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Outlaw Reproduction: Childbearing and the Making of Colonial Virginia, 1634-1785

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Outlaw Reproduction: Childbearing and the Making of Colonial Virginia, 1634-1785

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ABSTRACT

This dissertation examines discourses and experiences of reproduction in Virginia, 1630-1785. I define reproduction as an experiential reality that contoured women’s lives in specific ways, as a central demographic phenomenon that shaped colonial populations, and as a discourse of power in the colonial project. Informed by feminist theory, queer theory, and postcolonial theory, the dissertation examines the relationship between reproduction and colonialism in the development of a plantation economy in Virginia. I draw on a varied archive of court documents, colonial records, newspapers and other print culture, plantation records, diaries, letters, and medical texts. Chapter 1, “‘A considerable parcel of breeders’: Reproduction and Discourses of Racial Slavery in Colonial Virginia,” examines the ways that development of racial slavery in Virginia was based, in part, on the appropriation of black women’s reproduction. I examine the roots of the 1662 law that defined slavery as a condition of birth, finding the legal and cultural precedent for the law in the conflation of servitude and bastardy. I further examine the vernacular discourses of slavery that used reproduction to define enslaved people (especially women) as a kind of property legally similar to livestock. I close the chapter with a discussion of the Virginia House of Burgesses debates around defining slaves as real or personal property, and I argue that these debates were a consequence of defining slavery as a status of birth. In Chapter 2, “Wicked, Dangerous, and Ungoverned: The Transgressive Possibilities of Reproduction,” I examine the ways that childbearing could transgress colonial hierarchies and boundaries, especially in cases of bastardy and interracial birth. Throughout the chapter, I am particularly interested in understanding the relationship between domination and transgression, and the specific ways that reproduction could inhabit the space between those two poles. In Chapter 3, “Knowledge ‘not fit to be discuss publiquely’: Colonialism and the Transformation of Reproductive Knowledge,” I examine the ways that colonialism transformed Virginians’ reproductive epistemé. I attempt to reconstruct knowledge about reproduction in this space and time, and I show how childbearing became a potent intimate zone for the negotiating of colonial power relations. In the final chapter, “‘She lives in an infant country that wants nothing but people’: Discourses of Reproduction, Print Culture, and Virginia’s Colonial Project,” I examine the competing discourses of reproduction that informed Virginia’s colonial project. I argue that two competing discourses about reproduction – one that privileged “prolific reproduction” and another that privileged “rational reproduction” – show the ways that the experience of colonialism transformed ideas about reproduction. This transformation occurred because the exigencies of the colonial project prioritized the maintaining of colonial boundaries and hierarchies over the early notion of populating a “virgin” land.
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"Thomas son of Matthew Hubbard by Mary his wife was born November the 25th 1679."

*Charles Parish Records, York County, Virginia, 1679.*

"1 Blanket for the wench lying in [4 shillings].... To the Midwife for Negro Sarah 10 [shillings]"

*York County Court, Account of Orphan’s Estate, February 16, 1736.*

"Mr John Goodwin haveing this day in Court entered his information agt Judeth Clarke servant to Capt Joshua Slade of York parish & county for fornication with a negro, the sherr is therefore ordered to sumons her to the next Court for her personall appearance then & there to answer the same."

*York County Court, June 25, 1694.*

Mary gave birth to a son named Thomas. Sarah had a baby and lay in, attended by a midwife. Judith bore a child and found herself a defendant in court.

These three moments in Virginia's colonial past point to the simultaneously ordinary and transformative moment of childbearing. The records are thin – we will never know much detail about these births, much less how these three women felt about them. And yet, occurring in a colonial space marked by ever-shifting hierarchies of race, status, and gender, these three births are charged with meaning. All of these

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1 Landon C. Bell, *Charles Parish, York County, Virginia History and Registers: Births, 1648-1789, Deaths 1665-1787* (Richmond: Library of Virginia, 1996), vix, 111. (Hereafter abbreviated as CPR.)
2 York Deeds, Orders, and Wills 18: 271-2. Microfilm. Located at Library of Virginia. (All York County records hereafter abbreviated as "York DOW," with varying volume numbers. For some volumes, deeds and wills were recorded separately from judicial orders; those volumes are abbreviated as "JO," with the accompanying date.)
3 York DOW 10: 3.
births, I will argue, challenged the ever-shifting colonial ideologies, hierarchies, laws, or social structures. And all of them, I will argue, simultaneously inform and challenge our ability to understand the colonial past. Difficult to pin down in the past or the present, all of these births were and are outlaw in some way.

In November 1679, Mary Hubbard gave birth to a son, Thomas. Mary would bear two more sons in the next four years: Matthew, Jr. in February 1682, and John in November 1683. Like other Anglo-Virginian women in this era before reliable contraception, Mary bore children in rapid succession. The slim records of Charles Parish in York County, Virginia give a small glimpse into the life – and births – of Mary Hubbard. In colonial Virginia, parish clerks were legally bound to keep careful birth and death records for the white inhabitants of their parish. Those records were handwritten into large ledgers – formulaic and repetitive columns spanning decades. While parish records documented the birthdates of children, as legal documents and church documents, the ledgers cannot and do not reveal much about the experience or meaning of childbirth for women during this period – childbirth itself remains outside the boundaries of parish birth records.

The Charles Parish records indicate that Mary Hubbard bore one more child after her three sons were born: in the winter of 1689, she gave birth to a daughter.

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4 CPR, 111.
5 Birth intervals – the length of time between full-term births – will be discussed in detail in Chapter 3. Since Charles Parish (unlike some other parishes) did not keep marriage records, it is unknown how long Mary and Matthew were married before Thomas was born. He may have been their first child, or the Hubbards may have recently arrived to the parish with older children.
6 The recording of births during Mary Hubbard’s time was demanded by a Virginia law passed in 1658, which required ministers to keep records of births, baptisms, marriages, and deaths within their flock. William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature* (1823; facsimile reprint, Charlottesville, VA, 1969), 1: 433. (Hereafter, all references to the colonial Virginia statutes will be abbreviated as “Hening,” followed by volume number and page number.)
also named Mary, who would survive only one month. Baby Mary’s birth record differs from her brothers’. Colonial Virginia birth records, even in their succinctness, reveal the patriarchal assumptions of English culture. Babies were listed as the son or daughter of their father: Thomas Hubbard was listed as “the son of Matthew Hubbard” in 1679, as were his brothers. Mothers’ primary role in the records was as vessels for legitimate births: Thomas Hubbard was born “by [Matthew’s] wife, Mary.” When baby Mary was born, that formula was broken: Mary was listed only as the daughter of her mother, Mary Hubbard. Further culling of the record reveals a death record for Matthew Hubbard in November 1688, 13 months before the birth of baby Mary. The widow Mary Hubbard was never tried for bastardy (perhaps because her daughter died before Mary finished lying in); the birth record is the only surviving testimony of a moment of outlaw reproduction that broke Virginia law and custom.

While Mary’s births were recorded in the parish register, Sarah’s birth was recorded only in an account of the estate in which she was held as property. In 1736, the court-appointed guardians of John Burnham, an orphan, reported the value of his assets, which included several slaves: “Old Jack,” Will, Sarah, and Phaeby. Among other expenses, the account lists two charges which point to the birth practices of enslaved women in this time and place: a ten-shilling fee for “a midwife for the negro Sarah,” and a blanket “for the wench lying in.” These records expose

7 CPR, 111, 223.
8 CPR, vix.
9 Ibid.
10 CPR, 223.
12 Ibid. Sarah’s baby is not listed in the estate account: Sarah, Will, Phaeby, and “Old Jack” are all listed along with the “wages” they earned that are credited as profits to the estate’s account. Slaves
the tension always present in inherited chattel slavery – the birth of Sarah’s baby was simultaneously a form of profit (her child would also be a slave) and an expense (since Sarah required the attention of a midwife and whatever care that blanket might signify).

From these piecemeal records, we can begin to imagine Sarah’s birth. First, she had an English midwife: ten shillings was the usual fee for an English midwife at the time, and it is unlikely that a black midwife could have charged such a rate. It is possible that other women in the slave community attended Sarah in her labor and birth, but their presence is invisible in the document, as it had no explicit monetary value. Second, though enslaved, Sarah was afforded some time for recuperation, as indicated by the blanket bought “for [her] lying in.” Lying in was an English custom of rest and healing for up to a month following a birth; traditionally, lying in ended with “churching,” the first time a mother and her infant ventured into public after the birth. We can’t know what this translation of English custom meant to an enslaved woman of African descent. Possibly, she and the other women of the enslaved community reinterpreted the period of lying-in into a syncretic form that had particular meaning for them. Another possibility is that, in a small slaveholding

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belonging to orphans were typically rented out until the orphan came of age, with the profits of that rent being credited to the orphan.

13 Midwives’ rates and practices will be discussed in Chapter 3.

14 Ibid.

like this one, Sarah’s lying-in was defined in more English terms. Nevertheless, we see here a moment when customs surrounding birth, midwifery, and lying-in both complicated and were complicated by the intimate relations of colonialism. These sorts of moments can emerge only when our reading of the records recognizes that childbearing holds complex, contingent, contradictory, and contested meanings, and thus resists our ability to define it absolutely.

Another fragment of a record, this time from 1694: Judith Clarke was summoned before the York County court under suspicion of fornication, bastardy, and miscegenation. Three months later, the court decided against Clarke, ruling that she would suffer 20 lashes and serve her master, Captain Joshua Slade, for two more years. The court’s summons and decision are the only surviving record of Clarke’s life in York County. Even so, they reveal much about the colonial projects of racial division and status hierarchy in Virginia, as well as the ways that reproduction could interrupt, frustrate, and highlight those projects. Judith Clarke was an English

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16 Phillip Morgan argues that because Virginia’s economy was dominated by small farms, the world of Virginia’s enslaved people was “as much a white as a black world.” Phillip D. Morgan, Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry (Chapel Hill: University of North Carolina Press, 1998), 101.


18 By “status,” I mean to indicate the hierarchy of white people (and free people of color) in this colonial context. At the bottom of this hierarchy were indentured people of European ancestry, and at the top were the elite slaveowning planters. In the middle was a large group of free white people ranging in status from former servants to poor and middling farmers, artisans, and the emerging merchant class. While white interests were consolidated with the emergence of plantation slavery by the end of the seventeenth century, these complex status hierarchies fragmented those interests. Historians have debated the degree to which whites in colonial Virginia were unified. On Bacon’s Rebellion as a moment of consolidating white interests on basis of race and gender, see Edmund S. Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (NY: W.W. Norton and Co., 1975), 250-92; Kathleen M. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia (Chapel Hill: University of North Carolina Press, 1996), 137-86. Rhys Isaac depicts a Virginia that used deference to promote unity despite stratification. Rhys Isaac, The Transformation of Virginia, 1740-1790 (Chapel Hill: University of North Carolina Press, 1982). Anthony Parent depicts the consolidation of planter interests at the turn of the eighteenth century as a deliberate series of actions fueled by planters’ emerging class.
servant, likely indentured to Joshua Slade for around seven years. Her sexual relationship with an unnamed man of African descent crossed racial boundaries, resulting in the birth of a child of mixed race and liminal status. That relationship also crossed boundaries of status, as servant women were expected to remain celibate during the course of their servitude, in part to protect their masters from lost labor during a woman's pregnancy and lying in. No matter how calcified the racial order of colonial Virginia, it was easily permeated by sexual relationships and the children born of them. Interestingly, it is records like these – records of births that challenged racial boundaries, births that occurred outside of lawful marriages, births of servant women, births of free black women – that are most visible in the colonial archive because these births were defined as criminal by the courts. The births about which the most detail survives are those deemed “outlaw” by the courts – dangerous to the colonial order, threatening to the organization of power in the colony. Perhaps it is possible to see Judith herself as a sort of “outlaw” – defying the law of both the colony and colonialism itself, and suffering for it when punished by colonial authority.

All of these births are examples of what I call “outlaw reproduction” – births that occurred outside the law or that otherwise resist easy categorization. The concept of outlaw reproduction is useful in three ways. First, it suggests the ways that particular births – ones that broke the law – found their way into public view during a time when childbearing was a central aspect of women’s sphere and thus not often made public. Second, the concept of outlaw reproduction points to the limitations

and the opportunities presented by the archive of early Virginia. Finally, it helps us to view the intersections between reproduction and the colonial project in colonial Virginia.

In colonial Virginia, it was the births that in some way broke the law – either literally or figuratively – that emerged into public view. Both the birth of the widow Hubbard’s daughter and the birth of Judith Clarke’s interracial child fit into this category. Births to unmarried women, or, in the parlance of the early modern world, bastard births, were the clearest form of outlaw reproduction, because they challenged lines of inheritance, rules about sexual morality, and hierarchies of social status. Bastardy was a crime taken seriously in colonial Virginia, punishable by fines, corporal punishment, jailing, or extended terms of service. Therefore, bastard births left considerable evidence; these court cases, sometimes including sworn testimony, are one time when women’s experiences and voices are present in the records. Other births that somehow challenged cultural assumptions or caused crisis – cases of infanticide, monstrous births, and miscarriages or abortions – could also be brought into public view for adjudication. It is births that were somehow exceptional – births that created problems that needed to be solved by legal or cultural measures – that became visible.

The second advantage of the concept of outlaw reproduction is that it begins to address the challenges presented by the colonial Virginia archive, as well as the formation of that archive, which, in the case of court records, was a reflection of the reach of the law itself. For the historian, childbirth is a somewhat hidden event: difficult to view, hard to wrangle because it occurred outside of the public eye and
was thus rarely committed to the documentary records from which most historians
draw their conclusions.¹⁹ Most births in colonial Virginia were like Mary Hubbard’s
earliest three births – private, undocumented, and virtually silent save the cursory
records of rudimentary colonial demography. Those taciturn parish records are
embedded with even more silences, as births by enslaved women like Sarah, as well
as women of Native American descent, rarely found their way into even these
records. Therefore, the Virginia archive – like all colonial archives – is itself an
artifact of Virginia’s politics of gender, race, and status.

The colonial Virginia archive privileges the voices and interests of elite white
men – the nascent slaveholding planter class that would achieve ascendancy by the
second quarter of the eighteenth century.²⁰ Doing women’s history with such an
archive, lacking the women’s letters and diaries that are available for other times and

¹⁹ Judith Walzer Leavitt’s influential study of childbearing in America begins after the rise of
physician-assisted labor in part because physicians’ records have survived. Judith Walzer Leavitt,
Catherine Scholten’s study of colonial-era childbearing is one of the only studies to focus on this
period, and it is built exclusively from the records of white, Christian, middling and elite women from
University Press, 1985). Laurel Thatcher Ulrich’s deep reading of the diary of midwife Martha Moore
Ballard is exceptional in that Ulrich’s main evidence is the writing of a midwife herself; even so, that
diary had long been ignored by historians as being too ephemeral, repetitive, and lacking in detail to be
useful. Laurel Thatcher Ulrich, A Midwife’s Tale, 8-9. Another exception is the work of Lisa Foreman
Cody, whose history of midwifery in Britain is based on an eighteenth-century public debate about
midwifery in which midwives themselves participated (such a debate was not duplicated in America).
Lisa Forman Cody, “The Politics of Reproduction: From Midwives’ Alternative Public Sphere to the
²⁰ On the ascendancy of the planter class, see Isaac, The Transformation of Virginia, 34-42; Alan
Kulikoff, Tobacco and Slaves: The Development of Southern Cultures in the Chesapeake, 1680-1800
(Chapel Hill: University of North Carolina Press, 1986); Morgan, American Slavery, American
Freedom; Parent, Foul Means. Revelatory histories have been produced by using planter diaries: I
depend heavily on planter writings for this study. See, for example, Rhys Isaac, Landon Carter’s
Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation (NY: Oxford University Press,
2004); Kenneth A. Lockridge, The Diary, and Life, of William Byrd II of Virginia, 1674-1744 (Chapel
Hill: University of North Carolina Press, 1987); Kenneth A. Lockridge, On the Sources of Patriarchal
Rage: The Commonplace Books of William Byrd and Thomas Jefferson and the Gendering of Power in
the Eighteenth Century (NY: New York University Press, 1992); Daniel Blake Smith, Inside the Great
Press, 1982).
places, one has to rely instead on court records and the personal papers of men. The gendered formation of this archive was part of the gendered epistemology and experience of the era. Laurel Thatcher Ulrich has argued that in the early modern world, women’s lives were constructed around a different economy and different centers of meaning and power than men’s lives. The archive, itself an artifact of men’s public world, frames women’s experiences as outside of the realm of the law itself until women’s experiences and knowledge were required by the public courts.

Nevertheless, the elite white male authorship of the archive should not be seen as an absolute silencing of the voices, experiences, and presences of people who were not members of that small but inordinately powerful group. The disciplinary attention of the law fell most often on people who did not have access to elite privilege – free blacks, servants, poor people. Therefore, a deep irony of the colonial Virginia archive is that while middling women’s voices and experiences are difficult (but not impossible) to ascertain, non-elite women are quite present in the archive. They were the accused in bastardy cases, they were the women whose births were considered profit by slaveowners, they were the women who bore children of mixed race that challenged the colonial color line. To hear those voices or uncover those experiences, the colonial archive must be read with care and attention.

This brings us to the last advantage of the concept of outlaw reproduction: it points to the particular intersections between colonialism and reproduction, and the ways that reproduction was always connected with discourses of power in the colonial world. Birth was a central means by which colonial power was made,

22 This concept of gendered knowledge will be discussed more fully in Chapter 3.
policed, and organized. As we see with the recorded births of Judith Clarke and Sarah, births which challenged the nascent organization of colonial power – the deference of servant to master, the easy distribution of human property, the continuity of traditional cultures – are also births that become visible in the records. This archival visibility of non-elite people points to the contested and contingent nature of the colonial project itself. Using the colonial record of Dutch Indonesia, Ann Laura Stoler has argued that the colonial archive records not only reflects elite men’s interests, but the archive itself participated in the ongoing project of negotiating, defining, and policing elite interests in the colonial economy. As such, we need to read colonial archives as “condensed sites of epistemological and political anxiety rather than skewed and biased sources.”

Childbearing was central to the colonial project’s aim of populating supposedly “virgin” lands, even as it could interrupt and complicate the emerging discourses of race and power that colonialism created and upon which it depended.

This dissertation uses the framework of outlaw reproduction to examine the intersection of reproduction and colonialism in Virginia. I imagine reproduction and colonialism as mutually constituted discourses of power: discourses of reproduction impacted the colonial project and the colonial project transformed reproduction in ways that organized, categorized, and disciplined colonized bodies. I argue that reproduction was a crucial discourse of colonialism – a language and a set of ideas emergent in both print culture and vernacular discourse meant to forward the nascent

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and changing English colonial project in Virginia. I also argue that the power relations of colonialism fundamentally transformed ideas, knowledge, and practices surrounding reproduction. Finally, I argue that the birthing room, as a zone of intimate contact, was a space that interrupted, created, challenged, and cemented colonial relations. In this introduction, I will discuss the theoretical foundations for my understanding of reproduction as a cultural phenomenon and then lay out the historiographical background for my work. I conclude with an outline of the chapters that follow.

The theoretical underpinnings of my work – feminist theory, Foucauldian histories, and postcolonial studies – provide the context for my understanding of reproduction as a concept and a category of analysis. I define reproduction as an experiential reality that defined the contours of women’s lives in specific ways, as a central demographic phenomenon that shaped colonial populations, and, most importantly, as a crucial and central discourse of power in the colonial project. By seeing reproduction in this expansive way, we can resist the urge to universalize the experiences of some women or assume an essentialism in which motherhood is definitive of women’s lives. As Kathleen Brown argues, we must recognize that “the experience of childbirth varies culturally, historically, and individually and is most meaningfully analyzed when situated within a particular culture’s discourse of reproduction, sexuality, bodies, and gender.”  

our modern, post-contraceptive subjectivities and the subjectivities of women in the past. A study of reproduction does not reduce women's experiences to their role as mothers, but instead asserts that if reproduction is a central discourse of power, then women's varied experiences of reproduction (which, for some, includes not participating in it) can help us to understand the boundaries, trajectories, inclusions, and exclusions in that discourse.

An attention to reproduction in this expansive way helps us to see how women's lives and discourses of gender, sexuality, and the body are actually foundational, not tangential, to the history of colonialism. First, British colonialism was particularly focused on concerns about population, since the colonies of British North America were settler colonies. As Joyce Chaplin argues, British colonialist discourse “suggested that it was [English] bodies that guaranteed overseas possession, both by creating a population that demonstrated territorial dominion and by generating many hands to improve ‘wilderness’ through labor.”

Chaplin shows that this sense of British bodily colonialism was dependent on developing notions of Native American inferiority, specifically in terms of reproduction and population growth. This was intensified in the developing slave economies of the plantation south, where the growth of the laboring population was essential to the survival of the colonial economy, and that growth occurred increasingly through childbearing rather than through the importation of more indentured servants or slaves. Colonial Virginia existed at the nexus of these competing population discourses, where the decimation of the Native American population through disease, war, and the internal slave trade

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26 Chaplin, *Subject Matters*, 157-98.
was coupled with the prioritization of growing the populations of both English and African descent.\textsuperscript{27}

What does it mean to consider reproduction as not just experience or biological process, but as a discourse of power? For Michel Foucault, “discourse” is a specific concept – specifically, the urge to transform experience into language as a means of organizing and disciplining that experience. Foucault defines discourse in a way that is always embedded in specific and complex relations of power:

Discourses are tactical elements or blocks operating in the field of force relations; there can exist different and even contradictory discourses within the same strategy; they can, on the contrary, circulate without changing their form from one strategy to another, opposing strategy.\textsuperscript{28}

Discourses compete with each other and they are internally contradictory, but ultimately they are about the consolidation of power around particular bodies of knowledge through the exclusion of other ways of being and thinking. For Foucault, the modern world obsessively transforms sexuality into discourse, repositioning sexuality within force fields of power and domination: “Sexuality must not be described as a stubborn drive... [but instead] as an especially dense transfer point for relations of power.”\textsuperscript{29} Foucault’s understanding of discourse is useful here because it reframes language as a terrain of power negotiations, domination, and resistance.\textsuperscript{30}

\begin{flushleft}
\textsuperscript{27} Chaplin, \textit{Subject Matters}, 157-98. On the internal trade in Indian slaves and the creation of Southern culture, see Alan Gallay, \textit{The Indian Slave Trade: The Rise of the English Empire in the American South, 1670-1717} (New Haven, CT: Yale University Press, 2002).


\textsuperscript{29} Foucault, \textit{History of Sexuality}, 103.

\textsuperscript{30} In one reading of Foucault’s definition of discourse, “discourse is ‘where power and knowledge are joined.’” Charles C. Lemert and Garth Gillian, \textit{Michel Foucault: Social Theory and Transgression}
\end{flushleft}
Foucault’s framework of discourse operating within a field of power relations is useful to a study of reproduction for multiple reasons. First, Foucault’s focus is on sexuality, but reproduction is absolutely central to how he understands the boundaries of sexuality and its relationship to power. Importantly, in *The History of Sexuality*, Foucault is not attempting to understand sexuality as experience or identity (he in fact rejects both notions), but instead working to narrate the emergence of the modern world itself and the ways that sexuality, as a discursive construction, was central to that narrative. Modernity, for Foucault, was marked by the state’s increasing power to organize, discipline, and measure its people in terms of demography and population, which, at their root, are always about the organization of sexuality and reproduction.31 Second, Foucault’s understanding of power as a field of force relations demands analysis of power relations in intimate zones like the birthing room, helping us to understand the ways that emerging colonial categories of power, such as race, were enacted on an interpersonal level.32

Foucault’s narratives and methodologies do have limitations. Gayatri Spivak critiques Foucault for uncritically reifying the European intellectual as an arbiter of truth even as he fails to acknowledge his position of power within colonial

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31 This transformation and its application to colonial Virginia are discussed in detail in Chapter 4.
Importantly, Foucault’s narratives fail to recognize the centrality of colonialism and race in the creation of European modernity. Nevertheless, his methodologies and concepts have been central to the creation of postcolonial critiques of colonialism, notably those of Edward Said, who saw Foucault’s understanding of the links between power and knowledge as absolutely central to the creation of European colonialism. Ann Laura Stoler acknowledges this critique, but takes a different approach – one I find useful in my own work. Stoler argues that sexuality was a central discourse in the implementation of colonial projects, something that Foucault seemed to recognize after the publication of *The History of Sexuality*. For Stoler, this means that an attention to colonialism requires not a rejection of Foucault’s insights, but a shifting of his chronology – colonialism’s bans on interracial sex, for example, “linked individual desires to social reproduction in ways that he dates for Europe a century later.”

Postcolonial theory also offers a critical intervention into the history of early Virginia, especially as I try to write a history that is centered on discourses of power and the experiences of non-elite women. Postcolonial theory offers several important insights that fuel my project. First, postcolonial theory offers new and useful ways to view American history and the history of American colonialism. Second,

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35 Ann Laura Stoler, *Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things* (Durham, NC: Duke University Press, 1995). Stoler argues that, in his later work, Foucault places the emergence of race as a discourse at the end of the nineteenth century, but that an attention to European colonialism shows that race and colonialism were central dynamics in the creation of modern bourgeois identities. Ladelle McWhorter argues that race and sexuality emerged as parallel discourses of power, functioning in similar ways and mutually constitutive of each other. Ladelle McWhorter, “Sex, Race, and Biopower: A Foucauldian Genealogy,” *Hypatia* 19, no. 3 (2004): 38-62.
postcolonial theory offers important insights into colonialism itself, specifically its attention to colonialism as both a system of power and a constantly shifting process. Finally, postcolonial theory's attention to intimate zones offers a specific link between reproduction and colonial projects.

While scholars have debated the application of postcolonial theory to American history, especially early American studies, I find it a useful tool in understanding power relations in the time preceding the American Revolution. United States history provides both an affirmation and a challenge to postcolonial narratives: as a collection of former settler colonies, the United States both threw off colonial rule and reengaged in colonialism in the new nation’s own imperial projects. Nevertheless, if we consider colonialism as an epoch that laid the foundation for high imperialism, then postcolonial theory’s insights into the meanings of coloniality can be extremely useful in understanding the British colonies in North America. Catherine Hall separates colonialism from imperialism in this way, arguing that the high imperialism of the nineteenth and twentieth centuries was the “apogee” of a colonial process best understood as:

…the European pattern of exploration and ‘discovery,’ of settlement, of dominance over geographically separate ‘others,’ which resulted in the uneven

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development of forms of capitalism across the world and the destruction and/or transformation of other forms of social organization and life.\(^{38}\)

This colonial chronology places British North American history, including that of early Virginia, squarely within the sights of a narrative of European expansion, the rise of plantation capitalism, and the transformations of colonialism on both native and immigrant subjectivities.\(^ {39}\) Indeed, Ann Laura Stoler has argued that the exclusion of America from postcolonial narratives is less about American exceptionalism than the deeply politicized erasure of imperialism from the United States’ historical self-conception.\(^ {40}\) Indeed, if colonialism was a process of creating colonized and colonial subjectivities – for Europeans even more than for colonized others, according to Edward Said – then this process began with Columbus (or earlier).\(^ {41}\)

Postcolonial theory offers an understanding of colonialism that unsettles smooth or easy historical narratives and decenters power in those narratives. Robert Blair St. George points out the breadth of postcolonial studies’ decentering project:

\(^{38}\) Catherine Hall, “Thinking the Postcolonial, Thinking the Empire,” in *Cultures of Empire: Colonizers in Britain and the Empire in the Nineteenth and Twentieth Centuries*, ed. Catherine Hall (NY: Routledge, 2000), 5.


[Postcolonial theory] attempts to describe the subject matter and circuits of social relations through which discourse works to shape relations of power and knowledge, hegemony and consent, resistance and ritual, and thus makes problematic any ethnocentric assumptions concerning center-periphery models of empire, population movement, and the flow of capital.42

According to postcolonial studies, colonialism must always be understood as a process— one that was always contested, contingent, and questioned. Postcolonial theory's attention to what Malini Johar Schueller and Edward Watts call the "messy beginnings" of American history is particular useful in parsing the kinds of shaky, halting transformations that colonial Virginia underwent, such as the much-debated shift from a dependence on English indentured labor to African enslaved labor and the concomitant transformation in racial ideology.43

Colonialism was a process that created new subjectivities for both colonized peoples and colonizers. Robert Blair St. George calls this process "becoming colonial"—the self-conscious process by which European colonizers realized their new identities as separate from those who inhabited Europe itself.44 On the one hand, the subjectivities of those at the bottom of colonial hierarchies—slaves, Native Americans, free people of color, and perhaps even indentured servants—may usefully


43 Schueller and Watts, "Theorizing Early American Studies and Postcoloniality."

44 St. George, "Introduction," 4-5. For the ways that colonialism remade English subjectivities, see Kathleen Wilson, "Citizenship, empire, and modernity in the English provinces, c. 1720-90," in Cultures of Empire: Colonizers in Britain and the Empire in the Nineteenth and Twentieth Centuries, ed. Catherine Hall (NY: Routledge, 2000), 157-186.
be understood using the tools of subaltern and postcolonial studies.\(^4\) The intersection of power, silence, speech, and resistance inhabited by colonized people becomes a space where we can begin to understand the complex impacts of the colonial project on colonized bodies.\(^4\) On the other hand, it is important to be cognizant of the transformation of the subjectivities of all people impacted by colonialism, including white Virginians, whose subjectivities were qualitatively different from those who lived in Europe.\(^4\)

The intimacies of colonialism brought the subjectivities of colonizer and colonized into contact with one another.\(^4\) It is here, in these intimate zones where people of all statuses interacted face-to-face, and therefore negotiated on an intimate level the hierarchies and power relations of the colonial world, that we can see the intersection of colonialism and reproduction. Ann Laura Stoler argues that the complexities of colonial relations can best be understood by examining the intimate spaces where subjectivities collided and differences were policed.\(^4\) Colonial contact complicated notions of racial separation, both in terms of sociability and identity.\(^5\)

Intimate spaces like the nursery, the birthing room, and even the courtroom were


\(^{47}\) For an example of this awareness of difference and the anxieties of colonial self-fashioning, see Lockridge, The Diary, and Life, of William Byrd II.


\(^{49}\) Stoler, “Tense and Tender Ties”; Stoler, Carnal Knowledge and Imperial Power.

where colonialism was enacted on a day-to-day basis. These spaces were transformed by the experience of colonialism, and the examination of those spaces becomes crucial to understanding the meanings of the colonial project. Reproduction is an especially potent site for these transformations: what did it mean when women’s experience of social childbirth that occurred in the towns of England, the villages of Africa, or the Native communities of pre-colonial Virginia shifted to occur in the new context of the tobacco plantation?

Therefore, these intimate zones must be understood not just in terms of contact or sociability but as spaces that literally created colonized bodies. Stoler argues that sexuality, as a central discourse of power, was a space where women’s choices were absolutely central to the colonial project: “[in colonialism] the sexual choices of white women were at issue: they are desired objects, but unruly desiring subjects as well.”\(^{51}\) I argue that along with their sexual subjectivities, women’s issue was “at issue” as well – reproduction in colonial spaces was the literal creation of colonized bodies. It was not just sex and intimacy that challenged, transformed, and furthered colonial projects – it was the creation of bodies, and the ability for colonial authorities to categorize those bodies into emerging racial hierarchies. The intimacies of colonialism embodied in interracial sex literally created new identities, crucially marked by race, which complicated European notions of self and other.\(^{52}\)

Therefore, my concern throughout this dissertation is to understand experiences and understandings of reproduction in a space and time in which identity categories, subjectivities, and hierarchies of power were all transforming via the

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\(^{52}\) On the usefulness of postcolonial categories such as liminality and hybridity in interrupting stable racial categories, see Hulme, “Postcolonial Theory and Early America.”
colonial project. I draw on and participate in multiple historiographies, including but not limited to women’s history, histories of childbearing, histories of sexuality, and histories of colonialism in Virginia. The methodology of women’s history provides the foundation for my work: women’s history’s examination of gender discourses of power, its attention to the experiences of women, and its attention to the intersection of gender, race, class, and sexuality provide a way of seeing the past that interrupts dominant narratives and refocuses history away from centers of power. Second, cultural histories of the period have examined the ways that discourses of gender and race have intersected with ideas about the body and sexuality; these histories provide a sense of the ways that understandings of the body and sexuality undergirded gender and racial power relations, the creation of colonial spaces, and the framing of the colonial project. Third, as a subset of women’s history, histories of childbearing have examined the intersection of medicine, the body, sexuality, gender, and power. Finally, histories of colonial Virginia offer a context for the time and place that I study: the institutionalization of racial slavery, the expansion of the plantation economy and the rise of the planter elite, and the shifting British colonial project in this particular North American colony.

Women’s histories of early America have explored the meanings of gender as a social construct and discourse of power while simultaneously uncovering and working to understand the experiences and lives of women during this period.53

53 On gender as a discourse of power – or, more specifically, a category of analysis – see Joan Scott’s influential essay on gender. Joan Scott, “Gender: A Useful Category of Historical Analysis,” The American Historical Review 91, no. 5 (1986): 1053-1075. See also Joanne Meyerowitz, “AHR Forum: A History of ‘Gender,’” American Historical Review 113, no. 5 (2008): 1346-56; Jeanne Boydston, “Gender as a Question of Historical Analysis,” Gender and History 20, no. 3 (2008): 558-583. While indebted to Scott, my approach differs slightly from hers. Scott was primarily concerned with how gender might be understood as a metaphor for understanding other topics that didn’t seem to involve
While reproduction has been present in women’s histories’ focus on motherhood and marriage, it deserves a focused analysis. The construction of motherhood, as well as the changing meanings of the role of motherhood, has been a central concern in women’s history, especially the history of women in Early America. Whether motherhood was a site of power, of duty, or of resistance depended on women’s racial identity, their status as free, servant, or enslaved, and the particular cultural meanings attached to different women’s motherhood. Further, in this era of the *feme covert*, for women who married (or who could marry), their role as wives was absolutely central to their access to a public voice, their control over their own property, and their sexual subjectivities. In contrast, unmarried women’s lives were constructed fundamentally differently than married women’s. In their focus on the politics of

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gender and the ability (or willingness) of women to abide by their roles as wives and mothers, women’s historians have shown how individual women might have chafed against their prescribed roles, even as they participated in them.\(^5\)\(^6\) One goal of this dissertation is to treat motherhood and wifehood as important social constructs of gender, imbued with particular political power, while paying careful attention to the ways that reproduction was both central and peripheral to those constructions.

Shifting the focus away from motherhood or wifehood as roles or relationships allows a focus on the experience of childbearing itself and the ways that reproduction was a gendered discourse of power.

Women’s histories are deeply concerned with gendered relations of power, and women’s histories of early America are specifically interested in the ways that patriarchal power was enacted in the British colonies.\(^5\)\(^7\) My concern here is less with "The Empire of my heart": The marriage of William Byrd II and Lucy Parke Byrd," *Virginia Magazine of History and Biography* 105, no. 2 (1997): 125-56.


\(^5\) Kathleen Brown makes the case that patriarchy is a “historically specific” concept, describing both early modern domestic relations (the father’s authority over the household) and a primary discourse of power. Brown, *Good Wives, Nasty Wenches, Anxious Patriots*, 4-5. Other historians of this period (notably Mary Beth Norton and Holly Brewer) have focused on the contemporary meanings of patriarchy in the early modern world: Norton focuses on the gendered meanings of patriarchy, and Brewer on the ways that patriarchy impacted views of children and childhood. Norton, *Founding Mothers and Fathers*; Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Chapel Hill: University of North Carolina Press, 2005). While this attention to historical change is crucial, I find Brown’s definition especially useful because it acknowledges the interplay between social relations and cultural assumptions. Further, Brown is deeply concerned with the relationship between gender, class, and race ideologies. Feminist theorist bell hooks reminds us that a nuanced definition of patriarchy does not posit the absolute power of all men over all women, but instead, an understanding that patriarchal power is tightly linked to other discourses of power, such as capitalism, white supremacy, and heterosexism. bell hooks, *Feminist Theory: From Margin to Center* (Boston, MA: South End Press, 1984), 24-5. These feminist definitions of patriarchy are distinct from the early American historical conversation about patriarchalism - the discourse of
whether women as a group gained or lost power over the course of the colonial era than with how colonialism itself transformed women's knowledge, experience, and subjectivities.\(^{58}\) One advantage of this concern with the impact of colonialism is that it emphasizes the ways that discourses of power constructed different women's experiences in profoundly different ways because the intensification, transformation, and creation of categories of difference such as race and status were central to the colonial project. The point is not simply to observe differences between women, but to examine the process by which differences were constructed in a colonial context.

As Jane Haggis, a historian of colonial India, argues, difference must be understood not as "deviance from the norm" but instead as a "concept disrupting the complacent authority of the dominant discursive presence."\(^{59}\) Elsa Barkley Brown's discussion of intersectionality is useful here. She points out that all women's material lives were profoundly shaped by the intersection of race, class, gender, and status:

Middle-class white women's lives are not just different from working-class white, Black, and Latina women's lives. It is important to recognize that middle-class women live the lives they do precisely because working-class women live

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\(^{58}\) On the question of whether women gained or lost power in the colonial period, especially the notion that the early colonial period was a "golden age" for women, see Carol R. Berkin, "What an alarming crisis is this?: Early American Women and their Histories," in The World Turned Upside-Down: The State of Eighteenth-Century American Studies at the Beginning of the Twenty-First Century, ed. Michael Kennedy and William Shade (Bethlehem, NJ: Lehigh University Press, 2001), 254-267; Kathleen M. Brown, "Beyond the Great Debates: Gender and Race in Early America," Reviews in American History 26, no. 1 (1998): 96-123. This is not to say that women did not lose authority by the eighteenth century. Cornelia Hughes Dayton's work on Connecticut shows the ways that, as courts Anglicanized over the eighteenth century, women's voices were less often transcribed into the official record; therefore, our understandings of the "golden age" are deeply impacted by the available archive.

the lives they do. White women and women of color not only live different lives but white women live the lives they do in large part because women of color live the ones they do.\textsuperscript{60}

This was particularly true in the southern colonies, where the plantation economy and slavery defined the conditions of daily life and ideological framework for all women.\textsuperscript{61} Therefore, a major goal of my work here is to understand the ways that reproduction was used to define and police race and status boundaries at a time when those boundaries were being constructed.

This intersection between race, gender, and reproduction also links to discourses of sexuality and the body. Drawing on Foucauldian perspectives (as I discussed earlier in this introduction), historians of sexuality have shown the ways that sexuality should not be understood as a biological drive, but instead as a discourse of power and a site of conflict, especially in the contact zones of the colonial world. Changing sexual mores linked with new political theories to impact not just ideas about political and personal liberty, but to fundamentally transform ideologies of gender, marriage, and family.\textsuperscript{62} As part of a colonial project, these transformations also centered on colonial discourses of race, as black and Native

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sexualities were interpreted by Europeans within a colonial framework, even as peoples of African and Native descent struggled against those interpretations. Too often, though, histories of sexuality have bypassed issues of reproduction, focusing instead on the pleasures and dangers of sexual and intimate contact. We must remember that in this pre-contraceptive world where childbirth brought the threat of death, sexuality was inarguably tied to danger for any woman who had sex with men. These dangers were compounded for women on the bottom of social hierarchies, such as women who had children outside of marriage or women who bore children in slavery. I argue in this dissertation that reproduction must be seen as absolutely central – not peripheral – to discourses of sexuality; indeed, as I argue later in this introduction, reproduction was absolutely central to the narrative of emerging discourses of sexuality that Foucault outlines in *The History of Sexuality*.

The early modern period and the Enlightenment saw tremendous change in cultural discourses of the body that transformed understandings of reproduction. Thomas Laqueur argues that changing understandings of the sexed body were constitutive of the emergence of a new gender ideology of innate gender difference in

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this period. These changing understandings of the body — indeed, the very notion that the body itself was a changeable, mutable object — were deeply tied to colonialism, such as emerging colonial subjectivities, understandings of the promises and perils of the environment of the New World, and explanations for gendered and racialized hierarchies of power. All of these transformations implicated discourses of reproduction, in particular the ways that the reproductive body was implicated in the transformation of gender ideologies and the forwarding of the colonial project.

Histories of childbirth in the early modern world — especially the long transition from midwife-assisted childbirth to physician-assisted childbirth — provide another historiographical bedrock for this dissertation. Historians have argued that the shift from midwives to doctors occurred for a variety of reasons, including a contemporary perception that physicians were better skilled, differential class- and race-based access to medical care, and gendered attacks on women’s knowledge and access to education. Increasingly, historians have focused on the cultural context

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for changing medical practice, finding its roots in the cultural and epistemological shifts of the eighteenth century, such as the rise of the print public sphere, the cultural role of literacy and the creation of genteel subjectivities, the rise of consumer capitalism, and the increasing importance of colonialism in British self-construction. Further, histories of midwifery have focused on the role of midwives in communities, in particular the ways that midwives, both black and white, were holders of knowledge not just about childbirth, but about general medicine, social structures, and the law. This knowledge made midwives especially important members of frontier communities and slave communities.

General histories of childbirth have tended to focus on the American north, as well as on white women's experiences; a shift in focus to the American south and the impact of slavery and race expands and complicates the narrative of midwifery and medicine. In the South, the power differential between midwives and physicians

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70 Some of the most influential histories of childbirth focus exclusively on white women in the American north. See, for example, Leavitt, *Brought to Bed*; Scholten, *Childbearing in American Society*; and Wertz and Wertz, *Lying In*. An exception to this geographical focus is the work of Sally McMillen, which focuses on elite white women in the Antebellum south. Sally G. McMillen, *Motherhood in the Old South: Pregnancy, Childbirth, and Infant Rearing* (Baton Rouge: Louisiana State University Press, 1990).
was exacerbated by race, where midwives — especially midwives of African descent — served the black community and physicians served the white master class.\textsuperscript{71} The racial division between midwives and physicians had extraordinary impact on enslaved women. By the Antebellum period, planter-physicians took advantage of their ownership of their patients, using black women’s bodies to experiments with new techniques, to debilitating or even deadly effect.\textsuperscript{72} On the other hand, so-called “granny midwives” were keepers of knowledge and holders of considerable authority in the slave community.\textsuperscript{73}

This racial context was, of course, rooted in the fact that slavery was a status inherited at birth, so women’s reproductivity was a site of profit for slaveowners. Therefore, there was a deep tension for women in slavery between what Patricia Hill Collins calls the “motherwork” that created and nurtured the black community and a black subjectivity and the realization that motherhood was appropriated and exploited by the institution of slavery.\textsuperscript{74} This tension between motherwork and appropriation echoes the tension that existed between enslaved women’s reproductive role and their productive role as laborers. Social historians of slavery have pointed to the ways that enslaved women’s extraordinary labor demands led to higher rates of infant mortality

\textsuperscript{71} Marie Jenkins Schwartz, \textit{ Birthing A Slave: Motherhood and Medicine in the Antebellum South} (Cambridge, MA: Harvard University Press, 2006); Lee, \textit{Granny Midwives and Black Women Writers}.  
Jennifer Morgan’s expert study of the role of reproduction in the institution of slavery in Barbados and South Carolina explores all of these issues, connecting the ways that women’s reproductive role was central to early discourses of racial difference, deeply impacted women’s experiences as laborers and mothers, and directly shaped their understanding of their enslavement.76

Another intervention into the history of childbearing has been the introduction of cultural historical perspectives. As previously discussed, the eighteenth century saw radical changes in understandings of the sexed body. These changes in the epistemology of the body occurred simultaneously with the rise of man-midwifery, which itself was rooted in a notion of innate gender difference, where men claimed medical authority on the basis of masculine rationalism and an emerging understanding that childbearing had become newly important to the nation and the national economy.77 Further, changes in early modern understandings of the body had a direct impact on European and Euro-American women’s reproductive choices and practices, such as the use of emmenagogues and extended nursing to limit pregnancies.78 Susan Klepp has argued that these practices themselves had a cultural


76 Morgan, Laboring Women.

77 Jordanova, “Interrogating the Concept of Reproduction.”

and political meaning, as women consciously limited their pregnancies as an enactment of republican values.79

The third major body of historiography upon which I draw is the history of colonial Virginia, especially the emergence of the institution of slavery, the expansion of the plantation economy, and the rise of the planter elite. I make a theoretical intervention into Virginia’s colonial history, arguing that postcolonial theory is a useful tool for understanding the processes by which Virginia transformed from a military outpost to a settler colony to a plantation economy and slave society.

Edmund Morgan’s survey of Virginia’s colonial period narrates that history, arguing that the idea of freedom itself emerged as a result of the creation of the institution of racial slavery.80 As Anthony Parent argues, this process was one of consolidating planter interests through the control of land, political power, and, importantly, a growing enslaved population.81 Rhys Isaac and others have focused on how planters embodied their power and whether the authority they claimed was recognized.82


79 Klepp, “Revolutionary Bodies.” For another perspective on the fertility transition, Kenneth Lockridge and Jan Lewis argue that the lowering of the elite white birth rate was less about an adoption of republican values by women and more about women’s increasing fear of childbirth and maternal death at the end of the eighteenth century. Lewis, Jan and Kenneth A. Lockridge, “Sally Has Been Sick: Pregnancy and Family Limitation among Virginia Gentry Women, 1780-1830,” Journal of Social History 22, no. 1 (1988): 5-20.

80 Morgan, American Slavery, American Freedom.


These questions of power and its consolidation and contestation in colonial spaces animate my work.

A major site of debate in Virginia history has been to identify whether the transition to racial slavery from indentured servitude was planned and deliberate (as Parent argues), or an "unthinking decision," as Winthrop Jordan famously stated. Yet, postcolonial theory offers a different approach, focusing less on root causes (such as whether the move to slavery was motivated by racial animus) but instead on recognizing the contested processes by which colonial power was constructed and deployed.

The emergence of a gender analysis of Virginia's colonial history has invigorated the field, offering fuller understandings of this history. Kathleen Brown's comprehensive study of gender, race and power in early Virginia emphasizes the intersection of gendered discourses of power and English, Native, and African
women's experiences in the colony. More recently, examinations of how some women's experiences could move beyond those roles has shown the ways that those roles and gender discourses could be resisted, interrupted, and undermined by women of means.

Reproduction is a useful interjection into these histories of early Virginia. First and foremost, the role of reproduction in the establishment of racial slavery shows how discourses of reproduction were absolutely central to Virginia's colonial project. More importantly, a focus on reproduction in the history of Virginia is a continuation of the intervention women's historians have made into the writing of the history of the colony. For example, social histories of the colony have emphasized the utility of demography in understanding the development of Virginia's colonial society; some have made causal claims about Virginia's demography on the type of society that emerged. Reproduction itself remains under-theorized in this demographic view where "natural increase," "rate of replacement," and sex ratios are


88 Jennifer Morgan's study of reproduction and slavery focuses on Barbados and South Carolina, while gesturing towards the Virginia case throughout. Morgan, *Laboring Women*.

seen as causal agents rather than as cultural phenomena or bodily experiences worth exploring in and of themselves. In other words, by focusing on reproduction as both experience and discourse of power, ideas about demography are historicized, denaturalized, and made available for analysis. Further, an understanding of reproduction as a colonial discourse helps to place women, gender, and sexuality at the center of historical analysis and continues the exploration of the intersections between gender, sexuality, and the emergence of race.

This dissertation both depends on and intervenes in these historiographies, arguing that understanding reproduction as a cultural phenomenon and discourse of power is a useful means of understanding both women’s history and the colonial project in seventeenth- and eighteenth-century Virginia. The chapters of this dissertation all seek to explore the intersections of colonialism and reproduction in early Virginia, each with a different focus and a slightly varying methodology. The chapters are organized conceptually, and roughly chronologically, beginning with the period preceding the 1662 law that made slavery a status inherited at birth, and ending with Thomas Jefferson’s colonial vision, published in Notes on the State of Virginia in 1785. These chronological boundaries are in part created by my available archive – for example, York County, Virginia, from which I gathered most of my data, was incorporated in 1634. These boundaries are also the result of historical exclusions to limit the scope and size of the project – it is for this reason that I do not engage with the meanings of reproduction in rhetoric of the American Revolution, an

90 These demographic histories ultimately fail to acknowledge that, in the words of S. Ryan Johansson, "...Women's individual bodies [are] the basic individual unit [and] nations, provinces, counties, communities, occupational groups, households, or couples do not have babies, except by courtesy of metaphor." S. Ryan Johansson, "Implicit Polity and Fertility during Development," Population and Development Review 17 (Sept. 1991), 392; qtd. Klepp, "Revolutionary Bodies," 913.
era ripe for just such an analysis. Mostly, they are a result of thinking through history through the lens of a feminist and postcolonial analysis, which allows for the available archive, rather than received historical narratives, to shape the analysis.91

In the first chapter, “A Considerable Parcel of Breeders: Reproduction and Discourses of Racial Slavery in Virginia,” I examine the ways that development of racial slavery in Virginia was based, in part, on the appropriation of black women’s reproduction. The 1662 law of slavery by birth asserted that black women’s children would be enslaved or free according to their mother’s status. This law conflated blackness, slavery, and reproduction in order to naturalize slavery as an institution. It did so by rooting inherited slavery in two preexisting British legal discourses: bastardy law and inheritance law. I draw on Foucault’s understanding of the relationship between discourse and power to examine the ways that colonial legal structures, when enacted on an individual basis in the form of wills, deeds, and other transfers of property, were central in the creation of colonial discourses of reproduction.

In Chapter 2, “Wicked, Dangerous, and Ungoverned: The Transgressive Possibilities of Reproduction,” I examine the ways that individual women’s reproductivity could destabilize the seemingly solid, but always tenuous, discursive formations that constructed inherited racial slavery and colonial relations in Virginia. In the chapter, I draw on feminist, queer, and postcolonial theories of resistance and

91 On the ways that women’s history questions and remakes canonical historical narratives, see Joan Kelly, “Did Women Have a Renaissance?” in Becoming Visible: Women in European History, ed. Renate Bridenthal and Claudia Koontz (Boston, MA: Houghton Mifflin, 1977), 137-64; Perez, The Decolonial Imaginary, 24. Some examples of women’s histories rethinking or questioning chronologies in early American history include: Block, Rape and Sexual Power in Early America, 5-6; Juster, “Mystical Pregnancy and Holy Bleeding”; Clare Lyons, Sex among the Rabble. For the ways that postcolonial theory interrupts early American historical narratives, see Warner, “What’s Colonial about Colonial America?”.
transgression in order to examine the ways that women's reproductive lives could offer possibilities for crossing lines of power in this colonial space. I examine the ways that the reproduction of white servant women, free white women, enslaved women, and free women of color could all have particular transgressive meanings. The chapter concludes with an examination of the ways that free families of color transgressed lines of power through their liminal identities, extralegal marriages, and matrilineal genealogies. Throughout the chapter, I am particularly interested in understanding the relationship between domination and transgression, and the specific ways that reproduction could inhabit the space between those two poles.

Chapter 3, "Knowledge “not fit to be discust publiquely”: Colonialism and the Transformation of Reproductive Knowledge," discusses reproduction in Virginia through an intersection of colonialism and Foucault's concept of power-knowledge. The chapter examines two parallel questions regarding reproduction and history: what knowledge did women (and men) have about reproduction in that place and time, and what can we, in the present day, know about such intimate experiences during that period? In this chapter, I argue that colonialism fundamentally transformed bodies of knowledge about reproduction: the intimacies of colonialism remade the relationship between reproduction, knowledge, race, gender and power, ultimately allowing masters and patriarchs to claim knowledge about and power over reproduction that had formerly been held by women. While I seek to reconstruct the reproductive knowledge held by women and men in this colonized space, I do so with the understanding that my knowledge is contingent upon an archive that is itself an artifact of colonization. These theoretical questions guide my analysis as I try to
reconstruct the medical environment of colonial Virginia, the boundaries of midwives’ knowledge, the meanings of reproduction in women’s understanding of their worlds and lives, and the ways that colonialism transformed all of these.

In the final chapter, “She lives in an infant country that wants nothing but people”: Discourses of Reproduction, Print Culture, and Virginia’s Colonial Project,” I analyze the ways that the colonial project necessarily involved discourses of reproduction, as English colonizers imagined settling Virginia lands. I use Foucault’s concept of biopower – the modern state’s project of developing rational population strategies – to understand how colonialism transformed English discourses of reproduction. A varied archive of colonial writing (Virginia’s laws, colonial writers like William Byrd, Thomas Jefferson, and Robert Beverley, and the Virginia Gazette) shows that the colonial project was rooted in ideas about reproduction, but that those ideas were not stable or absolute. The early colonial project idealized prolific reproduction, a discourse in which English bodies were assumed to fruitfully multiply to populate the new land. The colonial project itself required a new understanding of reproduction – a discourse of rational reproduction, in which ideal reproduction should be controlled, measured, and scientifically measurable. These two discourses of reproduction were distinct, but they were also competing and overlapping. The emergence of racial hierarchy in the colonial project inspired the discourse of rational reproduction.

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Ultimately, this dissertation attempts a straightforward task: I work to make sense of the ephemeral and fragmentary references to reproduction that occur
throughout Virginia’s colonial archive. When Mary Hubbard bore her four children, when an enslaved woman named Sarah gave birth with the help of a white midwife, when Judith Clarke was punished for bearing a mixed-race child, their reproductive lives came momentarily into the view of colonial record-keepers and thus are available, however fragmentarily, for us to consider. Each of their experiences marked them as outlaws in some way: these women bore bastard children, interrupted the easy distribution of property, complicated long-held midwifery traditions, and challenged boundaries of race and status. In examining these and other records of reproduction in the colonial archive, I’ve found that reproduction was absolutely central to the aims of colonialism in Virginia: the creation of a laboring population, the populating of lands claimed by the colony, and the organization of power and property in this developing society. I’ve found that by focusing on childbearing, the lives of non-elite women and the intersections of gender, race, and status come better into view. I’ve found that reproduction was both a discourse of power and a path for some women’s transgression of that power. For Mary Hubbard, Sarah, and Judith Clarke, their experiences of childbearing may have marked them as outlaws, but they also give us a glimpse, however fragmentary, into the meanings of reproduction in this colonial space.
CHAPTER 1

“A considerable parcel of breeders”:

Reproduction and Discourses of Racial Slavery in Colonial Virginia

William Fitzhugh was a young Virginia lawyer and planter in 1679, when he wrote to fellow Virginia planter Robert Beverley, expressing the absolute necessity of legitimacy in deciding lines of inheritance:

None can be begotten but of a father and a Mother, and he must have in him two bloods: Blood of the father and the blood of the mother, these bloods commixed in him by lawfull Marriage, constitute and make him heir.92

For Fitzhugh and his seventeenth-century peers in both England and Virginia, only a legitimate child could inherit, and that legitimacy was defined both socially and physically. First, a legitimate heir’s parents were bonded by “lawfull Marriage,” blessed by the church and sanctioned by the state. Second, a legitimate heir was the bodily offspring of the parents, whose “bloods [were] commixed in him.” Only children who fulfilled these two qualifications – being what seventeenth-century writers called the “natural” child of legally married parents – could inherit. This was one of the most basic rules that governed the inheritance of estates in Virginia.

At the same time that Fitzhugh defined the conditions of legal inheritance, he was amassing an enslaved labor force comprised of people who would never be able to lay claim to either their own legitimacy or the legitimacy of their heirs. Instead, the people who Fitzhugh enslaved would themselves be the property inherited by

Fitzhugh’s own heirs. Enslaved people’s own family bonds – the “bloods commixed” in their own genealogies – were summarily severed as slaveholders organized and divided their own estates. We see the effects of this when Fitzhugh died in 1703. The Fitzhugh estate included over fifty people – men, women, and children, including infants – listed as slaves in Fitzhugh’s will and estate inventory. Those enslaved people’s family bonds were ignored with impunity when the Fitzhugh estate was divided amongst Fitzhugh’s heirs. For example, the three children of one enslaved woman, Black Pegg, were divided amongst three separate heirs. Fitzhugh divided the world into two neat categories – those who inherited, and those who would be inherited. This was a fundamental truth of the institution of slavery.

Embedded in the division of the Fitzhugh estate was a basic rule of chattel slavery, one which had been adopted during Fitzhugh’s own lifetime, and which enabled him to claim ownership over such a large number of enslaved people. In 1662, the Virginia assembly ruled that slavery was an inherited status, passed from mother to child, such that the status of any child born in the colony was determined at

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93 Davis, William Fitzhugh and His Chesapeake World, 373-84.
94 I use the terms “enslaved people” and “slave” with some specificity here, and throughout this chapter. I use the term “enslaved” because I intend to emphasize the ways that slavery was forced upon people of African descent by the people who enslaved them. Seen in this way, women (and men, and children) were not slaves – they were forced into slavery by the people who would be their masters and mistresses. The use of the term “enslaved” helps to remind me that slavery was a process (something done to people) through force and through law, as well as a status applied to some people. On the other hand, in the law, as well as in inheritance documents such as wills and inventories, enslaved people were reduced to inheritable objects. In those cases, I often refer to enslaved people as “slaves.” This division of terms echoes Robert Berkhofer’s distinction between “Native American” and “Indian.” Berkhofer used the term “Native American” to refer to the actual native peoples of the Americas, and the term “Indian” to refer to European and Euro-American representations of Native American people. Similarly, I use “enslaved people” to connote the process of enslaving people against their will, and the term “slave” to refer to slaveholders’ representations of those people. Robert F. Berkhofer, Jr., The White Man’s Indian: Images of the American Indian from Columbus to the Present (New York: Vintage Books, 1979), xvii.
95 Davis, William Fitzhugh and His Chesapeake World, 382.
birth by the status of their mother.96 Thus, in Fitzhugh’s will and inventory, the enslaved people themselves were often identified in terms of their familial relationships, especially between mother and child, since the children of enslaved mothers were themselves enslaved, because that familial relationship conferred ownership onto the slaveholder.97 With the 1662 law of slavery by birth, slavery and reproduction would become tightly intertwined. By determining slave status as a condition of birth, slaveholders were able to capitalize upon and exploit the reproductive lives of enslaved women, as any child born to any enslaved woman was the property of the woman’s master. This was an extraordinary legal move. As Jennifer Morgan argues, with the 1662 law of slavery by birth:

Slaveowners appropriated [black women’s] reproductive lives by claiming children as property, by rewriting centuries-old European laws of descent, and by defining a biologically driven perpetual racial slavery through the real and imaginary reproductive potential of women whose ‘blackness’ was produced by and produced their enslavability.98

Morgan’s analysis here points to the centrality of women’s reproductive lives not only to the development of the institution of slavery, but to the invention of race. The 1662 law of slavery by birth attempted to naturalize the institution of slavery by attaching it specifically to the bodies of infants born to enslaved women of African

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96 Hening 2: 170.
97 For example, Black Pegg’s children, in both the will and the inventory, are identified as such. Davis, William Fitzhugh and His Chesapeake World, 382.
98 Morgan, Laboring Women, 1.
descent. Thus, Virginia’s slaveholders conflated blackness, slavery, and reproduction in their efforts to naturalize the institution of slavery.99

To recognize the centrality of reproduction to the invention of race and slavery, we must examine the context for and the impact of the passage of the law of slavery by birth. This analysis, while centered on the discursive production of slaveholders (and the colonial government that served as their representatives), is aimed at understanding some of the meanings of enslaved women’s reproductive lives in this colonial space. As Hazel Carby succinctly argues, “within the economic, political, and social system of slavery, women were at the nexus of its reproduction.”100 Following from this understanding of the centrality of women’s reproductive lives to the making of racial slavery, I aim to both expose the creation of the institution of slavery as a discourse of power, and to, as much as possible, understand the meanings those discourses would have on enslaved women’s lives. Thus, William Fitzhugh’s legalistic understanding of inheritance rubs up against the impact that understanding would have on Black Pegg, her children, and the other people he enslaved.

The development of the institution of slavery is one of the central debates of American historiography. Was the turn to slavery an “unthinking decision,” in the words of Winthrop Jordan, the last step in a long process of dehumanization of blackness, Africa, and Africans?101 Or, was the institutionalization of racial slavery a

99 On the conflation of race and slavery with the law of slavery by birth, see Morgan, Laboring Women, 3-4. See also Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 133.
101 Jordan, White Over Black, 44-98. Jordan’s analysis is especially useful because it acknowledges the power of language and ideology in the development of social systems. James Campbell and James Oakes, “The Invention of Race: Rereading White Over Black,” Reviews in American History 21, no. 1
strategic move meant to quell class conflict, as Edmund Morgan argues? Anthony Parent argues that the development of slavery in Virginia was a conscious effort of the emerging planter elite in an effort to consolidate their power and influence. 

While these have been compelling questions for generations of historians, my goal in this chapter shifts this debate slightly. I attempt to uncover the process by which planters decided to link discourses of slavery, race, and reproduction in order to solidify slavery as an institution. By tracing the complex and often contradictory path by which slavery became a status inherited from one's mother, I am attempting to understand how planters conceived of owning, and capitalizing on, reproductive human property. In so doing, I hope to better understand the meanings of reproduction in this colonial space.

In trying to uncover these meanings, I offer in this chapter an analysis of the emergence of the law of slavery by birth. Virginia’s slave laws were a legal contradiction. Chattel slavery was not part of English common law, though English common law did not explicitly ban the practice. Instead, slavery’s legality was rooted in other legal practices – the taking of prisoners in war and the accepted practice of extracting labor as payment for debt were two such examples. Both of these long-held practices allowed for the claiming of others’ labor by force. Yet, the other


Morgan, American Slavery, American Freedom, 295-315. Slavery, Morgan argues, was not adopted until it was economically advantageous to planters. Morgan argues that a desired side effect of the adoption of slavery was the reduction of the population of formerly indentured freedmen, whose rage was expressed during Bacon’s Rebellion.


primary aspect of chattel slavery – that slave status was a status inherited from one’s
mother – had no precedent in English common law. In fact, the law of slavery by
birth directly contradicted English common law, especially the laws governing
paternal inheritance. In this chapter, I argue that the law of slavery in Virginia
found its roots in other parts of English law, specifically laws that defined bastardy,
inheritance, and property law. First, English bastardy law ruled that any child born to
an unmarried mother was legal the “child of no man.” By defining slaves as legal
bastards, Virginia law was able to deny enslaved children the legal protections
offered by legitimacy and paternal identity. Second, English property law
categorized slaves as reproductive property. Like livestock, the owner of a
reproducing female was assumed to own also the “issue” of that female. We see in
these twin definitions of inherited slavery – in which the slave is by definition
illegitimate and in which the slave is by definition a form of reproductive property –
the ways that reproduction was central to the development of an emerging local
discourse of slavery and race.

My analysis emerges from the reading of two main bodies of evidence: first,
the written laws that governed the colony, and second, the wills and other documents
that governed the inheritance of property. English colonial laws were notoriously
contradictory, both between colonies and within colonies. Colonial leaders exercised
considerable autonomy in interpreting and applying English common law to their
own colonial environment. Jack Greene suggests that these internal contradictions
were central to the English colonial project: “this [contradictory] legal inheritance

gave settlers enormous flexibility in adapting the law to local conditions while marking them as resolutely, even militantly, English." Warren Billings' analysis of the 1662 law of slavery by birth illustrates this sense of colonial lawmakers’ flexibility in their reading of English common law. Billings argues that the Virginia Assembly “ransacked” English Common Law in order to find a precedent for slavery by birth “which satisfied the yearning to remain faithful to tradition while resolving a problem for which tradition afforded no remedies.” It seems that English common law was flexible enough that it could justify whatever legal practice was needed in developing colonial societies.

This “ransacking” of English law to fit colonial context was, in part, an effort by lawmakers to create and uphold colonial discourses of power. Robert Blair St. George, examining the usefulness of postcolonial theory in the study of early America, calls local languages, ideas, discourses, and legal interpretations a development of a colonial “vernacular theory.” He emphasizes that power, especially in a colonial space, can be “creative as well as coercive,” and that these colonial vernacular theories were always embroiled in the creation of discourses of colonial power. Therefore, if we understand Virginia’s legal structures as an emerging vernacular theory of race and servitude, we can begin to understand the process by which slavery was institutionalized in a colonial space.

Such an analysis must take into account the ways that race, gender, and status operated in the colonial world, as well as in the development of colonial legal

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structures. In her analysis of rape cases in British colonial North America, Sharon Block emphasizes that these local iterations and applications of the law were essential to the process of creating and maintaining hierarchies of gender, race, and status, as incidents and narratives of rape became the locus around which early American identities were inscribed, racial hierarchies were constructed, and gendered structures of power were maintained.\(^{110}\) In the Virginia case, Anthony Parent argues that the emerging planter class, who dominated the colonial legislature, used the law to forward their own economic interests, and therefore, the laws they passed reflected their own priorities.\(^{111}\) If this is the case, then the Virginia law was not just an expression of gentry rule, but of gentry desire.

Michel Foucault draws this connection between the law and desire. Foucault concedes that the law and power have been, of course, tightly linked: “In western societies since the Middle Ages, the exercise of power has always been formulated in terms of law.”\(^{112}\) Even so, Foucault argues, the law always masks its origins, and thus its own power: despite beliefs in the fairness and rationality of law, the law is “the code according to which power presents itself and prescribes that we conceive of it.”\(^{113}\) This understanding of the law certainly lines up with Parent’s observation that class power and legal power were very nearly identical in the Virginia colony. Yet Foucault warns us not to rely on juridical discourses for our understanding of the mechanisms of power, because actual human interactions existed outside of and beyond the realm of the law – the law may have tried to construct desire by

\(^{110}\) Block, *Rape and Sexual Power in Early America*, 126-162. Race is central to Block’s argument here: “the racialization of rape was the primary Americanization of British common law regarding rape.” Block, *Rape and Sexual Power in Early America*, 148.


\(^{112}\) Foucault, *The History of Sexuality*, 87.

\(^{113}\) Foucault, *The History of Sexuality*, 87-8.
forbidding particular actions, but people still engaged in them. Foucault argues "that power in modern societies has not in fact governed sexuality through law and sovereignty" but instead power acts through "a multiplicity of force relations." What is useful here is the recognition that juridical discourses expressed the desire of state power for control and hegemony, but it was in intimate relations that power is exercised, shaped, and wielded.

This reading of Foucault would seem to discount his ideas as being useful to a reading of the legal structures of colonial Virginia. But if we recall Anthony Parent's argument that the legislature and the planter class were nearly identical in colonial Virginia, we realize that the Burgesses' writing and rewriting of the English common law was not a disembodied act – it was an attempt for them to create control over the world that they created. In the case of slave law, juridical discourses, as much as they masked the interests of power, were an expression of desire by individual planters to assert control over the lives, bodies, and sexualities of the people that they enslaved. This becomes even clearer when we include wills and other inheritance documents in the field of juridical discourse – these were hand-drawn documents in which individuals made and unmade families, relationships, and identities. Ann Laura Stoler, in her rereading of Foucault in a postcolonialist framework, argues that it was in these intimate spaces – especially sites of interracial sex and desire and the banning of interracial sex – that colonialism was enacted.

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114 Foucault, The History of Sexuality, 90.
115 Foucault, The History of Sexuality, 90, 92.
117 I examine later the relationship between the law of slavery by birth and laws banning interracial sex. Stoler, "Intimidations of Empire," 2-4. See also Perez, The Decolonial Imaginary, 101-4.
In the first section of the chapter, I examine the law and elite discourses of power, in the ways that bastardy law and slavery law were intertwined and co-defined in the emerging legal structure of the colony. In the second section, I examine the day-to-day enacting of power by individual slaveholders, as masters used the language of animal husbandry to assert their dominion over enslaved women and children. In the third and final section, I examine the ways that slaveholders' power was incomplete and inconsistent: even as planters' laws would seem to establish absolute control over the reproduction of enslaved peoples, we see the ways that reproduction and sexuality could not be contained by those structures. Ultimately, as Foucault makes so clear, attempts to exert absolute power can crumble under their own weight. Overall, I argue that colonial power structures were rooted in twin goals: the exploitation of black women's reproduction and the disciplining of white women's reproduction.

Bastardy and Servitude

According to English common law and inheritance practices, children inherited their property, status, and name from their father. Inheritance practices had deep cultural and political meanings: in the status society of early modern England, legitimate inheritance was the basis for the social order and of the monarchy itself.

118 Foucault, The History of Sexuality, 95-6.
These inheritance practices and ideologies were imported to England's colony in Virginia: testators, whether they followed the practice of primogeniture or divided their estates among their children via entail or other legal means, assumed that legitimate children were the rightful primary heirs of all that their father had amassed during his life. Legitimacy was built into the language of inheritance, as testators willed property to their "natural" children, born "of my body." By the middle of the seventeenth century, this inheritance tradition was taking on new meaning in the English (and Anglo-American) ideology of patriarchal power, where the power of the patriarch (whether literal father, God, or King) was duplicated in the family, religion, and the state. In the British colonies, fatherhood conferred full personhood to the

120 For examples of testators referring to "natural" children, see York DOW 2: 405; York DOW 3: 28; York DOW 3: 48; York DOW 3: 77; York DOW 4: 189. For testators referring to the children "of their body," see York DOW 3: 48; York DOW 4: 189.

