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Law and Women in the Seventeenth-Century Courts of York County, Virginia

Linda Lee Sturtz

College of William & Mary - Arts & Sciences

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LAW AND WOMEN
IN THE SEVENTEENTH-CENTURY COURTS OF
YORK COUNTY, VIRGINIA

A Thesis
Presented to

The Faculty of the Department of History
The College of William and Mary in Virginia

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

by
Linda L. Sturtz
1987
APPROVAL SHEET

This thesis is submitted in partial fulfillment of the requirements for the degree of

Master of Arts

Linda L. Sturg

Author

Approved, May, 1987

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Robert Palmer, Marshall-Wythe School of Law

Kevin Kelly
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In addition, the writer would like to thank members of the Colonial Williamsburg Department of Historical Research for their help. Members of the York County Project, especially Cathy Hellier, Peter Bergstrom, and Kevin Kelly were helpful in introducing the writer to the contents of the York County Court records and in permitting the writer to use their unpublished research reports. John Hemphill provided insights into the workings of Virginia politics. David Konig, of the Legal Traditions project, provided guidance in the law and government of colonial Virginia. Gail Terry, formerly of Colonial Williamsburg, was an important resource for discussing women's history.

Finally, the writer thanks her parents for their moral support while she researched the court records, lost computer data, and wrote the final paper. This paper is dedicated to them.
This paper examines the cases concerning women in the seventeenth-century court of York County, Virginia to determine how the local administration of law reflected and reinforced women's social status. A computer generated database of the cases concerning women in the York County records provided the primary source material for analyzing how women interacted with the law.

The thesis begins with background material comparing the law in England and Virginia during the seventeenth century. The distinctive demography of York County, which proves important in analyzing the development of women's legal roles is discussed here as well. Chapter One outlines the numbers of women who appeared in each type of case, providing the framework for understanding the cases in a quantitative context. Chapter Two, "Criminal Defendants" discusses women who appeared in court as deviants acting outside the norm of expected behavior. Chapter Three on civil defendants examines the court's expectations for women in managing their own and their family's legal affairs.

Women took a fairly active role in the court as civil litigants and had a success rate similar to men when they appeared in civil suits. The court forced women as criminal defendants to adapt to the community's accepted standards of behavior. In governing women as criminal defendants and civil litigants, the law adjusted from the English example to meet the demographic and economic setting of seventeenth-century York County.
LAW AND WOMEN

IN THE SEVENTEENTH-CENTURY COURTS

OF YORK COUNTY, VIRGINIA
INTRODUCTION: WOMEN AND THE LAW IN SEVENTEENTH-CENTURY VIRGINIA

In seventeenth-century Virginia, women appear in court in many different roles--as civil plaintiffs and defendants, in instances where women used the court to record agreements and transactions, and as defendants in a variety of criminal cases. The records from the York County court in Virginia demonstrate the influence of law in the lives of women during the seventeenth century and how the law changed to meet the context of the county in the seventeenth-century. These records permit a better understanding of women's lives in the seventeenth century by showing how law structured the lives and social interactions of women, how women made use of legal processes available to them to structure their own activities, and how the law adapted to the York County setting.

Men were more involved with the legal system than women were. The courtroom population, including the justices of the peace, the court clerk, and the jurors, was consisted predominantly of men. Men brought most of the official county business to court--whether they were collecting their rewards for wolves' heads or receiving payment for their service in county offices.

In addition to more frequent appearance in official capacities in the courtroom, men interacted with the legal system more often than
women.\(^1\) In a sample of cases brought before the York County Court

\(^1\)These statistics are based on a sample of cases. I took one 
year from each decade between 1640 and 1690 to determine the 
distribution of cases between men and women. Plaintiffs included 
civil plaintiffs while defendants included civil and criminal 
defendants. "Other" included matters brought to court which did not 
involve litigation. Examples of this type of case were 
administrations of wills or recording an indentured servant's age to 
determine when the servant would be free. The sample year ran from 
October to the following September in order to avoid gaps in the 
courts records. The years were: 1647-8, 1657-8, 1667-8, 1677-8, and 
1687-8. Table two summarizes the results of these five tables. 
There are no court records for October 1677. The breakdown of cases 
is recorded in Table 1.

The tables indicate that women's participation in court cases 
increased from the 1648 low of women appearing in one case for every 
15.2 cases in which a man appeared. In 1687, women appeared in one 
case for every 9.0 cases in which a man appeared. These statistics 
are misleading in describing how litigious women were. As indicated 
on Table 3, women made up a smaller percentage of the population in 
1647 than they did in 1687. Assuming that there was only one woman 
for every 2.5 men in 1647 and one woman for every 13 men in 1687, 
the chances that any individual woman would appear in court was 
higher in 1647. [These figures are estimates based on the 
information in Table 3.] Women were less frequent court participants 
in relation to their numbers in the total population that they were 
in 1647, appearing in 1 in 6.8 cases in 1647 and only 1 in 10 cases 
by 1687.

\textbf{1647 Situation}

a.) 15.2:1 cases involving men:cases involving women 
b.) 2.5:1 men:women in the population 
c.) 6.8:1 a/b=likelihood that any given man would appear in 
court in 1647:likelihood that any given woman would 
appear in court in 1647

\textbf{1687 Situation}

a.) 13.1:1 cases involving men:cases involving women 
b.) 1.3:1 men:women in the population 
c.) 10.1:1 a/b=likelihood that any given man would appear in 
court in 1687:likelihood that any given woman would 
appear in court in 1687
Table 1
Ratio of Cases Concerning Men to Cases Concerning Women in the individual years 1647, 1657, 1667, 1687, and 1697

<table>
<thead>
<tr>
<th></th>
<th>October 1647 to September 1648</th>
<th>October 1657 to September 1658</th>
<th>October 1667 to September 1668</th>
<th>November 1677 to September 1678</th>
<th>October 1687 to September 1688</th>
</tr>
</thead>
<tbody>
<tr>
<td>pit</td>
<td>10</td>
<td>311</td>
<td>31.1</td>
<td>11</td>
<td>188</td>
</tr>
<tr>
<td>deft</td>
<td>17</td>
<td>301</td>
<td>17.7</td>
<td>14</td>
<td>183</td>
</tr>
<tr>
<td>other</td>
<td>16</td>
<td>53</td>
<td>3.3</td>
<td>28</td>
<td>78</td>
</tr>
<tr>
<td>witness</td>
<td>3</td>
<td>33</td>
<td>11.0</td>
<td>13</td>
<td>43</td>
</tr>
<tr>
<td>total</td>
<td>46</td>
<td>698</td>
<td>15.2</td>
<td>54</td>
<td>476</td>
</tr>
</tbody>
</table>
between 1647 and 1688, men appeared 10 times more often than women. Men were plaintiffs 18.2 times for every female plaintiff, were defendants 15.4 times as often, acted as witnesses 4.6 times as frequently, and served in other capacities 2.8 times as often as women did.

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
<th>Men:Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plaintiff</td>
<td>58</td>
<td>1058</td>
<td>18.2</td>
</tr>
<tr>
<td>Defendant</td>
<td>74</td>
<td>1139</td>
<td>15.4</td>
</tr>
<tr>
<td>Other</td>
<td>95</td>
<td>263</td>
<td>2.8</td>
</tr>
<tr>
<td>Witness</td>
<td>37</td>
<td>170</td>
<td>4.6</td>
</tr>
<tr>
<td>Total</td>
<td>264</td>
<td>2630</td>
<td>10.0</td>
</tr>
</tbody>
</table>

Even if women participated in court activities less frequently than men did, historians must study the ways the legal system affected women's lives. The hundreds of cases with references to women's activities in court describe women's lives within the context of the seventeenth-century legal system. Colonial law provided a forum in which women appeared in public as responsible actors and reprehensible deviants.

Studying women's legal activities enhances historical understanding of the public roles of women. Historians have examined women's lives primarily in the private setting of the home. In a survey of the literature concerning women in the recent historical literature, Hilda Smith found that historians concentrated their studies on women's roles in the family, in biologically determined life cycles, and in their relationships to one another. Women's roles within public institutions and their relationships to men outside the family
have received less attention.\(^2\) The court documents reveal the duties women undertook outside the familial setting. Women often acted in the public arena of the courtroom in order to preserve family interests. In the seventeenth-century, at least, understanding even the private roles of women proves incomplete without knowledge of women's public activities in the court.

Before turning to specifically female activities in the legal system, one first must understand the geographic and demographic setting in which women acted. In addition, one must understand the English seventeenth-century origins from which Anglo-American law developed.

In establishing North American settlements, English colonists created new cultures. The English life left behind, tempered by the environment of the new location, became an amalgamated culture which was largely innovative. Both the old and new cultures relied on a system of law to provide order to their society. What is of concern here is how the new legal system defined the role and status of women in the Virginia settlement. Given certain environmental restraints and cultural traditions, how did colonists define the role of women? Specifically, how did local administration of law influence the lives of women?

Outside of newly established utopian villages, people rarely create

completely new cultures, but in certain periods and places, people develop innovative social structures. In nations experiencing political revolution, social and political traditions may change radically. Likewise, seventeenth-century Virginians had every opportunity to change their political institutions. But did they?

To study the roles of ordinary women, I wished to observe the administration of law as it affected women at the most local level—the county setting. York County, in tidewater Virginia was selected for several reasons. York County has a fairly complete set of court records compared to other Virginia counties. Parts of the records are torn, some appear only as transcriptions, and complete court sessions are lost. But compared to other Virginia counties the records are well preserved.³

York is significant, too, because it was one of the first counties formed in Virginia. In an attempt to create local systems of social control, the general assembly first created "plantations," with administrative powers over concerns of the vicinity. During the first years of settlement commanders or magistrates possessed the authority to make decisions concerning local matters.⁴

The most dramatic tale of the survival of the York County records concerns their burial in an ice house during the War Between the States. There, the records rotted peacefully rather than being burned in Richmond with most of the other records sent to the Confederate capital for safe-keeping.

In 1624 the assembly established "monthly courts," the antecedent to county courts, in two locations, Charles City and Elizabeth City. In a March 1629 law the courts were described as being for the greater ease of the inhabitants of diverse parts of this colony, and for the better conservation of the peace, and due execution of such laws and orders as are or shall be established for the government of the people and its inhabitants in the same.

The assembly commissioned a court with a quorum of three to hear disputes over goods valued at up to one hundred pounds of tobacco. The courts could fine and punish, but not take life or limb. Both plaintiff and defendant retained a power to appeal to the governor and council at James City. The value of the cases which could be heard in the monthly courts varied over the course of the seventeenth century, but the courts remained a place where smaller cases could be determined locally. Each county was to have a lieutenant, a sheriff "the same as in England" and sergeants and bailiffs "where need requires."

In 1634 the assembly further divided the colony into eight "shires"

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5 Craven, Southern Colonies, I, p. 168.


7 A more complete history of the activities of the York County court will be forthcoming in David Konig's study of the court in the colonial era.

8 Hening, I, p. 224.
which were to be "governed as the shires of England." Charles River County, York's first name, was one of these first shires.

Historians have had difficulty in determining the population in the county in part because of the splintering of the county. In its first years, York County included land on the Rappahannock and Potomac Rivers as well as lands on both sides of the York River, including present day Gloucester County. York lands later were divided and subdivided to form the counties of Gloucester, New Kent, King and Queen, Lancaster, Middlesex, Rappahanock, Richmond, and Essex. As a base figure, Edmund Morgan has estimated that 510 people lived on York lands in 1634. More problematic yet is the determination of specific demographic statistics. Of particular interest is the sex ratio. Lois Carr and Lorena Walsh have suggested that for Maryland at least the imbalanced sex ratio enhanced women's status in the seventeenth century. As the sex ratio became increasingly balanced at the end of the century, women had less legal bargaining power before marriage in the form of pre-marital agreements. To discover the relationship between women's legal position and their representation in the population, their frequency to the total population must be calculated.

9Hening, I, p. 223.


12Lois Carr and Lorena Walsh, "Planter's wife" p. 569.
TABLE 3
IMMIGRATION
to Virginia in the Seventeenth-Century

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>MEN</th>
<th>WOMEN</th>
<th>MEN per WOMAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>1625 muster population</td>
<td>333</td>
<td>100</td>
<td>3.33</td>
</tr>
<tr>
<td>1635 emigration from England</td>
<td>1728.7</td>
<td>201</td>
<td>6.15</td>
</tr>
<tr>
<td>1643 emigration on the ship, Unity</td>
<td>73</td>
<td>37</td>
<td>1.97</td>
</tr>
<tr>
<td>1683 indentures from Middlesex County England</td>
<td>145</td>
<td>37</td>
<td>3.92</td>
</tr>
<tr>
<td>1654-1679 emigration from Bristol to Virginia</td>
<td>3524</td>
<td>1168</td>
<td>3.03</td>
</tr>
<tr>
<td>1644-1651 headrights</td>
<td>3240</td>
<td>879</td>
<td>3.69</td>
</tr>
</tbody>
</table>


TABLE 4
York County Population in 1698

<table>
<thead>
<tr>
<th></th>
<th>MEN</th>
<th>WOMEN</th>
<th>RATIO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1698 adult white</td>
<td>487</td>
<td>390</td>
<td>1.25</td>
</tr>
<tr>
<td>York County population</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

from Kevin Kelly, "Demographic Description of Seventeenth-Century York County," unpublished research report, Department of Historical Research, Colonial Williamsburg Foundation, p. 18.
According to the 1625 muster lists, Virginia's population in that year consisted of 333 men and 100 women. The combined effects of birth, death, and additional immigration during the seventeenth century maintained an imbalance in the York County population, though the population approached parity by the end of the century. Immigration to Virginia perpetuated the imbalance, because during the century at least three men arrived in Virginia for every woman. Death worked to tip the balance more evenly because the death rate was higher for men than women. Births likewise worked to balance the ratio because approximately the same number of girls were born as boys. When natural increase replaced immigration as the primary contribution to the population, the number of women could begin to equal the number of men. Edmund Morgan found that in Charles Parish of York County in the years between 1665 and 1700 births numbered 746 while deaths reached 650.

