

In Protection of No Woman: Consent, Illegitimacy, and Gender-Based Violence in Early
Modern Somerset, 1600-1699

by

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Authors Declaration

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

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Abstract

Over the course of the seventeenth century, 1298 women came before the Quarter Sessions to secure financial resources for the upkeep of their unborn children. These interactions with the legal system highlight the ways in which female experience did not always translate into the adjudication of their cases. The preoccupation of the court, which was to shift financial support away from the parish to the putative father, highlights that the lived experiences of women were secondary to the primary economic objective. The inability to fully engage with these experiences and adjudicate accordingly demonstrates the violating nature of these proceedings. Who did the court intend to protect through bastardy proceedings, and what was the marginalizing impact of these decisions?

This dissertation explores the marginalizing processes embedded in the Quarter Session records of bastardy. Through the employment of a mixed methodological approach that engages both qualitative and quantitative strategies, this work shows that the Sessions were designed and implemented in a way that continued to marginalize unwed mothers for their failure to conform to socially accepted courting rituals. It also failed to account for the varied lived experiences of these women. As a result, the entire adjudicating process perpetuated institutionalized gender-based violence. The system was designed to not protect the well-being of mothers and their illegitimate children, but rather to protect the financial interests of the community at large, and reinforce gendered cultural expectations through a public shaming process. As a result, the processes ensured that women's voices were present but silenced through the procedural mechanisms enacted in the Sessions and institutionalized gender-based violence enacted against unwed mothers in Somerset.

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Table of Contents

<i>Authors Declaration</i>	<i>iii</i>
<i>Abstract</i>	<i>iv</i>
<i>Acknowledgements</i>	<i>v</i>
<i>List of Figures</i>	<i>ix</i>
<i>List of Tables</i>	<i>x</i>
Introduction	1
<i>Defining Gender-Based Violence</i>	4
Historiography	6
The Challenge of Source Scarcity	16
A New Path Forward: Digital Methodologies	21
<i>Notes on the COVID-19 Pandemic</i>	26
Outline of Argument and Dissertation	28
<i>A Note on Language</i>	30
<i>Violence in the Sessions: Bastardy in Somerset 1600-1699</i>	31
Introduction	31
Quantitative Methodology	33
History of the County	40
History of Bastardy in England	44
Judicial Processes	46
The Contours of Somerset Bastardy	49
Position of Mothers and Accused Fathers	54
<i>Physical Location</i>	54
<i>Occupation and Social Status</i>	57
<i>Outcomes</i>	62
Gendered Violence in the County	66
<i>Violence in the Quarter Sessions</i>	68
Conclusion	76
<i>Shaming and Blaming: The Process of Proving Paternity in Somerset</i>	79
Introduction	79
Methodology	81
The History of Emotion and Expression	88
The Process of Proving Paternity in the Early Modern Court Room	93
<i>Paternity</i>	95

Flattening Language Patterns: Simplifying the Emotional Complexity of Sex	107
Institutionalized Violence.....	110
Conclusion	117
<i>‘Who States that she is with Child after he Raped Her’: Consent, Illegitimacy, and Rape in the Somerset Quarter Sessions.....</i>	121
Introduction.....	121
Methodology	124
History of Rape and Sexual Violence	127
Rape and Sexual Violence in the Quarter Sessions	130
Patterns of Rape in the Quarter Sessions (Primary Source Analysis)	132
Consent and the Law	136
Consent in the Quarter Sessions.....	139
Rape and Illegitimacy	145
The History of Rape and Illegitimacy.....	145
Linguistic Analysis of Rape	146
Conclusion	151
<i>Gullible and Conniving Women?: Illegitimacy, Power, and Women in Service</i>	153
Introduction.....	153
History of Women in Service.....	156
Expanding the Definition of Rape	164
Vulnerability, Coercion, and Sexual Violence	168
Conclusion	178
<i>Conclusion</i>	181
<i>Bibliography</i>	191
Archival Sources	191
Secondary Sources	191
<i>Appendix A: Full List of Paternal Occupations</i>	213
<i>Appendix B: Complete List of Female Marital Status</i>	216

List of Figures

Figure 1: Chapter Methodologies

Figure 2: County Map of England

Figure 3: Map of Somerset

Figure 4: Cases of Bastardy in Somerset by Year

Figure 5: Relationship in Locality between Mother and Accused Father

Figure 6: Paternal Occupation

Figure 7: Specification of Paternal Occupation

Figure 8: Specification of Maternal Status

Figure 9: Maternal Status

Figure 10: Sentencing Applied

Figure 11: Power Imbalance between the Mother and Alleged Father

Figure 12: Paternal Threats of Violence

Figure 13: Coercive Tactics

Figure 14: Frequency of Marriage Proposals

Figure 15: Screenshot of Transkribus

Figure 16: Screenshot of Antconc

Figure 17: Structure of a Quarter Session Record

List of Tables

Table 1: Data Categories

Table 2: Initial Random Sampled Data and Collection Size

Table 3: Actual Sampled Data and Collection Size

Introduction

1656

from an order

*uppon hearing of one William Toogood uppon this appeale from an order in
Bastardy touching a base child borne of the body of one Elizabey Sherwyn...
and...doth order that the said Towgood shall pay unto the churchwardens and
overseers of the poore of Higham toward the releife of the said child¹*

Throughout the seventeenth century, 1298 women came before the Quarter Sessions in Somerset.² They came at various stages during and after their pregnancies to ask the Sessions for financial assistance. However, as the case of Toogood and Sherwyn demonstrates, the parish did not desire to pay the maintenance of the child and was most interested in ordering the putative father to pay for the upkeep of the child. While their experiences were diverse, these mothers were connected by their social status and behaviour. They were vulnerable individuals who conceived a child but were unable to formalize their relationship through marriage. These women were possible financial burdens to the parish poor relief fund, and, as such, the court took concerted steps to ensure that they would not become a social and financial burden to the parish.

These cases represent an early modern English equivalent of child support proceedings, but they diverge from the modern equivalent in that child support was not determined following

¹ Appeal against a bastardy order. 1656, (1656), Somerset Heritage Centre, Q/SR/94/117.

² The population of Somerset during the seventeenth century was approximately 200,000, as discussed in Geoffrey Robert Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick, N.J.: New Brunswick, NJ: Rutgers University Press, 1979), 9.

divorce, support only applied to the children of unwed mothers. As poverty rose in early modern England, so did the number of illegitimate births, which concerned officials administering support, and poor law infrastructure expanded during this period to better address rampant poverty, food scarcity, and famine.³ These proceedings represent the plethora of lived experiences of unwed mothers in this context and articulate how they encountered the court and their communities during this period of intense social and economic vulnerability. While the cases contain formulaic language, the events detailed in each case are in no way universal. The interactions with the court highlight the ways in which the translation of female experience was limited by the cultural views of the time. Their lived experiences are hidden within the preoccupations of the court.⁴ The inability to fully engage with these experiences and adjudicate accordingly also highlights the violating nature of these proceedings. Who did the court intend to protect through bastardy proceedings, and what was the marginalizing impact of these decisions?

This dissertation will explore the marginalizing processes embedded in the Quarter Session records of bastardy. Through the employment of a mixed methodological approach that engages both qualitative and quantitative strategies, this dissertation provides a stronger analytical framework than previous historical analyses of gender and gender-based violence to more effectively account for context and content and support a comprehensive analysis of patterns of violence and marginalization embedded in the Quarter Sessions. This work shows that the Sessions were designed and implemented by the community in a way that continued to marginalize unwed mothers for their failure to conform to socially accepted courting rituals and

³ Paul Slack, *The English Poor Law, 1531-1782*, 1st Cambridge University Press ed., New Studies in Economic and Social History 9 (Cambridge ; New York: Cambridge University Press, 1995), 3-4.

⁴ I define lived experience as a woman's perception of the events outlined in the court record. These experiences do not always conform to the legal definition or contribute to the burden of proof, but rather highlight the ways in which she perceived the experience. These experiences are then used in this dissertation to expand the definition of rape and gender-based violence to explore the embodied experience of women beyond the institutional definition.

failed to account for the varied lived experiences of these women. As a result, the entire adjudicating process perpetuated institutionalized gender-based violence. The system was designed to not protect the well-being of mothers and their illegitimate children, but rather to protect the financial interests of the community at large and reinforce gendered cultural expectations through a public shaming process. As a result, the processes ensured that women's voices were present but filtered and ignored through the procedural mechanisms enacted in the Sessions and institutionalized gender-based violence enacted against unwed mothers in Somerset.

Violence against women emerged in two distinct forms in the Quarter Sessions. Violence was exerted through patriarchal power structures that were embedded in the social fabric of early modern society. Patriarchy in this dissertation refers to the system of social order and control. The system could be equally as detrimental to men as women; however, in some circumstances men received more privileges through this system based on their gender, class, religious affiliation, and occupation. This system was often very contradictory and was implemented inconsistently across the seventeenth century. While it is important to acknowledge that men could also be negatively impacted by the patriarchal system, women in cases of illegitimacy were more consistently and differently punished by these structures than putative fathers.⁵ Throughout this dissertation, I define gender-based violence as a behaviour that results in the further marginalization and suffering of women (and men) within this system and this violence was enacted in two principal ways in the Sessions. This dissertation, however, will focus on the marginalization of unwed mothers. The first mechanism of marginalization was through the structural foundations of the court proceedings. This included the ways which women were

⁵ Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford University Press, 2003), 1; 133-134.

questioned about their sexual histories, as well as the ways in which putative fathers engaged with women outside of the court system in a violent and coercive manner. Second, through the courts' inability and/or unwillingness to effectively account for the lived experiences of women requiring their assistance. This included how women constructed and conveyed consent in the Sessions. Women who conceived a child during a sexual assault stated to the court their lack of consent, even though the presence of a fetus illustrated their consent based on the two-theory model of conception. Exploring questions of gender-based violence within the institutional structures, or adjudication process, of the Quarter Sessions enhances both our understanding of female experience in the past and in the present. It provides an opportunity to interrogate the ways in which crimes against women were positioned in the legal system and what options women had to ensure their survival as single mothers. Their position in the Quarter Sessions highlight the way in which women could speak to their own experiences. The presence of their voice might highlight the authority of unwed mothers in the determination of paternity. However, the power exerted by the Quarter Sessions and putative fathers made the reality and extent of female agency much more complicated.

Defining Gender-Based Violence

Gender-based violence is an action that results in the further marginalization and suffering of women in society. A combination of historical, social, political, and economic factors need to be considered when building this definition, however. Societies perceive violence against women differently across time and space. These definitions vary historically. The question is whether the judicial perception of violence mitigates the lived experiences of women both past and present. In the early modern period, for example, violence against women was socially and culturally permissible in corrective circumstances. However, by the end of this period, the threshold of

what constituted correctional – and thus permissible – became more stringent.⁶ While such violence was theoretically permissible, it does not account for the terror of women in these circumstances. Just because a behaviour is socially permitted does not make it correct by either our standards, or even from the perspectives of the women themselves. As a result, when studying the history of violence against women, researchers must account for social factors that shape the historical definition while also expanding our definitions to account for the spectrum of women's experiences.

A contentious relationship exists between defining violence historically while simultaneously attempting to account for a diverse range of experiences. While I wanted to avoid the pitfalls of presentism in historical analysis, defining violence exclusively in premodern terms failed to account for the experiences recorded in the Quarter Sessions. As a result, my definition of gender-based violence accounts for a diverse range of cultural understandings of violence in the modern world. Today, the World Health Organization defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering...including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”⁷ The essential feature in this definition is *harm*, which is important because harm occurs beyond legal definitions or societal expectations. Harm of women and their bodies is what researchers miss when we focus solely on historicization, especially in the premodern context, because they were not then considered people under the law in the same way as men. Harm is an individual, subjective experience. As a result, throughout my dissertation, I explore the relationship between harm, marginalization, and

⁶ Elizabeth A. Foyster, *Marital Violence an English Family History, 1660-1857* (Cambridge, Cambridge; New York: Cambridge University Press, 2005), 234-235.

⁷ United Nations. Declaration on the elimination of violence against women. New York: UN, 1993.

suffering to better understand the ways in which legal structures embedded violence against women in their procedures.

While the early modern definition of gender-based violence speaks to the violence between individuals or an individual and their community, I argue that bastardy cases reflect an institutional structure designed to inflict violence on mothers seeking their assistance. They exploited societal shame, thus inflicting harm, around mothers engaged in premarital sex and require them to discuss facets of their body and sex lives that they were unable to articulate.⁸ While shame was and remains an inherent part of the legal system, women were more affected as their shame was embodied physically in a different way than male criminals. Moreover, the combination of the modern and premodern definitions more accurately accounts for the spectrum of behaviour present within the Quarter Sessions. By combining these definitions, I better understand the limitations of relying solely on an early modern perception and definition of violence, and the inheritance of the early modern implicit biases on modern definitions of violence against women within our judicial system. While early modern individuals might not understand violence in these terms, it is imperative to expand our definitions of violence to account for the lived experience of women in their attempts to access resources for their illegitimate children.

Historiography

Over the last 40 years, literature on gender and violence have reflected the cyclical nature of the field. The emergence of discourse on the topic of gender and violence seemingly aligns with two significant methodological shifts in the discipline: the cultural turn (1980s), which saw the

⁸ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

incorporation of social scientific methodologies, and the linguistic turn (1990s-2000s), which evolved from the cultural turn and emphasized linguistic patterns in source materials.

Publications in this field have, for the most part, become scarcer over the last 20 years, seemingly reflecting the inadequacy of current methodological frameworks to re-examine criminal discourse, and that the history of gender-based violence exacerbates the relationship between power and agency demonstrating that neither can exist in isolation.

The convergence and divergence of men's power and women's agency are central to the study of gender and sexuality in the premodern period. The intensely hierarchical and patriarchal nature of early modern Europe enabled men to exert social pressure over others, both within their own class and between classes. Patriarchy refers to a system of control exerted through the male head of household.⁹ It subscribes to three areas of control that were essential to "an ordered household – and, but implication, an ordered society."¹⁰ In an ideal society, "husbands should govern wives; masters and mistresses their servants; and parents their children."¹¹ Consequently, male heads of household received significant privilege through this system, as well as married wives.¹² As a result, power, as understood within historiographical discourse, involves men's exertion of power over others of equal or lesser social rank: navigation of these structures represents women's agency within society. For our purposes, the rise of discourse on agency is very significant. This emphasis on agency as a central aspect of women's historical experiences counters the traditional model of inquiry that sought examples of female power that would parallel the position of men within society. This creates spaces to explore the everyday lives of women from all social classes, as to compare women to men undermines the ways in which

⁹ Shepard, *Meanings of Manhood in Early Modern England*, 3.

¹⁰ Shepard, *Meanings of Manhood in Early Modern England*, 3.

¹¹ Shepard, *Meanings of Manhood in Early Modern England*, 3.

¹² Shepard, *Meanings of Manhood in Early Modern England*, 3.

women resisted power. Moreover, in an intensely patriarchal society, it is unfair to understand female behaviour within the confines of masculine notions and enactments of power and control. Through the paradigm of agency, scholars sought to uncover the ways in which women resisted implicit and explicit patriarchal structures in the early modern period.¹³

Beginning in the early 1980s, the role of female power was central to interpreting the relationship between men and women.¹⁴ For example, the London Feminist History Group's *Sexual Dynamics of History: Men's Power, Women's Resistance* (1983), explores the ways in which women throughout history have responded to male power. They argue that women's actions fall along a continuum of survival, resistance and challenge, which includes female solidarity networks developed through the sharing of information and unconscious and conscious acts of resistance.¹⁵ For this continuum of female behaviour to exist, however, there must be an acknowledgement of female oppression within the patriarchal structures of society and an understanding of how women work with and against these structures.¹⁶ The historical study of gender-based violence exacerbates this interpretative framework. I interpret the rape of women as predominantly an act of male power over women. As a result of this definition of rape, it is challenging to find examples of female agency within judicial networks, which were hesitant to

¹³ London Feminist History Group, *The Sexual Dynamics of History: Men's Power, Women's Resistance*, History/Women (London: Pluto Press, 1983), 3-5.

¹⁴ Female power refers to women's ability to exert control or influence over others of equal or lesser social rank. The assertion by historians of women who emphasize power, is that women, especially women of higher social standing, asserted themselves the same way as men. Subsequent historiography, however, highlights that in trying to understand these forms of power relationships we are "deliberately [gendering] the master narrative" and defining women's actions through their congruencies to men (Mary Carpenter Erler and Maryanne Kowaleski, *Gendering the Master Narrative: Women and Power in the Middle Ages* (Ithaca: Cornell University Press, 2003), p. 15). Most women, especially those outside of the gentry, are not able to exert themselves within these structural frameworks, and by understanding women within these structures researchers are unable to fully articulate the variety of strategies women implemented to work within and outside of patriarchal power structures. The movement towards female agency allows the researcher to view early modern women on their terms.

¹⁵ The London Feminist Group was founded in 1973 by a group of graduate students interested in "committed to women's liberation and working on historical questions" from Anna Davin, "The London Feminist History Group," *History Workshop*, no. 9 (1980): 192; London Feminist History Group, *The Sexual Dynamics of History*, 5-6.

¹⁶ London Feminist History Group, *The Sexual Dynamics of History*, 6.

believe women and convict men. This study will thus explore both the court proceedings as well as group dynamics, to better account for the ways in which people were able to exert their power and perform agency within bastardy proceedings. This allows for a methodological shift away from interpreting power and agency as individual enterprises toward a multi-dimensional sphere of influence that further underscores the essential role of the household in structuring the power of individuals in early modern English society.¹⁷ Thus, scholars in the 1990s explored the role of institutional bodies in solidifying gender ideologies.

The early modern relationship between men and women existed within the structures of patriarchal authority and resulted in the subjugation of women. Anthony Fletcher articulates this point in his 1995 *Gender, Sex, and Subordination in England, 1500-1800*. He argues that the gender ideologies of the Church, which posited that men were rationale and women were weak, were solidified during this period.¹⁸ Administrated education, specifically English grammar schools, reinforced these teachings beyond religious ideologies to underscore the natural order of gender, which was the subjugation of women to male control.¹⁹ While it is unclear if the average Somerset family would have accessed these schools, the Justices of the Peace who presided over the Sessions would have had access to these spaces of education and the ideologies embedded in

¹⁷ Numerous scholars have demonstrated the important role of the household in the interpretation of crime and honour in early modern England. For example: Elizabeth A. Foyster, *Marital Violence an English Family History, 1660-1857* (Cambridge, Cambridge ; New York: Cambridge University Press, 2005); Barbara A. Hanawalt, *The Ties That Bound: Peasant Families in Medieval England*, Paperback edition. (New York ; Oxford, New York: Oxford University Press, 1988); Jennifer Kermode and Garthine Walker, *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994); Geoffrey Robert Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick, N.J.: New Brunswick, NJ: Rutgers University Press, 1979); Robert Brink Shoemaker, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres?*, Themes in British Social History (London ; New York: Longman, 1998); Garthine Walker, *Crime, Gender, and Social Order in Early Modern England*, Cambridge Studies in Early Modern British History (Cambridge: Cambridge University Press, 2003); AND Keith Wrightson, *English Society, 1580-1680*, Hutchinson Social History of England (London: Hutchinson, 1982).

¹⁸ Anthony Fletcher, *Gender, Sex, and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1995), xxii.

¹⁹ Fletcher, *Gender, Sex, and Subordination in England*, 295.

their curriculum. This resulted in stronger prescriptive tenants for women, as a means to mitigate their inferiority, and highlight the necessity of masculine control in society.²⁰ Bernard Capp's "The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England," demonstrates how men exerted control over women. Capp argues that male anxiety over their own position greatly impacted the ways in which they related to women.²¹ While his work underscores the ways in which women might leverage this anxiety, and, thus, highlights female agency, the male responses to these interactions demonstrate how men continued to exert control over women even in circumstances in which women appeared to hold significant agency.²² Capp's focus on male relations instead of female action places the gaze on female power and whether their actions could overcome patriarchal control. In doing so, is fails to address how women understood their own position based on their constructions of honour and gender norms.

The relationship between power and agency was further complicated by the publication of Judith Butler's *Gender Trouble: Feminism and the Subversion of Identity*, which shifted scholarly discourse away from power to the individual and collective agency of women. Butler challenges the "pervasive assumption in feminist literary theory of...the limits and propriety of gender and restricted notions of masculinity and femininity."²³ She argues against, "the presumed universality and unity of the subject of feminism [which] is effectively undermined by the constraints of the representational discourse in which it functions..."²⁴ Butler's critiques of the construction of binary categories of gender can be extended to analyses of gender in the

²⁰ Fletcher, *Gender, Sex, and Subordination in England*, 402.

²¹ Bernard Capp, "The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England," *Past & Present*, no. 162 (1999): 71.

²² Capp, "The Double Standard Revisited," 71.

²³ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, Routledge Classics (New York: Routledge, 2006), xvii.

²⁴ Butler, *Gender Trouble*, 7.

premodern past. Earlier historical research focused on patriarchal limitations on women, rather than how women defined their own and collective notions of female behaviour. It provided structural guideposts for scholars to redefine gender within the early modern context, and read gender beyond male recounting of its definition. Prior to Butler, scholars relegated the actions of women as secondary to the perceived action and power of men. This early model of gendered power meant that scholars judged female power in terms of its effective challenge to men, but Butler's work asserted that female power does not only work in opposition to the patriarchy. Butler shifted entrenched scholarly methods by interrogating and uncoupling gender binaries, which in turn created new avenues to explore female resistance to dominant patriarchal structures. Female agency was something inherently separate from male power. Nevertheless, this interpretation of female agency does not account for the few avenues of recourse women had to effectively challenge male power and control. This is especially true when examining cases of gender-based violence, where the performance of male power is more visible in criminal records than female agency.

Subsequent historical inquiries built on Butler's theories about gender performativity and began to examine female agency as something inherently separate from male power. Garthine Walker's "Expanding Boundaries of Female Honour in Early Modern England," (1996) is the first article that meaningfully engaged with female honour as it related to other women. Walker argues that early modern female honor extended beyond chastity and was "public, collective, and active and connected to their deeds" in society.²⁵ Similarly, the edited collection *Gendering the Master Narrative: Women and Power in the Middle Ages* (2003) explores women's actions within their own cultural and social context with the intention of uncoupling women's

²⁵ Garthine Walker, "Expanding the Boundaries of Female Honour in Early Modern England," *Transactions of the Royal Historical Society* 6 (1996): 245.

experiences from the confines of male power.²⁶ This shift to understanding women in their own terms and within their own contexts, highlights that to understand the history of women, scholars need to consider their behaviour and actions outside of the structures of male power and in the context of their lived experience within and against a patriarchal system.

These pivotal works articulate the importance of agency in the interpretation of female behaviour. The cultural turn, which introduced the notion of agency to historical discourse, creates space to challenge the ways in which women might resist or react to circumstances on their own terms versus evaluating these responses within a patriarchal system. While studies within the cultural turn, work to uncouple the study of women from the confines of male power this method poses particular challenges to the study of gender-based violence because gender-based violence is an expression of male dominance and power over women. Gender-based violence is not strictly about sexual congress, but rather incorporates elements of physical power, cultural constructions of gender, and social perceptions of criminality.²⁷ Women do not and cannot exist within a vacuum. While positioning women as holding degrees of agency allows for an interrogation of female behaviour, researchers need to form an understanding of the ways in which men and women intersect on a spectrum of agency and power. Researchers on gender-based violence have begun to assess the importance of this intersection and the ways in which power limits a woman's ability to act. They demonstrate that in circumstances of gender-based violence the power exerted on women by society, especially in court, mitigates any ability they might have had to act with agency.

²⁶ Erler and Kowaleski, *Gendering the Master*, 5.

²⁷ This argument is presented by Anna Clark, (*Women's Silence, Men's Violence: Sexual Assault in England, 1770-1845*, (London; New York: Pandora Press, 1987), 6-7), and it reiterated by Shani D'Cruze, ("Approaching the History of Rape and Sexual Violence: Notes towards Research," *Women's History Review* 1, no. 3 (September 1, 1992): 377-97, <https://doi.org/10.1080/09612029300200016>). While an argument can be made of the contextual nature of rape – motives can change based on specific circumstances – the consensus amongst scholars of early modern violence is that rape is not about sex, but rather is about power and dominance over women's bodies.

Historical research on rape and domestic violence thus exacerbates the tension between agency and power to demonstrate that neither exists in isolation. Scholars studying the history of violence against women fall into three broad categories of interpretation – violence as a crime between men (even in instances with a female complainant), a crime interpreted from the male gaze, and as a community concern. Most scholars of gendered violence understand rape as a manifestation of patriarchal power acting as a mechanism to continue exerting power over women.²⁸ The fear of bodily violation through rape keeps women subjected to men. While rape is a crime of male aggression over women. Women are ironically conditioned to believe that men are the only individuals capable of protecting them from this violation. The work of Clark (1987), and D’Cruze (1992), highlight two historiographical paradigms occurring directly before and following the cultural turn (marked by the introduction of social scientific methodologies into historical research). While logically they should demonstrate a shift towards agency over power, they maintain a focus on power dynamics between men and women. The emphasis on power over agency, even following the cultural turn, likely reflects the types of source materials available to historians.

Court records limit the perspectives available to historians. Since men predominantly produce, read, and interpret institutional records it can be challenging for researchers to ascertain female voice and perspective in them. As a result, these records seem to provide a more direct linkage to the performance of male power. Bernard Capp demonstrates this tension in “The Double Standard Revisited”, that despite the agency exerted by women taking men to court for restitution, he uses these cases to research male power and reputation. Records similarly point to

²⁸ Clark, *Women’s Silence, Men’s Violence*; D’Cruze, “Approaching the History of Rape and Sexual Violence.”

rape and domestic violence as a community issue.²⁹ When examining rape as a communal concern, scholars are most adept at demonstrating women's opinions and concern over violence, especially in cases involving children.³⁰ Nevertheless, *The Language of Abuse in Marital Violence* (2007), *Representing Rape* (2003), and "'Being Stirred to Much Unquietness:'" (1994) underscore communal power rather than individual agency in cases of rape and domestic violence. As Edward Shorter (1977) and John Marshall Carter (1985) show in their analyses of rape, the source materials available to scholars studying violence are not necessarily reflective of the lived reality of early modern peoples.³¹ Instead, they highlight the types of cases communities identified as being a clear example of rape. In practice this meant that most cases to come before the court involved men who were strangers to the community and selected a random victim.

Social networks provide space to interrogate the power of community in supporting female victims of gender-based violence. Community networks, such as families, guilds, and other cultural groups, were a central feature of early modern life. Research on domestic violence and sexual assault demonstrate the ways in which community and family networks intervened in circumstances perceived to impact broader community dynamics. For example, in cases of domestic violence, Elizabeth Foyster (1999) found that communities routinely intervened on behalf of abused women in the community both by removing the wife from the abusive home

²⁹ Sara M. Butler, *The Language of Abuse Marital Violence in Later Medieval England*, (Leiden; Boston: Brill, 2007); Barbara J. Baines, *Representing Rape in the English Early Modern Period*, (Lewiston, N.Y.: Edwin Mellen Press, 2003); Susan Dwyer Amussen, "'Being Stirred to Much Unquietness:' Violence and Domestic Violence in Early Modern England," *Journal of Women's History* 6, no. 2 (1994): 70-89.

³⁰ Louise A. Jackson, *Child Sexual Abuse in Victorian England*, *Women's and Gender History* (London ; New York: Routledge, 2000) Sarah Toulalan, "Child Victims of Rape and Sexual Assault: Compromised Chastity, Marginalized Lives?," in *The Place of the Social Margins, 1350-1750*, ed. Andrew Spicer and Jane L. Stevens Crawshaw (Abingdon: Routledge, 2017).

³¹ Edward Shorter, "On Writing the History of Rape," *Signs* 3, no. 2 (1977): 471-82; John Marshall Carter, *Rape in Medieval England: An Historical and Sociological Study* (Lanham, Md.: University Press of America, 1985).

and by seeking formal or informal reprimand of the abusive husband.³² Communities similarly intervened in matters of sexual morality. G.R. Quaife demonstrated that concern over children born outside of marriage was not related to a heightened sense of sexual morality; rather, it reflected concern over financial support.³³ These types of cases, records of which are routinely found within Quarter Sessions and Consistory Courts, reflect the centrality of community in supporting and disciplining members, whether within the nuclear family or in the broader community. Rather than having a woman sue a man for paternity, rural communities routinely found other mechanisms of resolution both within and outside of the formal judicial system.³⁴ While these cases reflect instances in which members sought formal proceedings, families and communities often resolved conflicts through informal mechanisms. For example, some cases of sexual assault were resolved through the marriage of the woman to her assailant.³⁵ Research in early modern British history, moreover, demonstrates that communities treated violence publicly and with concern.³⁶

An understanding of the relationship between power and agency changes frequently in historiographical discourse. While early scholarship on the history of women focused on patriarchal limits on female power, the cultural turn introduced a discernable shift in the historiography as scholars sought to understand female agency outside of patriarchal control. Nevertheless, research on violence against women highlights the need to take seriously both female agency and male power, as neither are mutually exclusive within the written records. By

³² Elizabeth Foyster, *Marital Violence: An English Family History, 1660-1857*, (Cambridge: Cambridge University Press, 1999), 2; 128.

³³ G.R. Quaife, *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England*, (New Brunswick; New Jersey: Rutgers University Press, 1979), 244-246.

³⁴ Quaife, *Wanton Wenches and Wayward Wives*, 89-123.

³⁵ Baines, *Representing Rape in the English Early Modern Period*, 9.

³⁶ Such concerns are demonstrated with the findings presented in the works of: Foyster, *Marital Violence*; Capp, "The Double Standard Revisited,"; Quaife, *Wanton Wenches and Wayward Wives*; and Butler, *The Language of Abuse*.

incorporating “an intersectional way of thinking about the problem...”, I develop a more critical interpretation of the source materials.³⁷ This model allows for a more meaningful engagement with the experiences of individuals working within the institution, as well as explores “where systems of power [converge, which] potentially provides a better explanation for social phenomena.”³⁸ Therefore, there is significant room to develop and address the ways in which class, race, gender and sexuality, religion, and the household in the study of the history gender-based violence.

By approaching the study of gender-based violence in context, my dissertation will more systematically address factors that informed early modern decision making around resolution, criminality, responsibility, and prosecution of gender-based violence within communities.³⁹

The Challenge of Source Scarcity

This section will explore the ways in which scholars have employed digital methodologies to challenge and expand entrenched historical narratives. Through an examination of the challenges of source scarcity, and digital humanities and methodologies, this section will provide an overview of the epistemological foundations of this dissertation project. Moreover, while most

³⁷ Patricia Hill Collins, “Intersectionality as Critical Inquiry,” in *Intersectionality as Critical Social Theory* (New York, USA: Duke University Press, 2020), 23.

³⁸ Hill Collins, “Intersectionality as Critical Inquiry,” 24; 28.

³⁹ The Quarter Sessions were secular criminal courts that met locally four times per year between 1362-1972. Local gentry presided over court proceedings and cases could be decided by a jury. They dealt with lesser criminal and civil offences, many of which detailed moral transgressions within the community. For example, in Somerset, if a jury convicted an individual of engaging in illicit sex one of their punishments might be an indictment into the higher court of the Assize (Quaife, *Wanton Wenches and Wayward Wives*, 197). Their core purpose was to keep the peace and resolve conflicts within the community, especially those that might not require the more formal attention of more centrally administered court systems, such as the Assizes. These courts provide insight into both the localized negotiation of the law, while also exploring the impact of individual and household relationship within the broader country and urban settlements. The local and communal nature of these court systems provide insight into broader community networks as well as variables which prompted a formal proceeding of gender-based violence within an administrated court.

scholars conducted research on gender-based violence within the confines of the cultural and linguistic turns, the growth of digital methodologies provide new and exciting avenues to re-examine questions of gender-based violence in early modern England.

Source materials limit all historians. As a discipline, historians endeavour to interpret evidence, predominantly written records, to find patterns politically, intellectually, culturally, and socially within the past. When examining topics such as gender, sexuality, and violence, historians face numerous additional limitations dictated by the disparate nature of the sources available and the methodological frameworks developed to interpret the written record. Specifically, because men produced and consumed these source materials, historians face methodological challenges in ascertaining the voice and perspective of female experience. While it is impossible to know the experiences of people of the past, the available source materials create additional barriers in the investigation of physical and emotional experiences of women both within the confines of their own gender, but especially when examining their experiences with violence in the premodern past. To better address these limitations, this study will employ a mixed-method digital approach to facilitate a multi-dimensional interpretation of premodern social structures that define conventions of gender, sexuality, and violence.

Early monographs on European sexuality broadly explored written records from the Church, secular society, and literature to understand normative sexual behaviour. Vern L. Bullough's *Sexual Variance in Society and History* (1980) remains one of the foundational monographs of the study of sexuality in the premodern past. This monograph highlights that source materials provide a male-centric perspective of sexuality and that to mitigate a male-centric interpretation, one must methodologically understand sexuality as a biological

imperative.⁴⁰ Such a framework argues that no element of sexuality is inherently against nature; rather, deviance is socially constructed.⁴¹ Jean-Louis Flandrin's 1991 work *Sex in the Western World: The Development of Attitudes and Behaviour* demonstrates similar concerns. Flandrin stresses the limitations of quantitative methods, which were prevalent in the 1970s, to the study of sexuality because sex lives of people are inherently individualistic and statistical analysis cannot adequately represent the nuances of individual experience.⁴² If the performance of sexuality is inherently individualistic, prescriptive behaviours documented in the written records do not explicitly account for various expectations of different social groups in the premodern period. Thus, while dated, these monographs highlight two important themes in the history of sexuality, gender, and violence which is a scholarly tension between micro and macro analysis, as well as the influence of the male gaze in the interpretation of these source materials.

Both *Sexual Variance* and *Sex in the Western World* represent the types of sources and methodological frameworks employed by early sexuality and gender scholars. These analyses focused on official documentation produced by intellectually elite men and presented the documents for what they contained versus their broader connotations to sexual identity and behaviour - just because a document states that all women must be chaste until marriage does not mean that sex was not engaged in prior to the union. Despite both authors identifying the biases around women within premodern discourse on sexuality, they rarely interrogated the implications of these biases beyond these statements. This is reflective of the methodological frameworks available at the time of publication. While in many ways our source materials are fixed or depleting, historians can innovate their methodology and, thus, epistemology, through experience

⁴⁰ Vern L. Bullough, *Sexual Variance in Society and History*, (Chicago: University of Chicago Press, 1980), xi.

⁴¹ Bullough, *Sexual Variance in Society and History*, xi.

⁴² Jean-Louis Flandrin, *Sex in the Western World: The Development of Attitudes and Behaviour*, (Chur, Switzerland; Philadelphia: Harwood Academic Publishers, 1991), 7.

and scholastic dialogue. The types of method used in both these cases, while problematic to current scholars, reflect the limitations of both the source materials used at the time and the methodological framework at their disposal. As the field developed, and scholars became more creative in the employment of source materials, in part as a reaction to the questions that arose from texts such as these, historians began to further understand how society constructed gender and sexuality in the premodern past.

The employment of court records changed the scope of analysis for the study of sexuality, gender, and violence. English ecclesiastical and secular court system, one of the most bureaucratically centralized legal systems in early modern Europe, shifted the gaze away from intellectual discourse to how society punished or condoned, explicitly, or implicitly, certain types of sexual or violent behaviour. The consistory court, an ecclesiastical court within the Church of England, is one such court system that heard cases on topics such as paternity and divorce. Through an analysis of the discourse in cases of divorce Lawrence Stone's 1992 monograph *Uncertain Unions: Marriage in England, 1660-1730*, for example, argues that contradictions in the legality of marriage in this period resulted in many couples being unclear of their marital status.⁴³ This illustrates that despite depictions of the legality of marriage, in reality contradictions and inconsistencies existed. Thus, historians cannot solely rely on legal treatises and elite texts, as they are not always reflective of the lived reality of individuals. Similarly, Bernard Capp's 1999 article "The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England" uses The Old Bailey, a secular court in London, records to demonstrate the centrality of male honour in the prosecution of sexual crimes amongst urban

⁴³ Lawrence Stone, *Uncertain Unions: Marriage in England, 1660-1753* (Oxford, [England], Oxford, England, Oxford [England]: New York: Oxford University Press, 1992), 3.

middling classes and provided women with adequate leverage to garner compensation.⁴⁴ While this article maintains a male-centric analysis through its failure to interrogate the agency employed by women in these circumstances, it reflects a shift in the types of source materials required to begin an analysis of women's involvement within sexual and violent crimes. This epistemological shift created a precedence that transformed the intellectual gaze towards female agency and female solidarity and, thus, questions begin to emerge regarding how women understand their own sexuality and gender, how they relate to one another, and how they experience violence.

The use of literature and correspondence in tandem with legal transcripts and intellectual treatises create the most nuanced approaches, as they combine both secular and ecclesiastical interpretations of sexual and gender norms in the premodern period. Through engagement with such records, scholars can begin to ask new questions about women's physical experiences. Through an engagement with social anthropological methods, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* examines fertility and reproduction to argue for the commonality of abortion in premodern Europe.⁴⁵ Abortion allowed for women to maintain control over their own fertility and was likely more common than scholars initially suggested.⁴⁶ The engagement with these materials in conjunction with a social scientific approach results in an ability to concretely interrogate both the elitist intellectual views of abortion, while also exploring the disconnect between male perception and female reality. This mixed-method approach, which examines a wide variety of source materials, and analysed within a social scientific framework, provides the historian with a

⁴⁴ Capp, "The Double Standard Revisited," 71, 98-99.

⁴⁵ Angus McLaren, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* (London, London; New York, NY, London: Methuen, 1984: Methuen, 1984), 6.

⁴⁶ McLaren, *Reproductive Rituals*, 6.

methodological basis to interrogate sexuality and gender from both the male and female perspective. Moreover, subsequent work, especially by authors such as Garthine Walker, argue for a reengagement with quantitative approaches that extend beyond statistical analysis presented in the 1970s.⁴⁷ Ideally, Walker argues for the employment of a mixed-method approach – one that privileges both statistical analysis and close-reading – however, methodological approaches must be dictated by questions rather than entrenched disciplinary and epistemological biases.⁴⁸ It is through this type of method that Walker demonstrated in *Crime, Gender, and Social Order in Early Modern England*, that women had a higher level of participation in crime than aggregates of male and female perpetrators would suggest.⁴⁹ Thus, through mixed-methodological approaches, scholars can more succinctly coalesce the variety of source materials available for analysis to produce more nuanced argumentation of the role of women within criminal proceedings in England.

A New Path Forward: Digital Methodologies

Scholarship on gender-based violence in England is dated. The foundational texts that contribute to our understandings of rape, domestic violence, and sexuality emerged predominantly in the 1980s, 1990s, and early 2000s with little attention following the linguistic turn. Consequently, there is significant room for re-examination. The re-emergence and growth of digital humanities offer a new space to interrogate cases of gender-based violence using computational tools to better understand the intersectional relationship of power and agency.⁵⁰

⁴⁷ Walker, *Crime, Gender, and Social Order in Early Modern England*, 5.

⁴⁸ Walker, *Crime, Gender, and Social Order in Early Modern England*, 5.

⁴⁹ Walker, *Crime, Gender, and Social Order in Early Modern England*, 5.

⁵⁰ I chose to use the term re-emergence here to reflect and account for the attempts to use computational methodologies in the 1970s.

The digital humanities offer new tools to support ascertaining micro and macro linguistic and social patterns in criminal proceedings in early modern England. Matthew Salganik in his 2018 monograph *Bit by Bit: Social Research in the Digital Age*, for example, highlighted that digital tools and methods can alleviate challenges experienced by scholars working in contexts of source abundance.⁵¹ The employment of computational strategies offer a stronger and more effective methodology to interrogate discursive trends over a longer period of time.⁵²

Traditionally, scholars of the digital humanities organized themselves under a “big tent” principle. Essentially, if research incorporated any digital aspect, such as visualization, text analysis, network analysis and so forth, then they could identify themselves as digital humanists.⁵³ Recently, some digital humanists have advocated for a definition change – they argue that the digital humanities must act as a disruption to field-specific “disciplinary habits of mind.”⁵⁴ Thus, employing digital tools is no longer sufficient to refer to oneself as a digital humanist: scholars must now address the limitations of their field and demonstrate the ways in which digital tools and methods offer a new path forward. By approaching research in this way, scholars can develop stronger intersectional and nuanced connections within their research protocols. The digital age, moreover, offers new opportunities to engage with social research and re-examine and extend research on early modern English violence.⁵⁵

⁵¹ Matthew J. Salganik, *Bit by Bit: Social Research in the Digital Age* (Princeton, New Jersey: Princeton University Press, 2018).

⁵² Some examples of texts that demonstrate this potential are: Jean-Baptiste Michel et al., “Quantitative Analysis of Culture Using Millions of Digitized Books” 331, no. 6014 (2011): 176–82, <https://doi.org/10.1126/science.1199644>; Franco Moretti, *Graphs, Maps, Trees: Abstract Models for a Literary History*, (London; New York: Verso, 2005); Salganik, *Bit by Bit*; and Eszter Hargittai and Christian Sandvig (eds.), *Digital Research Confidential: The Secrets of Studying Behavior Online* (Cambridge, MA: The MIT Press, 2015).