121 Kathleen Brown emphasizes that "domestic" patriarchy, or "the historically specific authority of the father over his household" was continually being constructed and contested throughout the colonial period. Brown, Good Wives, Nasty Wench, and Anxious Patriarchs, 4-5. This domestic patriarchy was mirrored in political patriarchy, in which "universal female subordination [was used] to establish and explain the naturalness of the political order." Political patriarchy, expressed most clearly in Robert Filmer's 1642 political treatise, Patriarcha, infused political, religious, and colonialist discourses both in England and the colonies. Brown, Good Wives, Nasty Wench, and Anxious Patriarchs, 15-7. Mary Beth Norton argues that because of its uneven sex ratio, the Chesapeake was never able to live up to the Filmerian ideal. Instead, seventeenth-century Virginia's demographically male-dominated society anticipated a Lockean ideal in which the state did not mirror the power of fathers over children, but instead operated through the consent of the governed (as with husbands and wives). Unfortunately, Norton elides race in her analysis, and her discussion of the Chesapeake functions mostly to illuminate the ways that New England was able to live up to the Filmerian ideal. Norton, Founding Mothers and Fathers, 3-14. Holly Brewer argues that seventeenth-century patriarchalism justified not men's power over women, or even fathers' power over children; instead, patriarchalism was expressed in the system of primogeniture, in which inherited status dictated all social hierarchies, from the family to the church to the monarchy. For Brewer, gender hierarchy and the hierarchy of adults over children were new concepts that needed to be justified in a post-Lockean world. Brewer, By Birth or Consent, 21-4. All of these definitions are useful here: Brown's emphasis on gendered power helps us to center women in the analysis, while Norton's discussion, however flawed, of how Virginia failed to live up to the Filmerian ideal helps us to focus on the ways that the experience of colonialism would make and remake political theories and discourses. Brewer's analysis, while it overemphasizes the power of women in the Filmerian model, historicizes the discussion of patriarchy in connection to primogeniture and inheritance, reminding us that status, defined by inheritance structures, was a primary expression of hierarchy before the emergence of patriarchalism. My interest is in both exploring the development of patriarchal power in Virginia, and in recognizing the ways that patriarchy was expressed through discourses of race as well as gender and status.
extent that, as Mary Beth Norton has argued, mothers *qua* mothers are virtually absent from the colonial statutes, while fathers *qua* fathers are nearly omnipresent.\(^{122}\)

In Virginia’s colonial context, patriarchal inheritance and power would take on especially potent meanings, especially regarding the labor relations of the plantation economy. For property-holding men of Virginia’s eighteenth century slave economy, the possession of servants and slaves was considered evidence of one’s patriarchal authority. In 1726, planter William Byrd II embraced this view when he described his position: “Like one of the patriarchs, I have my flocks and my herds, my bond-men, and bond-women, and every soart of trade amongst my own servants, so that I live in a kind of independence on every one, but Providence.”\(^{123}\) For Byrd, Virginia’s colonial labor hierarchy created for him a position akin to the biblical patriarchs – complete authority, endowed by God, and answerable only to God.

Yet the transfer of the English patriarchal tradition to Virginia was not immediate or absolute, and the development of racial slavery actually challenged the tradition of patriarchal inheritance in important ways. Most notably, the 1662 law that declared that any child in the colony should be free or enslaved “according to the condition of the mother” overturned the centuries-long tradition in which one’s status was inherited from one’s father.\(^{124}\) In other words, the law that solidified inheritable, life-long, racial slavery by birth was a direct affront to the English tradition of patriarchal inheritance and authority. Since the 1662 law of slavery by birth ran

\(^{122}\) Mary Beth Norton, *Founding Mothers and Fathers*, 143-4. Despite a comparative framework that includes the Chesapeake region, Norton’s argument ignores an important exception: the 1662 law of slavery by birth defined an entire class of people not in terms of their fathers, but in terms of their mothers.


\(^{124}\) Hening 2: 170.
counter to patriarchal inheritance, Virginia's lawmakers would draw upon another legal and discursive precedent to solidify inherited slavery: an already-present linkage between bastardy and servitude in colonial law. This section will examine the complex and contradictory relationship between the logic of black servitude and patriarchal inheritance, and will then trace the linkages between bastardy and servitude in Virginia law during the colonial period. Ultimately, by rejecting the precedent of patriarchal inheritance, the 1662 law of slavery by birth and its reiterations into the eighteenth century drew legal and discursive connections between illegitimacy, servitude, female sexuality, and race with the ultimate goal of extracting ever more labor from women (especially, but not exclusively, black women) and their children.

The 1662 law of slavery by birth did not institute a new practice; evidence exists that some children were held in slavery from their birth well before 1662. Instead, what made the law remarkable was its disjunction from the precedent of patriarchal inheritance, which, until the passage of the law, was understood to include at least some African servants and slaves. As we will see, as late as the 1650s, some English planters treated African laborers as indentured servants, who, when freed, were entitled to own property as patriarchs in their own right. Further, the courts, both on the county level and the colonial level, acknowledged black paternity in multiple ways. In other words, prior to 1662, we can see ways that African and mixed-race servants were included in the English tradition of patriarchal inheritance.

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of both property (in the transfer of property to African men as freed indentured servants) and status (in the assumption that mixed-race children’s status was inherited from their fathers).

One way to understand the manumission of male indentured servants (whatever their race) was as the conferring of the status of “patriarch” onto a former dependent. The property (including land, clothes, and corn) distributed to freed male servants was, in part, an effort to create independent households (headed by these newly landowning men) in the colony’s hinterland. Property transferred to female indentured servants also fed into this tradition of patriarchal property ownership. During the seventeenth century, English female indentured servants were expected and largely able to immediately marry upon the completion of their term of service; therefore, their property was absorbed into their husband’s estate, augmenting his status as patriarch and property holder.

For some masters, this conferring of patriarchal status – i.e., ownership of inheritable property and authority over dependents – included male servants of African descent as well. For example, in 1656, two black men, Phill and Nicholas, were freed from temporary servitude and given the basic tools of life so that they could support their children. When Nicholas Martiau died, his will decreed that “my Two Negroes Phill & Nicholas shall...be free” and that they should receive land, a cow, corn, clothes, and building supplies for houses, “for the good of them and their

126 Morgan, American Slavery, American Freedom, 223. Morgan emphasizes the abuses of freedom dues by masters, arguing that masters knew well that customary freedom dues would elevate a former servant to householder status. Simmering anger about these and other abuses, Morgan argues, erupted in Bacon’s Rebellion in 1676. Kathleen Brown argues for this connection between servitude, patriarchy, and Bacon’s Rebellion, making clear that the consolidation of white, male planter power after the Rebellion was about reframing a new definition of masculine honor that explicitly excluded men of African descent. Brown, Good Wives, Nasty Wenches, and Anxious Patriots, 174-86.

children." This explicit acknowledgement of Phill’s and Nicholas’s status as fathers was not accidental. The mention of Phill and Nicholas’s children implies an intention of patriarchal authority as well as patrilineal inheritance — Phill and Nicholas’s property would provide for the support of their children, and, in time, would become the property of those children. In another case, in 1660, Thomas Whitehead willed his clothes, two cows, a horse, and a house and land to “my negro man John.” Not only did Whitehead confer upon John the property to establish himself as a patriarch, he entrusted John with a patriarch’s responsibility as well, naming him as guardian to Whitehead’s orphan goddaughter. In both of these cases, newly freed men of African descent were understood to be, to use Mary Beth Norton’s term, “fathers qua fathers.” If, as black feminist theorist Hortense Spillers argues, enslavement was “a cultural situation that was father-lacking,” the cases of Phill, Nicholas, and John point to a brief period during which at least some black men were understood to be fathers, and their children were not “father-lacking” at all.

Along with property, status also was inheritable from one’s father, even by people of African descent in seventeenth-century Virginia. In 1655, the court of Northumberland County declared that Elizabeth Key, a mixed-race woman (variously called a “Negro” and a “mulatto” in the court records) who claimed she was being

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128 This was more property than a freed indentured servant typically received, but Martiau seemed to intend that the property be shared between Phill and Nicholas. York DOW 1, 337-9.
129 York DOW 3: 82.
130 Ibid.
131 Norton, Founding Mothers and Fathers, 143-4.
133 Brewer, By Birth or Consent, 23. Brewer emphasizes that primogeniture was about the inheritance of not only property, but also title. By extension, primogeniture was the basis for all status relationships in seventeenth-century England, both in terms of ideology and practice.
held as a “pretended Slave,” should be free. The court ruled in Elizabeth’s favor after hearing several depositions that asserted that Elizabeth was the daughter of a black woman and her English master. The court relied on the English patriarchal precedent to make its decision: “by the Comon Law the Child of a Woman slave begott by a freeman ought to bee free.” The court decided that Elizabeth Key’s status, like her name, should be inherited from her father. Elizabeth Key’s case is significant in its difference from what would become standard practice in the colony – just ten years later, her status would never have been determined along paternal lines.

Yet colonial Virginia was marked by competing practices. Simultaneously with these cases that explicitly included African and mixed-race people in the English tradition of patriarchal inheritance, other cases show an exclusion of Africans and mixed-race people from that tradition. Significantly, before the passage of the 1662 law of slavery by birth, there is evidence that many children were, in fact, considered slaves from birth. A case from 1657 shows the ways that this new practice – the enslavement of children from birth – competed with the old tradition of affording freed indentures with patriarchal status. Anne Barnhouse formally freed Mihill Gowan, a “Servant” man of African descent. Along with granting his freedom, Barnhouse gave Gowan “a male childe born ye 25th of August in ye year of our Lorde God 1655 of ye body of my negro Prosa being baptised by Mr Edward Johnson the 2d

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135 Billings, “The Case of Elizabeth Key,” 167.
136 York DOW 3: 16.
of September 1655 & named William."\textsuperscript{137} Only later in the document is it made clear that the child, William, was not intended to be Mihill’s servant or slave, but was in fact Mihill’s own son. That the property transfer was intended as a manumission was given further weight by the mention of William’s infant baptism: while the law was ambiguous at this point, it was still customary in Virginia that Christians could not be enslaved.\textsuperscript{138} While the intent of this case would seem to follow the logic of patriarchal inheritance – the son is freed along with the father – the legal mechanism by which the boy was freed was a deed, which transferred moveable property from one owner to another. Rather than relying on the assumption that the child’s status would be inherited from his father, Mihill Gowan and Anne Barnhouse used property law to achieve their aims, thus transferring ownership of the boy from Barnhouse to Gowan. The competing practices of seventeenth-century Virginia’s treatment of servants and slaves of African descent comes clear in the different ways that father and son were understood to be held in service: Mihill was considered a free man, temporarily in servitude, but his son was considered a slave from birth. Unfortunately for William’s mother Prosa, her freedom was not assured by this deal. No record survives of her fate.

The fact that Mihill Gowan had to jump through legal hoops to invent a way to free his son (rather than, as with Elizabeth Key, have the authorities assume that the child’s status was the same as the father’s, once paternity was determined) is just one example of how the emerging logic of slavery by birth had begun to percolate. Other cases point to a growing practice in Virginia, even before 1662, in which both

\textsuperscript{137} Ibid.
\textsuperscript{138} In 1667, Virginia formally declared that baptism would not free an enslaved person. Hening 2: 260.
slaveholders and the courts assumed that the children of enslaved women were
enslaved from birth. The 1644 inventory of Thomas Ludlow’s substantial estate
included “Tom a negro boy about 5 yeares old.” Similarly, William Stafford’s
inventory, also from 1644, included several “Negro” children: 4-year old Mary, 3-
year-old Elizabeth, an unnamed one-year old boy, and a 2-week-old baby boy, also
unnamed. The fact that some people of African descent were treated as indentures,
while others were treated as slaves from birth, reveals not just contradictory practices
in the ascribing of servant versus slave status. It also reveals the simultaneous
existence of two contradictory understandings of the relationship between servitude
and patriarchy. In the case of indenture, the indenture contract may have established
temporary servitude, but it also guaranteed that the servant bore the right to
participate in and benefit by the social legitimacy afforded by patriarchal

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139 York DOW 3, 108-9. The Ludlow inventory is itself evidence of the ambiguity of status amongst
black servants even as early as the 1640s. Five-year-old Tom is the only one of eighteen "negroes" in
the inventory for whom an age is unambiguously listed. Nevertheless, many of the other servants,
black and white, are listed with amounts of time (ranging from six months to twelve years) after their
names. Were these units of time referring to the person’s remaining time to serve (as seems clear with
an aging English servant, “William Ies an aultent man seasond abt 3 yrs”), or did they refer to the
person’s age (which would clearly indicate inherited slavery if such was the case for “Besse a negro
abt six months”)? Most of the time, the unit of time is listed only for children in the inventory: the
"negro boys" or "negro girls" were listed with time, while most "negroe women" and "negro men"
were not. This would seem to imply that the times listed were ages, and not remaining time to serve.
On the other hand, the case of Besse is again ambiguous, since she is not listed as being a “girl”.
Assessed values for the servants are also ambiguous. Besse has the second lowest value of any servant
listed (400 pounds tobacco): was this because she was an infant, or because she had only a short time
left to serve (as with Alice Cooke, who had 10 months to serve and was therefore valued at just 100
pounds)? The ambiguity and multiple possible readings of the Ludlow inventory make clear the
challenges for any modern reader wishing to ascribe singular meaning or clear intent to these
documents, much less to use these documents as absolute evidence of extant racism or perpetual
slavery.

140 York DOW 2: 185. For a 1655 marriage agreement which included a 5-year-old boy, along with
another boy whose age is unlisted, see York DOW 1: 265. For a 1660 sale of a black woman along
with her children, see Palmer, Wm. P. ed. Calendar of Virginia State Papers and Other Manuscripts,
1652-1781 (Richmond, 1875), 1: 2-3.
In the case of racial slavery, some people were defined by servitude as a fact of their birth—these slaves by birth would be specifically denied participation in patriarchal inheritance.

With these competing practices in place, it is perhaps not surprising that, when the House of Burgesses passed the 1662 law of slavery by birth, they did so because "some doubts have arisen whether children got by any Englishman upon a negro woman should be slave or free." The Burgesses' solution to these doubts—that a child should be free or enslaved "according to the condition of the mother"—ran counter to the principle of patriarchal inheritance upon which English property law was based. Thus the question arises: if the law of slavery by birth contradicted the tradition of patriarchal inheritance, upon what precedent was the new law based? British colonial law, including Virginia law, was at once conservative and creative: the lawmakers reacted to existing conditions and legal precedents, while still needing to provide interpretations and new laws that fit their new context. Living in this collision of old precedents and new conditions, the Burgesses created new ways to expand their own interests as property holders and masters over unfree labor. As we will see, the Burgesses used other existing English laws—specifically, bastardy law—to make sense of their novel departure from English property law in 1662.

Lisa Zunshine, commenting on historians' demarcating the Euro-American long eighteenth century as "the age of illegitimacy" (because illegitimacy rates increased significantly during that period), argues that the era is better labeled "the

141 Winthrop Jordan argued that indenture was understood as a temporary cessation of one's birthright of freedom through consensual contract, because, from the sixteenth century, "personal freedom had become the normal status of Englishmen." Jordan, White Over Black, 49.
142 Hening 2: 170.
143 Ibid.
age of illegitimacies” because of “the multiplicity of cultural meanings of bastardy.” As a concept, bastardy was and is an exploding category, imbued with multiple meanings and conveying multiple discourses. In other words, “illegitimacy” is more than just the birth of a child to unmarried parents – instead, it encompasses all of the cultural meanings, anxieties, and discourses attached to illicit sexuality and outlaw reproduction. In seventeenth-century Virginia, the concept of bastardy became inextricably linked with the concept of servitude, and particularly female servitude. As we will see, bastardy was inextricably connected in seventeenth-century legal discourse with servitude, sexuality, and, increasingly, race. As such, bastardy became the legal and discursive basis for slavery by birth. Starting with the first local fornication law, passed in 1643, continuing to the passage of the 1662 law of slavery by birth, and repeated in laws throughout the rest of the seventeenth and eighteenth century, Virginia’s legal system connected and even conflated bastardy, servitude, sexuality, and, increasingly, blackness.

Early modern English jurists recognized the internal contradictions of English inheritance traditions and bastardy laws. In his seminal treatise on English

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144 Lisa Zunshine, *Bastards and Foundlings: Illegitimacy in Eighteenth-Century England* (Columbus: The Ohio State University Press, 2005), 2. While they are archaic, I use the terms “bastard” and “bastardy” because those were the terms used in the courts – and, as I argue, they had specific meanings in their specific cultural context. I do not intend for those terms to be dismissive of or disrespectful towards unmarried women or their children. On the “age of illegitimacy,” see Peter Laslett, Karla Oosterveen, and Richard M. Smith, eds. *Bastardy and Its Comparative History: Studies in the history of illegitimacy and marital nonconformism in Britain, France, Germany, Sweden, North America, Jamaica and Japan* (Cambridge, MA: Harvard University Press, 1980). Elsa Hambleton argues that Puritan New England was able to avoid an increase in illegitimacy because of the rightful authority of the church: Elsa Hambleton, *Daughters of Eve: Pregnant Brides and Unwed Mothers in Seventeenth-Century Massachusetts* (NY: Routledge, 2004). Like Zunshine, other historians resist the idea of an “age of illegitimacy.” Ann Twinam finds “the age of illegitimacy” to be an inappropriate concept for colonial Spanish America: Ann Twinam, *Public Lives, Private Secrets: Gender, honor, Sexuality, and Illegitimacy in Colonial Spanish America* (Stanford, CA: Stanford University Press, 1999). Clare A. Lyons sees an explosion of illegitimate births in eighteenth-century Philadelphia, but attributes them to a local embrace of democratic values, rather than a universalized “age”: Lyons, *Sex Among the Rabbite*. 

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inheritance law, Henry Swinburne wrote that, like property, even the degraded status of slavery should follow the paternal line of inheritance: "Of all men which be destitute of libertie or freedome, the slave is in the greatest subjection.... even his Children also are infected with the Leprosy of their Father's Bondage." This would indicate that the 1662 law of slavery by birth countered English patriarchal precedent. Nevertheless, Swinburne went on to note that the English law itself was contradictory: the civil law stated that children's status followed the mother, while the common law held that the child's status followed the father's. Later in his treatise, though, Swinburne offered a clue as to why the Virginia Burgesses decided to make slavery inherited from the mother: "A Bastard shall not be bound, though the Father were a Bond-slave, because the Law doth not acknowledge any Father in this Case: For by the Law a Bastard is sometimes called filius nullius, the Son of no Man; sometimes filius vulgi, the Son of every Man." In other words, a bastard child's status as a servant could follow only the mother's status, because a bastard child was "the son of no man." That child could claim neither the father's property nor his status, and so defaulted to the mother's status. The Virginia law of slavery by birth would follow the same logic, though it distilled that logic through the lens of race – the children of (free) white men and (enslaved) black women were not their father's

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145 Henry Swinburne, *A treatise of testements and last wills, Compiled out of the Laws Ecclesiastical, Civil and Canon, as also out of the Common Laws, Customs and Statutes of this Realm.* 5th ed. London: n.p., 1728. Eighteenth Century Collections Online. Gale. 5 June 2013. <http://find.galegroup.com.proxy.library.vcu.edu/infomark.do?&source=gale&prodId=ECCO&userGroupName=viva_vcu&tabID=T001&docId=CW125320327&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>. Several historians have drawn the connection between Swinburne’s treatise and Virginia’s slave law. Morris, *Southern Slavery and The Law*, 43-44. Billings, “The Cases of Fernando and Elizabeth Key.” 472. My point is not to argue that Swinburne’s essay was the *basis* for Virginia’s law, but instead was part of the legal print culture from which the law sprang. On the Anglo-American legal print culture, especially legal treatises, see Brewer, *By Birth or Consent*, 369-75.

146 Swinburne, *A treatise of testements and last wills*, 76.
children, but instead, fatherless. The law implied that all enslaved women’s children were legal bastards, having no recourse to their father’s property or status – and, that as such, they were also slaves themselves.

The 1662 law of slavery by birth was rooted in a local precedent that linked, both legally and discursively, illicit sex, bastardy, and servitude. This linkage emerged gradually and locally in Virginia; significantly, the earliest bastardy cases in the colony were not linked to servitude. Virginia’s first fornication laws were passed in 1643; prior to 1643, the courts followed English common and ecclesiastical law when adjudicating fornication and bastardy cases. Therefore, in the earliest decades of the colony, fornication and bastardy were treated as moral crimes and were punished with corporal punishment and public penance. For example, in 1627, when John Ewins and Jane Hill were charged with fornication by the Virginia General Court, Ewins suffered 40 lashes, and Hill was required to confess her sins while standing before the parish wearing a white sheet.147

By the middle of the seventeenth century, with the growth in the servant population, the enforcement of fornication law had shifted from concern over morality and religious purity to control over servants.148 In 1643, two local

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fornication statutes, the first passed in the colony, addressed the crime in two ways. The first of these fornication laws formally established British ecclesiastical law for morality crimes in the colony. The statute grouped fornication together with drunkenness, and framed both as crimes against God and nature: these were “high and foule offences” that amounted to “the abuse of God’s creatures.” While this law was passed, it was little exercised: in York County, penance and ducking (the punishments meted out in moral trials) were used only a handful of times after 1643, and never after 1661. Throughout the colonial period, few cases involving solely fornication charges were brought before the county courts: the clearest evidence of fornication was the birth of an illegitimate child, and those cases involved bastardy charges. Those cases of fornication that were brought before the court typically crossed some social boundary. For example, in 1646, the York County court summoned Edward Wright because he “did lye with Joane Evans his servant mayde.” The case against Wright was never pursued – perhaps his public humiliation in court was deemed punishment enough.

If the first 1643 fornication statute had little impact, the second 1643 fornication statute, which outlawed marriage and fornication by servants, proved foundational to how the colony would deal with servant sexuality. The servant

\[149\] Hening 1:240. While this statute focused on servant marriage, its enforcement took the form of bastardy indictments.

\[150\] After 1643 in York County, penance and ducking were sentences in a total of seven cases involving fornication. Four of those cases involved irregular marriage – marriages not recognized by the church, so that the couple was said to be both married and living in fornication. York DOW 2: 350, 387. On the prevalence of informal marriages in the southern colonies, see Godbeer, *Sexual Revolution in Early America*, 120-22. Two of the seven cases involved extraordinary circumstances – one was a case of interracial sex, and the other involved an accusation of infanticide. York DOW 3: 2, 120, 125, 128. Only one of the seven cases – the 1657 bastardy and fornication trial of Elizabeth Turner – involved the kind of cases that would dominate the court's register after 1643: a servant woman accused of bearing a bastard child. Besides penance, Turner was also sentenced to double her term of service. In other words, for Turner, both statutes were applied to her case. York DOW 3:1.

\[151\] York DOW 2: 188.
marriage law introduced two new priorities in the disciplining of sexuality in the colony, both of which focused on servant sexuality. First, the fact that there were two separate statutes was significant: from the first passage of local fornication and bastardy laws, the law treated servant sexuality differently than the sexuality of free people. Framed as servants’ crimes, fornication and secret marriage were seen to cause “many great abuses & much detriment...against the law of God and likewise to the service of manye masters.”\textsuperscript{152} Second, the statute punished servant women convicted of fornication or secret marriage with \textit{more service}, effectively compounding servants’ indentures as punishment for illicit sex. This made the surveillance and disciplining of servant sexuality a site of potential profit for masters. With the 1643 fornication laws, the Virginia Assembly began to create a legal environment that conflated illicit sexuality, illegitimate births, and servitude.

The 1643 laws regulating servant marriage would be passed again, with minor adjustments, in 1652, 1658, and 1660.\textsuperscript{153} Undergirding the multiple laws barring secret marriages in the mid-seventeenth century was a desire to limit the birth of bastard children by servants. Tellingly, the Assembly referred to the 1658 version of the law as “[the act] touchinge Secrett marriages and Basterdizinge.”\textsuperscript{154} The birth of a child by a servant woman could be seen as virtually cataclysmic: in a 1661 case, the hiding of a bastard child born to an indentured woman was decried as a crime “sufficient to ruine a Countrey.”\textsuperscript{155} The consummation of an illicit marriage

\textsuperscript{152} Hening 1:252-3.
\textsuperscript{154} Kukla, “Some Acts not in Hening’s \textit{Statutes},” 83.
\textsuperscript{155} York DOW 3, 128.
(culturally defined not just by elopement, but by the pregnancy and childbirth of the woman involved) or birth of a child to an unwed indentured mother signaled a loss of control by the master over his servant, and a loss of time and labor during the servant’s pregnancy and lying-in.\textsuperscript{156}

The enforcement of the various secret marriage and fornication laws exposes the assumptions the undergirded the laws. First, despite the existence of laws barring fornication by free women and men, prosecutions focused almost exclusively on servant women and their partners.\textsuperscript{157} Following the passage of the 1643 fornication and servant marriage laws (and their multiple reiterations), the overwhelming majority of cases tried in York County involved servant women: as early as the 1650s, every single bastardy trial of that decade involved a servant woman.\textsuperscript{158} That

\textsuperscript{156} Mary Beth Norton has argued that seventeenth-century Virginia marriages were considered legitimate only when they were fertile. By extension, then, pregnancy was a critical marker of a “real” marriage: “In the eyes of contemporaries, the best evidence of a proper marriage was provided by its offspring.” Mary Beth Norton, “Communal Definitions of Gendered Identity in Seventeenth-Century English America,” in Through a Glass Darkly: Reflections on Personal Identity in Early America, ed. Ronald Hoffman, Mechal Sobel, and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997), 60-61. Masters’ loss of servant women’s labor during pregnancy and lying-in will be discussed extensively in Chapter 2.

\textsuperscript{157} Mary Beth Norton has found that, in the seventeenth century, the Chesapeake colonies saw a far greater number of bastardy cases than were tried the New England colonies. She argues that this was because single women held very different statuses in the two regions: in the Chesapeake, single women were typically indentured servants, while in New England (with its more traditional family structures), single women were free daughters. Where pregnant single women in New England could expect to get married (thereby conferring legitimacy on their child), pregnant single women in the Chesapeake were charged with bastardy. Norton does not discuss the political implications of these different patterns: I argue here that, in the context of indentured servitude, illegitimate births had not just social implications but political and cultural implications as well. Mary Beth Norton, Founding Mothers and Fathers, 336-7. For another discussion of master’s anxiety over servant women’s sexuality, see Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 94-104.

\textsuperscript{158} In the cases brought before the York County court between 1640 and 1700, there is a distinct pattern of targeting servant women for fornication and bastardy prosecutions. In the 1640s, only 16.66\% of the 6 cases involved servant women (note that 5 of the remaining cases involved irregular marriage – couples said to be living in fornication because their marriages weren’t recognized by the church). But, after the passage of the 1643 laws, the court’s prosecutions shifted to servant women. In the 1650s, fully 100\% of the 7 total fornication and bastardy cases were brought against servant women. In the 1660s, 84.21\% of the 19 cases were brought against servant women. In the 1670s, it was 94.73\% of 19 cases. In the 1680s, it was 75.86\% of 29 cases, and in the 1690s, it was 86.36\% of 22 cases. In the 1700s, the numbers skew very differently: only 38.63\% of the 44 cases were brought
bastardy would be construed as a problem exclusive to unfree women reflects Virginia authorities’ assumption that single free women who became pregnant would marry the father of the child.  

Second, the enforcement of the fornication and servant marriage laws over the years show that the actual focus of the courts was the birth of bastard children, not illicit sex. If illicit sex were the primary concern, then fornication would have caused greater apprehension among the authorities than it actually did. In reality, starting with the first York County court records in the 1640s, fornication was treated as a pro-forma charge, punishable only when a pregnancy was confirmed or a child was born. Further, there was not a single prosecution for secret marriage in the history of York County, meaning that secret marriage was either a vanishingly rare phenomenon, or that it was not considered a meaningful threat. Instead, the secret marriage law effectively barred any woman (or man) serving an indenture from marrying; therefore, servant women’s children were automatically considered bastards. It seems clear that curbing or punishing illegitimate births by servants was against servant women; over the course of the eighteenth century, the numbers would continue to dwindle. One reason for this is the shift in the laboring population from white servants to slaves of African descent. Further, as will be discussed further in this chapter, this shift in prosecutions away from servant women can be explained by a shift in priorities by the courts: free white and mixed-race women’s childbearing would become the focus as the courts became ever more focused on the status of mixed-race children.

159 Indeed, premarital pregnancy rates were high in the seventeenth-century Chesapeake. Lois Green Carr and Lorena Walsh found that 1/3 of Maryland brides were pregnant during this period. Carr and Walsh, “The Planter’s Wife,” 32. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 194.

160 The York County records make clear that fornication was a pro-forma charge. Of 379 total bastardy, fornication, and miscegenation cases between 1648 and 1789, 100 included a specific charge of fornication (often combined with other charges). Of those 100 fornication cases, in only 9 cases was there definitely no child born. Furthermore, 4 of those 9 cases were cases of irregular marriage, all occurring in 1648, where each man was accused of “living in fornication” with a woman that the court specifically referred to as the man’s “wife” (i.e., their marriages weren’t recognized by the colonial government, either for religious reasons or because the marriages were performed casually by the participants). Of the remaining 5 cases, 2 were dismissed, 2 were left incomplete, and one was a case of miscegenation. Clearly, in the overwhelming majority of cases, the evidence of fornication was pregnancy or birth.
the real focus of these statutes, as the number of bastardy charges increased with each passing decade.

Finally, as Virginia framed fornication and bastardy as servants’ crimes, it simultaneously whittled away at paternal accountability for the care and support for the illegitimate children born of those unions, virtually guaranteeing that children born to servant women would themselves become indentured servants into adulthood. In all of the secret marriage statutes, as well as later bastardy statutes, men fathering bastard children were held responsible for those children’s support. Nevertheless, the actual prosecutions show that a decreasing number of men were named in bastardy prosecutions or held responsible in any way.\(^{161}\) For all intents and purposes, after 1650, bastardy became not just a servant crime, but a female crime. In York County, fathers were named in bastardy cases at a decreasing rate, and, more significantly, by

\(^{161}\) The following chart shows the precipitous decline of the court’s determination of paternal responsibility for bastardy. Not all of the men punished were named as the purported fathers – some were, according to a 1723 statute, the owners of houses in which unreported births of bastard children occurred (though it is possible that the two categories overlapped). Cases were left incomplete for a number of reasons: they may have been inconclusive, the case may have been dropped, the mother may have been able to support the child alone, or the case may have ended in the marriage of the parties or some other settlement outside of court. Acquittals are counted as completed cases.

<table>
<thead>
<tr>
<th>Decade</th>
<th>Total number of cases</th>
<th>Total cases completed in records</th>
<th>Men punished (includes purported fathers and other men punished)</th>
<th>Percentage of completed cases in which a man received punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1640s</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>100%</td>
</tr>
<tr>
<td>1650s</td>
<td>7</td>
<td>6</td>
<td>4</td>
<td>66%</td>
</tr>
<tr>
<td>1660s</td>
<td>19</td>
<td>14</td>
<td>5</td>
<td>36%</td>
</tr>
<tr>
<td>1670s</td>
<td>20</td>
<td>19</td>
<td>6</td>
<td>32%</td>
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<td>22</td>
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<td>27%</td>
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<td>15%</td>
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<tr>
<td>1700s</td>
<td>43</td>
<td>37</td>
<td>3</td>
<td>8%</td>
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<tr>
<td>1710s</td>
<td>27</td>
<td>23</td>
<td>3</td>
<td>13%</td>
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<td>30</td>
<td>21</td>
<td>2</td>
<td>10%</td>
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<tr>
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<td>1740s</td>
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<td>1760s</td>
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</tr>
<tr>
<td>1770s</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>33%</td>
</tr>
</tbody>
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the 1690s, only 15% of bastardy cases resulted in any man being punished or otherwise held responsible for the support of the child, even if a father was named. This pattern would hold throughout the eighteenth century, so that, by the 1730s and continuing through the 1760s, virtually no men received any punishment for bastardy.

In March of 1662, Virginia’s fornication laws were rewritten again, this time outlining specific bastardy statutes and making abundantly clear the discursive links between bastardy, servitude, and female sexuality. The Virginia statutes were overhauled that year, as the colony’s leaders realigned with the crown during the Restoration.\footnote{Pagan, Anne Orthwood’s Bastard, 44-8. Jon Kukla outlines the process by which Virginia redrafted its laws in the wake of the Restoration, beginning in 1660. Kukla, “Some Acts Not in Hening’s Statutes,” 76-97. Many of the laws passed in 1662 – including the law of slavery by birth – seem to be an effort to make the law match up with current practice. This helps to explain the delay between the courts’ focus on servant women in bastardy cases and the passage of an actual bastardy law.} The Restoration-era laws would cement these existing practices in legal language that focused even more clearly on servant women. Once again, secret marriages were banned, but the new law not only banned fornication, but also laid out specific punishments for the birth of bastard children.\footnote{Hening 2: 114-5.} These new statutes represented a culmination of the process begun in 1643, transforming fornication from a moral crime punishable by penance to a servant’s crime punishable by the extension of service.

Despite being written during the Restoration overhaul of Virginia’s statutes, the new laws would build upon the long-standing conflation of servitude with illicit sex and illegitimate births. First, the new punishments for bastardy would specifically target servant women. Further, in the new statutes, fathers were nominally held responsible for child support, but, in practice, men were rarely named
as responsible in the court records. Finally, in the new statutes, service was again the primary punishment for all involved in bastardy cases – mothers, fathers, and infants. The 1662 statutes cemented the relationship between bastardy and servitude, and rationalized that relationship through clear sentencing structures.

While servant women’s bearing of bastard children had been punished by an extension of terms of service since 1643, the Restoration-era rationalization of Virginia’s laws created a standard which guaranteed that women bearing bastard children would be sentenced to two more years of service. Prior to 1662, servant women who bore bastard children were punished by the county courts with varying amounts of extra service, ranging from no service at all to a year of added labor to “double the time of service.” After 1662, punishment by extension of service became far more cut and dried: servant women convicted of bastardy saw two years added to their indenture.

For example, when Mary Bell was convicted of bastardy and fornication in 1674, she was ordered to serve her master, Edward Baptist, “2 compleat years at the expiration of her first time.” Some women saw extension piled on top of extension. Sarah Paskins was convicted of bastardy in 1673 and sentenced to two extra years of service. When she “had a second bastard child in

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164 Hening 2: 115, 166. According to the law, if a purported father was a servant, he could be required to serve extra time in lieu of paying for the support of the child.

165 Troth Ebbs was convicted of bastardy in 1658, but served no extra time because the infant died. York DOW 3: 43. Mary Gunnell served one year for bearing a bastard child in 1660. York DOW 3: 78, 88, 91, 92, 94. On the other hand, in 1657, both Ellianr Bray and Elizabeth Turner were required to serve double their original time of service. York DOW 2: 324; DOW 3: 5. The 1662 cemented the preexisting practice of demanding labor as punishment for bastardy, even while establishing two years as the standard punishment for each bastard birth. For more on why two years was seen as an appropriate sentence, see chapter 2.

166 Hening 2: 114-5. Free women convicted of bastardy paid a fine.

167 York DOW 5: 68. The two-year sentence was observed by the Council and General Court of the colony as well. See the 1670 case of Willimot Rgerman: H.R. McIlwaine, ed., Minutes of the Council and General Court of Colonial Virginia, 2nd Ed. (Richmond: Virginia State Library, 1979), 238.

168 York DOW 5: 54, 56.
the time of her first service," she was sentenced to yet another two years of service.  

Free women were to be fined or whipped, but, significantly, after the passage of the 1662 bastardy laws, not a single free woman was convicted of bastardy in York County until 1694.  Because it was meted out primarily to women serving indentures, the punishment for bearing bastard children was, in practice, a means of extracting ever more labor from servant women.

In practice, the requirement of service extended to servant women’s children as well as to the woman herself. If, in Swinburne’s term, the bastard child was *filius nulius* (the child of no one), then women bearing illegitimate children had little recourse to gain financial or moral support from the father of their children. Further, as we have seen, in shifting focus in bastardy cases to servant women, the courts made little effort to establish paternity or to garner paternal support in these cases. Therefore, if bastard children could not be supported by the mother and in the likely absence of paternal support, that child would be promptly indentured out until adulthood (even as early as the age of weaning).  

Infant indenture seems even more likely if the woman was a servant and still had time left to serve her master or mistress – the courts would consider her unable to support the child. For example, when Mary Denham was convicted in 1665 of bearing a bastard child while she was indentured to Ashaell Batten, not only was she sentenced to two extra years of service, but her child was “kept under the charge” of the churchwardens of Maston.

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169 York DOW 5: 91.

170 Significantly, the first free woman convicted of bastardy after the passage of the 1662 laws was a free woman of color, Mary Catilla, whose stepfather paid her fine in 1694. York DOW 9: 341.

Parish until the age of 21. Servant women’s children were routinely separated from their mothers, considered wards of the parish, and sold into indentures until they reached the age of majority. If, as Edmund Morgan remarked, the practice of indentured servitude taught Virginia masters to “treat men as things,” it certainly taught them to separate mother and child as well as to claim the labor of children as a result of their birth.

This was the context into which the 1662 law of slavery by birth was passed. Since 1643, Virginia’s legal structure had forged a legal and discursive link between servitude, illicit sex, and illegitimate births. Servant sexuality was treated as fundamentally different from — and more harmful than — the sexuality of free people. The courts targeted servant women especially, both by prosecuting them at a much higher rate than free women, and by ceasing to demand paternal responsibility for children’s support. Finally, the extension of service became the standard punishment for bastardy. This was true for children as well as for servant women: bastard children were destined to a life of service, at least until adulthood, as a result of the conditions of their birth. Bastardy had become synonymous with servitude, both in the targeting of servant women and in demanding service from women and children as punishment for the crime.

The 1662 law of slavery by birth was passed just six months after the new bastardy statutes, also as a part of the Restoration-era overhaul of the colony’s laws. Seen in this context, where servitude and illegitimacy were inextricably linked, the law of slavery by birth was an extension of existing colonial law, even as it was a

172 York DOW 4: 28, 52. As we will see later in this chapter and in Chapters 2 and 3, English servant women fought hard — against considerable odds — to maintain ties with their children.

173 Morgan, American Slavery, American Freedom, 129.
repudiation of the tradition of patriarchal inheritance. The law of slavery by birth specifically targeted black women and their children: "Negro womens children," the title of the law stated, were "to serve according to the condition of the mother." 174 The law’s explanation, though, drew the connection between this new definition of slavery and the bastardy and fornication laws which preceded it: "If any christian shall commit fornication with a negro man or woman, hee or shee soe offending shall pay double the fines imposed by the former act." 175 Fornication and bastardy were inherent to the makeup of the law of slavery by birth.

It is important to remember that the 1662 law of slavery by birth did not invent the idea of inherited slavery; nevertheless, the law stands as the first time the practice was actually enshrined in the legal code of an English colony, and its impact should not be underestimated. 176 Further, because the law was not the first to treat black women as a fundamentally different from white women, it also must not be construed as having originated racial slavery or racial difference. 177 Indeed, as with bastardy law, the law of slavery by birth was passed to standardize existing practice, as conflicting opinions arose as to the status of mixed-race children: the law was

175 Ibid. The implications of this new legal concept – the banning of interracial sex – will be discussed in more detail later.
176 Morris, Southern Slavery and the Law, 43. Morris acknowledges the roots of the 1662 law of slavery by birth in bastardy law, but argues that, ultimately, the law of chattel property was more important in the practice of slavery as an institution. The treatment of slaves as chattel property will be discussed in the second and third sections of this chapter; I argue that even treating slaves as chattel was rooted in enslaved people’s reproductivity.
177 Kathleen Brown argues that, by taxing black women’s labor differently than white women’s labor, the 1643 tithing law was a significant step in the creation of racial slavery via the deployment of gender ideology. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 116-128.
passed because, according to the Burgesses, “some doubts have arisin whether
children got by any Englishman upon a negro woman should be slave or ffree.”178

There were clear connections between the law of slavery by birth and the
existing conflation of servitude and illegitimacy. Legally, bastard children were
children without fathers; the appellation of enslaved children as “negro women’s
children” (in other words, as children who had only mothers) framed those children as
bastards. In the absence of fathers, white bastard children had been required to serve
into adulthood; such was the case for children of enslaved black women, except those
children’s service, by virtue only of their mother’s race, would be life-long. The
colony’s bastardy laws had asserted a hierarchy between free and servant women’s
sexuality and reproduction, had punished servant women’s breaking of the law with
even more service, and had demanded service from children as a consequence of their
birth. The targeting of black women and their children in the 1662 law of slavery by
birth was an extension of these practices. In this way, the law followed a perverse if
comprehensible logic: Kathleen Brown points out that it was simply not possible to
extend the term of service of women who were “already understood to be serving for
life.”179 The law of slavery by birth, by explicitly targeting “negro women” and their
children, racialized the hierarchy of women’s sexuality: if white servant women’s
sexuality was to be disciplined, enslaved black women’s sexuality would be exploited
by this law.

178 Hening 2: 170. The fact that the 1662 law was passed amidst the Restoration-era overhaul of
Virginia’s laws, many of which were out of date or contradictory, further implies that the practice was
already in effect prior to the law’s enactment. It is significant, though, that while the overhaul of
Virginia laws was aimed (and largely succeeded) at making Virginia’s statutes hew more closely to
English law, the law of racial slavery by birth stood outside of English precedent. Pagan, Anne
Orthwood’s Bastard, 47-8.

179 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 131.
The key difference in the 1662 law of slavery by birth was the expansion of the discursive link between servitude and bastardy to include race as well. Three laws passed concurrently with the 1662 law of slavery by birth make clear that the intent of the new law was to conflate race and servitude – in other words, to use the regulation of reproduction and sexuality in order to create a new definition of racial slavery. First, a new tithing law specifically targeted black women’s labor, asserting a fundamental difference between black and white labor and laborers. Second, the Assembly designed specific punishments for masters who fathered bastards by white servant women. And, finally, within the body of the law of slavery by birth itself, Virginia passed its first law barring interracial sex. An examination of these three laws reveals the attempt by the Assembly to define racial slavery through the regulation of sexuality and reproduction.

The 1662 tithing law overturned a 1643 law that taxed black women’s labor equally with men’s. The new tithing law would seem to be unrelated to the question of slavery by birth, but in fact it shows the ways that Virginia’s master class was reframing plantation labor in terms of race and birth. The intent of the original tithing law was to tax planters for all of their laborers, defined in 1643 as all men and all “negro women” over the age of 16.180 Kathleen Brown argues that the 1643 tithing law was a crucial initial step in defining racial slavery, significant in its particular focus on gendered labor: “The tax levied on African women in 1643 was the earliest distinctive and clearly unfavorable treatment of African people to be enshrined in law in Virginia.”181 According to the new 1662 tithing law, some masters had been

180 Hening 1: 242.
employing white women in their tobacco fields, in order to capitalize on their tax-free labor. The new law would tax not only black women, but any and all women who “worked in the ground.” While the new taxation law would be short-lived, it reveals the inner workings of the nascent ideology of racial slavery. With slavery by birth, slave status (and therefore taxable labor) was defined not as a category of labor and laborers, but as a status inherited at birth. It did not matter what kind of labor one did; what mattered was one’s birth status. The law of slavery by birth had made the 1643 tithing law obsolete.

Second, during that same session in December 1662, the Virginia legislature disallowed masters from claiming servant women’s extra labor if the woman named them as the father of their child. The law did limit masters’ ability to abuse their power: “late experiente shew that some dissolute masters have gotten their maides with child.” Nevertheless, the law was intended to protect masters as a class, while still punishing servant women for bearing children: concerned that “if a woman gott with child by her master should be freed from that service it might probably induce some loose persons to lay all their bastards to their masters,” the Burgesses required that the woman’s extra service be sold to the parish. To further illustrate the ways that this law actually protected masters, very rarely in York County’s colonial history was a master named as fathering a servant woman’s child, and no such cases were

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182 Hening 2: 170. Kathleen Brown argues that the 1662 taxation law was rescinded because it was unenforceable: “crafting individual definitions of tithability based on labor performed rather than on the sex of the laborer” proved too onerous a task for county courts. Brown, Good Wives, Nasty Wenches, Anxious Patriarchs, 120-2.
183 Hening 2: 167.
184 Ibid.
185 Ibid.
heard after 1700. One of those rare cases illustrates the gender, race, and status politics imbedded in the 1662 law. In that 1687 case, a recently freed servant named Phillis named her former master, Daniel Taylor, as the father of her child. While Phillis was punished with 18 lashes, Taylor was not punished at all. Since Phillis is listed in the court records without a surname, it is likely that she was a free woman of African descent. If this is the case, it is possible that the court heard the case as a way to censure Taylor for having a sexual relationship and fathering children with a free woman of color. Ultimately, that the law nominally protected white women from sexual abuse by their masters only underscores the fact that black women had no such legal protection from their masters. Masters not only claimed the labor of black

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186 There are five extant cases in the York County records of masters being named as the father of their servants' children after the passage of the 1662 law. In two of those cases, the court did hold the master responsible for the bastardy. See the 1662 case of Mary Minshall (York DOW 3: 175, 176) and the 1680 case of Elizabeth Morgan (York DOW 6: 236). Tellingly, two of the five cases are actually disputes between masters, both occurring in 1697: the women, now indentured to new masters, accused their former masters of fathering their bastard children. In other words, these cases were not examples of masters being punished for fathering bastard children, but disputes over who would provide support for the child. See the lawsuit between Francis Callowhill and the estate of William Kinard (York DOW 10: 360, 369, 404, 433-4) and the bastardy trial of Sarah Wood (York DOW 10: 406). The last case is the case of Phillis and Daniel Taylor, discussed below.

187 York DOW 8: 43. While Phillis was indentured at the time of conception, she had been freed by the time of the suit. Therefore, since Taylor could not claim to have lost any labor during her lying in, Phillis was not subjected to additional years of service.

188 Ibid.

189 Sexual access was part of the very definition of slave ownership. Sharon Block emphasizes the way that "mastery" was constructed in early American meant that female servants and slaves were "prime targets for sexual coercion by their masters." Block, Rape and Sexual Power in Early America, 64-74. Kirsten Fischer notes that the violence meted against slaves (including rape) was far greater than that suffered by white servants; sexualized violence itself was a powerful shaper of racial ideology. Fischer, Suspect Relations, 160, 189. Kathleen Brown points out that the law did not recognize the rape of enslaved women (as opposed to free and indentured white women) because "no man was recognized as being injured by the offense." Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 210. Black women's historians and black feminists have emphasized the constant threat of rape against enslaved women and girls was a fundamental aspect of life both during and after slavery: Darlene Clark Hine, "Rape and the Inner Lives of Southern Black Women: Thoughts on the Culture of Dissemblance," in Southern Women: Histories and Identities, ed. Virginia Bernhard, Betty Brandon, Elizabeth Fox-Genovese, and Theda Perdue (Columbia: University of Missouri Press, 1992), 177-89; bell hooks, Ain't I a Woman: Black Women and Feminism (Boston: South End Press, 1981), 24-9; Thelma Jennings, "'Us Colored Women Had to Go Through a Plenty': Sexual Exploitation of African-American Slave Women," Journal of Women's History 1 (Winter 1990): 45-74; Brenda Stevenson,
women who they impregnated, whether by rape or by coercive sexual relations, but they also gained the life-long labor of her child.  

The most important legal addendum to the 1662 law of slavery by birth was embedded in that law itself: the introduction of the first anti-miscegenation edict in the entire body of English law. The law of slavery by birth had two parts. The first, which defined inherited slavery, declared that “all children borne in this country shalbe held bond or free only according to the condition of the mother.”

The second part of the law declared that “if any Christian shall committ fornication with a negro man or woman, hee or shee soe offending shall pay double the fines imposed by the former act.” As we will see, if the law of slavery by birth was intended to create a dualistic racial system, in which whites were assumed to be free and blacks were assumed to be enslaved, then interracial reproduction was newly problematic.

Prior to 1662, there was no legal bar against interracial sex or interracial reproduction. There is some evidence that interracial sex was considered an especially egregious form of fornication before 1662. For example, in 1630, Hugh Davis was whipped “for abusing himself to the dishonor of God and shame of Christians, by defiling his body by lying with a negro.” On the other hand, in

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190 Sharon Block argues that master-slave sexual relationships, even when consensual, always included an element of coercion. Block, *Rape and Sexual Power in Early America*, 64-74.


192 Hening 2:170.

193 Ibid.

194 Hening 1: 145. This often cited case has been interpreted as some of the first evidence of racism in the colony. Morgan, *American Slavery, American Freedom*, 333.
1643, Thomas Tiemer fathered a child with an unnamed free woman of color. The case was treated as a moral crime. Tiemer was required to do public penance, and the woman was unpunished, a sentence no different than any other free couple convicted of bastardy at the time. The Tiemer case would indicate that interracial sex and reproduction was not problematic as late as the 1640s. The 1662 antimiscegenation law ended these competing legal practices, but it did not end interracial relationships, of course.

The 1662 anti-miscegenation law, because it was coupled with the law of slavery by birth, linked bastardy and sexuality to race in the creation of inherited racial slavery. The effect of this linkage was manifold. First, white women's reproduction would be increasingly disciplined as a means of maintaining the color line. As we will see, after 1662, the courts would focus on punishing (increasingly harshly) white women who bore interracial children. The advent of slavery by birth and the institution of antimiscegenation laws required the disciplining of white women's sexuality. This discipline took the form of bastardy and miscegenation prosecutions for white women who dared to cross the color line. As Ann Laura Stoler argues, in a colonial context, "the sexual choices of white women were at issue; they are desired objects, but unruly desiring subjects as well." More importantly, white women's "issue" was at issue as well: the children that were products of these relationships needed to be categorized, accounted for, and, in a colonial labor economy, exploited.

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195 York DOW 3: 2.
196 A case in 1640, involving Robert Sweat and an unnamed "negro servant woman" followed the same pattern. McIlwaine, Minutes of the Council and General Court, 483.
197 Stoler, Race and the Education of Desire, 41.
Second, the color line was permeable in the other direction, as white men were able to father children with enslaved women with impunity, knowing that those children would inherit the status of their mother. Cases like Thomas Tiemer's – where white men were held responsible for the birth of interracial children – would be virtually unheard of after 1662. This permeability of the anti-miscegenation law must not be underestimated: references to so-called “mulatto” slaves occur throughout the colonial record. Examples abound of these children, the daughters and sons of enslaved black women and unknown white men, such as in 1718, when Thomas Jones sued for ownership of “negro Women 4 mulatto Children & a parcell of Plate.”

Ann Laura Stoler points out that discourses about interracial sex “were not discourses designed to find a solution.” In other words, antimiscegenation laws were not meant to end the practice outright, but instead to police the boundaries of European group identity by defining outsiders as dangerous, polluting, and “abominable.” The law of slavery by birth did not end interracial sex, but instead created two categories of interracial children: the interracial children of enslaved women were chattel slaves, while the interracial children of white women were dangerous challenges to racial purity.

After 1662, the rule that one’s status was determined by the status of one’s mother was repeated, solidified, and expanded in the statutes, and, even as the transatlantic slave trade flourished, the principle of slavery by birth became the

198 York DOW 15, 340. That these women and their children had been reduced to the status of objects is clear in this example: arranged in a series, they were the linguistic equivalent to “a parcell of Plate.”
199 Stoler, Race and the Education of Desire, 46. In fact, Stoler’s Foucauldian reading of antimiscegenation statutes suggest that the laws created desire, rather than curtailing it. Writes Stoler, “A basic tension in the sexual politics of colonial states was the promise of new possibilities for desiring male subjects and objects for them, but implemented policies that simultaneously closed those possibilities down.” Stoler, Race and the Education of Desire, 178-9. See also Parent, Foul Means, 116.
central logic of creating and growing the laboring population. The language of the 1662 statute would be repeated frequently throughout the colonial period. In 1667, a statute declaring that baptism did not automatically free a slave referred to "slaves from birth."\textsuperscript{200} A 1696 fornication law repeated the 1662 language of slavery by birth: "all children born in this country be bond or free, according to the condition of their mother."\textsuperscript{201} The omnibus slave code of 1705 also declared, "all children shall be bond or free, according to the condition of their mothers."\textsuperscript{202} The 1705 language was repeated in the 1748 and 1753 slave codes.\textsuperscript{203} Finally, in 1785, the Virginia Assembly defined slavery for the new state, defining slaves as "such as were so on the first day of this present session of assembly, and the descendants of the females of them."\textsuperscript{204} The language was different, but the logic was the same: slavery was perpetual, and it followed the line of female descent.

Beyond simply repeating the law of slavery by birth, these statutes further emphasized and intensified the discursive and practical connections between servitude, illegitimacy, and, increasingly, interracial sex. Fornication and bastardy would continue to be criminalized throughout the colonial period in Virginia; further, interracial births would be subject to increasingly stringent penalties. The slave laws of 1691, 1705, and 1723 intensified the connection between bastardy, servitude, and interracial sex by creating what eventually amounted to a quasi-inherited slavery for mixed-race illegitimate children. In all of these laws, legitimacy and freedom were conflated – a legitimate child was, by definition, a child born free – while illegitimacy

\textsuperscript{200} Hening 2:260.
\textsuperscript{201} Hening 3: 137-40.
\textsuperscript{202} Hening 3: 447-62.
\textsuperscript{203} Hening 5: 547-58; Hening 6: 356-7.
\textsuperscript{204} Hening 12: 182-3.
and servitude were linked. Children born to unfree women (whether servant or slave) were, by definition, illegitimate, and were subject to some level of servitude, based on the status of their mother. Race, of both mother and child, was the factor by which the extent of that child's servitude would be defined.

This connection between miscegenation, bastardy, and servitude was made clear in 1691, when Virginia passed a new fornication law, as well as the slave code entitled "an act for the suppression of outlying slaves." Like the original 1662 law of slavery by birth, the 1691 laws were especially concerned with the birth of mixed-race bastard children to white women (especially servant women), and the intention of the law was to extract ever more labor from those women and children. The new laws expanded punishment for mixed-race bastardy from the double fine laid out in 1662 to five years extra service or a £15 sterling fine (a prohibitively high fine for any but the wealthiest Virginians to pay). Furthermore, any mixed-race children born to white women would be subject to 31-year indentures, rather than the traditional 21 years. In other words, in cases of interracial bastardy, both women and children were subject to even greater amounts of increased servitude.

The 1691 anti-miscegenation law made clear that the problem of miscegenation was not just illicit sexual contact, but the birth of babies who blurred the color line: the law was labeled as a law "for the prevention of that abominable mixture and spurious issue." Here, race and bastardy are linked in a language that signalled monstrous reproduction: sexual contact, or "mixture," between races was

206 For an example of the double fine, see the miscegenation case of Elizabeth Banks, who was sentenced to 39 lashes and four years of service for bearing a mixed-race bastard child in 1683. York DOW 6: 498.
“abominable,” and the “issue” born of these unions was “spurious,” or illegitimate, illegal. These babies were monstrous not just because of their skin color, but because their birth was a threat to the emerging racial order of the colony. To term these infant bodies as “abominable” or “spurious” also points to the belief that the black body itself was monstrous, and that contact with black bodies made white bodies dangerously vulnerable. We see a manifestation of this emerging discourse of racial danger in the actions of the county courts, which increasingly focused on policing interracial sex. The York County quarterly court presentments from February 1695 provide a potent example: that month, every single criminal case that the court heard was somehow concerned with interracial sex.

The York County courts interpreted the 1691 anti-miscegenation law as an expansion of the bastardy statutes, wherein illicit sex and illegitimate births were punishable by increased service by white women, and lengthening that service even more for the “abominable” crime of interracial sex. For example, Elizabeth Owell, a

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209 Black feminist scholars and historians have deconstructed racist discourses of black female monstrosity. Jennifer Morgan argues that ideas of black female monstrosity were inextricably linked with anxieties about sexuality and reproduction. Morgan, Laboring Women, 12-50. Londa Schiebinger discusses the ways that ideas about the monstrous black female body informed scientific discourses in Europe during this same period. Londa Schiebinger, Nature's Body: Gender in the Making of Modern Science (Boston: Beacon Press, 1993). These discourses continue today in popular culture, continuing to tie black female sexuality with dehumanizing notions of monstrosity and animalism. bell hooks argues that these discourses were and continue to be central to an ideology of hierarchical racial separation, by "allow[ing] whites to sexualize their world by projecting onto black bodies a narrative of sexualization disassociated with whiteness." bell hooks, “Selling Hot Pussy: Representations of Black Female Sexuality in the Cultural Marketplace,” in The Politics of Women’s Bodies: Sexuality, Appearance, Behavior, ed. Rose Weitz (NY: Oxford, 1998), 112-122. As I discuss later in this chapter, this discourse of black female animalism can be seen in the daily casual and legal language of slaveowners.

servant of Mary Tinson, was convicted of “haveing comitted the sinn of fornication with a Negro,” and bearing “a molatto child” in 1695.211 She was sentenced to two years service for bastardy (which was meant as a repayment to her mistress for her lost labor and other costs incurred during her lying in), and another two and a half years to repay her mistress for paying her fine. In another case brought to court in 1700, Ann Winball was brought to court because she “had a molatto chld borne of her body.”212 Her case was not decided until 1703, when her indenture was set to end. Sarah Starkey, Ann’s newly widowed mistress, sought to extend Ann’s service, explicitly referring to the 1691 act. The court took Winball into custody, and sold her for 5 years more service. The proceeds of the sale went to Winball’s mistress.

Embedded in the 1691 anti-miscegenation law were enforcements that further cemented the discursive intertwining of bastardy, color, and labor: mixed-race children born to white women were subject to 31 years, rather than 21 years, of forced labor. Illegitimate birth doomed a child to a form of servitude by birth – temporary, but still inherited as a matter of course by virtue of the circumstances of one’s birth. The automatic 31-year indenture of the mixed-race children of white women more closely linked illegitimacy and race to nearly perpetual labor: their indenture had them serve well into adulthood, especially with the still-low life expectancies of the Virginia colony. The mixed-race children of black women, of course, served for life: theirs was a fully inherited perpetual slavery.

The 1705 slave code, which had repeated the language of the 1662 law of slavery by birth, also repeated the 1691 language of “abominable mixture and

211 York DOW 10:106-7, 121, 152.
spurious issue.”213 The law linked interracial bastardy with servitude, not just by targeting servant women, but by punishing free women with 5-year indentures if they could not pay their fine. Servant women saw their time of service extended greatly for bearing bastard children.214 Free white women were routinely sold into 5-year indentures following their conviction, and their children indentured out for 31 years. In 1706, Rebecca Stephens, a free white woman unable to pay the £15 sterling fine, was sold for 5 years to the parish.215 Women struggled to raise the £15 fine, in order to avoid being auctioned off into service by the parish. Mary West, recently widowed in 1722, was charged with “having a Mulatto Bastard.”216 In concurrent lawsuits regarding debts owed by her deceased husband, she struggled to retain as much of the value as possible from her husband’s estate. Eventually, she was able to pay the £15 fine and avoid 5 years of service.

Mulatto children of white women were already required, since 1691, to serve to the age of 31. In 1723, the linkage between birth, inheritability, servitude, and race was intensified, as the Burgesses decreed that if any woman serving a 31-year indenture herself had a bastard child, that child would also serve to the age of 31. The new law was aimed at extracting the maximum amount of labor possible, based on birth and racially-marked illegitimacy. Kirsten Fischer emphasizes that the result of the law was that “mixed-race children, though nominally free, effectively spent

214 Rachel Wood was convicted on three separate occasions for interracial bastardy, each time finding her service extended. York DOW 13: 72, 115, 137, 216, 228, 235, 263. See also the case of Mary Hanson and the enslaved man named Dick, York DOW 12: 414, 424; York DOW 13: 17.
216 York DOW 16: 101, 120, 134, 153, 156, 162, 169, 179, 197.
their most productive and reproductive years as servants." As such, this new rule amounted to a sort of quasi-inherited slavery, in which mixed-race people, already serving well into adulthood and therefore more likely to bear children while completing their term of service, passed on that same extended servitude to their children for no reason other than their mixed-race background. This was a de facto (if not de jure) form of inherited slavery.

This 31-year indenture was like slavery in another way: women saw their children sold away from them, for what may have been their entire lives. Mothers serving indentures struggled to maintain relationships with their children. Martha West was a mixed-race woman who bore two sons, Charles and James, during her own 31-year indenture to Sarah Walker. In 1732, Sarah Walker petitioned the court to bind the two boys to her for their 31-year indenture, rather than having their labor sold by their parish. Martha must have been pleased by this agreement: it assured that her children would remain near her during their lives. Cases like Martha

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218 The notion that extended indentures would make some servants more likely to bear bastard children seems to echo Peter Laslett’s concept of the “illegitimacy-prone sub-society.” Laslett implied that the “illegitimacy-prone sub-society” was a group within a society that was more likely to have children outside of wedlock because of their different moral standards than the dominant culture. Those illegitimate children, then, would be likely to have illegitimate children of their own. In fact, I argue that quite the opposite process was occurring in Virginia. The conditions for illegitimacy were cemented into law by the Virginia government. Virginia law, by extending indentures well into adulthood, and also by refusing to recognize interracial marriages, literally created the conditions in which large numbers of children would be born to parents who were either unmarried or whose marriages were not recognized by the state. While servants, slaves, and free blacks may have indeed held different sexual mores than the dominant culture, the conditions for illegitimacy were created by the state itself. Peter Laslett, “Long-term trends in bastardy in England,” in Family life and illicit love in earlier generations (NY: Cambridge University Press, 1977), 102-159.

219 York DOW 17: 295. This is one of the few cases that I’ve found in which white mistresses actively aided their female servants and slaves. As will be discussed later, propertied white women were complicit or actively involved in the exploitation of black women’s reproductivity.

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West's were the exception - most mixed-race servants were not able to assert such control over their relationships with their children.

Two patterns emerged after the passage of the 1662 law of slavery by birth. First, illegitimacy and servitude continued to be discursively linked, as the laws for each overlapped well into the eighteenth century. Second, as servitude was racialized, so was illegitimacy: punishments for bastardy were gradated in terms of race, as mixed-race illegitimate children were expected to complete indentures that stretched well into their adult years. Childbearing was at the center of both these patterns. Slavery by birth was the central logic defining the entire servant population of the colony, regardless of color. The enforcement of slavery by birth created a gradated system of race and servitude, ranging from the inescapable lifelong servitude of black women's children to the temporary servitude (treated as a temporary aberration from innate freedom) of white servant women's white children. By appropriating the reproductive lives of black women, the slaveowning class found an economic boon in the law of slavery by birth.

In so doing, Virginia lawmakers created several overlapping classes of laborers who stood outside of the logic of patriarchal inheritance upon which the colony's wealth and laws were based. The children of enslaved women were, in Swinburne's terms, "children of no man" - legally fatherless. In a world in which everything - property, status, name - was inherited from one's father, the bastard child stood outside of the lines of inheritance, able to inherit neither from their fathers or their mothers. 220 Enslaved children had a similar status, unable to claim any link to

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220 These laws would be liberalized only after the Revolution. In 1785, Virginia declared that bastard children could inherit from their mother "as if they had been lawfully begotten of such mother."
either father or mother. This was an obvious protection for the white men who fathered enslaved children: the enslaved children of white men had no claims on their father's property, thus protecting the all-important patriarchal lines of inheritance that resulted in the solidification of the estates and power of the planter class. Whether the mixed-race children of enslaved women were the sons and daughters of their master, or another white man, and whether they were the products of rape or consensual sex, the effect was the same: slavery may have been marked by race, but it was a product of birth. It is not an exaggeration to argue that, in the seventeenth-century Anglo-American world, this legal fatherlessness was a method of systemic dehumanization. Enslaved people were denied a patronymic, and thus denied a recognized genealogy. Not only were they unable to inherit property, they became property themselves. Legal fatherlessness was the basis for slavery in Virginia law; reproductivity would be central to how slaves were understood as a category of property as well.

*Property and Slavery*

By the eighteenth century in the Anglo-American colonies, slavery was a system of life-long servitude, marked by race, wherein the slave was defined as the property of the master. Virginia's adoption of life-long slavery by birth had capitalized on the pre-existing legal context of English bastardy law. That life-long labor was racially coded: slavery was inherited exclusively by the children born of enslaved black and mixed-race women. In other words, reproduction was central to

Notably, bastard children's right to inherit was not extended to their fathers' property. Hening 12: 138-9.
defining slavery as both life-long and race-based. Similarly, the adoption of the principle of chattel slavery – the ownership of enslaved bodies as property – was itself rooted in pre-existent English property law. Further, like the linking of slavery to bastardy law, the principle of chattel slavery exploited enslaved women’s reproductivity. As we will see, if bastardy law had made it possible for slaveholders to claim the life-long labor of enslaved people by birth, then property law made it possible for slaveholders to imagine a racial hierarchy in which white slaveholders could literally own black bodies. Here, we’ll see again the emergence of a racial ideology in Virginia simultaneous to the development of slavery as an institution. In the long process of inventing race in the Americas, reproduction was both a central discourse and a means by which race was codified in social practice.

In defining enslaved people as property, Virginia’s slaveholders once more used the law to advance their own interests. As we have seen, colonial Virginia law was simultaneously reactive and creative. The 1662 law of slavery by birth serves as a potent example of this dualism. The law of slavery by birth was reactive in its codification of pre-existing practices – enslaved women’s children were clearly enslaved before the passage of that law. Even if the law was reactive, it was also creative: by drawing on pre-existing bastardy law, Virginia’s planter-legislators maximized their own wealth by constructing new discursive connections between sexuality, race, illegitimacy, and labor. As when they defined slavery by birth via discourses of illegitimacy, Virginia’s lawmakers would define their slaves as property via existing notions of property ownership. Again, existing law – here, the property
law regulating livestock ownership – would become the basis by which the emerging planter elite would solidify and maximize their economic holdings and their power.

The last quarter of the seventeenth century saw the amassing of vast plantations by an emerging planter class. Aided by access to slave labor, a legal system written by the planters themselves, inheritance laws that favored the amassing of large estates, and a headright system that offered free land to planters who purchased imported slaves, the planters who were best able to capitalize on these resources found great wealth in the tobacco economy. But prior to the rise of the so-called “great planters” Virginia’s inheritance system was in crisis. High mortality rates interrupted the primogeniture patterns that organized property in England: property-holding widows held far greater power than their sisters in England, minor children had a depressingly high chance of being orphaned, and second and third marriages called lines of inheritance into question. Surviving records evince property-holders’ anxiety over proper inheritance in a world where mixed families were the norm. For example, the lawyer William Fitzhugh’s letters are full of his explications of complicated patterns of inheritance where simple parent-to-child inheritance was not possible. Fitzhugh feared the “Confusion & uncertainty” that

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Virginia’s complex family structures meant for what were intended to be orderly lines of inheritance by primogeniture.\footnote{Davis, \textit{William Fitzhugh and his Chesapeake World}, 68-9. Commenting on the children of second marriages (a common phenomenon), Fitzhugh makes clear that the mixed families and step-children of the typical seventeenth-century Anglo-Virginia family posed a distinct challenge to English inheritance patterns. Another seventeenth-century Virginia writer, William Bullock, argued against this practice, claiming justifiably that it meant that half-siblings could have wildly different inheritances or be disinherited completely. William Bullock, \textit{Virginia Impartially examined, and left to publick view, to be considered by all Judicious and honest men} (London, 1649), \textit{Early English Books Online}, 15. By necessity, Virginia’s county courts (including York County) focused a great deal of time and energy on deciding complicated inheritance disputes.}{223}

Within this uneasy context, property ownership and property law were central to emerging discourses of power in Virginia. Therefore, property law was a potent site for constructing the emerging legal framework for racial slavery. In tying labor to illegitimacy, Virginia’s planter elite had created a legally fatherless laboring population without claims to inheritance. Instead, laborers would themselves be defined as objects to be inherited by others. In this section, I will argue here that what specific type of property slaves would be considered would be a result of their reproductivity. Indeed, enslaved women’s reproductivity – a key feature of their humanity – would become the means by which they would be dehumanized as property, since livestock was the category of property to which slaves seemed the most similar.

Even as tobacco dominated the Virginia economy, livestock was a key category of property and wealth in the colony. April Lee Hatfield has argued that if tobacco was Virginia’s major export to England, livestock were Virginia’s major export to the other colonies – for example, the counties of the Eastern Shore and Southside depended on livestock even more than tobacco for their income.\footnote{Hatfield, \textit{Atlantic Virginia}, 45.}{224}

Plentiful livestock (meaning breeding livestock) were a sign of colonial success,
frequently reported in British colonial booster texts. In his pamphlet extolling the virtues of the Chesapeake colonies, *Leah and Rachel, or, the Two Fruitful Sisters Virginia and Mary-Land*, John Hammond remarked that Virginia's abundant livestock were a resource to other colonies: "From this industry of theirs and great plenty of Corn, (the main staff of life) proceeded that great plenty of Cattel and Hogs, (now innumerable) and out of which not only *New England* hath been flicked and relieved, but all other parts of the *Indies* inhabited by Englishmen."\(^{225}\) Trudy Eden argues that beyond their economic value, livestock had significant cultural value: plentiful domesticated livestock were a sign of Virginia's Englishness, and therefore its civilization.\(^{226}\) Other colonial boosters, such as William Bullock, recounted the presence of "English Provisions" as a sign not only of the success of farmers, but of the essential inhabitability of the New World.\(^{227}\)

Besides their productivity (i.e., their production of wool, milk, or meat, or their labor in tilling fields or transportation), livestock were profitable because of their reproductivity. Some of the earliest Virginia laws were aimed at expanding the numbers of cattle and hogs – especially breeding females – in the colony. A 1630 law "for the better increase and multiplying of cattell in this colony" demanded that "all the female increase of neate cattell bee with all care and diligence preserved and kepte."\(^{228}\) The law made it a criminal act (punishable to whatever extent the Governor and Council saw fit) to kill any female cattle "unlesse they bee such as are


\(^{227}\) Bullock, *Virginia Impartially Examined*, 7-8.

\(^{228}\) Hening 1: 152.
eyther past breedinge, or are likely to dye by some infirmity." Female livestock were especially valuable because their young automatically belonged to their owner as well. The famous eighteenth-century jurist William Blackstone confirmed this in his description of the legal principle of *partus sequitur ventrem*: "of all tame and domestic animals, the brood belongs to the owner of the dam or mother." Virginia wills are full of language acknowledging the reproductivity, and therefore the profitability, of female livestock. From the earliest recorded wills in York County, testators designated not only livestock but the "increase" of that livestock to their heirs. Such inheritances were especially valuable, because they offered not just immediate income but the potential for future income – this was property that literally grew in value.

