

**Living as an “empowered weak”: 17th century women in the
Chesapeake and gender norms**

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Abstract

The 17th century Chesapeake region allows for a complex study of women's roles within a broader demographic, economic, and political shift in the region. For most women living as *feme covert*, their power rested in making household decisions with their husband. If they became widowed, Chesapeake women with means became *feme sole* and dictated, at least for their lifetime, what happened to their inheritance. Even with this limited power, wealthy widows did not upset the gendered hierarchy of inheritance. As an "empowered weak", wealthy widows continued the tradition of granting land to their sons and personal property to their daughters. Indentured women living "on the fringe" of society tried to increase their social standing by forming relationships with men who would be able to pull them out of indentured servitude. Even in these illicit relationships, women were more often and more harshly punished than their male counterparts in fornication and bastardy cases. For free African women, their role in relationships was further reduced based on the free status or race of their partner. For free women marrying a slave, they had to be indentured for a time and their children became slaves. As more women migrated to the Chesapeake from England, women's power within the family continued to shrink in the 18th century; the small window of opportunity that the 17th century gave women in the unorganized colony disintegrated with the change in population and increased racial and gendered legislation of the 1700s.

Introductory Chapter

In his diary, William Byrd II of Virginia wrote copious notes on his civility and genteel ways in order to fit into the gentry planter society that was forming in seventeenth century colonial Virginia. For example, William Byrd II described that his slaves “were whipped”, showing that he was trying to remove himself from direct punishment of slaves.¹ Years later, Landon Carter had a similar mindset on slave misconduct. Eight of Carter’s slaves ran away and, in his diary, Carter described the reasons why they would have run away aside from his leadership in order to reassure himself of his patriarchal power.² Carter was trying to reaffirm his authority over the slaves, even with their incorrect actions; he even documented that “these men had not touched one thing of his”, showing that they at least respected his authority.³ He wanted to show his patriarchal relationship with his slaves; “they owed him service, deference, and obedience...It was congruent with his own sacred obligations to his own sometimes-harsh, sometimes-benign master, God.”⁴ Carter and Byrd used their treatment and self-created definition of protecting and caring for slaves to further their role as gentlemen. Because they had no past interactions with slaves in England, the creation of a relationship in the colonies further shows the break with English and a creation of a new hierarchy more suitable for the colonial region.

With Byrd and Carter in mind, the economic foundations of a planter society in the seventeenth-century Chesapeake were established with a focus on authority and order

¹ Kenneth Lockridge, *The Diary, and Life, of William Byrd II of Virginia, 1674-1744* (Chapel Hill: The University of North Carolina Press, 1987), 68.

² Rhys Isaac, *Landon Carter’s Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation* (Oxford: Oxford University Press, 2004), 8.

³ Isaac, *Landon Carter’s Uneasy Kingdom*, 8.

⁴ Isaac, *Landon Carter’s Uneasy Kingdom*, 72.

within the plantation and family unit. Elite white men of the Chesapeake established authority over their self-proclaimed inferiors through public rituals, such as elections, church services, and court proceedings.⁵ In this elite planter society of the late 1600s, Chesapeake women remained in the home, deemed dependent on their husbands and fathers to act for them in the public sphere, whether economic, political, or legal.⁶ As the political and economic climate shifted in the eighteenth century, the planter family of the Chesapeake became more privatized within the region. Daniel Blake Smith believes that the shift to private family and kin environments is an unmistakable break from the previous extended patriarchal family of the late seventeenth century. By moving from the pomp and circumstance of well-to-do elite families, the nuclear family structured the household and family dynamics in a more intimate way.⁷ This change in Chesapeake society is important because the family unit became more intimate and private; sons and daughters gained more autonomy from their elders and a greater emphasis was placed on the nuclear family rather than planter kinship.⁸

Even with the changing societal landscape of the seventeenth and eighteenth century Chesapeake, the power of women in the region did not dramatically shift with the privatization of the family. As the Chesapeake region expanded in terms of population and economic growth in the mid-1600s, changing roles for women appeared with these increased economic opportunities. Even with this expanded realm of possibilities, women

⁵ Cynthia A. Kierner, "Women, Gender, Families, and Households in the Southern Colonies," *The Journal of Southern History* 73, no. 3 (Aug. 2007): 651.

⁶ Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 4.

⁷ Daniel Blake Smith, *Inside the Great House: Planter Family in Eighteenth-Century Chesapeake Society* (Ithaca: Cornell University Press, 1980), 21.

⁸ Smith, *Inside the Great House*, 21-22.

with the ability to upset gendered norms did not purposefully and actively weaken the gender roles in Chesapeake society, but rather continued to live within the structured patriarchal society. Living “on the fringe” of gendered norms due to their economic power, wealthy women wrote wills in Maryland reinforcing the status quo in their bequeathals, favoring sons over daughters in terms of land and personal effects. This is a significant reinforcement of gender norms because these wills were a potential avenue for wealthy women to give monetary power to other women in a defiant act against the patriarchy; this conscious act did not happen. In addition to wealthy women, women who had illegitimate children, many of which were servant women, were punished in Accomack County court cases at a significantly higher rate than their male accomplices. While the punishment for bastardy was the same for both parents involved, the increased number of women called before the courts shows the societal conceptions of blame on the woman. Finally, as intermarriage between races or freed status increased throughout the eighteenth century, Chesapeake society placed greater punishment on interracial marriages. The punishments enacted in the Maryland court system include disparities in punishment based on racial descriptions; the emphasis placed on the power of race, rather than the power of gender, highlights that gender was not a primary method of classification in the late seventeenth and early eighteenth-century as was race. Women “on the fringe” of economic power within Chesapeake society could exhibit power in their lives and wills; however, these women were limited based on their race. Gender norms and social constructs of gender influenced legislation and judicial verdicts; however, race became a larger influencer for birth, marriage, and death than gender in the colonial Chesapeake.

Gender as a Social Construct

To individuals in the seventeenth century, one's gender was determined by two factors. The first was physical: one's genitalia. The second was cultural: one's behavior and knowledge.⁹ These two, seemingly different determinants of gender in the colonial world can be shown by the life and persecution of Thomasina Hall. Raised as a girl in England, Thomasina grew up wearing girl's clothing and learning activities deemed appropriate for women. As a person in their twenties, Thomasina adopted a new gender identity, chopping off her hair and fighting as a soldier named Thomas. When Thomas returned from the army, he adopted a female identity and appearance, which she then carried to the Virginian colony.¹⁰ In Virginia, people began questioning Hall's gender based on a change in dress and a variety of male and female skills that Hall possessed. Hall's body was inspected numerous times, each with a different result. A group of women declared after a physical inspection that Hall was a man; in contrast, a group of men later declared Hall a woman.¹¹ This debate continued to the General Court in Virginia for a final verdict on Hall's gender. The court agreed with Hall, stating that "Hall was 'a man and a woeman, that all the Inhabitants there may take notice thereof and that hee shall goe clother in mans apparel, only his head to bee attired in a Coyfe and Crosecloth wth an Apron before him'."¹² The decision in Hall's case is less important than the question first being asked; a court hearing a case on gender identity shows the value colonial society placed on the binary gender norms prescribed in the 1600s.

⁹ Norton, *Founding Mothers and Fathers*, 190.

¹⁰ Norton, *Founding Mothers and Fathers*, 184-185.

¹¹ Norton, *Founding Mothers and Fathers*, 185-187.

¹² Norton, *Founding Mothers and Fathers*, 187.

This unique verdict from the Virginia General Court shows commonplace beliefs about gender and sex during the seventeenth century. The fact that this issue even went to court shows the importance colonial individuals placed on a gendered society and their trust in the Virginian court system to clarify a previously fluid case of gender identity. During the seventeenth century, colonial English scientific understanding about gender concluded that women were inferior to men because women's sex organs were an internal version of male sex organs. With this understanding of inferiority and inverted sex organs, a common belief in colonial society was that women could turn into men.¹³ Hall's clothing and skill set was also an identifier of gender. During the seventeenth century, clothing identified the gender and social rank of a person. Norton argues that, "People who wore skirts nurtured children; people who wore pants did not."¹⁴

As Thomasina shows, the concept of gender in Chesapeake society was a social construct that changed over time. The genitalia of an individual, coupled with clothing and social mannerisms, gave others an idea of one's gender. Gender was the construct of societal understanding of the definitions of femininity and masculinity during the seventeenth century and continues to this day.¹⁵ Historian Mary Beth Norton describes in *Founding Mothers & Fathers* that there are two major theories about gender relationships that are crucial to understanding colonial society, the Lockean and Filmerian systems. In the gender theory associated with John Locke, women could never reach political control or agency.¹⁶ Lockean theory was based on the dichotomous theory of power, in which a

¹³ Norton, *Founding Mothers and Fathers*, 188.

¹⁴ Norton, *Founding Mothers and Fathers*, 190-191.

¹⁵ Norton, *Founding Mothers and Fathers*, 5.

¹⁶ Norton, *Founding Mothers and Fathers*, 291.

woman's status was based solely on her gender; in Lockean society "the sources of authority in the family differed from those in society and the polity."¹⁷

In contrast, the Filmerian system believes gender was not the only determinant of public control and agency. The Filmerian system was named after Sir Robert Filmer, an English theorist who believed that several categories determined a person's station, including but not limited to gender, status, race, and age.¹⁸ In the Filmerian theory, high status women could hold more political and economic power than men of lower status because their economic power was more important than gender. This theory reflects the economic practices of the seventeenth and eighteenth century Chesapeake region; widows during this time, including Blanch Harrison Oliver Howell and Elizabeth Potter Greene, used their husbands' wealth and economic power to maintain property and political status in the region.¹⁹ This shift in societal norms to allow some wealthy women "on the fringe" of the gendered constructs to keep power after their husbands had died caused problems in social classifications. These women, as individuals, could maintain a high-rank; however, even in the Filmerian system, women as a collective were not able to break from the social and political constraints of their gender.²⁰ Throughout the seventeenth and eighteenth centuries, more women could access and keep economic power through inheritance; however, this was on an individual basis and no tactics for a large-scale attack on the social system can be found within individual high-status women's wills. Therefore, wealthy women benefitted from the Filmerian system in the

¹⁷ Norton, *Founding Mothers and Fathers*, 11.

¹⁸ Norton, *Founding Mothers and Fathers*, 11.

¹⁹ Norton, *Founding Mothers and Fathers*, 146.

²⁰ Norton, *Founding Mothers and Fathers*, 289.

Chesapeake; however, they did not fight for society to exclude gender from the classification system.

Women in the Chesapeake v. England

The ability of women to gain political and economic power within the Chesapeake region was directly correlated to the historical introduction of women into the colonies in the early 1600s. In the early Chesapeake colony, women rarely emigrated from England due to the focus on tobacco and economic work in the region. The ratio of women to men was distorted for approximately one hundred years. For example, less than 14 percent of immigrants from England in 1635 were women.²¹ Women embarked for the Chesapeake originally to become wives of planters already established in the colony; these women were sent to calm the assumed immoral and disorderly behavior of planter men in the region. Even with this biased view on gender roles, women who emigrated could achieve greater social advancement in the Chesapeake than they would have expected in England.²² In the 1600s, England was focused on a Lockean theory of society, whereas the unorganized and unstable colonial region allowed women to gain some authority through a Filmerian view of society.

As in England, widowhood allowed women greater economic power in the Chesapeake based on dower rights. The English custom of one-third of a husband's estate to go to the care of the widow continued in the Chesapeake colonies. Unlike in England, however, property-owning men in the Chesapeake increasingly gave more than one-third of their estate to their wives in their wills. *American Slavery, American Freedom*

²¹ Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton & Company, Inc., 1975), 163.

²² Betty Wood, "Servant Women and Sex in the Seventeenth-Century Chesapeake," in Foster, Thomas A. Ed., *Women in Early America*, (New York: New York University Press, 2015), 96.

described how, even with a variety in wills, it was common for men in the Chesapeake to give specific items to children and leave the rest to their wife for her lifetime.²³ This change in inheritance and economic power could be based on the isolation of the family within the unorganized colony or the increased reliance on wives to complete most household tasks. Because of increased mortality rates in the unruly seventeenth century Chesapeake, women were the unifiers of households. Their ability to organize orphans and stepchildren from previous relationships allowed them power within the family economy.²⁴ Either way, the economic power widows controlled in the Chesapeake far outweighed the control these women would have maintained if they lived in England.

The “Empowered weak”

While the comparison with England allows for Chesapeake women to gain economic rights through inheritance, it would be inaccurate to believe that this power was universal and overarching. Professor Irmira Wawrzyczek coined the term “empowered weak” in her article “The Women of Accomack versus Henry Smith.” In this article, Wawrzyczek describes how plantation life was not conducive to empowerment or gender consciousness. Women were seen as silly creatures who were irrational and impractical.²⁵ Understanding this gender dynamic, some women could manipulate the accepted gender norms rather than blatantly disregarding them and became the “empowered weak”. Historian Irmira Wawrzyczek cites that most women, however, gained more from

²³ Morgan, *American Slavery, American Freedom*, 165.