⁵³ Matthew K. Gold and Lauren F. Klein, “Introduction: A DH That Matter,” in *Debates in the Digital Humanities*, online edition, <https://dhdebates.gc.cuny.edu/read/untitled-f2acf72c-a469-49d8-be35-67f9ac1e3a60/section/0cd11777-7d1b-4f2c-8fdf-4704e827c2c2>

⁵⁴ Gold and Klein, “Introduction,” online edition, <https://dhdebates.gc.cuny.edu/read/untitled-f2acf72c-a469-49d8-be35-67f9ac1e3a60/section/0cd11777-7d1b-4f2c-8fdf-4704e827c2c2>

⁵⁵ Salganik, *Bit by Bit*, 2.

Digital tools, in many cases, allow for a broader breadth and depth of analysis. Mixed methodologies, however, are in no way novel to this study: many scholars have long advocated for the incorporation of quantitative methods into fields dominated by qualitative research protocols. Franco Moretti, for example, advocated for the use of abstract modelling to understand macro trends in literature. These models assist scholars in ascertaining more factual data rather than analyzing data curated through scholastic interpretation.⁵⁶ Through an engagement with Fernand Braudel's *longue durée*⁵⁷, Moretti argues the necessity of both quantitative and qualitative methodologies. Through an engagement with methodologies that promote micro and macro approaches scholars can holistically understand historical realities.

Concern over researchers' fixation with the short term is similarly articulated in Jo Guldi and David Armitage's 2014 monograph *History Manifesto*. Engaging with the concept of the *longue durée*, Guldi and Armitage argue that the focus on the short term came at the expense of ascertaining long term trends in historical discourse.⁵⁸ In the field of history, the *longue durée* attempted to remedy the preoccupation with nation-state and short-term thinking, but its retreat in the latter twentieth century highlights the resurgence and power of short-term thinking in the discipline.⁵⁹ The digital humanities, moreover, expand thinking beyond the short-term. They provide a new methodological framework to challenge entrenched short-term thinking by

⁵⁶ Moretti, *Graphs, Maps, Trees*, 9.

⁵⁷ The *longue durée* is an epistemological framework proposed initially by Fernand Braudel in his monograph(s) *The Mediterranean and the Mediterranean world in the age of Philip II* and *Civilization and capitalism, 15th-18th century* (1973). The *longue durée* posits the importance of examining events in time with both breadth and depth, to understand how long-term factors – such as climactic events – shape human interaction in the short term. The breadth and depth required within this framework leads to a plea for interdisciplinarity amongst academics. If historians are to understand how climate, for example, shapes events they must work in collaboration with climatologists and scientists who have extensive experiences in these fields. [Immanuel Wallerstein, "Beyond Annales?," *Radical History Review* 1991, no. 49 (1991): 7–15, <https://doi.org/10.1215/01636545-1991-49-7> and Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, [1st U.S. ed.] (New York: Harper & Row, 1972)]

⁵⁸ Jo Guldi and David Armitage, *The History Manifesto* (Cambridge, United Kingdom: Cambridge University Press, 2014), 1.

⁵⁹ Guldi and Armitage, *The History Manifesto*, 20, 23.

providing tools to further contextualize – spatially and temporally – trends in historical discourse.

The importance of contextualization is an essential overarching theme in digital humanities methodologies. Matthew Jockers in his 2013 monograph *Macroanalysis: Digital Methods and Literary History* demonstrates that “the study of literature should be approached not simply as an examination of seminal works but as an examination of an aggregated network or “economy” of texts.”⁶⁰ In emphasizing the necessity of mixed-methods approaches to literary studies he address the limitations of quantitative methods, which became popular in the 1970s. No better example of the challenges posed by a strict focus on macro trends is Robert Fogel and Stanley Engerman’s 1974 monograph *Time on the Cross: The Economics of American Negro Slavery*. Using quantitative statistical analysis of the types of food consumed by mill workers in the American North and slave populations in the American South, they argued that capitalism was more detrimental to the human condition than slavery.⁶¹ This publication received heavy criticism for its failure to fully contextualize and dehumanize the experiences of slaves in this period, and, consequently, the use of cliometrics dissipated.⁶² This work, moreover, acts as a cautionary tale of reading too much into long-term trends without fully understanding and articulating the challenges experienced on a qualitative scale. Thus, the incorporation of digital or quantitative approaches should never entirely replace qualitative methods; however, there is merit and value to the type of data, modelling and statistical analyses one can generate through quantitative approaches.

⁶⁰ Matthew Lee Jockers, *Macroanalysis: Digital Methods and Literary History*, Topics in the Digital Humanities (Urbana: University of Illinois Press, 2013), 32.

⁶¹ Guldi and Armitage, *The History Manifesto*, 97-98.

⁶² Guldi and Armitage, *The History Manifesto*, 98.

When examining cases of gender-based violence, scholars must explore both micro and macro trends within criminal records. Garthine Walker's 2003 monograph *Crime, Gender, and Social Order in Early Modern England*, advocates for this approach when studying gender and crime. Through an engagement with both quantitative and qualitative approaches, scholars of women, gender, and crime can more accurately assess patterns of criminality and gender in early modern England.⁶³ It is no longer enough to know only how many rape cases exist, or how they are performed in court; rather, scholars of gender history must begin to incorporate both these methods to understand the intersectional relationship of gender, crime, sex, power, agency and community within early modern England.

My dissertation thus builds on the work of these influential digital humanists as well as the computational work of Sara Klingenstein, Tim Hitchcock, Simon Dedeo⁶⁴, and Dan Cohen⁶⁵ to conduct a linguistic and textual analysis of seventeenth-century Bastardy proceedings in the Somerset Quarter Sessions. These methods supported the tracking of complex social and linguistic patterns of 1298 court cases, 338 of which were randomly selected and ordered for transcription and qualitative analysis. While early authors cautioned against the use of quantitative methodologies, I argue that through the employment of a mixed methodological approach that engages both qualitative and quantitative strategies, I can provide a stronger analytical framework that accounts for both context and content. Each chapter, moreover, includes a detailed description of the digital tools and methods employed in for that analysis.

Figure 1: Chapter Methodologies, provides an overview of the methods used in my analysis.

⁶³ Walker, *Crime, Gender, and Social Order in Early Modern England*, 8.

⁶⁴ Sara Klingenstein, Tim Hitchcock, and Simon DeDeo, "The Civilizing Process in London's Old Bailey," *Proceedings of the National Academy of Sciences* 111, no. 26 (July 1, 2014): 9419–24, <https://doi.org/10.1073/pnas.1405984111>.

⁶⁵ Dan Cohen, "Searching for the Victorians," October 4, 2010, <https://dancohen.org/2010/10/04/searching-for-the-victorians/>.

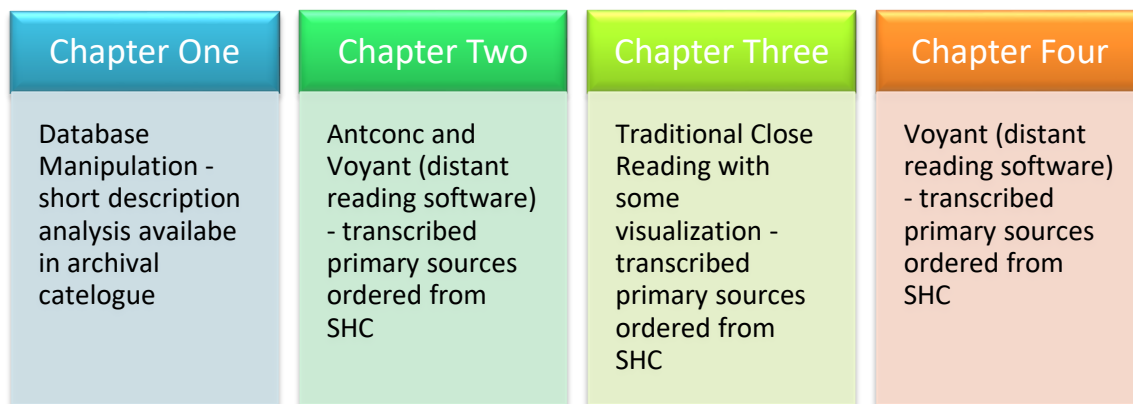


Figure 1: Chapter Methodologies

By structuring each chapter in this manner, I can best account for the range of meaning contained within these records. Moreover, I take the position that to best understand the violence exerted against unwed mothers, we must account for the variety of factors that contributed to the subscription of cultural meaning on behaviour. These include intellectual thought, criminal precedents, definitions of femininity and female honour, class, occupation, and marital status. In accounting for these factors, we can gain a deeper understanding of the lived experiences of unwed mothers in their attempts to gain financial support for their children.

Notes on the COVID-19 Pandemic

This dissertation took shape during an unprecedented time in history for researchers. The COVID-19 pandemic resulted in the closing of borders, archives, and libraries. At the point of the first wave of closures in March 2020, I was beginning preparations for my in-person research trip to Somerset, and two other archives in London and Lancaster County. However, these plans were thwarted by a small micro-organism that shut down any form of non-essential travel. As a

result, I had to pivot my research to address the challenges I faced in attempting to construct a PhD dissertation without the benefit of travelling to my country of study.

Accessing these records from Canada was challenging but manageable. Somerset County became my focus of study, as their decision to create searchable keywords (or metadata) in their online catalogue allowed a cost-effective way to identify and order documents remotely.⁶⁶ While I had initially intended to provide a comparative study of Quarter Session records in Lancaster and Middlesex counties, the method of ordering indexes to find and isolate records of bastardy was untenable due to the degradation of records and the astronomical copy costs. Moreover, the limitations from COVID-19 changed the way I would have traditionally conducted research, but not to the detriment of the overall method or quality of research. If anything, it stressed the importance of creating metadata and digital records.

As a graduate student, and eventually graduate course instructor, I had significant success directing students to use the Somerset Heritage Centre's catalogues as it provided detailed and accessible modalities to do research. While the records from the Quarter Sessions were not digitized, the ability to keyword search their catalogue and find short descriptions of my records was essential to building my dataset. Once I was able to isolate which records I intended to analyse, I placed an order with the Somerset research service, which created digitized versions of the original records. These records were then transferred into my possession using a OneDrive link. The pandemic, moreover, changed how I would prioritize the digitization of materials. While it is great that many repositories provide digital access to the document, it should become a priority to diversify the catalogue entries in archival repositories to assist scholars in finding

⁶⁶ Metadata refers to the creation of a list of terms associated with a library or archive catalogue entry. The purpose of metadata is to allow researchers to search a catalogue based on key words or phrases. Digital records refers to digitized sources that are available for immediate access/download/purchase from a library or archive website. Both methods are costly and require significant work on the part of the library or archive.

records for their research. Hopefully, this need will be a strong legacy from the COVID-19 pandemic.

This dissertation also focuses solely on Somerset and England and incorporates only some secondary literature from the continent. While this is not the direct result of the COVID-19 pandemic, the limitation of available resources made the decision more pragmatic. Most of this, however, is the result of the unique circumstances of England and how they structured their legal system. Bastardy cases moved into the secular (common law) system during this period, which is incomparable with the continental Roman Law system. This in conjunction with a very differently experienced religious reformation, makes it challenging to compare the two systems, especially in the early stage of my research career. As a result, I made the decision to focus exclusively on Somerset to gain a deeper understanding of the English context with the intention to explore cross-county and international contexts in a later research project.

Outline of Argument and Dissertation

This dissertation project explores the question of gender-based violence in the Quarter Sessions in two parts. The first section is divided into two chapters and provides a contextual examination of the aggregated network of texts, and an analysis of the random sample. Chapter one develops the contextual overview of the 1298 cases filed in the Somerset Quarter Sessions throughout the seventeenth century. This analysis explores the ways in which women experienced violence by their partners before and during the adjudication process, and how reflective these behaviours are of the larger dataset. Moreover, chapter one demonstrates that most violence was enacted on women not by their intimate partner and family but *within* the system. Chapter two builds on this discussion to provide a qualitative analysis of the random sample. It uses these 332 primary source court cases to explore the ways in which the structural foundation of the Sessions

marginalized women through the procedural requirements embedded in the institutional framework. These procedural elements created a foundation which marginalization and violence were exerted against unwed mothers, all of which contributed to the inability of the court to adequately account for the lived experiences of unwed mothers.

The second part of the dissertation, similarly, divided into two chapters, explores how the Sessions takes up the question of how the Sessions marginalized women through their inability to effectively account for their lived experiences. Chapter three explores instances of sexual assault in bastardy proceedings and the implications of female testimony on the historiography of consent and its construction in the early modern period. The final chapter expands on this discussion to explore the experiences of female service workers in Somerset, and how these women demonstrate the power imbalances between unwed mothers and their employers. An exploration of the challenges of defining consent in a work environment in which women were reliant on their employer for safety and security, further highlights that the concern was not on protecting vulnerable women. As a result, service cases reflect the intersection of violence, space, agency, and power of unwed mothers in the community.

To best contextualize this process, we must first create an aggregate dataset of texts from which to compare the violent nature of these proceedings. This aggregated dataset provides the foundation to answer the question of how gender-based violence was enacted in the Sessions. While the original hypothesis of this project was that women experienced most violence from the putative father and his relations, the aggregated dataset provided the important statistics to highlight that while some violence occurred between individuals, this was not as significant as the procedural protocols embedded in the judicial processes. As a result, chapter one provides

important contextual information on the type and scope of cases filed throughout the seventeenth century in Somerset.

A Note on Language

Language posed a significant challenge to the construction of this dissertation. Words are amorphous: their meaning and form have changed throughout history. Even in the case of Bastardy records, words that carry the same meaning in the present are spelt in a way that is distinct to the time. One of the challenges I came up against was how to best to quantify unspoken patterns and themes within these records, as there were not always early modern contemporary equivalents. As a result, I have employed modern language in certain contexts to best capture the meaning interpreted from the primary source court cases. While this could remove the meaning from the text, I argue that it actually provides a stronger touchstone to the past and quantifies features of women's lives and experiences that they were not always able to articulate within the confines of the early modern period. Moreover, this dissertation mixes both contemporary and early modern linguistic markers to best demonstrate the ways in which the procedural elements of the Quarter Sessions perpetuated violence against unwed mothers.

Violence in the Sessions: Bastardy in Somerset 1600-1699

Introduction

In the spring of 1624, Katherine Hobbes came before the Somerset Quarter Sessions. The court record identifies that Katherine was a spinster, or past the average marital age, and that she had lived in Chard before moving temporarily to Taunton. Upon her return to Chard, she alleged that Richard Phillippes, a sheer grinder, or knife grinder, and servant of Philip Bartyle, fathered her child. Not only that, he also “persuaded her to report that they were married.”⁶⁷ The court was now tasked with determining whether Richard Phillippes would be required to financially support Katherine and her illegitimate child, or if the burden would fall to the parish.

The financial upkeep of children was of significant concern for the people of Somerset. Over the course of the seventeenth century cases like Katherine and Richard’s came before the Quarter Sessions with the intention of securing support for the mother and illegitimate child. Katherine’s case speaks to the concern that unmarried women had about the upkeep of their illegitimate child(ren). By exploring the quantitative patterns in the whole dataset, we can better account for the uniqueness or ubiquity of Katherine’s experience. Through the development of an aggregated network of cases, a digital humanities methodology which identifies trends across data to better situate individual cases, it is possible to properly situate Katherine’s case within the context of bastardy cases in Somerset County. This mixed-method approach connects individual experiences with societal context to demonstrate the position and role of violence within the Sessions.

⁶⁷ Bastardy examination. 6 May 1624, (6 May 1624), Somerset Heritage Centre, Q/SR/50/2-3.

Among the 1,926 surviving records for the County of Somerset Quarter Sessions (1591-1929), 1,298 were cases filed in the seventeenth century. This chapter explores data collected from the catalogue descriptions of bastardy cases from 1600-1699. This analysis provides the context to understand illegitimacy in the community and provide an updated quantitative analysis of these cases, which has not been undertaken since Geoffrey Robert Quaife did so in 1979.⁶⁸ While Quaife sought to demonstrate that the community of Somerset was concerned about sexual morality, which would account for the volume of illegitimacy cases in the seventeenth century, in reality he found that the cases are more indicative of the financial anxiety of the county. My analysis expands on this work to return to the question of sexual control, but through the lens of gender-based violence. These cases thus offer insights into the performance of gender-based violence and gendered social expectations within the county of Somerset. While these court cases demonstrate that on a macro level there are few cases of violence between *individuals*, this of course does not mean that it did not occur. Rather, adopting the lens of gender-based violence forces us to understand that the emphasis needs to shift away from those listed in the case, and explore how the linguistic patterns within each document reflect a pattern of violence embedded within the procedural elements of the adjudication process, which is explored in chapter two. Through this, it becomes apparent the ways in which the institutional structures of the Quarter Sessions promoted and enabled a violent and biased view of female sexuality in the community. To best understand this pattern, however, it is imperative to first explore how the session present cases of bastardy and the rate of violence, as encapsulated in individual testimony.

⁶⁸ Quaife, *Wanton Wenches and Wayward Wives*.

This chapter will provide the context of bastardy cases in Somerset throughout the seventeenth century. It will begin by providing an overview of the history of the county, bastardy in England, and the judicial process. Next, it will examine the demographic trends of bastardy in the county. Finally, it will explore the context of violence in these cases to understand how men, their relations, and the court overtly exerted violence against unwed mothers. While on a macro level overt violence was not an inherent feature of these cases, through an examination of the structure of the court system and its application a theme emerges that most violence enacted against women fell outside of the six initial research categories.

Quantitative Methodology

Our understandings of gender-based violence, and sexuality emerged in the late twentieth century. Recent scholarship focuses on clear violent criminal behaviour such as rape and domestic violence. These types of cases allow for a clearer measure of the ways in which violence was exerted against women, as records contain a concise summary of behaviour between individuals. Publications on the topic of violence became much more sporadic following the linguistic turn. This was the result of an overall stagnation of methodological development as well as the relatively few source materials available to historians. The re-emergence and growth of the digital humanities offers new opportunities to interrogate cases of gender-based violence using computational tools to better understand the intersectional relationships between the person, the community, and the institution.⁶⁹

⁶⁹ I chose to use the term re-emergence here to reflect and account for the attempts to use computational methodologies in the 1970s.

The digital humanities offer new tools to ascertain micro and macro linguistic and social patterns in criminal proceedings in bastardy cases in early modern England. Matthew Salganik's 2018 *Bit by Bit: Social Research in the Digital Age* highlights that digital tools and methods can alleviate challenges experienced by scholars working in the context of abundance.⁷⁰ The employment of computational strategies offer a stronger and more effective methodology to interrogate discursive trends over a longer period of time.⁷¹ As a result, this chapter explores macro trends in bastardy cases to better understand and contextualize micro linguistic patterns, which are the focus of subsequent chapters.

Digital humanists have stressed the importance of contextualization, arguing that the provision of context is one of the most significant contributions of this approach. In *Microanalysis: Digital Methods and Literary History*, Matthew Jockers demonstrates that "the study of literature should be approached not simply as an examination of seminal works but as an examination of an aggregated network or "economy" of texts".⁷² In emphasizing the necessity of mixed-methods approaches to literary studies, Jockers addresses the limitations of quantitative methods, which became popular in the 1970s. As noted, we saw this debate around Fogel and Engerman, however, which underscored the limitations of a strict quantitative lens. Fogel and Engerman were criticized for its failure to fully contextualize the experiences of slaves in this period, and, consequently, the use of cliometrics dissipated.⁷³ This work, moreover, acts as a cautionary tale of reading too much into long-term trends without fully understanding and articulating the challenges experienced on a qualitative scale.

⁷⁰ Salganik, *Bit by Bit*.

⁷¹ An example of a text that demonstrates this potential is: Michel et al., "Quantitative Analysis of Culture Using Millions of Digitized Books."

⁷² Jockers, *Macroanalysis*, 32.

⁷³ Guldi and Armitage, *The History Manifesto*, 98.

This chapter explores the quantitative data collected from the Somerset Heritage Centre (SHC) to support qualitative analysis in subsequent chapters, as well as to advance my argument that on a macro level violence was not an inherent feature of these cases. This type of method allows for the creation of an “aggregated ecosystem” – establishing a foundation from which to develop small scale analysis. By using this type of methodology, my research addresses the criticisms of early cliometrics scholars of the 1970s and brings them into conversation with modern qualitative methods and social frameworks. I do not argue that the data presented in this chapter provides a comprehensive understanding of the cases coming to court, but rather an understanding of the contours and trends of surviving data that I was able to work with.

The records examined include all examinations, informations, orders, and letters archived in the SHC.⁷⁴ It does not examine information contained in the rough register books and, thus, does not represent a complete analysis of the records surviving from the seventeenth century. It is also important to underscore the potential randomness of this type of collection. Due to the age of the collection, there is a higher risk that documents could have been lost or degraded. As well, the inconsistent record keeping of the seventeenth century might impact the perceived scale of some cases over others. For example, due to the fiscal responsibilities necessitated in bastardy cases, they might persist in the court during periods of social and political upheaval, while others, such as slander, may have been less prevalent. While the archive and the governments of England and United Kingdom may have begun preserving certain documents with intention of long-term preservation, it is never clear whether certain records were lost over the centuries.

⁷⁴ I searched the catalogue using the term bastard* to collect any case that refers to a bastard whether it included an indictment of bastardy. However, all cases presented in the subsequent data are indictments of bastardy. Examinations and informations are similarly structured documents. They both contain content relevant to the adjudication process. Their tone and form, however, are almost identical. Both will contain testimony from the unwed mother regarding the case. These materials reside in separate categories to reflect the way in which the archive has catalogued the materials.

The COVID-19 pandemic also had a significant impact on my ability to acquire and examine records for this project. I selected the SHC because of its unique archival catalogue that allowed for the search of specific records using keywords during periods of pandemic restrictions (both in Canada and the United Kingdom). Ideally, I would have travelled to the United Kingdom and participated in more traditional forms of archival research, including examining the rough registers, but travel restrictions of the pandemic made this impossible. Instead I had to order copies of cases to Canada for analysis, which was a very time consuming process. As a result, the quantitative analysis presented in this chapter includes all items with attached metadata (or searchable keywords). Still, it is important to note that metadata is human developed and can contain variation in tags and keywords. As a result, this mechanism is not perfect and contains the possibility for human error and variance.

The SHC archival catalogue is unique within the United Kingdom. Archivists at the SHC developed metadata for the Quarter Session records, meaning that researchers can search the individual items in the collection by keyword. The archive received funding to complete this work through The Pilgrim Trust and Esmee Fairbairn Foundation.⁷⁵ Each catalogue entry includes a description of the record. This description includes pertinent information about the case including the alleged father, the mother, the parishes in which they belong, the status of the mother, the occupation of the father, the Justice(s) of the peace presiding over the case, and the punishment assigned.⁷⁶ It is important to note that there are no records to indicate whether these punishments were carried, only that they were assigned in the documents. However, the process of assigning these punishments could hold just as much significance as if the punishments were

⁷⁵ Eve Bickerton [Archivist, Somerset Heritage Centre], email correspondence with the author, 15 March 2022.

⁷⁶ It is imperative to note that while the descriptions in the catalogue indicate that a punishment was assigned, they do not articulate whether that sentence was carried. Meaning, that while many women were sentenced to public whipping, there is no evidence to suggest whether these punishments were administered, or if they were stayed.

carried. These descriptions might also include the location of the sex act(s) and other individuals related to the case: for example, a parent of the accused father, individuals who aided the father in avoiding prosecution, individuals who owned the property in which the sex acts took place, individuals who presided over the birth, and the name and gender of the child. Given the detailed nature of these archival descriptions, I compiled a database on all the individual case items filed in the SHC between 1600-1699 in advance of working with the sampled data itself.

My initial sample consisted of approximately 300 cases randomly selected throughout the seventeenth century.⁷⁷ The cases were selected through a random number generator. A number (1-100) was assigned to each year, and all cases in a year were ordered for deeper analysis if the number was selected through the generator. In addition to these cases, I developed a database, which includes all short descriptions 1298 bastardy cases, to explore macro trends across cases with the intention to eventually compare these trends to the 300 selected for close reading. The database explored larger trends in location, occupation, violence, and status to determine the extent to which violence occurred between individuals. This allowed for a more nuanced examination of larger trends over the course of the century to develop a more complete network of cases to situate my initial sample.

There are several significant categories I developed and traced throughout the data sampled from the SHC Quarter Session bastardy records. Table 1: Data Categories, provides a summary of the categories and the framing questions. I inputted this dataset manually to ensure consistency with categorization. Spelling was then standardized using OpenRefine.⁷⁸

⁷⁷ For an overview of the random sample, please refer to Table 2: Initial Random Sampled Data and Collection Size (p. 89).

⁷⁸ [OpenRefine](#) is an open-sourced software that can be harnessed by researchers to clean up data that has inconsistencies. These might include character and/or spelling changes in the database. In this case, I harnessed open refine to find character inconsistencies (spaces), and spelling, especially of the various parishes listed.

OpenRefine is an open-source software that can be harnessed by researchers to clean up data that has inconsistencies. These might include character and/or spelling changes in the database, or human error during the data entry process. For example, the Justice of the Peace Edward Phellipps was listed in the records as “Edward Phelipps” and “Edward Phellipps”. OpenRefine identifies these inconsistencies and allows the researcher to group these spellings to ensure they are read as the same person rather than two different individuals. This ensures easier and more accurate filtering and graphing during the analysis stage of research.

Table 1: Data Categories

<i>Description</i>	The description of the case included in the Somerset Heritage Centre (SHC) online catalogue. Researchers can access the catalogue here: https://somerset-cat.swheritage.org.uk/
<i>Call Number</i>	The archival catalogue reference.
<i>Date</i>	The full date (day-month-year) of the case.
<i>Year</i>	The year of the case (for fast filtering and referencing).
<i>Title</i>	The title of the case. These were hyperlinked in the database for quicker look-up functionalities.
<i>Sample</i>	Was case included in the random sample? - Yes or No
<i>Testimony</i>	Who gave testimony in this case?
<i>Gender</i>	What was the gender of the person who gave testimony?
<i>Justice of the Peace</i>	The name(s) of the Justice of the Peace presiding over the case.
<i>Number of Justices</i>	The total number of Justices presiding over the case.
<i>Father/Mother</i>	Name of the Father or Mother. Research Note: The categories below are included in separate columns for the mother and father. They are combined in this chart as to avoid duplicate definitions.

<i>Alias</i>	What was the mother or father known by an alias?
<i>Occupation</i>	What was the occupation of the father? What was the marital status (singlewoman, spinster, married, widowed) of the mother?
<i>Parish</i>	What parish do the mother or father belong?
<i>Named Relation</i>	What is the name of the relative or accomplice named in the catalogue description?
<i>Relationship</i>	What is their relationship to the mother or father?
<i>Same Parish?</i>	Do the mother and father belong to the same parish?
<i>Child Named</i>	Was the child named in the description? – Yes or No
<i>Child Gender</i>	What is the gender of the child?
<i>Child Name</i>	What is the name of the child?
<i>Abandoned?</i>	Was the child abandoned? – Yes or No
<i>Multiple Children</i>	Does the mother have multiple bastard children? – Yes or No
<i>Possible Rape</i>	Was the mother pregnant due to a possible rape? – Yes or No
<i>Punishment</i>	Was a punishment administered by the court? – Yes or No
<i>Power Imbalance</i>	Was there an imbalance of power between the mother and father? – Yes or No
<i>Threat of Violence</i>	Did the father or a relative threaten violence against the mother? – Yes or No
<i>Coercion</i>	Did the father or a relative attempt to coerce the mother (through financial or other means) to drop the bastardy suit? – Yes or No
<i>Offer of Marriage</i>	Did the father propose marriage to the mother prior to entering into a sexual relationship? – Yes or No
<i>Paternity Questioned</i>	Did the father deny paternity of the child? – Yes or No
<i>Related Case(s)</i>	Linked cases in the catalogue.

The data explored in this chapter does not reflect the lived experience of mothers. The data, however, highlights the changes in courting rituals and/or recording practices of these cases throughout the seventeenth century and the ways in which socio-political changes impacted these patterns. This type of research and analysis is important as it more effectively situates individual experience within a broader network of social and judicial norms than traditional qualitative approaches. Nevertheless, it should not be undertaken in isolation, but when used to enhance understanding of individual lived experience it provides a stronger sense of the underlying patterns indicative of a particular time and place. Moreover, the research presented here intends to underscore how unwed mothers and fathers related to one another on a macro scale to better understand their individual experiences.

History of the County

The early modern county of Somerset was a predominantly agrarian society, located in the south of England, southwest of London.⁷⁹ Most income was derived from various pastoral and stock raising as well as some cheese production in the town of Cheddar.⁸⁰ By the beginning of the seventeenth century, Somerset was a very wealthy county “renowned for its meat and textiles, with a population of 200,000.”⁸¹ It comprised of 480 parishes, divided between three archdiocese and two diocese.⁸² As highlighted in *Figure 2: County Map of England*, Devon, Dorset, Wiltshire

⁷⁹ In my initial research attempts to acquire sources on the subject I sought copies of the sources utilized to compose the chapter on the county in Quaife, *Wanton Wenches and Wayward Wives*. However, it quickly became apparent that the sources used to develop this research are no longer in circulation and were never in circulation in North America. While, ideally, I would have diversified the sources for this section, the travel restrictions of COVID-19 made accessing these materials unsafe. As a result, this section provides the necessary contextual information to understand the demographic information examined in subsequent sections drawn primarily from reference collections and the extensive work of Geoffrey Quaife.

⁸⁰ *Encyclopedia Britannica*, online edition, s.v. “Somerset,” <https://www.britannica.com/place/Somerset-county-England>.

⁸¹ Quaife, *Wanton Wenches and Wayward Wives*, 9.

⁸² Quaife, *Wanton Wenches and Wayward Wives*, 12.

and Gloucestershire surround Somerset. These neighbouring counties, as well as Wales appeared in the Somerset Quarter Sessions highlighting movement and travel throughout the southwest.



Figure 2: County Map of England⁸³

⁸³ Assessing population changes from disparate data sources: The decline of the Twite *Carduelis flavirostris* in England - Scientific Figure on ResearchGate. Available from: https://www.researchgate.net/figure/Map-of-England-showing-the-location-of-counties_fig1_231973670 [accessed 7 Jan, 2022]

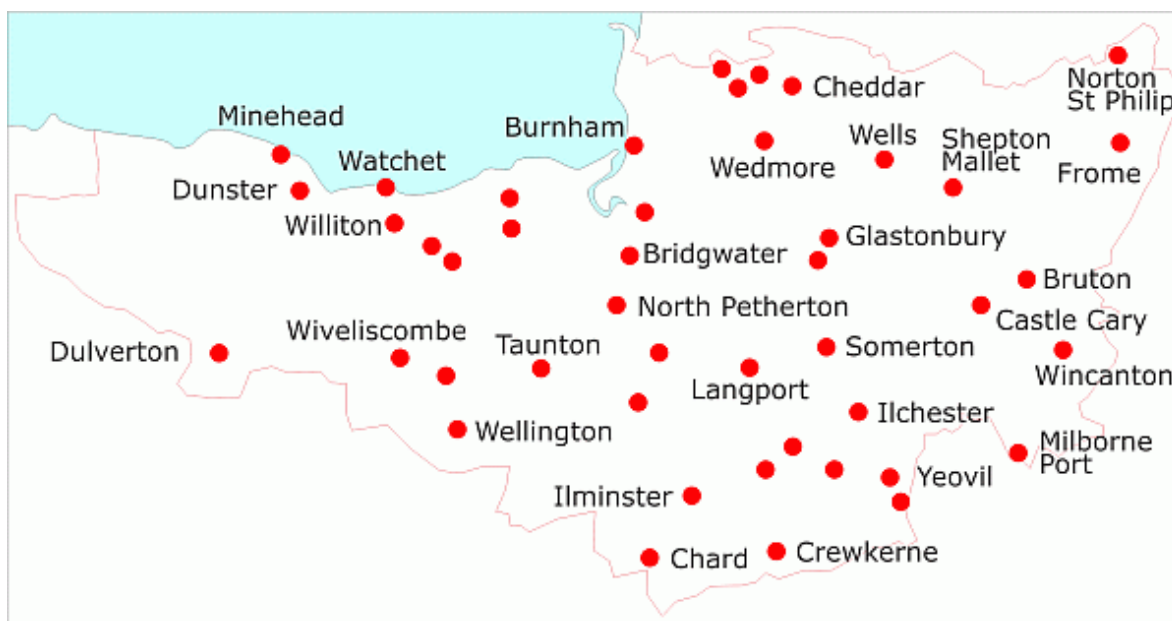


Figure 3: Map of Somerset⁸⁴

In the early modern period, lay society was divided between the gentry and non-gentry. However, there were significant divisions within the non-gentry class based on wealth and status.⁸⁵ There were nine broad categories based on occupation and occupational status amongst the non-gentry: these included yeoman, husbandman, labourer, small shopkeeper, tradesman, artisan, craftsman, pauper, and vagrant.⁸⁶ The agrarian class, which included yeoman, husbandman, and labourers, were the most common occupations recorded in bastardy Quarter Session records. Yeomen were the wealthiest of the agrarian class. They possessed land, maintained staff, were literate and tended to marry later in life.⁸⁷ Husbandmen were also part of the agrarian class; however, they had land holdings of less than 10 acres and had access to less wealth than yeoman.⁸⁸ Finally, labourers, sometimes referred to as the destitute, were the least

⁸⁴ Somerset Heritage Centre, *Somerset Urban Archaeological Surveys (EUS)*, accessed 20 July 2023, from <https://www.somersetheritage.org.uk/eus/>

⁸⁵ Quaife, *Wanton Wenches and Wayward Wives*, 13.

⁸⁶ Quaife, *Wanton Wenches and Wayward Wives*, 13.

⁸⁷ Quaife, *Wanton Wenches and Wayward Wives*, 13.

⁸⁸ Quaife, *Wanton Wenches and Wayward Wives*, 13.

wealthy of the agrarian class as the precarity of weather in the sixteenth-century made maintaining small farms challenging.⁸⁹ With a substantial rise in population at the start of the seventeenth century, many able-bodied workers were unable to find and maintain employment.⁹⁰ As a result, local parishes were an essential institutional mechanism to provide relief for these workers.⁹¹ The problem in the seventeenth century, however, was that parishes were illequipped to handle the economic depressions that plagued the southeast of England. The conclusion of conflicts, including the 30 years war, resulted in economic disruptions that made it challenging to sell normally sought after goods.⁹² Dorchester, for example, experienced significant disruptions to the cloth industry, as well as significantly inflated prices of food after a failed harvest.⁹³ The inflated cost of food led to both a high number of requests for relief, but also increases in theft of food.⁹⁴ While these examples occurred in a neighbouring county, this was a consistent challenge for peasants across the southeast of England. What is interesting, however, is that despite the economic precarity of the century, the overall rate of illegitimate births indicates that men in the non-gentry class were actively engaging in premarital sex and courting rituals.⁹⁵

⁸⁹ Quaife, *Wanton Wenches and Wayward Wives*, 14.

⁹⁰ David Underdown, *Fire from Heaven: The Life of an English Town in the Seventeenth Century* (New Haven, Conn: Yale U.P., 1992), 79, 85.

⁹¹ Underdown, *Fire from Heaven*, 85.

⁹² Underdown, *Fire from Heaven*, 85.

⁹³ Underdown, *Fire from Heaven*, 85.

⁹⁴ Underdown, *Fire from Heaven*, 86.

⁹⁵ David Levine and Keith Wrightson, "The Social Context of Illegitimacy in Early Modern England," in *Bastardy and its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North American, Jamaica, and Japan*, edited by Peter Laslett, Karla Oosterveen and Richard Smith, (London: Edward Arnold (Publishers) Ltd., 1980), 161.

History of Bastardy in England

Scholars have conducted extensive research on the history of bastardy in Europe.⁹⁶ Peter Laslett, Karla Oosterveen, and Richard Michael Smith conducted the most significant studies in the history of bastardy and provide long-term trends in England. Through the tracking of accounts in various parish repositories across England, Laslett, Oosterveen, and Smith highlighted that there was a cyclical relationship between illegitimacy rates and marriage.⁹⁷ Rates of illegitimacy increased at the same rate as marriage. In Somerset, marriage rates fluctuated throughout this period, with high rates of bastardy present during periods of peace, and lower rate during periods of political upheaval.⁹⁸ This demonstrates that premarital sex was an active part of early modern rural courting relationships.⁹⁹ Most women who bore illegitimate children therefore were of the same age as the first-born children of married women.¹⁰⁰ As Levine and Wrightson have argued, this suggests that mothers of illegitimate children “were neither particularly gullible nor exceptionally promiscuous. They were, however, unfortunate. They, unlike the pregnant brides, were left to bear their children alone.”¹⁰¹ Moreover, bridal pregnancy and illegitimate births

⁹⁶ For example refer to: Henry French, “Bastardy in Butleigh: Illegitimacy, Genealogies and the Old Poor Law in Somerset, 1762-1834,” *Genealogy* 4, no. 1 (March 1, 2020), <https://doi.org/10.3390/genealogy4010013>; Manon van der Heijden, Ariadne Schmidt, and Griet Vermeesch, “Illegitimate Parenthood in Early Modern Europe,” *The History of the Family* 26, no. 1 (January 2, 2021): 1–10, <https://doi.org/10.1080/1081602X.2020.1853586>; Jeannette Kamp and Ariadne Schmidt, “Getting Justice: A Comparative Perspective on Illegitimacy and the Use of Justice in Holland and Germany, 1600–1800,” *Journal of Social History* 51, no. 4 (2018): 672–94; Peter Laslett, *Family Life and Illicit Love in Earlier Generations: Essays in Historical Sociology* (Cambridge ; Cambridge University Press, 1977); Laslett, et al., (eds.) *Bastardy and Its Comparative History*; Angela Joy Muir, “Courtship, Sex and Poverty: Illegitimacy in Eighteenth-Century Wales,” *Social History* 43, no. 1 (January 2, 2018): 56–80, <https://doi.org/10.1080/03071022.2018.1394000>; Quaipe, *Wanton Wenches and Wayward Wives*; Griet Vermeesch, “The Legal Agency of Single Mothers: Lawsuits over Illegitimate Children and the Uses of Legal Aid to the Poor in the Dutch Town of Leiden (1750–1810),” *Journal of Social History* 50, no. 1 (2016): 51–73.

⁹⁷ Laslett, Oosterveen, and Smith, eds., *Bastardy and Its Comparative History*, 3–4.

⁹⁸ Refer to Figure 4: Cases of Bastardy in Somerset by Year, pp.56.

⁹⁹ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 161.

¹⁰⁰ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 162.

¹⁰¹ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 162.

highlight the role of premarital sex in courting practices in rural England. As a result, bastardy cases represent courting that did not result in marriage, rather than an engagement in nonprescriptive sexual practices.

Long term consequences for unwed mothers are unclear. Alan McFarlane, for example, argued that it was uncertain whether illegitimate births carried significant stigma for mothers in the long term.¹⁰² While the “ascription [of bastard] might be libellous [it] was not greatly disapproved of, as long as the child was “maintained.””¹⁰³ Geoffrey Quaife explores this relationship in *Wanton Wenches and Wayward Wives*. Using the Quarter Session records in Somerset, he argued that while the number of cases possibly indicated a heightened concern about sexual morality, the community was more concerned with who would take on the economic burden of the child’s care – the parish or the father.¹⁰⁴ Though it is unclear what the long term consequences were for the mother and the child within these communities, Quaife demonstrates that the community was concerned about the potential long term financial burden of unwed mothers and their children.¹⁰⁵

By understanding illegitimacy in context, I can better ascertain the relationship between premarital intercourse, bridal pregnancy, and illegitimacy birth. Nevertheless, the quantitative studies presented here date from several decades ago, before historians have had the benefit of more modern, mixed-method approaches that weave together context and individual experience. While quantitative research fell out of fashion by the early 1980s, the approaches can still tell us much about the violent relationships between unwed mothers and their sexual partners. In this

¹⁰² Alan McFarlane, “Illegitimacy and Illegitimates in English History,” in *Bastardy and its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North American, Jamaica, and Japan*, edited by Peter Laslett, Karla Oosterveen and Richard Smith, (London: Edward Arnold (Publishers) Ltd., 1980), 75.

¹⁰³ McFarlane, “Illegitimacy and Illegitimates in English History,” 75.

¹⁰⁴ Quaife, *Wanton Wenches and Wayward Wives*, 2.

¹⁰⁵ Quaife, *Wanton Wenches and Wayward Wives*, 2.

chapter, I thus place these earlier quantitative approaches into conversation with my quantitative analysis that emphasizes categories of violence and oppression to develop an aggregated network from which to explore issues of gender-based violence in subsequent chapters. This, therefore, provides a more nuanced examination of illegitimacy in Somerset. From this examination, illegitimacy connects to broader patterns of gendered violence that underlie the legal system that prosecuted and administered these cases.

Judicial Processes

The Quarter Sessions were the lower court of the early modern English legal system. These courts emerged in the early Middle Ages to centralize the various noble courts that existed beyond the control of the King of England.¹⁰⁶ By 1200 it was common for the King of England to appoint knights to keep the peace.¹⁰⁷ This position eventually transformed into the role of Justice of the Peace, which existed at the juncture of modern police and a court judge.¹⁰⁸ Justices of the Peace, moreover, supported the Assize courts, which were the main criminal court, and also acted as a centralizing force in the emergent judicial network under the direction of the King (or Queen) of England.¹⁰⁹ By the early modern period, a quorum of lawyers and knights involved in these Sessions had the ability to arrest, detain, and gaol criminals, as well as hold court at four specific intervals – Michaelmas, Epiphany, Easter, and the Translation of St. Thomas.¹¹⁰ While lawyers, knights, and eventually laymen theoretically could reside over capital offences, in

¹⁰⁶ John H. Baker, *An Introduction to English Legal History*, 2d ed.- (London: Butterworths, 1979), 23.

