Lives of the Little-Known: Women Children and Servants in Augusta County, 1745-1779

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LIVES OF THE LITTLE-KNOWN:

WOMEN, CHILDREN, AND SERVANTS IN AUGUSTA COUNTY, 1745-1779

by

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A Thesis Submitted to the Faculty of
Old Dominion University in Partial Fulfillment of the
Requirement for the Degree of

MASTER OF ARTS

HISTORY

OLD DOMINION UNIVERSITY
December 1998

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ABSTRACT

LIVES OF THE LITTLE-KNOWN
WOMEN, CHILDREN, AND SERVANTS IN AUGUSTA COUNTY, 1745-1779.

Nancy B. Osborne
Old Dominion University, 1998
Director: Dr. Jane T. Merritt

The court and its justices exerted a great deal of control and power over all the people of eighteenth-century Augusta County, Virginia. The justices oversaw the economic life of the county. They also arbitrated in civil matters and punished those convicted of crimes. The court exerted its authority most heavily over the less powerful of Augusta County society, its women, children, and servants. The justices’ control of these people was based upon considerations of economic values and the justices’ own prestige and power in the community. The women, children, and servants, in turn, used the court system to regain some amount of power over their own lives. Women came into court to request business licenses, document land transactions, ask to be appointed as administrators and executors of estates, petition for relief from abusive husbands, or to protect children. Children used the court to protect themselves from abusive masters or to request guardians. Servants used the court to complain about abusive masters, request freedom dues, or draw up agreements between themselves and masters. Records used will consist of the court order books and will books of Augusta County, from 1745 through 1779.
This thesis is dedicated to my family.

Thank you for all your patience, encouragement and help when things were rough. To Jeremy, thanks for putting up with the computer in your room. To Ingrid, you know why. To Ken and Amy, for all your words of cheer. And to Kevin, my husband, the most thanks of all, for putting up with me and listening to all my hopes and fears. This thesis couldn't have been done without all of you.
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CHAPTER I
INTRODUCTION

Much of the scholarship of colonial Virginia has focussed on the Tidewater and eastern regions of the state, leaving the history of the frontier comparatively unexplored. Augusta County, the westernmost frontier of Virginia until after the American Revolution, is one such under-examined area. Even when discussing the Virginia frontier, historians have tended to concentrate on the lives and actions of the large landowners, who were often the ruling gentry of the frontier regions. Recent scholarship has turned to more detailed community studies, in Virginia as well as elsewhere. Recent studies of colonial history have dealt with the frontier areas such as Augusta County. Even in these studies, however, some elements, such as the poor and the less powerful, have been slighted in favor of discussions about the gentry and how they ruled their society. Historical studies of women and the family have also left many areas unexplored, especially when referring to frontier families. This thesis will attempt to add to the knowledge of how the women, children, and servants of Augusta County society lived within that society on a reciprocal basis with the court system. This will be done by examining court and will records of Augusta County from 1745 through 1779. From these records a picture of how and why the court exerted its authority over its women, children, and servants will be explored, and how those people used the court system to gain back some measure of control over their own lives.

Many books have been written about the Virginia frontier, to include its settlement, land usage, and demographics. Thomas Abernethy’s book is one of the most cited and quoted works on the subject of the settlement of the American frontier and the
western lands. His *Western Lands and the American Revolution* is one of the earliest works which deals with the Virginia frontier and its settlement in the 1700s. Abernethy was mostly interested in the various land companies and how they gained large tracts of land, rather than any individuals or groups of people that migrated into this area. The book itself is a good starting place for information on these land companies and speculators and the British reaction to their speculation before the Revolution, yet scholarship on families and individuals is severely lacking. When Abernethy did mention individuals, he focussed on well-known elites such as William Preston or George Washington, and their efforts to gain new land and wealth.¹

Like Abernethy, Ray Billington discussed the actions of land speculators in the western regions. He grouped land speculators into two main groups, the amateurs and the professionals.² Into the amateur group he placed the ordinary farmer, who bought more land than he could use in the hopes of selling some of it for profit in the future, and the businessman or banker who lived in the western areas and supplemented his income by bartering land for goods. Into the second group Billington placed all the “capitalists” as he called them: eastern merchants and planters who used their wealth and influence to acquire large estates in the wilderness to sell for profits at a later date.³ He further asserted that there was a pattern of landholding in which a succession of zones could be discerned according to size, from small clearings farmed by squatters and “restless pioneers” to larger farms, where corn and tobacco were planted, to larger estates with a higher stage of civilization, and finally to settled regions, where small farms were run by


³ Ibid.
owners with the help of indentured servants. No proof was offered to substantiate these assertions, but Billington did make the point that a more careful study of county records could shed some much-needed light on the subject of land use. Although his article concentrated on land speculators in particular, and their role in the civilization and settlement of the frontier, he also felt that further studies were needed in order to clarify the types of people that were settling in the western regions.

Another excellent work on the western lands and their settlement is by Jack Sosin. In his Whitehall and the Wilderness, the Middle West in British Colonial History, 1760-1775, Sosin concentrated not on the issue from the colonial point of view, as Abernethy had done, but rather from the British side. Like Abernethy, Sosin believed that land speculation was a driving force among colonial Americans not only for material gain, but also social prestige and eminence. Sosin concentrated on the large landowners and speculators, leaving out the individuals in his view of the settlement of the western lands.

Robert Mitchell, using his background as a cultural geographer, took the issue of settlement of the western regions to a new level of scholarship. His article on the Shenandoah Valley frontier in 1972, and his later landmark book Commercialism and Frontier, have done much for the scholarship dealing with this time and place in history. Mitchell showed that the Shenandoah, rather than being settled in any sense of the word, was still a “frontier” in terms of population density until the 1770s. Mitchell also pointed out that the upper Valley of Virginia was remote both physically and socially from eastern Virginia due to its geographical location, having only two gaps in the Blue Ridge by which

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4 Ibid., 206.


roads of any size could traverse. It was this remoteness that set apart the upper Valley from the rest of Virginia, making it an excellent choice for study in Mitchell’s opinion. Instead of grouping all immigrants to the region as land speculators, or as pioneers or debtors, Mitchell presented a picture in his book of the many different nationalities of people that came into this region in the 1700s. His studies of the economic practices of this area seemed to find a connection between wheat cultivation and the rise of independent thinking along with a cultural distinctiveness which set apart the backcountry from the tobacco regions of the east.

Again, like Abernethy and Sosin, Marc Egnal, in his article “The Origin of the Revolution in Virginia: a Reinterpretation,” asserted that the large land speculating companies were responsible for the settlement of the western regions of the colonies. Egnal posited that groups of men in eastern Virginia were either for or against expansion to the West, depending upon their affiliations with others in the political arena, and their family connections. In his book, Egnal reaffirmed that he believed that the migration and populating of the western parts of Virginia was due to the actions of these groups of people which he called “expansionists” or “non-expansionists.” He did mention that Virginia, at least the eastern portion of it, was successful in maintaining control of its poorer landholders and tenants, because there was no restless urban class present, but

7 Ibid. The Upper Valley of Virginia is the name given to the southern, or lower, portion of the valley, both by its inhabitants and geographers.


failed to discuss the control of tenants and other settlers in the western areas of the colony.\textsuperscript{11}

Sarah Hughes' book, \textit{Surveyors and Statesmen}, is unequaled for its depth and detail explaining the mechanics of westward expansion and how land was surveyed and titles secured to that land. Hughes took no position on the motives behind expansion, or what groups were involved, but explained succinctly just how land was acquired, and who could help or hinder in that process. Her book is indispensable in understanding the processes behind land deals and who benefitted from those deals. If anything negative can be ascribed to the book it is the fact that Hughes talked only about prominent members of Augusta County and western society in general must be noted. This is understandable, since the book was mainly an attempt to explain the broader issues of land acquisition, rather than the story of the individual people acquiring that land.\textsuperscript{12}

Some historians, rather than concentrating on large groups of people such as speculators or land companies, have instead endeavored to delineate those individuals or groups of people who actually settled the backcountry. One of the earliest books in this field is Carl Bridenbaugh's \textit{Myths and Realities} in which he talked of three major ethnic groups that migrated to the western lands in colonial days. Bridenbaugh spoke of the English, the Scotch-Irish, and the Germans. Bridenbaugh had a tendency to assign stereotypes to these groups in varying degrees. For instance, he considered the English to be "inferior" farmers, the Germans to be "shrewd and calculating" and the Scotch-Irish as "contentious."\textsuperscript{13} Getting past the various labels which Bridenbaugh used, there is some

\textsuperscript{11} Ibid., 428.


\textsuperscript{13} Carl Bridenbaugh, \textit{Myths and Realities: Societies of the Colonial South} (Baton Rouge, LA: Louisiana State University Press, 1952), 123, 133 and 135.
useable information in this book. In general, he painted a picture of a very closed society in which everyone was suspicious of everyone else, no one trusted anyone, and there was mutual dislike due to ethnic and religious differences. Bridenbaugh did admit at the end of the book that perhaps more study could be done of the county court records, which he considered a great unworked source to illuminate the social and cultural life of the area.

While Bridenbaugh's work leaned toward prejudgment, a much more balanced approach was taken by Mildred Campbell in her work “English Emigration on the Eve of the American Revolution,” written just two years before. Campbell used emigrant lists drawn up in England from 1773 through 1776. In these lists the British government asked people who emigrated to the American colonies a series of questions. From the information given in the lists, Campbell was able to determine what professions people held when they emigrated, their age, sex, city or town of origin, their education, and much other information. Even accounting for errors, as in the case of some who lied about their profession or work history, this study still is a very informative source for the reasons behind emigration, and who actually came to the colonies just before the Revolution. The main motive, in Campbell's opinion, was the lure of cheaper land. It would have been even more interesting if she could have traced some of the emigrants to their eventual destinations, perhaps even to Augusta County, but the nature of record keeping in the 1700s precluded this possibility.

Willard Bliss's study of tenant farmers is also pertinent to an understanding of the people who migrated to the frontiers of Virginia. Unlike Sosin and Abernethy, who

14 Ibid., 184.
15 Ibid., 198.
posited that social prestige or material gain was the primary motivational factor in obtaining western lands, Bliss argued that a need to build up a reserve of fertile soil was the initial impetus behind land acquisition by wealthy eastern planters. Only after realizing that the burden of quitrents and taxes, as well as the fluctuating prices for tobacco, was costing them too much income, did they turn to leasing as a way of making money on those same lands. Therefore, Bliss felt that the land speculator as well as the earnest planter gave rise to the practice of tenant farming. Bliss asserted that leasing was advantageous for tenants as well as landlords and led to an interdependence between them. He based this on records of counties east of the Blue Ridge, and believed that if it got too difficult for tenants, they would simply move further westward into such regions as Augusta County. Bliss spoke in broad terms about settlers to the western regions without referring to any individuals among them.

Klaus Wust wrote about another group of settlers to the western frontier. In his book, *The Virginia Germans*, he wrote about the emigration of Germans to Virginia, beginning in the early 1700s when they were invited by Governor Spotswood to live on land he owned. Unlike Bridenbaugh, Wust did not characterize Germans as being either hard working or lazy or by any other appellation. Rather, he stated the facts of their arrival and paid particular attention to the more prominent and well-known ones. Again, like many scholars before him, and many after, Wust concentrated on men of property and power, such as Jost Hite of Opequon and Johannes Muller of Holston, and somewhat ignored the ordinary people who made up the backbone of the German settlements.

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18 Ibid., 437.

In recent years, scholarship has turned toward community studies as a way to learn more about the lives of everyday people who settled in Virginia as well as its backcountry. In a book written in 1984, Darrett and Anita Rutman described Middlesex County, Virginia. The Rutmans used mathematical data to arrive at various demographic statistics, such as birth and death rates, growth of slavery, density of population, distribution of wealth and commercial networks, and patterns of office holding. For example, from the court records the Rutmans found petitions requesting the building of churches and showed from these what ministerial salaries were and where ministers resided. If the Rutman’s book had one major flaw, it was that they assigned little weight to the power of the county court and its political system, yet it was the court that controlled the communities in colonial Virginia. Rather, they asserted that Middlesex was mainly a rural society from which all American society proceeded. Another flaw was that the study itself tended more towards numerical data in preference to discussions of individuals, making it difficult to assimilate.

A second community study, which came out in the same year as the Rutman book, but unlike that study concentrated more on individuals and less on statistics, was written by Richard Beeman. His book, *The Evolution of the Southern Backcountry*, does not rely on numbers but presents a much more cogent picture of what life was like in the backcountry of Virginia. One of Beeman’s concerns was to trace the transmission of culture, from the older and more settled regions, such as the Tidewater and Chesapeake, to the less settled frontier, in this case, Lunenberg County. Beeman saw Lunenberg as

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21 Ibid., 143 and 249.

somewhat conflicted: a county which never really came together as a community until the mid-nineteenth century.\(^\text{23}\) In the early years the elite of Lunenberg had less power and unity than their contemporaries in the more settled areas of Virginia such as the Southside and Tidewater.\(^\text{24}\) It was only by the 1760s that Lunenberg’s ruling gentry resembled more closely the cultural and social style of their counterparts in the older counties of Virginia. Again, a predominance of attention was paid to the ruling elite and the rise of slavery, while other issues concerning women, children, and servants, were lacking.

By contrast, an article by Paula Anderson-Green six years earlier about the backcountry, does focus on the lives of the women and children of the frontier. Anderson-Green drew on writings by Frank Owsley for her study of the New River, Virginia settlement from 1760 through 1820. Using Owsley’s appellation of “plain folk,” she wrote a focussed study of the lives and actions of a group of people who established one of the earliest Virginia frontiers, in the New River valley land. Studying county land, tax, and marriage records, as well as court cases, wills and militia lists, she reconstructed a picture of settlers in that region that did not concentrate on the elite, but rather gave a more complete picture of those who had lived in this frontier area.\(^\text{25}\) She spoke of families headed by married brothers, patriarchs, or widowed mothers. Anderson-Green wrote mostly about the individual settlers themselves, such as the Bakers, Coxes, Hashes and Osborne, although she did refer to the large land companies and other large landowners.\(^\text{26}\) Anderson-Green called in this paper for further studies of the individuals

\(^{23}\) Ibid., 13.

\(^{24}\) Ibid., 105.


\(^{26}\) Ibid., 415-18.
that inhabited this area, rather than concentrating on general groups or motives of the many. She strove in her paper to present a picture of people that could be known through their records, not as statistics, but as real human beings. Women were given just as much attention as men, with children being mentioned also. The piece is mainly a study of how people settled the areas, but interactions between them and the ruling elite were not discussed in detail.

Warren Hofstra also wrote about the individual settlers of the frontier, specifically about the inhabitants of Opequon, a western community located three miles from the seat of the Augusta County government at Staunton. Opequon was settled during the 1730s by immigrants from northern Ireland, and Hofstra contrasted them to the usual picture, perhaps evoked by Bridenbaugh and others, of the Scotch-Irish as restless individuals out for material betterment. Like Anderson-Green before him, Hofstra concentrated on the individuals that he found in the records that he studied, but referred to men most of the time. Women were almost non-existent in Hofstra’s article, being mentioned only as the wives of the landowners. In three tables on land inheritance patterns, Hofstra included only the sons, sons-in-law, brothers, and brothers-in-law. Women were not discussed in conjunction with land transactions. Whether this was intentional or accidental on Hofstra’s part, or whether women were not part of the process of land buying and selling in Opequon, was not made clear in his text.

Any study of the backcountry and the people who lived in it involves the continuing discussions among historians as to what the backcountry really was: was it a culture of separate ethnic groups, or was there a tendency to converge rather than


diverge? Gregory Nobles, referring to recent scholarship on the backcountry, considered the history of the backcountry to be one of a simultaneous quest for independence along with a process of integration. Nobles saw the backcountry as a blending of the frontier and Tidewater traditions which eventually created a culture that became "distinctly Southern." He did call though for more studies to be done. Those like Laurel Ulrich's study of Maine women and the female frontier experience as well other topics such as family structure, marriage relations, life expectancy, and inheritance patterns, were important and needed to be researched, because he felt that without such studies, no historian could write with any confidence about the frontier family. He also warned scholars of the limits to a lot of the written evidence about the backcountry. Nobles pointed out that much of this evidence came from the elite of the backcountry, while common settlers left little to tell of their expectations and experiences. This thesis will try to add to the knowledge of what the common people on the frontier wanted and how they went about getting it through the court system, and how the records reflected facets of their everyday lives.

Albert Tillson also called for more study from historians, but not of the family or women's history. Instead, he urged historians to explore more fully the nature of the conflict and tensions between the ruling elite in the backcountry and their fellow citizens, as well as the nature of the religious, cultural and ethnic divisions that impacted on


30 Ibid., 657.

31 Ibid., 650.

32 Ibid., 649.
backcountry politics. Tillson did an admirable job of showing how the various people in the backcountry interacted, yet his studies often left out those that have not given historians any direct evidence of their own thoughts and motives, such as the women, children, and others who had little power compared to the ruling elite.

Historians have always taken a keen interest in the gentry class as a whole, wherever it existed, if only because power was vested in the hands of the ruling elite, the landowners and other men of wealth and power. Among the many books on the subject, those concentrating on Virginia and the frontier in particular, are of interest to this thesis. Two broad areas of investigation can be discerned: those dealing with the gentry and their control in general, throughout colonial Virginia; and those delineating gentry power in specific areas, to include Augusta County. One of the earliest works to deal with the gentry, and one which had a huge impact on all others after it, is Charles Sydnor’s Gentlemen Freeholders. Sydnor presented an idealized view of what government was like in colonial Virginia, power being held firmly in the hands of the rich, well-born and able. The view he presented was not necessarily wrong but more of an ideal rather than a reality. He felt that the leaders of society were trained to govern through instruction they received while living in their gentrified homes, planter’s sons being the only ones fit to govern through circumstances of wealth and learning. In contrast, Robert and B. Katherine Brown asserted that anyone could buy land in Virginia and that economic opportunity was available for everyone. Therefore, anyone could be wealthy and could

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35 Ibid.
rise to positions of power, not just the wealthy, more educated upper classes. The Browns stated in their book that they were not concerned about women in colonial Virginia, yet did not give reasons for such a position. It is more likely that when speaking of the availability of land and economic opportunities, the Browns, like most other historians in this time period such as Sydnor, preferred to speak about men rather than women.

Rhys Isaac’s book greatly influenced the scholarship regarding the gentry class as a whole and Virginian society in particular. In *The Transformation of Virginia* he gave us a society which was stratified, with the upper layers controlling the lower ones through the control of credit and social power. Using various anthropological and social data, Isaac presented a picture of a culture in which the wealthy secured the deference of the less fortunate, sometimes through fear, but more often through voluntary compliance. Isaac’s world referred mainly to the more settled regions of Virginia and somewhat ignored the frontier areas, while women and children received little mention in his book. Like Isaac, A. G. Roeber’s book on the court system of Virginia also focusses on the more established societies of the eastern counties of Virginia, mainly the Tidewater area and the gentry's control there. Roeber could have included all of Virginia in his study, because all counties, whether settled like the Tidewater or on the frontier like Augusta, were similar in their court systems and laws, but he did not. Roeber, like many other historians before him, concentrated on the interactions of males. Like Isaac he noted the decline in the authority of the gentry in the 1760s. Isaac attributed this decline to the rise of the

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Evangelicals, while Roeber saw it more as a reaction among the common people against an increasingly professional and thus more alien judicial system. Both authors neglected the issue of the control of the gentry and their court system over women, children, and servants.

