervasive in popular novels from the time. For a discussion of the plot of the typical American novel of seduction see, Cathy N. Davidson, Revolution and the Word: The Rise of the Novel in America (Oxford: Oxford University Press, 1988).
454 Lorri Glover discusses young men’s proclivity for getting into trouble in Southern Sons.
have sent him [to school]. A few months later, Mary wrote again, this time about news of a duel, “I hope you were not concerned in that disturbance which happened at the College… [I] think that young man that refused the challenge showed his good sense.” By commenting on the behavior of Richard’s peers, whether it be condemning his friend who got into debt or praising a young man for refusing to duel, Mary was signaling to Richard what she expected of him.

In addition to implying what she expected of Richard, Mary also explicitly pleaded with him to take her advice. She worried about Richard’s academic reluctance and proclivity toward “idleness,” but more importantly the toll these two traits might take on his reputation and status as an elite member of Virginian society. For example, just one week after the start of Richard’s semester, Mary wrote, “I am sorry to find that you don’t like your situation… I would advice you not to quite it for one twelve month, for if you do I am afraid that there will be a great deal said about it.” Two years later, Richard attempted to quit school again, this time because he was “tired and wornout with [his] studies.” He floated the idea of returning home to manage the Eppes estates that had transferred back to his mother after his father’s death in 1836. Mary responded with a firm no, “nothing on earth would give me more pleasure than to have you with me at home attending to the farms,” she wrote, but “I think you are too young to manage such servants as ours for they would torment you out of your

455 Mary Eppes Cocke to Richard Eppes, 7 April 1842.
456 Ibid.
457 Mary Eppes Cocke to Richard Eppes, 19 October 1840.
458 Mary Eppes Cocke to Richard Eppes, 30 November 1842.
Youth and the vulnerability that came along with this stage of life, as Mary Eppes Cocke alluded to, was a regular theme in her own and other mothers’ letters to their children. For example, of the ten letters Mary wrote to Richard between 1840 and 1843, she referenced Richard’s youthfulness in seven of them, usually in the context of reminding him to be a “good child” or that his youth made it possible to easily reinvent himself if he had slipped into “idleness” as a result of his “dissipated” peers. “Compose your mind and reform whatever bad habits you have contracted for you are young and can easily do it,” she wrote on January 22nd, 1841. A few months later, Mary expressed severe disappointment in Richard for carelessly criticizing his peers via written correspondence. “You are entailing misery on yourself and perhaps dislike by all your acquaintances,” she warned. Mary feared that others would see the words that Richard wrote and cautioned him to “think more and write less.” She concluded by noting with disappointment that: “you are young and thoughtless.”

This fear, that their children acted, spoke, or even wrote before thinking due to their youth, was a regular topic that appeared in parents’ letters. Perhaps sensing her son’s recklessness, Mary Eppes Cooke had suggested to Richard a few months prior “confide in your mother… for she will never betray you.”

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459 Ibid.
460 Mary encouraged Richard to be a “Good child” on October 10th, 1840 and she referred to “dissipated young men” on September 15th, 1841.
461 Mary Eppes Cocke to Richard Eppes, 22 January 1841.
462 Mary Eppes Cocke to Richard Eppes, 22 January 1841 and 21 May 1841.
463 Mary Eppes Cocke to Richard Eppes, 22 January 1841.
1807, Sarah C. Watts received similar advice. “It is a sentiment natural to young minds to believe every body good and of course our friends as we are not conscious of having done any thing to make them otherwise,” her mother warned, but “daily experience proves how few there are who deserve the name of friends, in me, you have a friend whom you may trust, and one who will never betray you.” These mothers expressed an identical concern: that their children would be naively trusting of their fellow youth, confide in the wrong person, and as a result, their reputation would be ruined.

Jane Henry Garland expressed the same concern about youth, naiveté or vulnerability, and love when writing to her two teenage daughters, Sally and Mary. Jane’s inability to spell seems not to have impeded her ability to communicate concerned motherly advice: “You are now, my Daughters, at a time in life that the Hart is susceptible to tender passhun—let me beg of you to gard it well, and let it not be taken by outward appearances alone… I only wish to give you a caution in time for perhaps when once you have given place to that passhean it will not be so easy to get rid of it.” By “passhun” Jane meant emotions or intense feelings associated with potential suitors. Because her daughters were away, Jane was unable to control who they interacted with and how often; consequently, Jane was rightfully concerned the girls might engage in a courtship with an unsuitable young man.

Finally, Philadelphian French ex-patriot Margaret Izard Manigault wrote to her close friend, a fellow mother, Josephine du Pont in 1814 about the frustration

464 Mother to Sarah C. Watts, 4 April 1807.
465 Jane Henry Garland to Sally and Mary Garland, 19 February 1819.
she felt regarding her nineteen-year-old son, Charles, and his inability to see consequences due to his youth, in this particular case regarding his attitude about the War of 1812. Margaret explained that “all this chain of events amuses him. What seems frightful to us is only a game to the young…. At his age temperament is not formed.” Margaret saw her son’s excitement for war as ignorant and linked his callowness to his age. Furthermore, Margaret’s comments are representative of the widely-shared parental awareness of adolescence as an in-between stage where mature opinions and careful considerations of one’s actions did not necessarily come naturally. Consequently, the awareness of youth and adolescence motivated parents to write letters to provide their children with a guiding hand.

The advice parents offered their children was all encompassing, ranging from who to confide in to proper appearance. Eighteen-year-old Sally Garland received advice from her mother in 1819 to make sure that she was dressed “fashionable (so far as is prudent)” but also to have a “degree of elegance to [her] apperence and much neatness.” Interestingly, nearly thirty years later, Sally passed along similar advice to her nineteen-year-old son William: “I sometimes hear you are not as clean as I would wish you, your employment I know is a dirty one and you must get cloths enough to change often… I wish you at all times to appear neat and genteel.” Mary Eppes Cocke also wanted her son, Richard, to appear genteel, explaining to him the importance of paying more for quality: “you

467 JHG to Sally and Mary, 19 February 1819.
468 Sarah (Sally) Garland Waller to William Waller, 5 July 1847, Garland Family Papers.
seem to think that you gave too much for the Cape but I do not for I had much rather you should be comfortable and genteel than otherwise.”

Outward appearance, which included the right clothing and proper hygiene, was an important part of the performance of gentility and elite status. Without being able to see how their children looked every day, mothers worried that they were not physically presenting themselves well, which in turn could hurt their reputations.

In order to have the right clothing for making a good appearance, along with the ability to gain access to the other trappings of privilege, young people needed money. Consequently, money was a point of discussion parents regularly raised in their letters to children (and vice versa). More significantly, fathers often centered the entirety of their correspondence with their children on finances. Some fathers flexed their authority via their purse strings, while others simply acknowledged their child’s financial request and provided it. This was the case with Sally and Mary’s father, David Garland, who wrote only one brief letter to the girls while they were away in Richmond. David’s letter quickly granted the girls permission to attend a ball “if [they had] suitable Company” before shifting the focus of the letter to finances. “Inclosed you will find $20…. If you want more perhaps your cousin William can let you have what you want.” Mothers also discussed money in their letters to their children, but usually in the context of thrift linked to one’s moral character. For example, in 1847, Sally Garland Waller reminded her son William that while he had “money enough to buy any thing [he]
wanted,” he should “keep a memorandum of how [he] spen[t] his money” so that she could guide him in his financial decisions both “minute as well as large.”

Letters written from seventeen-year-old George Blow to his father, Richard, provide an excellent example of the way fathers could, and did, use financial resources as a method of control from afar. George’s father frequently questioned his son’s spending habits while away at the College of William and Mary. This prompted George to provide lengthy, detailed lists (including receipts) of his expenses in most letters home in an effort to demonstrate to his father that he was not a frivolous spendthrift. “You accuse me of spending too much money,” George wrote, “I confess that my expenses have been great, but I must also declare that $10 have not been squandered by me this course.”

Evidently, George’s father did not believe him and began holding out on George to test his theory. On March 13th, 1805, George got desperate and pleaded with his father to send his rent and food money. George reminded his father that after he agreed to a price for room and board at a local boarding house, George “immediately wrote to” him “and requested [his father] remit [George] the money to pay” the landlady. “But,” George continued, “you have disregarded my request and suffered my feelings to be greatly mortified, by suffering me to present myself every day before one to whom I have violated my promise. I really feel so ashamed of myself whenever I go to breakfast or dinner that I almost appear like a criminal convicted of a crime. I beseech you to rescue me from this

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473 Sally Garland Waller to William Waller, 5 July 1847.  
474 George Blow to Father, 20 March 1804.  
475 Between 1804 and 1805, George asked for more money in every letter he wrote to his father.
disagreeable situation.”

Another example of how monetary dependence was a tool parents implemented to assert control of their children can be found in letter from mother Nelly Parke Custis Lewis to her close friend Elizabeth Bordley. Nelly and her husband used the promise of inheritance and financial support to control their son, Lorenzo. In 1823, Nelly mentioned to Elizabeth that their family home and ancestral lands “[would] be [her] sons when he [turned] 23.” Most inheritances transferred once a child turned twenty-one, to assign the age of twenty-three would have been unusual and purposefully done by the family, possibly to extend their ability to control the young man. Evidently this tactic worked because in 1824, after Lorenzo was twenty-one, Nelly told Elizabeth that “Mr Lewis has consented to Lolen’s return to Philadelphia, & I hope he will go in a few days-- & be very attentive to his studies.” As a legal adult, Lorenzo should have been able to do as he pleased, but with the inheritance not yet his, he still required his father’s consent before making decisions for himself.

John Clark, a father and resident of Petersburg County, Virginia, provides one final example of a parent’s attempt to control their child’s behavior through monetary incentives but from beyond the grave. In 1822, John filed a will with the court that explicitly stated that to his “eldest son William Clarke [who] hath highly offended and disobeyed me I give and bequeath unto him the sum of five hundred dollars to be paid on or before he arrives at the age of twenty years.”

476 George Blow to Father, 13 March 1805.
477 Eliza Parke Custis Lewis to Eleanor Bordley Gibson, 7 May 1823 in George Washington’s Beautiful Nelly, 135-136.
478 EPCL to EBG, 22 November 1824, 155.
However, at the end of his will, he attached the following note: “I hereby empower my executors that in case my eldest son William shall conduct himself in such a manner as will entitle him to their confidence and approbation, that so soon after he becomes of age, as they may think proper and right, they may pay him the further sum of five thousand dollars.” William’s younger brothers were to receive equal shares of the remaining estate, so although John was not willing to fully reincorporate William back into his inheritance, by upping William’s sum from $500 to $5000, he offered a huge incentive for William to turn his life around in accordance with his father’s wishes.

The diary of nineteenth-year-old Lizzie Neblet expressed the frustration children, especially daughters, occasionally felt about parental control over access to money. Lizzie’s relationship with her parents was an abusive one. In 1852, Lizzie got engaged as a means of escaping her parents’ house, yet she was concerned about her future husband’s ability to provide for the two of them. “I will not be dependent on my parents. Never! Never!,” she wrote a few months before their marriage. Revisiting the topic days before the wedding, Lizzie exclaimed: “I’ll work my fingers off before I’ll be dependent on him and if Will and I do separate, I’ll never come back to him. I’ll support myself.” Lizzie was not concerned with being a dependent; she had readily accepted that she would be a dependent of her future husband Will once they married. What Lizzie did not want was to be dependent on her parents, her father specifically, any longer and

479 John Clark Will, 1822, Petersburg, Virginia Hustings Court Will Books, Microfilm, Reels 18, 19, 20, 22, Library of Virginia.
she identified that dependence was a result of the need for money.

One of the most effective tools that both parents used to ensure their children’s appropriate behavior regardless of gender was the suggestion of anonymous surveillance. Both Sally Waller and Richard Blow implied to their children that they were being watched even while away from home. In 1847 Sally chastised her son William about his appearance, writing: “I sometimes hear you are not as clean as I would wish you… you were always careless in your person, you are now old enough to pay more attention to it.”  

By commenting on something specific such as hygiene, Sally sent a clear message to William that others were surveilling him and reporting back to her. George Blow’s father, Richard, evidently had a similar arrangement. In 1804, George wrote to his father: “It is extremely mortifying to my feelings to be under the necessity of vindicating myself to you; but the impressions you have lately received & the reports you (I suppose) have heard of me, oblige me undertake this disagreeable duty.”  

George did not know who had informed on him, but Richard’s information was evidently accurate enough that George felt compelled to explain himself and clarify the turn of events. “You have heard that my roommate has been implicated in a duel, & that I was his second…” George wrote, “This is not true, he indeed was about to fight, but he did not choose me as his second.”

The bottom line was that George received the message, his father had eyes and ears on George, and if he slipped up or lied, his father would know about it.

The forms of parental control discussed throughout this chapter, whether

481 Sarah (Sally) Garland Waller to William Waller, 5 July 1847.
482 George Blow to Father, 20 March 1804.
483 Ibid.
they be emotional or financial, had nothing to do with actual age and so could easily extend into the child’s legal adulthood. Parents were aware of this and used the ambiguity surrounding the end of adolescence to their advantage. For example, Eliza Whitfield, an unmarried thirty-two-year-old North Carolina woman who lived with her mother, remained deferential despite her legal independence. In 1842, Eliza wrote to her cousin, Louisa Sills, explaining that because of rumors spread about her within their community, her mother would never let her “visit Belford [North Carolina] again unless she can know who it was told them lies.”

Two years later, Eliza again wrote to Louisa about another controversy she was embroiled in, this time when she refused to attend a local wedding because the father of the bride had “not acted gentlemen like in his conduct towards our Mother.” Explaining that had she attended the wedding, she would have “treated [her mother] with very little respect.” Eliza’s recognition of her mother’s control of her movements, despite the fact she was in her thirties, confirms that she deferred to her mother when making personal decisions, limiting her ability to do as she pleased.

Letters between traveling Virginian judge Joseph Prentis Senior and his twenty-two-year-old son, aspiring lawyer Joseph Prentis Junior, provide a more thorough example of an extension of parental control beyond a child’s legal independence. Joseph Senior regularly referred to Joseph Junior as “my boy”

484 Eliza N. Whitfield to Louisa M. Sills, 20 March 1842, The Sills Family Papers, Eastern Carolina University Special Collections.
485 Eliza N. Whitfield to Louisa M. Sills, 1844.
486 Eliza most likely remained in the life stage of adolescence due to her unmarried status.
487 In many ways, the letters between Joseph Senior and Joseph Junior seem to be ideal examples of a democratic family relationship between father and son as their writing was intimate and affectionate to one another. However, Joseph Junior’s letters to his father were
and stated numerous times how important it was that Joseph Junior thought through his actions as he was “just entering into life.” Despite the fact Joseph Junior was twenty-two years old and so a legal adult, both father and son clearly viewed Joseph Junior as in the stage of adolescence. Like many of the mothers discussed previously, this father also warned against the danger of a “youthful mind,” writing in July of 1805:

“The road is beset with Dangers on all sides, every step should be trodden with caution. Various are the temptations to depart from that path, which leads to Happiness; and in a youthful mind too often it will at first become irksome and difficult to persevere in virtuous actions. From that cause perhaps it may reasonably presumed that a youth at your time of Life may be too careless and inattentive to that great object, Reputation or Character. They pursue with unabated zeal the plans formed by themselves with the ardour of youth, and confiding in their own knowledge, become indifferent as to the opinion of others; at the period of Life hurried into irregularities from youthful Zeal they sometimes suffer from impressions made and fixed on their character which a life of prejudice is received where truth has not the least foundation.”

Joseph Junior seems to have taken this advice to heart, writing two years later (and thus when he was two years older) about the fear he felt over potentially making the wrong choice because of his youth. “I trust, however, that from the great advantages from being brought up under the eye of such a parent as I had, that I shall avoid those vices and immoralities, which the youthful mind falls into from the want of correction in the earlier part of their lives.”

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488 Joseph Prentis Senior to Joseph Prentis Junior, 5 July 1805, Prentis Family Papers, Colonial Williamsburg Foundation. Joseph Senior saw this advice as so important that he asked Joseph Junior to hold on to the letter so that he could show it to his younger brother, John, when the time came. Joseph Senior wrote: “This letter contains observations which in a few years may suit your dear Brother, when he is about to establish himself in Life. They may be a profit to him at that time, and it may be well to preserve them for his Eye…. There is little probability that I shall live to see him established in business.” Joseph Prentis, Sr. to Joseph Prentis, Jr., 5 July 1805.

489 Joseph Prentis Junior to Joseph Prentis Senior, 22 May 1807.
flattery may have been calculated as Joseph Junior used the rest of his letter to ask for money. "I endeavor so to curtail my wants as to avoid getting in debt," he explained, "yet with all my endeavor, I keep behind with friend Jones-- It would be convenient to me for some small aid on the score board, but my convenience I hope will not allow to conflict with yours… I know you have a large family to provide for, who are more helpless than myself and therefore require greater attention." Joseph Junior’s deferential tone combined with the request for funds indicates that even at twenty-four he did not view himself as a fully independent adult. He concluded his request by musing that one day he might “have the same pleasure of administering to the comfort and want of others” as his father could, but despite being legally labeled an adult, he was not yet there.

These kinds of ambiguity over when adolescence began and, more importantly, when it ended could create different kinds of tension in parent-child relationships. In elite families, as seen in the letters discussed above, these tensions revolved mostly around a desire for independence from parental control. Possibly taking cues from advice literature, elite parents expected different things from-- and behaved in different ways towards—their children based on their child’s gender. But while elite parents expected deference, largely because of their continued financial and social support, they did not depend on their children for labor or income the way that lower class families did. Significantly, then, lower class families’ labor arrangements are a significant place to see the influence of

490 Ibid.
491 Ibid.
gender on perceptions of deference and dependence. When a family actually lost something if they recognized a child’s legal “adulthood,” we see the clearest examples of challenges to legal definitions of age and independence.