¹⁰⁷ Baker, *An Introduction to English Legal History*, 23.

¹⁰⁸ Baker, *An Introduction to English Legal History*, 23.

¹⁰⁹ Baker, *An Introduction to English Legal History*, 23.

¹¹⁰ Baker, *An Introduction to English Legal History*, 24.

practice they heard misdemeanour offences like attempted sexual assault and child maintenance (bastardy) cases.¹¹¹

The Justices of the Peace were significant to the overall functionality of the early modern community.¹¹² Local landed gentry predominantly held the position of Justice of the Peace and resided over Quarter Sessions proceedings. However, bishops, aristocrats and judges could appear in the written court proceedings despite rarely appearing in person.¹¹³ Each county had no more than twenty active Justices at one time, and they were unpaid volunteer positions, but held significant power and prestige within the community.¹¹⁴ Justices could arrest individuals, take recognizances, or provide terms of bail, and two judges together could “fix the poor rate, grant alehouse licenses, supervise the repair of roads and bridges, take bail and decide on paternity in cases of bastardy.”¹¹⁵ Moreover, the Justices of the Peace who oversaw the Quarter Sessions held significant legal and social power within the community. The position tasked them with maintaining order and control amongst the peasant classes and centralizing judicial authority at the behest of the reigning monarch.

The Quarter Sessions were a significant mechanism of institutional control in the community. While they initially represented a move to centralize control by the monarch over the various local administrators of justice, all Justices were locally based. As a result, despite working at the directive of the reigning monarch, discourse within the Sessions represented local assumptions and concerns about criminal and social issues. Thus, the Quarter Sessions were a means of affirming and implementing gender ideologies into the broader community.

¹¹¹ Baker, *An Introduction to English Legal History*, 24.

¹¹² John Briggs, Christopher Harrison, Angus McInnes, and David Vincent, *Crime and Punishment in England: An Introductory History* (Florence: Routledge, 1996), 22.

¹¹³ Briggs, Harrison, McInnes, and Vincent, *Crime and Punishment in England*, 22.

¹¹⁴ Briggs, Harrison, McInnes, and Vincent, *Crime and Punishment in England*, 22.

¹¹⁵ Briggs, Harrison, McInnes, and Vincent, *Crime and Punishment in England*, 22 -23.

The social issue of bastardy fell within the jurisdiction of both the ecclesiastical and secular court systems. Ecclesiastical courts had the authority to legitimize a child's status if that child was born prior to the finalization of a divorce, and if the parents subsequently married.¹¹⁶ By the early modern period in England, most proceedings took place in the secular (Quarter Sessions) court. In this court system, illegitimate children had the same rights as any other child, other than the right to inherit property.¹¹⁷ This was true even if the parents subsequently married following the birth of the child. As a result, few bastardy cases came before the Quarter Sessions.¹¹⁸ This could reflect the challenges of legitimizing children in the secular court, but it is likely that many individuals married before the birth of the child, women experienced a miscarriage, the child was stillborn, or the family decided to deal with the situation internally.¹¹⁹ In other words, the women who came before the Quarter Sessions were individuals who had no other options for financial support through either familial connections or a subsequent marriage. The legal charge of bastardy, moreover, represented a complicated intersection of familial, personal, and financial responsibility within the community. Those who went before the court systems had few if no other options and were members of the poorest social classes. If there was a less public option for handling the financial upkeep of children conceived outside of wedlock, most families chose this option. Thus, the individuals in these cases were at the mercy of the Justices of the Peace and the Quarter Sessions to provide them and their child(ren) adequate support to ensure their survival.

¹¹⁶ Baker, *An Introduction to English Legal History*, 400.

¹¹⁷ Baker, *An Introduction to English Legal History*, 400.

¹¹⁸ Quaife, *Wanton Wenches and Wayward Wives*, 203.

¹¹⁹ Quaife, *Wanton Wenches and Wayward Wives*, 203.

The Contours of Somerset Bastardy

Bastardy, as a criminal offence, is a significant feature of the seventeenth-century Quarter Sessions. Within the Quarter Session rolls there are a total of 1890 pieces of paper for the duration of the seventeenth century.¹²⁰ This number is not reflective of the entirety of the cases that came before the Quarter Sessions in the seventeenth century. Rather, it reflects the entirety of the cases saved and stored effectively in the archival catalogue in Somerset. Of the 1890 pages catalogued, 1433 deal with bastardy and represent 1298 unique cases.¹²¹ Moreover, based on these numbers, bastardy cases represent approximately 76% of the cases which came before the Quarter Sessions in Somerset. This section will explore the contours of Somerset bastardy cases for the duration of the seventeenth century. It will begin by presenting the overall scope of the records including the distribution of cases by year, followed by an analysis of the location and relationship between unwed mothers and accused fathers. The occupation of the accused father and status of the unwed mother will follow this section. Finally, this section will conclude with a breakdown of the scope of gender-based violence in the county. While this assessment cannot be fully representative of the circumstances of the seventeenth century, the percentage of bastardy cases preserved is significant and requires contextualization and critical analysis.

¹²⁰ I came to this number by searching “Q/SR” in the SHC. I then narrowed my search to the collection “Quarter Session Records for the County of Somerset” and limiting the search to the years 1600-1699. The total number of cases that meet these criteria are 1890. These criteria were selected to ensure that the numbers correspond with the collection and criteria used for selecting the bastardy cases analyzed in this research.

¹²¹ I determined that there were 1298 unique cases through the compilation of my database. I was able to filter papers that were part of the same court proceedings and count the remaining cases, automatically in Excel, to determine this number.

Parish records in England indicate that throughout the seventeenth-century bastardy rates were significantly lower than in the sixteenth century.¹²² This shift could be indicative of delayed marital rituals and, thus, premarital sex. The loose relationship between the age of marriage and the age of first illegitimate birth indicates that the birthing of illegitimate children “may have responded to the same factors which influenced the age at first marriage.”¹²³ In other words, courting rituals involved a significant amount of premarital sex with the hope that this engagement would lead to a more formalized marital union. David Levine and Keith Wrightson, however, argue that this is an oversimplification of the data from rural villages. They suggest that these statistics were based on a singular parish record and then extended to 24 others. Levine and Wrightson argue that to properly understand the rate of illegitimacy scholars need to examine particular communities and how their trends shift over time.¹²⁴ As a result, the number of bastardy cases in Somerset during a period of relatively low numbers elsewhere does not necessarily indicate that they were an outlier; rather, it underscores the challenges of working with aggregated data that explores human behaviour. It is also worth noting that the data presented here are legal cases, rather than parish records. Parish records account for all illegitimate births in a region as both legitimate and illegitimate children are presented to the parish for baptism. Legal records only highlight the women who sought financial support for their illegitimate children. This is an important distinction as this data represents the attempts of women to acquire financial support for their illegitimate child rather than the number of illegitimate births. These women had no other options for support and, thus, represent the poorest

¹²² Peter Laslett and Karla Oosterveen, “Long-Term Trends in Bastardy in England: A Study of the Illegitimacy Figures in the Parish Registers and in the Reports of the Registrar General, 1561-1960,” *Population Studies* 27, no. 2 (July 1973): 256-257.

¹²³ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 161.

¹²⁴ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 160-161.

and least connected in the community.¹²⁵ Even if the initial goal was to secure a marital alliance, the existence, or eventual existence, of an illegitimate child necessitated the acquisition of financial security through the Quarter Sessions.

Thus, the aggregated network of seventeenth-century Somerset bastardy cases highlight shifts in the ability to formalize relationships through marriage following conception. Figure 4: Cases of Bastardy in Somerset by Year, highlights significant increases and declines over the course of the century. Moreover, contrary to arguments of Laslett and Oosterveen that the seventeenth century marked a significant decline in illegitimacy, the records in Somerset indicate that there was a significant oscillation between marital viability and inactivity.¹²⁶

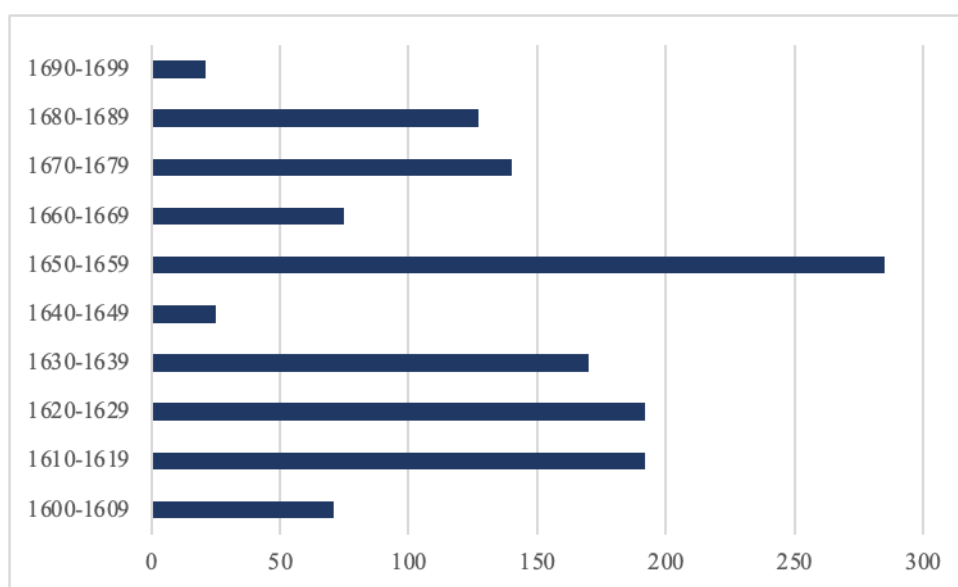


Figure 4: Cases of Bastardy in Somerset by Year

There are several explanations for the oscillation in marital viability over the seventeenth century. For example, the “baby boom” of 1650-1659, could represent an increased participation

¹²⁵ Quaife, *Wanton Wenches and Wayward Wives*, 203.

¹²⁶ Laslett and Oosterveen, “Long-Term Trends in Bastardy in England,” 255-286.

in courting rituals following the cessation of the English Civil War (1642-1651). The records further support this claim by the relative dearth of illegitimate births during the 1640s, indicating that the conflict disrupted courting patterns. Nevertheless, while this is one potential explanation for the significant shift in case numbers during this period, another explanation could be that record keeping was not sufficient during this period and, as a result, indicate a false relationship between bastardy cases and the English Civil War. The final possible explanation for these shifts is the role of the Puritans in English society. It is possible that the increase in persecuted cases in the Interregnum period coincided with the rise of Puritan power in the central government. However, this seems to be the least likely explanation for the shift in case numbers, as “the formal regulation of sexual behaviour in [this] period was dependent upon local support for its efficacy...”¹²⁷ Moreover, the Puritans did little to reform the overall prosecution of sexual transgressions and were simply more likely to omit them from the registers resulting in a false causation.¹²⁸ In the case of Somerset, G.R. Quaife found that few women considered morality when choosing to engage in premarital sex.¹²⁹ That in conjunction with the communities preoccupation with the financial upkeep of the child over moral implications demonstrates that the Puritans had little influence on the judicial reporting in Somerset.¹³⁰ With these explanations in mind, the increase in bastardy cases between 1650-1659 most likely represents an increase in sexual activity compounded by overall better record keeping as the community stabilized following the English Civil War. This would align with well documented increases in pregnancy in other post-war periods, including those following the Great War and the Second World War.

¹²⁷ Keith Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” in *Bastardy and its Comparative History: Studies in the History of Illegitimacy and Marital Nonconformism in Britain, France, Germany, Sweden, North American, Jamacia, and Japan*, edited by Peter Laslett, Karla Oosterveen and Richard Smith, (London: Edward Arnold (Publishers) Ltd., 1980), 176.

¹²⁸ Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” 176.

¹²⁹ Quaife, *Wanton Wenches and Wayward Wives*, 245.

¹³⁰ Quaife, *Wanton Wenches and Wayward Wives*, 245.

While the overall increase in cases may have been compounded by better record keeping, this growth trend aligns best with increased courting activity following a period of conflict.

The hypotheses for the oscillation in bastardy cases throughout the seventeenth century highlights the limitations of working with large dataset. Even though this methodology illuminates broader social trends the challenge is that they may emphasize patterns with multiple explanations or that had little significance to the historical actors of this period. Data collected for the seventeenth century, however, illustrates that it is an outlier in the archival record. Only 395 pages exist for the eighteenth century whereas 1433 pages account for the seventeenth century. This change could represent a shift in reporting (i.e., bastardy cases moved from the Quarter Sessions to another judicial body), or that marriage became more viable as a resolution to illegitimate conceptions than in the seventeenth century, records were lost or damaged and, thus, not preserved, or a combination of all three. The variability in data highlights that even though there appears to be significant variation in cases between the seventeenth and eighteenth century, the data will always be incomplete. As a result, there are and will always be limitations of this data.

Methodologically there is a key factor to consider when analyzing the compilation of the quantitative data. The database is based on the catalogue description of the cases as found in the online SHC catalogue. The challenge of this type of data is that while it was readily available and contains valuable information about each court case there is significant variation between entries. This variation could reflect the discrepancy in modern archivists' creation of the catalogue (i.e., multiple individuals developed catalogue entries), or the inconsistency of early modern scribes in creating these records. While there is significant formulaic language in the short descriptions on bastardy cases, including the location, names of the mother and father, and the dates in which the

case takes place, there is less consistency in the inclusion of more tangential information, such as the status of the mother and occupation of the father. As a result, scholars must be mindful of the limitations of this type of data when drawing their conclusions. Further, the data presented contributes to the creation of the aggregated ecosystem from which it is possible to develop a stronger mixed methodological approach that uses this aggregated data to better understand the sample selected for close reading.

The analysis of macro trends in yearly case count demonstrates how aggregated ecosystems ascertain trends otherwise invisible when exploring individual cases. The analysis of this data emphasizes the process of bastardy, as understood within the framework of the *longue durée*. By exploring this trend throughout the seventeenth century I am able to highlight otherwise unattainable patterns about the ways in which this community responded to bastardy. The records of bastardy in Somerset, moreover, highlight the ways in which communities responded to conflict and change. The rebounding of the population in the 1650s highlighted the rise of courting rituals at the close of the English Civil War.

Position of Mothers and Accused Fathers

Physical Location

The locality of the mother and accused father are important to understand courting patterns in the county. Case descriptions included the physical location of both the unwed mother and alleged father. For example, in the case of “Dorothy Lyneinge *of Mark*, spinster, states that she is with child and that Augustine Godfrey *of Mark*, husbandman, is the father of her child...”.¹³¹ Similarly, “...Florence Whyte *of Sparkford*, spinster in a bastardy case against Henry Hoddinott

¹³¹ Bastardy examination. 15 Aug 1649, (15 August 1649), Somerset Heritage Centre, Q/SR/81/8.

of the same place, labourer...".¹³² I have emphasized parts of this quotation to demonstrate how both the unwed mother and alleged father are positioned first by their locality and second by their status or occupation. The identification of physical location was essential as women filed their cases in the parish in which the child would be born to ensure access to financial support from the parish as outlined in the Poor Law Act of 1576.¹³³ However, while The Poor Law could pay for the upkeep of an illegitimate child and the mother, it primarily sought to displace the financial burden from the Parish to the parents of the child.¹³⁴ As a result, while the location of the mother is most consistently listed in the catalogue description, the father's location is also listed with significant frequency to force their financial upkeep of the child.

The relationship between mothers, the poor law, and judicial networks demonstrates how women might utilize the institutional structures of their community to acquire financial support for their child(ren). At least on paper, women in these circumstances appear to independently navigate and exert agency in their ability to file charges in the Quarter Sessions to ensure the survival of themselves and their illegitimate child.¹³⁵ Single motherhood did not necessarily mean marginalization and social isolation.¹³⁶ For example, in instances of paternity suits in early modern Bavaria, the engagement in the judicial process reinstated their reputation as honourable women.¹³⁷ While the position of unwed mothers was inherently precarious, it was not necessarily

¹³² Bastardy examination 8 Feb 1655, (8 February 1655), Somerset Heritage Centre, Q/SR/92/76.

¹³³ Thomas Nutt, "Illegitimacy, Paternal Financial Responsibility, and the 1834 Poor Law Commission Report: The Myth of the Old Poor Law and the Making of the New," *The Economic History Review* 63, no. 2 (2010): 336.

¹³⁴ Nutt, "Illegitimacy, Paternal Financial Responsibility, and the 1834 Poor Law Commission Report," 336.

¹³⁵ Kamp and Schmidt, "Getting Justice," demonstrates that women used the legal institutions strategically for their own benefit; however, I contend that this is only part of the story. While there is evidence to suggest that women were active participants in the process and not passive victims (673), I believe that this is only part of the story and fails to account for the violence wrought against women in this process.

¹³⁶ van der Heijden, Schmidt, and Vermeesch, "Illegitimate Parenthood in Early Modern Europe," 4.
<https://doi.org/10.1080/1081602X.2020.1853586>.

¹³⁷ Kamp and Schmidt, "Getting Justice," 683.

a hopeless situation.¹³⁸ In Somerset, the physical proximity between unwed mothers and putative fathers reflects the presence of permissible sexual engagement related to courting practices in the early modern period.

The location of parents in bastardy court proceedings affirms the long-held understanding that premarital sex was a component of early modern courting rituals.¹³⁹ As demonstrated in Figure 5: Relationship in Locality between Mother and Accused Father, women and men in these cases overwhelming belonged to the same parish, with more residing in the same rural deanery. The Y axis represents the number of cases, and the X axis demonstrates whether the named parents were from the same parish (yes), different parishes (no), or if one or more of the parents' locations was unspecified (unspecified) in the record. The final category unknown refers to instances in which a mother states that she does not know the parish of the alleged father. The data highlights that illegitimate children are most frequently conceived amongst villagers in the same locality and could be the result of the dissolution of a courting process. Nevertheless, there was still a considerable number of individuals unspecified in their location. This could be the result of women not knowing the location of the father or inconsistencies in the cataloguing of these cases. Further, while not statistically significant two cases list the location of the father as being unknown. This affirms that for women to access resources through the parish and The Poor Law Act, they needed to provide as much information to the court as possible, even if the information could not lead to financial support from the father. Moreover, the data collected from

¹³⁸ Kamp and Schmidt, "Getting Justice," 687-688.

¹³⁹ Here are several examples of scholars who highlight that many of these cases emerged as a result of promised marriage between the couple: van der Heijden, et al. "Illegitimate Parenthood in Early Modern Europe."; Kamp and Schmidt, "Getting Justice."; Laslett, *Family Life and Illicit Love in Earlier Generations*.; Laslett, et al., (eds.), *Bastardy and Its Comparative History*; Vermeesch, "The Legal Agency of Single Mothers,."; Griet Vermeesch, "Facing Illegitimate Motherhood in Eighteenth-Century Antwerp: How Changing Contexts Influenced the Experiences of Single Mothers," *Continuity and Change* 34, no. 1 (2019): 117-37, <https://doi.org/10.1017/S0268416019000110>.

Somerset between 1600-1699 affirms the findings of Peter Laslett and others that bastardy cases were localized and occurred between individuals known to one another.

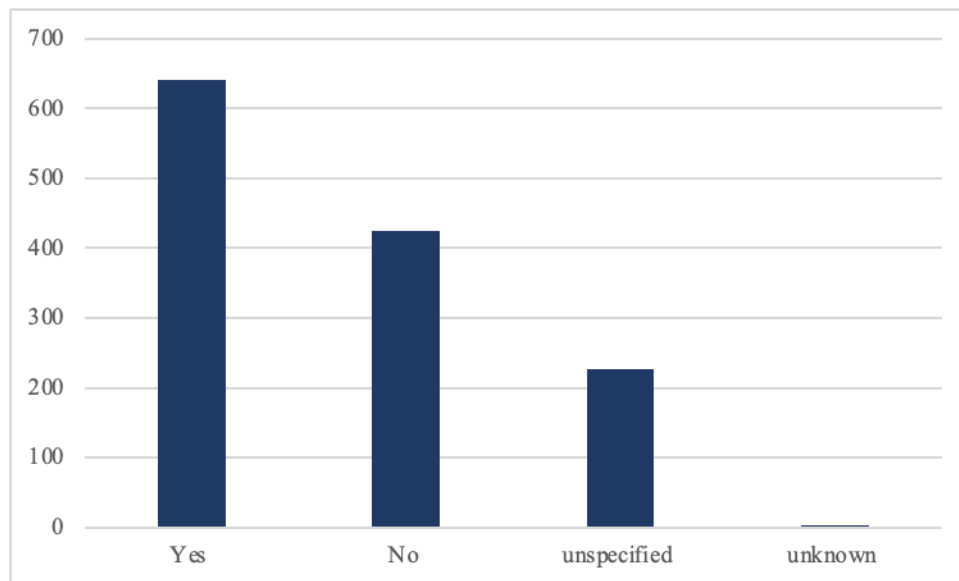


Figure 5: Relationship in Locality between Mother and Accused Father

Occupation and Social Status

Accused fathers were predominantly rural agrarians, as reflected the community and broader economy. Figure 6: Paternal Occupation illustrates the eleven most common occupations listed amongst those specified.¹⁴⁰ For inclusion in Figure 6, each occupation had to have a count of at least 10. Most individuals belong to the agrarian sector, either as yeoman, husbandman, or labourers. Husbandmen were the most common agrarian occupation, accounting for 210 of the 633 specified in the records. The distribution of occupations aligns with research conducted on illegitimacy. Since the most common interpretation of illegitimacy is that illegitimate children represent active courting, and, thus, premarital sex, in the community, it is unsurprising that

¹⁴⁰ For a complete list of paternal occupation and maternal status, refer to Appendix A: Full List of Paternal Occupations and Appendix B: Complete List of Female Maternal Status.

those in the agrarian sector experienced challenges in solidifying these alliances. Throughout the seventeenth century, the world experienced significant global cooling that impacted the viability of many professions in England and beyond.

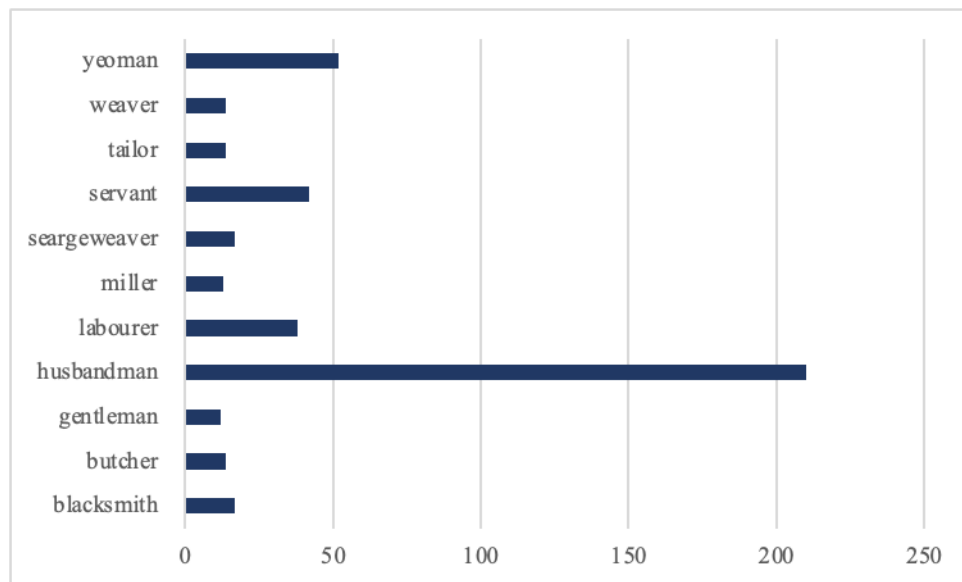


Figure 6: Paternal Occupation

Bastardy cases in Somerset occur during what is historiographically known as the general crisis. The general crisis involved a period of heightened conflict and recession between the sixteenth and nineteenth centuries.¹⁴¹ This coincided with a period of global cooling that significantly impacted the climate. Geoffrey Parker argues that while this period of global cooling did not cause the general crisis, it exacerbated social, political, and economic changes by impacting industries such as agricultural production causing widespread famine.¹⁴² In England, for example, the threshold for tolerance of change in monarchical decision making was much

¹⁴¹ Geoffrey Parker, *Global Crisis: War, Climate Change and Catastrophe in the Seventeenth Century* (New Haven: Yale University Press, 2013), xix.

¹⁴² Parker, *Global Crisis*, xix.

lower than in previous centuries, which contributed to the execution and removal of Charles I as King of England.¹⁴³ Thus, to best understand the context of bastardy cases in Somerset, it is imperative to understand the broader social, and economic factors impacting marital viability and courting.

In Somerset, the changes in climate would have significantly impacted the overall economic health of the region. For example, at the turn of the seventeenth century there was rampant poverty in England that was compounded by poor harvest seasons in 1596 and 1597.¹⁴⁴ Cost of living and employment were unable to keep pace with the upward trend of population growth, resulting in a need for formal poverty relief mechanisms.¹⁴⁵ Due to the reliance on agrarian production, Somerset would have been particularly vulnerable to crop failure, which, as Geoffrey Parker articulates, would have impacted broader institutional structures and economic security. Figure 6: Paternal Occupation highlights that in cases of bastardy, there is a high number of individuals who identify as husbandman, yeoman, and labourers – all of which are agrarian positions. While husbandmen would account for most of these agrarian occupations, making their presence in the Sessions unsurprising, their overall inclusion becomes statistically significant when considered with other community factors. By understanding illegitimate births as a society striving to form marital alliances, this pattern of paternal occupation highlights a society financially burdened by broader economic changes resulting from this period of global cooling. This is further corroborated by the work of Paul Slack, who underscored the connection between the rise of poverty and an increase in illegitimate births through the first part of the seventeenth century.¹⁴⁶ Moreover, this pattern, which was illuminated through quantitative

¹⁴³ Parker, *Global Crisis*, 355.

¹⁴⁴ Slack, *The English Poor Law*, 3.

¹⁴⁵ Slack, *The English Poor Law*, 3.

¹⁴⁶ Slack, *The English Poor Law*, 4.

analysis, further illustrates the social impacts of the global crisis in seventeenth century Somerset.

However, the Quarter Session records are inconsistent in their recording of the paternal occupation and the maternal social status. Figure 7: Specification of Paternal Occupation and Figure 8: Specification of Maternal Status, illustrate an inverse relationship between the articulation of the position of the mother and father. While this could be the result in variation in record keeping, either by modern archivists or premodern scribes, it is equally as feasible that this relationship represents the ways in which women filed accusations. The lack of specification of the paternal occupation could reflect the occupation being unknown to the mother at the time of filing. If this is the case, this raises questions about the extent to which women know the father at the time of conception. This would therefore challenge the assertion that women were engaging in courting rituals. Nevertheless, it is impossible to know this for certain. The more plausible explanation for the high number of unspecified roles is variation in either or both the archivists cataloguing and scribal recording. Moreover, the data collected in Somerset demonstrates the incomplete nature of the ways in which certain criteria are recorded over time and space. As a result, it remains imperative to explore these trends cautiously.

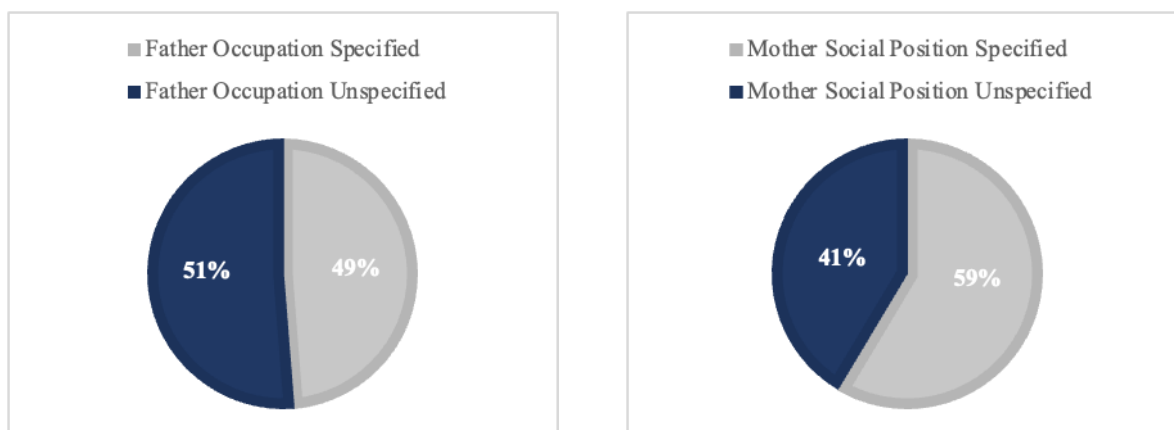


Figure 7: Specification of Paternal Occupation

Figure 8: Specification of Maternal Status

The viability of courtship while in service would have also rates of illegitimacy. Courtship was an inherently important facet of becoming an adult in the early modern period. For both men and women, the entrance into marriage marked a discernable shift in status in society. For women, society primarily understood their positionality based on marital viability. Figure 9: Maternal Status highlights that, at least in the Quarter Sessions, women are identified by their marital status or eligibility. While marriage was a significant in determining the life outcomes of women, it was also an important rite of passage for early modern men. Men only achieved full adult status when they became the head of a household.¹⁴⁷ Anthony Fletcher argued that the household was the epicenter of performative masculinity, and, as such, the performance in this realm was “under constant surveillance from the community.”¹⁴⁸ Nevertheless, many northern European countries delayed marriage as they required sufficient wealth to establish a nuclear family unit.¹⁴⁹ It is more evident the extent to which men in service partook in premarital sex than women. However, many scholars have identified that women tended to enter service prior to marriage.¹⁵⁰ While marriage was not always a viable option for men and women in service, which is evident by the number of bastardy cases coming before the Quarter Sessions, servants appear to have engaged in premarital intercourse regularly.

¹⁴⁷ Fletcher, “Manhood, the Male Body, Courtship and the Household in Early Modern England,” 431.

¹⁴⁸ Fletcher, “Manhood, the Male Body, Courtship and the Household in Early Modern England,” 431-432.

¹⁴⁹ Merry E. Wiesner, *Early Modern Europe, 1450-1789*, Second edition., Cambridge History of Europe; v. 2 (Cambridge: University Press, 2013), 62-63.

¹⁵⁰ For example, see P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520*, ACLS Humanities E-Book (Series) (Oxford : New York, Oxford: Clarendon Press; Oxford University Press, Clarendon, 1992); Laslett, *Family Life and Illicit Love in Earlier Generation*; Wiesner, *Early Modern Europe*.

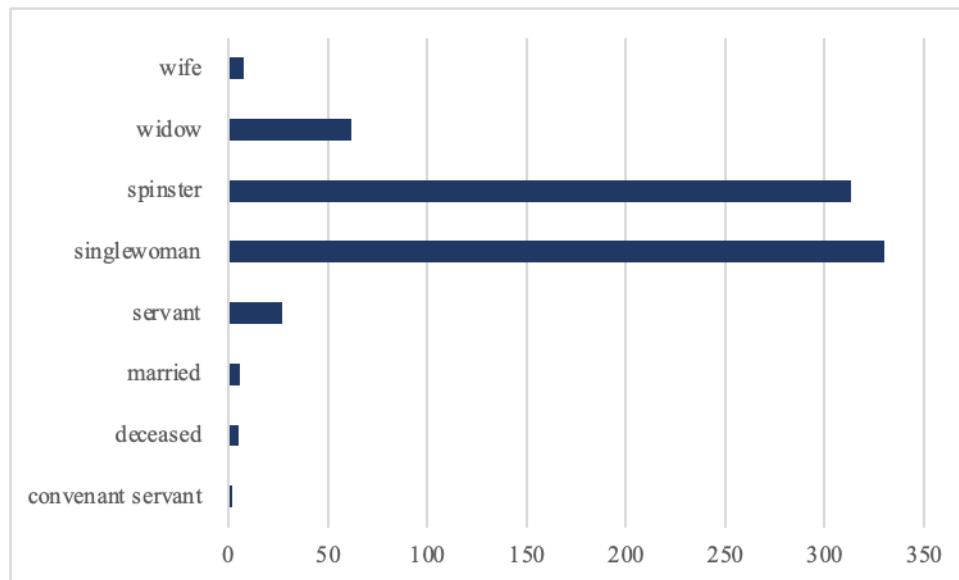


Figure 9: Maternal Status

Outcomes

While the quantitative data for the county of Somerset reflects a community striving to form marriages, the inability to formalize these unions could result in punishment. Justices of the Peace sentenced women most commonly at the beginning of the seventeenth century. These punishments were recorded in the catalogue description. While it is impossible to know whether these sentences were carried out, the prescription of them within the court highlights a public shaming process. The sentencing of women in Bavaria reflected the reintegration of women into society.¹⁵¹ Thus, whether these sentences were carried or stayed the statement of these punishments reflects women being shamed for their behaviour. As a result, the analysis of the number of punishments listed throughout the seventeenth century is based on the underlying assumption that these punishments were symbolic, as it is impossible to determine whether these punishments were carried.

¹⁵¹ Kamp and Schmidt, "Getting Justice," 683.

Punishments included a combination of emotional and physical repercussions for women. The most common punishments listed in the records are public whipping, sentencing to the community gaol, penance, and in some cases, punishments targeting the alleged father. For birthing an illegitimate child, for example, Elizabeth Coppener of Winsford was sentenced to a public whipping.¹⁵² Katheren Chanker and Nicolas Ruddock were both sentenced to whipping “through the streets of Glastonbury ‘until their boddies shalbe both bloody.’”¹⁵³ Figure 10: Sentencing Applied, highlights that 11% of all cases of bastardy included a formal punishment assigned by the court. Whether the punishment involved the father, mother, or both, the cases have been categorized in this study as a case involving sentencing. The public nature of these types of punishments speak to the combination of emotional and physical consequences to women engaging in premarital sex. It also speaks to how communities used “castigation” as a mean to publicly shame women who engaged in criminal behaviour, especially crimes against property.¹⁵⁴ Moreover, even if these punishments were never carried out, the threat of public shaming marks the reintegration of women into society, and as a deterrent for other women engaging in this behaviour prior to solid commitments of marriage. It also demonstrates a preoccupation with corporal punishment that is distinct from our modern criminal prosecutions.

¹⁵² Bastardy order. 29 Oct 1616, (29 October 1616), Somerset Heritage Centre, Q/SR/27/203.

¹⁵³ Bastardy order. 20 Ju 1617 (20 July 1617), Somerset Heritage Centre, Q/SR/27/79.

¹⁵⁴ Walker, *Crime, Gender, and Social Order*, 91.

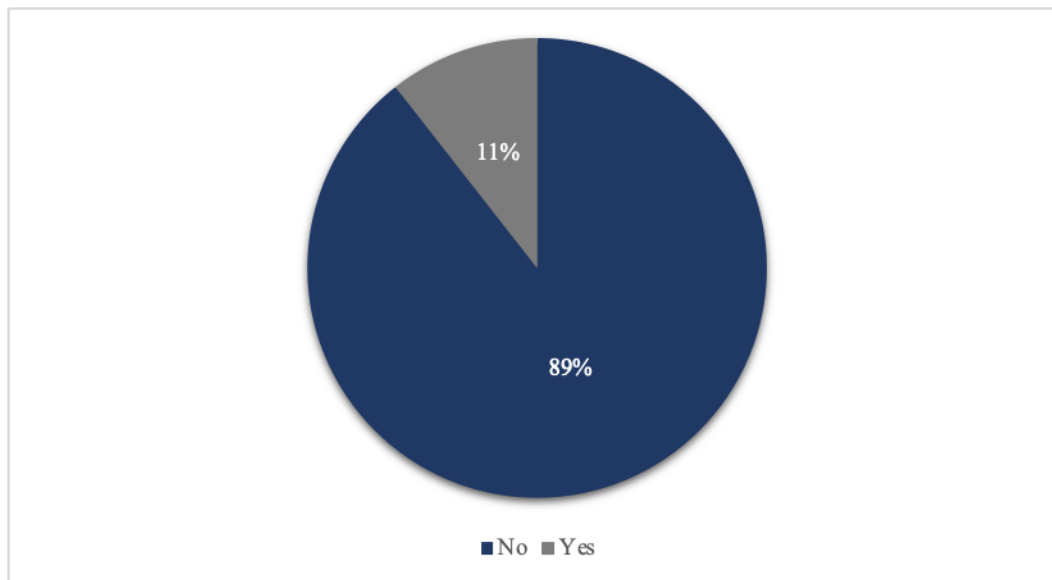


Figure 10: Sentence Applied

To further contextualize this data in the temporal distribution of cases, most punishments were assigned during the early part of the seventeenth century in which case rates were stable. By the 1640s, punishments became more sporadic following the decline of cases during the civil war period. While it is unclear whether punishments declined or if the recording process changed, there is significant evidence to suggest that Justices of the Peace in Somerset were more concerned with marital patterns at the beginning of the seventeenth century. This aligns with other legal changes to marriage. For example, early modern English authorities viewed bigamy as a significant problem in the early seventeenth century.¹⁵⁵ Bigamy, or the marriage of

¹⁵⁵ Few scholastic works examine themes of bigamy in Restoration Era England. Bernard Capp's article, entitled "Bigamous Marriage in Early Modern England," provides the only detailed study of bigamy cases in seventeenth century England [Capp, Bernard. "Bigamous Marriage in Early Modern England." *The Historical Journal* 52, no. 3 (September 2009): 537–56]. <https://doi.org/10.1017/S0018246X09990021>. Capp examines previously unexplored records on bigamy from various county record offices across England. In doing so, he is the only scholar to offer a typography of bigamists in early modern England. While this thesis made a concerted effort to trace Capp's research, problems arose in diversifying the source base, as the majority of secondary commentary, within this article, stems from monographs on marriage and divorce, which only mention bigamy as a passing phenomenon. Nevertheless, one scholar has conducted research in the French medieval context. Sara McDougall's monograph,

an individual to multiple persons at the same time, became a felony through an act of parliament in 1604.¹⁵⁶ Secular authorities had become concerned at the Church's inability to control bigamous, incestuous and scandalous marriages and as a result, they took steps to shift the legal intervention from the consistory courts to a felonious act in the secular courts.¹⁵⁷ Thus, the seventeenth century marked a legal shift of marriage and marital crimes from the purview of canonical to secular authorities. The punishment of women and occasionally men for illegitimacy in the beginning of the seventeenth century, moreover, aligns with other criminal changes in marriage laws that reflect an increasing social anxiety around marriage, especially those of higher social rank. While bigamy typically targeted men, the emphasis on women and illegitimacy highlights attempts to control women's reproduction by promoting a more concrete proposal of marriage before engaging in premarital sex.

The rate of punishment aligns with other patterns of control exerted over marriage. While patterns of punishment do not persist over the course of the seventeenth century, the concentration of this behaviour at the beginning of the century align with other efforts by the English government to control marriage patterns. Much of this was a response to ongoing religious reformation in England and increasing concern by secular and religious authorities that

entitled *Bigamy and Christian Identity in Medieval Champagne*, argues that bigamy was a reflection of Christian identity. The impregnation of such values, moreover, is reflective of the overall desire and need to marry in times of peace [Sara McDougall, *Bigamy and Christian Identity in Medieval Champagne*, (Philadelphia: University of Pennsylvania Press, 2012), 6-7]. Importantly, McDougall highlights why the literature fails to examine questions of bigamy until the early modern period. She purports that sources of bigamous marriage do not emerge until the fifteenth century, and are unique to Northern France. In all other regions including: Italy, southern France, England, and Germany, there are no such efforts to systematically control marriage (McDougall, *Bigamy and Christian Identity*, 3). Sources in the English context, as demonstrated by Capp, however, emerged in the early seventeenth century as a response to increased parliamentary and regnal concern over marriage, and dissipated by the end of the seventeenth century. Thus, despite the assertion by McDougall that records exist on bigamy in early modern England: in reality, there exists a small window to study this phenomenon.

¹⁵⁶ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640*, (Cambridge; New York: Cambridge University Press, 1987), 149-150.

¹⁵⁷ Capp, "Bigamous Marriage in Early Modern England," 539.

clerics were operating outside of the purview of the church.¹⁵⁸ As a result, secular courts increasingly heard cases that included felonious and spiritual concerns. The resulting punishments of non-prescriptive sexual behaviour, of sex before marriage, could represent the shift in judicial process from the canonical to sexual courts. Moreover, the decrease in punishments over the century could reflect a decline in concern over marriage formation, a shift in legal understanding and precedent as more cases are heard in secular courts, or simply that punishments were not being recorded in the same fashion. Whatever the reason, these cases include an assortment of violent behaviour that is administered by the court or reported by the mothers coming to court for assistance. All of which can be understood within the lens of gender-based violence targeted against women.

Gendered Violence in the County

Illegitimacy provides a unique avenue to explore gender-based violence in Somerset. The early modern period witnessed important changes in laws around sexual violence. While in previous centuries rape had been a crime of property, or the theft of a woman, by the early modern period rape became associated with “the sexual violation of a person.”¹⁵⁹ Nevertheless, there were still circumstances in which a woman could not accuse a man of rape, most notably in instances in which the assault resulted in pregnancy. There was a commonly held belief throughout this period that pregnancy proved female consent.¹⁶⁰ As a result, authorities considered any woman who conceived a child because of rape, incest, or coercion to have consented to the act.