Alan Kulikoff’s *Tobacco and Slaves* somewhat corrects the conception that the planter gentry elite lived in a world of their own, without reference to, or dependence upon, wives, children, or servants. His work presents a complex picture of what it was like to be among the gentry who controlled Virginian politics in the colonial years, especially his chapter on domestic patriarchy. Kulikoff delineated how that society operated, with husbands over wives within the family, the legal inferiority of women, and separate spheres for men and women. Men were responsible for the economic well-being of the family while women were responsible for nurturing of children and household management. Usage of court records and wills was extensive and Kulikoff definitely considered that women, children and servants were an important part of an historical study of colonial Virginia. He spoke mainly of the eastern, more settled regions of Virginia, rather than the western areas such as Augusta County.

In contrast to Kulikoff, Richard Beeman concentrated on the western areas of Virginia. He saw Lunenber County as an “unstable frontier” area in its early formative years, in his article written about that county six years before his book about the same subject. Beeman characterized the hold of the gentry as tenuous at best, the court system


40 Ibid., 166.
as weak and felt that the gentry did not exert the kind of control and power in Lunenburg that they held elsewhere in more settled regions of the colony.41 Eventually, by the 1760s, the inhabitants of Lunenburg looked elsewhere for the guidance and strength they could not get from the gentry, and they found it, posited Beeman, in evangelical religion.42 Thus Lunenburg County was characterized by a division among religious attitudes as well as along political lines, with the Anglicans retaining most of the control and the Baptists challenging it. Little attention was paid to the less powerful of Lunenburg, with most of the book focused on the elite and their attempts to hold on to their power. In a second article, Beeman further expanded on his opinion that the material endowments of the elite who lived in the backcountry were meager compared to other places in Virginia. Beeman, citing elections in which the results were contested, asserted that up to seventy percent of the people in the backcountry owned land, and were less deferent to the ruling elite than earlier had been supposed. 43 He went on to say that traditional deference was less secure there and more grudging.44 No mention was made of women who owned land and therefore may have also been less deferent, nor was the role of the gentry in controlling its female population, as well as its children and servants, discussed.

In his writings about the upper valley of Virginia, Albert Tillson has done an admirable job of juxtaposing the gentry culture that sought to emulate its eastern


42 Ibid., 468.


44 Ibid., 228.
counterparts and the local populace that was more connected to an independent, localistic attitude. Yet Tillson’s two works, his article on the militia of the Upper Valley, and his book five years later on the same general subject, leave much out about all the inhabitants of the Upper Valley. Tillson did study the court records, as well as militia lists, vestry books, and personal letters among the gentry, yet he failed to include any women in his examples. For instance, he discussed the fact that sometimes the justices on the court were insulted, but he only gave examples of how men insulted the justices. Later on, he discussed servants and deference, and how the courts punished them for lying or running away, or showing disrespect for the authority of the gentry and the laws the gentry sought to uphold. Here, no servants were mentioned who had made lawful complaints, nor were any instances noted in which servants and masters were shown to be on a cooperative, rather than antagonistic, footing.

The control of the gentry over society is brought out convincingly in an article by Turk McCleskey in which he traced the land transactions conducted in Augusta County from 1738 through 1770. McCleskey’s opinion was that the politically powerful men of Augusta controlled the acquisition of land by granting or withholding their approval of its purchase by other men. They exerted this control to benefit themselves, in that they wanted the best land for their own and because they did not want to share with outsiders. This article is interesting for what is missing from it, not what is included. Land transactions between various men and the county were discussed, but McCleskey


46 Ibid.

failed to take into account other transactions which might have included married women, as well as widows and unmarried females, who owned land.

The difficulty in colonial history, as in any other history, is to ensure that all participants in the drama are included. Often historians neglect one segment of society in order to tell the story of others, which they consider to be more important, or because they feel that to include all detracts from the story they are telling. Jean Soderlund made a valid point, even though she was writing about eighteenth-century Pennsylvania rather than Virginia: “...women have gone largely unrecognized as significant historical actors by the authors of most influential works.”48 She went on to point out that while there were those who had researched women’s history, all too often they had failed to appreciate that there was a multicultural model, that is, more than one kind of woman.49 In Augusta County, as elsewhere, there was more than one kind of woman, and to extend the argument, there were also servants of more than one kind, from convicts, to indentured, to slave, as well as children, both male and female, rich and poor. Although there has been a surge of women’s histories recently, this was not always so in the early years. While many authors have failed to include this other half of American society, as already noted, some fine books and articles have been written about women’s as well as family history. Many books about women’s history have centered around women and the court system. Mary Beth Norton’s article on court cases involving defamation, although referring to Maryland, does offer some insights into the thoughts and actions of Chesapeake women in colonial times. Norton pointed out that there were differences in the types of cases brought before the court, differences based upon gender. Men sought


49 Ibid., 165.
to protect their reputations, especially in any cases where their honesty was questioned, while women were more concerned with sexual reputations. This pattern of court action is interesting for the comparisons that could be made with eighteenth-century frontier life.

Another author concerned with women and how they interacted with the court system was Marylynn Salmon, whose article about women and property in South Carolina is interesting for the light it sheds on comparative cases in Augusta County in the same time period, in the late eighteenth century. Salmon’s opinion was that women had a lot more power in the court system than had been previously thought, and that while law as it was practiced back then appeared to favor men over women, in reality women were afforded much leeway in the conduct of their property transactions. Salmon attributed this to the fact that in South Carolina many women enjoyed legal rights because they had marriage settlements, which were written before their marriages. As Salmon stated, more studies of the same kind needed to be done in other colonies, since each handled its laws regarding property settlements differently. This thesis will show that court records found for property transactions in Augusta County seemed to reflect that while women did have some power in this area, most of these women were either widows or unmarried women.

A study which complements Salmon’s is that of Joan Gundersen and Gwen Gampel regarding the legal status of married women in eighteenth-century New York and Virginia. These authors felt that women were active participants in the legal system, not only because English common law was not as restrictive as had been previously assumed


by historians, but also because certain colonies, such as Virginia and New York, deviated from those laws in ways that benefitted married women.\textsuperscript{52} While Gunderson and Gampel tried to make the case that married women had more freedom of legal action in Virginia, their examples were drawn from cases in which the married or remarried women were in court with their husbands, not by themselves. Therefore, women were still constrained by the legal system to act in concert with their husbands. The authors made the assertion that because Virginia used the joint deed, in which the husband and wife had to sign a document before land was conveyed, it conferred more power on married women.\textsuperscript{53} This analogy is somewhat misleading, in that women were still under the legal purview of their husbands, not acting independently as Gunderson and Gampel suggested in their article. The area chosen for this study in Virginia was situated south of the James River and west of Richmond. This was because Gundersen and Gampel felt that these areas were likely to mirror practices in other parts of the colony.\textsuperscript{54} Topics studied included disposal of property, contracts, suing for debts, dower rights, will bequests, guardianship of children, and whether or not a woman was named as the executor or administrator of her late husband’s estate. The authors concluded that women in eighteenth-century Virginia used common law and the precepts of English law to their advantage, and while they did lose some rights, they had a greater say in their own economic lives than had been previously considered by historians.\textsuperscript{55}


\textsuperscript{53} Ibid., 125.

\textsuperscript{54} Ibid., 116.

\textsuperscript{55} Ibid., 134.
A. G. Roeber's article also discusses legal practices in Virginia, focusing on court day in Tidewater Virginia. It is a precursor to his later book on the magistrates and justices of Virginia. In the article, Roeber specifically addressed the issue of contempt of court, and how it was expressed and handled in the courts. Here he had an opportunity to include women in his survey, for women did appear in court cases, and albeit rarely, they were involved in contempt of court actions. Women were not mentioned in his study though, only men. Roeber did state that more studies needed to be made of the courts and court systems of colonial Virginia, referring to work done by Rhys Isaac in his Transformation of Virginia, yet Roeber himself did not include all the people of the time in his studies, specifically women, children, and servants.56

Emphasis on women's histories seems to be centered around two areas, either that of women and the legal system, topics which have been discussed by the foregoing writers, or about women and the family. Laurel Ulrich and Mary Beth Norton have both added to the understanding of women and their families in colonial history. Ulrich's Good Wives, while set in New England, is an excellent study of the different roles that women played in colonial society, from mothers to mistresses, from Christians to viragoes, to neighbors and deputy husbands.57 Her well-rounded approach delineated the complexity of the life cycles of women in New England. As she said at the end of her book, it was "hardly possible to write about 'community'...while focusing entirely upon fathers and sons." as many important works in colonial history have done.58 This thesis and its study


58 Ibid., 240.
of the court records of Augusta County may shed some needed light on the different roles that women played in Augusta society, from wife and mother to servant or criminal.

Among scholars of women’s history there is disagreement about the role of women and their lack of power compared to men. Mary Beth Norton asserted that in pre-Revolutionary times both men and women believed that women were inferior to men, and that women had low self-esteem, an opinion which was not shared by other writers such as Gundersen, Gampel, and Salmon. Norton based her observations on writings by women about themselves and inferred from those writings what they were feeling in terms of their own self-esteem. A danger here is that Norton used the writings of one group of women to speak for all women. Jean Soderlund pointed out that no group of women should be categorized as being homogenous, and that we must all pay strict attention to ethnic, religious and class divisions when writing women’s history. Still, Norton’s book is useful for the light it sheds on what a particular class of women was thinking and feeling. She did accede that in frontier areas women’s roles could blur, but otherwise little of her book referred to frontier life. This can be attributed partly to the fact that many frontier women left no written records of their experiences or feelings, and partly because many authors tend to write about more well-known colonial women rather than everyday women.

Helena Wall acknowledged that examples of individual behavior that she found did not “prove” anything, but they did suggest a lot, and that her goal in Fierce Communion: Family and Community in Early America, was to suggest ideas, not arrive at concrete


60 Soderlund, “Model of Diversity,” 182.

61 Norton, Liberty’s Daughters, 13.
Like many others, she used court records because going to court involved the active participation of many individuals and she saw these records as a way that people expressed their values. She also noted that by examining court records, one corrected the reliance on the exclusive male, literate, upper class sources that had influenced so much historical thinking in the past. This thesis will show relationships between women and their community in many areas by using the court records. Women will be seen as independent businesswomen, as mothers and wives, as litigants using the court system, and as persons accused of criminal behaviors. Wall did a fine job in that she delineated women’s roles in colonial society, much like Ulrich did for New England, but did tend to skirt around certain issues. She affirmed the role of the women in families, yet did not address the issue of binding out, which did have a direct impact on families, when children were sent from them. She also concentrated on the early seventeenth century and not the eighteenth century, placing a majority of her emphasis on New England to the detriment of other locations in colonial America.

Another work about women, which used court records, is that by Kathleen Brown. Her book, Good Wives, Nasty Wenches, and Anxious Patriarchs, was based on the assumption that there was a growing concern in colonial Virginia regarding women’s sexual behavior, and that concern led to a pattern of prosecution that attempted to change the behavior itself. Brown, while concentrating on the early seventeenth century, did

62 Helena Wall, Fierce Communion: Family and Community in Early America (Cambridge, MA: Cambridge University Press, 1990), x. Wall evidently did not want any examples she found in her study to be construed as being indicative of the whole of colonial society.

63 Ibid., ix.

trace developments into the eighteenth century, and noted that by then, heads of families and the justices in the courts were requiring more female respectability, by regulating female public behavior and thus protecting women's reputations. Brown also noted a lessening after 1700 in the number of court cases in which the fathers of illegitimate children were named in court, thus indicating a shift from controlling men and women's behavior, to controlling only the behavior of women. If there is a weakness to her book it is that she based her conclusions on slaveholders rather than on a cross-section of colonial society, and concentrated on the Tidewater area rather than other areas of Virginia, to include the frontier regions. Therefore, some of her findings, such as the assertion that white women were rarely whipped in public by the mid-1700s, do not hold true for the frontier areas such as Augusta County.

A last work about gender, although not specifically pertaining to American colonial society, is Anthony Fletcher's work in 1995, *Gender, Sex and Subordination in England, 1500-1800*. This book is essential reading in order to understand how the concept of a patriarchal society was imported into the colonies from England and Ireland. Fletcher's book explained the thoughts and origins behind such actions as the beating of wives, children, or servants. In England from 1500 onward, it was considered acceptable to maintain order in the hierarchical relationship of a man and his family by administering "moderate correction" to anyone the master deemed deserving of it. This would explain a lot about court proceedings anywhere in the colonies where people were of English or

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65 Ibid., 284.

66 Ibid., 200.

67 Ibid., 289.

Irish descent, and used a court system which was derived directly from English law. Fletcher also wrote about the rise of class identity among the English gentry, based upon distinct cultural and social assumptions, which differentiated them from the multitudes of other Englishmen and women. These attitudes had a direct bearing on how people in the colonies thought of themselves and those around them, and offers an explanation as to why people acted the way they did and set up the kinds of societies that they did.

Just as women's histories are proliferating, so is the subject of children and family in American history. Studies first concentrated on the New England area, but now more and more are being written about the middle colonies, including Virginia. As Daniel Blake Smith pointed out, materials relating to child rearing are scarce and historians have had to rely on conjecture and the materials left behind by the more elite families for their interpretations of what childhood was really like. Conclusions also have been based on the types of evidence used, such as sermons and advice books. Smith said that while a picture of a more disciplined approach to raising children appeared from these sources, some diaries and journals reflected a different view of how parents felt and how they acted towards their offspring. Smith admitted that for some children, notably those from poorer families, sources such as court records, traveler's accounts and other scattered sources would have to suffice. He did not delve into the subject of the binding out of children except to say that there was some evidence that children of poorer families were "set out" on their own at younger ages than those from genteel families. Court records

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69 Ibid., 283.


71 Ibid., 13.

72 Ibid.

73 Ibid., 14.
of Augusta County do tend to corroborate this finding, in that children orphaned in poorer families were bound out at the court's discretion on a regular basis, while those from more wealthy families received guardians.

Philip Greven has written a large body of work pertaining to childrearing in colonial times, and has studied effects of physical punishment on children in all time periods of American history. In an article he wrote in 1991, Greven stated that he had not realized at the time he wrote his book, *The Protestant Temperament*, that physical punishment was a lot more prevalent in the colonies than he had previously thought.\(^\text{74}\) He made the point that this physical punishment, which was common throughout most of the colonies, had profound consequences for the shaping of both individuals and their behaviors and beliefs.\(^\text{75}\) Here would have been a good place for Greven to talk about the binding out of children, and what effect that action may have had on their spirits as well as bodies, yet mention of binding out is lacking. Greven's later work, *Spare the Child*, is a call for historians to recognize that physical punishment, as well as all other forms of punishment meted out in childhood, has had a direct and profound effect on history, and that historians need to recognize this and take it into account in their histories.\(^\text{76}\) This could just as easily be aimed at the subject of the treatment of poorer children, who were taken away from their families at varying ages, many in infancy. Studies of the effects of


\(^\text{75}\) Ibid.

binding out of children need to be done, and the findings of this thesis will add to the scholarship of that subject.

Most studies of colonial life do touch upon the servant population, although a lot more research needs to be done about how servants lived and existed within a society such as Augusta County. Having little power, servants had to rely on masters and mistresses for their lives and well-being. When masters or mistresses failed them, then servants came to the court justices to petition for grievances. No works were found in which the interplay between servants and the court system was discussed in any detail. Tillson mentioned servants in his study of the gentry of the backcountry, but neglected to go beyond referring to servants that ran away, unjustly complained, or failed to respect the authority of the gentry and the courts. In Jack Greene’s study of Chesapeake society, servants were mentioned but mainly so that they could be compared to slaves, as two different forms of free labor. In a similar vein, Edmund Morgan, talking about how masters had to exert more control over slaves because they had no incentive to work, compared slaves to servants and how servants were punished in the early years of the colony. Kulikoff lamented the lack of attention paid to white women or poor white men, such as servants, by the gentry, and then proceeded to somewhat ignore the indentured servant population himself. Kulikoff spent about one page discussing how powerless servants were, without any reference to their ability to use the court system. The best

77 Tillson, Gentry and Common Folk, 31.


80 Kulikoff, Tobacco and Slaves, 295-6.
treatment of servants and their position in colonial society is perhaps that of Laurel Ulrich. Discussing the role of mistresses in households, she commented that servants, just like children and women, were subject to physical correction at the hands of the more powerful members of society, because colonial Americans accepted the idea of "authoritarian violence." Ulrich did note briefly the intervention of the court, but only briefly.

Convict servants, just like indentured servants, have been largely ignored by scholars of colonial history, although some books specializing in them have been written. A fine book by A. Roger Ekirch addresses the subject of the convicts that came to the colonies, from 1718 through 1775. Ekirch discussed in great detail what sorts of criminals were transported to the colonies. Then he went on to say that not many convicts were transported to the backcountry, partly because of the distances involved in getting them there, and partly because they were usually taken up by more wealthy planters on the east coast. Ekirch did not discuss how the courts controlled the convict population or how convicts may have used it for their own purposes. Historians have focussed on women's history, or the history of slaves. The study of convicts has been somewhat slighted in scholarly studies. Women's studies have ignored the fact that while the majority of convicts were men, there were also many female convicts in the colonies.

Slaves and slavery have been the subject of many books, and this thesis will probably not shed any new light on their history. Philip Schwarz, writing about slaves and how they were punished, first by their masters and secondly by the court system, makes a telling point: just how good are court records about slaves, when much punishment was of


a private nature? His book is useful for the information he gave on types of crimes committed, types of punishments given out, and what types of slave codes were enacted. Yet, any comparison of how slaves were treated versus other free labor, of how they may have been treated differently in areas where they were not numerous, such as Augusta County, is lacking.

Darrett Rutman asked the question in 1985, and it is still relevant today: is there a need for more studies of the "little communities," as he called them? Do these studies offer a basis for generalizations about what life was like in Anglo-America or do they simply contradict one another and offer nothing in particular? Rutman thought that community studies, while exasperatingly different, did allow us to see that the basic social arrangement found in all places in America was the nuclear family and involved direct and personal relationships based on cooperation insuring the success of individual families.