The traditional expectation that children’s labor would contribute to the household’s productivity seamlessly continued after the Revolution—though despite some shifts in the experience and understanding of work and labor. This was particularly true for families that did not rely on wage-based work arrangements in addition to many families who did work for wages but still relied on family labor to maintain the household. Legally, fathers had the right to benefit from their children’s labor, male or female, until their child turned twenty-one. However, culturally, many families expected this arrangement to continue so long as their child was unmarried and dependent in some way on the household for survival. This was particularly true for daughters, indicating that gender influenced how families viewed expectations of dependence and servitude more than chronological age did. Evidence of the commonness of these arrangements can be found within the court system through seduction suits and loss of service cases tried and appealed in the first half of the nineteenth century.

At the close of the eighteenth century, the number of seduction suits by fathers as a means of seeking legal and financial recourse following their unmarried daughters’ pregnancies was on the rise. The basis for these seduction suits was on a claim of loss of service, which originated with the English law of servitude that “recognized the loss a master might suffer if another

492 See Jeanne Boydston, *Home and Work*
493 Sweet, 7.
individual improperly ‘seduced’ away one of his servants.  

494 English law also defined the status of children as legal dependents, or “servants,” to their fathers. This in turn offered a legal loophole for fathers to sue for a “loss of service” when their unmarried, underaged daughters fell pregnant, even if the daughter never actually labored for the household. Used in this way, the law was automatically gendered, as only daughters, not sons, could become pregnant. An analysis of these cases shows that parents regularly challenged Early Republican legal definitions of age and independence and provides evidence that juries and justices struggled with when and how to adhere strictly to the law or to uphold communal expectations of gendered dependence.

The 1822 Pennsylvania appellate case, *Hornketh v. Barr*, is an example of straightforward loss of service case via a seduction suit in which the father was awarded damages for the “debauching of his minor daughter.” 495 According to trial records, sometime in 1816, with his consent, Hugh Barr’s younger daughter moved to Philadelphia to work and to live with her older, married sister. While in Philadelphia, “the seduction and confinement of [Barr’s] daughter took place… before she attained the age of twenty-one years.” The defense appealed the case on the grounds that because Barr’s daughter was living with her sister, technically her sister was her master, and she should be the one to sue for a loss of service. If the girl “did not live with her father, he could not lose for want of her services” they argued. However, as the initial court as well as the appeals court ruled, because the girl was a minor, “the father could command the services of

494 Sweet, 12.
his child at any time. Therefore, during her pregnancy and confinement, he lost, because he could not have had her services, if he had required them.” The two factors that made the ruling in *Hornketh v. Barr* so clear cut were the fact that the girl was under the age of twenty-one and that Hugh Barr was her “natural” father.496

Other rulings for seduction suits and loss of service cases involving stepfathers suing on behalf of their minor stepdaughters, or a “seduced” adult daughter were much more complicated and circumstantial. Justices (and juries) had to balance communal expectations of deference and continued familial dependence with legal definitions of age and independence as well as the rights (or rather lack there of) of stepfathers. By looking at seduction suits that were challenged and appealed, we gain an important insight into how parent-child (and stepparent-stepchild) relationships operated outside of legal definitions of age and independence as well as how fluid and negotiable legal statutes could be.

The relationships that existed between stepparents and stepchildren were just as complex and individualistic as those between parents and their biological children. The main difference were the legal expectations (or lack thereof) that undergirded these relationships. As mentioned earlier in the chapter, biological fathers were legally obligated to provide for their children during their minority while stepfathers had no such obligation. In fact, Early Republican courts viewed

496 As John Sweet has pointed out, “a seduction suit could only be filed by a father, a widowed mother, or other guardian. The notion that it was a father or husband who was harmed by the seduction of his daughter or wife was based in deep-seated patriarchal assumptions about male sexual ownership of women that suffused the Anglo-American legal tradition... while this patriarchal ideology limited who could obtain recourse for seduction, it also was largely responsible for the seduction suit’s power as a form of recourse.” Sweet, 11.
stepfathers with suspicion, and a number of laws limited the control stepfathers could have over their stepchildren and their inheritance. At the same time, legal scholars often discussed the concept of “in loco parentis,” when a stepfather essentially adopted his stepchildren by voluntarily providing for and treating them as “his own.” Thus, if a stepfather “held [a stepchild] out to the world as part of his family,” then he should also be required to support that child as a biological father would be. Following the same logic, a stepfather who provided for his stepchildren should then also be entitled to that child's service. The key word here is *should*. Legal scholars put forth these assertions in their publications on common law, but according to statute, stepfathers clearly had no obligations and they had no rights.

Four cases, *Bartley v. Richtmeyer, Bracy v. Kibbe, Williams v. Hutchinson, Lantz v. Frey and Wife*, heard in New York or Pennsylvania in the 1850s, collectively illustrate the complicated relationships that stepfathers formed with their stepchildren. Each case sheds light on the difficulties courts faced in determining what was more important when deciding on a verdict: the individualized relationship that existed between stepparent and stepchild or the generalized legal relationship? Justices who oversaw the appeals of these cases also considered the impact of their verdicts in setting precedents that might negatively influence stepparent-stepchild relationships or undermine male authority in the ability to control daughters and other female dependents.

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Together, these cases illustrate the disconnect that occurred between how legal statute was expected to work theoretically and how it actually was applied within the court system.

The first case, *Bartley v. Richtmeyer*, was heard by New York appellate justices in 1850. Several years prior to the case, in 1843, seventeen-year-old Gitty Ellen McGarey moved out of the New York home she had shared with her mother and stepfather, Mr. Bartley. Evidently the relationship Gitty had with her stepfather was complicated one; although he had raised the girl since she was five, by her late teens he had told “her to leave his house.” According to trial records, Gitty “abandoned [Bartley’s] house, assumed the exclusive management of her own affairs, and was then in the actual employ and service of another, under stipulated wages”; for all intents and purposes, then, she was acting as an independent adult. Most importantly though, “so far as appeared, [Gitty did not have] any intention of returning” to the household--that is until she became pregnant two years later. At five months pregnant, Gitty was invited to move back to her family home and offered a job working for her stepfather for “six shillings a week.” While she lived with her mother and stepfather, she gave birth, was “confined there and nursed and attended during her sickness.” At nineteen years old, Gitty remained a legal infant, and now that she lived back at home, her stepfather saw her as under his control. Consequently, Bartley brought a seduction suit against Mr. Richtmyer, the presumed father of Gitty’s child, in order to claim damages and seek remuneration for a loss of service.

Had Gitty been Bartley’s biological child, this would have been a

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500 *Bartley v. Richtmeyer*, 4 N.Y. 38 (1850)
straightforward case—fathers had a legal right to the service of their minor children, regardless of whether their child lived with them or away from them. As justices of the Court of Appeals pointed out, regardless of the quality of the relationship that existed between a father and a daughter, a father had a “right to reclaim the custody of her person and her services” so long as his daughter was a legal infant. Stepfathers, however, “had no such right.” Still, a legal precedent had been set that allowed for “any one standing in loco parentis” when the “father was dead” to prosecute for seduction. According to the prosecution’s argument in the original trial, Bartley had “assumed the place of a parent, and [Gitty] was regarded as a member of his family at the time of the seduction.” Consequently, “the dishonor and suffering” caused by Richtmyer’s “seduction” of Gitty “fell upon [Bartley] and his household.” This combined with the fact that Gitty had become Bartley’s servant while she was pregnant led the trial court to rule in Bartley’s favor and award him $1000 in damages.

Unsurprisingly, the verdict was appealed and eventually reversed by the Court of Appeals on the grounds that Bartley was not Gitty’s “natural father.” The case could set a problematic precedent. Justices argued “there is no blood tie between him and the girl; and neither owes any duty or obligation to the other.

501 Justices noted in Bartley v. Richtmyer, “accordingly it is now settled that the right of prosecuting for seduction is no longer confined to the father of the child, or to her relatives by blood, or even to those who have a legal right to her services. Where the father is dead, the action may be maintained by the mother, or any one standing in loco parentis; e.g. an aunt, uncle, guardian, and even the grandfather of an illegitimate child.”

502 $1000 would have been a significant sum in 1850, equivalent to about $30,000 today. As John Sweet has pointed out, beginning in the 1790s, the “claims for monetary damages in seduction” suits dramatically increased. As seduction suits began to be grounded on the loss of female purity and family disgrace rather than strictly the loss of service by a servant, damages began to reach staggering amounts. Sweet details out one such seduction suit, Callanan v. Bedlow, where a stepfather was awarded the equivalent of half a million dollars today. Sweet, 24 and 3.
He has not lost a farthing point of estate; and if we may judge from his conduct in dismissing the girl from his house, he has probably suffered very little in point of feeling. The wrong which he complains was not done to him, his child, or his servant. He has no condition to sue; and has done nothing to gain a title to action but to employ a pregnant woman, and pay her stipulated wages.” In other words, at the time of the alleged seduction, Bartley had no relationship with Gitty: he was not her master and he was not acting in loco parentis since she had moved out due to disagreements with each other. Even more problematic was the fact that the damages awarded to Bartley belonged solely to him, “he [was] under no obligation to share it with the girl, or to do anything for her support.” Consequently, “if such a verdict be had in such a case, the hiring of a pregnant female into one’s service [would] be a profitable business.”

Comparing Bartley v. Richtmyer with a similar case, Bracy v. Kibbe, it becomes clear that justices (and juries) struggled with how to balance legal expectations with social realities surrounding stepfathers’ rights. Bracy v. Kibbe, heard in 1859 also in New York, this time by the state Supreme Court, was a seduction case where William Bracy sued Mr. Kibbe for impregnating his fifteen-year-old stepdaughter, Alvira. In both trials, the justices sought to determine what type of relationship existed between stepfather and stepchild prior to the offense. The relationship between Bartley and Gitty was a distant one that became nonexistent once she left his home. Comparatively, William Bracy had essentially adopted Alvira at the age of two, giving her his last name and raising her as he would a biological child despite the fact that “she was the illegitimate daughter of

503 Bartley v. Richtmyer, 4 N.Y. 38 (1850)
his wife by another man.” As a result of Bracy’s actions toward Alvira, justices argued that “he stood, therefore, in loco parentis, and was clearly entitled to sustain the action.” In the initial trial, Bracy was awarded “$200 in damages,” demonstrating that jurors determined the relationship between Bracy and Alvira was close enough to that of father and child that he had a right to recoup losses as a “natural” father would.

Ultimately, Kibbe appealed the case, arguing that damages were meant to be awarded to compensate for the “supposed loss on the part of the parent of the society of a chaste and pure daughter” and according to Kibbe, Alvira was no such thing to begin with. Rather, Alvira had “already been impure,” which meant that Bracy lost nothing in that regard through Kibbe’s relationship with Alvira. Furthermore, there was evidence that suggested that Bracy and his wife encouraged Alvira to name Kibbe as the father of her child, even though there was chance he might not be. As a result of the concerns surrounding the credibility of Alvira’s testimony as well as Alvira’s character prior to the relationship, the state Supreme Court justices reversed the judgment and ordered a new trial. Essentially, the case was overturned because of the successful gendered attack on Alvira’s virtue. Although the case itself was retried, it was for reasons that had nothing to do with the legality of a stepfather claiming losses for a stepdaughter’s indiscretions. This illustrates just how flexible legal definitions of parenthood and responsibility could be.

Two final cases involving a stepfather and his stepchild adds to our understanding of how these relationships and rights were negotiated within the

legal system. It is important to point out that in the first two cases, *Bartley v. Richtmeyer* and *Bracy v. Kibbe*, stepfathers brought suit, specifically on the grounds that their stepdaughters’ pregnancies caused “loss of service.” Although obvious, only daughters can become pregnant; consequently, these cases were built around a gendered expectation of female dependence, regardless of the legal relationship to the child. The next two cases to be discussed involved stepchildren suing their stepfathers for back pay, arguing that due to the nature of their relationship, their stepfathers did not own their labor and had no right to freely profit from it.

In 1850, the New York Court of Appeals heard *Williams v. Hutchinson*, a court case that pitted a stepfather, Mr. Hutchinson, against his stepson, Mr. Williams. Similar to the seduction suits discussed above, the court recorded the type and length of relationship that existed between Hutchinson and his stepson. In 1834, Hutchinson married the plaintiff’s mother when the plaintiff was “eleven years old.” According to the trial record, Williams had two full-blooded brothers, Hutchinson had four biological sons, and after the marriage “they all lived [as a] family together.” More importantly, “the step-children were clothed and schooled and treated in all respects the same as the other children, and performed labor for [Hutchinson] suitable for children of their age and condition.” Hutchinson seemed to think he was acting as a “natural father” for Williams because although he made no “express agreement or understanding that [Williams] would receive wages” for the work he did on Hutchinson’s farm, he

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505 There were no first names mentioned in the trial record.
506 *Williams v. Hutchinson*, 3 N.Y. 312 (1850).
also did not make any “account for [Williams’] board, schooling, or clothing.” Now twenty-seven years old, Williams took Hutchinson to court because he felt that he was owed back wages for the labor he performed as a child. Williams argued that Hutchinson was not his “natural” father and so Hutchinson was never entitled to Williams’ service.

A referee assigned by the lower court determined that, after “the value of [Williams’] board, clothing, and schooling” were factored in, Hutchinson had benefited from Williams’ labor by a total of “$146.81.” However, because there was never any kind of agreement or implication that Hutchinson would pay Williams’ wages for his labor, jurors ruled in Hutchinson’s favor. Williams appealed the decision but the Court of Appeals upheld the verdict. Justices of the higher court pointed out “that where a man stands in loco parentis, he is entitled to the rights and subject to the liabilities of an actual parent, although he is not legally compelled to assume that relation.” More importantly, justices argued that they would not want to “establish a rule calculated to deter the husband from adopting his wife’s children, by a former marriage, into his family…if, therefore, the husband voluntarily adopts them, and discharges his whole duty towards them as a parent and a good citizen, the law should be liberally construed in his favor.”

A similar case took place in 1850 in Pennsylvania where the state Supreme Court heard a case between a stepfather, Mr. Frey, and his stepdaughter, Mrs. Lantz. According to trial records, Mr. Frey married Mrs. Lantz’s mother and took the girl in as his daughter until she herself was

507 Williams v. Hutchinson, 3 N.Y. 312 (1850).
The stepdaughter sued her stepfather for wages “for services rendered after attaining full age.” It is unclear how long Mrs. Lantz lived and worked for her stepfather before marrying but after turning twenty-one; to the court, it was irrelevant. State Supreme Court justices identified Mrs. Lantz as a “dependent” and explained that she lived with her stepfather and mother in the capacity of a daughter, “not a menial or hireling.” Consequently, she could not expect wages since no contract was ever formed and she had regularly received “shelter, food, clothing, and education” from Mr. Frey. More importantly, though, to award Mrs. Lantz wages could set a dangerous precedent that could discourage stepfathers from providing “protection and aid to orphan children” of their wives.

Clearly the justices of this case had the same concern as the justices who ruled on Williams v. Hutchinson. They were so invested in facilitating the rebuilding of broken families (from death or divorce) that they were willing to give stepfathers more control and rights over their stepchildren than the statutes intended. As Lisa Wilson has argued, during the antebellum age of reform, “the importance of having a mother [or father] in a middle-class family overcame the ancient prejudices against stepmothers [and stepfathers], making them the ideal

508 Lantz v. Frey and Wife, 14 Pa. 201 (1850). Again, there were no first names provided in the trial record.
509 The fact that Mrs. Lantz was suing for wages that would have been earned while she was an adult and the courts denied her because they saw Mr. Frey as acting in loco parentis is certainly interesting. However, because no specific details about Mrs. Lantz’ chronological age were included, not much can be deduced about age and dependence from this ruling. As will be discussed later in this chapter, courts struggled with how to balance social perceptions of unmarried female dependence with legal statute which set the age of independence at twenty-one regardless of status.
replacement, preferable to servants or overextended relatives." While Wilson was referring specifically to the depiction of stepmothers in "children’s literature and women’s magazines," her argument helps explain the favorable treatment of stepfathers within the court system.

When looking at these four cases in relation to one another, it becomes clear that there was a disconnect between how stepfather’s rights were recorded in the statute and how they were interpreted within the court system. In each of the above cases, jurors and justices sought additional information regarding the length and quality of relationship that existed between stepfather and stepchild. If there was evidence that the stepfather acted in "loco parentis," as was the case in *Bracy v. Kibbe, Williams v. Hutchinson,* and *Lantz v. Frey and Wife,* jurors and justices were inclined to treat the relationship as that of a natural parent-child relationship—where the father was legally entitled to the services of their child. Clearly, jurors and justices flexibly interpreted the legal rights of stepfathers. This flexibility also extended to biological fathers who attempted to push the boundaries of legal dependence beyond the age of twenty-one for unmarried daughters.

The traditional expectation that daughters remained at home and dependents of their families so long as they were unmarried continued even as it became at odds with legal definitions of age and independence. Four court cases illustrate this tension between law and tradition that increasingly surfaced within

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510 Wilson, 8.
511 Lisa Wilson discusses the impact of the antebellum age of reform on the perception of stepmothers. Prior to this period, stepmothers were "demonized." However, during the nineteenth century, "in children’s literature and women’s magazines, the good stepmother appeared as a counterweight to the longtime reign of the wicked stepmother." Wilson, 7.
the court system; two occurring in North Carolina and two in Pennsylvania. The two cases that were tried in North Carolina were both filed by the “natural” fathers, while the cases heard in Pennsylvania were filed by other family members. When looking at legal statute that defined independence at the age of twenty-one, it would seem that all four cases would be fairly straightforward, with the plaintiffs losing because the “seduced” were legal adults. Yet this was not the case; the rulings of the four cases provide additional evidence of how jurors and justices weighed the significance of legal definitions of age and independence with communal and familial expectations of status, dependence, and gender.