¹⁵⁸ Capp, “Bigamous Marriage in Early Modern England,” 539-540.

¹⁵⁹ Julia Rudolph, “Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought,” *Journal of British Studies* 39, no. 2 (2000): 172-173.

¹⁶⁰ Michael Dalton, *The Country Justice*, 1727 edition, (London: E. and R. Nutt and R. Gosling, 1618), 524.
https://www.google.ca/books/edition/The_Country_Justice_By_M_Dalton_And_an_A/7gJXAAAACAAJ?hl=en&gbpv=1

Regardless of this legal precedent, a small percentage of women employed terminology such as “forced” or “by force” to describe their sexual encounters with the alleged father. Other women highlighted different concerns such as coercion, threats of violence, and offers of marriage that never came to fruition. Cases of bastardy, moreover, provide an avenue from which to explore how women experienced gender-based violence in the community and how they attempted to take legal recourse against the alleged fathers of their children.

Catalogue descriptions provide the foundation to trace quantitative trends of violence in the Somerset Quarter Sessions. I began my research by asking whether violence was included in the testimony; however, this question quickly became too vague, and I created five subsequent categories. These included whether there was a suspected sexual assault, whether the court issued a punishment, whether it was carried or stayed, whether the alleged father was in a position of power, if the woman was coerced, or if they threatened violence for disclosing their paternity.¹⁶¹

Bastardy cases reflected an ongoing desire in Somerset to form marriages. This, however, is not fully representative of the lived experiences of mothers and alleged fathers. Throughout the development of this database, the catalogue descriptions pointed to instances of coercion, threats, broken promises of marriage, and sexual assault. While these instances are not statistically prevalent overall, their presence underscores mechanisms of violence against women within the community.

¹⁶¹ The qualifiers for whether a case included elements of sexual assault was the use phrases such as “resisted” (e.g., Q/SR/29/83), “against her will” (e.g. Q/SR/83/177) or in circumstances in which consent is unclear (typically in instances in which a child is conceived with an individual in authority). I also assumed that all punishments were stayed as the court description only included sentencing information and not whether they were carried.

Violence in the Quarter Sessions

Alleged fathers performed a wide range of violent behaviours against the mothers suing for maintenance. There are three categories of violence that can be parsed from the data collected from the catalogue descriptions: these include, power imbalances, coercion, and threats of violence. I define power imbalances as any relationship in which the alleged father is in a position of power to the mother. This might include their employer, relatives of their employer, religious officials, family members (typically in-laws), or an individual of a higher social status. Coercion involved male attempts to persuade women from taking their case to court – including, financial bribery, offers of gifts, or other compensation. Finally threats of violence involved men threatening bodily harm against women who disclosed their circumstances in court. These three categories account for most of the violence inflicted against women throughout the judicial process according to the quantitative data collected.

Coercion and Consent

A small percentage of cases include a form of power imbalance between the mother and alleged father. As illustrated in Figure 11: Power Imbalance between the Mother and Alleged Father, of the 1298 cases recorded in this dataset, 92, or 7%, include instances of a significant class difference between the mother and father listed in the case. As previously mentioned, a power imbalance refers to men who are the employer, related to the employer, individuals of significant social status, or family members of the mother. In these circumstances, differences in position and status made it challenging for women to provide informed consent to their sexual partners.

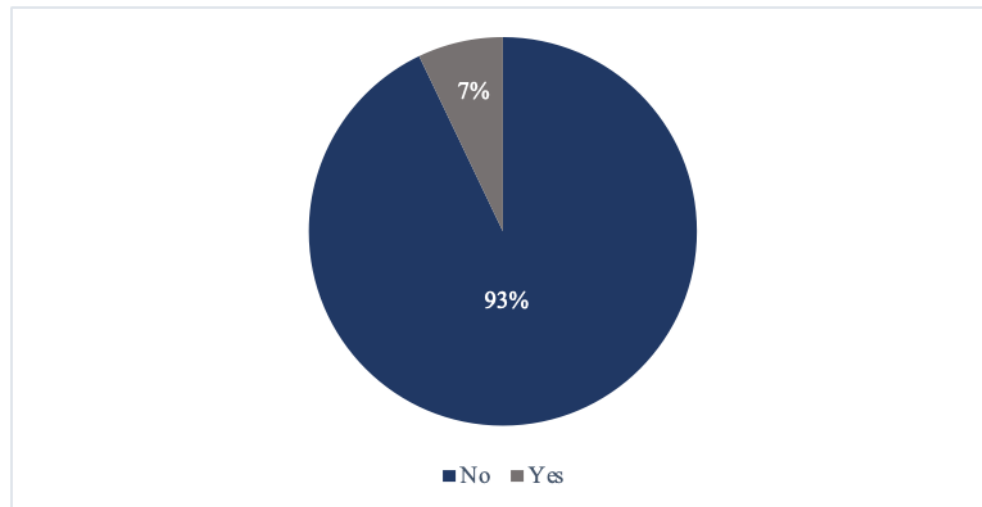


Figure 11: Power Imbalance between the Mother and Alleged Father

Consent is an evasive concept in the early modern period. Consent is predicated on the development of women's rights and their ability to have ownership over their own bodies.¹⁶² Since rape was predominantly a crime of property, women were not able to consent to sexual encounters within the same expectations of how women consent today. This is because the ownership of women's bodies belonged to their male relatives (i.e., father, husband, or brother). Since women did not have ownership over their own bodies their consent (or lack thereof) was legally irrelevant. This, however, changed in the early modern period as the legal definition of rape shifted to a sexual violation of women's bodies which resulted in consent beginning to play a significant role in legal discourse. In cases of bastardy, for example, women were unable to claim rape or force as conception was predicated on orgasm and, as such, it inherently disproved rape.¹⁶³ One of the problems of historical scholarship is that historians and scholars of rape explore these issues only within their historical contexts. While understanding the historical

¹⁶² Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven [Conn.]; London: Yale University Press, 2003), 90.

¹⁶³ Gowing, *Common Bodies*, 91.

foundations is imperative to developing a discussion of women, property, and consent it does not account for the physical harm that women faced in these circumstances. Harm existed beyond what was legally defined as harmful. As a result, consent must be considered an innate human right, even in circumstances in which the legal system does not recognize this right. For example, Joane Ashford of Sanford articulated that her base child was conceived with “an unknown man who she met on the road to [Shepton] Montague and who had the carnal knowledge of her body *by force*.”¹⁶⁴ Further, Margaret Wyllis of Wincanton, stated that John Knatt was the father of her child “who had the carnal knowledge of her body after *placing a white powder in her drink*.”¹⁶⁵ In both examples, women stress their failure to consent. There is thus a necessity to explore the ability of women to provide informed consent in circumstances deemed consensual by the court. In doing so, it is possible to provide a more nuanced exploration of how the courts perceived women’s bodies, while also understanding the power dynamics, and individual experiences of women bringing suit to the Quarter Sessions.

Power imbalances also highlight the challenges of analyzing gendered violence in the Quarter Sessions. The women who accessed the Quarter Sessions had few other options to gain support and survive in their community.¹⁶⁶ Since the seventeenth century marked a significant increase in economic and political turmoil, the formalized mechanisms of court may have provided additional incentive for men to maintain their child(ren), as civility and honour were tied to early modern notions of masculinity.¹⁶⁷ However, in instances in which a woman took a father of a higher social standing to court, it raises the question of the purpose of bringing these

¹⁶⁴ Bastardy examination. 22 Nov 1654, (22 November 1654), Somerset Heritage Centre, Q/SR/92/72.

¹⁶⁵ Bastardy examination. 7 Dec 1652, (7 December 1652), Somerset Heritage Centre, Q/SR/86/157.

¹⁶⁶ Quaife, *Wanton Wenches and Wayward Wives*, 203.

¹⁶⁷ Elizabeth A. Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage*, Women and Men in History (London; New York: Longman, 1999), 36-37.

men to court. While the process could still force the father to acknowledge and pay for the illegitimate child, in many instances it may be more prudent for women to negotiate with men outside of the court system. In these cases, this would then avoid the shame associated with both genders in making the issue public. Thus, the decision to go to court could represent a process of performative shame for the mother and father. This highlights the ways in which women might mobilize the court systems to reintegrate themselves publicly into society and use communal shame to encourage men to pay for their child's upkeep.¹⁶⁸ There are numerous reasons why a women might go to court over brokering a private agreement. However, to say that these women had extensive understandings of the legal system would be an overreach.¹⁶⁹ The most likely explanation is that women explicitly needed financial capital from the alleged father and a private deal was not possible. Implicitly, the public shame process allowed for their reintegration into the community following the birth of the child.

The extent of financial and social destitution experienced by these women is also illustrated in their desire to seek judicial intervention even in instances where they are coerced or threatened. Catalogue descriptions highlight that women actively brought cases before the Quarter Sessions. In the case of Edith Gullock, for example, she was threatened by Henry Elliot, the alleged father, that he would "not give payment if she charged him."¹⁷⁰ While Figure 12: Paternal Threats of Violence, illustrates that there are very few cases that include threats of paternal violence, the 14 cases included in this dataset underscore concern about taking these cases to the Quarter Sessions. This pattern of concern is further highlighted in instances of coercion.

¹⁶⁸ Kamp and Schmidt, "Getting Justice," 683.

¹⁶⁹ Miranda Chaytor, "Husband(Ry): Narratives of Rape in the Seventeenth Century," *Gender & History* 7, no. 3 (1995): 381.

¹⁷⁰ Bastardy examination. 26 May 1633, (26 May 1633), Somerset Heritage Centre, Q/SR/68/12.

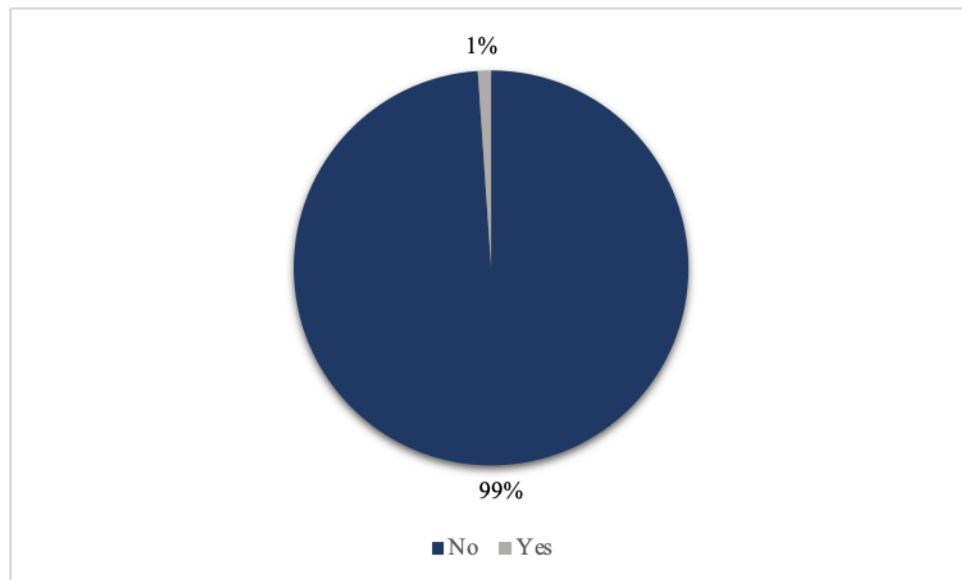


Figure 12: Paternal Threats of Violence

Coercion was commonly employed to deter women from filing charges in the Quarter Sessions. However, the numbers represented in Figure 13: Coercive Tactics represent the number of instances in which men were unsuccessful at coercing women, rather than the real number of cases. Coercion typically involved monetary compensation or gifts. For example, Roger Down gave Edith Pollard 20s to go to London; however, when she subsequently returned to the community with her child, Roger took the child away and their cases ended up before the Quarter Sessions.¹⁷¹ John Bagwell and his father William Bagwell similarly paid Ruth Cripp to lie about the paternity of her child before the court.¹⁷² While these cases represent unsuccessful coercion strategies, the number of cases raise questions about the extent to which these tactics were successful. Despite these numbers being invisible to modern researchers, it highlights concern amongst men about their cases coming before the Quarter Sessions. This avoidance of

¹⁷¹ Bastardy Examination. 7 Sep 1655, (7 September 1655), Somerset Heritage Centre, Q/SR/93/178.

¹⁷² Bastardy Examination. 19 Jan 1656-27 May 1657, (19 Jan 1656 – 27 May 1657), Somerset Heritage Centre, Q/SR/95/221.

accountability could indicate financial distress amongst men and their families (i.e., in inability to pay the fines), or that they did not want to pay the social cost of acknowledging the paternity of these illegitimate children. Regardless, the attempts to avoid culpability in these circumstances is a violent act against the mothers, as their attempts to avoid payment and responsibility directly impacts the survival of the mother and child.

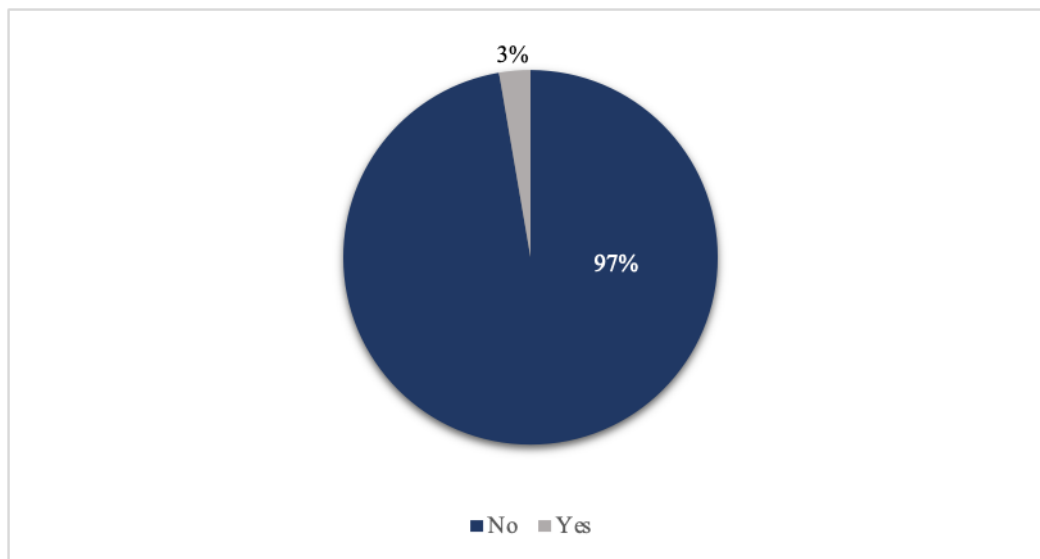


Figure 13: Coercive Tactics

Coercion was not limited to the payment of mothers. In some circumstances, men isolated women by dishonest means with the intent to engage in sexual intercourse with them. The nature of these circumstances raises questions about whether women willingly participated in these liaisons. Since all women in these cases are pregnant, they are unable to code these circumstances as rape.¹⁷³ For example, John May lured Elizabeth Wine “up the stairs under false pretences of her meeting Mr. Hurd her soon to be master.”¹⁷⁴ The use of language such as

¹⁷³ Gowing, *Common Bodies*, 91.

¹⁷⁴ Bastardy examination. 8 Oct 1656, (8 October 1656), Somerset Heritage Centre, Q/SR/95/258.

“luring”, and “false pretences” indicates that Elizabeth was not a willing participant in this circumstance. While it is possible that this language was employed with the intention of garnering sympathy from the Justices of the Peace, this is unlikely given that women who came before the court had little knowledge of its process, and that rape or unenthusiastic involvement would have been irrelevant given her pregnancy.¹⁷⁵ Even though coercion occurred in only 3% of cases in the seventeenth century, it is impossible to know how often these tactics were successful at deterring women. Nevertheless, the cases that have come before the court highlight interpersonal violence that occurs between the mother, the alleged father, and his extended family.

Coercion through Marriage Proposal

Our final category of analysis is how proposals of marriage were utilized to engage in premarital sex. The proposal of marriage prior to sexual engagement, therefore, can be coded as a coercive mechanism to give the illusion of security to women. Of all the variations of coercive tactics, an offer of marriage was most common. Figure 14: Frequency of Marriage Proposals, highlights the prevalence of marriage proposals in the Sessions, and the desire to form marital unions.¹⁷⁶ Women seemed inclined to consent to sexual intercourse on the pretext that it would lead to a formalized marriage. To return to the definition of gender-based violence, the promise of marriage led women to engage in behaviour that would eventually bring mental and physical harm to their bodies. Even if these men intended to solidify their relationship with these women, their inability to inadvertently brought harm. As a result, women sought compensation through the Quarter Sessions to ensure the basic needs and survival of themselves and their child.

¹⁷⁵ Chaytor, “Husband(Ry)”, 381 AND Gowing, *Common Bodies*, 91.

¹⁷⁶ Levine and Wrightson, “The Social Context of Illegitimacy in Early Modern England,” 161.

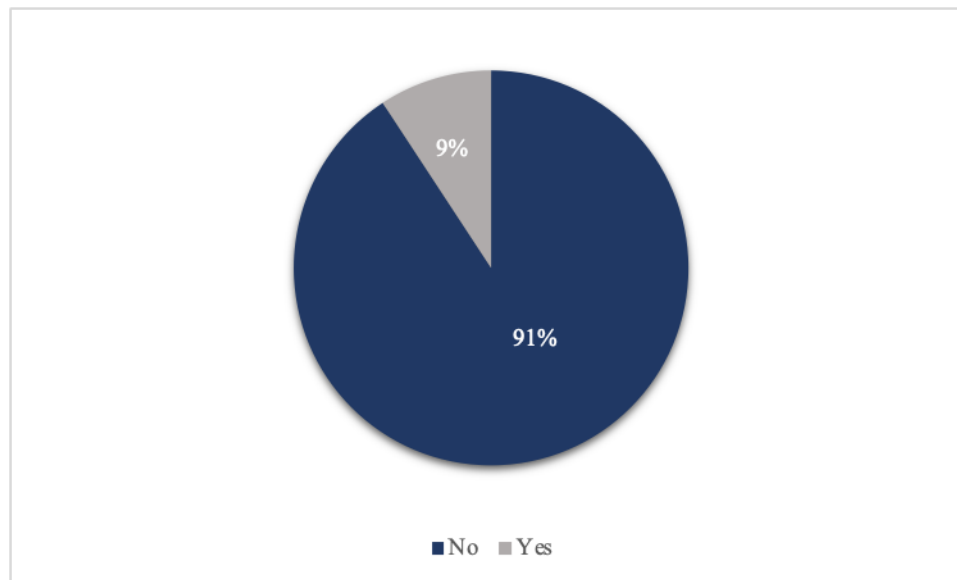


Figure 14: Frequency of Marriage Proposals

Marriage proposals represent a coercive mechanism on both the part of the mother and the alleged father. From an analysis of the quantitative data, men used marriage proposals as a means of providing security. Margaret Pollard of Broadway, for instance, asserted that Nicholas Tatchell “had the carnal knowledge of her body after a proposal of marriage.”¹⁷⁷ Judeth Vincent of Combe St. Nicholas, similarly, articulated that she only engaged in sexual relations with George Rooke after several proposals of marriage.¹⁷⁸ In both examples, Margaret and Judeth both articulated to the Justice of the Peace that their decision to enter into a sexual relationship with their respective partners was contingent on this marriage proposal. This linguistic pattern, moreover, aligns with arguments that bastardy cases reflect a society endeavouring to form marital alliances. Nevertheless, the alternative assessment of this linguistic pattern is that women mobilized the promise of marriage to reduce the repercussions of engaging in premarital sex. In

¹⁷⁷ Bastardy examination. 30 May 1624, (30 May 1624), Somerset Heritage Centre, Q/SR/50/62.

¹⁷⁸ Bastardy examination. 14 Sep 1624, (14 September 1624), Somerset Heritage Centre, Q/SR/53/189.

both instances, however, the institution of marriage acts as a coercive mechanism both against women and for women. While it is unclear the agency women have in the court system, especially considering the social position, both circumstances are feasible explanations to the consistency and frequency in which women employ the promise of marriage in their testimony.

Conclusion

In stories like Katherine Hobbes, introduced at the beginning of this chapter, historians are unable to know what the ultimate judgement of the case was. We are left only with fragments of her interactions with Richard Phillipps and the case she compiled to ensure the survival of herself and her child. From the description included in the Somerset Heritage Centre catalogue, however, her case involved coercion and thus a relationship to gender-based violence within the Quarter Sessions.

There is great difficulty in balancing an analysis of quantitative methodologies while not losing the humanity of the court cases. Digital humanities methodologies prompt historians to engage with quantitative approaches to allow for a stronger contextualization of data. In this case, understanding how Somerset County dealt with these cases on a macro-level can provide greater insights into individual stories and cases. For example, returning to Katherine Hobbes case, although her experience included an element of coercion, her lived experience was in the minority. This is not to discredit her experience. Rather, it helps the historian better understand whether her experience diverges or conforms to the types of cases that came before the Quarter Sessions in the seventeenth century. As a result, even though it is challenging to draw conclusions about individual experience from quantitative data analysis, the development of an “aggregated ecosystem of texts” allows for a more nuanced examination overall.

An exploration of quantitative data for Somerset County affirms that the contours of Somerset Bastardy cases align with patterns of courtship identified by scholars in the 1970s. While it can be challenging to develop concrete argumentation based on large datasets, the demographic data for the county demonstrates the disturbances to social institutions. The General (Global) Crisis, moreover, impacted courting rituals in the county, as the economic hardships would have limited the agrarian sector's ability to acquire the necessary financial stability to formalize marital unions. Despite this barrier to formalizing courting rituals, there were concerted efforts amongst men and women to engage in premarital sex, much of which was anticipated, at least by the mother, to result in marriage. This disconnect between marriage promise and formalization highlights that coercively violent behaviour was a component of illegitimacy in Somerset County.

Gender-based violence was overall statistically insignificant in the Quarter Sessions. Despite expanding my definition of gender-based violence to account for a wider range of behaviour, examples of violence between Mothers and Alleged Fathers were inconsequential when situated within the larger dataset. Nevertheless, those that did engage in facets of gender-based violence most often applied coercive tactics – through marriage proposals, or financial incentives – to control female behaviour and prevent the filing of cases in the Quarter Sessions. Overall, the quantitative data highlighted the necessity to explore the connection between institutional violence and the female experience.

Based on the quantitative data, there are few cases that included some facet of gender-based violence. Nevertheless, their presence is important and worth examining to understand whether other forms of violence are enmeshed within the broader institutional structures of the Quarter Sessions. The cases presented above record the violence that occurred between

individuals. The contention of this dissertation, however, is that the greater violence is not between individuals, but rather between the *institution* and the *individual* to access its support. As a result, it begins to illuminate the institutional structures that created and perpetuated the oppression of women and their illegitimate children.

Shaming and Blaming: The Process of Proving Paternity in Somerset

Introduction

The parishioners of Longsutton were concerned that Ann Bishop was pregnant. Ann had come to Longsutton from Martock in January of 1649 to enter the employment of Edeth Herrine. According to Edeth's testimony in the Sessions Ann "...was to have a penney a day and meate and drinke..." as payment for spinning wool.¹⁷⁹ By February, her brother-in-law, Jarmin Duddridge, questioned Ann as to the paternity of her child. Under Jarmin's scrutiny, Ann named Arthur Pullman as the father of her child. The problem was that Arthur had been named the constable of Martock. Arthur had threatened that if she did not name Robert Cribbs as the father "...he could have her whipped..."¹⁸⁰ Ann reported a similar story to Dorothy Bishop, her mother-in-law. Ann originally stated that Robert Cribbs was the father, but eventually recanted this statement to note that the true father was Arthur Pullman, but she had feared naming him as he threatened to have her "...whipped to the bone..."¹⁸¹ Arthur suspected that Ann had sex with Robert, and so he was clearly the correct father. He continued to leverage his power to threaten whipping and imprisonment in the county jail should she try to prove that he was the correct father.

In examining this case, filed as a single document in the Somerset Heritage Centre, it was initially unclear as to why the parishioners of Longsutton were so concerned about Ann's pregnancy. While some of these individuals appear to be her relatives, they are in only a very

¹⁷⁹ Informations and bastardy examinations. 9 Feb – 2 May 1650, (9 February – 2 May 1650), Somerset Heritage Centre, Q/SR/82/181-184.

¹⁸⁰ Informations and bastardy examinations. 9 Feb – 2 May 1650, (9 February – 2 May 1650), Somerset Heritage Centre, Q/SR/82/181-184.

¹⁸¹ Informations and bastardy examinations. 9 Feb – 2 May 1650, (9 February – 2 May 1650), Somerset Heritage Centre, Q/SR/82/181-184.

distant sense. The term in-law, as we understand it, was applied broadly in his period, and, in this case, did not refer to her husband's family, but rather the family of her sister or even cousin. As a result, it was unlikely that any of the in-laws mentioned in this case would have been willing or able to provide for her and her child with financial support. It was also unlikely that these individuals were ensuring that the eventual Bastardy case would not fall to Longsutton's poor relief fund, by ensuring they identified the correct father in a neighbouring parish. It raises the question of what these individuals were concerned about, and how the case fits into the larger discussion of institutionalized forms of gender-based violence in the Quarter Sessions. The overarching discussion of the paternity of Ann's child reflects the invasive questioning process that occurred both within and outside of the Quarter Sessions that sought to shame the unwed mother, and, consequently, marginalized her from her community.

This chapter explores how the structural linguistic elements of Somerset Bastardy proceedings shamed and marginalized unwed mothers. It will complement and expand the findings of G.R. Quaife to highlight that while the community was concerned with the financial upkeep of children, it argues that *the way* in which they determined financial culpability was meant to shame and police sexual behaviour that did not conform to community standards. This process constituted an institutionalized form of violence against unwed mothers.

The Quarter Sessions punished and publically shamed individuals who did not conform to socially constructed standards of pre-marital sexuality. By accounting for both the policing of sexual behaviour, and overarching concern with financial culpability, this chapter argues that the way in which women were examined was intended to produce feelings of shame. This environment marginalized female sexual behaviour to deter other women from finding themselves in similar circumstances. The emphasis on female behaviour, over men, in

conjunction with the lack of options available to unwed mothers who relied on the Sessions created circumstances in which they had no other option then to provide detailed information of their sexual histories to the court. As a result, the entire process of accessing financial support through this court system was a *violent* and *violating* performative experience for women. Thus, this process constitutes a form of institutionalized gender-based violence.

This chapter begins with a methodological overview of the sampling method, and digital tools employed to assess the 338 cases in the random sample. It will then provide an overview of the history of emotions and the challenges associated with identifying and defining shame-based emotions in this period. It will then analyse the primary source dataset to explore how discussions of paternity, and qualifying language patterns place most of the burden of the crime on women. Finally, it will explore how this marginalization process was embedded within the functionality of the court system. Moreover, it argues that the court system was designed and enacted in a way that constituted a form of gender-based violence against unwed mothers in early modern Somerset.

Methodology

This chapter combines traditional and digital methodologies to analyze 338 cases from the Somerset Quarter Sessions throughout the seventeenth century. This project employed a multistage sampling process. The first phase randomly sampled cases from the 1298 bastardy cases tried in seventeenth century Somerset. To create this dataset, I created a spreadsheet that identified each year in the seventeenth century. Each year was then assigned a number from 1 to 99. Using a random number generator, I identified 30 years to include in my sampled data. These

would be added to the cases of sexual assault, which were identified and acquired separately from the random sampling protocol.

Table 2 identifies the years that were selected by the generator, and the number of records available through the archive. Of these 30 years, 3 years had no surviving data, which left 27 years to order from the Somerset Heritage Centre. The random sample comprised of 473 records, which includes a combination of examinations, informations, orders, certificates, and letters. Some cases include a combination of orders and examinations, which reflect the full case record, while most involve a single record of the event. If a case included multiple pages of data in a non-sampled year, those records were ordered to ensure a complete close reading of the case details.

1602	0	1629	16	1656	76
1610	14	1633	29	1672	10
1611	12	1639	3	1676	17
1614	14	1640	0	1684	14
1616	18	1644	2	1685	11
1617	28	1645	0	1686	8
1618	34	1649	16	1687	18
1623	14	1650	22	1688	11
1624	18	1654	18	1695	2
1626	15	1655	33	1697	1

Table 2: Initial Random Sampled Data and Collection Size

Due to the ongoing global health crisis, I applied a judgement sampling model. I chose to prioritize the copying of examinations and informations and any of their corresponding orders, with a specific emphasis on cases that included mentions of violence in the metadata. This ensures that the voices of mothers were prioritized over the judgements of the court. Nevertheless, orders were still sampled frequently, especially in the early years of the seventeenth century, as they survived in greater numbers than examinations. Table 3 reflects the number of records that were sampled, and the distribution between Orders and Informations/Examinations.

	Orders	Examinations /Informations	Other Records		Orders	Examinations /Informations	Other Records		Orders	Examinations /Informations	Other Records
1610	14	0	0	1637	0	2	0	1661	0	2	0
1611	12	0	0	1638	0	1	0	1672	0	8	0
1614	16	0	0	1644	0	2	0	1673	0	1	0
1616	16	3	0	1649	3	8	0	1676	0	14	0
1617	21	8	1	1650	0	14	0	1679	0	1	0
1618	21	8	0	1651	1	0	0	1684	0	10	0
1621	0	1	0	1652	0	1	0	1685	0	6	0
1623	0	2	0	1653	0	1	0	1686	0	2	0
1624	1	6	0	1654	1	8	0	1687	0	6	0
1625	1	1	0	1655	1	18	0	1688	0	7	0
1626	0	6	2	1656	5	38	1	1695	0	2	0

1633	0	5	0	1658	0	2	0	1697	0	0	0
1634	2	1	0	1659	0	1	0				

Table 3: Actual Sampled Data and Collection Size¹⁸²

The challenges I experienced in sampling data demonstrates the importance of taking a mixed-method approach to the study of history. There were numerous factors throughout the research process that were impossible to anticipate and could have negatively impacted the analysis. As a result, records in my quantitative analysis help to supplement and affirm trends found in the close-reading analysis. While the short descriptions found in the Somerset Heritage Centre are not as detailed as the document, comparing the transcribed record to the short description highlights that the core information was accurately record and consistently reflects the essence of the document. Overall, the digital metadata of each Bastardy record helps to affirm and develop the close-reading analysis included in this chapter.

I used Transkribus software to support the transcription process. Transkribus, developed through the EU-funded Recognition and Enrichment of Archival Documents (READ) project, makes handwritten text recognition (HTR) accessible to researchers.¹⁸³ After the initial collection period, I along with three undergraduate research assistants traditionally transcribed 70

¹⁸² The data represented here highlights a significant rise in illegitimate births during the period of the Interregnum during a time of Puritain control of the county. While this seems to be an unlikely correlation, it aligns with research conducted by Keith Wrightson on the Puritain influence on the prosecution of illegitimate births. the Puritans did little to reform the overall prosecution of sexual transgressions and were simply more likely to omit them from the registers resulting in a false causation (Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” 176). “The formal regulation of sexual behaviour in [this] period was dependent upon local support for its efficacy...” (Wrightson, “The Nadir of English Illegitimacy in the Seventeenth Century,” 176). The anxiety of the community to financially support these children overpowered the desire to omit or modify the prosecutorial patterns of these crimes. The rise in illegitimate births during the Interregnum most likely reflects an increase in births common during post-war periods.

¹⁸³ Louise Seaward and Maria Kallio, “Transkribus: Handwritten Text Recognition Technology for Historical Documents,” (*Digital Humanities*, 2017), 1.

documents within the software. This would then become the foundation for my HTR model.

When developing this model, entitled *SCRO_Quarter Sessions*, I used the English Handwriting base model developed by Transkribus. *Transkribus English Handwriting M3* includes records from the 18th to 20th century and has a character error rate of 6.4% on the train data, and 5.10% on the validation set. From my initial dataset, I selected 10% of records to act as the validation set, which was the minimum recommended by Transkribus to ensure overall accuracy.¹⁸⁴ After running the model, the character error rate for *SCRO_Quarter Sessions*, was 5.86% on the training set and 7.30% on the validation set. This met Transkribus' threshold for HTR model recommendations. They recommend that models should be under 10%-character rate on both train and validation data.¹⁸⁵ Based on the numbers provided, I could expect my model to read my documents with 94% accuracy.

The challenge, however, was the variation in handwriting across the seventeenth century. While I had hoped to create an updated model with lower character error rates after transcribing an additional 50 records, the character error rate worsened overall. The initial character error rate improved to 0.39% on the train set but worsened on the validation set to 12.61%. This change in the validation set error rate reflects the variation in handwriting employed in the Somerset Quarter Sessions. The more I trained the model, the more it emphasized specific scribes and reduced its flexible application across scribal hands.

¹⁸⁴ Transkribus, "How to Train and Apply Handwritten Text Recognition Models in Transkribus eXpert," How to Guides, Transkribus, December 2022, <https://readcoop.eu/transkribus/howto/how-to-train-a-handwritten-text-recognition-model-in-transkribus/>

¹⁸⁵ Transkribus, "How to Train and Apply Handwritten Text Recognition Models in Transkribus eXpert," <https://readcoop.eu/transkribus/howto/how-to-train-a-handwritten-text-recognition-model-in-transkribus/>

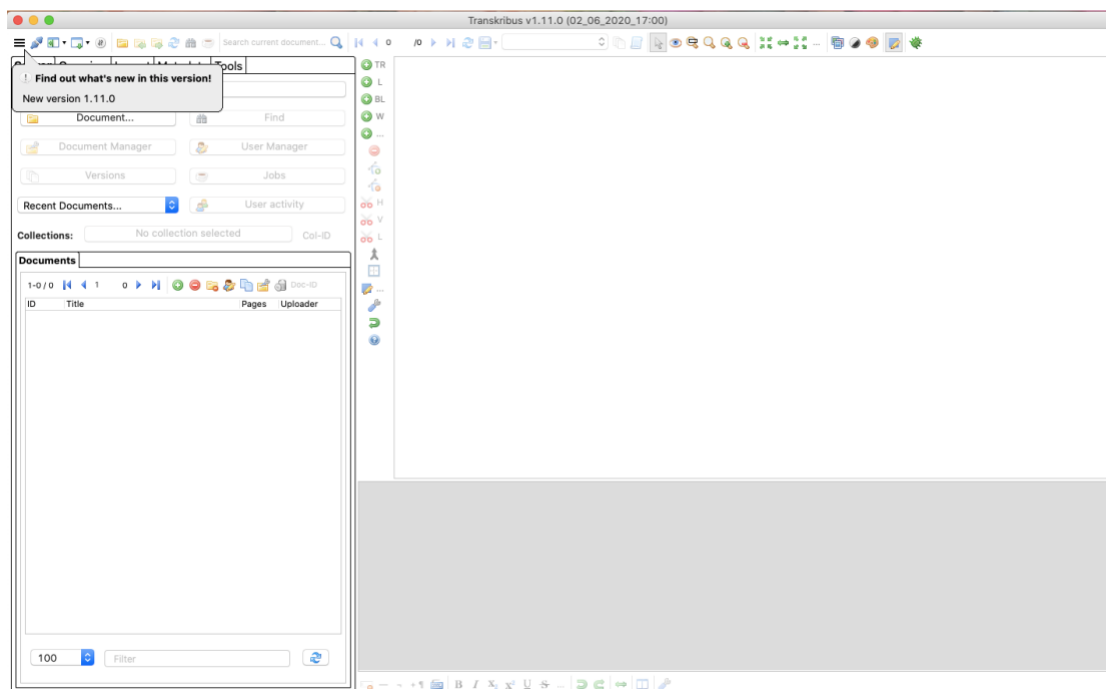


Figure 15: Screenshot of Transkribus

Flexible application was required in this dataset. During a single year of Sessions, the records would be created by multiple scribes as many Justices of the Peace were involved in document creation. There was significant variability in the written record which challenges the overall accuracy of the computer-generated model. As a result, I employed the *SCRO Quarter Sessions* throughout the subsequent transcription process. I also read and revised every record to ensure that the computer was correctly transcribing the handwriting. The benefit of Transkribus was that it significantly reduced the time required to transcribe a record. When I was transcribing by hand, each record took about 45 minutes to process. This process time included the uploading of the record as well as two read throughs to ensure optimal accuracy. Transkribus was able to cut this time by roughly 60%. The HTR model would provide the first transcription draft, and then I would spend about 15 minutes reading and correcting this transcription. Overall,

Transkribus significantly expedited the transcription process and prepare records for analysis into AntConc.

AntConc provides the computational framework to analyze the sampled, transcribed dataset. It is an opensource corpus analysis tool kit, which works similar to Voyant, another software employed in subsequent chapters. The key difference between the computational potential of AntConc and Voyant, is that AntConc can support larger datasets. This tool was leveraged to support the close reading of records to identify linguistic patterns relating to marriage proposals, paternity, and violent or coercive behaviour. Once records were identified by AntConc, individual documents were randomly selected for additional close reading, and to provide examples of a broader trend.

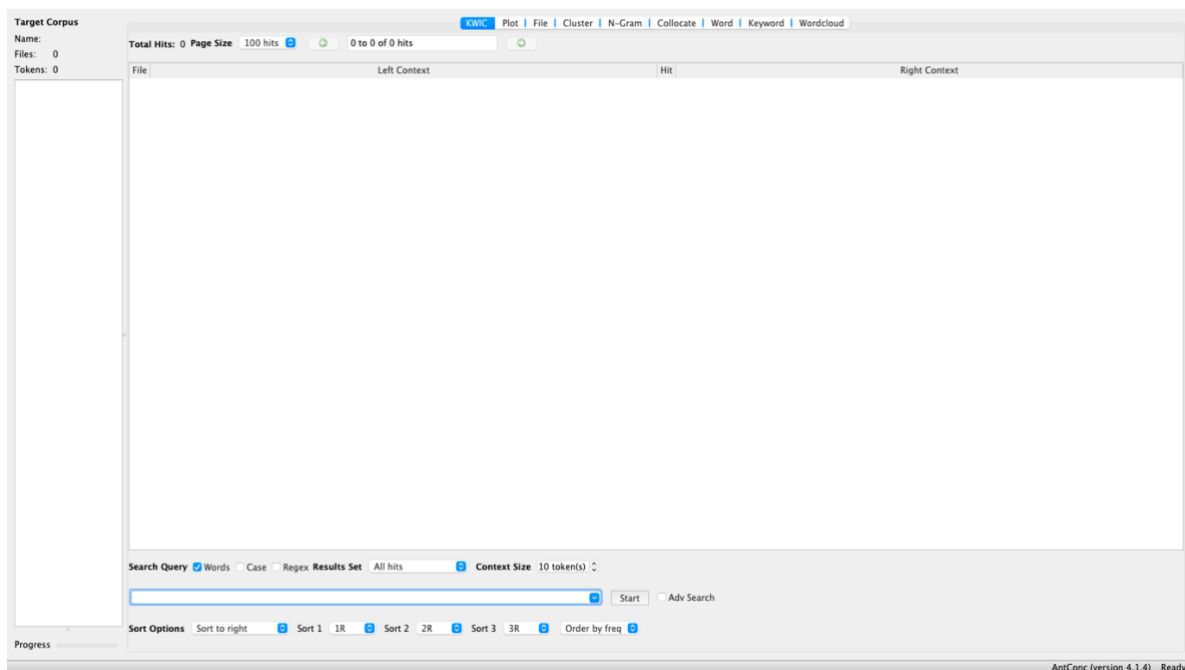


Figure 16: Screenshot of Antconc

The overarching structure of Sessions marginalized women. An analysis of the document structure and the process of examination created an environment in which women were consistently required to disclose intimate details of their sex lives to between one and four male Justices of the Peace. The overarching structure of these cases coupled with the lack of viable community networks of these women created a space in which they were restricted in their ability exert agency. As a results, the courts were able to access information at their discretion and women had to comply to ensure the survival of themselves and their child(ren). The lack of female and the unilateral exertion of male power created an institutional structure that caused additional marginalization of unwed mothers. As a result, the administration and adjudication of bastardy cases in seventeenth-century Somerset represents an institutionalized form of gender-based violence. To best understand this marginalization process, moreover, we need to explore the role of shame in Bastardy adjudication.

The History of Emotion and Expression

Illegitimacy intersects with the history of crime and emotion in several different ways. Cases of bastardy address broader patterns of sexual crimes, as well as the power imbalances present in the varied sexual experiences of women. While the first chapter explores how illegitimacy represented patterns of courtship subscribed by the community, this chapter is concerned with the structural features of these cases and how they provide insights into emotions and honour. Secondary literature on sexual assault in the early modern period provides insights into how women linguistically articulated sex acts in court. Illegitimacy cases do not always involve the same level of violence and violation as experienced by sexual assault survivors. However, a review of secondary literature on this topic helps to better situate how the structural and

procedural processes of the Quarter Sessions created the foundation to further marginalize women in their community. This constituted a form of institutionalized gender-based violence.

Women struggled to articulate the perpetration of rape against their bodies in court. They experienced a double disadvantage. Not only did they divulge the details of the rape, but they also implicated themselves in a secondary, though less severe, crime of wanton sexuality.¹⁸⁶ As a result, the crime was not only sexually debilitating for women, but also had significant social impact on their position in the broader community.¹⁸⁷ Walker argues that “the language of sexual practice evoked discourses of sin and culpability in which women were responsible for illicit heterosexuality.”¹⁸⁸ Not only does Walker suggest that women relied on metaphor to describe their experiences, but they were also tasked with providing their own innocence in these crimes.¹⁸⁹ This double disadvantage created a space in which women had to be overly aware of and working in opposition to the preconceived legal notions of female sexuality. As a result, the adjudication process implicitly draws upon emotions of shame and honour as a secondary punishment to the physical punishments recorded in the session records.