²⁴ Smith, *Inside the Great House*, 80.

²⁵ Smith, *Inside the Great House*, 69.

accepting the gender norms of society than from accepting the social order because of the chaos of early colonial plantation life.²⁶

The empowerment that some women gained in Chesapeake society was found on a case-by-case basis. There was no collective gender identity or support for women throughout the social spectrum—slave, indentured servant, planter’s wife, and widow. For example, women servants could not expect support from their mistresses after accusations of rape or illegitimate children.²⁷ Also, married women gained legal power compared to their unmarried counterparts because married women could be used as valid witnesses in legal trials.²⁸ Because of the individualistic nature of women’s influence, it is difficult to know whether women identified with the power structure or resigned themselves to live within the social construction.²⁹

What is clearer in Chesapeake society is the rigidity in a racial hierarchy rather than a heavily defined gender hierarchy. The term “white” was first used in the Chesapeake in a 1691 miscegenation law, which forbade English men and women from marrying Africans or Native Americans.³⁰ Furthermore, a 1705 law code in Virginia specified that blacks could not testify against whites.³¹ The collective language in legislation continued throughout the 1700s; laws referred to differences in race rather than gender to determine punishments. In the colonial Chesapeake, whites began to think

²⁶ Irmira Wawrzyczek, “The Women of Accomack versus Henry Smith: Gender, Legal Recourse, and the Social Order in Seventeenth-Century Virginia,” *The Virginia Magazine of History and Biography* 105, no. 1 (Winter 1997): 26.

²⁷ Wood, “Servant Women and Sex in the Seventeenth-Century Chesapeake,” in Foster, *Women in Early America*, 98.

²⁸ Wawrzyczek, “The Women of Accomack versus Henry Smith,” 7-8.

²⁹ Wawrzyczek, “The Women of Accomack versus Henry Smith,” 8.

³⁰ Alison Bell, “White Ethnogenesis and Gradual Capitalism: Perspectives from Colonial Archeological Sites in the Chesapeake,” *American Anthropologist* 107, no. 3. (Sept 2005): 448.

³¹ Bell, “White Ethnogenesis and Gradual Capitalism,” 448.

and organize themselves collectively in order to form distinct identities from Africans and Native Americans.

Because of the sources available and time period of study, archeological evidence is crucial in understanding how distinct racial identities formed in the seventeenth century Chesapeake. Anthropologist Alison Bell researched material culture in seventeenth century Virginia to discover the slow process of racial definition. Bell cites that changes in the floor plan of manors to focus more on the white planter family unit and the movement of the laborer's and slave' quarters to a separate area of the manor shows a purposeful reorganization and division in racial and social classes.³² When planters placed their laborers away from the main home and structured their manors to include division between rooms and more individual space for the family, it was in effort to establish a division between white planters and their self-described inferiors, based on a racial basis. For white Chesapeake planters, divisions based on race were not as rigid when it came to social class. Archeological sites show that, despite differences in wealth, many European-Virginias built wood houses, showing their similarities. This choice in home most likely played a role in creating commonalities between white homeowners in comparison to other ethnicities.³³ It also further complicates the issue of race and social class as defining traits within Chesapeake society. As the seventeenth century Chesapeake moved to a private family and kin group, there were rigid definitions made in the law and manor structure to solidify divisions based on race, rather than social class or gender.

³² Bell, "White Ethnogenesis and Gradual Capitalism," 448.

³³ Bell, "White Ethnogenesis and Gradual Capitalism," 454.

As the Chesapeake colonies became more organized in the late 1600s, classifications based on race and gender became more apparent. Women who lived outside of the traditional domestic gender roles, mainly widows, had the economic advantage to control land and wealth for their family. These widows did not further their own female children's power when they died. Rather, they continued to abide by common practices of inheritance, such as giving the majority of their land and wealth to sons and male relatives. The strong patriarchal society of the seventeenth century Chesapeake is also shown in the treatment of indentured servants who had illegitimate children and women who wanted to marry a man of a different race or freed status. Indentured female servants were called before the Accomack County Court at a much higher rate than their male counterparts. Freed women who wanted to marry a slave also had to give up some of their freedom and their children's freedom for this relationship. These women "on the fringe" of society had the opportunity to upset the social structure of the Chesapeake region through inheritance laws and court cases; however, the unyielding gender norms in the Chesapeake did not allow for any movement.

Chapter 1: Chesapeake Widows and Inheritance

Unlike the majority of widow's wills, Winifred Ashcom, a labeled spinster, made a rare appeal in her will by giving her estate only to women. For example, in her entire will, Winifred Ashcom writes "In the name of God amen I Winifred Ashcom of St. Mary's County in the province of Maryland spinster being sick and weak in body but sounds and perfect mind and memory and having daily mementos of mortality...I give an bequeath my Negro man named Tony unto my Hono. Mother Martha Danset to her and her heirs for ever."³⁴ She continues by giving "to my coz or neive Mary Ashcom Greenfield for ever two Negroes boys called James and Job and fifty pounds sterfrom Robert Dansey."³⁵ This rare example of female inheritance is an example of what other women could have done in their own wills; however, they did not. The women impacted by Winifred Ashcom's property and personalty gained temporary economic power within the Chesapeake region. This power was unfortunately fleeting based on their gender. Even though Chesapeake women had the ability to share their inheritance with other women, familial or not, they overwhelmingly did not chose to follow Winifred Ashcom's example. The emphasis on marriage, gender roles, and the importance of *feme covert* in the colonial Chesapeake lead to conformity among wealthy widows.

To continue the social hierarchy, elite marriage in the 17th century Chesapeake region was focused on maintaining a small, cohesive elite group of families that had economic and political power. In the late 1600s, Historian Trevor Burnard identified that

³⁴ Winifred Ashcom, Will, Somerset County Will Book, 27 March 1718, *Wills 1714-1718, Prerogative Court*, reel 14, 464, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm, MPW13, MSA SM16, SR4408, Edward H. Nabb Research Center for Delmarva History and Culture, Salisbury University, Salisbury, Maryland).

³⁵ Winifred Ashcom, Will, Somerset County Will Book, 27 March 1718, *Wills 1714-1718, Prerogative Court*, reel 14, 465, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm).

fifty-three percent of wealthy Marylanders had at least one child that married another elite family based on Maryland court records.³⁶ This focus on marriage between prominent families changed towards the end of the 18th century based on the changes over time of the gentry class. It became more important for families to show respectability and gentility, regardless of status, than to keep the rigid marriage structures of the earlier 1600s.³⁷ As consumer goods became cheaper, population rose, and individual wealth increased, more Maryland families acted like the elite Marylanders of the previous decades. They emulated the wealth and sophistication of the wealthy.³⁸ This transformation is shown in marriage statistics from 1760; by this time, less than one-third of Maryland elite families married within their ranks. This does not mean that elite families declined in wealth or social status; they still married well because of the increased wealth and material possession overall in planter society. Of elite Marylanders who married outside their ranks, less than 5 percent married individuals who had less than £225 in their estate.³⁹ This change over time of elite Maryland marriages highlights the opportunities for women of all social classes to rise in society through marriage.

Property Rights- England v. Chesapeake

The change in marriage choice and law seen in the Chesapeake region is a vast divergence from English common law of the seventeenth and eighteenth centuries. In England, children inherited property and money primarily from their father. Furthermore, English women became *feme covert* when they married, barring themselves from any

³⁶ Trevor Burnard, "A Tangled Cousinry? Associational Networks of the Maryland Elite, 1691-1776," *The Journal of Southern History* 61, no. 1 (February 1995): 26.

³⁷ Trevor Burnard, *Creole Gentlemen: The Maryland Elite, 1691-1776* (New York: Routledge, 2002), 127.

³⁸ Burnard, "A Tangled Cousinry?," 27.

³⁹ Burnard, "A Tangled Cousinry?," 28.

legal status.⁴⁰ A *feme covert* had no legal rights including buying or selling property, writing a will, or making a binding contract; her husband had to consent to any public decisions that she wanted to make.⁴¹ As a *feme covert*, English widows, if their husbands died before them, would be given one-third of the estate to live on for the rest of their life, as long as they remained chaste and unmarried.⁴² These parameters were stringent and meticulously followed throughout the colonial era in England; the change to widow's inheritance rights first came in the English colonies rather than in mother England.

The Chesapeake colonies started their existence in tune with English common law based on their understanding of the legal system. The circumstances that arose in the first decades of the colonies manipulated English legal doctrine based on several factors. This change was based on the complexity of English doctrine, the lack of proximity to English law and counsel on inheritance law, and the large majority of English commoners who emigrated to the Chesapeake without knowledge of English nobility law.⁴³ Individuals emigrating to the American colonies had little experience with English common law because they were not part of the English gentry class.⁴⁴ Therefore, English common law was interpreted in different fashion based on the colony.⁴⁵

⁴⁰ Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," *The American Journal of Legal History* 31, no. 2 (Apr. 1987): 147.

⁴¹ Marylynn Salmon, "Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730-1830," in Robert Blair St. George Ed. *Material Life in America 1600-1860* (Boston: Northeastern University Press, 1988), 292.

⁴² Shammas, "English Inheritance Law and Its Transfer to the Colonies," 147.

⁴³ David S. Clark, "Comparative Law in Colonial British America," *The American Journal of Comparative Law* 59, no. 3 (Summer 2011): 662.

⁴⁴ Historian Mary Beth Norton points out that this lack of legal training benefits historians based on the information presented. To Norton, "The earliest court records therefore supply a treasure trove of information about the colonists' assumptions, attitudes, and behaviors." Historians can look at court record indirectly to see the values judges placed on their colonists. This is a unique and purposeful historical technique that can show value on intermarriage, gender roles, and the concept of race in the seventeenth century. Norton, *Founding Mothers and Fathers*, 14.

⁴⁵ Clark, "Comparative Law in Colonial British America", 662.

This interpretation of English common law is important to understand because regional legal differences abounded. It is incorrect to assume that colonial law and life in New England was a mirror of Chesapeake or Carolina interpretations. For example, New England took a hands-on approach to governance, instituting strict laws on daily tasks and family life. In comparison, Chesapeake judges were narrowly focused on two parts of family life—marriage and death or divorce.⁴⁶ Prior to 1690, the colonies of Virginia and Maryland granted widows personalty, or personal property, and realty dower rights. This is a break from English law, which only gave widows personalty rights.⁴⁷

These increased rights for Chesapeake widows slowly reverted to English policy on marriage settlements. When married, a colonial woman became *feme covert* and lost all personal property rights associated with her family; these rights became her husband's.⁴⁸ Marriage settlements served many purposes—granting women a semblance of financial security in marriage and possible widowhood and protecting family property from creditors.⁴⁹ These colonial marriage settlements were interpreted more liberally than English law. In England, marriage rights were for wealthy women; however, the colonial atmosphere allowed all women, regardless of social class, to have legitimate claim to their one-third.⁵⁰

Inheritance Within the Family

Probate wills and inventories from the seventeenth century Chesapeake offer a rich look into the values that individuals espoused. Wealthy Chesapeake families were

⁴⁶ Norton, *Founding Mothers and Fathers*, 48.

⁴⁷ Shammass, “English Inheritance Law and Its Transfer to the Colonies,” 158.

⁴⁸ Shammass, “English Inheritance Law and Its Transfer to the Colonies,” 159.

⁴⁹ Salmon, “Women and Property in South Carolina,” 292.

⁵⁰ Salmon, “Women and Property in South Carolina,” 293.

increasingly focused on their nuclear family and the correct format of inheritance. For example, Kenelm Chiseldyne from St. Mary's County gave his wife Mary "her thirds" as well as his young son Cyrenius 20,000 pounds of tobacco after his death in 1719. Chiseldyne continued in his will to give his personalty to his godson Kenelm Bolt.⁵¹ Inheritance trends of the 1600 and 1700s show an increase in property and personalty given to family members, rather than nonimmediate friends and family. By the second half of the seventeenth century, less than ten percent of Virginia wills included people outside the immediate family. In Maryland, "over three-fourths of Maryland testators with family made no mention of kin other than spouses and children before 1700."⁵² This focus on family inheritance shows the value and concern for immediate family, even after one's death.