North Carolinian Jacob Phipps took John W. Garland to court in 1838 for the “seduction of his daughter” who at the time was “about thirty years old.” Before offering their ruling, jurors were given information on the living arrangements of the daughter. According to the daughter’s testimony, “her father’s house was her home; her bed and furniture and all her other property, except some clothing, remained there.” However, “with her father’s consent, [she] went to live in the house of the defendant’s father… as a hireling, and remained there three or four years, performing such services as were required.” On one hand, Phipps’s daughter was an acknowledged legal adult due to her chronological age. Yet she made clear that she deferred to her father for consent on life choices and considered her father’s house as her home, insisting she remained a dependent of his. To reaffirm this dependent/servant status, Phipps’s daughter testified that she occasionally returned to her father’s home and “performed the ordinary duties in his family of washing, cooking, and milking.”

the original trial, the jury found in favor of Phipps; however, Garland appealed and won.

The outcomes of the initial trial and the subsequent appeal reveal how communal and legal interpretations of father-daughter relationships were at times at odds with one another. The initial trial was ruled upon by a jury, or members of the community that Phipps and Garland lived in. Most likely made up of similarly aged and life-staged men, jurors may have taken into consideration their own family circumstances and the realities that although children symbolically became independent adults at the age of twenty-one, that did not mean that they actually did so—especially when these children were unmarried females. However, the appeals case was ruled upon by justices who would have more interest in adhering strictly to the law. In the appeals case, justices stated that because “the daughter was of full age and did not live with her father at the date of the debauchery” then there was “no legal obligation on the father to maintain and take care of her.” Consequently, Phipps had no right to sue for loss of service.

A similar case occurred just six years later, also in North Carolina, when Lewis Briggs sued John J. Evans for impregnating his daughter.\textsuperscript{513} At the time she became pregnant, Briggs’s daughter was twenty years old and living with her grandmother. One month after conception, she turned twenty-one. It was put to the jury to determine what right the father had to sue for a loss of service given that the girl was an infant at the time of conception but an adult for most of the pregnancy and the subsequent birth. The trial judge recognized the uniqueness of the case and “instructed the jury” to decide the following:

\begin{flushright}
\textsuperscript{513} Lewis Briggs v. John J Evans, 27 N.C. 16 (1844).
\end{flushright}
before the daughter became of age, the action might be sustained by the father in his paternal character for the loss of the services of the daughter, and that, after she became of full age, it must be sustained in the character of master for the loss of the services of his servant—that in this action the loss of some service must be proved, in order to entitle the plaintiff to recover any damages at all, but if the evidence satisfied them of the loss of any services of the daughter, as daughter or servant, in consequence of the defendant’s act of seduction, then they might take into their consideration the anguish and disgrace brought upon the plaintiff and his family, in order to enhance the damages.\textsuperscript{514}

The jury, again most likely made up of similarly stationed men, found for the woman’s father, Mr. Briggs. The case was appealed and made its way to the state Supreme Court where justices upheld the original verdict. Evans argued that Briggs could not sue for loss of services “without proof of an actual contract for services after the daughter became of age.” Justices disagreed, arguing that because it was clear that she lived with her family and provided services at the time of the seduction, an assumed master-servant relationship existed. Justices explained:

Before the child attains the age of twenty-one years, the law gives the father dominion over her, and, after, the law presumes the contract, when the daughter is so situated, as to render services to the father, or is under his control; and this it does for the wisest and most benevolent purposes, to preserve his domestic peace, by guarding from the spoiler, the purity and innocence of his child. If this were not so, in those cases... the unfortunate parent would be without redress, if his daughter were over twenty-one years of age.\textsuperscript{515}

The assertion that a legally recognized master-servant relationship was not dependent on a contract regardless of chronological age was counterintuitive. The ruling in \textit{Lewis Briggs v. John J. Evans} highlights the arbitrariness of legal

\textsuperscript{514} Ibid.
\textsuperscript{515} Ibid.
distinctions of age and independence, as many families maintained traditional relationships that kept unmarried women in perpetual dependence and deference to their families.

Like *Jacob Phipps v. John W. Garland* and *Lewis Briggs v. John J. Evans*, *Logan v. Murray* and *Wilson v. Sproul* were seduction suits and loss of service cases heard in Pennsylvania that revolved around a pregnant adult woman “dependent.” In these specific cases, the “seduced” was either not the “natural” daughter of the plaintiff or the plaintiff was the mother, which weakened the claim to her daughter’s service. The outcomes of these last two trials suggest that although many families continued their expectations of unmarried female dependence regardless of the woman’s chronological age, courts were only willing to extend the assumed master-servant relationship beyond adulthood for fathers.

In the first case, heard in 1820, Margaret Logan attempted to sue the man who impregnated her daughter, Sarah, on the grounds that the resulting pregnancy led to Sarah’s death and ultimately deprived Margaret of her daughter’s labor. The lower court ruled that because Sarah was “above the age of twenty-one years” and no indenture contract existed between mother and daughter, Margaret had “no legal right” to Sarah’s labor and so could not sue for compensation. Margaret attempted to appeal the case but state Supreme Court justices reaffirmed the mother’s inability to file a claim.

A similar case occurred in 1831 after unmarried, twenty-eight-year-old

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Polly Porter fell pregnant. Her brother-in-law, Robert Sproul attempted to sue the child’s father, John Wilson for seducing Polly and causing a “loss [of] service.” As Sproul explain, after Polly gave birth, “she was nurses by [Sproul’s] wife; was confined two weeks, and worked but little for four weeks.” Because both of Polly’s parents had died, she was unmarried, Sproul was her brother-in-law, and she occasionally worked for him in exchange for boarding, Sproul assumed Polly was his dependent.517 Jurors found in favor of Sproul and ordered Wilson to pay. However, the ruling was appealed. The justices explained that it was true that parents were not the only family members who could sue for a loss of service, for example, “an aunt may maintain an action for the seduction of her niece. So, also, a person may maintain an action for the seduction of an adopted child.” However, “in such cases, the child must be under age, and actually employed in the service of the plaintiff.” Consequently, state Supreme Court justices reversed the judgment because “the seduced was twenty-eight years of age, and was neither the daughter, niece, nor servant of the plaintiff... she paid him for her boarding, and was in every respect her own mistress.”518

All four cases revolved around the issue of lost service due to pregnancy, however, in none of the cases was the unmarried woman in question under the age of twenty-one or a legally contracted servant. The fact that these women were unmarried was precisely what caused their families to view them as dependents, despite the fact they were all legally recognized as independent

517 Polly lived from time to time with Sproul and paid for her boarding “in weaving and other work.” Wilson v. Sproul, 3 Pen. & W. 49 (1831)
518 Wilson v. Sproul
adults due to their chronological age.\textsuperscript{519} Clearly, for many families and the communities they lived in, one’s marital status and gender was more important than one’s chronological age in determining a person’s status in life. Women could be well over the age of consent, yet if they were unmarried, they were still considered a childlike dependent who owed deference to their families. Significantly, jurors and justices consistently upheld the perception of continued female dependence if a seduction suit was brought forward by a “natural” father, indicating a reluctance by courts to use legal definitions of independence to undermine a fathers’ control of their unmarried female children.

One final court case heard in New York, \textit{Bennet v. Smith and others}, suggests that under extraordinary circumstances, the rights of a father could challenge the rights of a husband. According to common law and statute, marriage was a transformative act. But, rather than gain the status of an independent adult, marriage simply transferred the right to the woman’s custody and services from that of her parents to that of her husband. \textit{Bennet v. Smith} attempted to challenge this legal transition of authority by raising issues of chronological age, consent, and deviant behavior to undermine a husband’s right to the “company” of his wife. In 1856, Mr. Bennet sued his wife’s parents, the Smiths, because, he argued, they “seduced” her away from him, “depriving him of his wife’s… society and services.”\textsuperscript{520} The Smiths countered Bennet’s claim by

\textsuperscript{519} A less explicit example of this assumption can be seen in the 1849 murder case heard in New York, \textit{The People v. Matthew Wood}. Matthew Wood was found guilty of murdering his wife of two years, Susan. In the retelling of how Matthew and Susan met, Susan’s brother referred to Susan as a “girl” who was “enticed away” by Matthew. However, the court record also specified that Susan was “forty-two years of age” at the time of their marriage. \textit{The People v. Matthew Wood}, 2 Edm. Sel. Cas. 71 (1849).

\textsuperscript{520} \textit{Bennet v. Smith and others}, 21 Barb. 439 (1856)
explaining that they had never consented to the marriage between Bennet and their daughter, who at the time of the marriage was between “fifteen and sixteen years of age.” More importantly, all they had done was allow their daughter to return to their home and advised her to not go back to Mr. Bennet because he was “so immoral and indecent as to render him grossly unfit for her society.” Consequently, by harboring their daughter, the Smiths were acting within their legal rights to “protect their [child] from injury” and relieve her from “distress.” Still, Bennet had a valid and rarely challenged argument, that by marrying the Smith girl, he had a legal right to the “comfort and assistance of his wife” which was “violated” by her parents’ actions of support.

The heart of the case was determining whose authority and rights mattered most and when: a husband wanting access to his wife or a father protecting his child? In the original trial, jurors awarded Bennet damages to be paid out by the parents. However, the Smiths appealed the decision and justices granted them a new trial, determining that the original judge had erred by not allowing evidence of Bennet’s immoral behavior to be included in the trial testimony. By refusing to hear this, jurors lacked a critical understanding of the motivation behind the father’s advice to his daughter to leave her husband. State Supreme Court justices who ruled on the appeal case argued that, “the law is not

521 According to New York statute at the time, females could marry without their parents’ consent after the age of fourteen. Consequently, although this particular marriage would have been invalid had it occurred in other states, like Pennsylvania or Virginia, it was legally recognized as valid in New York.

522 According to court records, Bennet was said to have “habits of drunkenness” and “of frequenting houses of ill-fame,” at times “publically boast[ing] of his illicit intercourse with prostitutes.” He was also “profane, vulgar and lascivious.” Bennet v. Smith and others.

523 The court record specifies that “Parents are under obligations, by the law of nature, to protect their children from injury and relieve them when in distress.” Bennet v. Smith and others.
so unreasonable as to regard mere advice in such a case, prompted by parental love, as a wrong, entitling the husband to damages.” More importantly, “the rejection of this evidence assumed that a habitual drunkard, a frequenter of brothels, and so debased as to boast of illicit intercourse with prostitutes, was entitled to the same measure of damages for depriving him of his wife, as a man of good habits and fair character.”

By granting a new trial, justices were sending a complicated message: that parents had inherent, life-long rights to protect their children and that these rights were to be carefully weighed against that of a husband’s rights if the husband behaved immorally. Justices insisted that Bennet’s behavior, his “profligate habits and his criminal connection with other women,” alienated his wife’s “affections and destroyed the comfort he had of her company.” In other words, his actions pushed her away. Knowing this side of the story, the father’s motivation to advise his daughter to stay away from her husband becomes much less malevolent. Significantly, the person Bennet v. Smith and others revolved around had no voice in the case—possibly because she was legally an infant or because she was a dependent female, most likely a combination of the two. The fact that this young woman’s perspective was precluded only underscores the assumption that women, married or single, adult or minor, remained in a perpetual state of deferential dependence which required men to provide for and protect them.

“Even amidst the independence of early youth,” de Tocqueville argued,
“an American woman is always mistress of herself.” When read against the court cases discussed above, de Tocqueville could not be more wrong. An American daughter was never her “own mistress.” Instead, she was always perceived as someone’s dependent, regardless of her age, because of her gender. This perception of female dependence was so expected that it was regularly upheld within the legal system, despite the fact that it went against statutes that defined adulthood by age. But the same could be said for most young men such as Joseph Prentis Junior or Lorenzo Lewis who deferred to their parents’ advice and relied upon their financial support past the age of legal independence. A more constructive and accurate way of interpreting Early Republican parent-child relationships, then, is to recognize the negotiation of power dynamics and control that continued irrespective of law, literature, and chronological age.

As this chapter argues, parents continued to assert their authority and control over their children until they believed their child was ready to assume an independent identity, which was not always when that child reached the age of twenty-one. Although advice literature and legal definitions of dependence and independence acted as guidelines for parent-child interactions, in reality, parents continued to shape their relationships with their children based on their own familial needs and expectations. Letters give insight into day-to-day life within individual families and show how parents informally asserted their authority over their children. Seduction and loss of service suits demonstrate how parents disregarded legal definitions of independence and the narratives of family life.

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524 De Tocqueville, 242.
found within the trial records give us glimpses at the conflicts that existed between parents and their children regarding age, dependence, and deference.

Finally, cases heard in the trial and appellate courts provide evidence of the way schisms appeared between local practice and the *supposed* absolute power of the law, highlighting how flexible statutes defining age and independence truly were. At the same time, cases that negotiate age and dependence provide evidence of the ways age was perceived within a particular community as well as strategically employed to win a legal case. As seen in *Jacob Phipps v. John Garland*, the exact age of Phipps’ daughter (thirty years old) was presented as evidence in the court case. The inclusion of the young woman’s age in trial testimony was a strategic decision on the part of the defense to undermine the father’s claim to her service. As will be shown in the following chapter, John Garland’s lawyers were not the first to argue for a strict interpretation of the law defining independence by age.
Chapter Five

“Well grown for his age”:
Age as a Legal Strategy in the Courts

On October 31\textsuperscript{st}, 1851 in Houston County, Georgia, a young white woman named Mary Daniel arrived home from her job picking cotton “just at night… alarmed and in the deepest distress.” Her dress was torn in multiple places and her body had “marks of great violence and abuse” upon it. According to her parents, “there was no earthly doubt as to the nature and extent of the injury she had suffered… her person had been violated… and every appearance indicated that it was forcible and against her will.” Mary had told her mother that “it was Stephen (a black “man slave”) that hurt her.” Following Mary’s accusation, Stephen was arrested and put on trial for rape. On the surface, this case represents just one among many historical examples of the fraught debate surrounding race, gender, sexuality, and criminality, while also underscoring the vulnerability of black men to charges of rape.\textsuperscript{525} However, this case is significant not only for these reasons, but because gendered perceptions of age, maturity, and consent played the central role in securing a rape charge in addition to race. Through a close reading of cases like \textit{Stephen v. State}, this chapter demonstrates that age-- a mutable construct that intersected with race and gender in critical ways-- became a key legal strategy employed during the Early Republican period.

\textsuperscript{525} For more information on the legal and social tolerance and intolerance of interracial sex in the South as well as the vulnerability of black men to charges of rape, see: Martha Hodes, \textit{White Women, Black Men: Illicit Sex in the Nineteenth-Century South} (New Haven: Yale University Press, 1999) and Sharon Block, \textit{Rape and Sexual Power in Early America} (Chapel Hill: University of North Carolina Press, 2006), especially Chapter 5, “Constructing Rape and Race in Early American Courts.”
Stephen’s “admission” to the crime thoroughly established his guilt, which automatically raises questions about the confession’s legitimacy. According to the state of Georgia, after Stephen was arrested he admitted the rape to a fellow prisoner, John W. Johnson, who later testified against him. Chained together “by the side of Moreland’s store house, at Hayneville,” Stephen allegedly told Johnson that:

he was very sorry that he had done as he had, and that had it not been for Anthony (another slave) he should not have acted so.” Witness cautioned prisoner to be careful how he talked, for that it might cost him his life. He then asked him if the charge was true? He said, “Yes, but Anthony caused him to do it.” He stated, “that he had heard, that if a girl was not large enough, that to tie something around her waist, would make her big enough. Mary did not make much objection to having the handkerchief tied around her, but when it came to throwing her down on the ground, she objected and struggled.” He said, “he did not succeed in accomplishing his ends, she was too small.” He said, “the devil had induced him to do it... he sent for the girl to bring him a pin, making out that he had a splinter in his finger, and in that way he got hold of her. She was picking cotton on one side of the fence, and he at work on the other.”

Not only did Stephen’s statements (as recounted by the fellow prisoner) confirm that the crime was premeditated, intentional, and forceful, but he also referred to Mary as a “girl” and made comments about the sexual immaturity of her genitals, referring to them as “too small” to “accomplish his ends.” This was a key aspect of the prosecution’s argument for charging Stephen with rape; regardless of her actual age, if Mary was not sexually (or intellectually) mature, she could not be considered a woman and the sex could not be consensual. Furthermore, it’s important to point out that this “admission” was never given to

the state directly by Stephen but rather through a third party, a fellow prisoner, who certainly could have traded his testimony against Stephen for his own favorable treatment or acquittal.

With accusation and admission in hand, the initial jury trial was fairly cut-and-dry. The jury found Stephen guilty and sentenced him to death within two months of the incident. However, Stephen’s legal counsel appealed the case to the state Supreme Court by questioning both the validity of Mary’s statements and the alleged admission. Mary never testified for herself in either case because her lawyers portrayed her as a “weak-minded creature” who was incapable of being “brought as a witness upon the stand.” Her testimony instead came through her mother, who, as the defense pointed out, never mentioned “the pin and the splinter” incident “as it was related by the prisoner to Johnson.” The Georgia Supreme Court ruled that regardless of whether the testimony or the admission were factual, there was evidence that sexual intercourse had occurred between Mary and Stephen. As a result, a new issue was raised: whether Mary was capable of consent.