Following the 1662 law of slavery by birth, planters transferred their understanding of inheritable wealth from livestock to slaves: enslaved human property began to be listed along with their so-called "increase." This linguistic shift was not just accidental or convenient: through this discursive coupling of livestock with human property, individual planters enacted their power over enslaved people. In a colonial world where print was rare and wills were often the only written documents that individuals ever produced, these wills, in the words of Jennifer

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229 Ibid.
230 William Blackstone, *Commentaries on the Laws of England*, vol. 2, (Oxford, 1765-69), *Eighteenth Century Collections Online*, 390. Interestingly, Blackstone goes on to state that "for the most part in the human species [English law] disallows that maxim." Clearly, the exception to which he alluded was the humans who were enslaved in the British colonies and in Britain itself.
231 For just a few examples of the "increase" of livestock see the 1637 will of Joseph Ham ("Cattle with their increase," York DOW 1: 50), the 1670 will of James Moore ("all my Cattle female...& their female increase", York DOW 4: 368), a 1691 deed of gift by Susanna Goodwyn ("1 heiffer...w/ all her increase (vizt) male & female together," York DOW 9: 87), and the 1713 will of James Purvis ("one young mare & her increase," York DOW 14: 222). Virtually every colonial will that included livestock guaranteed ownership of the "increase" of that livestock to future heirs.
Morgan, were key sites for the development of an emergent "moral grammar" of slavery.\textsuperscript{232} Wills were personal documents, and as such they demonstrated the ways in which white Virginians fashioned and adopted ideologies of racial hierarchy in their daily lives. In these wills, we see the development of an ideology of racial slavery that first conceived of humans as reproductive property, by discursively connecting those humans to livestock. In other words, the wills provide a window into the ways that individual Anglo-Virginians enacted emerging discourses of race, slavery, and power in their daily lives and in the ways they imagined their futures. Analysis of these documents produces, in a sense, a cultural history of common, daily language.

Wills and other legal documents drew a connection – sometimes oblique and sometimes incontrovertible – between the "increase" of livestock and the childbearing of enslaved women. In 1668, Frances Harrison inherited both livestock and slaves from her father, Robert Harrison. Frances received not only "the first mare foal...with her increase" of his "great Bay mare" but also Harrison's "negro woman called [Betsy?] & the children that have or may come on her."\textsuperscript{233} In 1669, when Mary Ludlowe, the wealthy widow of Thomas Ludlowe, married the Reverend Peter Temple, she distributed her inheritance from her first husband among her children.\textsuperscript{234} Throughout the marriage agreement are glimpses of enslaved women and girls whose reproductive lives had been transformed into economic gains for Mary's children.

\textsuperscript{232} Morgan, \textit{Laboring Women}, 69. Jennifer Morgan has also commented on the frequent use of the language of "increase" in Bermuda in the 17\textsuperscript{th} and 18\textsuperscript{th} centuries. She writes: "Terms such as 'pickaninies' were rare – the more common terms such as 'increase' and 'produce' suggest that slaveowners understood quite early the value of the reproductive lives of laboring women in their evolving conception of themselves as owners of human property." Morgan, \textit{Laboring Women}, 82.

\textsuperscript{233} York DOW 4: 180.

\textsuperscript{234} York DOW 4: 258.
“Molatto Moll” (likely the daughter of a black woman and a white man, whose life-long enslavement was made possible by the 1662 law) and her “whole Increase male and female forever” were transferred to Mary’s son George. 235 Nanne, the six-year-old daughter of a man Mary called “old Lawrance” would be transferred to Mary’s daughter, Elizabeth, along with “her whole increase.” 236 Nanne’s five-year-old sister, Besse, would be transferred to Mary’s daughter, also named Mary, “with her whole Increase male & female forever.” 237 Each of Mary Ludlowe’s children also received livestock along with these enslaved women and girls; the livestock were listed, just like the slave women and girls, along with their “increase.” Colonial Virginia court records – in wills, inheritance disputes, probates, marriage agreements, deeds, records of the sale of slaves, estate divisions, and other cases – affirmed the ownership as chattel not only of enslaved women, but of their future children, or their “increase,” as well. 238 Livestock had provided a ready-made legal language for the ownership of reproducing enslaved bodies.

Indeed, that these two categories of property – livestock and slaves – were understood to be equivalent, and that their sameness was rooted in their reproductivity, can be seen in the frequent cases in which the separation between the “increase” of livestock and the “increase” of slaves is blurred in the records. In these examples, a modern reader cannot easily determine whether the offspring or the families of enslaved women are the “increase” to which the records refer; more likely,

235 Ibid.
236 Ibid.
237 Ibid.
these references to "increase" include both the children and the livestock. Some of these examples occur in the years preceding the 1662 law of slavery by birth, indicating yet another way in which enslaved women's status (and the status of their children) were in question before the passage of that law. In the 1651 prenuptial agreement between John Chew and Rachel Constable, the blurring of slaves and livestock was clear when John promised to Rachel "Two Negro Men servants called Tony and Sampson Two Negro Women called Ann and Kate one old Gray Mare with all and every their Increase." When Surrey, England resident John Cheesman appointed Virginian Lawrence Smith his attorney, he gave Smith control over all of his Virginia property, except for "two negroes Vizt one named Missce and Margaret and two mares, that the sd John Cheesman wholly reserves with the Encrease thereof." Such blurring between the increase of livestock and the increase of slaves continued after 1662. When William and Mary Stark married in 1714, William granted to Mary both cattle and enslaved women, listed as "Jenney, Nanney, Sarah, Lucy & six young heifers of about three or four year old & the increases."

The conceptual connection between livestock and enslaved people was more than just a linguistic one. The notion that slaves and animals were fundamentally similar was foundational to slaveholders' sense of themselves as owners of human property, and therefore had a deep impact on the lives of enslaved people. As we will see, the slave-as-livestock connection can be seen in slaveholders' most basic practices of property ownership. First, slaves, like livestock, were seen as

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239 York DOW 1:132.
240 York DOW 3: 162-3. For more pre-1662 examples of such blurring between the increase of livestock and slaves in York County, see: DOW 3: 32 (1657), DOW 3: 64 (1659), and DOW 3: 69 (1659).
241 York DOW 14: 333.
investments that grew in value. Second, female slaves, like female livestock, were
differently valued than male slaves. Finally, slaves’ economic value, like that of
livestock, was central to the support of white children. Ultimately, I will argue that
the slave-as livestock connection had tremendous impact on the lives of black women
and their children: whether conceived as a mother/child dyad or separated from one
another, the impact of slavery on black families was rooted in the notion that enslaved
property was fundamentally similar to property in livestock. In all of these practices,
slaveholders enacted the idea that slaves and livestock were fundamentally similar
sorts of property because they were reproductive.

Slaveholders saw black women’s reproductivity as an opportunity for
economic investment: this was property that literally grew in value as it grew in
numbers. Jennifer Morgan has argued that, because wealth in slaves depended on
black women’s reproductivity, slaveholders saw black women’s wombs as “the site of
venture capitalism.”242 This speculative economy in black babies extended even to
enslaved girls, long before they were of childbearing age. In 1713, John Rogers gave
an enslaved girl named Lucy to his granddaughter, Eliza Goodwyn, herself a young
girl. Rogers had clearly thought through the economic value of Lucy’s future
reproductive life. Lucy’s first child would also be Eliza’s property, but Lucy’s
children thereafter would be distributed amongst Eliza’s siblings. Rogers even
considered the possibility that some of Lucy’s children might not survive infancy: if
her first child should die, Lucy’s second child was to belong to Eliza. What is
remarkable, though not uncommon, about this case is that Lucy was only two years

242 Morgan, Laboring Women, 167. Jerome Teelucksingh has made a similar observation, pointing out
that, by the end of the seventeenth century, “[British Caribbean] planters viewed the purchase of slave
old – probably only recently weaned – when Rogers was speculating on the value of her future children. Her children, too, would be separated from her as toddlers, for the benefit of Rogers’ white progeny.\footnote{York DOW 14: 309. Examples of young girls being willed along with their future “increase” abound. Some examples include: York DOW 4: 258 (the Ludlowe-Temple marriage agreement discussed earlier), York DOW 8: 411-2, York DOW 11: 76. Cases of toddlers and infants being separated from their mothers are discussed later in this chapter.}

In this merchant-capitalist world, slaveholders used language of capitalist investment to refer to enslaved women and their children.\footnote{Morgan, \textit{Laboring Women}, 82, 91.} This was a practice rooted in the ownership of livestock. While “increase” was the most common term used to refer to the future offspring of cattle or hogs, the language of some wills reveals that reproductivity was seen as a form of capital investment or a sort of banking relationship. Wills referred to calves as “increase & p[ro]fits,” to cattle and their calves as “principall and increase,” and to the future offspring of a calf as “p[ro]fitts.”\footnote{York DOW 2:124, York DOW 2: 180-1, York DOW 4:322.} This language of banking, interest, and profits would be extended to enslaved women as well. When Maree, a “Negro wench,” was willed by William Felgate to his wife, Felgate noted that “what proffitt shall be made of hir” should be delivered to his daughter, Mary Bassett. As it would be virtually impossible for a holder of multiple slaves to determine exactly the value of the labor of one slave, it is clear that the “proffitt” to which Felgate referred was the future children of Maree.\footnote{York DOW 3: 92.}

Because enslaved women’s reproductivity was seen as an investment in future values, whites valued enslaved women differently than enslaved men. Enslaved women had a dual value, both productive (as laborers) and reproductive (as bearers of
future slaves).\textsuperscript{247} Admittedly, the demographic picture for Virginia would seem to belie the notion that planters valued or priced women for their reproductivity. The enslaved population in Virginia would not be self-reproducing until after the 1730s – until then, the growth of the slave population depended on purchase, via the transatlantic slave trade, not reproduction.\textsuperscript{248} It was not until the 1750s that lowered infant mortality rates, higher birth rates, and an equaling of the sex ratio allowed the enslaved population in Virginia to grow via reproduction, as opposed to importation (though, of course, the international slave trade would continue in Virginia until 1785).\textsuperscript{249} Even with women’s dual value as producers and reproducers, planters were more likely to buy male slaves and purchase those male slaves at higher prices. Nevertheless, even in the context of this demographic picture, reproduction was still a considerable factor in the institutionalization of slavery. Although slaves were not self-reproducing, evidence suggests that whites understood reproduction to be a significant means of growing the enslaved population. The discrepancy between social practice and demography, therefore, indicates that the cultural understanding of enslaved women as a form of reproductive capital took hold even as the enslaved population was too sick, too traumatized, and too overworked to enable self-reproduction.\textsuperscript{250}

While women were not more highly priced than men – though, as we will see, they were similarly priced – women were differently valued than their brothers, sons, and husbands. Jennifer Morgan’s research on the Caribbean indicates that even in the


\textsuperscript{248} Kulikoff, Tobacco and Slaves, 67-70.


\textsuperscript{250} Kulikoff, Tobacco and Slaves, 67-70.
deadly sugar colonies of the late seventeenth century, planters saw value in women’s reproductivity. She argues that, even as men outnumbered women as laborers, Caribbean planters began to value women “more systematically as potential reproducers.” She has found that, from early in the colony’s history (also before slaves were self-reproducing in that colony), Bermuda planters listed slaves in male-female pairs, indicating slaveholders’ interest in reproduction. Anthony Parent argues that similar practices in Virginia were intended to express masters’ control over the enslaved population: “The pairing of male and female enslaved was less about benevolence than social control. Planters wanted to maintain a reproducing, tractable, and healthy workforce.” Similar social pairings exist in the York County records in Virginia. For example, when the estate of Pinkethman Eaton was divided upon his death, the slaves were listed in quasi-familial groups, with each group valued at between 160 and 170 pounds: “Joe Lucy Matt & Lett,” “Jack Temp. Fanny & Matt,” “James Jake Mary & Nell,” “Michael Cate & Hannah,” “David Frank Judith & Child,” and “George Sarah Nanny & Tom.” The exact relationship (if any) of the slaves in each of these groups is unknown; nevertheless, the presence of at least one woman in each group indicates that reproduction may have been a consideration in the division of Eaton’s slaves, as it was for the Caribbean estates that Morgan examined.

251 Morgan, *Laboring Women*, 84-5. By examining Nevis wills between 1650 and 1675, Morgan also found that 79% of slaveowning households held at least one enslaved woman, implying that reproduction was an interest in purchasing slaves, even if women were outnumbered by men. I have not undergone a similar quantitative examination of York County wills to be able to assert the numerical frequency of women in slaveholder holdings, but I can attest anecdotaly to a frequency in the presence of women in seventeenth-century wills.

252 Ibid.


Examination of one wealthy planter’s purchases clarifies the ways that women were differently valued because of their reproductivity. Throughout William Fitzhugh’s letters, we see that the reproduction of his enslaved labor force was a concern as Fitzhugh sought to purchase a youthful labor force that included female slaves. In 1681, Fitzhugh sought to buy between six and eight “boys or girles, men or women.” He directed Ralph Wormeley to purchase five or six slaves, “whereof three or four to be boys, a man & woman or men & women, the boys from eight to seventeen or eighteen, the rest as young as can procure them.” In his instructions to Wormeley, Fitzhugh allowed that he would be willing to pay more for boys and men: “boys according to their age & growth are valued in price.” Fitzhugh desired to have more boys, who he saw as strong laborers and knew would be more expensive. In the context of extremely high mortality for imported slaves, young men and boys were the most expedient purchase: they could do more labor before their likely premature death. Nevertheless, Fitzhugh also specified that he wanted women “as young as can procure them.” We can surmise that while these women would be effective laborers, he also likely hoped that their youth would make them more likely to bear more children. In 1683, Fitzhugh again was seeking to buy slaves, and outlined for John Jackson what prices he was willing to pay. Interestingly, he specified the same prices for slaves regardless of gender – 3000 pounds of tobacco for boys or girls aged seven to eleven, 4000 for boys or girls aged eleven to fifteen, and 5000 for “every young man or woman that shall be above 15 years of age, & not

255 Davis, *William Fitzhugh and his Chesapeake World*, 105-6.
256 Ibid.
257 Davis, *William Fitzhugh and his Chesapeake World*, 104.
258 Ibid.
As always, youth was Fitzhugh’s primary concern—he ascribed the greatest value to teenagers and young adults, as both women and men could do labor, but only young adult slaves were likely to bear children.

In a later letter, written in 1686, Fitzhugh describes the fruits of his investments. He had amassed four separate plantations, totaling almost 25,000 acres. He described the plantation where he lived to Doctor Ralph Smith: the thirteen-room house was “furnished with all accommodations for a comfortable & gentile living,” numerous outbuildings including “a Dairy, Dovecoat, Stable, Barn, Hen house, Kitchen & all other conveniencys,” an orchard, a garden, numerous livestock, and a palisaded yard. He also described his slaves: “a choice crew of Negros at each plantation, most of them this Country bourn, the remainder as likely as most in Virginia, there being twenty nine in all.” “Country bourn” slaves, of course, referred to the slaves that had been born in Virginia, the children of the women he enslaved. For Fitzhugh, his country-born slaves were of the highest value: they were more likely to survive, did not have to be purchased, and also symbolized the health and reproductivity of the adult slave population. Fitzhugh’s country-born slaves also marked his success as a planter: his aims of creating a youthful, reproductive enslaved population had been met. For planters like Fitzhugh, the

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259 Davis, William Fitzhugh and His Chesapeake World, 127.
260 Davis, William Fitzhugh and His Chesapeake World, 175-7.
261 This particular Fitzhugh letter is discussed further later on in this chapter. As will be discussed then, it is clear from a later section of the letter that the reference to “Country bourn” slaves indicates the children of women that Fitzhugh himself enslaved, not locally born slaves he purchased from other Virginians.
262 Other slaveholders also held this view, especially in the eighteenth century. Eighteenth-century issues of the Virginia Gazette are full of advertisements for slaves and slave auctions. Like William Fitzhugh’s letters, these ads often emphasized that “Virginia born” slaves were valuable slaves. See, for example, Virginia Gazette, Purdie and Dixon, May 12, 1768, page 2.
263 In her analysis of the acquisition of slaves by Gloucester County planter Lewis Burwell II in the 1690s and 1700s, Lorena Walsh identifies a similar pattern in purchases of enslaved women and men.
purchase of slaves had a dual goal: procuring enough laboring hands to maximize tobacco production and provide an increasingly comfortable standard of living to the planter, while still including enough women to ensure steady reproduction.

This dual function for slaves – both productive and reproductive – was a major consideration in the support of Virginia’s large population of white “orphans.”264 Because slaves, like livestock, were reproductive, they were seen as providing long-term, accretive value to support these white children until they reached adulthood. Livestock had long been used in Virginia to support the large numbers of orphaned white children that populated Virginia in the seventeenth century. The county courts held regular hearings aimed at assessing the proper care and support for orphans’ estates – especially their property in livestock.265 Parents regularly included language in their wills indicating that livestock and their increase were intended to support the upkeep and education of surviving minor children, as well as those children’s children.266 In agreements drawn up before they entered into second marriages, widows typically specified that particular livestock would be the property of their children from their first marriages (thereby assuring that those

While the overall population of Burwell’s slaves had a skewed sex ratio, with more men than women, women’s childbearing greatly expanded the enslaved population on the plantation. Walsh argues that the larger enslaved populations seen on large plantations (like Burwell’s and his contemporary Fitzhugh’s) were more able to sustain slave family life during this period. Implicitly, Walsh’s analysis duplicates those of Jennifer Morgan and myself: even if planters sought male slaves as laborers, their acquisition of female slaves in significant numbers indicates their desire to create a reproductive enslaved population. Interestingly, Walsh finds that by the mid-eighteenth century, harsher working conditions had actually decreased the rate of childbearing amongst the enslaved people on the Burwell plantation. Lorena Walsh, From Calabar to Carter’s Grove: The History of A Virginia Slave Community (Charlottesville: University of Virginia Press, 1997), 29-31.

264 These “orphans” were most often the property-owning children of deceased fathers, who had been willed property in the form of land, livestock, and slaves. Until children reached the age of majority (in the case of boys) or married (in the case of girls), their property was managed by court-approved guardians, often a male relative. As Linda Sturtz argued, when widows remarried, they used this system to protect their and their children’s estates from absorption by the woman’s new husband. Sturtz, Within Her Power, 19-29. See also Norton, Founding Mothers and Fathers, 147-56.

265 See, for example, York DOW 2: 399-403.

266 See, for example, York DOW 1: 145, DOW 2: 201, DOW 3: 98, DOW 3: 106-7, DOW 4: 327.
children would have financial support, even as the widow’s estate was absorbed by her new husband.\textsuperscript{267} For example, in 1655 Margery Griggs assured that, even if the livestock she had owned were sold by her new husband, William Hay, Margery’s son, John, would receive the proceeds from the sale.\textsuperscript{268} Orphaned children who could not be supported by family members were typically assigned to indentures or apprenticeships that were overseen by the courts. In these cases, livestock were used to fund those apprenticeships and, since the orphan legally owned the animal as well as its increase, assure that when these orphans reached adulthood, they would have a continuing source of income beyond the skills they learned during their indenture.\textsuperscript{269}

Support of white orphans and other white children was yet another area where Virginians used ownership of livestock and their increase as a model for the ownership of slaves and their children. As valuable reproductive property, enslaved people were regularly given or willed to white children, in order to assure that child’s future income. In 1715, William Wise gave to his young granddaughter, Frances Wise, “one negro woman named Frank.” William saw the dual value in giving Frank, who was 20 years old at the time of the will, to his granddaughter. He stipulated that “the labor of this negro woman to be for the maintenance of my sd granddaughter Frances” and that Frances also would receive “all [Frank’s] increase male & female.”\textsuperscript{270} Wise also stipulated that Frank and her future children should be

\textsuperscript{267} See, for example, York DOW 2: 120, DOW 2: 162, DOW 2: 279.
\textsuperscript{268} York DOW 1: 265.
\textsuperscript{269} See, for example, York DOW 2:144, DOW 3:42.
\textsuperscript{270} York DOW 14: 396. For similar cases, see York DOW 11: 76, DOW 13: 197, 206.
inherited by Frances’s heirs: the reproductive lives of Frank and Frances would be perversely linked by ownership, inheritance, and labor.\footnote{The Wise will entailed Frank to Frances. By directing that Frank and all of her descendents belonged to Frances, William Wise intended to create a virtually unbreakable bond between Frank’s family and Frances’s family throughout the generations. The process of entail and its specific connection to Virginia slavery is discussed later in the chapter.}

It is vital to recognize that, especially in the transfer of human property to their children, white women were active in the exploitation of black women’s reproductive lives. Early American women’s historians have argued that property law was an advantage for white women in the seventeenth century: much more than their English peers, or women of the eighteenth or nineteenth centuries, white widows of seventeenth-century Virginia were able to wield public and private power by means of their ownership of property.\footnote{Norton, \textit{Founding Mothers and Fathers}, 153-6; Carr and Walsh, “The Planter’s Wife,” 34-40; Sturtz, \textit{Within Her Power}, 19-29. On the decline of widows’ power in the eighteenth century, see Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 287-291; Sturtz, \textit{Within Her Power}, 29-34. Focusing on Connecticut, Cornelia Hughes Dayton argues that the Anglicization of the law (making legal structures more formal, increasing the use of professional lawyers in court) was a precipitating factor in women’s loss of power at the end of the seventeenth century, not least because women’s voices were no longer heard in the public space of the court. As will be discussed further in Chapter 3, the conscious Anglicization of Virginia’s law, beginning with the Restoration in 1662, was having a similar effect on women in Virginia. Dayton, \textit{Women Before the Bar}, 8.} In a way, the high mortality rates of the seventeenth-century Chesapeake offered to women a legitimate, but exceptional, form of matrilineal inheritance, as widows directed the disposal of their estates for the protection of their children. This power for white widows to protect their children, though, came at the expense of black women’s and children’s lives. As Linda Sturtz argues, slaves were, in a sense, feminized property in eighteenth-century Virginia: widows worked hard to retain their dower rights to slaves, and wealthy families were more likely to give their daughters slaves (and give land to their sons).\footnote{Sturtz, \textit{Within Her Power}, 52. Slaves were an especially attractive addition to a dowry because they could be easily moved onto a husband’s land when young women married. See, for example, York DOW 14: 13, 17-8.} As a result,
white women were frequent agents (and benefactors) in the appropriation of black women’s reproductivity. In an early example, Frances Jones, a widow, directed in 1657 that her son, Francis Townshend, should receive a large share of her property, which she had inherited upon her husband’s death. Townshend received land, livestock including oxen, horses, hogs, and cattle, household goods, and the labor of white servant men. He also inherited “one negro woman named Sarah and her child Francis two yeares old.”

Frances Jones was clearly a powerful, wealthy woman who protected her property in order to support her son. She also was part of the first generations of Anglo-Virginian slaveholders who chose to exploit, for their own benefit, black women’s reproductive lives.

We have seen the ways that, by connecting slaves to livestock both discursively and legally, Anglo-Virginians were able to conceive of slaves as a particular kind of reproductive property. This legal-linguistic construction would have devastating effects on the fragile families that enslaved women and men were building in the colony. Since whites held absolute ownership over the children of black women, they were able to dispose of that property as they saw fit – including separating families at will. Whether keeping mothers and children together, or separating them through inheritance or sale, slaveholders sought to maximize the reproductive potential of enslaved women while still claiming the labor of both them and their children. Such was the absolute power of the slaveholder: both the fostering and the destruction of slave families were forms of reproductive exploitation.

Perversely, the choice by a slaveholder to keep mothers and children united was a way that slaveholders actively exploited enslaved women’s reproductivity and

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274 York DOW 3: 32. See also: York DOW 8: 411-2.
dehumanized enslaved women as property similar to livestock. In their wills and
other legal documents, Virginians signaled the value, health, and profitability of
reproductive animals by noting when animals were pregnant, nursing, or recently
weaned. Doing so indicated the greater value of an animal (the value of a pregnant
animal needed to account for the value of the offspring), and it also indicated that
newborn animals needed special care in order to make good on their investment.
Therefore, pregnant cattle or pigs might be described as “breeding” and cattle and
horses might be listed as “sucking,” or nursing.\textsuperscript{275} Mare colts were considered more
valuable after they had first “foaled.” Nursing cattle were milking cattle, and were
therefore especially valuable. Most commonly, individual cattle and other livestock
were listed “with calves” or “with colt sucking,” therefore indicating not only the
reproductive value of the adult animal but the inseparability of the mother and its
young.\textsuperscript{276}

Once again, this was a language that bled into the language of slaveownership,
emerging not only in wills (documents composed by individuals) but also in
inventories and other court-produced documents (indicating that the state also
participated in the development of this slave-as-livestock construction). When Major
Joseph Croshaw died in 1670, his large estate was divided amongst his heirs. As was
the convention, female livestock were listed with their young and according to their
reproductive status: cows listed with “sucking” calves, and highly valued mares with
“sucking” colts. Along with those cattle and horses were listed people. Two
enslaved women, Moll and Rose, were listed along with “One Negroe Girle Sucking

\textsuperscript{275} York DOW 3: 148, DOW 4: 322, DOW 4: 288.
\textsuperscript{276} York DOW 2: 379, DOW 4: 224, DOW 4: 288.
May.” While it is not clear whose daughter May was, it seems reasonable to assume that either Moll or Rose was nursing May as the inventory was being compiled.

Similarly, another enslaved woman named Moll was listed along with three children: “One Negroe Girle sucking One Negroe Girle three years old Named [Han?] One Negroe Girle named Besse.” It is unclear whether Han and Besse were Moll’s daughters, but it is likely that the unnamed girl who was still nursing was Moll’s daughter. The identical language was used to describe Moll and her daughter, and little May and her mother, as had been used to describe cattle.

In the Croshaw inventory, mothers and daughters were listed with the same language as cattle and calves. Other documents show a persistent urge to link mothers and infants; this linkage discursively connected the reproductive value of livestock to the reproductive value of enslaved women. Like cattle and calves, which were frequently listed with combined values rather than individual values, enslaved women and their children were listed with a single value. Such was the case of Anne and her daughter Hager, who were listed for a combined value of 40 pounds sterling in 1667. Nan and her son Sam, and Sew and her daughters Jane and Dina were all sold in 1706; their values were calculated in terms of mother-child units, not as individuals. Enslaved women were very frequently listed in court documents (such as deeds of sale and estate inventories) along with their children.

Lacking more detailed evidence, are we to read these as examples of slaveholder benevolence in keeping children with their mothers, or examples of

278 York DOW 4: 143.
279 York DOW 12: 437.
slaveholders capitalizing on enslaved women's reproductive labor in nursing and raising their children? Even as these women were fortunate to stay united with their children, that unity was marked by the discourses of power and ownership of white slaveholders who must have seen themselves as maximizing the value of their reproductive property. While these listings may seem to affirm the mother-child relationship, because that language is part of owners' wills, the language is still an artifact of the slaveholder's power (or the power of the slave state, in the case of state-produced inventories). Hortense Spillers argues that that perverse linkage (between mother and child) by the owner (who may indeed have been the father of the child) underscores enslaved women's inability to "claim" their own children. In this world where some children were chattel property, Spillers argues, "The offspring of the female does not 'belong' to the Mother."281

The all-too-frequent separation of mothers from their children and siblings from one another exposes the heartlessness of the enterprise of enslavement. This practice, also, seems to be rooted in understandings of the ownership of reproductive livestock. Inventories included considerations of whether or not calves were "weanable," or able to be separated from their mothers in order to be sold.282 To separate mother and young too early would endanger the young, and therefore endanger the investment. On the other hand, once physically independent from their mothers, livestock's "increase" was easily divisible, and was sold to settle debts and balance inheritances.283 This convention informed the practice of dividing slave families for the purposes of balancing inheritances; the practice required a

282 York DOW 2: 275, 395, DOW 3: 34.
283 York DOW 4: 132.
dehumanization of the families being divided. In 1741, Daniel More, an heir of James Sclater, requested that the executors of Sclater's estate meet and officially divide the estate amongst Sclater's heirs. The court ordered the executors to "divide the Negroes wch [Sclater] dyed possessed of together with the Increase thereof since his death into 3 equal parts and that they assign one equal third part thereof to each of the Children of the sd. [Sclater] and the other third part to the sd. Danl. More." In other words, all of the slaves were to be either distributed amongst the heirs or sold (and the proceeds distributed equally amongst the heirs), including the children that had been born since Sclater's death. That this would undoubtedly require the separation of families was par for the course, as enslaved women and their children were reduced to mere "increase."

If livestock were salable as soon as they were weaned, then so were enslaved children. Western African women typically nursed their children for up to two years; this choice both improved the health of their babies and helped women to actively space their pregnancies.285 Enslavement in the Americas interrupted these patterns.286 The result was that toddlers and even newborn infants were sold or inherited separately from their mothers. Two-year-old Tom was given to Peter Goodwyne by

286 Shorter periods of breastfeeding were required if enslaved women were to meet slaveholders' labor expectations. That this would result in more frequent births might have been seen as an advantage by the slaveholders, even if it resulted in unhealthy babies. Richard Steckel has found that, because of women's work requirements on Antebellum-era cotton plantations, breastfeeding could be reduced to a mere three-month period. Steckel, "Women, Work and Health," 50. Nursing, especially as it related to the frequency of pregnancies for black and white women, will be discussed in Chapter 2.
his mother, Blanch Goodwyne, with no reference to the fate of Tom’s mother.287

Judith was only nine months old when she was separated from her mother to be given to Ann Morris.288 When Mary Moss and her children divided the estate of Mary’s deceased husband, the court ruled that “the Increase” of the slaves (i.e., the children born since the official inventory had been done) be sold, and the proceeds divided and shared amongst the heirs.289 That “Increase” was “a Child of about a Month old (Toney by name) which we [the court] value to £6.”290 It’s unclear in the court order who Toney’s mother was – indeed, to the court, it did not matter, as Toney was sold to equalize the inheritances of the Moss family. The dehumanizing logic of slaves-as-livestock was apparent whenever children were sold or inherited separately from their parents.291

Real Property and Personal Property

Even as slaveowners discursively constructed the ownership of slaves as fundamentally similar to the ownership of livestock, the House of Burgesses would persistently debate the question of slaves as a legal category of property. Should slaves be considered personal property (also termed chattel property and moveable property), like livestock? Or, should slaves be considered real estate – tied to the land as the feudal serfs of English precedent? These debates exposed the fractured colonial consciousnesses of the planters, who themselves made up the Burgesses, as they sought to work both in their own interests as slaveholders and in the interests of

287 York DOW 8: 411-2.
290 Ibid.
These legal debates complicated the everyday practices that had governed slaveholding since the seventeenth century, especially the treatment of slaves as livestock. Ultimately, it was the reproductivity of slave property that would decide the debate and define slaves’ legal status. I argue in this section that in their debate over what kind of property to label slaves, the Burgesses defined what they called the “nature” of slaves via racialized discourses of reproduction. In the debate over whether slaves were real or personal property, slaveholders sought to structure inheritance law to best serve their own interests. As Thomas Morris has argued, the real versus personal estate debate “defined, if anything, the status of the owner and not the slave.” While the debate had little effect on the daily lives of slaves (slaves were, after all, still defined as property, and subject to the wills of slaveholders), the Burgesses were seeking ways to protect the economic interests of property holders and their heirs. Defining slaves as real estate held two primary advantages for slaveholders. First, when a property holder died, their moveable property could be sold off to pay off any of the estate’s outstanding debts. By defining slaves as real estate, property owners sought to protect their estates, of which slaves were the most valuable property other than land. Second, when slaves were defined as real estate, testators could choose to place slaves in entail – permanently transferring ownership of those slaves (and their children – thus ensuring ownership in perpetuity) to a new line of heirs outside of the direct line of

292 According to Anthony Parent, the actions of the House of Burgesses were an enactment of the emerging class consciousness of planters. Anthony S. Parent, Jr. Foul Means. The Burgesses’ desire to please the Crown had become one of the defining features of that body after the 1660s, when the newly reinstated government of Governor Berkeley had overhauled Virginia’s laws following Virginia’s promise of allegiance to the Crown after the Restoration.

293 Morris, Southern Slavery and the Law, 65.
primogeniture. This option was attractive to large planters, who used entail to divide their large holdings amongst multiple heirs, while still ensuring that those plantations would remain intact and productive. Furthermore, as Linda Sturtz and Holly Brewer have both argued, entail was a primary means by which elite white women in Virginia could own and hold onto property. As such, by defining slaves as real estate, the House of Burgesses made it possible for propertied white widows to control even more wealth, even after they remarried. The debate over personalty and realty was protracted (lasting over forty years) precisely because it was centered on the foundational questions of power in a slave society: how should human property be legally defined, how should that property be distributed amongst heirs, and how could the disbursement of property be used to expand the power of the planter elite?

For modern readers, the debate over realty and personalty is one of legal esoterica. Even so, we must be cognizant of the ways that these legal debates could preoccupy elite Virginians’ minds and time in the eighteenth century. A primary priority of the Burgesses was to create a body of statutes that furthered the interests of the great planters with the least amount of controversy, confusion, or internecine conflict. The statutes written by the House of Burgesses were designed to expedite

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294 Holly Brewer has argued that, contrary to earlier interpretations, vast amounts of property was entailed in colonial Virginia: she calculates that, by the time of the Revolution, up to 75% of Virginia’s land was held in entail. Brewer argues that the decision to define slaves as real property (and thus subject to entail) was an attempt by Virginia planters to recreate a form of feudalism in the colony, where planters were lords and slaves were vassals. Nonetheless, Brewer does not discuss the attempt by the Burgesses to rescind the real estate law in 1748. If planters were interested in forming a feudal society in 1705, why would they change their minds in 1748, well before the Revolutionary-era dismantling of entail? Brewer, “Entailing Aristocracy,” 307-46.

295 Brewer, “Entailing Aristocracy,” 342-3. Sturtz, Within Her Power, 52-7. Sturtz makes a convincing argument that the realty/personalty debate centered on the question of widows’ property ownership. Significantly, though, because her focus is on white propertied women, Sturtz does not take into account the meanings of slavery itself or the specific meanings of the enslavement of women when she discusses these laws.
inheritance processes and reduce the “law suits and controversies” (labeled by the Burgesses as “many mischiefs”) that clogged up the county courts. The realty versus personalty debate, though, was more than just a procedural dispute: at the heart of the debate was the question of how best to capitalize on the value of slaves’ bodies as reproductive property.

The Burgesses passed the first Virginia law that defined slaves as real estate in 1705, along with the passage of the first comprehensive slave code in the colony. The real estate law duplicated much of the language of a similar Barbadian law, as the sugar colony’s dependence on slave labor and development of a unified gentry class had preceded that of the tobacco colony. Virginia’s 1705 law ruled that “all negro, mulatto, and Indian slaves...shall be held, taken, and adjudged, to be real estate (and not chattels)” for the purposes of inheritance. As was discussed earlier, slaves were conceived as a category of property especially profitable for the support of surviving spouses and children. By defining slaves as real estate, slaves would be inherited via the same processes devised for land, processes that were aimed at keeping estates as consolidated as possible while still providing for multiple heirs. By legally tying slaves to the land upon which they worked, the Burgesses hoped to ensure that heirs would inherit both land and the laborers to work that land. Further, the law provided the legal basis for a practice we’ve already discussed: the inventory, valuation, and division of slave property (including the increase of those slaves)

296 Hening 4: 222.
297 Morris, Southern Slavery and the Law, 66. Unlike Virginia, Barbados would not attempt to rescind its real estate law. The connections between the planters of Barbados and the planters of Southside and Eastern Shore Virginia planters have been explored by April Lee Hatfield – it is possible that these business and familial connections were a vector for the application of Barbadian law in Virginia. Hatfield, Atlantic Virginia, 137-68.
298 Hening 3: 333-5.
amongst heirs. Several exceptions were built into the law. For example, sales of
slaves would not be regulated like land sales, slaves could be claimed as return for the
debts of an estate, and slaveholders would not be extended the right to vote unless
they also owned land.

By 1728, the Burgesses confirmed that defining slaves as real estate had been
“very beneficial for the preservation and improvement of estates in this colony.”
That year, the Burgesses expanded the language of the 1705 law, making clear that
the “true design” of the 1705 law was to ensure the productivity of inherited lands, a
goal which “[could not] be done, according to the custom and method of improving
estates in this colony, without slaves.” By considering slaves as real estate, the
Burgesses argued, the state could “establish a method for settling slaves, and their
increase.” In other words, by declaring slaves to be real estate, the Burgesses
sought to capitalize not just on the slaves’ labor, but on their reproductivity as well.
By entailing slaves to the estates upon which they worked, the Burgesses sought to
guarantee that the owners of those lands would have claims to slave labor far into the
future: the “slave or slaves, and their increase, so long as any of them shall be living,
shall descend, pass, and go, as part of the freehold” to an unending line of white

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299 Hening 4: 222.
300 Hening 4: 224. By one measure, the Burgesses were correct in their observation: the 1705 entail
law had been one of many laws written by landowners to expand and solidify their holdings. By
commanding slave labor and taking advantage of inheritance laws that favored the nascent gentry
(those laws, it should be noted, were written by the slaveholders and landowners themselves), property
holdings in the first quarter of the eighteenth century were consolidated into vast family estates.
Anthony Parent has called this process (of which the 1705 law was one of the last steps) “the land
grab,” and argues that the gentry consolidation of estates via the law was a conscious, deliberate
process of increasing their own power. Anthony Parent, Foul Means, 9-54.
301 Hening 4: 224.
owners, their children and heirs. To declare slaves to be real estate guaranteed to heirs not just land, but ownership of human property in perpetuity.

In 1748, the Burgesses revisited the issue of slaves as real estate with a striking turnaround: the 1705 and 1728 acts “having been found inconvenient, and not to answer the ends thereby intended,” were summarily repealed. “For the future,” stated the Burgesses, “all slaves whatsoever shall be held, deemed, and taken, to be chattels personal.” Indeed, claimed the Burgesses, to consider slaves as real estate was to indulge in a dangerous fiction: “slaves are in their nature personal estate, and not real.” This language of slaves’ “nature” is exceptional in the colonial Virginia statutes – rarely, if ever, did the Burgesses consider slaves’ “nature,” either as people or as property. Therefore, this invocation of “nature” should be considered as an intentional rhetorical choice. The idea of “Nature” had powerful, multiple meanings in the eighteenth century. Nature and Nature’s God were sites of absolute truth, and to make claims about an object or person’s nature was to make claims about their core meaning and identity. To make claims about slaves’ “nature” as property was both to state an undeniable truth claim and to assert a racialized notion of slaves as salable objects. What had caused a legal reversal that required such potent language?

The problem lay in the very reproductivity that had made the entailed estates so advantageous. Entailed estates had become more problematic than profitable,

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302 Hening 4: 225.
303 Hening 5: 436.
305 Hening 5: 440. Later in the law, the Burgesses argued that personal estate was slaves’ “natural condition.” Hening 5: 441.
306 Schiebinger, Natures’ Body; Chaplin, Subject Matter; Parrish, American Curiosity.
according to the Burgesses. The Assembly described the ways that the real estate law had harmed planters:

Because in time [the slaves] overstocked the plantations, and often the tenant was the proprietor of fee simple land, much fitter for cultivation than his intailed lands, where he could work his slaves to a much greater advantage. But on the other hand the frequent removing and settling them on other lands in other counties and parts of the colony, far distant from the county court, where the deeds or wills which annexed them were recorded, and the intail lands lay; the confusion occasioned by their mixture with fee simple names of the same name and sex, and belonging to the same owner; the uncertainty of distinguishing one from another, after several generations, no register of their genealogy being kept, and none of them having surnames, were great michiefs [sic] to purchasers, strangers, and creditors.307

Here, the Burgesses imagined a “typical” aggrieved planter, who might own slaves both in fee simple and in entail, and his entailed slaves could not be moved (without considerable legal wrangling) from the estate to which they were entailed.

But why had the entail of slaves become a problem for the Burgesses’ idealized planter? This section of the law makes clear that, for slaveholders, the unruly reproduction of enslaved people had made the real estate law untenable. By defining slaves as real estate, the Burgesses had made a core aspect of the profitability of slavery – that slaves were self-reproducing property – unprofitable. The slaves had “overstocked the plantations” and were, in the eyes of the slaveowner, sitting idle rather than laboring in his interests. The term “overstocked” is itself a dehumanizing one, implying the uncontrolled reproduction of livestock animals. The law created, in the view of slaveholders, artificial categories amongst their human property: if some slaves on an estate were entailed, and others were not, how should their “mixture” be categorized? The birth of such “mixed” enslaved children became legal problems, rather than an expansion of the slaveholders’ property. We see the

307 Hening 441-2.
discourses of bastardy, slavery, race, and reproductivity intertwining here: it is no coincidence that this language of “mixed” children recalls the language used to describe the free mulatto children of free mulatto, black and white women, or the enslaved children of black mothers and white fathers. There was also the issue of bureaucracy: slaveholders bristled at the notion that they’d have to carefully record the complex genealogies of slave families.\(^\text{308}\)

Most egregiously, the law that defined slaves as real estate forced slaveowners to recognize the family relationships of their slaves. The very practices used to dehumanize slaves, from denying surnames to separating families, were made problematic by the real estate law. Since at least 1662, slaves had been denied surnames (slaves, after all, were children of enslaved mothers – a surname would link them to fathers, and therefore to legitimacy or even to whiteness). By extension, the process of enslavement meant that slaves were denied genealogies (slaves’ natal alienation – to use Orlando Patterson’s term – denied them links to the past and the future).\(^\text{309}\) Finally, the real estate law denied slaveholders the opportunity to move or sell individual slaves at will. Instead, slaves were tied to the land upon which they were born, and therefore connected to their families of birth.\(^\text{310}\) The problem of the entail law was that, by forcing slaveholders to recognize the familial relationships of slaves, it forced slaveholders to confront the humanity of their human property.

\(^{308}\) It should be pointed out that, when involved in lawsuits over the ownership of the increase of slaves, slaveholders were more than willing to reconstruct the very genealogies that were deemed so egregious in this 1748 statute. See, for example, York JO 2: 416-7, and DOW 19: 172-3.

\(^{309}\) Patterson, Slavery and Social Death, 7.

\(^{310}\) Lorena Walsh has pointed out that, by entailing slaves, slaveholders “unintentionally afforded their bondspeople more generational continuity and for a time more settled places of residence than was the lot of most slaves.” Walsh, From Calabar to Carter’s Grove, 45.
Ultimately, the 1748 statute was disallowed by the King in 1751, and slaves were again considered real estate. While it was in the interests of slaveholders to categorize slaves as personal estate, ultimately, the Crown’s interests (not the least of which was the upholding of primogeniture, the justification for monarchy itself) won out. Slaves would continue to be considered real estate until the outlawing of the entail system in the 1770s. All the while, slaveholders were able to hold and control their estates, whatever category of property slaves were considered. This is not to say that the debate did not matter. If this was the case, what are we to make of planters’ complaints so-called “overstocked” plantations? Entailing slaves could only “work” if planters were willing to record slaves’ genealogies, allow families to live and grow together, to take seriously both the maternal and paternal lineages of enslaved children. In other words, required planters to recognize that enslaved people were not livestock: slaveholders were forced to confront the humanity of enslaved peoples’ reproductivity. The attempt to define slaves as personal estate was not just about maximizing planter profits and holdings. Like the discursive connection drawn between slaves and livestock, the personal estate law was an attempt by planters to deny the humanity of their property.

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In 1686, William Fitzhugh (the planter discussed earlier who placed the highest value on so-called “Country bourn” slaves) trumpeted his wealth and

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311 Hening 5: 567.
312 Brewer, *By Birth or Consent*, 22-4. Because primogeniture (including entail) was the basis for monarchy, any interruption was a threat. Nevertheless, it is important not to misinterpret the 1748 Virginia statute as an attempt at democratizing inheritance. Instead, the 1748 statute was an attempt to make inheritance practices work in the interests of the crown.
financial solvency. After describing his extensive plantation in a letter to Doctor Ralph Smith, Fitzhugh concluded:

Thus I have given you some particulars, which I thus deduce, the yearly Crops of corn & Tobo. together with the surplusage of meat more than will serve the family's use, will amount annually to 60000 lb. Tobo. wch. at 10 shillings P Ct. is 300 L annum, & the Negroes increase being all young, & a considerable parcel of breeders, will keep that Stock good for ever.\textsuperscript{314}

By reducing enslaved black women to “breeders” and their enslaved children to “increase,” Fitzhugh revealed the logic of racial slavery which exploited black women’s reproductivity for profit. This reproductive exploitation was part of an emerging ideology that demanded the dehumanization of enslaved Africans as a justification and explanation for their enslavement. By calling women “breeders,” Fitzhugh implied that black women were little more than animals, like the livestock he owned and bred for profit. By calling children “increase,” Fitzhugh asserted that his slaveownership was a for-profit venture, and that claiming black women’s childbearing was a crucial means of becoming wealthy in the new world. Fitzhugh saw his wealth, like slavery itself, as perpetual – able to support him and his heirs “for ever.”

When William Fitzhugh called black women “breeders,” or when Mary Ludlowe referred to the “brood” of one of her slaves, or when William Byrd II urged settlers of the malarial Great Dismal Swamp to buy “both sexes, that their Breed may supply the loss [should older slaves die],” these slaveholders made clear the end result of the logic of slavery by birth.\textsuperscript{315} In their personal documents, their legal documents,

\textsuperscript{314} Davis, \textit{William Fitzhugh and His Chesapeake World}, 177.
and their state documents, Virginia’s slaveholders defined enslaved people as legally and linguistically similar to livestock. Did that logic extend to coercive sexual exploitation of black women for the purposes of breeding? There is every reason to assume that it did. The fact that explicit textual examples of slave breeding don’t seem to exist for this period should not give a false sense of the realities of slavery by birth. Indeed, the commonplace use of language such as “brood,” “breeder,” “increase,” and “profit,” makes clear that, far from such practices lacking specific evidence, they were part of the foundational logic of slavery. The fact that such casual language of livestock and breeding so permeated whites’ writing makes clear that breeding intentions (if not outright coercion) were the rule, not the exception. Anglo-Virginian culture was so saturated with the idea of slave breeding that the practice was barely worth articulating. Seen in this light, all slaveholding in the colonies should be considered a form of slave breeding, since all slaveholding was predicated on the idea of ownership not just of enslaved women, but of their childbearing capacity as well.

If this was the case, did Fitzhugh, Ludlowe, and Byrd literally think of black women as animals? Jennifer Morgan has argued that categorizing enslaved people as livestock was about humiliating black women, not about a literal belief in black women’s lack of humanity: “An enslaved person was branded ‘like’ an animal in order to humiliate, not because she was an animal and was insensate.” This may be the case, but it should be noted that the documents where the language of livestock

316 Jennifer Morgan argues that while no one in the Caribbean “articulated a position on the logic of ‘breeding’ the enslaved,” the logic of breeding was an “inherent supposition” of racial slavery. Morgan, Laboring Women, 128. See also, Fischer, Suspect Relations, 165-6 and Parent, Foul Means, 232.
317 Morgan, Laboring Women, 105.
and breeding appeared (letters, wills, legal documents) were meant exclusively for white readers. Instead, the language of livestock and breeding was just one of the ways that whites desensitized themselves to the humanity of those they enslaved. Because that language was part of the day-to-day exigencies of slaveownership, it exposes the ways in which emerging understandings of innate racial hierarchy were inherent in the very basis of slaveowning as an institution and as a practice.

Nevertheless, if reproductivity provided slaveholders a language with which to deny the humanity of the people they enslaved, the debate over real and personal estate shows us that that same reproductivity forced slaveholders to confront that humanity as well. Ultimately, the language of livestock used by slaveholders reveals the deep dualities and contradictions inherent in the exploitation of black women’s reproductivity. For enslaved women, childbearing could be an act of extraordinary hope and agency – literally a visceral means of creating humanity in the midst of inhumanity.318 On the other hand, enslaved women’s childbearing contributed to the profits, and ultimately the power, of their oppressors.319 How did women make choices about childbearing in this context? Were there ways that women could exercise their agency within their reproductive lives? If reproductivity was foundational to the coercive power of slavery, could it also be a site of resistance?

319 Dorothy Roberts emphasizes the ways that, both during and after slavery, black women’s childbearing “profited the system that subjugated [them].” Dorothy Roberts, Killing the Black Body: Race, Reproduction, and the Meaning of Liberty (NY: Vintage, 1997), 40-1.
CHAPTER 2

Wicked, Dangerous, and Ungoverned:
The Transgressive Possibilities of Reproduction

In 1692, years after Mary Walters was freed by her former master, Isaac Collyer, Walters sued Collyer's widow, Mary Bennit, “for the unjust detention & withholding” of Walters’ child.\(^{320}\) Now a free black woman, Walters had been freed by Collyer some time previously. Mary Walters’ claim to her child’s freedom was rooted in the 1662 law of slavery by birth: Mary claimed that her child had been born after she had been freed. Corroborating this claim, Mary’s husband Joseph testified that his wife “was with child when she was freed from Collyer.”\(^{321}\) Mary Bennit disagreed, arguing that the child “was borne in the time of its mother being...Collyer’s slave.”\(^{322}\) Indeed, Bennit claimed, the child was born “a long time before” Collyer freed Mary Walters.\(^{323}\) Several witnesses corroborated Mary Bennit’s testimony, and ultimately the court sided with Bennit. Because Mary Walters’ child was born to an enslaved mother (regardless of her current status), that child was rightfully a slave for life. Mary and Joseph Walters went home without their child.

Mary Walters was summoned back to court a year later. This time, Mary was the defendant in an assault and battery case. Mary, the court claimed, “hath most notoriously & wickedly abused [Elizabeth Sampson] not only by words but alsoe by

\(^{320}\) York DOW 9: 155. The child was never named in the court records. Mary (Collyer) Bennit had remarried after the death of Isaac Collyer.

\(^{321}\) York DOW 9: 179.

\(^{322}\) Ibid.

\(^{323}\) Ibid.
blows & offered great violence upon her."  

Mary was punished with “29 lashes on her bare back” and then imprisoned until she could “give sec[urity] for her future good behavior.” However, the court was not satisfied with this straightforward punishment. The justices argued that Mary’s life, which they described as “wicked & dangerous” and “ungoverned,” would “prove of dangerous consequence if some cause be not speedily taken to prevent her.” Therefore, the court determined, Mary Walters’ bond would not be collected to guarantee her good behavior – it would instead finance her “transportation out of this colony.”

The deportation order against Mary Walters was rooted in the court’s newly adopted belief that Mary was not in fact a free woman. The justices accused Mary of fraud, saying that her “pretence of being a free Negro” was unsustainable because Mary was “not...in the least capable of maintaining the same.” Just a year previously, the court, based on the testimony of Mary, her husband, and her former mistress, had implicitly believed that Mary had been freed from slavery. Ultimately, this former stance changed because since that ruling, Mary Walters had become a problem – a violent, angry, unpredictable problem. Mary’s racial status, along with her inability to prove her history of slavery and freedom, gave the court an opportunity to literally make that problem go away.

Mary Walters’ story is one of transgressing the lines of power that organized colonial Virginia society. It is also a story of how those transgressions were met by a colonial court willing to reverse its own decisions in order to enforce the racial social norms.
order. As a free black woman, Mary challenged her former mistress in court at a time when the rights of free black people were being increasingly curtailed in the colony. The court, of course, held the upper hand: no matter how convincing Mary’s testimony, the court decided in the favor of Mary’s white mistress. The language of the later case, in which Mary is described as “wicked,” “dangerous,” and, significantly, “ungoverned,” shows the ways that Mary’s life and actions transgressed the increasingly calcified racial hierarchy of the colony. Mary’s violence was interpreted by the court as a lack of proper discipline and deference – as a lack of mastery. For the court, the answer to Mary’s lack of governability was to reverse its own decision and recategorize Mary as a slave. Fascinatingly, the court did not attempt to actually re-enslave Mary: she was so “ungoverned” that they banished her altogether. This reversal by the court, ironically, exposed the fallibility of that institution and the limits of their power. As we will see, this was a prerogative claimed more than once by the court: met with a black or mixed-race free person who transgressed lines of racial and gendered power, the court was more than willing to change course in order to maintain dominance.

Mary Walters’ story also shows the centrality of reproduction to women’s lives and subjectivity in this colonial space. The crux of Mary Walters’ lawsuit against Mary Bennit was a dispute over Mary Walters’ reproductive history, specifically whether the birth of her child occurred before or after she was freed. From the distance of centuries, we can’t discern what caused the conflicting timelines in the testimonies of Mary Walters and Mary Bennit. Nor can we assert that the rage

that boiled over in Mary Walters’ fight with Elizabeth Sampson was in any way related to the Mary’s loss of her child. Nonetheless, Mary Walters’ violent rage – a rage that so shocked the colonial authorities that they demanded she leave the colony – calls to mind Frantz Fanon’s observation that “the violence which has ruled over the ordering of the colonial world... that same violence will be claimed and taken over by the native.”330 It is hard to imagine that Mary Walters’ rage was not in some part fueled by the violent injustices she had endured, one example of which was the loss of her child to the exploitation of colonial slavery by either an accident of that child’s birth or a misrepresentation of that birth by Mary’s former mistress.

In creating and enforcing the law of slavery by birth, Virginia’s lawmakers sought to erect an absolute legal and social structure: slavery and freedom were linked to race, and race was marked by birth. By building this legal structure on the foundation of bastardy law, the planter elite had created a system in which illegitimacy laws were enforced on the basis of race. White women’s illegitimate children were subject to some labor, enslaved black women’s children (all of whom were treated as illegitimate) were subject to lifelong, inherited slavery, and mixed-race children were subject to ever increasing amounts of unfree labor. This link between illegitimacy and servitude also impacted white women and free women of color, who were punished with forced servitude for the crime of bastardy. Seen in this light, the creation of racial slavery was an exercise of patriarchal power: slavery was the ability of a particular group of men to define, claim, discipline, and capitalize upon the reproductivity of women. As was discussed in Chapter One, the effect this

330 Frantz Fanon, The Wretched of the Earth (NY: Grove Press, 1963), 40.
system had on women varied by their race and status, but, because all women’s births were on some level suspect, all women were subject to these laws.

Even as Virginia’s patriarchs, via their colonial government, sought to create an airtight system, cracks still appeared. Hidden in the court documents are stories of women who defied authority, either intentionally or not, and sought to create lives for themselves and their children: their outlaw reproduction is the focus of this chapter.

My goal here is to understand how some women could make power work in their own interests even in the face of the overwhelming discursive power of colonialism and racial slavery. Ultimately, the process of creating colonialism and racial slavery in Virginia inadvertently created possibilities for the transgression of those very systems. First, even in attempting to create an absolute legal structure, Virginia’s lawmakers created spaces for individual women to find ways to use the law and the culture to protect themselves and their children. We’ve seen this in Mary Walters’ case, when she tried (albeit unsuccessfully) to sue her former mistress. Second, on a cultural level, the assertion of patriarchal power through colonialism and racial slavery, in a sense, created its opposite: patriarchal Virginia created a world in which reproduction could carry the keys to freedom, personhood, and familial stability.

Specifically, free black families like the Walters family, who existed outside of the dualistic framework of racial slavery, challenged the notion that blackness and slavery were absolutely linked. In some cases (like Mary Walters’), the court would reassert its power and authority; in others, free black families found ways to continue their lives outside of the boundaries set by colonial elites. While these patterns of transgression should not be overestimated – the power of colonialism, especially in
the form of racial slavery, was devastating on both an individual and a systemic level – the actions of women who transgressed lines of power and authority must be recognized.

This chapter aims to uncover outlaw reproduction in the context of colonialism and racial slavery. How could reproduction be a site for transgression in a culture of overwhelming domination? First, I will explain the theoretical underpinnings for my understanding of transgression within systems of domination. Second, I will explore the meanings of transgression in the reproductive lives of women in Virginia's colonial culture. Finally, I will attempt to reconstruct the lives of two women and their families who straddled the color line in seventeenth- and eighteenth-century Virginia. These two family histories emphasize the ways that marginalized women's reproduction could unsettle the foundations of early Virginia's systems of racial hierarchy and racial slavery.

*From resistance to transgression*

In this discussion thus far, I have tried to avoid using the term “resistance” in favor of another term and another framework: transgression. Attention to people's resistance to structural power has been absolutely central to the development of histories “from the bottom up,” especially histories of slavery. Historians of women in slavery, in particular, have focused on understanding the ways that resistance, accommodation, and domination were intertwined in a complex matrix.

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Women’s resistance to slavery ran the gamut from nonviolent protest (such as work slowdowns) to armed rebellion, but women’s role as the primary caretakers for children made them differently invested than men in preserving their safety and their children’s safety. Because of their role as mothers, women’s resistance often took on different forms and had different priorities than men’s resistance. Acknowledging the complexity not only of enslaved women’s resistance but of historians’ debate about that resistance, Jennifer Morgan argues that historians must avoid seeing resistance and accommodation as an absolute binary, as such a dualism “suggests an ability to clearly delineate the meaning of various behaviors and does so while suggesting that there is consensus about the terms in play.” For Morgan, resistance is a meaningful concept only if we understand it fully in the context of the domination of slavery. Otherwise, well-meaning historians run the risk of reducing enslaved people to “imaginary automatons” forever trapped in a “vacuum of perpetual resistance.” In other words, resistance itself – as a way to understand agency, as a way to understand the relationship between individuals and power, as a way to understand change in social and historical systems – is a concept under debate.

In this chapter, I draw on three bodies of theory to provide a framework for understanding the relationship between power and women’s resistance to that power in the context of the law of slavery by birth, where reproduction was understood as

333 Morgan, Laboring Women, 166-7.
334 Morgan, Laboring Women, 167.
part of a nexus of sexuality, race, and servitude. Michel Foucault's definition of power – as emerging from multiple points within a discursive field – demands that we acknowledge the power held by all actors within a structure, even those with less (or seemingly no) formal authority. Readers of Foucault in feminist and queer theories have offered possibilities for rethinking the ways that transgressive lives or actions that expose the artificiality of structures of power can weaken, or at least expose, the foundations of that power. Finally, postcolonial theorists have grappled with the relationship between the academic and the historical subject, questioning whether historians and other academics can recover the lives and voices of those at the bottom of hierarchies. This chapter is informed by a reading of all of these bodies of theory.

Foucault reminds us that discursive structures of dominance contain within them the means for their own transgression: resistance is rooted in, springs from, and therefore reflects the very power it counteracts. For Foucault, power "must be understood...as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization."335 Foucault's poststructuralist understanding of power, in other words, frames power as not held by or embodied in those at the top of hierarchies, but instead as emanating from and between (and thus able to be claimed by) people at all levels of society. The point here is not to deny the existence of hierarchy, but instead to recognize the ways that power is made, remade, and exchanged in the intimate zones where individuals interact.336 Foucault alerts us that, if power is understood as intimate or multiple (i.e., not simply held by rulers), then resistance to power is simultaneously as

335 Foucault, History of Sexuality, 92.
336 Foucault, History of Sexuality, 44-6; Stoler, "Intimidations of Empire," 3.
universal and as multiple as power itself. Again, Foucault’s poststructuralist stance allows for a rethinking of power and resistance as emanating from individuals, rather from classes. Foucault argues:

[Power relations’] existence depends on a multiplicity of points of resistance.... These points of resistance are present everywhere in the power network. Hence there is no single locus of great Refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary. Instead there is a plurality of resistances, each of them a special case.337

In this context of multiple power relations, even people at the bottom of hierarchies influenced the cultural systems in which they lived.338

Foucault’s definition of power and understanding of resistance have been critiqued, reframed, and expanded by other theorists, notably feminist theorists and post-colonial theorists. Some feminist critics have argued that Foucault’s discussion of the multiplicity of power relations denies the existence of structural power, and thus would seem to deny the reality of men’s oppression of women (or even, we might surmise, slaveholders’ oppression of those they enslaved).339 However,

Foucault’s critique of totalizing theories of power still acknowledged that power was

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337 Foucault, History of Sexuality, 95-6.
338 Kirsten Fischer frames women’s resistance in colonial North Carolina in just these Foucauldian terms, arguing that “far from being passive recipients of a new social order, [women’s] resistance and accommodations to the exigencies of bio-power fundamentally influenced race relations in the colonial setting.” I address Foucault’s notion of biopower in Chapter 4. Fischer, Suspect Relations, 6-7.
339 Some radical feminist and socialist feminist theorists sharply critiqued this aspect of Foucault’s theories, arguing that by denying structure, Foucault made it impossible for oppressed groups to organize for their own liberation. See, for example, Nancy Hartsock, “Foucault on Power: A Theory for Women?” in Feminism/Postmodernism, ed. Linda J. Nicholson (NY: Routledge, 1990), 157-175. I find more convincing the more measured critique of Susan Bordo, who praises the attention to complexity, heterogeneity, and resistance by Foucault and other poststructuralists and postmodernists, while still cautioning against a “methodologism” which would elevate his theories to a new canon. Further, Bordo suggests that postmodernism’s attention to heterogeneity and difference is rooted in similar attention paid by feminism and other social justice movements. Susan Bordo, “Feminism, Postmodernism, and Gender-Skepticism,” in Feminism/Postmodernism, 133-156.
focused in the hands of the few. Foucault’s theories allow that power can and does coalesce into systems of domination through the repetition of particular discourses of power. Importantly, though, because they emerge in a discursive field, these systems of domination are never absolute: for Foucault, power is “a multiple and mobile field of force relations, wherein far-reaching, but never completely stable effects of domination are produced.”340 Rather than seeing power as a result of domination, Foucault sees domination as the effect of power.

Foucault reminds us that even as discourses are repeated, they are tenuous and unstable – indeed, the incessant repetition of discourses exposes their instability. In Chapter One, we have seen how this operated in the creation of a culture of inherited racial slavery in early Virginia: repeated discursive patterns created the possibility for particular kinds of reproduction to be tied to perpetual labor, and for particular kinds of property ownership to be tied to certain women’s reproductivity. The system of racial slavery in early Virginia, while clearly a system of domination, was also an unstable one in significant ways. We have seen this in the debates over realty and personalty discussed in Chapter One: power had coalesced in the hands of planters through their exploitation of black women’s reproductivity. The debate over real and personal property revealed the inability of the elite to control the very discourses of reproductivity, servitude, and race upon which racial slavery depended. Drawing on this foundation, this chapter explores the ways that women could exploit these sites of instability for their own and their children’s benefit.

If systems of power are inherently unstable, then resistance to power can take myriad forms. Feminist theorist Johanna Oksala uses the twin concepts of

340 Foucault, History of Sexuality, 102.
transgression and limit-experiences to understand some of the forms resistance can take in a Foucauldian framework. Oksala’s reading of Foucault’s theory offers a compelling model for thinking about how bodily experiences can pose challenges to discourses of power. Drawing on Foucault, Oksala argues that:

Limit and transgression are irrevocably tied to each other; they constitute each other and constantly reaffirm and contest each other. Transgression creates a limit that exists only in the movement that crosses it. It literally crosses over the limits and thus brings and explicit experience of limits into being.341

In other words, the relationship between limit and transgression is parallel to the relationship between domination and resistance. Limits are unknown before they are crossed; attempts at domination are resisted. But what do these transgressions look like, and why do they matter?

Oksala outlines three modes of transgression that she terms “limit-experiences,” or experiences that exist on the edges of discourse and, as such, transgress cultural boundaries.342 These limit-experiences are useful to us here in understanding the relationship between resistance and domination. First, and most obviously, limit-experiences transgress lines of power, crossing over from what is perceived as normal, legal, or permissible, to that which is deemed abnormal, illegal, or impermissible. In terms of this discussion of reproduction in colonial Virginia, illegitimate births, by definition, transgressed lines of power by standing as undeniable evidence of sexuality outside of the narrow boundaries of patriarchal marriage. Second, Oksala discusses limit-experiences that transgress lines of

342 Oksala, “Anarchic Bodies,” 112.
knowledge, crossing over from the intelligible and understandable to the unspeakable and unknowable. In this study, we've already seen how cross-racial births pushed the boundaries of knowledge, as lawmakers struggled to categorize and make sense of babies that challenged boundaries of race, servitude, and freedom. The birth of free interracial children challenged the dualistic framework of racial slavery, in which slavery and blackness were co-defined. Finally, limit-experiences transgress boundaries of subjectivity, as people move from understanding their place in social categories and hierarchies to being “[thrown] outside of ourselves,” and outside of normativity. Again, cross-racial births provide an example of this kind of limit-experience, but this time, we must imagine or discern what it meant to individuals to live outside or in the liminal spaces of the rigid hierarchies of colonial Virginia’s racial discourse.

Oksala’s framing of limit-experiences as transgressing various boundaries trains our eye away from mass revolution (the mythical “soul of revolt,” in Foucault’s acerbic phrasing) to the meanings of individual interactions. Understanding the meanings of transgression requires attention to local spaces, intimate zones, and individuals in a discursive field. But are these individual interactions meaningful in a political sense? Biddy Martin argues that, if neither power nor resistance emerges from a central locus, then “a very different form of political organization and struggle

344 Greg Dening emphasizes the liminality of colonial identities, since colonial spaces were “places of ambivalence and unset definition.” Greg Dening, “Introduction: In Search of a Metaphor,” Through a Glass Darkly: Reflections on Personal Identity in Early America (Chapel Hill: University of North Carolina Press, 1997), 2. In his introduction to Possible Pasts, Robert Blair St. George emphasizes that this liminality was part of a process of “becoming colonial,” a process that was always occurring for all people, as they shaped and were shaped by the colonial project. St. George, “Introduction,” 4-5.
suggests itself."\textsuperscript{345} For Martin, seemingly fragmented, individual, incoherent, or under-theorized transgression may indeed be deeply effective, because it is the local struggle that undermines the repetition of discourses of power. Martin's recognition of local struggles is profoundly useful in recognizing the complex political meanings of women's lives and choices in the context of colonialism. For example, even as New World slavery was an Atlantic phenomenon, its myriad local formations (such as Virginia's conflation of illegitimacy with labor) demonstrate the ways that even global phenomenon had specific local iterations. Early American historian Robert Blair St. George uses the term "vernacular theory" to describe the development of local discourses of power, authority, and resistance in colonial American spaces—a concept strikingly parallel to Martin's discussion of a localized feminist politics.\textsuperscript{346} Our task here, then, is to uncover the ways that transgressive lives or experiences challenged the emerging vernacular theory of colonialism in Virginia, or may have created alternative vernacular theories themselves.

My point is not to exaggerate the power of individuals, but to recognize the ways that individuals can destabilize the cultural systems that frame their lives. Indeed, queer theory and lesbian history's analysis of queer lives within the context of heteronormativity allows that, for marginalized people within discursive power structures, simply living— if living is understood as occurring within and against a constructed framework of gender and sexuality—might be understood as a form of subversion. Judith Butler argues that "heterosexuality must be understood as a

\textsuperscript{345} Biddy Martin, "Feminism, Criticism, and Foucault," in Feminism and Foucault: Reflections on Resistance, ed. Irene Diamond and Lee Quinby (Boston, MA: Northeastern University Press, 1988), 9-10.
\textsuperscript{346} St. George, "Introduction," 10.
compulsive and compulsory repetition that can only produce the effect of its own originality."  

If this is the case, then queer performances (like drag or butch/femme) destabilize heterosexuality by emphasizing its repetition. There is an analogy to be made here: if, like heterosexuality, racial hierarchy and separation were compulsively reiterated (as we’ve seen with the discursive repetitions that created slavery), then outlaw reproduction could expose this anxious repetition.

Martha Vicinus argues for the centrality of lesbian histories precisely because lesbian sexualities pose a threat to the dominant culture by pointing to the “social danger inherent in women’s economic and sexual independence.” Again, an analogous reading is necessary here: outlaw reproduction exposed the limitations and boundaries of the cultural and legal culture of inherited racial slavery.

This reading of queer theory intends to show possibilities for foregrounding the transgressive possibilities of women’s experiences in colonialism. The intention of my reading of Butler and other queer theorists is not to argue that all lives lived are transgressive. Instead, I wish to emphasize that lives lived (and babies born) in liminal, marginal, or outlaw spaces give the lie to the racial and gender categories and hierarchies that slaveholders’ discourse labored to create and naturalize. To connect this discussion of queer theory to Oksala’s framework of limit-experiences, the limit-experiences of queer and transgender sexualities transgress boundaries of power, knowledge, and subjectivity by rejecting what is seen as “normal,” forcing the unspoken to be spoken, and creating spaces for identities outside of rigid categories.

To be clear: I am not arguing that race and sexuality are/were constructed by identical processes, but instead that queer theory offers a particularly compelling insight into the power of transgressive identities by focusing on the ways that daily interactions can destabilize cultural systems.349

In his study of interracial marriages in nineteenth-century Virginia, Joshua Rothman argues that formally illegal relationships were tolerated by neighbors and the authorities, so long as the participants did not push the boundaries of their status, claim power that the community defined as undue, or allow their relationships to become too publicly known.350 This reading of early American community relations points to a way for us to understand the relationship between people’s transgressive lives—whether defined by illegal marriages or outlaw reproduction—and community norms. Transgressions like illegitimacy or interracial births could be tolerated or even absorbed by the community when such absorption was in the interest of colonial power structures: the clearest example of this is the ways that black women’s interracial children were absorbed into slavery because planters profited from this form of interracial birth. White women’s interracial births, on the other hand, were too transgressive, and were punished harshly. On the other hand, we will see the many ways that other forms of transgressive births—births by white servant women,

349 For a feminist discussion of the parallels between the emerging discourses of race and sexuality, see McWhorter, “Sex, Race, and Biopower,” 38-62. McWhorter argues that the discourse of race emerged in a manner parallel and simultaneous to the emergence of a discourse of sexuality as described by Foucault. For another Foucauldian reading that parallels the emergence of race and the emergence of sexuality, see Stoler, Race and the Education of Desire. Stoler argues that outside of The History of Sexuality, Foucault considered deeply the politics of racial discourses, and that by rereading The History of Sexuality via Foucault’s own ideas and the history of empire, we can come to a fuller understanding of the formation and transformation of the bourgeois discourses that have marked the modern world.

350 Rothman, Notorious in the Neighborhood.
births by free white women, and so on – might be tolerated so long as they did not pose too much of a challenge to colonial power.

The project here, then, is to recover the transgressive possibilities of women’s reproductive experiences in colonialism, even while understanding the limits of such a knowledge-project. If poststructural feminist and queer theories are concerned with recognizing transgressive power within systems of domination, postcolonial theories are engaged in a similar project – and particularly interested in the difficulties of recognizing and naming those transgressions. Homi Bhabha emphasizes that in the discursive field of colonialism, where colonial power depended on the construction of a subaltern “other” in order to justify its own dominance, “subaltern social groups were also in a position to transgress the authority of those who had hegemonic power.”351 Understanding the politics of subaltern transgressions requires reconstructing colonized subjectivities, a task that Gayatri Spivak has both demanded and problematized in her influential essay, “Can the Subaltern Speak?”352 Spivak’s framing is useful here for two reasons: her critique of the Western intellectual, and her understanding of colonized subjectivities. Spivak points out that if colonial power was constantly being reinscribed in the local context, it continues to be reinscribed by the intellectual (or, in this case, the historian). Her critique is aimed squarely at Foucault, who, she argues, reinscribes his own position as a Western intellectual even as he critiques the notion of a unified subjectivity.353 Significantly, Spivak does not reject Foucault wholesale, but instead forces us to consider the

352 Indeed, Spivak problematizes the very notion of the “subaltern” as a category of identity or experience at all. Spivak, “Can the Subaltern Speak?” 66-111.
limitations of his (or any theorist’s) ideas and subjectivity. Spivak requires a constant
intellectual vigilance on the part of the intellectual to divest themselves from colonial
power even as they recognize that they are imbricated in that same power.