For wealthy widows, the focus on family continued and highlights how family dynamics were structured during the colonial Chesapeake Era. Wealthy widows, such as Hannah Horsey and Elizabeth Davis, continued to bestow personalty and land to their family members, specifically to their sons and other male relatives. Of all the individuals named in Elizabeth Davis's Somerset County will from 1734, slaves and the residue of her estate were given to male relatives. The women mentioned in her will were given personalty. Although Elizabeth Davis continued to perpetuate the gendered giving of land and slaves to men in her life, she did grant three slaves freedom.⁵³ "It is my will that my three Negros Simon, Will, and Sam be manumitted set free at the age of twenty one years

⁵¹ Jane Baldwin Ed., *The Maryland Calendar of Wills Volume IV- Wills from 1713 to 1720* (Baltimore: Genealogical Publishing Company, 1968), 212.

⁵² Smith, *Inside the Great House*, 233.

⁵³ Elizabeth Davis, Will, Somerset County Will Book, 14 Jan. 1734, *Wills 1734-1738, Prerogative Court*, reel 21, 268, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm, MPW 20, MSA SM16, SR4415, Edward H. Nabb Research Center for Delmarva History and Culture, Salisbury University, Salisbury, Maryland).

and each of them to have a horse and a suit of clothing will o live with David Murray until the age of twenty one.”⁵⁴ These slaves were required to live with Davis Murray until they turned twenty-one; however, she granted them freedom and clothing upon that date. This focus on male inheritance transferred down the social ladder to less wealthy widows, like Sarah O’Neal. In her 1710 will, Sarah O’Neal gives her son her entire estate “including that which was due by his father.”⁵⁵ Sarah O’Neal and Elizabeth Davis showcase that most widows, whether wealthy or not, bestowed their estate on their male relatives.

Another wealthy woman’s will, Henrietta Loyd from Talbot County, Maryland, showcases the change in inheritance over time. For Henrietta Loyd, like so many others at this time, there were stipulations in wills to include directions after a recipient’s death. For example, Henrietta stated: “I give unto my dears & Honord Mother Mad. Ann Neale all my part of the estate given me by my Honor. Father by his wife. I give ypon my Hono. Mother two Negros for her use during wife & after her desece one of them to my Brother Mr. Anth. Neal & the other to my Suster Mrs. Jane Borsman.”⁵⁶ In 1697, Henrietta Loyd gave her mother the estate she had previously received from her deceased father. When her mother died, Henrietta’s brother and sister were to receive the African slaves. These parameters of multiple directions after a recipient’s death and typical of Chesapeake wills at the time. For individuals in the region, death came unexpectedly and quick, regardless

⁵⁴ Elizabeth Davis, Will, Somerset County Will Book, 14 Jan. 1734, *Wills 1734-1738, Prerogative Court*, reel 21, 268, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm).

⁵⁵ Jane Baldwin Ed., *The Maryland Calendar of Wills Volume III- Wills from 1702 to 1713*(Baltimore: Genealogical Publishing Company, 1968), 173.

⁵⁶ Henrietta Loyd, Will, Somerset County Will Book, 2 June 1697, *Wills 1693-1698, Prerogative Court*, reel 7, 252- 253, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm, MSA SM16, SR4403, Edward H. Nabb Research Center for Delmarva History and Culture, Salisbury University, Salisbury, Maryland).

of age. Therefore, parameters needed to be written into wills to determine how land and personalty was to be inherited under different circumstances.

Henrietta Loyd's will also represents the special circumstances her family members had within the community. As a wealthy woman, Henrietta Loyd had substantial acreage in the area. She willed part of her land to her son, Richard Bennett, when stating "I give unto my Son Richard Bennett all my tract of land called the Folly containing 400 acres and four hundred acres of land with the two lots at towne out of my tract of land called Buckingham lying in Sassafras River with all plantation houses and orchards thereupon to him & his heirs."⁵⁷ The unique circumstances to her will is that she also gave her daughter considerable land as well; "I give upon my Daughter Henrietta Maria all that tract of land called the adventure containing @ 450 acres lying in St. Michaels River also all that tract of land called upon Range purchased of George Hirlock to her and her heiress."⁵⁸ There are very few instances of wealthy women giving land to their daughters. Most inheritance by daughters came in the form of personalty. Henrietta Loyd's will is the exception to the larger rule of inheritance. While most Chesapeake wills kept estates within the family, there are few instances of women bestowing large percentages of their estate to other women. The access wealthy widows had to upset the economic roles of society was not realized because most widows continued to subscribe to gendered inheritance rules.

⁵⁷ Henrietta Loyd, Will, Somerset County Will Book, 2 June 1697, *Wills 1693-1698, Prerogative Court*, reel 7, 252, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm).

⁵⁸ Henrietta Loyd, Will, Somerset County Will Book, 2 June 1697, *Wills 1693-1698, Prerogative Court*, reel 7, 252- 253, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm).

Women Executors and Power

In the Chesapeake region, women were usually chosen as their husband's executor in the seventeenth century; this executor status allowed women economic authority over property and inheritance. As an executor, a widow would hear claims to her late husband's estate and, if she delayed payment on a claim, could continue to enjoy the estate for a period of time.⁵⁹ The economic power that an executor held gave a widow power over the familial estate; however, her position in society did not change dramatically. A widow paid taxes on the estate, but she could not have any other political power granted to male heads of households, including voting, holding office, or serving on a jury or in the militia.⁶⁰ Historian Mary Beth Norton describes that a widow's disqualification from political power was based on her gender, rather than other qualifications for men, such as property ownership, age, or social class. Therefore, in some instances, a widow could act like a man and use her *feme sole* status, but in the political realm, her gender was the only qualifier.⁶¹

This unique opportunity for widows to have the executive power of a man, while keeping their femininity, was a rare occurrence and did not last for an extended period. The rate of widow executors over their husband's estate dropped significantly over a period of 100 years. For example, in York County, Virginia, wife only executors in 1700-09 were fifty percent of married men's wills. By 1750-59, the percentage had dropped to 10.6 percent in Albemarle County. By 1799, the percentage of wife only executors in

⁵⁹ Morgan, *American Slavery, American Freedom*, 166.

⁶⁰ Norton, *Founding Mothers and Fathers*, 139.

⁶¹ Norton, *Founding Mothers and Fathers*, 139.

Albemarle County had dropped further to 5.4 percent.⁶² During the same time, son executors had moved from zero percent in 1700 in York County to sixty percent in 1790 in Albemarle County. Friend executors had also dramatically increased from 16.7 percent in 1700 to 58.2 percent in 1790-99.⁶³

This change over time from wife only executors was predicated by more rigid gender roles, the domestication of women, and the change in gentry allegiance so that men turned to other men rather than their wives. The gender roles in the colonial Chesapeake became more rigid because of a new balance between the sexes. As more women immigrated to the Chesapeake, women lost their bargaining power within the household because men now had multiple options for wives.⁶⁴ With less opportunities to act as equal partners in a marriage, women were relegated to household tasks. The changing population demographics in the mid-1700s ultimately led to both the relegation of women to domestic work and the rise of the gentry class of elite men.

In addition to change over time of widow executors, the wills of widows themselves show the decreased power and gender constrictions forced upon women in the seventeenth and eighteenth century Chesapeake. In Appendix A, the analysis of Maryland wills from 1635 to 1743 shows a small increase in the percentage of wills written by women; however, this increase still shows that economic power was mainly in the hands of men. For example, from 1635 to 1685, there were 1,091 wills authored by men in Maryland. During the same time, women authored 42 wills, of which 14 were

⁶² Smith, *Inside the Great House*, 239. The change in statistics from York County to Albermale County is based only on the survival of court records during this time. There was not a significant number of York County court records from the late 1700s to create statistics.

⁶³ Smith, *Inside the Great House*, 239.

⁶⁴ Lois Green Carr and Lorena S. Walsh, "The Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *The William and Mary Quarterly* 34, no. 4 (Oct. 1977): 569.

labeled widow and 1 was mentioned as “the wife of...”⁶⁵ This percentage of wills written by women increases from 3.7% in Volume I: 1635-1685 to 12.1% in Volume VIII: 1732-1743.⁶⁶ Even with this small increase, Chesapeake women over time did not gain increased economic power. This small increase could be based on the larger collection of wealth from agriculture of the time or the increased access to literacy.

Also, while 115 out of 947 wills written from 1732-1743 in Maryland were from women, these property owners were labeled as widows in 40 instances.⁶⁷ In Catherine Sturney’s own will in 1716, she even labels her daughter Priscilla as the “wife of Daniel Swillavant”.⁶⁸ The classification of women property owners as widows and wives takes away from their agency as individuals. There were no instances of Maryland wills from men labeling themselves as “husband of”. For some men, their occupation was labeled in their will. For example, Thos. Bartlett was a blacksmith from Talbot County. In his will of 1711, Mr. Bartlett gave his sons Thomas and John part of Radclife Manor, his daughter Hester “certain money” and his wife Mary “personal estate and plantation during life”.⁶⁹

In comparison, women characterized themselves mainly by their marital status. For example, Catherine Owlin of Queen Anne’s County was labeled a spinster in her 1721 will; she gave her entire estate to Patrick O’Bryon, a planter.⁷⁰ There is a rare occurrence of a women and her job title. Mary Evans of Somerset County wrote in 1728

⁶⁵ Baldwin, Jane Ed. *The Maryland Calendar of Wills Volume I- Wills from 1635 (Earliest Probate) to 1685* (Baltimore: Genealogical Publishing Company, 1968), 1-219.

⁶⁶ Appendix A.

⁶⁷ Appendix A, *Maryland Calendar of Wills, Volume VIII*, 1-282.

⁶⁸ *The Maryland Calendar of Wills, Volume IV*, 63.

⁶⁹ *The Maryland Calendar of Wills, Volume III*, 231.

⁷⁰ *The Maryland Calendar of Wills, Volume V*, 100.

that she was a “semsterif”, roughly a seamstress.⁷¹ If this interpretation is true, this is the first account in the Maryland wills at this time of a women’s job title written into her will. The value she places on her occupation is important; however, the rest of her will also shows the constrained nature of gender norms. Mary Evans gives 203 acres to her sons Gamage and Powell.⁷² This inheritance to her sons may be because she only had sons; however, she did not give her personalty to anyone in her will, male or female. As someone that wanted her occupation noted in her will, Mary Evans still used her will to focus on supporting her family rather than her female kin.

Fleeting Power

In addition to the choices that widows made during their lives, as executors, and in their own wills, the concept of the widow deserves attention. Widows gained more economic and legal authority over their husband’s estate but their power was fleeting. The “widowarchy” that Edmund Morgan describes in *American Slavery, American Freedom* of the seventeenth-century Chesapeake dwindles by the eighteenth century.⁷³ This was based on a variety of factors. First, whenever a widow remarried, the estate they inherited became part of their new husband’s estate; which this change in marital status, women also lost their power as controller of the estate. Based on the unequal sex ratio in the early Chesapeake colonies, women remarried in a few months or years after their first husband died.⁷⁴ Second, the strength that women gained through marriage and the remarriage to men of higher classes dwindled with the early eighteenth century. This

⁷¹ *The Maryland Calendar of Wills, Volume VII*, 4. The translation of semsterif to seamstress is an original conclusion based on the information presented.

⁷² *The Maryland Calendar of Wills, Volume VII*, 4..

⁷³ Morgan, *American Slavery, American Freedom*, 166.

⁷⁴ Norton, *Founding Mothers and Fathers*, 146.

is because of the influx of male slave labor to supplant servant labor. In Maryland, the sex ratio of men to women was 157.2 in 1704 and dropped to 113.3 by 1755.⁷⁵

Therefore, even with remarriage, there was less social mobility for women to move upon the social ladder in terms of marriage because there was more competition over mates.

When a woman remarried in Chesapeake society, the land or personalty they gained from another's will transferred to their husband. This custom was so pervasive that Jane Coursey of Talbot County, Maryland gave her mother personal effects and slaves in her 1695 will. Jane Coursey specifically outlines that her mother "during widowhood" would retain these effects but "brothers John and James and hrs., sd. Slaves in event of mother's marriage".⁷⁶ Her allocation of resources shows her allegiance to her family while also understanding that marriage allowed the man to claim responsibility for his wife. That is why Jane Coursey gave her brothers the slaves whenever her mother remarried.

In Maryland wills, the discussion of children also illuminates social conventions of the time. While only a few women wrote about unborn children in their wills, the will of Eliza Hemstead shows the beliefs of the time about gender and economic power. Eliza Hemstead of Baltimore County wrote in 1690 "to Enock Spinke and unborn child of Eliza, Waly, if male, and their hrs. all land. If sd. Child be female, personalty only, and Enock Spinke, afsd. To inherit all land."⁷⁷ If the unborn child of Eliza Hemstead's relatives was a girl, she would not inherit land. This will is a rare instance of designating inheritance for an unborn child strictly on gender. To Eliza Hemstead, gender was the

⁷⁵ Smith, *Inside the Great House*, 79.

⁷⁶ *The Maryland Calendar of Wills, Volume II*, 114.