By portraying Mary as a white girl rather than a white woman, the prosecution ensured that Mary would be viewed as a victim instead of a co-perpetrator and that Stephen, a legal adult, would be charged with rape, rather than illicit sex, and sentenced to death. Following English precedent, Early Republican American common law defined the age of sexual consent at ten years old. Sex with a child younger than ten was automatically considered

527 American law makers adopted the British statute that set the age of consent at ten years old. England updated its consent laws in 1875, making the age of consent thirteen years old.
rape and a capital crime, regardless of race. Additionally, in the state of Georgia at this time, interracial sex was illegal but not punishable by death; the rape of a free white woman by a black man, however, was. In this particular case, the prosecution worked to show that Mary was incapable of consenting to a sexual relationship regardless of her chronological age.

It is important to consider the status of each Stephen and Mary in order to understand how legal interpretations of maturity and consent were the means by which this case was argued, not race. Mary’s status as a white, dependent daughter who lived at home, may have made it more likely for her to be viewed as “young” and vulnerable. At the same time, the fact that Mary worked in the cotton fields alongside slaves indicates her family was not elite, which could have been used to tarnish Mary’s image and undermine a claim of rape. As Martha Hodes has argued, in the antebellum South, a white woman accusing a black man of rape did not always end in a guilty verdict and execution— the “script of false conviction and sure death emerged and developed … in post-Civil War America.” For example, in North Carolina in 1825, an eighteen-year-old, poor

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529 For more information on the gender perceptions of dependency within families see chapter four of this dissertation.

530 Hodes, 39.
white woman, Polly Lane, accused an enslaved man, Jim, of raping her.\textsuperscript{531} Initially, Jim was found guilty of the crime and sentenced to death; however, once it became clear that Polly was pregnant, witnesses began to come forward and attest to knowledge of the existence of a long-term, sexual relationship between the two. The likelihood of the consensual nature of the relationship was argued on the grounds that Polly was poor and most likely depraved because of her class status, making her more likely to willingly engage in sex with a black man. Subsequently, Jim was acquitted of the crime. Stephen, like Jim, was a slave, meaning he was someone’s property, and valuable property at that. After 1821, in North Carolina, “owners of executed slaves were [compensated] only two-thirds their value,” consequently, a master would not have easily let his slave be executed based on a false claim of rape, especially by a lower classed woman.\textsuperscript{532} This reality reveals how critical perceived maturity was in establishing Stephen’s guilt—if Mary was legally incapable of consent, then it would not matter if she was a “willing” participant.

Trial records never specified Mary’s age, but it is clear that she was older than ten, the legal age of consent, because lawyers highlighted her intellectual and physical “deficiencies” so as to challenge the law. More specifically, the prosecution insisted that she “lacked the instinctive intelligence to comprehend the nature and consequences of [sexual intercourse]… to distinguish, morally

and legally, between right and wrong.\(^{533}\) Physically, “her mother sw[ore] that she [was] nothing but a child; that she had never had her monthly courses; and that there was no appearance of womanhood about her.” Consequently, the prosecution asked: “in view then of her condition, both as to body and mind, why was she not as incapable of consenting, as females of ten years of age and younger are, ordinarily?”

By incorporating a description of Mary’s sexual immaturity, the prosecution argued that Mary lacked the capacity for sexual intercourse in every possible way—she could not intellectually consent or physically engage in sex. These depictions of Mary could have been completely accurate; the only other description of Mary comes from Johnson’s retelling of Stephen’s admission and in it, she’s referred to as a “girl” and her genitals as “too small.” At the same time, these depictions may have been fabricated (along with Johnson’s alleged admission) to manipulate the case’s outcome in order to punish Stephen, a black man who had sex with a white, dependent daughter.

The trial testimony suggests that, like race and gender, there was a performative element to age. Although there were assumptions about how people were supposed to act or a look at specific ages, they did not always act or look as expected.\(^{534}\) The prosecution’s descriptions of Mary mirrored descriptions

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533 *Stephen v. State*

534 As Ariela Gross argues in *What Blood Won’t Tell*, “by reading trial transcripts critically, it is possible to catch glimpses of ordinary people’s, as well as lower-level legal actors, understandings of legal and racial categories and their own places in the racial hierarchy. Legal rules passed by high courts and legislatures had to be translated into practical action on the ground. Witnesses, lawyers, and litigants learned to tell stories that resonated with juries or with government officials. At the intersection of law and legal culture, we can see the day-to-day creation of race.” (Gross, 12) The same can be said about the way legal definitions of age were
of a prepubescent child, which suggests that there was a shared understanding of how the ability to consent related to one’s intellectual and physical maturity. In the state Supreme Court hearing of the case, justices sided with the prosecution and offered the following: “the period of ten years designated” by common law “is altogether arbitrary.” This was because “no definite time fixed by law [can] infer puberty,” rather, “it depends more upon the constitution and habits of body of the party, than upon age.” Additionally, one’s maturity (sexual or otherwise) was influenced by their community. Justices offered the example that “in cities these developments are made earlier than in the country; there females are often found living in a state of open prostitution at the early age of 12 or 13 years.” Consequently, justices broke from legal precedent and ruled that regardless of her chronological age, Mary’s immaturity made her “incapable of consenting.”

Similar to the prosecution’s description of Mary, it is hard to accurately identify the motivations behind this ruling. Did the Georgia Supreme Court justices truly believe that legal definitions of age were arbitrary? Or, by ruling that Mary was incapable of consent and thus labeling the sexual relationship rape, were they simply trying to ensure that Stephen, a black man, would be punished for his interracial sexual encounter? Regardless, the verdict of *Stephen v. State* illustrates how chronological age could operate or be manipulated in the legal system during the Early Republican and antebellum periods; it demonstrates that courts explicitly recognized that the relatively new use of age as a legal marker was both important and arbitrary. Under no circumstance could a child under the upheld or ignored depending on the case. See Ariela J. Gross, *What Blood Won’t Tell: Race on Trial in America* (Cambridge: Harvard University Press, 2010)
age of ten consent to a sexual relationship, however, to assume that everyone
over the age of ten was capable of consent was also problematic and therefore
open to judicial interpretation. More importantly, the legal significance and
definition of age was up for debate, and both sides of the prosecutorial aisle
seized upon the ambiguity of age to win their case.

One kidnapping case, *Davenport v. The Commonwealth*, heard in the
General Court of Virginia in 1829, provides an additional example of how legal
perceptions of age and the ability to consent to a contract transcended gender
and race. This case also shows how flexibly statutes could be applied. Alfred R.
Davenport was found guilty of the kidnapping and attempted sale of a “free
mulatto boy” named David Caesar. Alfred admitted that he knew David was free
but insisted that he had the boy’s consent in transacting the sale. Consequently,
the defense asked that the jury be “satisfied that the taking and carrying away of
the free boy was against his consent.” However, adhering to the legal
definition of age and consent, the judge ruled that because David was only eight
years old he was “incapable of giving his consent, and incapable of collusion.” In
this circumstance, perceptions of age took priority over race and gender; what
was most important in determining Davenport’s guilt was the fact that David was
a young child. However, this is not to say that a black boy’s rights were put above
a white man’s life. While an act had been passed in 1788 that made the sale of
free person a capital crime, Davenport was only sentenced to “two years” in the

In both trial and sentencing, flexibility existed in a seemingly rigid legal system.

Questions of the significance of age entered courtroom discussions beyond rape and kidnapping cases; in addition to determining one’s capability, communities also used age to determine one’s reliability and culpability. For example, one had to understand the significance of being under oath in order to give a trustworthy testimony. As a result, common law assumed that children below the age of fourteen were incapable of testifying because they lacked discretion, or the ability to comprehend right from wrong, and the consequences of their actions—in other words they were unreliable. Adhering to these same assumptions meant that children below the age of fourteen could not be seen as culpable for criminal behavior. After the Revolution, states passed laws that established that young people below the age of twenty-one (or eighteen depending on the state) could not enter into contracts or be held financially accountable in business transactions due to their perceived inability to comprehend the consequences of their actions. When looking at statutes from


537 Holly Brewer traces the evolution of the use of children’s testimony in *By Birth and Consent*, see pages 155-180. Brewer explains that “during the early seventeenth century, young children in both England and America often testified, apparently without even the doubts of their veracity later offered by Blackstone.” (Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2007), 155.) However, “by the early nineteenth century, most criminal court decisions in America set fourteen as the minimum age for witness testimony in criminal cases.” Still, “judges retained the ability to make exceptions at their discretion if the child could prove extraordinary understanding or grasped the nature of an oath.” Brewer, 159.

538 Brewer explains that in the Middle Ages, “very young children [could] consent to valid contracts of different types.” Brewer, 239. Contract laws did not become more formal, regulated, and age restricted until the late eighteenth century. Brewer, 237. For more on
the first half of the nineteenth century, legal definitions of age and the ability to consent, give reliable testimony, or be culpable for crime seem absolute. In reality, it was not until the late nineteenth century that more consistent connections among chronological age and culpability, reliability, and capability were reflected in law and legal proceedings.

During the Early Republican period, these age specifications acted more as guidelines and were regularly challenged by both victims and defendants, while jurists were routinely instructed to question the appropriateness of rigid age distinctions. Savvy offenders often manipulated interpretations of age meant to protect minors by either obscuring their own age in hopes of gaining a more lenient sentencing or challenging the testimony of their child victim as unreliable. Minors, on the other hand, leaned on definitions of age and culpability to avoid punishment for the crimes they committed, while prosecutors pushed back against this idea to hold minors more accountable for their actions.539

This chapter looks specifically at court cases that questioned a child's capacity or criminal culpability as well as cases that pertained to crimes with age boundaries, such as the validity of contracts, rape, and abduction and seduction, in order to highlight the many examples of how legal definitions of age were strategically used and actively challenged (or dismissed depending on the circumstances of the case) within the courts. By analyzing court cases that included age as evidence, much can be revealed about how communities legally

negotiated ideas such as culpability, reliability, and capability in the Early Republican period. I also consider the subtle differences in definitions of the terms capability, culpability, and reliability to explore how the perception of age and ability was used as a legal strategy in the nineteenth century. Culpability refers to the ability to be legally responsible for an action or inaction, whether a person can be held responsible for criminal activity. Reliability refers to the ability to be trusted to understand the significance of one’s words—whether a person understands the consequences of being untruthful. Capability refers to one’s competency or the ability to give informed consent, be it sexual activity or signing contracts. Unsurprisingly, most cases touch on at least two if not all three of these issues, further illustrating how entwined their definitions are.

By looking at cases heard in Northern, Southern, and mid-Atlantic states as well as urban and rural areas, it becomes clear that regardless of region, age remained a critical tool of legal strategy that was regularly negotiated within the court systems of the Early Republic. Legal definitions of age and capability did differ slightly from state to state. In Massachusetts, for example, the legal age to marry without a parent’s consent was eighteen for girls and twenty-one for boys, while in Virginia the age was set at twenty-one for both genders. However, for the most part, laws which assigned a chronological age to determine one's capacity, culpability, or reliability were the same across state lines. Most states retained English common law as the basis for their legal code, but after the

Revolution, updated laws regarding consent and the ability to reason were
passed “as an assertion of newfound independence.” Within all states,
individuals under the age of eighteen (or twenty-one) were legally referred to as
“infants.” While the term “infant” today refers to babies under the age of one year,
historically the term was used in the wider sense to mean “a child” which explains
its use to denote a minor in the legal arena.

While not every case that weighed legal and social definitions of age with
culpability, capability, and reliability ended in life or death, *Stephen v. State* did.
Because the Georgia Supreme Court determined that Mary was incapable of
giving her consent, despite her biological age, justices ruled that Stephen was
guilty and “unworthy to have a place longer among the living.” Of course race
and gender very likely played a role in the higher court’s final decision to
reinterpret these perceptions of age and consent. Yet it is also important to note
that the significance attached to age was a social construction just as race and
gender were, and that each of these categories of identity mutually constituted
the others. Many of the following cases seem to end with rulings that either
protected or forgave young women and girls more often then boys and men,
suggesting a gendered bias in perceptions of age, maturity, and criminality.

The first section of this chapter focuses on cases that revolved around the
question of the capacity of accused child murderers to demonstrate how
seamlessly age was factored into arguments for or against one’s culpability
alongside race, class, and gender. Concurrently, the cases discussed in this

541 Syrett, 27.
542 *Stephen v. State*
section illuminate how these “categories of being”—male, female, white, black, free, slave, etc.—altered one’s perceived maturity and in turn the significance of their age as a guideline for criminal culpability. These cases clearly demonstrate how contextualized legal interpretations of age were as well as shed light on how and why age could be used as a defensive legal strategy—because of the willingness of the courts to consider the fluid and contextualized nature of age as an arbitrary legal boundary.

The chapter then shifts to highlight cases where lawyers explicitly presented the age (sometimes down to the exact day) of a defendant or victim as a legal strategy to win their case. The cases to be discussed include contract fraud, rape, and abduction and seduction; and in each circumstance, legal actors attempted to argue for a strict interpretation of legal statute regarding age and culpability, capability, and reliability. Not all of the defendants, however, were minors. Indeed, a few cases existed in which adult males accused of infant rape strategically attempted to undermine their victim’s testimony based on legal definitions of age and reliability. Furthermore, the use of age as evidence was not always successful, demonstrating how circumstantial and inconsistent the application of these age-related statutes were.

It is important to note that the majority of the cases examined here were appealed and settled at the state Supreme Court level, illustrating the difficulty legal participants faced when trying to reconcile community interpretations of culpability, reliability, capability and age with the new statutes. Juries often disregarded legal definitions of age in their rulings. This prompted the appeals
and retrials attempting to throw out rulings that did not adhere to the letter of the law. Success in appealing a verdict on the grounds that the original ruling did not follow Early Republican legal interpretations of age was mixed. Some justices doubled down on the new age restrictions while others shirked the new definitions of consent and age just as quickly as jurors did. Regardless, an analysis of cases that debated the significance of age of defendants and victims demonstrates that Early Republicans understood that the law of age was highly flexible and contextual, prompting legal participants to use the negotiability of age strategically within the court systems.

In criminal cases, law suggested that age should determine one’s capacity to give a confession, be held culpable for a crime, and the level of punishment. Culpability is legally understood as the “blameworthiness” of an individual, whether a person can be held accountable for their actions or events. By the end of the eighteenth century, legal consensus set fourteen years old as the age of “discretion,” or the beginning of the ability to understand the consequences of one’s actions and be legally culpable for them. In turn, below the age of fourteen, no matter how horrendous the crime, the child was not supposed to be held accountable for their actions. Similarly, confessions given by children younger than fourteen were not supposed to be considered valid. A number of cases exist where children had confessed to violent crimes, and courts had to rule on the validity of these confessions in relation to the child’s perceived mental capacity.

543 Brewer, 205.
The judges and justices who heard these types of cases were particularly interested in determining whether the child on trial had the necessary capacity to understand the significance of their confession. This is because it made the confession “reliable,” but also because if the accused had the capacity to understand the significance of their words, they also had the capacity to be culpable for the crime they committed. By analyzing the rulings as well as the language used to describe capacity in four infant murder cases heard between 1806 and 1845, one tried in Tennessee, two in New Jersey, and the last in Delaware, we can see how race, class, and gender were factored into perceptions of age and capacity (and, in turn, culpability). Additionally, by exploring these connections we gain insight into how the flexibility of age was utilized strategically within the legal system.

Sometime in early April 1806, Tennessean Michael Doherty, a poor widowed father of four young children, went missing. Known to be a drunk, his neighbors assumed he had stumbled off while intoxicated and was “dead somewhere.” After four days, they went to the Doherty house to check on his children. Twelve-year-old Mary, the eldest child, answered the door and attempted to brush off her visitors, insisting the children had stayed together on their own before and were “not afraid” without their father home. But something seemed off, and while discussing the oddity of the situation outside, one neighbor “by chance descried something under the house.” Mary reluctantly let the group back in, where they discovered Michael Doherty under the floor, dead. It was unclear whether Michael died from the blow to the head from an axe, or a loss of
blood, but it was obvious he had met a violent end. More unnerving, however, was the fact that all four of his children “were present when the body was found, and none of them seem to be alarmed in the smallest degree.” Mary was quickly accused, and put on trial for the murder.

The jury charged with determining Mary’s fate was instructed to decide, first, if Mary committed the murder and, second, if she appeared to be capable of “discerning between right and wrong” and could be held culpable for the crime. The trial judge explained to the jury that it is assumed a child under the age of fourteen lacks discretion; however, this presumption can be “removed if from the circumstances it appears that the person discovered a consciousness of wrong.” The court sought testimony that provided insight into Mary’s life, because after she was arrested, Mary “seems to have [gone] insane.” During the trial, Mary went mute and often stood with her “eyes nearly closed.” The jailer testified that while imprisoned, she never spoke and “appeared to be senseless.” More significantly, Mary was described as “ghastly pale, without the least expression, or indication of understanding.”