Second, Spivak’s discussion of colonized subjectivities points to ways that we
might consider and understand the transgressive experiences of colonized peoples,
even while recognizing the limitations of our understandings. She points to the
“epistemic violence” of colonization, which repetitively elides the subjectivities and
experiences of the subaltern (a process we’ve already seen in the deployment of
discourses of livestock in the creation of chattel slavery in Virginia). The point is
not that the subaltern cannot speak, but that her voice is so hard to hear across the
distances of differing experiences, chasms of time, and the purposive violence and
silencing characteristic of colonialism and slavery. Further, embedded in Spivak’s
concept of “epistemic violence” is the crucial understanding that colonized people’s
subjectivities did exist within colonization, however silenced by the colonial archive
and transformed by the experience of colonization itself.

Therefore, recognizing these silencing processes requires a hopeful reading of
the archive: in the words of historian Ania Loomba, we must “suppose a presence
which at first cannot be found.” For Loomba, reading intently for the subjectivities
of women who “survived to tell the tale” allows us to get closer to understanding
those subjectivities within the context of the structures that silenced them. My

354 Spivak, “Can the Subaltern Speak?” 76.
355 Loomba, “Dead Women Tell No Tales,” 319, emphasis in original.
356 Loomba, “Dead Women Tell No Tales,” 319. Loomba’s radical contextualization of subaltern
women’s subjectivities has much in common with Linda Alcoff’s concept of a historicized
“positionality” in her rethinking of feminist identity politics in a poststructuralist framework: “The
positional definition...makes [woman’s] identity relative to a constantly shifting context, to a situation
that includes a network of elements involving others, the objective economic conditions, cultural and
approach here is inspired by the hopefulness of Loomba, but tempered by the
cautiousness of Spivak. The early Virginia archive, made up of court records and
other elite documents, is itself an artifact of domination. One unarticulated but
present purpose of these documents was to do epistemic violence to colonized
subjects, be they women, enslaved or free African-Americans, or Native Americans –
a silencing of these voices and experiences via framing those subjectivities in the
terms of the dominant culture. Even so, for the women whose reproductive lives
crossed boundaries or complicated categories, these documents record that
transgression, not least because this boundary-crossing posed a challenge to power.

My examination may not necessarily reconstruct subaltern subjectivities, but it does
aim to make sense of the transgressive effects of those subjectivities.

To summarize, my goal in this chapter is to understand the ways that
individual women’s reproductivity could destabilize the seemingly solid, but always
tenuous, discursive formations that constructed inherited racial slavery in colonial
Virginia. Foucault’s poststructuralist understanding of power within discursive fields
reminds us that, even as power was consolidated in particular groups (read: the
slaveowning planter class in colonial Virginia), individuals at the bottom of
hierarchies could exercise power to influence their worlds. Indeed, as Virginia’s
planters tried to construct a society based on the twin dualisms of race (black vs.
white) and labor (slave vs. free), people who defied or blurred those dualisms could
pose a challenge to the system as a whole. This challenge could take as simple but
profound a form as the birth of a child. To seek out these transgressions is not to

political institutions and ideologies, and so on.” Linda Alcoff, “Cultural Feminism versus Post-
Structuralism: The Identity Crisis in Feminist Theory,” in The Second Wave: A Reader in Feminist
ascribe to marginalized people some universal resistant subjectivity, but to try to
recognize the fissures in the system that allowed marginalized people to live their
lives. Further, the goal is not to underestimate the overwhelming power of systems of
domination like slavery, but instead to recognize how incredibly difficult
marginalized lives within those systems could be.

Recovering the stories of the women who “survived to tell the tale” in early
Virginia’s culture of inherited racial slavery is a complex task. This is further
complicated by the exigencies of reproduction in early Virginia. The events of
women’s reproductive lives – the birth of a child, the outlaw pregnancy, the intent to
limit one’s reproduction – are not so easily categorized as “resistance” or
“accommodation.” Instead, I tend to see these events as examples of transgression
rather than resistance. As was described in Chapter 1, Virginia’s intersecting
hierarchies of race, labor, gender, and status were framed by discourses of
reproduction; lawmakers tried to use reproduction to create and police race and labor
categories. Simultaneously, reproduction also complicated those very categories:
interracial children, bastard births, and other births that crossed categories
destabilized hierarchies and blurred divisions. My focus here is to understand the
effects of the choices that women (both enslaved and not) made that transgressed or
complicated the structures of power in which they lived. In this way, my concern is
less about resistant intent than with transgressive effect. I seek to uncover the limit-
experiences of women whose lives transgressed boundaries of power, of knowledge,
and of subjectivity, in a colonial space in which those boundaries were constantly
being constructed and reconstructed. The particularities of reproduction within

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colonialism – especially in a culture defined by inherited racial slavery – meant that all women’s reproduction had political meaning. Because status (whether in terms of race or labor) was marked by birth, birth itself carried significant potential political power.

Transgressive Reproduction

An examination of the transgressive possibilities of reproduction in early Virginia is undoubtedly attenuated by the available archive: the surviving court records and plantation documents are, by definition, artifacts of the systems of domination in the colony. This does not mean that all of the births recorded in the archive transgressed social and cultural boundaries. For example, the required birth records submitted by parishes recorded all white women’s births, both legitimate and illegitimate (parishes were not required to record the births of slaves, though some did). Nevertheless, the county courts’ records of births did focus on outlaw reproduction – those births that caused problems, created legal crises, or challenged social hierarchies. Indeed, it was because these births transgressed social and cultural boundaries that they produced discursive effects. Further, planters’ records sometimes provide clues for how enslaved women’s reproductivity could interrupt the plantation economy. Therefore, the character of the early Virginia archive makes an attention to transgression (rather than resistance) especially useful. In all but the rarest of cases, I can’t begin to assert the intent of the women who bore these children – their subjectivities are assiduously elided by the men who wrote the documents. Nevertheless, some women’s transgressive actions left traces in the court records.
In the following section, I will examine how the Virginia court documents (and, in some cases, other records) offer up some ways that women’s reproductivity transgressed the lines of the increasingly calcifying systems of domination of early Virginia. My analysis is organized, with some blurring and a few exceptions, by women’s status: the pathways to and meanings of transgressive reproduction were profoundly different if a woman was white, black, or mixed race, as well as whether she was indentured, enslaved, or free. I first focus on the transgressive reproductivity of white women, whose experience was complicated and defined by their status as servants or free women. Then, I examine the possibility that black women’s reproductivity in slavery could have transgressive meanings. The transgressive reproductivity of free women of color, especially mixed-race women and their families, is examined in depth in the next section.

White women’s reproductivity was transgressive of colonial systems of domination in a number of ways. As we will see, for white women, transgressive reproductivity took a number of forms depending on whether they were free or indentured. Some free women simply defied the disciplinary power of the court by escaping trial or punishment when they bore children outside of marriage. For English servant women who bore bastard children, the rituals of childbearing, especially the tradition of lying-in, challenged household hierarchies. Further, as we will see, for both free and servant white women, the bearing of a bastard child could allow some women to live outside of the strict hierarchical norms of colonial patriarchy. As was outlined in Chapter 1, the establishment of racial slavery in the colony was founded on the appropriation of black women’s reproductivity along with
the disciplining of white women's reproductivity: legitimate white reproduction could occur only within marriage, and could not cross increasingly calcified racial barriers. For many white women, both free and indentured, the record of their bastard births stands as evidence of some unlikely (and tenuous) paths to transgressing the disciplinary power of the colonial courts and elites.

For some women, their defiance of the court's power over their reproductivity was explicit: they evaded the court. An example of intentional resistance, escaping the court's punishment also shows ways that women charged with bastardy transgressed social and cultural boundaries. First, these women transgressed lines of power by disobeying the court's orders and outwardly challenging the court's authority. In 1662, after being sentenced to ten lashes each for bearing bastard children, Elizabeth Holloway and Anne Roberts enraged the court when they together "escap[ed] from the Court without punishment."357 This transgression of power was also a transgression of knowledge, when women used their knowledge of the law and the masculine public sphere to their own advantage. In 1708, Judith Moody's bastardy case was dropped because she "hath absented & gone out of the County," a move that suggests that Moody understood the boundaries of the court's jurisdiction and used that knowledge to plot her escape.358

No matter the intention of women who evaded the court, women's defiance of the courts' power had transgressive effects. Some women simply refused to show up

357 York DOW 3: 161, 168. In another case, Margaret George was tried simultaneously for bastardy and running away. DOW 5: 11, 109.
358 York DOW 13: 120, 125. For similar cases, see the 1759 bastardy cases of Martha Driver, Elizabeth Robertson, and Mary Bayley, which were dismissed "the Defts not being to be found in this County." It is possible that the three women escaped together. York JO 3: 66, 73. See also the case of Elizabeth Hughes, whose case was dismissed from the York Court because the offense occurred in another county: York DOW 3: 151, 175.
to court when summoned for bastardy. When Mary Hubbard was charged with bastardy in 1745, the court had to dismiss the case when she failed to obey her summons and could not be found.\textsuperscript{359} When Barbara Hutton refused to obey her summons for bastardy in 1707, her case was dismissed, and her accusers, George Baskerville and Thomas Mountfort, were each fined 500 pounds of tobacco as punishment for her nonappearance.\textsuperscript{360} Later that year, Mountfort was denied a license to open an ordinary because the court thought him "insufficient."\textsuperscript{361} Was his failure to detain Hutton evidence of his insufficiency? These cases indicate that free white women were willing and able to frustrate the court's attempts to discipline their reproductivity and sexuality. And these cases caused a problem for the courts—bastardy cases often clogged up the court's dockets for months at a time as women either refused or otherwise failed to show up to hearings.\textsuperscript{362} Whatever women's intent in defying the court, the effect of their actions was to subvert the power of the court, and, by extension, the colonial patriarchy it represented.

For other women, especially English servant women, the transgressive possibilities of their childbearing were more implicit. These implicit meanings

\textsuperscript{359} York DOW 19: 365-6, 372. Interestingly, on the same day that Driver, Robertson, and Bayley left the county, another woman, Elizabeth Godfry, was fined for bastardy despite the fact that she did not appear in court. This suggests that simply skipping court was not enough to escape punishment—one needed to escape the court's jurisdiction altogether. York JO 3: 32, 66.
\textsuperscript{360} York DOW 13: 40, 58, 66, 75, 76, 85, 93.
\textsuperscript{361} York DOW 13: 94.
\textsuperscript{362} Mary Clay evaded court for 16 months before finally being sentenced: York DOW 8: 300, 512. See also the 1731-2 bastardy case of Anne Banks (13 months between initial charge and eventual dismissal): York DOW 17: 253, 260, 265, 273, 296, 308, 314, 338; York DOW 18: 5; the 1741-2 bastardy case of Cleopatra Bee (9 months between initial charge and guilty decision): York DOW 19: 45, 56, 62, 72, 79, 89; the 1745 bastardy case of Hope Drewitt (6 months between initial charge and guilty decision; Drewitt never showed up to court and was found guilty in absentia): York DOW 19: 365-6, 372, 381, 386, 391; the 1751 bastardy case of Mary Hughes (7 months between initial charge and eventual dismissal): York JO1: 507, 517; JO 2: 13, 27, 47; the 1731-2 bastardy case of Elizabeth Jones (6 months between initial charge and last mention of case, which was never completed): York DOW 17: 248, 253, 260, 265, 273, 313.
require a reading of the Anglo-Virginian cultural context of those births. The relationship between women servants and the master class reveals a tug-of-war over power in cases of servant women’s bastard births. Undoubtedly, white servant women’s pregnancies and births posed difficulties to the master class: a pregnant servant couldn’t work as hard, and bastardy cases had to be investigated and tried in the courts. In some ways, the colony’s appropriation of servant women’s reproductivity was an attempt to reclaim that power. As discussed in Chapter 1, Virginia lawmakers used bastardy law as a discursive foundation for the colony’s culture of servitude and slavery: bastardy law was the basis by which Virginia’s planter class extracted ever-increasing terms of service from women based on race.

Even so, preexistent English customs surrounding childbirth complicated those labor demands. A close reading of the intent of Virginia bastardy law as it was applied to English servant women’s bastardy cases indicates some of the ways servants’ reproductivity unsettled the social hierarchies of the master’s household.

As was discussed in Chapter 1, beginning in 1643, servant women were treated differently, and increasingly punished more harshly, than free women for the crime of bastardy. By 1696, punishments for bastardy had been rationalized in a way that would stay more or less intact until the Revolution. All women convicted of fornication were to be punished one of three ways: they were to be fined 500 pounds of tobacco, or severely whipped, or (if a servant) forced to serve six more months. Servant women who bore bastard children were to serve an additional two years. Since fornication cases were rarely brought to court unless a bastard child was born, the result of the statute was that free women were fined or whipped for bastardy,

\[363\] Hening 3: 137-40.
while servant women could serve anywhere between six and twenty-four extra months and could be whipped and/or fined as well. For example, in 1674, when Mary Bell was found guilty of bearing a bastardy child while indentured to Edward Baptist, she was ordered both to serve and extra two years and to be whipped “until the blood come.”\footnote{York DOW 5: 68.} County courts exercised considerable leeway in assigning punishments, but, as we will see, the reasoning for those punishments was remarkably consistent.

Ann Elmes’ 1679 bastardy case demonstrates well the ways that the law was applied by the York county court to English servants accused of bastardy. Elmes was a 24-year old servant of William Wade when she was brought to court for bearing a bastard child. Elmes was ordered to receive “20 lashes upon the bare back” for the crime of fornication, unless Wade conceded to paying Elmes’ fine for her.\footnote{York DOW 5: 89; York DOW 6: 94.} Cases like Elmes’ reveal a potent power held by masters in these cases: essentially, it was up to Wade whether or not he would be generous enough to protect Elmes from the whipping by paying her fine (for which he could demand extra labor for repayment). Besides the fine or lashes, Elmes received a separate punishment for the birth of the bastard child: she was ordered “to serve for same according to law.”\footnote{Ibid.} In other words, besides being whipped (or serving extra as repayment for a fine), Elmes was required to serve Wade for two additional years.

Why were servants like Ann Elmes required to serve the extra time for bastardy? On one level, this question has an easy answer: as community members with very little authority, white servant women were at the mercy of the law and those

\footnote{York DOW 5: 68.} \footnote{York DOW 5: 89; York DOW 6: 94.} \footnote{Ibid.}
who applied it. With Virginia's high demand for labor, why wouldn't planters extend their servants' terms of service as much as they could? This answer, while self-evident and undoubtedly true, doesn't tell the whole story. The language of the statute and the individual cases indicates that the extended labor had a very specific function: "If it happen a bastard child to be gotten in such fornication then the woman if a servant in regard of the losse and trouble her master doth sustaine by her haveing a bastard shall serve two years after her time of indenture is expired." The extra labor demanded from servant women was intended to repay the master for "the losse and trouble" he had sustained, but what was this "losse and trouble" exactly? The answer to this question lies in the potentially transgressive power of the early modern European practice of lying in.

In his discussion of women's culture of midwifery in eighteenth-century England, Adrian Wilson notes that the tradition of lying-in could overturn the basic hierarchies of the patriarchal household. In early modern England, as well as the colonies, recently delivered women were attentively cared for by other women for up to a month as they recovered from childbirth. This highly ritualized process of "lying-in" allowed women to recover from the strain of childbirth, enjoy female sociability, and begin the process of nursing and infant care. The connection between lying-in and resuming labor was clear in practice. Laurel Thatcher Ulrich points out that recovery from childbirth was defined by women's ability to return back to their

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367 Hening 2: 114-5, emphasis mine.
368 I do not assume that birth practices translated wholesale from England to Virginia. Indeed, the argument that follows indicates some ways that the servant economy in Virginia interrupted and problematized English birth practices. The differences between English and Virginian birth practices will be discussed more fully in Chapter 3.
usual labors after lying-in: "It wasn’t the size and position of the woman’s uterus but her ability to make her own bed that signified recovery."

Wilson emphasizes the political ramifications of this tradition, which essentially removed the postpartum woman from the household sexual economy and labor structure:

The ceremony of childbirth inverted the normal pattern of conjugal relations; the wife’s bodily energies and sexuality now, for the space of ‘the month’, belong to her; what marriage had taken from her, the childbirth ritual temporarily restored.

In this way, childbirth traditions could be seen as functioning in the same way as did celebrations of carnival (or May Day in England) – both were a temporary overturning of social hierarchies. Lisa Foreman Cody argues that the single-sex environment of the birthing room and the lying-in chamber created an alternative public sphere that challenged both gender and status hierarchies:

Whereas the culture of lying-in – like the ideal coffeehouse – was marked by ignoring class differences and hierarchies, both the birth chamber and the developing institutions of the public sphere often excluded on the basis of gender. Whereas the Royal Society, for example, explicitly forbade women from membership, the early modern lying-in chamber also prohibited men from entering.

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370 Ulrich, A Midwife’s Tale, 189.
372 Mikhail Bakhtin, Rabelais and His World, transl. Tvorchestvo Fransua Rable (Bloomington: Indiana University Press, 1984). While the lying-in tradition cannot be said to embrace the intentional hilarity of the Renaissance carnival discussed by Bakhtin, it did, in this reading, offer a moment where hierarchies were overturned and the patterns of daily life were reversed.
At its core, the tradition of lying-in transgressed both gender and status hierarchies. Those transgressions were intensified in the intensely stratified colonial culture of early Virginia.

As practiced in Virginia, white servant women’s exercise of their right to lie in after giving birth transgressed boundaries between master and servant and complicated hierarchies of class and status. This means that the court’s demand that servant women serve extra time to repay “the losse and trouble of her master” was a repayment for the social upheaval signaled by lying-in. An early case shows the ways that the court saw bastardy cases as an opportunity to reimburse women’s masters for the costs incurred by their pregnancy, delivery, and lying in. Phoebe Hardy, a servant to Thomas Mann, bore a bastard child in 1667. During her labor, Hardy named James Clarke as the father of her child (later cases would not be concerned with such prosaic information). Mann sued Clarke for the costs he had incurred due to Hardy’s pregnancy and birth. Mann’s award from the court included 100 pounds of tobacco and a barrel of com to repay the midwife, as well as “six pds sterling” for his “troubles care & charge abt Phebe Hardy in the tyme of her lying in” – all to be paid by Clarke, the father of the child. Mann agreed to keep the child, so long as Clarke paid him another eight pounds sterling for support of the infant. This custody arrangement did not last long: by 1669, Mann was relieved of responsibility for the child when Charles and Alice Gratham offered to take custody. This case makes clear that the court considered the lying-in period to be a significant cost to the master, worth being repaid for a large amount of cash. The equivalencies here are

374 York DOW 4: 164.
375 Ibid.
fascinating and revealing: the cost of lying-in was considerably more than the charges for the midwife, and nearly equivalent to the costs of supporting a child for several years.377

Phoebe Hardy’s case helps us to understand the deeper threat posed by white indentured servant births in early Virginia: at least temporarily, the birth of a bastard child overturned status hierarchies in the household. Significantly, even in the intensified hierarchy of the master-servant relationship, English servant women still expected – and received – the traditional month-long lying-in period after their births.378 The specific language used by the county courts in adjudicating bastardy cases elucidates the ways that white servant women’s lying-in was seen as a cost borne by the master or mistress. The court records show that the extra term of service was demanded as repayment by the servant woman for the transgressive social upheaval of her lying-in.379 By extending the terms of service for servants who bore bastard children, the court’s aim was to set right the social hierarchy.

As legal responsibility for bastardy shifted to mothers in the eighteenth century, this repayment for lying-in was extracted through extra labor from the mother, rather than cash or labor from the father.380 Furthermore, throughout the record, the extra labor demanded from English servant women for bastardy was framed by the York county courts in terms of repayment for lying-in. When, in 1712,

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377 The 1699 bastardy trial of indentured servant Margaret Stringer also points to these equivalencies. Stringer is sentenced to one extra year, and she forfeited her allotment of corn upon her freedom (part of typical freedom dues) rather than being whipped for the crime of fornication. In other words, whipping was the punishment for fornication, but the extra labor was the punishment for bastardy and the loss of labor suffered by the master. York DOW 11: 235.
378 For examples, see: York DOW 3: 34 and York DOW 3: 43.
379 Karin Wulf has found a similar pattern in colonial Philadelphia, where the financial loss of servants’ and slaves’ labor during pregnancy and lying-in was reclaimed by masters as soon as possible. Wulf, *Not All Wives*, 105.
380 See Chapter 1 for a discussion of this shift in responsibility.
Ann Green bore a child during her term of service to Elizabeth Brookes, the court demanded that Green serve “her sd mistress two years for her fine & trouble of her house in the time of lying in.”\textsuperscript{381} In 1714, after she gave birth to twins, Frances Lee was sentenced to twenty-five lashes as well as a year of service “for the trouble of [her master’s house] in the time of her lying in.”\textsuperscript{382} Benjamin Catton appeared in the York county court in 1743 “praying relief” because his servant, Jane Tomson, had borne a bastard child: “he hath been at great expense and Trouble thereby.”\textsuperscript{383} Tomson paid her own fine, but was still sentenced to serve an extra year to Catton.

Even as the court records became increasingly perfunctory over the course of the eighteenth century, clerks made clear why servants were required to serve extra time: the extra time was repayment “for the trouble of [her master or mistress’s] house in the time of her lying in.”\textsuperscript{384} These frequent and specific references to lying-in make clear that, at least discursively, the court did not consider itself to be attempting to regain the labor lost during pregnancy and nursing. The court’s calculus is also significant here: the “losse and trouble” that the master incurred for one month was equal to, in the eyes of the law and the justices of the county court, up to two years of a woman’s labor. This further emphasizes that the punishment for servant bastardy was intended to symbolically right the social order: the labor demanded from servant women far outweighed the actual time and labor lost by the master. This inequity between crime and punishment may be explainable by the specific language that the courts repeated. That lying-in was considered not just a

\textsuperscript{381} York DOW 14: 217, emphasis in original.
\textsuperscript{382} York DOW 14: 348.
\textsuperscript{384} The quoted language is repeated verbatim in the following cases in York County: DOW 7: 7, 16; DOW 14: 138; DOW 15: 59, 60; DOW 15: 124, 137; DOW 15: 110; DOW 15: 523 (1719); DOW 15: 536; DOW 16: 75; DOW 16: 38; DOW 16: 75; DOW 16: 247; DOW 16: 513.
financial burden but a social transgression is apparent in the repeated language of “losse and trouble”: servant women’s lying-in may have equaled just a month of “losse,” but the “trouble” that it caused was worth two years of labor.

A rare document filed with the York county court elucidates how masters and mistresses framed the bearing of a child by a servant woman as transgressive of social norms and status hierarchies. In 1680, Elizabeth Mullins gave birth to a bastard child while serving an indenture to Elizabeth Vaulx. Mullins was set free before the case was tried, but Vaulx hoped to retain Mullins and extract her labor nonetheless.

Unable to appear at court for Mullins’ trial, Vaulx sent word to the court that she hoped Mullins would serve out her extra time, since Vaulx asserted that “the childe was borne in [Mullins’] servitude.” But the real problem, Vaulx intimated, was that since the birth Mullins had ceased to observe the social deference demanded of servants by masters and mistresses. Vaulx complained of Mullins: “she is grown soe high and soe parantory, that I can scarce speake to her.” Ultimately, the court fined Mullins 500 pounds of tobacco for fornication; because Mullins could not pay that fine, the court extended her service to Vaulx by six months. Significantly, the court offered no reprimand at all for Mullins’ “high and parentory” behavior. Vaulx expected deference from her former servant. Having been freed and having experienced the social leveling of lying-in, Mullins was no longer compliant.

385 York DOW 6: 279, 288.
For most servant women, the effects of transgression were temporary:

Elizabeth Mullins and the other servant women discussed so far all received extended indentures for their crimes. The transgressive power of outlaw reproduction existed in concert and in contest with the extraordinarily dominating power of Virginia’s servant and slave economy. This is especially clear for servant women who bore multiple children during their time of indenture. For example, Sarah Paskins, an English servant woman indentured to Charles Dunn, was charged with bastardy in April 1673, for which she was sentenced to two extra years of service. As it turns out, Paskins was pregnant during that first bastardy case: by November 1673, she had borne another bastard child. She was again ordered to serve an additional two years, and the confessed father of the children, fellow servant William Lane, was sentenced to a year of extra service as well. Exactly a year later, in 1674, Paskins was again brought to court for bastardy, and again sentenced to two years of extra service. The court did not address the fate of Paskins’ children, but the law required that they themselves were indentured until the age of 21. Even as we acknowledge the ways that Paskins’ births, lying-in, and long-term relationship with her children’s father might have had transgressive effects in the Dunn household, the fact remains that she

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387 York DOW 5: 44. While the timing between Paskins’ three cases was extremely tight, it was not impossible that she was charged in such quick succession for these three cases. This first, April 1673, case was likely brought to court a significant period of time after the birth of the child. The seventeenth century York county court only met quarterly, and masters on far-flung plantations may have delayed bringing their servant woman to court. The discovery of Paskins’ second and third pregnancies may have inspired Dunn to quicker action for the later cases.

388 York DOW 5: 56. William Lane was accused of fathering Paskins’ child in this case, but not in the other two cases. Even so, it is possible that he was the father of all three of her children: as was discussed in Chapter 1, bastardy was increasingly framed as a female crime by the 1670s. At any rate, it is possible that Paskins and Lane shared a committed relationship even within their indentures.

389 York DOW 5: 91.
had to serve 6 additional years, and her relationship with her children was likely severed as a result.

Paskins was one of many women, servant and free, who were accused multiple times of bastardy in York county. We know exceedingly little about these women – indeed, the records of their bastardy cases are often the only trace that exists of their lives. It is impossible for us to know the specific circumstances of those births. For English servant women, lying-in may have represented a temporary respite from labor, a rare moment when the servant was the one who was served. Nevertheless, it also typically meant an extension of their indentures and a separation from their children. If childbearing offered servant women a moment to transcend their status, the punishment of extended service certainly cemented their lower status anew.

In Virginia’s intensely stratified colonial society, the transgressive possibilities of reproduction were far different for free white women than for white servant women. For some free white women, bastardy charges may stand as unlikely evidence of a measure of independence enjoyed by some women during this period. Take the case of Mary Cosby. Cosby was charged with bastardy in 1765; though she never appeared at court, she was fined 500 pounds of tobacco in absentia. Cosby disappears from the records until 1774, when, surprisingly, that 1765 case again emerged as a question. It seems that Cosby, counter to the law which required

bastard children to be bound out, had managed to provide for her children herself for

390 Of the 380 cases of bastardy I’ve uncovered in the York County court records and the Charles Parish, York County birth register, fully 30% (or 116 cases) were committed by repeat offenders. Those 116 cases involve 48 separate women; of those women, 29 were free women, 15 were servants, and 4 saw their status change between their cases (i.e., they were servants for one case, and had been freed by the time of their later charges).

391 York JO 4: 374, 447.
those nine years. Cosby herself brought the case to the attention of the court – she finally named John Holt as the father of her children, in an attempt to demand some financial support from him. The court recognized that Cosby’s financial circumstances had changed, and the children were “likely to become chargeable to the…Parish.” The court stepped in, required Holt to provide financial support for the children (six pounds annually for each child), and arranged for the children to be apprenticed when they each turned ten years old. Thereafter, both John Holt and Mary Cosby were understood to be the children’s parents: in the subsequent court records that manage the boys’ indentures, Mary Cosby’s sons are alternately referred to as “Thomas Holt and Matthew Holt” and “Matthew and Thomas Cosby Bastard children of John Holt and Mary Cosby.” Was Mary Cosby a single mother, independently supporting her children during the early years of their lives? It seems likely. Indeed, it seems clear that Cosby steadfastly held onto her independence only until she was sure that her actions would best benefit her children: her actions in 1774 guaranteed not only financial support for her sons, but the promise of an education, in the form of an apprenticeship. That the court continued to recognize her parenthood after the fact indicates the authority that she had carved out for herself.

Mary Cosby’s bastardy and custody cases give us a window into the ways that some individual women could create independent lives for themselves and their

392 For other cases in which women approached the court for support only when they were unable to support their children on their own, see: York DOW 11: 476, York JO 3: 103.
393 York OB 4: 21, 48. While these and subsequent records make clear that Cosby had two sons, there is no record that Cosby ever faced a second bastardy charge. (It is unlikely that the boys were twins. Bastardy cases for multiple births clearly communicated that fact, and the 1774 custody case indentures the boys when “the[y] severally arrive to the age of ten years,” implying that they had two different birth dates.) For other cases in which the court stepped in when mothers were unable to support their children, see: York DOW 6: 22, York JO4: 450, York OB 4 (1774-1784): 77.
children, even in the patriarchal culture of eighteenth-century Virginia. Significantly, it is only because these women broke both the law and social norms that we have any record of their lives: their outlaw reproduction is the reason they appear in the colonial records. Another example of some women’s transgression of the boundaries of patriarchal culture is the ability of some free women to pay their own fines when they were charged with bastardy. When Ann Bayley confessed to bastardy in 1738 and “agree[d] to pay the fine...at the laying the next Crop,” this could mean that Bayley had access to her own crop, and therefore her own cash, to pay her fine and by extension support her child. Martha Lester also paid her own fine when she was charged with bastardy in 1735. It is clear that the court held her solely responsible for her fine – and did not consider her under the protection or authority of any male guardian, husband, or master – when the clerk recorded a year later that she herself had paid the remainder of her fine. When free women could pay their own fines for bastardy, they were able to sidestep the custom of infant indenture, thereby transgressing both the discursive link between bastardy and servitude and the assumption of a patriarchal household.

Single motherhood was an option not just for propertied women. The diarist John Harrower, himself an indentured servant who worked as a schoolmaster for his master, Colonel Daingerfield, observed a fellow servant with a child by her side: “Yesterday came her Mary Fitsgyls to spin flax. She is an Irish girle and has now been Nine year in Virginia. She is still unmarried but has had a Child to one Dolton a

Taylor in Fredricks[bur]g. The boy is with her & is now two years old.”397 When read in the context of the journal as a whole, Harrower’s observation takes a paternalistic tone: an educated man, Harrower tended to place himself above the other servants whose paths he crossed. To be sure, Mary Fitsgyls’s story is a heartrending one, especially considering Dolton was himself likely married and already a father at the time.398 Further, it seems likely that Fitsgyls had originally signed a seven-year indenture, but that it was extended upon the birth of her son. But we also see the unlikely power of this young woman: somehow, she had arranged to keep her son with her. Still working in her master’s house, Fitsgyls’ son was an ever-present reminder of her own subjectivity, her own sexuality, and her own family.

The construct of the *feme covert* was a legal fiction in which women were considered legally “covered” first by their fathers and then by their husbands.399 Some women, though, held a liminal position according to the law. For example, English servant women had no legal standing outside of their masters (and thus were similar to children), but they had independently signed contracts, and, as we have seen, were held responsible for crimes. Women’s historians have noted that widows, temporarily independent, could act as *feme sole*, representing themselves in the

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courts. This public authority would be whittled away by the eighteenth century. These cases of women retaining control over their children hint another category of women who acted as *feme sole*—single women with children, who lived under the radar as much as possible in order to maintain their independence, but who still used the law when it could come to their defense or the defense of their children. Women who supported their bastard children alone lived outside of social norms and the law, which may indicate why the evidence of their lives is so sparse.

Perhaps because their lives were transgressive of patriarchal norms, single mothers’ ability to maintain independence and control over their children was tenuous at best. The case of Mary Meade shows the ways that women’s fragile independence was counterbalanced by a court system which could assert patriarchal power seemingly at will. Mary Meade appeared in court three times for bastardy, in 1741, 1744, and 1750. The charges for the first case were dropped (which indicates either that the court was operating on false information or that Meade paid the fine). In the second case, the court sentenced her to 25 lashes. In the third case, Meade was ordered to pay 500 pounds of tobacco as punishment for fornication. A free woman, the court punished Meade only for the crime of fornication in both the 1744 and 1750 cases.

Throughout this period, Mary Meade was, for all intents and purposes, treated as a *feme sole* by the courts. She inherited money from the estate of John Bale in

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401 York DOW 19: 9, 22, 43, 52, 56, 64, 72, 79.
403 York JO 1: 307, 326.
1743 and acted as a sole defendant in a lawsuit in 1748. More importantly, for our purposes, Meade retained custody of her daughters, Ann and Frances, even though she was unmarried. Her lenient punishments indicate that the court was confident in Meade’s ability to support her children: there is no mention made of protecting the parish from being charged with the girls’ support. Yet, in 1751, the court stepped in to check Meade’s power and assert its own patriarchal authority: Ann and Frances were bound out as indentures. The court explained its decision to split up the family: Meade was an unsuitable mother for the children, “by reason of her idle, dissolute, and disorderly course of life.” While the court record leaves to the imagination exactly what Meade had done to merit such a description, it remains that Meade’s outlaw reproduction had put her in the view of the court, which held the power to take away her children. Meade’s outlaw reproduction was tolerated only as long as she displayed proper deference – that Meade was punished for being too transgressive is a tantalizing interpretation.

Kirsten Fischer reminds us that, in a culture in which illegitimacy was seen as sinful, having a child outside of wedlock could be seen as “a conscious act of resistance to authority, a specialized form of nose-thumbing.” All of these cases show not only these women’s defiance of the law but their willingness and ability to transgress early Virginia’s intertwining status and gender hierarchies. The sexual and labor economies of early Virginia demanded that white women’s sexuality and reproductivity be confined to marriage: legitimacy (and therefore freedom and community membership) was conferred by birth. Even so, those same economies

404 York W I 19: 152; JO 1: 69.
405 York JO 1: 435.
406 Fischer, Suspect Relations, 113.
created populations of white women—especially servant women and unmarried women—whose reproductive histories challenged the notion that white women’s reproduction could be so unremittingly disciplined. Those economies which confined white women’s legitimate reproduction to marriage were, ultimately, based on slavery.

As was discussed in Chapter 1, the institution of slavery reproduced itself via the appropriation of black women’s reproduction. Within this context, enslaved women’s reproduction—and its transgressive possibilities—took on very different forms and meanings than did white women’s outlaw reproduction. We have seen the ways that servant and free white women’s outlaw reproduction could be transgressive on an individual level: challenging household economies, offering possibilities for individual autonomy outside of the patriarchal household. Reproduction could be a site for enslaved women to transgress limits of power, knowledge, and subjectivity. For enslaved women, reproduction could be a transgressive means of both asserting their own cultural frameworks and challenging slavery itself as a culture of domination and exploitation.

Even within the context of inherited racial slavery defined by the law of slavery by birth, slave women’s motherhood could be an assertion of self, of hope, and of relationship to others. Jennifer Morgan points to the existential hopefulness of childbirth in the context of enslavement: “After the Middle Passage and during

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407 Black women’s historians and black feminists have emphasized the complexity of the institution of motherhood for enslaved women, especially during the Antebellum period, when black women were explicitly excluded from the dominant culture of sentimental maternity for white women. Beckles, *Natural Rebels*, 115-40; hooks, *Ain’t I a Woman*, 71-82; King, “‘Suffer with them ‘til death’,” 147-68; Roberts, *Killing the Black Body*, 22-55; Stevenson, *Life in Black and White*, 95-139; White, *Ar’n’t I a Woman*, 91-118. For an examination of how this process of exclusion impacted women’s medical practices, see Wilkie, *The Archaeology of Mothering*, 55-74.
the interminable reality of forced labor, reproduction could afford women and men an opportunity to ground themselves, to manifest strength and persistence through children.\textsuperscript{408} Deborah Gray White notes that motherhood had very specific cultural meanings for slaves who traced their roots back to west Africa, for whom ideas about motherhood and childbearing traditions were an important assertion of culture in the face of slavery.\textsuperscript{409} In this way, reproduction could be seen as both an assertion of self and an assertion of community – both transgressive effects in the dehumanizing conditions of chattel slavery.

While birth and motherhood could be read as transgressing the logic of slavery, refusal to give birth was another form of subversion: if an enslaved woman refused to have children, she was tacitly denying the master’s claim to ownership over her body and reproductivity, and also denying him a key means of expanding his property holdings.\textsuperscript{410} In 1773, the governor’s council recorded a rare case of infanticide by an enslaved woman named Sall who was executed for “Feloniously Murdering her own child.”\textsuperscript{411} We have no way of knowing Sall’s state of mind about her actions. Further, assuming that women in similar situations either hid their births, disguised the infanticide, or were disciplined by masters instead of the courts, there is no way to know how common actions like Sall’s were. While there is a fair amount of textual evidence attesting to the existence of abortion techniques amongst English and Indian women during this period (as will be discussed in Chapter 3), there is

\textsuperscript{408} Morgan, \textit{Laboring Women}, 116-9.
\textsuperscript{409} White, \textit{Ar’n’t I a Woman?}, 106-9.
\textsuperscript{411} H.R. McIlwaine, ed. \textit{Legislative Journals of the Council of Colonial Virginia}, vol. 3 (Richmond: Virginia State Library, 1918), 1598.
considerably more silence on the issue for enslaved black women. We must remember, though, that the textual evidence for this period, like the records of the governor’s Council, was created by white (usually male) hands. We could interpret the textual silences as evidence that black women did not seek to limit their pregnancies and births. Conversely, could we instead interpret those silences as a remarkable example of the ability of enslaved people to keep some parts of their lives private, even in the face of tremendous social control? Darlene Clark Hine, writing of black women’s strategies of resistance against the long history of rape of black women by white men, argues that “black women as a rule developed a politics of silence and adhered to a cult of secrecy, a culture of dissemblance, to protect the sanctity of the inner aspects of their lives.” This secrecy provided black women with “the psychic space and...the resources needed to hold their own in their often one-sided struggle to resist oppression.” In other words, lack of textual evidence may not indicate a lack of agency or power – indeed, it may indicate the opposite.

Furthermore, the work of historians Jennifer Morgan and Barbara Bush points to the possibility that enslaved women drew on their African cultural heritage to limit their pregnancies, and, in some cases, to justify infanticide. Jennifer Morgan notes that enslaved women had “transferred knowledge of fertility control from Africa to the Americas,” including knowledge of plants (both African and American) that could

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412 Black women’s historiography on abortion and infanticide
413 Hine, “Rape and the Inner Lives of Black Women,” 915. Hine’s argument focuses on the culture of dissemblance as it was expressed in northern black women’s organizations in the twentieth century, but she emphasizes that the roots of dissemblance can be found in the complex and often violent relationship between enslaved women and white masters. Indeed, Hine makes clear that the culture of dissemblance was one that moved from the South to the North during the Great Migration of the early twentieth century.
414 Ibid.
be used as abortifacients and emmenagogues.\textsuperscript{415} Barbara Bush argues that fertility control went beyond medical knowledge to cosmology. She presents a fascinating interpretation of the demographic impact these traditions might have had on the sugar colony of Jamaica. Historians have long noted that the nineteenth-century Jamaican slave population precipitously dropped, even as conditions improved. Bush explains this demographic paradox by arguing that enslaved women (many of whom were new imports to the colony) drew on West African cosmologies that saw fetuses and infants as inhabiting a liminal space between the human world and the spirit world. Bush argues that enslaved women actively participated in a sustained pattern of abortion and infanticide (or infant neglect), rather than submit their children to the injustices of enslavement.\textsuperscript{416} Ywone Edwards-Ingram, investigating the archaeological evidence for slave sites in British North America, including Virginia, describes similar rituals and cosmologies in the mainland colonies.\textsuperscript{417} Interestingly, in her examination of Carter's Grove Plantation in York County, Virginia, Lorena Walsh has noticed a similar phenomenon: increased importation of Africans was accompanied by a drop in fertility.\textsuperscript{418} Did those newly-enslaved Africans resist their slavery by reinterpreting and acting upon their ideas about the personhood of infants and fetuses? Bush warns against portraying enslaved women as "passive subjects" of demographic trends rather than "active agents with a degree of control over their own bodies": the

\textsuperscript{415} Morgan, \textit{Laboring Women}, 113-4. The African plants aloe and okra, both used as abortifacients, had been brought to the colonies by the eighteenth century.


\textsuperscript{418} Walsh, \textit{From Calabar to Carter's Grove}, 30-1.
limiting of childbearing may have been not only a rational response to abhorrent conditions, but a response rooted in long-held cultural traditions.419

One irony embedded in the appropriation of enslaved women’s reproductivity was that childbearing represented both an economic profit and an economic loss to the master class: while an enslaved pregnant woman’s child would ultimately be claimed as a master’s property, pregnancy and nursing also limited her ability to work in other ways.420 Masters, such as the planter Landon Carter, recognized this tension between enslaved women’s reproductive and productive value. Carter’s diary is full of his references to women who transgressed his power by turning his own economic interests against him. Carter’s frustration was rooted in these women’s transgression of the limits of his power and his ability to discipline them, but it was also rooted in their transgression of the limits of his knowledge about the body, about reproduction, and about the lives of people he purported to own.

Enslaved women’s pregnancies represented the promise of another child but also the loss of a woman’s labor during her pregnancy and birth. In July 1775, Carter complained of losing several pregnant women’s labor because “the Bellyed women have been 5 in number good 5 months idle.”421 Then, the tobacco harvest was delayed because “our Wenches have all taken it into their head to cry out at this busy time.”422 Were the women’s labors triggered by the backbreaking work of the tobacco harvest? Or was Carter correct – did the women “cry out” in order to avoid

420 Morgan, Laboring Women, 4.
422 Ibid. Enslaved women’s births were remarkably seasonal. Cheryll Ann Cody observes that, in South Carolina, births peaked at the height of summer and the dead of winter, the two most dangerous times in terms of infant mortality. Cody, “Cycles of Work and of Childbearing,” 61-78.
harvesting in the heat of summer? Ultimately, these five pregnancies and births are notable for their transgressive effects, even if we cannot discern the intent of the women. Importantly, the pregnancies and births were understood by Carter to be transgressive. For Carter, the loss of women's labor during pregnancy was not just an economic loss, but a sign of rebellion and conspiracy.

These were not the only women whom Carter believed took advantage of their reproductive role to thwart his power. Carter often suspected that enslaved women faked or exaggerated the symptoms of pregnancy in order to avoid other labors, even openly pretending pregnancy in order to avoid work. The bodily privacy of women's reproductive lives — the simple fact that only they knew if they were pregnant, what symptoms they experienced, and when the pregnancy might end — stymied Carter's ability to control the enslaved population on his plantations. We see this frustration when, in 1770, Carter complained that one enslaved woman "pretends to be big with Child and perhaps may be so." He also grew frustrated at the length of women's pregnancies, complaining once that a woman "seemed to be near her time about 2 months," implying that he believed either that she had announced her pregnancy before she was actually with child or that she was somehow obstinately refusing to give birth. One enslaved woman named Wilmot "pretended to be too heavy to work" for a full year before Carter caught on. It is entirely possible that these women were, in fact, pregnant, and were suffering repeated miscarriages or

424 Greene, The Diary of Colonel Landon Carter, 389.
425 Greene, The Diary of Colonel Landon Carter, 204. As will be discussed in Chapter 3, Carter's understanding of pregnancy seemed to assume that women had some level of control over the length of their pregnancies and the timing of their births. This control was a source of considerable frustration for Carter.
426 Greene, The Diary of Colonel Landon Carter, 372.
stillbirths. Or, they were lying about being pregnant in order to lessen their workload. Either way, one transgressive potential for pregnancy was that it challenged Carter’s assumption that, as a master, he could expect to be omnipotent over every aspect of enslaved people’s lives.

The women Carter describes found ways to use their role as mothers to undermine the slave economy and carve out opportunities for themselves and their children. Once again, we see the conflict between Carter’s desire to claim women’s productive labor and their reproductive labor as well. Breastfeeding mothers openly and collectively defied the limits Carter placed on their ability to nurse their children, convincing the plantation’s overseers to allow them to nurse their babies five times a day, rather than Carter’s prescribed three times.427 Pregnant women not only refused to work in the fields but stayed in the slave quarter, the closest thing they had to their own domestic space: the women “not only fall behind, but come in, stay as long as they please, and care not ever to go out though close by their homes.”428

Reproduction offered women an opportunity to transgress lines of power by laying claim to their own time and their own space.

Importantly, the transgressive possibilities of enslaved women’s reproduction had limits; Carter’s frustration with the women often boiled over into rage. Carter was more than willing to use violence against enslaved people, including pregnant women. Wilmot’s pretended pregnancy ended when Carter “broke her.”429 When an enslaved woman named Sarah pretended to be pregnant, Carter “had her corrected,”

427 Greene, The Diary of Colonel Landon Carter, 496.
428 Greene, The Diary of Colonel Landon Carter, 554.
429 Greene, The Diary of Colonel Landon Carter, 372.
and threatened to sell her. When another woman named Criss ran away during her pregnancy, she was caught and suffered "a severe whipping." Transgression and domination existed in a tug-of-war: enslaved women's transgressions were met with violence, and that violence was met with further transgressions. Notably, even after being whipped, Criss continued to transgress Carter's power, "making her Children milk [Carter's] Cows in the night."

Enslaved women's reproduction, embedded and appropriated as it was by the law of slavery by birth, points again to the complex matrix of transgression and domination in early Virginia. As we see in the multiple examples of the transgressive possibilities of reproduction in Landon Carter's diary, the particularities of slavery as a system of domination created spaces for its own transgression. The law of slavery by birth fostered the dehumanization of black women, even as those same women's childbearing was a site for human expression and connection. Indeed, this conflict between domination and transgression ultimately was a process of cultural production. Jennifer Morgan argues that creolization — that process by which enslaved Africans created a creole African-American culture — happened via women's childbearing: "children...made explicit the process of literal and symbolic reeducation that is at the heart of creolization." In other words, even as childbearing in slavery was fraught with danger and dehumanization, it was also a site for cultural creation. Slavery created deep tensions between violence and creativity, domination and subversion.

431 Ibid.
432 Ibid.
The context of racial slavery demanded that white women’s and black women’s reproduction be disciplined in profoundly different ways. Where white women’s reproduction was aimed at creating legitimate heirs for the transfer of property, black women’s reproduction was appropriated into creating that very property. This disciplining of reproduction required racial separation, but mixed-race people and mixed-race families existed. Indeed, the creation and flourishing of mixed-race families was an unlikely result of Virginia’s legal attempts at racial separation. Again, domination and subversion existed in unlikely tension.

**Transgressive Families**

The lives of free black and mixed-race families, who by their very existence challenged the notion that slavery and blackness were utterly linked, transgressed lines of both race and servitude. The unplanned result of Virginia’s attempt to create inherited slavery and regulate sexuality through bastardy and miscegenation law was the creation of a vast category of liminal people – neither black nor white, slave nor free – that challenged the entire logic of inherited racial slavery.434 These transgressions existed on a number of levels. Here, I will discuss three of these transgressions of Virginia’s absolutist logic of racial slavery: *liminal identities* (the

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434 For discussions on liminal identities in early America, see Merrell, “‘The Cast of His Countenance’,” 13-39; James H. Merrell, “‘Although I am dead, I am not entirely dead. I have left a second of myself’: Constructing Self and Persons on the Middle Ground of Early America,” in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel, and Fredricka J. Teute (Chapel Hill: University of North Carolina Press, 1997), 404-418. Robert Blair St. George adopts from postcolonial theory the concept of *hybridity*, arguing the complex identities of early America, defined as they were by contact with perceived others, demands a methodological attention to vernacular expressions of hybrid identities. St. George, “Introduction,” 23-5. I find the concept of liminality as more useful than hybridity in describing free black families because their status was defined so fully as “in between” – between black and white, between slave and free.
ways free people of color moved between white and black identities), extra-legal marriages (the ways free people of color created marriage traditions and families in defiance of the law) and matrilineal genealogies (the ways that free people of color remembered their maternal ancestors in an effort to solidify their freedom). I will then analyze the ways that those three transgressions appear in the lives of two free mixed-race families, the Jewell-Catillas and the Inscows, who transgressed Virginia’s absolutist racial and sexual policies. Through these case studies, we will see the twin trajectories of power and transgression: while the race, sex, and status hierarchies assigned at birth curtailed their lives, for Virginia’s free people of color, birth could also be a pathway to transgressing lines of power, knowledge, and subjectivity in the colony.

Since Virginia’s laws attempted to create a dualistic framework of black and white, slave and free, the first challenge that free black and mixed-race families posed was that of liminal identities. Throughout the colonial period, Virginia’s lawmakers sought to preserve racial difference through ever-increasing sanctions on miscegenation, especially on interracial births. The presence of mixed-race people, both free and enslaved, points to the ultimate unenforceability of those laws. As Foucault argued, the expression of juridical power in the form of bans on particular kinds of sex (here, interracial sex) is always doomed to fail:

Power can ‘do’ nothing but say no to [pleasure]; what it produces, if anything, is absences and gaps; it overlooks elements, introduces discontinuities,
separates what is joined, and marks off boundaries. Its effects take the general
form of limit and lack.\textsuperscript{435}

In other words, anti-miscegenation laws could never actually put an end to interracial
sex or mixed-race births. To be sure, the fact that the mixed-race children of enslaved
mothers would also be enslaved illustrates that the intention of the law was never to
end all interracial sex. Conversely, the mixed-race children of white women or free
black women represented real threats to racial absolutism. Therefore, any
enforcement of racial dualism in the colony extended beyond the ban on interracial
sex, ultimately attempting to control and discipline the mixed-race population as
much as possible.\textsuperscript{436}

The Virginia courts enacted this discipline via a multiple nodes of surveillance
over free mixed-race and black women’s reproductive lives. First, tithing laws taxed
black and mixed-race women, but not white women. Therefore, Virginia’s tax laws
demanded that the court determine any woman’s racial status when her identity was
in question, calling into question her parentage, her family, and her own birth.
Second, because their marriages often were not recognized, many mixed-race women
were brought before the court each time they gave birth because their children were
considered legal bastards. Finally, as we’ve already seen, free mixed-race and black
women faced the threat of having their children indentured should the mothers be
determined insufficient parents, either financially or morally. Virginia was never able
to truly “outlaw” mixed-race people, but the colony sought to discipline their lives as
much as possible.

\textsuperscript{435} Foucault, \textit{The History of Sexuality}, 83.

\textsuperscript{436} Douglas Deal outlines the ever-tightening restrictions on free black families, beginning in the last
Existing outside of the law, free black and mixed-race families carved out lives in defiance of legal codes. Their *extra-legal marriages* formed another challenge to Virginia's legislative authorities. In Virginia, the ability to legally marry was a sign of full membership in the community, as defined by religion, status, and race.\(^{437}\) In this Anglican colony, community membership was further marked by religion. Starting in 1662, only marriages that were publicly announced and performed by members of the Anglican clergy were recognized by the colony.\(^{438}\)

These 1662 laws may have been, in part, an attempt to quash marriages that occurred without state sanction.\(^{439}\) As racial slavery was institutionalized in the colony, legal marriages were even more narrowly defined. Unsanctified by the church, slave marriages were officially unrecognized, though it is clear that slaves married using their own ceremonies.\(^{440}\) From the 1640s onward, Virginia outlawed the marriage of any white servants without the express permission of their master.\(^{441}\) Further,

\(^{437}\) Though she does not analyze racial politics, Mary Beth Norton highlights the importance of marriage as a signifier of white community membership in her analysis of the gender identity of seventeenth-century Virginian T. Hall. Norton, “Communal Definitions of Gendered Identity,” 40-66.

\(^{438}\) *Hening* 2: 50-1. This statute, part of the Restoration-era overhaul of the colony's laws, made explicit the role of the clergy in regulating marriage.

\(^{439}\) For example, in 1648, three married couples were presented to the York County court on suspicion of fornication because their marriages were not recognized by the church. *York DOW* 2: 350. It seems likely that the three couples were all Dissenters of some form. For another similar case see *York DOW* 2: 387. On sexual permissiveness in Virginia's early tobacco economy, see Lee Gladwin, “Tobacco and Sex: Some factors affecting non-marital sexual behavior in colonial Virginia,” *Journal of Social History* 12, no. 1 (1978), 57-75. Richard Godbeer has argued that, in the Carolina backcountry, many couples married, divorced, and remarried without the benefit of clergy. Godbeer refers to this as a sort of socially (if not legally) sanctioned “serial monogamy.” Godbeer, *Sexual Revolution in Early America*, 125-35. For a York county case which fits Godbeer's model of "serial monogamy," see the four bastardy charges against Elizabeth Morris in 1738, 1740, 1746, and 1748. The father of Morris's children was Jones Irwin, who had separated from his wife in 1727. *York DOW* 16: 353, 434, 441; *York DOW* 18: 414, 597-8; *York WI* 18: 562; *York DOW* 19: 426, 442, 445; *York OW* 19: 330; *York WI* 20: 108; *York JO* 1: 80, 100.

\(^{440}\) Masters seemed to have informally recognized these unions on some level. See, for example, the 1674 will of Peter Temple, in which an enslaved woman, “Besse” is referred to as the widow of an enslaved man, “Old Lawrence.” *York DOW* 5: 81. For other examples, see: *York DOW* 11: 408-11; *York JO* 1768-1770: 402.

\(^{441}\) *Hening* 1: 252-3.
Virginia outlawed interracial marriages in 1691, ordering banishment for any couple that refused to comply with the law. 442

Legal marriage and its benefits were limited to free white couples.

Nevertheless, in the York county court records, we see traces of informal marriage traditions continuing throughout the colonial period. Interracial couples and free black couples lived together, even without a legally recognized marriage. 443 Further, because they existed outside of and between the black/white racial binary, couples made up of two mixed-race people, often informally but not legally married, could find their relationships casually recognized by the courts or by the church. For example, in 1725, Elizabeth Birdsong was summoned by the court for bastardy; the case was never completed. 444 Perhaps the case never came to fruition because the Birdsongs, members of a large clan of free people of color were understood to be married: the clerk of Charles Parish recorded that Elizabeth Birdsong and James Birdsong, members of a large York County mulatto family, had two daughters, Frances (born in 1719) and Agnes (born in 1736). 445 The Birdsong family shows one of the ways that mixed-race families could transgress the power of colonial institutions: while the court did not believe the Birdsongs to be married, the church

443 Hening 3: 86-7. The punishment for interracial marriage was banishment from the colony. Interestingly, while there is much evidence of mixed-race and interracial marriages in York County, I have yet to find any examples of such banishment in the county. This seems to anticipate Joshua Rothman’s argument about 19th century Virginia: interracial relationships were tolerated so long as the couple hewed to other social expectations. Rothman, Notorious in the Neighborhood, passim.
445 CPR 51, 52. Considering the wide span of years between these births, it seems likely that this couple had more children which either did not survive or were not recorded by the Parish. Indeed, the 1725 bastardy case against Elizabeth Birdsong points to those possibilities. See also the case of Sarah Whiting: York DOW 11: 554, 580; CPR 193-4.
listed them as such, and because of that, Elizabeth Birdsong was able to evade the court’s discipline.

While lawmakers tried to limit marriage only to free white Anglicans, the existence of extra-legal marriages shows both the willingness of people to live outside the law and the inability of conventional regulatory frameworks to constrain pleasure and desire. It also shows the ways that the marriages of free people of color exploded the narrow definitions of marriage in the colony. Indeed, the community seems to have informally recognized these marriages as well: Kirsten Fischer points out that these relationships “could attain social legitimacy outside the aegis of legal authority.”

The language of the Bruton Parish records, which unlike the Charles Parish records include the vital records for some enslaved people and also free people of color, shows the ways that free black marriages challenged the standards for marriage in the community. Some free black and mixed-race couples are unquestioningly listed as married by the Parish: for example, when Matthew, the son of “Daniel Harmfield and Elizabeth his wife free negro” was born in 1746. Some births of free black children were listed like births of white bastard children: for example, the baptism of Thomas, “Son of Elizabeth Stuart a free mulatta” was listed only with the mother’s name, as was “John free Negro Son of Barbary.” But other free black children were listed under only their father’s name, indicating a recognition of paternity, if not of legal marriage: for example, in the cases of the birth of “Reuben [,] Son of Peter Gillet a free Negro,” and the baptism of “Elston Son of Ned

446 Fisher, Suspect Relations, 114.
448 BPR, 6.
Edwards Formerly Majr. Swiney's Slave." Even the church, tasked with policing the boundaries between legal and legal marriages, recorded these marriages and births in ways that illustrate both the relationships' liminal status and the inability of colonial institutions to constrain desire. Colonial parish marriage and baptism lists stand as a record of couples who were married in practice if not by law; the lists recorded these relationships without conferring upon them legality or legitimacy.

The third challenge posed by free black and mixed-race families to Virginia’s policy of inherited racial slavery was the casual adoption of *matrilineal genealogies* by free black and mixed-race families in order to prove their freedom. As has been discussed, by asserting that slavery was inherited from the mother, the law of slavery by birth symbolically erased slaves’ fathers and fatherhood itself – in theorist Hortense Spillers’ terms, slavery was a state of enforced “father-lacking.” In a patriarchal society like the English colony of Virginia, this erasure of paternity was a dehumanizing act of epistemic violence. The erasure of paternity extended to free people of African ancestry as well. The law required free people of color to demonstrate their white ancestry in order to prove their freedom – specifically, free black and mixed-race people had to prove that they were descendents of free women. The marriages of free black and mixed-race people were not recognized;

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449 BPR, 6.
450 Kirsten Fischer has recognized a similar pattern in eighteenth-century North Carolina. Fischer, *Suspect Relations*, 127. Perhaps there is irony to be found in the fact that African societies were matrilineally organized. Brenda Stevenson emphasizes the West African roots of matrilineality and matrifocality, which continued to exist in tension with the enforced matrilineality of slavery. Stevenson, *Life in Black and White*, 223. Jennifer Morgan notes the conflict between slaveowners’ desire to assert patrilineality onto slaves and slaves’ own culture of matrilineality. Morgan, *Laboring Women*, 107-43.
452 The York County records include several examples of slaves suing for their freedom based on the freedom of their mothers or other maternal ancestors. A mixed-race enslaved woman named Sarah sued for her freedom in 1694, claiming that her mother was an English woman. No result was
therefore, the supposedly “illegitimate” mixed-race children of free black and mixed-race families were recorded in birth registers only with mothers, not fathers.\footnote{See, for example, the cases of Ann Hobson (CPR 110) and Ann Whiting (CPR 193).}

Ironically, Virginia’s patriarchal policies of inherited racial slavery created a category of families who, by necessity, traced their ancestry to female progenitors. Again and again, the courts required free people of color to prove their white ancestry. In 1673, Mary Cooke was a servant to Thomas Bushrod when she bore a mixed-race daughter, Sarah. When Sarah was twenty-one, she sued for her freedom, “alleging herself to be the daughter of an English woman named Mary Cooke.”\footnote{York DOW 5: 47, 126; York DOW 9: 297, 325, 352.}

In another case in 1705, Thomas Danford sued for his freedom when he was twenty-one, because he was “borne of a free woman.”\footnote{York DOW 12: 274, 319.} Essentially, Virginia’s law of slavery by birth required that the colony specifically recognize matrilineal genealogies as legally binding. Again, we see limit and transgression existing in tension with one another, as the erasure of paternity created alternative genealogies for free people of color.

These three patterns – liminal identities, extralegal marriage, and matrilineal genealogies – intertwined in the lives of free people of color. By examining two mixed-race families – the Jewell-Catillas and the Inscows-Bees – we can begin to understand how these forms of transgression existed in tension with the many forms of domination in colonialism. The family histories of the Jewell-Catillas and the Inscows help to illustrate the ways that, even as Virginia’s lawmakers tried to create in slavery an airtight system based on an absolute racial binary, liminal families

recorded for the case (York DOW 9: 318, 352). Other examples are discussed in more depth later in this chapter.
existed and even thrived. These two family histories begin with the choices and actions of individual women – Katherine Jewell and Joanna Inscow – but ultimately they illustrate the transgressive effects of the lives of mixed-race people.

In 1670, an English servant woman in her twenties named Katherine Jewell bore a mixed-race son, whom she named William Catilla.\footnote{Katherine’s birth date is estimated from a will that she witnessed in 1699. In the will, her age is listed as “being near six[ty] years of Age.” Jane Merry will, York DOW 11: 269-70. Her age at the time of William’s birth is estimated from his 1695 freedom suit, where he is listed as being 24 years old. William Catilla freedom suit, York DOW 10: 137, 153. William is referred to as a “mulatto” by the courts. York DOW 7: 61. William’s date of birth is surmised from two lawsuits he filed against his master. The first, in 1685, lists him as 14 years old, and the second, in 1695, lists him as 24 years old. York DOW 7: 61; York DOW 10: 137, 153.} Katherine was serving an indenture to William and Margaret Booth at the time. Sometime before 1670, Katherine had given birth to two more children, Mary Catilla and Matthew Catilla; it is unknown whether Katherine served extra time after these births.\footnote{It is likely that William Catilla was the youngest of the Catilla siblings; by 1672, two years after William’s birth, Katherine was listed as a free woman, married to John Pond. CPR 153. Mary Catilla is listed as Katherine Jewell’s daughter in a 1699 will. In that will, Mary’s age is estimated as “being thirty years of age or thereabout,” placing her birthdate as near 1669. Jane Merry will, York DOW 11:269-70. Matthew’s age, and indeed his parentage, is less easily substantiated. There is no record of his birth, and there is no document that directly links him to Katherine Jewell. On the other hand, a Matthew Catilla is listed in the Charles Parish Records as being married by 1693, and having two sons of his own by 1697. CPR 61. While Mary and William are quite clearly siblings, there is no absolute evidence that Matthew is their brother. Nevertheless, I assume that the Matthew Catilla listed contemporaneously in the Charles Parish Records is their brother because all three begin to have children during the same time period (the late 1690s and early 1700s), indicating that they all married and at childbearing age at nearly the same time. Interestingly, Katharine Jewell was never charged with bastardy in the extant York County records; based on the existence of William Catilla’s indenture, it is possible that she and her master came to an alternate solution that did not involve the court.} Born shortly after the 1662 passage of the law of slavery by birth, but before the passage of long-term indentures for mixed-race bastards, the three mixed-race Catilla children faced an uncertain future. What would their status be, as the mixed-race children of a white servant mother?

We know virtually nothing about the father of the three Catilla children, but a few things might be surmised from William’s race and the surname that Katherine
gave her son. William Catilla is consistently labeled a “mulatto” by the courts; therefore, the elder Catilla was of African descent, either an indentured servant or a slave. Judging from the surname “Catilla,” it is likely that William’s father had been brought to Virginia by Portuguese or Spanish slavers. Ira Berlin has identified a generation of slaves (alive in the mid-to-late seventeenth century) whom he labels “Atlantic creoles.” These enslaved Africans might have lived in multiple ports of call before eventually landing in British North America, were therefore frequently multilingual, and often bore Spanish or Portuguese names. For this generation, slavery was less of an absolute institution than it would become by the eighteenth century: many members of this generation eventually found freedom. Further, many had business relationships, friendships, and sexual relationships with whites. Based on the time of their relationship and his unusual last name, Katherine Jewell’s partner seems to fit this pattern.

Apparent already in the story of the first generation of the Jewell-Catilla family are the ways that they transgressed the increasingly calcifying boundaries of race and servitude in 1670s Virginia. Like the other women who bore bastard children during their indentures, Katherine Jewell’s birth (or births, if the two younger children were also born while Katherine was indentured) transgressed the expectations of servants’ obedience and deference. This transgression is further apparent in the fact that Katherine was freed before 1672: it seems possible that Katherine and her master, William Booth, came up with some alternative

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458 Berlin, Many Thousands Gone, 17-28, 37, 39, 44. Lorena Walsh emphasizes that the first generations of enslaved Africans in Virginia were treated according to more traditional (and flexible) customs of enslavement, which included customary privileges and manumission. The amount of respect given to the senior Catilla may indicate that he was enslaved under these more flexible conditions. Walsh, From Calabar to Carter’s Grove, 32.
arrangement than extending her service after lying in after the birth of William Catilla in 1670.\textsuperscript{459} This willingness to handle the birth by extralegal means is yet another transgression of lines of power in Katherine Jewell’s life. That her children were all given the same last name indicates that, regardless of the law that disallowed servant marriage, Katherine maintained a long-term relationship with her children’s father. That this was an interracial relationship only heightens the transgressive meanings of this family’s story. Finally, that the Catilla children took their father’s last name shows a remarkable, and fleeting, moment in which black fatherhood was recognized by the community and, to a lesser extent, the law. This recognition may be a further indication that the Catilla children’s father, though clearly of African descent, was not fully enslaved. Yet because their father was of African descent, the Catilla children, as legal bastards, could not place themselves in a patrilineal family, and instead were attached solely to their mother.\textsuperscript{460} The Jewell-Catilla family’s matrilineal genealogy would be significant to the family for generations.

William Catilla’s indenture, arranged by his mother and her master in 1670, illustrates the precarious position of mixed-race children in the colony after the passage of the law of slavery by birth. At this point in the colony’s history, mixed-race bastard children, like white bastard children, were expected to serve indentures until the age of 21. Nevertheless, the indenture negotiated for William Catilla by his mother and her master extended to thirty years. In exchange for that service, William was promised “his bringing up and Corne & Cloathes at the Expiration of his time

\textsuperscript{459} CPR 153. Katherine was listed as a free woman, married to John Pond, in 1672.

\textsuperscript{460} For example, William Catilla was referred to as the “son of Katherine Jewell” in his original indenture agreement. York DOW 7: 61.
and a heifer of a yeare old when he attaines to the Age of fowerteen." In 1685, Booth honored his portion of the agreement, and transferred ownership of the heifer to the teenaged William. In 1691, the law changed in Virginia: mixed-race bastard children were ordered to serve 31-year indentures. When he was 25, William Catilla challenged the original indenture: he sued William Booth’s widow for his freedom in 1695, five years before his indenture would have been completed, arguing that he should have only served 21 years, as was customary when he was born. The court ruled in William Catilla’s favor. For the courts, the fact that William had already served 24 years, and “was the son of a free woman & was baptized into the Christian faith” took precedence over the original indenture agreement.

By the 1690s, the entire Jewell-Catilla family had seen their statuses improve, even as conditions for mixed-race people had deteriorated in the colony. Upon her release from her own indenture, Katherine Jewell’s own position would change dramatically: by 1672, she was a free woman, had married a white man named Stephen Pond, and had given birth to a white son named John Pond. Significantly, even as Stephen and Katherine’s marriage struggled, the Pond family and the Catilla family would remain close over the years. Katherine’s children saw their fortunes

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461 York DOW 7: 61. It is possible that Katherine Jewell negotiated similar indentures for Mary Catilla and Matthew Catilla. Indentures were private contracts, and were not brought to the attention of the courts unless they required specific property transfer or they were challenged. William Catilla’s indenture is documented because of the transfer of the heifer and his lawsuit. Similar indentures for Mary and Matthew may never have been negotiated or enforced in court. For other cases of women negotiating indentures for their children, see: York DOW 12: 67, 181, 188; York DOW 13: 51.
462 York DOW 7: 61.
464 York DOW 10: 137, 153
465 Ibid. Even as late as 1695, Christianity remained a marker of freedom in Virginia.
466 CPR 153.
467 Matthew Catilla would testify in court for his white half-brother, John Pond in 1695. York DOW 10: 141. When Mary Catilla was accused of bastardy in 1694 (a case discussed in more detail later), Stephen Pond paid her fine. York DOW 9: 341. The marriage between Stephen Pond and Katherine
improve as well, though their race would always make them vulnerable. Finally a free man, William’s facility in handling his legal affairs would be an advantage; he would need those legal skills as his life went on, and Virginia’s free blacks found themselves in an increasingly restricted world. By the 1690s, all three Catilla children were also freed and had also started families of their own.

Freedom could not protect the Catilla family from the increasing strictures placed on free mixed-race families in Virginia. The Catillas’ liminal identities, extra-legal marriages, and matrilineal genealogy would both be sites of transgression of and protection from colonial power as the years went on. As mixed-race free people of color, the Catilla children and their descendents could not enter into fully recognized marriages. Because of this, their childbearing would forever be in question. Indeed, the historical record makes it very difficult to find conclusive evidence of the marriages of many of the Catillas – lacking recognition by the court, there is often no record of their marriages, and we are left surmising the nature of many of the relationships in the Catillas’ family tree. While the freedom of William, Mary, and Matthew – negotiated by Katherine Jewell, their white maternal progenitor – protected the family from enslavement, it could not protect them from the increasing surveillance by the courts over free people of color.

The court’s surveillance was especially focused on the Catilla family’s childbearing. Over the course of the eighteenth century, all three branches of the Catilla family tree – Mary’s, William’s, and Matthew’s – were marked by births that

Jewell was not an uneventful one, though. Stephen was accused of adultery in 1693. Cornell Cornute, a former English servant of Pond’s, accused Pond of what can only be understood by a modern reader as falsely imprisoning and sexually harassing (if not assaulting) Cornute’s wife: Pond “kept & detained [Cornute’s] wife from him & made it his frequent custom to lye w/ her openly boasting thereof to sd Cornute & others together w/ diverse other rude behaviors & unjust actions.” Pond’s higher status protected him when the court only fined him 100 pounds of tobacco. York DOW 9: 202.
the court deemed illegitimate. Mary Catilla, Katherine Jewell’s daughter, was the first to bear the brunt of the court’s scrutiny. Mary’s eldest son, James, was born in 1693. James’ birth is recorded in the Charles Parish birth register; no father is listed, and James’ last name is listed as “Catilla.”468 James’ father was known to the court, though: upon James’ birth, Mary was accused of “comitting the sinn of fornication with an English man named John Berry haveing a bastard child borne of her body,” for which she was fined 500 pounds of tobacco.469 This bastardy case shows the tenuousness of Mary’s identity as a free woman of color and a bastard child herself: while the parish register lists her name as “Mary Catilla,” the court summons lists her as “Mary Jewell.”470 The Catilla last name would seem to nod at the legitimacy of Mary’s birth, but the Jewell last name symbolically conferred upon Mary her freedom. Further, while the court did not fully recognize Mary’s family relations, it was that family – specifically, her white relations – that protected her: her stepfather, Stephen Pond, stepped in to pay her fine so that Mary would not be whipped.471

Mary would bear three more children over the next ten years. Patience Jewell was born in 1697; no father was listed in the Charles Parish record of her birth. Neither was a father listed for the birth of Matthew Catilla in 1700. In 1703, Mary had another daughter, Catherine Catilla, who was named after Mary’s mother.472 While the court did not accuse Mary of bastardy for the births of Patience or Catherine, she was summoned “for her late committing the sin of fornication” when

468 CPR 61.
469 York DOW 9: 341.
470 Ibid.
471 Ibid.
472 All three births are listed in CPR 61. There is one more possible birth that can be linked to Mary Catilla: Ann Catilla, born in 1710, was listed as the daughter of Mary Catilla and Christopher Robinson.
Matthew was born.\textsuperscript{473} Mary was furious at the indignity: she “refus[ed] to pay her fine,” and suffered “25 lashes on her bare back.”\textsuperscript{474} Did she consider herself to be married? It seems possible that the Englishman John Berry was the father of all of Mary’s children. Generations later, in 1773, descendents of Mary, Edward and Ann “Cottillow,” named their newborn son “John Berry Cottillow.”\textsuperscript{475} It seems that the family had preserved the genealogy of the family, including Mary’s extralegal marriage to John Berry, which was recognized by the family, if not by the courts. Significantly, the family’s remembered genealogy tied them to their white ancestry: whether to Katherine Jewell or John Berry, the tie to whiteness conferred some measure of freedom.