The balancing began during the end of the seventeenth century, though the population remained slightly imbalanced even at the end of the period under study. Kevin Kelly estimated that in 1698 487 free white adult men lived in York while only 390 free white adult women

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14 See tables 3 and 4.


resided in the county. Thus, the imbalance continued past the 1648-1690 scope of this paper, though the 1698 ratio of 125:100 men to women in York County was much more balanced than the Virginia-wide 333:100 ratio of seventy-three years earlier. The number of women gradually approached the number of men.

While demographic determinism cannot be held accountable for all the changes in how women participated in the legal system, the drastic change in the population composition surely had similar effects in York County, Virginia to those Lois Carr and Lorena Walsh found in Maryland during the same period. Demography must be taken into consideration in discussing the legal position of women in seventeenth-century Virginia.

The evolving legal position of women was part of the development of a new system of colonial law. When the English colonists came to Virginia in 1607, they brought various notions about how their society was to innovate--creating some kind of new, better society. Much of their law retained traditional aspects of English law when the colonists held on to old familiar ways of doing business and solving disputes. The system of law which the colonists chose was one aspect of their new culture. Throughout the course of the seven-

---

18 Kevin Kelly, "A Demographic Description of Seventeenth-Century York County," unpublished research report, Department of Historical Research, Colonial Williamsburg Foundation, p. 18. This table shows the sum of both native and immigrant populations. Immigrant men continued to outnumber women. As the native population outnumbered the immigrant population, the immigrant imbalance would have less effect on the ratio of men to women in the total population of York County.
teenth century, colonists accepted and rejected different aspects of English law according to their goals for settlement in America.
Since the law prescribed society's expectations for the roles and duties of women, law provides a view of how women were expected to live in the seventeenth-century colony. In addition, the procedures of legal actions were the tools by which colonists conducted business, and women had to learn to use legal processes to accomplish their tasks.

The official policy of England with regard to colonial law was simply that it was to conform to English law. According to the Letters Patent of 1606 for the formation of the two colonies of Virginia, the president and council of each colony were to "make and ordaine such constitutions, ordinances, and offices, for the better order, government and peace of the people," as long as punishment did not involve life or limb.\(^{19}\) However, the enacted laws were to "stand with, and be in substance consonant with the lawes of England."\(^{20}\) By 1609, the phrase was altered so that statutes, ordinances, and proceeding were to "as near as conveniently may be, be agreeable to the laws, statutes, government, and policy of our realm of this England" permitting some room for local variations.\(^{21}\)

Unfortunately for historians, English law in the seventeenth-


\(^{21}\)Hening, Laws of Virginia, v. 1, p. 96.
century presented no unified system of codes after which the colonists could model their laws, even had the settlers been so inclined. Different local courts in England oversaw actions based on the traditions of the vicinity. In addition to the ever-changing common law and variants in local law, ecclesiastical law still held force in seventeenth-century England. Ecclesiastical courts had jurisdiction over the probate of estates, and thus oversaw matters of assigning dower, an issue which was obviously of great concern to women. A multitude of courts, laws, and remedies were available for export to the American colonies. The colonists' selection of which to accept was based on ideology, ignorance, personal gain, and environment, with the result that different new world colonies created different systems of law. The variety of law that developed in the different colonies further highlights the ways the selective adoption of aspects of law could affect the status of women.

As well as developing separate bodies of law with distinct purposes, different colonies varied in their systems of equity justice. Traditionally, equity was a type of petition for sovereign intervention in deciding cases, and was used when petitioners considered that their cases would not be judged fairly under common law. Someone might have turned to equitable jurisdiction if she

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feared the jury would be intimidated or corrupted by a powerful opponent. Originally equity was not a means of escaping the law; rather, it was a way of insuring justice in cases involving peculiar circumstances. By the seventeenth century, equity was seen as circumventing justice rather than preserving it, and was suspect in the same way all discretionary powers were suspect.

In Virginia, beginning in 1645, a defendant could request equity for cases to be heard in way of chancery anytime before proceedings began on the issue. The case would then be kept from common law until the defendant "answered the particulars of his petition on oath and the cause heard accordingly." The commissioners then decided whether they would permit the case to be heard in equity or not. If not, the case was sent to be heard by common law.

Equity jurisdiction may seem like a trivial technicality, but historians of women's legal status are concerned with which aspects of English law the colonists adopted because each system of law stipulated different, even contradictory, roles for women. By common law, married women did not exist as legal beings independent from their husbands. The Lawes Resolutions of Womens Rights (1632) described the status of married women under the common law in the following manner:

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25Milsom, Historical Foundations, p. 91.
26Hening, Laws of Virginia, v. 1, p. 303.
It is true that man and wife are one person; but understand in what manner. When a small brooke or little river incoporateth with Rhodanus, Humber, or the Thames, the poor rivulet looseth her name; it bearith no say; it possesseth nothing during coverture. A woman as soon as she is married, is called covert... clauded and overshadowed she hath lost her streams.27

Wives' covert status was justified because Eve seduced Adam in Eden. As a result, "the common laws here shaketh hand with divinitye" in limiting the legal powers of women.28

Under equity, a married woman maintained more legal powers than she had under the common law covert status of wives. In England, the harshness of the common law's stance toward married women was mitigated by the potential resort to local custom or equity. In America by equity, married women maintained rights of proprietorship as well as other rights until the second half of the eighteenth century.29

Each colony's selection of laws affected women's lives. In studying the New England puritans, Lyle Koehler found that they relied heavily on "those elements of local and customary law which did not threaten the male need for power," thus adopting elements of


common law over equitable solutions. Historians have adopted various suggestions as to why the puritans avoided equity in creating their system of law. The puritans who wished to see a specific code of laws with concrete resolutions and punishments found the ambiguity of equity difficult to accept. In England certain factions attempted to phase out equity, and its puritan opponents in America saw no reason for its introduction to Massachusetts. Whether the puritans were men insecure in their own power, as Koehler suggests, or people who distrusted discretionary law and equity in any form, the result remains the same—puritan wives, subjected to strict common law applications, had little power or status by law when juxtaposed against women in other colonies during the same era.

Women in other colonies in the pre-Revolutionary period experienced great variations in their legal powers. In a comparative study of women's property rights in Connecticut, Pennsylvania, South Carolina, and Maryland, historian Marylynn Salmon found that women in South Carolina maintained legal rights to hold separate estates, to devise their own property, and to veto their husbands' conveyances of land. Women in puritan Connecticut had no such rights. Salmon

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30 Koehler, Search for Power, p. 51.


attributed part of the differences in the rights of women to puritan legal reforms. In addition, she pointed out the way the demography of the south worked to the relative advantage of the few women who lived here. Thus the system of law which each colony offered was significant in determining what roles and responsibilities women would have in each of the colonies.

Studies on women in the seventeenth-century county courts have been few. Linda Speth wrote on "Wives and Widows in Colonial Virginia" in order to challenge the idea that the seventeenth and eighteenth centuries were a "golden age" for women with regard to their legal, economic, and social status. Speth concluded that pre-Revolutionary America was neither a golden age for women nor the opposite, "grim patriarchal milieu." Speth's moderation seems justified in explaining the eighteenth century, but she examined very few seventeenth-century cases and seemed to assume the seventeenth-century woman's life was similar to that of her eighteenth-century great-granddaughter. Surely Speth overgeneralized. What if the fall of women from their respected place in the local courts occurred a

According to the Carr/Walsh argument, since there were few women in the Chesapeake colonies, the law developed in a peculiar way. The phenomenon of early death by disease in the Chesapeake forced families to consider the probable reality of a young wife becoming a widow with small children dependent on her. The demographics of New England followed a different pattern, and widows were more often elderly and were less likely to have young children in their care. Inheritance law reflected these variations.


century before the Revolution? Only an examination of the court
documents will reveal when changes in women's roles occurred.

That women participated in the seventeenth-century court in a great
variety of actions is obvious from observing one randomly-selected
day in the York court, September 25, 1646. Mrs. Sarah Googins sued
Nicholas Brook for a debt of 5000 pounds of tobacco which he owed
her.\textsuperscript{35} Bettres Stookes, who was administering the estate of
Christopher Stookes, confessed debts to three different creditors.\textsuperscript{36}
Ann Owle complained that she and her husband were in danger of
physically harming each other in their disagreements.\textsuperscript{37} Women acted
in court and answered to cases brought against them from the first
years of the York County Court's existence.

None of these women had any part in creating the laws in force in
Virginia. Women were not even represented in the institutions which
developed the law. It is possible, however, to go beyond mere
legislation in interpreting the creation of law. David Konig, in
studying the legal situation in Massachusetts, observed that the
course of legal conflict in itself is a force in defining social
issues, and through litigation older values may be attacked and newer

\textsuperscript{35} York County, Record of Deeds, Orders, and Wills, book(2), p.
170, microfilm manuscript at Colonial Williamsburg Foundation
Department of Historic Research.

\textsuperscript{36} York County, Record of Deeds, Orders, and Wills, book(2), p. 178.

\textsuperscript{37} York County, Record of Deeds, Orders, and Wills, Book(2), pp.
168-9.
one elevated. As long as women were active participants in litigation, they were part of the process of refining the problems of society. This is not an attempt to blame women for their own secondary role in society, for the legislators were all men and men and women themselves were socialized to accept certain roles in society. Instead, one can see that through the courts, women took responsibility for the management of family affairs or were forced to account for their criminal actions, thus taking part either voluntarily or involuntarily in the evolution of Virginia legal practices.

The court served a dual role in forcing women to take a more active role in society and publicly defining the boundaries of community deviance. The process of litigation refined the generalizations of law into the specifics of daily activities of individuals. To understand the place of law in society and its perception of women's place, one must turn to the actual cases which developed from colonial law in light of what society hoped to accomplish through the law. In the cases heard before the York County court, women made decisions about their children's futures, settle debts, and name the fathers of their bastard children. Their words and actions describe their society's expectations for their actions and their own confidence in their abilities to participate in the public life of the colony.

[38David T. Konig, Law and Society in Puritan Massachusetts, (Chapel Hill, 1979), pp. xv.]
Seventeenth-century Virginia women tended to appear in court in similar capacities to those of men who appeared in court. Women were debtors and creditors. Women testified as witnesses concerning their neighbors, especially about the actions of other women. They served on juries, but with the distinction of serving only on juries which examined other women in cases of abuse by a master or husband and in suits concerning the birth of bastard children. Even servant women's testimony was accepted against their mistresses in the early years of the colony. While seventeenth-century York County women participated in all these activities, this study includes only women who were criminal defendants, civil plaintiffs, and civil defendants.

Women appeared in court most often as executrixes of their husbands' estates. In attempting to sort out a husband's estate, a widow might appear as a civil plaintiff, defendant or both over the course of several years. With the pattern of early death in the seventeenth-century Chesapeake region, a woman might be forced to undertake the settlement of more than one husband's estate during her lifetime. Examples of these cases will be discussed later in this paper. Women also took care of business concerning their children. They were arrested for crimes and illegitimate births. They were
represented in court by men and represented men in court. As widows, women adopted new responsibilities for their children's financial and educational well-being. Since a deceased husband might have brought children to the marriage, the family could have the problem of making decisions concerning step-children after the death of the father.

A wife occasionally took responsibility for her husband's business while he was alive. Because of the economic and political ties between the colonists and England, a wife might have to take responsibility for her husband's business while he was in England.

This great variety of cases resulted in 1348 total settled cases involving women in the York County courts between 1648 and 1690. Of course, many records are missing and substantive records do not exist before 1648, but the unbiased destruction of time, rot, and rodents should provide a representative sample for examining the role of women in the York County court in the distinctive condition of Virginia during the second forty years of colonial settlement.

The type of cases in which a woman was involved depended on the stage in the "life cycle" that she had reached. For example widows would be most active in probate matters concerning their husbands' wills. Whether a woman was free of bound labor also determined the types of cases with which she would participate. To determine the types of cases affecting each of the various categories of women, I assigned a "woman's status" code to each woman involved in a case.
The categories defined a woman's legal, as well as social status.

The most frequent participants in cases were widows, who were involved in a total of 568 settled cases, a full 42 percent of the cases.\(^1\) When the 160 cases which remarried widows brought to court are added to the sum, the total climbs to 728 cases, or 54% of all cases concerning women. Single free women were involved in 31 or 2.3% of the cases and single servants appeared in 99 or 7.3% of the cases.

### TABLE 5

<table>
<thead>
<tr>
<th>status</th>
<th>frequency</th>
<th>percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>single, free</td>
<td>31</td>
<td>2.3</td>
</tr>
<tr>
<td>single, bound labor</td>
<td>99</td>
<td>7.3</td>
</tr>
<tr>
<td>single, uncertain status</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>married</td>
<td>384</td>
<td>28.3</td>
</tr>
<tr>
<td>widowed</td>
<td>568</td>
<td>42.0</td>
</tr>
<tr>
<td>widowed, remarried</td>
<td>160</td>
<td>11.8</td>
</tr>
<tr>
<td>slave</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>unknown status</td>
<td>103</td>
<td>7.6</td>
</tr>
<tr>
<td>total, widows and remarried</td>
<td>728</td>
<td>54.0</td>
</tr>
</tbody>
</table>

As one might expect, widows and remarried widows participated in the county courts more frequently than other women.\(^2\) What is more revealing is the types of cases in which these various women were

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\(^2\) Remarried widows had the same legal obligations as unmarried widows in settling the previous husband's estate and arranging for their children's well-being.
involved, to be discussed later in this paper.