⁷⁷ *The Maryland Calendar of Wills, Volume II*, 51.

only indicator that mattered for the unborn child. These parameters show that people reaffirmed social conventions and gender roles in their wills.

Another unique case is widow Rebecca Calvert's will in which she dictates in 1734 that her small children should be entrusted to her executors, Benjamin Tasker, George Plater, and Onorio Razolini. She asks that "Mrs. Razolini have the care of them during their minority and living single if she shall so long live and that my Negro Sue be with her to attend my children also the Negro girl Becky so long as Mrs. Razolini shall want her. I desire that due care be taken to educate my children in the Protestant religion..."⁷⁸ Rebecca Calvert's discussion of her executor, Mr. Razolini, taking care of her children shows the actuality of Mrs. Razolini taking care of her children and raising them in the Protestant faith. This will shows the general roles of the period: Mr. Razolini was entrusted to take care of the children monetarily; however, Mrs. Razolini was the familial and domestic caretaker. Overall, Rebecca Calvert's and Eliza Hemstead's wills highlight the strict enforcement of gender norms of the colonial Chesapeake; individuals did not use these legally binding documents to upset the social structure or give women more economic power.

The wills of Marylanders explain the complex hierarchy in the seventeenth century and the values that individuals espoused. Both men and women writing wills focused on keeping their property within the family; individuals maintained the gendered hierarchy by overwhelmingly giving their male relatives more property and estate than

⁷⁸ Rebecca Calvert, Will, Somerset County Will Book, 13 March 1734, *Wills 1734-1738, Prerogative Court*, reel 21, 322, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm, MPW 20, MSA SM16, SR4415, Edward H. Nabb Research Center for Delmarva History and Culture, Salisbury University, Salisbury, Maryland).

female relatives. Women who could hold economic power as widows did not reach the political or legal status of men. They also kept their widow status for a short amount of time due to the high rate of remarriage in the colonies; when women did remarry, legally their assets went to their new husband. When women died, they had a final opportunity to give economic power and sustainability to their female counterparts; however, most women, like men, gave inheritance to their family members, rather than bolstering female kin.

Chapter 2: Indentured Servants and Bastardy Cases

Brought to the Chesapeake as an indentured servant of Henry Smith, Elizabeth Carter's life and work within Virginia showcases the hardships and immorality associated with many indentured servants. Elizabeth Carter formed a romantic relationship with the married Smith and stayed on the plantation as his concubine far after her contract was complete. Another servant, Elizabeth Nock, stated that Carter gained social standing within the plantation for this relationship. Nock described receiving "blows Kicks & Whipping without any just Occasion given, Only for the pleasure & humor of himselfe & Wench Eliza Carter."⁷⁹ In this common master-mistress relationship of the colonial Chesapeake, Elizabeth Carter took advantage of her position as Smith's favorite mistress and was able to bend social rules on reputability and power. In her quest for power and control not granted to her indentured status, Carter became pregnant. Once pregnant and concerned about legal action, Elizabeth Carter stated in a deposition that Smith lured her to bed with the promise of marriage.⁸⁰ The deposition further explained that, when Henry Smith found out about Carter's pregnancy, he gave her an abortifacient producing a stillborn baby. When Elizabeth Carter was formally charged with bastard-bearing and infanticide, she finally realized her vulnerability in this situation based on Henry Smith's lack of support.⁸¹ Elizabeth Carter was not killed for her crimes and historian Irmina Wawrzyczek believes that Carter's relationship with a married man was one of the only avenues where woman could publicly combat the constricting and confining nature of the plantation social order.⁸² For indentured servant women like Elizabeth, life relegated to

⁷⁹ Wawrzyczek, "The Women of Accomack versus Henry Smith," 10-11.

⁸⁰ Wawrzyczek, "The Women of Accomack versus Henry Smith," 10.

⁸¹ Wawrzyczek, "The Women of Accomack versus Henry Smith," 12-14.

⁸² Wawrzyczek, "The Women of Accomack versus Henry Smith," 25.

domestic work in difficult conditions felt like a trap. Some tried to maintain relations with men of power, either master or free man, in order to find a way out of their current condition. Servant women who were involved with individuals above their own social standing were trying to move up in society, even though many of these relationships did not produce their desired result.

Perceptions of Indentured Servants

Indentured servitude was the main form of labor in the seventeenth century Chesapeake. Historian Lois Green Carr estimates that “between 100,000 to 150,000 Europeans, the vast majority of them English, came to Maryland and Virginia in the seventeenth century. About 70 to 85 per cent came as indentured servants, needed for work in a labor-intensive crop, tobacco.”⁸³ Many immigrants from Europe believed that becoming indentured servants in the American colonies for a period of time would increase their social status after their contract was complete. Even with this opportunity for social advancement, many indentured servants were abused during their contracts. Virginia and Maryland laws of the 1600s did give servants rights to petition the court if they were mistreated; however, the implementation of the law was different than the idealized verbiage. For example, a 1642 Virginia statute allowed servants with “just cause of complaint” to appeal to a judge. This law was not practical because of the courage and legal necessities needed by a servant to take their master to court.⁸⁴ In fact, of servants that took their masters to court for abuse or neglect, many had their service extended if the master was found not guilty. For servants who did win their case, a court victory did

⁸³ Lois Green Carr, “Emigration and the Standard of Living: The Seventeenth Century Chesapeake,” *The Journal of Economic History* 52, no. 2 (June 1992), 272.

⁸⁴ T.H. Breen and Stephen Innes, *“Myne Owne Ground” Race and Freedom on Virginia’s Eastern Shore, 1640-1676* (New York: Oxford University Press, 2005), 62.

not invalidate the indenture contract; therefore, a servant could be forced to continue service with the same master who was found guilty of abuse in county court.⁸⁵ The perceptions and devalued nature of indentured servitude continued throughout the 1600s. By 1700, however, only five percent of the colonial labor force was indentured. This change over time is based on the increase in slave labor, labor demands in mother England, and decreasing opportunities for social mobility once their contract was complete.⁸⁶

This change over time in the Chesapeake labor force led to previously unstudied social stratification within the indentured class. When wealthy planters needed more sophisticated plantations to maximize profits, indentured servants began to specialize in labor. Specialized servants, such as carpenters and blacksmiths, were able to prosper within their social class.⁸⁷ For example, Historians Carr and Walsh describe that in the 1730s, only skilled Virginia servants could have Saturday afternoons off, a custom that was given to all indentured labor just fifty years before.⁸⁸ By the late seventeenth century, servants had moved to being less trusted than in previous decades. This decaying trust was based on the effects of Bacon's Rebellion and less land and resources provided to freedmen.⁸⁹ This regressive system of indentured labor is one reason why indentured women like Elizabeth Carter wanted to show their value by engaging in relationships with their masters. For many indentured women, there was little option for skilled labor like their male counterparts. With the further social stratification among indentured

⁸⁵ Wawrzyczek, "The Women of Accomack versus Henry Smith," 22.

⁸⁶ Brandon Paul Righi, "The Right of Petition: Cases of Indentured Servants and Society in Colonial Virginia, 1698-1746" (Master's Thesis, College of William and Mary, 2007), 30.

⁸⁷ Righi, "The Right of Petition," 25.

⁸⁸ Righi, "The Right of Petition," 17.

⁸⁹ Righi, "The Right of Petition," 12.

servants in the 1700s, servant women looked to any way they could gain power and standing within their community. Many of the methods of power, including fornication, had the opposite result that was intended.

Policies towards Indentured women

The transfer to slave labor and increased specialization of indentured servants did not solve the mistreatment of indentured women; this mistreatment came in many forms: restriction on marriage, fornication, and bastardy cases. Masters did not want their indentured servants to marry for two reasons: they would lose their labor source and the capital invested in securing that labor source.⁹⁰ In fact, a 1619 Virginia law “said simply that ‘no maide or woman servant’ already in Virginia or any ‘hereafter to come’ would be permitted to marry without the express ‘consent of her parents,’ her employer, ‘or the magistrate & Minister of the place both together’.”⁹¹ This gendered law focused on women continued until 1643 when the law was expanded to include all indentured servants. Regardless of gender, servants who married without the permission of their master would have a year sentence added onto their indenture contract.⁹²

The concept of adding time to an indenture contract was commonplace for an infraction, including illicit marriages and running away. Masters enforced this law to exploit their workers, gaining as many as ten days work for every day a servant ran away. For example, servant Mary Sullivan ran away for twenty-nine days before being recaptured. She then had two hundred fifty-two days added to her servitude.⁹³ This

⁹⁰ Wood, “Servant Women and Sex in the Seventeenth-Century Chesapeake”, 99.

⁹¹ Wood, “Servant Women and Sex in the Seventeenth-Century Chesapeake”, 99.

⁹² Wood, “Servant Women and Sex in the Seventeenth-Century Chesapeake”, 99.

⁹³ Wood, “Servant Women and Sex in the Seventeenth-Century Chesapeake”, 98.

policy was not gender-specific; however, it does show the lengths masters went to in order to gain control over their labor force.

Masters and judges in the Chesapeake region further restricted indentured servants in their prosecution of bastardy cases. In seventeenth century Maryland and Virginia, lawmakers did not create legislation that restricted individual's daily lives. The legislation they created was focused on illegitimate pregnancy because they were concerned about who was financially responsible for the child. Sexual relations, such as premarital fornication, was not punished, unless it resulted in a bastard child.⁹⁴ The father of the child, whether free or servant, was responsible for the child financially so that the parish or master of the mother would not have to be inconvenienced.⁹⁵ Even with the focus on bastardy cases on the father, indentured mothers did not emerge unscathed. In a 1662 Burgess policy, Virginian indentured women had two years added to their servitude; their only other option was to pay their master two thousand pounds of tobacco, which was unrealistic based on their work.⁹⁶

These policies are in stark contrast to New England colonies. In New England, half of all sex-crimes were for fornication and only ten percent were for bastardy cases. The Chesapeake region prosecuted half of all sex-crimes for bastardy cases and only one-fifth were for fornication.⁹⁷ This difference is based on the status of single women. In the Chesapeake, these women were most likely indentured servants, whereas in New England, they were free women.⁹⁸ Therefore, it was more important to prosecute

⁹⁴ Norton, *Founding Mothers and Fathers*, 336.

⁹⁵ J. Douglas Deal, *Race and Class in Colonial Virginia: Indians, Englishmen, and Africans on the Eastern Shore During the Seventeenth Century* (New York: Garland Publishing, Inc., 1993), 126.

⁹⁶ Wood, "Servant Women and Sex in the Seventeenth-Century Chesapeake", 101.

⁹⁷ Norton, *Founding Mothers and Fathers*, 336.

⁹⁸ Norton, *Founding Mothers and Fathers*, 336.

bastardy cases in the Chesapeake because the indentured women were in service to a master that would not want to be forced to financially support the bastard child. The more unbalanced sex ration in the Chesapeake may have lead women to be tempted by the advances of different men or single men being tempted by married women.⁹⁹ This comparison based on bastardy legislation is another example of why regionalism is important when discussing the American colonies. The issues faced by women of all statuses in the Chesapeake was different from their New England counterparts.

Indentured Marriages

Masters wanted to restrict the relationship status of their indentured women because marriage would cause them to lose their labor source. By the end of the seventeenth century, Virginia and Maryland outlined strict penalties to servants charged with adultery, sodomy, fornication, and bastardy. A legal servant marriage had to include a master's consent and a public ceremony.¹⁰⁰ In a 1696 Virginia law, any woman, servant or free, was not allowed to secretly marry between the age of twelve to sixteen or risk losing her inheritance.¹⁰¹ These restrictions on marriage in the seventeenth century included punishments for both the husband and wife, including imprisonment or physical punishment such as lashes.¹⁰² The gendered nature of illicit marriages during the 1600s was based on the inheritance lost for women.

The persecution of women for illicit marriages more than their male counterparts was directly related to the gender norms for women in the seventeenth century. In the

⁹⁹ John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (Chicago: The University of Chicago Press, 2012), 11.

¹⁰⁰ Ruth H. Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800* (Berkeley: University of California Press, 2003), 80.

¹⁰¹ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 81.

¹⁰² Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 82.

1600s, women were thought to be more immoral and sexual than men.¹⁰³ This focus on immorality on the part of the woman only allowed women redress in terms of child support. If a woman became pregnant from this illicit relationship, she could petition the court for the child's father to financially support the child.¹⁰⁴ Fathers were decreasingly charged with fornication over the seventeenth century; instead, the courts focused on determining who would financially provide for the child so that the church did not become overburdened.¹⁰⁵ In contrast, if a woman did not bear a child from a secret marriage, she took the majority of the punishment, both physically and financially. This misguided focus on the woman in a secret relationship takes ownership away from the other half of the problem, the man involved.