This thesis will also study a community, Augusta County. Just as Rutman found in his studies, no community is exactly like any other, and so any findings of this thesis do not necessarily reflect those of any other place except Augusta County in the years 1745 through 1779. Nevertheless, the information and conclusions reached in it will add to an understanding of how the court system of Augusta County controlled the lives of its less powerful people, the women, children, and servants, and how those people used that court system to exercise some amount of power over their own lives. The subject of how women, children, and servants were controlled by the court system in colonial Virginia has received some attention, yet more information is needed to determine the reasons behind

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85 Ibid., 167-8.
that control and how the less powerful managed to live within that control. This thesis will show that the justices' control of their women, children and servants was based upon considerations of economic value and their own prestige and power in the community. It will also show that the women, children and servants reacted to this control by using the court system in various ways to protect themselves and further their own desires.
CHAPTER II
AUGUSTA COUNTY LIFE, 1745-1779

Two institutions, the County Court and the Anglican church, were present in almost every facet of colonial life in Augusta County, Virginia during the eighteenth century. Both proposed to regulate people’s behavior, acting as the arbiters of what was considered moral or immoral. It was the court, through its many functions, that exerted the most control over the inhabitants of the county. The court system regulated life in the county, being the arbitrator and coordinator of all economic activity in it. The court system appointed commissions to study everything from liquor rates to where the next road should be built and who should work on it. In court records we can find the rates of exchange between the currencies of Virginia and her neighbor Pennsylvania. Court was also where one went to prove one’s country of origin for the purposes of claiming headrights. The court approved licenses to build mills, bridges, ordinaries and other structures, and appointed juries to review such plans. Inspectors appointed by the court looked at the quality of food such as flour, pork and beef, while other inspectors looked at roads, determining their need for repair, or need for change of location. The court determined if a person was tithable. Brands used to identify farm animals and stock were also recorded in the court records, as were marks denoting ownership by individuals of various properties.1

Besides this regulation of economic activity, the court also directly controlled what people said and did. When a crime was committed, the court decided who was guilty and what punishment they should receive. The court prescribed punishment for misdeeds by levying fines, imprisonment, ejection from the county or by physical punishments such as whippings or being put in the stocks. It also accepted acts of contrition for minor crimes

1 Augusta County Order Books, I through XVII, 1745-1785 (Virginia State Library, Richmond, VA), various pages (hereafter cited as OB).
in the form of public apologies. Major crimes, such as murder, larceny of large amounts of money, infanticide, or treasonable activities, were sent on to Williamsburg, to the General Court. Most cases, though, were heard at the county level, including any cases involving slaves. People could be found at fault for any number of crimes, such as theft, horse stealing or threatening bodily harm to another. Drunkenness was also cited, as were cases of housebreaking, larceny, adultery, fornication, having children out of wedlock, assault, resisting arrest, selling liquor without a license, forgery, failure to attend as a witness, disorderly conduct, failure to provide for one’s children or wife, slander, debt, drinking toasts to the King of England’s enemies, or swearing.\(^2\)

Finally, the court also served as an arbitrator in deciding civil cases involving debt or other transactions, and kept records regarding its citizens, noting marriages, deaths, remarriages, and when people left the county. Wills were recorded in court, and estates were bought and sold through it, while the court justices decided who would administer those estates. Land was bought and sold and the deeds registered with the court system. Transactions involving contracts between people were registered with the court, as in the case of indenture contracts between servants and masters or contracts between masters for the buying or selling of slaves. The court identified those exempt from taxes and tithes and controlled the payment of pensions. The court also bound out children, appointed guardians for children or registered guardians already chosen.\(^3\)

The county court held jurisdiction over everyone in Augusta County, but exerted control most firmly over its less powerful citizens: women, children and servants. Women had few legal rights, unless they were unmarried or widowed, and even then, they were subject to the decisions of the court, which was composed of propertied men. Children

\(^2\) Ibid.

\(^3\) Ibid.
had even fewer legal rights until they came of age, eighteen for females, and twenty-one for males. When orphaned they were directly controlled by the court in areas such as estate management, choosing guardians or having them appointed for them, or when being bound out. Lastly, the servants, including convict labor and slaves, were not only subject to the control of their masters, but also under the jurisdiction of the court in all civil and criminal matters. Women, children, and servants could use the court to some extent, but they were limited in what they could do in court. All could bring suits or petitions in court, except for slaves, but the final decision for any case or petition rested with the court justices.

Control of the court rested in the hands of the ruling elite of the county. They, in turn, through the court system, controlled the lives of all the people living in the county. Ideally, the justices sitting on the court were to be selected from the most qualified men in the county, men who had breeding and economic status in the community. In actuality many of these positions were handed down through families and kinship networks, so that in any given year, the same names appeared and reappeared. Technically, the justices were nominated by the citizens of the county and selected by the colonial government in Williamsburg. In reality, names were submitted as a matter of formality and sitting justices selected their successors.4 The first set of justices for Augusta County, commissioned in December 1745 and April 1746, totaled twenty-nine, and of these twelve went on to repeat judgeships, some as many as three times. In July 1746, sixteen judges were appointed, and of these eight were justices from the session before.5 Control of the court was firmly vested in the justices who sat on it. They decided who would succeed or not succeed to a judgeship since they decided who should be considered. By 1753, certain

4 Sydnor, Gentlemen Freeholders, 81-2.

5 OB I, 1 and 142.
prominent family names began to appear on the justice rolls, names like Patton, Buchanon, McClenachan, Lewis, Cunningham, and Robinson. Many of these same families were also among the wealthiest in the county. This was particularly important since a judgeship was an unpaid position and necessitated spending many days in court hearing cases and conducting administrative business. An unpaid justice had to be able to take time away from paying pursuits such as farming or store keeping, which is one reason why the judgeships were usually held by men in positions of relative wealth in the county. The other reason was because colonial society was based upon the rule of the elite. This rule of the elite was reciprocated by the other members of colonial society, in that they accepted the control of their lives by the justices in exchange for certain rights which they could exert. These rights included petitioning the court for redress, asking the justices to decide civil or criminal matters, and various other empowering actions which anyone in Augusta society, with the exception of slaves, could take. In this respect the backcountry was somewhat like the other, more established parts of Virginia, in that the gentry controlled society, with the permission and support of that society.

The elite of Augusta County society controlled the people through their positions as court justices and as lesser officials. The elite were part of Augusta society, but separate from it. The definition of elite, or gentry as it was also known, is elusive. Some historians have characterized it by the standard of “liberality,” meaning freedom or independence.6 Others have classified it using terms denoting power, birth or wealth.7 Gentry has also been defined as the “upper class of society” and men of “property” and “family” who by custom and public opinion were the leaders of their society.8


7 Brown and Brown, *Democracy or Aristocracy?*, 35.

definition of gentry included those individuals who were the wealthiest, averaging more land ownership, were unified by kinship, and had a continuity of membership in the county courts.9 For the purpose of this thesis, “gentry” is meant to signify those who held offices of some importance and power at the county level, such as the justices, the sheriff, the militia officers and other officials of significance, as well as others who exerted influence without specific political office, such as large landowners and men of wealth in the county. Although wives and daughters of the elite were also considered as part of that group by others in colonial society, for purposes of this thesis, only men will be considered when referring to the elite class.

Below the justices in matters of power and prestige were the offices of the county clerk, the sheriff (chosen from among the judges), the coroners, the under-sheriffs, various constables and guards, all of whom were chosen by the justices.10 These men were paid, with the sheriff receiving fees for the many duties he performed. Men traditionally spent years working up from lesser positions such as constable or under-sheriff to the pinnacle of a judgeship. Only the office of burgess (an elected position) was a higher position.

Most activities of a business nature were conducted at the court house, where justices sat in sessions. The court also heard criminal cases there, as well as civil matters between husbands and wives, or masters and servants. Designation of guardians and the binding out of children was also conducted in court. The court regulated all of the county business associated with roads, commerce, and defense. Wills had to be read in court and registered there, while executors and administrators of estates were accepted or appointed during court sittings. Sessions were conducted on a quarterly basis. Anyone wishing to bring a suit, lodge a complaint, or conduct a major business transaction involving the

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10 Sydnor, *Gentlemen Freeholders*, 82.
purchase or selling of land or other property, had to personally appear in court. The court house was located in Staunton, the only major town in Augusta County until after the American Revolution. By 1775, Staunton consisted of approximately 800 people.11 Many references in the court records reflect the efforts of the people of Augusta County to build a proper court house, with an adequate jail and all the appurtenances that went along with county government. An old building was used until 1752, when plans were made to build a new court house. A new ducking stool was ordered to be built, and a “proper seal” for the county ordered soon afterwards.12 Stocks, a pillory and leg irons were then ordered, and an adequate jail house was procured.13

Augusta County was formally created in 1745 at the western region of the Virginia colony, bordered on the north by Pennsylvania and Maryland, on the east by the Blue Ridge Mountains, and on the south by the Carolinas. The western boundary of Augusta was undefined, but in theory stretched to the Mississippi River.14 Most of the inhabitants lived on small farms, the median size being between one hundred and four hundred acres.15 Farms were far apart, being anywhere from a few miles to upwards of twenty miles from each other, making communication difficult.16


12 OB I, 197 and IV, 105-6.

13 OB I, 3 and 46.

14 Sosin, Whitehall and Wilderness, 18. Actually, the Virginia-Pennsylvania boundary was still unsettled as late as the advent of the American Revolution, while the western boundary was constantly being changed due to new treaties with the Indians and new surveys.

15 Brown and Brown, Democracy or Aristocracy?, 14.

While tobacco production was the main staple of the economies of Piedmont and southside Virginia, in Augusta County a more diversified economy flourished, based on tobacco and other crops such as hemp, wheat, corn, and rye. Livestock such as cattle, horses, and swine were raised as well as small amounts of vegetables and fruits. Five years after the county was formed, fifteen water grist mills, used for grinding grain and corn, had been built, and in May 1751, two fulling mills were built to support the production of cloth.

A large percentage of the economic base of the county consisted of the production of hemp, a commodity used to make rope, burlap and other fibrous materials. The production of hemp fluctuated, with good production years alternating with poor ones, and attesting to the uncertainties of life on the frontier. Hemp and tobacco were labor-intensive and required many people to work these plants, both slaves in the fields and servants to run all other affairs. Due to the presence of other types of farming though, it was not necessary to have large numbers of slaves to till the fields; therefore, the slave population in Augusta County was never large, as compared to eastern Virginia. Other crops such as wheat, flax, corn, and rye were also grown which did not require slave labor. In the early years of the county's formation and growth, a basic subsistence economy existed, the people growing for their own needs, with little left for export.


19 OB VII, 166; VIII, 387; X, 172; XI, 61, 214, 337-8, 342-3, 346-7, 350-1, 366, 374, 489-95, 500-502, 512 and 520; XII, 138-40, 146-8, 251, 274, 312, and 333; and XV, 125 and 197.

Trade gradually expanded and developed with the eastern counties of Virginia, starting in the 1760s. Numerous country stores are also mentioned in the court records as reference points when roads were being built and for various other reasons, which indicates that there were opportunities for the inhabitants of the county to buy items from outside their region without actually having to go there themselves. Taverns, or “ordinaries” as they were known, also flourished at the many crossroads.

Besides farming, many colonists dealt in fur trading and animal bounties for their livelihoods or to supplement their incomes. Relatively large profits could be realized from the fur trade. One historian estimated that the bounties from wolf hides and elk skins in one hunter’s cache, noted in 1762, could have been enough to purchase at least 900 acres in the county. Court records verify this, for in 1753 certificates were recorded in which the number of wolves’ heads turned in was worth the equivalent of 50,600 pounds of tobacco. It can be further inferred that the trade in hides was lucrative from the fact that penalties were assessed to those that hunted without the proper permission. The court charged one man in 1747 with a felony for killing thirty-eight red deer. He was found guilty and fined for his crime.

In addition to farming or dealing in animal skins, there were many men in such occupations as blacksmiths, wheelwrights, curriers, coopers and carpenters. There were also furniture makers and joiners and those who built and repaired structures. There were those that assisted in the transport of commodities, such as the drovers, the ferrymen, and the toll-takers. For the personal needs of the people there were shoemakers, wigmakers,

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21 Ibid., 482.
22 Brown and Brown, Democracy or Aristocracy?, 21.
23 OB III, 241.
24 OB I, 151.
barbers, weavers and clothiers. For medical needs there were doctors and midwives, and for spiritual needs, the ministers and other church officials. In addition to these occupations, there were also the lawyers who helped to bring the many suits and cases before the court.\(^{25}\)

The control of these economic and business activities came under the jurisdiction and purview of the court and its justices. Business contracts were heard in court and entered into the records, land was bought and sold, and debts were settled or cleared through the court. When people died, their wills were read in court and administrators and executors were approved of by the court justices. Even though the justices had the power to make all final decisions, that power derived from their popular reputations. Reputations of the justices, as for any person, depended mostly on an oral culture and word of mouth, since society at this time was not highly literate.\(^ {26}\) A justice’s reputation was influenced by how he controlled the conduct of the people that came to court, both those who came in and those who waited outside. The county court affirmed the deferential values that the gentry sought to impose on the rest of Augusta County society. The justices sought to compel recognition and the acceptance of their dignity through the authority of the court.\(^ {27}\)

Because court days were also an occasion for socializing, many people came into court not only to conduct their business transactions, but also to meet friends and hear the latest news. Sometimes situations got out of control, as attested by the numerous cases involving fighting in the courtyard as well as in the courthouse itself. Fighting while court was in session, arguing with the justices, calling them names and threatening them with

\(^{25}\) OB I, 7.

\(^{26}\) Isaac, *Transformation of Virginia*, 91.

\(^{27}\) Tillson, *Gentry and Common Folk*, 32.
physical harm were viewed as activities inimical to the power and prestige of the court, and were dealt with promptly, usually by fines and public apologies. Sometimes the justices meted out physical punishment, as in the case of one man who was fined and then sent to the stocks for one-half hour for damming the court and swearing oaths in its presence.\(^{28}\) Fines were the usual punishment and were levied for various transgressions, including swearing during court, showing disrespect toward the justices, interrupting a witness or failure to appear as a witness.\(^{29}\) The court justices perceived that when people behaved disrespectfully during court sessions or caused disturbances in other ways, they were showing disrespect toward the justices themselves, and thus to the ruling elite they represented. If the actions of any justice were questioned, then the entire concept of gentry control over others would be undermined. For these reasons, any type of behavior that questioned the power or honesty of a justice had to be punished in order to discourage similar acts in the future. That justices held their reputations very dear is illustrated by a case heard in 1748. Justice Samuel Gay was accused by another justice of “indulging” a criminal after the man had been arrested. Justice Gay was summoned to appear in court to answer this charge while two other men put up the money pledging his appearance. The next month, Gay appeared in court and was acquitted of the charge. Later that same year court records stated that Justice Gay had quit the county and had removed to Carolina.\(^{30}\) Gay’s integrity, and thus his reputation, had been called into question and thus his authority as a justice and his prestige as a member of the ruling elite.

While justices were concerned about their reputations among the people they interacted with, it did not stop them from committing various types of misbehavior

\(^{28}\) OB I, 46.

\(^{29}\) OB I, 83 and 340; III, 249; and VII, 293.

\(^{30}\) OB I, 345 and 364 and II, 43.
themselves. James Kerr, selected as a justice in 1745, was fined for disturbing the peace in 1747.\(^{31}\) In the same year, Justice Samuel Gay was accused of threatening to put a man in the stocks and beat him, but was let off when he apologized for it. He had been a justice for less than one year.\(^{32}\) John Bowyer, appointed as a justice in 1757, was found guilty in court by his fellow justices of disturbing the peace the next year: he had been playing cards while court was in session. Bowyer was fined five shillings.\(^{33}\) Four years later Bowyer was again charged by his fellow justices with gaming and assaulting another justice who attempted to stop him; Bowyer was fined for this. The next year he was re-appointed as a justice, along with the man he had been accused of assaulting.\(^{34}\) Robert McClenachan, three times a justice, assaulted a man at the court house and was bound to the peace for this behavior. He was serving his fourth judgeship at the time.\(^{35}\) So while justices expected a certain type of behavior from those they presided over, they also could be guilty of that same behavior themselves. Additionally, such behavior did not seem to prevent them from retaining their judgeships or being re-appointed as justices at later dates. This would indicate that the justices, while concerned with the behavior of others, often accepted behavior among themselves that they would condemn in anyone outside of their profession.

Besides hearing civil and criminal cases, the court also determined the punishment for moral crimes such as failure to attend church or profaning the Sabbath, activities which normally would seem to fall under the jurisdiction of the church. Many of the justices on

\(^{31}\) OB I, 1 and 199.

\(^{32}\) OB I, 68 and 257.

\(^{33}\) OB V, 1 and VI, 203.

\(^{34}\) OB VII, 292 and 477 and VIII, 113.

\(^{35}\) OB IV, 6.
the bench were concurrently vestrymen in the Anglican parish, so they could and did control religious behavior from the courthouse. Of the twelve vestrymen appointed in 1746, three were also justices, while a fourth was the county clerk. Three other vestrymen went on to be justices later in the 1740s and 1750s, as the roles of church and state tended to merge, with a common objective: the regulate the behavior of the inhabitants of the county. The court could bind out a child and name the receiving family, or direct the church wardens to complete the binding out process. While the court might designate someone as a charge on the county or as a vagrant, and punish them accordingly, the church was more likely to accept petitions from people that were needy and help them out as much as was possible. With older people, both the church and court endeavored to help them by directing support for their needs, the church by allocating funds for them and the court by exempting them from county levies.

Although, in theory, the county was under the jurisdiction of the Anglican Church, the approved church of the colony of Virginia, in reality many of the inhabitants of Augusta County were Presbyterians or other dissenting faiths. Court records note numerous instances in which Presbyterians requested permission to build meeting houses. Requests for three houses were found in the court records in May 1748, two in February 1749 and one each in August 1752, May 1755, August 1756 and March 1765. It has been estimated that by 1775 there were approximately twenty percent English, nineteen percent Germans, fifty-eight percent Scotch-Irish and three percent “other,” in Augusta County. Of the Scotch-Irish, many were Presbyterians, while others were Anglican.

36 OB I, 1; VI, 1; and Lyman Chalkley, comp., Chronicles of Scotch-Irish Settlement in Virginia: Extracted from the Original Court Records of Augusta County, 1745-1800, vol. 2 (Rosslyn, VA: The Commonwealth Printing Co., 1912-1913), 1.

37 OB II, 20 and 77; III, 326; IV, 427; VII, 56; and IX, 238.

The German population included many sects, such as Moravians, Dunkers, and Mennonites.39

The justices, many of whom were directly from Ireland, may or may not have been dissenters, that is, non-Anglicans. In the early years of the county there was no requirement to be a particular faith in order to serve as a justice. In order to be a county official a person merely had to publicly declare that he was against the Catholic doctrine of transubstantiation.40 Later, trying to curb the power of non-Anglicans, a law was passed in 1769 in Williamsburg specifically referring to Augusta County’s vestry (and that of two other counties) as being composed of too many dissenters from the approved Church of England.41 This law called for the dissolution of the Augusta vestry and the re-election of its vestrymen. Just after the passage of this act, three members of the Augusta parish resigned as vestrymen because they had refused to take the oath and subscribe to the doctrine of the Anglican church.42 There was some fear at this time among Anglicans of the growing power of dissenting faiths, especially of the rise of evangelicalism.43

Those who had settled in the county also originated from other countries such as Germany. Itinerant Moravian ministers traveling through the backcountry in the 1740s and 1750s documented encounters with Germans in Augusta County. Two of these ministers, one traveling in November 1743 and the other in 1747, spoke of their fears of traveling through the “Irish settlements” and passing by the “disorderly, wicked and

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39 Ibid, 473.

40 Isaac, Transformation of Virginia, 91.


42 Chalkley, Chronicles of Scotch-Irish, 459. Robert Breckinridge, John Poage, and Israel Christian were all justices at different times in the 1750s and 1760s.

43 Isaac, Transformation of Virginia, 153.
godless house of an Irishman."  

Although fear and animosity may have existed among visitors from outside the county, it would seem from the court records that there was little trouble between the Germans and the Scotch-Irish settlers in the county itself. Children who were German, as well as non-German children, were bound to German couples.  
The court directed who would participate in the repair and building of roads, and included Germans, naming "Dunkers" and other dissenters.  