Also significant are the roles in which women appeared in court. To determine this, I assigned a code to each woman to denote their part in the case. Since most cases involved widows, the cases in which women were involved concentrate in the areas of women as civil plaintiffs and civil defendants who were conducting the business of settling the wills of their husbands. The breakdown of the roles women played in the York County court between 1648 and 1690 is as follows:

**TABLE 6**

<table>
<thead>
<tr>
<th>ROLE OF WOMAN</th>
<th>NUMBER OF CASES</th>
<th>% OF TOTAL CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. criminal defendant</td>
<td>102 cases</td>
<td>7.6%</td>
</tr>
<tr>
<td>2. civil defendant</td>
<td>176 cases</td>
<td>13.1%</td>
</tr>
<tr>
<td>3. civil plaintiff/transaction</td>
<td>503 cases</td>
<td>37.3%</td>
</tr>
<tr>
<td>4. deponent/witness</td>
<td>99 cases</td>
<td>7.4%</td>
</tr>
<tr>
<td>5. friend or guardian conducting case</td>
<td>67 cases</td>
<td>5.0%</td>
</tr>
<tr>
<td>6. wife approving transaction</td>
<td>163 cases</td>
<td>12.1%</td>
</tr>
<tr>
<td>7. woman as victim</td>
<td>19 cases</td>
<td>1.4%</td>
</tr>
<tr>
<td>8. new husband taking over case</td>
<td>136 cases</td>
<td>10.1%</td>
</tr>
<tr>
<td>9. other</td>
<td>75 cases</td>
<td>5.6%</td>
</tr>
<tr>
<td>10. unknown</td>
<td>7 cases</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

This introduction places women's cases into proper numeric perspective when the different categories are discussed in future chapters. Progressing from this overview of the various types of cases to a focused analysis of each category of court participants will permit observation of women's roles in seventeenth-century York County.
CHAPTER TWO: CRIMINAL DEFENDANTS

Female criminal defendants appear infrequently in court, showing up in only 102 of the 1348 cases under study. A study of criminal defendants sheds light on Virginia women in general because it provides insights into what behavior was considered deviant in colonial Virginia, who participated in deviant activities, who was punished for criminal behavior, and how colonial society sought resolutions to the problem of people who failed to live up the accepted moral code.

When women committed crimes, they rebelled against the constraints of the roles assigned to them. Lyle Koehler, in his study of seventeenth-century New England women, noted that some crimes had connotations of opposition to accepted female behavior. For example, adultery, contempt of authorities, heresy, swearing, murder, and abusive behavior fell into a category of "severe" violations

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against "the passive, deferential female sex role." At the other extreme, crimes such as absence from church or court coincided with the approved "passive, deferential female sex role." Between the two extremes, Koehler divided crimes into "moderate violators of the female sex role," and "offenses involving little or no sex role-related behavior." The former category included theft, drunkenness, keeping a disorderly house, running away from servitude and arson, the latter group consisted of operating a tavern illegally, nightwalking, marrying contrary to law, and card-playing. Koehler allotted fornication a separate category between "severe" and "moderate" violations of the female sex role since he saw adulteresses as rejecting their husbands' authority. Many Virginia women committed crimes which qualify as rebellious against the accepted female role, as well as rebelling against social and economic roles which were not gender related.

Concerning the question of what sorts of women composed the Virginia criminal population, the answer is fairly easy to discover. Free single women were summoned for 3% of the cases, married women appeared for 24% of the indictments, widows for 4% and remarried widows for 2% of the cases. Indentured servants were cited for 61 of the cases, a total of 60% of the cases. Using Koehler's analysis of crime as rebellion, Virginia women protested their servant role as

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4 Koehler, A Search for Power, p. 193.
5 Koehler, A Search for Power, p. 193.
6 Koehler, A Search for Power, p. 190.
much as the "passive, deferential" role assigned to females.

### TABLE 7

<table>
<thead>
<tr>
<th>status</th>
<th># of cases</th>
<th>% of women's crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>single, free</td>
<td>3</td>
<td>3.0%</td>
</tr>
<tr>
<td>single, bound</td>
<td>61</td>
<td>60.0%</td>
</tr>
<tr>
<td>married</td>
<td>24</td>
<td>24.0%</td>
</tr>
<tr>
<td>widowed</td>
<td>4</td>
<td>4.0%</td>
</tr>
<tr>
<td>remarried widows</td>
<td>2</td>
<td>2.0%</td>
</tr>
<tr>
<td>unknown</td>
<td>8</td>
<td>8.0%</td>
</tr>
</tbody>
</table>

Each category of woman was likely to appear in different types of criminal cases. Servant women were subjected to strict restraints on the way they could live their lives, especially concerning their decision to marry. With more legal restrictions on their lives, servants had more causes for which they could appear as criminal defendants. Not surprisingly, servant women's appearances as criminal defendants far exceeds that of any other status category.

### TABLE 8

<table>
<thead>
<tr>
<th>crime</th>
<th>frequency of occurrence</th>
<th>percentage of all criminal cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. bastardy</td>
<td>33</td>
<td>33.3</td>
</tr>
<tr>
<td>2. fornication</td>
<td>12</td>
<td>12.1</td>
</tr>
<tr>
<td>3. runaway servant</td>
<td>8</td>
<td>8.1</td>
</tr>
<tr>
<td>4. theft</td>
<td>5</td>
<td>5.1</td>
</tr>
<tr>
<td>5. slander/libel</td>
<td>4</td>
<td>4.1</td>
</tr>
<tr>
<td>6. fornication, later married</td>
<td>4</td>
<td>4.1</td>
</tr>
<tr>
<td>7. defamation</td>
<td>3</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Women committed thirty-four different types of crimes between 1648 and 1690. Since the most common type of crime for which women were summoned to court was bastardy, the single free and single servant
women were more often brought to court for this offense than married women. The court would be able to prosecute married women only in unusual situations, such as when their husbands were absent from the colony for a lengthy period.

In 1648 Edward Rawlins "and wife" and Piggott Ableston "and wife" were brought to court for fornication, presumably because their children were born too soon after their marriages. Their punishment was to "do penance" for three Sabbaths during the service. While these couples were shamed into doing public penance before their peers, their punishment was relatively mild. They were guilty of fornication, but because they later married, their children were legitimate. Between 1648 and 1690 there were no further convictions for cases of fornication against married couples. In a case heard in 1671 the court judged Argold Blackstone not liable to a fine imposed on him earlier because he married the child's mother before the baby was born. People who were free to do so could marry to avoid major punishment for bearing bastards by marrying.

Not all people were permitted to marry in seventeenth-century Virginia, however, and this created serious problems for the pregnant women prohibited this option. Between 1648 and 1690, servants could

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marry only with the permission of their masters or mistresses. Ministers who secretly married servants faced stiff penalties, as did the servants themselves. In March 1662, the statutes spelled out that the children of secret marriages were illegitimate, leaving pregnant servants with no way to escape punishment for bearing bastard children. As a result, servant women bore most of the bastard children and were prosecuted for the crime by the court.

Bastardy cases in the court records reveal what was expected behavior for men, for women, and for servants. Although the bastardy cases punished what was considered deviance, the cases also outlined the socially-defined expectations of responsibilities mothers and fathers had toward their children.

The punishment for bearing illegitimate children during servitude changed between 1647 and 1685, the years for which laws are available, but the law remained harsh. Punishment for a woman bearing a bastard during servitude attempted to resolve two problems which arose with bastards born to servants. First, extending the terms of service under the indenture repaid the master for time the servant lost during pregnancy. Second, whipping deterred women from risking sexual relations if a bastard child might result. The law provided a standard of behavior for the colonists to follow.

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addition, the laws reinforced traditional gender-defined roles for parents of bastard children. In the years before March 1658, the colony's laws made no specific recommendations for punishment, but simply stated that church wardens were required to make presentments of fornicators.

In one case, a servant woman was to serve double her time for bearing a bastard. The punishment was listed as being "according to the Act of Assembly," but this was the punishment for secret marriage, not for bearing a bastard. A law of March 1658 specified that a servant woman bearing a bastard child must serve an extra year's time to her master or pay 1500 pounds of tobacco to the parish in security for the child's support.

Fathers of bastards were to support their children, just like other fathers were expected to provide for their offspring. Paternal support had the added benefit of insuring that the mother's master and the parish would not be held responsible for the children and would be saved from the costs of raising them. In one bastardy case heard before 1657, the court ordered that the father keep the child and support it. Fathers were to pay the mother's master 1500 of tobacco or one year's service. In addition, he paid security to the

parish for the child's support in order to "save" the parish and masters "harmless" from the burden of cost in raising the child. The same law ordered that all fornicators were to pay an additional 500 pounds of tobacco or be whipped. A March 1661/2 law enabled masters to pay the court 500 pounds of tobacco so that their servants could avoid whipping. In return for the master's payment the servant worked an extra six months for the master.

Women's punishment was specifically for fornication since women were to be chaste. Whipping as a punishment increased between 1648 and 1690, but women were far more likely to be whipped than men, creating a somewhat incongruous situation where only women were ever convicted of fornication. During this thirty-seven-year time span, twenty-one women were sentenced to whipping for fornication when only one man was recorded as being so sentenced. The court record stated that a woman was whipped for "her offence against God" or "for the filthy sin of fornication." The court was far less likely to punish men for fornication at all, and when it did, the court generally fined men rather than ordering whipping, perhaps because the men were free, and able to pay their fines. It is not clear why men were accused and punished less often than women for fornication. A plausible explanation is that women were easier to convict. A


pregnant woman carried her evidence with her. A guilty man could conceal his guilt with greater ease. Whatever the explanation, men and women were not prosecuted in equal numbers. From the allocation of justice, one would be forced to assume that either a large number of Virginia servant women conceived immaculately or that fornication was a sin only for women. Men were responsible for their children; women were guilty of bearing them.

The demographic and social conditions of York County could explain the unbalanced punishment meted out to men and women for the same crime of being the parent of a bastard child. Since women were rare in the colony, most women who wished to marry could once they finished the terms of their indentures. Many men, however, would not be able to marry. The demographic imbalance created a distinctive pattern of relationships in the colony. A population of lifelong single men might attempt to engage in non-marital sexual relationships with any available women and perhaps have children outside of marriage. In this setting, encouraging women to limit or delay their sexual activities would prove more successful than encouraging unmarried men to adopt a celibate life. Women, more often than men, could look forward to a legally approved liaison.

Control came in two forms. First, the legal system placed severe punishments on women for their illicit behavior while penalties for men were less harsh. Second, informal censure from neighbors encouraged women to maintain community standards of sexual behavior.
Women and men could circulate information or suspicions about their female neighbors' behavior. Mary Beth Norton found that in seventeenth-century Maryland, people attacked women for their sexual morality when gossiping maliciously. The case of Baily v. Milton in York County illustrates the accusations women flung at one another. Mrs. Baily accused Mrs. Milton of being a "drunken Sott" and Mrs. Milton responded with the insinuating statement that "I have never brought my husband a bastard." Outside of court, the accusations served as an informal social control for women's sexual behavior.

Informal restraints placed on women by the community could be as powerful as the law in controlling their behavior. In addition, women themselves defined the social restrictions of themselves and other women rather than leaving them to the legislation enacted and enforced by men. The severe legislated penalties for bearing bastard children worked in conjunction with the informal restraints to reduce the multitude of illicit sexual unions one would expect in a society where a large portion of the population could never hope to marry. In this demographic setting, women carried the burden of maintaining sexual morality, and theirs were the reputations to suffer should a couple have a bastard child.

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The court settled most bastardy cases over several months, with one or two witnesses in each case. A woman would be brought to court where she would "lay the child to" a man, and other people might testify what they had seen or heard about the couple. If a man denied that the child was his, the court would have a difficult time attributing the child to anyone. For example, Thomas Heyrick denied that Rebecca Noble's child was his, saying that the boy was the son of a "Negro."

The court merely noted that Heyrick "couldn't be charged with the child."

John Reason was less successful in escaping legal responsibility for the child "laid to him" by Anne Roberts. Determining the father of the Reason-Roberts bastard illustrated how the most complicated bastardy cases proceeded, involving both parties, their neighbors, and the midwife. Anne Roberts and John Reason first appeared in court on June 24, 1662. The churchwardens and minister of the parish summoned Anne to court while Anne's master, Thomas Pinkethman had the court summon John as a defendant in the case. In June a certain Lewis Griffith testified that Anne declared John the father of the child at the time of her delivery. Henry Goodgame testified that when he asked Anne Roberts when John "got her with child" she answered that she was not sure "but when the crop was in the house he

19York County Record of Deeds, Orders, and Wills, p. 125, 129; August 26, 1661.

20For the records of this case, see York County Record of Deeds, Orders, and Wills, book (3) pp. 167, 168, 169, 170, 173, 176.
got it." Henry further complicated the case when he testified that Richard Webb, another servant of Pinkethman, said "John Reason would not meddle with such a durtie whore as Anne Roberts," and that Anne attributed the child to Webb for several days. Anne Goodgame, Henry's wife, agreed with her husband's account and added that Webb had said that if Roberts declared the child was his he would not have denied it. Anne Goodgame reported that Pinkethman's wife said "Anne Roberts was impudent and gloried in her wickedness." Mrs. Pinkethman accused Anne of having had "2 or 3 bastards" in England to which Roberts responded she had "but 1 here." After Anne Goodgame dragged Anne Robert's character through the mud, Richard Bullock testified that he caught Richard Webb with Anne Roberts "behind the house & that he there lay with her."