This misogyny in seventeenth century marriage law changed in the 1700s with the romanticized version of a pitiful woman being portrayed in fiction and religious teachings.¹⁰⁶ Court documents from the mid-1700s outline judges' sympathy for the emotional women and outrage at their reckless and negligent male counterparts.¹⁰⁷ This shift in blame for illicit marriages changed punishments doled out to the perpetrators. By the mid-1700s, ministers who performed illegal marriages were fined, rather than the couple being married.¹⁰⁸ For example, the Virginia House of Burgesses fined a clergyman in 1705 for crossing state lines and marrying a couple who were unable to marry in Virginia based on state marriage requirements.¹⁰⁹ While this change in gender biased legislation included less harsh punishments for women engaged in illicit

¹⁰³ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 95.

¹⁰⁴ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 98.

¹⁰⁵ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 90.

¹⁰⁶ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 100.

¹⁰⁷ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 96.

¹⁰⁸ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 89.

¹⁰⁹ Bloch, *Gender and Morality in Anglo-American Culture, 1650-1800*, 87.

relationships, this type of gender bias was still not in the best interests of Chesapeake women. Characterizing colonial women as fragile and pious rather than sexualized continues to take away their agency and individuality. Women during the seventeenth and eighteenth century were unique and multifaceted individuals and legislation made throughout this time discredited their value within a complex society.

Indentured Women and Illegitimate Children

In addition to restricting the marriage rights of indentured servants, Virginia and Maryland judges also punished women more harshly than their male counterparts for bastard children coming from these illicit relationships. In Accomack County court records from 1673 to 1676, more than twenty women were charged with fornication; however, only half the time their male counterparts were mentioned or fined.¹¹⁰ This trend continues throughout the colonial Chesapeake. From 1737 to 1744 in Accomack County, “forty-five different women were accused of bastardy or related crimes; only nineteen of their partners were named. Many of these men had probably departed for parts unknown, a choice that was also made by a handful of the women.”¹¹¹

In servant Anne Orthwood’s case, her clandestine relationship with John Kendall lead to bastardy charges being levied against her. Because John Kendall was the nephew of prominent Virginian Colonel Kendall, he was not charged with fornication.¹¹² Orthwood received the majority of the punishment associated with an illicit pregnancy because the pregnancy restricted her ability to work as a servant.¹¹³ As her punishment

¹¹⁰ JoAnn Riley McKey, “Accomack County, Virginia Court Order Abstracts 1673-1676 Volume 4” (Court Order Abstracts, Bowie, MD, Heritage Books, 1997), xiv.

¹¹¹ McKey, “Accomack County Court Orders”, Volume 17, vii-xi.

¹¹² John Ruston Pagan, *Anne Orthwood’s Bastard: Sex and Law in Early Virginia*, (Oxford: Oxford University Press, 2003), 3.

¹¹³ Pagan, *Anne Orthwood’s Bastard*, 4.

for bastard bearing, Anne Orthwood had “to serve her master an extra two years or pay him 2,000 pounds of tobacco to compensate him for the loss of her labor while she was incapacitated by pregnancy and childbirth.”¹¹⁴ Orthwood’s case highlights the inequality between gender and social status in terms of illegitimate children. For Anne Orthwood, her child’s father was not criminally prosecuted for the birth of their twins, rather he was responsible for the support of the surviving twin based on his social standing.

In other bastardy cases, servant women were persecuted for relationships with their masters, some consensual and others forced. Historian Jacqueline Jones highlights that “many of the bastardy cases in Virginia were simply instances of masters impregnating their female servants, often as a result of rape, and then claiming extra service owed to them as a result of the pregnancy.”¹¹⁵ In 1662, the Virginia Assembly mandated that indentured servants that bore bastards had to serve their masters for two additional years to compensate the master for their loss of labor and immorality.¹¹⁶ In the Accomack County court records of April 1672, Penelope Coe was mandated to serve her master Jonah Jackson two additional years or pay him a standard 2000 pounds of tobacco.¹¹⁷ Because of the financial situation Coe was placed in as an indentured servant, the tobacco fine was unrealistic. Therefore, like many other indentured women, Coe was forced to endure further sexual harassment and rape by a master and legislation that devalued indentured women based on their biological abilities and social status.

Prosecution of Bastardy Cases

¹¹⁴ Pagan, *Anne Orthwood’s Bastard*, 6.

¹¹⁵ Righi, “The Right of Petition,” 43.

¹¹⁶ Darrett B. Rutman and Anita H. Rutman, *A Place in Time: Middlesex County, Virginia 1650-1750* (New York: W.W. Norton & Company, 1984), 131.

¹¹⁷ McKey, “Accomack County Court Orders”, Volume 3, 59.

While Chesapeake courts fully prosecuted women for illegitimate children, the courts did not prosecute individuals until the birth of the child rather than closer to conception. Servant Sara Harness was called to Accomack County court on January 12th 1687 while visibly pregnant. Harness and her master Christopher Thompson claimed that Thomas Jenkins was the father of this bastard child; however, because the child had not been delivered yet, no damages could be awarded.¹¹⁸ Once Harness had delivered the child in 1687, an Accomack judge “ordered that the sheriff take Jerkins into custody till he gave a bond to save the parish from any charges related to the child; he was also to pay court costs.”¹¹⁹

To further illustrate that Chesapeake courts were focused on the birth of illegitimate children, rather than conception, if a couple was married before the birth of the child, they were not charged with bastardy or fornication. In November 1688, “the wife of Richard Cooper was summoned to answer the grand jury’s presentment for fornication and having a bastard child. Her husband appeared and said that they were married before the delivery of the child. The court thought fit to discharge her from the fine; Cooper paid court charges.”¹²⁰ This incident in Accomack County court illustrates the concern over birth for court officials as well as the status of married men and women. By addressing a woman as “the wife of...”, the Accomack County Court showcases the gender roles given to women. Only after her husband confirms that they were married prior to the birth of their child is the woman discharged. It is unclear the social class of this woman; however, the description of her based on her marital status and not her name

¹¹⁸ McKey, “Accomack County Court Orders”, Volume 7, 186.

¹¹⁹ McKey, “Accomack County Court Orders”, Volume 7, 186.

¹²⁰ McKey, “Accomack County Court Orders”, Volume 7, 255.

or occupation reiterates the treatment Chesapeake women endured in the seventeenth century.

In extreme contrast to the previous example of Richard Cooper's nameless wife, women did hold some authority in the naming of a bastard's father. It was a common belief in the colonial Chesapeake that a woman would not lie about the name of the bastard child's father if asked during childbirth. Midwives were called into court and their testimony about the child's father was accepted based on this belief.¹²¹ Women who testified in court as to the father of their child were also believed. For example, Anne Beadle testified February 18th 1667 that John Rickords was the father of her child. Rickords received corporal punishment for his misdeeds, while Beadle received 35 lashes and a fine of 500 pounds of tobacco for fornication.¹²² While Rickords was punished, the description of Beadle's multiple punishments in Accomack County Court Records shows the difference in punishment for bastard bearing between men and women.

When confronted with mothers and midwives who claimed they were the father, there were some Chesapeake men who denied paternity. This denial did not work. "Eager to save the parish any charges related to rearing the children, the court ordered John Cane, Walter Harges, Joseph Hooke, and Richard Roberts to support children they claimed were not theirs."¹²³ Furthermore, Delight Shield denied paternity of Rose Badger's child in 1723. An Accomack County judge "on the strength of Rose Badger's oath, ... decided that 'he was guilty of ye sd fact Laide to his Charge of adultery.' Ordered that Sheild (at the next laying of the parish levy) pay 1000 lbs tobacco to the

¹²¹ Norton, *Founding Mothers and Fathers*, 227.

¹²² McKey, "Accomack County Court Orders", Volume 2, 22, 26, and 28.

¹²³ McKey, "Accomack County Court Orders", Volume 7, xxii.

churchwardens.”¹²⁴ This fine of 1000 pounds of tobacco was double the customary 500 pounds because he refused to be honest about his fornication. Bastard paternity cases allowed Chesapeake women to be involved in court proceedings and testify as reliable witnesses. These small victories were insubstantial compared to the unequal prosecution of women for bastardy and fornication throughout the seventeenth century.

When servant women accused high-ranking men of fathering bastards, unique results ensued. Although women were trusted to tell the truth about paternity during childbirth, when Ann Morfe accused Burgess Mr. Hugh Yeo of fathering her child, there was no immediate acceptance of Morfe’s word. “The magistrates sought direction from the governor. The leaders in Jamestown confirmed that it was agreeable to English law to commit the father on the testimony of the mother alone.”¹²⁵ The magistrates in Accomack Country waited even further until the Governor could act on this case.¹²⁶ The case comes to a murky conclusion as a 1667 document states “At the request of Mr. Edward Revell and in the absence of Mr. Hugh Yeo, the case between Yeo and Mrs. Ann Morfe was deferred to the next court.”¹²⁷ While the end result is not known in the case of Morfe and Yeo, the magistrates’ actions of deferring to a higher court based on the high status of the accused father shows the difference in legal enforcement for men of various social classes.

Colonial Fears in Bastardy Cases

The harsh punishments and treatment of women who had illegitimate children was rooted in a deep fear that the county parish would have to take financial

¹²⁴ McKey, “Accomack County Court Orders”, Volume 14, 139.

¹²⁵ McKey, “Accomack County Court Orders”, Volume 2, xix.

¹²⁶ McKey, “Accomack County Court Orders”, Volume 2, 18.

¹²⁷ McKey, “Accomack County Court Orders”, Volume 2, 41.

responsibility for the child. Because of the harsh conditions and life expectancy of individuals in the Chesapeake colonies, twenty percent of children born in the late 1600s would be an orphan by their thirteenth birthday.¹²⁸ Because of this high percentage of children needing financial assistance, many Accomack County court cases refer to a monetary punishment because they did not want the child to be a burden to the county parish. For example, George Ginne fathered an illegitimate daughter with a disability in the late 1600s. Ginne was ordered to “be taken into the sheriff’s custody till posting a bond with security to save the parish from any expense arising from Deborah’s disability. Ginne, who was to benefit from any labor she was able to do, was also to pay court costs.”¹²⁹ In rare instances, Accomack County court would direct the guilty party to pay the church directly for their illegal activities. In 1684, Micha Warder paid Isabel Pitts’ fine of 500 pounds of tobacco for fornication and bastard-bearing “to the church wardens on behalf of the parish and court charges.”¹³⁰

Benefits to Masters

Based on Virginia legislation, Accomack County courts tried to discourage fornication and bastard bearing by placing hefty fines and physical punishment on individuals; in contrast, masters of indentured servants did not discourage fornication because of the benefits these charges awarded them. Indentured servants of both genders lived in the same quarters and a master would benefit from illicit relationships. For example, on Henry Smith’s plantation, a woman servant who had a child with a free man had to serve Smith for two additional years and the man had to pay a 1500 pound fine for

¹²⁸ Rutman and Rutman, *A Place in Time*, 114.

¹²⁹ McKey, “Accomack County Court Orders”, Volume 4, 34.

¹³⁰ McKey, “Accomack County Court Orders”, Volume 7, 85.

damages.¹³¹ These fines and increased contracts for indentured women were based on the “inconvenience” caused to the master in terms of workload and trouble. In a March 1672 Accomack County court record, Anne Dix was ordered to serve her master Mrs. Anne Charleton for an additional half year for bastard-bearing based on “expenses and loss of time to her mistress”.¹³² These increased fines and term lengths were a way for masters to gain a greater hold on their workforce; masters benefitted from these laws and did not structure their plantations to combat illicit relationships.

If the servant’s pregnancy was a secret and the indentured woman was sold to another owner without disclosing the pregnancy, the new owner gained compensation for the bastard child. On June 16th, 1673, Thomas Teackle purchased Mary Ballard from Capt. Daniel Pensax without knowing that she was pregnant. Court records state that, “when she delivered her bastard child, it caused her master great bother and inconvenience, so upon Teackle’s petition, it was ordered that he bind out the child, which was named Elizabeth, till she reached the age of 24 years, thus saving the parish from the expense of supporting her.”¹³³ Teackle made money on this deal because he was able to add years of service to Ballard’s contract and was about to bind out the child for a set term of 24 years. The process of indenturing bastard children for profit allowed masters to gain multiple advantages to the overall process of bastard bearing.

Fines for Bastard-Bearing

Punishment for bastard-bearing remained constant throughout the seventeenth and eighteenth century, with the standard fine being 500 pounds of tobacco. The continuity of

¹³¹ McKey, “Accomack County Court Orders”, Volume 2, xix-xx.

¹³² McKey, “Accomack County Court Orders”, Volume 3, 49.