Germans did participate in county government, although not often. Adam Harmon, a German, was a candidate for constable in 1753. Alexander Painter, another German, was appointed a road overseer in the same year.  

Matthias Selzer, a prominent and wealthy German settler, was nominated as a justice of the county court in 1751, no doubt because of the rising population of Germans at that time.  
The lack of participation by the German community may have been attributable to a language difference between themselves and the rest of the county. Other cultural differences may also have been factors keeping the German community isolated from other Augusta County inhabitants.  

Augusta County was controlled by its gentry class. They ran the political life of the county through their various offices as justices, sheriff, and vestrymen. Most of the gentry were composed of Scotch-Irish and English immigrants, with the Scotch-Irish in the majority. The gentry class, however, was not a closed one and opportunities for advancement into it existed. For example, the Mathews brothers, George and Sampson,  

44 Kemper, "Moravian Diaries," 68 and 374.  
45 OB III, 245. The difficulty arises in identifying the participation of Germans because many German names were changed into more Anglicized versions in the court records.  
46 OB I, 168.  
47 OB IV, 9.  
were merchants who owned a country store. George became a vestryman in 1760, and by 1775 both were justices. Along the way they were involved in various events which could have prevented their acceptance into the gentry hierarchy but did not: the death of a slave under suspicious circumstances, a disagreement with a powerful man in the county, enduring insults while in office, and being sued by one of the biggest landowners in the county, and yet they both succeeded in becoming justices.

All other inhabitants of the county deferred to the leadership and power of the elite. Most of the people had access to the courts, which gave them some control of the direction of their own lives. The majority of these people could be categorized as middle class: men and women who worked their farms, maintained their businesses, and lived somewhat quiet lives, appearing in public when they brought a suit or conveyed land. Men could vote because they owned sufficient land or a structure in the town. Those who could not vote included tenants, renters, non-citizens, and all women. Then there were the less powerful, children, indentured servants, slaves, and convicts. Lastly were those without the means to sustain themselves, such as the vagrants and the people who relied on the county and church for their food and shelter.

The court exerted direct control over its citizen’s lives. Because they had no political power, women were directly under the control of their husbands and fathers, and then the court system. Women went to court to carry on land transactions, either as unmarried women, widows or as wives. Married women had to be privately examined as to their wishes regarding any land that they owned or controlled, in order to prevent husbands from conducting any land transactions against a wife’s wishes. This questioning

49 OB XII, 253.

50 OB VII, 173; XI, 250; and XV, 443 and 452.
was conducted by the justices and required by two laws passed in 1674 and 1738.\textsuperscript{51}

Women also went to court when suing on behalf of their children regarding land or indenture contracts, or to petition the court for separate maintenance from their husbands in cases of marital abuse. Married women came into court with their husbands. Women also sued on their own behalf. The court also punished women if they were convicted of any crimes.

Children were directly affected by the power of the court, even more so than women. The justices could decide that they should be bound out, in cases where their fathers had died. The court determined if their parent or parents were providing for them in the proper Christian manner. If the court determined that they were not, then the court could also bind those children out.\textsuperscript{52} In cases where children possessed land through inheritances, guardians could be appointed or accepted by the court to act in their behalf, to conduct the sale or acquire land or sue for debts on behalf of the child.

The servant population consisted of indentured servants, convicts and slaves. The court system sometimes protected servant’s rights and at other times punished servants for their transgressions. An indentured servant could request that the court free him if he could prove that his contract had been fulfilled. Often former indentured servants came into court and stated that they had not received their freedom dues, and the court would direct that masters pay them. A servant could also bring suit against a master who had been abusive, although the burden of proof was on the servant rather than the master. If the court did not believe that the servant was telling the truth, the servant could not only lose the suit but also be punished for bringing a false suit.\textsuperscript{53} Masters also sued in court for

\textsuperscript{51} Hening, \textit{Statutes at Large}, 3:325-6 and 5:530-3.

\textsuperscript{52} Ibid., 4:212 and 5:452.

\textsuperscript{53} OB VII, 297.
lost wages when they apprehended runaway servants, and the court directed what punishment was to be given out, whether it was a fine, additional time of servitude, or physical punishment. Convict servants were able to use the court system just like indentured servants, although not having any rights to freedom dues or contracts with their masters did limit the type of assistance that they could request from the court justices. Convicts were also controlled by the court when they had committed any crimes. Lastly, cases involving crimes committed by slaves were heard in a special court of Oyer and Terminer in which the justices decided the life or death of a slave for such crimes as murder, arson and stealing. Lesser crimes which slaves committed were not heard in the court itself but were more likely settled on the plantations where the slaves themselves resided.

The court of Augusta County was the controlling authority in the lives of all of the inhabitants of the county. It was the court that decided what roads should be built, and where they should be built, and who should work on them. The court arbitrated disputes between husbands and wives, masters and servants, and between people suing each other for debts or conducting transactions involving land or other commodities. The court determined where children should live if they were orphaned or if it was decided that their parents were unfit, and the court decided ultimately who would be a child’s guardian. The court determined who would execute the provisions of a will, and required that those designated by these wills prove themselves to the court as being fit to administer the estates. It was the court that disqualified people for office or accepted others, and carried out the laws as promulgated in Williamsburg. The court controlled the economic life of the county, dispensing licenses and permits and regulating the prices of goods sold or their quality. The court decided who was to be punished for any criminal activities committed in the county.
Ultimately, although everyone was under the jurisdiction of the justices and the court system, it was the more powerful who could best use that system to their advantage. County officials, to include justices, the county clerk, and the other men who ran the business of the county, depended upon the will of the white male voting population for their support. The gentry and men in their society had similar values and roles. The gentry needed the support the landholding males, and used their powers as justices wisely to win this support. Since women, children, and servants were without much power, they were considered less important to gentry interests. To gain the favor of the empowered male population, it was in the best interests of the justices to consider what their decisions in court would mean for their own futures. For it was the "interests" of the justices, and the gentry class as a whole, that mattered when the justices made their decisions. Being a justice was one step away from the coveted role of a representative in the House of Burgesses in Williamsburg, a position that many justices probably aspired to, and they therefore endeavored to keep in the favor of their fellow county men as much as possible.

Because women, children, and servants were legally under the control of their husbands, fathers, and masters, they depended upon the court to intercede on their behalf. The court justices could choose to protect these people, or manage their lives as they saw fit. This thesis will explore the ways in which the court justices controlled those with the least amount of power in their society: the women, children, and servants. The motives behind this control by the justices will also be explored. This thesis will also explore how women, children, and servants could and did use the court system to exercise some power over their own lives and will show how successful they were when dealing with the court system and its justices.
CHAPTER III
WOMEN AND CHILDREN

Women and children in Augusta County were always under the control of others in colonial society. Married white women and their children were first of all under the control of their husbands and fathers. Additionally, like all other inhabitants of Augusta County, they were legally under the control and jurisdiction of the county court system, its justices and their decisions. The court controlled all facets of their lives, from the time they were born through childhood, into adulthood and to death. Despite this, women and children could and did use the court system to regain some measure of control over their own lives. Married women, legally under the control of their husbands, had to appear in court with their husbands in order to conduct any business such as conveying land or settling debts. Yet married women could act on their own on the rare occasions when they charged husbands with abuse or sued to retain custody of a child. If widowed, a woman regained some measure of legal power with the court. She could enter into business arrangements, conduct a business, or sue for debts on her own behalf. Remarriage of a widow often resulted in other forms of control by the court justices. Widows were often required to show proof of financial responsibility regarding the administration of their late husband’s estates when they remarried. The court also determined if they and their new husbands were administering estates properly, and could intervene by directing that they pay counter-securities to insure estates against mismanagement. Children had even less power in Augusta society, being dependant on their parents for support and upbringing. Should one or both parents die, the court could and did step in to direct the child’s future, through appointing guardians or binding the children out. The court also intervened in cases where it felt that a child was not receiving the proper type of upbringing even if both parents were present.
Women, since they did not have any political power and little financial power, were always dependants in the male-dominated society in which they lived. The court, being the ultimate authority in colonial society, exerted its influence very strongly on the female members of that society. Women were classified into two categories of legal status in colonial Virginia. One was *feme sole*, which included any unmarried or widowed woman. The other was *feme covert*, and was used to describe the legal status of women that were married. The county court differentiated between these two states when adjudicating civil matters, while in the cases involving criminal matters, women were considered as individuals, whether they were married or not. For business and other legal purposes, a *feme sole* was an unmarried woman who had the same legal rights as that of a free man. A married woman, on the other hand, was considered to be under the jurisdiction of her husband in all legal matters. According to English law a married woman became as one person with her husband, in all matters of an economic nature: she could not sell property without his permission, enter into contracts or agreements, or even write a will. Upon the death of her husband a widow reverted to *feme sole* status and was considered once more to be legally equal to men.

Unmarried women used the court system in order to conduct their own businesses, enter into contracts, or procure licenses. Euphemia Hughes became an independent business operator in March 1767 when she was granted a license to run an ordinary in her house for no more than a year. She became a widow two months before this, when her husband James had died. He had operated up to five ordinaries himself. His will left

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1 Gunderson and Gampel, “Married Women’s Legal Status,” 114.


3 Gavit, *Blackstone’s Commentaries*, 469.
everything to his wife, except some clothes for his stepdaughter and a house to his eldest
daughter, and had named her and another man as co-executors. Euphemia, probably
through her experiences in running ordinaries with her husband, elected to try running one
herself. She must have been somewhat successful, for later that year she had herself
appointed guardian for her children so that she could go to court and contest a case on
their behalf. The case involved her co-executor and his brother, prominent members of
Augusta society. They were Sampson and George Mathews, justices in the county in
1770 and 1774. Possibly the Mathews were attempting to collect against the Hughes
estate and Euphemia was trying to protect that estate for her children. Being in business
for herself enabled her to earn the money necessary to fight the Mathews brothers in court.

Another business activity engaged in by unmarried women was that of farming. Some
women produced hemp on their farms. Elizabeth Taylor was one such woman
whose farm produced hemp from 1768 through 1774. She had been a widow since 1749,
when she qualified to be the administrator of her deceased husband’s estate. By not
remarrying she maintained control of her farm and lands. Taylor’s farm would have had
slaves as well as servants on it, since hemp was a labor intensive crop like tobacco, which
meant that she ran a large farming business by herself. Other widows who engaged in
their own businesses were Elizabeth Preston, Mary Chittman and Mary Wood. Widow

4 Augusta County Will Books, I through VI, 1745-1779 (Virginia State Library,
Richmond, VA), Book III, 347 (hereafter cited as WB).
5 OB XI, 58.
6 Ibid., 469.
7 OB XIV, 66 and XVI, 30.
8 OB XI, 500 and XV, 445.
9 WB I, 145.
Preston managed an estate left to her by her husband and also litigated in court for debts due to that estate. During the French and Indian war, she put in a claim for a horse that was impressed for military service. Mary Chittman bought and sold land in her own name, while Mary Wood was also sole owner of a large estate. As long as these women, and other women, stayed unmarried, they could run their lives somewhat independently as a *feme sole*.

Women who had never married had the same degree of legal independence that widows did, yet court records reflected that it was usually widows or married women who used the court system to their own advantage. This could have been for various reasons. Many single, that is, never married, young women would not have needed to use the court system, since they were not financially independent enough to sue for debts or convey land. Some never-married women were financially well-off though, such as the Preston sisters, Ann and Mary, so they did use the court system to their advantage. Never-married women, when they did come into court, often came as a result of some criminal action they had committed. Some never-married women may also have had to work as servants, and as servants, may have come into contact with the court system for various reasons. Jean Soderlund, referring to findings made about the Philadelphia workforce in 1775, found that some 45% of the women from the more affluent part of town were hired or bound servants or slaves. The reasons why servants came into court will be developed in the next chapter. More work does need be done to flesh out the lives of the women who never married and still retained some degree of independence in colonial society.

10 OB V, 2.
11 OB VI, 146.
12 OB IV, 289 and XI, 361.
13 Soderlund, "Model of Diversity," 175.
Kathleen Brown felt that marriage enabled a person, whether a man or a woman, to rise higher and faster in colonial society.\textsuperscript{14} Undoubtedly this was true, for marriage did confer more power upon a woman, as she could use her husband’s influence to her own advantage.

A widow could also wield power over her late husband’s estate. If she were executor of his estate, or if the court accepted her as the administrator of the estate, she was free to run that estate as she saw fit, under the terms of the will if there was one. The difference between executors and administrators was a matter of name only: executors were named explicitly or implicitly in wills while administrators were chosen when no wills were written, no executors were designated in a will, or the named executors had refused to execute the will.\textsuperscript{15} The person who desired to act either as an executor or administrator of an estate had to come into court and post a security bond. This was in the form of a promise to pay damages if they failed to run the estate properly. Then the court would decide if they were qualified and designate them either as an executor or an administrator.

Of a total of 686 wills heard by the Augusta County court from 1745 through 1779, wives were mentioned in 258 of them. Table 1 shows how many women in Augusta County, Virginia, were named in their husband’s wills as executors, as well as the incidence of men named as executors, and widows named as co-executors with other men, either relatives or friends of the deceased.

\textsuperscript{14} Brown, \textit{Good Wives}, 92.

\textsuperscript{15} Gunderson and Gampel, “Married Women’s Legal Status,” 118, n. 11.
Table 1. Women as Executors in Husband’s Estates, 1745-1779

<table>
<thead>
<tr>
<th>Period</th>
<th>Wills</th>
<th>Women</th>
<th>Men</th>
<th>Women as Co-Executors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1745-1749</td>
<td>19</td>
<td>2 (11%)</td>
<td>9(47%)</td>
<td>8 (42%)</td>
</tr>
<tr>
<td>1750-1754</td>
<td>36</td>
<td>10 (28%)</td>
<td>9(25%)</td>
<td>17 (47%)</td>
</tr>
<tr>
<td>1755-1759</td>
<td>30</td>
<td>4 (14%)</td>
<td>13 (43%)</td>
<td>13 (43%)</td>
</tr>
<tr>
<td>1760-1764</td>
<td>47</td>
<td>8 (17%)</td>
<td>22 (47%)</td>
<td>17 (36%)</td>
</tr>
<tr>
<td>1765-1769</td>
<td>35</td>
<td>8 (23%)</td>
<td>11 (31%)</td>
<td>16 (46%)</td>
</tr>
<tr>
<td>1770-1774</td>
<td>50</td>
<td>6 (12%)</td>
<td>21 (42%)</td>
<td>23 (46%)</td>
</tr>
<tr>
<td>1775-1779</td>
<td>41</td>
<td>4 (10%)</td>
<td>21 (51%)</td>
<td>16 (39%)</td>
</tr>
</tbody>
</table>

Husbands named their wives as executors less frequently than they did other men, usually sons and relatives. Except for one five year period, 1750-1754, women were consistently designated executors less often than men. This indicates that men considered other men to be more competent in running their estates than their own wives. When husbands did have faith in the abilities of their wives, they often stipulated that control of the estate should be managed by other men as well as their wives. The number of wills in which co-executorships were selected stayed somewhat constant, around one-third to one-half during this time period. Kulikoff saw a rise in co-executorships in the 1760s and 1770s in Chesapeake society, yet in Augusta County, co-executorships stayed somewhat constant. Being a co-executor gave widows some control over their estates, but husbands undoubtedly felt that their wives needed other men to help them handle any problems in estate management.

When the will did not designate an executor, or there was no will present, the court decided who should administer the estate. Here the preferences of the ruling court

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16 WB, I through VI, various pages and OB, I through XVII, various pages. Not all deceased men had had wives; many being unmarried men or widowers. Only wills in which wives were present were considered.

17 Kulikoff, Tobacco and Slaves, 189.
hierarchy, the powerful men in the community, came into play. Table 2 shows how many widows were allowed to qualify as administrators on their husband’s estates, compared to the number of men who qualified, and the number of women who qualified along with men as co-administrators. Again, the wills considered were only those in which a wife was present at the making of the will.

Table 2. Women as Administrators in Husband’s Estates, 1745-1779.18

<table>
<thead>
<tr>
<th>Years</th>
<th>Estates</th>
<th>Women</th>
<th>Men</th>
<th>Women as Co-Administrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1745-1749</td>
<td>43</td>
<td>30 (70%)</td>
<td>8 (18%)</td>
<td>5 (12%)</td>
</tr>
<tr>
<td>1750-1754</td>
<td>33</td>
<td>29 (88%)</td>
<td>2 (6%)</td>
<td>2 (6%)</td>
</tr>
<tr>
<td>1755-1759</td>
<td>28</td>
<td>22 (78%)</td>
<td>5 (18%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>1760-1764</td>
<td>65</td>
<td>42 (65%)</td>
<td>16 (24%)</td>
<td>7 (11%)</td>
</tr>
<tr>
<td>1765-1769</td>
<td>15</td>
<td>8 (53%)</td>
<td>3 (20%)</td>
<td>4 (27%)</td>
</tr>
<tr>
<td>1770-1774</td>
<td>35</td>
<td>13 (37%)</td>
<td>13 (37%)</td>
<td>9 (26%)</td>
</tr>
<tr>
<td>1775-1779</td>
<td>32</td>
<td>9 (28%)</td>
<td>20 (63%)</td>
<td>3 (9%)</td>
</tr>
</tbody>
</table>

In the early years of the county, until 1770, the court considered that women were the best qualified to run their husband’s estates. The court qualified men, whether sons, other relatives, or friends of the deceased, much less frequently. Women as administrators were in the majority until 1770, when the court chose the same number of men and women as administrators. This would indicate that the justices may have begun to view the handling of estates as a task increasingly more suited to men. By 1775, more men than women were chosen by the court to run men’s estates. Women had gone from a majority in the early years of the county to a minority by the time of the American Revolution. They were not even a strong presence in the category of co-administrators. Initially, this partnership was the least favored among the justices, and only outnumbered

18 WB, I through VI, various pages and OB, I through XVII, various pages.
men as administrators from 1765 through 1769. This could be attributed to the fact that there were more men of legal age in the county by this time, sons having grown up to help their mothers manage their father’s estates. The designation of couples to administer estates rose in the 1760s and then dropped again during the Revolutionary War years. Many sons were away fighting and therefore could not have been chosen to help their mothers run their father’s estates. Additionally, the court may have felt that it was better to have the estates in control of men by themselves rather than by women alone or as co-administrators due to the unsettled nature of those wartime years. Therefore, individual men generally appointed other men to execute their estates. If they did appoint their wives, they usually did so in conjunction with other men. Conversely, the courts were more apt to give the sole administratorship of an estate to the widow, at least until the advent of the American Revolution. Gunderson and Gampel’s study of the legal status of women in eighteenth-century Virginia, which concentrated on the counties just west of Richmond, corroborates this. They found that widows normally were designated as the administrators of their husband’s wills.19

After a will was read in court, a widow was allowed a grace period of up to nine months in order to contest that will.20 The law stated that a widow was entitled to a third of a man’s estate if there were two or less children living from that marriage. In the cases involving larger families though, a widow would have to share the estate equally with all of the children.21 One widow renounced her husband’s will because most of the land went to her sons, while another had to accept the fact that the children of her husband’s


20 Hening, Statutes at Large, 5:446-7.

21 Ibid., and Gunderson and Gampel, “Married Women’s Legal Status,” 121.
brothers and sister would get most of the estate. Another widow came into court and stated that her husband was "not in (his) right senses" when he wrote his will. The court overruled her and decided that the will would stand as written, and she received less than she wanted from the estate. In this instance, the court justices were telling the widow that they knew her husband better than she did, and were doing what they considered right, not what she wanted. Salmon found that in South Carolina, widows generally had marriage contracts drawn up, which did protect their inheritances should their husbands die. Evidence of marriage contracts in the will books and court records of Augusta County was lacking, either because they were rarely drawn up or not noted in these records.