Community members gave testimony insinuating that something was wrong with Mary (and her family) prior to her arrest. According to neighbors, Mary never went to school, was never seen conversing “with other children in the neighborhood,” and “did not appear to be employed as girls her age usually [were].” Her father was a known drunk, and her family was never seen at “a place of worship.” Furthermore, John Sheflet, a witness for the State, recalled Michael telling him that Mary and “two of his other children had run away” at one point,

544 State v. Mary Doherty, 2 Tenn. 80 (1806).
suggesting Mary had attempted to rid herself of her father before. The testimony provided by neighbors worked to Mary’s benefit because it portrayed her as a sheltered, possibly abused child, and sheltered and abused children would not likely be intellectually advanced for their age.545

The jury ultimately found Mary not guilty, largely because of her perceived incapacity exhibited during the trial. Mary’s story, however, did not end with her not guilty verdict. The judge attached a note to her trial transcript which illustrated how faulty and performative perceptions of capacity could be. The day after Mary’s trial, she was seen sitting outside the courthouse. As two judges walked by, Mary “threw up her head up and smiled... instead of her pale death-like countenanced exhibited in court, her complexion was vivid, and her countenance expressive.” Mary had successfully pulled off the ultimate deception, one “several hundreds, if not thousands,” had fallen for.546 Mary had acted incapacitated, which, when paired with her age and family history, made it impossible to hold her legally responsible for a crime. Her strange behavior shifted the focus of the trial from whether she committed the murder or not to whether she understood anything that was happening to her. As the judge later pointed out, Mary took

545 Out of desperation to figure out what happened and whether Mary could be culpable for the crime, prosecutors tried to put Mary’s ten-year-old brother on the stand. But according to trial record, “upon examination, it appeared that he had not any sense of the obligation of an oath, nor of any of the consequences of swearing falsely.” State v. Mary Doherty. Mary’s brother’s inability to testify only reinforced this perception of the Doherty children as unlikely to be intellectually advanced for their ages.

546 Rhys Isaac discusses the public spectacle that was court in his work, The Transformations of Virginia, 1740-1790 (Chapel Hill: University of North Carolina Press, 1982). Isaac explains, “a great deal besides the court proceedings drew the county’s inhabitants together on court day, but the sessions in the courthouse were at the center of all activity.” (Isaac, 90). Attending court was an important social function as it taught citizens “the primary mode of comprehending the organization of authority” but it was also free entertainment. Isaac, 93. Consequently, Mary, just like any other court participant was regularly viewed and inspected by her community.
advantage of the fact that her community perceived her as “young, without education, decorum, a sense of religion, or the benefit of social intercourse.”

By doubling down on this perceived lack of intelligence and capacity, Mary pulled the wool over everyone's eyes.

In an interesting twist, the judge blamed Mary’s father for her devious behavior. Mary was capable of murder and deception because she possessed an “extraordinary character” which the judge attributed to her lack of “schooling, precept, example, morals, or light derived from social intercourse.” The judge determined that Mary’s “education was a disgrace to those whose duty it was to attend to it;” in other words, Mary’s parents had failed her, and, in turn, they were responsible for the monster that was created. “Parents,” the judge argued, regularly underestimate “the responsibility attached to them.” More importantly, the judge insisted that Mary’s case should be seen as “a warning to those who have the care of education,” as “crimes of children are too often owing to the want of good precepts, education, and morals.”

After the Revolution, there was a significant rise in the education of children as reformers insisted that formal

547 State v. Mary Doherty
548 Holly Brewer briefly discussed Mary Doherty’s case in By Birth or Consent. Her initial analysis coincides with my own in that she argues that Mary’s not guilty verdict was based on her youth and perceived lack of “mental awareness.” Brewer uses Mary’s case to argue that by the nineteenth century, “age was becoming critical to deciding not only punishment but guilt itself.” Brewer, 220. However, Brewer does not mention the discovery of Mary’s deception. Without this crucial piece of the story, Brewer missed the larger point—that Mary was aware of how perceptions of age, capacity, and culpability intersected to determine guilt and that she strategically behaved in a way that played up her youth and “incapacity” in order to be acquitted.

549 State v. Mary Doherty
schooling was the key to a moral citizenry; the judge certainly applied this rhetoric to their interpretation of Mary’s case.\textsuperscript{550}

\textit{State v. Mary Doherty}, and the notes attached at the end of the trial transcript, demonstrates how age and behavior were knowingly factored into the perceptions of capacity and culpability in ways that informed trial outcomes. Mary’s performance illustrates how widespread the knowledge of these relationships was. As the judge in Mary’s case pointed out, Mary was not very well socialized and uneducated. While they perceived these deficiencies as the root cause of Mary’s fraudulent character, read another way, Mary’s formal ineptitudes point to how commonly understood the relationship between age, maturity, behavior, capacity, and culpability actually were. That an uneducated child knew that by acting a particular way she could secure herself a not-guilty verdict is revealing. Still, Mary’s case was unique not only because of her sophisticated manipulation but also because the judge uncovered the truth in the end and made note of it in the trial records. The next three cases to be discussed, \textit{The State v. Aaron}, \textit{The State v. James Guild}, and \textit{The State v. Mary Bostick}, collectively demonstrate how race, gender, and status informed legal perceptions of age and capacity.

In October of 1817 in New Jersey, eleven-year-old Aaron, slave of L. Solomon, was tried for the murder of two-year-old Stephen Conelly. On August

27th, 1817, the toddler had gone missing and prior to the discovery of his body, Aaron had been asked if he had seen him, to which Aaron replied “he is gone up the road.” Aaron was questioned while he sat perched on the branch of a cherry tree and when asked to help search for Stephen, he remained put and “called aloud three or four times.” A few hours later, the small child was pulled from the well. Witnesses testified that upon this discovery, Aaron simply stared at the young boy’s body and remarked, “so, you’ve found Stephen.” Aaron then returned home that night to his master, where he skipped dinner and went to bed early. The next day, Aaron confided in the apprentice of his master that “he saw Stephen fall into the well.” According to Aaron, “Stephen climbed over the curb, and thus fell in.” Aaron also insisted, “that he did not tell anybody for fear that they would think he did it.”

At first Aaron maintained he had nothing to do with the boy’s death. However, after “his master and one of the jurors took him aside… he told them he had done it; that Stephen went to the well and put his hands on the curb, and [Aaron] took hold of his legs and threw him over.” According to the trial records, Aaron then “continued for three or four weeks to make the same confession” before denying his involvement again just as his trial began. Aaron then proceeded to flip flop on the topic of his guilt; sometimes confessing he killed Stephen “to spite [the toddler’s] father… because he had driven [Aaron] out of his shop and threatened to whip him.” Other times he claimed he was innocent and that he only confessed because he was told by jurymen that “the devil would get him if he denied it, but if he confessed it he would not be sent to jail.”

In Aaron’s initial trial, the jury found him guilty. This was largely due to his confession, the perception of Aaron as “more cunning and smarter… than was usual for boys his age,” and the fact that many testified that due to the height of the curb surrounding the well, it would have been “impossible for [Stephen] to get over it” on his own. However, Aaron’s lawyers successfully appealed the case to the New Jersey Supreme Court and secured Aaron a retrial on the grounds that Stephen’s infancy made him legally incapable of giving a testimony, let alone a reliable confession. In the state Supreme Court ruling, justices explained that confessions obtained by threat are unreliable as “the human mind, under the pressure of calamity, is easily seduced…to acknowledge indiscriminately a falsehood or a truth.” “A confession,” the justice continued, “obtained from a defendant either by the flattery of hope or by the impressions of fear, however slightly the emotion may be implanted, is not admissible evidence.”

Furthermore, and most importantly, “if this be so with respect to confessions in general, how much more strong does it apply to the confessions of infants, especially under the age of twelve years old?”

As seen in the trial transcript, Aaron initially denied having anything to do with Stephen’s death; he then alternated between confessing and denying his involvement. Consequently, justices agreed that, in general, his confession needed to be thrown out because he might have been pressured to give it, and especially, because he was an infant. Although his actions that day might have been perceived as strange—staying in a tree when questioned, skipping his

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552 State v. Aaron. Emphasis in trial transcript.
553 State v. Aaron.
dinner—they could have been the result of having been traumatized after witnessing Stephen’s fall. Justices stressed that Aaron “was so very young” and that the consequences of finding him guilty and culpable were extreme: execution. The fact that Stephen’s death could have been an accident seemed to be the swaying factor to grant the retrial. However, when the ambiguity surrounding accident and murder was resolved, as was the situation in the next New Jersey Supreme Court case, *The State v. James Guild*, justices were less willing to be sympathetic of one’s infant status.

On September 24th, 1827, sixty-year-old Catharine Beakes was found beaten to death on the floor of her home by a neighbor, Charles F. M’Coy. M’Coy had been near Catherine’s house earlier in the day and noticed twelve-year-old James Guild, a “coloured boy” and “servant of Joshua Bunn,” “hacking [a] tree with a corn knife.” However, it was not until later in the day that M’Coy visited Catharine’s house again and discovered her body. As the only person seen near the Beakes’ house the day of the murder, James was questioned that night by a constable. According to the trial transcript, James “was asked if he knew anything how the old lady came to her death. He denied knowing. He was twice asked.” But something did not sit right with the constable about James’s denial and the next day, he questioned the boy again, this time telling James that he “believed he was guilty of the murder.” After repeatedly pressing (and accusing) James, the constable finally got the boy to confess.

554 Unfortunately, I could not find the retrial transcript and so I could not determine what ended up happening to Aaron.
The State v. James Guild was similar to The State v. Aaron in some respects. Although ten years apart, both cases were murder trials that were heard and appealed in New Jersey where the accused was an enslaved black male around the age of twelve. In both cases, the child confessed to the murder and was found guilty in the jury trial. Also in both cases, the verdict was appealed to the state Supreme Court where the central question of the appellate case was whether that confession was coerced, and, if not, if the child understood the significance of their confession. What was different about The State v. James Guild from The State v. Aaron, however, was the gruesomeness and brutality of the Catharine Beakes’s murder. Prosecutors paired grisly details of the crime scene with testimony about James’ cunningness to argue that despite his infancy, James’s confession should be included in evidence, and he should be held criminally culpable for the crime.

A total of six people, including the boy’s master, were questioned in the original jury trial about James’s intellectual capacity, and their testimonies are indicative of how perceptions of maturity, gender, race, and culpability were presented within the legal system. Each of the character witnesses described James as some combination of “smart,” “cunning,” and “mischievous.”556 Two, Jonathan Vankirk and Daniel Cook, incorporated race in to their descriptions and testified that James was “smarter than common black boys of his age.”557 James’

556 Charles M’Coy: James is “a smart, cunning, mischievous kind of boy.” Joseph Davis: “He is reputed a cunning smart boy.” Jonathan Vankirk: “He is account smarter than common black boys of his age; full of mischief; think him cunning boy.” Charles Bonnel, “he appeared to have considerable wit.” Stephen Albro, “He appeared to have a smartness of turn when talked to.” The State v. James Guild
557 Daniel Cook stated: “he has a great deal of understanding; as much as any black boy I am acquainted with.” The State v. James Guild.
own master, Joshua Bunn, conceded that the boy “in some respects knows the
difference between good and evil,” and although he agreed that James was
“mischievous,” Bunn insisted that James did “not bear malice.” Given that a guilty
verdict would mean a loss of property for Bunn, his testimony was considered
problematic. However, Stephen Albro, the jailor, supported Bunn’s perception
of James, testifying that “he has capacity enough to distinguish between right
and wrong; but I do not think he considers or reflects as much as some… I think
his bad actions proceed more from passion than from malice.”

Yet there was no question that whoever killed Catharine Beakes did so
viciously, and the prosecution included testimony of the grisly details of
Catharine’s death in order to show that her murder was more than just an
instinctive reaction of anger from a “passionate” person. M’Coy, who had
discovered Catharine’s body, testified that at first he “thought she had a fit, and
fell, and bruised herself,” but upon closer inspection he discovered that “the top
of her skull… appeared to be mashed in.” He then “looked round and saw the
yoke (a horse yoke) about four feet off… [with] some blood on [it.]” The doctor
sent to inspect the woman’s body testified that “her hair [was] clotted; her breast
covered with blood, which was still flowing; her head [was] dreadfully mangled
[with] the scalp loose and cut through; a large bruise [was] on the right side of her
head; [and] the under jaw [was] broken.” Most importantly, he testified that “a

558 In New Jersey, masters were compensated the full value of their executed slave. However,
James was only a boy, which meant that he had not yet reached his potential full value. In
turn, this reality would have been an incentive for his master to want him alive, because he
would be worth more later as an adult man than he would be as a dead child.
559 The State v. James Guild
560 A yoke is a piece of metal or wood that serves as a link between pieces of leather fixed to a
horse’s collar.
blow with the yoke by a boy might produce death.” By including such grim details, the prosecution hoped to insert malicious intent into James’ guilt, something necessary to try him as an adult. Catharine was not simply struck once because of a moment of uncontrolled passion, the prosecution argued, but was beaten over and over again until her head was “mangled” and “mashed in.”

The final piece of James’s case was his confession, which he repeated to at least seven other people. For the most part, the stories each witness repeated were the same.561 On September 24th, 1827, James went to Catharine Beakes house and asked to “borrow a gun.” According to Eli Herbert, James told him that “the old bitch would not lend it to him” and instead accused James of letting her pigs and “pidgeons” out. Between the refusal and the accusation, James got angry. On the way “out the door, he saw the yoke… he picked it up and went back,” and “struck her” while her back was turned to work at the fire. According to James, after the first blow, “she did not fall, [so] he struck her again, and she fell.” James began to leave but then realized “if she got well, she would tell his mistress, and his mistress would thrash him.” Consequently, he stated, “he then went back to kill her,” which he did.

James’s confession was a damning one because it showed that James had a violent, uncontrolled temper, but also that he thought through the murder—opting to go back and kill the woman rather than risk punishment should she tell his mistress. While his logic was flawed (thinking he could avoid the risk of a beating in exchange for the risk of a death sentence), James’s understanding of

his actions that day was enough to convince the New Jersey Supreme Court justices that he had sufficient capacity to be convicted as an adult. The appeal trial ended with justices upholding the original guilty verdict and James’ execution.

*The State v. Mary Bostick,* heard in Delaware in 1845, demonstrates how class, gender, and race could skew perceptions of age and culpability. Twelve-year-old white servant Mary Bostick was indicted for arson and the subsequent murder of two children, four-year-old Truston Fenwick Fisher and two-year-old Frances Virginia Fisher, who died in the fire. Ann Eliza Fisher, the children’s mother and mistress of the household, was the only person to provide testimony regarding the incident. 562 According to Ann Fisher, on March 10th, 1845, at “about 8 o’clock, the children were playing in the kitchen; and [Mary] without any direction from [Ann] ordered them to bed.” 563 Allegedly, Mary “went up with them, and when she came down, she passed through the room where [Ann] sat with others, sewing and reading. After a short time, [the ladies] were alarmed by a noise… finding the house on fire, [they] rushed out, and fell down the stairs.” A few days after the accident, the children’s mother “took Mary into another room and questioned her” about the fire. At first Mary “denied” having anything to do with it; however, after Ann told the girl that “if she confessed it… she (Ann) did not expect to do any thing with her, but was going to send her home.” With the suggestion of immunity if she admitted guilt, Mary then “confessed that when she

562 Ann was married to George Purnell Fisher, a young successful lawyer in Dover who had recently completed two terms in the Delaware House of Representatives. 563 *State v. Mary E. Bostick,* 4 Del. 563 (1845).
went up stairs in the evening, she placed a candle under the clothes which hung from the bed.”

Ann started her testimony with a mental description of Mary, carefully choosing her words to keep in mind intellectual markers of class while at the same time represent Mary as competent enough to be capable, and so held liable, for her crime. Ann stated that Mary was a “very shrewd, artful girl” who had turned “twelve years old last August,” possibly emphasizing Mary’s age to place her closer to the age of criminal culpability which was fourteen. Using the familiar trope of the “crafty servant” to prove Mary’s guilt, Ann explained that Mary was “not intelligent, or very capable of learning; but smart to work” and most importantly, “shrewd in mischief.” Ann’s summary of Mary was also meant to provide evidence that Mary had “sufficient mental capacity to make confession of her guilt.” Despite Ann’s testimony, the trial judge determined that Mary, like Aaron discussed earlier, was too young to give a reliable confession much less be culpable for the crime. Furthermore, without the disqualified confession, there was no remaining evidence against Mary; consequently, Mary was freed.

Interesting overlaps exist in *The State v. Aaron*, *The State v. James Guild*, and *The State v. Mary Bostick*. In all three cases, judges and justices had to determine, first, if the children’s confessions were coerced, and, if they were not, whether the children had sufficient capacity to understand the ramifications of their confessions. All three children on trial were servants or slaves, and, significantly, all three children were described as “smart” and “mischievous.” Both Aaron and James were described as “cunning” and more intelligent than “most
The fact that these cases were heard years apart and in two different states provides insight into how a child’s capacity was interpreted during the Early Republican period. The terms “cunning” and “mischievous” both carry negative connotations, and even “smart” can be interpreted as negative descriptor. All suggest a level of comprehension and deliberate bad behavior.

Important differences existed between the cases as well, which, when highlighted, shed light on the significance of race, status, and gender in perceptions of age, capacity, and culpability. For example, although, Aaron, an enslaved black boy, was eventually granted a retrial, he was initially found guilty for his crime. In comparison, Mary, a white servant girl, was acquitted of the crime outright and quickly deemed incapable of having the capacity to understand the consequences of her confession. At nearly the same age (Aaron was actually the younger of the two) and apparently both “smart” and “mischievous,” it would seem they had similar levels of capacity. Most likely, Mary’s status as a servant, not a life-long slave, as well as the fact she was a white female, worked in her favor to be immediately perceived as a dependent, incapable, and in need of protecting. Even if Mary had committed the crime, she could be rehabilitated and would be of little threat to the status quo. Aaron, however, as a black, male slave, was already viewed with constant suspicion and distrust—any hint of rebellion or hostility to whites needed to be squashed. Still,

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564 According to Holly Brewer, James Guild was one of the last children under the age of fourteen to be executed in the United States. Brewer, 222. Furthermore, she points out the irony that “while so many people in the early nineteenth century were trying to prove that blacks were mentally inferior (in order to justify slavery and racism), many of the witnesses in this case vied to grant Guild an understanding equal to or greater than other boys his age, since only possession of that understanding would make him responsible.” Brewer, 224.
New Jersey was not a slave society, which meant a slave rebellion was less of a concern. Aaron was very young, at barely eleven years old, and his (potential) victim was a fellow male child, these particularities of his case increased his chances for a retrial.