The history of emotions and, more specifically, shame show how the underlying structures of the Quarter Sessions impacted the marginalization of unwed mothers. Research on early modern emotions does not directly explore the intersection of emotion and illegitimacy, but it does, to some degree, explore sexual assault and violence. Overwhelmingly this is an emergent and expanding field of inquiry. There is a challenge in defining the individual experience of women, and how the beliefs and associated emotions translate to behaviour. For example, the

¹⁸⁶ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

¹⁸⁷ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

¹⁸⁸ Walker, *Crime, Gender, and Social Order in Early Modern England*, 56.

¹⁸⁹ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55-56, AND Garthine Walker, “Rereading Rape and Sexual Violence in Early Modern England,” *Gender & History* 10, no. 1 (1998): 3.

collection *Gender and Emotion in Medieval and Early Modern Europe* (2015), collectively highlights that despite the efforts to create methodological and investigative structures to explore the history of emotions, research is only beginning to explore how emotive experiences were gendered.¹⁹⁰ Gender, of course, inherently influences how and when an individual expresses emotion.¹⁹¹ The secondary challenge of research on emotions is that it explores writings and written documentation produced by elite and literate members of society. As a result, the experiences of women complainants are filtered through the lived experiences of a male audience. Nevertheless, research on emotions and sexual assault provide methodological scaffolding to explore the role of shame and shaming in the adjudication of Bastardy cases.

The prime challenge of the historian of criminal proceedings is that emotions had no legitimate place in the courtroom.¹⁹² While many individuals may have experienced emotions while recounting their testimony, the way in which Justices recorded the proceedings inherently limits the visibility of underlying emotional responses. Justices developed a summation of the important narrative elements of female testimony to support findings related to the following questions: who would pay for the illegitimate child; how much should be paid; and for how long. These questions were translated into the record as follows:

Being sworne saith, that shee is (gotten) with child by one Willim Hoskins of Martocke aforesaid glover, and being demanded when where and how often the said Hoskins had bodily and carnall knowledge of her, saith that aboute a weeke after Michelmas last past, on a monday (in a barne belonging to Collonell Strode) in the said parish of Martocke, aboute two or three of the clocke in the morning the said Hoskins had then the carnall knowledge of her bodye, and also saith that never any other man but the said Hoskins had ever bodily and carnalle knowledge of her and hee only the tyme foremenconed

¹⁹⁰ Susan Broomhall, *Gender and Emotions in Medieval and Early Modern Europe: Destroying Order, Structuring Disorder* (Farnham, Surrey, England: Ashgate, 2015), 2.

¹⁹¹ Broomhall, *Gender and Emotions*, 9.

¹⁹² Tracy Adams, "Court Culture," in *Early Modern Emotions: An Introduction*, Early Modern Themes, ed. Susan Broomhall, (London; Routledge, Taylor & Francis Group, 2017), 225.

who promised this informant that he would marry with her in one quarter of a yeare at the far these further shee sath not¹⁹³

While this was a realitvely short examination, it demonstrates how each testimonial element was translated into the written record. It is clear that the unwed mother provided this testimony, and responded to specific questions about paternity, the uniform nature of this examination illustrates that testimony was recorded for a specific purpose: it was not intended to capture the experiences of the unwed mother prior to her presence before the Quarter Sessions.

The consequence of the recording process is that upon initial review, the records seem devoid of emotion, even in circumstances in which a woman outlines a violent assault. Bastardy examinations are unable to consistently tell us if women expressed strong emotions while in court. Readers are left wondering whether women showed anger, sadness, fear, self-loathing, or shame. This has presented a challenge to historians of emotion. The lack of explicit emotive descriptions makes it difficult to craft an argument about the presence of emotion in the courtroom. The evidence, to a certain degree, supports the argument that emotions are not welcomed in court. However, these written records were produced to align with social expectations of the legal system. Expectations of these institutions does not necessarily reflect how women and men conducted themselves in court. It focuses on the insights that language patterns can provide into the procedural structures of the court, and the types of implicit and explicit patterns of violence and shame present within the system.

Indeed, sociological research on shame and emotions associated with single motherhood demonstrate the implications of societal expectations on female position in the community. Shame is and was a marginalizing force against female integration and acceptance in their home

¹⁹³ Bastardy examination. 23 May 1656, (23 May 1656), Somerset Heritage Centre, Q/SR/92/70.

communities. Married women avoided stigma attached to unplanned pregnancies because of the formalized legal relationship to their husbands.¹⁹⁴ For single women, there is significantly more violence and censorship towards their experiences.¹⁹⁵ As a result, this signals a level of structural marginalization and violence against unwed mothers.¹⁹⁶ This process of shame "...is closely entangled with gender subjectification and normative gender binarisms, which are raced, classed and enmeshed with other forms of intersectionalities."¹⁹⁷ Structures of shame, moreover, impact the ways in which unwed mothers articulate and position their experiences within the community.

This also highlights why historians of emotions are less able to articulate the emotions of women in court. There has and continues to be a precedence of silencing the experiences of unwed mothers as they are not able to benefit from the safety and security of marriage. In the context of the early modern world, sociological analyses help to disentangle the complex intersection of class, gender, and honour. The inherent marginality of shame-based emotions makes it challenging for historians to find evidence of it in the written record. As a result, we return to methodologies of the cultural turn, and rely upon anthropological and sociological inquiry to cast light on shadow emotions present in the early modern court room.

¹⁹⁴ Marcia A. Ellison, "Authoritative Knowledge and Single Women's Unintentional Pregnancies, Abortions, Adoption, and Single Motherhood: Social Stigma and Structural Violence," *Medical Anthropology Quarterly* 17, no. 3 (2003): 323.

¹⁹⁵ Ellison, "Authoritative Knowledge and Single Women's Unintentional Pregnancies," 323.

¹⁹⁶ Arthur Kleinman, "The Violence of Everyday Life: The Multiple Forms of Dynamics of Social Violence," in *Violence and Subjectivity*, eds. Veena Das, Arthur Kleinman, Mamphela Ramphele, and Pamela Reynolds, (Berkeley: University of California Press, 1997), 227-228.

¹⁹⁷ Tamara Shefer and Sally R Munt, "A Feminist Politics of Shame: Shame and Its Contested Possibilities," *Feminism & Psychology* 29, no. 2 (May 1, 2019): 146.

The Process of Proving Paternity in the Early Modern Court Room

Shame was a significant tool of control in premodern societies.¹⁹⁸ The process of shaming an individual was connected to both the emotional experience of shame, as well as the cultural processes that would publicly elicit a shame response.¹⁹⁹ Shame was both private and public. It was a mechanism of social control. As a social tool, it reinforced and perpetuated community standards of behaviour.²⁰⁰ Shame was embedded in the procedural functioning of the Quarter Sessions.

Throughout the Sessions, shame was used to both punish the mother, but also shift the blame to the behaviour of the putative father. To secure financial resources for her child, the unwed mother had to present her case before a panel of Justices. When a mother was questioned, she would be interviewed by a single Justice of the Peace, but orders required a minimum of two Justices present. The process of disclosing details of their experiences to another male, of higher social standing, acted as a mechanism to publicly shame and draw attention to the transgressions of the unwed mother. All of which was required to secure financial support. Considering that women rarely spoke without male accompaniment in court, the process by which they disclosed their sexual histories, which provided evidence of paternity, and the mitigating circumstances of their behaviour, for example marriage proposals, would have been significantly challenging for these women. Throughout the Sessions, shame was used to both punish the mother, but also shift the blame to the behaviour of the putative father.

The structure of the testimony record is significant in determining both the emphasis of the Justices, and to explore how gender-based violence was embedded into the institutional

¹⁹⁸ Peter N. Stearns, *Shame: A Brief History* (Urbana, Illinois: University of Illinois Press, 2017), 10.

¹⁹⁹ Stearns, *Shame*, 10.

²⁰⁰ Stearns, *Shame*, 11.

functioning of the court. The formulaic structure of the examination record highlights the order of emphasis and concern of the Quarter Session files, while also highlighting the institutionalized process of shame. Figure 17 underscores the core elements of the document. Each document varies slightly, but the overall structural process remains the same. The testimony begins with a summation of pertinent information relating to the deponent, including her name, parish, and status as a spinster, single woman, or servant. The document then outlines who has taken the examination, and on which date. The core of the record begins with a discussion intended to determine the paternity of the child. This is followed by a qualifier or an explanation of her behaviour. Finally, the document will close with a summary of the above information or provide any additional qualifying information that the court should know about the putative father. While it remains unclear if women were questioned following this structure, or if this was how the court chose to record the various information provided during the proceedings, at a minimum women were required to provide details related to paternity and behavior. To best understand the way in which shame and violence were embedded in this system, we need to explore the two core features of the document: paternity and behavioural qualifiers.

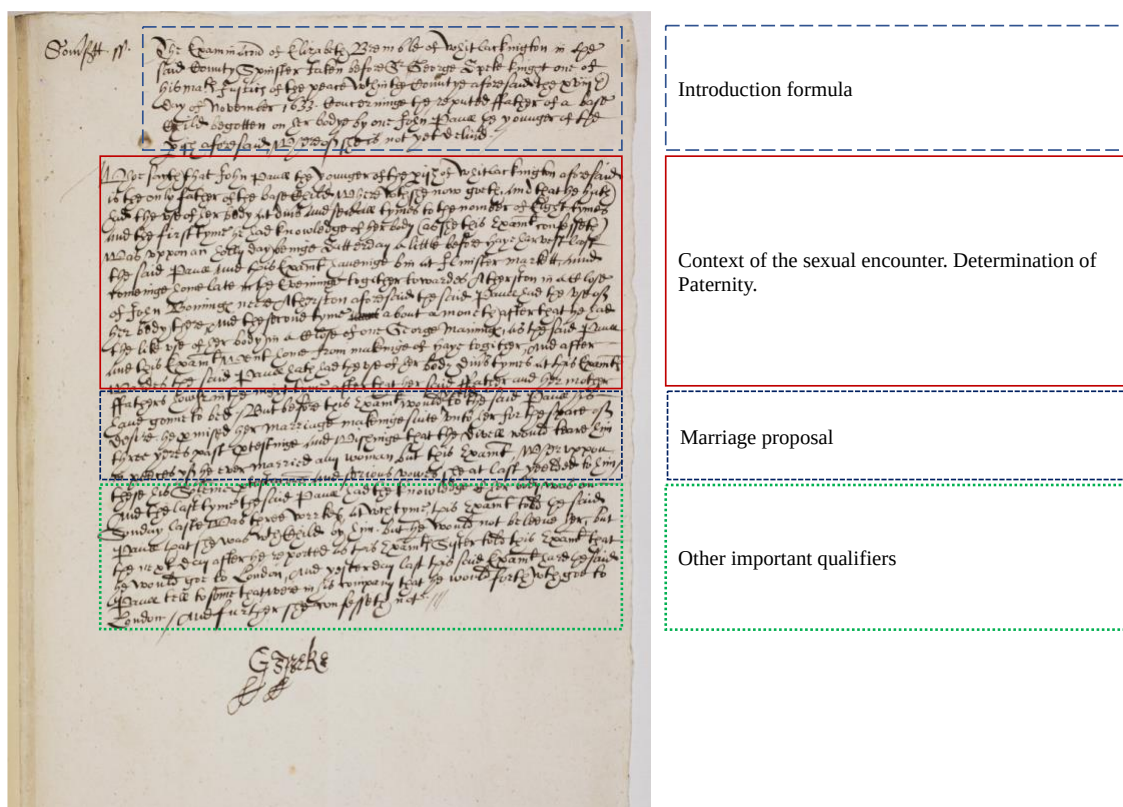


Figure 17: Structure of a Quarter Session Record

Paternity

The objective of bastardy examinations and orders was to determine paternity and ensure payment. Early research on the repository of bastardy cases in Somerset highlighted that the Sessions were mostly concerned about who would be monetarily responsible for the upkeep of the child.²⁰¹ The default was that the putative father would pay for the child. If the father was unable to pay, the responsibility fell to the local parish. The overall emphasis on determining paternity in each session records highlights that the community was first and predominantly concerned with identifying the correct father.

²⁰¹ Quaife, *Wanton Wenches and Wayward Wives*, 245, 248.

To declare the paternity of the father, a woman had to identify the individual, where they had sex, how often, and for how long. In 1636, for example, Mary Squire of Mulchelney stated that she had sex in a “barre” with William Lock the younger, the son of her master.²⁰² Mary stated that:

she is with child and that William Lock the younger of Muchelney aforesaid husbandman hath soe begotten her with child and the first time he had carnall knowledge of her body was about a month before midsomer last past in the barre of William Lock father of the said William whenhence then shee served in conevant, after which time he had the common use of her body untill michaelmas last att wuch time shee leyted out of the service of her said master shee lastly sayth that never any but the said William Lock the younger had carnall knowledge of her...²⁰³

Mary stated the four features required to prove paternity. She named the father, highlighted when they began having sex, how many times they had sex, and when the relationship ended. The underlying assumption of each relationship was that penetrative sex occurred. There remains a possibility that the relationship involved other sexual and emotional acts; however, the courts were solely concerned with the penetrative sex that led to the conception of a child.

While the statement above highlights the four elements required to prove paternity, the process was by no means linear. Proof came from words and actions. For example, there was clear concern from the court, that another man could have fathered Mary’s child. The testimonial record states that:

Being further examined whether shee did not travel to South Petherton farre on midsummer day last whence Phillip Cattle confeseth that and travelled with him alone and accompanied with him most parte of the day in the farre But he medled not with her at all nor afford her any abuse she further confeseth that since that time the said Cattle hath bine often neither and had conferreme with her about marrings but never abused her nor afford soe to doe being examined

²⁰² Bastardy examination. 21 Jan 1637, (21 January 1637), Somerset Heritage Centre, Q/SR/76/90.

²⁰³ Bastardy examination. 21 Jan 1637, (21 January 1637), Somerset Heritage Centre, Q/SR/76/90.

whether she did not say that Cattle was her husband and that she would never forsake him confesseth the same...²⁰⁴

To conclusively prove paternity, Mary had to both articulate the four situational factors as well as disprove that Phillip Cattle could be the father. While Mary admitted to spending time with Phillip and, most notably, travelling with him to another town, she underscores his honourable demeanor to her throughout their companionship. The challenge for the Justices was that there was no person to corroborate her presentation of events, and a possible proposal of marriage would have, theoretically, made a premarital sexual relationship socially acceptable. The class proximity of Mary and Phillip compared to Mary and William would have also made the alternative a more desirable situation. Since both individuals were single people and in the same class, the court could force or heavily persuade a marriage whereas the class discrepancy between Mary and William would have made marriage unlikely. While this could be considered a violent behaviour against the putative father, it is important to acknowledge the power of the marriage proposal within the marriage process. This type of punishment holds accountable the words of the putative father. It forces a renewed commitment of the oath sworn to the unwed mother at the time of conception. However, we must not overstate the rate of forced marriages in the Quarter Sessions. In the sampled data, an order of marriage or the report of a subsequent marriage only emerges a handful of times in the orders. As a result, while it is possible that some women leveraged a false proposal to secure a marriage, the rates of marriage highlight that this was outlying behaviour and is not part of a larger trend. Overall, this case highlights the centrality of Mary's words in the court system. In the absence of scientific evidence of paternity, Mary had to construct a narrative that would include enough information to persuade the court of paternity.

²⁰⁴ Bastardy examination. 21 Jan 1637, (21 January 1637), Somerset Heritage Centre, Q/SR/76/90.

The importance of paternity was directly connected to concerns of financial responsibility. The last analysis of this dataset demonstrated the financial anxiety of Somerset. G.R. Quaife demonstrated that while the high number of cases filed in the seventeenth century might indicate a concern over sexual morality, the orders demonstrate that the Sessions were most concerned over the financial upkeep of the child.²⁰⁵ The Poor Laws of 1601 ensured that the Parish and Overseers of the Poor administered relief to qualifying individuals.²⁰⁶ This included the support of illegitimate children. The preoccupation with paternity in these cases was predicated on the notion that if the putative father could not pay, then the parish would have to take on the financial burden. As a result, the Sessions were highly motivated to find and charge the putative father. Even in circumstances in which paternity could not be concretely determined or the father had fled, the courts would order any man involved in the case to pay support.²⁰⁷ Nevertheless, the courts still intended to charge the correct father. Men were able to contest orders and appeal the findings.²⁰⁸ The courts would also examine multiple men, if a woman was unable to conclusively prove paternity.²⁰⁹ Most women who relied on the court to order support, had a single sexual partner and paternity was never in question – at least to them. The court continued

²⁰⁵ Quaife, *Wanton Wenches and Wayward Wives*, 245, 248.

²⁰⁶ Marjorie Keniston McIntosh, *Poor Relief in England, 1350–1600* (Cambridge: Cambridge University Press, 2011), 116.

²⁰⁷ Select examples of multiple men paying maintenance: Orders. 1607, (1607), Somerset Heritage Centre, Q/SR/2/12127; Bastardy order. 15 Jun 1613, (16 June 1613), Somerset Heritage Centre, Q/SR/16/38; Bastardy order. 26 Jul 1621, (26 July 1621), Somerset Heritage Centre, Q/SR/39/63; Certificate. 11 Jan 1620, (11 January 1620), Somerset Heritage Centre, Q/SR/35/243; and Bastardy order. 22 Apr 1609, (22 April 1609), Somerset Heritage Centre, Q/SR/6/134-5.

²⁰⁸ Select examples of men contesting paternity charges: Bastardy order. 31 Aug 1610, (31 August 1610), Somerset Heritage Centre, Q/SR/11/90-1; Bastardy examinations. 31 Jan 1644, (31 January 1644), Somerset Heritage Centre, Q/SR/79/10; Appeal against a bastardy order, 1656, (1656), Somerset Heritage Centre, Q/SR/94/117; Orders. Nd [1615?], (1615), Somerset Heritage Centre, Q/SR/20/27-8; Bastardy examination. 17 Apr 1621, (17 April 1621), Somerset Heritage Centre, Q/SR/38/10; Order. 1622, (1622), Somerset Heritage Centre, Q/SR/41/190.

²⁰⁹ Select examples of records examining multiple men: Bastardy examinations. 28 Dec 1626, (28 December 1626), Somerset Heritage Centre, Q/SR/58/192; Bastardy examination. 6 Feb 1608, (6 February 1608), Somerset Heritage Centre, Q/SR/3/59; Orders. Nd [1615?], (1615), Somerset Heritage Centre, Q/SR/20/27-8; Order. 1622, (1622), Somerset Heritage Centre, Q/SR/41/247.

to place an evidentiary emphasis on paternity and therefore sexual history before they would provide the unwed mother with financial support for her child.

Determining paternity of a child was a significant preoccupation of the Quarter Sessions. The four evidentiary components of paternity were included in all cases, even when there was no question of paternity. For example, in 1618 Joan Clarke stated to John Horner, Justice of the Peace, that “[Thomas] Waddington had carnall knowledge of her a weeke before Christmas last in the evening in the said Waddintons chamber and that he never had to doe with her in [that manner but that one time...”²¹⁰ Joan’s examination follows the same four linguistic markers as Mary Squire. Joan informs Justice Horner that she had sex with an individual named Thomas Waddington, they had sex once around Christmas time (December), and then never had sex again. This is the linguistic pattern is included in every examination. The 1654 testimony of Mary Lopstone further highlights this pattern. She states that:

Edward Lovell of Eastwells in the said countie mason d the father thereof
whoe had the carnall knowledge of her body the seaventh of this instant
^month^ and never since nor before alsoe this informat upon her oath as above
said sayeth that noe man beside the said Edward Lovell ever had the carnall
knowledge of her body...²¹¹

The prominence of paternity is evident throughout Mary’s testimony. We again see that she names the father, Edward Lovell, when they had sex, October, and how often they had sex, which in this case was once. While the openness of Mary’s testimony may indicate that she was willing and able to share her experiences, the uniformity of her testimony with every other women who came before the Sessions illustrates that this level of openness was *required* by the court. As a result, we cannot take this openness at face value and must interrogate it to determine

²¹⁰ Bastardy examination. 20 Jul 1618, (20 July 1618), Somerset Heritage Centre, Q/SR/33/104.

²¹¹ Bastardy examination. 21 Oct 1654, (10 October 1654), Somerset Heritage Centre, Q/SR/90/28.

the place of shame in the courts, and the ways testimony deviates from these requirements. For example, one of the curious parts of this case is that Mary's testimony underscores that the conception of her child occurred in the same month that she filed her court case. The alignment of these dates, however, does not reflect a broader trend of pre-emptive application for support. From these examples and the aggregate analysis, the data affirms that the main purpose of this examination was to determine paternity, with the objective of identifying financial culpability, hence the uniformity of openness about their sexual histories.

For the female examinees, the burden of proof fell solely on their words. Considering that unwed mothers were already in a precarious financial position, they faced marginalization as their behaviour discredited their honour and reputation. To counteract these behavioural deficiencies, they had to provide significant evidentiary support of paternity, in linguistic terms they were not socialized to readily provide. For the historian this provides a treasure trove of female testimony that is rarely seen in early modern criminal proceedings.

The female voice dominates seventeenth century Bastardy proceedings in the Somerset Quarter Sessions. The quantitative data, metadata collected and analyzed in chapter one, supports this statement. Of the 1298 cases filed in the seventeenth century, only 55 identify a sole male or gender unspecified speaker. These speakers, however, are not referred to as the putative father. They are most commonly individuals of authority that can provide additional testimony about the behaviour and movement of the individual charged as the putative father. For example, in 1672, Samuëll Barber was examined by Edward Gorges, Justice of the Peace, about a warrant administered by Samuëll and the churchwardens of Tychemham against John Syms.²¹² The concern of the information was that John was able to evade custody of the churchwardens, and

²¹² Information. 17 Sep 1672, (17 September 1672), Somerset Heritage Centre, Q/SR/116/10.

Barber was to identify how Syms was able to do so.²¹³ Other male testimonies follow similar patterns. The documents included in the Quarter Session record (QSR) collection are letters and correspondences between male authorities in the community, informations, or summations of challenges to an order that was investigated at a later Sessions. Moreover, the testimony – examinations and informations – are predominantly female. While these records summarize female testimony and position their statements to meet the needs of the court system, the position of women in these records highlights burden of proof. Women were solely responsible for determining the paternity of their child. They had to provide sufficient evidence to the court to demonstrate who was the father and why they engaged in premarital sex to access the financial resources required for survival. The Sessions were not concerned with the male defence, they relied solely on the testimony of the unwed mothers. It is clear that the Sessions viewed women as a reliable and authoritative voice in bastardy proceedings.

The emphasis placed on women resulted in a significant emotional burden. As sole testimony providers, they accepted most of the shame associated with pre-marital sex that did not lead to marriage. The lack of male examinations highlights that they were less concerned with the male behaviour that led to this encounter. Women were responsible for demonstrating not just the paternity by why they would engage in sex. As a result, following the identification of the putative father, women provided linguistic markers to shift the emotional shame burden from themselves to the failed promises and behaviour of the putative father. Proposals of marriage were the most common linguistic feature in this section of testimony.

²¹³ Information. 17 Sep 1672, (17 September 1672), Somerset Heritage Centre, Q/SR/116/10.

Shifting the Burden of Shame: A Case Study of Marriage

Marriage, or rather, the proposal of marriage was a prominent feature of seventeenth century Somerset bastardy proceedings. As discussed in Chapter 1: Understanding the Big Picture, the proposal of marriage was a common linguistic device employed by women, as highlighted in the short descriptions, to underscore their participation in sanctioned courting practices. While proposals of marriage were the most common linguistic pattern employed in short descriptions, putative fathers' and their families employed other linguistic methods to ensure that the mother conformed to their agenda.

This section continues to explore linguistic devices employed in the Sessions. It will transition from a macro analysis of short descriptions to a micro analysis of 338 cases randomly selected for close reading. It highlights the linguistic patterns of female testimony to demonstrate how the structural formation of these Sessions positioned the unwed mother in the community. The testimonial construction had two consequences for mothers. They allowed for a process of disclosure and honesty that could alleviate some of their shame in the community, while simultaneously asking mothers to speak about their sexual experiences in a way that was socially taboo and drawing additional attention to their wrongdoing. In some cases, women provide mitigating circumstances that led to their behaviour. Marriage proposals, and threats of violence were two distinct avenues women used to rationalize their behaviour to the court. Testimonies provide space to explore the complexity of female experiences in the court and how they leveraged and were crushed by the institutional structures of the time.

There are several commonly employed linguistic patterns that point to mechanisms of survival to mitigate culpability and shame on the part of the unwed mother. A survival strategy, in this context, was a behaviour, expression, or narrative device that alleviated shame from the

mother and shifted additional culpability to the putative father. In most cases, these statements are included at the end of the testimony, which further reflects the process of shifting blame and further rationalizing an unwed mother's decision to engage in premarital sex. The consistency of these statements, in conjunction with the placement in the formula of testimonial preservation highlights that these were an important narrative device for women to deflect shame of behaviour onto the behaviour of the putative father.

Marriage proposals were the most common linguistic method employed by women in court to validate their decision to engage in premarital sex. Women used both *marry* and *marriage* to demonstrate that a betrothal had taken place prior to any form of sexual engagement. The term *marry* occurred at 48 times, while *marriage* appeared 37 times.²¹⁴ Structurally, these terms are interchangeable in their meaning. The employment of two distinct forms of the word *marry* represent variation in recording procedure, rather than discrete meanings. All references to marriage are contained at the end of the document, and work as a conditional clause to mitigate the judgement of their behaviour. Due to the incomplete nature of the dataset, it is impossible to determine if women who claimed a marriage proposal experienced less marginalization or less punishment for their behaviour; however, the consistent positioning of these statements highlights that they contributed to the formula of the record and were part of the adjudication of the case.

²¹⁴ While the language here was relatively standardized across records, there was significant variation in the spelling for other terminology, such as “carnal knowledge of her body”. This statement emerges as “carnall knowledge”, “carnell knoweledge”, and “carnall knoweledge”. This poses challenges for leveraging some linguistic analysis tools, as you have to account for variation in spelling when searching the early modern transcripts. To address this challenge, I aggregated data to demonstrate collective meaning of linguistic patterns rather than discrete markers. In the example provided above, “marry” and “marriage” are intended to demonstrate the presence of a marriage proposal. To account for plurality, I would employ a boolean operator, such as “marriage*” to ensure that number was accounted for in the text analysis search. Thus, the form of the word was not significant, but rather its embedded meaning. As a result, several searches would be conducted to explore a single linguistic pattern – “marriage*”, “marry”, and “marriage” being one example of this process.

The placement of statements of marriage proposal is significant when exploring the overt and embedded meaning of female testimony. The rate of bridal pregnancy in early modern England reflects the social acceptability of premarital sex.²¹⁵ This behaviour, however, had conditions. Couples were expected to remain chaste until a proposal of marriage had taken place. This ensured couples would imminently solidify their relational bond to avoid illegitimate children who had a greater potential at becoming the financial burden of the community. Therefore, unwed mothers were not considered a social burden, unless they were unable to marry. The position of the statement of marriage proposal, which followed descriptions of the place and location of the sex act, highlights that unwed mothers and the Justice positioned this information to provide explanation of behaviour. While women did not necessarily have narrative control over the placement of information in these testimonies, the location of these statements transformed the culpability of unwed mothers.²¹⁶ It placed a significant burden on the putative fathers who failed to make good on their proposals of marriage.²¹⁷ Women are positioned as victims of broken promises rather than sexually voracious. Moreover, the shame of the act shifted from the unwed mother to putative father.

The placement of behavioural burden demonstrates the significance of bastardy as a predominantly female criminal offence. While the Sessions were interested in making men maintain the cost of their child, the judicial burden fell to the mother. It was her responsibility to

²¹⁵ Here are several examples of scholars who highlight that many of these cases emerged as a result of promised marriage between the couple: van der Heijden, et al., “Illegitimate Parenthood in Early Modern Europe.”; Kamp and Schmidt, “Getting Justice.”; Laslett, *Family Life and Illicit Love in Earlier Generations*; Laslett, et al., (eds.), *Bastardy and Its Comparative History*; Vermeesch, “The Legal Agency of Single Mothers.”; Vermeesch, “Facing Illegitimate Motherhood in Eighteenth-Century Antwerp.”

²¹⁶ Garthine Walker found a similar pattern in her analysis of unwed mothers. In court proceedings, women often would attempt to transfer culpability to the putative father by underscoring the poor behaviour he exhibited towards them (230). “Women presented themselves as honest, lawful and abused by an implicit juxtaposition of male dishonour and female honour.” Walker, *Crime, Gender, and Social Order*, 230.

²¹⁷ Walker, *Crime, Gender, and Social Order*, 231.

present the details of the case in a manner convincing to a panel of male Justices of the Peace. Considering that most of these women were poor and unconnected, they inevitably experienced more marginalization than their male counterparts. Their shame was viewed publicly. Female honour, moreover, was on explicit display in the Quarter Sessions. While one could argue that a man's inability to resolve this situation without assistance from the Quarter Sessions negatively impacted their sense of honour personally and communally, the centrality of female behaviour highlights a stronger burden of shame on the unwed mother.

Female honour was publicly assessed through the scope and shape of their testimony. Unwed mothers were the ones to provide testimony – articulating to male adjudicators when, where, how often, and for how long they had a sexual relationship. While on the surface morality does not seem to be the prime concern of the session, their preoccupation with paternity and sexual history highlights to some degree that sexual experiences were relevant in determining financial support. The secondary and tertiary qualifiers of male behaviour further illustrate that women wanted to demonstrate that these sexual relationships were approached in good faith, and that the bad faith behaviour of the putative father negated their ability to act honourably.

It is important to underscore that these women were not whores, or sexually loose women. They represent women who chose partners that were unable to meet the socially dictated norms around premarital sex and pregnancy. Ann Valtor of Weston in Bath, for example, articulated to the Sessions that she had sex with John Wilshire, also of Weston, but that this relationship was predicated on the proposal of marriage he made prior to his death.²¹⁸ The way in which Ann positioned marriage in her testimony highlighted that she participated in socially ritualized premarital sex. Ann positioned her testimony to highlight her honourable and socially

²¹⁸ Bastardy examination. 2 Jul 1633, (2 July 1633), Somerset Heritage Centre, Q/SR/68/18.

acceptable behaviour. As illustrated throughout this chapter, women consistently positioned their experiences within broader courting rituals to mitigate the social consequences of their actions. While G.R. Quaife argued that the community was not concerned with sexual morality, only financial culpability, I argue that these spaces of adjudication are far more complex. The position of statements of explanation in examination and information records demonstrate that women provided testimony intended to reduce the social consequences of their illegitimate pregnancy. In addressing the questions of social morality in their testimony, the court could focus more on the adjudication of financial culpability, as women publicly addressed their behaviour, which was a form of social punishment. Their words positioned them as financial burdens, which had social consequences.

Positioning women as financial burdens on the community elicited feelings of shame and acted as their moral punishment. This is not to say that men were not also subjected to shame as a form of punishment. Shame was consistently leveraged as punishment in early modern England.²¹⁹ Men, however, were less likely to receive punishment for the crime of bastardy in England, as much of their culpability was determined by the word of the mother.²²⁰ The position of women in court, as well as record of punishment of women in the early seventeenth century, highlights the centrality of shame in the investigation of bastardy in seventeenth-century

²¹⁹ Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford University Press, 2003), <https://hdl.handle.net/2027/heb31964.0001.001>, 133.

²²⁰ Shepard, *Meanings of Manhood*, 134.

Somerset.²²¹ The problem, however, is that shame remains a challenging emotion to quantify.²²² While the connection between shame and single motherhood is well documented in the present, it is challenging to find sources that explore constructions of shame for unwed mothers in the premodern past. Because shame acts as a social mechanism of control, the testimony construction and sample punishments demonstrate that while the prime objective was financial culpability the secondary objective was to publicly shame the behaviour of the unwed mother. The system was designed to place women in front of an audience for judgment of her behaviour, and her and her child's survival was directly tied to this judgement. Moreover, this aligns with the performative definition of shame. The emotion of shame is inherently connected to a perceived judgment by an audience.²²³ The flattening of linguistic markers in female testimony further supports the argument that the system was designed to provide public shaming, and thus control unwanted sexual behaviours amongst Somerset women.

Flattening Language Patterns: Simplifying the Emotional Complexity of Sex

Bastardy Quarter Session examination and information testimony never uses direct terminology to describe the female sexual experience. Corpus analysis of the 252 files sampled for this chapter highlight that the term "sex" was never used. Most commonly, sexual acts are referred to as an individual having "carnall knowledge of her body". This phrasing occurs 136 times across the sampled examinations, informations, orders, and letters. Importantly, this phrasing was not

²²¹ Punishments assigned to women by Quarter Session orders demonstrates the public shaming attached to the crime in the early seventeenth century. Women were ordered to be stripped of clothing from the shoulders to waist and walked through town on market day while being whipped. The selection of a very public date and the physicality of the punishment demonstrate the process of public shaming attached to many women. While these punishments disappeared as the century progressed, their presence at the start of the century provides insights into the perceptions of authority. Even if these embodiments are not openly acted upon in all cases or throughout the century, it reflects a pattern of shaming and ritualized social reintegration that morphed throughout the century. For more information on punishments, please refer to Chapter 1: Understanding the Big Picture.

²²² Stearns, *Shame*, xi.

²²³ Stearns, *Shame*, 4-5.

necessarily employed by the unwed mother, but rather was a translation of testimony by the Justice of the Peace to fit their perceptions of how best to describe sexual acts for their audience. The consistency of this phrasing, moreover, raises questions about how women described their sexual experiences, and how these experiences were sanitized by the Sessions to meet their particular purpose. Women were ill-equipped to discuss sex, especially in the context of rape.²²⁴ They did not hold the linguistic tools to articulate the violation of their bodies by men.²²⁵

This argument can be extrapolated to cases of Bastardy. While bastardy, theoretically, did not involve the same level of violation as rape, women found themselves in a similar position to female rape victims. They were required to come before the Sessions and explain in detail their sexual histories to prove the paternity of their child. This process of articulation would have been challenging for women, as their presence in the court system underscored a different type of violation. They were violated socially rather than physically. The uniformity of discourse between all Bastardy examinations reflects a desire amongst officials to articulate sex in a sanitized manner that was devoid of all emotive markers. The way in which sex was positioned reflected not the physicality of the act, or how women described the act; rather, it reflects a desire amongst the court to neutralize and systemize their discussion and record of female sexual experiences.

The structure of the court record affirms the desire to neutralize and flatten language patterns. If a case survived in its complete form, the file includes an examination or information from the unwed mother, and an order by two or more Justices outlining a schedule of payment for the putative father. Only 108 complete cases, or 8%, survive in the Somerset Heritage Centre. These cases, however, provide insights into the interaction of unwed mothers and putative

²²⁴ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

²²⁵ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

fathers. For the most part, these cases went unchallenged by the father. In rare cases, we have a surviving record of conflict between the unwed mother and putative father. For example, William Toogood appealed the order of the Quarter Sessions that stated that he must pay five pounds for the upkeep of their child.²²⁶ He successfully called several witnesses to refute the claim, and successfully had the order overturned.²²⁷ The rarity of cases like those of William Toogood and Elizabeth Sherwyn, highlight the inherently female nature of the crime of Bastardy. Unlike other types of court proceedings, female testimony was central to the adjudication process. Since these women were unconnected and had few or no male relatives to intervene of their behalf, the centrality of their testimony highlights the seriousness placed upon their word. The court was most interested in using this space to address and counter female sexual behaviour. The challenge, however, is that the linguistic flattening inherent in the Sessions makes it challenging to determine how women were shamed.

The process of linguistic flattening challenges our ability to ascertain the process of shaming in the Sessions. Surviving testimonies realistically went through at least two levels of retelling – the unwed mother to the court, and the court to the documentary evidence – the language loses some of its meaning. Records never existed to determine whether women included emotive qualifiers in describing the sexual acts, promises made, and threats leveraged against them. However, the punishment process provides insights into how women represented the core of social responsibility and were publicly shamed within the community. The most

²²⁶ Appeal against a bastardy order. 1656, (1656), Somerset Heritage Centre, Q/SR/94/117.

²²⁷ Appeal against a bastardy order. 1656, (1656), Somerset Heritage Centre, Q/SR/94/117.

common punishment involved women being stripped to the waist, and then publicly whipped in town on market day.²²⁸

The inherently public nature of these punishments, which used a combination of nakedness and public spectacle, demonstrate the shaming process inherent in the adjudication of Bastardy cases. While these punishments faded over the course of the seventeenth century, the public nature of these original actions highlight the way in which public shaming was leveraged to control and deter female sexual behaviour. This assessment aligns with the work of Jeannette Kamp and Ariadne Schmidt, who argued that German and Dutch unwed mothers were reintegrated into society after a public trial that shamed their behaviour.²²⁹ While it is unclear if unwed mothers were as successfully reintegrated into Somerset society in the same way as their Dutch and German counterparts, there are intersections of shame with the court process both in Somerset and the continent. Overall, there was a connection between the shaming process and Bastardy, regardless of the continuity of punishment. This process, moreover, marginalized unwed mothers in their home communities.

Institutionalized Violence

The process of marginalization embedded in Bastardy court proceedings illustrate broader trends of gender-based violence leveraged against unwed mothers. I previously explored how the structure of testimony and evidentiary requirements were structured to produce feelings of

²²⁸ For example: Bastardy order. 1 Jan 1611, (1 January 1611), Somerset Heritage Centre, Q/SR/11/39-40; Bastardy order. 11 Jul 1610, (11 July 1610), Somerset Heritage Centre, Q/SR/11/46-7; Bastardy order. 6 Apr 1610, (6 April 1610), Somerset Heritage Centre, Q/SR/11/74-5; Bastardy order. 8 Jun 1610, (8 June 1610), Somerset Heritage Centre, Q/SR/11/76-7; Bastardy order. 23 Apr 1614, (23 April 1614), Somerset Heritage Centre, Q/SR/19/93-4; Bastardy order. 24 Feb 1616, (24 February 1616), Somerset Heritage Centre, Q/SR/24/18; Bastardy order 27 Sep 1617, (27 September 1617), Somerset Heritage Centre, Q/SR/27/7; and Bastardy order. 2 Dec 1629, (2 December 1629), Somerset Heritage Centre, Q/SR/63/182.

²²⁹ Kamp and Schmidt, "Getting Justice," 672–94.

shame. A behaviour or action that results in the marginalization and suffering of women in society constitutes gender-based violence. As a result, the marginalization process embedded in the testimony structuring of the Sessions constitutes a form of gender-based violence. While the quantitative analysis of Bastardy cases demonstrated that violence occurred less between individuals and occurred most frequently between the institution and the individual, the qualitative analysis highlights the way in which this violence was embedded in the procedural processes of the Sessions. Women were marginalized through the evidentiary burden of the court, which had them prove paternity by detailing their sexual histories to a panel of male Justices of the Peace. Their lack of alternative options for financial and community support, forced them to engage with this process, and reflects a deeper marginalization process that was focused on and leveraged against *poor* unwed mothers. The entire process, moreover, reflects a process of institutionalized gender-based violence. It is a system designed and intended to inflict marginalization, and, thus, gender-based violence on those required to solicit their services. This section will explore how paternity and sexual histories represent violent institutional acts against poor unwed mothers. Moreover, it demonstrates that the entire process of requesting and receiving financial aid from the putative father, or, in rarer cases, the parish, was designed to inflict violence against these mothers and marginalize their sexual behaviour.

The requirement of women to identify and prove the paternity of their child began this process of marginalization. This process of interrogation of female behaviour seems to be the sole way courts determined paternity of the child. While previous research on this dataset argued that authorities were primarily concerned about financial maintenance, the requirement to prove paternity through a detailed description of their sexual histories created space for public judgement of their sexual pasts. Despite a seeming lack of moral adjudication, the process of

determining financial culpability required women to demonstrate their moral fortitude. The challenge for these women, however, was that many men would go to great lengths to avoid culpability, which reflected negatively on female morals. For example, Henry Elliotte threatened Edith Gullocke of Ile Brewers that if “shee did chardge him hee would never give her a penny or penny worth whilst hee lived...”²³⁰ Since women had to prove paternity, they were in a precarious position as they were the intermediary between the putative father and Justice. While this could provide the unwed mother with significant power within the system, as their words held significant weight, they in fact were more vulnerable to the competing needs of their child, the court, and the putative father. They had to navigate a complex system of men not wanting to pay, the court not wanting the parish to pay, and their own survival. Edith determined that it was worth risking the wrath of Henry to ensure he adequately paid support to their child.

Edith was not the only woman to experience this dilemma. Many women who articulated coercion in their testimony underscore the desire to avoid financial culpability. In the spring of 1650, for example, Margaret Parsons came before William and Edward Ceely, Justices of the Peace, to swear to the paternity of her child. Margaret testified that on the 20th of September 1647, she met a man named John Jones in Parchie common in the parish of Chedzoy. They then began a sexual relationship that continued for one year. Margaret stated to the court that “the said John Jones and noe person else is the father of her second base child...”²³¹ John, however, had hoped to avoid a formal proceeding. He “did promise to give this examinant ten pounds for her and her said child mayneteinance and that the said John Jones and Richard Jones, the sonne of the said John did threaten to kill this examinant if shee did name the said John to be the

²³⁰ Bastardy examination. 26 May 1633, (26 May 1633), Somerset Heritage Centre, Q/SR/68/12.