The court decided that the case would be difficult to settle without further examination of the servant, master, reputed father, and "Bullock hir midwife" so the case was postponed to the legal day of reckoning in bastardy cases--the birthday. On August 25, 1662 the case was heard as "the difference between Thomas Pinkethman plt and John Reason deft." The case was not the business of the mother or even the parish but between the mother's master and the accused father since it was Pinkethman the master who would collect damages from Reason. At this point in the case, the master wanted to obtain restitution for his servant's lost work time.

In August Anne Roberts said the child was John Reason's and she had
reported that Richard Webb was the father earlier only because Reason had told her to do so. In the same court, Henry Goodgame said that Roberts reported the baby was "none of Resons but that her Master diverse times came to her and said that it was Reason's and not Webb's" Since Webb was a "negro" he was most likely a slave or servant. Pinkethman would not be able to collect a profitable penalty from Webb, so it was to Pinkethman's advantage to have Reason burdened with the child. Because Pinkethman would remain Anne Roberts' master, he could convince her to testify as he wished her to through intimidation. The case is fraught with unanswered questions and potential suspects.

The law provided a clear-cut solution to the problem of the father's identity by accepting whomever the mother declared to be the father during the agony of labor as the "reputed" father under the law. Because of the importance of the midwife's testimony as to whom the mother named as the father, Reason and Pinkethman argued over who would serve as midwife at Anne Roberts' delivery. On August 25, Dorothy Bullock, the midwife and two other witnesses reported under oath that Anne Roberts gave the child to John Reason, therefore the court concluded that Reason was the "reputed" father and he would have to pay the master. On September 10, 1662, Reason's estate was attached for the payment of the fine. Anne Roberts was to serve her master extra time "according to the Act of Assembly" and receive ten lashes as her punishment. She escaped the court with a defendant in an unrelated case before anyone whipped her. As of October 24, 1662,
the parish, in contempt of court refused to take and provide for the child of Anne Roberts and the court repeated the order to the parish. After days of testimony over a period of five months, the reputed father's estate was attached, the mother had run away unpunished and the parish refused to take responsibility for a child as duty and the court dictated. Even with strict laws in place to punish parents of bastards, the guilty parties in this case escaped unharmed.

Bastardy cases introduce a multitude of other problems. How often did masters abuse their positions of authority over their servants? Did masters force their servant women into marriage once the women were pregnant as a means of obtaining a wife among the few women? How often did masters marry their servants? Judging from the numbers of servant women convicted of bearing bastard children, servant women were vulnerable during their servitude in spite of the fact that they could look forward to being able to choose their husbands from among many men once they finished their term of servitude.21

Since the punishment for bearing a bastard child was high, a woman living in a remote area might try to conceal the crime of bearing a

21 One case where a master may have married his servant under these conditions is Nicholas Clarke's marriage. The court accused Nicholas Clarke, master of Mary Minshall, of being the father the child with which she was five months pregnant in October 1662. The court ordered her to return to his home and told him to care for her properly at his peril. [York County Deeds, Orders, and Wills, book (3) p. 176. October 24, 1662.] By November 1666, Nicholas Clarke was married to a Mary, which could be this same woman. Neither wife nor child was mentioned in his will, March 24, 1687.
bastard by murdering it. When the women were unsuccessful in their attempts to conceal the pregnancy and murder, the court prosecuted for murder. In 1684, Mary Dyer was brought to court for murdering the bastard child of Jonathan King while her husband was out of the colony in New England. Jonathan carried the baby into the swamp and buried it. In January of 1685, the court concluded the evidence "not being positive the same being only by hear say but highly presumptive and [Mary Dyer] being a woman of ill fame & repute" the sheriff was to take her into custody until she gave bond with security for good behavior.22

The case points out several important aspects of court hearings, at least in bastardy cases. Women were trusted as witnesses. The midwife's testimony of the mother's accusation was the most important deposition. However, the court's trust was limited because it refused to distribute equal punishment to fathers of bastards based upon these testimonies. Even in cases where men admitted to being the fathers, their punishment was more lax because they were more often free from servitude and could pay fines to avoid being whipped. Bastardy cases constituted a significant proportion of the instances where single women appeared in court and public life. Clearly, women faced a stiff double standard in punishment during their foray into the public life of the court when they appeared as defendants in

22York County Deeds, Orders, and Wills, book (6), p. 615 November 24, 1684; book (7) p. 2, January 26, 1685. This case has the added twist that Mary Dyer is referred to as Jonathan King's "sister." Seventeenth-century Virginians often referred to half-sisters, step-sisters, and sisters-in-law by this same term.
these criminal suits.

Another type of commonly occurring criminal case which only affected female and male bound laborers was that of running away. Eight cases came to the court's attention, one case each in 1659, 1671, 1674, 1688 and two each in 1672 and 1683. One audacious Mary Pell managed to have her cases removed from the county court to be determined by the House of Burgesses, where it met an unknown resolution. One case was continued to the next court where the plaintiff would be considered successful if the servant defendant did not appear. The other six women received six identical sentences of returning to servitude with their date of freedom postponed further by additional time of service to their masters.

Other crimes with which women were charged were slander, libel, and defamation, with a total of seven cases reaching resolution in the period. While fornication, bastardy, and running away from servitude were distinctively servant's crimes, slander, libel, and defamation were the crimes of wives.

Mary Beth Norton found that in Maryland, wives often gossiped as a means of establishing authority in the own system of social control.23 Upper class women slandered lower class women in order to highlight what was unacceptable and acceptable behavior in the

The "small politics" of social control, by means such as gossip, could be as powerful as the statutes in maintaining social control. The gossip of upper-class women against lower-class women no doubt went unpunished, since the powerful people in the community would side with the upper-class women. What appear in the records, then, are the attempts of lower class women to slander their social betters.

In York County, three women were brought to court for defamation. All were wives. One case was continued but never resolved. One woman was forced to make a public apology for her crime. A third case reached its conclusion by being recorded as "dismissed."

The four women who appeared for slander and libel cases were all wives as well. In one case Elizabeth Woods, a remarried widow, was presented in court by churchwarden Robert Cobb and charged with libel in October 1658 for insinuating that the wives of the churchwardens and vestrymen were women of suspect character. Woods suggested the churchwardens and vestrymen should be removed from office as a result. According to witnesses, Woods and her fellow defendant, Johanna Poynter, had five slips of paper written up and dropped in the church with news that the churchwardens' wives practiced

24 Mary Beth Norton, "Gender and Defamation," p. 19.
25 Mary Beth Norton, "Gender and Defamation," p. 31.
26 The information on the progress of this case is found in York County Deeds Orders and Wills, book 3, pp. 37-38. October 26, 1658
dishonorable trades. In all, six deponents came forth to testify against her. The remedy for the case affected Elizabeth Woods's husband as much as it did her, since he was required to put up a bond for the sum of 10,000 pounds of tobacco for her good behavior after she was released into his custody. Johanna Poynter's husband also had to put up a bond for his wife's good behavior. Since women by law had no real property of their own, any monetary or property fine was in effect levied against the husband.22

One way the court punished wives was to force them to make a public apology, as happened in the cases brought against Joane Sandifer in 1661 and Jane Wode in 1648. The two witnesses who testified against Joane Sandifer reported that Sandifer declared James Mander, Elizabeth Mander and Samuel Spicer stole some wheat. The Wode case records that the settlement was reached out of court with unknown resolution. Joane Sandifer admitted she was wrong and in court acknowledged "that I have done wrong" and "am heartily sorry for the same & am willing that this my acknowledgment be recorded in Yorke Co Ct."28

While public apology may seem like a relatively minor punishment today, humiliation before one's peers could be a grave matter. As in most small communities, an individual's reputation was very important

22When a woman married, her husband obtained right to her real property. The concept is discussed further in chapter 3.

not just for the modern concept of "self esteem," but for legal reasons. In the above-mentioned case of Mary Dyer and her murdered bastard child, the court had no evidence that she committed the crime. However, the court ordered her to put up security for her good behavior on the basis that she was a woman of "ill fame and repute." A woman had better keep her reputation pure if she wished to avoid being forced to put up security for any stains upon it. Married women had no property which the court could take from them as a punishment, but they did have reputations which would be sacrificed if the woman acted illegally.

Because a bad reputation left a woman open to accusations for other crimes, the courts punished libel and defamation as serious crimes. In the previously discussed case where Joane Sandifer falsely accused three people of theft, she damaged their reputations in the York community. The best way to remedy the problem was to force Sandifer to make public apology to the harmed individuals, freeing them of the stains upon their honor as well as adding blemishes to her own reputation.

York County women perceived public apology as a severe punishment. One woman preferred corporal punishment to the shame of public apology. Joane Wardley was accused of uttering "several scandalous words...to the great disparagement & dishonor" of Lieutenant Colonel Thomas Beale, a justice in the York County court and Lt. Beale's wife. Wardley was ordered by the general court to appear at the next
York County court to "acknowledge her hearty sorrow & repentance for the same," to ask pardon of Beale and his wife, and "to have a paper on her breast" announcing her shame. When the day arrived for Joane Wardley to give public apology, she "utterly refused it" and said "the sense of the court was mistaken & that she would not ask Mrs Beale forgivenes on her knees & she would be brought to the whipping post."

For Joane Wardley, either she refused to take responsibility for the crime or the sting of public humiliation was greater than that of the whip.

Women were less active in other sorts of criminal activities, or at least were not arrested for them. Four women were brought to court as thieves with one of the women facing two different charges of theft. The two servant women had their terms of service extended, the usual punishment for servants convicted of crimes. They both had to serve three additional years. Anne Pettipole, a married woman at the time of her case, only put up security for good behavior and ultimately was discharged from her bond for good behavior in October of 1661. Elizabeth Woods, a widow and frequent litigant, was not so fortunate, and she was convicted on one accusation of theft and would be convicted on a second if she failed to appear at the next court. No record exists of how the second case was resolved.

There were other sorts of criminal cases for which women appeared

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29 York County Deeds, Orders, and Wills, Book (4), p. 353; May 26, 1671.
only infrequently. Several concerned relations between masters and servants. Since servants were placed in a vulnerable situation of owing obedience to both master and law, certain laws protected the servants. Elizabeth Wing was accused of forcing a servant to forge the signature of a justice of the peace in order to collect a debt. For this crime Wing was placed in the pillory for an hour.  

Likewise, the impoverished state of servants placed in households of comparative wealth created temptation for the servants to steal from their masters. To prevent such thefts, the court punished people who traded with servants. Mary Mills was accused of trading with a servant, and the court ordered the sheriff to whip her with 31 lashes. She begged for forgiveness with "humble submission and petition on her bended knees," and the victim forgave her.  

Single cases of the following crimes were brought against women in the York Court: arson, suicide, contempt of court, desertion of a husband, sale of liquor without a license, and absence from church. Two women appear in the records for each of these crimes: breaking the Sabbath, trespass, and keeping a disorderly tippling house.  

Mary Morisby, was the only woman accused of "breach of the penal lawe concerning mutinous and rebellious [illegible]" in February of  

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31 York County Deeds, Orders, and Wills, book (8), p. 121; 24 May 1688.
1679. For her crime her husband was fined 1000 pounds of tobacco.\textsuperscript{32} The court record gives no more details to this intriguing case, but considering the timing of this case, the crime could relate to the aftermath of Bacon's rebellion.

The court records often contain such insights into cases concerning women. Just enough information is given to pique the curiosity of the historian, but not enough survives to create a complete picture of women in seventeenth-century York county. From piecing together the bits of information concerning criminal defendants, the historian can observe the bounds of acceptable behavior for women both free and servant, both married and single.

The court attempted to control women's behavior through the use of various punishments. Servants convicted of crimes such as theft, bastardy, and running away from their duties were returned to the authority of their masters for additional terms of service. Postponing the long awaited day of freedom was the court's only recourse in punishing servants. Servants had no property to lose and harm done to a servant would further penalize a master by depriving him of his servant's labor. The servant's time and labor was all she had left to lose.

Married women convicted of crimes were placed under the governance

\textsuperscript{32}York County Deeds, Orders, and Wills, book (6) p. 76, February 24, 1679.
of their husbands. The court expected a husband to be able to control his wife's actions, since it was he who had to insure her future good behavior or forfeit his security. When married women were brought to court for crimes, the husbands were sometimes listed as defendants as well.

In the above-mentioned case of Joane Wardley dishonoring Lt. Beale and his wife, "Thomas Wardley & Joane his wife" were listed as defendants. During the course of the trial, it became apparent that Mrs. Wardley had uttered scandalous words against Mrs. Beale. Instead of the case being listed between Mrs. Beale and Mrs. Wardley, the court heard the case as being between Thomas Beale and wife and Thomas Wardley and his wife. Shame against Mrs. Beale was shame against Thomas Beale. The court held Thomas Wardley responsible for scandalous remarks uttered by Mrs. Wardley. Thomas Beale had the responsibility of protecting his wife's honor as his own and Thomas Wardley was punished for his wife's behavior. Thomas Wardley had to give bond for his wife's good behavior and pay the costs of the suit. In this manner, the court viewed married women as covert in responsibility for her actions as well as for control of her property.