Widows, once they did remarry, changed from their *feme sole* status to *feme covert* status, which meant they were legally under the jurisdiction of their new husbands. When a woman was the administrator or executor of her late husband's estate, remarriage could change the perception of the court as well as others as to how the estate was being managed. Often women and their new husbands were charged in court with the crime of "wasting the estate." Interested parties who had something to lose if an estate went bankrupt or lost money could initiate a case in which they charged mismanagement. The burden of proof fell on the widow and her new husband. They had to show evidence that they were not wasting the estate and that it was being managed in the proper manner. In this way the court controlled how estates were run and therefore those that managed them through its acceptance of these cases.

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22 WB III, 94 and OB XVI, 74.

23 OB XIV, 62.

24 Salmon, "Women and Property," 656.

25 OB III, 186.
The court could also exert its control over remarried women by approving requests for counter-securities. When a person was directed to put up a counter-security, it meant that they had to give a certain sum of money to the court, which in turn held the money as insurance against bad management of the estate. A remarried widow and her new husband could expect a request for counter-security from parties that had direct financial dealings with the estate, such as creditors or fellow business partners. When the widow had qualified as the administrator or executor of her husband’s estate, she had put up a security bond at that time, promising proper management of the estate. Because many widows had few financial resources, they often had another person, usually a man, put up this security bond for them. Therefore, when a woman remarried, the man who had vouched for her abilities when she first started managing her late husband’s estate now wanted assurances that her new husband would manage the estate just as well as the widow had done. The counter-security request was the new husband’s promise not to waste the estate. The court, through the oversight of this system, also exerted control of the people who ran their own estates and ensured that estates were properly managed and maintained in a sound manner.26

The court decided that once a woman married or remarried, any suits that had been brought by her when unmarried were dismissed. These cases were often for debts owed to the woman’s estate or leases broken, but were considered no longer viable once the widow or unmarried woman who brought them remarried.27 Justices were adhering to the law that a *feme covert* had no legal rights of her own without the consent of her husband. Since any legal matter an unmarried woman opened did not have the approval of...
a husband after marriage, then that matter was null and void. After remarriage, if the new husband so desired, a case brought by his wife before marriage could be reopened under both their names.

The remarriage rate for widows in Augusta County was not high as seen from the evidence of the court records. From 1746 to 1779 rates of remarriage were never higher than 25% of the total number of widows in any five year span. Of the 471 women who were identified as being widowed in these years, only sixty-six widows were identified as having remarried, for a total of 14%. Of these sixty-six, about 16% remarried within one year, some before their deceased husband’s estates could even be settled, with one widow remarrying the co-executor of her husband’s estate. Twenty percent remarried within two to four years, the rest after five years. Perhaps women, knowing that remarriage would take from them many legal rights they had as _femes sole_, were reluctant to remarry and lose those rights. Or it is also possible that there were more women than men in the county. Because marriages often brought land when widows were involved, it may have been that enough new land was available on the frontiers of Augusta County so that men did not have to marry widows in order to acquire land. In Morgan’s study of Virginia in the 1600s, he found that widows remarried at a fast rate, while Kulikoff’s work about Chesapeake society in the 1700s also found that widows in their twenties and thirties often remarried.

Widows who did not remarry rarely appeared in the court records. When they did, it was usually because they were conducting business matters of some sort. Euphemia

28 WB I through VI, various pages, and OB I through XVII, various pages. Remarriage rates for widows were determined by noting when widows were noted in the court records as being remarried.

29 OB VII, 486 and WB III, 67.

30 Morgan, _American Slavery_, 164 and Kulikoff, _Tobacco and Slaves_, 188.
Hughes had her ordinary, Elizabeth Taylor ran her hemp farm, and Elizabeth Preston managed her estate. Hughes was widowed in 1767, Taylor in 1749 and Preston in 1747. They, and other women like them, who had some degree of financial independence, elected for whatever reasons to stay unmarried, no doubt so they could manage their own affairs and not be under the control of someone else.

The court allowed women to convey land if they owned it themselves, but once they were married, then they had to sell or buy land through their husbands. The court was required to “examine” any woman whose husband desired to sell any of her land, to see if she was agreeable to the transaction. The court appointed commissions to question wives as to their personal wishes concerning land transactions. Since no cases were noted in which a wife disagreed with her husband’s plans to dispose of any land, it would seem that wives and husbands discussed this beforehand, and an agreement was made before actually coming into court. It is also possible that the examination itself was merely a formality and wives’ wishes were not necessarily listened to by the court. Examinations of wives were most prevalent during the 1760s, but fell in later years to only three or four per year, sometimes none for many years in a row. Perhaps the court began to consider that asking for permission from wives to transact land was either not necessary or a waste of its time.

Women used the court system to manage their estates and conduct business activities. They also could use the power of the court to protect themselves from cruel or abusive husbands. Women sued their husbands for cruelty, abuse or a lack of proper maintenance. These cases were not numerous, indicating either that marital relations on the frontier were somewhat harmonious, or that women found other ways of dealing with abuse. Some suffered in silence while others took action, leaving their husbands.

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31 OB VII, 108; VIII, 124; IX, 355; and XI, 218.
Runaway wives were not a common occurrence in Augusta County. In one case, the husband came into court and asked that another man be charged for "robbing him of his wife and sundry goods." Additionally, because they lived in a patriarchal society, complaints by women against their husbands may have been viewed as challenges to the idea of male authority. Therefore, women may have hesitated to formally complain in court or air their grievances for all of the county to hear and see. It is more likely that women complained among themselves and to other women who would understand their problems. Also, many cases of abuse may have been solved without resort to the court system, by using the offices and power of the church to condemn a husband's behavior or change it.

A total of eight cases were found in which a wife complained of treatment by her husband. In two of them, the wife requested that the court grant her permission to live apart from her husband. When one of the cases came to court, neither the wife nor the husband appeared, and that case was dropped. In the second case, the husband was summoned to answer his wife's charges that he had "ill-used" her. After five months, the justices finally heard the case. In the court's opinion, most of the trouble had resulted from the interference of the wife's relatives, and the case was bound over to investigate charges involving their actions. The original case in which the wife had pressed charges against her husband was dismissed as "groundless." The wife was denied her request for separate maintenance, and was directed by the court to return to her husband. The

32 OB IV, 214.
33 OB III, 239.
34 OB V, 32.
35 Ibid., 189.
justices in this case were saying that the relatives of the wife had encouraged her to bring the abuse charges, and that the husband was not really guilty of any wrongdoing.

In five cases of marital abuse, the husbands were accused of putting their wives in "fear for ... life and bodily harm." The husbands were directed by the court to obtain securities from friends and ordered to appear at the next court to be held some months hence. Although further mention of these cases was not found, the evidence must have been strong against the husband in one of them. Usually, in cases of this nature, the husband was requested to post a security bond in the sum equivalent to fifty pounds of tobacco. This particular man was directed to pay a fine equal to 500 pounds of tobacco. He was also ordered to be on his good behavior toward everyone, especially his wife, for the next year and one day. He was then bound to the peace, that is, enjoined from acting in any harmful way towards his wife, and had to find someone to put up security for his good behavior. In this case the court acted as the protector of the wife, even though she was not granted separate maintenance from her abusive husband and had to return to her home. Again, the idea that men were in control of their wives was paramount over any protection afforded to the woman. Ulrich found that in New England in the early 1700s wife beating was tacitly condoned and women were seldom allowed to leave even if the husband had beaten them. She felt that assaults on women usually resulted from challenges to male authority.

In the eighth case the wife came into court to say that she had been physically kicked out of her house by her husband and his brother. She charged that her husband had

36 OB II, 4; III, 178; VII, 53; IX, 429; and XV, 49.

37 OB IX, 429.

38 Ulrich, Good Wives, 187 and 269.

39 Ibid., 188.
refused to grant her the “common necessities” for living, such as food and clothing. Both husband and brother were fined, but no further action was noted on the case.\footnote{OB II, 317.} In this case, where no further mention is made of the wife or husband, it is possible that like the first case, differences were overcome and the couple had no further need of the court. Or perhaps just the fact that the wife had come into court and had publicly accused her husband of abuse was sufficient to stop any further abuse on his part.

Because the court made decisions that did not always coincide with the opinions of those who came to court, it was normal for differences to arise between the justices and the people of the county. The justices derived their power from being on the bench, but their prestige came primarily through the good opinion of their fellow county men and women. Disrespect for their office and the court itself was something that was not to be taken lightly. Incidents of disrespect and disagreement included verbal or physical assaults upon the justices and other officials of the county court, as well as other actions such as swearing in court, gambling outside while the court was sitting and hearing cases, and interrupting witnesses.

Although men were usually the instigators of these types of actions towards the justices, of forty-three cases identified, four involved women. One woman, Ann Brown, was responsible for three separate acts of disrespect. In May 1751 she was accused by the Sheriff, Robert McClenachan, of “abusing” him, and was subsequently summoned to court to answer the charge. Ann and her husband, James, then swore out a complaint in August 1751 against another man, saying he had abused them, but this case was disallowed, indicating that the Browns may have been perceived as troublemakers. Four months later Ann Brown was again in court with her husband, arguing about the settlement of an estate. When the judgment went against the Browns, Ann impugned the
honesty of Benjamin Borden, one of the witnesses, and was fined forty shillings. She appealed the fine, but it stood. Then, in May 1754, Ann Brown came into court for a fourth time and called the presiding judge a “rogue” and promised that if he would come off the bench, she would “give him the Devil.” That was the last straw for the court: Ann was fined twenty pounds and remanded to the custody of her husband for good behavior.41 The court was asserting that a woman’s place was under the control of her husband. A similar instance of disrespect was committed by Jane London, who was fined fifty pounds for threatening and verbally abusing three men, one of them a prominent member of Augusta county society, in 1751.42

Normally, it was men who impugned or slandered the justices and the court system itself. The small number of instances in which women were involved would indicate that women refrained from commenting on the court system and the justices in general. Since so many women were present in the records, being “examined” and appearing as witnesses, among other activities, it is likely that they were less verbal than their male counterparts, at least in the hearing of the justices themselves. It is also possible that women talked more among themselves rather than behave like Ann Brown and Jane London and speak their minds in public. Mary Beth Norton found in seventeenth-century Maryland that women and men exhibited different patterns of name-calling when castigating someone’s reputation. Both men and women were more apt to slander a woman’s sexual reputation, while men were the target of slander aimed at their honesty or economic viability. When Ann Brown called the justice a “rogue” she was acting similarly to the people Mary Beth Norton studied, who had lived some one hundred years before in

41 OB II, 594; III, 186; III, 226; and IV, 219. No more was heard of Ann Brown in the court records.

42 OB III, 197.
Maryland. The justice, eager to preserve his reputation, which had been called into question by Brown's name-calling, had to punish her in order to restore his name.43

Women who were financially independent were more apt to abide by the rules of the court and the society in which they lived. Other women, less financially able and, therefore, less free to do as they wished, may have felt that society and its justices had too much control over them, and so they rebelled. This rebellion could take the form of criminal activities such as stealing or disturbing the peace, or more socially unacceptable behaviors such as fornication, adultery or having illegitimate children.

A total of one hundred and twenty crimes against property, including stealing, larceny, burglary, housebreaking and theft, as well as physical and verbal assaults against persons, were committed by Augusta County residents from 1745 until 1779. Of these, fourteen were committed by women, a total of less than twelve percent. Women committed crimes of a clandestine nature such as receiving stolen goods, while a few women were involved in acts of disorderly conduct or fighting. Very few women committed more serious crimes against others, such as infanticide.44 Men committed more overt crimes such as stealing, beating others, or murder.

The court justices directed that the punishment for stealing was a whipping, which was applied equally to both male as well as female criminals. Of two women charged with stealing, one received a punishment of thirty lashes, the other, thirty-nine lashes.45 Sometimes the punishment, even if it was not physical, seemed harsher than the crime. In 1747, Catherine Quin stole a pewter plate valued at six pence. The justices directed her to


44 OB I, 191 and 347; III, 197 and 249; VI, 212 and 256; VII, 205 and 281; VIII, 214 and 491; IX, 66; X, 1; XI, 340; and XIV, 288.

45 OB VIII, 491 and IX, 66.
find two people who would put up ten pounds security apiece for her good behavior until her next appearance in court. She contracted smallpox in 1753, and the court threatened to put her in jail if she did not leave the county. The next year her three children from two different men (she denied being married), were bound out by the court. In 1756 she was forced by the court to leave the county, the court justices considering her to be an undesirable person and a charge to the community.

The court also had to deal with women who were involved in assault cases. Assaults by women were rare. Besides the two involving disrespect against the gentry and court by Ann Brown and Jane London, two other women committed acts of assault. One woman, Elizabeth Skillern, was found guilty of assault and using threats against other men on two separate occasions. The first time, in 1748, she acted in concert with another man against a second man and was fined twenty-five pounds by the court and told to keep the peace for a “year and a day.” Four years later, Skillern and her two sons were charged with threatening another man. This time, the fine imposed by the justices was harsher: thirty pounds each and good behavior required for another year and a day, plus the threat by the court that if she and her sons did not behave, their land and goods would be subject to forfeit to the court. In 1767 another woman and her husband were charged with threatening a man, and told by the court to behave peacefully.

One crime that came before the court, whose justices had to decide on the proper punishment, involved concealing the death of a newborn child or contributing to its death,

46 OB I, 154.
47 OB III, 490; IV, 252; and V, 126.
48 OB I, 347.
49 OB I, 249.
50 OB XI, 340.
either willfully or unknowingly. Even if the infant's death was an accident, or the child was born dead, the charge was infanticide if there had been no witnesses present at the birth. The court assumed in these cases that the mother was guilty until proved otherwise, if only because the death had occurred without any witnesses being present, or because it had occurred under suspicious circumstances, in the opinion of the justices. Of the three cases of infanticide noted, the court judged two women guilty enough to be sent to Williamsburg and the General Court for trial, but in the third case, the woman was found insane and acquitted. Interestingly, it was mostly the testimony of women that convicted the first two women and freed the third.

In the first case, the woman's mother, a relative and another woman were also charged by the court as accessories to the murder since they had attended the birth. Later the court acquitted them of these charges. Their testimony, along with that of thirteen other women, was heard by the justices before judgment was made. Of the other thirteen witnesses, five women were vouched for by their sons, and the others were similarly vouched for by their husbands. Even though women were able to testify in court in this case, it appeared that their husbands and male relatives were obligated by the court to testify as to their truthfulness.

In the second case, the witnesses consisted of three women and one man. The court justices decided, upon hearing the evidence, that the mother was probably guilty, and they therefore charged the witnesses to proceed to Williamsburg where they were to testify against the mother.

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51 Brown, *Good Wives*, 204.

52 OB I, 191-4; X, 1; and XIV, 288.

53 OB I, 191-4.

54 OB X, 1.
The third case involved Jane Dove. She was acquitted by the justices upon the testimony of her witnesses, one married couple and one man. They asserted that she had committed the crime in a “fit of lunacy,” and so the court decided to let her off.\(^{55}\) In all three cases no mention was made of the fathers of these infants, and the court records do not show that any effort was made by the justices to determine the identities of these men.

It was noted that of the three cases of infanticide, none involved servant women. However, for cases of bastardy, female servants were accused of the crime of bastardy by the court approximately twice as often as free white women. A total of eleven free white women were charged with bastardy, from 1745 through 1779, compared to twenty servant women.\(^{56}\) Perhaps this meant that free women could more easily hide their pregnancies or actions or that their reputations were guarded more closely and many bastardy cases may have been quietly resolved. It is more than likely that servant women had less opportunity to hide their pregnancies, having to work in close proximity to their masters and mistresses, while free white women could go away until the birth of the child or otherwise remain hidden from society until they had delivered their child. Therefore, since free white women may have been more secretive about their pregnancies, when the birth came, and if they had no witnesses, they were more apt to be charged with infanticide if the baby died, even if it was from natural causes.

From these cases it can be seen that a social network of women existed in addition to the social institutions of church and government, perhaps because women held no power in the political arena, and therefore looked to one another for support. This network could work either for or against a woman in time of trouble. In the first

\(^{55}\) OB XIV, 288.

\(^{56}\) OB I, 154 and 288; I, 393, 424, 429, and 483; III, 203 and 206; IV, 496 and 512; V, 42-3, 256, 300, and 428; VI, 87, 91, 146, and 276; VII, 126; IX, 342; X, 104; XI, 65, 83, and 503; XII, 499 and 507; and XVI, 85.
infanticide case, it was clear from the records that there were many women who were willing to come forward and testify against the mother. In the second infanticide case, the three female and one male witness were strongly enjoined by the court to proceed to Williamsburg, which may indicate that they were somewhat hesitant to testify against the mother. In the third case, the witnesses were decidedly on the side of the mother, the one female witness probably being present at the birth or familiar with the circumstances of the infant’s death.

Women’s lives were controlled by the male dominated society in which they lived, including the justices and the court system. Therefore, many women may have found an outlet for their dissatisfaction by committing acts which they knew were inimical to what society, that is the ruling gentry, considered to be correct. Besides crimes against property or assault, crimes of a sexual nature occurred in Augusta County. Kathleen Brown, referring to colonial Virginia, found a pattern of prosecution suggesting that there was a growing concern of the authorities to regulate certain kinds of sexual behavior in the colonies by the mid-1750s. The court of Augusta County did consider the sexual behavior of its people within its right to control, yet within this control by the court there appeared to be a double standard. Men were not usually identified in the records, nor was there evidence present in the court records suggesting that the justices had made an effort to locate them, in cases of bastardy or infanticide, while the women always were identified. In cases involving wife abuse, husbands were not always found guilty by the court when the evidence must have suggested otherwise. Even when found guilty, husbands were let off lightly, and the justices ordered that wives go home with them. This would seem to indicate that the court justices, men themselves, tended to lean more on the side of their fellow men rather than ensure that wrongdoers were punished, whether they

57 Brown, Good Wives, 7.
were men or women. Besides identifying with fellow men, justices may have been reluctant to punish those who were their supporters in Augusta County society.