Similar to Mary and Aaron’s trials, justices acknowledged in James’ case that his confession may have been coerced and, more importantly, that he was an infant under the age of criminal culpability. But, as a black male slave, James was on trial for the brutal murder of an older white female, which made jurors and justices less sympathetic to his plea of infancy. For example, James trial judge pontificated on the following to assist jurors in their decision-making: “with respect to the ability of persons of his age, to commit crimes of this nature, the law is, that under the age of seven, they are deemed incapable of it. Between seven and fourteen, if there is no proof of capacity... the presumption is in their favour; a presumption however growing weaker and more easily overcome, the nearer they approach to fourteen.” This was an important point to make because James had just turned thirteen during the trial, making him much closer to fourteen than to seven. Furthermore, the justices added in their ruling: “at the age of this defendant, sufficient capacity is generally possessed in our state of society, by children of ordinary understanding... if you are satisfied that he was able, in a good degree, to distinguish between right and wrong; to know the

565 A “slave society” is a community whose existence is dependent upon slave labor and whose population is primarily composed of slaves. New Jersey was considered a “society with slaves,” which is a community that tolerates slavery but is not dependent on it for its survival. For more information on this topic see: Ira Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America (New York: Belknap Press, 2000).
566 The State v. James Guild
nature of the crime which he is charged... his infancy will furnish no obstacle, on
the score of incapacity, to his conviction.” James, unlike Mary and Aaron, was
found guilty, denied a retrial, and executed.

Culpability and capacity were legal concepts that were meant to be
defined exclusively by age (and, as the century progressed, expanded to include
interpretations of mental soundness). Yet as can be seen in the murder cases
discussed above, gender, status, and race influenced how legal participants
interpreted and depicted these concepts in actuality. They also indicate how
easily lawyers could manipulate legal definitions of age as they related to
perceptions of capacity and culpability as a defensive argument. A number of
cases exist in which legal participants strategically presented the age of a
defendant or victim and pushed for a literal interpretation of the law in order to
win their case. In cases in which it was obvious a crime was committed,
defensively, this was a smart tactic as it shifted the question away from guilt to
culpability. Two state Supreme Court cases, *Stoolfoos v. Jenkins*, a contract
fraud case, and *State v. Pugh*, a rape case, provide excellent examples of this
strategy. In both cases, it was clear the accused had committed a crime while
underage; consequently, guilt was not in question, but culpability was.

In the spring of 1800, when Catherine Jenkins was “about the age of
seventeen years,” she inherited land from her maternal grandfather. Soon after,
she chose her father, James Hamilton, to act as her guardian regarding the
management of the land. Within a month, James had lined up purchasers for the

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land, promising them “a good title” to “all [of] the estate” that Catherine had inherited once she turned twenty-one. Before executing the deed, James “demanded” that the buyers provide “part of the purchase-money” up front, which they complied with. After James received £300, the release was then “sealed and delivered by the daughter Catherine, although she was not mentioned as a party in the body of the instrument,” which should have been an early indication that the deal would not go as planned. The land was never released and the money was never returned, resulting in the Pennsylvania Supreme Court case Stoolfoos v. Jenkins.

*Stoolfoos v. Jenkins* sought to answer the question of “whether there may… be cases of such gross and palpable fraud, committed by an infant, as would render valid a release of his right to land,” or simply, whether Catherine Jenkins could commit fraud as an “infant.”\(^{568}\) Due to guardianship laws, neither James as her guardian nor Catherine as a minor was legally allowed to release the land—once the investors realized this, they argued that they had been defrauded by both father and daughter. Additionally, they insisted that this was a preconceived plan: “the daughter began the business,” the purchasers insisted, “by petitioning the court that her father should be appointed guardian of her estate; she represented to the defendants, that their title was complete, by the release of her father, executed also by herself, and she received money from the defendants.” In other words, Catherine intentionally chose her father as her guardian so the two could bring their plan to fruition. By arguing that Catherine was capable of plotting such a sophisticated fraud, the purchasers hoped to

\(^{568}\) *Stoolfoos v. Jenkins*, 12 Serg. & Rawle 399 (1825).
prove her intellect was beyond that of a normal minor and, thus, she should be culpable for the crime despite her infancy. If this were the case and she were found culpable, then the land should be released to the attempted buyers.

Catherine’s lawyers framed their defense in a way that focused on Catherine’s vulnerability as a minor, utilizing newer definitions of childhood and the ability to reason to their advantage. They argued that although she had signed and sealed a release, this did not equal fraud. Her actions only provided evidence of “ignorance” on her part, as she did not understand that what she was doing had no validity. Conveniently, her lawyers cast the blame on the then-deceased James and argued “if there has been a fraudulent combination, it has been practiced against the infant, and not by her. What could she know of the law, at the age of seventeen? How easy would it have been, for the guardian to prevail on his ward to execute this deed?” James was the one who should have known better and was assigned her guardian tasked with the responsibility of protecting her inheritance. According to the defense, the fact that Catherine needed a guardian was indicative of her inability to fully comprehend right from wrong, the significance of her actions, and in turn, be culpable for criminal activity.

In offering their ruling, the justices considered the importance of chronological age in determining Catherine’s culpability. They began their opinion by stating that “although the law allows the plea of infancy, as a good defense, it will not permit the infant to convert it into an offensive weapon, for the purpose of defrauding others.” Still, contracts signed by infants could not be binding because
they are incapable of fully comprehending the obligation of moral duties...[as] their understanding has not arrived at maturity.” Even in the extreme circumstances in which an infant “represented himself to be of full age” in order to engage in business transactions, the contract the infant signed would not be valid because of his actual chronological age. Focusing on Catherine’s case, the justices ruled that there was no evidence to prove that Catherine intentionally defrauded the investors. “She did not pretend to be of full age, and the probability is, that acting under her father’s influence, she was ignorant of the law… it is not to be imagined, that a girl of seventeen should be acquainted with the law of contracts.” They then shifted the blame to the investors: “what man of common prudence could be deceived by her assertions in matters of law? Why did not the defendants consult their own counsel, rather than rely on the opinion of a child?” Ultimately, the court determined that Catherine could not be held accountable for a contract made in her minority and more importantly, she could not be held culpable for fraud. Consequently, the land remained in her possession.

When placed side-by-side, Catherine Jenkins and Mary Bostick’s case outcomes are unsurprisingly similar. Both cases demonstrate how one could use age to shift the question of whether a person committed a crime to whether they could be culpable for it. Both Catherine and Mary (if we are to take her confession seriously) clearly committed crimes, fraud in Catherine’s case, and either arson or perjury in Mary’s. However, due to their youth (and most likely gender), the crimes themselves did not matter because the girls were too young to be held culpable. As the justices noted in Catherine’s ruling, infancy could be
used as a defense, but it was not supposed to be used as “an offensive weapon,” meaning young people could not hide behind their age to escape punishment for crimes they intentionally committed. Although legal definitions of age and culpability that were established following the Revolution were meant to protect minors, it became evident that these definitions were flexible and that more information had to be considered when establishing one’s culpability.

The case, *State v. Franklin Pugh*, provides stronger evidence that gender factored into perceptions of culpability and age. Heard in 1859, thirteen-and-a-half-year-old Franklin Pugh stood trial for the rape of his schoolmate, fourteen-year-old Elizabeth Foust.\(^569\) Common law, derived from British statute, assumed that a male below the age of fourteen was physically (as well as intellectually) incapable of committing rape.\(^570\) If the law had been strictly upheld, as it was for Catherine and Mary, Franklin would have walked free. However, possibly because he was a male who also assaulted a young white female, the court heard testimony on Franklin’s intellectual capacity and physicality before offering their ruling. Elizabeth testified that Franklin had “approached her in a run” before overtaking her “forcibly and against her will,” and throwing her to the ground. He

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\(^{569}\) *State v. Franklin Pugh*, 7 Jones (NC) 61 (1859).

\(^{570}\) Block, *Rape and Sexual Power in Early America*, 129. Additionally, an interesting case heard in North Carolina in 1855, *Robert B Chambers v. Allen White*, illustrates how this idea of chronological age and sexual capability was applied in non-rape cases as well. *Champers v. White* was actually a slander case, where Allen White accused Robert B. Chambers, a boy under the age of fourteen, of bestiality. In the original case, the judge had instructed the jury that they needed to be “not only satisfied that the words were spoken, but that the plaintiff was physically capable of committing the crime.” As a result, the plaintiff “took a non-suit and appealed to the Supreme Court.” The Supreme Court ruled that whether Chambers was sexually mature enough to engage in bestiality was of no consequence to a slander case as that was the not the crime on trial. The case is revealing because it shows how legal definitions of culpability and capability could be (and were) interpreted differently. (Additionally, there is no evidence that Chambers was tried separately for bestiality.) See *Robert B. Chambers by his next friend v. Allen White*, S47 N.C. 383 (1855).
“held her down” and she “struggle[ed] to get up from him” while he “had his will of her.” Elizabeth stated repeatedly how he used force and that she resisted which made it difficult for Franklin to argue he did not know what he was doing was wrong.

Still, Franklin’s lawyers attempted to use his infancy as his defense by supplying a “witness who proved” that Franklin was “thirteen years and six months old when the transaction was alleged to have taken place.” However, because Franklin was nearly fourteen, the court decided that he was “liable to answer for a misdemeanor, if the jury believed he had sufficient capacity to distinguish right from wrong.” Asking for more information regarding Franklin’s competence, the same witness that testified on behalf of Franklin did state he was of “ordinary capacity and well grown for his age.” This is significant because the court acknowledged the arbitrariness of age boundaries when determining criminal culpability and, as they did with Aaron and James’ cases, the court factored in more information about Franklin to determine whether he knew what he was doing or not. Rather than dismiss the case as common law suggested, based on the fact Franklin was below the age of fourteen, the court decided to investigate the circumstances of the offense as well as Franklin’s competency, specifically regarding his capacity and physical size, before coming to their verdict.

The jury found Franklin guilty, and, despite his efforts to appeal the verdict, the state Supreme Court upheld the lower court’s ruling. Justices stated that generally, children under the age of fourteen should not be held liable for
“ordinary assault and battery,” and instead it was best to leave punishment of these wayward youth to schoolmasters or parents. However, “if the battery be an aggravate kind… [if] it is prompted by a more brutal passion, such as unbridled lust, as in the case before us,” the minor must be apprehended by the law. More importantly, young men, like Franklin, need to be “made an example of… so that all others may know and fear the law.” In other words, both courts refused to let Franklin hide behind his “infancy” as a defense. This decision was strikingly different from Catherine and Mary Bostick’s verdicts. Ultimately, justices of the South Carolina Supreme Court determined that regardless of Franklin’s chronological age, the fact that he brutally attacked and raped his fellow schoolmate meant he needed to be punished for it as an adult.

A comparison of the language of the rulings between the case State v. Franklin Pugh and State v. Mary Bostick suggests that gender influenced perceptions of age and culpability for violent crimes. Franklin and Mary were both under the age of fourteen, but only by a year or two. Both committed crimes of violence; Franklin assaulted and raped a young woman while Mary burned down a house, killing two young children. However, the court quickly dismissed the possibility of Mary having the mental capacity to comprehend right from wrong. Justices acknowledged that Mary was “shrewd, sensible, and artful,” adjectives that could also be used to argue she was intellectually advanced for her age and so capable and culpable. However, she was more importantly still a “girl,” a “child,” and children could not be held accountable for their actions. Comparatively, although justices identified Franklin as a “boy,” they argued that
he needed to be brought “into court like a man” because of the nature of his crime. Franklin was listed as only having “ordinary capacity” for his age, which one would assume to mean he should be tried as any other child under the age of fourteen would be. However, justices ruled that Franklin had enough “malice and wickedness [to] supply the want of age.”

What role race played in the court’s decision to try Franklin as an adult is hard to determine. Had Franklin assaulted a black woman rather than a young white woman, would justices have been as willing to reconsider the legal significance of age and culpability the same way justices in New Jersey did when they sentenced James Guild to death for murdering Catharine Beakes? Regardless, by making “an example” of Franklin, justices sent a clear message that young white women were to be protected, even it meant reinterpreting the law.571 Taken one step further, judges and justices at times reassigned blame away from young women by using notions of white adult male control. For example, Catherine Jenkins and Mary Doherty both committed crimes that were ultimately blamed on white adult men.572 In Catherine’s case, justices argued that

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571 Society did not appear to always value the safety of young white women and girls over the legal rights of white men. For example, in 1860, fifteen-year-old Wesley Gray’s lawyers honed in on a legal loophole regarding the proof of rape to secure a new trial. In the original case, Gray was found guilty of raping eight-year-old Louisa E. Wheeler based on the testimony of a doctor who had examined the child shortly after the attack. According to Doctor Pugh, he “found her private parts very much swoolen, torn and lacerated; that there had been a penetration... as far as it was possible in a child of her age.” In the original trial, the jury found Gray guilty of the offense based on the evidence of penetration alone, but in the appeal case, justices determined that “proof of emission” was necessary as well. The justices explained that the original presiding judge had erred by assuming the state of North Carolina had passed a similar law as England that specified only penetration had to be proven to convict in a rape trial. Louisa had clearly been sexually violated, but the prosecution still lacked a legally necessary piece of evidence, proof of ejaculation. Consequently, Gray’s legal rights, as a white male, superseded the belief that children like Louisa should be legally protected due to their gender and age at all costs. See State v. Wesley Gray, 53 N.C. 170 (1860).

572 Hodes demonstrates, in White Women, Black Men, that courts often blamed white men in
the investors should have known better than to “rely on the opinion of a child,” while in Mary Doherty’s case, the judge argued that her father had failed to provide the necessary education and socialization that would have prevented the corruption of Mary’s character. Because Catherine and Mary were expected to be permanent dependents, they were perceived as inculpable; but Franklin was not only supposed to regulate his own behavior but also, eventually, that of his dependents, making him too much of a liability on the community to be given the benefit of the doubt.

An unexpected place that a plea of infancy was regularly used as a legal strategy was against the military. US v. Bainbridge, heard in a Massachusetts circuit court in 1816, was one case regularly cited in judges’ and justices’ rulings. At the age of nineteen, Robert Treadwell enlisted in the United States Navy; within a month he had deserted, was court-martialed, and sentenced to two-years service. Treadwell’s lawyer argued that because Treadwell was an infant, he was not legally capable of enlisting, and since his enlistment was invalid, his court martial sentencing should be annulled. The United States government, however, argued that Treadwell was not under the control of his father at the time he enlisted, instead “this individual was suffered by his father to roam at large, and gain his sustenance where he could.” The judge ruled that “if

573 US v. Bainbridge, 1 Mason 71 (1816).

574 There is a long history of minors enlisting and serving in the military both with and without parental consent. These cases are also inherently gendered as only men, sons, could enlist in the military. See Caroline Cox, Boy Soldiers of the American Revolution (Chapel Hill: University of North Carolina Press, 2016); John A. Ruddiman, Becoming Men of Some Consequence: Youth and Military Service in the Revolutionary War (Charlottesville: University of Virginia Press, 2014).
a father should voluntarily send his minor children away from home, to obtain maintenance and support in any manner, that they could; this would be an implied consent to any contract for that purpose, and a waiver of parental rights."

Consequently, Robert’s enlistment was ruled as valid and he was remanded to his commanding officer. Dozens of cases like Robert’s exist, indicating not only that minors regularly asserted their independence by choosing to enlist prior to their legal independence, but also, when things went wrong, many attempted to lean on their legal infancy as a way of escaping the consequences of their actions.

Knowledgeable minors were not the only ones who attempted to work the law regarding culpability to gain a more lenient sentencing; youthful looking adults attempted to take advantage of these laws as well, especially in communities that had no formal way to document one’s age. Consequently, courts began to crack down on the necessity of proof to claim infancy as a defense. This was the case in the North Carolina murder trial, State v. Elijah Arnold, heard in 1850. According to court records, Elijah “appeared… to be a small boy,” but his exact age could not be ascertained. The defense appealed the case to the state Supreme Court and argued that Elijah was “under the age

575 As mentioned in a previous footnote, Bianca Premo examined this phenomenon in her work on colonial Lima, Children of the Father King: Youth, Authority, and Legal Minority in Colonial Lima (Chapel Hill: UNC Press, 2005). See specifically chapter four, “Minor Offenses: Youth and Crime in the Eighteenth Century.” Premo argues that both the courts and those tried “manipulated the reporting of ages in order to influence the outcome of a trial.” Premo, 119. In America, official forms of birth records did not become standard until the end of the nineteenth century. Instead, communities often relied upon private family records to prove their age and identity which of course could be incorrect or intentionally altered. For more information, see Shane Landrum, “From Family Bibles to Birth Certificates: Young People, Proof of Age, and American Political Cultures, 1820-1915” in Age in America: The Colonial Era to the Present, ed. Corinne T. Field and Nicholas L Syrett (New York: New York University Press, 2015), 124-147.
of presumed capacity” and that it should be up to the State to “prove that he was over the age, or, if under it, that he had such knowledge of right and wrong, as would render him responsible for the homicide.” However, justices “held the onus of proof lie on the prisoner as to his age.” Unable to prove he was under the age of fourteen, Elijah was convicted of the murder and sentenced as an adult would be. While Elijah’s actual age is not known, State v. Elijah Arnold illustrates how individuals used the ambiguity of chronological age to take advantage of culpability laws meant to protect minors.577

Lawyers of defendants accused of crimes against children attempted to undermine the testimonies provided by their victims, especially in infant rape cases, by arguing for strict interpretations of legal definitions of age and reliability. Reliability as a legal concept is determined by how trustworthy a person is. In every state during the Early Republican period, children below the age of fourteen were not supposed to testify in court. Considered unreliable witnesses, it was assumed children lacked the capacity to understand the significance of their words. Still, both prosecutors and defense attorneys attempted to put children on the stand, either because they were the victims in the cases being tried or they happened to be the only witnesses available. More often then not, these testimonies were either struck from the record or never allowed to be given to begin with because trial judges or higher court justices

577 An example in which the defendant successfully provided evidence of his infancy can be seen in the 1837 North Carolina Supreme Court case, The State v. Jesse, a Slave. Jesse was acquitted of raping Bransy Witherington, a white female, because his legal counsel provided “evidence” that proved he was below the age of fourteen at the time the rape was alleged to have been committed. The State v. Jesse, a Slave2 Dev. & Bat. 297 (1837).
determined the child had no “sense of the obligation of an oath, nor of any of the consequences of swearing falsely.”