The women of the Catilla family would continue to be brought in to court for bearing bastard children through the generations, drawing the eye of the court onto the entire family. In 1729, Judith Catilla, William’s 26-year-old daughter, was accused of bearing a bastard child, and the court took the unconventional step of also summoning her father. At Judith’s trial, the court referred to a little-used statute which held that, in the case of a bastard birth, the owner of the house where the child was born could be punished as well.\textsuperscript{476} William was punished because he failed to inform the churchwardens of the illegitimate birth. Did he (like his sister Mary in her

\textsuperscript{473} York DOW 11: 400, 444.
\textsuperscript{474} Ibid. The court’s language is extraordinary here – in no other case that I’ve come across does the court state that a woman “refused” to pay a fine. This language would seem to point to Mary’s demeanor.
\textsuperscript{475} CPR 72.
\textsuperscript{476} Waverley K. Winfree, comp. The Laws of Virginia, Being a Supplement to Hening’s Statutes at Large, 1700-1750 (Richmond: The Virginia State Library, 1971), 253-7. Hening 4: 208-15. This statute was applied to only four other cases in York county. York DOW 16: 527, 535; York DOW 17: 12, 29; York DOW 18: 43-4, 60, 67, 73, 79, 85, 103, 112; York DOW 18: 349A, 359-60, 362, 375, 376, 379, 380, 381. Interestingly, in the 1733 case, Hannah Tavernor was accused of bearing “a Bastard Child at John [E]ton’s house.” The case was struck off the docket, meaning that neither Tavernor nor Eton was held responsible. This is quite different from the case of William Catilla and Judith Catilla, where both were held to be responsible for the birth.
relationship with John Berry) believe that Judith was married? The court ordered that William Catilla be whipped for his abetting of his daughter, itself a marker of Catilla’s tenuous status as a mixed-race free man in Virginia: usually, if a man couldn’t pay a fine, the sum was levied against his property.477 Either William did not have enough property to make up for his fine of 500 pounds of tobacco, or the court singled him out for the racially-charged punishment of whipping. Kirsten Fischer argues that whipping and branding servants was prohibited in North Carolina (as it was in Virginia).478 The result was that these punishments were reserved for slaves by the eighteenth century, and as such “reinforced the idea that the bodies of African Americans were inherently different.”479 It seems significant that whipping would be used against a free man of color, seemingly to underscore and emphasize his race. Further, that the colonial state would reserve whipping as a punishment for particular crimes like bastardy indicates the racialization of that crime in eighteenth-century Virginia.

The court’s surveillance over the Catilla family lasted for generations, both in the form of bastardy cases and tithing cases. Matthew Catilla (Katherine’s son) had eleven grandchildren.480 His youngest granddaughter, Martha, was fined for bearing a bastard child in 1764.481 The Charles Parish records lists another “bastard child of Martha Cutillo,” Nancy, who was born in 1766. No bastardy case was brought

477 For example, Roger Badget was protected from being whipped when Elizabeth Ellyson bore a bastard child in his house – his fine was “levy’d on [his] Goods & Chattels Lands & Tenements.” York DOW 18: 381.
478 Fischer, Suspect Relations, 10.
479 Fischer, Suspect Relations, 10, 167.
480 CPR 61.
against Martha for that birth.\textsuperscript{482} Again, with Martha, we see the possibility for racial
liminality and extra-legal marriages for the Catilla family: the year before Martha’s
first child was born, Thomas Combs was fined for failing to list Martha as tithable.\textsuperscript{483}
Were Martha Catilla and Thomas Combs married?\textsuperscript{484}

Even with the constant scrutiny by the court, the Catilla family flourished, and
generations of the Catilla family continued in York county throughout the eighteenth
century. Their names indicate the tight-knit culture of this family: Mary Catilla
named her daughter Catherine after her mother, Katherine, an act that may indicate
both the closeness of the two women and the recognition that it was Katherine’s
whiteness that insured the family’s freedom. Further, in the four generations
following Katherine Jewell’s sons, there were three more Matthews and two more
Williams. These names also link the family back to that first generation of free
mixed-race Catillas. This attention to the matrilineal genealogy existed in tension
with the initial assertion of patrilineality by Katherine Jewell: if slavery meant
erasing fatherhood, it is certainly significant that Katherine Jewell’s children carried
their father’s last name. When later generations of Catillas were brought into court,
their memory of their genealogy was a means to maintain their freedom.

We see in the story of Katherine Jewell and her family the ways that free
people of color, guaranteed a measure of freedom by asserting a genealogy that
reached back to a white female ancestor, could transgress some of the racial
assumptions of Virginia’s culture of inherited racial slavery. Even as the court acted

\textsuperscript{482} CPR 62.
\textsuperscript{483} York JO 4: 90.
\textsuperscript{484} York DOW 18: 667. Martha’s father, Matthew Catilla, Jr., had also been fined for failing to pay
taxes on Martha’s mother, Sarah.
to discipline the Catilla family—through fines, surveillance, and physical punishment—the Catillas were able to enjoy some level of independence. As a large free black family in the racially dualistic slave economy of Virginia, the Catillas’ freedom transgressed the notion that blackness automatically conferred slavery. While their marriages were not legally recognized, we see a tension as the courts tacitly recognize their legitimacy in most instances even as it refused to recognize them in others. It is certainly remarkable that, of the 29 Catilla births for which there is some trace in the records, only four were tried in the court as a bastardy case. The rest of those births were recorded by the Charles Parish clerk as legitimate births born to married, mixed-race couples. Finally, we see how the memory of an English servant woman, Katherine Jewell lived on in a family for whom genealogy was a ticket to some measure of freedom.

Throughout the generations, the Catilla family was seen as a free black or mixed-race family. While their white ancestry granted them freedom, the courts and the church always categorized the family as non-white. As we’ve seen, that white ancestry offered some measure of freedom, but it did not guarantee a life free from the surveillance and harassment by the courts. Thus, the Catilla family, because of their racial identity that transgressed the line between black and white, lived in a liminal space between free and unfree, legitimate and illegitimate. For some free people of color and their white family members, though, their identities themselves were liminal and therefore transgressive. Such was the case with Joanna Inscow, a mixed race woman whose own racial identity was so uncategorizable, and thus so

485 These include the bastardy cases of Mary Jewell/Catilla (1693 and 1700), Judith Catilla (1729), and Martha Catilla (1764).
transgressive, that the courts repeatedly recategorized her as a means of minimizing her transgressions. Again, we see the ways that liminal identities, extralegal marriages, and matrilineal genealogies were sites of transgression, this time for free people whose race was not easily categorized. Joanna Inscow’s transgressive identity, rooted in her birth and extending to the birth or her children, existed in constant tension with the domination of the colonial state.

Joanna Inscow was the daughter of white woman named Elizabeth Rawlinson.\(^{486}\) Elizabeth herself was probably the bastard daughter of another Elizabeth Rawlinson, who, as a servant to Ralph Flowers, bore a bastard child in 1684.\(^{487}\) There is no surviving record of Joanna Inscow’s own birth (or the source of her last name), but the circumstance of Joanna’s birth were questionable enough to make her racial status suspect for her entire life.\(^ {488}\) Joanna’s identity, down to her name itself, was slippery throughout her life – the court frequently mistook her for her mother, even in 1728 summoning “Elizabeth Rawlinson, Elizabeth Rawlinson the younger” and “Johanna Inscome” on the same day for the same crime.\(^{489}\) Several years later, the court referred to “Rollinson” as Joanna Inscow’s “alias.”\(^ {490}\)

Inscow’s name was not the only aspect of her identity questioned by the court. Over the course of her life, Inscow was called in to the York county court to prove

\(^{486}\) York WI 20: 197. Elizabeth Rollinson’s will, dated October 4, 1748, named Joanna’s brother, John Rollinson as executor and major inheritor of the estate. Joanna inherited “1 English Shilling” from her mother. The court spelled “Rawlinson” and “Joanna Inscow” multiple ways; for clarity, I will use “Rawlinson” and “Joanna Inscow” throughout, except when quoting directly from original sources.

\(^{487}\) York DOW 6: 612. In that case, John Hall is named as the father of the bastard child. He does not appear again in any of the records connected to Joanna Inscow or her mother, Elizabeth Rollinson.

\(^{488}\) No bastardy case, miscegenation case or birth record survives that can be tied to the birth of Joanna Inscow. It is most likely that Joanna Inscow’s father was of African or Native American descent. It is possible that Joanna’s mother, Elizabeth Rawlinson Jr. was herself mixed-race, though no evidence survives that confirms or even suggests that. It is also possible that Elizabeth Rawlinson Jr. was the baby born in the 1684 bastardy case of Elizabeth Rawlinson Sr.

\(^{489}\) York DOW 16: 489, 1727.

\(^{490}\) York DOW 18: 60, 67, 73, 79 86, 103, 112.

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her racial identity no less than four times. In her analysis of Inscow’s life, Kathleen Brown emphasizes that Inscow’s marriage to Isaac Bee, a white man, temporarily conferred upon her the status of whiteness.\textsuperscript{491} When Bee died, so did Inscow’s status as a white woman. For Brown, Inscow’s story indicates the remarkable intertwining of white families and free black families, and the power conferred by whiteness in eighteenth century Virginia. I agree with Brown, but my focus here is different: while Inscow’s marriage to Bee conferred privileged status, the questioning of that status occurred whenever Inscow gave birth.

Virginia law regarding the tax status of black women’s labor shifted back and forth throughout the seventeenth and eighteenth centuries. In a groundbreaking 1643 law, black women’s labor was taxed the same as men’s labor; as Kathleen Brown has argued, this law marked black women as field laborers, and was the first open legal enshrinement of racial difference in Virginia law.\textsuperscript{492} This law was rescinded in 1662, with the passing of the law of slavery by birth. Then, in 1668, black women’s labor was again deemed taxable.\textsuperscript{493} Back and forth the law would go, until 1723, when black women’s labor was again deemed taxable, following a Northampton county petition complaining of the revenue lost from failing to tax that labor.\textsuperscript{494} The 1723 law would have a major effect on Joanna Inscow’s adult life, as it was the basis for the court’s continued questioning and surveillance of her.

The narrative of Joanna Inscow’s tithing cases points to the transgressive liminality of her identity as a mixed race woman: even as the court sought a stable

\textsuperscript{491} Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 238-9.
\textsuperscript{492} Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 118.
\textsuperscript{493} Hening 2: 267.
\textsuperscript{494} Hening 4: 131.
identity for her, Joanna Inscow was always difficult for them to categorize. She was first fined for failing to pay her taxes in 1727, four years after the passage of the new tithing law. The case was never completed, perhaps because the court was never quite sure who Joanna Inscow was: this was the case where they simultaneously summoned Joanna, her mother, and her grandmother for the same crime (even though Joanna’s grandmother was most assuredly white, being a former English servant). Joanna’s racial identity again was called into question in 1735, when her husband Isaac Bee was fined “for not listing Joanna Inscow a Molatto.” The court provided a mixed ruling on the case: Bee was excused from the fine, but still had to pay the taxes in question. Inscow was called in again “for not listing herself as a Tithable” in 1738 – this time she “prov[ed] herself not a Molatto” and was excused from paying taxes in the future. The court’s memory was short, though. In 1746, Joanna was again charged with not listing herself as a tithable. Joanna defied the court by failing to appear, but to no avail: she lost that case, and was heavily fined. Clearly, Joanna Inscow’s status as a white woman had lasted just over twenty years.

Inscow’s string of tithing cases was not accidental. Except for the first tithing case (Inscow’s first appearance in the record), each summons came on the tail of another case (or cases) in which Inscow’s transgressive behavior challenged the court’s authority. In 1734, Inscow was charged with bastardy; in 1735, the second tithing case occurred. Two more bastardy charges came in 1736 and 1738, the

495 York DOW 16: 489, 499. Elizabeth Rawlinson Sr. was treated as a white woman during her bastardy case in 1684. York DOW 6: 562, 612.
496 York DOW 18: 237-8, 245.
497 York DOW 18: 440.
latter immediately followed by the 1738 tithing case. Finally, from 1743 to 1746, Inscow was involved in a series of debt cases as she worked to maintain her husband's estate. Following the pattern, these cases were followed by the last tithing case, in 1746.

All of these cases – whether for tithing, bastardy, or inheritance – were linked to Inscow's extralegal marriage to Isaac Bee, and were thus rooted in questions about transgressive reproduction. If racial identity was inherent in birth (and marked by particular labor demands), then the tithing cases were about interpreting and reinterpreting the legal status of Inscow's birth well after the fact. Each and every case somehow called into question Inscow's own birth: the circumstances of Inscow's birth determined the legality of her marriage, and thus the legitimacy of her own children. Thus, Inscow's bastardy charges were inextricably linked to the questions about her own racial status.

Significantly, Inscow was never actually punished for bastardy. The 1734 case was "Struck of the Docket," the 1736-7 case was dismissed, and the 1738 case was never completed. The court's reasoning for dropping all three cases was never made explicit, but the circumstances suggest several interpretations. Born to a free woman of some means, Inscow's children were not likely to become destitute – the court may not have seen further action against Inscow as necessary. Further, it was possible, as with the Catilla family, Inscow's extralegal marriage to Bee was informally recognized by the court. Finally, the fact that none of these cases came to

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500 York DOW 18: 279, 293, 300, 324, 333. Interestingly, when charged the third time for bastardy, Inscow's alias again surfaced: the initial charge was brought against both Inscow and "Betty Roleson". The case against "Roleson" was dropped when the court realized it had again mistaken Inscow for her mother. York DOW 18: 414, 434.
fruition points the possibility that the purpose of these cases was, on some level, surveillance: the court was asserting its authority over Joanna Inscow’s transgressive reproduction, even as it declined to actually punish her for those births. Ultimately, these failed bastardy charges indicate that the court was willing to tacitly consider Joanna Inscow as white (and thus married and bearing legitimate children), so long as she submitted to their domination.

Isaac Bee died in 1740, leaving Inscow and her son, John Inscow, some property. Upon Bee’s death, the courts ceased to abide Inscow’s transgressive liminal identity. Again, we see a tension between transgression and domination, as Inscow and the courts each tried to establish Inscow’s identity and her rightful access to power. After her husband died, Inscow fought hard to maintain both Bee’s estate and her relationship with her son, who was probably no more than six years old at the time; considering his young age and Inscow’s questionable status, it was possible that he could have been indentured out. This process was not easy for Inscow; the court was not eager to grant her the authority she demanded. Nevertheless, Joanna Inscow had seen the court in action for many years, and her role as a widow would only expand her knowledge. Ultimately, and after many failures, Joanna Inscow used the courts to win nominal recognition of her relationships, both to her husband and to her son.

Following the death of her husband, Joanna Inscow was involved in a series of debt cases, all related to Isaac Bee’s estate. In 1743, Inscow sued Thomas Dickson,

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501 York DOW 19: 249, 258-9, 267, 275. John Inscow is named as Joanna Inscow’s son in a 1753 deed. York JO 2: 363. During his youth, Joanna’s son used her last name; as will be discussed later, as an adult, he would take Isaac Bee’s last name.

502 This age determination is based on the timing of Inscow’s earliest bastardy charge in 1734.
the administrator of Bee’s will. After a series of delays due to legal technicalities, Dickson died before the case could be completed — Inscow did not recover the debts she felt owed to her. In 1746, Inscow herself was sued, first by Peter Hay, and then by Thomas Hornsby. Again, Inscow was unsuccessful: she lost both cases. Just eight months later, the court, which had in 1738 unequivocally stated that Inscow was “not a Molatto,” changed its mind and presented Inscow “for not Listing herself as Tithable.” When Inscow defied the court by failing to appear for her summons, the court levied against Inscow a double fine of 1000 pounds of tobacco. In this series of cases, the court whittled away at Inscow’s claims to her relationship with Bee — she was unable to make a claim to his estate, and ultimately unable to make a claim to the white status her marriage to him had conferred upon her. In other words, it took just six years (between the 1740 death of Isaac Bee and the 1746 tithing charge) for the court to recategorize Joanna Inscow from white (or tolerably transgressive) to free black (or intolerably transgressive).

After 1747, Joanna Inscow’s name fades from the records. She was involved in a few more court disputes, but ultimately the court’s decision to remove her status as a white woman, and thus its erasure of her marriage to Isaac Bee, succeeded in silencing her to a great extent. Nevertheless, Joanna’s son, John Inscow, would take up her battle for recognition of his (and thus his mother’s) relationship with Isaac Bee. Sometime before 1747, young John had been placed in the guardianship of John

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Hatherway Carter, a mixed-race relative of Joanna’s mother, Elizabeth Rawlinson.\textsuperscript{506} These kinds of guardianships were common in the eighteenth century as a way to ensure the support and education of young children. The arrangement was not always smooth – Carter and Joanna Inscow engaged in one court battle that was resolved outside of the courtroom – but it did underscore the closeness of the Inscow’s to their mixed-race extended family, as well as Joanna Inscow’s desire to connect with her family after the crushing legal defeats of 1743-1746.\textsuperscript{507}

Joanna Inscow died in 1759. Over the course of her lifetime, she was summoned to the York county court more than 25 times, just for questions of bastardy and tithing. As a free woman of color, Inscow’s status was always in question, and her relationships (whether to her husband or to her son) were not legally recognized. Yet it was Joanna’s relationship with her son, John, which would, in the end, solidify her legacy. Shortly after Joanna’s death, John sued Fips Jackson for major debts Jackson owed to the estate of Joanna Inscow. Finally, the Inscow family was victorious in court: John Inscow recovered from Jackson well over £100 Sterling, plus interest.\textsuperscript{508}

John Inscow’s victory in court was significant for a number of reasons. First, it indicates that John, even as a very young man of color, had access to power in the courts which his mother, as a woman, could not claim.\textsuperscript{509} Nevertheless, it is important to recognize that, while he was male, John Inscow’s access to power was

\textsuperscript{506} York DOW 19: 400. If John was born in conjunction with one of Joanna Inscow’s bastardy charges, he would have been between 7 and 12 years old at the time of this indenture, not an unusual age for an educational apprenticeship to begin. On the relationship between Carter and Elizabeth Rawlinson, see Brown, \textit{Good Wives, Nasty Wenchcs, and Anxious Patriarchs}, 238.

\textsuperscript{507} York JO 1: 6, 14, 71.

\textsuperscript{508} York JO 3: 39, 51, 62, 72, 133.

\textsuperscript{509} John Inscow was likely just over the age of majority and recently released from his apprenticeship/indenture when he sued Fips Jackson.
curtailed by both his race and the status of his birth. As a bastard child (legally if not practically), John Inscow was legally the "child of no one." According to Virginia law, he was not legally qualified to inherit from Inscow (or from Bee, for that matter). Yet John was a bastard child only because of a legal technicality – Isaac Bee and Joanna Inscow were not allowed to marry because of Virginia’s law against interracial marriage. Yet John Inscow clearly believed that Isaac Bee was his father – by 1761, John had even taken on Isaac Bee’s last name. But John retained his relationship with his mother’s mixed-race family as well.

We see in the lives of Johanna Inscow and her son, John Inscow, the tenuous power that could be held by those with transgressive liminal identities in colonial Virginia. The Inscows’ story hews particularly closely to Johanna Oksala’s description of how limit experiences can transgress boundaries of power, knowledge and subjectivity. Joanna Inscow’s questionable birth transgressed lines of power, defying the notion that black and white should or even could be sexually separated in the colony. Further, her life transgressed lines of knowledge, as she and the courts grappled over her identity, which, in the context of Virginia’s racial duality, was unintelligible and thus continually problematic both for the courts and for Inscow herself. The courts sought to control Inscow’s transgressions, subjecting her to near-constant surveillance and the humiliation of refusing to recognize the legitimacy of either her marriage or her children’s births. Yet, this attempt at domination was met by one last transgression by the Inscow-Bee family: a transgression of subjectivity.

As Joanna Inscow’s life progressed, we see her continually grappling with the

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510 Virginia would change this law in 1785, ruling that illegitimate children could inherit from their mother “as if they had been lawfully begotten of such mother.” Hening 12: 138-9.

meaning of her identity. Born of a white woman, she was legally free, if not legally white. She married a white man, Isaac Bee, temporarily cementing her privileged status. But when Joanna Inscow and John Inscow’s ties to whiteness ceased to protect them, they strengthened their ties to their free black family. How much did Joanna Inscow’s understanding of herself, her identity, and her experiences transform as her transgressions were met with increasing domination?

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We began this chapter with the story of Mary Walters, a free woman of color so enraged by her situation that she was considered dangerous enough to banish from the colony. We ended with the Catilla and Inscow families, whose transgressive identities were met with less violent censure but who likewise met the domination of the colonial state. Transgression and domination existed in constant tension with one another. Significantly, in multiple ways, reproduction could be a site of transgression of the increasingly calcifying lines of power of colonial Virginia. Those transgressions were frequently met with the opposition of domination. Childbearing offered servant women a respite from their labors; that respite ways paid back in the form of years of extra service. Women who bore bastard children transgressed lines of knowledge, defying the law and defying the court’s authority, with varying levels of success. Single mothers carved out lives of some measure of independence, but that independence was always shaky. Enslaved women found ways to instill meaning in their reproductive lives, even using their reproductive role to openly defy the authority of the master class. Finally, mixed-race families transgressed Virginia’s racial order in multiple ways, especially if they were able to trace their genealogies.
back to a white female progenitor. These stories exist in tension with the overwhelming domination of the colonial slave economy. Nevertheless, to borrow the words of Ania Loomba again, reproduction offers a lens for us to see the women "who survived to tell the tale."
CHAPTER 3
Knowledge “not fit to be discust publiquely”:
Colonialism and the Transformation of Reproductive Knowledge

During the hot Virginia summer of 1646, four days after delivering Anne Owle’s baby, 46-year-old midwife Margaret Grimes returned to check in on her patient. Margaret was horrified by what she saw. Rather than finding Anne in bed with her baby, as the lying-in tradition required, Margaret found her patient “walking upp & downe the house,” “beare legged” but for a blue linen petticoat. Margaret urged her patient to go back to bed, telling Anne that “shee did very ill to goe soe cold,” and that she worried that Anne “might soune take Could.” Anne was reluctant to speak, but eventually told her midwife “shee was very ill”: “her water scalded hir...and her beareing came downe,” which probably describes what we would call a prolapsed uterus or vagina. Margaret urged Anne to keep herself warm and to “keepe warme Cloathes” against “her faery parts.” As she treated Anne, the midwife reassured her patient that she, too, had suffered the same ailment: “I have been soe myself,” Margaret said, and she believed that Anne’s uterus “would goe upp againe.”

512 York DOW 2: 168. Laurel Thatcher Ulrich observes that these postnatal visits from midwives were most common in the cases of complicated births, where midwives were more likely to observe that their patient needed more medical attention after the birth. Ulrich, A Midwife’s Tale, 189-93. Kathleen Brown examines Anne Owle’s case, arguing that Margaret Grimes’ testimony shows both her expertise and the level of trust the court place in her. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 97-8.
513 York DOW 2: 168.
514 Ibid.
515 Ibid.
516 Ibid.
517 Ibid.
Margaret Grimes’ story of that summer day survives as the only testimony recorded when Anne Owle reported the “unsufferable abuses” she’d experienced at the hands of her husband to the York County Court.\textsuperscript{518} The Court had difficulty even making sense of the tale: Anne’s complaint, they demurred, was “in such secrete manner that it is not fit to be discust by the Court publiquely.”\textsuperscript{519} The court convened a group of neighborhood women, including midwife Margaret Grimes, Elizabeth Hopkins, and Elinor Coming, to “serch” Anne Owle and make a report of their findings.\textsuperscript{520} The actions of the court would be decided by the women’s testimony: the court would “proceed” in the case “as they [the women] shall cause.”\textsuperscript{521}

The testimony of Anne Owle, Margaret Grimes, and the other women would have extraordinary impact: Anne Owle was, for all intents and purposes, granted one of the few marital separations in the colony’s history.\textsuperscript{522} As the Virginia summer cooled to autumn in 1646, Anne prepared to leave Virginia to return to England with her baby, where Anne was “desirous to go...to her friends” so that she could “seek cure” for her ailments.\textsuperscript{523} Anne’s estranged husband, Richard Owle, would stay in

\textsuperscript{518} York DOW 2: 166.
\textsuperscript{519} Ibid.
\textsuperscript{520} Ibid.
\textsuperscript{521} Ibid.
\textsuperscript{522} Of all the colonies, only Virginia disallowed divorce. Norton, Founding Mothers and Fathers, 89-95. The only way that a divorce could legally be obtained in Virginia was to apply to the House of Lords – an unlikely scenario indeed. In the absence of legal divorce, local courts arranged informal separations of couples, who were not allowed to remarry after obtaining the separation. Godbeer, Sexual Revolution in Early America, 130-2. See also: Fischer, Suspect Relations, 17n.4. There is one other marital separation case in the York County records. In 1691, the court arranged for the division of the marital property of Mary Savory and her husband Henry on the grounds of Henry’s physical abuse of Mary. Notably, as in the Owle case, the agreement forged by the court in the Savory case did not dissolve the marriage, but it did provide for the division of the couple’s property. York DOW 9: 91. Kathleen Brown argues that women’s \textit{feme covert} status “ironically may have strengthened the legal position of wives” when husbands failed to live up to community standards. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 336. Therefore, while divorce was not legal in the colony, some wives, such as Anne Owle, were able to find satisfactory alternatives in the courts. Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 336-40.
\textsuperscript{523} York DOW 2: 168-9.
Virginia. This transatlantic journey would fulfill the court’s order that the couple “doe not Come togeather,” because “they have & doe dayly goe in danger of there lives.”524 Anne’s journey would be funded by a financial settlement in which her husband was required to relinquish to Anne 1,200 pounds of tobacco, a pig and her shoats, a rug, “all her owne & her childs weareing cloathes,” “A Chest with locke & Key,” as well as half of the couple’s flock of chickens.525

This case presents a fascinating window into reproductive practices and beliefs in seventeenth century Virginia. Not only that, it shows us the ways that knowledge about reproduction worked in this particular space. We see knowledge about reproduction emerge in several ways in the case of Anne Owle. First, midwives held particular knowledge about childbirth, lying-in, and the medical practices that helped to treat childbearing women. Importantly, Margaret Grimes’ knowledge about midwifery enabled her to not only treat but to reassure and protect Anne Owle. Grimes’ knowledge here was both professional and personal. She knew how to treat Anne particular symptoms with “warme Cloathes” and skilled hands. She also knew how to allay Anne’s anxiety by telling Anne that she, too, had suffered the same ailment and been cured. Was it because of this reassurance that Anne revealed to Margaret the extent of her husband’s abuse? Or was it that, to Margaret and the other women in the neighborhood, the ignoring of traditional lying-in practices was simply beyond the pale? For Margaret Grimes, midwifery was not just

524 Ibid.
525 Ibid.
about medical knowledge: it was about shared experience with the women of one’s community.526

Second, that same knowledge about midwifery reveals the gender boundaries that constructed and defined bodies of knowledge in this period. While Grimes and the other women eagerly conferred with each other about the case, the male public sphere of the court treated the case very differently. To the court, Grimes’ knowledge about midwifery was not just outside of their purview, but it was literally unspeakable – “not fit to be discust.” Given this, the court had to defer to women’s knowledge to determine the facts of Anne Owle’s case. The women’s medical knowledge provided both the reasoning and the basis for Anne’s extraordinary separation agreement: Richard’s abuse of Anne endangered her life, and Anne was granted the right to go back to England (in other words, to truly separate from her husband) in order to “seek cure” for her illness. Did the midwife Margaret Grimes (who from her testimony seemed confident that she could cure Anne herself) convince the court that Anne’s illness was so severe that only a trip to England could cure her? The court was able to craft this unprecedented decision precisely because the case relied on women’s knowledge: even before the jury of women convened, the court granted that it would proceed with whatever the women decided about the case.527 The court’s observance of a gender division of knowledge – where women’s knowledge was private, experiential, and medical, and men’s knowledge was public and legal – allowed for

526 I do not mean to imply an essential bond between women. Instead, I use the phrase “women of one’s community” advisedly, to show that shared experiences existed only within the boundaries of the shifting community lines of colonial Virginia. The varied experiences and epistemologies of European women, Native women, and enslaved and free African-American women meant that their “communities” were increasingly defined by race, status, and coloniality.
527 York DOW 2: 166.
the “secrète” truths of the women’s testimony to have extraordinary power when they erupted into the masculine public sphere.528

Finally, the case reveals the possibilities and limitations of historians’ ability to see and understand past systems of knowledge, especially those that are not well represented in the archive. We can see that Anne Owle’s case was decided based on the knowledge of her midwife, but that knowledge remains elusive to us. We get a glimpse of the treatments Margaret Grimes used, and the importance of lying-in traditions to seventeenth-century English women, and the relationship between midwives and their patients, but the image we get is fragmentary at best. Margaret Grimes’ practice was likely steeped in both years of practice and the rules of humoral theory; she was deeply concerned that Anne would get too cold or too hot, and her choice of treatments were rooted in that concern. Even with that understanding, questions remain. Why was Anne’s walking about the house considered so dangerous, beyond the fact that it countered long-held lying-in traditions? What specific treatments did Margaret offer to Anne? How was Anne’s neglect of the lying-in tradition evidence of spousal abuse? This incomplete image is a result of the fact that the only evidence we have of this case (and any other similar case) is the court’s record. This archive is an artifact of the very gendering of knowledge that allowed the court to make its decision: the court recorded only its own version of the story because women’s knowledge was “not fitt to be discust by the Court publiquely.”529 Ironically, it was the very unspeakable nature of the case that demanded that it be recorded. Anne Owle’s outlaw reproduction – the way her

528 Ibid.
529 York DOW 2: 166.
failure to observe lying-in was a sign of her abuse by her husband - was recorded in the archive precisely because it broke with tradition. Outlaw reproduction – childbearing that became visible because it broke tradition, or because it broke the law, or because it, for whatever reason, became public rather than staying private – is often the only reproduction we can see from the distance of centuries.

As the case of Anne Owle makes clear, understanding the ways that knowledge about reproduction was constructed in colonial Virginia is no easy task. Such a study must not only attempt to reconstruct historical bodies of knowledge, but it must grapple with the limitations and blind spots of the knowledge of the historian herself. Some of this difficulty is specific to the topic of reproduction, experiences of which were rarely recorded. In her cultural history of pregnancy in England, Clare Hanson, drawing on E. Ann Kaplan and Ann Oakley, argues, “in such areas as the conduct of pregnancy and of child-rearing, subjective experience – complex, contradictory and often unrecorded – is extremely difficult to recover.”530 For Hanson, the solution to the silences in the historical record is a cultural historical approach: “…if we cannot recover subjective experiences, we can trace the discourses that have framed and inflected pregnancy, and in so doing disclose a history of the ideas that have shaped and informed experience.”531 This is particularly true for a historical space such as colonial Virginia, where the archive is fragmentary or even non-existent concerning the experiences and ideas of English women, and especially true for women of Native or African descent. The archival silences Hanson outlines are intensified in the colonial archive.

530 Hanson, A Cultural History of Pregnancy, 5.
531 Ibid.
In this chapter, I attempt to outline the contours of knowledge about reproduction in the colonial space of seventeenth and eighteenth century Virginia. As the analysis of the case of Anne Owle shows, any examination of historical knowledge must address that knowledge in at least two frames. The first is the historical project of trying to reconstruct past systems of knowledge, with particular attention to the intersections between knowledge and power. In a colonial context, this transformation of knowledge was always tied to the ways that colonialism itself shaped and reshaped colonized subjectivities in the process of what Robert Blair St. George calls "becoming colonial."\footnote{St. George, “Introduction,” 4-5.} The second is a self-critical, self-reflexive examination of the limitations of such a historical project at all, considering not only the limitations of the archive but also the subjectivity of the historian herself. Speaking to both of these frames, Gayatri Spivak has described the ways that colonialism both created and required "the complete overhaul of the episteme" of both the subaltern and the colonialist (though, for her, the subaltern is the particular focus).\footnote{Spivak, “Can the Subaltern Speak?” 76.} In other words, the process of colonialism fundamentally remade the knowledge of both colonizer and colonized, so that each needed to understand the world in fundamentally new ways, with the colonizer’s knowledge erasing, silencing, and remaking that of the colonized. The postcolonial scholar is left searching (perhaps futilely) for the voice of the subaltern amidst this silencing process. With that in mind, we must not only consider the organization, construction, and dissemination of knowledge about reproduction in this particular space, but the ways
that the colonial experience shifted, transformed, and reframed knowledge about reproduction.

In this chapter, I examine the relationship between reproduction, colonialism, and knowledge from a number of angles. First, I lay out the theoretical foundations for my examination. A feminist historical reading of postcolonial theory offers a grounding here for a discussion of how knowledge about reproduction was steeped in gendered, raced, and colonial power relations. While the archive is largely and lamentably silent about the knowledge systems of Native American and African women, and that same archive presents only glimpses of English women's knowledge systems, it does provide a window into the ways that knowledge about reproduction was transformed in a colonial space. After laying out this theoretical foundation, I will describe the reproductive episteme of colonial Virginia – the unspoken knowledge about pregnancy, childbearing, and genealogy held by women and men in this time and space. The translation of that episteme into experience and medical practice is the subject for the next section, which focuses on how knowledge about reproduction was used by midwives and women. This knowledge gave midwives some specific power in the public sphere, when their knowledge was required by the colonial courts. Finally, I will examine the ways that colonialism created new intimate relationships that challenged and remade previously held bodies of knowledge about reproduction.

Ultimately, I argue that colonialism interrupted and remade the gendering of knowledge about reproduction. Specifically, I argue that the intimacies of colonialism reframed the relationship between knowledge, gender, race, and power.
Where knowledge about reproduction was strictly gendered in Anne Owles’ world—such that the (elite, male) court simply refused any knowledge over the topic—the continued colonial encounter increasingly empowered masters and patriarchs to claim knowledge about reproduction, thereby shifting the meanings of reproduction for all involved.

* * *

In 1673, the York County court settled a dispute between the Robert Penrice and the wife of Owen Davis. The court’s entire record of the case reads: “Whereas it is manifestly apparent that an Indyan through Robert Penrice his meanes caused the wife of Owen Davis to miscarry it is therefore ord[ered] that he pay her one thousand [pounds of tobacco].”\(^{34}\) In other words, according to the court, Robert Penrice had somehow procured an abortifacient from an Indian and gave it to Mrs. Davis. The court judged in Mrs. Davis’s favor, and Penrice was ordered to pay damages to her. As in the case of Anne Owle, the frustrating silences of the record may hide more from us than they reveal. Also like Anne Owle’s case, this case shows us some of the ways that the court addressed the intersection between reproduction, power, and knowledge. Further, this case (hereafter referred to as the Penrice-Davis-“Indyan” case) can be a platform to understand the ways that colonialism complicated and transformed gendered systems of knowledge.

I will use the Penrice-Davis-“Indyan” case to outline some of the theoretical foundations for this chapter’s discussion of reproduction, colonialism, and the politics of knowledge. Four questions emerge (and overlap) in this discussion. First, what are the limitations of the colonial archive and, therefore, historical knowledge? Next,  

\(^{34}\) York DOW 5: 56.
how does the position of the historian herself further constrict a historical investigation? Then, if historical knowledge is so compromised, then, how is knowledge defined in this study? Finally, what was the relationship between colonialism and knowledge?

The abbreviated record of the Penrice-Davis-“Indyan” case illustrates in particularly intense ways that historian’s knowledge of the past – especially the colonial past – is limited by the available archive because the textual fragments we have are an artifact of the very power relations we wish to uncover and understand. In her examination of the literature of early colonialism, Myra Jehlen argues that we must not limit ourselves to thinking of the archive as a record of its time, but instead we must understand that the texts themselves are “self-conscious participants in the events they represent.” Antoinette Burton takes a similar stance, arguing that “…archives do not simply arrive or emerge fully formed; nor are they innocent of struggles for power in either their creation or their interpretive applications.” This is intensified in the colonial Virginia archive, for which the textual presence of the nascent colonial state – in the form of court records and the written law itself – is one of the richest (indeed, one of the only) archives available.

We see this simultaneous presence and absence of a colonial record in the Penrice-Davis-“Indyan” case. Only the court’s decision in the case survives, and we have very little sense of the experiences, motivations, and opinions of Penrice, Davis, or the “Indyan.” The judgment in Davis’s favor indicates that the court believed that she was harmed by the remedy obtained by Penrice from the Indian, but little else can

be surmised. More intensely, the “Indyan” whose reproductive knowledge stands at the center of the case – the miscarriage was supposedly caused by methods this person provided – is not just silenced but unnamed. The court’s record is an artifact of its production: what mattered to the court were its own decision in the case and the monetary transaction that decision demanded.

Further, because the court’s record is an artifact of its own power in colonial systems, it participated in silencing the colonized Other. Part of this silence is a result of the abbreviated, recalcitrant nature of the colonial Virginia archive. We know nothing about the “Indyan” and the knowledge he/she shared with Robert Penrice. Further, we know similarly little about the relationship between the “Indyan”, Robert Penrice, and Mrs. Davis. More importantly, though, the silences in this short record are in fact revelatory of the colonial construction of race and power, especially in the organization of knowledge. For Gayatri Spivak, the colonial historian might well find their project reduced to “a task of ‘measuring silences.’”537

There are multiple ways that we can measure the silences of this case. In one possible reading of the text, Robert Penrice, his motives unknown, contracted an Indian to somehow cause Mrs. Davis to miscarry her pregnancy – whether through medicine, magic, or some other way.538 In this reading, the record transmits colonial fears about the crossing of racial boundaries: the unnamed “Indyan,” a holder of powerful and dangerous knowledge, crosses into English society to sow discord. In this reading, the court did not only neglect to record the “Indyan’s” knowledge, it refused to do so. In the court’s opinion, Robert Penrice needed to be punished

537 Spivak, “Can the Subaltern Speak?” 82.
538 Of course, many other possible readings exist. We can’t know the relationship between Penrice and Davis and why he would want to procure an abortion for her (or force one upon her).
because it was through "his meanes" that this knowledge found its way into the English settlement. In another reading, the silences point to the ways that the colonial court privileged English agency over native agency. In the court's view, Robert Penrice was the only one who could be punished: Penrice was named as defendant, despite the fact that the court claims that it is "manifestly apparent" that the "Indyan...caused" the miscarriage. By naming Penrice as the defendant in the case, the court shifts agency from the "Indyan" to Penrice. In this reading, the "Indyan" is unnamed because his/her coloniality rendered him/her without agency in the eyes of the court. Either way, the silences here – the refusal to record either the name of the "Indyan" or the knowledge he/she held – reveal the ways that the court tried to police colonial boundaries between Indian and English and assert English power, especially when threatened by Indian knowledge.

My project here is to allow the silences in the record to reveal what they can. This requires being attentive to the ways that the archive specifically erases the subjectivities of those at the bottom of various colonial hierarchies, including both racial and gender hierarchies. Nevertheless, the exigencies of colonialism meant that those hierarchies were constantly being negotiated and renegotiated; the colonial archive does not totally silence colonized voices. Therefore, despite the power structures etched into the silences in the archive, we can still hope to find the stories of women and colonized peoples. Postcolonial theorist and historian Ania Loomba argues that historians must look for women – we must "suppose a presence which at first cannot be found."539 In so doing, we must engage with the ways that race and gender intersected in the colonial archive. Jane Haggis urges a reading of colonial

539 Loomba, "Dead Women Tell No Tales," 319.
gender relations that recognizes the overrepresentation of white women in the archive: she warns that “recuperative histories” of white women “[colonize] gender for white men and women rather than gendering colonialism as a historical process.”540 Finally, as Ann Laura Stoler argues, colonial spaces – and colonial archives – were the same spaces where hierarchies of gender and race emerged and calcified; the reading of the archive amounts to the observation of the creation and policing of hierarchy itself.541

An inquiry into the history of reproductive knowledge provokes a second question: what is the position of the historian herself within bodies of colonial knowledge and colonial history? The hope to decode stories such as the Penrice-Davis-“Indyan” case may reveal as much about the historian’s subjectivity as it does the archive itself. In her examination of Chicana histories, Emma Pérez warns against another kind of recuperative history, one that would assert claims about women that we wish were true, rather than acknowledging that our knowledge is always incomplete:

Many of us [historians] try with our passions to reconstruct the epics, dramas, comedies, and tragedies in a narrative that will echo ‘truth.’ We want so much to unearth the documents and organize the ‘facts’ that will disclose the ‘real truth.’ And what we know, what we discover as we venture into other worlds, is that we can only repeat the voices previously unheard, rebuffed or

underestimated as we attempt to redeem that which has been disregarded in our history.\(^{542}\)

For Pérez, this realization of the archive’s silences not only reminds the historian of the inevitable limitations of their knowledge, but fuels even more the need to acknowledge historical silences. Pérez’s approach reminds us that the historical project of uncovering knowledge in colonial spaces is complicated not only by the limitations of the archive, but by the limitations of the historical project itself.

With this in mind, an examination into the role Mrs. Davis took in this particular case can begin to uncover the role of the historian’s subjectivity in the creation bodies of historical knowledge. What can we learn about Mrs. Davis and her reproductive experiences or her agency in this brief record? The record both erases and highlights Mrs. Davis’s agency in this case, blurring the standard application of the legal concept of the *feme covert:* she is not named (referred to instead as “the wife of Owen Davis”), but the court’s judgment is for her alone (Penrice is ordered to pay damages to her, not her husband). Was this language intentional in the recording of the case, and what did it reveal about what happened, either in the courtroom or in the events surrounding Mrs. Davis’s miscarriage? We can hope to find Mrs. Davis’s agency, but, ultimately, it is lost to us.

It’s worth noting that while we know little about Mrs. Davis, we at least know her name; in the colonial archive, the “Indyan” is even more invisible. Further, the invisibility of the “Indyan” is highlighted by my own historical methodology. This case only came to my own view because it included some record of the reproductive experiences of a woman in colonial Virginia. Admittedly, my interest in the “Indyan”

\(^{542}\) Pérez, *The Decolonial Imaginary*, xv.

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emerged tangentially to my interest in Mrs. Davis; I need to resist a “recuperative”
history of white women not just because of the limitations of the archive but because
of the limitations of my own research methodologies. How do historians, through
recounting white experience in colonial spaces, re-establish the power relationships of
colonialism? When Spivak asked “can the subaltern speak?”, she was questioning the
ability of Western intellectuals to adequately hear and be able to understand the
subaltern, noting that “the intellectual is complicit in the persistent constitution of
Other as the Self’s shadow.”\textsuperscript{543} The problem was not the subaltern’s silence, but the
intellectual’s willingness to fill in those silences with his own politics: “representing
[the subaltern], the intellectuals represent themselves as transparent.”\textsuperscript{544} Feminist
theorist Michele Barrett offers a helpful rephrasing of Spivak’s original question:
“can the hegemonic ear hear anything?”\textsuperscript{545} In other words, Spivak not only critiques
the colonialis t but also requires the historian/intellectual to recognize her own
position in historical narratives of colonial and postcolonial power relations.

The feminist concepts of positionality and intersectionality are useful in
helping historians to be self-critical of their own position in historical narratives.
Knowledge, in these theoretical frameworks, is always defined and constructed within
the power structures of identity: gender, race, sexuality, class, nation, and so on.
Donna Haraway argues that we must divest ourselves of the myth of objectivity,

\textsuperscript{543} Spivak, “Can the Subaltern Speak?” 75.
\textsuperscript{544} Spivak, “Can the Subaltern Speak?” 70.
\textsuperscript{545} Michele Barrett, “Can the Subaltern Speak? New York, February 2004,” History Workshop
Journal 58 (2004): 359. Spivak’s approach in “Can the Subaltern Speak?” has been read by some as
suggesting that the subaltern can, in fact, not speak – or certainly cannot be heard. See, for example,
Sandhya Shetty and Elizabeth Jane Bellamy, “Postcolonialism’s Archive Fever,” Diacritics 30:1
instead adopting a stance of what she calls “situated knowledge.” Haraway defines situated knowledge:

I am arguing for politics and epistemologies of location, positioning, and situating, where partiality and not universality is the condition of being heard to make rational knowledge claims.... I am arguing for a view for a body, always a complex, contradictory, structuring and structured body, versus the view from above, from nowhere, from simplicity.

Haraway’s valorization of the self-conscious partial view challenges us not just to acknowledge but to embrace the limitations of scholarly knowledge. Such a self-conscious positionality, in which we observe the colonial past from our postcolonial position (while still embroiled in the neocolonial politics of our own historical standpoint), will help us to “translate” (to use Jane Haggis’s term) colonial archives while working to avoid recreating colonial power structures. We must admit that the histories we write are, like the colonial archive itself, fictions. In the Penrice-Davis-“Indyan” case, any attempt to recreate the story must be tentative and hypothetical. Nevertheless, the very opacity of the record tells us a story about the past – the ways that colonized knowledges were silenced, and the ways that individual agency was elided by the colonial state. This act of “translating” the colonial record into post-colonial meaning requires refusing the same position of power that the court itself claimed.

I have discussed the “Indyan’s” knowledge and how the court erased it; I have also inquired how my own view of the court’s knowledge constructs my understanding of this moment in the colonial past. This brings me to the third question regarding this history of reproductive knowledge: how is knowledge defined in this study? Ultimately, knowledge about reproduction in the Penrice-Davis-“Indyan” case was about the contours of reproductive control – abortion, pregnancy care, medicine, and magic. My goal here is to define knowledge broadly, to include how knowledge about reproduction was learned from sources both oral and written, and through education both formal and experienced in everyday life. This must be the case, as the period in question – the seventeenth through the eighteenth centuries in both Europe and the American colonies – witnessed profound shifts in what constituted legitimate knowledge about reproduction, specifically about childbirth practices. Women’s historians and medical historians have traced in detail the ways that women’s knowledge about midwifery, passed down orally from midwife to midwife and through the combined experience of witnessing birth upon birth, gave way to medical men’s knowledge about medicine and anatomy, transmitted through print and formal education.\(^{549}\) As we will see, this debate played out in eighteenth-century Virginia, as well. Therefore, my approach to knowledge here must encompass both the knowledges of midwives and of doctors. Further, my approach must acknowledge the ways that women who were never named as midwives – including Native women and enslaved and free women of African descent as well as

English women – had access to the kinds of orally-transmitted, experiential knowledge held and shared by midwives.

I am also concerned with uncovering knowledge about reproduction on a much broader, deeper, epistemological level. Michel Foucault defined the episteme as:

...the strategic apparatus which permits a separating out from among all the statements which are possible those that will be acceptable within, I won’t say a scientific theory, but a field of scientificity, and which it is possible to say are true or false. The episteme is the ‘apparatus’ which makes possible the separation, not of the true from the false, but of what may from what may not be characterized as scientific.\textsuperscript{550}

This definition of the episteme mirrors, in some ways, the separation of knowledge described in the debates between midwives and physicians. Physicians’ knowledge was defined as scientific, and it defined itself against the non-scientific knowledge of midwives. But Foucault is getting at something else here: for him, the episteme is not just the separation of knowledge into categories, but the very ability to draw categories at all. In this way, the episteme can be understood as that which is known, if not necessarily questioned or proven – the fundamental, invisible assumptions that organize all knowledge into what is true and what is false.

When considered as episteme, knowledge is fundamentally related to power: the power to distinguish that which is true from that which is false, the power to determine that which is known versus that which is unknowable. Emma Pérez,

whose work is rooted in Foucault's methodologies, makes this clear: "The politics of meaning, then, becomes the aim of a history that interrogates the construction of knowledges accepted and condoned in society, thus granting power to those who make knowledge." Following Pérez and Foucault, I am utilizing a different framework than scientific vs. unscientific to understand historical epistemes. Instead, I am interested in the ways that knowledge was sorted into what might be termed the "knowable" and the "unknowable." The boundary between the knowable and the unknowable was often defined via power relations, including gender and race. As we saw with Anne Owle's marital separation agreement, the court simply defined women's reproductive knowledge as unknowable — they deferred to women's knowledge because such knowledge could not be translated into the court's episteme. In the Penrice-Davis case, the "Indyan's" knowledge of reproduction and abortion was also unknowable and unrecordable by the court. Our knowledge of the past is limited by what past recorders understood as possible to be understood.

The fourth and final question about the history of reproductive knowledge that I work to answer here is this: what were the precise contours of the relationship between colonialism and knowledge? The framing of knowledge as episteme emphasizes the ways that knowledge was and is always embroiled in power relations, whether gendered, raced, or colonial. The history of colonialism was and is a history of changing relationships of knowledge and power. Ania Loomba argues for the interdependent relationship between colonialism and knowledge: "Colonialism reshaped structures of human knowledge. No branch of learning was left untouched

551 Pérez, The Decolonial Imaginary, xvi.
by the colonial experience." This is important to our exploration of reproductive knowledges, as it begins to reveal one of the connections between the midwifery-to-medicine shift and the history of colonialism, one which will be discussed further in this chapter. Loomba points out the ways that colonialism's urge to "discover" — whether new lands, new peoples, or new ideas — was part of the creation of the Western mind (the very objective mind that Haraway rejects): "The central figure of Western humanist and Enlightenment discourses, the human, knowing subject, now stands revealed as a white male colonialist." In the Penrice-Davis case, the colonial court did not just refuse to record the reproductive knowledge of the "Indyan": it punished Robert Penrice for the temerity of crossing colonial knowledge boundaries.

When knowledge is defined in this way — as episteme, as the framework of knowable vs. unknowable — we can see the ways that knowledge was embroiled in the exercise and distribution of power, especially colonial power. Spivak argues that colonialism created and required "the complete overhaul of the episteme." In other words, colonialism was defined by the power of the colonialist to remake, erase, and silence colonized knowledges. Spivak's primary concern is the ways that colonialism was a process of epistemic violence against the colonized subaltern. That said, embedded in her analysis is the understanding that colonialism also transformed the episteme of the colonizer, for whom colonialism amounted to what she, drawing on Heidigger, called "the worlding of the world." Therefore, Loomba and Spivak

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552 Ania Loomba, Colonialism/Postcolonialism (NY: Routledge, 1998), 57.
553 Loomba, Colonialism/Postcolonialism, 65.
554 Spivak, "Can the Subaltern Speak?" 76.
555 Spivak, "Can the Subaltern Speak?" 82.
together understand colonialism as a knowledge project, and knowledge itself as a colonial project.

The transformation of colonial epistemes took place in the intimate zones inhabited by both colonizer and colonized. Ann Laura Stoller discusses what she calls "the intimacy of empire": the ways that colonialism was enacted not just in the public arenas of conquering and law, but in the most private, intimate of spaces.\(^{556}\) For Michel Foucault, the "the will to knowledge" about sex was the transformation of sex from experience, pleasure, and desire into discourse through the forced intimacy of the confession.\(^{557}\) Stoler draws on Michel Foucault's critique of the multiple spaces where confessions demand the transformation of sex into discourse: the ritual of confession, which originated in the church, spread to "a whole series of relationships," all defined by the intimacy between those who confess and those who hear the confession.\(^{558}\) The kitchen, the bedroom, and the nursery are all spaces, for Stoler, where the intimate relationships of colonial power (mistress and maid, colonizer and concubine, infant and nurse) were enacted. Drawing on Foucault, Stoler argues that these intimate relationships were especially "dense transfer point" for the exchange and creation of power.\(^{559}\)

I posit that because reproduction involved people's most intimate relations, it becomes an especially potent space to understand the intersections between knowledge, power, and colonialism. Therefore, we can add the birthing room to the bedroom, kitchen, and nursery as a potent site for the transfer of colonial knowledges.

\(^{556}\) Stoler, "Tense and Tender Ties," 23.

\(^{557}\) Foucault, History of Sexuality, 12-13.

\(^{558}\) Foucault, History of Sexuality, 61-3.

\(^{559}\) Stoler, "Tense and Tender Ties," 24.
The reproductive knowledge of Anne Owle and her midwives, of Robert Penrice, Mrs. Davis and the "Indyan," was all made, transformed, and communicated in private, intimate spaces. Because these intimate spaces became spaces for the enacting of colonial power relations, they blurred the boundary between public and private, we have a record (however elliptical) of the transactions that happened there. The knowledge transactions of colonial spaces created both discourses of sex (and reproduction) and discourses of colonialism itself.

My project in this chapter is to attempt to reconstruct the contours and boundaries of reproductive knowledge in colonial Virginia, while being attentive to the limitations of my ability to do so. The theoretical questions I’ve outlined above help to explain the character of my argument herein. The archive upon which I draw is limited and fragmentary; therefore, my own knowledge and the conclusions I draw must be partial and impressionistic. Surely, the colonial archive reflects the interests of colonizers, but even so, the development and creation of that archive was part of the process of creating colonial and colonized subjectivities and therefore is neither hegemonic nor totalizing. Knowledge and power were co-defined, but neither knowledge nor power hierarchies were absolute or concrete in this space and time. What I try to uncover here is the colonial reproductive episteme – the deeply held, often unquestioned, assumptions about childbearing and its meanings that colored not just childbirth experiences but people’s understanding of the world in which they lived. Colonialism shook the foundations of people’s reproductive epistemes as they participated in the creation of new hierarchies, new relationships, and new intimacies.
This transforming and unstable relationship between colonialism, reproduction, and knowledge is the focus of this chapter.

* * *

In the biblical creation story, after banishing Adam and Eve from Eden for eating from the tree of knowledge, God punished Eve and all women thereafter: “Unto the woman he said, I will greatly multiply thy sorrow and thy conception, in sorrow thou shalt bring forth children.” Eve’s curse, that biblical stricture that seemed to doom women to frequent and painful childbirth, formed the basic understanding of women’s reproductive lives in the British American colonies. The myth seemed to reflect reality. In Virginia during the eighteenth century, white women gave birth to an average of ten or eleven children during their lives, and enslaved black women’s fertility rate increased throughout the century to an average of nine children. For these women, repeated pregnancies, childbirths, and nursing defined their adult lives. Understanding how this experience shaped their understanding of their lives and of reproduction itself requires seeing childbearing not just as the experience of childbirth but as a fundamental organizing principle of everyday life – reproduction as episteme.

Women’s knowledge, especially in the ways that they interpreted their own bodily experiences, is difficult, but not impossible, to ascertain. Women’s voices are remarkably and frustratingly silent in the Virginia archive. Therefore, lacking sources written in women’s own hand, we must read the existing archive against the grain to

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560 Genesis 3:16 (King James Version).
561 Kulikoff, *Tobacco and Slaves*, 57, 72. Increasing black fertility over the century indicates the shift from an immigrant African slave labor force to an American-born slave labor force. For a variety of reasons, not least the physical, mental, and emotional stress of the Middle Passage, immigrant enslaved African women had a much lower fertility rate than native-born enslaved women.
find women’s knowledge. If we reframe knowledge to include that which is 
knowable – in other words, as Foucauldian episteme – we can begin to ask how 
women’s reproductive experiences would have constructed their understanding of the 
world. As Foucault argued, episteme is the knowledge we hold but do not question, 
and therefore this is knowledge that often goes unspoken. Therefore, we cannot 
recreate this episteme in its entirety, but we can trace the outlines where this episteme 
erupted into text and speech. Therefore, a reconstruction of early Virginian 
reproductive episteme requires an examination about the deepest assumptions about 
reproduction, as well as the ways those deep assumptions steered people’s choices 
and colored their interpretations of their lives.

My analysis of the reproductive episteme of early Virginia is based on the 
ephemeral moments when deeply held beliefs about reproduction were articulated. 
First, I try to understand the ways that women themselves understood childbearing as 
a specific process that impacted their lives. I use evidence both of women’s 
description of the reproductive process and of women’s experiences of repeated 
pregnancies. For women, reproduction was a central node of meaning in their lives – 
while much of this meaning is lost, there is some evidence that reveals what 
reproduction meant to women. Next, for all immigrant Virginians, birth and death 
were inherently linked in the colony, especially in a disease environment that pushed 
mortality to extraordinarily high levels. An examination of the discursive linking of 
birth and death shows some of the ways that people made sense of the dangers of 
childbearing. Finally, for men and the state, reproduction was both a challenge and 
an affirmation of patriarchal power: efforts to assert control over reproduction (or at
least over the impact of reproduction) show the beginnings of the ways that Virginia’s patriarchy sought to colonize reproduction. I examine the language of wills to try to decode the ways that men tried to make sense of the unpredictability of reproduction.

Well into the eighteenth century, women controlled knowledge about childbearing; nevertheless, ideas about reproduction were still central to patriarchal and colonial concerns about the organization of property and power.

In English society in early Virginia, all adult women could be expected to have some knowledge about childbearing, women’s reproductive cycle, and fetal development. This knowledge was rarely articulated because it was so deeply rooted in everyday life and bodily experience. An example of one York County servant woman’s pregnancy illustrates this. When Elizabeth Knight was accused of fornication in 1659, several witnesses testified to her familiarity with Nicholas Taylor. Elizabeth confessed the liaison, saying that Nicholas “did oftentimes solicit her to be naught of her body with him,” and that eventually, “his Importunity prevailing at last to the getting of hir consent.”

After meeting several times, the couple had sex “by ye spring where ordinarily we fetch water,” and that “at which time she conceived by him.” Beyond these testimonies, the proof of the relationship lay in the fact that Elizabeth was pregnant at the time of her trial.

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562 York DOW 3: 65, 67 (1659).
563 Ibid.
564 Ibid. Bastardy and fornication charges rarely commenced while the woman was still pregnant; instead, as was discussed in Chapter 2, the court brought charges after the woman’s lying-in. In York County, there are only nine colonial-era cases of women being charged with fornication while they were pregnant. Six of those cases (including the case of Elizabeth Knight) are clustered in the years 1655-1662, indicating a localized shift in enforcement priorities during those years. See, for example, the fornication case of Rachel Hammon, York DOW 3: 36, 39 (1658).
Asked to confirm her pregnancy, Elizabeth stated that “ye fruit that taken life this
fortnight,” and that she “felt it to stirre so long but faintly.”

When called upon to judge Knight, the court was remarkably lenient in its
decision: Nicholas Taylor was to pay Elizabeth’s master, Charles Dunne, a small fine
of 200 pounds of tobacco, and there is no record of Elizabeth being punished at all.
There are several reasons for the court’s leniency in this case. First, there was no
child yet born for the parish to support. Further, as was discussed in Chapter 2,
because she was relatively early in her pregnancy, Elizabeth had not yet disrupted her
master’s household with her lying-in. Finally, it is possible that the court believed
that Nicholas Taylor, a free man, would marry Elizabeth Knight and the child would
not be born a bastard.

The 22-year-old Elizabeth Knight’s familiarity with the language of
conception and quickening points to the ways that even young, single, servant women
were well aware of the reproductive knowledge held by women. First, Elizabeth’s
claim that she could pinpoint conception seems to suggest her familiarity with the
popular medical theory that Thomas Laqueur has called the one-sex model.

Laqueur argues that, in the early modern understanding of human reproduction, male
and female bodies were understood to be homologues of each other: both men and
women produced “seed” during orgasm, and both needed to orgasm in order for
conception to occur. In Elizabeth Knight’s testimony, she is able to pinpoint the date

566 Laqueur, Making Sex, 63-113; Laqueur, “Orgasm, Generation, and the Politics of Reproductive
Biology,” 1-41. This one-sex model had the effect of making it impossible for pregnant women to
convince the court that they were raped. See, for example, the case of Anne Collins. York DOW 3:
144, 148, 161, 167, 169.
that she "conceived by" Nicholas Taylor. If Elizabeth Knight was in fact referring to the one-sex model, she was able to identify that day as the date of conception because of the pleasure she felt during intercourse with Taylor. For Elizabeth Knight, as well as the court that recorded her testimony, knowledge about reproduction was rooted in Knight's own bodily experience.

Elizabeth Knight's use of the language of quickening -- "the fruit hath taken life" -- also indicates the ways that popular knowledge about pregnancy and fetal development was rooted in bodily experience. In the early modern mind, pregnancy was considered to be a "period of uncertainty," in the words of historian Barbara Duden:

A woman was truly pregnant when she had felt the 'quickening' of her child. With its movements, the unborn announced itself as a child. Before quickening, a woman whose menses did not come was in an ambiguous situation; maybe she was 'with child,' maybe not. Perhaps the cessation of her 'monthly' was due to some blockage, some 'retention of the menses.'

Elizabeth Knight may have believed she experienced "a conception" when she and Nicholas Taylor met by the spring; that belief was confirmed when she felt the first movements of her fetus. Again, it was bodily experience that formed the basis for women's knowledge about reproduction.

Women's bodily experience defined their knowledge about reproduction; this was knowledge that made sense not only of pregnancy but of women's adult roles and the narrative of their lives themselves. Marriage during the early modern period was

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568 Duden, "The Fetus on the 'Farther Shore'," 16.
a rite of passage that marked one’s entrance into adult roles, including childbearing. In some ways, for women, this entrance into adulthood was a biological experience: legitimate marriage and childbearing were codefined for women during this period. Roy Porter argues that early modern marriage was understood as inherently reproductive: during this period, marriage was “the rite of passage that translate[d] the biological potential for reproduction into social and moral actuality.”569 Susan Klepp points out the ways this conflation of adulthood with reproductivity intersected with discourses of feminity. She argues, “pregnancy was the natural condition of married women…; barrenness was unnatural.”570 One place we see this conflation of marriage, adulthood, and reproduction is in the language of wills. Wills frequently stipulated that children would inherit property upon their own marriage – the implication was that the marriage guaranteed future heirs for that property.571 Nicholas Harrison’s will declared that his mother should inherit his property “if he should dye a Singleman,” thereby conflating marriage with the production of heirs.572

This sense that adulthood, sexuality, and childbearing were codefined was present in Native American and African societies as well. The Powhatan Indians’ polygynous marriage structure and matrilineal social organization befuddled English observers, who did not bother to record much about that society, but it seems clear that motherhood was central to women’s adult roles in the Powhatan community.573 Indian women had remarkable sexual freedom, especially compared to English

570 Klepp, “Revolutionary Bodies,” 920.
571 York DOW 2: 366-7 (1648); York DOW 2: 406 (1648).
572 York DOW 1: 175 (1652).
women. In the early eighteenth century, Robert Beverley observed that Powhatan “maidens are entirely at their own disposal, and may manage their persons as they think fit.”\textsuperscript{574} This sense of autonomy undoubtedly inflected Native women’s sense of their reproductive role. Evidence from early modern African societies shows the centrality of reproduction to adult status and to the community’s ritual life. Jennifer Morgan emphasizes the importance of coming-of-age rituals such as circumcision (for both boys and girls) in western African societies.\textsuperscript{575} Further, rituals meant to ensure the fertility of marriages show the importance of fertility in understanding adult women’s roles in western Africa.\textsuperscript{576} The survival, erasure, and transformation of these rituals through the Middle Passage suggest the ways that colonialism and slavery transformed not just women’s lives but their understanding of those lives in the cosmos.

Early Virginian women’s experience of childbearing defined their lives in ways that are hard to comprehend from our post-birth-control vantage point. If marriage and reproduction were conflated during this period, lack of effective birth control meant that for fertile married women, pregnancy and childbirth were nearly constant experiences. Judith Walzer Leavitt, examining the childbearing patterns of middle class and elite New England women in the eighteenth century, has posited that, because of repeated pregnancies occurring approximately every 2-3 years, women spent up to a third of their adult lives pregnant.\textsuperscript{577} Paula Treckel shows that Southern white women’s birth interval was far more unpredictable than New England women.\textsuperscript{578}

\textsuperscript{575} Morgan, \textit{Laboring Women}, 65.
\textsuperscript{576} Ibid.
\textsuperscript{577} Leavitt, \textit{Brought to Bed}, 14-20.
women's during the colonial period: the south's disease environment, pattern of later marriage, and race and status hierarchy meant that women's experiences are hard to generalize.\textsuperscript{578} York County's birth and baptism records from Charles Parish seem to suggest a 2-year birth interval.\textsuperscript{579} For example, Sarah Hawkins' five children were born 18-24 months apart: Thomas was born in June 1725, Martha in February 1727, Pinkethman in February 1729, William in March 1731, and Rebecca in May 1732.\textsuperscript{580}

Scholars have argued that the two-year birth interval is evidence of women's agency: women used extended nursing to limit their pregnancies, which would happen far more frequently in the absence of breastfeeding. Jennifer Morgan argues that African women also intentionally used breastfeeding as a form of birth control; the practice had the advantage, in the colonies, of bonding women with their children and providing support to nutritionally vulnerable babies.\textsuperscript{581} Examining white women's birth histories, Paula Treckel asserts that the 18-24 month birth interval is not accidental or "natural."\textsuperscript{582} Instead, Treckel argues, this birth interval was a result of white women's concerted use of breastfeeding to delay conception. The planter-patriarch Landon Carter was well aware of women's use of breastfeeding to limit their fertility when he chided his daughter-in-law, Winifred Carter, for continuing to nurse her baby, even when Winifred was herself sick in 1770:

\textsuperscript{578} Treckel, "Breastfeeding and Maternal Sexuality," 45-8.
\textsuperscript{579} These conclusions are impressions; I have not embarked upon a full statistical analysis of the Charles Parish birth records.
\textsuperscript{580} CPR 100-1. Records for other women point to a similar pattern. See, for example, Elizabeth Hayward, CPR 102-4.
\textsuperscript{581} Morgan, Laboring Women, 66.
\textsuperscript{582} Treckel, "Breastfeeding and Maternal Sexuality," 42-6. For a discussion of pregnancy limitation in Virginia after the Revolution, see Lewis and Lockridge, "Sally Has Been Sick," 5-20. Susan Klepp argues that women's active limitation of their fertility was an offshoot of Revolutionary politics: Klepp, "Revolutionary Bodies," 910-45.
Mrs Carter taken ill yesterday and was to be seen so before, though she would not own it. And the poor little baby Fanny is every time to share her Mama’s disorder by sucking her, and this because she should not breed too fast. Poor children! Are you to be sacrificed for a parent’s pleasure? I have been a Parent and I thought it murder and therefore hired nurses or put them out.  

Winifred Carter had suffered several painful and debilitating miscarriages at this point; her wish to limit her fertility may have had as much to do with protecting her own health as pursuing pleasure. (Carter’s reference to hiring wetnurses will be discussed more fully later on in this chapter.)

Interestingly, women who were accused of bastardy more than once seem to follow this pattern of a 2-year birth interval as well: repeat bastardy charges often occurred about two years apart. Some of these repeat offenders were, as was discussed in Chapter 2, mixed-race women or women involved in long-term interracial relationships which were not recognized as marriages. Therefore, for women such as Joanna Inscow and Mary Catilla, it makes sense that their births would follow the pattern of married women, and occur roughly two to three years apart.  

For servant women like Elizabeth Dutchfield, the 2-year window between her bastardy charges points to the possibility that servant women may have nursed their babies for at least a year. Whether intentionally or unintentionally, this practice provided some contraceptive effects.

584 Mary Catilla’s births were recorded in 1694, 1697, 1701, 1703, and 1710. Joanna Inscow’s births were recorded in 1733, 1736, and 1738.
585 York JO 1: 141, 145, 157, 365. When Olive Eaton, an Accomac County servant woman, was charged with bearing a bastard child in 1638, she was ordered to keep and nurse her child “until weanable.” Susie M. Ames, ed., *County Court Records of Accomack-Northampton, Virginia: 1632-1640* (Washington, DC: The American Historical Association, 1954), 129-30. (Hereafter cited as
Enslaved women’s birth interval is hard to ascertain, given the lack of reliable documentation, but it seems to reflect a 2-year birth interval as well. The parishes were not required to record the births and deaths of enslaved people, and therefore the records are spotty.\textsuperscript{586} Sometimes, in wills, inventories, and probate suits, enslaved women were listed with children, along with their ages. In the 1713 record of the division of the estate of John Kendall, an enslaved woman, Bety, is listed along with her children: Bety (age 11), Johnny (age 6), Dick (age 4), Kate (age 2½), and Frank (age 7 months).\textsuperscript{587} The ages of the youngest three children indicate that Bety’s births occurred roughly 2 years apart. But, the gap between 6-year-old Johnny and 11-year-old Bety indicates that we must not overestimate women’s agency in determining their birth interval. That gap could indicate a number of possibilities: intentional birth spacing, loss of a partner, miscarriage, stillbirth, infant death, death in early childhood, or sale of a child.

The life of Bety points to an important caveat: because birth records include only live births, they do not provide documentation of miscarriages or stillbirths. Incorporating pregnancy loss into our understanding of birth intervals helps us to understand the extent to which pregnancy dominated women’s adult lives. For enslaved women like Bety, we are left with only questions about the gap between her two eldest children. For other women, more evidence is available, and we can begin to understand the impact of pregnancy loss on women’s reproductive lives.

\textsuperscript{587}York DOW 14: 309.
The records of the life of Lucy Parke Byrd provide an opportunity for such an analysis. Lucy Parke married William Byrd II in 1706, when she was eighteen years old. Over the course of their 10-year marriage (Lucy died of smallpox in 1716), Lucy had four live births: Evelyn was born in July 1707, Parke was born in 1709, Phillips William was born in 1713, and Wilhemina was born in 1715. Both Parke and Phillips William died before they were a year old. If we count Lucy’s four completed pregnancies, she had a long, but not unusual birth interval – average of 33 months between pregnancies.