¹³³ McKey, “Accomack County Court Orders”, Volume 3, 124.

tobacco being used shows the primary role tobacco played in Chesapeake colonial society. Fines for bastard-bearing and fornication were similar for men and women called before court. For example, Robert Barkum was called to court in the 1660s for fornication with Mary Lee. As an indentured servant, Barkum was “ordered that at the end of his time of service, ‘about two years and odd months’, he would serve a person appointed by the court half a year or pay a fine of 500 lbs tobacco.”¹³⁴ In 1725, a 500 pound fine of tobacco was still be used because Isabell Buttler was fined 500 pounds of tobacco for fornication and bastardy. The interesting part of Buttler’s case is that Elizabeth Abbott posted Buttler’s fine.¹³⁵ The story of Buttler and Abbott shows a rare instance of a woman posting another woman’s bond. It is unclear if Abbott was Isabell Buttler’s mistress; however, it is important to note that, when indentured women were fined, most court documents cite a male counterpart paying their fine.

With the introduction of pounds sterling in the early 1700s, the fine of bastard bearing included an option to pay the fine, either 50 shillings or 500 pounds of tobacco.¹³⁶ The first reference to a fine in coinage in Accomack County was Elizabeth Palmer’s case on October 4th, 1715. Palmer testified that she was expecting an illegitimate child with Phillip Fisher. “The court ordered the sheriff to take Fisher into custody till he posted a bond of 20 pounds current money of Virginia for his good behavior during the pleasure of the court; he was also to pay court charges.”¹³⁷ While it is unclear how many individuals paid the fine in coins or tobacco, the choice allowed in these fines shows the value placed on both tobacco and English and Virginia coinage.

¹³⁴ McKey, “Accomack County Court Orders”, Volume 2, 64.

¹³⁵ McKey, “Accomack County Court Orders”, Volume 15, 61.

¹³⁶ McKey, “Accomack County Court Orders”, Volume 19: Part One, xiii.

¹³⁷ McKey, “Accomack County Court Orders”, Volume 12 & 13, 25.

With the standard fine of bastard bearing being 500 pounds of tobacco or later 50 shillings, there are instances of higher fines levied based on more serious crimes. For example, Richard Labrooke was fined 1000 pounds of tobacco in 1668 because he committed fornication with Anne Peale twice. Anne Peale was also fined 1000 pounds for bearing two bastard children.¹³⁸ Both Labrooke and Peale were indentured servants and their master was cited as paying both fines. In an even harsher fine, William Taylor was fine 10,000 pounds of tobacco “to save the parish from all charges that might accrue in the support of the child born to Martha Eyrs.”¹³⁹ This unusually high fine is the only instance of Martha Ayers and William Taylor in Accomack County court records. It is unclear in the court documents why the punishment was so large and does not indicate William Taylor’s status to help decipher the departure from the normal fine.¹⁴⁰ Eliza Furnis was similarly punished in February 1668 for having a third illegitimate child. She received 20 lashes on her bare back and would continue to receive 10 lashes every week for a year because this was her third bastard child.¹⁴¹

For individuals that tried to eliminate the evidence of their illegitimate relationships, there were harsh punishments for killing bastard children. Proving that a woman intentionally killed their child was difficult to prove and most cases resulted in acquittals. On November 20th, 1694, Jenny, a Native American slave, was charged with

¹³⁸ McKey, “Accomack County Court Orders”, Volume 2, 82.

¹³⁹ McKey, “Accomack County Court Orders”, Volume 11, 134.

¹⁴⁰ The unclear nature of Ayers and Taylor’s case is an example of the frustration of historiography. Historians are only able to work with the documents and information given. If we knew the status or criminal history of Taylor, we could hypothesize why this fine was different from the norm. The high fine might also be from the abilities of the child when born. If the child had physical or mental challenges, perhaps Accomack County courts would have added that caretaking expense for the church into the fine amount. This case gives more questions than answers; however, it is important to mention the case because it is a major deviation from the general trend of fines being 500 pounds of tobacco.

¹⁴¹ McKey, “Accomack County Court Orders”, Volume 2, 82.

murdering her bastard child. “The evidence produced to prove the murder was examined and deemed to be of no validity to convict her of murdering her child. Since no further evidence appeared against her, Jenny was discharged from further prosecution and was acquitted.”¹⁴² Ann Arrington’s trial had a similar result. After a grand jury investigated in 1694, there was not enough evidence to prove that Ann committed a criminal act.¹⁴³ Prosecution for murder of a bastard child rarely happened because it was very difficult to prove criminal intent and most women charged were acquitted.

Mixed Race Fornication

The standard punishment of 500 pounds of tobacco for bastard bearing or fornication was reserved for relationships between whites, regardless of status. When white women, especially indentured servants, had illegitimate children with African American men, their punishment was harsher than a strictly white relationship. For example, indentured servant Jane Dicke went to Accomack County court on April 17th, 1675 for bearing a bastard child with Robert, an African slave. Jane received 15 lashes on her bare back for this indiscretion and the court ordered that “the Negro servant was to be summoned to the next court to receive punishment.”¹⁴⁴ The story of Jane Dicke and Robert show two inconsistencies of previous discussions on bastard bearing. First, Jane’s punishment of 15 lashes was corporal punishment, compared to the fine that other indentured servants received for illegitimate relations with a white man. Second, Robert was told to report to the court to receive punishment himself. As stated previously, in relationships with both parties being white, only about half the time was the man

¹⁴² McKey, “Accomack County Court Orders”, Volume 8, 150.

¹⁴³ McKey, “Accomack County Court Orders”, Volume 8, 152.

¹⁴⁴ McKey, “Accomack County Court Orders”, Volume 4, 113.

mentioned or receive punishment. In mixed race relationships, there is a higher percentage of African men being called to court for punishment.

When punishment for interracial relations and bastard bearing was a fine, white women were fined double the customary rate of 500 pounds tobacco. This double fine in Virginia was based on the eleventh Act of the Assembly in 1662 which allowed double the customary fine for bastardy cases involving multiple races.¹⁴⁵ Dorothy Bestick paid a double fine of 1000 pounds of tobacco when she had a daughter with George Francis, an African slave. “A few months later Dorothy’s little Sarah was indentured to James Longo till she attained the age of 21 years. Sarah was not yet three years old when Dorothy was presented for having a second illegitimate child. This time Dorothy got 30 lashes.”¹⁴⁶ When Dorothy repeated her illegitimate actions with George Francis in 1690, she received corporal punishment. In addition, her child was indentured until adulthood to carpenter James Longo. Longo “was to provide sufficient meat, drink, apparel and lodging” for Sarah and she was to serve her indenture contract of 21 years.¹⁴⁷

The indenture contract that was created for bastard mulatto children was customary in the seventeenth century Chesapeake. “While most of these children could expect to serve till they attained the age of twenty-one years, Thomas Farrill—the child of a white woman and a slave named Spindolo—was required to serve till he was twenty-four.”¹⁴⁸ Elizabeth Hamond’s case in Accomack County court is unique based on her status as a mulatto daughter of an English servant woman and her child’s indenture contract. When Hamond had her second bastard child in 1725, she was given 25 lashes

¹⁴⁵ McKey, “Accomack County Court Orders”, Volume 7, 211.

¹⁴⁶ McKey, “Accomack County Court Orders”, Volume 7, xxii.

¹⁴⁷ McKey, “Accomack County Court Orders”, Volume 7, 250.

¹⁴⁸ McKey, “Accomack County Court Orders”, Volume 8, xxiv.

because she refused to pay her fine. Her son, James, was bound to an indenture contract for 31 years. This extended servitude for James may be based on Hamond's second bastardy charges.¹⁴⁹

The punishments for women who bore bastards to African men was much higher than bastardry cases with white men. This harsh punishment actually increased over time from the mid-1600s to the mid-1700s. In the 1600s, many punishments included increased fines and corporal punishment. These punishments only became more severe as time continued. For example, in 1700, a servant woman committed fornication and bastard-bearing with Peter, an African slave. Because she could not pay her fine, she was given 25 lashes on her bare back.¹⁵⁰ By 1719, increased restrictions had been placed on bastard-bearing with African men. The 49th Act of Assembly stated that "every free Christian white woman that had a bastard child by a Negro or mulatto was required, within one month of delivery, to pay the churchwardens 15 pounds or be sold for five years."¹⁵¹ The indenture of the mother in addition to the child was a harsh new addition to mixed race relationships in the Colonial Chesapeake.

While African men were frequently written about in court records, there were only a few references to Native American men and illegal relationships with white women. On November 16th, 1671, servant Elizabeth Lang was punished for bastardy with a Native American named Kitt.¹⁵² Lang was fined 500 pounds tobacco and "Elisabeth Lan expressed her willingness to serve her master, Mr. William Custis for three years beyond her indenture plus extra time due to him for 'hinderance and loss of time' during

¹⁴⁹ McKey, "Accomack County Court Orders", Volume 15, xiv.

¹⁵⁰ McKey, "Accomack County Court Orders", Volume 9, 101.

¹⁵¹ McKey, "Accomack County Court Orders", Volume 14, 74.

¹⁵² McKey, "Accomack County Court Orders", Volume 3, 36.

her pregnancy and delivery. She agreed that the child would be bound to Custis till attaining the age of 24 years, thus saving the parish from any expense. She also ‘humbly desireth that the Indian may not have the bringing up of my child, nor anything to do with it.’ She further desired that ‘a Pagan may not have my child’.”¹⁵³ Because Lang’s court case is a rare example of white and Native American relations, strong comparisons cannot be made between treatment of relationships with Native Americans and Africans. All mixed-race relationships involving a white woman were more harshly punished than relations between two white individuals or a white master and his indentured servant or slave.

These increased penalties for mixed-race relationships could be based on a reaction to increased relationships that crossed racial lines. From 1719 to 1724 in Accomack County, forty women were charged with fornication, bastardy, or adultery. In these forty cases, a fourth were relationships that crossed racial lines.¹⁵⁴ This increase over time could be based on a fear of continued mixed race relationships; increasing punishments were a reactionary measure to the trend.

Indentured women accused of bastard bearing were met with punishments ranging from a 500 pound tobacco fine to corporal punishment. These punishments increased with the number of bastard children a woman had and the race of a woman’s partner also impacted the punishment. Women who had illegitimate relations with African and Native American men were prosecuted more severely than women who had relations with white men. In addition, white men were called to court to accept punishment on a much smaller basis than their Native American and African counterparts. All of these punishments and

¹⁵³ McKey, “Accomack County Court Orders”, Volume 3, 37.

¹⁵⁴ McKey, “Accomack County Court Orders”, Volume 14, xiv.

court cases were crucial for Accomack County so that the parish did not have to support bastard children without compensation.

Chapter 3: The Rise of Interracial Relationships

In March of 1734, the first record of a will of a free African American female was recorded in Accomack County. In her will, Sarah labels herself a Negro and bequeaths her children to local individuals. Her children, William, Elizabeth, and Mary, were to live with Mr. Samuel Maddox for twenty-two years. If Mr. Maddox died before twenty-two years had passed, the children were to live with Mrs. Ann Vowles.¹⁵⁵ The care and precise nature of Sarah's will shows her concern for her children and her understanding of the role African Americans had in colonial society. Sarah's will is a rare occurrence of an African American writing a will.¹⁵⁶ As a free woman, she would have greater access to legal means of protecting her children in the future compared to slave women. Sarah was able to form relationships with Mr. Maddox and Mrs. Vowles, trusting them enough to take care of her children after her death. Relationships that slave women and indentured servant women had with free people were more limited and restrictive.

Change from indentured to slave labor

In the late seventeenth century, Chesapeake labor systems endured a dramatic shift in the labor pool. Previously, at least half of white migrants that came to the colonial Chesapeake in the seventeenth century came as indentured servants.¹⁵⁷ The high mortality rate and sex imbalance of men to women made population growth scant in the seventeenth century. There was a constant influx of unskilled laborers from Great Britain

¹⁵⁵ Sarah, Will, Somerset County Will Book, 6 March 1733, *Wills 1730-1734, Prerogative Court*, reel 20, 904, Register of Wills, Somerset County, Princess Anne, Maryland (microfilm, MPW 19, MSA SM16, SR4414, Edward H. Nabb Research Center for Delmarva History and Culture, Salisbury University, Salisbury, Maryland).

¹⁵⁶ In my research into Accomack County records from 1635 to 1743, Sarah's will is the only reference to an African American writing a will. I did not see any other wills refer to themselves as Negro, which shows the rare nature of Sarah's will. It is unclear the status of Sarah; however, whether she was free or a slave, her focus on her children shows the concern she had for her children's well-being.