An example of an infant rape case in which lawyers argued for a literal interpretation of the legal definitions of age and capability in order to undermine the reliability of their child victims’ testimonies can be seen in the 1813 South Carolina Supreme Court case, *State v. Fracis Leblanc*. Leblanc was found guilty of raping a young girl, “little more than seven years old at the time the charge [was] laid.” Sexual intercourse with a child under the age of ten years old was a capital crime, punishable by death because it had been long established that a child that young could not consent. The sole witness was the girl herself, and so Leblanc pled not guilty, pitting his word against hers.

Supporting Leblanc’s defense were the circumstances surrounding the discovery of the crime as well as the “inconsistency” of the girl’s testimony. According to trial records, “several days elapsed before [the girl] disclosed any” information and shared what happened after her mother had “discovered blood on her linen” and “charged [the girl] with having had connection with a man.” After being “closely questioned as to the circumstances, the girl then pointed out the prisoner, as the offender and his house as the scene of the crime.”

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578 *State v Mary Doherty*  
579 *The State v. Fracis Leblanc*, 1 Tread. 354 (1813).  
580 If the victim was over the age of ten, then the crime was considered a misdemeanor which might result in jail time or fines. More importantly, cases of child rape were easier to prosecute, because if it was known that sex occurred, consent was irrelevant as a child under the age of ten could not agree to the relationship. However, if the victim was over the age of ten years old, the defense could employ a number of arguments that might cast the victim in a negative light and result in an acquittal. This was because between 1770 and 1820, legal definitions of rape became more complicated and, as a result, harder to prove. The courts began considering the “competency of the witness, the level of force applied and resistance offered, and the precise intent of the aggressor,” in determining if crime occurred. See Simpson, “Vulnerability and the Age of Female Consent,” 182. See also, Block, *Rape and Sexual Power in Early America*, 127.
Additionally, the girl was “inconsistent” in her testimony; she had declared to the "magistrate that she cried out, and in deposing in court, that she did not."\(^{581}\)

While Leblanc’s defense pointed to these issues as a reason to not trust the girl’s testimony, their biggest argument was that she was too young to be reliable. LeBlanc’s defense lawyers argued for a retrial on the grounds that it was wrong to “pay too much regard to the testimony of a child of nine years old,” especially when doing so would “deprive a man of his life.” A similar attempt to undermine a victim’s testimony based on age was made in trial that took place in Brooklyn, New York in 1797, where Nathaniel Price was accused of raping his ten-year-old servant, Unice Williamson. Price’s defense objected to Unice’s testimony arguing that she was an “incompetent witness, being incapable of knowing from her tender years the nature and obligation of an oath.”\(^{582}\) In this case, ultimately, the judge overruled the objection “after questioning [Unice] and hearing her answers,” further illustrating how flexible legal age restrictions were. Leblanc’s (and Price’s) shrewd defense utilized the same perception of childhood that made their actions a capital crime to question the victim’s ability to be a reliable witness. If the court assumed that children under the age of ten could not consent or be culpable for their actions because of their inability to reason or understand the consequences of their actions, then how could jurists trust their testimony?

\(^{581}\) It is important to remember that the girl was only seven years old at the time she gave her statement, furthermore, her delayed divulgence and inconsistent retelling of the event is a common occurrence for victims of assault. For example, Unice Williamson explained that she delayed several days before telling anyone that she was raped because her attacker had “said he would kill her if she told.” The Trial of Nathaniel Price, for Committing a Rape on the Body of Unice Williamson, a Child between 10 and 11 Years of Age, at Brooklyn in King’s County, in May 1797… (New York: Printed for Elijah Weedg., 1797), 3.

\(^{582}\) The Trial of Nathaniel Price…, 2.
In the end, the additional evidence against Leblanc was too incriminating for his tactic to work. The girl had incredibly specific details about Leblanc's house, the scene of the crime and a place she should have had no knowledge of. For example, she gave a “description of the closet where the offence was committed, which she could not have known, if she had not been there.” Even more incriminating was the fact she had contracted the same venereal disease that Leblanc had. Consequently, the lower court's verdict was upheld in the appeals court and Leblanc was sentenced to death. Although unsuccessful, Leblanc's attempt illustrates the danger the court exposed itself to in adhering too strictly to legal definitions of age and capacity—the same definitions meant to protect minors could be used to harm them.

The 1810 New Jersey Supreme Court case, *Van Pelt v. Van Pelt*, provides another example of the flexibility in legal age requirements regarding testimonies provided by minors. The son of the defendant was excluded from giving his testimony because a justice had been told the boy “was about twelve years of age,” and more importantly, “he did not appear to understand the nature of an oath.” Following an unsatisfactory verdict, Van Pelt, the defendant, collected “affidavits… to prove that the boy was a few days more than fourteen years of age at the time of the trial” in an effort to gain a retrial that included the boy’s testimony. State Supreme Court justices conceded that the boy “possessed

583 According to the trial record, “although it is admitted that the infection may be communicated without carnal intercourse, yet, such a thing is not to be presumed: and when this fact is relied only as a circumstance to strengthen her testimony, it cannot fail to have that effect. The lameness which was immediately observed by the mother, and the stains upon her clothes, although not absolutely conclusive, are certainly strong corroborating circumstances.” *The State v. LeBlanc*

ordinary understanding” and “was not uncommonly deficient in mental qualifications,” however, he “did not appear” to be “fourteen years of age at the trial.” Consequently, they affirmed the lower court’s judgment and denied a retrial. *Van Pelt v. Van Pelt* perfectly illustrates how age and reliability laws were important and arbitrary. The boy’s father thought that by providing evidence that the boy was “a few days more than fourteen,” his testimony would have to be heard as he was legally considered a competent witness. However, justices insisted the boy did not appear fourteen, despite the affidavits, and so they reaffirmed the decision to deny his participation in the trial.

Other cases where the significance of age of the victim was strategically highlighted, challenged, or qualified were abduction and seduction cases. The cases to be discussed in this chapter are different from the seduction and loss of service cases analyzed in chapter four because parents were not seeking redress for impregnated and abandoned daughters, but rather the physical and legal separation from their child via marriage or labor arrangements. Three cases in this chapter primarily focused on the child’s ability to consent—whether they had the capacity to understand what they were agreeing to. In other words, these cases questioned how “capable” children were as active participants in running off to get married or commit to employment. A study of abduction and seduction cases reveals how deeply gendered perceptions of these types of crimes were as well as tells us about the types of opportunities that were available for young people to escape their households. For example, all cases I have found that deal
solely with charges of “abduction” are regarding young males and labor. Conversely, all cases I have found that deal solely with charges of “seduction” or “abduction and seduction” are regarding young females and marriage or sexual relationships. The fact that there is no record of cases where young men were “seduced” away by older women or young women were “abducted” solely for labor purposes is suggestive of how perceptions of gender influenced the persecution of these types of crimes.

Keeping in mind the gendered assumptions inherent in abduction and seduction cases, these legal disputes can also reveal much about how communal perceptions of age and familial dependence infiltrated the legal system and influenced court rulings. Abduction charges stemmed from employing minors without their parent’s consent. In most cases, the father filed suit against the employer in an effort to reclaim his “losses.” Fathers were legally entitled to the labor and services of their children until they reached the age of twenty-one; this included the right to contract out their child’s labor and collect their earnings. This legal right extended equally to sons and daughters, yet there are no examples of fathers taking employers to court for “abducting” their daughters as laborers. This was most likely due to differences in employment opportunities of men and women. For example, transportation companies were always in need of sailors—an occupation not available to women. Consequently, a number of cases exist were fathers accused various ships of “abducting” their sons and depriving them their right to their child’s service. Although typically the

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585 A further discussion of abduction and/or seduction cases and what they reveal about parent-child relationships and age can be found in chapter four of this dissertation.
rulings of these cases tell us more about how communities legally defined familial relationships and responsibilities (as is argued in chapter four), occasionally perceptions and expectations linked to chronological age appear. The first example of this can be seen in the 1850 Massachusetts case, *The Platina*.

On July 13th, 1850, James N. Luce, said to be “nineteen years and three months,” left New Bedford, Massachusetts with The Platina, a whaling ship headed for the Pacific Ocean. According to Andrew Hicks, the owner of The Platina, James had been paid “full wages,” which meant that James either presented himself “as a man of full age,” or “that, if he was a minor, he had been emancipated, and had been permitted to act for himself, and enjoy the proceeds of his labor and industry.” Hicks also explained that after James’ contract ended, James was settled with “at Talcahuana, a port in Chile, and there paid the full amount of his lay, and by his own consent discharged from the ship for the purpose of going on another whaling voyage.” 586 Three years later, the Platina returned to New Bedford *without* James, prompting his father, James W. Luce, to take Hicks to court to claim a portion of his son’s wages as well as damages because of the “violation of his paternal rights by the wrongful abduction of his child.”

The ruling in *The Plantina* is illuminating because although James’ legal minority was “satisfactorily proved,” justices argued against the notion that James was vulnerable dependent because of his age. According to court records, it was established that Hicks’ “agents” knew at the time that James was “a minor, as in the crew list he is, in the description of his person, put down as of the age of

586 *The Platina*, 3 Ware 180 (1858).
nineteen.” It was also proven that James’ family at the time actively benefited from the young man’s labor, as he “worked with [his father] on his farm,” dispelling any potential argument that James was away from home and acting as an independent adult. The law stated that fathers were entitled to the labor and services of their children while they were minors—this was very clear and so the jury readily agreed that James’s father was owed a percentage of the young man’s wages. However, James’ father did not just want wages but also damages, arguing that “in withdrawing [James] from his [father’s] control, and depriving [his father] of the comfort and satisfaction of his son’s society, and the child of the benefit of the influence, counsels, and examples of a parent in forming his habits for his future life.” This is where the jury drew the line, the district court judge held that “this claim would stand on stronger ground, if the boy had been of a tender age.” In reality, because James “had arrived nearly at full age,” his father should not be additionally compensated for this theoretical “loss.”

Gender factored in how the judge perceived the significance of James’s age. This is particularly evident when *The Platina* ruling is compared to an 1804 seduction case heard in New Jersey. In *Vaughn v. Perrine*, New Jersey Supreme Court justices awarded damages to the father of eighteen-year-old Mary Vaughn because she had been seduced and impregnated by Mr. Perrine, a man “between thirty and forty years of age.” Justices stated that “the daughter was an inexperienced girl of eighteen, a perfect child, seduced by a man double her age.” The father had been “injured” because his child had been “disgraced,” and so it was only right he be awarded damages. This perception that at nineteen,

James was nearly an adult, while at eighteen, Mary was a “perfect child,” demonstrates how gender informed perceptions of age and one’s vulnerability in abduction and seduction trials.

Common law made it illegal to marry without parental consent or impregnate a young woman under the age of eighteen (in some states, twenty-one). Individuals accused of this crime were accused of having “seduced” a minor. In most states, a similar law existed that made the crime of marrying or having sex with a minor below the age of sixteen (but over the age of ten) an additional offense, called the “seduction and abduction” of a minor. The original law was derived from the English statute meant to prevent young women poised to inherit significant lands or tenements from running off with “inferior” men. However, new understandings of age and capability forced courts to redefine these types of laws in order to close loopholes and protect minors, specifically young women and girls. It is important to note that no cases of seduction exist regarding young men and boys, which is most likely explained by the origins of the law. Men retained their legal independence and ownership of their property after marriage. Marriage set into motion the husband’s legal acquisition of their wife’s property and consumption of her identity, not ever vice versa. In turn, young men’s inheritance did not need to be protected in the same way.

The ruling in the “seduction and abduction” case, *State v. Edward Findlay*, attempted to set a precedent, at least in South Carolina, that age would be the sole factor in determining these types of cases and that the “class and station” of a young woman was irrelevant. In 1802, South Carolinian Edward Findlay was

588 For more information on age and marriage, see chapter two of this dissertation.
found guilty of “seducing” away a young girl below the age of sixteen. According to the trial record, “upon observing too great a degree of familiarity between [Findlay] and their daughter, [they] forbade him [from] their house, and desired him to have no kind of intercourse with her, as she was a child incapable of judging for herself, and much too young to think of matrimony.”  Findlay evidently ignored the parents’ request and continued to visit the house in order to “pay his addresses to her” before “seduc[ing] her to go off with him.” The parents explained that he “had lived openly with her ever since,” unmarried. Furthermore, they claimed that “in frequent conversations with different persons who censured him for his improper conduct in seducing away a child from her parents, he declared, and indeed in some degree boasted, that she was old enough, or woman enough for him.” As can be seen in the parents’ testimony, a complicated relationship existed between individuals, families, and communities regarding perceptions and expectations of age, maturity, and deference.

Edward was found guilty of seduction but appealed the case, arguing that because the girl had come from “poor people,” the law was not meant to apply to her circumstance. The South Carolina Constitutional Court of Appeals upheld the guilty verdict and argued that the law was meant to “promote the security and happiness of young inexperienced females of all descriptions, whether poor or opulent.” The ruling was significant because it illustrates the new focus on chronological age in determining one’s vulnerability and a reinterpretation of old laws to reflect these new perceptions of age. The law’s original intention was to safeguard family wealth by requiring parental consent for marriage. However,

589 The State v Edward Findlay, 2 Bay 418 (1802).
South Carolina justices made clear that class was irrelevant and that the law was now meant to protect the innocence of young women regardless of their social status.  

With the new interpretation of the law came an increased focus on the chronological age and physical appearance of the young women at the center of an illegal act. An example of this can be seen in the 1850 South Carolina case, State v. Isaac Tidwell where Isaac Tidwell was found guilty of seduction and abduction. Tidwell was charged with abducting and marrying thirteen-year-old Lucy Jane Crankfield, the daughter of Tidwell’s employer, Jonathan Crankfield. According to trial records, Crankfield was “the owner of lands and of 25 or 30 slaves,” and he and his wife had five children together, Lucy being the second oldest. Tidwell had worked for the Crankfield for about “18 months or two years, often absent upon business, but when at home eating at [the Crankfield] table and sleeping in [their] house.” On Thursday, March 22nd, 1850, after her parents had gone to bed around “11 o’clock” at night, after midnight, Lucy left with Tidwell and proceeded to the magistrate’s house who “without delay solemnized the contract of matrimony between Tidwell and Lucy Jane.”

Lucy’s lawyers presented testimony to argue that Lucy was clearly legally and intellectually thirteen (meaning she was not mentally mature for her age).

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590 Lindsay Keiter highlights what she calls “male fortune hunters,” or examples of men praying on young heiresses. According to Keiter, one example can be seen with James Henry Hammond, who “explicitly selected a wife, teenager Catherine Fitzsimons, for whom he cared little in order to obtain her fortune.” Lindsay Keiter, “Uniting Interests: The Economic Functions of Marriage in America, 1750-1860,” Ph.D Dissertation, The College of William and Mary, 2016, 101. Hammond’s relationship is also discussed in Drew Gilpin Faust, James Henry Hammond and the Old South: A Design of Mastery (Baton Rouge: Louisiana State University Press, 1985), chapter 4.

Lucy’s exact birthdate—September 10th, 1836—was provided to the court as evidence of her infancy. It was also stated that “at trial she was in height and weight equal to many grown women, but her countenance, figure, and whole appearance denoted her very tender year.” This is significant because it demonstrates that average people understood the increasing significance of chronological age within the legal system. It also illustrates an understanding that these age-based laws could be flexible if one seemed physically or intellectually mature for one’s age. The purpose of including Lucy’s birthdate and description of her demeanor as evidence was to push back against any suggestion that Tidwell was mistaken about Lucy’s age because she was larger than the average thirteen-year-old girl.