Nevertheless, William Byrd II’s diary for the period from 1709 to 1712 gives us a remarkably detailed picture of Lucy’s reproductive experience – one that belies this 36-month birth interval. In the diary, Byrd habitually noted the state of his own health, as well as that of his wife. From the diary, we can get a remarkably clear sense of the timeframe of Lucy Byrd’s pregnancies, often pinpointing the date of conception with reasonable accuracy. During the period of the diary, Lucy was pregnant four times, but only two of these pregnancies culminated in a live birth. The first resulted in the birth of her son, Parke. The second ended in an early miscarriage, probably in the fifth or sixth week of pregnancy. The third pregnancy also ended in miscarriage, sometime between the third and seventh months of pregnancy. Finally, the fourth pregnancy ended with the birth of Phillips William, several months after the end of the diary.

Lucy’s experiences of repeated pregnancies, miscarriages, and infant death force us to rethink the extent to which women could control their fertility, and the impact that this lack of control had on their understanding of their lives. It is unlikely
that Lucy Byrd breastfed her children (there is no mention of nursing in the diary); therefore, she did not experience the contraceptive effect of the practice. All told, Lucy spent between 20.5 and 24.5 months pregnant during the 43-month period of the diary, or, between 47.7 and 57% of this period – a far greater proportion than the 33% suggested by Leavitt. The meanings of this disparity become clearer if, rather than calculating Lucy’s birth interval, we calculate her conception interval. In other words, by considering the interval between pregnancies, rather than births, we can see that Lucy Byrd was pregnant roughly once every 13-14 months during the period of the diary.\(^{588}\)

\(^{588}\) During the period of the diary (c. 1709-1712), Lucy Byrd’s conception interval was about 13.6 months. This chart attempts to reconstruct Lucy’s Byrd’s conception interval. This calculation does not include the interval between the births of Phillips William and Wilhelmina, because we don’t know whether Lucy experienced miscarriages or stillbirths during that time. All citations are from Louis B. Wright and Marion Tinling, eds. *The Secret Diary of William Byrd of Westover, 1709-1712* (Richmond, VA: The Dietz Press, 1941).

<table>
<thead>
<tr>
<th>Timeline of Pregnancies</th>
<th>Date</th>
<th>Interval between conceptions (in months)</th>
<th>Citation (shaded areas are in the period included in the diary)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: Estimated conception date</td>
<td>c. 1/1709</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>A: Birth of Parke Byrd</td>
<td>9/5/1709</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B: First mention of sex following birth of Parke (first possible conception date)</td>
<td>1/1/1710</td>
<td>12 months</td>
<td></td>
</tr>
<tr>
<td>B: Miscarriage</td>
<td>2/13/1710</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C: Estimated conception date</td>
<td>c. 11/1710 – 2/1711</td>
<td>10-13 months</td>
<td></td>
</tr>
<tr>
<td>C: First mention of pregnancy mentioned in diary</td>
<td>3/3/1711</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C: Miscarriage</td>
<td>6/25/1711</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D: Estimated conception date</td>
<td>c. 5/1712</td>
<td>15-18 months</td>
<td></td>
</tr>
<tr>
<td>D: Birth of Phillips William</td>
<td>2/23/1713</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E: Estimated conception date</td>
<td>c. 2/1714</td>
<td>21 months</td>
<td>Note: it is possible that Lucy experienced another miscarriage during this longer interval.</td>
</tr>
<tr>
<td>E: Birth of Wilhelmina</td>
<td>11/6/1715</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death of Lucy Parke Byrd</td>
<td>1716</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The idea that Lucy spent over half of her marriage pregnant, while only two of her children survived past one year of age, helps us to think about the emotional intensity, physical debilitation, and consciousness of the nearness of death that must have accompanied women's reproductive lives. In February of 1710, Lucy experienced an early-term miscarriage. Just four months later, her nine-month-old son, Parke, died suddenly. For William Byrd, Parke's death could be explained by a sort of theological fatalism: Byrd marked the death in his diary by intoning, "God gives and God takes away; blessed be the name of God." 589 For Lucy, the emotional toil of repeated pregnancies, miscarriages, and infant death were not so easy to bear. Byrd compared his wife's emotional state to his own: "My wife was much afflicted but I submitted to His judgment better, notwithstanding I was very sensible of my loss, but God's will be done." 590 Late that fall, Lucy became pregnant again. This pregnancy was marked by fears of miscarriage and mourning for her lost son. In February, she "was melancholy of her misfortunes and wished herself a freak." 591 This pregnancy, too, would end in miscarriage.

Based on this analysis of Lucy Parke Byrd's reproductive life, we can find new insight in the gaps between births, not just for Lucy Byrd but for other women as well. For example, seven of Abigail Lamb's births are recorded in the Charles Parish Records: Sarah in September 1713, John in June 1717, William in March 1722, Ann in October 1724, Elizabeth in February 1726, Hannah in July 1729, and Elizabeth in

December 1735.592 This averages to approximately 38 months between births. Such an average, though, erases the fact that Abigail Lamb experienced long gaps between some births and short gaps between others. These gaps might be explained in a number of ways, including separation from her husband, illness, malnutrition, active use of sexual abstinence or other methods of pregnancy limitation, or stillbirths and miscarriages. It is important to temper our interpretation of these gaps: they may indicate not women’s agency, but instead the intensity with which their lives were dictated by their reproductive role.

What did this cyclical rhythm of pregnancy, birth, and nursing mean to women? How did early Virginians’ experience of reproduction impact their understanding of the world? In age determination cases, the court called upon mothers, midwives and friends to remember births that had happened long ago.593 In 1675, Mary Avery was called in by the York County court to testify to the age of Joane Morley, an orphan who was petitioning the court for access to her inheritance.594 Mary Avery’s process of recollection reveals much about women’s community values in York County in the seventeenth century. Mary Avery recalled attending the lying-in of another woman, Mrs. Heyward, in the year 1654. Mary Avery was “with child of her son William” at the time, and her friend Mary Morley

592 CPR 123-4.
593 The court needed to determine ages for a number of reasons, including determining when an heir was able to inherit, when an indentured orphan or bastard was rightfully freed, and, most commonly, when masters were required to pay taxes on slave labor, as enslaved children were not taxable. Age determination cases involving enslaved children were pro forma: the court merely estimated the child’s age, rather than calling in witnesses.
594 York DOW 5: 117, 119. In the age determination case of Mildred Massey, the date of Mildred’s birth was corroborated by her mother, Ann Brasett: York DOW 9: 314, 328. See also York DOW 5: 92; York DOW 9: 318, 352; York DOW 14: 70.
was “with child of her daughter Joan.” The two women commiserated, wondering who would deliver first. Twenty years later, Mary Avery remembered clearly that she had given birth to her son in July of 1654, and that Mary Morley “was brought to bed before her.” Mary Avery’s memories were both bodily and communal: she remembered her life, and her friends’ lives, by recalling the birth of her children. Mary Avery’s memories show us the ways that women reckoned time by their personal cycle of pregnancies and births, marking the passage of years by remembering their own bodily experiences as well as those of their friends.

Even with a dearth of records written by women, there are moments in the archive where we get some sense of how mothers and fathers imagined their relationship with their children. In 1667, in preparation for marriage to her second husband, James Moore, the widow Anne Creighton drafted a will so that she could guarantee that her son, Thomas, would be protected after her death. For Anne, even the idea of leaving her son an orphan filled her with great sadness: she directed that her entire estate be willed to “my poore fatherlesse & motherless Child Thomas Chreighton.” Fathers, too, showed affection not only for their children but for those children’s mother. John Overstreet, husband to midwife Sarah Overstreet, dictated his will as he lay dying in 1671. When John asserted that his entire estate be willed to his wife, Sarah jumped in, “asking him whether hee would give anything to his children.” Counter to the patriarchal notion that children were the chattel of their fathers, John repeated his desire that Sarah have possession over the entire

595 York DOW 5: 119.
596 Ibid.
597 York DOW 4: 143.
598 Ibid.
599 York DOW 4: 363.
estate: “Noe...” he said, “they were her children as well as his.” ⁶⁰⁰ We see here two trajectories of affection: first, John’s implicit trust in his wife’s financial judgment, and second, his belief that her role as the children’s mother was in some way equivalent in meaning to his.

These glimpses into peoples’ intimate emotional lives are vanishingly rare in the colonial Virginia archive. Yet the provenance of these examples – both ultimately rooted in the fates of orphaned children – points to another key experience that would be central to the construction of the reproductive episteme of colonial Virginians: parental and infant death. During this period, birth and death were inextricably linked in multiple ways. If women’s lives were organized by a repeated cycle of pregnancy, birth, and nursing, then that cycle was punctuated by death, or at least the fear of and planning for death. We have seen this already with the understanding that gaps in women’s birth intervals might point to pregnancy loss due to miscarriage or stillbirth. As we will see, the inherent unpredictability of reproduction – not just in the threat of death but also in the human inability to predict an unknown future – was a threat to patriarchal power. In other words, men’s lack of knowledge about the innumerable contingencies of reproduction posed a threat to their control over property and power. By attempting to control this unpredictability, the colonial state (embodied by property holders) sought to enact epistemic control over reproduction.

Reproduction is by its nature about contingencies: the outcome of pregnancies, the sex of children, the health and life of mother and child are all in question. Men’s knowledge about and ability to control these contingencies was always limited. Recall that pregnancy itself was defined by women’s bodily

⁶⁰⁰ Ibid.
experience: a woman did not consider herself to be truly pregnant until quickening, which, in our medical terms, occurs roughly four to five months after conception and implantation, or somewhere around the 16-20th week of pregnancy. Further, paternity was decided (at least theoretically, if not in practice) based on the mother’s own testimony. In other words, women’s knowledge had extraordinary power to define and make sense of the experience of reproduction. There is a deep irony here: patriarchal power and authority in colonial Virginia was rooted in the organization and distribution of property, but that patriarchal distribution of property was rooted in women’s knowledge about their own bodies. I will spend some time examining wills for two reasons: first, they are one of the most extensive archives of language about reproduction available for this period, and second, they show the ways that property-holding Virginians tried to make sense of the inevitable contingencies of reproduction.

Wills are an artifact of the ways that property holders tried to predict every possible reproductive contingency in the face of the increased mortality of Virginia’s colonial disease environment. Property was willed on the condition that an heir was produced. The birth of a new baby might inspire the drafting of a new will. For example, Robert Wilkinson drafted his will soon after his youngest son was born in 1655. The child had not been baptized yet, and therefore had not even been named: the baby is listed in the will only as “my Young son unbaptized.” If an heir did not produce their own heir, alternate paths of inheritance needed to be established:

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601 This power seems even more potent when we consider the ways that modern medicine defines both of these experiences today. Pregnancy can be determined just days after unprotected sex. Paternity is determined by a blood test. We can now define pregnancy and paternity with remarkable accuracy, but the locus of authoritative knowledge has shifted from women to physicians and medical testing.
602 York DOW 1: 251 (1655).
John Heyward willed his estate to his eldest son, but "if it shall happen that my eldest
dye without Issue," then the estate would go to Heyward’s second son.\textsuperscript{603} In this way,
wills were not about transferring property to individuals, but along family lines for
multiple generations. For example, Thomas Gybson willed his estate not just to his
son Nicholas, but "to his heirs of [Nicholas’s] body lawfully begotten forever."\textsuperscript{604}
Should Nicholas fail to produce his own heir, Thomas’s property would be
transferred to his daughter Cassandra, and "to her heires lawfully begotten
forever."\textsuperscript{605} William Barbar, a grandfather, willed much of his property to his
grandchildren and their heirs, ensuring the life of the estate for at least four
generations.\textsuperscript{606} By attempting to control the disposition of property not just for
generations but "forever," wills attempted to predict reproduction in order to combat
the impermanence of life itself, an impermanence that was intensified in the deadly
Virginia colony.

Wills written when women were pregnant attempted to predict all possible
outcomes for that pregnancy. Testators needed to take into account the possibility of
maternal and/or infant mortality. Richard Smith considered this in his own will,
because his wife Alice was "with Childe."\textsuperscript{607} Smith willed that his property be
divided between Alice and the unborn child, “if she [liveth] and the Chyld live.”\textsuperscript{608}
Sons were given preference over daughters. William Hay’s 1669 will divided his

\textsuperscript{603} York DOW 3: 177. See also York DOW 4: 327; York DOW 9: 113, 157.
\textsuperscript{604} York DOW 2: 146.
\textsuperscript{605} Ibid. See the will of Thomas Ray for a similar transfer of property from one child to another,
should that child fail to produce their own heirs. York DOW 1: 293. See also York DOW 1: 337-9;
York DOW 3: 117.
\textsuperscript{606} York DOW 4: 254. See also York DOW 4: 327.
\textsuperscript{607} York DOW 2: 119.
\textsuperscript{608} Ibid. See also York DOW 18: 235-6 (1735); Ames, Accomac 1: 32 (1634); Susie M. Ames, ed.,
County Court Records of Accomack-Northampton, Virginia: 1640-1645 (Charlottesville: University
Press of Virginia), 302-4 (hereafter cited as Ames, Accomac 2, followed by the page number).
estate equally between all of his children and his wife if his pregnant wife gave birth to another daughter, but if she gave birth to a son, that son would inherit half the estate.\textsuperscript{609} The desire for control over reproduction is clear in the 1659 will of Francis Hayward, in which he listed conditions for all of the following contingencies: if his pregnant wife gave birth to a son rather than a daughter, if that unborn son should die before the age of 21, if his already born son should die before the age of 21, if the pregnancy ended in miscarriage or stillbirth, and, finally, if it turned out that his wife wasn’t pregnant at all.\textsuperscript{610}

These wills remind us of the ways that birth and death were inherently linked in the Virginia colony. Childbirth could be dangerous to both woman and child. Women and infants died in childbirth.\textsuperscript{611} Infants and young children were more vulnerable to deadly disease. When James Miller wrote his will in 1656, he carefully distributed his property between his sons and daughters.\textsuperscript{612} He made his wife, Mary, executor of the estate, instructing her to “improve the Estate to the best advantage for the good of my Children.”\textsuperscript{613} But, in the final lines of the will, Miller acknowledges that all of his plans and calculations may come to nothing: “It is my will that in Cause of the death of my Children that any land be shared among those that are Living but in case all my Children dye then I give all that I have to [my] wife.”\textsuperscript{614}

Anglo-Virginians accepted that children’s lives in the colony could be cut short. Planter William Fitzhugh, writing to console a relative on the recent death of two of his children, reveals the ways religion provided both explanation and weak

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  \item \textsuperscript{609} York DOW 4: 229.
  \item \textsuperscript{610} York DOW 3: 62.
  \item \textsuperscript{611} York DOW 3: 43.
  \item \textsuperscript{612} York DOW 1: 294.
  \item \textsuperscript{613} Ibid.
  \item \textsuperscript{614} Ibid.
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comfort in cases of infant death. The loss of the children, he wrote, could be "easily & cheerfully born, if natural affection be laid aside." While Fitzhugh acknowledged the "affection" one had for one's children, he wasn't joking when he advised his relative to bear his grief "cheerfully." The bereaved must remember that the children "have changed a troublesome & uncertain terrestrial being, for a certain & happy Celestial habitation." Indeed, small children were more likely to go to heaven, as "their Regeneration in Baptism wash[ed] off all Original Sin, & their fewness of years excus[ed] them from all wilfull & obstinate sins." For Fitzhugh, life was advantageously temporary, as our life's sojourn would be mercifully brief: as he closed his letter, he congratulated his relative on the recent birth of another child, which Fitzhugh referred to a "new born Guest." The idea that children's lives were but temporary was a sentiment that Fitzhugh repeated in describing his own family: "God Almighty hath been pleased to bless me with a very good wife and five pledges of our conjugall affection, three of which he has been pleased to call into the Arms of his Mercy, and lent me two, a hopefull boy and girle." For Fitzhugh, the birth and death of children was an expression of God's will – his children were merely "lent" to him for a short time. Religion offered Anglo-Virginians a way to make sense of the death of the children they loved.

Particular language repeated in many property-holding Virginians' wills points to yet another reproductive contingency: the ever-present question of

615 Davis, William Fitzhugh and his Chesapeake World, 198.
616 Ibid.
617 Ibid. William Byrd II expressed a similar sense of obedience to God’s will when his 9-month-old son, Parke, died suddenly. Wright and Tinling, The Secret Diary of William Byrd, 186-7.
618 Ibid. On referring to infants and children as “guests” or “strangers,” see Klepp, “Revolutionary Bodies,” 928-9.
619 Davis, William Fitzhugh and His Chesapeake World, 170-1.
paternity. Throughout their wills, property-holding Virginians refer to the “natural” birth of their sons and daughters. In 1660, Eleanor Wheeler stipulated that her “owne naturall children” would inherit her property.620 In another will, John Clark referred to his “natural father John Clark.”621 This discourse of the “natural” in reference to reproduction had two meanings, both of which were significant in the relationship between property and reproduction. First, the reference to “natural” children and “natural” parents points to the way that familial relationships were remade and restructured by Virginia’s high adult mortality and low life expectancy.622 Virginians used a language of “natural” birth to mark the difference between children and step-children, a crucial distinction in the determination of lines of inheritance.623

This language of “natural” children and “natural” parents had a second meaning as well. In the early modern world, paternity could only be known socially: through women’s adherence to marital monogamy, or, in cases of nonmarital sex, through women’s naming of the father of her child during childbirth. As I argued in Chapter 1, Virginia’s bastardy laws and miscegenation laws were about disciplining white married women’s sexuality: legitimacy and illegitimacy were at the root of the distribution of property, the organization of labor, and the definition of race itself. Again and again, the York County court ruled that bastard children could not inherit property, even when a will expressly directed that the child should inherit.624

The threat of illegitimacy lurks in the margins of nearly every colonial Virginia will. In 1655 Margery Griggs and William Hay signed a marriage

620 York DOW 3: 77. See also York DOW 2: 405.
622 Rutman and Rutman, “‘Now-Wives and Sons-In-Law’” 153-82.
623 See also York DOW 3: 8.
624 See, for example, York DOW 16: 213, 222; York DOW 16: 461; York JO3: 281-2, 287.
agreement that guaranteed that their children from their earlier marriages would keep their own property. Throughout the document, William Hay refers to children born during this new marriage as “Children of my body by Margery my own wife.”

What does this language reveal about assumptions about reproduction, legitimacy, and property? Certainly, the language of “Children of my body” shows Hay’s effort to distinguish between stepchildren and “natural” children. Further, it reveals the ways that Hay sought to assert the legitimacy of his heirs, both in the next generation and in future generations. The presence of a discourse of natural children points to the threat of children born who were not “of his body.” This language reveals the ways that legitimacy was understood not just socially, but bodily – in some way, the process of conception and birth conferred legitimacy. Birth mattered, because it defined the boundaries of legitimacy, property, family, and nature.

Knowledge about reproduction – the colonial reproductive episteme – made sense of bodily experience, organized and determined people’s life narratives, and controlled the dispersal of property. Women’s bodily experiences, such as their sexual experiences and the physical sensations of pregnancy, were the root of their knowledge of reproduction. For women, reproduction was a material reality that determined their adult lives, marked always by the threat of loss and death. The language of reproductivity in wills shows us something different. Here, knowledge about reproduction was always contingent, always ephemeral. This was theoretical, not material, knowledge about reproduction, because the result of any pregnancy was fundamentally unknowable.

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625 York DOW 1: 265.
626 Ibid. See also York DOW 4: 189.
Within these complex and contradictory epistemologies of reproduction, midwives' practice delivered women in their time of travail. Colonial medical practice traversed the boundary between material and theoretical knowledge. As such, practitioners of reproductive medicine—midwives, and, increasingly, man-midwives and physicians—had particular power in early Virginia.

* * *

On July 28, 1709, when Lucy Byrd was pregnant with her first child—before all of those miscarriages and infant deaths—she was visited by her midwife, “Mrs. B-t-s.” Lucy was uncomfortably pregnant—her husband described her as “indisposed”—but the birth was not imminent. Lucy’s husband, William Byrd II, pestered the midwife with questions and worried over his wife’s symptoms. Mrs. B-t-s calmed the anxious gentleman by teaching him her method for calculating when a woman might give birth: “20 weeks from the time a woman is quick when she will seldom fail to be brought to bed. In this reckoning there are seven days in a week.” Just a week later, and after several days of “pains” that seemed to William to have “no purpose,” Lucy’s labor finally began in earnest the night of September 4. Several other neighbor women joined Mrs. B-t-s, and they all surrounded the laboring Lucy, “full of expectation.” William Byrd, perhaps knowing he had outstayed his

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627 Wright and Tinling, *The Secret Diary of William Byrd*, 64, 74, 78. Byrd abbreviated many names in his diary; though those names have been decoded, some of them, including “Mrs. B-t-s,” cannot be connected without question to particular individuals.
usefulness, went to bed at 10 o'clock. When he woke the next morning, Mrs. B-t-s informed him that Lucy "was happily delivered of a son."632

What can be known about Virginia midwives like Mrs. B-t-s? There are few records of midwives and their practices in colonial Virginia. The diary of William Byrd II is the only known record of the work of Mrs. B-t-s. Further, the court records are often quite silent and opaque regarding the lives and work of midwives in the colony. In this section, I attempt to reconstruct the presence of midwives, whether English, Native American, or African in the Virginia colony. This reconstruction requires a reading of the silences in the colonial record, and a willingness, in the words of Ania Loomba, to "suppose a presence which at first cannot be found."633 Thus, examining the reasons for midwives' invisibility in the colonial archive might offer some understanding or sense of meaning about their work the ways their knowledge was constructed. Therefore, this section explores the relationship between the limitations of historical knowledge and the construction of bodies of knowledge in the colonial past. In this section, I will attempt to outline the knowledge that midwives held and the skills that they used in the context of social childbirth; I extend this analysis from English midwives to Native American and African midwives and healers.

At first glance, midwives are virtually invisible in the court records of York County. Of the 53 medical practitioners mentioned in the York County records through the Revolution, only 5 are women. Yet the court records provide a surprising view of English midwives' "secret" practices; even if our understanding of midwives'

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633 Loomba, "Dead Women Tell No Tales," 319.
knowledge in the birthing room is limited, we can reconstruct the ways that English midwives' knowledge was understood in the public sphere of the courts. Silences and speech in the archive point to the different relationships and power held by women and men in the colony: male medical practitioners are plainly visible in the archive, where female medical practitioners are often difficult to discover. Nevertheless, midwives were far more present in the colony than a cursory reading of the court records would attest.

Beginning in 1646, the colony regulated physicians' and surgeons' practices and fees. These regulations reveal a general mistrust of male medical professionals, who were assumed in the 1646 statute to be charging "immoderate and excessive rates and prices." Price gouging had a serious impact: apparently, masters had been withholding medical care for their indentured servants because they found that the cost of medicine outweighed the cost of a new servant. By 1726, the colony established an explicit schedule of fees for doctors' services, with university-educated physicians authorized to charge higher fees than other practitioners. Significantly, though, only one of these regulations - one passed in 1761 - ever mentioned midwifery as requiring regulation. It is unlikely, though, that the statute was meant to regulate female midwives. Instead, as will be discussed later, by the 1760s, several man-midwives were practicing in the colony. In other words, the 1761 statute was not intended to regulate female midwives, but male physicians as they expanded their practices to include the lucrative new service of man-midwifery.

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634 Hening 1: 315. This 1646 statute was repeated in 1652, and versions of the same statute were passed again in 1658, 1662, 1692, and 1726.
635 Hening 4: 509-10. Fee schedules had previously been enforced on the county level. York DOW 3: 24.
636 McIlwaine, Legislative Journals 3: 1264.
The disparity in the county courts reveals a fundamental difference between the economic relationship between female and male medical practitioners and their patients. The regulation of fees charged by physicians and surgeons reveals the ways that male medical practitioners acted within a cash (and debt) economy: they expected their patients to pay cash or a cash equivalent for their services, and they sued patients or patients’ estates to collect on those debts. Thus, Dr. Francis Haddon sued Thomas Whitehead for 780 pounds tobacco in 1660 and John Myhill for 310 pounds of tobacco in 1668; in the Whitehead case, the court recorded each specific remedy administered and its costs.637 Midwives, on the other hand, operated within a feminine domestic economy that relied on barter rather than cash.638 If these barter agreements were disputed, the courts rarely adjudicated them. An exception, from Accomac County in 1634, illustrates the varieties of payments that midwives accepted for their services. Susan Helline, a midwife and a widow, sued John Major for payment of 12 hens “for her paynes and tyme in lookinge to his wife the tyme she did lay in Childbed.”639 The court decided in Helline’s favor, awarding her not just the 12 hens, but 6 more as well.640 Besides this early case, the midwives that do appear in the records are often the ones who, for some cases, arranged cash payments. By the eighteenth century, the county court asserted that 10 shillings was “the accustomed fee” for midwifery services; significantly, this was far less than what would be charged by physicians for their services.641

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637 York DOW 3: 82; York DOW 4: 214.  
638 Ulrich, A Midwife’s Tale, 75-90.  
639 Ames, Accomac 1: 15.  
640 Ibid.  
What can we learn from this economic and archival disparity? Physicians’
visibility in the archive is an artifact of their power, and of the ways that their work
occurred in the public sphere. Physicians are visible in the archive because they are
named as such. The honorific of “Doctor” may or may not have referred to a
university education; at any rate, the title marked its bearer as holding particular kinds
of medical knowledge. There was not only Dr. Francis Haddon, but also thirteen
other physicians explicitly given the honorific “Doctor” in the York County records,
and eighteen more whose profession can be surmised from the records. Further, there
are seven titled surgeons (or “churrurgions”) listed in the records. Meanwhile, just 5
women are named in the York County records as practicing any form of medicine –
Sarah Overstreet (1672), Elizabeth Shelden (1691), Mary Whitby (1707), Sarah
Smith (1711), and Ann Brooke (1713) – and only two of those, Ann Brooke and
Sarah Smith, are clearly named as midwives or as practicing midwifery. All of them
are white women. These disparities in the court records demonstrate that while
physicians practiced in a public, cash-based, professional economy, midwives
practiced in a private, barter-based, personal economy.

Because midwives like Overstreet, Shelden, and even Mrs. B-t-s, who
attended Lucy Byrd, operated in a private, barter-based, personal economy, our
knowledge of their practices are abbreviated. This is even more the case for non-
white midwives, of whom there are no mentions in the York County records. Even
so, births like Lucy Byrd’s – attended by a trusted midwife and the women of the
community – were likely repeated again and again in the Virginia colony. The calm
and knowledgeable presence of the neighborhood midwife, aided by other local
women, brought Lucy to bed as part of a community of women. Lucy’s husband William – a man known for his well-developed sense of his own importance – willingly retreated from the scene. Midwives’ invisibility in the public records was a result of the privacy of their practice; the tradition of social childbirth, when births were ordinary and uncomplicated, occurred outside of the view of the courts.

Medical historians and women’s historians have reconstructed this model of social childbirth, forms of which lasted well into the twentieth century in some parts of the United States and in some segments of the population. Focusing on Maine in the late eighteenth century, Laurel Thatcher Ulrich describes the way that midwives learned their craft:

This was the era of ‘social childbirth,” when female relatives and neighbors, as well as midwives, attended births. Most midwives began as observers, gradually assuming a more active role, until one day, when the old midwife was delayed or willing, they ‘performed.’

The learning process that Ulrich identifies was deeply rooted in the practice of early modern midwifery in Europe and the colonies: this was a practice learned by women through experience, informal apprenticeship, and observation of the many births that occurred all the time. This learning process was informal, and therefore mostly undocumented; reconstructing colonial midwives’ knowledge requires weighing the existing textual evidence, while remembering that midwives’ knowledge was rooted

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642 Leavitt, Brought to Bed, 171-95.
643 Ulrich, A Midwife’s Tale, 12. The term “social childbirth” was coined by Richard and Dorothy Wertz, who saw colonial-era childbearing as a proto-feminist space which was “the primary occasion on which women expressed their love and care for one another and their mutual experience of life.” Wertz and Wertz, Lying-In, 2. My concern here is less with identifying social childbirth as a specifically feminist space and more with understanding the way knowledge was constructed within and outside of that space.
644 Leavitt, Brought to Bed, 38; Wilson, The Making of Man-Midwifery, 30-33.
in experience, not in books. Women’s knowledge about reproduction was part of their basic understanding of the world; sometimes, the distinction between formal midwife and everyday woman was not an easy or useful one to draw.

The social nature of childbearing in the early modern world extended to African and Native American women in Virginia as well. As in the English community, African and Native American midwives or medicine women in may have held positions of honor, even as all reproduction was central to the episteme of all women in those communities. Because the historiography of social childbirth has focused on white women, Native and African women’s childbirth traditions have been excluded from that narrative. This exclusion is a result of silences in the archive as well as persistent colonial tropes of gendered and racialized bodies.

Early colonial records are mostly silent about Powhatan knowledge of childbearing. Much of the particular knowledge and skills held by Native midwives is hidden from the records, as English observers did not record any information about Powhatan childbearing rituals. In the absence of direct observation of Powhatan birthing practices, English colonialists, like William Strachey, asserted that Powhatan women had an easy time in childbirth, even giving birth unassisted.645 Responding to this colonialist myth, ethnohistorian Helen Rountree argues that the Powhatans “must have had means, practical and magical, of assisting difficult deliveries,” even if the English didn’t record those means.646 The assertion that native women gave birth unassisted had more to do with English beliefs about civilization and savagery – that “civilized” Christian women were subject to Eve’s curse, where “savage” Indians

645 Rountree, The Powhatan Indians of Virginia, 94.
646 Rountree, The Powhatan Indians of Virginia, 94.
were not – than any actual observation of Powhatan birthing traditions. It is
dangerous to assume that English men’s observations of Powhatan women’s birth
experiences were accurate.\textsuperscript{647} Powhatan women’s reproductive knowledge was
colonized by these tales of easy childbearing – replaced in the archive by a colonial
myth.

The secondary literature makes clear that Virginia women of African descent
were heirs to their own tradition of midwifery knowledge and skills. As with the
Powhatans, African women’s midwifery traditions often escaped English observation,
and, like Native women, African women were assumed to bear children with ease
(the easy transferability of this trope from one set of colonized bodies to another
exposes its role as a colonialist narrative rather than a reflection of observed
behaviors).\textsuperscript{648} Despite these silences, Ywone Edwards-Ingram’s survey of the
archaeological evidence of the medical practices of enslaved Africans shows that,
even in the conditions of slavery, enslaved midwives’ held a similarly broad skill-set
as English midwives, including using plants as remedies, caring for not only pregnant
women but also the sick and the dying, and serving as spiritual leaders within the
slave community.\textsuperscript{649}

Both African and Native American midwives were able to cross the cultural
boundaries established via colonialism. First, the slave trade itself transformed
African women’s knowledge, as ethnic differences were elided in the face of

\textsuperscript{647} For example, Theda Perdue’s study of nineteenth-century Cherokee women shows that while some
observers of the Cherokee continued this colonialist myth of unassisted childbirth, others reported that
Cherokee women had their own tradition of skilled midwifery. It seems likely that Powhatan women
had similar traditions that were simply overlooked by English observers. Theda Perdue, \textit{Cherokee
Women: Gender and Culture Change} (Lincoln: University of Nebraska Press, 1998), 32.
\textsuperscript{648} Morgan, \textit{Laboring Women}, 30-1, 40-2.
institutional slavery. Jennifer Morgan emphasizes the ways that the transatlantic slave trade involved a collision not just between African and European cultures, but specific and varied African ethnic groups.\(^{650}\) For Morgan, the traditions around childbearing, including childbirth practices, pregnancy spacing techniques, and breastfeeding traditions, would have been shared and transformed by the women caught in the midst of the transatlantic slave trade. Further, Morgan argues that this process of creolization waxed and waned, as importation of African slaves increased and decreased.\(^{651}\) Further, the evidence seems to suggest that Native women and African women crossed not just ethnic but racial boundaries, sharing medical information with each other. Archaeologist Laurie Wilkie emphasizes the Native American roots of antebellum slave midwifery, quoting nineteenth-century slave midwives whose knowledge, passed down through generations, originated with “the old home remedies, mostly come from the Indian remedies.”\(^{652}\)

Most of the knowledge held by early modern English and Anglo-Virginian midwives – the techniques they used to deliver babies, the herbal remedies they created, the rituals they performed – is also lost to us. Some textual evidence of English midwifery technique exists from the period, but it needs to be read critically. A few book-length midwifery manuals exist, but it is unlikely that they were intended for a female audience, so it is unclear how much their contents actually reflect midwifery practice during this period. The most popular of these manuals – *Aristotle’s Master Piece* and Eucharius Rosslyn’s *The Byrth of Mankynde* – were intended for a masculine audience, as both purport to “display” information that had

\(^{650}\) Morgan, *Laboring Women*, 64, 123-8.  
\(^{651}\) Morgan, *Laboring Women*, 142.  
\(^{652}\) Midwife Ossie Logan, quoted in Wilkie, *The Archaeology of Mothering*, 126.
been held “secret” by women. The goal of these texts was to make public, via text, knowledge that had been held private by women. It is unlikely that midwives used these texts to learn their craft. At its heart, midwifery was an art learned through story and experience; recipes and remedies might be shared, but the knowledge about how to handle the processes and complications of childbirth could only be learned by doing.

Other texts seemed to have been aimed at a female audience. For example, recipe books such as Eliza Smith’s *The Compleat Housewife, or Accomplished Gentlewoman’s Companion* included numerous herbal remedies to improve women’s reproductive health. Smith’s text, originally published in England but reprinted in Williamsburg in 1742, included several recipes intended to ease women’s suffering in childbirth. “To procure easy Labour,” women were instructed to drink a tincture of figs, raising, licorice, and anise. If labor stalled, Smith recommended borax dissolved in white wine with sugar and cinnamon. Smith’s cure for Anne Owle’s ailment – a prolapsed uterus – involved sitting over heated ginger. These recipes offer a tantalizing glimpse not only into the remedies available for laboring women,

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but a sense of the overlap between the knowledge held by midwives and the knowledge held by all housewives.

Nevertheless, there are limitations to our application of such texts. First, much of the knowledge that informed Smith’s recipes has been lost, and the text contains only echoes of that knowledge. Smith’s recipes are full of ingredients that are mysterious to modern readers: it is unknown, for example, what Smith meant when she called for “dragon’s blood” and how that ingredient might help to “prevent Miscarrying.”657 Second, the audience for such a text was limited to the literate women who could afford to purchase not only a book but the imported ingredients for the recipes – it is not coincidence that the text is explicitly aimed at “gentlewomen.” Indeed, Smith herself emphasized the gentility – and thus the power – of her intended audience:

[The recipes] are very proper for those Generous, Charitable, and Christian Gentlewomen that have a Disposition to be serviceable to their poor Country Neighbours, labouring under any of the afflicted Circumstances mentioned; who by making the Medicines, and generously contributing as Occasions offer, may help the Poor in their Afflictions, gain their Good will and Wishes, entitle themselves to their Blessings and Prayers, and also have the Pleasure of seeing the Good they do in this World, and have good Reason to hope for a Reward (though not by way of Merit) in the World to come.658

In other words, Smith intended her elite audience to use the recipes to minister to their poor neighbors; the practice of housewifery here is tied up with a genteel

657 Smith, The Compleat Housewife, 192. Laurel Thatcher Ulrich offers a list of ingredients used by midwife Martha Ballard – it too includes “dragon’s blood.” Ulrich, A Midwife’s Tale, 360.
658 Smith, The Compleat Housewife, preface.
noblesse oblige rooted in England’s stratified system of class and status. How well that translated to Virginia’s colonial hierarchies of race and status is unclear. Smith’s emphasis on the knowledge of elite women – and the apparent backwardness of those this mistress would treat – makes clear that the text likely has little to tell us about non-elite women’s medical knowledge. While the book did have some audience in Virginia, it is unknown how the recipes had to be transformed to fit local ingredients and conditions. How did the experience of colonialism transform even elite women’s use of such texts?

Even lacking textual evidence of their techniques, it is clear that midwives’ oral and experiential education endowed them with estimable skills, not just in delivering babies, but in fostering women’s reproductive health, ministering to the sick, and even burying the dead. As Ulrich makes clear in her biography of midwife Martha Ballard, a single midwife might deliver hundreds, or even thousands, of babies in her career, and might have a very low maternal mortality rate.659 A 1774 notice published in the Virginia Gazette suggests that Martha Ballard’s expansive practice was not an anomaly: “Mrs. Catherine Blaikley, of [Williamsburg], in the 76 years of her Age, and eminent Midwife, and who, in the course of her practice, brought upwards of three thousand children into the World.”660 The vast majority of women who practiced midwifery never earned public accolades, but the lack of such records does not mean that other women did not have similarly successful practices in the colony.

659 Ulrich, A Midwife’s Tale, 171-3.
Midwives' skills extended beyond attending women in childbirth. As Ulrich makes clear, midwives also held a vast array of medical knowledge, and treated not just pregnant women, but sick people as well, offering medicines both homemade and purchased.661 The York County records include several examples of women practicing medicine. In 1707, John Hilliard paid Mary Whitby a debt “due for medicines & visits in the time of his families sickness.”662 Further, midwives attended to the dying, participated in autopsies, and prepared bodies for burial.663 For example, in 1672, York County widow Sarah Overstreete was awarded the costs of “funeral chardges” from the estate of Thomas Kelton “for her trouble & pains” in caring for him as he died.664 Significantly, the court’s records do not explicitly name either Mary Whitby or Sarah Overstreete as midwives – the source of their expertise goes unmentioned. Nevertheless, their recognized skills in the medical arts suggest the distinct possibility that their expertise was rooted in training in midwifery.

The skills and knowledge of midwives were recognized in the masculine sphere of the courts. When Margaret Grimes testified to the court about Anne Owle’s illness and her treatment by her husband, she was translating the epistemology of social childbearing into the public sphere of the court. Midwives like Margaret Grimes held knowledge about the most private (or as Aristotle’s Master Piece termed it, “secret”) aspects of women’s lives: their reproductive cycles, their sexualities, their bodies. Midwives’ legal role required them to use that knowledge in public spaces: testifying in court in cases of illegitimacy or births that were otherwise

663 Ulrich, A Midwife’s Tale, 54, 250-1.
664 York DOW 4: 363; York DOW 5: 27.
suspicious. Further, non-midwives, in the form of juries of women, could also be called upon to speak of women’s reproductive knowledge in court. In these cases, the private, intimate realm of reproduction exploded into the public sphere – and their anomalous presence in public is the only reason why we have any record of them at all.

Midwives were the chief witnesses in court cases involving extramarital childbearing and other suspicious births. When the York County court issued summons for women accused of fornication and bastardy, they were ordered “to appeare...with Midwives and other Evidences.” Women’s knowledge about childbearing had several purposes within the walls of the courtroom. First, it is important to distinguish between juries of women, midwives’ testimony, and women’s personal testimony. Juries of women were formed when the court needed to examine the body of a woman, be she a plaintiff or a defendant. These juries were called by the court not only to protect modesty but to capitalize on women’s particular knowledge about anatomy and reproduction. Recall that a jury of women was called to examine the body of Anne Owle when she accused her husband of abuse; we can assume the women looked for signs of injury and also corroborated the testimony of the midwife Margaret Grimes about Anne’s prolapsed uterus. Juries of women were also impaneled to determine whether women were pregnant. In 1633, when Margaret Hatch was convicted of infanticide, she attempted to delay or escape

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her execution by claiming to be pregnant. When a “jury of Matrons [found] her not pregnant,” the execution went forward as scheduled.666

Unlike juries of women, midwives were called as witnesses by the court to provide testimony about particular births. These might include the recognized midwives who were the main attendants at a particular childbirth, or any of the women who were present at the birth.667 Midwives’ testimony was called for in births that were in some way questionable: either because paternity was in question, or because of the death of the fetus/infant. Midwives also provided corroborating evidence to support (or question) women’s own testimony about the progress of their pregnancies. Often, when the woman herself testified, the court did not require any further expert opinion.

Midwives’ primary form of testimony was attesting to the paternity of the infant. It was believed during this period that paternity could be determined by questioning a woman during childbirth: whomever she named must be the father, tradition averred, because a woman simply could not lie when in the pain of childbirth.668 In this way, midwives acted as interrogators even as they cared for women during childbirth.669 In 1662, midwife Dorothy Bullock recalled attending servant Ann Roberts during childbirth. “In [the] extremity of paine,” Bullock “demanded of [Roberts] who was the father of hir said Child,” and Roberts named

666 Hening 1:209. For another similar example occurring in 1711, see Wright and Tinling, _The Secret Diary of William Byrd_, 542-3.
667 For examples of a single midwife providing testimony, see: York DOW 3: 166, 168; York DOW 6: 28, 32; York DOW 5: 117, 119; York DOW 6: 444, 606. For examples of several women providing testimony, see: York DOW 3: 28; York DOW 4: 313, 342.
668 Pagan, _Anne Orthwood’s Bastard_, 79-83; Ulrich, _A Midwife’s Tale_, 149. Some mothers named the fathers of their children in open court. Because they were under oath, this confession carried legal weight as well. See, for example: York DOW 8: 205.
669 Pagan, _Anne Orthwood’s Bastard_, 81-3.
In another example, the fact that Margery King "in the tyme of her travaile & labor" named Andrew Dudden to be the father of her child was evidence enough to determine that Dudden was the father of her child. Women’s refusal to name the father during labor could hamper a paternity investigation. When Francis Pressee categorically refused to name the father of her child, either during labor of after labor, she was committed to jail until she confessed.

Midwives’ expertise in childbearing, rooted in their witnessing of multiple births, made them invaluable witnesses in cases of suspicious births, especially when the court suspected infanticide. In 1678, 60-year-old midwife Susanna Evans testified that servant Mary Beckett had given birth to a “still borne” child. Virginia law construed infanticide as a servants’ crime—committed by “leud mothers” who wished to “conceal” the birth of bastard children. Therefore, infanticide cases such as the case against Mary Beckett came to light because her birth was suspect from the beginning.

Across race and status, women acted as interlocutors, translating the epistemology of reproduction into the practice of everyday medicine and midwifery in the Virginia colony. For English midwives and elite women, this gave them considerable power in the public sphere—their testimony was essential to determining illegitimacy, infanticide, and pregnancy. This public role points to the

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671 York DOW 4: 38, 43.

672 York DOW 14: 493.


674 Hening 4: 133. On bastardy being a servants’ crime, see Chapter 1.
ways that the reproductive episteme of women could unsettle established boundaries, hierarchies, and structures. David Cressy argues that midwives’ power stemmed from their ability to cross boundaries, both physical and social:

    Midwives were summoned as servants but performed as officiants. They crossed social boundaries and entered homes of all sorts.... The midwife’s office allowed her to pass thresholds and open doors, to reach day and night to the heart of *material materna*.

Social childbirth blurred and transgressed boundaries of class and status. Adrian Wilson emphasized that, in the birthing room, the midwife had power that defied her status: “It was even possible for a young and inexperienced midwife, probably of no higher than yeoman status, to defy a mother who was a lady, that is, the wife of a gentleman, a member of the ruling class.” In Virginia (and the other English colonies), midwives also crossed the boundary between the intimate spaces of women’s lives and the public space of the court. Midwives acted as mediators between women and the moral authority of church and court. Lisa Foreman Cody posits that this public role for midwives was an “alternative public sphere,” a space where midwives occupied “a necessary public position seemingly unavailable to men.”

Women’s knowledge, borne of the intimate sphere of childbearing, gave them some authority in the public sphere. As colonialism challenged, shifted, and remade boundaries and hierarchies, women’s reproductive authority would be called into question.

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675 Cressy, *Birth, Marriage, and Death*, 61. Cressy emphasizes the “priest-like” power of midwives, whose rituals were so similar to religious officiants’ practice of baptism and last rights.
In the afternoon of Monday, April 5, 1658, Elizabeth Dunne, Elizabeth Taylor, and Mary Sevill were summoned by two servants to help attend a birth at the home of Elizabeth and Ralph Hunt. The Hunts’ servant, 30-year-old Margaret Barker, was having her baby. Dunne and Sevill got to the Hunts’ house too late – it had been “a quick delivery,” and Barker had already given birth. But something was terribly amiss. The infant was dead: “the head bruised to pieces & the Child bleeding very fresh att ye nose.” Further, Elizabeth Hunt refused to let the women see Margaret Barker, who she said was “in a very weake condicon.”

What the women had seen troubled them, and they reported it to the constable. The next day, Dunne and Taylor returned to the Hunt home, along with the constable and several other neighborhood women, including Elizabeth Rooksby, Elizabeth Johnson, and Margaret Bouth. They found Margaret Barker weak and reluctant to speak to them, and the dead infant buried in the yard. The women exhumed the tiny body, and their examination confirmed what Seville and Dunne had seen the previous day: “they found ye head of ye said Child much bruised & ye skull...broken in pieces.” The women pressed Margaret Barker – how had the newborn come to be in this condition? Barker finally answered: “she knew not unless it were by blowes rec’d from her [Mistress].”

The women’s interrogation revealed that Margaret Barker had been brutally beaten by her mistress multiple times in the days preceding the birth. After first

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679 Ibid.
680 Ibid.
681 Ibid.
682 Ibid.
making “some refusal either to take knowledge of any hurt either to ye child or herself,” Barker reluctantly revealed her injuries to the women. Her body, from the thighs upward, was “full of cruell blowes & stripes,” and her belly was “very black & blew.” Elizabeth Rooksby and Elizabeth Johnson commented that Barker’s body was “in a sad condicon from ye Knees upwards all her body full of stripes & black & blew,” with apparently only Bakers arms spared from the beating.

As the four women examined her, Barker revealed the details of the terrible beatings she received from her mistress. Three weeks previously, Elizabeth Hunt had beaten Barker with a peach rod. The Friday before the birth, Hunt had “grievously whipped & kicked her.” Then, on the morning of her delivery, Hunt found Barker while she was doing the washing. Hunt whipped Barker with a tobacco stick – a particularly cruel punishment that sliced the skin, creating harsh welts that swelled and numbed from the tobacco juice. The women postulated that perhaps it was this final beating that caused Barker’s labor to begin, and to proceed so quickly that Barker was attended only by her mistress and tormentor who “did...take ye Childe from her,” “cursing” her the entire time.

Upon hearing this testimony, the York county court charged Elizabeth Hunt “of the supposition of the Death of an Infant born of her husbands woman servant &

\textsuperscript{683} Ibid.  
\textsuperscript{684} Ibid.  
\textsuperscript{685} Ibid.  
\textsuperscript{686} Ibid. Throughout the testimony, Barker “acknowledged” her master, Ralph Hunt, “to be cleare” of the injuries – it was Elizabeth, not Ralph, who beat her.  
\textsuperscript{687} Ibid.  
\textsuperscript{688} On the racial and sexual symbolism of different punishments, see Kirsten Fischer, Suspect Relations, 159-90.  
\textsuperscript{689} York DOW 3: 28.
in hir house." Ultimately, though, the court found "noe cause of binding her over" to the Governor and Council – in other words, the court ruled that Hunt was not guilty of infanticide. The court did make some effort to check Hunt's violence against Barker. The court ordered Elizabeth Hunt's husband, Ralph Hunt, to enter into a bond of 5,000 pounds of tobacco to guarantee "his said wifes good behavior." He was required to guarantee that Elizabeth Hunt would "[keep] the peace towards all [persons] especially towards the said Margarett [Barker]." In other words, while Elizabeth Hunt was not guilty of killing the infant outright, the court agreed that her treatment of Barker was egregious. Their solution: greater discipline over Elizabeth Hunt by her husband.

The harrowing story of Margaret Barker shows us the ways that the relations of colonialism – here, the intense intimacy and violence of the mistress-servant relationship – interrupted, transformed, and reconstructed knowledge and practices concerning reproduction. In some ways, the precolonial model of social childbirth was upheld in Barker's case. When she went into labor, neighborhood women were called to attend the birth. When questions arose, the court deferred to women's knowledge – it was women who examined the dead infant, and it was women who both questioned Margaret Barker and inspected her injuries. And, when the court made its decision, it deferred to the women's knowledge and authority in assigning some punishment (however weak) to Elizabeth Hunt.

The actualities of the case, though, reveal the ways that colonial conditions fundamentally remade these relationships between gender, knowledge, and authority.

690 York DOW 3: 20.
691 York DOW 3: 27.
692 Ibid.
First, it is significant that the women never actually made it to the birth. Instead of being attended by a midwife, Margaret Barker’s birth was attended by her mistress. As we will see, colonialism fundamentally reshaped social childbirth. Second, the court’s decision shows the ways that status, rather than experience, conveyed authority in colonial spaces, ultimately causing the court to craft a decision that contradicted the women’s testimony. The women’s testimony did not outweigh the fact that Elizabeth Hunt’s status gave her the right to beat (though not to kill) her servant. Further, the court’s check on Hunt’s violence – disciplinary surveillance by her husband – shows the ways that the court relied on patriarchal power to keep women in check.

Colonialism cemented old power structures like gender even as it created and enhanced new power structures, like status and race. Ultimately, these two colonial trajectories – the reshaping of the tradition of social childbirth and the assignment of hierarchy, rather than experience, as the locus of authority – would fundamentally reshape reproduction in the colony. Ann Laura Stoler argues that it was in intimate spaces – like the birthing bed – that colonialism was enacted, as it was in those spaces that “relations of power were knotted and tightened, loosened and cut, tangled and undone.”693 Colonialism demanded new kinds of categories, and new kinds of knowledge, as race, status, and servitude created and enforced a hierarchical structure of all colonial bodies. Yet, intimate zones were spaces in which people at multiple points in those hierarchies came into contact with each other. This contact could be threatening, as it was within intimate zones that colonized people could “transgress

the protected boundaries” of race and status upon which colonialism was build.\textsuperscript{694} Therefore, colonizers looked for ways to reenact their power and their worldview in those intimate zones.

We see these competing trajectories of colonial intimate zones in the case of Elizabeth Hunt and Margaret Barker. The mistress-servant relationship between Hunt and Barker required and created intimacy: they lived and worked alongside one another, far enough from neighbors that it took hours for help to come during Barker’s labor. Barker’s pregnancy complicated this already explosive situation. As we saw in Chapter 2, servant women’s pregnancies can be seen as a transgression of social norms and a rebuke to the absolute power of masters and mistresses. If this is the case, Hunt’s torture of Barker might be seen as an effort by Hunt to reassert her power over Barker in order to realign the status hierarchy.

This final section of this chapter will attempt to use this understanding of intimacy as a crucial element of colonial relations to outline the ways that colonialism transformed reproductive knowledge in early Virginia. Previously, we’ve seen that knowledge about reproduction imbued English women with authority in Virginia’s colonial culture. How did the colonial categories of status, race, and servitude fundamentally remake that authority? First, I will examine cases in which, as in the Barker-Hunt case, relations of colonialism fundamentally transformed the social childbirth model. Next, I will discuss the ways that colonialism diminished midwives’ power. Finally, to close the chapter, I will discuss the ways that, as midwives’ authority was diminished, master-patriarchs stepped in to claim medical authority over reproduction.

\textsuperscript{694} Stoler, “Tense and Tender Ties,” 35.
As we’ve discussed, English women brought to Virginia a centuries-old tradition of social childbirth led by an experienced midwife. The exigencies of colonial life in the seventeenth century, though, could interrupt and complicate that ideal, especially in colonial Virginia, where plantations could be far-flung, and women might not have the close contact they enjoyed in England or New England. In Virginia, it was sometimes impossible to summon a community of women for births. When Ann Roberts, a servant, gave birth to her baby in 1662, the midwife Dorothy Bullock attended the birth. No other women were present. Instead, when Dorothy Bullock questioned Ann Roberts about the paternity of her child, two men, 47-year-old Lewis Griffith and 50-year-old John Gaiford, stepped in to repeat the question. It is unclear what role Griffith and Gaiford took in the birthing room, but the lack of any other women’s testimony besides the midwife indicates two interpretations: first, that men had entered into what had been seen as a strictly women-only spaces, and second, that even if there were other women in the room, the men’s testimony was seen as most convincing or believable. What did it mean to Ann Roberts that her birth was so different from the expected norm? It is difficult to say how many births saw these kinds of gendered interruptions and transformations of social childbirth. The evidence presented previously shows the persistence of the social childbirth model, even with challenges. Nevertheless, it should be noted we are aware of these cases because they involved servant women giving birth to bastard children. How many births saw a similar complication of the social childbirth ideal, but were not recorded because legal births did not warrant documentation by the colonial courts?

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695 York DOW 3: 168.
696 Ibid. For an example of a male servant witnessing a birth, see York DOW 5: 92.
Besides gender, colonial hierarchies of status and race remade social childbirth. Adrian Wilson argues that, in England, social childbirth was an expression of the “collective culture of women.” The hierarchies of colonialism fundamentally remade that collective culture. First, status relationships were intensified in a colonial space, and those status relationships found their way into the birthing room. As we saw in the Barker-Hunt case, when servant women gave birth, their mistresses took an active role in the childbirth process. For example, when Mary Margerum gave birth to her child, her midwife, Elizabeth Tindall, was assisted by Mary’s mistress, Sarah Townsend. In this case, Sarah Townsend took an active role in questioning her servant Mary about the father of her baby – an interrogation that must have been inflected by the hierarchy in Mary and Sarah’s relationship. On the other hand, as was discussed in Chapter 2, the lying-in tradition overturned the relationship between servant and mistress, as new mothers took a traditional month-long period to rest and heal. The point here is that the meanings of the servant-mistress relationship were thrown into relief by the intimacies forced by the childbirth experience.

Even “normal” social childbirth – a birth attended by women, with an experienced midwife as the authority – was transformed by Virginia’s colonial culture. Specifically, as hierarchies of status and race intensified and cemented, social childbirth created moments of intimate contact that crossed, complicated, and crystallized both status and racial boundaries. Social childbirth depended on clear relationships between women; the race and class hierarchies of the eighteenth century

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698 York DOW 444, 606.
made social childbirth both a space of enacting those hierarchies and of expressing elite anxiety over the maintenance of those same hierarchies.

In the colonial racial and status hierarchy of early Virginia, social childbirth could become a space where hierarchies were intensified, not ameliorated by a so-called “women’s culture.” Social childbirth, in the extant records, became a space to serve the needs of elite women. Women servants were “loaned out” by one household to help with the births of elite women. For example, when John McDearman’s wife went into labor in 1775, Lucy Gaines, an indentured housekeeper at Belvidera, the plantation of the Frazer family, was immediately sent to offer assistance.699 Lucy was a young single woman – her role was not to offer assistance in the birth or to join the other women in the birthing room. Granted, such events provided space for sociability and a change in a servant’s day-to-day responsibilities. Nevertheless, for Lucy, participating in this iteration of social childbirth was just an extension of her own responsibilities; it would simply mean serving Mrs. McDearman and her friends.

Race inflected social childbirth as well, as white midwives were hired by masters to attend the births of slaves. William Byrd occasionally recorded slave births in his diary. Notably, he was not interested in recording all slave births – this was not an accounting of his slave property – but only those that occurred which disrupted his domestic space. We see this blending of slave women’s reproductive experience with Byrd’s personal interests in a typically terse entry from 1709: “Our maid Jane began to cry out. I danced my dance. Jane was brought to bed of a boy.”700

When another enslaved woman, Jenny, "threatened to be brought to bed," Byrd attempted to call the local white midwife to attend her.\textsuperscript{701} The midwife wasn't home, so Jenny was able to depend on the women in her community for support.\textsuperscript{702} We can only imagine the power relationship between the white midwife and the enslaved woman; suffice it to say that this relationship was much different from a relationship built on common experience upon which social childbirth was built.

Planter Landon Carter's fundamental mistrust of black midwives underscores the ways that social childbirth (in this case, the practices of enslaved women) was interrupted by colonialism. A reader of Carter's diary can feel his palpable contempt for the "old midwife" at Nomini Hall. The relations of slavery and colonialism remade the relationship between gender and authority in the colony. Carter saw a conflict between the midwife's work as a health care provider and his expectation that she contribute in terms of the agriculture of the plantation. The "old woman" who served as plantation midwife also tended Carter's turkeys; Carter grew angry when four turkeys (of the total 86) died because the midwife "was obliged to attend Manuel's daughter Peg."\textsuperscript{703} Carter was eager to call in his friend Dr. Mortimer when he doubted a black midwife's call, but he still complained that the doctor charged fees.\textsuperscript{704} Landon Carter need not even pretend he had any respect for the knowledge or authority of the plantation's midwife, even as he benefitted from her skills.

Servants and slaves were also called upon to act as wetnurses and baby nurses for their mistresses' children. As early as 1690, "The Trappan'd Maiden," an English

\textsuperscript{701} Wright and Tinling, The Secret Diary of William Byrd, 549-50.
\textsuperscript{702} For another example of a white midwife being hired to assist an enslaved woman's labor, see York DOW 18: 271-2.
\textsuperscript{703} Greene, The Diary of Colonel Landon Carter, 306.
\textsuperscript{704} Greene, The Diary of Colonel Landon Carter, 514.
ballad that lamented the poor treatment experienced by indentured servants in Virginia, listed child care as a burden held by servants:

When the Child doth cry, I must sing ‘By-aby!’

In the land of Virginny, O;

No rest that I can have, whilst I am here a Slave,

When that I am weary, weary, weary, weary, O.\(^{705}\)

Amidst complaints about starvation rations, illness, and abuse, it was caring for children which was likened to slavery.

Infant care was a site of conflict and anxiety for masters, mistresses, servants, and slaves. While Philip Vickers Fithian expressed surprise at the use of slaves as wetnurses – “I find it is common here for people of Fortune to have their young Children sucked by the Negroes!” – it was an accepted practice throughout the colony.\(^{706}\) Yet Fithian showed little more respect for Mrs. Oakley, the free white woman who acted as a nanny and baby nurse. He eagerly recorded a rumor that “the Nurse, a short Stump of a [wom]an,” had been seduced when young and bore an illegitimate child: she “felt the difficulties of being a Mother, several years before She enjoyed the Pleasures of being a Wife.”\(^{707}\) Paula Treckel has found that wetnursing would have been most common in elite families, as it was in England.\(^{708}\)

White wetnurses were hard to find, they were expensive to hire, and their morality

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\(^{707}\) Farish, *Journal and Letters of Philip Vickers Fithian*, 133. Fithian’s concern with the nurse’s morality does not stop there. Later in his journal, Fithian hinted that Mrs. Oakley had a relationship with an enslaved man, and he jokes that her taste in clothing reveals her desire to reach beyond her station. Farish, *Journal and Letters of Philip Vickers Fithian*, 134, 142.

was always in question, as parents feared that the woman’s moral character would be
communicated through her milk.\(^{709}\) Thus, enslaved women were considered ideal
wetnurses. Landon Carter expressed frustration at the role that enslaved women
played in raising his children: “I have none but negroes to tend my children nor can I
get anyone.”\(^{710}\) He had little better opinion of white wetnurses. When a friend
complained to him about the health of her white wetnurse, he replied to her, “these
creatures may be ladies of the Game, and possibly may have got foul that way.”\(^{711}\)
For Carter, wetnursing was one step away from prostitution. Despite his discomfort
with slaves caring for his children, he recommended a slave wetnurse, whose morality
might be more easily guaranteed: “I there wished little Paculet rather at some cleanly
negro buabby, but that as she pleased.”\(^{712}\)

The intense intimacy of the relationship between masters, mistresses, and the
women who cared for their children could become explosive. Lucy and William
Byrd’s children were provided care by two women in particular: Mrs. Joanna Jarrett
(or Mrs. G-r-t, as it appears in the diary), a white widow hired by the family since
William himself was a child, and Anaka, an enslaved women who cared for the older
children. From the snippets of Byrd’s diary that discuss the two women, it appears
that they had a rapport, even a true friendship. At least one time, Anaka protected
Mrs. Jarrett from William’s rages, refusing to disclose to her master any details about

\(^{709}\) Treckel, “Breastfeeding and Maternal Sexuality,” 26-8. See also Perry, “Colonizing the Breast,”
302-332. Sally McMillen, examining the antebellum period, argues that we should not overstate the
prevalence of slave wetnursing. McMillen, Motherhood in the Old South, 126-8. This may be the case, but,
as both Treckel and Perry argue, the eighteenth century saw widespread debates around the
morality and healthfulness of wetnursing. Because of this, slave wetnursing was much more
acceptable among elite families in the eighteenth century.

\(^{710}\) Greene, The Diary of Colonel Landon Carter, 194.

\(^{711}\) Greene, The Diary of Colonel Landon Carter, 811-2.

\(^{712}\) Ibid.
Mrs. Jarrett’s relationship with an enslaved man, Daniel.713 Once, Anaka and Mrs. Jarrett were caught stealing alcohol together.714

The relationship between William Byrd, Lucy Byrd, Mrs. Jarrett, and Anaka was marked by violence bred by suspicion, anger, and recriminations. The Byrds were unhesitant to discipline the two other women with violence for the smallest infractions. Once, when 2-year-old Evelyn Byrd wet the bed, William Byrd blamed Anaka and beat her.715 Another time, when Mrs. Jarrett arrived home late after attending a wedding, Lucy Byrd flew into such a rage at the woman that “she could not forbear beating her.”716 Lucy was 5 months pregnant at the time. Eventually, William’s suspicions of Mrs. Jarrett meandered to familiar grounds: he began to suspect her of being morally insufficient. William was all too eager to believe a rumor that Mrs. Jarrett had had a baby and abandoned the child in Williamsburg.717 Mrs. Jarrett protested, and even threatened to quit this family for whom she had worked for decades.718 Six months later, William Byrd fired Mrs. Jarrett when she and Anaka broke into the cellar to steal beer, cider, and wine.719 Byrd did not record what punishment he meted out to Anaka.

While the discord between the Byrds and the women who raised their children seemed to be peripheral to the women’s work, it was the intimacy of their relationships that provided the fuel for the conflicts. Byrd’s anger at Mrs. Jarrett stemmed from his intimate knowledge and suspicions of her intimate life – her sexual

partners, her reproductive history. There is a tit-for-tat aspect to Byrd’s accusations: Anaka and Mrs. Jarrett must have known extraordinary detail about the Byrds’ life and marriage – a marriage that even we know was explosive. Ultimately, given the chance to exert his power as master and mistress over these women, William and Lucy Byrd did, either through physical violence or removal of their livelihood.

As an intimate space, social childbirth was transformed by colonialism. In some cases, Virginia’s geography of far-flung plantations made the neighborhood model of social childbirth impossible to uphold. Further, social childbirth, wetnursing, and infant care were all intimate zones where the status, race, and gender of the participants were constantly being negotiated and renegotiated. We see in the anxiety over wetnursing the ways that the master class expressed discomfort over the cross-race and cross-class intimacies of that relationship. Upholding colonial hierarchies meant asserting that status – defined by class, by race, by gender – was the basis of authority. As we will see, this meant a diminishment of midwives’ authority in the public sphere at the same time that a new authority arose to take their place: master-patriarchs asserted themselves as the new authority in medicine and reproduction. Lisa Foreman Cody, analyzing the shift from midwifery to man-midwifery in England, argues that we must focus on the causes for this shift: “...even if we are right to grasp the story as both interesting in itself and standing for much larger shifts in gender relationships, the mechanics of the tale – how men conquered the midwives – seem much more elusive.”720 I argue here that the experience of colonialism does much to explain how midwives lost their authority in the public sphere.

By the eighteenth century, midwives and juries of women were no longer so present in the York County court records. For the historian, it becomes more difficult to use that archive to illuminate experiences of reproduction – the stories, testimonies, and depositions of the seventeenth century disappear quite precipitously at the end of the seventeenth century. What caused this shift in the archive? After the 1660s, the Burgesses consciously Anglicized the Virginia court, both in terms of proceedings and record keeping. As a result, the cases in which women’s testimony was recorded in the early seventeenth century either were not tried (such as defamation cases), or were recorded in only the most cursory ways (in the case of bastardy and fornication cases). Therefore, the eighteenth-century recording of bastardy cases – the cases in which midwives were most frequently deposed – focused on the verdict in the case, and as a rule included no testimony at all.

Anglicization of the courts also meant that cases were decided using new standards of proof. The childbed confession, so powerful in the seventeenth century, was supplanted by sworn courtroom testimony as the most potent proof of paternity. As early as 1689, paternity was decided in Elizabeth Hambleton’s bastardy case when Hambleton “did this day declare in open court upon her corporall oath that Mr. John Child of James Citty parish and county is the father of a man child begotten of her body.” Similarly, in 1706, Mary Hanson “decl[ared] on oath” that the father of her

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722 York DOW 8: 205, 220.
child was an enslaved man named Dick.\textsuperscript{723} Another space of midwives’ authority—the inspection both infant and maternal bodies in cases of suspected infanticide—was eroded in the eighteenth century. When Ann Tandy, a free woman was charged with killing the “bastard male child borne of her body” in 1701, the investigation was led by the coroner and a “jury of inquest,” not a jury of women.\textsuperscript{724}

This shift in authority was not just about a shift in legal procedures. Instead, it was about a shifting epistemology of reproduction— as midwives’ public authority was being eroded in the courts, experience was also being eroded as a reliable font of knowledge. Instead, male physicians and text-based scientific knowledge were supplanting the authority of women in matters of reproduction. By the eighteenth century, the shift to man-midwifery—or, in other words, the employment of male physicians in normal births, not just emergency surgeries—was well underway in both Britain and in Virginia. By the 1760s, several man-midwives were practicing in the colony, and they specifically advertised themselves as experts not only in midwifery but in surgery and general medicine as well. For example, in a 1766 issue of the \textit{Virginia Gazette}, Dr. William Coakley advertised his skills “in every branch of SURGERY, MIDWIFERY, and PHYSICK.”\textsuperscript{725} This shift was not absolute—the \textit{Gazette} even ran an essay criticizing man-midwifery as an affront to female modesty

\textsuperscript{723} York DOW 12: 414, 424; York DOW 13: 17. See also York DOW 14: 83; York JO 3: 224-5.
\textsuperscript{724} York DOW 11: 518, 526; York DOW 12: 73.
\textsuperscript{725} \textit{Virginia Gazette}, Purdie and Dixon #790, July 11, 1766, page 2. Further advertisements and mentions of man-midwives in the \textit{Gazette} were published throughout the decade. See: \textit{Virginia Gazette}, Purdie and Dixon #795, August 15, 1766, page 3; \textit{Virginia Gazette}, Purdie and Dixon #901, December 4, 1766, page 3; \textit{Virginia Gazette}, Rind, November 27, 1766, page 2; and \textit{Virginia Gazette}, Purdie and Dixon, February 2, 1769, page 3.
in 1772 – but, as we will see, it was indicative of a larger shift in framing elite men as medical authorities.726

The shift to man-midwifery was a result of a larger epistemic shift in the Anglo-Virginia world. First and foremost, medical authority became increasingly couched in the discourses of science and the Enlightenment, which were communicated and learned through text rather than through orality and experience. As Lisa Foreman Cody argues, “the language and logic of midwifery fundamentally differed from the rational-critical debate of the scientific revolution and Enlightenment.”727 Adrian Wilson echoes this view, arguing that not only were man-midwives seen as newly authoritative due to the scientific discourse of the Enlightenment, but that elite women were more likely to accept man-midwives as attendants in normal births precisely because those women were themselves participants in the newly emergent bourgeois culture of literacy.728

While, as discussed before, midwifery texts were vanishingly rare in the colony, elite planters often included medical texts as an essential part of their libraries. As early as the 1660s, Matthew Hubard, a York County planter, had several medical books in his library, including “[Riverews?] Body of Physick, Phisitiens Library; Culpepps Dispensatorys; […] Sennuatory Institution of Physick; […] [and] Culpeppers Alchomy.”729 By the eighteenth century, planters’ libraries included

726 Virginia Gazette, Purdie and Dixon #1105, October 1, 1772, page 1.
728 Wilson, The Making of Man-Midwifery, 185-192; Cody, “The Politics of Reproduction,” 489. Judith Walzer Leavitt also makes a class-based argument for why elite women chose male physicians to attend their births. Leavitt, Brought to Bed, 64-86. Wilson’s and Cody’s arguments are especially useful here because they couch that class consciousness in questions of literacy, knowledge, and epistemology.
729 York DOW 4: 430. For York County, see also York DOW 2: 344. For outside of York County, see: James, ed., The Lower Norfolk County Virginia Antiquary 1: 104-6, 122-3; Lyon G. Tyler, ed.,
stacks of medical books. For example, John Parke Custis's library included 42 medical titles - he was a planter and an attorney, not a physician. Rhys Isaac has argued that inventories like these might actually underestimate the importance of medical texts in a gentleman's library. The inventory of Landon Carter's extant library includes not a single medical book - which is simply impossible as an accurate snapshot of his actual reading, as he frequently referred directly to multiple medical texts in his diary. Instead, Isaac argues, the most useful books - medical books, especially - were simply "culled from the collection" over the generations. Undoubtedly, medicine was part of any learned gentleman's personal education and private library.

Along with seeing medicine as a necessary area of knowledge for any gentleman, medicine was claimed as a sphere of influence and authority for planters. The laws that regulated physicians were rooted in the understanding that masters were responsible for providing medical care to their families and white servants: prices needed regulation so that masters would not be "swayed by profitable rather than charitable respects." In fact, white servants used the courts to guarantee their access to medicine. In 1657, Robert Crouch was ordered by the court to find and pay a surgeon to treat the "very soare & much perished Legg" of his servant, Robert Crouch. Captain Daniel Parke, a wealthy and influential York County planter, saw

731 Isaac, Landon Carter's Uneasy Kingdom, 87.
733 York DOW 3: 2.
his medical authority as extending not just to his servants but also to his neighbors. In 1665, Parke was paid the considerable sum of 1,450 pounds of tobacco “for physicke administered to & attendance about” his neighbor Thomas White. Elite planters’ responsibility for providing medical care extended not only to paying for physicians, but also to acting as a physician oneself.