This conclusion agrees with what Mary Beth Norton found to be true


34 Married women's covert status in relation to her property is discussed further in chapter 3.
in Maryland. People of lower status could insult men of greater status by making the wife of the superior a target for malicious gossip. "By denigrating the sexual mores of a male superior's wife a man [or woman, in the York County setting] could attack that superiority circuitously but no less effectively than if he confronted his male target directly."\(^5\) In York County, Joane Wardley insulted a male superior through his wife, too. Whether Joane Wardley intended to insult Lt. Beale as well as Mrs. Beale is not certain. The court took the gossip as offensive to Lt. Beale directly, it would appear.\(^6\)

The punishment of exposure to shame by public apology, penance, or being placed in the pillory assumed that a woman would avoid criminal actions for fear of the court subjecting her to public humiliation. Public humiliation of a woman informed all members of the community that the woman was a deviant character, and further warned other

\(^5\)Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," p. 19.

\(^6\)The effect of Lt. Beale acting on behalf of his wife should not be underestimated. For Mary Beth Norton's Marylanders, the female plaintiffs in slander cases were more successful when assisted by their husbands. In addition, slandered married women prosecuted cases, either by themselves or through their husbands more often than did slandered single or widowed women. Norton suggested that this was because "marriage afforded a defamed woman certain advantages and that a target of scandal might be more likely to seek and obtain redress if she had a husband to appear for her in court."["Gender and Defamation," p. 33] Norton qualified this statement by adding that married women represented by their husbands were only more successful when prosecuting against men. When women were the defendants, married women prosecuted as successfully as their husbands did.
women of the fate which befall them should they, too, step outside the bounds of acceptable behavior. Wives acting outside the boundaries of acceptable behavior were placed under the control of their husbands. Married women were not always forced to take responsibility for their own deviant actions. Instead, a wife's failure to remain within legal bounds was a sign that a husband had failed in his duties to govern his wife, and the husband was held accountable for the punishment.

In spite of these punishments, women committed a great variety of crimes and were forced to deal directly or indirectly with the legal system as a consequence. Like Lyle Koehler's New England women who often committed crimes in protest of their sex-roles, Virginia women rebelled against their powerlessness as women and as bound servants. When women encountered the legal system to answer for their crimes, they participated in the public life of the community beyond the sphere of home and family. But before these women ever appeared in court, they could use crime to publicly protest their sex roles or condition of servitude.

But not all women came into court as criminal defendants. Many were trying to maintain or advance the well being of their families and themselves by using the court to conduct business. The next section will discuss women acting as civil plaintiffs and defendants.
Addressing the questions concerning women's civil suits offers a better view of how women within the mainstream of seventeenth-century York County participated in the activities of the court. In addition to being the most important group of cases to exhibit the activities of ordinary women the civil suits concerning women make up the largest group of cases in which women appear in court. Of the 1343 cases considered in this study, 985 of the cases were civil suits--73% of the total number of cases.

These cases suggest many questions about the legal roles of women. What kinds of women brought civil suits or answered to them? Did the women handle the cases personally or did they turn their problems over to men whom they considered better able to conduct the cases? In what kinds of civil suits did women appear? How did the courts adapt English law concerning women to fit the context of seventeenth-century Virginia. This chapter will examine the variety of roles in which women appeared in regard to civil suits and assess how much women actually participated.

Women could be plaintiffs or defendants in their own rights. However, a friend or relative could represent a woman in a case. A married woman would appear in court to approve a husband's real
property transactions, as was required by law. She also could conduct the business of her absent husband or appear on behalf of her children. In civil suits women appear are as follows:

TABLE 8
NUMBERS OF WOMEN IN CIVIL SUITS

<table>
<thead>
<tr>
<th>Role of Woman in Case</th>
<th>Number of Cases</th>
<th>% of All Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>civil defendant</td>
<td>176 cases</td>
<td>14%</td>
</tr>
<tr>
<td>civil plaintiff</td>
<td>504 cases</td>
<td>42%</td>
</tr>
<tr>
<td>wife's approval of husband's transaction</td>
<td>26 cases</td>
<td>2%</td>
</tr>
<tr>
<td>friend of guardian taking case for woman</td>
<td>67 cases</td>
<td>5%</td>
</tr>
<tr>
<td>other</td>
<td>72 cases</td>
<td>6%</td>
</tr>
</tbody>
</table>

These figures do not include cases in which a husband took a case on his wife's behalf or a guardian accepted a case for a minor child.¹

As in criminal matters, the cases in which a woman appeared depended on her status as free or bound, single or married. The case could be further complicated if the woman was a widow or if she were a remarried widow with legal matters from her previous marriage to settle. A remarried woman with children from a previous marriage might have been in court to give property to her children from the first marriage or to settle accounts in the children's interests.

Married women comprised the category of women least likely to appear in the court records as being involved in civil suits because they had to approve their husbands' land transactions. They appeared independently in only a few cases. As was mentioned in the

¹These cases are worthy of future consideration but are beyond the scope of this paper.
introduction, under common law, married women were *covert* and had no independent identity. While common law made some provisions for protecting the real property rights of married women, their personal property was at the disposal of the husbands. The effects of this concept can be seen in a case where the newly widowed Martha Todd was allowed her own clothes out of the estate of her husband, William Todd. A married woman did not have clear right even to her own clothes. Since married women had no identity under the law, they would not be able to bring cases before the court. Most legal matters would be managed by the husband.

But wives did appear in court. Since a wife, having no independent status under the law was in the vulnerable position of having no control of lands she brought to the marriage nor over lands acquired during the marriage, the law made provision to protect her interest in her property.

An important property right for a married woman was her dower rights. Dower rights were created in England to provide economic support for a woman during her widowhood and to insure she maintained her social status. According to *A Treatise of Feme Coverts* printed in England in 1732 and citing earlier law, "Dower at Common Law, is a Third Part of the Lands or Tenements whereof the Husband was seised in Fee-simple, or Fee-tail, during the Coverture; and this the Widow

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2 York County Deeds, Orders, and Wills, book (2), page 351, May 24, 1648.
is to hold during her life."³ Restrictions could be placed on the assignment of dower if the parties agreed to them at the time of the marriage or if during the marriage the wife assented to them.⁴ The Treatise of Feme Coverts stated that by English example a conveyance was determined to be in satisfaction for dower when it was "a competent Livlihood for the Wife of an Estate or Freehold to take Effect presently after the Death of the Husband, for her Life and more."⁵ By allotting the widow a portion of the land the couple had owned during the marriage, the law insured the wife could support herself and maintain her social standing either directly from the crops harvested on the land or indirectly through some other type of agreement. She might, for example, permit a child to have use of the farm in return for a place to live.

As discussed in the introduction to this essay, nothing dictated that Virginians must adopt the English common law example of dower rights since a variety of legal systems were in use in England during the seventeenth-century. England merely stated that the colonists follow English examples of the day, not necessarily the common law precedent. However, English manor courts seemed to require a type

³A Lady's Law: A Treatise of Feme Coverts, p. 62. [first ref]

⁴The Lady's Law, pp. 70-3. Certain types of jointures could bar the right to dower. Page 71 of the Lady's Law described the six conditions necessary to making a perfect jointure in order to bar dower. Additionally, English law prevented a widow from enjoying dower rights if her husband committed treason or a felony.

⁵Act 27 H. 8 as cited by The Lady's Law, p. 73.
of dower allotment similar to the common law example. The Treatise of Feme Coverts stated that "Dower by Custom [as opposed to common law] is, that Part of the Husband's Estate, to which the Widow is entitled after his Death, by the Custom of any Manor or Place, so long as she lives Sole and Chaste; which Dower may be more than one Third Part; for in some Places she shall have Half the Land; as by the Custom of Gavelkind; and in divers Manors the Widow hath the Whole, during her Life, called her Free Bench: Though, as Custom may enlarge Dower, so it may abridge it to a Fourth Part." The colonists were free to develop an efficient means of supporting widows by adopting one of the other customary examples which demanded similar types of allotments for widows.

The plan of setting aside a portion of land for a widow was simple enough in a society where little land was purchased and sold. As long as land was conveyed from generation to generation reserving a portion for the widow when the husband died, few complications arose. Under the society in which this common law practice appeared, land was conveyed in such established patterns. Problems appeared when a husband wished to sell land. A wife had no legal identity during the marriage, but as soon as her husband died she could claim a share in the land he had held during his lifetime.

A purchaser would be wary of acquiring land if he realized the seller's wife might return to haunt him for the "thirds" to which she

6 The Lady's Law, p. 62.
was entitled once she became a widow. In order to solve the problem, a wife acknowledged the sale of land, including her dower portion, at the time the land was sold. In the Virginia setting, buyers needed to be less concerned with the wife's acknowledgement of the sale if the buyer knew the couple was moving far away and the wife would be unable to make future claims against the land because she lived too far away to dispute the sale conveniently.

Virginia courts were less cautious than English courts about wives' acknowledgements of alienation of lands in which they held dower rights. Since the courts oversaw community interest, it tried to insure that the wife would not become a burden to the populace as a destitute widow. Also, the court was interested in making sure that the husband had not coerced his wife into selling lands against her will. To achieve these ends the English law developed a procedure of privately examining wives for their agreement to the bargain before recording the land transaction. The process was as follows:

The examination procedure required by most colonial courts was fairly standard. When a woman wanted to execute a conveyance of real property, she and an officer of the court, who was usually a judge of common pleas, went alone into a separate room where he read the contents of the deed to her, ensuring himself that she understood its meaning. He then asked if she freely agreed to a conveyance of her ownership or dower rights in the property, and if she answered affirmatively he noted that she had done so on the face of the deed or on an attached certificate. This acknowledgment by a woman barred her forever from
establishing claims to the property.  

In order for a husband to sell land outright, with no dower restrictions on the land for the purchaser, the wife was required to relinquish her ownership or dower rights in the property. Between 1648 and 1690, the York County court recorded 135 cases of wives approving their husbands' sale of land and thereby relinquishing their dower rights. Wives approved of husbands giving gifts of real property in seven cases.

But in York County there were many other ways of selling or giving lands without the traditional wife's acknowledgement of the sale. An alternative means of accomplishing the same goal was for the wife and husband to be recorded as co-sellers or co-grantors of the property. The format of this type of grant varies. Usually the husband and wife are listed as co-grantors in the body of the deed as in this example: "to all to whome these presents Shall come Know yee that wee John Underhill and my Wife Mary Underhill of Hampton...doe by these presents bargaine Sell Assigne Alienate and Sett over unto Isaack Collyer his heirs...one prcell of Land...." In some transactions, the wife was not mentioned by name but listed in the first line of the grant simply as "my wife." Deeds in this form were usually signed by both husband and wife. In addition, land listed in

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8York County Deeds, Orders, and Wills, book (8), p. 24, February 24, 1687.
the deed as being granted only by the husband, with no mention of the wife was often signed by the wife as well. Although these transactions did not meet the strict standards of common law land sales, none seemed to be contested later by widows claiming they had not received their rightful lands.

One or several supporting documents sometimes followed the actual deed in the court records. Documents granting power of attorney for a stand-in for the sellers appeared here. Another type of document which would appear after the deed in the record was a simple approval of the transaction signed by husband and wife. An example of the structure of the document is "Acknowledged in court the 29th day of March in the yeare of our Lord 1668" with signatures of both husband and wife. Alternatively, the document could be "acknowledged in open court" or acknowledged through attorneys.9

If there is any mention of a wife's acknowledgement in an attempt to meet common law requirements, the acknowledgement is usually an in-court assent to the transaction. Various wordings of acknowledgements are: "Acknowledged in open court by the aforesaid Peter Glenister & Sarah his wife as her voluntary Act" and "Acknowledged in open Court November the 12th 16[?]) by James Harrison

& Anna his wife her voluntary Act & Deed without compulsion.\textsuperscript{10} Acknowledgements mentioning the wife's "free and voluntary consent," "voluntary act and deed," or being made "without compulsion" tend to be concentrated in the later, post-1660 deeds. The record makes no mention of private examination of the wife for her acknowledgement and often notes that the acknowledgment was made in "open court."

Recording cases of wives surrendering their own land and their rights in lands owned by their husbands represented the ideal under common law. The reality of seventeenth-century Virginia often strayed from the ideal. Records reveal that wives rarely acknowledged the alienation of lands in which the women had rights. In cases where a wife acknowledged a transaction, the courts did not record private examinations of the women to determine if they were consenting to the sales free of their husbands' coercion. In one case, Thomas Minor served as attorney to Richard Thorpe and his wife Mary to assigne their rights in a bill of sale.\textsuperscript{11} John and Mary Utye jointly sold some land and there is no record of her private examination. While it is possible that the acknowledgements have been lost, this theory seems improbable, for reasons to be discussed later.


\textsuperscript{11} York County Deeds, Orders, and Wills, book (1), 236. December 4, 1649.
Perhaps more astonishing is the way in which the acknowledgement was adapted in seventeenth-century York County. Keep in mind that the system of private examination and the wife's official relinquishing of her rights in family land was created to protect the wife from her husband's coercion. Unless the court permitted thorough private examinations of wives at home with witnesses present, having the wife relinquish her dower or property rights by letter of attorney failed to protect the wives from the husband's influence. A husband could persuade his wife quite easily from their home unless the court required private examinations at home. Consider the complications if the wife were illiterate, as was often the case judging from the number of wives who signed their acknowledgements with a "mark." A conniving husband could draw up a document of acknowledgement or letter of attorney for acknowledgement, have the illiterate wife put her mark to paper, and alienate her lands. Yet when wives relinquished their rights in land, their attorneys had to affirm their agreement to the sale.