¹⁵⁷ Righi, "The Right of Petition," 2.

to keep the population steady and productive.¹⁵⁸ It was not until the late seventeenth century that the population steadily grew because of the rise of African slavery and the shift towards skilled labor. Plantations became more sophisticated for the planter class and skilled indentured servants were needed to perform diverse tasks.¹⁵⁹ Colonial planters also started using convict labor to staff their plantations. England started exporting convicts to the American colonies in 1718. Planters gave preference to the skilled, non-convict laborers; however, convict labor became appealing because they were guaranteed few rights of indentured servants and were judged based on the nature of their crime.¹⁶⁰ Therefore, these skilled laborers, coupled with African slavery and convict labor, changed the landscape of Chesapeake labor at the turn of the eighteenth century.

The shift from unskilled indentured labor to the use of African slaves was based on the easier means of control and monetary benefits of their children. Historian J. Douglas Deal stated that a slave from Africa stood out in Chesapeake society based on their speech, color, and mannerisms. They were not able to successfully run away and blend into society like a white indentured servant could. African slaves also most likely had families and communities on plantations that they did not want to leave. Plantation owners also benefitted from slave children because they were less expensive to raise than their servant counterparts.¹⁶¹ Deal points to these characteristics as reasons why African slavery became increasingly popular in the Chesapeake.¹⁶²

¹⁵⁸ Deal, *Race and Class in Colonial Virginia*, 87.

¹⁵⁹ Righi, "The Right of Petition," 8.

¹⁶⁰ Righi, "The Right of Petition," 6.

¹⁶¹ Deal, *Race and Class in Colonial Virginia*, 127.

¹⁶² Deal, *Race and Class in Colonial Virginia*, 125.

Policies on African slavery

As African slavery became more useful in the Chesapeake region, the distribution of African slaves was based on the division between sweet-scented, Orinoco, and peripheral tobacco being grown.¹⁶³ The conditions that African slaves faced in the plantation system were brutal and did not allow for slave families to form until the mid-1700s.¹⁶⁴ For example, slave women were repeatedly subject to rape and other types of sexual exploitation. These victims were not usually able to use the county courts to solve these crimes because their masters concealed the crime through bribery or threats.¹⁶⁵ Children who were born to African parents, either mother, father, or both, would follow the status of their mother, per legal tradition.¹⁶⁶ As with Sarah, because she was African, her children, regardless of their father's status, would be slaves and were to be given to new owners upon their mother's death.

This legal tradition to follow the maternal line to determine social status was not strictly followed when it came to African men's progeny. African enslaved men were not able to support their children so the courts usually declared their children slaves, even if their mother was white, because the county did not want the church forced into the responsibility to raising the child.¹⁶⁷ This shift in legal tradition happened in the 1680s and 1690s. Historian Betty Wood states that during the majority of the seventeenth

¹⁶³ Lorena S. Walsh, "The Chesapeake Slave Trade: Regional Trade Patterns, African Origins, and Some Implications," *The William and Mary Quarterly* 58, no. 1 (Jan. 2001): 145.

¹⁶⁴ Walsh, "The Chesapeake Slave Trade," 157.

¹⁶⁵ Deal, *Race and Class in Colonial Virginia*, 128. It is difficult for historians to calculate the expansiveness of sexual abuse to slave women because it was rarely documented and did not always result in offspring. This inability to explain specific numbers should not diminish the very real situations that many African women were forced into.

¹⁶⁶ Wood, "Servant Women and Sex in the Seventeenth-Century Chesapeake," 110.

¹⁶⁷ Wood, "Servant Women and Sex in the Seventeenth-Century Chesapeake," 110.

century, few African men were declared fathers of children in the county courts. It was only with the shift in planter labor to mainly enslaved that a multitude of African fathers were being called into court to discuss their children.¹⁶⁸ The increased use of an enslaved labor force changed colonial Chesapeake society both socially and economically.

Policies on Native American slavery

With the major impact that African slavery had on the Chesapeake plantation system, it is important to note that Native American slavery were used before African slavery, albeit on a smaller scale. A Virginian Act in 1670 differentiated between Native American and African slaves. Non-Christians servants brought to the Chesapeake region by land should serve limited terms; however, slaves brought by sea would serve for life.¹⁶⁹ Native Americans worked in colonial homes as servants, slaves, and apprentices in growing numbers in the seventeenth century. In the first half of the seventeenth century, nominal Native Americans were serving as servants. In the 1660s and 1670s, local young Native Americans became apprentices on the plantations and, by the 1680s, Native Americans were brought to the Chesapeake from other regions to serve as slaves on the plantations.¹⁷⁰

Native American slaves that worked the land seemed to live and work in similar conditions as Africans slaves. The only difference between the two slave groups was the community that Africans created. Because African slaves shared social rituals, religious practices, and the brutal conditions of plantation life, they were able to form a community

¹⁶⁸ Wood, "Servant Women and Sex in the Seventeenth-Century Chesapeake," 110.

¹⁶⁹ Deal, *Race and Class in Colonial Virginia*, 57.

¹⁷⁰ Deal, *Race and Class in Colonial Virginia*, 49.

through extended kin networks.¹⁷¹ This access to extended family and shared community practices was not accessible to Native American slaves in the region. There were very few Native American slaves working on plantations and their work spread them across the vast region. It was more difficult for Native American slaves to find spouses of the same race than African slaves. Historian J. Douglas Deal shows this detail by stating that, throughout seventeenth century Chesapeake court records, no mention is made of a complete nuclear Native American slave family. There are many mentions of African nuclear families in court documents, which would be based on their prevalence in the region.¹⁷² Overall, it is important to note that Chesapeake planters used both Native American and African slaves to maximize profits; however, the circumstances surrounding the prevalence of these labor forces is different.

Intermarriage Policies

The first marriage laws in the Chesapeake colonies did not mention race or ethnicity. The parameters for marriage focused on the parents or masters giving permission for the marriage to take place. There was no law in the early seventeenth century that forbade Native American or African individuals from marrying European-born individuals.¹⁷³ However, as Africans became more integrated into Chesapeake society in the seventeenth and eighteenth centuries, colonial legislators passed intermarriage laws in order to better organize society and determine the social status of any children of an interracial relationship. For example, in 1662, Virginian lawmakers

¹⁷¹ Brenda E. Stevenson, "The Question of the Slave Female Community and Culture in the American South: Methodological and Ideological Approaches," *The Journal of African American History* 92, no. 1 (Winter 2007): 78.

¹⁷² Deal, *Race and Class in Colonial Virginia*, 58.

¹⁷³ Norton, *Founding Mothers and Fathers*, 63.

wrote that any child borne of a slave woman would be a slave, regardless of the father's status. In addition, illicit relations between white and blacks would pay double the fine for illegitimate relations between individuals of the same race.¹⁷⁴

Even with these increased restrictions, there is documentation of marriages between free black men and free white women. There were two marriages in the 1650s between free black men and free white women in Virginia. In the 1660s, that number increased to three marriages.¹⁷⁵ Fearing an increase in interracial marriages, Virginia passed a law in 1691 stating that any white person who married an African, mulatto, or Native American would be banished from the colony.¹⁷⁶ This strict law came from a deep-seeded fear that whites marrying outside their race would uproot the overall social structure. The trend of intermarriage continued even with the 1691 statute and Virginia created a stricter law in 1717 supported by Thomas Bacon that "any White Man or White Woman, who shall intermarry as aforesaid, with any Negro, or Mulatto, such White Man or White Woman, shall become Servants during the Term of Seven Years..."¹⁷⁷ In addition, if the interracial marriage included a free African or mulatto, the individual would be forced into slavery for the rest of their life.¹⁷⁸ The historical nuances of various interracial marriage laws showcases the deep fears white legislators had of intermarriage. These increased penalties were in response to the increased practice of interracial marriages throughout the seventeenth and eighteenth century Chesapeake.

¹⁷⁴ Deal, *Race and Class in Colonial Virginia*, 180.

¹⁷⁵ Deal, *Race and Class in Colonial Virginia*, 180.

¹⁷⁶ Deal, *Race and Class in Colonial Virginia*, 180.

¹⁷⁷ Bacon's Laws of Maryland, Volume 75, 300.

¹⁷⁸ Bacon's Laws of Maryland, Volume 75, 300.

Jane Webb's Story

Jane Webb, a free mulatto woman in Virginia, decided in 1703 that she wanted to marry Left, a slave under the care of Thomas Savage. Savage, as the owner of Left, agreed to the marriage if Jane would indenture herself to him for seven years. She also had to indenture her children to Savage for eighteen years in order to marry Left.¹⁷⁹ As a free woman of color, Jane Webb did not have the same advantages that white colonial women did in terms of marriage. If Jane entered into an indentured contract to marry Left, she could not rely on her husband to buy her out of her contract, because of his slave status. If she became widowed, she could also not gain any property rights from their union.¹⁸⁰ Jane Webb's story of intermarriage between free and slave is a rare occurrence for historians.¹⁸¹ This unique story of a free woman of color marrying a slave is important to share because most historical documentation about free women of color is incomplete or sporadic.¹⁸² Jane Webb's story highlights the inconsistencies of intermarriage between free and slave in seventeenth century Chesapeake society.

Born in 1682, Jane Webb was the product of Ann Williams, an English indentured servant, and Daniel Webb, a slave. Jane was born out of wedlock and, due to an English law, she was considered an orphan based on her mixed-race heritage and

¹⁷⁹ Deal, *Race and Class in Colonial Virginia*, 399.

¹⁸⁰ Terri L. Snyder, "Jane Webb and Her Family Life Stories and the Law in Early Virginia," in Cynthia A. Kierner and Sandra Gioia Treadway, *Virginia Women: Their Lives and Times* (Athens: The University of Georgia Press, 2015), 58.

¹⁸¹ Most analysis of women during the colonial period includes prominent white women and their connections to prominent men. Jane Webb's story is one of very few that have survived from women "on the fringe". Her story is even more valuable because it is one of the only stories written about marriage between free and slave individuals.

¹⁸² Snyder, "Jane Webb and Her Family", 59.

bastard status. Jane was indentured for eighteen years and freed around 1700.¹⁸³ In order to marry Left, Jane Webb agreed to Thomas Savage's terms: she would be a servant for seven years and her children born through 1711 would serve Thomas Savage for eighteen years.¹⁸⁴ In addition to the concessions Jane had to make to master Thomas Savage, she also had to be taxed like a white man. A 1643 Virginia law stated that free black women had to be taxed like men; however, white women were not taxed. These unfair tax practices highlight that race, rather than gender or class, was a classification method in the colonial Chesapeake.¹⁸⁵ These differing tax practices between black and white women were based on the fact that more black women worked in the labor force than did middle and upper class white women.

Once Jane Webb and Left were married, Jane held a rarely discussed position within the household. English law practices stated that married women became *feme covert* and were legally subservient to their husbands. Under *feme covert*, wives could not enter into contracts themselves or be sued.¹⁸⁶ In Jane's case, however, she was both *feme sole* and *feme covert* because of her husband's enslaved status. Jane was the legal representative for her household and, while these types of marriages created tension with the patriarchal society, her marriage was initially tolerated.¹⁸⁷

Jane Webb's marriage to Left strained the patriarchal structure of *feme covert*; however, it was accepted initially by Thomas Savage and masters like him for the benefits they received. Masters of slaves who entered into contracts with free people

¹⁸³ Snyder, "Jane Webb and Her Family," 59-60.

¹⁸⁴ Snyder, "Jane Webb and Her Family," 61.

¹⁸⁵ Snyder, "Jane Webb and Her Family," 60.

¹⁸⁶ Snyder, "Jane Webb and Her Family," 61-62.

¹⁸⁷ Snyder, "Jane Webb and Her Family," 62.

could write contracts that benefitted them in the occurrence of marriage. For example, Savage gained an economic advantage because he gained the seven children of their marriage until their eighteenth birthday. Savage did not have to purchase these servants, which defrayed costs of the plantation.

These initial economic benefits to masters were soon engulfed by a larger need to extend patriarchy and the coverture laws. Over time, lawmakers in Virginia changed the ruling on free women who married slaves. No longer could women like Jane Webb be the head of household. They had to ask permission of their husband's master to enter into legal contracts and conduct business.¹⁸⁸ Another free woman, Sarah King, married Thomas Driggus, a slave, and initially lived with him in his master's home. In the mid-1670s, Northampton County court changed the law and ordered that she could not leave the master's house without permission from her husband and his master.¹⁸⁹ Sarah King was forced to live separately from her husband so she would not be under the control of his master. Jane Webb had to take the same drastic steps to circumvent the vast reaches of her husband's master.¹⁹⁰ The initial economic benefit that master's enjoyed from marriages between free and enslaved Africans quickly moved to a focus on political and social control over family life.

Jane Webb and Left's marriage produced seven children and their children took their free status from their mother, following the law of *partus sequitur ventrum*.¹⁹¹ Even though her children were free, they did have to work for Thomas Savage for eighteen years, per Jane Webb's original contract with Savage. When Webb had children after

¹⁸⁸ Snyder, "Jane Webb and Her Family," 62.