By the eighteenth century, planters’ interest in medicine extended to midwifery. Two eighteenth-century Virginia planter diaries – those of William Byrd II and Landon Carter – show the ways that planters saw themselves not only as responsible for the medical care of their “people” but ultimately claiming authority over knowledge of childbearing as well. Both diaries represent their writers well. Byrd was a secretive and suspicious man, ever anxious about his power. His medical techniques were rudimentary, at least as expressed in his diary. Carter, on the other hand, was truculent and cranky, confident in his knowledge and authority, and forever feeling slighted by others when they failed to live up to his expectations. Carter fashioned himself as a man of learning, and for him, medicine was an area where he could both prove and expand his knowledge. For both men, medicine (especially midwifery) was an intimate space in which they enacted their power as colonial patriarchs. And for both men, medicine was a sphere in which their various patients – slaves, neighbors, wives, daughters – found ways to resist that power.

William Byrd II’s approach to medical and reproductive knowledge bridged between the world of midwives and the world of man-midwives. Byrd himself

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734 York DOW 4: 37. See also York DOW 3: 41.
736 Isaac, Landon Carter’s Uneasy Kingdom, passim.
imagined himself as a Biblical patriarch, and his medical expertise was part of that role. In 1726, he famously wrote to a friend: “Like one of the patriarchs, I have my flocks and my herds, my bond-men, and bond-women, and every soart of trade amongst my own servants, so that I live in a kind of independence on every one, but Providence.” Byrd saw doctoring his slaves as one of his responsibilities to his “bond-men and bond-women.” When slaves were sick, he applied the techniques of the heroic medicine of his era, giving vomits, bleeding veins, and prescribing medicines made from local herbs. For Byrd, his role as plantation doctor was in keeping with his identity as a patriarch. When a wave of smallpox swept through the slave quarters, Byrd interpreted the event as his punishment from God: “These poor people suffer for my sins; God forgive me all my offenses and restore them to their health if it be consistent with his Holy will.” Even when admitting his faults, Byrd imagined himself to be at the center of the universe, the cause and consequence of all events.

Byrd extended his medical authority from his slaves to his wife. Recall that when Lucy Byrd was brought to bed in 1709, she was attended by an experienced midwife to whose knowledge William unflinchingly deferred. Over time, though, that deference would be undermined, first by Byrd’s desire for intimate knowledge of his wife’s reproductive health, and second by his decision to trust physicians over the expertise of his wife’s midwife. The intimate detail of Byrd’s diary extended to his wife’s health: Byrd recorded Lucy’s mood, her symptoms, and her menstrual cycle throughout the diary. For Byrd, this surveillance was not just his right as a husband,

737 Tinling, Correspondence of Three William Byrds, 354-5.
739 Wright and Tinling, The Secret Diary of William Byrd, 278.
it was a necessity to make sure that Lucy stayed healthy. As has been discussed previously, Lucy Byrd suffered greatly from miscarriages, illness, and depression after the birth of her son, Parke. These only intensified when Parke died as an infant. Throughout Lucy’s 1711 pregnancy, William recorded her symptoms, recording that Lucy was “sick,” or “indisposed” more often than not. As Lucy’s condition faltered, Byrd recommended that Lucy allow him to bleed her. Again and again, Lucy refused. On June 22: “I persuaded her to be let blood but she would not consent.” The next night: “My wife was indisposed and was threatened with miscarriage. I again persuaded to bleed but she would not be persuaded to it.” Finally, Lucy relented the next morning: “My wife grew worse and after much trial and persuasion was let blood when it was too late.” Lucy’s condition worsened through the day, until she finally miscarried: “she was delivered of a false conception and then grew better.” The narrative of resistance, refusal, and eventual acquiescence marks many of the medical interactions between William and Lucy Byrd.

Alongside this narrative of William Byrd treating his wife by letting blood (and also prescribing purgatives and other remedies), we see the gradual destabilizing of Lucy’s connection to the feminine knowledge of social childbirth. When Lucy gave birth to Parke in 1709, her birth and her lying-in were attended by a group of midwives and female friends. The 1709 birth was attended by Mrs. B-t-s, the midwife, and also by William Byrd’s cousin, Betty Harrison, and Lucy’s friend, Mrs.

744 Ibid.
Hamlin, plus whatever unnamed servants and slaves attended the group.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 79-80.} After the birth, Lucy was cared for by Anaka and Mrs. Jarrett, and Betty Harrison and Mrs. Hamlin visited several times.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 84-5, 87-8.} When Lucy miscarried in 1710, she was again attended by Mrs. Jarrett, Mrs. Hamlin, and Betty Harrison, as well as a new friend, Mrs. Anderson.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 141, 142.} When little Parke died a few months later, Mrs. Anderson and another friend, Mrs. Baker, came to be with Lucy in her grief.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 186-88.}

After Parke died, though, Lucy’s social circle shrunk, and she was increasingly attended by her husband and his chosen physicians, Dr. Cocke and Mr. Anderson. It was during the next pregnancy, in 1711, that William Byrd fired the nurse, Mrs. Jarrett. It was also during this pregnancy that William tried multiple times to convince Lucy be bled, either by him, or by his new ally Dr. Cocke, or by their friend Mr. Anderson. This time, when Lucy miscarried, only one friend, Mrs. Dunn, was with her.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 365-6.} William and Mrs. Dunn clashed over Lucy’s care – William wanted to call Dr. Cocke, but Mrs. Dunn insisted that the physician’s care wasn’t needed.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 366-7.} When the doctor arrived, he prescribed a tincture of chamomile, and William paid him four gold pieces for his services.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 367-8.} When Lucy was pregnant again in 1712, Dr. Cocke was a near constant presence, prescribing medicines and bleedings throughout the pregnancy.\footnote{Wright and Tinling, \textit{The Secret Diary of William Byrd}, 565-86. The diary ends before the end of that pregnancy; it is unknown who attended that birth.}
We should be reluctant to interpret too broadly the experiences of Lucy Byrd—she was, after all, an extremely elite woman whose frail health, both physical and mental, required considerable medical attention. That said, throughout the period of the diary, William and Lucy’s opposing medical epistemes come into constant conflict. William cajoled Lucy to accept his heroic medical techniques; Lucy resisted again and again. It was only when her connection to the authority of other women was broken—when she, for whatever reason, was no longer attended by a group of neighbor women, midwives, and friends—that William was able to convince her to be seen by a physician. When women’s community faltered, men’s medicine stepped in.

Even more than William Byrd, Landon Carter epitomized the model of the master-patriarch as medical authority. Like Byrd, Carter regularly practiced medicine on his slaves, seeing doctoring as an essential aspect of mastery. Unlike Byrd, who relied on just a few medical techniques, Carter approached these cases with a scientific eye: he carefully listed the various treatments he tried, measuring their outcomes so that he might improve his practice. In 1757, smallpox spread throughout Carter’s population of enslaved people. One case, that of Betty Oliver, was especially interesting to Carter because Oliver was pregnant at the time of her infection. She had first gotten sick in the summer:

...She was releived [sic] as others were by evacuants, but her pregnancy preventing a repitition of them she relapsed with the Season into an
inflammatory disorder for which she was twice blooded and recovered so as to
employ herself about light works.\textsuperscript{754}

Here, we see the entanglement of Carter’s interests all in one case: the proper method
of curing an illness, the measuring of success of one method over another, and,
finally, the guarantee that a slave might still do labor, even when sick and pregnant.
After Oliver had her baby, Carter redoubled his medical interventions, prescribing
“Nervins,” purging with rhubarb and castor oil, treatment with “Sal Ammoniae,”
drinking a concoction of wine, whey and chamomile, taking a “hysteria medicine”
prescribed by Dr. Flood, and finally treatment with opiates.\textsuperscript{755} Despite all of these
interventions, Betty Oliver died. It took three days for Carter to remember to record
her death in his diary.\textsuperscript{756}

This attention to sick slaves, and this ready use of heroic treatments such as
purges, bleeding, and vomits, is a source of considerable similarity between Landon
Carter and William Byrd II. One difference, though, is Carter’s willingness – even
eagerness – to assert himself into cases of reproduction, including childbearing,
miscarriage, and stillbirth. Where Byrd’s influence over his wife’s childbearing was
gradual, Carter had no hesitation in claiming his authority over reproductive
knowledge. In 1776, Carter was visited by a neighbor, Vincent Garland, “about his

\textsuperscript{754} Greene, \textit{The Diary of Colonel Landon Carter}, 144-5. Carter’s treatment of another sick and
pregnant slave, Winney, also included many different remedies, including herbs, physicians’
\textsuperscript{755} Greene, \textit{The Diary of Colonel Landon Carter}, 144-5, 146, 154, 155. This experimentation on slave
women brings to mind a later master-physician, Alabama planter J. Marion Sims, whose
experimentation on slave women led to breakthroughs in fistula treatment, but amounted to torture of
the women whom he owned. Sims is considered the “father” of American gynecology. Kapsalis,
\textit{Public Privates}, 33-59. See also McMillen, \textit{Motherhood in the Old South}, 99.
\textsuperscript{756} Greene, \textit{The Diary of Colonel Landon Carter}, 156.
poor wife dangerously ill, as he thought, with the labour of her first Child."  
Rather than deferring to the midwife (who was likely present with the wife), or even to a physician, Carter eagerly expressed his own opinion, having never seen the patient in question:

I enquired into Particulars and found nothing amiss there [illeg.]ted the man and administered a mild provoken of Pains and bid him be satisfied his wife might to very well, and he returned well satisfied. I cautioned him against all hot Cordials for fear of increasing the Natural fever which would attend...  

For Carter, knowledge about reproduction was a token of his status as a man of authority and gentility: as he sent Garland home, he hoped to himself that the man would be impressed by his “good advice.”

Carter’s medical authority extended to his own family, especially his daughter-in-law Winifred Carter, who experienced three miscarriages (or stillbirths – it is unclear how far along in pregnancy Winifred was) in 1766, 1771, and 1774. For all of these events, Carter was not just an active participant in the diagnosis and treatment of Winifred’s ailments – he was her primary attendant. In these cases, we see two themes. First, Carter’s knowledge about reproduction was deeply rooted in the textual basis of man-midwifery: he refers often to midwifery texts and the science of man-midwifery. Second, we see the ways that Winifred resisted Carter’s claim to authority by finding ways to block his view of her reproductive experience.

Landon Carter’s diagnosis of Winifred Carter’s 1766 miscarriage shows his devotion to the new scientific accounts of pregnancy and childbirth. Even so, as

757 Greene, The Diary of Colonel Landon Carter, 980.
758 Ibid.
759 Ibid.
enlightened as Carter imagined himself to be, he held some patently unscientific views. When Winifred Carter miscarried her pregnancy in 1766, he blamed the unfortunate event on her dishonesty and apparent belief (however joking) that women chose when to go into labor: Winifred was "in labour the 3d time without a midwife so punctual are women or rather obstinate to their false accounts." Finding that "the child was dead and the womb was fallen down and what not," Carter stepped in and acted as man-midwife to his daughter in law. He forwarded several possible diagnoses, including a prolapsed uterus and a "swelled and inflamed" vagina, before finally concluding that what he saw "proved only the protuberance of the waters through the thickness of the membrane." The fetus, "much squeezed and indeed putrified was delivered," but without any "lochial discharge." He struggled to find the cause of the lack of fluid, since the circumstance he saw "I never read of...in any Author." Days later, Carter still struggled to find an explanation for the lack of fluid in one of his books: "Indeed Smellee says that is various in women some more some less, some of one Colour some another." Here, Carter is referring to William Smellie's influential text, A Sett o f Anatomical Tables, with explanations, and an abridgement, of the practice of midwifery, first published in London in 1749. Carter concluded that, since his reading could not find an absolute diagnosis, that he had in fact discovered a new scientific phenomenon: "If she should continue so books and experience have not yet amounted to all the particular cases in Midwifery," he

761 Ibid.
762 Ibid.
763 Ibid. It's unclear here what Carter means by "lochial discharge," and why it caused him such concern. A possibility is that he is referring to a lack of amniotic fluid, indicating that Winifred's water had broken some time before the miscarriage.
764 Ibid.
exclaimed. For Carter, midwifery was not something to be learned from experience – he was a knowledgeable authority because of his immersion in the scientific literature, and the fact that he had never seen anything like Winifred’s miscarriage before was a moment of scientific discovery, not a sign of his lack of knowledge.

Despite his confidence in his knowledge and authority, or perhaps because of it, Landon Carter grew ever more furious with Winifred Carter when she strived to keep her reproductive experiences to herself. When Winifred miscarried again in 1771, Landon Carter complained:

She is a strange woman. I suspected her being with child some months ago, and advized her to be carefull in many things, particularly to get timely blooded, as she always knew how fatal the want of [s]uch a thoughtfulness had been [torn] a laughing matter, both in her husband and herself.767 Instead of telling her father-in-law about the pregnancy, Winifred had kept it a secret. Even on the day of her miscarriage, she hid her trauma from her father-in-law, her husband, and their guests: “…she was taken with very suspicious complaints, concea[led] from everybody, for she went about as Usual, and after the Company was gone she would only be blooded in the morning.”768 When Winifred finally admitted her symptoms to her father-in-law, he called Doctor Mortimer to tend to her.

Winifred repeated the same pattern on an autumn morning in 1774. After refusing to come to breakfast, she finally admitted to her husband and her father-in-law that she was “in labour and now it comes out: she had not felt her child these 2

766 Ibid.
767 Greene, The Diary of Colonel Landon Carter, 620.
768 Ibid.
months; a thing she had never spoak of to one soul." In fact, Winifred insisted, she had told her father-in-law the truth: she told him she "was not with child," because "a woman with a dead Child in her, could be thought much more said not to be with Child." Winifred was hearkening to the belief that she was not pregnant until she felt the fetus stir within her at quickening. For Landon Carter, a man of the new scientific mind, women's experience was no longer a compelling definition of pregnancy. Therefore, we can suggest two reasons why Winifred Carter might want to hide her pregnancy from her father-in-law. First, perhaps she was seeking out some modicum of privacy in a household in which the patriarch had such overwhelmingly invasive power. If this was the case, Winifred's silence was a form of resistance against the intimacies of her father's patriarchal authority. Second, perhaps she was holding on to an understanding of reproduction in which her knowledge was rooted in her bodily experience. If this was the case, Winifred's silence was a way of resisting her father-in-law's demands to be the arbiter of all knowledge in the household.

We see in the diaries of Byrd and Carter not only an expansion of planters' authority and influence, but a significant epistemic shift in the understanding of reproduction. First, we see an increased willingness to observe, interfere, and even control the processes of childbirth — this is a far cry from the justices at Anne Owle's case claiming that knowledge about reproduction was "not fit to be discust publiquely." Second, this claiming of authority in the birthing room amounted to a claiming of a new kind of cultural power: the power of abstract knowledge over

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769 Greene, The Diary of Colonel Landon Carter, 859-60.
770 Ibid.
771 York DOW 2: 166.
As Lisa Foreman Cody argues, the expansion of physician’s authority to midwifery had profound social and cultural meaning: “Man-midwives ultimately worked in the interests of the developing bourgeois public sphere to articulate the natural, physiological, psychological, and moral constitution of both female and male individuals.” In other words, the expansion of physicians’ authority to female bodies involved a fundamental shift in how the gendered and sexed body was scientifically understood, from rooting knowledge about childbearing in women’s experience to rooting that knowledge in text and abstract education. The man-midwife – and, in Virginia, the layman planter-physician-midwife – colonized female knowledge about women’s bodies. By extension, by claiming authority over medicine, and then over reproduction, planters engaged in their own epistemic colonization.

For both William Byrd II and Landon Carter, knowledge and authority were claimed by virtue of their status. That status was rooted in their identities as planter-patriarchs: they were empowered as caretakers of their neighborhoods, masters of slaves, scientists of the Enlightenment, and patriarchs of families to be the bearers of knowledge, power, and authority. This was the consequence of colonialism: the fundamental transformation of knowledge and power.

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One day, watching his charges play about him, the tutor Philip Vickers Fithian observed the little girls imagining their lives as adults: they ran about, “stuffing rags and other Lumber under their Gowns just below their Apron-Strings,....prodigiously

charmed at their resemblance to Pregnant Women!"  

What did these little eighteenth-century girls imagine for their futures? Did they look at the women around them – their mothers, sisters, aunts, grandmothers, and also the slaves and servants who labored for them – and assume that adult womanhood and pregnancy went hand-in-hand? What did they think their pregnancies and childbirths would be like? These little girls were born into a new world, where those questions were no longer decided by tradition, but instead were expressions of power, status, authority, and knowledge in their colonial context.

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CHAPTER 4

"She lives in an infant country that wants nothing but people": Discourses of Reproduction, Print Culture, and Virginia's Colonial Project

In a 1729 letter to his sister-in-law, Anne Taylor Otway, William Byrd II offered, amidst standard family news, his detailed fantasy of how the colonial government could better encourage marriage amongst its people. Byrd opined that every man should be required to marry or else suffer public whipping by "2 of the oldest virgins in the neighbourhood." Further, engaged couples should "view each other stark naked thro' an iron grate," so that they wouldn't be "surprised" by their spouse's body on the wedding night. To ensure legitimate births, Byrd proposed that fornicators be sentenced to a diet of "thin water gruel...to quench the excessive heat of their constitutions." Why enact these policies? Byrd hoped that "many unhappy matches will be avoided, to the great peace of familys." His greater purpose was "the propagateing a strong and vigorous posterity," so that the next generation of children "wou'd be all six feet 4 inches without their shoes." In case mandatory marriage didn't achieve Byrd's procreative goals, he suggested that people with ten children should be exempt from all taxes, and that "those who are fumblers and have no children" pay double taxes.

774 Tinling, ed., The Correspondence of The Three William Byrds, 1: 401-2.
775 Ibid.
776 Ibid.
777 Ibid.
778 Ibid.
William Byrd II is notable to historians, of course, for often making explicit the thoughts that his peers kept to themselves or left abstract. Byrd’s fantasy was notable in its varied imaginings of the corporeal body, which he envisioned publicly displayed, tortured, examined, starved, and sexually joined. Byrd’s procreative fancy reveals his beliefs about the role of marriage and reproduction in the creation of a civil society. For him, reproduction should be unfettered, so long as it occurred within the bounds of marriage. He imagined only positive effects to this pronatalist policy, including happier families and halier progeny. For William Byrd II, since reproduction should ideally be copious, the state’s role was to encourage even more childbearing: procreation, he believed, “was ever for the publick good.”

Just over eighty-five years later, Thomas Jefferson wrote a (now famous) letter to Francis Gray. Seeking to define absolutely the legal and racial status of mixed-race people, Jefferson turned to algebraic equations to determine race:

...one-fourth of negro blood, mixed with any portion of white, constitutes the mulatto. As the issue has one-half the blood of each parent, and the blood of each of these may be made up of a variety of fractional mixtures, the estimate of their compound in some cases may be intricate; it becomes a mathematical problem of the same class with those on the mixtures of different liquors or different metals; as in these, therefore the algebraical notation is the most convenient and intelligible.

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779 On Byrd’s frankness, see: Smith, Inside the Great House, 199-204; Treckel, “‘The Empire of my heart’,” 125-6. On the ways that that frankness was “coded” in Byrd’s diary, see: Kenneth A. Lockridge, The Diary, and Life, of William Byrd II of Virginia, 7-8.
780 Tinling, Correspondence of The Three William Byrds, 1: 402.
Jefferson went on for several pages of equations, imagining generation after
generation of people “cohabit[ing],” until he was satisfied that “two crosses with pure
white, and a third with any degree of mixture, however small, as clearing the issue of
negro blood.”782 In an aside, Jefferson remarked that even that person, who was
white according to his equations, might still be legally enslaved, because of the law of
slavery by birth. Jefferson’s calculations were aimed not just at defining racial
categories but about literally erasing blackness, if not the institution of slavery.

Jefferson’s reproductive calculations could not be more different from Byrd’s.
Byrd espoused a vision of prolific reproduction, where fertile bodies combined in
marital sexual bliss to birth innumerable strong and healthy children. For Jefferson,
on the other hand, reproduction was rationalized, reduced to a series of equations.
There are no bodies in Jefferson’s mathematical modeling, only “crossings” who
“cohabit” in order to produce “issue,” who then themselves cohabit and cross. For
Byrd, reproduction was a public good that should be encouraged by any means; for
Jefferson, reproduction was rational, scientific, mathematical, and predictable, and the
state’s role was to categorize births according to hierarchical labels of race and
servitude. For Byrd, reproduction was a bodily phenomenon, inextricably linked to
marriage and sexuality (which for him ought to be co-defined). For Jefferson,
reproduction – especially the reproduction of black, mixed-race, and enslaved people
– was an abstract process divorced from human relationships. Finally, for Byrd,
reproduction was a means of growing an implicitly white colonial population. For
Jefferson, reproduction and state policy regarding reproduction was always about race
– racial categories, hierarchy, and domination.

782 Bergh, ed., The Writings of Thomas Jefferson, 270.
The purpose of this chapter is to explore the transition between the prolific reproduction promoted by Byrd and the rational reproduction calculated by Jefferson. The period bookended by these two men’s lives was one of tremendous political, cultural, and social change ranging from the Enlightenment to scientific and democratic revolutions. As Western society lurched into modernity, even the most basic intimate relations were altered: gender ideology transformed, birth rates fell, and elite marriage relationships were redefined. Michel Foucault posited that, with the combined changes that pushed the Western world into modernity came a new organization of the state’s power over people’s intimate lives: “the ancient right to take life or let live was replaced by a power to foster life or disallow it to the point of death.” This new power, which Foucault termed biopower, involved “the set of mechanisms through which the basic biological features of the human species became the object of a political strategy... [in which] modern Western societies took on board the fundamental biological fact that human beings are a species.” For Foucault, capitalism required wholly new understandings of the relationship between the body and society: the basic biological processes of life (e.g., birth, sex, death) were to be regulated in order to produce the most profitable outcomes. Therefore, into this new modern world came a new, scientific understanding of the reproductive body, and supervision and intervention in order to develop an ideal population. In short, biopower was the state’s modern project of developing rational population strategies.

783 Michel Foucault, History of Sexuality, 138. Emphasis in original.
785 Foucault, History of Sexuality, 140-1.
786 Foucault, History of Sexuality, 139.
Foucault’s understanding of biopower helps us to understand how Byrd’s lusty reproducing bodies were replaced by Jefferson’s coldly abstract equations.

This chapter will use a postcolonial reading of Foucault’s concept of biopower to examine competing reproductive discourses in colonial Virginia. The English colonial project was first understood within the discourse of prolific reproduction. Within this discourse, reproduction was understood to be inherently natural and godly. Taking seriously the biblical command to “be fruitful and multiply,” this discourse saw profuse reproduction as the ideal, and the state’s role concerning reproduction was to encourage population growth. Within this discourse, Virginia was imagined as a fertile garden waiting to be exploited – and peopled – by English colonizers. This discourse, though tenacious, was challenged by the actual experience of colonialism. Alongside the discourse of prolific reproduction came a new discourse, which saw unchecked fertility as threatening to colonial order. Instead, reproduction was reimagined as rational – orderly, predictable, abstract, and adhering to the laws of science. Even as the colonial state continued to prioritize populating the “empty” land of the colony, managing that population – creating an ideal colonial population – arose as a new priority. Central to the discourse of rational reproduction were concern about racial purity: reproduction became a tool to separate, categorize, and define races. While these two discourses would exist simultaneously, they bore fundamentally different relationships to the colonial project: while the discourse of prolific reproduction was one of the earliest justifications for English colonialism, the discourse of rational reproduction was itself a product of the colonial project.
From their first voyages to the New World, English colonizers idealized America as an exceptionally fertile, fruitful land uniquely suited for the development of English colonies. Well into the eighteenth century, the English colonial project mirrored English views of reproduction, where colonialism depended on and would be accomplished by the creation of a large population for this new fertile land. The discourse of prolific reproduction would be remarkably tenacious, surviving for several generations, well into the eighteenth century. We see it not only in the early documents of colonialism (such as colonial booster texts and Virginia’s earliest statutes) but also in the 18th century letters of the planter William Byrd II, and in the *Virginia Gazette*, the Williamsburg newspaper that served the colony beginning in 1736.

The English vision of a fertile, virgin land meshed perfectly with the discourse of prolific reproduction, which demanded childbearing that would answer the Biblical commandment that man “be fruitful and multiply.” Susan Klepp has argued that, in the early modern period, women’s reproductive role was defined by frequent childbearing: women’s bodies were described both in print and in private as “teeming,” “breeding,” “flourishing,” or “fruitful.”

One print example of the discourse of prolific reproduction was *Aristotle’s Master Piece* (the most popular medical book in England and the colonies during the eighteenth century), which purported to discover to the reader the “secrets” of sex, generation, and childbirth.

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787 Klepp, “Revolutionary Bodies,” 917.
In his exegesis of Aristotle's *Master Piece*, Roy Porter described the book as remarkably positive (if "pronuptialist and pronatalist") in its approach to sexuality and reproduction: so long as it took place within marriage, sex and its pleasures were "portrayed as nature's way of ensuring generation and safeguarding the life of the species within the wider rhythms of the cosmos."\textsuperscript{789} That connection between nature and human reproduction can be seen in seventeenth-century Virginia wills in which testators requested a Christian burial by metaphorically "bequeathing" their bodies "to my Mother the earth from whence it came."\textsuperscript{790} Even in these explicitly Christian documents (the same wills make clear that the testator's soul was bequeathed to God or to Jesus), an explicit connection was drawn between nature, fertility, earth, and motherhood. In some ways, the discourse of prolific reproduction was positive for women: it embraced a certain form of women's sexuality, even affirming that sexuality as reflective of nature and God's plan.

Nevertheless, the early modern connection between reproduction and nature should not be idealized. First, the discourse of prolific reproduction was deeply essentialist, defining women's lives by their childbearing. Second, the discourse of prolific reproduction, while it embraced women's reproductive role, defined that role in masculine terms. Early modern theories of human generation defined the human body as inherently masculine, with the female body being a lesser version of the male.\textsuperscript{791} This idea of reproduction as inherently masculine was not just academic; it permeated popular medical texts as well. Mary Fissell has noted the ways that early

\textsuperscript{789} Porter, "The Secrets of Generation," 13, 15.
\textsuperscript{790} York DOW 1: 277; York DOW 2: 154.
\textsuperscript{791} Laqueur, "Orgasm, Generation, and the Politics of Reproductive Biology," 1-41; Jordanova, "Interrogating the Concept of Reproduction," 369-386.
modern English domestic medical texts, while deeply ensconced in the discourse of prolific reproduction, increasingly used male-centered metaphors for human reproduction. Metaphors of arable land, craft labor, and formal gardening – all rooted in nature, but also all masculine professions and pursuits – were used to describe female reproductivity. As Fissell argues:

[These metaphors] played upon images of the female, making landscape highly gendered. The land was a woman, a woman tamed and controlled, alluring and erotic. Men planted, constructed, and enclosed her in ways congruent with cultural expectations of women’s behavior.792

In this way, the discourse of prolific reproduction imagined a feminine natural world upon which men must act in order to fulfill God’s plan.

The discourse of prolific reproduction found a conceptual match with the early modern British colonial project. That colonial project, as exemplified in colonial booster texts, emphasized the unbounded fertility of American spaces; this was a “virgin” land just waiting to be exploited by British agriculture and industry. Kathleen Brown makes clear the connections between the British characterization of Virginia as “virgin,” empty land and their gendering of Native Americans as feminine, ineffectual stewards of that land. These twin discourses, both rooted in the belief that prolific reproduction and large populations were the ideal, provided the basis for English conquest.793 Joyce Chaplin makes a similar argument, demonstrating the ways that English colonizers justified their conquest by claiming


793 Brown, Good Wives, Nasty Wenches, and Anxious Patriots, 56-64.
that Natives had insufficiently populated American lands. Jennifer Morgan argues that these colonial metaphors of fertility originated in early travel writings which viewed African women’s bodies as simultaneously savage and fertile; this fertility, Morgan argued, provided a discursive basis for the exploitation of both colonial colonized lands and colonized bodies.

According to these discourses of reproduction and colonialism, much as a pregnant body grows, or a family multiplies, the British commonwealth would expand with colonialism through conversion of the Indians and expansion to American lands. This connection between fertility and expansion can be seen in both the texts that advertised and boosted the colonial project, and in the Virginia legal archive as well. The Virginia writer John Hammond put this succinctly in the opening of his 1656 book, *Leah and Rachel, or the Two Fruitfull Sisters Virginia and Mary-land*: “It is the glory of every Nation to enlarge themselves.” Throughout his text, Hammond emphasized that the success and growth of the colony would rest on the fertility of Virginia’s land itself. Virginia’s founders, who continued to believe that the colony would grow even after the disaster at Roanoke, embraced this pronatalist mission. In the first and second colonial charters (in 1606 and 1609), they pledged that not only settlers but “every of their children, which shall happen to be

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born" in Virginia would enjoy the rights and privileges of English subjects. That the colony should be home to a growing English population was implicit.

The experience of actual colonization interrupted this idealized vision of a fertile, yielding Virginia, but English colonizers still embraced the discourse of prolific reproduction. Virginia's early years were marred by much-publicized deaths from starvation, sickness, and war with the not-so-docile Indians, which would seem to interrupt the belief that America was a lush Eden just waiting to be settled by fertile English bodies. But from Virginia's founding, English colonizers believed that births would always outweigh inevitable deaths. This notion that births cancelled out deaths can be seen in seventeenth century ballad titled "Newes from Virginia," which recounts the deaths of two people on the voyage to the colony:

And for the loss of these two soules,
Which were accounted deere,
A sonne and daughter then was borne,
And were baptized there.  

While the death of two people at sea was a "deere" loss, they were providentially replaced by two children born and baptized in the colony, thus literally expanding the realm of Christendom into the new colony. As Joyce Chaplin has argued, in a culture that had only recently survived the plague, the birth of children was needed to outmatch a dying population, and marriage and childbearing took on dual meanings in the colonies, both as replacing that lost generation and in populating the new

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797 Hening 1: 64, 95.
The first births in the colony—including the famous Virginia Dare of Raleigh’s colony at Roanoke—had deep cultural resonance.

Therefore, even in the face of the hardships that colonization brought, English colonizers continued to embrace the pronatalist discourse of prolific reproduction, seeing fertility as a providential gift from God and a sign of God’s approval for the colonial project. John Hammond, who referred to Virginia and Maryland as “fruitfull sisters,” claimed that it was only Virginia’s natural fertility that had kept it solvent through the difficult early years: the two colonies were “in danger to moulder away,” and there was not “any thing but the fertility and natural gratefulnesse of them, left to remedy to prevent it.” Hammond averred again and again that “the Country is fruitfull, apt for all and more then England can or does produce,” tying Virginia’s natural fertility to the success of the colonial venture. The fruitfulness of Virginia was recognized by Virginia’s government when it passed the 1646 Act for Binding Out of Children, which set up an apprenticeship program for poor children: “God Almighty, among many his other blessings, hath vouchsafed increase of children to this colony, who are now multiplied to a considerable number.” Like those two births that outweighed the deaths at sea, the “increase of children” in the colony was sign of God’s providence.

The discourse of prolific reproduction, rooted as it was in deeply held religious beliefs, gender ideology, and nascent colonialist and racial discourses, would survive into the eighteenth century. William Byrd II’s letters provide us with a

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800 Chaplin, *Subject Matters*, 155.
remarkable account of the ways that the discourse of prolific reproduction impacted this elite planter’s thoughts on both the colony at large and his wife’s own pregnancies. Not only did William Byrd II espouse the belief in a fertile Virginia, he proposed that women in Virginia were similarly fertile. For Byrd, Virginia was a new Eden, where “men evade the original curse of hard labour,” and women “bring forth children with little sorrow, and hardly any danger.” Native women, Byrd claimed, had no need for assistance of any kind at their births: “They retire to some lonely place, when they find their pains coming on, and leaning upon a crutch, leave all to the midwifery of nature.” According to Byrd, easy childbearing was facilitated by Virginia’s climate and was thus available to English women as well. When Byrd’s wife, Lucy, was pregnant for the fourth time, Byrd posited that her frequent pregnancies were “certainly owing to the climate,” in which, he believed, even elderly women could easily get pregnant.

Throughout his letters, Byrd expressed admiration and amazement at extraordinary reproductive events, which he understood within the discourse of prolific reproduction. He marveled at the reproductive cycles of plants, which (unlike human generation, hidden as it was in the female body) were “by a good microscope…plainly discovered.” Human reproduction, on the other hand, could be made visible only through one’s numerous progeny, something he hoped for.

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805 Ibid.
806 Tinling, *The Correspondence of The Three William Byrds*, 402.
himself. His fondest recollection of York in England was “a tomb-stone in the
minster of Dr. Honywood, upon which it is recorded that his grand mother livd to see
367 persons of her legitimate posterity namely 16 children 114 grand children, 228
great-grandchildren, and nine of the 4th generation.”\footnote{808 Tinling, \textit{The Correspondence of The Three William Byrds}, 214.} He later hoped that his wife
would “live to see as many of her descendants as my Lady Honiwood.”\footnote{809 Tinling, \textit{The Correspondence of The Three William Byrds}, 402.}

Sometimes, Byrd’s comments tested the boundaries of eighteenth-century gentility,
but his adherence to the discourse of prolific reproduction (and his love for bawdy
jokes) won out over social propriety. For example, Byrd commented on Lucy’s best
friend Mary Jeffreys Dunn’s pregnancy by mentioning that “there goes a prophecy
about, that in the eastern parts of Virginia a parson’s wife will, in the year of our
Lord, 1710, have four children at a birth, one of which will be an admiral, and another
archbishop of Canterbury.”\footnote{810 Tinling, \textit{The Correspondence of The Three William Byrds}, 271.} He hoped that his joke would not be rejected because
Mrs. Dunn had become “too demure a prude, now she is related to the church.”\footnote{811 Ibid.}

For Byrd, prolific reproduction was not just desirable, but magical and prophetic.

Ultimately, Byrd saw prolific reproduction – and, specifically, Lucy Byrd’s
prolific reproduction – as a necessary boon to the colony. In a 1729 letter, Byrd
complained that Lucy would not be travelling soon because of pregnancy, and,
anticipating many future pregnancies, Byrd declared that Lucy “will hardly be in a
travelling condition till she’s towards 50.”\footnote{812 Tinling, \textit{The Correspondence of The Three William Byrds}, 391-2.} Byrd saw Lucy’s frequent pregnancies
as a humorous sign of her animalistic nature (which he ascribed to all women): “I
know nothing but a rabit that breeds faster.”

His attempts to slow down her childbearing, he complained, were for naught: “I know no remedy but to make a trip to England some times, and then she must be content to lye fallow til I come back. But then she’ll be revenged of me, and redeem her lost years by having 2 at a time when I return.”

Byrd’s characterization of his wife’s childbearing exemplifies the complications of the discourse of prolific reproduction. Byrd forgave Lucy her fertility (even as he claimed he wished he could “disswade her from it”) because childbearing fulfilled the goals of the colonial project: “The truth of it is, she has her reasons for procreateing so fast. She lives in an infant country that wants nothing but people.”

For Byrd, childbearing was necessary for the colonial project, yet women’s fertile bodies, like the land of the colony itself, were wild, fecund, and unpredictable (or predictable only in their fertility). Unlike plants, women’s reproductive cycles were not “plainly discovered”; Byrd’s only means of controlling Lucy’s childbearing was to flee to the other side of the Atlantic. While Byrd idealized prolific reproduction, there is ambivalence here: what did it mean that the future of the colony, of mankind itself, was dependent on fickle women and their mysterious bodies? Further, what did it mean that Byrd, who saw himself as a paragon of modernity and gentility, embraced prophecy, magic, and his own powerlessness because of his belief in the necessity and desirability of prolific reproduction?


815 Ibid.
William Byrd II inhabited a different world than the founders of the colony, yet he, like that first generation, adhered to the belief that the colonial project required prolific reproduction. This belief found a wider colonial audience in the form of the readership of *The Virginia Gazette*, which began publication in 1736 and continued to be published under several different editors. Among the news reprinted from British newspapers and gathered from private correspondents, advertisements, and reprinted essays from magazines like *The Spectator*, were ephemeral notices of unusual events that occurred throughout the British Empire. Many of these notices told stories of extraordinary births. Stories of successful multiple births (such as twins, triplets, and quadruplets), large multi-generational families (like the Honiwoods so admired by William Byrd), and elderly parents successfully having babies showed up frequently in the pages of the *Gazette*. These stories show a continued fascination with prolific reproduction by Virginia's gentry (the prime readership of the newspaper). Another category of extraordinary birth stories, which recounted the births of royalty, filled a significant amount of column space in this weekly, 4-page newspaper. These stories point to the political meanings of extraordinary births and prolific reproduction. Even so, as we will see, the discourse of prolific reproduction did not fit perfectly into this new medium.

Successful multiple births were newsworthy because they tend to be relatively rare and they likely challenged the medical abilities of birth attendants in eighteenth century Virginia.\(^{816}\) Therefore, examples of successful multiple births pepper the pages of the *Gazette*. These notices typically included two pieces of relevant

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\(^{816}\) There are three mentions of successful multiple births in the York county records. York DOW 14: 348; York DOW 16: 267, 280, 287; York JO 3: 358, 384.
information: first, the event of the birth, and second, the health of the mother and children. One such example is this short notice of an English birth in 1739: "They write from Wells in Sommersetshire, that a Woman of that Place was delivered of Four Sons and a Daughter at a Birth, and that they are all Christened and likely to live."817 Women who had experienced more than one multiple birth were especially remarkable. In a 1736 notice, a woman who had given birth to quadruplets was doubly fascinating because of her history: "The Woman has been married but 4 Years, and lain in 3 Times; at First she had 2 Female Children, at the Second 2 Males, and the Third 4…”818 Multiple births, rare as they were, pointed to a remarkable and tantalizing fertility. Readers were invited to imagine multiplying sets of twins, all marked by the auspiciousness of their births. For example, a remarkable baptism in Marblehead, Massachusetts, invited the reader to imagine the coincidence of many multiple births: "Last Lord's Day were bro't to Baptism in the new Meeting-house here, 2 Children, which were the Third Pair of Female Twins of the same Parents: They were brought out by the first Pair, who are now Women grown, were held up to Baptism by their Father, who was a Twin, and Baptiz'd by a Minister who was a Twin."819 Such a baptism was a blessed event, indeed.

Along with multiple births, large families were celebrated in the pages of the Virginia Gazette as examples of prolific reproduction. Some notices resembled the Honiwood tombstone that William Byrd II so admired. In 1739, the Gazette reprinted a Rhode Island obituary from 1739 for Mrs. Mary Hazzard, who was praised for her

817 Virginia Gazette. Parks #151, June 22, 1739, page 1. For other similar examples, see Virginia Gazette Parks #53, Sept. 9, 1737, page 3 and Virginia Gazette, Hunter #9, Feb. 28, 1751, page 3.
818 Virginia Gazette, Parks #15, November 12, 1736, page 4. For another example, see Virginia Gazette, Hunter #61, Feb. 27, 1752, page 2.
819 Virginia Gazette, Parks #82, Feb. 24, 1737/8, page 3.
huge family: "This Gentlewoman has had Five Hundred Children, Grand-children and Great-Grandchildren; and has now left behind her living Two Hundred and Five of the aforesaid Number." Other examples highlight elderly people who survived to see numerous generations of their progeny. In one such example, the birth of a baby girl whose maternal great-great-great grandmother was still living inspired the following riddle: "Rise up Daughter, and go to thy Daughter, for her Daughter's Daughter hath a Daughter." The said great-great-great grandmother is described as "about 92 Years of Age, is in perfect Health, has all her Senses clear, and hopes to see five Generations more." These celebratory stories showed the aspirations of people who believed that prolific reproduction was a measure of a life well lived.

Another category of extraordinary births, births by elderly parents, frequently found its way onto the pages of the Gazette. These stories show not only how the discourse of prolific reproduction embraced births that challenged social and biological norms, but also the extent to which marriage and fertility were codefined. One such story recounted the birth of a "Lusty Boy" by a 64-year old woman, echoing the biblical story of Sarah giving birth to Isaac. More common were stories of elderly men who married young wives. An Irish man, who died at the age of 112, was celebrated for his marriage, when he was 84, to a 14-year-old girl, "by

820 Virginia Gazette, Parks #140, April 6, 1739, page 2. For more examples, see Virginia Gazette, Hunter #20, May 16, 1751, page 2; Virginia Gazette, Hunter #69, April 24, 1752, page 2; Virginia Gazette, Hunter #87, Aug. 28, 1752, page 2
821 Virginia Gazette, Parks #155, July 20, 1739, page 2. For more examples, see Virginia Gazette, Hunter #4, Jan. 24, 1751, page 3; Virginia Gazette, Royle, Feb. 12, 1762, page 2.
822 Ibid.
823 Virginia Gazette, Parks #100, June 30, 1738, page 2. For another example, see Virginia Gazette, Parks #36, April 8, 1737, page 4.
whom he had about twenty Children, she bearing a Child every year." This fertile marriage was credited, along with exercise and an appetite for alcohol, for his longevity. While these stories were sometimes jocular in tone, they uniformly expressed the sense that such unions should be sexual and fertile ones — and readers were implicitly invited to imagine the sexual habits of the people whose lives were recounted in the *Gazette*. For example, when an 84-year-old Philadelphia man married "a young vigorous Nymph of Twenty-five," the editor wished the couple "all possible nuptial Felicities!" This same issue of the *Gazette* devoted space to two other similar marriages, which show both that marriages between old men and young girls were not considered abnormal, and that those marriages were expected to be fertile. A local marriage announcement celebrated that "on Tuesday, the 3d Instant, was married, Mr. ROBERT FERGUS, of AMELIA County, aged 83, to Miss ANNE JONES, a Girl between 14 and 15, being his third Wife." Printed alongside the Philadelphia notice, readers are implicitly invited to imagine the "nuptial felicities" of this local marriage. Another marriage, between an 89-year-old man and a 72-year-old woman, on the other hand, was derided because of the advanced age of the bride: the marriage "promises little Hopes of Success in the more common Effects of the matrimonial State." A reader would easily pick up the subtext here:

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824 *Virginia Gazette*, Hunter #73, May 22, 1752, page 1. For another example, see *Virginia Gazette*, Parks #73, Dec. 23, 1737, page 2.
825 *Virginia Gazette*, Rind #44, March 12, 1767, page 2. In another reading, the emphasis on the word "possible" may be a joke about age-related male impotence. This reading still supports the notion that marriage — even marriages with a wide age gap — were expected to be sexual and fertile.
826 Brewer, *By Birth or Consent*, 297-300. Notably, child marriages were property arrangements, aimed at consolidating property, and thus were more common among the most elite Virginians. For anyone serving out an indenture, of course, marriage would be delayed. Smith, *Inside the Great House*, 127-8.
827 *Virginia Gazette*, Rind #44, March 12, 1767, page 2.
marriages were meant to be fertile, and marriages that did not (or would not) produce children were suspect.\footnote{As Mary Beth Norton has argued in her reading of the seventeenth-century Acomac County Thomas/Thomasine Hall case, marriage and fertility were so co-defined that Hall was prohibited from marrying because the county court believed Hall was unable to have children. Norton, “Communal Definitions of Gendered Identity,” 60-61.}

These extraordinary births – multiple births, large families, and elderly parents – all illustrate the continuing power of the discourse of prolific reproduction in the eighteenth century. Not only that, their placement in the \textit{Gazette} underscored the importance of prolific childbearing to the colonial project. Note that these stories originated across the British empire: from the London metropole and the English countryside to Ireland to Massachusetts, Rhode Island, Pennsylvania, and Virginia. Significantly, these were \textit{English} births and marriages that were celebrated: there are no similar accounts of multiple births, large families, or elderly childbearing by Native women or women of African descent in the \textit{Gazette}. In this way, we see the unspoken racial implications of John Hammond’s dictum that “It is the glory of every Nation to enlarge themselves.”\footnote{Hammond, \textit{Leah and Rachel}, 1.} Within the discourse of prolific reproduction, the success of colonialism depended on and celebrated the multiplying of white colonial bodies.

Another category of extraordinary reproduction – births in the English royal family – made this connection between prolific reproduction and national identity explicit for English readers of the \textit{Virginia Gazette}: with the prolific reproduction of the royal family, the nation grew and survived. Throughout the eighteenth century, the \textit{Virginia Gazette} ran frequent announcements of royal pregnancies, births, baptisms, and birth celebrations. These announcements were readers’ primary
window into royal events. When Princess Augusta gave birth to Prince George (who would become King George III) in 1738, the *Gazette* ran six separate announcements of the birth. The news first arrived in Williamsburg via the passengers of the ship *Forward*, and then was more formally announced via a reprint from the *London Gazette*:

> On Wednesday Se’nnight, at half an Hour past Seven in the Morning, her Royal Highness the Princess of Wales was safely deliver’d of a Prince, who was immediately christen’d by the Name of GEORGE; which was occasion’d by some dangerous Symptoms that appear’d at first, though they are now happily over, and the Princess likewise is in a very good way.\(^{831}\)

Other royal births were similarly chronicled in the *Gazette*.\(^{832}\) Indeed, coverage of royal reproduction often began well before the actual birth, as pregnancies were carefully recorded in the pages of newspapers across the Empire. For example, in 1736, the *Gazette* reported, “Yesterday the News that her Royal Highness the Princess of Orange is with Child, came confirmed.”\(^{833}\) Birth announcements also extended to the lesser British aristocracy.\(^{834}\) Soon, Virginians began imitating these birth announcements, as local gentry planters began publishing

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\(^{831}\) Announcement from the *Forward*: *Virginia Gazette*, Parks #109, Sept. 1, 1738, page 3.

\(^{832}\) *Virginia Gazette*, Hunter #13, March 28, 1751, page 2; *Virginia Gazette*, Hunter #41, Oct. 11, 1751, page 3; *Virginia Gazette*, Hunter #47, Nov. 21, 1751, page 2; *Virginia Gazette*, Royle, Oct. 25, 1765 supplement, page 2; *Virginia Gazette*, Parks #114, Sept. 29, 1738, page 3.


similar messages regarding their own growing families: "We hear from Goochland County, That Mrs. Randolph, Wife of William Randolph, of Tuckahoe, Esq; was safely delivered of a Daughter, on New-Year’s Day, to the great Joy of the Family; they having been marry’d about 4 Years, and had no Child before."\textsuperscript{835}

While the Randolph birth was undoubtedly important to the local gentry, births within the British royal family had profound political significance and thus were part of constructing eighteenth century British nationalism in a colonial space. These births cemented the alliances between royal families that governed war and peace in Europe. For example, the announcement of the pregnancy of the Duchess of Lorraine (which coincided with birthday celebrations for the Austrian Empress) was embedded in a report of a Russian treaty that had recently been negotiated in Vienna.\textsuperscript{836} More viscerally for Virginia readers, though, these announcements offered English colonials a chance to participate in nationalistic celebrations. While the actual announcements were quite concise, considerable column space was devoted to detailed descriptions of celebrations of these royal births. Upon the birth of Princess Augusta, the \textit{Gazette} provided descriptions of celebrations both at the palace and throughout the British Isles, including London, Edinburgh, and Dublin. These accounts provided exhaustive detail of royal visitors to the family, gifts offered to the new baby, and lavish public celebrations.\textsuperscript{837} As if to play up the nationalist intent of these notices, descriptions of the celebrations of royal births in other countries were depicted as wasteful and even harmful to those countries. Fires and

\textsuperscript{835} \textit{Virginia Gazette}, Parks #80, Feb. 10, 1738, page 3.
\textsuperscript{836} \textit{Virginia Gazette}, Parks #17, Nov. 26, 1736, page 3.
\textsuperscript{837} \textit{Virginia Gazette}, Parks #67, Nov. 11, 1737, page 1, 3; \textit{Virginia Gazette}, Parks #69, Nov. 25, 1737, page 3, 4; \textit{Virginia Gazette}, Parks #71, Dec. 9, 1737, page 3.
deaths marred the celebrations of the birth of the Duke of Burgundy in France, at which the starving populace held banners which read, "Amidst our Sufferings we rejoice." 838

These descriptions of public celebrations provided Virginians an opportunity to witness from afar the rituals of the British crown, and thus to affirm their own Britishness. Public speeches celebrating the births were reprinted in the *Gazette*, inviting the reader to participate in the patriotism that the birth events inspired. Lengthy speeches given by government officials in honor of the births were reprinted in full in the *Gazette*. These speeches not only celebrated the birth, but spoke to the political meanings of royal reproduction. For example, a 1738 statement by the Lord Mayor of London drew an explicit connection between the "very happy Event" of the birth of Prince George and the continued "Welfare and Prosperity of this Nation." 839 The Lord Mayor's 1751 statement, reprinted in the *Gazette*, makes clear that the survival of the nation depended on the survival of the royal family's line:

...we are truly sensible of the Blessings we enjoy under Your Majesty's Government, and are convinced, that the Security of our Rights and Liberties, in Time to come, depends on the Protestant Succession established in your illustrious House; it is, at this Time, a peculiar Satisfaction to us, that we have once more the Honour of congratulating Your Majesty on the Increase of Your Royal Family. 840

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838 *Virginia Gazette*, Hunter #52, Dec. 19, 1751, page 2. For other similar examples, see *Virginia Gazette*, Hunter #47, Nov. 21, 1751, page 2; *Virginia Gazette*, Hunter #71, May 8, 1752, page 2.
839 *Virginia Gazette*, Parks #110, Sept. 8, 1738, page 3.
Speeches delivered at birthday celebrations for the King also drew this connection. When the Mayor of Bath in England proclaimed that he was “truly sensible how auspicious the Birth of His Majesty [the Prince of Wales] was to this Nation,” he explicitly tied that birth to the survival of the nation and English liberty:

A Birth, to which we owe the Continuance of those invaluable Blessings,

which our successful Struggles for Liberty have procur’d us in that glorious Act of Succession; A Birth, to which we are indebted, Sir, for your royal Person, in whose Presence we enjoy all possible Happiness…

An “ODE for his Majesty’s Birth-Day, 1736” exaggerated its subject’s qualities, but it also drew this connection between the birth of royalty and the success of the nation. In the “Ode,” King George II is credited with bringing peace and prosperity to Britain; George’s reign promised to British subjects that “Your Commerce, your Arts, / Shall all flourish and sing.” The birth of the King – “the happy Day / That gave the Godlike Hero life” – was the origin of this blessed time.

Virginians participated in these birth-centered displays of nationalism in multiple ways. Local celebrations imitated the glory of English fetes. King George II’s birthday in 1739 was celebrated in Williamsburg by the display of flags, three cannon volleys, illumination of public buildings and private homes, and a ball at the Governor’s house: “…the Night was concluded with great Demonstrations of Joy, suitable to the happy Occasion, and agreeable to the distinguish’d Loyalty of this

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842 Virginia Gazette, Parks #28, Feb. 11, 1737, page 1-2.
843 Ibid.
Colony in general, to His Majesty, and His Illustrious Family." Significantly, though, the primary means of observing royal births – both in the sense of witnessing the birth, and of marking their importance – was through print. Virginians, unable to participate in the rebirth of the British nation in Britain itself, could do so imaginatively through the consumption of these numerous stories printed in the *Virginia Gazette*.

These print-based celebrations of royal births show the complex and sometimes tenuous nationalist connection that Anglo-Virginians felt to the mother country. Benedict Anderson has argued that newspapers provided the basis for modern nationalism through the development of "imagined communities." Specifically, Anderson emphasizes that colonial spaces – because they were far-flung and connected to the metropole only through print – were the first crucible for these imagined communities. Anderson focuses on the ways that creoles imagined *themselves* as communities, separate from the metropole; he does not examine the ways that, prior to democratic revolutions, creoles may have adhered to the metropole in forging their national identities. Further, while Anderson concentrates on creole identities as defined by their geographic placement, he is not concerned with the development of creole subjectivities or coloniality as such. Kathleen Wilson has argued that Anderson’s argument, while correctly focused on "cultural representations," fails to recognize the relationship between colony and metropole: British print elided the "crueler aspects" of colonialism in favor of a more patriotic

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vision of empire. Wilson argues that British nationalism developed in part in order to exclude colonized and feminized bodies. Wilson's formulation of British nationalism helps us to understand the competing nationalisms that were in play for colonial subjects: were they part of a creole imagined community, or were they part of the patriotic British empire marked by masculinity and whiteness?

We see, therefore, in the Virginia Gazette's celebration of royal reproduction a tinge of colonial anxiety. Kathleen Brown argues that, in the eighteenth century, Virginia elite masculine identity was marked by significant anxiety: “Conscious of being colonials whose dependent and marginal relationship to London diminished their status, [elite planter men] could never achieve enough success to reassure themselves that the foundation of their identity would not collapse.” Royal reproduction would seem to fit the discourse of prolific reproduction, where numerous royal births guaranteed the survival of the nation. Nevertheless, this constant attention to the celebrations of royal births only served to underscore the distance, both geographical and cultural, between Virginia and London. Virginians did not learn of royal births the way that people in London did, through the sound of cannon volleys and ringing church bells on the day of the birth; they learned through sketchy reports provided by sea captains months after the event. Celebrations of these births, no matter how heart-felt, paled in comparison as well. How could Williamsburg's illuminated houses compete with the official celebrations that were so copiously described in the Gazette?

If the meaning of royal reproduction stories shifted depending on the colonial context, becoming not just about the rebirth of the British nation but about the distance between colony and metropole, then do we need to re-examine the meanings of the other prolific reproduction stories in the *Virginia Gazette*? Specifically, if the colonial print context for stories of royal reproduction was significant in understanding the meanings of those stories for Virginia readers, then how does that context shift our understandings of other stories of prolific reproduction?

Newspapers were not simply repositories for text; as Anderson’s and Wilson’s discussions of newspapers and nationalism make clear, colonial print culture did not just reflect but created new and different ways of understanding the world. These new understandings would inevitably impact colonial reproductive discourses – as we will see, the discourse of prolific reproduction was in competition with other reproductive discourses more suited to the modern era.

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The discourse of prolific reproduction had fueled the English colonial project, where English bodies, urged to “be fruitful and multiply,” would populate Virginia’s wilderness. As we have seen, that ancient discourse survived well into the eighteenth century in newspapers, letters, laws, and pamphlets. Yet the anxieties exposed by the *Virginia Gazette*’s coverage of royal births begins to reveal the ways that the discourse of prolific reproduction faltered in the face of colonial subjectivities. Print representations of royal reproduction underscored the differences and distances separating Virginia and the mother country. That separation was further emphasized
as Virginians began to reframe prolific reproduction not as an ideal, but as a curiosity or even a threat.

In the pages of the *Gazette*, alongside announcements of multiple births and royal celebrations came more disturbing stories of monstrous births. Where the discourse of prolific reproduction celebrated extraordinary births, monstrous births presented the possibility that prolific reproduction could go very wrong. In one such story, an English farmer “having a Cow that had been ill for some Time, […] knock’d her o’th’Head; and when she was open’d, there were found in her Five Calves, all hair’d, and One Four Feet long.”849 Here was a multiple birth, albeit by an animal, that proved deadly and terrifying, or at least bizarre. Another story recounted the story of a “casual Poor” woman who miscarried three fetuses: “the first time with a Male Child, the next Day with a Female Child, and the third Time with a Monster, which had a Head and Body like a Toad, and a Tail like a Rat.”850 Other stories recount tales of monstrous births that challenged normal categorization. A monstrous calf born in England was described as “about the Size of a Child of ten Years old,” with a face like “an old Man,” a chest that resembled female genitals, a “Spanish Mustacho,” and a complexion “equal to a French Foot soldier after a Summer’s Campaign.”851 This monstrous calf blurred the boundaries not only of human and animal, but of nation, age, and sex.852

How were these stories of monstrous births read, and what do they reveal of Virginians’ ideas about reproduction in the eighteenth century? First, they must be put into the context of Virginia’s nascent print culture. For a colony that prided itself on its Englishness and modernity, Virginia was very late in developing a local print culture. A royal order specifically prohibited printing beginning in 1682, and that ban stayed in effect until 1730, when William Parks brought a press to Williamsburg. He began publication on the *Virginia Gazette* in 1736; by contrast, Boston had had a local newspaper since 1704. When the *Gazette* finally did begin publication, genteel readers needed instruction on print culture — how newspapers should be read, consumed, and discussed. Newspapers were meant not just to report current events, but also to be both didactic and diversionary. An early letter to the printer of the *Virginia Gazette* offered this praise of the infant newspaper:

> The Design you have undertaken of adding to the Instruction of your Readers, while you entertain them, and of mixing their Improvement with their Diversion; and the candid Reception, I understand, your Endeavours meet with from Gentleman of the highest Distinction, as well for their good, as great Qualities; and the natural Propensity we have to believe what we wish, give a solid and well-grounded Hope to all Lovers of Humanity, that we may see, in these our Days, Virtue and Good Manners encouraged, Vice and Folly depressed, and Mankind reformed.854

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This letter, in characteristically baroque eighteenth-century prose, outlined this reader’s hopes for the *Gazette*: that it should be instructive yet entertaining, and that it should improve readers’ virtue. That the newspaper should entertain and divert was of particular importance: newspapers were a key prop in the display of genteel wit and conversation.855

Another early entry in the *Gazette* offered readers a demonstration of exactly how newspaper stories should be used in genteel conversation. Apparently, a “romantick” story of an Alligator eating three sailors had made its way from India back to London, and was then reprinted in the *Gazette*. The story “had furnish’d all our Coffee-House Connisseurs with Discourse” and inspired various reactions, from “the Jocular and Gay,” to “Horor and Surprize.” One young man doubted the story’s veracity, comparing it to an “old English Ballad” about “the Dragon of Wantley,” which also ate three victims at a time. The debate continued, with some in the coffeehouse siding with the young man, and others trusting “the Probability of the Narration.”856 This “romantick” story had several purposes. On the surface, it was merely a repetition of a tall tale for a new audience, but it also provided readers with some instruction on how to read similar tall tales found in the pages of the *Gazette*. These stories were to be debated and discussed, regardless of their veracity, in a genteel display of wit. Significantly, the debate over the alligator was never resolved in the *Gazette*; obliquely, the story invites new readers to take their own positions in the dispute. Further, genteel debates placed readers in a reading community that spanned the empire: the alligator story originated in India, travelled to London, and

eventually made it to Virginia. Therefore, readers of the new Virginia Gazette were participating in a global colonial conversation. Ultimately, it did not matter if the stories in the Gazette were factual – what mattered was the conversation that they could inspire.

It was in this context – where newspaper stories were published as curiosities, not necessarily as facts – that the stories of extraordinary reproduction found their home. Alongside stories of monstrous births in the Gazette came other accounts that reframed prolific reproduction – and the bawdy marital sexuality that supported it – as threatening, violent, and immoral. A notice about an especially fertile woman illustrates how subtle this shift was: "We learn from the Head of Timber-Creek in the Jerseys, that a Woman there has lately had 5 Children, all born alive, within the Space of 11 Months, by 2 Husbands."857 On one hand, this notice reports yet another multiple birth and could be seen as celebrating the woman's extraordinary fertility. Yet, within the context of genteel coffeehouse culture, readers were expected to read between the lines here. While the obvious reading is that the woman was widowed and swiftly remarried, having one set of triplets with one husband and one set of twins with the other, the vagueness of the prose invites other readings: was she a bigamist? How many pregnancies were there? Was it possible for a woman to have so many pregnancies in such quick succession? While seemingly fitting into the discourse of prolific reproduction, this story invites the possibility that prolific reproduction was the result of aggressive female sexuality or the threatening unpredictability of the female body.

857 Virginia Gazette, Parks #136, March 9, 1739, page 3.
Another form of threatening reproduction emerged in the colonial context: English colonialism had always depended on the prolific reproduction of *white* bodies. A “dream” recounted by an anonymous Virginia writer in the *Gazette* in 1738 reveals the ways that reproducing *black* bodies did not fit into the discourse of prolific reproduction, even as white Virginians’ demand for slaves rose to a fever pitch in the early eighteenth century.858 In this dream, the writer recounts the possibilities and problems facing the colony: the foremost threat was slavery, specifically the multiplying black bodies imported to Virginia. The writer envisions slave ships as monstrous mothers whose “Bodies were of a dark Hue” with “exposed...Bellies” from which they “discharg’d their Spawn upon the Shore.”859 That “pernicious Spawn” was “innumerable black Creatures, not unlike Monkies.”860 In an orgy of trading, white Virginians buy up the “filthy Creatures,” and the slave ships depart, newly filled with coffers of gold.861 Virginia’s economic dependence on slavery clashed with a nascent white terror of black bodies – this conflict was represented as a horrifying nightmare of prolific reproduction. Significantly, after decades of reliance on the international slave trade, beginning in the 1730s, the slave population was majority creole in the colony.862 This fantasy of slave ships as a form of monstrous reproduction masked the reality that most slaves were acquired by biological, not metaphorical, reproduction.

These various monstrous births pushed at the boundaries of prolific reproduction: how could this old ideal make sense of deformed calves, oversexed

858 *Virginia Gazette*, Parks #91, April 28, 1738, page 1-2.
859 Ibid.
860 Ibid.
861 Ibid.
mothers, or, most importantly, the proliferation of other bodies which, through colonization, English bodies must contact? The discourse of prolific reproduction, while still present throughout the seventeenth and eighteenth centuries, failed to fully make sense of the relationship between colonialism and reproduction. Ultimately, the colonial project itself necessitated new ways of thinking about reproduction. These examples of monstrous reproduction, or prolific reproduction gone wrong, stand in opposition to a new reproductive discourse that emerged in the colonies: rational reproduction.

Before examining Virginia legal and print culture to demonstrate the rise of rational reproduction as a new discourse and reproductive ideal, it is necessary to situate this analysis within particular theoretical and historiographical frameworks. Michel Foucault’s concept of biopower is especially useful in mapping the competing discourses of prolific reproduction, monstrous reproduction, and rational reproduction. As discussed above, for Foucault, one of the defining qualities of the modern state was unprecedented surveillance over and involvement in individuals’ private lives. Foucault’s published work focused on the European – specifically the French – case, sidestepping the twin issues of colonialism and race. Yet, as Ann Laura Stoler has argued, Foucault’s transitions are more convincing when we interject race and colonialism into his framework. I will outline the major chronological transitions that Foucault posits, and then discuss Stoler’s interjections in order to show how a postcolonial reading of Foucault’s concept of biopower can be especially useful in understanding discourses of reproduction in colonial Virginia.
As Foucault argues in *The History of Sexuality*, premodern state power was rooted in "the deployment of alliance," where power was organized via family lines and inheritance, and the state's role in regulating sex was "built around a system of rules defining the permitted and the forbidden, the licit and the illicit."863 Within the constraints of the deployment of alliance, sex was about the transmission of wealth from one generation to another. In this framework, the people of the nation were the embodiment of the king's power – the crown had absolute power of life and death over the people, and the nation survived in the body of the king.864 The discourse of prolific reproduction, which we have seen in Virginia print culture, fits well within the deployment of alliance. In the deployment of alliance, sex acts were defined as basically licit or illicit; we see this in the embracing of marital, procreative sexuality in *Aristotle's Master Piece* and William Byrd's letters. Further, at its root, the discourse of prolific reproduction was about the production of many heirs (think of the *Virginia Gazette's* admiring descriptions of multiple births and large families). The colonial project, within the discourse of prolific reproduction, was one of *peopling*: the creation of more British bodies would expand the glory of the British empire. We can see as well how print culture representing royal reproduction was indicative of the deployment of alliance: the reproduction of royal bodies literally reproduced the nation and its power.

Foucault's focus in *The History of Sexuality* is understanding the rise of modernity, specifically the deployment of the modern discourse of sexuality which.

replaced the deployment of alliance as the basis of state power. The discourse of sexuality justified increasingly intrusive state power over people’s sexual behaviors by “proliferating, innovating, annexing, creating and penetrating bodies in an increasingly detailed way, and in controlling populations in an increasingly comprehensive way.” In this new power regime, the people of the nation – the population – became a resource to be managed and controlled. This management of the population occurred through the deployment of biopower – whereas the king had previously held power over life and death, now the state held the power to maximize, grow, control, and shape populations through the deployment of sexuality and the organization of people’s most intimate lives. Biopower demanded rethinking the nation not as a people but as a population:

Governments perceived that they were not dealing simply with subjects, or even with a ‘people,’ but with ‘population,’ with its specific phenomena and its peculiar variables; birth and death rates, life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and habitation…. At the heart of this economic and political problem of population was sex: it was necessary to analyze the birth-rate, the age of marriage, the legitimate and illegitimate births, the precocity and frequency of sexual relations, the ways of making them fertile or sterile, the effects of unmarried life or of the prohibitions, the impact of contraceptive practices…

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866 Foucault, *History of Sexuality*, 25-6. In *Discipline and Punish*, Foucault shows how the state’s power over intimate lives expanded to the disciplining of all people in institutions, from prisons to schools to hospitals. Foucault, *Discipline and Punish*, 135-194. Foucault would expand on his ideas about biopower in *Security, Territory, and Population*, where he made clear that the state’s power over intimate lives extended not just to sexuality (in other words, the coupling of particular bodies) but to
In other words, biopower required a new, rational approach to reproduction: in order to develop and manage a *population*, childbearing became differently politicized. The remainder of this chapter will examine the rise of a new discourse of rational reproduction in colonial Virginia that strikingly mirrors Foucault’s model of biopower and its attendant focus on population.

To be clear, though, the point here is not merely to apply Foucault’s model to the colonial Virginia context. Instead, this Foucauldian reading of colonial Virginia print culture is an intervention not only into Virginia history but into Foucault’s model as well. Ann Laura Stoler has argued that the transitions that Foucault outlines can be understood only if placed in the context of colonialism and colonized spaces: according to Stoler, it was in the colony that Foucauldian modernity took shape, specifically via the creation of race. Indeed, Stoler argues that Foucault, in his later lectures, himself recognized and discussed the importance of race in the deployment of sexuality. Stoler’s intervention into Foucault’s narrative is in part an attempt to reconstruct his chronology; this intervention is not about quibbling with dates, but instead to argue that the discourse of sexuality “was situated on an imperial landscape where the cultural accoutrements of bourgeois distinction were partially shaped through contrasts forged in the politics and language of race.”

other biological functions, including access to food and water, the egress of waste, and even the air we breathe. Foucault, *Security, Territory, Population*, 23.

867 Stoler, *Race and the Education of Desire*, passim. While she does not examine colonial spaces with specificity, philosopher Ladelle McWhorter has argued that race and sexuality were identically defined, emerging at the same time and in the same ways. McWhorter, “Sex, Race, and Biopower,” 38-62.

Sexuality. For example, colonial spaces were deeply concerned with recording, studying, and quantifying populations before that impulse was witnessed in Europe. This concern with population was rooted in colonial race relations: the colonial project focused on defining racial boundaries and policing sexual relations in thoroughly modern ways well before Foucault recognizes it happening in France. Specifically, Stoler sees Virginia's seventeenth-century laws forbidding interracial sex as a moment when both alliance and biopower coexisted in a colonial space: "While these injunctions were clearly legal and concerned with the conjugal couple – features that Foucault attributes to the apparatus of alliance – they also linked individual desires to social reproduction in ways that he dates for Europe a century later." Therefore, Stoler argues, transitions that Foucault sees as happening chronologically in Europe (e.g., first the deployment of alliance, then the deployment of sexuality) may have been far more blurry in colonial spaces, as the colonial project demanded both new ways of thinking and adherence to deeply held beliefs from home. We see in colonial spaces the first rumblings of process that would become manifest later in Europe.

To summarize, Foucault's understanding of modern state power as biopower is tremendously useful in understanding reproductive discourses in colonial Virginia print culture. With the rise of biopower and the discourse of sexuality, the modern nation state became focused on managing its population as a resource. Reproduction was central to national interests not just in terms of creating a large population (as in the discourse of prolific reproduction) but in managing that population. Ann Laura

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869 Stoler, Race and the Education of Desire, 42.
870 Stoler, Race and the Education of Desire, 40.
871 Stoler, Race and the Education of Desire, 41.
Stoler’s interjection of race and colonialism into this framework helps us to see that it was in colonial contexts like Virginia that this idea of managing a population would become especially important – colonial contexts became the proving ground for the rise of biopower. Colonial populations would be managed both in terms of policing racial categories (as we saw in chapters 1 and 2) and in terms of creating a colonial population in a so-called “empty” land. The colonial project required new, modern, scientific, and rational attention to reproduction in the interest of growing and managing a colonial and colonized population. Even so, Stoler’s recognition of the simultaneity of some discourses that Foucault saw as chronological helps remind us that this transition to rational reproduction would not be complete, sudden, or absolute. We will not see here the emergence of the full-blown bureaucratic state that Foucault describes. Instead, following Stoler, we will see in colonial Virginia a space where Foucauldian biopower could emerge in its earliest form. That said, as we will see, from nearly the inception of the Virginia colony and inspired by the exigencies of colonial life, a discourse of rational reproduction emerged parallel to the older discourse of prolific reproduction.

The earliest attempts at creating a stable colonial population in Virginia show the new reproductive discourses that colonialism inspired and required. As early as 1620, colony’s leaders used their power to shape the English colonial population not just in terms of growth but in terms of specific moral and economic concerns. During its earliest history, Virginia’s emerging colonial society was perceived as inherently immoral or amoral: one writer described the colony as “an unhealthy place, a nest of Rogues, whores, desolute and rooking persons; a place of intolerable labour, bad
usage, and hard Diet, etc.” These pronouncements countered the popular notion of Virginia as a fertile new Eden. In these harsh conditions, English settler men weren’t contributing to the colonial project: rather than participating in the “Noble worke” of creating a colony, these men were “esteeminge Virginia, not as a place of habitation but only of a short sojourninge.” In other words, by failing to settle permanently, these male colonists were working towards their own profits, not towards enriching the colony as a whole – these settlers were insufficiently colonial. A group of English investors resolved to send “young, handsome, and honestlie educated Maides to Virginia” to marry the reluctant colonists, and in 1621, 57 young women were sent to the colony. Significantly, there was no belief that the women themselves would provide a moral compass (this was an idea that would emerge much later). Instead, the investors hoped that the presence of women would help Virginia to approximate a civil society because it would “tye and roote the Planters myndes to Virginia by the bonds of wives and children.” In other words, by intervening in the private lives of the colonists through the encouragement of patriarchal family forms, the nascent colonial state hoped to engineer a more compliant colonial population and therefore a more profitable colony. While the goal was the birth of children, this was not prolific reproduction for its own sake (or for the glory of God); instead, patriarchal planter families were seen as the proper foundation for building a moral, permanent, lucrative colonial society. For example, when two unmarried “maids” got pregnant at sea in 1632, they were summarily “sent back again” to England – bastard children were not

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872 Hammond, Leah and Rachel, 3.
an acceptable addition to the colony’s new moral order. In Foucauldian terms, these are remarkably modern goals: the colonial state was implementing biopower, achieving economic goals through the organization and management of the population’s private, sexual, and moral lives.