The court more often identified both men and women in cases involving adultery or fornication. In cases in which the court charged adultery, the women were identified as being married, yet the men were not, because adultery was based upon a woman's marital status. The accused woman’s husband was identified while the accused man’s wife, if he had one, was not. This was because wives were considered as dependents of their husbands, while husbands were considered as independent of their wives. Apparently the court thought that it was more disturbing that wives cheated on their husbands, rather than husbands had cheated on their wives. Sometimes the court noted who brought forth the charges, but most of the time the records simply stated that the court had been “informed.” Because colonial society was based more upon verbal exchanges than on the written word, much information was gleaned from other sources apart from the court. These sources could be the churches, the local markets, or any other places in which people congregated and exchanged gossip and news about others. In the case of Humberston Lyon and Jane Mires, it was the foreman of the grand jury who brought forth the charges. This was not necessarily because he had knowledge of the transgression, but more likely that information had come to him in another way. Sometimes letters were written to people in positions of power complaining of the behavior of people in the county. At other times, people came forward to accuse others of illicit sexual activity. In one such case, the witness came into court and stated that he had seen two people, who

58 OB I, 134 and 199 and IV, 254.
59 OB I, 332.
60 OB I, 134.
were not married to each other, living together. No mention was made in the court records stating what fines or punishments were meted by the court justices to people who were convicted of adultery. Fines were probably levied, similar to those incurred for fornication, and public whippings may have been carried out. The court record is not clear in these cases. The act of identifying the sinners, the men and women involved in these adulterous acts, was also a method of control by the justices, as it made public to the community their transgressions, and undoubtedly shamed them in front of their fellow citizens. By informing the court, other citizens of the county could also control those actions they disapproved of by those they informed upon.

As the county consisted of people who were somewhat familiar with each other, at least in the early years when fewer people lived in it, it was natural for people to talk about each other and to the court justices. People informed on others and pointed out their transgressions, which was not unusual in Augusta society in these years. It was considered quite normal, and people expected that their neighbors would know a lot about their private lives. Of course, those that lived in the town of Staunton, which was the County seat, probably spent more time watching others, since people lived closer together there and secrets were harder to keep. Laurel Ulrich’s study of New England showed that it was the watchfulness of the women that ensured the morality of its citizens. Those living further away from Staunton had less chance of seeing each other except during church services or at court days. Even servants were in the network of people who could inform on their neighbors, master, mistresses or others. In 1754, one servant came into court and stated that he had “carnal knowledge” of his master’s wife. Why he made this

61 OB IV, 254.
63 OB IV, 330.
statement was unclear in the court records: perhaps he was endeavoring to get back at the woman for something she had done or said to him, perhaps he was trying to punish his master, or perhaps he was just trying to excuse his own actions. The court records do not state what happened to this servant, yet the fact that he felt compelled to come into court, and the fact that the court accepted his statement, indicates that the court, and the men in general in Augusta County, were very concerned with the sexual behavior of their women.

Fornication between unmarried people was also punished by the court and here the names of the guilty, including the men, were usually mentioned. Fines for this type of crime could be severe, the justices levying a fine of 500 pounds of tobacco or its equivalent in cash. In one court day, three cases of fornication were heard. In the first, the man denied any wrongdoing, while in the second and third, the accused did not appear in court to answer the charges.\(^{64}\) The court acted as the judge of people’s moral behavior, publicly declaring their guilt so that shame was employed to force them to change their ways. The justices also levied fines which were aimed at preventing such future misbehavior.

The court also charged women with the crime of having illegitimate children. Here a double standard clearly existed. The names of the mothers were noted in the records, but unlike many other crimes of a sexual nature, the names of the men involved were not, at least in cases where both parents were white. Of the eleven cases of bastardy involving free white women, nine involved other white men and two involved black men, one free and one slave.\(^{65}\) In one case the person complaining about the unmarried woman’s child was the woman’s father. He came into court and asked that his daughter be charged by

\(^{64}\) OB I, 150.

\(^{65}\) OB II, 393 and 429; III, 206; IV, 512; V, 42-3 and 428; and VI, 91 and 276; and XI, 65.
the justices with bastardy and fined. He also requested that the court throw her out of his house, as she evidently refused to go on her own accord. While punishment of these women was not recorded in the records, it can be assumed that they were fined, according to the law. Virginia law stated that the bastard children were to be bound out at the direction of the court, and the court records indicated that six of the eleven children were bound out.

Sometimes a woman used the courts to name the father of her illegitimate child, hoping no doubt to force the father to pay for the child’s upbringing, as was required by law. Court records show that two women came into court for such a reason. The law stated that while a woman were not required to name her bastard child’s father, once a father was named he was liable for the costs that would be incurred in raising that child.

In 1756, a case appeared in which the father of a bastard child was identified but when he did not appear in court, the court justices ordered his arrest. In 1755 an unmarried mother came into court and asserted that the father of her child was John Dickinson, a very prominent person in Augusta County, being a landowner of some wealth. Dickinson was not charged with fathering her child and was cleared of any wrongdoing by the justices, because, in the court’s words, an oath was not administered “properly” in court.

Two years later Dickinson was selected to be a justice of the court, while in 1762 he was referred to as a “gentleman,” denoting that he was a man of some property and social

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66 OB II, 149. No further mention was made of the daughter in the records.

67 Hening, Statutes at Large, 8:375-6.

68 Ibid., and OB II, 393; III, 206; V, 42; VI, 91 and 276; and XI, 65.

69 Hening, Statutes at Large, 8:375-6.

70 OB V, 43.

71 OB IV, 512.
standing in the community. Fathering a child out of wedlock was not a serious offence to the justices when the offender was a man of high social rank, while it is also possible that the justices considered Dickinson to be innocent of any wrongdoing.

The court heard two cases of bastardy involving white women and black men. A free white woman and a slave liaison resulted in a child. The mother and the father were both charged by the justices and the child was bound out. The punishment of the woman was not mentioned in the court records. No mention was made as to whether the slave was to be punished or not; most probably his punishment was carried out at the plantation itself rather than in court. In another case, a free black man, Joseph Bell, died and his estate was granted to William Wilson, who stated that a mulatto son of this man and a white woman had been bound to Wilson and he requested that the court agree to this arrangement. The mother was not identified by name. Therefore, in the nine cases involving white women and white men, all the women were mentioned in the records by name but only two names of fathers were also mentioned. In one of these the father was judged not guilty and absolved, as later events in his own life would prove. In the two cases involving white women and black fathers, the names of the white woman and the slave were mentioned, but where the white woman and the free black man were involved, only the name of the man was mentioned. Virginia law did call for white women to be fined or sold into servitude for consorting with black men, but the court records are not clear as to what happened to these two women in Augusta County.

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72 OB VI, 41 and VII, 249.
73 OB V, 428.
74 OB VI, 276.
75 Kulikoff, *Tobacco and Slaves*, 386.
The court kept a double standard in that women were identified as having bastards, yet men were not identified or punished along with them. Only twice was a white man identified and one was released from all wrongdoing while another less fortunate was targeted for arrest. These cases involving white women and black men also point to the fact that some women could not, or would not, abide by the social rules as set down by their society, and were somewhat independent of those rules, even if it meant their own punishment. The same would hold true for those women that committed crimes such as theft or were accused of assault. They were not afforded much freedom in their lives, and perhaps these kind of behaviors were their way of denying the control of the elite male population over them.

Children, like many of their mothers, were politically as well as financially powerless. Children depended upon their parents to protect and nurture them. When the parents could not, or would not, take care of their children, then it was the duty of the county court to step in and take control of these children. When a child’s father died, that child was considered an “orphan” even if the mother was still alive. The court could deal with orphans in two ways, either binding them out or ensuring that they had guardians. If an orphan’s family was financially able to support him, a guardian was appointed by the court or chosen by the child to help guide him into adulthood. When children of more prosperous families became orphans they could choose their guardians if they were of the legal age of fourteen or older. The court designated guardians in cases where the children were younger than fourteen. Either way, guardians functioned in the place of the absent parent, usually the father. First of all, guardians protected the estates of orphans and made sure that these estates were not “wasted.” They administered the estate in the name of the children. Guardians might also get themselves appointed by the

76 OB I through XVII, various pages.
justices in order to sue in court on behalf of a child. A guardian could initiate a case, charging waste of the estate, on behalf of a child who was an heir to that estate. In November 1751, a child chose a guardian who then complained about the estate’s management by the mother and step-father. In another instance, the court determined that a remarried woman was about to leave the county, and feared that the estate might suffer as a consequence. The guardian of the woman’s child requested that the estate be viewed and a determination be made as to its condition. The court appointed three of its justices to look into this matter and report back to it. In this way children, until they came of age, had some small control through the court system over the estate of a parent. Guardians could also ensure that children were properly educated, and if needed, properly trained in an occupation. The court allowed some guardians to raise orphaned children as their own and made them promise to clothe and bring these children up at their own expense, without petitioning for payment from the child’s estate. In one of these cases, the guardian also agreed with the court that he would give his charge an education and provide him with clothes and pay the child when he came of age the lawful amount due to him from his estate plus interest.

The majority of guardians chosen by orphans or designated by the court were men or married couples. Some children chose guardians despite the fact that their mothers were still living. In one such case, the child chose a guardian four months after his father had died. Perhaps the mother encouraged this choice, since she may have realized that

\[\text{77 OB III, 211.}\]
\[\text{78 OB III, 371.}\]
\[\text{79 OB VII, 53.}\]
\[\text{80 OB I through XVII, various pages and WB I through VI, various pages.}\]
\[\text{81 OB XV, 100.}\]
her child would have a better chance maintaining his father’s estate if he had a male guardian to help him. In three cases, guardians were appointed by the court despite the fact that the mother was still living. In the first case, the mother contested her late husband’s will, and three months later, a guardian was appointed for her five children. In the second case, two days after the widow remarried, her husband having died one year before, a guardian was appointed by the court for her four children. In the third case, the widow remarried two years after her husband died, and soon afterwards, the co-administrator of her deceased husband’s estate was appointed as the guardian of her two children. It would seem that if the safety of an estate was in question, either because the widow remarried or she had contested her husband’s will, then the guardianship of the children was likely to be given to those whom the court felt were more inclined to deal efficiently and honestly with the children’s estates.

Sometimes, widowed women were also appointed guardians. Mothers could petition the court to appoint them as guardians so they could represent their children in court, as did a mother on behalf of her daughter. These women undoubtedly had some degree of financial independence and could manage the estate on behalf of their underage children. It would also indicate that the court was willing to designate women as guardians as long as the safety of the estate was not in question. When there was a question, as in cases where widows remarried or contested a will, the court was ready to step in and give guardianship to someone else. Ultimately, it was in the best interests of

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82 OB XIV, 62 and 66.
83 OB XIV, 184 and 190 and WB IV, 285.
84 OB XVI, 74 and 78 and WB V, 217.
85 OB XI, 69.
the court to ensure the continuity and viability of the estates of deceased men, and by appointing guardians, they could control who managed those estates.

Little secondary literature discusses the subject of guardians in colonial society. Kathleen Brown did make the point that wealthier girls might be tutored to read and write, suggesting that they were assisted in this endeavor by their guardians. Poorer girls, lacking guardians, might be bound out as apprentices to learn homemaking skills such as sewing and spinning, while boys would learn a trade. Philip Greven, because he was particularly concerned with issues of child abuse in all phases of American history, called for more studies of childhood, asserting that few historians had taken the subject of child-rearing seriously. Rhys Isaac’s work on colonial Virginia, while ground breaking at its time, only referred to children and childhood fleetingly, and then using the memoirs of just one man, Devereux Jarratt. The problem with any history of children and their childhoods is the lack of materials to draw from. The court records of Augusta County, even though limited in this area, do shed some light on what happened to many of the children of the county when parents died.

If, in the opinion of the court, there was an inadequate support system in place to care for an orphaned child, the court then stepped in and bound the orphan out to another family. In cases where the family was somewhat poor and the court felt that the children could become a burden on the county, those children could expect to be bound out. Undoubtedly there were informal arrangements in which children were taken in by relatives or friends of the family, in order to forestall any action by the court. Kulikoff

87 Ibid., 295.
89 Isaac, *Transformation of Virginia*, 43.
noted that the numbers of children bound out by the court, in one Virginia county that he studied, decreased from an average of 8.5 per year in the 1720s to 4.6 a year in the 1730s and 1740s. He attributed this to a rise in the use of kin networks, in which parents relied less on the court and more on their relatives and neighbors to care for their orphaned children. Hofstra, writing of Opequon, also noted the operation of extended networks of families and relatives that took care of children when a parent died. Records for the court in Augusta County show that the justices bound out children at a rate of 4.5 boys per year in the 1750s and 6.7 boys per year by the 1760s. Girls were bound out at the rate of 3.9 girls per year in the 1750s and 4.3 per year in the 1760s. This would indicate that while binding out was diminishing in other parts of the colony, in Augusta County it was still a preferred method of ensuring that the poorer children of the country would be provided for and that they would not be a burden to the county. The numbers of bound out children in Augusta County did not diminish in the 1770s. Virginia laws governing the care of the poor applied to orphans as well as children living in poorer families where there was a doubt that the parents could support the children properly. This law was aimed primarily at the poor of the community and protected the community from having to support its poorer children. At the end of their service, eighteen years of age for girls and twenty-one years for boys, the children were released from service and given their

90 Kulikoff, Tobacco and Slaves, 173. The county referred to was Prince George.


92 OB, I through XVII, various pages.

93 Ibid.
freedom dues. Daniel Smith, studying the colonial family, concluded that poorer children may have been set out at a younger age than more genteel children.

No secondary literature could be found discussing the effects of binding out on the children themselves. Freeman Hart, in The Valley of Virginia, referred briefly to children being bound out, but made it sound as if the court was acting for the good of society, which was partially true. Although we cannot know what thoughts went through children’s minds when they were bound out and taken away from their natural parents, it undoubtedly was traumatic. Yet even Philip Greven, with his emphasis on the effects of abuse, physical and emotional, of children, did not address the issue of the binding out of children in colonial society. He complained that studies of child-rearing were inadequately addressed by historians, yet offered little in that area himself. Helena Wall considered the binding out of children to be revealing of the limits of colonial childrearing, but went no further. Mary Beth Norton, with all her emphasis on women and how their lives revolved around their homes and families, did not address the issue of binding out either. Binding out was something that the court justices could do because they had the power to do so and believed that they were doing so for the good of Augusta County society.

Families were separated when children were bound out. Not only were children separated from their parents, they were also separated from their brothers and sisters.

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94 Hening, Statutes at Large, 5:432-3.
98 Wall, Fierce Communion, 86.
99 Norton, Liberty’s Daughters.
total of 275 children were identified as being bound out by the court system from 1740 through 1779, and of these, 145 children had brothers or sisters, i.e. siblings, who were also bound out, for a total of fifty-seven groups of siblings. Fifty-four of these sibling groups contained either two or three children, with three larger groups of five, six and seven children respectively. Table 3 shows how many groups of siblings were separated as a result of being bound out.

Table 3. Separation of Sibling Groups, 1745-1779

<table>
<thead>
<tr>
<th>Sibling Groups Bound</th>
<th>Sibling Groups Together</th>
<th>Sibling Groups Separated</th>
</tr>
</thead>
<tbody>
<tr>
<td>1740-1745</td>
<td>3</td>
<td>3 (100%)</td>
</tr>
<tr>
<td>1750-1759</td>
<td>14</td>
<td>13 (93%)</td>
</tr>
<tr>
<td>1760-1769</td>
<td>25</td>
<td>17 (68%)</td>
</tr>
<tr>
<td>1770-1779</td>
<td>15</td>
<td>10 (67%)</td>
</tr>
<tr>
<td>Totals</td>
<td>57</td>
<td>43</td>
</tr>
</tbody>
</table>

Of a total of fifty-seven groups of sibling children, fourteen of those groups were kept intact, the children going to the same person or family. Of the three large sibling groups, the one with seven children was bound to a grandfather while two German men took the other two groups of five and six children. Therefore, forty-three groups of brothers and sisters were separated, being bound into different households. In the early years of the county, until 1759, children were routinely separated from their brothers and sisters by the court system. By 1760 and up until the Revolutionary War, these children were usually kept together about one-third of the time. Just because siblings were

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100 OB, I through XVII, various pages.

101 OB III, 245; VII, 217; and XVI, 76.
separated by the court did not necessarily mean that brothers and sisters could not visit or see each other. Still, being bound to different households meant that children, who had previously been raised together in the same family environment, would now have to adjust to completely different families by themselves. Considering that most of the sibling groups were small, consisting of two to three children, it would seem that more care could have been taken by the court justices to ensure that brothers and sisters were kept together as much as possible. The law was designed, though, to protect the community from having to support poor children. To assume that the court did not care about the feelings of the children being bound out is hazardous, yet the facts do indicate that economic considerations were very important.

According to Joan Gunderson and Gwen Gampel, in their study of women’s legal status in Virginia in the eighteenth century, it was traditional that children were left with their mothers upon the deaths of their fathers. Augusta County records show a different picture. In the early years of the county, from 1745 through 1749, seven out of ten orphaned boys were bound out, a total of 70%. Six out of ten orphaned girls, 60%, were also bound out. In the 1750s, 64% of the orphaned boys were bound out, while 78% percent of the orphaned girls were also bound out. This trend in which girls were bound out at a higher rate than boys may indicate that the court felt girls were too much of a hardship to raise by their widowed mothers, and that boys were better utilized helping run their mother’s farms. In the 1760s, slightly over half of orphaned boys, some 51%, were bound out, while orphaned girls were bound out 45% of the time. This may reflect a better economy, one in which the court felt that parents were more able to care for their children, and so those children were not bound out by the court system. In the 1770s only 38% of orphaned boys were bound out by the court justices. The number of girls bound

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out by the justices increased to 68%. The state of the local economy may have dictated that boys were of more use at home, working farms, and that girls were again too much of a financial strain on widowed mothers, even though girls could help their mothers. Therefore, from the 1740s to the beginnings of the American Revolution, boys were consistently bound out less and less as the years progressed. They went from a high of 70% in the 1740s to a low of 38% in the 1770s. Conversely, girls were bound out over half the time except in the 1760s, when they were bound at the rate of 45% of the time. In a rural society, the labor of older boys would have been of utmost importance to widowed mothers, and the court justices probably took this into consideration when deciding if a boy should or should not be bound out. The labor of girls, on the other hand, was such that they could be used elsewhere, and their labor would benefit their mothers, and society in general, at the same time, in that mothers would be relieved of the burden of caring for girls that could not do the same amount of labor that boys could. Gunderson and Gampel based their studies upon the records of more settled areas of Virginia, and it is possible that the economical differences between those areas and the frontier such as Augusta County could account for the differences in the percentages of orphaned children bound out.

A parent or parents could ask that a child not be bound out, but the court required proof of the mother’s or father’s ability to take care of that child before making such a decision. One mother petitioned to keep her daughter, and in this case, her wish was granted. It may have been because she was remarried at the time and could prove to the court that she had the means to bring her daughter up properly. Another mother, upon her remarriage, was summoned to court to answer why she did not want her children to be

\[103\] OB I through XVII, various pages.

\[104\] OB II, 502.
bound out. She must have been successful because no record of their being bound out is present in the court records.\textsuperscript{105} A widow even went so far as to renounce her inheritance under her husband's will, in exchange for the power to raise her son by herself without asking anything of the estate or its other heirs. The court seemed to be more interested in the estate than in the widow or her child, and granted her petition.\textsuperscript{106}

Parents could ask the court to bind out their children. One mother, deserted by her husband, asked the court to take two of her children and bind them out and leave the third one with her, stating she could take care of the youngest child.\textsuperscript{107} Another child, four years old, was not so lucky. His father ran away and he was promptly bound out.\textsuperscript{108} One father asked the court to bind his children out, stating that he could not afford to raise them himself.\textsuperscript{109} In this case, it might be possible that since the father was a single parent he did not feel that he could provide for his children as he would have wished. In these cases, the court agreed with parents about what was in the best interests of the children, as well as the best interests of Augusta County.