In cases where wives acknowledged the sale of their husbands' lands, they used attorneys to acknowledge their approval in 29 of the 141 cases, a total of 21% of the transactions. When married women used attorneys, the woman signed a power of attorney which was recorded with the deed. In most cases, two other people witnessed the wife's signature to the power of attorney. The powers of attorney varied in how specific they were. Some were simple statements designating a friend to acknowledge for the woman.
Occasionally, they were lengthy descriptions of the land involved and the attorney to alienate it.

Rather than obtaining the traditional common law acknowledgements, the sellers often sought a speedy sale. A case where discovering a wife's concern about the sale of her land seemed secondary to the land's quick sale was Bryant Smith's sale of land to John Duke. Dorothy Tucker Smith inherited land from her father, Daniell Tucker. Bryant Smith, who had no legal right to dispose of the land, sold the land on July 19, 1670 and "promises his wife will acknowledge this assignment." Legally, she could have barred this sale later since there is no record of her acknowledgement. The York County court may have been following the letter of the law in requiring some proof of the wife's agreement to the sale of real property, but it certainly exhibited no concern for the reasoning behind the law—protection of the wife's property rights from the coercion of the husband. Apparently this system proved adequate since no widows contested the land transactions due to insufficient acknowledgement.

Further evidence that the court simply followed the letter of the law with little concern for the reasoning behind it is an assignment of land from William Crumpe to Charles Woodington. William Crumpe received the land in 1657 from Edward Digges, acting

12York County Deeds, Orders, and Wills, book (4) p. 311, recorded January 10, 1671.
governor of Virginia, for transporting twenty people to the colony. Anne Crumpe, William's wife, had dower rights to the land. When William sold the land to Charles Woodington, Anne appointed an attorney to acknowledge the assignment in the usual Virginia manner. The person she appointed to be her attorney was none other than her own husband. That the courts accepted this acknowledgement demonstrates that the courts were not concerned with using the traditional procedure to protect the property rights of the wife from her husband using the traditional format. The acknowledgement process in seventeenth-century York County merely followed the form of common law procedure, without concern for the rationale behind it. Since no women later contested the sales in this form, the new system proved realistic for the York County setting. Perhaps the sellers were moving farther out on the frontier or back to England, thereby removing the widows from the location where the land would ever be valuable to them. More elaborate acknowledgements proved unnecessary in this situation.

In contrast Marylynn Salmon stated that colonial Virginians strictly adhered to the procedure of privately examining wives before alienating land in which they had interest. Salmon admitted that "Undoubtedly, in the earliest days of settlement in all the colonies, women's rights were overlooked, sacrificed to the need for secure land titles even though some of the titles resulted from unfair

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dealings."\(^{14}\) But she stated the Pennsylvania law was radically
different from the situation in Maryland and Virginia because
"Pennsylvania jurists contented themselves with asking that the
intent of the legislative formula be followed, rather than its exact
words."\(^{15}\) In its early years Virginia seemed concerned only applying
common law forms where they were appropriate to its distinctive
situation.

By September of 1674, Virginia law required that a married woman
agree to the transfer of lands in which she had an interest by "being
first privately examined by the court whether she acknowledge the
same freely."\(^{16}\) The law stated that this was "the legal way in
England of passing estates where the inheritance is in a ffeame
covert" and was "the usual way in this country for many yeares."\(^{17}\)
The absence of the acknowledgement permitted the court to nullify a
land transaction and return the land to the grantor.

The historian must ask the question of why the York County
records follow a different pattern from "the usual way in this
country for many years" and from what Marylynn Salmon found to be

\(^{14}\)Marylynn Salmon, Women's Property Rights in Early America, p. 38.

\(^{15}\)Marylynn Salmon, Women and the Law of Property in Early America, p. 33.

\(^{16}\)Hening, Statutes at Large, v. 2, p. 317, September 1674.

\(^{17}\)Hening, Statutes at Large, p. 317.
true of later Virginia court records. One might wonder if the records of private examinations were simply lost. But considering that records of acknowledgement were a critical factor in determining whether a land transaction were valid or not, the court would take as much care to record and preserve the acknowledgement as it did to preserve the deed itself, for without the acknowledgement the transaction would have been void.

A more plausible explanation is that the strict adherence to the common law practice of private examination which was noted in the statutes and appears to have been in use in eighteenth-century Virginia was less rigorously followed in the early days of the colony. This underlines Salmon's conclusion that Virginia law concerning women followed the English common law example more strictly as the eighteenth century progressed. But this explanation shifts the time of Virginia's adopting common law practices to half a century before the trend occurred in the northern colonies. Salmon detected that by 1770, the law became "anglicized" in Pennsylvania and New York when these two colonies began conforming to English methods of conveying women's property rights.18 The same process appears to have occurred earlier in Virginia. Married women in Virginia in the eighteenth-century may have had the benefit of strict-procedure private examinations that Salmon described, but they did not follow a consistent procedure throughout the entire colonial

18Marylynn Salmon, Women and the Law of Property in Early America, p. 27.
era. In addition, the historian must question the reason for returning to acknowledging sales of real property in the English manner. Why were the acknowledgements overlooked in Virginia's earlier years? What was the rationale behind the "anglicization" of the law?

The legal practices related to real and personal property transactions reflect the economic and demographic realities of colonial York County. The roles and duties allotted to women defined the legal practices. The law in turn determined what women could legally accomplish in colonial York County. The lack of step-by-step common law acknowledgements of sales of land by wives reveals as much about how wealth was held and how land was valued in seventeenth-century Virginia as it does about the role of women and their power within the family.

The concern for a wife's dower rights in English law is based on several assumptions about wealth and marriage. Dower was to maintain a woman social and economic position. Dower could be useful to widows for two reasons. First, dower provided for widows who would not otherwise be able to support themselves and their social position during the rest of their life-long widowhood. Second, dower rights could enable widows to remarry more easily because they brought a life right in land with them to the marriage. To accomplish these two goals, land must be a valuable asset.
English dower rights were based on the assumptions that the lands were held with little turnover. Land in the English setting was a fairly stable asset following a rigid pattern of transfer to family members from generation to generation. The courts could determine the dower portions in lands held throughout the marriage fairly easily. Strict dower acknowledgments worked in the English system of scarce and expensive land, established patterns of transferring land, and a stable demographic pattern of one or few marriages in an individual's lifetime.

The Virginia social and economic situations were much different than this pattern. Land was a different economic entity in Virginia. Marriages and families differed from their English counterparts.

Land was far more available in Virginia than in England. Even by 1660, 16% of the York lands were left unpatented, though this land may have been marginal in quality.\(^1\) In addition, a great deal of land was available beyond the boundaries of modern York County. Farther up the York River and even on its north bank, land remained available. During the 1640s and 1650s the population of York County actually decreased as people looked elsewhere for available land. At

\(^1\)Peter V. Bergstrom, "A Stop Along the Way," a chapter of Well Built Towns presented to the Philadelphia Center for Early American Studies at the University of Pennsylvania, October 17, 1986, p. 3. The 16% figure is based on the boundaries of modern York County. Ownership of land was not an option open to all York County residents. Many people were indentured servants and did not even own their own labor. Estimates from the Bergstrom "Stop Along the Way" article, (p. 2) suggest that the 1660 York County population included 245 landholders, representing about 20% of all residents.
the time York County was losing population, nearby Gloucester County
grew in both population and patented acreage. Some of these early
Gloucester patents were taken up by speculators, but over the course
of the century the lands were increasingly being settled by people
who intended to plant the land themselves. Nearby New Kent County
land began to be claimed in the 1660s, and the pattern was repeated
elsewhere. Instead of a surplus population of laborers developing in
York County, the population remained fairly constant after 1662, when
most of the land was patented. From 1662 to 1697, York County's
tithable population grew at an annual rate of 0.3% per year. In
contrast, the population of outlying counties continued to increase
much more quickly. Land, being relatively available elsewhere
could not rise as rapidly in value as it would in the next century.

York County did not develop a large landless population because
landless free persons could find opportunities to settle their own
lands further up the river. Relatively speaking, land was cheap;
labor was dear. Other types of property were valuable in comparison
to land. Protecting a widow's dower rights held in land was less
important in Virginia than in England simply because land was less a
guarantee of wealth and well-being in Virginia than in England.

Another reason Virginians did not need to worry about strictly

protecting a widow's dower right was that widows could marry fairly easily. As mentioned earlier, English dower rights provided widows with a means of supporting themselves during widowhood, which might last for the rest of a woman's life. A widow could have had the land cultivated or could have traded the use of the land for subsistence, perhaps in the home of a relative.

The imbalance of population between men and women meant that a widow would have had little difficulty remarrying, should she have wished to do so. Some of the court's most frequent participants were the widows who remarried, sometimes repeatedly. A woman often gave land owned by her previous husband to the children of that husband at the time of her remarriage.\(^22\) These gifts reflected the concern of mothers that their children receive their property. Besides, land inconveniently situated to the newly-weds' home could be of minimal value to the couple.

Since the demographic situation of the seventeenth-century permitted a widow to contract a new marriage fairly easily, the woman needed little property to make her more marriageable. Seventeenth-century women were so few in number that property in the form of a dowry was unnecessary.\(^23\)

\(^{22}\)This phenomenon will be discussed later in the section describing pre-nuptial agreements.

\(^{23}\)See the demographic statistics mentioned in the introduction to this thesis for details.
Because land had a minimal value in seventeenth-century York County and demography created a social situation for widows in Virginia that differed from that of England, the law adjusted to the reality of the setting. As has been described, dower acknowledgements in Virginia proceeded differently than the ideal under English common law. But there were other differences as well. The relatively low value of Virginia land had other repercussions. As a result of the labor shortage, a widow would have difficulty in finding anyone, besides her children to cultivate the crop for her during her widowhood.

More valuable to a widow would be the goods she needed to survive, but which she was unable to obtain for herself. These widows found that they most needed from their husbands' estates were some food, a means of preparing it, and a place to sleep—the minimal material objects necessary to sustain life. On May 24, 1686, Alse Read, relict of John Read "did relinquish her right of her said husbands Estate onely craveing for her Bed, pott. and three Barrells of Indian corn." Likewise, Elizabeth Smith relinquished the right to administer her husband's estate in return for her bed, pestle and pot. In the same language, Elizabeth Winge did in open court


25York County Deeds, Orders and Wills, book(6), p. 94, June 24, 1679. Elizabeth Smith, wife of John Smith, received one third of her deceased husband's land and one third of his "good movable and
"relinquish all her dower and right of adm of the sd estate [of her husband Jeremiah Winge requesting] onely her bed, pott and 3 barrells of Indian Corne which she is ord to have allowed her...." on January 24, 1689.

Why widows chose these same object is not certain. Perhaps these widows would have a room or small house on a relative's plantation and these goods would have been necessary in her new home. Elizabeth Price decided she needed more assistance in her new role as a widow since she "doth relinquish all her right and dowry of her late husbands estate Charles Price deced." but she needed "her God, [and] a pott and frying pann." She also requested and received "the bennifitt of her labour in the cropp this present yeare."^27

unmovable" in his will. [Deeds, Orders, and Wills, book (4), p. 291, recorded September 26, 1670] The estate was divided Nov. 21, 1670, with the remaining two thirds going to her son, who had apparently reached majority at this time. [Deeds, Orders, and Wills, book (4), pp. 301, 316. November 10 and November 21, 1670] When she relinquished her right to the third share of the land she may have obtained a place to live in the home of her son, since he would inherit the third share.

26 York County Deeds, Orders, and Wills, book (8), p. 197, January 24, 1689. Little more is known about Elizabeth Winge and her husband Jeremiah. She had been a criminal defendant earlier, as described in an earlier chapter. The Winges were sufficiently affluent to have a servant, Jno. Duning. [Deeds, Orders, and Wills, book (7), p. 51. March 24, 1685.] Jeremiah Winge seems to have been a glazier because he was brought to court for being late in completing some "glaseing" work. [Deeds, Orders, and Wills, book (7) p. 163, May 6, 1686. When Elizabeth relinquished her administration of the estate and her dower rights in it, the court assigned administration to Nathaniel Bacon, esq. because he was the greatest creditor. They may have been little property for Elizabeth to relinquish.

27 York County Deeds, Orders, and Wills, book (8) p. 137, July 24, 1688.
Another way in which dower rights and land transactions differed from those in England was the liquidity of land as a source of wealth in the colonies. Land was a fairly stable resource in England and was bought and sold fairly infrequently. In contrast, people moved more frequently in Virginia to seek better opportunities farther west. Under the English system, the wife of a man who had owned a 300 acre tract of land which he held during his marriage would receive a dower portion of 100 acres. If the man, who owned only this land during his marriage, sold the 300 acres, the court would want to insure that his wife approved of the land upon which she would be dependent for her support during widowhood.

Consider a second situation, more closely related to Virginia. A man sells 300 acres of land, also held during his marriage, and buys another 300 acres. He makes four successive transactions of this sort--selling one parcel of land to buy another. Technically, his wife would be entitled to a third of any land he held during their marriage. She could claim 500 acres, 100 from each of the five pieces of land. When husbands speculated in large tracts of land held over short periods of time, the wife's claim to dower rights in the total of all the lands would be unreasonable because she accumulated shares in each of the tracts of land the husband had ever held serially. Since in Virginia much of the land was held speculatively, courts would be less concerned with the wife's dower acknowledgements to these distantly located and often uncultivated
lands. By the eighteenth-century, the situation changed so that people cultivated the land in York, rather than merely speculating with it. With a low turnover of land, the court would have to be more careful to take wives' acknowledgements of dower alienation in the lands being sold.