²³¹ Bastardy examination. 19 Apr 1650, (19 April 1650), Somerset Heritage Centre, Q/SR/82/143.

father...”²³² The threat compelled Margaret to identify that another man had fathered her child.²³³ While she eventually named the true father, her case demonstrates the complexity of these cases for unwed mothers. Women needed financial support. They had to rely on a system that viewed them as financial burdens and questioned their sexual decision making. As a result, many women wavered in naming the true father in the hope that they could avoid the threat, while still receiving some form of financial support. They relied on the Sessions for their and their child’s survival. As a result, even though their testimony played a significant role in determining paternity, these examples demonstrate how women were influenced and marginalized by external forces. Thus, marginalization and violence were exerted within and outside the Quarter Session system.

The connection of these examples to processes of gender-based violence in early modern Somerset is essential to understanding the marginalization process of the Sessions. For women like Margaret and Edith, their situations are indicative of only a small percentage of cases, but their experiences are illustrative of broader trends within the structure of the Sessions. While both theoretically had power, in the authority afforded to their declaration of paternity, their vulnerability as unwed mothers and pregnant women left them susceptible to threats and coercion. The double marginalization as financial burdens and unwed pregnant women left them particularly susceptible to violence both within and beyond the Sessions. As a result, their cases, and the many others included in this sample demonstrate a pattern of marginalization that was most concretely located within the structural foundations of the Sessions, rather than with the putative father. Just because women took their cases to the court does not detract from the patriarchal pressures exerted from above – limiting their ability to act. The lack of social network

²³² Bastardy examination. 19 Apr 1650, (19 April 1650), Somerset Heritage Centre, Q/SR/82/143.

²³³ Bastardy examination. 19 Apr 1650, (19 April 1650), Somerset Heritage Centre, Q/SR/82/143.

of these women highlights their vulnerability because they had to rely on the Sessions. Moreover, the procedural elements of the court in conjunction with a lack of community network, ensured that they had to disclose personal and morally precarious information, even if it resulted in additional marginalization in their community.

The procedural element that contributed to this marginalization process, was the detailing of their sexual histories' male Justices of the Peace. This process resulted in two levels of marginalization for women. The first, was that women experienced significant challenges articulating details of their sexual history, and the second was that these disclosures occurred before a panel of male Justices of the Peace. Garthine Walker argues that "rape and attempted rape were the most difficult for women to articulate [in a court of law]."²³⁴ The social capital placed on female chastity, in conjunction with the power of social gossip made disclosure of rape particularly challenging for women.²³⁵ Even in circumstances in which a women had all the evidentiary support to prove her case, Walker found that women used linguistic markers that indicated that they felt guilt for disclosing their assault publicly.²³⁶ While bastardy cases do not always contain elements of rape proceedings, the principles found in these cases can and should be applied to other cases dealing with disclosure of sexual acts – whether consensual or not. It raises further questions about the compounding influence of the community in the disclosure of pregnancy in this venue.

Concerned community members periodically emerge in bastardy proceedings as policers of unwed pregnancy. For example, in May 1649, Mary Hunt was examined by Henry Bonner, Justice of the Peace, after it was discovered that she was with child.²³⁷ Mary was "...suspected

²³⁴ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

²³⁵ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

²³⁶ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

²³⁷ Bastardy examination. 1 May 1649, (1 May 1649), Somerset Heritage Centre, Q/SR/81/54.

by her neighbour to be with child...” she was then “brought before [the Justices] upon suspition she being demanded by [the Justices] whether she ever had any child she affirmeth that she never had...”²³⁸ To confirm Mary’s statement to the court, they called a Mrs Freake of Chard, midwife, to examine Mary for signs of pregnancy or recent birth. Upon examination, Mary was found to have “...milke in her breaste...” and so the Justice proceeded with a bastardy trial.²³⁹ This example provides insights into the role of gossip and the community in policing female sexuality. In Mary’s case, her neighbour was concerned that she was with child. While it is impossible to know the motivations of the neighbour in disclosing this fact to the Sessions, it is reasonable to assert that this neighbour may have been concerned with Mary eventually falling to the parish for support. The sooner Mary named a father, the sooner the financial burden would shift to him.

The community was concerned about who would pay for the maintenance of these children. This was overtly communicated throughout the dataset. However, as we begin to explore other facets of the document, including structure, and punishment, a different story begins to emerge. The role of gossip and community reporting highlights an attempt to regulate the poor law system to ensure that the community would not need to take social responsibility. As a result, this developed a form of social pressure on individuals who produced children out of wedlock. The inherently public position of women within the community highlights that their behaviour was consistently under observation and judgement. The public judgment of their behaviour in conjunction with the possibility of financial burden promoted shame and acted as a means of social correction for the women in the court proceeding as well as future unwed mothers.

²³⁸ Bastardy examination. 1 May 1649, (1 May 1649), Somerset Heritage Centre, Q/SR/81/54.

²³⁹ Bastardy examination. 1 May 1649, (1 May 1649), Somerset Heritage Centre, Q/SR/81/54.

Women had a challenging time talking about sex. The public discussion of sex in this context would have confronted female notions of civility and chastity. Despite their engagement in well documented early modern courting rituals, the disclosure of sexual partner(s), where they had sex, and how often, would have been private information that women were ill-equipped to provide the court without eliciting feelings of shame. The public nature of this process, that began with physical markers of pregnancy to the disclosure of her sexual history to male Justices of the Peace, highlights the systematic process of shaming through gossip and judicial judgement. Moreover, the overarching process of how women shared their experiences before the court was a means to continue to marginalize their position in society by legal identification as a possible burden to community resources. The following presence of the child would perpetuate this position until the child could no longer fall to the care of parish – typically around eight years of age. This entire process, which was institutionalized through the Sessions, demonstrated the inability of this woman to conform to social norms. The process by which the court functioned was inherently designed to systemize this process of marginalization, which according to the definition articulated in chapter one, constitutes an institutionalized form of gender-based violence.

The single most important factor contributing to the extent of marginalization of these mothers was their lack of other options. Women who relied on the Quarter Sessions for help – either in ordering the putative father to pay or providing support through the poor laws – were women with no other options. They did not have family members to support them and their child, and they were already unable to marry the putative father. Women who had any other viable options other than the Sessions would have taken it.²⁴⁰ This aligns with the argument of

²⁴⁰ Quaife, *Wanton Wenches and Wayward Wives*, 203.

Walker that women felt great shame and embarrassment detailing their sexual pasts in court, even in circumstances in which sex was not forced upon their bodies.²⁴¹ Their reliance on the Sessions created an environment in which they had to conform to its requirements. Thus, the Sessions could create a system in which they further shamed and marginalized women without any form of social policing. The institutionalization of marginalization created a space in which women were subjected to gender-based violence to ensure the survival of themselves and their children.

Conclusion

The lack of options of these unwed mothers contributes to an assessment of how the Quarter Sessions was able to create and maintain a space that marginalized women rather than protected them. G.R. Quaife argued that communities in Somerset were not concerned with the connection between illegitimacy and sexual morality; rather, they were most concerned with the possible financial burden these mothers and children posed to the community.²⁴² Yet there were still significant moral challenges women faced when bringing their suit to the Quarter Sessions.

While the Justices may have, theoretically, only been interested in the topic of finances, the procedural elements embedded in this process, highlight how shame factored into the examination of unwed mothers. The Justices of the Peace may appear to be solely interested in the financial culpability of these unions; however, the procedural elements embedded in this process highlight that women were exposed to a shaming process. They had to articulate their sexual histories in a manner that brought attention to the ways in which their behaviour did not align with the theoretical and practical ideologies of the time. This coupled with their lack of

²⁴¹ Walker, *Crime, Gender, and Social Order in Early Modern England*, 55.

²⁴² Quaife, *Wanton Wenches and Wayward Wives*, 245, 248.

options, created the foundation for an institution that exerted violent behaviour based on gender ideologies against those they were supposed to protect. As a result, women were viewed as burdens to the community, rather than the men whose sense of entitlement created the circumstances in which these women found themselves. The system created an environment in which women were positioned as burdens to community resources. This led to their increased marginalization in the community and represents a pattern of institutionalized gender-based violence.

Women had the choice to come before the Quarter Sessions to prove paternity; however, they did not have agency over what the court required after filing suit. While the courts afforded significant agency to female voice in this process, the process itself was structured to ensure women were shamed and further marginalized in the community. This chapter has established that women came to the Sessions because they had no other viable option. These women were viewed as potential financial burdens on the county. They also represented individuals who did not, whether through their own volition or by accident, conform to the social sanctioned patterns of premarital pregnancy. All elements of which were openly shared in front of the Justices of the Peace for adjudication. Factors of adjudication in conjunction with a lack of options demonstrates that women exerted limited agency in this process. The process was entirely dictated by the institution. These embedded processes ensured that women conformed to the Parish's need to avoid financial culpability, even if this process further marginalized those that needed the protection of the court.

The emphasis on financial upkeep over the protection of unwed mothers and children demonstrates that the Sessions were not concerned with how women experienced the adjudication process. They were additionally unconcerned with how their processes impacted the

standing of unwed mothers in the community following the conclusion of the proceedings. Moreover, the court did not account for the ways in which their processes marginalized women. While I do not wish to insinuate that the courts intentionally created a violent system that women were required to rely upon, the effects of the institutional structure inadvertently ensured that women experienced a continuum of marginalization. The consistent and public display of female “deviance” reflected the institutionalization of gender-based violence that was both reflective of the period and is a structure that has endured to the present. Overall, the analysis of the structure of female testimony in Bastardy proceedings highlights the ways in which the community was not concerned with the plight of single mothers. They were solely concerned about the financial health of the community – even if the assurance of their health marginalized these women within the community.

To return to our case study, Ann Bishop represents the intersection of financial concern, gossip, and social policing. The community was not concerned with the challenges Ann experienced. They wanted to ensure that the correct father was identified to the court, so that Ann and her child would not fall to the poor relief fund. The process of interrogation and reliving the threats she experienced at the hands of Arthur Pullman, acted as a mechanism of re-traumatization that was continuously called upon by her neighbours, family, and the court. Moreover, while we can never know this answer, her entire story raises questions about why she moved to Longsutton from Martock while with child. Overall, her story highlights how the concern over financial health created a space in which women were continuously marginalized and shamed by the organizations intended to protect their well-being. Their lack of other viable options forced them to have to open themselves to public scrutiny and violating lines of questioning to ensure the health and viability of their child. This tension and the reliance of

women on these resources allowed the institution to create systems and protocols embedded with marginalizing factors. Overall, women experienced the most violence and violation from within the institution.

‘Who States that she is with Child after he Raped Her’: Consent, Illegitimacy, and Rape in the Somerset Quarter Sessions

Introduction

In the summer of 1636, about three weeks before St. Bartholomew’s Day, the widow Johan Pore of Crewkerne brought a pot of food to Maurice Game after dining with George Lawrence. Upon entering Maurice’s house, Johan met Maurice’s son John Game in the kitchen. They were both completely alone. John then “shut the doore upon this examinant and threwe her downe upon the stairs and there bad the carnall knowledge of her bodie...”²⁴³ This case included significant sexual and physical violence that might lead the reader to assume that Johan was raped by John. Johan was presented as a woman of good standing in the community and was entrapped by a young man who used violence and brute strength to have carnal knowledge of her body, or, in layman’s terms, had sexual intercourse. However, according to the court no rape could have taken place as “...she [was] begotten with child by the said John Game.”²⁴⁴ The conception of a child during a violent sexual act precluded Johan from claiming rape in a court of law. She could only ask for financial assistance from her assailant to support the upkeep of her illegitimate child. Johan’s story and the many like hers found in the Somerset Quarter Sessions begin to highlight the complexities of early modern consent.

A woman’s ability to consent to a sexual act was a complicated concept in early modern England. Consent involved the confluence of a variety of biological and social constructions of conception and consent. Even in circumstances in which women articulated their lack of consent, societal structures ultimately determined whether women did or did not provide their consent.

²⁴³ Bastardy Examination. 4 Jan 1638, (4 January 1638), Somerset Heritage Centre, Q/SR/77/11.

²⁴⁴ Bastardy Examination. 4 Jan 1638, (4 January 1638), Somerset Heritage Centre, Q/SR/77/11.

The case of Johan Pore represents an excellent example of the disconnect between her experience and the challenge of presenting this experience in a court of law. While the beginning of her testimony described a violent sexual encounter with John Game, the conception of a child precluded her from using the term “rape” to describe her experience. Linguistic patterns of her failure to consent, however, are evident throughout her testimony. Her testimony referred to her isolation, her inability to call for assistance, and the violent nature in which he overpowered her with the purposes of sex. All of this suggested that a violent rape had occurred.

Stories like those of Johan raise significant questions around how historians understand how women understood consent in early modern Somerset. While none of the details of Johan’s case were required to ensure the financial assistance of her child, she still chose to disclose them to the court. The inclusion of these details underscores the ways in which women, especially in cases that included rape and a subsequent pregnancy, still attempted to make clear the circumstances surrounding consent in these sexual encounters. While this might constitute of a form of female agency, the inability of the court to address these assertions of rape demonstrates the lack of credibility to female voices. They asserted their bodily autonomy, but social perceptions of consent prevented the acknowledgement of this stance. As a result, the power exerted by the institution overpowered the agency of the unwed mothers.

An examination of attempted sexual assault cases and bastardy cases highlights the ways in which bastardy cases included articulations of rape in female testimony. Despite the legal and biological definitions of rape and consent, women petitioning for child maintenance (bastardy cases) in the Quarter Sessions described their experiences in remarkably similar ways as those who alleged attempted sexual assault. Essentially, pregnant women used the language of rape to describe their previous sexual encounters in court. This demonstrates that while society may

have attempted to advance one particular definition of consent, the women themselves involved did not necessarily adhere to these definitions. This disconnect expands and nuances definitions of consent in early modern English society. Despite masculine intellectual privilege in discourses of female consent, women described their experiences in opposition to prevailing social definitions.

As a result, early historical definitions of consent, such as those of Edward Shorter and John Marshall Carter, in cases of sexual assault exclude the lived experiences of early modern English women. More contemporary historical definitions – such as those used by Garthine Walker and Anna Clark – were based on how the courts and Church formulated definitions and theories of female consent and reproduction.²⁴⁵ In examining how women in cases of bastardy addressed circumstances of sexual violence, this chapter expands the definition of consent to incorporate female perspectives. The inability of the court systems to adequately recognize and address the violent nature of the conception of these children further marginalized their mothers within their communities. This process acted as a form of gender-based violence against the women of early modern Somerset.

Through a close reading of 23 cases of attempted sexual assault and 22 cases of bastardy tried in the Somerset Quarter Sessions between 1600-1699, this chapter argues that despite the legal definitions of consent, women described their experiences within the linguistic patterns of rape cases. This chapter begins with an analysis of sexual assault in the Quarter Sessions, followed by an examination of the construction of consent in legal and biological terms. Finally, this chapter examines how bastardy cases align with linguistic constructions of rape to

²⁴⁵ Garthine Walker, “Rape, Acquittal and Culpability In Popular Crime Reports In England, c. 1670–c. 1750,” *Past & Present*, no. 220 (2013): 115–42; and Anna Clark, *Women’s Silence, Men’s Violence: Sexual Assault in England, 1770-1845*, (London; New York: Pandora Press, 1987).

demonstrate how consent was articulated in circumstances that did not require linguistic evidence of consent. Moreover, this chapter argues that despite the confines of the English legal and medical definitions of consent, pregnant women described their sexual encounters as including elements of sexual assault.

The challenge of this work is not defining what constituted the violation of female bodies, but rather how to measure bodily consent in early modern courts. Because courts were unable to fully articulate what consent meant in a medical, legal, and bodily context, they were unable to address instances in which women claimed that sexual force resulted in their impregnation. This relationship with consent and bodily autonomy is a significant issue in attempting to construct and understand the history of the rape of women. The emphasis on legal definitions of rape and the performance of the crime of rape in court mitigated other examples of rape in crimes where rape could legally not occur. The expansion of historians' understanding of consent and female bodily autonomy complicates our understanding of the history of rape. The ineffective prosecution of rape was the result of an inconsistent understanding of female consent and bodily functionality in early modern Somerset.

Methodology

The court cases analyzed in this chapter were obtained from the 1298 bastardy court proceedings in the Somerset Quarter Sessions for the seventeenth century. Through the development of my case database (explored in Chapter 2), I found that several cases used language that indicated a lack of consent on the part of the mother in their sexual encounters. There were numerous instances of an explicit lack of consent, through terminology such as “by force” or “without my consent”, but there were also cases that were less overt in their descriptions of their sexual encounters. For example, one woman explained to the court that a man placed a white powder in

her drink before engaging in sexual intercourse with her, or the many women who indicated being coerced into sexual experiences with men in authority positions.²⁴⁶ Of the cases initially sampled for the database, there were approximately 54 of 1298 that included features that required closer investigation to determine whether the women were raped. Once these 54 cases were acquired and transcribed, this sample was reduced to 22. While this seems to be a statistically insignificant number when compared to the 1298 bastardy cases for the seventeenth century, it is comparable and significant when compared to a more comparable dataset. Throughout the seventeenth century, 23 cases of attempted sexual assault were filed in the Somerset Quarter Sessions. As a relatively underreported crime under most circumstances, the 22 cases found within the bastardy dataset represents a foundation from which we can begin to explore the nuances of consent and violation of female bodies.

Nevertheless, it is important to note that the sample of cases that included elements of rape grew as I continued to transcribe other bastardy cases from my close-reading sample. Cases that included standard short description elements, such as name, location, and charge, were later found to include rape keywords in their testimony. This underscores the challenges of working with catalogue descriptions and developing meaningful metadata for online archival catalogues. My sampled data and database relied solely on the interpretation of records by volunteers to create the short description in the catalogue. As a result, there is significant variation in what information was included or excluded. While there was a volunteer who saw significance in the level of violence perpetrated by the putative father, some volunteers chose to omit this

²⁴⁶ Some examples of cases that include rape elements such as a white powder, Bastardy examination. 7 Dec 1652, (7 December 1652), Somerset Heritage Centre, Q/SR/86/157, and those which include a power imbalance, Information. 19 Nov 1617, (19 November 1617), Somerset Heritage Centre, Q/SR/29/82; Bastardy examination. nd, 1624 (1624), Somerset Heritage Centre, Q/SR/50/14-15; Bastardy examination. 3 Dec 1656, (3 December 1656), Somerset Heritage Centre, Q/SR/93/17.

information in their catalogue description. This could be the result of the volunteer's perception of the significance of these cases in the context of early modern bastardy or the instructions provided by the institution about the format and structure of short descriptions. There are a range of reasons why volunteers might include or exclude examples of violence, none of which are the fault of the archive or the volunteer transcriber. Regardless, this variation reinforces the importance of researchers engaging with the written document and not relying solely on metadata to construct historical arguments. While much can be gleaned by short descriptions, the information is limited based on the biases and perceptions of the archivist, and the volunteers digitizing the catalogue.

Once I had a sample of data, I used various feminist research methodologies to inform my interpretation of these sources. Feminist research methodologies address the inherent power imbalances within academic research that privilege male voices and their approaches in the interpretation of source materials.²⁴⁷ Feminist methodologies are flexible and adaptable to a wide range of contexts, but their underlying assertion is that they consider the plethora of female experiences allowing researchers to ascertain harder to measure trends, such as female empowerment and gender-based violence.²⁴⁸ This chapter uses close reading methods and feminist methodologies to better understand the ways in which bastardy and attempted rape perpetuate systems of violence against women appealing to their community for support. While feminist methodologies are applicable to numerous fields of study, in the context of history

²⁴⁷ Gwendolyn Beetham and Justina Demetriades, "Feminist Research Methodologies and Development: Overview and Practical Application," *Gender & Development* 15, no. 2 (2007): 199 AND Linda Bell, "Ethics and Feminist Research," in *Feminist Research Practice: A Primer*, edited by Sharlene Nagy Hesse-Biber, (Los Angeles; London: Sage, 2014), 77. See also Joan Kelly, *Women, History & Theory: The Essays of Joan Kelly* (Chicago: The University of Chicago Press, 1984), and Joan Wallach Scott, *Gender and the Politics of History*, Gender and Culture. (New York: Columbia University Press, 1988).

²⁴⁸ Beetham and Demetriades, "Feminist Research Methodologies and Development," 199-200.

feminist debates predominantly focus on the relationship between female agency and male power to best understand female empowerment in male dominated records.

History of Rape and Sexual Violence

The convergence and divergence of men's power and women's agency are central to the study of early modern gender, sexuality, order and violence. This emphasis on agency emerged to counter the traditional model of inquiry that sought examples of female power that would parallel the position of men within society. Newer research on the topic, however, argues that to compare women to men undermines the ways in which women resisted power. In an intensely patriarchal society, it is unfair to understand female behaviour within the confines of this system which enactments of power and control.²⁴⁹ Through the paradigm of agency, scholars can understand the ways in which women resisted implicit and explicit patriarchal structures in early modern society.

Research on rape and domestic violence exacerbates the tension between agency and power to demonstrate that neither exists in isolation. Scholars studying the history of violence against women fall into three broad categories of interpretation. The first is violence as a conflict between men (i.e., a crime of female property rights or honour). The second is analysing the crime from the male perspective (i.e., how does male honour factor into the prosecution of rape or domestic violence), and finally how the community might involve themselves in the prosecution of violent offenders. Rape is therefore a manifestation of patriarchal power acting as

²⁴⁹ Patriarchy in this dissertation refers to the system of social order and control in early modern England. The system could be equally as detrimental to men as women; however, in some circumstances men received more privileges through this system based on their gender, class, religious affiliation, and occupation. This system was often very contradictory and was implemented inconsistently across the seventeenth century. While it is important to acknowledge that men could also be negatively impacted by the patriarchal system, women in cases of illegitimacy were more consistently and differently punished by these structures than putative fathers. [Shepard, *Meanings of Manhood*, 1; 133-134].

a mechanism to continue the exertion of power over women and their bodies.²⁵⁰ The fear of bodily violation through rape keeps women subjected to men. While rape is a crime of male aggression over women, women are ironically conditioned to believe that men are the only individuals capable of protecting them from violation. For example, Anna Clark and Shani D'Cruze represent two historiographical paradigms occurring directly before and following the cultural turn (marked by the introduction of social scientific methodologies into historical research). While logically they should demonstrate a shift towards agency over power, they maintain a focus on power dynamics between men and women.

Court records and literary sources are limited in their ability to illuminate the lived experiences of individuals living at this time. Since men predominantly produce and consume institutional records it can be challenging for researchers to understand female voice and perspective. As a result, these records seem to provide a more direct linkage to the performance of male power. Bernard Capp demonstrated this tension in his article “The Double Standard Revisited”, as despite the agency exerted by women taking men to court for restitution, he uses these cases to research male power and reputation.²⁵¹ Records similarly point to rape and domestic violence as a community issue.²⁵² When examining rape as a communal concern, scholars are most apt at demonstrating women’s opinions and concern over violence, especially in cases involving children.²⁵³ Nevertheless, Jackson, Butler, Capp, and Toulalan underscore communal power rather than individual agency in cases of rape and domestic violence. As Shorter and Carter have inadvertently demonstrated in their analyses of rape, the source materials

²⁵⁰ Clark, *Women’s Silence, Men’s Violence*; D’Cruze, “Approaching the History of Rape and Sexual Violence.”

²⁵¹ Capp, “The Double Standard Revisited,” 70–100.

²⁵² Butler, *The Language of Abuse Marital Violence in Later Medieval England*; Baines, *Representing Rape in the English Early Modern Period*; Amussen, ““Being Stirred to Much Unquietness.””

²⁵³ Jackson, *Child Sexual Abuse in Victorian England*; Toulalan, “Child Victims of Rape and Sexual Assault.”

available to scholars' studying violence are not necessarily reflective of the pervisiveness of rape in the early modern period.²⁵⁴

One entry way into this realm of the past is to explore the social networks of victims. Community networks were a central feature of early modern life. Research on domestic violence and sexual assault demonstrate the ways in which community and family networks intervened in circumstances perceived to impact broader community dynamics. For example, in cases of domestic violence, Elizabeth Foyster found that communities routinely intervened on behalf of abused women in the community by both removing the wife as well as seeking formal or informal reprimand for the husband.²⁵⁵ Communities similarly intervened in matters of sexual morality. G.R. Quaife demonstrated that concern over children born outside of marriage was not related to a heightened sense of sexual morality; rather, it reflected concern over financial support.²⁵⁶ These types of cases, records of which are routinely found within Quarter Sessions and Consistory Courts, reflect the centrality of community in supporting members, whether located within the nuclear family or beyond. Rather than having a woman sue a man for paternity, rural communities routinely found other mechanisms of resolution both within and outside of the formal judicial system.²⁵⁷ While records of attempted sexual assault and bastardy reflect instances in which members sought formal proceedings, there are also examples in which members of families and communities resolved conflict through informal mechanisms. For example, some cases of sexual assault were resolved through the marriage of the woman to her

²⁵⁴ Shorter, "On Writing the History of Rape," 471–82; Carter, *Rape in Medieval England*.

²⁵⁵ Foyster, *Marital Violence: An English Family History*, 2; 128.

²⁵⁶ Quaife, *Wanton Wenches and Wayward Wives*, 244–246.

²⁵⁷ Quaife, *Wanton Wenches and Wayward Wives*, 89–123.

assailant.²⁵⁸ Research in early modern British history, moreover, demonstrates that communities treated violence publicly and with concern.²⁵⁹

Historiography on rape has notably focused on power relationships between men. While feminist approaches have sought to understand the historical female experience through an analysis of agency, this construct is not always available to historians in cases of rape. In shifting our focus away from rape criminal proceedings in the assize court, to bastardy cases in the Quarter Sessions, new patterns emerge regarding how women understood their bodies and experiences outside of judicial definitions. This shift in focus allows for a more nuanced examination of the ways in which women experienced rape in circumstances in which they are not limited by the requirement to conform to legal definitions of rape as a crime. While this dissertation argues for the relevance of feminist approaches that challenge male discourse on female experiences in the past, it employs an intersectional approach to better understand the continuities and change of female perceptions of their own bodies outside the confines of the law.²⁶⁰

Rape and Sexual Violence in the Quarter Sessions

In cases of rape, women, at least in the eyes of the law, had a complicated relationship to their bodies. The early modern period shifted the legal definition of rape from a crime of property to a crime of the person. As a result of this shift, women had ownership over their physical person in a court of law. This meant that whether a women consented to a sexual encounter was an

²⁵⁸ Baines, *Representing Rape in the English Early Modern Period*, 9.

²⁵⁹ Such concerns are demonstrated with the findings presented in the works of: Foyster, *Marital Violence*; Capp, "The Double Standard Revisited."; Quaife, *Wanton Wenches and Wayward Wives.*; Butler, *The Language of Abuse*.

²⁶⁰ It continues to draw from the work of Patricia Hill Collins (as discussed in the introduction) to explore both how individuals' work within the judicial system, as well as how power and agency intersect within this system. Hill [Collins, "Intersectionality as Critical Inquiry," 24; 28].

imperative factor in determining whether she had been raped. While the inclusion of consent in legal prosecution seems like a positive shift for women to take ownership over their own bodies, courts instead created a complex system of consent that women were required to meet to prove that their sexual encounter was indeed rape. Not only was consent tied to what women did during the attack (e.g., Did they cry out? Did someone hear them? Did they resist? Is there proof of their resistance?), but also to the biological functionality of a woman's body.²⁶¹

Women had to both intellectually and physically prove their lack of consent. The female orgasm became an important factor in the determination of physical consent and conception.²⁶² Intellectual authorities believed] that both men and women had to mutually orgasm to conceive a child.²⁶³ While a woman might vocalize her lack of consent to a sexual interaction, her body might consent through orgasm resulting in pregnancy. As a result, women had to prove intellectual, but also physical rejection of their rape, which was proven through their lack of conception. This was the most common theory of conception in the early modern period and held that two-seeds – the sperm of men and women – were required for conception.²⁶⁴ The two-seed theory postulated that the seed of a man and a woman was required to produce a child. This shift was predicated on the rise of Protestantism, which shifted the perception of women away from virgins, to “chaste and obedient wives”.²⁶⁵ As a result, women had a greater role in the conception of children than previous centuries.

²⁶¹ Nazife Bashar, “Rape in England between 1550-1700,” in *The Sexual Dynamics of History: Men's Power, Women's Resistance* edited by The London Feminist History Group, (New South Wales: Pluto Press, 1983), 36.

²⁶² Mark Breitenberg, *Anxious Masculinity in Early Modern England* (Cambridge University Press, 1996), 26.

²⁶³ Breitenberg, *Anxious Masculinity in Early Modern England*, 26.

²⁶⁴ Mary Fissell, “Gender and Generation: Representing Reproduction in Early Modern England,” *Gender & History* 7, no. 3 (1995): 435.

²⁶⁵ Breitenberg, *Anxious Masculinity in Early Modern England*, 26.

Patterns of Rape in the Quarter Sessions (Primary Source Analysis)

In the Somerset Quarter Sessions, cases of attempted sexual assault follow patterns of rape identified throughout early modern rape cases. Women clearly articulated and vocalized their lack of consent to both the perpetrator and others in their community. When examining cases of attempted sexual assault, to explore the manifestation of linguistic patterns of consent to apply to bastardy cases, a few additional patterns emerge that differentiate attempted sexual assault from cases of illegitimacy. For women who accuse a man of attempted sexual assault, her community and relational status played an important role in the presentation of the evidence.

Women in these cases drew upon a network of relatives and neighbours to substantiate their claims in court. From the surviving evidence, the testimony of others (testimony beyond the victim and perpetrator), supported the claim of the woman. While this could reflect the significant burden of proof placed on women to support their claims, the ability for women to recruit witnesses to their cause is significant. This ability highlights the status and influence these victims had in their community. Their reputation was positive and elicited a reaction of support from their neighbours and relatives.

The support of the victimized woman emerges in three distinct categories. The first is that while no subsequent testimony was recorded, other than the victim and perpetrator, the court *identified* the female victim in relation to a male authority figure. This was most commonly her husband. For example, Margaret Brasier of Hinton St. George was recorded in her testimony as “Margaret Brasier wife of Henry Brasier of Hinton St. George.”²⁶⁶ Similarly, the case of Anne Pocock articulated this was “the examinacon of Anne the wife of Robert Pocock and [was] taken upon oath the 26th day of March 1685.”²⁶⁷ The way in which the court positioned these cases

²⁶⁶ Information. 16 Sep 1636, (16 September 1636), Somerset Heritage Centre, Q/SR/75/75.

²⁶⁷ Information and examination. 26 Mar 1685, (26 March 1685), Somerset Heritage Centre, Q/SR/160/3.

highlights the importance of male authority in the prosecution of rape cases. By positioning women as wives and daughters, the court creates an imagery of a woman successfully integrated into her adult life. Conversely, women in illegitimacy cases are almost never connected to a male relative, even in circumstances in which they are widowed. The connection to male relatives provides the victim of attempted sexual assault with an authority not always afforded to single women or spinsters. For example, Susan Nowell was referred to as the daughter of John Nowell in the case of her attempted sexual assault, whereas Joane Ashford, in her case of bastardy, was simply referred to as a widow – her deceased husband's name was not recorded in her evidence.²⁶⁸ The named connection of a male relative in these cases provides a sense of patriarchal support and belief for the female victim. As well as an opportunity to highlight their respectability as a familial unit. Despite Joane reporting to the court that she was attacked by an unknown man while travelling and was now with child, for example, no male relative or authority was recorded in her testimony. Her deceased husband was not even identified by name.²⁶⁹ Moreover, despite the overarching shift in the definition of crime from property to person, male authority maintained a significant presence in the criminal proceedings of attempted sexual assault.

The second category of cases, which involves testimony from both related and non-related male witnesses, affirms this pattern. For example, in the attempted sexual assault of Marie Morgan by Arthur Brook, her husband, George Morgan articulated the events that he had witnessed. "Lookinge backe [he] mighte see the said Brooke goeing to this said [examinant's] house whereupon this said [examinant] returnynge came back unto his said house...he heard the

²⁶⁸ Bastardy examination. 22 Nov 1654, (22 November 1654), Somerset Heritage Centre, Q/SR/92/72. & Examination. 22 Aug 1610 (22 August 1610), Somerset Heritage Centre, Q/SR/9/7.

²⁶⁹ Bastardy examination. 22 Nov 1654, (22 November 1654), Somerset Heritage Centre, Q/SR/92/72.

said Brooke forcible assaueing to enforce his will against her will.”²⁷⁰ George’s testimony affirmed Marie’s story. She stated that her husband “opened the chamber doorway [which] she thinketh by their striving [had] shut and came into the chamber...[and] unless her husband have come into the house the said Brookes would have enforced her against her will.”²⁷¹ However, the men who spoke on behalf of the victim were not always related. For example, an unrelated male came to the aid of Mary Thorne after three men attempted to rape her while travelling to her home.²⁷² While her testimony was affirmed by her husband, who she disclosed to upon returning home, she was also able to have a witness, Richard Washer, provide information on her behalf. Based on the surviving testimony, Richard had no relation to the female victim or her husband, he was simply travelling along the same road when he heard a commotion made by the attackers and Mary.²⁷³ The position of the male testimony in the records highlights the important role of men in crimes of sexual assault. Male testimony, and more specifically spousal testimony, was consistently listed first in the record, even before the female victim who experienced the crime. This affirms previous historical conclusions that rape is a crime between and amongst men.²⁷⁴ Despite women theoretically having highly circumscribed bodily autonomy in the early modern period, from the perspective of the court, male testimony and experience had greater weight. This emphasis on male experience is further articulated through the final category, and the smallest, which is the inclusion of broader community testimony of both male and female witnesses.

²⁷⁰ Examination. 23 Feb 1616, (23 February 1616), Somerset Heritage Centre, Q/SR/23/59.

²⁷¹ Examination. 23 Feb 1616, (23 February 1616), Somerset Heritage Centre, Q/SR/23/59.

²⁷² Information. 4 May 1687, (4 May 1687), Somerset Heritage Centre, Q/SR/170/29-30.

²⁷³ Information. 4 May 1687, (4 May 1687), Somerset Heritage Centre, Q/SR/170/29-30.

²⁷⁴ Anna K. Clark, “Rape or Seduction?” A controversy over Sexual Violence in the Nineteenth Century, in *The Sexual Dynamics of History: Men’s Power, Women’s Resistance*, edited by The London Feminist History Group, (New South Wales, Pluto Press, 1983), 23; Bashar, “Rape in England between 1500 and 1700,” 41-42. Also see Shorter, “On Writing the History of Rape,” and Carter, *Rape in Medieval England*.

The final network category were women who drew upon their extended community to substantiate their claims. These cases include testimony from male relations (husbands), as well as friends and peers of the woman's male relations, and distinctly they also include testimony of female relations and peers in the community. The inclusion of women in substantiating claims of attempted rape begins to highlight networks of solidarity. For example, in the case of Catrine Gad, who was captured by William Moreligh with the intent to rape her, her sister, Ann Gad, substantiated Catrine's claims.²⁷⁵ Ann's testimony is longer and more detailed than her sister Catrine's. This highlights Ann's support of her sister's case by ensuring that all the necessary requirements, including disclosing to a witness, are captured in the records. This would have supported Catrine's claims that an attempted sexual assault occurred. Similarly, in the attempted rape of Agnis Roe, her friend Isabell Mar of Yeatton confirmed to the court that Agnis immediately disclosed her assault to her.²⁷⁶ Isabell's ability to articulate the immediate disclosure of the assault is significant as it affirms to the court one of the many requirements of rape allegations, which is immediate disclosure. By affirming Agnis' assault, she could provide and support the non-physical evidence required by the law. In both examples, female testimony is included amongst those of male relations and witnesses. They never stand alone. Their voices, however, are nevertheless significant as they highlight the ways in which women remained central in the proving of the crime of rape, despite most authority being held by men. Catrine and Isabell supported their community members by articulating important evidentiary factors that supported the determination that a crime did indeed take place. Thus, the presence of female voices in the records demonstrates that even in circumstances under which a woman's honour is questioned through her attempted sexual violation, women and men came to her defence.

²⁷⁵ Information. 4-6 Oct 1651, (4-6 October 1651), Somerset Heritage Centre, Q/SR/83/61-64.

²⁷⁶ Informations. 18 May 1630, (18 May 1630), Somerset Heritage Centre, Q/SR/62/55-56.

Access to community support differentiated women accused of bastardy as opposed to women who accused men of attempted sexual assault. As has been noted, women who sought financial support through the court system had no other avenues for support. Not only did they not have access to community support, but the community inherently did not want to support them and their illegitimate child(ren). The inclusion of female and male statements of support is the most significant differentiated factor in understanding how the community viewed and responded to the women at the center of these cases. To further parse down why women received support in attempted sexual assault versus cases of illegitimacy was inherently connected to the perception of their honour. Women who presented attempted sexual assault cases were firmly rooted in their community. They were married, had relations (sisters, aunts, cousins, and neighbours) in the community who were willing to speak for them, and some were mothers. The court positioned them as honourable members of society. While conception outside of marriage was not unheard of, a mother's inability to secure resources from relations in the community to support their child would result in a depreciation of her honour in the community. The exacerbation of this tension was most present when examining the difference in discourse of cases of attempted sexual assault and cases of illegitimacy that involved rape. The perception of consent, moreover, is an important factor when considering the ways in which women experienced violence in the court systems.

Consent and the Law

Those who could provide consent to sexually access female bodies changed significantly in the early modern period. While the law began to provide greater agency and authority to female consent in instances of rape, the changing definitions caused inconsistent application of the law

across England.²⁷⁷ Considering that prosecution rates of sexual assault were low in the most ideal circumstances, the changes indicative of the early modern period, which changed the legal definition of rape from a crime of property to a crime of the person, resulted in confusion and an even lower rate of prosecution.²⁷⁸ Despite changes to legal definitions of rape, recent scholarship by Helen Barker suggests that the recodification of rape law cannot fully account for the low prosecution rate.²⁷⁹ These legal changes are important to understanding the overall rate of prosecution; however, they must also be considered with the social and gender pressures that prevent women from reporting this crime.²⁸⁰ A woman's ability or lack thereof to consent to sexual contact was a significant factor when considering the prosecution of rape in early modern Somerset.

Rape had previously been understood as a crime of property, meaning that the male relative of the woman who experienced rape was the individual who failed to consent to the sexual contact. Changes to rape statutes in England between the fifteenth and sixteenth century, shifted the legal definition to define rape a crime of the person, rather than property.²⁸¹ In practice, this meant that the woman was the one who did not provide consent to access her body. While in theory this meant that women could exert greater agency in court, as their perception of the sexual behaviour was imperative to gaining conviction, in practice this was not the case. The court placed the burden of proof on whether women consented to the sexual act rather than if the crime of rape occurred. For example, “[t]o ravish a woman where she doth neither consent before nor after, or to ravish any woman with force, though she do consent after, is a felony.”²⁸²

²⁷⁷ Bashar, “Rape in England between 1550-1700,” 11.

²⁷⁸ Bashar, “Rape in England between 1550-1700,” 11.

²⁷⁹ Helen Barker, *Rape in Early Modern England: Law, History and Criticism* (London: Palgrave Macmillan, 2021), 2.

²⁸⁰ Barker, *Rape in Early Modern England*, 5.

²⁸¹ Barker, *Rape in Early Modern England*, 76-78.

²⁸² Dalton, *The Country Justice*, 523.

As a result, women were responsible for morally and physically defending themselves against interrogation about whether they clearly and explicitly did not provide consent.²⁸³ The emphasis placed on consent in the early modern court room created a complicated social and legal environment which women had to navigate to receive justice for the violation of their bodies. In cases of rape, moreover, the person on trial was not the man who perpetrated the crime, but the woman. She had the responsibility of defending her character and her behaviour.

Historical writings have had a hard time distinguishing between lived experience and legal practices. John Marshall Carter's *Rape in Medieval England* aptly illustrates this tension.²⁸⁴ Despite focusing on medieval England, Carter demonstrates the challenges of research taking legal records at their face value. In his analysis, which historians have long identified as simplistic and not reflective of the broader crime of rape, he argues that rape was a crime that occurred randomly, was perpetrated by strangers, and only occurred amongst the peasant classes.²⁸⁵ While subsequent studies articulated that this was categorically incorrect, Carter's assessment is a cautionary tale about the veracity of rape criminal proceedings in demonstrating social understandings of rape.²⁸⁶ The surviving legal records in cases of rape highlight the circumstances required to achieve conviction. Courts were more likely to find a perpetrator guilty if they were unknown to the community in which the crime took place, and there was no prior relationship with the survivor of the attack. Peasants were mostly in these records as complainants because they relied on the court system to administer justice. Higher social classes had other mechanisms of justice that they could draw upon. Rape cases that involved conflicting

²⁸³ Barker, *Rape in Early Modern England*, 52.

²⁸⁴ Carter, *Rape in Medieval England*.

²⁸⁵ Carter, *Rape in Medieval England*, 154-155.

²⁸⁶ James Given, Review of *Rape in Medieval England: An Historical and Sociological Study* by John Marshall Carter, *Speculum*, 61:3(Jul.,1986), 633-635 AND Guido Ruggiero, Review of *Rape in Medieval England: An Historical and Sociological Study* by John Marshall Carter, 17:3 (Autumn, 1985), 315-316.

testimony, colloquially known today as “he said she said” cases, were a challenge to prosecute because courts found it challenging to determine consent.