Finally, *Samuel Anderson v. Commonwealth* illustrates how chronological age, down to the day, could be used as evidence to acquit oneself of this type of crime. It also illustrates how arbitrary certain age-specific laws could be. In 1826, Samuel Anderson, was found guilty of the “seduction and abduction” of Elizabeth F. Hargrove. However, that same year, he appealed his case in the General Court of Virginia, submitting evidence that Elizabeth was “the age of sixteen years, two months, and nineteen days” at the time of the alleged crime. Samuel successfully argued he could not be charged with abduction because Elizabeth was over the age of sixteen. In this case, justices adhered strictly to the law,

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593 “Our statute… punishes by imprisonment… the person who unlawfully takes and carries away any maiden, or woman child, being *within the age of sixteen years*, from the possession, and against the will of her father, mother, or other person having custody of such maiden: and the punishment is greatly increased if the maid be deflowered. The maiden in this case being more than sixteen, the offence was not within the statute…” *Samuel Anderson v. The Commonwealth*
but it is easy to see how this decision could be challenged by Elizabeth’s parents as “two months and nineteen days” could hardly have made a difference in her ability to reason and consent to the relationship. The underlying theme in each of these “seduction and abduction” cases is the protection of young women. As justices ruled in *The State v. Edward Findlay*, the purpose of the law was to “protect all the young women of our country, of every degree and condition whatever.”594 Young women were perceived as particularly vulnerable because of their gender and their age.

The significance of age and vulnerability of white girls was not just debated in criminal courts, but also in civil courts regarding custody disputes. Republican child-rearing beliefs, and the use of an English legal doctrine known as *parens patriae*, allowed nineteenth century American courts to intervene and “reformulate child-custody procedures” upon the dissolution of a family, either through death or divorce.595 According to Grossberg, “gradually a father’s custody power evolved from a property right to a trust tied to his responsibilities as a guardian; his title as father thus became more transferable.”596 This shift created an opening for mothers to argue for, and win, custody of children. Known as the “tender years doctrine,” mothers were the best guardian for children below

594 *State v. Edward Findlay*

595 According to Michael Grossberg, *parens patriae* was an old doctrine expanded by the English courts in the seventeenth century in response to the abuse of feudal wardships. “Under [the expansion], the courts assumed sovereign custodial power over children and other dependents in the name of the crown. They used these powers mainly to ensure the orderly transfer of feudal duties. Chancellors hesitated to rely on the doctrine to override custody rights of a child’s natural parents. Yet they did begin to act more vigorously in custody disputes involving parents accused of being grossly immoral or heretical. The development of *parens patriae* into a means of challenging parental custody rights went on more rapidly and fully in North America.” Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1988), 236.

596 Grossberg argues this shift was a result of the “anti-patriarchal ethos embedded in republican family law.” Grossberg, 236.
the age of puberty, “under it, mothers gained presumptive claim to their young children.” At the same time, “the tender years doctrine required the courts to devise a standard for maternal fitness;” a fit mother was a woman who was moral and reasonable, in turn an adulterous mother could not be so.

A three-year custody dispute between Barbara Lee and her ex-husband, Joseph Lee, over their two young daughters, Adelaide and Frances, provides a look at how chronological age and gender was used to negotiate custody arrangements. The original case, *The Commonwealth v. Addicks and Wife*, occurred in 1813 in Pennsylvania. Barbara and Joseph divorced that same year because she had an affair with a man named John Addicks. After the divorce, Barbara and John married and held custody of the girls, while her ex-husband retained custody of their son. Joseph attempted to use the affair to his advantage, arguing that due to “the nature of the intercourse between their mother and Addicks,” it was “highly improper to permit them to remain under her care.” Justices disagreed, arguing that although they frowned upon Barbara’s conduct, they believed she provided excellent care and education to the girls. More importantly, due to the girls “sex as well as age,” the court felt that they should remain with their mother as they were currently in need of “that kind of assistance which can be afforded by none so well as a mother.” At the time of the first trial, Adelaide was ten years old and Frances was seven.

Three years later, Joseph Lee sought out custody again in *The Commonwealth v. Addicks and Lee*, arguing that because Adelaide was now
thirteen, she was morally at risk of being influenced by her mother’s “bad
example.” Additionally, with Frances now almost ten, the girls no longer
required “those attentions which a mother alone can properly bestow.”
Consequently, Joseph thought that the custody of both girls should be
transferred to himself. This time, the justices agreed with Joseph and explained
in their ruling: “these children do not stand before us in the same situation as
formerly; the eldest has now arrived at a critical age; every moment is important;
and the education of the next three years will probably be decisive of her fate.
The case of the youngest is not so urgent; but it is important that the sister
should not be separated.” More importantly, the girls were coming of an age
where they would understand why their parents were divorced, and the court was
insistent that by giving their father custody, and, in turn, punishing their mother, it
would teach the girls that “the marriage contract, unless dissolved by the laws of
the country, is sacred and inviolable.”

The rulings of the original custody hearing and its subsequent appeal are
significant because they demonstrate in which contexts and by what terms
chronological age, gender, and children’s needs were beginning to be negotiated
during the Early Republican period. Traditionally, fathers held sole custody
following divorce. However, during this period, courts began to consider the
wellbeing of children in determining who deserved custody, and, more
importantly, when they deserved custody. According to justices in Pennsylvania,
female children below a certain chronological age belonged with their mothers—
in this circumstance ten years old or younger. However, girls’ needs changed

600 *The Commonwealth v Addicks and Lee*, 2 Serg. & Rawle 174 (1815).
dramatically as they aged—in this case, just three years. By the age of twelve, courts assumed female children were rapidly approaching sexual maturity, which meant they required morally upright influences or risked falling into depravity.\textsuperscript{601}

With Adelaide already thirteen and Frances only two years away from puberty, the courts had to act fast to prevent the girls from mimicking their mother’s behavior. The quickest way the courts could do this was by reassigning custody to the girls’ father.

The chronological age at which a person was most vulnerable was up for debate and varied widely due to one’s gender and the circumstances of the crime they were involved in. However, the use of age as evidence was not always related to protecting or discrediting youth; two final cases underscore this point, \textit{James W. Dupree v. Lewis B. Dupree} and \textit{Edward Cooper v. Elizabeth Cooper}. As laws associated with age definitions were increasingly passed in the Early Republican period, age became one of many tools legal participants used to plead their case, even when there was no age related statute to uphold or challenge. This indicates that Early Republicans were increasingly paying attention to and employing understandings of age in ways they never had before.

On January 9\textsuperscript{th}, 1817, Patience Goff executed a deed that conveyed to her grandchildren, “Washington and Lewis Dupree, sons of Robert and Rachel Dupree, and to the next of their heirs lawfully begotten of their bodies… a slaved

\textsuperscript{601} According to an Early Republican legal dictionary, girls went through puberty and began to “have discretion” at the age of twelve. See John Bouvier, \textit{A Law Dictionary Adapted to the Constitution and Laws of the United States of the American Union and of the Several States of the American Union, 2 Volumes}, Volume 1, (Philadelphia: T. and J.W. Johnson, 1839), 65.
named Rose.” At the time, Washington and Lewis were the only two sons that Robert and Rachel knew about, however, within 280 days (the length of a full-term pregnancy), another son was born: James. Consequently, James took his brother, Lewis, to court in 1853 to claim his share of the inheritance—specifically “one-third of Rose and her increase.” James insisted that because he was “in ventre sa mere,” (in his mother’s womb) at the date of the deed, he technically “existed” and so was capable of inheriting alongside his brothers. More specifically, James determined that he had been conceived “six days before the date of the deed,” forcing court justices to debate whether “a thing in its mother’s womb, six days old” counted as a person capable of inheriting. The North Carolina Supreme Court conceded that James existed, however, they ruled against him due to the fact that when the deed was executed James was unable to physically claim his property as his brothers could.602

The circumstances of James W. Dupree v. Lewis B. Dupree were unique; however, as this chapter has shown, the inclusion of one’s chronological age down to the day as presented as evidence in the courts was not. On the surface, this case seems like a desperate ploy to gain access to inheritance. However, at the heart of Dupree v. Dupree was a question of the relationship between age, capability, and, one could argue, the legal definition of personhood—a concept that would take on its own significance in the twentieth century. James lost his case because, as a “six-day-old” fetus, he was physically and intellectually incapable. But, the fact that James’s “age” was legitimately used as evidence

602 James W. Dupree v. Lewis B. Dupree, 45 N.C. 164 (1853).
suggests how ubiquitous the discussion of chronological age had become within the legal system by this point.

Edward Cooper v. Elizabeth Cooper is a particularly revealing case because it attempted to use an argument for the vulnerability of old age. In 1832, Edward Cooper took his granddaughter, Elizabeth, to court to declare that a deed that had conveyed several of his slaves to her was fraudulent. In case he failed to prove the deed was an outright forgery, Edward insisted that Elizabeth had obtained the deed by “practicing upon his great age, and weakness of mind.” In other words, if the court determined that he had signed the deed, he claimed he did not remember doing so and the signing was contrary to his wishes. What is interesting about this case is that, despite his geriatric age, Edward was evidently competent enough to represent himself in court, while at the same time arguing that his age made him vulnerable and incapable of consenting to a contract. More likely is that Edward changed his mind and used the excuse of his “great age” to his advantage. Still, his age-related argument demonstrates another way that perceptions of age and capability were manipulated in the Early Republican legal system.

Another example can be seen in 1810 when the Supreme Court of Appeals of Virginia heard the case, Harvey and Wife v. Pecks in which the children of Jacob and Lydia Peck accused Robert Harvey and his wife of taking advantage of the elder Pecks in 1797 by manipulating them into selling land at an extremely low price. At the time the deeds were transacted, Jacob was “about one hundred years” and Lydia “upwards of eighty.” According to the court record, “the witnesses differed in opinion concerning their capacity to make contracts; but the evidence was strong as to the mental imbecility and dotage of Jacob Peck.” Harvey and Wife v. Pecks, 1 Munf. 518 (1797). For more information on the history of perceptions of old age in early America, see: W. Andrew Achenbaum, Old Age in the New Land: The American Experience since 1790 (Baltimore: John Hopkins Press, 1980); Carole Haber, Beyond Sixty-Five: The Dilemma of Old Age in America’s Past (Cambridge: Cambridge University Press, 1985). Haber’s chapter, “Medical Models of Growing Old,” is particularly helpful in understanding the nineteenth century shift in awareness of old age as medically and psychologically distinct from “adulthood.” Haber, 47-63.

Edward Cooper v. Elizabeth Cooper, 2 Dev. Eq. 298 (1832).
Post-Revolutionary lawmakers legally defined capability and culpability by chronological age in an effort to protect minors, especially young white women. However, as the nineteenth century progressed, it became clear that in many ways these age boundaries were arbitrary and could be easily manipulated to benefit criminals. Consequently, perceptions of age and life stage were continually questioned, qualified, and redefined during court cases regarding age related crimes. By providing exact birthdates or additional information regarding a person’s capacity, size, or demeanor, the legal significance of chronological age could be negotiated away. Furthermore, as the cases discussed in this chapter have shown, the legal significance of one’s age was influenced by one’s race, class, and gender. In turn, particularly mature minors, at least when male, could still be punished as adults. Conversely, legal adults, at least when female, could be deemed incapable of consent.
Conclusion

The significance of age in the Early Republican United States appears almost everywhere in contemporary sources once one looks for it. As this study has shown, young people, their families, and officials regularly negotiated age and its perceived influence on defining marriageability, independence and dependence, culpability, capability, and reliability in the Early Republican United States. The relative importance of age varied considerably by region, venue, youth culture, community, and individual or family context. Although state statutes attempted to provide baseline definitions of independence, culpability, and capability, as court cases analyzed throughout this dissertation have shown, legal definitions were still incredibly fluid, circumstantial, and uneven in their application. Furthermore, as age-defined boundaries were enacted ostensibly to protect youth, these same boundaries took on lives of their own as legal actors manipulated perceptions of age as a strategy to win court cases. Just as the significance of age could be challenged within the legal arena, it was also regularly tested more quietly as particularly independent minors took it upon themselves to marry or enlist without parental permission. Often, these acts of youthful defiance went unnoticed, but sometimes they resulted in public, complicated negotiations about when age mattered and why. Only by looking at both of these scenarios—the quiet acceptance and the loud debate-- can we get a fuller understanding of how youth was perceived and experienced in the Early Republic.
This dissertation is focused primarily on elite, white youth; their voices tend to be amplified by their archival presentation. Still, important work has been done on age and slavery. Historian Wilma King, for example, argues that enslaved youth, due to the horrific experiences of slavery, were denied a childhood; they “grew old before their time,” she concluded.\(^{605}\) We can also find meaningful points of inquiry that challenge us to think about the significance of age for lower-class and working-class whites or freed African American youth. To start, we should reconsider sources that historians have traditionally used to “count” and produce demographics for particular populations and regions; these types of sources include censuses, pension records, ship logs, and plantation or slave records, to name just a few.\(^{606}\) Free Black Registers are particularly revealing sources because clerks often diligently recorded an individual’s age alongside family relationships, occupations, and the physical descriptions of free


\(^{606}\) For example, Revolutionary War Pension Records required pensioners to state their age in their paperwork. Historian Caroline Cox has used this information to identify “boy” (under the age of sixteen) soldiers who served in the Revolutionary War in her work *Boy Soldiers of the American Revolution*. See also, A Census of Pensioners for Revolutionary Military Services with their Names, Ages, and Places of Residence as Returned by the Marshals of the Several Judicial Districts, Under the Act for Taking the Sixth Census (Washington: Printed by Blair and Rives, 1841). Family papers that include plantation records of slaves are bountiful throughout southern archives, one notable document can be found in the Duke University Archives from the Virginian Dromgoole Family labeled “Negroe Ages.” As Daina Ramey Barry has shown in her recent work *The Price for their Pound of Flesh*, plantation records that included inventory of slaves as well as records of selling, buying, and insuring the lives of slaves usually recorded the specific age or relative age of an individual and in turn, these sources provide information on the economic valuation of age and race. According to historian Sharon Murphy, the Baltimore Life Insurance Company “routinely charged double the rate quoted on white lives of the same age; for example, the premium on a 25-year-old slave was $2 per $100 of insurance (versus $1 on the corresponding white life).” See Sharon Murphy, “Securing Human Property: Slavery, Life Insurance, and Industrialization in the Upper South” in *Journal of the Early Republic* 25.4 (2005), 615-652 and Daina Ramey Berry, *The Price for their Pound of Flesh: The Value of Enslaved, from Womb to Grave, in the Building of a Nation* (Boston: Beacon Press, 2017).
people of color. When read for more than just the numbers, these types of sources can raise important questions about what significance age had within free, non-elite and/or non-white communities.

The Early Republican Free Black Registers of Petersburg, Virginia offer a more explicit example of the questions that still need to be answered about the significance of age and race. On March 21st, 1816, W[ilia]m Arnet, “17 years old” registered himself as a free person of color in Petersburg. In addition to providing a physical description of William and noting that he worked as a “Waterman,” the clerk made careful mention “that [William] is not father or mother alive & not under Controul of any Person by Indentures.” By registering William on his own and providing him with a copy of his freedom papers, the Petersburg county clerk recognized William an independent adult within the free black community. But what did that mean for William? Was he now legally an adult and recognized as such by the state of Virginia? Was he socially or culturally recognized as an adult by his free black peers? The answers to these questions are beyond the scope of this project, but I raise them to highlight the work that still needs to (and can) be done to fully explore the significance or insignificance of age and life stage in the Early Republican period.

607 Petersburg, Virginia was home to one of the largest free black communities in the antebellum South. In 1793, the state of Virginia passed a law that required all free blacks to formally register with the state to receive “freedom papers,” which they were to have on their person at all times. The close attention to detail—regarding one’s age and physical description—was meant to prevent fraud and ensure the person claiming the status of free (and in turn, the freedom papers that would permit them to travel and not be arrested or re-enslaved) was who they said they were. For more information on Free Black Registers as well as how they can be used to glean important social and cultural details about free black communities see Beth Wood, “The Family Politic: Race, Gender, and Belonging in Old Virginia,” Ph.D. dissertation, The College of William and Mary, forthcoming.

608 Petersburg, Virginia. Registration of Free Negroes and Mulattoes, 1794-1819 #1-944, Microfilm, Reel No. 47, Library of Virginia
In January of 2016, *The Atlantic* published the article “When Are You Really an Adult?” In it, journalist Julia Beck argues that “the line between childhood and adulthood is blurrier than ever.” But when was it ever clear? Adulthood as a concept is now legislated just as it was in the Early Republic, set at the arbitrary age of eighteen or twenty-one; and biological, cultural, and social markers of adulthood were no less murky then as they are today. Although now it is much more common to know one’s actual age-- and be able to document it--we continue to negotiate the significance of age in our justice system when we charge minors as adults after they commit particularly sophisticated or devastating crimes. In twenty-two states, children as young as seven can still be legally be tried as adults. Furthermore, only in 2016, Virginia passed a state law that raised the minimum age at marriage for females from thirteen to eighteen. Rather than fixate on how perceptions of age “evolved” by the twentieth century, historians need to think about the ways age remains a

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610 According to Shane Landrum, “during the 1840s, every American state had laws that allowed parents to record their children’s births and deaths, but they did not compel adherence. As a result, American birth certificates did not become useful identity documentation at a mass level until sometime in the early twentieth century.” Shane Landrum, “From Family Bibles to Birth Certificates: Young People, Proof of Age, and American Political Cultures, 1820-1915,” in *Age in America: The Colonial Era to the Present*, ed. Nicholas L. Syrett and Corinne T. Field, (New York: New York University Press, 2015),125. Furthermore, race continues to heavily influence the perception of age, culpability, and criminality, for example, according to the Campaign for Youth Justice, “African American youth are 9 times more likely, Latino youth are 40% more likely to receive an adult prison sentence as white youth.” See Campaign for Youth Justice “LET’S GET CHILDREN OUT OF ADULT COURTS, JAILS, AND PRISONS” Fact Sheet, http://www.campaignforyouthjustice.org/images/factsheets/BasicFactsJune72016final.pdf

611 Ibid.

continuously contextual category of identity as well as consider what it means that we are *still* grappling with the legal definitions of age, culpability, and consent.
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