The court could also bind out a child in accordance with the directions in a father's or mother's will. Usually someone was designated in the will who could teach that child a viable profession or prepare them for adulthood. Parents were aware that after their deaths their small children would be helpless, and for that reason gave detailed instructions as to whom they should be bound and what trade they should learn. Many wills written by fathers stipulated whom their children should be bound to, while one will

\textsuperscript{105} OB VI, 179.
\textsuperscript{106} OB VI, 348.
\textsuperscript{107} OB IV, 253.
\textsuperscript{108} OB XIV, 365.
\textsuperscript{109} OB VI, 433.
written by a widow left detailed instructions as to what professions her children should be taught and whose homes they should live in.\(^1\) One son was apprenticed to a blacksmith, another to a weaver, and a third to a laborer. Two daughters were bound to two different families.\(^2\) The court oversaw the execution of these wills, in effect giving their approval of these actions. Their approval enabled people to care for their family members even after their own deaths.

Most often it was the poorer people whose children were bound out, either because the parents could not provide for them or the children had lost their father and their mother could not take care of them. In the first instance, parents could disagree regarding a court decision to bind their children. They then had to prove to the court justices that they were financially able to support their children by posting a security bond. They would forfeit this bond if they failed to provide properly for their children.\(^3\) The court, not the parents, would judge whether they succeeded or failed to provide properly for their children. In effect, the court was telling families how to raise and support their own children. In the second instance, a mother left alone with children to raise was usually considered unable to raise those children on her own so the county court decided where the children would live and who would raise them.

The court often charged single parents with the failure to provide, and not just unmarried or widowed women. Of the total of thirteen cases identified in which parents were charged with failing to take care of their children properly, four allegations were brought by the court justices against unmarried and widowed females for failing to bring

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\(^{1}\) WB I, 424.

\(^{2}\) Ibid.

\(^{3}\) OB VI, 402.
their children up properly or in a "decent, Christianlike manner." The other nine cases were levied at seven unmarried men and two couples.

In the case of the four single mothers, twice the record stated that the court was "informed." No further information was recorded in the records. Often court records were very sparse, some clerks being very brief in their remarks. An informant could be someone who had personal knowledge of the parent, or someone from that person’s church. In one of the cases, the single mother evidently fought back, for she eventually paid a fine and retained her children. By paying that fine, she was able to convince the court that she was financially able to support her children.

While women were somewhat powerless, they did wield a lot of authority in the domestic area. The justices were more apt to question the parental abilities of unmarried men. Of the seven cases in which a father was accused of not bringing his children up properly, six were noted simply with the father’s name and the fact that the court believed that the children should be bound out because they could not be raised in a "decent, Christianlike manner." In the seventh case, the single father was deaf, a fact that was noted, for whatever reason, in the court records. This would seem to indicate that not only did the court feel that unmarried parents were unable to raise children on their own, but that unmarried men, and especially someone who was deaf, could not function as a proper parent and provide properly for his children. The role of women was to raise children, and that role was defined within the sanction of marriage. In the opinion of the

113 OB II, 531; III, 240; and VII, 31 and 93.
114 OB II, 531 and VII, 31.
115 OB XI, 217.
116 OB II, 531; III, 240; V, 64; X, 200; XIII, 89; and XV, 175 and 197.
117 OB XII, 474.
justices, neither unmarried men or women were fit to raise children by themselves. The court needed no proof, simply that it was informed, in order to initiate proceedings to take children away from a parent. In the two cases involving married couples, the court also had the power to decide if parents were bringing up their children in ways that were considered acceptable by the court and society as well. In the first case, the charges against the married couple were dismissed, no reasons given. In the second case, the parents were summoned, but no further mention is made of them, either because their case was dropped or they themselves may have left the county.

The court rarely bound children to unmarried or widowed women. Of the 275 children bound out in Augusta County, from 1745 through 1779, only eight were bound to women, one boy and seven girls. Two sets of sisters were bound to two women who were prominent members of the community. These two women were themselves sisters: Ann and Mary Preston, daughters of one of the founders of Augusta County, John Preston and his wife, Elizabeth, daughter of James Patton, a prominent founder of the county. In February 1761 two sisters were bound to Mary and Ann. Then in May 1761 two more sisters were also bound to them. In general, widows or unmarried women did not have children bound to them. The justices usually bound children out to other men. These men could have been married, but the court records put only their names on the indenture papers. In this way the court ensured that the children were under the direct control of a man, who was either a father himself, and the head of household, rather than a woman by

118 OB XI, 341 and XII, 131.
119 OB XV, 310.
120 OB VI, 493; VIII, 506; XIV, 222; and Chalkley, Chronicles of Scotch-Irish, 53, 185 and 327-8.
121 OB VI, 493 and Chalkley, Chronicles of Scotch-Irish, 327-8.
herself. Men also controlled more resources than women, and this may have had a bearing on who the justices chose.

Sometimes, a parent or parents did not approve of the person whom that child was bound to, so the parent could go to court and try to have the child either removed from the family or in some other way protected. In those cases in which children had not received guardians, but had instead been bound out, at the discretion of the court, mothers were still entitled to some say in the upbringing of their children, even if those children lived with and worked for someone else. In June 1769, Eleanor Dunn came into court to complain that the master of her son was not properly training and providing for him according to the law and the terms of the contract.122 A child’s binding out contract could be broken if it could be proved to the justices that the master was not raising that child properly or adhering to the agreements of the contract. In one instance, the child himself came into court and stated that he had been bound out to four different masters in quick succession, so the court canceled his indenture, and directed the church wardens to bind him to someone else.123

From the foregoing evidence it would seem that the economic status of the child, as well as the status of the family in general, dictated whether a child was appointed a guardian or bound out to another family. The Browns seemed to feel that neglected children were the ones usually bound out, yet from the court records it would appear that economic status was the determining factor as to whether a child was or was not bound out.124 Children of poor parents were usually bound out to different families, often separating brothers and sisters from each other and from their mothers or fathers. Those

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122 OB VII, 156 and XIII, 214.
123 OB III, 312.
124 Brown and Brown, Democracy or Aristocracy?, 47.
born into more well-off families could count on the court to designate guardians for them, or were allowed by the court to choose their own guardians. The courts seemed to protect the children of the more wealthy inhabitants of Augusta County. Sometimes this protection extended to children who in less affluent circumstances would have been dealt with according to law rather than sentiment. For example, a law promulgated in Williamsburg in 1769 stated that certain people, including children, who were unable to take care of themselves due to mental infirmities, were to be removed to a hospital where they would be taken care of. The court stepped in to protect two such children, both daughters of John Patterson, a prominent member of Augusta society, when their father died. One of the girls was deaf and dumb while the other was considered to be an “idiot” according to the court records. Even though there were laws concerning the treatment and disposition of children or adults that were impaired, these girls were both allowed by the court to remain in the county under the guardianship of others. If they had been poor they undoubtedly would have been sent to Williamsburg.

Women and children in Augusta County were always under the control of someone else in colonial society. When married, women were legally adjuncts of their husbands, being unable to enter into contracts, convey land, or conduct any business without their husband’s approval. If they were widowed, women had a small degree of independence. They could go into businesses of their own, convey land, settle disputes in courts, and act as guardians for their children. In order to maintain this independence though women had to prove that they were financially stable. Women were required to give assurances to the court that they could handle their estates in a proper manner through the requirement of putting up security bonds. If they did remarry, women once

125 OB XV, 199.

126 Hening, Statutes at Large, 8:378-81.
again fell under the control and jurisdiction of their new husbands. Probably for this reason many widows did not remarry, but stayed single in a society in which being married was the preferred condition for most women. Children, being totally dependent on their parents, were at the mercy of the court when one or more parents died, left the family, or were otherwise absent. If parents were living but could not provide for their children, those children could be sent anywhere the court decided and bound to anyone the court chose for them.

Both groups of people relied upon the generosity of the court, and endeavored to work within its system to better their lives. The court was there to protect all of its residents' interests, but the interests of the court were often influenced by economic considerations, as when they bound out children, or chose men instead of women to manage estates, or refused to allow widows to challenge wills. Sometimes, a woman's status as a dependant was also a factor, as when wives accused husbands of abuse. The husband represented the male ruling class of Augusta County society, and wives who complained were challenging the authority of all men in general. Therefore, the interests of the ruling elite, and the court which represented it, often took precedence over the interests of the less powerful of Augusta County, its women and children.
CHAPTER IV
INDENTURED SERVANTS, CONVICT SERVANTS, AND SLAVES

The women and children of Augusta County society were controlled by their husbands and fathers, and also by the court system and its justices. They could exert some degree of power over their own lives if they used that court system. Indentured servants, convict servants, and slaves were also controlled by their masters and the county court justices. When servants ran away, offered violence to others, or committed any crimes, masters turned to the court justices for assistance. The courts punished indentured servants with whippings or extra time added onto their indentures. Female indentured servants who had bastard children were punished with extra time of servitude and their children were bound out. The court also punished convict servants by whippings or adding time onto their sentences that had been passed in England. Slaves were punished by their masters for small offenses, but were controlled by the court when they committed certain serious crimes, such as murder, arson, or theft, whether on the plantation or farms where they lived or in other places. In crimes of this nature, the justices decided on the punishment for slaves in its special court of Oyer and Terminer. Usually, slaves were executed if found guilty of serious crimes, but sometimes they were punished less harshly with whippings. While they had little formal political power, servants, both indentured and convict, could use the court system, to exert some control over their own lives. They could petition the court for redress of their grievances, while slaves could not.\footnote{Hening, Statutes at Large, 6:359.} All these laborers were under the direct supervision and influence of their masters. While these masters were also themselves under the jurisdiction and purview of the justices and the court, masters still had a great deal of power they could exercise over their servants.
The courts ideally sought to ensure that all of the inhabitants of Augusta County were treated fairly, but many factors complicated this duty. Servants were hired by their masters, and therefore, masters had economic considerations that the court took into account when hearing any cases involving servants. Servants were also without political power, and so their interests did not coincide with those of the gentry class and its justices. The justices had no reason to prefer servants over masters, and often this affected decisions they made regarding servant grievances or crimes committed by servants. Convict servants brought with them the onus of being troublemakers who had been kicked out of their homelands, whether it was Ireland or England, and were therefore considered as less deserving of kindness and protection by the court. In his study of Chesapeake society, Kulikoff made the point that while servants and women came into court quite often, the jurors were chosen from the ranks of the more prosperous and substantial men of the county. These prosperous men would have been less likely identify with the indentured servants, and even less so with any convicts. Lastly, slaves were the property of their masters, and court justices, often slaveholders themselves, tended to temper justice with the eyes of a master, rather than that of a slave. Additionally, racial differences affected the way that the justices perceived their duties, making them more prone to side with the white masters than with the black slaves.

Indentured servants had been a part of colonial Virginia society, since the early days of its founding. Edmund Morgan, studying the rise of slavery in Virginia, concluded that by 1660 it was economically more advantageous to buy slaves than to hire indentured servants. But as late as the mid-eighteenth century, servants were still a large part of colonial society. Mildred Campbell’s study of emigration lists identified over 12,000

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2 Kulikoff, Tobacco and Slaves, 284.

3 Morgan, American Slavery, American Freedom, 199.
individuals who had emigrated from England from 1773 to 1775, and of these, approximately 55% came as indentured servants.\(^4\) It is not possible to ascertain with any certainty the total number of servants that resided in Augusta County in any time period. Using the court order books is difficult, since servants were not usually identified when they were listed as tithables. However, servants were identified when they came into court and petitioned the justices for help or when masters came into court with complaints against their servants. Conclusions of this thesis will only be based on the actual cases involving servants that were found in the order books.

Indentured servants ideally worked under the protection of a negotiated contract. The contract stated what type of work the servant was to do, the length of service, and the living arrangements. Virginia law also stipulated the treatment servants could expect while indentured, and what masters owed their servants.\(^5\) Masters were required to provide “wholesome” diets, clothing, and lodging, and not give “immoderate correction.”\(^6\) The court determined if masters were abiding by the terms of their servants’ contracts, and was charged with protecting servants from abusive masters by arbitrating whether or not a servant’s complaint of abuse was valid. The court was the ultimate authority on whether or not a servant had served the requisite time of indenture and was therefore free. The court was also the place where a servant could petition for freedom dues not paid, or seek relief from masters keeping them beyond the time of their indenture. The court justices also decided the punishment for runaway servants or those that committed crimes. Bastard children of servants were bound out by the court and its justices designated the extra time the mother had to serve.


\(^5\) Hening, Statutes at Large, 6:356-69.

\(^6\) Ibid., 357.
Servants and masters alike used the court system to negotiate agreements. Sometimes a servant could exchange education for extra time in servitude. Christopher Warren agreed to serve his master an extra year and a half in exchange for a six-month education to learn the art of weaving. John Price agreed to four extra years and was taught the crafts of carpentry and joinery. Sometimes agreements were made in which a servant waived his freedom dues in order to be freed early. A servant could negotiate to serve extra time in exchange for a particular action on the part of a master. Edward Breedin accepted an extra year of service after his master agreed to support Breedin's daughter. Other servants accepted additional time of servitude as payment for services rendered, as in the case of four servants of John McNeil. The three women and one man had contracted a venereal disease and their master cured them of it for an extra year of service apiece.

If a servant needed to present a petition in court, he could either do it himself, or ask for his master's help. Occasionally a master would agree to petition on behalf of a servant in court against another person. Alexander Fullerton, servant of Robert McClenachan, had complained that his former master, Valentine Sevier, had kept some of Fullerton's books. McClenachan petitioned the court to require Sevier to give them up. In order to marry, servants had to go into court and petition their masters for permission. One female servant made such an arrangement, agreeing to serve three extra years if she

7 OB IX, 238.
8 OB XI, 114.
9 OB VII, 147; XVI, 254; and XI, 334.
10 OB VI, 146.
11 OB IX, 80 and 91.
12 OB II, 597.
were allowed to marry. She was also promised money every year of those three years if she did not have any children.\(^\text{13}\) Sometimes, servants would become almost like members of the family they worked for, participating in such activities as going to church services with the family.\(^\text{14}\)

If their masters failed to abide by the contract, the servants could take them to court. Even though many servants were probably freed from their contracts in a timely manner, many others were not. Four male servants charged that they had finished their indentures and asked the court to set them free.\(^\text{15}\) In one case, the servant was ordered back to his master while the court delayed its decision as to whether or not he was to be freed. Six months later the matter had still not been resolved. Like two other cases in which the servant petitioned for freedom, this case seems to have been resolved out of court.\(^\text{16}\) In the fourth instance the servant was freed and his master was ordered to pay his freedom dues. Female servants were less likely to be kept over their indenture time: only one female servant had to use the power of the court to prove that she should be free.\(^\text{17}\)

It could be difficult for a servant to prove that he or she had served their indenture times. Important papers could be lost, destroyed, or damaged in some other way. In instances such as these, both servant and master had to present their cases before the court, and the court decided who was telling the truth. The court weighed the evidence, listened to both sides, and arrived at a decision. Lost or damaged indenture papers figured

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\(^{13}\) OB VII, 146 and X, 417.


\(^{15}\) OB I, 131; II, 580; III, 178 and 207; and IV, 383.

\(^{16}\) OB III, 178 and 207.

\(^{17}\) OB XV, 457.
in seven cases involving three male and four female servants. In two of the men's cases the master and the servant, probably with the permission of the court, came to a mutual agreement regarding the remaining time of indenture. In the third case, the court decided that the servant had to remain, even though he had claimed that the indenture papers had been burnt in a fire. The female servants' cases depended more heavily on the statements of witnesses. Two female witnesses came forward regarding one servant and stated that she was not free as she had alleged. The court ordered that she remain a servant. In another case the master stated that the papers had been destroyed, but the servant called two witnesses. On their testimony, the court released her two months after her case was opened. Another servant also had witnesses and though her papers had been lost, the court believed her and so she was freed. The court decided in favor of the master in the fourth case and the servant was ordered to remain with him. Having witnesses could either help or hinder a servant's case, depending on whether or not the court justices believed their testimony, and whether they testified for or against the servant. It is not possible, from the few cases that were found, to ascertain if the justices were affected by considerations of gender when making their decisions.

Masters sometimes failed to pay freedom dues after the servant had completed their indenture. Upon a petition from the aggrieved servant, it was the court's duty to decide if freedom dues were owed, and if they were, to compel the delinquent master to

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18 OB VI, 17 and IX, 69.
19 OB VII, 229.
20 OB VI, 60.
21 OB V, 31 and 119.
22 OB VII, 215.
23 OB XII, 253.
pay them. Eight out of fifteen complaints (53%) initiated by female servants in the Augusta County court, from 1745 through 1779, were for non-payment of freedom dues. Fourteen of the forty-three complaints (33%) by male servants were for non-payment of freedom dues. This suggests that masters sometimes tried to get away with not paying their female servants more often than their male servants. The court stepped in only if the servant requested it to do so. The justices did not levy fines or other punishments on masters who did not pay their servants in a proper and timely manner in all twenty-two cases noted.

Sometimes a man or a woman was taken up as a servant when in fact they were really free. Such a person could petition the court for redress, and the court decided whether or not the person in question was or was not a servant. One man was seized and held while out riding his horse. After he petitioned the court, the justices decided that he was not a servant and ordered his release. Yet he was also ordered by the court to pay back his abductor for the care and feeding of the horse he had been riding at the time of his detainment. In five other cases, men complained of being falsely detained as servants. Again, the men were set free but no fines were levied against the people who had kidnapped them. It is not possible from the court records to ascertain why these men were picked up. It was likely that they were strangers to the area and looked like they were runaway servants, and so they may have been mistaken for such. Women were also in danger of being mistaken for servants. In one case, the court ordered that the woman was to be paid by the guilty party a sum of money for her trouble. In the second

24 OB I, 42; II, 151, 155, 302, 494; III, 258 and 270; IV, 187, 440, 496 and 517; V, 39, 189, 240, and 300; VI, 235-6; VII, 108; VIII, 230; XI, 503; and XVI, 114.

25 OB III, 181.

26 OB III, 314 and 377; V, 32; VII, 108; XII, 474; and XV, 120.
case the woman was set free by the court, but no action was taken against those who had abducted her. Again, court records gave no reason as to why these women were mistaken for servants, but in these instances a woman by herself might have been cause enough for suspicion.

A servant could also petition the court to set aside a contract. The servant had to prove to the court’s satisfaction that the contract had been broken. Six cases in Augusta County records involved male servants whose complaints centered around material considerations, such as insufficient clothing and lack of education, or a general unhappiness with masters. One man was set free after the court had pondered his case for six months, the justices having decided that his master had not complied with the “tenor” of the contract. Two other male servants complained of the lack of proper clothing. The justices ordered one servant to return to work and warned the master to abide by the terms of the contract. No resolution was found regarding the other servant so perhaps he and his master settled out of court. A fourth case involved a young servant boy who argued that his master had not abided by the terms of his contract. The justices terminated the contract and the boy was allowed to choose a guardian instead. In the fifth case the servant accused his master of not educating him properly. In this instance, the court justices stated that since his time of indenture was so short, he would have to return to his master, but that the master would pay for the court costs. The court did not ensure that the servant was educated by his master, so he lost his case, not only to be freed, but also

\[\text{\footnotesize OB II, 155 and IX, 243.}\]
\[\text{\footnotesize OB VII, 231 and 396.}\]
\[\text{\footnotesize OB V, 14.}\]
\[\text{\footnotesize OB IX, 163.}\]
\[\text{\footnotesize OB II, 578.}\]
to be educated. In the last case, a servant named John Fleming also complained that his master failed to educate him. The justices characterized Fleming’s complaint as “frivolous” and ordered him back to work. Kulikoff asserted that the courts usually sided with the masters because the masters were part of their political and economic system and servants were not. Tillson also stated that servants who “unjustly complained” were punished by the court because they had failed to respect the authority of their masters. He did not, however, address the issue of valid complaints.