Consider a survey of seventeen couples selling land in the seventeenth-century. Three couples sold land which the wife inherited from her father or which she received as a marriage gift from her parents. Five sold or made a gift of land which the wife had received as a bequest from a former husband. Four couples were living in England at the time. Two transactions were internal family arrangements, either gifts or exchanges of land with other family members. Two seemed to involve lands held speculatively. In one case the couple sold land in order to obtain another form of capital. For three cases further details were unavailable. In only the first type of transaction, when the couple sold the wife's inheritance or marriage portion, would strict acknowledgement be

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28These couples were chosen at random from a group of people who seemed to have more recorded biographical information about them. Keep in mind "more information" is a relative term in describing seventeenth-century Virginians.

29The total number of transactions exceeds seventeen because some fall into two categories, such as in the case of a remarried widow who moved back to England. The women surveyed were: Elizabeth Lyman Madox Chant, Agnes Reader, Elizabeth Ludlow Wiles, Margaret Fellow, Elizabeth Hansford Lockey, Lucy Higginson Burwell Barnard Ludwell, Elizabeth Hay Snignall, Elizabeth Booth Plouvier Griggs, Nutting, Mary Dickenson Overstreet, Mary Hurd Thompson, Mary Underhill, Sarah Webb Juxon, Mary Rooksby Travillion Wise, Elizabeth Ludlow Wiles, Barbara Gallant Baptist Wood, Elizabeth Burwell Hull Vaulx, and Mary Underhill.
expected. Acknowledgements from the wives living in England would have been impractical to the couples trying to sell their land. The court did not record strict acknowledgements for any of these transactions.

The remaining fourteen cases illustrate how the procedure in operation was appropriate for the Virginia context. Remarried widows could find the land from the first marriage unnecessary in their new family, especially if they were living in distant England. A ready market for land was necessary for land held speculatively to be valuable for the speculator. When Elizabeth Burwell Hull Vaulx sold 2000 acres of Westmoreland land her dead husband had received for headrights, the court would not be especially concerned that the land she needed the land to maintain herself and her social situation because she owned land locally as well. Likewise, when Mary Overstreet and her husband sold two plantations with dwelling houses, they were not selling the only home they owned.\(^\text{30}\) Isaak Godding, the purchaser of the Overstreet land, was most likely speculating as well since his residence was given as Gloucester and the land was described as being in Hampton Parish of York County.

The three remaining cases further demonstrate that strict acknowledgements proved superfluous in certain Virginia situations

\(^{30}\text{York County Deeds, Orders, and Wills, book (5), p. 156, February 28, 1676. When he died, Jeffery Overstreet left several tracts of land to his wife and sons, including land which his father "tooke up" and which probably was left to him. [Deeds, Orders, and Wills, book (12), pp. 100-101., March 24, 1703.]\)
because the woman's parents were involved in the transactions.

Elizabeth Booth Plouvier Griggs Nutting and her husband sold land to
Elizabeth Nutting's father, William Booth. He, in turn, gave them
another tract of land on the same day. Elizabeth Hay Snignall and
her husband sold land she inherited from her father. Part of the
land was sold to a stranger, but part was apparently sold to her
mother and her mother's new husband who was referred to as "my father
Howard." The land the Snignalls sold was a third share of land which
her mother also held a third share. The daughter, out of concern for
her mother's well-being and holding a share in a parcel of land in
which would be of marginal importance to her now that she owned other
land could easily part with land which would be of greater value to
her mother. These transactions show no signs of a coerced wife
having her lands sold against her will. The wives probably approved
of these sales even without the recorded acknowledgement. Lack of a
recorded wife's acknowledgement of a land transaction does not imply
that the wife's interests were overlooked. Simply because the court
did not make private examination of the wife does not prove injustice
against a woman. In the above-mentioned situations, the married
woman may have suggested and no doubt assented to the transactions,
even though the court records show no written acknowledgement for
these sales. Acknowledgements would be necessary in cases where the
court had reason to suspect a husband's disposal of land in which his

31York County Deeds, Orders, and Wills, book (8) 16-9, August
28, 1689.

32York County Deeds, Orders, and Wills, book (7) pp. 95-7,
August 24, 1685.
wife had an interest contradicted her wishes. In transactions within the wife's family, the court had no reason to be suspicious.

The remaining case in which land was transferred as a liquid asset was that of Agnes Reader and her husband, Andrew. They sold a house and land with the agreement that the building be used as the York County court house. In return, the Readers received another bit of capital, a license to operate an ordinary (tavern). Operating a tavern to lodge and feed transients involved with court activities could be extremely profitable. Since women often operated taverns as widows, the tavern could be as valuable to Agnes Reader in her widowhood as a parcel of land would be. Trading the property for a licence to operate their ordinary treats the land, not the sole form of wealth, but as one means among many to obtain a person's financial well-being. Land was not currency, but neither did it hold the position of the dominant means of generating wealth that it had in England. The abundance of land in Virginia depreciated its value relative to real property in England. The dearth of labor permitted other sources of income to be equally valuable. Making it easier for Agnes Reader's husband to sell land to obtain a tavern would still permit her to support herself alone should she need to. The circumstances required the application of property law to adjust according to economic reality, and the Reader sale displays one such adjustment since the sale of land maintained her interests.

Another case demonstrates how the law adapted to the economic situation when the value of land compared unfavorably to other types of property. Under one English example, a wife would acknowledge her husband's sale of real property but not of personal property. All of a woman's personal property became her husband's upon marriage, so no acknowledgement was necessary. In Virginia, chattel property could be as valuable as real property since land had a relatively low value compared to livestock and imported goods. By protecting a wife's interest in chattel property, the court could insure that she had sufficient wealth for her financial well-being during her widowhood.

In January 1669, Robert Jones and Mary his wife sold a foal to Francis Barnes. Both Robert and Mary signed the record of the transaction, Mary signing by her mark. Following the record the clerk noted that the transaction was "Acknowledged in open court January the 25th 1668[9] by Robert Jones & Mary his wife & her voluntary act...." In this case, the couple followed the same procedure for the sale of a horse as was customary for the sale of land. The horse was part of a trust Robert had established for Mary in the first years of their marriage.


35York County Deeds, Orders, and Wills, book (3) p. 179, October 25, 1662; book(4) 97, August 24, 1666.
Normally the law did not require a wife's acknowledgement of a sale of a horse since she could claim no dower rights in the horse after her husband's death. In this unique example, the husband respected that his wife's chattel property as well as her rights to real property were protected. Though the Joneses sold the horse in the end, Mary Jones acknowledged the sale before the transaction was recorded. The couple thought the acknowledgement made the sale more valid. The court also recognized that the chattel property held by the couple could be as valuable as the real property it owned, and recorded the same acknowledgement as for real property sales.

As has been shown, in the early years of the colony the population and land distribution of Virginia was much different than that of England at the same time. Wealth and well-being were described in entirely different ways in the two locations due to economic and demographic differences, even if the legal heritage was much the same. As a result the legal situation in seventeenth-century Virginia adapted to meet the social situation.

By the eighteenth-century, the period in which Marylynn Salmon described Virginians following strict common law acknowledgments, Virginia had become more similar to England in its economic and demographic situations. As can be expected, their legal situations became more similar, too.

In the eighteenth century, land in York County and Tidewater
Virginia was more densely settled and the sex ratio balanced. Since land was more scarce, its value increased and once again land became valuable in itself as well as being a means for creation additional wealth. As such, land could be given to widows with the expectation that the widows could actually use the land as a means of providing economic support for widowhood. Dower rights in land would become more important as land values rose.

Virginians adapted the law to the new situation of limited, valuable land being a useful means of support for a woman in her widowhood. Instead of relying on the informal or non-existent acknowledgements of the seventeenth century, one would expect the York court to use the strict example of English private examinations.  

If demography were a contributing factor to informal acknowledgements of land conveyance, a change in the structure of the population would reflect a change in the acknowledging patterns, too. With the unbalanced number of men to women in the seventeenth century, widows could remarry fairly easily. Thus, providing for

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36York County Deed Book 6: pp.2-3, January 19, 1778, William and Eleanor Mitchell to John Baker; pp. 4-6, July 20, 1778, David and Mary Morton to Isham Goddin, and other examples.

Wording for the Morton case is as follows: "By Virtue of this Writ We did personally go to the within named Mary Morton Wife of David Morton and Examined her privily and apart from her husband and before us she acknowledged the Indenture within mentioned to be her Act and Deed and declared that she did the same freely and voluntarily without his persuasions or threats and that she was willing the same should be recorded in the Court of York County...."
widows was less critical in a situation where widowhood was likely to be a temporary state. There even is a possibility that society avoided automatic assignment of dower lands to a widow in the situation of an unbalanced sex ratio. If widows had no economic motivation to remarry, the unmarried men in seventeenth-century Virginia would have fewer opportunities to marry. Married men and women might see economically secure unmarried widows as a threat to a stable society. Would they be tempted to remain happily unmarried, producing no new children? Would they be tempted to engage in relationships outside the accepted marital bond of the Christian English example? These possibilities are unlikely as the primary causes, but could be considered in assessing reasons why seventeenth-century Virginians de-emphasized married women's right to acknowledge sales of lands in which they had dower rights. Without the means to support themselves, widows would be persuaded to marry again. In addition, formal acknowledgements were less critical if very few women lived as widows for very long. By the eighteenth century, the sex-ratio had evened out and older women were more likely to live as widows for a longer period of time. As a result they would need to have the dower lands to support themselves and the courts would be more concerned with seeing that they received the land they needed. Wives' acknowledgements of land transactions were likely to become more important in the eighteenth-century demographic situation.

This scenario accurately describes what happened. In the eighteenth century, the courts began recording not only the
acknowledgements but also noted the procedure followed by the court to obtain the wife's consent. The changes in the society and economy of York County resulted in a change in its legal practices.

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In other types of civil cases the social and economic situation of seventeenth-century York County determined women's roles within the legal system. Economic necessity forced some married women to become active in court by serving as attorney for their husbands. Married women acting on behalf of their husbands were a different kind of attorney than the twentieth-century notion of the courtroom lawyer. "Mercenary attorneys" were prohibited in Virginia in 1645 and were suspect at other times in the early years. In the seventeenth century, an attorney was a friend or family member who assisted in legal affairs without financial reward, often when the person was unable to go to court in person. Elizabeth Burwell Hull Vaulx was married to Robert Vaulx, "London merchant." She, like her husband, spent time in both London and Bruton Parish, York County. Her husband appointed her as his attorney, apparently during his frequent or sustained absence. His absence from the colony required that someone take over his affairs, and he chose his wife to


oversee matters in Virginia. Robert Vaulx appointed Elizabeth attorney in April 1659. She appeared in seven separate cases or courts until her last case as attorney in 1666, the year of her death. During the years between 1659 and 1666, Elizabeth Vaulx presented her husband's accounts and collected debts for him. At one point, she turned the accounts over to her own attorney when she intended to go to England. However, Elizabeth Vaulx was exceptional in seventeenth-century Virginia both for the number of cases for which she acted as an attorney and for the total number of cases in which she appeared in her own right. She appeared in twenty-four cases, sometimes settling the affairs of her first husband's estate and twice giving testimony in other cases.

While Elizabeth Vaulx's name appeared in the county court records more frequently than other York women, most women serving as attorneys for their husbands gained more experience in court proceedings by their frequent attendance than women who did not serve as attorneys. Women attorneys appeared in cases numbering from a low of two to a high of twenty-four and averaging slightly over eight cases each. This is high compared to the total number of cases in which a woman would participate in her lifetime. Since the husbands of women who served as attorneys had business which took them out of the county and often out of the colony, these men left a great deal

of responsibility to their wives to settle. The distance from England and the business which required these particular men to be absent from the colony forced the wives to take on more public roles within the York County Court.

Twenty-eight cases were decided in court in which either the plaintiff or the defendant was a woman serving as an attorney. The cases were distributed fairly evenly through the period of this study, with a few cases in each decade beginning with the 1640s. Thus, wives acting as attorneys were not just an aberration or an early, less-rigid legal system.

The thirty-four cases for which women were noted as attorneys break down into eleven cases for which the woman acted on behalf of a plaintiff, eleven cases the woman was a defendant, and twelve for which the woman's role is uncertain. In the "uncertain" cases, the husbands appointed their wives attorneys for such general reasons as Samuel Plowright's instructions for Mrs. Plowright to take care of "my business whatsoever that belongs to me."40 Of the eleven cases in which women were attorneys for defendants, they "confessed judgement" to debts in seven cases. Whether confessing judgement was a simple settling of accounts or other type of action is uncertain, but the defendants admitted they owed the debt. Occasionally the

40York County Deeds, Orders, and Wills, book (4) p. 229, March 10, 1669. Another example of general instructions to the wife are those from Edward Davis to Susannah Davis the second time she was his attorney. Deeds, Orders, and Wills, book (6), p. 205, February 24, 1680.
husband gave his attorney wife exact instructions for her to follow in court. An example of this is when Mary Smith "confessed judgement by order of her husband" to William Padisson.\(^1\) Perhaps many of the attorney wives acted with specific directions for what they should accomplish in court.

The other four cases in which wives acted on behalf of husbands were also debt suits. One suit was dismissed without further details. In one case the attorney wife was successful in obtaining a nonsuit and in another the court ordered her to pay the debt. In the final case, the plaintiff would win if the defendant did not appear at the next court. No further details exist. Attorneys for defendants were successful in half their cases.\(^2\)

In the eleven cases where women were attorneys for the plaintiffs they had similar results. In three cases the litigants settled their accounts in court. Two cases were dismissed with no further details. Four attorneys for the plaintiffs lost outright while only two of the plaintiffs won.\(^3\) The attorney wives had no overwhelming success or failure rates. They were successful in about half of the disputed cases which is the same rate one could expect

\(^1\) York County Deeds, Orders, and Wills, book (2) p. 287, October 26, 1647.