Consent was the underlying issue in the prosecution of rape throughout this period. The inability for the legal system to meaningfully articulate a definition of consent that accounted for the legal, biological, and female bodily experience resulted in the further marginalization and suffering of women seeking assistance from this network. This, therefore, constitutes a form of gender-based violence. While both the legal and biological definitions of consent have been studied in all rape literature, less attention has been paid to the ways in which women define consent and access to their bodies. The underlying assumption of many is that the legal and biological definitions informed female experience. This, moreover, frames the importance of examining other criminal proceedings in which consent is not a mitigating factor in prosecution. Bastardy cases are a strong example of cases in which consent is irrelevant to determining financial culpability; however, women did describe their sexual encounters as lacking consent. A comparative linguistic analysis of both attempted sexual assault and bastardy cases underscores the similarities in how women defined consent and access to their bodies.

Consent in the Quarter Sessions

Cases of attempted rape provide the most direct access to explore how women defined consent and access to their bodies. Since rape was and is predicated on a lack of bodily consent, women had to highlight in court that they did not provide access. Women were expected to clearly articulate their failure to consent. Michael Dalton, author of *The Country Justice*, stated that “[a] woman that is ravished ought presently to level open hue and cry, or to complain thereof presently to some credible persons, as it seemeth...that the complaint must be made within forty

days or else the woman may not be heard.²⁸⁷ Moreover, women had to “cry out for help”, run to a witness for assistance (i.e., immediately disclose their assault), and have physical evidence of an assault (e.g., ripped clothing and/or physical wounds).²⁸⁸ The penetration of the female body became less of a concern for legal authorities; rather, they were increasingly concerned with *visible* physical proof of assault.²⁸⁹ As a result, reputation, respectability, and honour played a significant role in determining consent for women.²⁹⁰ Attempted sexual assault, moreover, provides a strong avenue to study discursive similarities between how women constructed consent in their testimony in cases of illegitimacy. Since penetration played a secondary role in the prosecution of rape, consent would look similar in instances in which penetration did and did not occur. To best understand the relationship between rape, consent, and illegitimacy, we must first explore the patterns of consent discourse in attempted sexual assault cases.

Susan Nowell articulated her lack of consent by *crying out*. On the 20th of August in the year 1610, ten-year-old Susan was with her five-year-old sister in Cayfeds Field when they were approached by William Shark. He enticed Susan with knowledge of a wooded close where she might collect more sticks for her household. Once she was removed to a secluded location “the said William Shark layed [Susan] down upon her and thrusting his privye member between her legs in short that she cried out; yet he did...not enter her bodie.”²⁹¹ Susan then received a small sum of money, six pence, to not report the crime and was told that “if she did crie, he would cut off her heade with a butchers cleaver...”²⁹² When asked about the incident in court, William was adamant that he had no knowledge of Susan’s chastity. In fact, he, in a testimony of 216 words,

²⁸⁷ Dalton, *The Country Justice*, 523.

²⁸⁸ Gowing, *Common Bodies*, 92.

²⁸⁹ Gowing, *Common Bodies*, 92.

²⁹⁰ Gowing, *Common Bodies*, 92.

²⁹¹ Examination. 22 Aug 1610, (22 August 1610), Somerset Heritage Centre, Q/SR/9/7.

²⁹² Examination. 22 Aug 1610, (22 August 1610), Somerset Heritage Centre, Q/SR/9/7.

he only uttered 28 in reference to the alleged assault. He was most concerned with explaining to the court that he had been travelling from Frome Selwood to an animal auction.

The case of Susan Nowell highlights the importance placed on the *cry* of female victims. In her testimony, despite being young, there is careful attention paid to ensuring the court knew that she cried out. While it is unclear if anyone was witness to these cries, especially given that William isolated her from others, she stated that she cried, nonetheless. This provision was likely provided because of the young age of the victim, as child sexual assault was particularly egregious.²⁹³ As a result, the burden of proof for Susan may have been different than that of an adult female victim. Her emphasis on stressing that she had cried out articulates the knowledge of female victims that they must actively and vocally share their lack of consent to anyone that might hear. William's threat further highlights the importance placed on the cry. His decision to threaten the child for crying out for assistance highlights both that he wanted to keep her isolated from others, but also that the vocalized cry would be problematic if the case ever went to court. While the result of this case is unknown, the emphasis from Susan about her cry for assistance highlights that she attempted to articulate her consent within the known legal parameters.

²⁹³ The egregious nature of child sexual assault was demonstrated in *Child Sexual Abuse in Victorian England* which examines the ways in which working-class populations of London conceptualized cases of child rape. Despite reporting public outrage within the London press, the conviction rates for assailants remained exceptionally low (p. 8, 21). Since the definition of what constituted childhood was predicated on the knowledge and experience of each child, juries were tasked with determining how much children knew about sex to conclude if they were able to consent, even if they were below the average consenting age of roughly fourteen years old (p. 7). Juries were also troubled by the notion that a normal, respectable man – who held a job and familial status – would want to molest a child (p. 8). The combined skeptics of both the accused and the complainant thus resulted in very few convictions, even if the frequency of child rape cases were higher than rape of adult or teenaged women (p. 21). Sarah Toulalan further examines how juries' perception of the complainant's experience impacted their decision (p. 181). Her findings align with those of Louise A. Jackson in that perceptions of a young girl's sexuality and her knowledge of sex can mitigate previously entrenched notions of age of consent. This monograph, and the monograph by Jackson demonstrate how cultural perceptions of knowledge impact the boundaries of childhood. However, in instances in which children were perceived to be unable to consent the prosecution rate of offenders was more severe than in cases of rape of adult women.

Mary Thorne of Milverton also cried out for assistance in the case of her attempted rape. On the 23rd of April, 1687 she was travelling on the road from Wiveliscombe when she came across three men – James Lorty (alias Southfoot), William Brooke and Thomas Lovell (alias Coger). They attempted to engage her in conversation, despite her reserve, and eventually she parted from them, hoping that the group would continue home as she intended to do herself. However, when they came to a nearby field, Lovell threw her down and Lorty and Brooke covered her mouth to prevent her from crying out. After she recounted this evidence to the court, she stated that “she being senslesse knewe not what they did further and soe they left her...”²⁹⁴ While Mary did not remember what these men did to her body and articulated their desire to silence her cries, supplementary testimony by Richard Washer provided strong evidence of her assault. Richard was travelling to Wiveliscombe on the same road on April 23rd when he heard a woman speaking to some men asking them to go about her business. He then heard her say “if you will not lett me alone I will made an outcry, then presently he heard her cry our O Lord, O Lord twice then he saw two fellows running from the place where he heard the cry...”²⁹⁵ While Mary was unable to testify to her cry, Richard was able to affirm her failure to consent. Both the testimony of Mary and Richard were organized around whether Mary vocalized her lack of consent to the three men in the field. Mary’s testimony does not explicitly confirm her cry, but subsequent testimony by a male witness affirmed and substantiated her lack of consent. This highlights the importance of witnesses in attempted rape proceedings. Despite her best efforts, Mary’s testimony lacked concrete proof of her attempted sexual assault through her (understandable) inability to remember the events following the men isolating and restricting her movement in the field. Due to the physical proof required of the court, it was important that

²⁹⁴ Information. 4 May 1687, (4 May 1687), Somerset Heritage Centre, Q/SR/170/29-30.

²⁹⁵ Information. 4 May 1687, (4 May 1687), Somerset Heritage Centre, Q/SR/170/29-30.

Mary had someone speak on her behalf to clearly articulate the ways in which she vocally resisted her attack. Witnessing and disclosing the events from third and fourth parties was an essential component of testimony filed in the Somerset Quarter Sessions.

On 18 May 1630, many witnesses came forward to disclose an assault that had taken place on Whit Tuesday nine years prior. Agnis Roe, the wife of Thomas Roe, husbandman, had been home alone and pregnant when William Hort came to her door. Agnis told William that her husband was not at home, and he must have no business with her. He then proceeded to explain to her that he could have sexual access to her body without repercussion, as she was already with child and her husband would therefore be none the wiser. He forced her to go upstairs while he went to the front of the house to determine if his brackle were within the house. Alone upstairs, she “locked the stayres foote doore and shut her selfe from him and there sate about two howres...”²⁹⁶ He attempted to come to her again, but once he found that the door was locked, he went about his business and left Agnis’ home. When she finally emerged from her hiding place, she went to Isabell May, the aunt of William, and disclosed his actions to her. This, however, was not the end of Angis’ interactions with William. While this instance occurred nine years in the past, it was brought up as a confirmation of a pattern of behaviour of William against Agnis. In April of 1630, William approached Agnis while she was riding near his house when “hee came unto her and thrust his hands under her coates and sayd the belly is up again...”²⁹⁷ Agnis was able to avoid his advances by riding her horse away from her location and immediately disclosing her assault to her husband.

The testimony of Agnis highlights the importance of witnesses in confirming a woman did not consent to her attack. The case against William Hort included a wide assortment of

²⁹⁶ Informations. 18 May 1630, (18 May 1630), Somerset Heritage Centre, Q/SR/62/55-56.

²⁹⁷ Informations. 18 May 1630, (18 May 1630), Somerset Heritage Centre, Q/SR/62/55-56.

testimony from Thomas Roe (the husband of Agnis), John Taylor, Isabell Mar (the aunt of William), George Taylor, and finally Agnis. All testimony confirmed that Agnis disclosed her assault to her husband and a female confidant, and that Thomas proceeded to disclose details of his wife's assault to other honourable men in the community. The case recounted here affirms the physical criteria of the crime required to pursue legal action. While Thomas and Agnis did not take legal action after the first assault, they followed the necessary protocol of disclosure to ensure that they had witnesses to corroborate their story nine years after the crime took place. Attempted rape was only rape if it was public.

The above examples highlight the public nature of rape allegations. For a rape case to form against a male perpetrator, there had to be significant public confirmation of the crime. In the case of Susan Nowell and Mary Thorne, both cried out and were heard by individuals in the community. While Agnis Roe did not cry out, she immediately disclosed her assault to her husband, in both instances, as well as to a female neighbour. In all three instances, the women in the Quarter Sessions made their assault public and thus made their stories more plausible within the court. While consent in cases of rape was inherently public, the question remains about how to measure consent in instances in which it does not align with legal definitions. In understanding the public nature of consent in rape cases, we can begin to explore how women defined and articulated their consent in less clear legal circumstances. As a result, cases of bastardy provide a mechanism from which we can explore how women describe their failure to consent, even when consent was irrelevant, such as cases in which a child was conceived.

Rape and Illegitimacy

The History of Rape and Illegitimacy

Rape and illegitimacy were mutually exclusive in early modern Europe. This incongruity stems from the notion that true rape cannot lead to pregnancy. A woman who became pregnant during an assault, therefore, could not have been raped. The two-seed theory of conception, which is the foundation for the relationship between conception and rape, dominated judicial definitions of the crime of rape. While there were other conception theories that created space for women to conceive during an assault, the two-seed theory was the most prevalent throughout this period.²⁹⁸ The two-seed theory posited that conception only occurred through the union of a seed from the father *and* the mother. The scientific understanding was that women could not release their seed unless they received pleasure from the sexual act.²⁹⁹ A woman's pleasurable experience during sex was a prerequisite to conception. As a result, when women became pregnant during a sexual assault, their pregnancy inherently disproved their assault. While a woman might refuse consent on an intellectual level, her body might still provide its consent, which was proven in the releasing of the female seed.³⁰⁰

The two-seed definition of conception poses significant challenges when attempting to understand how women defined consent and their relationship to their own bodies. While judicial authorities in the early modern period might define a form of contact as consensual, it is unclear if women held the same definition. Because of the clearer articulation of consent provided by judicial authorities, historians have focused on their definitions and understandings of consent and rape. However, it is imperative to expand our definitions to include female perception. To

²⁹⁸ Gowing, *Common Bodies*, 91-92.

²⁹⁹ Gowing, *Common Bodies*, 91.

³⁰⁰ Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, Science, and Culture*, Cambridge History of Medicine (Cambridge; Cambridge University Press, 1995), 93-94. AND Gowing, *Common Bodies*, 91.

adequately shift the focus of the crime to the female victims, it is important that we trouble and expand the definition of female consent to account for their perception of the crime. Moreover, this can be done by examining consent discourse in cases of bastardy, or illegitimacy.

Issues of consent had significant representation in the 1298 bastardy cases filed in the Somerset Quarter Sessions in the seventeenth century. Of the 1298 cases, 22 clearly articulated the female victim's lack of consent, while 21 others had elements of power imbalances that might complicate a woman's ability to consent. These numbers are comparable to the 23 attempted sexual assault cases discussed at the beginning of the chapter. What makes these 22 bastardy cases significant is that consent was irrelevant in cases of illegitimacy. It is thus surprising that linguistic patterns of rape cases were included in bastardy testimony. These patterns included statements such as "with force" or "against [my] consent". While these 55 cases are a small percentage of the overall bastardy cases, they remain significant, as according to the legal definition no cases should be identifiable in bastardy proceedings. This aligns well with the total number of cases that came before the Quarter Sessions of attempted rape. Through a comparison of both attempted sexual assault and bastardy cases this chapter argues that consent plays a significant role for women who were raped and subsequently became pregnant.

Linguistic Analysis of Rape

Bastardy and attempted sexual assault cases highlight the linguistic congruencies in how women described forced or coerced sexual experiences. Even in instances in which a child was conceived, and thus disproved rape from an early modern perspective, women stated in their testimony that they were forced into these circumstances. Due to the high burden of proof on raped women to prove consent, comparing their testimonies with women unable to file charges for rape highlight how women who conceived through rape viewed their ability to consent. In

both circumstances, attempted sexual assault and certain cases of bastardy follow similar linguistic patterns.

Women who articulated rape in cases of bastardy follow similar linguistic patterns to women examined in cases of attempted sexual assault. Most commonly, women who claimed rape in bastardy examinations use terms such as “with force” or “without my consent” to describe their experiences. For example, Mary Burge of Chidzoy stated that:

[as] she was goeing home to her house in Chedzoy aforesaid from Bridgwater market [she] mett a little out of the said towne in a close two persons unknown to this examinant and there each of them *forced* this examinant and throughinge her on the ground had both of them the carnall knowledge of her body...³⁰¹

The use of the term *force* in Mary’s testimony aligns with cases of attempted sexual assault articulated throughout this chapter. While Mary does not go into the detail of the assault in the same manner as Agnis Roe, for example, who was assaulted twice by William Hort while pregnant, her case holds a similar essence to that of Agnis. Mary’s admission of pregnancy mitigated her ability to describe her story with the same detail as Agnis, but it did not preclude her from stating her failure to consent in her testimony. As we have previously seen in cases of women in service, where it is unclear whether consent was coerced, forced, or given willingly, not all women described their experiences in such terms. The ambiguity of consent in cases of bastardy is further highlighted in the case of Elizabeth Wine, a single woman from Kingsdon. Elizabeth was lured upstairs under the false pretence of meeting her new master, one Mr. Hurd, by John May. Once John isolated Elizabeth in the bedchamber, he “cast her downe one a bedstead there in the chamber and he had then the carnall knowledge of this deponents body

³⁰¹ Bastardy examination. 12 May 1658, (12 May 1658), Somerset Heritage Centre, Q/SR/98/99.

and this deponent would not resist him though striving soe to doe...”.³⁰² Elizabeth did not use terms such as “by force” or “without her consent” to describe her experiences, yet the events she described to the court highlighted that she struggled against her attacker.

The challenge for these women, and the many others recorded in the Quarter Sessions, was that while they did not consent rationally, their subsequent pregnancies meant that, to the court, they consented physically. While this was the stance of the courts at the time, it is worth exploring why women would clearly state their lack of rational consent, when this was inherently irrelevant to the court proceedings. It highlights, moreover, a disconnect between how women understood their ability to consent, and the legal structures that defined it.

The structure and recording process of testimony is important when exploring female constructions of consent in cases of illegitimacy. The documentation employed in this dissertation encompassed the court summation of testimony and events. Procedurally, these records were produced by scribes who listened and recorded the testimony of women filing suit for child support. Importantly, the testimony was not recorded verbatim – the testimony record holds important details and the *essence* of what women reported to the court system. As a result, the testimony served the purposes of the court. The records produced summated the key features of the crime to highlight to subsequent readers how the court determined guilt, innocence, and who should financially upkeep the child. Importantly, the inclusion of phrasing in bastardy trials that indicate a lack of consent on the female victim speaks to the perception of the female experience as dictated in subsequent testimony. As mentioned previously there was no legal requirement to include phrasing that was indicative of a lack of rational consent in cases of bastardy. Whether a woman consented to the sexual act was irrelevant in determining guilt. As a

³⁰² Bastardy examination. 8 Oct 1656, (8 October 1656), Somerset Heritage Centre, Q/SR/95/258.

result, the inclusion of such phrasing in women's testimony in cases of bastardy is significant to determining how women positioned consent in their pregnancies despite being unable to formally call their interactions rape.

There are numerous cases in the Quarter Sessions that use terminology indicative of rape. Many testimonials include phrases such as "by force" or "without my consent" to describe the sexual experiences that led to their pregnancies.³⁰³ While women's rational consent was irrelevant in cases of pregnancy, as pregnancy indicated bodily consent, it is curious that women expressed their lack of rational consent to the court. The insistence on articulating their lack of rational consent raises questions for historians about our understanding of female perceptions of consent. Consent was defined in the context of male legal authorities' perception of the crime, and what constitutes female consent. As a result, constructions of consent are absent in cases like bastardy as pregnancy mitigated the ability for a woman to articulate her failure to consent. The challenge with this perception is that it fails to fully account for the lived experiences of women.

The distinction between rational and bodily consent by male legal authorities placed women in a disadvantaged position. In cases where a child was conceived, they could not formally prosecute for rape or another sexual crime as their bodily consent surpassed their rational consent. The testimony of women in instances of bastardy highlight that their perception of the rational consent was most important in their retelling of their experiences to the court. The decision to articulate the failure to rationally consent to sex in cases of pregnancy highlights the ways in which lower class women understood their bodily autonomy. Despite the narrative

³⁰³ For example: Bastardy examination. 12 May 1658, (12 May 1658), Somerset Heritage Centre, Q/SR/98/99; Bastardy examination. 8 Oct 1656, (8 October 1656), Somerset Heritage Centre, Q/SR/95/258; Bastardy examination. 7 Jan 1626, (7 January 1626), Somerset Heritage Centre, Q/SR/57/48; Bastardy examination. 4 Jan 1638, (4 January 1638), Somerset Heritage Centre, Q/SR/77/11; Bastardy examination. 14 Jan 1653, (14 January 1653), Somerset Heritage Centre, Q/SR/86/56; Bastardy examination. 7 Dec 1652, (7 December 1652), Somerset Heritage Centre, Q/SR/86/157; AND Bastardy examination. 5 Feb 1659, (5 February 1659), Somerset Heritage Centre, Q/SR/98/54.

perpetrated by the court and learned men, women articulated that their rational consent mattered in circumstances in which they became pregnant. Since many women framed their experiences in terminology that indicated a lack of consent, the failure of the court to adequately acknowledge their lived experience underscores the institutionalized gender-based violence leveled at women through the judicial system. The inability for the judicial system to adequately incorporate female perceptions and articulation of consent resulted in the re-victimization of women, and thus resulted in systemic gender-based violence.

The formulation of consent in Somerset bastardy cases challenges and expands how historians articulated and historicized female consent in the early modern period. Definitions of rape and who could experience it were predicated on those outlined by the court. While this presented an important facet of consent in Somerset, it does not adequately account for the lived experience of women. The comparison of testimony between attempted sexual assault victims and bastardy highlights that there was significant overlap in how women defined their experiences. Despite pregnancy invalidating rational consent, women would identify their lack of rational consent to the court when attempting to obtain support for their illegitimate child that resulted from the encounter. This indicates that women in both circumstances experienced the assault in similar terms, despite the court having two distinct definitions. In comparing the testimony of female victims, criminal codes, and community testimony it is evident that consent was a contentious issue in early modern Somerset. The failure of the court to acknowledge the disconnect between bodily autonomy, and legal and scientific thought constitutes a form of institutionalized violence against women.

Conclusion

It is challenging to defining gender-based violence in the early modern period. As posited throughout this dissertation, gender-based violence resulted from behaviour and structures that further marginalized women in their communities. In seventeenth-century Somerset, courts enacted gender-based violence through their failure to account for and acknowledge the ways in which women defined consent in favour of intellectualizations of the female body and, more specifically, conception. An examination of attempted rape cases in the seventeenth century highlights the ways in which women related to their bodies. These cases demonstrate that women who came to the courts had a strong community network of men, and sometimes women, to corroborate their stories to the Justices of the Peace. They demonstrated their quick disclosure, their cries for assistance, and that, most importantly, their male relatives believed their stories. They also had the added benefit that their experiences did not result in pregnancy.

Pregnancy invalidated female stories of assault, as if a women became pregnant, she physically consented to the sexual act. The two-seed theory of consent, which informed judicial interpretations of rape, made claiming rape and relief from the parish impossible. However, a linguistic analysis of illegitimacy cases in Somerset demonstrates that women defined their sexual experiences with these men in similar terms to women who described their attempted sexual assault to the courts. While some women may have defined consent and conception within the intellectual framework of the two-seed theory of conception, the inclusion of rape terminology, such as “without my consent” and “with force” reflects that women did not conform exclusively to male thoughts about consent. As a result, women understood access to their bodies outside of the legal definitions of consent and the inability of the court to incorporate

their lived experience into the prosecution and definition of rape constitutes a form of institutionalized gender-based violence.

The failure to acknowledge female experiences in the conception of their children, the court systems of Somerset re-victimized women by positioning their cases as illegitimacy cases – thus, creating a narrative of being a drain on the community and parish resources. This positionality further marginalized women by placing them in direct and perpetuated contact with their rapists to ensure that their community did not further marginalize them by the necessitation of parish financial support for the upkeep of their children if the father could or would not pay. Attempted sexual assault, rape, and illegitimacy reflect the systemic marginalization and re-victimization of women within early modern Somerset legal systems.

To return to the story of Johan Pore, who conceived a child with John Game in 1636, she clearly stated to the court a level of violence not commonly described in illegitimacy cases. Johan was lured upstairs under false pretenses, shut into a room with this man, and he “threw her downe upon the stairs.”³⁰⁴ Her case reflects the essence of many attempted sexual assault cases. What distinguished her from other women living in Crewkerne in 1636, was that she had no person to support her financially, and that she conceived a child. Despite articulating a failure to consent to this sexual act, Johan was unable to access justice and proper support following the conception of her child. The blame remained on her for becoming a financial burden to the parish. As we consider the judicial functionality in these types of cases, it is evident that the court functioned to support male entitlement to their own financial security and investments in female bodies.

³⁰⁴ Bastardy Examination. 4 Jan 1638, (4 January 1638), Somerset Heritage Centre, Q/SR/77/11.

Gullible and Conniving Women?: Illegitimacy, Power, and Women in Service

Introduction

Mary, the wife of Robert Beefin of Carrington, came before Sir Ferdinando Gorges in the winter of 1636 to recount the details of her pregnancy by Walter Durborrowe. Mary was contracted to serve Amy Durborrowe for a term of one year. Unfortunately, before her contract concluded, Amy died and “Walter Durborrowe her said [master] sought all possible meanes to have his will and pleasure of this examinant, but she [refused]...”³⁰⁵ She told him “that she would never yield to him in that kind, [but] he...persisted with divers oaths that if she...would give consent and that if afterward thereby hapned to prove with child, that hee...would marry her.”³⁰⁶ He continued to pursue her until she acquiesced. When Mary found out she was with child, Walter said that “hee was not minded to marry and with this examinant of all women living...was not good enough for him...”³⁰⁷

Mary’s story is unfortunately far from rare across in the Somerset Quarter Sessions. Many women in service were offered the prospect of marital security to ensure their consent to sexual advances. As Walter Durborrowe had pointed out, however, most of these women were not in the position to marry their male partners. Even in circumstances where there was not a significant class difference, the women who relied on an appeal to the Quarter Sessions for financial support were not ideal marriage partners.

The marginalization of women is challenging to measure throughout the seventeenth century. While cases such as Mary’s highlight patterns of coercion and pressure, historians have

³⁰⁵ Bastardy examination. 5 Jan 1637, (5 January 1637), Somerset Heritage Centre, Q/SR/76/39.

³⁰⁶ Bastardy examination. 5 Jan 1637, (5 January 1637), Somerset Heritage Centre, Q/SR/76/39.

³⁰⁷ Bastardy examination. 5 Jan 1637, (5 January 1637), Somerset Heritage Centre, Q/SR/76/39.

been unable to establish the long-term consequences of these actions. Based on the written testimony of female servants embroiled in bastardy cases, scholars such as Bernard Capp and R.C. Richardson position these women as dichotomous – early modern women were either conniving opportunists or passive victims.³⁰⁸ The application of intersectionality to historical discourse, encourages us to re-interpret the actions of these women to explore the various pressures that contributed to their decision making. For women in service, there were class pressures that made promises of marriage impossible to bring to fruition. As a result, these relationships were more likely coercive than genuine. This, in combination with other coercive and violent tactics meant to control female behaviour, challenges the construction of male-defined rationale consent. It argues that despite the articulation of various coercive measures, including marriage proposals, threats of violence, and long-term propositioning, as well as the precarity of service contracts, women had few options to rationally deny these sexual advances.

This chapter does so by exploring illegitimate pregnancy amongst women in service. Through an analysis of 77 cases, drawn from the broader sample of 338 bastardy cases across the Somerset Quarter Sessions, it will demonstrate the precarious nature of service for women within the communities they served. It also highlights the need to further expand and nuance the definition of rationale consent in the early modern period to better account for the experiences of women workers. The case studies that are examined in this chapter, moreover, show us that we need to re-define the scope of rationale consent to better account for the experiences of women in service. The inability for the Quarter Sessions to recognize and provide recourse for the behaviour of men in these circumstances highlights the institutionalized biases about female consent and uncontrollable female sexuality. As a result, women were viewed as troublemakers,

³⁰⁸ See Capp, “The Double Standard Revisited,”; AND R. C. Richardson, *Household Servants in Early Modern England* (Manchester: University Press, 2010), 168.

rather than the men whose sense of entitlement created the circumstances in which these women found themselves. The system thus created an environment in which women were positioned as burdens to community resources. This led to their marginalization in the community and represents a pattern of institutionalized gender-based violence.

Our definition of consent in early modern Somerset needs to be further complicated to address the challenges faced by women in service. My third chapter demonstrated that women predominantly emphasized their rational consent when discussing their experiences (rather than rational and physical as defined by the contemporary intellectual elite). This chapter argues for an additional expansion of the definition of consent to account for the lived experiences of women in service who had even less autonomy over their bodies than other women. While those presiding over the Quarter Sessions remained firm in their position that a women could provide physical consent without rational consent, the linguistic patterns consistently demonstrate that women did not hold the same belief. Women continued to articulate this belief, though less explicitly, in cases of illegitimate conception while employed in service. To better account for the distinction between women who articulated rape, and those who articulated apathetic or coerced consent, this chapter will explore these cases on a spectrum of sexual abuses of power that relate to sexual and gender-based violence.

This chapter begins with a brief history of service work in early modern England. This provides the context for the lived reality and precarity of women contracted in service. It then explores the challenges of using consent as the sole means for understanding sexual crimes. Next, it shifts into a close-reading analysis of the 77 cases that involve women in service. This chapter employs text and linguistic analysis to identify discursive patterns around marriage proposals and coercive behaviour. Throughout this chapter we call for an expanded definition of

rationale consent to better account for the plethora of lived experiences of women in service. From this analysis, as well as the expanded definition, it argues that women were unable to rationally consent to the advances of men present in their places of employment. Through an expansion of this definition, it is evident that women continued to be marginalized by the Quarter Session institutional body as it failed to adequately address the variety of factors that ostracized women in their places of employment.

History of Women in Service

Engagement in service positions was a common occurrence for both men and women in early modern England. Taking on a service position provided young men and women with the opportunities to acquire the necessary physical goods to set up independent households later in life.³⁰⁹ The extent of participation of young men and women in husbandry servitude made it an essential factor in the health of the English economy.³¹⁰ Families contracted husbandry servants for annual tenancies in which they resided on the property and were available to their employers at all times of day.³¹¹ In England, the *Act of Artificers* (1563) ensured that agricultural contracts were for a one year duration, with a three month notice period.³¹² As a result of the nature of their employment contracts, as well as the tenancies of women in agrarian service, these servants developed close relationships with the families in which they serviced.

³⁰⁹ Marjorie K. McIntosh, "Servants and the Household Unit in an Elizabethan English Community," *Journal of Family History* 9, no. 1 (March 1, 1984): 4, <https://doi.org/10.1177/036319908400900101>. AND Ann Kussmaul, *Servants in Husbandry in Early Modern England*, Interdisciplinary Perspectives on Modern History (Cambridge: University Press, 2008), 4.

³¹⁰ McIntosh, "Servants and the Household Unit in an Elizabethan English Community," 4.

³¹¹ Kussmaul, *Servants in Husbandry in Early Modern England*, 4.

³¹² Amanda Flather, "Gender, Space, and Place: The Experience of Service in the Early Modern English Household c. 1580–1720," *Home Cultures* 8, no. 2 (July 2011): 172-173, <https://doi.org/10.2752/175174211X12961586699766>.

Female agrarian service workers had significant freedom of movement within the communities they serviced. They worked within and away from the core patriarchal household structure.³¹³ Compared to service positions in wealthier households, agrarian service workers aided in all facilities that contributed to the day-to-day functionality of the farm.³¹⁴ The flexibility of these workers resulted in a heightened sense of agency within the community to speak against male members in court.³¹⁵ Through their position in their household they were able to access positions and spaces that, as unmarried women, would be otherwise unavailable to them. Charmian Mansell argues that this resulted in an increased sense of power and agency for women within service.³¹⁶ The challenge of such an assertion is that while it is possible that women felt power and agency over community members, it cannot remain isolated to other factors that impacted female employment. For example, it is important to consider how this agency intersected with the vulnerability of having access to spaces within and beyond the home. In rural communities, women often performed tasks within their master's private chambers.³¹⁷ The performance of tasks in isolated locations for their male employers placed women in exposed positions for sexual advances and violence. Isolation would have made it impossible to meet the requirements needed to demonstrate unwanted sexual advances and violence.

Sleeping arrangements of servants increased their vulnerability to violence. Sleeping spaces were temporary and located across the household grounds.³¹⁸ Even in circumstances where servants had access to a room, it would not necessarily deter their master or mistress from

³¹³ Charmian Mansell, "Beyond the Home: Space and Agency in the Experiences of Female Service in Early Modern England," *Gender & History* 33, no. 1 (2021): 24, <https://doi.org/10.1111/1468-0424.12494>.

³¹⁴ Mansell, "Beyond the Home," 32.

³¹⁵ Mansell, "Beyond the Home," 25.

³¹⁶ Mansell, "Beyond the Home," 25.

³¹⁷ Mansell, "Beyond the Home," 31.

³¹⁸ Flather, "Gender, Space, and Place," 180-181.

entry, as they owned the space.³¹⁹ However, because the seventeenth century began to see an attempt to specialize labour in the household, there were attempts to separate the sleeping arrangements of servants from their employers.³²⁰ For employers of lower economic means, which was the case with most agrarian service positions, the separation of genders became untenable due to lack of space and beds.³²¹ This means that both men and women experienced little to no privacy during their tenure of employment.

An overall lack of privacy created further vulnerability for female service workers. The proximity to other males, both masters and fellow servants, in the household left them particularly susceptible to violence. While having access to a variety of different spaces may have given some women a sense of agency to speak their mind about male community members, it does not account for the intersections of male entitlement impacting the overall agency of women. This was further complicated by a servant's legal position as dependent to their employer during the duration of their contract.

The recording of servants in household registers aligned with similar entries for children and other dependents. Despite how they were recorded in household registers, women could have reached sexual maturity before engaging in servant contracts.³²² Since women were listed as dependents, even though they had reached sexual maturity, it meant that female servants were unmarried, and their care shifted from their familial household to their employer.³²³ According to Peter Laslett, female servants occupied a legal grey area in society because they had reached sexual maturation, which shifted their status away from child and consequently the protection of

³¹⁹ Flather, "Gender, Space, and Place," 181.

³²⁰ Flather, "Gender, Space, and Place," 173.

³²¹ Flather, "Gender, Space, and Place," 183.

³²² Laslett, *Family Life and Illicit Love in Earlier Generation*, 163.

³²³ Pippa Madder, "'In my own house': The Troubled Connections between Servant Marriages, Late Medieval Household Communities and Early Modern Historiography," in *Women, Identities and Communities in Early Modern Europe*, edited by Stephanie Tarbin and Susan Broomhall, (Ashgate: Burlington VT, 2008), 46-47.

the father, but were yet to be married, which would have established legal protection through their husband.³²⁴

Analyses of the Somerset Quarter Sessions show that women, in fact, did have significant legal capital in cases of bastardy. They were far from lacking legal protection and rights, women consistently spoke for themselves in court. They presented testimony in front of several high ranked members of society to gather resources for themselves and their illegitimate child. While legal protection may have been more ideal in a circumstance in which her husband or father could speak on her behalf, female service workers were still able to navigate the court system. The disconnect between status and lived experience of women in the court system created a false dichotomy of behaviour in terms of position in society. The ability for women to seemingly overcome their status as dependents in a household gives a false or sometimes over asserted sense of agency that does not adequately account for the broader institutional and social factors that limit their behaviour. Thus, before beginning an analysis of the relationship between women in service, illegitimacy, agency, and power, it is important to interrogate how historians have situated a woman's ability to navigate the court system.

Women who navigate the court system to acquire resources and recourse against their employers are often positioned as passive victims or conniving opportunists. Bernard Capp's "The Double Standard Revisited," for example, argues that men had significant anxiety over their reputation and that women actively leveraged these concerns in the London court system to recourse past wrongs.³²⁵ Linguistically, this type of argument poses a significant challenge for historians working to deconstruct the nuances of female experience in service. For example, when discussing women who named different men as the father of her base child, Capp argues

³²⁴ Laslett, *Family Life and Illicit Love in Earlier Generations*, 163.

³²⁵ Capp, "The Double Standard Revisited," 71.

that these women “[knew] that the real father was unable to marry or provide for them, set out quite *shamelessly* to trap some other man into marriage.”³²⁶ The use of the term shame is significant in this discourse as it highlights that Capp sought to pass judgement on women whose behaviour could not be easily interpreted in the court system. It may have been easier to understand their behaviour as conniving and opportunistic, rather than exploring other more complex factors that might lead a woman to name another man as the putative father. This type of analysis, which focuses on male perspectives, fails to account for the inherent power imbalance between women and men and how this imbalance was performed in court. As a result, it does not adequately account for the social and economic severity of finding oneself unable to acquire support. While some women may have named a different man as the putative father with the intention of trapping them into marriage, many could have feared the real father and the consequences of naming him in a court of law. Women did not leverage their understanding of male honour, rather they were victims of the preservation of male honour in the court system.

The assertion of women as either passive victims or opportunistic strategists is found elsewhere in the literature. R.C. Richardson’s *Household Servants in Early Modern England* positioned examples of female servant marriages, particularly those outlined in G.R. Quaife’s work, as being either “*gullible*” and “*ambitious*”.³²⁷ This provides insights into how these types of cases were read in the late 1990s and early 2000s. In placing women into a dichotomous position as either gullible or ambitious, Richardson fails to account for the assortment of factors that impact women in service. While he does identify the predatory nature of employer advances towards servants, his description and interpretation of Quaife’s analysis highlights the false dichotomy of female behaviour in the court. While some women were certainly gullible or

³²⁶ Capp, “The Double Standard Revisited,” 76.

³²⁷ Richardson, *Household Servants in Early Modern England*, 168.

conniving, there is a necessity to expand the interpretation of women in court to better understand the pressures of honour, survival, and violence inherent in many of the cases of illegitimacy in the Somerset Sessions. For example, these types of analyses and false dichotomies raise questions about how women might feasibly consent to the advances of their employers when they are dependents. Assertions of violent behaviour may also be more challenging to articulate in the Somerset Sessions, as women are both pregnant and limited by the power exerted by their (past) employers. Moreover, as a scholar writing in the post #metoo movement, it is imperative to challenge discourses and dichotomies attached to women in service to explore the complexity of the institutions in which they functioned.

Female servants occupied a precarious position within the household. Their physical closeness to the family and length of their tenancies may have resulted in a familial comfort with their employers. However, servants were dependents of their masters.³²⁸ This meant that a master had control over the contract of employment and could dismiss a servant without fear of legal recourse.³²⁹ The power dynamics inherent in these spaces created significant tension for female servants as they occupied a space of close relation to the household, while having to contend with unstable employment conditions.

Flexible space allocations and lack of privacy left women particularly vulnerable to sexual advances of both their master and fellow male servants. Throughout the seventeenth century, approximately 25% of the bastardy cases that came before the Somerset session dealt with women who became pregnant while engaged in service. The relative frequency of women in service in the Sessions highlights a range of lived experiences. On the one hand, women might

³²⁸ Merry E. Wiesner-Hanks, *Women and Gender in Early Modern Europe*, fourth edition., New Approaches to European History (Cambridge, United Kingdom; Cambridge University Press, 2019), 127.

³²⁹ Wiesner-Hanks, *Women and Gender in Early Modern Europe*, 127.

have been actively attempting to form courtship relationships with other servants in the household. While service tended to precede marriage in the early modern period, many women and men might have sought companionship with the intention of transitioning out of service into a nuclear household. The high representation of women in service positions, however, more accurately reflects the lack of resources available to either leave service to set up an independent household or provide monetary support for the illegitimate child. Women in service were in a particularly vulnerable position. Even in circumstances in which sexual advances were welcomed, the inability for servants to set up independent households meant that they were unable to secure a proposal of marriage. The inability of women to secure financial support from the punitive father outside of the Sessions reflects their marginalization, and consequently is a form of gender-based violence, in the broader community. Nevertheless, despite the range of precarity experienced in service, women continued to develop a variety of interpersonal relationships with their employers and other servants that in some cases led to pre-marital pregnancy.

Consent, Illegitimacy, and Service

One of the most significant challenges of assessing the scope of gender-based violence of women in service is determining whether women properly consented to sexual advances while employed or if they could withhold consent if they wished to do so. As opposed to the 45 cases explored in chapter three, women did not state their consent as openly or explicitly in the Sessions. This makes it challenging to determine whether women positioned their bodily autonomy in similar terms of women who claimed rape, or if other factors influenced their sense of self. Further complicating these trends is the juvenile ages of women in employment. On average, women

engaged in service contracts were between 15 and 25 years of age.³³⁰ As young adults, many women would not have had the life experience or acumen to identify disingenuous advances compared to women who would have been older and remained connected to their extended family and peer support. As a result, it is important to consider the circumstances in which women consented to sexual advances and if these circumstances would have made it impossible or improbable for a woman to withhold consent. Cases of illegitimacy in service, moreover, occupy the intersection of themes discussed in previous chapters. They contain similarities in spatial and physical intimidation to cases of rape, while omitting any linguistic patterns to articulate a lack of consent to the session judges. Service exacerbates tensions of female experiences in highlighting to a court system how their circumstances while employed marginalized them and created an environment in which they had no autonomy to refuse or avoid sexual advances from fellow workers, or from their employer.

Women's experiences in service fall on a continuum of sexual abuses of power. A sexual abuse of power is "a wrongdoer's culpable exploitation of dominance, influence, and control over a person in a subordinate position."³³¹ By articulating rape as a more complex experience than non-consensual sex, we extend our definition to explore rape as "an act of sexual abuse of power, dominance, and control."³³² This shift is particularly important when studying the sexual advances of women in service. The early modern perception of rape excludes the lived experiences of many women. If women were unable to create a case that perfectly fit into the definition of criminally culpable rape, then their rape did not occur. There has also been a

³³⁰ Charmian Mansell, "The Variety of Women's Experiences as Servants in England (1548–1649): Evidence from Church Court Depositions," *Continuity and Change* 33, no. 3 (2018): 315. <https://doi.org/10.1017/S0268416018000267>.

³³¹ Michal Buchhandler-Raphael, "The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power," *Michigan Journal of Gender & Law* 18, no. 1 (2011): 199-200.

³³² Buchhandler-Raphael, "The Failure of Consent," 200.

mistake in assuming that the criminal definition of rape extended to social constructions of rape, and that all women defined their experiences by these restrictive terms. This has limited our historical analysis of the cultural foundations and articulations of rape outside of criminal culpability. While sexual abuses of power were introduced to modern (21st century) discussions of rape legislation and prosecution, the definition holds weight historically. By shifting our focus away from debating the nuances of rape as being a matter of consent only and focusing on abuses of power that create the circumstances for rape, we can better account for the diverse experiences of early modern women. This provides structure to examine the experiences of women who highlight abuses of power, without employing terminology of consent. In reconstructing their experiences within a framework of sexual abuse of power, we can more accurately account for the breadth of stories women presented in the Quarter Sessions. The broadening of this definition also helps to access the extent of violence, particularly sexual violence, women were susceptible too while under the employ of another.

Expanding the Definition of Rape

Sex consistently occurred outside of marriage. Whether the sexual contact was consensual, coerced, or forced, however, is the challenge that faces historians of violence against women. Early work by Edward Shorter argued that “there was, in this [early modern European] world we have lost, almost no sex outside of marriage save forcible sex.”³³³ This work took issue with the arguments of Susan Brownmiller, who posited that all rape is political in nature.³³⁴ He argues that rape reflects sexual frustration of men in the early modern period, rather than attempts to

³³³ Shorter, “On Writing the History of Rape,” 475.