The 1621 importation of women to the colony was not the only, or even the first, instance of the exercise of biopower in Virginia, but it gives a sense of how we must rethink the colony’s approach to reproduction, where prolific reproduction might help the colony grow, but rational reproduction would help the colony survive. Indeed, examining the laws of early Virginia reveals the ways that a modern, rational approach to population growth was present even in the early seventeenth century. From its inception, Virginia’s laws reflected the colonial state’s interest in exercising biopower to not just maximize the colonial population, but to rationalize that population through careful counting and record keeping. Where the discourse of prolific reproduction emphasized population growth for its own sake, the discourse of rational reproduction fundamentally reshaped the relationship between reproduction and the state. Rather than idealizing unfettered reproduction, the discourse of rational reproduction understood childbearing as measureable and controllable. In both the discourse of prolific reproduction and the discourse of rational reproduction, childbearing served the interests of the colonial project. But where the earlier discourse had simply idealized population growth, this new discourse saw reproduction as something over which humans and the state could and should exert control. This control came in many forms, but the most prominent was population measurement.

876 Hening 1: 552.
In *The History of Sexuality*, Foucault argues that demography became a central tool in modernizing the state’s approach to population – in order for the state to enact biopower, it would first have to measure and understand its population. European states transitioned from the “crudely populationist arguments of the mercantilist epoch” (such as Hammond’s exhortation that nations must “enlarge themselves”) to “much more subtle and calculated attempts at regulation that tended to favor or discourage – according to the objectives and exigencies of the moment – an increasing birthrate.”\(^877\) In the modern epoch, a population that simply multiplied was no longer ideal. Instead, the concept of population emerged as “an economic and political problem: population as wealth, population as manpower or labor capacity, population balanced between its own growth and the resources it commanded.”\(^878\) The rational and measured growth of population required deep attention to sexuality and reproduction because national strength was “tied not only to the number and uprightness of its citizens, to their marriage rules and family organization, but to the manner in which each individual made use of his sex.”\(^879\) For Foucault, the regulation of sexuality was key to the accurate measuring of population, and thus the strength of the nation as a whole.

Two interventions into the Foucauldian framework are necessary, though: a rethinking of reproduction in the Foucauldian narrative and an understanding of the centrality of race and colonialism in this chronology as well. Foucault elides reproduction here – it is understood, but barely stated by him, that the birth of children is the means by which populations grow. Yet, the regulation of not just

sexuality but of reproduction as well lies at the center of the rise of biopower.

Demographer S. Ryan Johansson reminds us that “nations, provinces, counties, communities, occupational groups, households, or couples do not have babies, except by courtesy of metaphor.” Further, if we recall Ann Laura Stoler’s argument that colonial spaces saw both of those epochs simultaneously, we can see how Virginia was beginning to focus on rational reproduction even as Europe continued to embrace prolific reproduction. By examining the legal discourses of early Virginia, we can see not only how reproduction fits at the center of the new modern view of population, but also how that modern view emerged in this particular colonial space.

This modern view of population emerged in Virginia’s attempts to regulate the tobacco market (in Foucault’s terms, balancing population growth against “the resources it commanded”), as well as the colony’s continued attempt to enumerate its laboring population (in Foucault’s terms, assessing its “manpower or labor capacity”).

From the moment the tobacco economy took hold in Virginia, the colony’s welfare was tightly linked to wildly fluctuating commodity prices. In 1630, the Burgesses attempted to regulate the tobacco market by deliberately trying to shrink the supply and thus raise prices, which had dropped precipitously following the boom of the 1620s. Planter were ordered to limit their crops to 2,000 tobacco plants “for every heade within his family including weomen and children.” Simultaneously, planters were ordered to plant and tend 2 acres of corn “for every head that worketh

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881 Morgan, American Slavery, American Freedom, 108.
882 Hening 1: 152.
the ground." 883 Along with these laws were regulations on merchants, as well as a requirement that planters make their own potash and saltpeter. 884 Edmund Morgan argues that these regulations were necessary in a boom economy in which "men would risk both prosecution and hunger in order to put their time into tobacco." 885 Yet these regulations reveal more than just an attempt to force planters to diversify their crops: the regulations were explicitly linked to population. Corn—the staple food crop in the colony—was needed to feed the laboring population, those who "worketh the ground." Tobacco, on the other hand, was the purview of planters, who were implicitly rewarded by the law for marrying and having children. The colonial economy rationalized resource distribution by linking it to population. These new laws sought a balance between resources and population: planters were enjoined to supply enough resources to support the laboring population, and were rewarded for raising the families that were believed to provide the colony with stability and permanence. Further, population growth was rewarded within particular moral and colonial parameters: the law limited tobacco production to legitimate, marital reproduction by landowners who participated in the plantation economy.

As the tobacco economy became more entrenched, Virginia used biopower not only to encourage families but to encourage the expansion of the laboring population through both importation and reproduction. The colony would continue to use the law to link population growth with economic growth, rewarding planters for the importation of servants and slaves. The headright system, first put into effect in 1617, promised 50 acres of land to any planter who paid for an indentured servant's

883 Hening 1: 152.
884 Hening 1: 150-1.
885 Morgan, American Slavery, American Freedom, 112.
passage to the colony. The headright system quickly allowed planters to consolidate their holdings into large plantations.\textsuperscript{886} According to Anthony Parent, planters took advantage of the headright system to fund their importation of slaves and consolidate their own interests.\textsuperscript{887} As discussed in chapter 1, these interests were further consolidated by the decision to enact the law of slavery by birth, wherein the colony’s economic future was specifically tied to the reproduction of the enslaved colonized population. At its root, the creation of a colonial population in Virginia was about more than just advocating prolific reproduction – the colonial population in Virginia was a product of deliberate economic policies that were focused on managing population growth in the interests of the colonial planter elite and the colonial state.

Rationalizing colonial population growth required bureaucratic record keeping. From the beginning of the colony, Virginia’s attempts to enumerate its population functioned as a means of measuring the expansion of colonial power. During the earliest years of the colony, population estimates focused on English immigrants and their children – those who could be considered full members of the colonial community. Nevertheless, as the colony grew, more detailed population records were needed precisely because the colonial project involved more than just English settlers. As we will see, detailed bureaucratic records provided a means to make sense of a population that included both colonizer and colonized. Virginia used an existing bureaucratic structure – the church – to enforce a careful and constant calculation of the colony’s population. Benedict Anderson argues that the census was a central tool of colonization, one which “profoundly shaped the way in which the


\textsuperscript{887} Parent, \textit{Foul Means}, 40-54.
colonial state imagined its dominion." In short, the colonial project required counting bodies and categorizing them according to race and servitude.

Empowered by the House of Burgesses, the Anglican church was the institutional record keeper in Virginia. Starting in 1619, complete church records of births, marriages, and deaths were required by law, and a keeping those records was a major component of ministers' work. Ministers were fined for failing to comply with the law. The logic behind these laws seems simple: to provide an accurate record of the inhabitants of the colony. Nevertheless, these records wove into numerous aspects of colonial life. Feminist political theorist Jacqueline Stevens argues that because demographic records document our most intimate relationships, "the state's relation to normal and deviant forms of being is not stenographic, but pornographic." Marriage and birth records expose the state's interest in defining what it considers normal kinship forms, while still meticulously recording kinship relationships that contest the norm. Therefore, the Virginia birth, marriage, and death records were not mere lists. They were central tools in enforcing legitimacy, the distribution of wealth, and emerging racial categories. In Chapter 1, I argued that Virginia's miscegenation laws made every birth suspect, since the circumstances of one's birth determined one's life-long inherited status; it was in the church records

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888 Anderson, Imagined Communities, 164.
890 There were no such cases in the York County records, but ministers in other counties were fined for failing in their duties. Ames, Accomac 1: 78-9; James, ed., The Lower Norfolk County Virginia Antiquary, 2: 12.
that these births were recorded. Thus, in the Charles Parish (York County) records, illegitimate births and births of free mixed-race infants were meticulously recorded.\textsuperscript{892} Birth, marriage, and death records were also necessary for regulating inheritance and taxation. Taxes were levied based on gender, race, and age, and accurate birth records were needed to insure accurate taxation; in the absence of good records, midwives could be called in to testify about births that happened years previously.\textsuperscript{893}

Ultimately, birth records were central to the policing of racial categories in the colony, as can be seen with the evolution of Virginia’s taxation records. Prior to the passage of the law of slavery by birth in 1662, tithing lists had included the ages of all male servants, so that servants under the age of 16 would not be taxable.\textsuperscript{894} With the passage of the 1662 law, and the shift from indentured to slave labor as the dominant form of labor in the colony, these lists were no longer sufficient. Therefore, in 1672, the counties were required to keep lists of “all negro, and molatto children, and slaves that shalbe borne in this country,” so that taxes could be collected from their masters.\textsuperscript{895} In 1680, this law was determined to be “too hard and severe” on masters, since small children were taxable “before they are capable of working.”\textsuperscript{896} The new law, which exempted masters from paying taxes on enslaved children until the child turned 12, required even more accurate accounting: all birthdates should be recorded,

\textsuperscript{892} See, for example, the birth of Abraham Combs or George James in CPR 67, 96.
\textsuperscript{893} For examples of age determination cases, see: York DOW 5: 92; York DOW 5: 117, 119; York DOW 9: 314, 328; York DOW 14: 70.
\textsuperscript{894} Hening 1: 361.
\textsuperscript{895} Hening 2: 296.
\textsuperscript{896} Hening 2: 479-80. In the same law, white indentured servants were determined to be taxable at the age of 14 years.
and any imported enslaved children would have their ages judged by the county courts.

This meant that ministers were required to keep comprehensive lists of enslaved and free people in the colony. Ann Laura Stoler argues that race is a “crucial colonial sorting technique,” and that these sorts of records were part of a colonial project set on devising clear lines between categories of people. Since 1619, ministers had been required to keep records of all christenings, marriages, and burials that they performed. Starting in 1713, those lists of christenings were expanded to include information on “every child which shall be born free,” as well as “every child which shall be born a slave.” This law makes clear that the ministers were not just to perform their religious duties, but to act as agents of the colonial state. The blurring of the religious and the governmental can be seen the 1714 accounting of births and burials in one parish: the minister categorized the births and burials as “Crist’d Males,” “Crist’d Females,” “Negro Slaves Males & Molatoes,” and “Negro Slaves ffemales & Molatoes.” For this minister, and arguably for the colony as a whole, whiteness (“Crist’d Males” and “Crist’d Females”) became a defining identity, as slavery and race coalesced to form a category of a colonized Other. Yet, that category of colonized Other required its own subcategorization – slaves, “Negroes,” “Molatoes” – which, though not fully sorted (to use Stoler’s term) by this minister, hints at the beginnings of this kind of colonial thinking.

Virginia’s approach to population and demography, then, was more complex than simply advocating for prolific reproduction. This is not to say that population

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897 Stoler, “Intimidations of Empire,” 2.
898 Hening 4: 42.
899 Palmer, ed., Calendar of Virginia State Papers, 1: 176.
growth was not a goal for the colony. When Governor William Gooch reported to the Board of Trade about the status in the colony around 1730, he proudly declared that “without all doubt the Inhabitants are greatly increased & in all likely hood will continue to do so.” As with other advocates of prolific reproduction, Gooch credited Virginia’s environment for easy reproduction: the colony was a place “where Nature furnishes the requisites of Life with less Labour & vexation than in many other Places.” But when it came to reporting the actual population of the colony and proposing policies to increase that population, Gooch shifted into the discourse of rational reproduction. “The Rules for computing” the colony’s population, Gooch explained, was “by a List of Tithables,” which included all white men older than 16 years old and all black men and women older than 16 years old. He then moved on to calculate that since there were 85,000 tithable white men and 40,000 tithable black men and women, then “therefore ye white women married & unmarried, & ye white & black children under 16” should be “treble [triple] the no. of ye white Tithables.” Using this method, he asserted that the population of the colony “will be about 135,000.” As much as prolific reproduction was natural in Gooch’s Edenic Virginia, actual population estimates depended on the colonial language of biopower. This colonial language required categorization of bodies: blacks were separated from whites, men from women, and children from adults. Further, it assumed that reproduction was rational: total populations could be estimated based on a sample. Colonial power required not just population growth, but state knowledge of not only

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900 “Virginia Under Governor Gooch: Queries from the Board of Trade to Governor Gooch, n.d. (probably 1730),” Virginia Magazine of History and Biography 3, no. 2 (1895): 119.
901 “Virginia Under Governor Gooch,” 119.
902 “Virginia Under Governor Gooch,” 118.
the size, but the racial composition of that population. While "a malignant Fever"
had recently "occasioned a Mortality in whites and Blacks," he hoped for population
growth both through importation of slaves and "the early marriages of the males & ye
aptness of ye Females for generation in both complexions." In other words, the
governor was confident that the colonial state both should and could encourage
childbearing – and the breeding of more slaves. Insofar as Gooch assumed easy
reproduction in an Edenic Virginia, he was confident that he could safely produce a
mathematical estimate of the population and the use of the power of the colonial state
to decrease deaths and increase births. The discourses of prolific and rational
reproduction were not only simultaneous, but mutually defined.

By the eighteenth century, this colonial discourse of rational reproduction was
reflected in the colony's print culture. As with Virginia's legal culture, the discourse
of rational reproduction existed in newspapers simultaneously with the previously
examined discourse of prolific reproduction. As we will see, the Virginia Gazette
participated in this new discourse, with its attendant focus on population and racial
categorization, but it did so within the particular context of colonial genteel print
culture. We've examined how the Virginia Gazette's content both reflected and
destabilized the discourse of prolific reproduction, where stories of multiple births
and large families were offset by stories of monstrous births. The discourse of
prolific reproduction was further destabilized by the same discourse of rational
reproduction that was present in Virginia's legal documents as the colony enacted an
early form of biopower. Within eighteenth-century print culture, rational

904 "Virginia Under Governor Gooch," 119.
reproduction reflected racialized ideas about population and colonialism, and it was central to the development of new gender ideologies.

The discourses of prolific and rational reproduction existed simultaneously in the *Virginia Gazette*; therefore, one place to see the discourse of rational reproduction was in stories of prolific reproduction gone wrong. As has been discussed, colonialism required categorization or sorting of people, and the records of the colonial state served as a means to enact this sorting. Therefore, some stories in the *Gazette* reframed prolific reproduction as threatening specifically because it could challenge categorization of births. For example, some stories of large families played up confusing familial relationships for their humor value. A 1752 story announced the double wedding of a Spanish ambassador and his son to the two daughters of a Danish baron. The marriages inspired the following "enigmatical Conundrum": "My Father is father of my Father: My Father Is Brother of my Sister: My Mother is Daughter of my Mother: My Mother is Sister of my Brother: My Wife is Daughter of her Sister: I am the Son of her Brother, and she is Great-Aunt of my Children." The announcement concludes, "All this is true without any Body being guilty of Incest," thereby raising the specter of incest while simultaneously denying it. Here, marriages that reflected the old world of alliance - royal marriages, arranged marriages, and marriages that too deeply intertwined family and politics - existed on the edge of propriety. Even as the Virginia gentry class itself was deeply embroiled

905 *Virginia Gazette*, Hunter #60, Feb. 20, 1752, page 3
906 For another example of confusing family relationships, see *Virginia Gazette*, Hunter #4, Jan. 24, 1751, page 3. For another example of foreign royal births as being ridiculous, see *Virginia Gazette*, Parks #34, March 25, 1737, page 2.
in such arranged marriages and family alliances, the practice was made unfamiliar by making it literally foreign here.

Another story, printed in one of the very first issues of the *Gazette*, similarly trades on the idea that prolific reproduction was foreign and boundary-crossing. It seemed that the dean of the cathedral at Orihuela, Spain, was not a man at all – the dean had “brought to Bed of Two Daughters.”\(^7\) Upon investigation, it was found that “this Lady for long Time disguised herself under the Ecclesiastical Habit, and embracing that State had several Benifices conferr’d on her, ‘til she was promoted to the Deanery.”\(^8\) Indeed, she seemed in line to become Pope! This story of gender-bending served several purposes. First, it certainly fit into the *Gazette*’s project of entertaining its audience with titillating stories that would inspire debate and conversation. That same issue of the *Gazette* was full of titillating notices: the pages included stories of cannibalism and murder as well. More importantly, the tale of the dean served a political purpose. On the page facing the story of the pregnant priest was an analysis of European politics, which reports a new alliance between “the Catholick Princes [of France and Spain, who] shall join their Forces, in order to drive the Turks out of Europe, and enlarge their Dominions on that Side.”\(^9\) These two stories, taken together, trade on English fears and derision of Catholicism – Spain and France were still considered threats to Virginia and to the entire British Empire.\(^\) Here, prolific reproduction was reframed as something ridiculous and foreign, but also threatening to the colony itself.

\(^7\) *Virginia Gazette*, Parks #6, Sept. 10, 1736, page 2.
\(^8\) Ibid.
\(^9\) *Virginia Gazette*, Parks #6, Sept. 10, 1736, page 3.
The most potent boundary crossing in colonial Virginia was transgressing the racial boundary. While racial slavery and the law of slavery by birth would seem to require prolific reproduction, we've already seen some of the ways that the growing slave population provoked anxiety among elite white readers. The discourse of rational reproduction helped to make sense of prolific childbearing that challenged the colony's emerging racial order. In 1752, the Gazette reprinted an account from the London-based Gentleman's Magazine of a "dissimilar Birth" that had occurred locally in Virginia: "A young Negroe Wench of Col. Mason's began to breed early, and had at the first Birth a Negroe Child. Soon after she was delivered of two, a Mulatto Girl, and a Negro Boy, named Austin."911 Births like this one posed a threat: what did it mean that racial boundaries were so easily blurred? By way of explanation, the Mason family believed the babies to be "of different fathers": the girl's "Negro Husband," and an overseer named Thomas Plum, who "kept Company with her, to the no small Uneasiness of her black Husband."912 The family explained the extraordinary birth by calling on their beliefs in black women's hypersexuality, black men's ineffectual and even feminine lack of control over black women, and a class-based suspicion of the overseer's access to black bodies. The writer of the Gazette article, J. Mercer, concurred with the family's conclusions about the children's parentage, but he offered a different set of evidence as his proof: scientific observation. He argued that "the Appearance of the Children was a Proof stronger than any Witness" that the twins had two different fathers.913 The boy, Austin, "was as black a Negro as I ever saw, and had short, curled, woolly Hair," while his twin

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912 Ibid.
913 Ibid.
sister was "white, with blue Eyes, and long black Hair, that reached to her Waist." According to Mercer, the new scientific language of racial categorization (focused on the specifics of skin color, hair texture, and eye color) provided the most potent explanation so that this "dissimilar birth" could be explained in a rational way. It was more important to Mercer to assert the absolute heredity of racialized body morphology than to entertain the possibility that racial categories could be imprecise. The discourse of rational reproduction defused the threat of prolific reproduction and reasserted racial binaries.

In these examples, prolific reproduction was refigured as a threat because it blurred the very categories that colonialism demanded be clearly separated. Rational reproduction stood in opposition to the ways that prolific reproduction signified loss of control, boundary crossing, and category blurring. Essentially, rational reproduction offered a way to reinterpret the world, and thus rethink the meanings of prolific reproduction. But, as we’ve seen with Virginia’s governmental language, the discourse of rational reproduction also stood on its own as an alternative to the discourse of prolific reproduction. J. Mercer’s reliance on scientific observation to interpret this cross-race birth reveals the ways that scientific language reframed understandings of birth and parentage and thus was central to the discourse of rational reproduction. Scientific language and changing ideas about marriage combined to set up rational reproduction as a new ideal for elite childbearing.

The discourse of rational reproduction could be seen clearly in eighteenth century scientific and medical culture. Numerous scholars have pointed to the ways that the scientific revolution reframed European and Euro-American understandings.

\[^{914}\text{Ibid.}\]
of reproductive processes. For Michel Foucault, the rise of scientific language about sexuality – a *scientia sexualis*, as opposed to the *ars erotica* of an earlier age – was part and parcel of the rise of sexuality as a discourse and the emergence of the modern era.\(^{915}\) Susan Scott Parrish has shown that, with the rise of scientific thinking, nature itself was fundamentally reconsidered, as both nature and the human body (including especially its reproductive functions) were reframed as rational, organized, and fundamentally understandable.\(^{916}\) Ludmilla Jordanova echoes this notion of rational reproduction, arguing that scientific discourses of reproduction (as opposed to earlier patriarchal discourses of generation) framed reproduction as rational and natural, thereby divorcing reproduction from religious frameworks and instead connecting it to nascent capitalism.\(^{917}\) The rise of rational reproduction had mixed impacts on women. Lisa Foreman Cody points to an interesting tension in the rationalizing of reproductive knowledges: even as print culture made reproduction "an area of knowledge available to all, attainable through 'rational-critical' means rather than personal bodily experience," that “rational-critical” knowledge model explicitly excluded older, women-centered bodies of knowledge.\(^{918}\) On the other hand, Susan Klepp has argued that rational reproduction gave women unprecedented

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\(^{915}\) Foucault, *History of Sexuality*, 53-70. Notably, Foucault firmly dates the emergence of a French *scientia sexualis* in the nineteenth century, though its roots are found in the medieval forms of the confession. Yet, as Laura Stoler argues, Foucault’s framework is itself colonialist, contrasting the West’s *scientia sexualis* with the *ars erotica* of an imagined East. Stoler posits instead that the emergence of a *scientia sexualis* was itself a product of the colonial project and colonial subjectivities. Stoler, *Race and the Education of Desire*, 14. The emergence of a scientific discourse of sexuality in eighteenth-century colonial spaces indicates again the ways that colonial spaces served as crucibles for the discourses of modernity. Foucault’s observation of the emergence of a scientific language about sexuality holds, yet the colonial limitations of his argument must be observed.

\(^{916}\) Parrish, “The Female Opossum,” 475-514.


control over their fertility as new reproductive discourses allowed women “to de-
emphasize bellies and to stress head and heart.”

The new focus on head and heart fundamentally transformed marriage in the
eighteenth century. This transformation required a rethinking of the relationship
between marriage and childbearing. As elite Virginians began to be suspicious of the
examples of prolific reproduction that threatened the colonial order, these same elites
were adopting a new gender ideology and concomitant marital practices that made
their own lives hew more closely to ideal presented by the discourse of rational
reproduction. Specifically, the new elite ideal of companionate marriage idealized
limiting fertility in favor of prioritizing the marriage relationship. Scholars have
outlined the rise of a companionate marriage ideal within both the upper and middle
classes throughout the Anglo-American world. Daniel Blake Smith argued that
“sentimental and sometimes passionate male-female relationships reflected the
growing importance in marriage during the eighteenth century of companionship and
the declining significance of property and lineage.”

The companionate marriage ideal, which demanded that women be sexually pleasing to men, existed in tension
with the demands of reproduction and motherhood, possibly contributing to a drop in
fertility at the end of the eighteenth century.

By emphasizing romantic love over financial bonds as the basis for marriage,
the companionate marriage ideal hews to the transition Foucault described from the
premodern deployment of alliance to the modern deployment of sexuality; thus we
see the connection between marital forms and political economy. A locally-produced

919 Klepp, “Revolutionary Bodies,” 910-45.
920 Smith, Inside the Great House, 135.
921 Klepp, “Revolutionary Bodies,” 928.
anonymous essay, published in the Gazette in 1738, argued that marriages should be based on romance, not property: “...the Reason why there are so many unhappy Matches, is not because Marriage is a miserable State in itself, or that the other Sex is less pleasant and agreeable than our own; but that Money is often married instead of the Person; that is, in other Words, Persons marry where they do not love.”

In the deployment of alliance, marriage upheld society by providing an orderly means to transmit wealth from generation to generation – these were the marriages that the writer in the Gazette critiqued when he opined “Money is often married instead of the Person.”

Within the new context of modern sexuality, marriage had a more complex, though still deeply political, set of purposes. Foucault argued that marriage and sex themselves were simultaneously disciplined and romanticized, as a new focus was trained on “the sensations of the body, the quality of pleasures, and the nature of impressions.”

Companionate marriage still had an economic basis – specifically, the reproduction and disciplining of more consuming bodies in capitalism – but that basis was less explicit than in the deployment of alliance. In other words, marriage gained new importance as it became the idealized, and sole, acceptable site for pleasure. The nuclear family became the place, in Foucault’s terms, “to anchor sexuality and provide it with a permanent support.”

What we see in the actual deployment of the companionate marriage ideal in eighteenth century Virginia print culture is the conscious emphasis on romance, friendship, and pleasure coupled with the remarkable invisibility of childbearing and

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922 Virginia Gazette, Parks #89, April 14, 1738, page 1-2.
923 Foucault, History of Sexuality, 106-7.
924 Foucault, History of Sexuality, 106.
925 Foucault, History of Sexuality, 108.
parenthood. An anonymous author in the *Gazette* proclaimed that “agreeable Conversation” is “one of the greatest Pleasures of a married Life,” and that men who deny women’s intelligence “over value themselves.” If witty conversation was essential to a happy marriage, perhaps children were not: the essayist never mentions children at all. The absence of any discussion of parenthood in that essay was not a fluke. Another description of an ideal wife (which ends with the plea, “O give me *such a Wife* – or give me *none*”) depicts a woman with every positive quality, including being “A gay *Companion* and a Friend *sincere*” – but never mentions children or motherhood. An essay reprinted from the *Universal Spectator* in the *Gazette* praised marriages that were rooted in sobriety, rather than passion, yet never mentioned parenthood as part of a happy marriage.

How does this invisibility of childbearing reflect the discourse of rational reproduction? Where children were mentioned, they were made abstract, and they were never numerous. The anonymous local writer of one long poem, entitled “The Wish,” described his ideal wife and family. The wife is described extensively and extravagantly: she was to be “witty, good natur’d, ever prompt to please,” have “Judgement,” and “converse with Ease.” She should “love” and “Desire” her husband “as Angels feel.” That love and desire would produce a “Brace” (or pair) of ideal children, in whose faces “bloom the Parental Grace.” In the companionate marriage ideal, women and children were meant to be a flattering reflection of the man. This sense that marriage should reflect upon the husband had some impact on

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926 *Virginia Gazette*, Parks #89, April 14, 1738, page 1-2.
927 *Virginia Gazette*, Parks #64, Oct. 21, 1737, page 3.
929 *Virginia Gazette*, Parks #48, July 1, 1737, page 2.
how Virginians understood their own relationships. For example, in the few obituaries published in the Gazette memorializing local women, the women were remembered primarily for their relationships with men.930

By making parenthood secondary to the marriage relationship, the companionate marriage ideal imagined that reproduction could be placed in human control, rather than in the control of God or nature. As a result of companionate marriage, English colonial women’s fertility rates dropped during the eighteenth century, especially among elite white women.931 Examining Virginia women’s letters from the end of the eighteenth century, Jan Lewis and Kenneth Lockridge posit that a drop in fertility among middle class and elite white women was precisely the result of new marital forms that prioritized the marital relationship over the parental one. Nevertheless, the new model had its costs: fertility dropped only when women and men began to believe that pregnancy was “pathological.”932 Literary historian Ruth Perry argues that the sentimentalizing of marriage in the eighteenth century served masculine interests by separating maternity and sexuality, and thus robbing women of their sexuality: “In the eighteenth century, maternity came to be imagined as a counter to sexual feeling, opposing alike individual expression, desire, and agency in favor of a mother-self at the service of the family and the state.”933 Historian Cynthia Kiener makes clear the continuing patriarchal impulses of companionate marriage: companionate marriage “combined a new appreciation for feminine sensibility, or improving emotion, with the more traditional assumption that the sole function of a

930 See, for example, Virginia Gazette, Parks #150, June 15, 1739, page 3; Virginia Gazette, Parks #480, Oct. 10, 1745, page 2.
931 Klepp, “Revolutionary Bodies,” 914-7.
933 Perry, “Colonizing the Breast,” 305.
wife was to serve her husband’s needs and interests.”\textsuperscript{934} The new ideal of 
companionate marriage enabled rational reproduction by pathologizing childbirth and 
reasserting in new ways patriarchal control in marriage. Foucault points out that “it 
was around and on the basis of the deployment of alliance that the deployment of 
sexuality was constructed.”\textsuperscript{935} In other words, while the deployment of alliance did 
give way to the deployment of sexuality, this was not a total or sudden replacement. 
If idealized marriage was set apart from childbearing, this made the stories of prolific 
reproduction suspect – prolific childbearing was, in a word, something \textit{other people} 
did.\textsuperscript{936}

Thus, stories of prolific reproduction gone awry – the dark-hued bodies of 
ships spewing their “Spawn” onto the shore, the cross-racial births of slaves, the 
cross-gender births of Spaniards, and the monstrous reproduction of both human and 
animal – were meaningful precisely because they contrasted so fully with the rational, 
even invisible, reproduction of the emerging ideal of the bourgeois, white, married 
couple. For Foucault, the legitimacy of the married couple was inextricably linked to 
silence, privacy, and domesticity:

The legitimate couple, with its regular sexuality, had a right to more 
discretion. It tended to function as a norm, one that was stricter, perhaps, but 
quieter. On the other hand, what came under scrutiny was the sexuality of 
children, mad men and women, and criminals; the sensuality of those who did

\textsuperscript{934} Kierner, \textit{Beyond the Household}, 28. 
\textsuperscript{935} Foucault, \textit{History of Sexuality}, 107.  
\textsuperscript{936} Foucault, \textit{History of Sexuality}, 126. 
not like the opposite sex; reveries, obsessions, petty manias, or great transports of rage.\textsuperscript{937}

A focus on discourses of reproduction in colonial spaces shows that to that list of scrutinized sexualities must be added the slave, the servant, the colonized body. Jennifer Morgan traces the ways that black women’s bodies, sexualities, and reproductivity stood “as evidence of a cultural inferiority that ultimately became encoded as racial difference.”\textsuperscript{938} Haunting the margins of the discourse of rational reproduction safely ensconced in companionate, bourgeois, legitimate marriages was the prolific reproduction of the colonized body.

The discourse of rational reproduction exposed the limitations of prolific reproduction in a colonial space. The colonial project required more than just population growth – that population growth needed to foster the long-term economic goals of the colony. Colonial population growth needed to adhere to categories of race and servitude. It needed to be measurable, so that colonial expansion and colonial success could be assessed. Within this new colonial context, prolific reproduction began to be seen as suspect, especially when it challenged colonial racial categories. A new ideal for marriage even went so far as to introduce rational reproduction within elite households, as fertility was limited in favor of a focus on the marriage relationship. Vestiges of the discourse of prolific reproduction remained, but the discourse of rational reproduction, which originated in colonial law, had made inroads into colonizers’ intimate lives. Prolific reproduction had become a sign of colonial inferiority, rather than a strategy for colonial domination.

\textsuperscript{937} Foucault, \textit{History of Sexuality}, 38-9.  
\textsuperscript{938} Morgan, \textit{Laboring Women}, 49.
By way of conclusion, a comparison between two eighteenth-century natural histories of Virginia will crystallize the distinctions between the discourses of prolific reproduction and rational reproduction, while still showing the threads that connected those two discourses. Robert Beverley’s 1705 book, *The History and Present State of Virginia*, presented his version of the colony’s history to that point, along with a description of the colony’s “Works of Nature,” a “true Account of the Indians,” and an account of the colony’s laws. The *History* is one of a long line of colonial texts that emphasized the colony’s natural fertility as a means to attract more immigrants. Thomas Jefferson’s *Notes on the State of Virginia*, first printed in 1785 and more widely published in 1787, was Jefferson’s attempt to catalogue his knowledge about the new state. Jefferson’s *Notes*, like Beverley’s *History*, offers to the reader a description of Virginia’s natural resources, people, and government. Where Beverley hoped to attract new immigrants, Jefferson hoped to advocate for his home state’s worth to the scientific community.

For both Beverley and Jefferson, the question of population, and thus the issue of reproduction, was a central concern in their representation of Virginia. Beverley’s text is steeped in the discourse of prolific reproduction: Virginia is a fertile, if underused, promised land, and the colony’s strength could be measured by the growth of its population. Jefferson’s book, on the other hand, is emblematic of rational reproduction: for Jefferson, ideal reproduction is measured, predictable, and controllable, and therefore the new state should manage and measure its population in

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order to grow. For both Beverley and Jefferson, their ideas about reproduction were deeply entwined with their colonial vision: where Beverley would advocate population growth through intermarriage between English settlers and Native Americans, Jefferson placed sexuality and reproduction at the center of his ideas about the racial differences between colonized bodies.

Beverley’s History, like so many other colonial booster texts, presents Virginia as an abundant garden, teeming with resources waiting to be harvested. Within the discourse of prolific reproduction, fertility was a natural expression of God’s favor. This fertility emerged from Virginia’s soil and was intrinsically devoted to the support and happiness of human civilization: “The Soil is of such Variety, according to the Difference of Situation, that one Part or other of it, seems fitted to every sort of Plant, that is requisite either for the Benefit or Pleasure of Mankind.”

With this soil as its foundation, Virginia exploded with such a “great Abundance” of wild fruits and other plants that Beverley confessed “I may not mention one half of what the Country affords.” Fish swam so thickly in the rivers that Indian “Boys and Girls wou’d take a pointed Stick and strike the lesser sort, as they Swam upon the flats.” Virginia’s “extream fruitfulness” extended to crops: “No Seed is Sowed there, but it thrives.” Beverley’s description of the fertility of the colony slipped easily into an eroticization of nature. Nature’s creations themselves unabashedly displayed the workings of reproductive sexuality: Beverley offered a description of an “extraordinary” flower that “resembled the Pudenda of a Man and Woman

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943 Beverley, The History and Present State of Virginia, 2: 32.
944 Beverley, The History and Present State of Virginia, 4: 77.
These natural wonders were placed in Virginia for mankind’s enjoyment. To any observer of nature, the colony was a pleasure garden where “all their Senses are entertain’d with an endless Succession of Native Pleasures [and] Their Eyes are ravished with the Beauties of naked Nature.”

This eroticism coexisted with Beverley’s view that Virginia was the promised land – a new Jerusalem marked by God’s extraordinary blessings. Beverley noted that Virginia was “very near the same Latitude with the Land of Promise”:

*As Judea was full of Rivers, and Branches of Rivers, So is Virginia. As that was seated upon a great Bay and Sea, wherein were all the conveniencies for Shipping and Trade; So is Virginia. Had that fertility of Soil? So has Virginia, equal to any Land in the known World. In fine, if any one impartially considers all the Advantages of this Country, as Nature made it; he must allow it to be as fine a Place, as any in the Universe.*

For Beverley, the teeming, sexualized fertility of Virginia’s natural environment was an expression of God’s will, a garden given to mankind. Even the Powhatans themselves seemed to anticipate this comparison of Virginia to Judea. Again linking fertility and Christianity, Beverley remarked, “children are not reckon’d a Charge among [the Powhatans], but rather Riches, according to the blessing of the Old Testament.” He further imagined that English settlers would also follow the path of the Biblical patriarchs. He tells the story of a remarkable English settler family

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comprised of "an ancient Woman" and her elderly husband who, like Sarah and Abraham, had a 12-year-old son.\textsuperscript{949}

The success of the English colony in Virginia depended on population growth that could take advantage of the extraordinary riches of the land. Colonial successes, for Beverley, were inextricably connected to reproductive successes. The birth in Roanoke of Virginia Dare, "the first Child there born of Christian Parentage," is linked in the text to the expansion of the colonial project.\textsuperscript{950} That birth occurred "on the same Occasion" as the baptism of Manteo, who Beverley claims was "the first Indian that was made a Christian in that Part of the World." These two auspicious events signaled the success of the colony: "This seem'd to be a Settlement prosperously made, being carry'd on with much Zeal and Unanimity among themselves." For Beverley, the birth of English settlers, the Christianization of Indians, and consensus among the settlers all signaled the success (however premature) of the Roanoke colony. Less tinged with later mystery is the first marriage performed in Jamestown. Beverley links this marriage to the growth of the colonial population: "Anno 1609, John Laydon and Anna Burrows were marry'd together, the first Christian Marriage in that Part of the World, and the Year following the Plantation was increased to near Five Hundred Men."\textsuperscript{951} Within the discourse of prolific reproduction, these two facts – the marriage and the growth in a colonial population – are not distinct, but instead inextricably linked.

Beverley's main concern was that Englishmen were failing to adequately make use of Virginia's many blessings. In the book's preface, Beverley states his

\textsuperscript{949} Beverley, \textit{The History and Present State of Virginia}, 1: 97.
\textsuperscript{950} Beverley, \textit{The History and Present State of Virginia}, 1: 9.
\textsuperscript{951} Beverley, \textit{The History and Present State of Virginia}, 1: 19.
hope that his book would inspire future English immigrants to Virginia to make the most of "the Excellencies of my Country," if only they (unlike their predecessors) would approach their work with "a due Spirit of Industry, and Management."\textsuperscript{952}

Unlike the English settlers, Virginia's natives did not need to rely on industry. They lived in an enviable and perfect state of nature, relying on the land for their sustenance:

This and a great deal more was the natural Production of that Country, which the Native Indians enjoy'd, without the Curse of Industry, their Diversion alone, and not their Labour, supplying their Necessities. The Women and Children indeed, were so far provident, as to lay up some of the Nuts, and Fruits of the Earth, in their Season, for their future Occasions. But none of the Toils of Husbandry, were exercised by this happy People, except the bare planting a little Corn, and Melons, which took up only a few Days in the Summer, the rest being wholly spent in the Pursuit of their Pleasures.\textsuperscript{953}

Berkeley worried, though, that exposure to the beauties and luxuries of the Virginia environment had made English settlers, like the Indians, averse to industry. Virginia Englishmen, he complained:

...depend altogether upon the Liberality of Nature, without endeavouring to improve its Gifts, by Art or Industry. They spung upon the Blessings of a warm Sun, and a fruitful Soil, and almost grutch the Pains of gathering in the Bounties of the Earth.\textsuperscript{954}

\textsuperscript{952} Beverley, \textit{The History and Present State of Virginia}, preface.
\textsuperscript{953} Beverley, \textit{The History and Present State of Virginia}, 2: 40.
\textsuperscript{954} Beverley, \textit{The History and Present State of Virginia}, 4: 83.
Beverley idealized Native Americans, but he did not imagine that Englishmen should reduce themselves to a state of nature. Instead, he hoped that his writing would inspire English settlers in Virginia to “make the most of all those happy Advantages which Nature has given them.”955

Ultimately, only the presence of women in the colony would guarantee the growth of the population. Once Englishmen were “settled [in Virginia] in a comfortable way of subsisting a Family, they grew sensible of the Misfortune of wanting Wives.”956 The men “excepted against the Indian Women, on account of their being Pagans.”957 This decision Beverley finds unfortunate, and it is on this point that he embarks on a fascinating counterhistory: he suggests that intermarriage between English men and Indian women would have been a boon to the struggling colony in its early years. Beginning with the marriage of Pocahontas and John Rolfe as his starting point, Beverley suggest that the English should have followed the Indians’ suggestion of further intermarriage between the two societies: “I can’t but think it wou’d have been happy for that Country, had [the English] embraced this Proposal.”958 Because it would have defused “the Jealousie of the Indians,” intermarriage would have prevented “most of the Rapines and Murders [the Indians] committed.”959 Ultimately, Beverley’s argument for intermarriage rested on his belief that intermarriage would increase the colonial population. First, Virginia could have avoided deaths by wars. The colonial mission of spreading Christianity would have been more successful, and therefore the wars of 1622 and 1644 could have been

955 Beverley, The History and Present State of Virginia, 4: 83.
957 Beverley, The History and Present State of Virginia, 4: 51.
958 Beverley, The History and Present State of Virginia, 1: 25.
avoided: "the Country would have been full of People, by the Preservation of the many Christians and Indians that fell in the Wars between them."960 Second, these Christianized Indians could have been absorbed into the colonial population, and their numbers increased rather than decreased. Third, immigrants would have been attracted to the colony by "so much Success and Prosperity," rather than repelled by "Frights and Terrors."961 Finally, Beverley hoped the colony "wou'd have been encreasing in Children to its Advantage."962 That these children would have ties to both the Indian and the English communities did not concern Beverley; by Christianizing the Indians, the English colonial presence and civilizing influence would override any vestiges of Indian culture.

While published in the eighteenth century, Beverley’s History was rooted in reproductive discourses of the earlier era. Beverley’s depiction of a hyper-fertile Virginia landscape reveals his adherence to the discourse of prolific reproduction, in which reproductive sexuality was godly and natural. Prolific reproduction fueled the colonial project and was a marker of colonial success. It was Beverley’s imagining of the colonial project that most reveals his commitment to the discourse of prolific reproduction. Rather than advocating separation of colonizer from colonized, Beverley imagined a colony that could absorb colonized people and thereby increase its numbers not only through avoiding wartime deaths but by embracing intermarriage and its resulting births. For Beverley, the noble Powhatans, who lived in a perfect state of nature, wanted only Christianization and civilization; the English, who brought both, wanted only greater numbers to truly tame the fertile Virginia
wilderness. Prolific reproduction, then, achieved multiple colonial goals: subduing of native populations, spreading Christianity through intermarriage, and increasing numbers of English-identified settlers.

Thomas Jefferson's vision of Virginia's environment and its population was radically different from Beverley's. For Beverley, fertility, nature, and God were all equally boundless and outside of his comprehension – plants were too numerous to name, animals too numerous to count. Jefferson's approach to nature is that of a scientist in the age of Enlightenment: God's plan was fundamentally orderly, and science provided man with the ability to understand the natural world. Contrary to Beverley's effusive prose admiring the fertility of the colony, Jefferson provides succinct catalogs of the observed plant, mammal, and bird species native to Virginia. These lists include common names and Linnaean designations for each species; the goal here was to both present an impressively long list of species and to fit those species into European scientific discussions that were deeply engaged in the categorization of knowledge. The fertility of Virginia did not result in innumerable creatures – instead, those newly discovered plants and animals simply needed to be studied, understood, and categorized.

Jefferson's lists of species place his discussion within the larger field of history. While Jefferson's natural history did argue for the fundamental fertility of Virginia and America at large, he does not make this argument by pointing to the teeming fecundity of its wildlife. Instead, within the discourse of rational

reproduction, Jefferson’s focus was on the relative size of animals. Jefferson took exception to the Comte de Buffon’s claim that animals in the New World were smaller than those in the Old. Jefferson dismantles de Buffon’s argument point by point, arguing that American animals, both wild and domestic, were either equal or greater in weight than their European counterparts. Jefferson found what he considered the most convincing evidence in the fossilized remains of the mammoth (an animal he was convinced was not extinct), which he noted was “the largest of all terrestrial beings.” The existence of the mammoth proved the fertility of the American climate: “[The mammoth] should have sufficed to have rescued the earth it inhabited, and the atmosphere it breathed, from the imputation of impotence in the conception and nourishment of animal life on a large scale....” Like his predecessor Beverley, Jefferson was arguing for the fundamental fertility of the American environment. Yet, rather than making a claim about the mere numbers of animals, Jefferson focused on the better quality (here, the increased size) of those animals. In his one lapse into the discourse of prolific reproduction, Jefferson allows that goats “are very prolific here, bearing twice or three times a year, and from one to five kids at a birth.” Yet he immediately shifts to a discussion of sheep, and how sheep in Virginia weigh much more than sheep in Europe. Jefferson may still have been impressed by prolific reproduction, but he built his argument around rational reproduction. Jefferson continued to imagine Virginia as uniquely fertile, but that fertility was channeled into more efficient, rational reproduction than the prolific reproduction advocated by Beverley.

966 Jefferson, Notes on the State of Virginia, 47.
967 Jefferson, Notes on the State of Virginia, 47.
968 Jefferson, Notes on the State of Virginia, 57, 87.
How did this reimagining of the fertility of Virginia impact Jefferson's discussion of Virginia's human population? It is here that we see most clearly Jefferson's immersion in the discourse of rational reproduction, in terms of his understanding of reproduction itself, the role of the state in managing it, and Virginia's continued colonial project. For Jefferson, human reproduction was fundamentally measurable and predictable, and thus controllable or manageable by the state. Not satisfied with simply calculating the current total population of the state (which he estimated at 567,614 in 1782), Jefferson focused his attention on the rate of population increase over time, which he was confident that was able "to calculate, with a considerable degree of precision."969 Jefferson allowed that the colony's population fluctuated greatly in the early years, but that it quickly became very predictable:

By the year 1654, however, it becomes tolerably uniform, importations having in a great measure ceased from the dissolution of the company, and the inhabitants become too numerous to be sensibly affected by Indian wars. Beginning at that period, therefore, we find that from thence to the year 1772, our tythes had increased from 7209 to 153,000. The whole term being of 118 years, yields a duplication once in every 27\(\frac{1}{4}\) years.... Should this rate of increase continue, we shall have between six and seven millions of inhabitants within 95 years.970

This is a remarkable assertion, for Jefferson was claiming that Virginia's population growth – which included free and enslaved immigration as well as births – was so

fundamentally uniform that it could be reduced to a rather simple calculation that could be used to predict future population growth, and thus inform state policy.

Population was inextricably connected with political representation in the republic, and therefore the state's interests lay in the proper management of population growth. Jefferson tacitly agreed that Virginia's population should grow, not least to provide enough people to work the land: "In Europe the object is to make the most of their land, labour being abundant; here it is to make the most of our labor, land being abundant." But by what means should the population grow, immigration or birth? Using his equation for estimating the rate of population increase, Jefferson theorized that it would take about 30 years longer for the population to reach 4.5 million through birth rather than through immigration. Even with this delay, Jefferson advocated population growth through "natural propagation" rather than rapid immigration. Jefferson opined that immigrants from monarchical Europe lacked the natural love of liberty held by native-born Americans. Suddenly exposed to Americans' "temperate liberty," immigrants and their children would mire themselves in "unbounded licentiousness." And, because these licentious immigrants would have representation in the population-based republican government, their presence would be disastrous to the republic: "They will infuse into [the legislature] their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass." For Jefferson, managing population growth had profound consequences in the post-Revolutionary world – consequences

971 Jefferson, Notes on the State of Virginia, 85.
973 Jefferson, Notes on the State of Virginia, 84.
974 Jefferson, Notes on the State of Virginia, 85.
975 Jefferson, Notes on the State of Virginia, 85.
that could threaten or strengthen the republic itself. Because native-born bodies were needed both to work the land and to outweigh non-native-born votes, Jefferson’s pronatalist, anti-immigrant policy implicitly depended upon white women’s childbearing to advance his economic and political vision for the nation. Jefferson was not making an argument for “republican motherhood,” in the sense of mothering being essential to the creation of republican-minded citizens. Instead, he was arguing for white women to birth citizen bodies in order to populate the nation: he was arguing for republican breederhood.

Implicit in Jefferson’s discussion of the effects of population growth on the republic was that his analysis was limited to the white population. This is a fundamental logical flaw in his argument. His estimate of the total current population of Virginia included both free people and slaves, but his discussion of future population growth and its impact on the republic took into account only full citizens and their dependents. Jefferson participated in a sort of colonial blindness here: he saw only white bodies when he imagined his ideal republic, but the development of that republic depended on the colonization and exploitation of colonized peoples, both African American and Native American. The expansion of the white population was necessarily embroiled in the growth of the enslaved population and the shrinking of the Native American population. When Jefferson did include enslaved and Native American peoples in his vision of Virginia, he did so within the discourse of rational reproduction by using fertility and population as a justification

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977 As Edward Said argued, the presentation of the colonial Other – “the Orient” in Said’s framework – was always about reflecting back the self-presentation of Europe itself. In this way, Europe was created by its colonies. Said, *Orientalism,* 12.
for racial hierarchy and separation. Fertility was fundamental to Jefferson’s theory of racial difference, and thus his vision of Virginia’s continued colonial project.

Contrary to his plan for white population expansion, Jefferson presented black sexuality and fertility as threats to the state. In concluding his discussion of the growth of Virginia’s population, Jefferson attempted to calculate the relative numbers of enslaved versus free people in the state. He found that slaves outnumber free people “nearly as 11 to 10.”978 The growth in the slave population was a result of their “mild treatment” and inherent fertility: “Under the mild treatment our slaves experience, and their wholesome, though course, food, this blot in our country increases as fast, or faster, than the whites.”979 What was the source of this hyperfertility? Jefferson described black sexuality, and thus black reproduction, as utterly opposed to the rational reproduction of modern sexuality: “They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation.”980 Masters exacerbated this uncontrolled sexuality: unlike the slaves of ancient Rome, who were segregated by sex, “Their situation and manners place the commerce between the two sexes almost without restraint.”981 Jefferson praised the end of the international slave trade as one means to limit the growth of the black population in Virginia, and he advocated a never-adopted plan to emancipate the slaves through colonization.982 The goal of this emancipation plan was racial separation – specifically, avoiding mixed-race births.

978 Jefferson, Notes on the State of Virginia, 87.
979 Jefferson, Notes on the State of Virginia, 87.
980 Jefferson, Notes on the State of Virginia, 139.
981 Jefferson, Notes on the State of Virginia, 141.
that would mar white families. Again comparing Virginia slavery to Roman slavery, Jefferson emphasized the whiteness of slaves in Rome:

Among the Romans emancipation required but one effort. The slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. When freed, [the slave] is to be removed beyond the reach of mixture.

Jefferson’s advocating of the end of slavery was intertwined with his adherence to the discourse of rational reproduction. The growth and survival of the republic depended on the birth of virtuous white citizens, which was being outpaced by the birth and importation of slaves. Managing the white population required removing this threat to its purity and dominance.

Jefferson treated the decline of the Native American population as a scientific curiosity that absolved English colonization and American expansion of responsibility for that decline. Like Beverley, Jefferson idealized the Indians as living in a perfect state of nature: “Their only controuls are their manners, and that moral sense of right and wrong, which, like the sense of tasting and feeling, in every man makes a part of his nature.” That very connection to nature was the source of the Indians’ demise, as it was insufficient to protect them from the ravages of

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983 The irony of this stance is hard to ignore, considering Jefferson’s own long-term relationship and fathering of seven children with the enslaved mixed-race woman Sally Hemings. Hemings was herself the half-sister of Jefferson’s wife, Martha Wayles Jefferson, and Hemings’ mother, Elizabeth Hemings, was the daughter of an English sea captain and an African woman. Needless to say, Jefferson’s personal life was marked in very real ways by interracial sex and interracial reproduction. Annette Gordon-Reed’s work plumbs the breadth and depth of the relationship between Jefferson and Hemings, its meanings in their time, and its continued resonance. Annette Gordon-Reed, “‘The memories of a Few Negroes’: Rescuing America’s Future at Monticello,” in Jan Ellen Lewis and Peter S. Onuf, eds., Sally Hemings and Thomas Jefferson: History, Memory, and Civic Culture (Charlottesville: University Press of Virginia, 1999), 236-254; Annette Gordon-Reed, The Hemingses of Monticello: An American Family (NY: Norton, 2008).

984 Jefferson, Notes on the State of Virginia, 143.

985 Jefferson, Notes on the State of Virginia, 93.
European colonization. Observing the tremendous drop in the Native American population in Virginia since the seventeenth century, Jefferson blamed “spirituous liquors, the small-pox, war, and an abridgment of territory,” which “to a people who lived principally on the spontaneous productions of nature, had committed terrible havock among them, which generation, under the obstacles opposed to it among them, was not likely to make good.”

These “obstacles” to generation, for Jefferson, are illustrative of the primary differences between the races. Jefferson believed that reproduction answered to rational human intervention: Indians’ failure to intervene to increase their own reproduction was the root of their failure to compete against the ravages of European colonization. While Jefferson rejects the Comte de Buffon’s characterization of the Indians as feminine and desexualized, he blames Native culture for failing to prioritize and facilitate sufficient reproduction to continue the population. Native women, Jefferson opined, “are submitted to unjust drudgery,” and therefore were less fertile than European women. Further, Native women actively sought to end their pregnancies: “they have learnt the practice of procuring abortion by the use of some vegetables and that it even extends to prevent conception for a considerable time after.” Like Beverley, Jefferson imagined intermarriage between Indians and English colonizers as facilitating population growth; unlike Beverley, Jefferson saw this boon as benefitting the Indians, not the English. When exposed to white culture – through the marriage of Indian women to white men, or the enslavement of Indian women – Indian women proved able to “produce and raise as many children as the

986 Jefferson, Notes on the State of Virginia, 96.
987 Jefferson, Notes on the State of Virginia, 58-60.
988 Jefferson, Notes on the State of Virginia, 60.
white women,” and, presumably, less likely to limit births through contraception or abortion.\footnote{Jefferson, \textit{Notes on the State of Virginia}, 61.} Ultimately, while Jefferson allowed that colonization had some effect on Native American populations, he placed blame for the drop in population on Native women’s bodies and actions:

To the obstacles then of want and hazard, which nature has opposed to the multiplication of wild animals, for the purpose of restraining their numbers within certain bounds, those of labour and of voluntary abortion are added with the Indian. No wonder then if they multiply less than we do.\footnote{Jefferson, \textit{Notes on the State of Virginia}, 61.}

For Jefferson, the drop in Native population was rooted in their racial difference, which he interestingly constructed as both natural and cultural. While Indians were too much like “wild animals,” and thus too exposed to the dangers of the natural world, their culture did not just fail to protect them from those dangers, it exacerbated them through abortion and contraception.

Jefferson’s analysis of the Native American population, along with his opinions about Indian fertility, was part of his adherence to the discourse of rational reproduction, and thus the American colonial project. In the chapter of \textit{Notes} titled, “Aborigines,” Jefferson placed Indians into the narrative of natural history and anthropology, and thus the Enlightenment scientific imaginary. In that chapter, Jefferson provided a general description of Indian culture, but he also attempted to catalogue and define Native American tribes. Like his charts of animal, plant, and bird species, Jefferson attempts to catalogue all past and remaining Virginia Native American tribes. Here, we see the most modern iteration yet of Ann Laura Stoler’s

\footnote{Jefferson, \textit{Notes on the State of Virginia}, 61.}
contention that race was a “crucial colonial sorting technique.”

Stoler argues that “racial thinking secures racial designations in a language of biology and fixity and in the quest for a visual set of physical differences to index that which is not ‘self-evident’ or visible – neither easy to agree on nor easy to see.” Jefferson’s categorization of Native groups both asserts their racial difference and places that difference into the discursive framework of biology. Jefferson argued that his main categories of Indians – the Powhatans, the Mannahoacs, and the Monacans – were illustrative of an ancient racial difference within the Native population. Observing the linguistic differences between the groups, Jefferson argued that “very possibly there may have been antiently three different stocks, each of which multiplying in a long course of time, had separated into so many little societies.”

Within those three main ethnic categories, Jefferson lists those tribes, or “little societies,” whose names were recorded by the English. Jefferson’s charts of Native ethnic groups, so similar to his charts of plant and animal species, placed Native American political groups into the same discursive field as biological categorization. Yet where Jefferson’s biological charts attempted to demonstrate the fertility and strength of Virginia’s natural world, the charts of Indian tribes were part of a colonial narrative of population disaster.

Beyond sorting Native Americans into discrete ethnic groups, Jefferson attempted to provide estimates of their populations. The information is laid out in two separate charts; the charts themselves are documents of the impact of colonization. The first chart includes a list of the tribes first encountered by the

991 Stoler, “Intimidations of Empire,” 2.
992 Jefferson, Notes on the State of Virginia, 92.
English, along with "their numbers when we first became acquainted with them" and again in 1669, "when an attempt was made by the assembly to enumerate them."\textsuperscript{993} Jefferson described the marked decrease between those two columns as "the melancholy sequel of their history...by which we discover that the tribes therein enumerated were, in the space of 62 years, reduced to about one-third of their former numbers."\textsuperscript{994} As to their current (1787) numbers, the Indians were marked by their disappearance. Of the Mattaponi, "there remain...three or four men only, and they have more negro than Indian blood in them."\textsuperscript{995} The Pamunkies were similarly devastated: they "are reduced to about 10 or 12 men."\textsuperscript{996} The Nottoways were the worst hit: "not a male is left. A few women constitute the remains of that tribe."\textsuperscript{997} Following this narrative of colonial population devastation, Jefferson's second chart of Native Americans provided "the nations and numbers of the Aborigines which still exist and a respectable and independent form."\textsuperscript{998} If Jefferson's charts served two purposes – racial categorization of Natives and a narrative of colonial population devastation – then this second chart would seem to imply that those projects were yet unfinished. Jefferson regretted the lack of specificity in this second chart, blaming "imperfect information, and sometimes...a greater or less comprehension of settlements under the same name."\textsuperscript{999} He did not mention the ways that America's colonial westward expansion would wreak similar devastation on these uncharted tribes. The collapse of the Native American population was the unspoken basis for

\textsuperscript{993} Jefferson, \textit{Notes on the State of Virginia}, 93-5.  
\textsuperscript{995} Jefferson, \textit{Notes on the State of Virginia}, 96.  
\textsuperscript{996} Jefferson, \textit{Notes on the State of Virginia}, 96.  
\textsuperscript{997} Jefferson, \textit{Notes on the State of Virginia}, 97.  
\textsuperscript{998} Jefferson, \textit{Notes on the State of Virginia}, 102.  
\textsuperscript{999} Jefferson, \textit{Notes on the State of Virginia}, 107.
Jefferson’s plan for the white population expansion that would fuel his vision of a republican nation.

For both Beverley and Jefferson, reproductive discourses were deeply intertwined with Virginia’s colonial project. For both, Virginia’s fundamental natural fertility was the root of the success of the colony and the state. For both, expansion of the white population was central to their understanding of Virginia’s history and their vision of Virginia’s future. For both, white fertility was embroiled in the colonial encounter between Europeans and colonized peoples, whether the removal of Native Americans or the enslavement of African Americans. In some ways, then, *The History and Present State of Virginia* and *Notes on the State of Virginia* were deeply similar texts. Yet by distinguishing between the competing discourses of prolific and rational reproduction, we see profound differences between the texts and their relationships to the Virginia colonial project. Where Beverley saw in Virginia a teeming Eden, Jefferson tamed that Eden with the scientific tools of Enlightenment rationality. Where Beverley celebrated population growth and saw in that growth Virginia’s colonial success, Jefferson sought to harness population growth in order to best serve the needs of the republic. And, finally, while Beverley’s version of colonialism would absorb Indians into the colony, Jefferson’s colonial vision was one of strict racial division.

The most significant difference between these two texts was the relationship between reproductive discourses and the colonial project. Where Beverley brought the discourse of prolific reproduction to his understanding of the colonial project, Jefferson’s use of the discourse of rational reproduction was shaped by the colonial
project itself. For Beverley, colonization was, at its most fundamental level, a process of populating empty lands – prolific reproduction would accomplish that task, and the goal of the colonial project was to facilitate population growth. The relationship between colonialism and reproduction for Jefferson was far more fraught. The process of colonization had decimated one colonized population – Native American – while multiplying another – enslaved Africans and African Americans. The white population was in danger of being infiltrated by immigrants who had little invested in the republican experiment. Simple population growth could no longer sustain what was now America’s colonial project. Instead, for Jefferson, reproduction must be rationalized – tamed by science and managed for the sake of the future of the republic.
CONCLUSION

Revisiting the Concept of Outlaw Reproduction

This dissertation began with the stories of three women and the babies they bore: the widow Mary Hubbard and her baby daughter, the enslaved woman Sarah and her unnamed child, and the servant Judith Clarke and her interracial baby. My methodology privileges stories like these: faced with an archive that is frustratingly silent about women’s experiences of pregnancy and childbearing, any glimpse of a moment of childbearing emerged as potential evidence of experiences lost over time. These stories serve not as mere illustration of my ideas, but as a foundation for my argument itself. Surely such stories offer glimpses of women – especially of non-elite women – whose voices might be silenced by the colonial archive. But the stories that populate this dissertation, with their multiple interpretations, their silences, and their evoking of the shifting power relations of the colonial world, also reveal the complexities of interrogating the history of women in the colonial past.

Why were these stories – bastard births, enslaved women’s births, interracial births – the ones that emerged from the archive? The reproduction that is visible in the colonial Virginia archive is the childbearing that was somehow understood to be extraordinary or troublesome. These were births that created problems that needed to be solved – the bastard child who needed support lest he or she become a burden on the community, the enslaved child who embodied both a profit and an expense to his or her master, the interracial child who defied colonial racial binaries. To explain this sense of colonial anxiety around such births, I introduced the concept of “outlaw
reproduction," which I used not just to label these births as occurring outside of the law, but to begin to explicate the complex relationship between reproduction, colonialism, and the colonial archive.

As outlined in the introduction, I define outlaw reproduction in three ways. First, we can consider outlaw reproduction in the literal sense: *juridical* outlaw reproduction included those births which the law defined as criminal. The people involved in this juridical outlaw reproduction were subject to punishment or censure. The concept of juridical outlaw reproduction allows for the possibility that such lawbreaking occurred in defiance of community rules and strictures – juridical outlaw reproduction encompasses both transgressive reproduction and the disciplining of those transgressions. The archival traces of these illegal or transgressive births lead us to the second definition of outlaw reproduction: *archival* outlaw reproduction refers to the ways that some births made their way into public view, despite the intimacy of birth and the fact that so much of women's lives, not just birth, is invisible in the archive. The concept of outlaw reproduction, then, encompasses the ways that births that broke the law (especially, but not exclusively, when the law was broken by non-elite women) would be recorded and thus available for historical analysis. This leads to the third and final definition of outlaw reproduction: *colonial* outlaw reproduction reflects the ways that the intimate relations embedded in reproduction could transgress colonial boundaries and hierarchies, thereby destabilizing the colonial project even as it was being constructed. In this conclusion, I trace the ways that all three of these definitions of outlaw reproduction wind their way through each chapter of the dissertation. I close with a defense of the
concept of outlaw reproduction as a revelatory way to understand not just the history of reproduction but the history of colonialism as well.

In Chapter One, I examined the centrality of discourses of reproduction to the solidification of race-based chattel slavery. I argued that Virginia's colonial lawmakers capitalized upon *juridical* outlaw reproduction in establishing the law of slavery by birth: lacking a direct precedent for inherited racial slavery in English common law, Virginia law was built on a precedent that linked fornication and bastardy law with servitude. The result was that enslaved women's births were reframed as outlaw by definition: fatherless and thus outside of patriarchal culture, inheritance, and power, enslaved children could now be understood as the chattel property of their masters. This reading of colonial law connects to the idea of *archival* outlaw reproduction – the moments when reproduction, normally silent, emerges in the archive. I argued that the amassing of discourse about enslaved women's reproductivity shows the centrality of childbirth to the construction of a colonial slave economy. It was childbirth that allowed masters to imagine not only that enslaved children were fatherless but that enslaved women's reproductivity made them fundamentally like livestock, and thus able to be treated as property. Further, because slavery and servitude rested on a foundation of reproduction, we are able to reconstruct some abbreviated glimpse of the cost of reproduction upon women's lives which would otherwise be invisible to us: the repeated extension of servant women's terms as punishment for their outlaw reproduction, and the vulnerability of enslaved women's lives and connections to their children because their reproduction was constructed as outlaw as well.
The overwhelming power of masters emerged in a slow process, of which the establishment of the law of slavery by birth was a major part. Thus, colonial outlaw reproduction – reproduction’s role in the construction and negotiation of colonial boundaries – allows us to see the ways that the discursive power of the master class was constructed and therefore never absolute. The conflation of race, servitude, and illegitimacy took decades to emerge in law and practice; a long period of competing practices predated the establishment of slavery by birth in law. Further, the attempt to police a binary definition of race would always fail, as interracial children lived as testimony to the permeability of that boundary. Finally, well after the 1662 law of slavery by birth was passed, masters had to deal with the consequences of their appropriation of enslaved women’s reproduction: the extended debate over how slaves should be categorized as property hinged, in part, on masters’ inability to fully rationalize and control the reproduction of enslaved people. In other words, even as Virginia’s master class worked to capitalize upon reproduction in service of colonial racial absolutism, outlaw reproduction destabilized those goals.

Outlaw reproduction is located more obviously at the center of Chapter Two, which investigated the transgressive possibilities of childbearing in a colonial space. There, I examined the destabilizing effects of juridical outlaw reproduction, especially bastard and interracial births. With its focus on the transgressive effects of reproduction, this chapter serves as a balance to the first chapter, which focused on the ways that reproduction could be disciplined and appropriated in the interests of the colonial project. This chapter expanded on juridical outlaw reproduction, allowing it to encompass not just births which were deemed illegal, but the ways that
entire lives could be constructed as "outlaw" due to reproductivity: interracial families, single mothers, and women who repeatedly committed bastardy all created lives for themselves outside of the narrow confines of colonial legality. Thus, we also see archival outlaw reproduction in this chapter – the ways that the colonial archive made some kinds of reproduction visible due to its outlaw nature. Therefore, interracial families and single mothers, because they were under the surveillance of the colonial courts, left considerable traces in the colonial archive. Colonial authorities needed to keep tabs on reproductive outlaws; because of this, we are able to understand the lives of those outlaws and their families, sometimes for generations.

This focus on transgressive reproduction emphasizes transgressive effects over resistant intents; in this, colonial outlaw reproduction helps us to see the ways that the colonial project could be undermined or destabilized. We would be remiss to see the colonial courts as hegemonic, or even internally consistent, institutions. Instead, throughout this chapter, we see the ways that colonial institutions like the courts changed courses, reconsidered cases, and even tolerated some outlaw reproduction, so long as these actions served the interests of the colonial project at large. The attempt, explored in the first chapter, to create an airtight system of race-based chattel slavery and attendant racial hierarchy, was undermined by the existence of individuals and families that gave the lie to such absolutism. Interracial children, free black families, and single mothers all transgressed the racial and status hierarchies so essential to the colonial project.

Chapter Three examined the meanings of power and knowledge in our understanding of outlaw reproduction. Again, we see the interplay of all three
definitions of outlaw reproduction. The epistemic knowledge that I explored in this chapter concerns the unspoken knowledge that women and men held about reproduction; this knowledge emerged from and reflected daily life and bodily experience. As such, the chapter is mostly concerned with archival outlaw reproduction, in which the private, intimate sphere of childbearing was recorded in court records, personal papers, and printed texts. The recording of such moments is doubly significant here: first, because the gender politics of childbearing meant that the birthing room was rarely open to the public eye, and second, because, by definition, episteme is the unquestioned, unspoken knowledge that is rarely put into words, much less recorded for posterity. Even the knowledge of midwives, the respected community experts in matters of reproduction, was learned via experience, not text, and therefore was rarely recorded. Therefore, any scraps of the reproductive episteme that survive in the archive are fleeting and must be read with deliberation and care.

With these caveats about the colonial archive in mind, the third chapter examined the other two definitions of outlaw reproduction as well. Because of their role as arbiters of knowledge about childbearing and reproduction in general, midwives’ and women’s expertise gave them a public role in adjudicating cases of juridical outlaw reproduction, especially bastardy, infanticide, and other questionable births. Thus, juridical outlaw reproduction allowed women to engage in the colonial outlaw reproduction that unsettled hierarchies and transgressed boundaries. Reproduction was a singular area in which women’s knowledge gave them public authority, and institutions like the court deferred to that knowledge. The intimate
relations of colonialism would transform and undermine this public role: childbirth became an intimate space for the negotiating of colonial power relations between mistress and servant, master and slave, and patriarch and dependant. The production of knowledge itself was itself a colonial endeavor in this instance, so that access to knowledge about childbearing was yet another way for planter-physicians to discipline the bodies of various colonial others.

The final chapter engaged with outlaw reproduction as a discourse of colonial power. In another framing of *archival* outlaw reproduction, here the colonial archive preserved particular stories and images of reproduction because that reproduction was central to representing the colonial project in both law and in print – stories of monstrous births fell alongside attempts to enumerate the colonial population as colonizers sought to make sense of the meanings of reproduction in a colonial space. Ultimately, this archive existed to frame and reframe colonial discourses as a form of *colonial* outlaw reproduction. In this chapter, the ways that colonial outlaw reproduction remade both understandings of reproduction and colonialism, as reproduction informed colonial discourses, and the experience of colonialism remade reproductive discourses. While early colonialism prized prolific reproduction to populate colonized spaces, a later colonial discourse emphasized the ways that rational reproduction could be used to discipline and enforce colonial hierarchies. The key difference between these two discourses was that the experience of colonialism reframed the meanings of outlaw reproduction: where the discourse of prolific reproduction imagined that the colonial project amounted only to populating an "empty" land, the discourse of rational reproduction saw that the outlaw
potentialities of reproduction needed to be contained and controlled in the service of the colonial project. Unrestrained reproduction – especially the reproduction nonwhite, colonized bodies – could sate the plantation economy’s demand for labor, but unchecked, such outlaw reproduction could undermine racial hierarchies, and, after the Revolution, threaten the infant republic. Therefore, we see the underlying reasons for the need to police and discipline juridical outlaw reproduction: bastard births, interracial births, and even prolific reproduction could destabilize the colonial project as a whole.

It is the multiplicity of the concept of outlaw reproduction that makes it a useful tool for understanding the colonial past. The juridical sense of outlaw reproduction encompasses both the efforts of the law to discipline bodies, and the ways those bodies transgressed lines of power and knowledge. The archival sense of outlaw reproduction points to both the limitations and the opportunities of the colonial archive: reproduction was a space of silence in the archive, so when stories of childbearing were spoken, they are potent textual ruptures. The colonial sense of outlaw reproduction emphasizes the ways that reproduction was central both in the creation of colonial projects, and in moments when that project was undermined. In a sense, reproduction became visible in the colonial archive by necessity: moments of outlaw reproduction transgressed boundaries, destabilized epistemic frameworks, and unsettled the colonial project.

It is so obvious as to be virtually unspoken that the British colonial project in Virginia utterly depended on the reproduction of peoples for its success. The settlement of a permanent colony, the displacement of the native population, the
creation of a labor force for the emerging plantation economy – these could not happen through the transport of bodies alone. Colonialism happened via the reproduction of bodies, and via the disciplining of those bodies within colonial hierarchies of status, servitude, and race. It goes without saying that colonialism happened via women’s bodies – this dissertation strives to interrupt that silence.
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