\(^2\) The wives were Anne Calthorp, Rebecca Hethersall, Jane Mountfort, and Elizabeth Disarme.

\(^3\) These women were: Elizabeth Vaulx (four cases), Jane Mountfort (two cases), Jane Parke (two cases), Agnes Reade, Alice Page, and Elizabeth Jones (one case each).
men to obtain. Men could depend on their wives to carry on the family's business when the men could not appear in court themselves.

The woman who appeared as attorney for her husband during his lifetime was fairly rare. After a husband's death, however, the widow often took responsibility for the family's finances. The result of short life expectancies in the colony was that women who survived the disease-ridden climate were widowed early and often.

Administrations of estates were to be granted at the county court of the place where the decedent resided. The secretary of the colony then certified and sealed the administration. Widows who administered the estates would have to request an accounting of the estate's assets, arrange payment on debts the estate owed and collect debts owed to the estate. Women were recorded in 324 cases involving administration of an estate and requesting appraisal or accounting for it.

Of the 324 cases involving administrations, widows were involved in 160 cases where debts were either owed to or from the estate. Widows were only slightly less successful as plaintiffs in debts suits for settling estates than creditors were in obtaining a judgement against the estate. Women's slightly lower success rate could be explained by the fact that the husband could have adjusted or forgiven a debt without informing his wife or making a note in his

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44 Act 9, November 1645, Hening, Statutes at Large, v. 1, p. 303.
records. At any rate, the difference in success rates proves minor in the context of the total number of cases. A total of 94 plaintiffs brought cases against a widow where she was specifically stated to be an administratrix or executrix and 71% of these plaintiffs were successful. Specifically stated executrices or administratrices brought 66 cases against defendants were successful 67% of the time. Those with claims for or against an estate seemed to be equally successful, regardless of gender. Women could take care of business left by their deceased husbands as successfully as the men could have themselves.

**TABLE 9**

**CIVIL SUITS FOR SETTLING ESTATES**

<table>
<thead>
<tr>
<th>RESULT</th>
<th>ADMINISTRATRIX AS PLAINTIFF</th>
<th>ADMINISTRATRIX AS DEFENDANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL CASES:</td>
<td>66</td>
<td>94</td>
</tr>
<tr>
<td>PLAINIFF WON</td>
<td>44 67%</td>
<td>67 71%</td>
</tr>
<tr>
<td>DEFENDANT WON</td>
<td>7 11%</td>
<td>10 11%</td>
</tr>
<tr>
<td>ACCOUNTS SETTLED</td>
<td>7 11%</td>
<td>5 5%</td>
</tr>
<tr>
<td>CONTINUANCES, INVESTIGATIONS</td>
<td>2 3%</td>
<td>6 6%</td>
</tr>
<tr>
<td>APPEALS</td>
<td>4 7%</td>
<td>2 2%</td>
</tr>
</tbody>
</table>

Widows whose husbands were active in trade or out-of-colony business were most likely to take responsibility for a husband's finances eventually. If a husband died leaving much business
unsettled, his widow would have more legal duties after his death than would the widow of a subsistence planter with few outside obligations.

As widows, women had new responsibilities for their children. Some historians, such as Lorena Walsh and Lois Green Carr, have argued that Chesapeake husbands trusted their wives to make financial decisions for their children and gave their widows control over the family's property in their wills, even though the men know that their widows were likely to remarry. York County men exhibited varying degrees of confidence in their wives' ability to care for their children's property. Some, like William Clopton, "gent.", carefully divided his legacy because he wished "to prevent question that might arise amongst his wife and children." But another York County husband showed as much confidence in his wife as Lorena Walsh and Lois Carr suggested to be the case throughout the Chesapeake region. John Overstreet gave his wife everything in his estate after his debts were paid. When his wife asked if he wished to leave the children anything, he said no because "they were her children as well as his."


46 York County, Record of Deeds, Orders, and Wills, book (6), pp. 551, January 24, 1684.

Not all women chose to manage the estates. Widows sometimes assigned sons as their attorneys in collecting and paying debts against the estates. That many widows married again before their former husbands' estates were settled can be seen by the number of cases where a new husband took over the administration of the estate by "intermarrying with the relict." These cases are difficult to follow because the widow was not always mentioned in second and subsequent references to disputes involving the first husband's estate. Instead, the new husband was listed as the litigant in the case. The most complicated cases involved two new husbands of widows when neither of the original contractors appeared in court at all. Instead, the cases are heard under the names of the two new husbands of the two widows of the two men who originally brought the case to court. Chesapeake planters may have had faith in their wives' ability to manage their estates after their deaths, as Carr and Walsh suggested. Some wives would prove capable, others less so. Some husbands would count on their wives to handle the estate, others would not, sometimes from a sexist fear of his wife as a woman being incompetent. An alternative explanation to explaining why Chesapeake husbands granted their wives the power to administer their estates is that the husbands had faith in their wives' remarriage prospects to men who would manage the estates for them, since most debt suits involving estates were taken over by the new husband. The phenomenon of a husband, appointing a wife as his attorney during his absence offers more concrete evidence of the husband's faith in his wife's
business skills.

Widows often faced additional legal duties when they chose to remarry. In many instances, women chose to solve the "his, her, and theirs" complications by making some sort of pre-nuptial agreement. In the historical literature, pre-nuptial agreements often are used to support the notion that wives desired to maintain some independence even though a woman usually lost her legal identity after marriage. For example, Mary Beth Norton described an eighteenth-century woman, Elizabeth Murray Campbell Smith Inman, who negotiated agreements with each of her husbands so that she could maintain control over her resources for her own economic pursuits.48

A few York County women, almost all widows, entered into pre-nuptial contracts. Occasionally the agreements permitted the widow to maintain her property for her own benefit, like Mary Beth Norton's Elizabeth Murray. When York County resident Elizabeth Lyman, a widow, married William Madox he gave her "during her life all the estate, property, servants, and lands that her husband John Lyman deceased left to her in his will."49 This he did "in consideration of the love he has for Elizabeth Lyman." In the first years of


Robert Jones's marriage to Mary Rogers Jones Bass⁵⁰, Robert Jones established a trust for his wife. She received household goods and animals as a result of this trust.⁵¹ When John Chew married Racheal Constable, he gave her the proceeds from the sale of four servants and some horses as well as giving her the house and plantation where they lived.⁵² Clement Marsh, upon marrying Mary Croshaw gave Mary "the same full pwer & authority after marriage to dispose of & settle accord. to her owne will & desire her sd estate whether real or personall either to her children or otherwise by feofees in trust as sd Mary to the best advice agreeing with her judgmt shall think fit."⁵³

Most York County women entering pre-nuptial contracts were not expressly seeking financial independence for themselves. Instead, they made agreements to protect the property rights of their orphaned children. Just before Mary Ludlow married Peter Temple, she gave her three children "servants mares sheep cattle household stuffe plate and other goods," as well as a sum of tobacco, which was the currency

⁵⁰The system of keeping all of a woman's names in the text may seem cumbersome to the reader, but it is the only way of maintaining a constant means of identifying women when they married so often during their lifetimes. Especially when doing computer sorting, the historian finds she must have a constant identity for the historical characters.

⁵¹York County Deeds, Orders, and Wills, book (3) p. 179, October 25, 1662.


since the woman's personal property would become her husband's after their marriage, she would have to make the gift at the time of the wedding or the children might lose their property at the hands of a dishonest or luckless step-father. Many of the agreements made when "there is a marriage suddenly to be solemnized" were gifts made to the children of the wife's previous marriage and signed by the bridegroom. The court recorded cases where the husband put up security for the performance of these agreements.

Another example of a pre-marital contract benefitting the children was the Wythe-Tiplady agreement. In this case, a man wrote a contract to preserve his estate for the benefit of his children. When Rebecca Wythe took as her first husband widower John Tiplady in 1687, she signed an agreement which designated part of his estate would go to his two daughters if he died before Rebecca. With the complex familial relationships that existed in seventeenth-century Virginia, providing for one's kin, but not to those of the spouse might require such an agreement. In families where neither spouse brought children to the marriage, an agreement was less essential. In the Wythe-Tiplady marriage the agreement proved warranted because two years after the marriage John Tiplady died, and Thomas Beale took...
up the cause of John Tiplady's daughter, Elizabeth against Rebecca Wythe Tiplady. In the case Beale claimed Rebecca Tiplady sought "wholy to dispossess" Elizabeth of a slave which had been given to her. The court decided in favor of Beale. This case demonstrates how the York pre-nuptial agreements protected children's property rights as much as it did wives.

The civil suits describe the roles and expectations of women in the York County context. The women involved in civil suits tended to be the more well-to-do in the community, in contrast to the criminal defendants described in the previous chapter. The civil litigants had property concerns which were of sufficient economic value to bring them to the concern of the court. Women making pre-nuptial agreements, such as Mary Croshaw Marsh and Mary Ludwell Temple were among the wealthiest women in the county and were married to some of the most influential men in Virginia. Like a centuries old jigsaw puzzle, much of the picture is visible even if many of the individual pieces are missing.

The women in civil suits took on responsibility for family affairs when their husbands were absent or after they died. The law adapted to meet the distinctive situation of York County's blended families and short-lived parents. The law protected wealth in York County in a new manner. The law evolved to reflect accurately and

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57 York County Deeds, Orders and Wills, book (8), p. 351, December 18, 1689.
protect suitably the roles of women in seventeenth-century York County.
CONCLUSION: TANTALIZING QUESTIONS AND SUSPECT ANSWERS

The greatest frustration I experienced in writing this thesis was that there was so much more I wanted to know. Some things could not be discovered; the records simply did not hold the information. Other questions could be answered only with the proper amount of coaxing the records and by "massaging the data." Women did appear in court as victims and as witnesses, and interesting things can be said about them. Likewise, comparisons could be made to women in other colonies and England at the same time and to Virginia women in the next century. Questions about women as victims and witnesses as well as comparisons to women in other times and place will have to await future inquiry.

The point of this paper was to describe the variety of often surprising roles women undertook in legal activities in seventeenth-century York County. I also attempted to show some of the reasons why certain legal processes developed as a result of the distinctive demography and economy of seventeenth-century York County. As these contextual factors changed, so did the roles of women in court.
Within the historian's own social and political context, many assumptions have been developed about the "traditional family" and "women's roles" both in and out of the family. The court records of seventeenth-century Virginia provide a great deal of ammunition to fire at those who make these assumptions. The role women took as attorneys in court for their husbands is a prime example of a "traditional" role for women, which is often overlooked. Another historically traditional action for women was to protect their assets before entering a new marriage through the use of pre-nuptial contracts.

Elizabeth Jones Caufield was another woman who breaks the stereotype of the dependant woman in history. Elizabeth, wife of William Caufield, apparently sold land without his consent. Purchasers of the land must have agreed with her right to sell or been unaware of William's existence as her husband. At any rate, William Caufield issued a statement that "I Major William Caufield of Lyons Creek in the County of Surrey do hereby make publique protest against all & every bargaine sale contract & other agreement whatsoever made by my wife Elizabeth Caufield & do hereby declare that I do disallow renouce & utterly disowne all such bargains sales & contracts whatsoever by her made...." He further threatened that anyone who dealt with his wife "may not expect the least satisfaction from me but such bargains & sales [are] made upon their own peril &
hazard."¹ Elizabeth Caufield broke out of her legally assigned role.

Other women spoke out against the power of the court. On May 24, 1648 Katherine Warde appeared in court concerning a debt claimed by Robert Baldry, and the court determined that she owed Baldry 150 pounds of tobacco. Warde was apparently unhappy with the decision because the records state that on the same day she "uttered many unseemly speeches" against the court and was committed to the sheriff's custody.²

In response to an unfavorable decision in a suit heard in 1683, Mrs. Anne Clopton agreed with her husband that no justice was done in the York County court concerning their case. She told her son, John Dennett, "if thy father had been as rich a man as Capt. Archer, he had had justice done him as well as Capt Archer, but he being a poor man there was none for him."³ Anne Clopton along with her husband were fine 200 pounds of tobacco for their "words tending to the contempt of his maj's government."⁴

While these statements do not represent the views of all women

²York County Deeds, Orders, and Wills, book (2), p. 355; May 24, 1648.
³York County Deeds, Orders, and Wills, book (6) 497; April 24, 1683.
⁴York County Deeds, Orders, and Wills, book (6) 493; April 24, 1683.
in York County concerning the nature of justice distributed at the
court, they are among the few references which state how particular
women reacted to court's decisions. The court records usually reveal
how the court responded to the actions of the women brought before
it, not vice versa.

Describing the more active, outspoken, daring women as the norm
is tempting, but this temptation must be resisted. Seventeenth-
century women are not like twentieth-century women in quaint wattle-
and-daub settings.

Nor are seventeenth-century women like those of the eighteenth-
century. Seventeenth-century women were required by their situation
to take a comparatively active role in legal matters. They were
widowed often, which required them to make frequent probate
appearances. They had confusing families of children and step-
children with half siblings that meant the devolution of property
could be complex. Because husbands were sometimes absent, married
women were required to take on additional responsibilities. Their
statistical rarity meant they were sought-after brides, with any
negotiating value that fact might bring. Many spent part of their
lives as indentured servants and faced unfortunate consequences as a
result of their servitude.

The law developed new strategies to deal with their distinctive
situation in the seventeenth-century York County context. Even
without the exciting cases of women like Elizabeth Jones Caufield and Anne Clopton, the seventeenth-century York County woman was forced to be relatively independent and aware of what was necessary for her family's well-being and her own. Application of the law in York County reflected her situation.
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