³³⁴ Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Bantam Books, 1976); Shorter, “On Writing the History of Rape,” 472.

depreciate the property of other men.³³⁵ Based on Shorter's assessment, all cases explored in this dissertation are inherently rape because they occurred outside of marriage. The problem both the work of both Brownmiller and Shorter is that they construct their arguments in dichotomies: rape is political, sex outside of marriage is rape, and that rape is the result of sexual frustration. These arguments construct rape and sex as being a concrete concept with a singular motivation when all can be simultaneously true and false.

Yet the cases that survive in the Somerset session illustrate the complexity of sex, illegitimacy, and sexual violence. The cases underscore that women had a wide assortment of motivations for consenting to sex, as well as the perception men had of coming before the Sessions on a charge of bastardy. As scholars we must never remove the possibility that women enthusiastically consented to sex to secure a promise of marriage. If we deny this possibility, then we deny agency. At the same time, we cannot underestimate the power the patriarchy exerted over these women who may have reluctantly and apathetically consented to sex when they had few options of refusal. While both Brownmiller and Shorter were influential in beginning conversations about sex, marriage, and consent in the early modern period, it is important to continue to complicate and expand our understanding of sex to account for the lived experiences of women.

The similarities in modern rape legislation illustrates how little our perceptions of consent and rape have changed since the sixteenth century. Sociological and legal discourse provide structural frameworks to explore the connection between rape, power, and consent. In shifting towards defining rape as an act of inequality allows for a more nuanced framework from which

³³⁵ Shorter, "On Writing the History of Rape," 472-473.

to define and prosecute rape.³³⁶ Mackinnon argues that “by fracturing consent into a dozen forms with as many modifiers and force into multiple guises and levels, [and] seldom [assesses] these elements themselves in sex equality terms,” we cannot adequately prosecute rape.³³⁷ This shift towards equity discourse and rape better contextualizes how we, as historians, might understand the female experience in circumstances not traditionally aligned with legal definitions. This is especially relevant for women in service, as many individuals could impact her employment contract. In Mackinnon’s examination of rape statutes in the United States, rape laws include numerous early modern English linguistic patterns, including “having carnal knowledge of her body”, “with force”, and “against her will”.³³⁸ The underlying perceptions that drove prosecution in the premodern era have yet to be fully dissected in the modern era. The overall lack of visibility of rape in criminal systems reflects the laws inability to adequately capture what rape means socially.³³⁹ To account for the social factors of rape, Mackinnon argues that we first must examine the relationship of the parties.³⁴⁰ Further “much routine sad resignation or worse passes for “voluntariness” in a sexual setting.”³⁴¹ Women are not always able to consent to sex, even in circumstances in which they seem to voluntarily provide such assurances.

Women often found themselves in circumstances where they had few options but to consent to a sexual advance. In the spring of 1624, Margerie Becham, spinster, presented her case before John Harbin. While alone in a lodging chamber during Whitsomeweek, the seventh week after Easter, she was approached by John Evans the younger. Margerie told the court that “John Evans the younger her late master is the father of her child...he had the pleasure of the

³³⁶ Catharine A. MacKinnon, “Rape Redefined General Essays,” *Harvard Law & Policy Review* 10, no. 2 (2016): 436.

³³⁷ MacKinnon, “Rape Redefined General Essays,” 436.

³³⁸ MacKinnon, “Rape Redefined General Essays,” no. 26.

³³⁹ MacKinnon, “Rape Redefined General Essays,” 439.

³⁴⁰ MacKinnon, “Rape Redefined General Essays,” 440.

³⁴¹ MacKinnon, “Rape Redefined General Essays,” 440.

bodie in his lodging chamber in his fathers house in Powell: noe bodie being in the said dwelling house.”³⁴² She further outlined that John had attempted, numerous times, to have the carnal knowledge of her body, but that each time she refused. Margerie finally consented to him after “he calle[d] this examinant up into the said chamber and before such tyme as he obtained his purpose he swore he would doe this examinant noe hurte whereupon she consented.”³⁴³ Margerie’s case highlights a pattern of power imbalance. While her case does not fall neatly within categories of rape, her story reflects the necessity of reassessing historic definitions of consent to better account for the lived experiences of Margerie and many other women in service.

To understand the violence and marginalization inflicted upon these women, we must expand our definitions of consent and sexual violence to account for their lived experiences. Unlike some bastardy cases which employ rape legal markers, including *without my consent* and *with force*, cases that involve women in service tend to employ opaque language. Margerie, for example, highlights her isolation from others, her history of refusal, but that she did provide her consent to her master after a promise of protection. Despite not clearly articulating rape, the linguistic elements of this case align with Mackinnon’s notion of resigned consent. To best account for the lived experiences of women like Margerie, we need to do a better job at accounting for the power imbalances inherent in cases of bastardy. This is especially true for sexual relationships between employers and employees.

To understand rape, historians must move past defining it solely in legal terms. Chapter 3 highlighted that women did not define their experiences within the intellectual framework of physical versus rational consent. Women in service further complicate the expanding definition

³⁴² Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

³⁴³ Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

to articulate how power imbalances and resigned consent factor into our understanding of sexual violence. Based on an analysis of bastardy testimony in the Somerset Sessions, sexual violence involves the engagement in a sexual act based on false promises of security resulting in women providing resigned consent to those in a power position. Power positions could include a relationship between employer and employee, but also accounts for the patriarchal imbalance between men and women generally. Men have the capacity to physically overpower women, and thus have influence over female decision making, especially when isolated from others. As articulated by Jocelyn Hollander, there is a *perception of vulnerability* for women in positions of service which make them particularly socially exposed to pursuits of men in the household.³⁴⁴ While Hollander addresses 20th-century American history, the conversations with women demonstrate how male perceptions of female vulnerability increase the overall risk to female bodily autonomy. It provides insight into female perceptions of rape and vulnerability that are hidden within early modern records. Thus, the extrapolation of these findings for application in the early modern society, help to contextualize female perception of their own vulnerability in physical spaces.

Vulnerability, Coercion, and Sexual Violence

Several linguistic congruencies exist between the sampled cases involving women in service. As previously mentioned, women did not describe their experiences with sexual assault linguistic markers, such as “without my consent” or “against my will”. Rather, women in service outlined a pattern of vulnerability to their sex partners. Women employ a combination of location markers, situational factors, and the number of times the sex act took place (or was attempted) to

³⁴⁴ Jocelyn A. Hollander, “Vulnerability and Dangerousness: The Construction of Gender through Conversation about Violence,” *Gender and Society* 15, no. 1 (2001): 83–109.

demonstrate their vulnerability to the men they encountered while employed in service. Location markers refer the parish and/or former parish in which they reside, and situational factors encompass the plethora of reasons a woman consented to a sexual relationship. One of the most common situational factors that influenced a woman's decision to engage in premarital sex was the promise of marriage.

Women in service were promised marriage at a higher rate than those not in service. Of the 77 cases that mentioned the employment of the mother, 13 identified a promise of marriage impacting their decision to engage in sex. Compared to the larger dataset, women in service received marriage proposals at double the frequency to those in non-service positions a rate of 18% compared to 8%. Testimony indicates that women received marriage proposals prior to their engagement in a sexual relationship. Long before they found themselves in the purview of the Sessions. Further, the rate in which women mentioned a marriage proposal highlights that this was a significant factor in their decision to engage in premarital sex. It also indicates their perception of its importance to the men who adjudicated their cases. This is not to create a false dichotomy between why women articulated a marriage proposal in court. Likely the security of marriage played a role in consent, and women also recognized the importance of marriage promises within the adjudication of bastardy cases. This is further supported by the frequency of marriage proposals aligning with a county wide increase in illegitimate pregnancies. There was, however, one factor that distinguishes these proposals from other courting rituals in the community. There was a significant class difference between the mother and the punitive father.

In the winter of 1649, Joan Fettson of Milverton, singlewomen, recounted to Thomas Georges, esquire, how she became pregnant by her mistress's son. Mary Crosse employed Joan in Milverton, and while under her employ Joan "was often solicited by John Hill alias Chubberty

sonn to the said wid[dow].”³⁴⁵ John stated that he would “marry with the said deponent [if] shee yielded unto his importunity.”³⁴⁶ Similarly, in the summer of 1655, Mary Goodenow of Dunmast while employed by John Barlett, his son, also named John, promised to marry her. In doing so, he attempted to have knowledge of her body. She stated that “she oftentimes denyed but about a fortnight before St. Tide last by striving and persuasions with this deponent the abovesaid John Bartlett [the younger] had the carnall knowledge of this informants body.”³⁴⁷ In both cases Bartlett and Hill used a marriage proposal as a tactic to convince female servants to engage in sexual intercourse. While some marriage proposals may have been genuine, the class difference between the service worker and the son of their master would have made the match untenable. However, the decision of both women to engage in sex with the sons of their employer following a marriage proposal highlights the types of assurances women sought prior to engaging in premarital sex. It further highlights the interconnection between both women with the children of their employers and the opaque boundaries in class between servants and rural employers. The linguistic position of sex in addition to the underlying boundaries highlight the importance of marriage proposal and the perception of class boundaries in rural communities.

The decision to articulate marriage proposals reflects two possible strategies employed by and against women in service positions. The first is that women might have leveraged community perspectives about premarital sex following a proposal to gain sympathy from the court. Early orders from the Quarter Sessions highlight significant bodily punishments to women who became pregnant outside of marriage.³⁴⁸ For example, when Mathew Langdon came before

³⁴⁵ Bastardy examination. 25 February 1650, (25 February 1650), Somerset Heritage Centre, Q/SR/82/185.

³⁴⁶ Bastardy examination. 25 February 1650, (25 February 1650), Somerset Heritage Centre, Q/SR/82/185.

³⁴⁷ Bastardy examination. 23 Jun 1655, (23 June 1655), Somerset Heritage Centre, Q/SR/93/98.

³⁴⁸ For example, Bastardy order. 20 Jan 1611, (20 January 1611), Somerset Heritage Centre, Q/SR/11/26-7; Bastardy order. 1 Jan 1611, (1 January 1611), Somerset Heritage Centre, Q/SR/11/39-40; Bastardy order. 27 Jun 1617, (27 June 1617), Somerset Heritage Centre, Q/SR/27/124).

the Quarter Sessions in 1611 to acquire financial support for her infant son Thomas Langdon, they sentenced her to “bee whipped up and downe the market between xi and xii of the clock of [Thursday]...” at the Bridgwater market.³⁴⁹ Similarly, Ann Hooper in 1610 was sentenced to be “whipped in the open Markett at Somerton until her body be bloody through the said Markett and backe againe on Minday next between the hours of xi and xii of the [c]locke..”³⁵⁰ While it is unclear if either punishment was carried out, stories of sentencing were likely prevalent within the community and could have impacted how subsequent testimonies were structured and relayed to the Justices of the Peace.

Of the 44 sampled cases that include a punishment, only one case included testimony indicative that a proposal of marriage had occurred. This indicates that in the early seventeenth century, women were less likely to be subscribed a public punishment if they articulated a proposal of marriage. If women adopted a strategy of marriage proposals to help limit the bodily consequences of their decisions, then they would have highlighted significant agency and understanding of the judicial processes in the county. The overall lack of cases that utilized this type of survival strategy indicate that women were unlikely to have made the connection between punishment avoidance and marriage proposals. The more likely circumstance is that men used this tactic to coerce women into sex. This, however, is not to position women as passive and gullible victims, but to demonstrate the level of security a marriage proposal provided. Through the employment of this strategy and the known connection between marriage and sex, women felt confident consenting to sex. Nevertheless, the overarching power imbalances inherent within service positions, made it challenging for women to demonstrate their agency as their ability to consent to sex was limited.

³⁴⁹ Bastardy order. 20 Jan 1611, (20 January 1611), Somerset Heritage Centre, Q/SR/11/26-7.

³⁵⁰ Bastardy order. 9 Apr 1610, (9 April 1610), Somerset Heritage Centre, Q/SR/11/95.

Grace Totley, of Hill Bishop, provides some interesting insights into power imbalances within service. While describing the events that led to her pregnancy in a 1617 case, Grace stated that her master, Thomas Gale, “did often tymes tempt her to have the use of her body but she always denied him...”.³⁵¹ Thomas, however, was not the reputed father of her child. Grace outlined to the court that not only did Thomas endeavour to have access to her body, but so did another male worker on the property. She yielded to this male servant, upon a proposal of marriage, which resulted in the conception of the base child.³⁵² Grace disclosed to the Justice of the Peace that she experienced significant harassment while employed by Thomas, which seems to have impacted her decision to accept the proposal. Grace did disclose the advances of Thomas to her mistress and John, but nothing was done to prevent or restrict Thomas’ behaviour. Based on the circumstances outlined to the Justice of the Peace, Grace experienced significant gendered violence in her place of employment and her broader community. While she intended to formalize her relationship with Henry Bryant following his proposal of marriage, he did not uphold his promise. It is unclear in the testimony why this was the case; however, one might speculate that John did not have the funds to set up an independent household, or that Thomas’ behaviour impacted his decision. No matter the reason why the relationship was never formalized, we know that her position in the court as a single mother would have impacted her social standing in the community, as Grace would have been considered a possible drain on community resources. Unfortunately, there are no records of the aftermath of these cases. Grace’s story, like many others, ends with the filing of an Order. There are no follow up records to highlight if/when Grace was able to reintegrate herself into the community.

³⁵¹ Information. 19 Nov 1617, (19 November 1617), Somerset Heritage Centre, Q/SR/29/83.

³⁵² Information. 19 Nov 1617, (19 November 1617), Somerset Heritage Centre, Q/SR/29/83.

Grace Totley's case also provides some insights into the challenges consent for women in service positions. Throughout her employment, Grace was repeatedly harassed by her employer to gain access to her body. Unlike other women in her position, Grace both rejected the advances, while also disclosing them to her Mistress and Henry. Grace's testimony raises questions about her ability to *voluntarily* consent to sexual engagement with both her betrothed and her master. Grace outlined a pattern of abuse that occurred for a significant duration prior to her engagement.³⁵³ The consistency of these advances in conjunction with her attempts to disclose the abuse illustrates her marginalization within her service contract. She experienced a power deficit. Her strategies for survival – avoidance and disclosure – did nothing to dissuade Thomas from his goal. The decision to accept the proposal of Henry Bryant could reflect the next step in her survival strategy: securing a husband to defend her honour and protect her from these advances. While there could have been other factors that influenced her decision to accept the proposal of Henry, including that the proposal was desired, we must not underrepresent the precarious position of Grace when she accepted this proposal. Securing a husband would have been an effective way to secure her person or, at a minimum, advocate for her in the community – a pattern frequently articulated in attempted rape cases. As a result, Grace's need for survival and security mitigates her ability to freely consent. The security she sought was ultimately thwarted by the conception of her child and the failure of Henry to make good on his promise of marriage.

Women in service were in an inherently vulnerable position during periods of employment. While a marriage proposal was a common coercive behaviour exerted by men,

³⁵³ The court case does not outline any temporal references. It does, however, outline several instances in which her master attempted to have carnal knowledge of her body, and the steps she took to curb the abuse. Information. 19 Nov 1617, (19 November 1617), Somerset Heritage Centre, Q/SR/29/83.

women also experienced a range of other coercive and threatening behaviour to elicit consent. For example, in the winter of 1653, Bride Pitman came before George Sampson, esquire and Justice of the Peace, to recount her experience with the gentleman Samuella Keene. She stated that "...[he] locked this examinant with himself into his house swearing that he would kill her unless she would consent..."³⁵⁴ Bride articulated to George Sampson that there were no witnesses to this violence, and that she had sex with him a total of three times and consequently became pregnant with his child. Samuella also "hath primused her marriage" after her final sexual encounter with him.³⁵⁵ There are a variety of linguistic markers in this testimony that illustrate that Bride could not consent to the advances of Samuella Keene. He threatened her life, offered her security through marriage (even though there was a *significant* class difference between them), and was her employer. Bride also indicated that there was no community network to help protect her person and/or corroborate her story. All these factors made Bride particularly vulnerable to marginalization in her community and her work environment.

Threats of violence extended beyond the employer to the threats posed by fellow male servants. For example, in 1633 Edith Gullocke of Ilebrowsers stated that another servant, Henery Elliott, had sex with her numerous times while they were in the employment of William Walrond, esquire. Edith's testimony highlights that Henery did not want to be named the putative father in court and took every effort to avoid prosecution. He had Edith leave her position before her employers determined her to be pregnant, and convinced her to name John Turner, a falconer on the estate. He then stated that "if shee did chardge himself hee would never give her a penny or penny worth whilst hee lived..."³⁵⁶ Similarly, in 1649, Ann Bishop was coerced to name a

³⁵⁴ Bastardy examination. 14 Jan 1653, (14 January 1653), Somerset Heritage Centre, Q/SR/86/56.

³⁵⁵ Bastardy examination. 14 Jan 1653, (14 January 1653), Somerset Heritage Centre, Q/SR/86/56.

³⁵⁶ Bastardy examination. 26 May 1633, (26 May 1633), Somerset Heritage Centre, Q/SR/68/12).

different man as the father of her unborn child.³⁵⁷ In her original testimony, Ann named John Arford as the father of her child; however, subsequent testimony indicated that the putative father was Robert Cribb. When asked about the change in testimony, Ann stated that Arthur Pulman, constable of Martock, “did threaten her that if she named Robert Cribb to be the father of child he ould see her rott in goale.”³⁵⁸ The analysis of female testimony in cases of violence and coercive behaviour highlight a tertiary pattern of behaviour amongst male defendants. While female honour was challenged throughout this process, many men perceived a similar challenge to their own reputation, and actively sought to avoid public accountability.

In both instances men leveraged the necessity for security to ensure their public honour. There are significant challenges in determining how male honour was impacted by the conception of an illegitimate child. Evidence suggests that men sought sexual experiences prior to marriage to bolster their own prowess.³⁵⁹ The circumstances of male employers was clearer, as they were expected to respect and uphold the sexual chastity of their employees.³⁶⁰ For the peasant male in Somerset, the desire to shift paternity reflected a desire to divert culpability. While the consequences of unwed motherhood are well documented, there is significantly less documentation that explores the impact on men in early modern Somerset. The inability for male servants to follow through on a promise of marriage represented, to a degree, their inability to set up an independent household with a wife that was affirmed to be a suitable match by their community.³⁶¹ As we have witnessed in several of the above cases, there were significant class differences between the couples, which would have limited their ability to marry. The anxiety

³⁵⁷ Informations and bastardy examinations. 9 Feb – 2 Mar 1650, (9 February – 2 March 1650), Q/SR/82/181-184.

³⁵⁸ Informations and bastardy examinations. 9 Feb – 2 Mar 1650, (9 February – 2 March 1650), Q/SR/82/181-184.

³⁵⁹ Elizabeth A. Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage*, Women and Men in History (London ; New York: Longman, 1999), 48.

³⁶⁰ Foyster, *Manhood in Early Modern England*, 88-89.

³⁶¹ Foyster, *Manhood in Early Modern England*, 58.

men experienced around their reputations in being named the putative father furthers the precarious position of unwed mothers and the pressures they experienced. Not only were they marginalized by the broader community for requiring parish support, but they were also ostracised and victimized by their male partners who employed a variety of coercive behaviours to avoid culpability. Women were thus marginalized on multiple levels by both the institution, which failed to properly account for their lived experiences, and the men in which they placed their trust.

In sum, it is important to ask whether women could reasonably consent to their employer in early modern Somerset. While previous chapters have outlined that women could not claim rape from situations in which a pregnancy resulted, it is important to determine whether women provided rational consent. From an analysis of the records pertaining to service workers, few women claimed rape. For women in service, they articulated that their masters or fellow service workers were able to acquire knowledge of their bodies following either a proposal of marriage or through significant and durable pressure. For example, In the spring on 1624, Margerie Becham of Yeovill came before the Quarter Sessions to state that her master, John Evans had begotten her with child.³⁶² She outlined to the court that John got her alone in his father's house – his father's boys were in the workshop and his wife was out in the field. After which "tyme he often solicited her to have his pleasure of her but she still refused..."³⁶³ When asked whether she had ever confided in her mistress the advanced made by her master, she stated that she had not. It is unclear why she did not disclose these advances; however, it seems that there may have been some conflict with her mistress over her acquisition of new clothes.³⁶⁴ Like many others in her

³⁶² Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

³⁶³ Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

³⁶⁴ Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

position, Margerie initially named another individual as the putative father at the behest of John, as he claimed that if she named him, he would be “utterlie undom.”³⁶⁵

The case of Margerie and John demonstrates common threads of violence within early modern service work. The beginning of her testimony holds linguistic congruencies to women who were raped and subsequently became pregnant. For example, Margerie was isolated by her employer in a location away from other servants, her mistress, and the patriarch (her employer’s father). She was then pursued by John over several months to continue this sexual relationship. Finally, she was coerced by her employer to name another man as the father to secure his own reputation in the community. While Margerie does not describe her experience within linguistic patterns of rape, deeper reading of the documentation highlights a hostile work environment that was marked by sexual harassment and coercive behaviour. The inherent power imbalance between Margerie and John created an environment in which she was marginalized and ostracised by her workplace and her community.

Despite the legal and cultural markers of consent in early modern Somerset society, the lived experiences of female service workers highlight the impossibility to provide consent to their employers. The class and power imbalance between female service workers and their male sexual partners. Regardless of male position, the women who found themselves at the mercy of the Quarter Sessions represented an inherently marginalized group of women. As discussed in previous chapters, they lacked a community network to support their pregnancies and had no alternative financial options to support themselves. These women had no other option then to rely on the charity of the parish for survival. The position of these women makes any form of marriage proposal highly unlikely, as the community networks of the putative fathers seemed

³⁶⁵ Bastardy examination. 5 Apr 1624, (5 April 1624), Somerset Heritage Centre, Q/SR/46/39.

unlikely to support the match, even after the conception of a child. The inherently coercive nature of the marriage proposal, moreover, and the rate at which women identified them highlights that women were consistently pressured into engaging in sex. This is compounded by the power imbalance between them and their employer. If women refused to engage in the sexual advances of their employers, they risked losing their place of employment. Moreover, while women consistently seemed to provide their rational consent, the power exerted by male members of a household created an environment in which women could not feasibly provide consent.

The testimonies of female service workers, as relayed to the Somerset Quarter Sessions, demonstrate that their rational consent was forced or coerced based on male power exerted in employment environments. This complicates our understanding of female rationale consent as it highlights circumstances in which consent was gained through coercive means. As a result, while part of the sample revealed that women consistently denied their physical consent in court, the subtext of female service workers highlighted that their rational consent was taken through unseemly tactics. Female consent in early modern Somerset, was far more complex and accounted for a range of behaviour that impacted and influenced female decision making. The court's inability to properly account for the variation in lived experiences of unwed mothers highlights their institutionalized marginalization.

Conclusion

Historians of illegitimacy face significant challenges in our attempt to analyze these cases to reconstruct their meaning. It is inherently unclear whether discussions of marriage within Quarter Session testimony are part of a subscribed courting ritual in early modern Somerset, or if they represent survival strategies intended to garner male sympathy. As with most historical

testimony, the reality is likely somewhere in the middle. By positioning women in either category, we run the risk of creating a false dichotomy of female testimony that articulates women as either passive victims to male advances or manipulators of male emotion. These categories mitigate the various factors that contribute to the construction of their testimony in court. An analysis of both categories is essential to understanding the spectrum of female experience, while accounting for the socio-cultural factors that limit women in early modern Somerset. As this dissertation has established in previous chapters, pre-marital sex was an accepted part of early modern courting rituals, and, consequently, it logically makes sense that marriage proposals likely pre-empted a woman's decision to consent to sex prior to marriage.

Nevertheless, humans are inherently unreliable narrators. To return to the case of Mary Beefin, for example, she might have employed the existence of a marriage proposal in her testimony to gain further sympathy from the Justices of the Peace. Based on the testimony provided by Mary her position as a service worker made an authentic proposal from her employer unlikely. Regardless of intentionality, both circumstances represent a spectrum of survival strategies employed by female service workers to ensure their future – whether through a forced marriage or the acquisition of financial support. Women in early modern Somerset had to navigate a court system that had no intention of protecting their interests. The court was most concerned with the financial burden of these children not falling to the parish.³⁶⁶ By aligning themselves with behavioural patterns deemed acceptable by the community, they outlined to the court their victimization in the courting process, while their cognizance of this fact demonstrates their agency. Exploring these cases from an intersectional lens challenges the entrenched historiographical narrative of women as *either* victims or opportunists. Women were both and all

³⁶⁶ The importance of financial responsibility in Somerset is argued in Quaife, *Wanton Wenches and Wayward Wives*.

of the above. Moreover, this type of analysis allows for the more accurate positioning of male behaviour, while accounting for the range of circumstances that impact how women conveyed their experiences to the court.

Conclusion

[Elizabeth Sherwin of High Ham] saith that William Toogood...had the carnall knowledge of her body about the middles of November last in an out house...and that...shee is now with child by the said William Toogood and...that never any person besides the said William Toogood hath had the carnall knowledge of her body and the said William Toogood had but once the carnall knowledge of her body...³⁶⁷

Unwed mothers were a vulnerable group in early modern Somerset. To ensure the survival and financial protection of their child(ren), mothers had to submit to the requirements laid down by the Quarter Sessions. To return to the case of Elizabeth Sherwin and William Toogood, Elizabeth's testimony, and William's subsequent appeal, which opened this dissertation's introduction, demonstrates Elizabeth's vulnerability before the legal system. As with all women who brought forward a bastardy case, Elizabeth had to provide significant detail to the Quarter Sessions to prove the paternity of her child. She provided details as to where, when, and how often she engaged in this sexual relationship to prove that no other individual could be the father of this base child. The public discussion of Elizabeth's sexual history in court highlights what was necessary to secure financial compensation. Nevertheless, the process guaranteed nothing. A woman might go through the entire process of the Sessions only to be appealed by the putative

³⁶⁷ Bastardy Examination. 15 Jan 1655, (15 January 1655), Somerset Heritage Centre, Q/SR/91/39.

father. This was the case with William and Elizabeth. The entire adjudication process, moreover, placed the sexual history of women on public display in the court, and, often, the community.

From start to finish, the adjudication process marginalized unwed mothers and reflected community concerns. Testimony patterns demonstrate that women had to disclose information that had significant consequences for their position in the community. To apply a modern interpretive lens to this, this can and should be understood as an example of institutionalized gender-based violence. The Quarter Sessions leveraged community standards of courting rituals and practices to underscore their moral failing within the scope of ritualized premarital sex. These women not only were unable to legally bind their relationships with these men, but they also became financial liabilities to the Poor Law infrastructure. As a result, the institutional frameworks within the Sessions worked to publicly shame and draw attention to the inability of these women to conform to social expectations. The marginalizing nature of the Sessions was not restricted to judicial processes. The Sessions also failed to hear and address any experiences of these mothers that did not align with perceptions of conception and illegitimacy. Notably, instances of sexual assault and significant power imbalances were present in the testimony of unwed mothers. The failure of the court to account for the varied lived experiences of these mothers, despite the recorded testimony they provided, resulted in a process of community marginalization. The Quarter Sessions therefore are an example of the ways in which gender-based violence was institutionalized in the form and function of early modern legal systems. The processes enacted in the Sessions ensured that women's voices were *present* – I have been able to draw on their words from transcripts throughout this dissertation – but *silenced* through the embedded procedural mechanisms.

Violence against women emerged in two distinct forms in the Quarter Sessions. The first mechanism was through the structural foundation of the court proceedings. This included how women were questioned about their sexual histories as well as the ways in which putative fathers engaged with women outside of the system. The second way that gender-based violence emerged was through the inability of the court to adequately account for the lived experiences of women. This emerged most strongly in how women conveyed consent. While women spoke extensively in court, there is a difference in being able to speak versus being heard. Despite the extensive nature of the female voice in the records, the way in which the court settled the cases demonstrates that their stories were not heard. The entire judicial process did not protect unwed mothers. The way in which their testimony was translated in action highlights that the goal was to protect the financial interests of the parish and not the unwed mother and her child. Through an emphasis on financial interests, the courts placed women in a harmful gaze that marginalized them within their community. Overwhelmingly gender-based violence was an embedded feature within the Sessions.

This argument is supported by the novel digital humanities and mixed method approaches that I am deploying in this dissertation. Each chapter outlined a distinct methodological approach that was designed to address the complexity of the source materials in relation to historical convention. The challenge throughout this dissertation, as with most works of historical scholarship from this time, was the limits on both the existence and scope of sources. The surviving documents that I have read here were created to tell a specific story, but they can still speak to broader patterns of violence and marginalization that underpin the entire institution. By taking a digital approach to these sources, this dissertation integrated quantitative and qualitative approaches. This created significantly more nuance to the arguments by positioning each element

within a broader aggregated ecosystem of information. Overall, this allowed for a more nuanced argument to be developed that accounted for a broad range of historical factors and contexts. Each chapter, moreover, demonstrated the way in which methodology and evidence worked in relationship to one another. Each informed the subsequent chapter.

Chapter One demonstrated that gender-based violence between mothers and putative fathers was not statistically significant. This chapter defined gender-based violence as any behaviour that would increase the marginalization of women in the community. This created space to explore a range of coercive violent behaviour targeted at unwed mothers. These behaviours, though, occurred in rare cases. The total number of behaviours, which included threats of violence, and bribes occurred in less than 5% of cases. Marriage proposals, however, were the most common tactic employed by men to gain access to women's bodies. Proposals were used to provide women with a sense of security prior to their engagement in a sexual relationship. While it remains unclear as to whether men used this with malice or good intentions, the consistent presence of these proposals highlight their centrality to female decision making. This chapter, moreover, leveraged digital quantitative approaches to explore common trends in the Quarter Sessions. It represented part one of a two-part distant reading methodology.

Quantitative methodologies were essential to answering the research question posed in this chapter. Without developing an aggregated ecosystem of texts that included all short descriptions of the 1298 cases archived in the Somerset Heritage Centre, it would have been challenging to determine the significance of these instances of coercion in relation to everything else. By building a database of these descriptions and tagging their significance within my definition of gender-based violence, I identified that instances of violence between individuals were relatively uncommon. While cases of rape and violence existed in this dataset, it was

important to not over state their significance within the broader sample. These findings created a foundation from which to pivot my research question to explore the relationship between the individual and the institution. By employing a digital approach that prioritizes the creation of both breadth and depth, I was able to identify a different pattern that was not visible through a strict close-reading method. Moreover, the structure of the cases began to point to a larger pattern of violence between the institution and the individual.

Chapter Two explored the presence of violence between the institution and the individual. This analysis was conducted through a close-reading method, supplemented with digital humanities methods, to identify and explore linguistic patterns across the dataset. This method helped to identify that the procedural elements of the Sessions embedded shame into the examination of unwed mothers. It highlighted the limits of our historical knowledge and how using both distant and close-reading methods can help illuminate trends otherwise unknowable through standard historical methodologies. This mixed-method approach demonstrates linguistic congruencies between records and across the dataset. The requirement of women to detail their sexual histories to the court, which was intended to prove paternity but also highlights the ways in which their behaviour deviated from traditional conventions around premarital sex. This process, in conjunction with the overwhelming lack of alternative survival strategies for unwed mothers who relied on the Sessions created the foundation for an institution to exert power over this vulnerable group. This digitally enhanced close reading demonstrated that the Sessions exerted violence against unwed mothers based on the subscribed gender ideologies of the time. The Sessions marginalized those they seem to have been protecting. As a result, women were viewed as the troublemakers rather than the men who sense of entitlement to female bodies created the circumstances the brought women to court. The system created an environment in

which women were positioned as burdens to community resources, which increased their marginalization in the community. Overall, this demonstrates an institutionalized pattern of gender-based violence.

Following the first two chapters, the dissertation pivoted to explore how these institutional frameworks failed to account for the lived experiences of unwed mothers. It similarly employed close reading methods enhanced through Voyant. The digital methods employed in chapter Three and Four highlight the ways in which digital tools supplement basic close reading to identify more concrete linguistic patterns and examples. Chapter Three, for example, explored instances of sexual assault in bastardy proceedings. It found that despite early modern intellectual belief about the relationship between rape and conception, women consistently defined their experiences with the same linguistic markers as women who came before the Quarter Sessions for the adjudication of attempted sexual assault. A digital platform such as Voyant Tools supported the identification of these linguistic patterns, and the uniformity of the textual markers between cases. Thus, I found that despite early modern intellectual belief about the relationship between consent, rape, and pregnancy women consistently defined their experiences using the same linguistic patterns as women suing for attempted sexual assault. The failure of the court to acknowledge the female experience in the conception of their child resulted in the re-victimization of women by positioning them as illegitimacy cases. It thus placed greater emphasis on women's moral failings and framed them as financial drains on the community, which was a further marginalizing process. It placed women in direct and perpetuated contact with their rapists to ensure that their community did not have to pay for the financial upkeep of their children if the father could or would not pay. The treatment of

attempted sexual assault, rape, and illegitimacy in the Quarter Sessions reflects the systemic marginalization and re-victimization of women within early modern Somerset legal systems.

Chapter Four then demonstrated the challenges posed by women in service in the deconstruction of consent. Women in service roles have been positioned in the historiography as being either passive victim of male behaviour or conniving aggressors. This misaligned relationship, however, fails to account for the power imbalances embedded in cases of bastardy that include a woman in a service role. In deconstructing this dichotomous relationship, the events outlined in bastardy proceedings represent a spectrum of survival strategies to ensure their future. This could include forced marriage, in cases where the unwed mother and putative father are part of the same social strata, or the acquisition of financial support. The identification of a spectrum of survival strategies highlights the plethora of ways women attempted to navigate a system designed to protect the interests of the community and putative father. It thus challenges the entrenched historiographical narrative of women as *either* victims or opportunists. Women existed on a spectrum of behaviour. Shifting the discourse in this way allows for a more nuanced interrogation of male behaviour, their accountability in these cases, and the ways in which the court primarily protected male interests.

Bastardy adjudication was not designed to protect unwed mothers and their children. An examination of the 1298 cases highlight that the procedural processes of Quarter Sessions put unwed mothers in an extremely vulnerable position. While women were able to speak openly in court, their gender precluded their voices from being heard – as women were always considered less than men. Women had to detail their sexual histories to a panel of male Justices, openly admit their inability to conform to community moral standards around premarital sexual relationships and articulate the ways in which men took advantage of their bodies, either through

sexual assault or coercion. This entire process marginalized women in the community without guarantee of financial support from either the farther or the parish. The lack of alternative supports for unwed mothers and their illegitimate children compounded this marginalization in the community. They had no other realistic option then to submit to the requirements of the Sessions. Moreover, the process by which women engaged with the Sessions marginalized them in the community and represents a form of institutionalized gender-based violence. The entire legal structure that should have protected them, was a perpetrator of significant violence based on preconceived notions of gender and sexuality.

Modern Relevance

As with many historical topics, especially those in the early modern period, we must ask what is the modern relevance to these findings? The embedding of gender-based violence in institutional frameworks, especially within the justice system are of particular importance to the present. As identified in Chapter Three, many of the changes to the legal system in the early modern period have a direct connection to the laws and process still used in 2023.

To better understand our contemporary legal system, it is imperative to explore the creation of these institutions and the explicit and implicit goals that they sought to achieve. We must continue to ask ourselves what we are upholding and how are the embedded biases of these systems perpetuating violence against those in marginalized positions. For example, in cases of intimate partner violence, which includes physical, sexual, and psychological violence against an individual in an intimate relationship with the aggressor, researchers have found that it is not prosecuted consistently.³⁶⁸ The justice system's, in this case police, perception of gender, race,

³⁶⁸ Michael D. Saxton et al., "Experience of Intimate Partner Violence Victims with Police and the Justice System in Canada," *Journal of Interpersonal Violence* 36, no. 3–4 (2021): 2031

relationship status, location of the crime, and severity of offence, influence whether chargers were filed against the perpetrator.³⁶⁹ Biases also continue to impact the prosecution of rape.³⁷⁰ The ongoing challenge of women to find consistent and equitable application of the law raises questions about whether the judicial system is able to protect them against violence.

Over the years that I have drafted this dissertation, numerous cases have addressed the tension between society and the court system, and demonstrated the challenges women face in asserting authority over their own bodies. For example, on 24 June 2022, the United States supreme court overturned *Roe v. Wade*, which ended the American constitutional right to an abortion. In 2023, there was also a landmark decision in the civil case between former American president Donald Trump and E. Jean Carroll. Carroll alleged that Trump had sexually abused and assaulted her in the 1990s. While Trump was not found liable in the case of her sexual assault, he was found guilty on the charges of sexual abuse and defamation relating to statements he made regarding her allegations. Despite both cases occurring hundreds of years after the seventeenth century, and in America, they demonstrate the challenges we still face in women being able to claim autonomy and decision-making rights over their own bodies. The court system has never been able to meaningful *hear* how women speak about access to their bodies and provide them with agency to make decisions. The protection is never applied to female autonomy, it is consistently and continuously applied to others who are believed to have more rights than the

³⁶⁹ Saxton et al., “Experience of Intimate Partner Violence Victims,” 2031.

³⁷⁰ For example; Dominic Abrams et al., “Perceptions of Stranger and Acquaintance Rape: The Role of Benevolent and Hostile Sexism in Victim Blame and Rape Proclivity,” *Journal of Personality and Social Psychology* 84, no. 1 (2003): 111–25, <https://doi.org/10.1037/0022-3514.84.1.111>; Bertram F. Malle, Andrew E. Monroe, and Steve Guglielmo, “Paths to Blame and Paths to Convergence,” *Psychological Inquiry* 25, no. 2 (2014): 251–60; Saxton et al., “Experience of Intimate Partner Violence Victims,”; Steffen Bieneck and Barbara Krahé, “Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard?,” *Journal of Interpersonal Violence* 26, no. 9 (June 1, 2011): 1785–97, <https://doi.org/10.1177/0886260510372945>; Bjarte Frode Vik et al., “Is Police Investigation of Rape Biased by Characteristics of Victims?,” *Forensic Science International: Synergy* 2 (January 1, 2020): 98–106, <https://doi.org/10.1016/j.fsisyn.2020.02.003>.

woman the decision is being applied to. It raises the question of who the court is protecting?

These landmark decisions demonstrate that we are still unable to protect women and their right to bodily autonomy.

Throughout the seventeenth century, the Quarter Sessions dealt with a range of concerns in Somerset. Cases filed in the Sessions spoke to a range of social conflicts that equate to civil, criminal, and family court matters in the present. As these cases were passed on judicially in the communities in which the crime took place, they are microcosms of community concerns related to property, financial oversight, criminal behaviour, sexual morality, and gender politics. This dissertation demonstrates that the Sessions had a hard time positioning the female experience in relation to consent and access to their bodies. A woman's word was not sufficient to claim violence, they must show a range of proof to demonstrate that they did not consent. Thus, while women were able to *speak* in court, their voices were not *heard*. For her words to be heard, she must demonstrate that her word is more valuable than the putative father.

In the intensely patriarchal structure of early modern Somerset, this was an impossible task. The court was responsible for maintaining the rights of men in cases of gender-based violence. Despite the testimony and evidence provided by women, these courts have developed and maintained an institutionalized structure that perpetuates and marginalizes women. While the court was (theoretically) established to protect the masses, all evidence points to the notion that these courts were established to protect the financial and social interests of men in the community. As a result, they perpetuated and continue to perpetuate gender-based violence. They protected no woman.

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Appendix A: Full List of Patnernal Occupations

Male Occupation	Total
Grand	1298
apothecary	1
apprentice	6
army rebel	1
bachelor	1
baker	6
barber	3
blacksmith	17
brazier	1
broadweaver	2
burler	1
butcher	14
button mould maker	1
carpenter	9
carrier	4
chandler	1
Chimney Sweeper	1
clerk	5
clothier	5
clothworker	3
coal carrier	1
coalminer	1
collier	1
cook	1
cooper	2
cordwainer	4
cordwinder	5
covenant servant	1
currier	2
cutler	2
dyer	3
employer	1
Father-in-Law	2
feltmaker	3
fuller	2
fustianweaver	3
gentleman	12
Glazier	2
glover	8
groom	9

horse broker	1
husbandman	210
husbandman, weaver	1
innholder	6
innkeeper	1
labourer	38
lime burner	2
linen weaver	3
malster	1
married	1
married, husbandman	1
mason	6
master	3
meare, singleman	1
mercier	4
millar	13
minister	2
musician	2
parson	1
pewterer	1
potter	1
rope maker	1
sailor	2
seaman	1
seargemaker	2
seargeweaver	17
servant	42
sheargrinder	2
shearman	2
shoemaker	5
silkweaver	1
soap boiler	1
soldier	2
tailor	14
tanner	6
thatcher	1
tobacco cutter	1
tucker	2
unspecified	665
vicar	2
Victualler	1
watchman	1
weaver	14

white baker	1
widower	1
woollen weaver	3
worsted comber	8
worsted comber, tailor	1
yarn weaver	1
yeoman	52

Appendix B: Complete List of Female Marital Status

Female Occupation	Total
Grand	1298
common strumpet	1
covenant servant	2
deceased	5
employee	1
former widow	1
married	6
servant	27
singlewoman	330
spinster	313
spinster and indented servant	1
unspecified	538
wellch wench servant	1
widow	62
widow, deceased	1
widow, now married	1
wife	8