¹⁸⁹ Snyder, "Jane Webb and Her Family," 62.

¹⁹⁰ Snyder, "Jane Webb and Her Family," 63.

¹⁹¹ Snyder, "Jane Webb and Her Family," 55.

1711, she refused to bind her children to Savage in accordance with the original contract. Thomas Savage petitioned the court that these young children would be best suited in the care of him because Jane Webb had no means to support them. The judge agreed with Savage and Jane Webb's children born after 1711 were bound for eighteen years.¹⁹²

Jane Webb brought a legal suit against Thomas Savage in 1725 to try to stop the continued enslavement of her children and her husband. Savage stated that he never agreed to free Left and that he did not remember the specific time that her children were supposed to serve him.¹⁹³ Because she did not have the original contract, she was forced to use a witness to the arraignment. In *Webb v. Savage*, Jane Webb called on a free African to describe the original terms of the contract. In Virginia at this time, non-Christians and slaves were not allowed to testify; however, a free African Christian had not been expressly prohibited by law. The judge did listen to her witness; however, he ultimately sided with Savage in the case.¹⁹⁴

In another legal suit, Jane Webb argued that her oldest children, Dinah and Daniel, were not freed by Savage once they reached eighteen, as agreed upon in the original contract. In her petition, Webb cites her free status repeatedly throughout: 'The humble petition of Jane Webb a free mulatto...baptized by the name of Jane the said petitioners mother being a white woman and whereas...the petitioner having served seven years for the Liberty of Intermarrying with one negroman named Left'.¹⁹⁵ Her focus on labeling herself free and Christian is a cognizant effort by Jane Webb to remind the judge of her higher status in society than enslaved Africans.

¹⁹² Snyder, "Jane Webb and Her Family," 63-64.

¹⁹³ Deal, *Race and Class in Colonial Virginia*, 401.

¹⁹⁴ Snyder, "Jane Webb and Her Family," 65.

¹⁹⁵ Snyder, "Jane Webb and Her Family," 64.

Even though Jane Webb was not able to hold Thomas Savage to the original terms of their contract, her story is still important based on the repeated legal avenues she took. In order to free her children, she studied law, petitions, and contracts to prepare for her cases in county court. Jane Webb challenges the assumptions of *feme covert* and a woman's inability to have political and legal avenues for expression. Jane Webb's story also illustrates the overbearing and far-reaching power of patriarchal lawmakers and judges. The laws created to hinder Webb's cases show the ability of colonial powers to circumvent themselves in free women's lives. This legal patriarchy was based on the protection of masters and the anxiety of whites to African marriages, whether free or slave.¹⁹⁶

¹⁹⁶ Snyder, "Jane Webb and Her Family," 68.

Conclusion Chapter

The changing social and economic landscape of the seventeenth century colonial Chesapeake was a direct reflection of the rise of the gentry class and the focus on the nuclear family over the extended family. While gentry white men were focused on public rituals such as elections, church gatherings, and social gatherings, women were secluded in their homes.¹⁹⁷ The practice of *feme covert* was a continuation of English traditions and married women were not able to conduct their own economic and legal affairs.¹⁹⁸

For the few subsets of women who were not under *feme covert* status—widows, indentured servants, and freed women—the increased opportunities they had did little to overturn deep-rooted social and legal gender roles. For example, widow Hannah Horsey of Somerset County crafted an extensive will to her many relatives at the time of her death. In this will, Horsey gave her son their family land, called “Hannah’s Delight”, and gave various family members, both men and women, small parcels of land near the large “Hannah’s Delight”.¹⁹⁹ Hannah Horsey’s will indicates the wealth that she collected throughout her lifetime; there is no mention of whether this land and economic power came from a deceased husband or if her family had collected this wealth. Horsey’s will shows that ability of a few wealthy widows to keep economic power during their lifetimes; however, in their wills, wealthy women did not upend the social conventions on inheritance rights based on gender. Horsey gave most of her land to her son John and many female relatives received personality. Wealthy widows in the seventeenth century Chesapeake had the ability to change inheritance traditions through their wills; however,

¹⁹⁷ Kierner, “Women, Gender, Families, and Households in the Southern Colonies,” 651.

¹⁹⁸ Norton, *Founding Mothers and Fathers*, 4.

¹⁹⁹ Norton, *Founding Mothers and Fathers*, 4.

they followed social conventions and continued the common practices of gendered inheritance rights.

It is important to understand that even though these “empowered weak” widows did not overtly break from the patriarchal structure, they had gained increased power compared to their English counterparts. Due to the early unequal gender dynamic and the low life expectancy in the American colonies, Chesapeake women had increased opportunities. Historian Edmund Morgan stated that Virginia law echoed English law for inheritance putting a widow’s entitlement in her husband’s estate at one-third during her lifetime. This legal doctrine was usually expanded in the practice of inheritance so that Chesapeake widows would receive the entire estate minus any outstanding debts during their lifetime.²⁰⁰ Therefore, regardless of the legal doctrine, the common practice in the Chesapeake was to grant additional advantages to widows in comparison to English practice.

The fleeting power that widowed wealthy women received in the Chesapeake region was a goal for many women who came to the colonies as indentured servants. For indentured women, there was little room to move up in the social hierarchy; some used sexual relationships with their master or free men in order to gain increased opportunities. This hope of increased economic power or social standing was rarely realized because women were persecuted for fornication and bastard bearing at a much higher rate than their male counterparts. For example, Anne Orthwood became pregnant with the bastard children of Colonel John Kendall. Because her pregnancy inconvenienced her master, Anne was given a choice in punishment, a fine of 2,000 pounds of tobacco or two

²⁰⁰ Morgan, *American Slavery, American Freedom*, 165.

additional years of servitude.²⁰¹ Anne Orthwood did not have to serve those additional years because she died shortly after childbirth; however, Orthwood's case is an example of the larger unequal punishments for bastard bearing under colonial Chesapeake law. In Accomack County court records, women were punished for bastard bearing more than double their male counterparts.

The unequal treatment of between men and women who committed fornication was amplified by race. In the seventeenth century Chesapeake, race was a much larger indicator of identity and social status than gender. For widowed white women, they could gain fleeting power over economic issues. For Africans and Native Americans of any gender, there were increased limitations placed upon them based on legal doctrine. For free African women, marriage to an African slave meant a complicated situation that many plantation owners tried to take advantage of. Because free African women who married slaves were considered *feme sole* and *feme covert*, they created a legal situation that courts tried to analyze as relationships organically happened. For example, Jane Webb married a slave named Left. She was the legal head of the household; however, Left's owner Thomas Savage wanted more control over Jane Webb and her children. Because he was the owner of Left, he claimed in court that he could make decisions for the family because Jane Webb was considered *feme covert*. Savage ultimately won multiple court victories to indenture Jane for several years and to indentured their children.²⁰² The interracial and interstatus marriages that were seen in the colonial Chesapeake pushed the legal parameters of the time; colonial legislators created more

²⁰¹ Pagan, *Anne Orthwood's Bastard*, 6.

²⁰² Terri L. Snyder, "Jane Webb and Her Family Life Stories and the Law in Early Virginia," in Cynthia A. Kierner and Sandra Gioia Treadway, *Virginia Women: Their Lives and Times*, (Athens: The University of Georgia Press, 2015), 63-64.

restrictive interracial laws as situations, such as Jane Webb's, arose and African slavery became a predominant form of labor.

Source Material

The pitfalls of work on colonial Chesapeake women from various social, economic, and racial backgrounds are the holes in research. Interracial relations and marriages during the seventeenth century offer a unique look into the intersection of race, gender, and social standing. The issue with this intersection is that very few cases of interracial marriage were recorded and individual's reactions were not included in the sparse court documents. It would have been an interesting comparison to show how Native American and white relations differed or were similar to white and African American relations. This comparison is improbable to make as previously discussed because of the lack of source material on interracial relations. An indirect reading of court cases can describe situations; however, it is difficult to gauge motivations and situations from court documents.

The difficulty of court cases was also apparent in research on wealthy widows. For the widows in Accomack County, it was apparent that a trend in inheritance rights favored men for land and other items of economic value and women gained personality. While this was the overwhelming trend, it would have been helpful to understand the family relations that caused these inheritance decisions. For example, was there a personal quarrel between a mother and daughter in order to give her effects to her son or neighbor? For women that did give land to their daughters, was it because they were economically responsible or did they not have any sons to gift land to? These intimate questions cannot be unpacked in a will or inventory. As historians, we may try to raise

questions about these trends; however, there are many social and intimate family details that we will not uncover.

Lastly, the court records explaining bastard bearing and fornication cases allow historians to glimpse into a small part of individuals, like Anne Orthwood's, lives. The problem with court documents is that these cases with average Chesapeake citizens are sometimes the only mention of an individual in colonial records. For example, Ann Morfe accused a Burgess, Mr. Hugh Yeo, of fathering her bastard child. The case in the 1660s did not have a resolution as the case was deferred to the next court, which did not keep the same meticulous notes as Accomack County did.²⁰³ Ann Morfe is also not included in any other case documents from Virginia. It is impossible to know if Ann Morfe was more severely punished than the child's father or if social and political standing had anything to do with the punishment phase of bastard bearing.

These issues with source material and indirect viewing of public documents makes it difficult to determine all of the unique voices in the seventeenth century Chesapeake. What can be determined, however, is the trend for women to grasp for power in various ways, either through widowhood, bastard bearing, or interracial marriage. This small glimpse of power outside the strict *feme covert* parameters was fleeting and unique to each woman's situation; there were no multigenerational shifts in women's social, economic, or political power within a strict patriarchal Chesapeake society.

As more women immigrated to the Chesapeake region from the 1600 to 1700s, a few women were able to keep a small amount of power they had previously gained

²⁰³ McKey, "Accomack County Court Orders", Volume 2, 41.

through marriage or social connections. Those women, usually upper-class widows, had the opportunity to show their *feme sole* status and grant increased economic opportunities to other women through bequeathals in their will. They did not do this, as they had no previous examples and accepted the prescriptive gender norms. For indentured women “on the fringe” of society, those persecuted for bastard bearing or fornication were given harsher punishments than their male counterparts. Finally, freed women or women in interracial relationships fought against legal parameters that further limited their choices and their children’s freedom. These three groups of women, widows, indentured servants, and free African women, had few similar societal expectations; however, they suffered under the unyielding gender norms of the 17th century Chesapeake without any hope for lasting societal change.

Appendix A

Women's wills in Vol. 1 1635-1685	42
Of women mentioned, women mentioned as widow of...	14
Of women mentioned, women mentioned as wife of...	1
Men's wills in Vol. 1	1,091
Percentage of Wills written by women	$3.706\% = 42/1133$

Women's wills in Vol. II 1685-1702	67
Of women mentioned, women mentioned as widow of...	14
Of women mentioned, women mentioned as relict of...	1
Of women mentioned, women mentioned as wife of...	2
Men's wills in Vol. II	970
Percentage of Wills written by women	$6.460\% = 67/1037$

Women's wills in Vol. III 1702-1713	72
Of women mentioned, women mentioned as widow of...	19
Of women mentioned, women mentioned as wife of...	2
Men's wills in Vol. III	948
Percentage of Wills written by women	$7.058\% = 72/1020$

Women's wills in Vol. IV 1713-1720	63
Of women mentioned, women mentioned as widow of...	24
Of women mentioned, women mentioned as wife of...	1
Men's wills in Vol. IV	687
Percentage of Wills written by women	8.4% = 63/750

Women's wills in Vol. V 1720-1726	92
Of women mentioned, women mentioned as widow of...	33
Of women mentioned, women mentioned as relict of...	1
Of women mentioned, women mentioned as wife of...	3
Men's wills in Vol. V	699
Percentage of Wills written by women	11.6308% = 92/791

Women's wills in Vol. VI 1726-1732	73
Of women mentioned, women mentioned as widow of...	24
Of women mentioned, women mentioned as relict of...	1
Of women mentioned, women mentioned as wife of...	0
Men's wills in Vol. VI	700
Percentage of Wills written by women	9.443% = 73/ 773

Women's wills in Vol. VII 1732-1738	91
Of women mentioned, women mentioned as widow of...	35
Of women mentioned, women mentioned as relict of...	2
Of women mentioned, women mentioned as wife of...	2
Men's wills in Vol. VII	755
Percentage of wills written by women	10.7565% = 91/846

Women's wills in Vol. VIII 1732-1743	115
Of women mentioned, women mentioned as widow of...	40
Of women mentioned, women mentioned as relict of...	1
Of women mentioned, women mentioned as wife of...	0
Men's wills in Vol. VIII	832
Percentage of wills written by women	12.1436% = 115/947

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