This last case points to a serious problem that could occur when a servant filed a complaint against a master: if the justices did not believe the complaint, then the court could order that he or she be punished for bringing a false charge. John Fleming was not punished, but other servants were. On two occasions, on the orders of the court, male servants were whipped after their cases were dismissed. One servant charged that his master had stolen money from him. The court did not believe him, so he was given ten lashes for lying. Another servant complained about his master’s behavior, and after the justices had dismissed his case, he was given ten lashes for his complaint. In these instances, the court was sending the message that false charges levied at masters would be punished severely. These charges may not really have been false or incorrect, but since the justices tended to side with the masters and not the servants, they were judged to be so. False accusations by servants, or even the appearance of them, could adversely affect the

32 OB XVI, 134.
33 OB V, 243.
34 Kulikoff, Tobacco and Slaves, 295.
35 Tillson, Gentry and Common Folk, 31.
36 OB II, 362.
37 OB IV, 6.
reputation of a master, and therefore, the reputations of all the gentry, because the gentry as a group were judged by the actions of all. Just as in the tobacco culture of the Tidewater, which Breen wrote about, there was a social cohesion among masters in Augusta County, so that accusations against one were in effect accusations against all.  

While male servants generally complained of abusive treatment such as lack of proper clothing, unsuitable work, or a general lack of proper behavior on their master’s behalf, female servants’ complaints consistently referred to physical abuse by their masters. From 1758 through 1773, five female servants brought charges against their masters for inhumane treatment or usage, lack of food or clothing, and being beaten. In the first case in 1758, the master was told by the court to refrain from injuring his servant and fined forty pounds. Even though the servant complained of alleged “inhuman treatment” on the part of the master, she was directed by the court to return to his employ.  

In the second case, in 1768, the servant alleged that her master provided “no proper lodging or diet.” The court directed that the servant be taken by the church wardens and that they find a safe place for her to stay until the court decided what was to be done about the matter. Three months later, at the next court session, the case was dismissed and the court ordered that the servant return to her master. The master received a reprimand by the court for his behavior, but no fine or other punishment was levied against him.  

In a third case, the servant charged that her master had beaten and abused her. The court summoned the master, but in the meantime, directed that the servant return to him. This was in 1773, and no more was found in court records about the servant or the master.  

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38 Kulikoff, Tobacco and Slaves, 58.

39 OB VI, 182.

40 OB XII, 323 and 508.

41 OB XV, 157.
In another case in 1773, a servant complained of abuse and beatings, as well as insufficient food, at the hands of her master, a prominent physician in the town of Staunton. This servant’s complaint was dismissed at the time it was filed and she was also required to return to the doctor.\(^\text{42}\) Although Ulrich was talking about wives when she posited that assaults on them by their husbands usually resulted from challenges to male authority, perhaps assaults on female servants also arose from challenges to a master’s authority by a female servant.\(^\text{43}\)

The fifth female servant, Margaret Farrell, brought charges against her master not once but twice. In 1762 she complained to the court of “ill usage” but was told by the court that she was “at fault” and thus deserved the treatment. The court directed that she be given twenty-five lashes and was ordered to return to her master.\(^\text{44}\) Two years later she complained again that her master was abusing her and this time he was summoned by the court. After reviewing the case for over one year, the justices finally dismissed it and cleared the master of all charges. During that year, Margaret had to continue working for him.\(^\text{45}\)

Servants lived in a society in which control through violence was condoned, whether directed at them, or at slaves, or even towards family members.\(^\text{46}\) Justices rarely interfered with private practices towards servants at home or on the farm.\(^\text{47}\) Part of the reason why female servants were more likely to be physically abused than male servants

\(^\text{42}\) OB XV, 47.

\(^\text{43}\) Ulrich, Good Wives, 188.

\(^\text{44}\) OB VII, 297.

\(^\text{45}\) OB IX 215 and 319 and X, 113.

\(^\text{46}\) Roeber, Gentlemen Magistrates, 89.

\(^\text{47}\) Ibid., 92.
may lie in the fact that women traditionally fulfilled household duties, and were therefore in more intimate daily contact with their masters. It is also possible that women were perceived as being easier to intimidate and abuse than men, and so masters took advantage of them. Ulrich asserted that servants were often mistreated because the bonds between them and the families that they served were weak. In the five cases involving female servants, the charges were somewhat ambiguous, the word “abuse” being commonly used. It is not possible from the records to ascertain if any of the abuse was of a sexual nature, although it might have been in some cases. Physical correction of servants, as long as the punishment was appropriate in the eyes of society and the court system, was allowed in colonial society. The laws of Virginia stated that a master owed his or her servant a “wholesome and competent diet, clothing, and lodging,” and that servants were not to be given “immoderate correction” by their masters. Just what “wholesome,” “competent,” or “immoderate” meant was not clearly specified in the laws. It was the responsibility of the justices and the court system to oversee the treatment of servants and to ensure that masters were treating them in accordance with the law. The court justices decided when a servant had been treated too severely or when a servant was telling the truth. In these cases, especially those involving female servants, justices seemed to side with the masters and the not the servants. Kulikoff’s tale of the fate of a married servant and his wife, and their beatings by the master and his overseer, offers the same general conclusions. In this case, even though the servant had a letter from another gentleman, who was also a neighbor, to support his grievance, the case was thrown out of the court and the servant

48 Ulrich, Good Wives, 187.

49 Ibid.

50 Hening, Statutes at Large, 6:357.

51 Ibid., 358.
lost. Justices did not like to find for servants when it showed the guilt of their fellow gentry. The reputation of the master was being questioned, and the justices were more inclined to protect gentry reputations rather than side with servants.

Servant’s testimonies were not always believed by the justices. Masters and justices shared common interests, among them, control of society by the gentry class. Complaints by servants threatened this control, and were thus to be discouraged. Additionally, some servants, because they did cause trouble, either running away, committing other crimes, or bringing false charges against masters, may have prejudiced the court justices against the class of servants in general. Sometimes servants tried to get out of their indentures by running away. Others offered violence to their masters or brought suits in court saying that they were free when in fact they were not. Undoubtedly, the justices were somewhat skeptical of the testimony of many servants, and may have tended to lean toward the side of the masters rather than the hired help.

If servants could not enlist the aid of the court to protect them from abusive masters, then they might take more drastic measures. Sometimes a servant ran away, as was the case concerning William Hoopwood. In 1748 Hoopwood complained in court of treatment by his master, Valentine Sevier. Two witnesses were called, but the case languished, so in August 1749 Hoopwood took matters in his own hands by running away. He stayed free for nine months, and then was caught. The court directed that an additional nine months be added onto his indenture time, plus the nine months he had been away, for a total of eighteen additional months. Hoopwood may have been trying to run

52 Kulikoff, Tobacco and Slaves, 295-6.

53 OB II, 2.

54 OB II, 162.
away again in November 1753, when he was caught stealing money from his master. For this crime the court directed that he be given thirty-nine lashes.\textsuperscript{55}

Hoopwood was not the only one of Sevier’s servants who ran away. In May 1755 another male servant ran away, also after having complained to the justices of abuse eighteen months before this.\textsuperscript{56} Two accusations of abuse and two runaway servants do not prove that Valentine Sevier was a poor master, but they do suggest the power a master could wield over his servants, and how the court upheld that power. Sevier was a successful member of Augusta County society, running an ordinary, owning a mill, and having numerous servants.\textsuperscript{57}

The court was reluctant to interfere in the conduct of masters and their servants, preferring to let masters discipline and regulate their servants’ behavior. This reluctance had the effect of condoning the behavior of masters, and gave them great powers over their servants, which some masters abused. Only on rare occasions did the court justices interfere when they considered that a master had been too harsh with a servant. In May 1751 Henry Witherington was accused of being a runaway servant. The court added an additional nine weeks onto his contract.\textsuperscript{58} Shortly thereafter one of the justices noted that Witherington was in jail, evidently because he had tried to run away again. The justice, seeing that Henry had an iron collar secured around his neck and a gag in his mouth, ordered them removed. Henry was brought into court soon afterwards where he was given an additional seven and one-half months for his runaway time. His master, John

\textsuperscript{55} OB IV, 77.

\textsuperscript{56} Ibid., 77 and 437.

\textsuperscript{57} OB I, 72; II, 162; III, 239 and 368; and IV, 77 and 437.

\textsuperscript{58} OB II, 580.
Stevenson, was judged to be entirely within his rights, although some of the justices thought that an iron collar and gag were too harsh. Henry was fourteen.\(^{59}\)

When servants ran away and were caught, the court added extra time onto their indentures. The amount of time to be added was mandated by law, and consisted of twice the time the servant was gone, plus extra time equivalent to the amount of money that the master claimed he had spent to capture the servant.\(^{60}\) Additionally, if the master could prove to the court’s satisfaction that the runaway had cost him unharvested crops, then even more time was added onto the servant’s indenture by the court justices. The formula the court used was that ten shillings equaled 100 pounds of tobacco, which in turn equaled \(1\frac{1}{2}\) months’ time.\(^{61}\) For example, if a servant ran away and was absent for ten days, he would receive an extra twenty days for that lost time, which was twice his time of absence. If his master claimed he spent twenty shillings recovering his servant, perhaps through advertising or hiring someone to look for him, that twenty shillings equaled three extra months of time, ten shillings being equal to \(1\frac{1}{2}\) months. Then, if the master said he had lost 200 pounds of tobacco because his servant was gone and had not harvested it, that was another three months, every 100 pounds of tobacco equaling \(1\frac{1}{2}\) months, of service time added on. Even though the master brought the charge against a runaway servant, it was the court justices that decided what the fines and penalties should be. The court could accept or reject whatever a master said it cost him or her to get a servant back, and often this could mean a penalty totally out of proportion to the time gone. One servant, gone for eleven days, received an extra two years on his service contract because his

\(^{59}\) OB I, 357 and III, 184 and 187.

\(^{60}\) Hening, Statutes at Large, 6:368-9.

\(^{61}\) Ibid., 367 and OB I through XVII, various pages.
master said it had cost a large amount of money to find the servant and bring him back. Another servant was gone nine days and an extra thirteen months of service was added to his contract. Court records do not note any discussion or disagreement among justices or between them and masters regarding claims, even when the amounts that masters claimed they spent finding runaway servants fluctuated wildly from one master to another. Again, the word of the master was taken more often over the word of a servant, and in these cases, even claims which might not have sounded honest were accepted by the court, because they came from the masters and the justices generally took their side in any conflict between masters and servants.

Female runaways seemed to fare better than men, many only having to serve the time that they were away. Ann Croxan was gone for eighteen weeks and her punishment was another eighteen weeks added onto her contract. Sarah Walkley was gone for twenty-one days, and her master asked that she stay an extra twenty-one days at the end of her contract. Since female servants worked in the households of their masters, and male servants were responsible for the crops that were produced, it is possible that both masters and justices alike considered running away by male servants to be a more grievous crime, and so were willing to punish the men more harshly than the women. Male servants generally spent anywhere from twice the time they had been gone in extra servitude to ten times longer than female servants did.

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62 OB XI, 235.
63 OB V, 159.
64 OB VII, 458.
65 OB XII, 450.
66 OB I through XVII, various pages.
Masters rarely attempted to curb their servants from running away by asking the court justices to intervene and impose harsher sentences. William Robinson asked that his man, Charles Conner, be given eight extra days for the eight days he had been gone, and twenty-five lashes.67 Another servant attempted to run away, and when confronted, offered resistance to his master. For this, his master asked for a punishment of twenty-nine lashes.68 The court justices granted both requests. Runaway servants continued to be a problem in the county, with an average of two to four runaway servants every year. Nothing the court or the masters did seemed to slow down the process. Female servants often ran away with husbands or male friends, while males ran away alone or in groups of two or three.69 Some stayed away for long periods of time, such as two and three years, while others were caught within days.70

The court also punished those servants who committed more serious crimes, such as theft. In one instance, the servant had stolen some tobacco out of a cart which an onlooker witnessed. The court ordered that the servant be given twenty lashes.71 A second servant stole bacon and made the mistake of trying to sell it to someone who knew its rightful owner. The court ordered that this servant be given twenty-five lashes.72 Six months later he tried to run away and was caught. This time the court decided on harsher punishment, and gave him an additional seven months of servitude.73 Even former

67 OB I, 7.
68 Ibid., 325.
69 OB II, 65; IV, 254, and 467; V, 113; and VII, 301.
70 OB I through XVII, various pages.
71 OB II, 160.
72 OB V, 33.
73 OB V, 248.
servants found it easy to get into trouble. James Denniston, a servant in 1762, had run away and the court made him serve extra time. After he became a free man, he broke into a shop and stole some coins. Perhaps because he was a former servant, and the value of the coins was not high, he was let off by the court with a punishment of thirty-nine lashes.\(^4\)

Crimes of a more serious nature also occurred among servants eliciting harsher countermeasures from the court. One servant received an extra twelve months of service because he had threatened his master’s wife while that man was away on business.\(^5\) He had no witnesses to say that he had not committed the crime, only the word of the master and his wife. Another servant, undoubtedly provoked because his master had bound out his two-year-old son, threatened his master. In this case the court gave the servant one extra year of service and thirty-nine lashes.\(^6\) The court had a vested interest in making sure that servants behaved properly towards their masters, mistresses and the community in general. Even an action on the part of a servant, somewhat vague but perceived as threatening, was punishable. In one instance, a servant ran away and was given thirteen extra months for his punishment. Evidently, he did not accept this and offended his master sufficiently so that his master took him back to court. There he was charged with “bad behavior” and the court justices decided that he deserved an additional thirty-nine lashes in addition to his original sentence.\(^7\) Masters had the final word on the behavior of their servants, and if they wished to complain, the court could punish the servants in any way they deemed fit.

\(^4\) OB VII, 298 and XIV, 61.

\(^5\) OB II, 425.

\(^6\) OB IV, 289-90.

\(^7\) OB V, 159 and 177. The nature of the offensive behavior was not noted.
While servants generally confined their criminal activities to stealing or threats, occasionally violence took a more serious turn, as in the case of Day Thoroughgood, accused of killing his master. Thoroughgood had no previous misbehavior on record nor had he been a runaway prior to this. The court sent him to Williamsburg to stand trial for the murder. In a similar crime, a servant stabbed a man during a fight so the justices sentenced him to thirty-nine lashes. If a master believed in less harsh treatment for a servant, they could ask the court to accept their wishes in this matter. William Crane was charged with beating his master, but his master stated in court that he had not been hurt. The master requested of the justices that Crane not be punished and that the charges be dismissed. The court acquiesced with the master’s request. It all came down to what the masters preferred. If they wished to punish harshly, with extra time of service, they requested it, and the courts deferred to their wishes. Conversely, if a master wanted a servant treated more gently the justices would agree. Justices and masters had a lot in common: they were all part of the same class of society, in that they had property and strove to protect that property and their own political powers at the same time. Misbehavior by servants undermined that power because it undermined the nature of society, where servants obeyed their masters in all things, masters were always right.

The justices rarely had to punish female servants for criminal activities in Augusta County. In the one case found in which a female servant assaulted another person, the servant was given twenty lashes for beating a free white woman. Usually, a female servant’s main “criminal” activity, besides running away, consisted of having illegitimate

78 OB III, 198.
79 OB IX, 247.
80 OB XIII, 115.
81 OB IX, 258.
children. Kathleen Brown found, in her study of Tidewater, Virginia, that bastardy cases in the late 1600s and early 1700s usually involved servant women rather than free white women. Bastardy among servant women also occurred in Augusta County, with harsh consequences for the women and their offspring. The court gave such women an extra year of service and their children were bound out, according to the law. Some masters tried to prevent future sexual misbehavior by asking the court to hand down even harsher sentences in the form of physical punishment. In February 1747, Catherine Cole, a servant, was given twenty lashes and then sold, for the crime of having a bastard. By May 1750, she was again pregnant, and her new master informed the court that he had put her out of his house. In August 1750 Catherine had her second bastard child, and her punishment this time was two extra years, instead of the customary one extra year. Mary Handlin also had two illegitimate children by the time her contract was sold to her second master. She came into court and agreed to serve him an extra four years for the trouble she had caused by having these two children. Elianor Roork had run away from her first master in June 1746 and when caught was given four extra months of service. Shortly thereafter, she was sold to another master, and in September 1747 she had a bastard child. The child was bound out by the court and the mother was penalized with another year of servitude. The court intended to punish servants in the hopes that they could prevent such future behavior, but also in order to recover some of the money lost when a servant became pregnant and had a child. Pregnant servant women were not able

82 Brown, Good Wives, 194.

83 Hening, Statutes at Large, 8:376.

84 OB I, 154 and II, 393, 424 and 483.

85 OB XV, 225.

86 OB I, 49 and 288.
to work as hard as other female servants, while the care of their children was a drain on Augusta County's resources, in that the justices had to take the time to find suitable families for these children, and ensure that they were treated properly in those families. The court justices were trying to protect the investments of masters and also keep the illegitimate children from being a charge to the county. If any of the cases of illegitimate children were a result of masters fornicating with their servants, it was not noted in the court records. This may have been because the justices were reluctant to identify their fellow men, or such cases could undermine the authority of the masters and the gentry society as a whole. Neither did the justices request that the fathers of these children be identified. The court justices, and the masters they represented, were interested in getting the most economical worth out of servants and so were not greatly concerned in determining who the fathers were. No cases of infanticide among servant women were noted. Ulrich insisted that most cases of infanticide in New England during the same years occurred among servants and others on the fringes of society, but Augusta County records do not reflect this finding.87

Just as with former indentured male servants, some former female servants found the transition to a free life difficult to make. Mary Elliott was granted her freedom dues in August 1749 and ten years later she was sent to Williamsburg on charges of larceny.88 Julian Mahoney did not last as long on the outside as a free woman before turning to criminal activity. In November 1756 she was given one extra year for having a bastard while she was a servant. Some time later she was freed, but in December 1760 she was convicted as a free woman of stealing and given thirty-nine lashes.89

87 Ulrich, Good Wives, 196.
88 OB II, 155 and VI, 256.
89 OB V, 256 and VI, 461.
Servants were considered in light of the labor they could provide by their masters and the court system. Two cases illustrate this fact. In the first, a servant’s master owed money. In order to pay his debts, the Sheriff was ordered by the court to sell off the servant’s contract and use the money gained from it to pay off the master’s creditors. In the second case, a servant was killed by his master. When the master appeared in court, he had witnesses who swore that he was innocent, and the verdict was an “accidental homicide.” No mention of witnesses for the servant was noted. Attitudes towards indentured servants reflected a need to control them in order to get the maximum amount of work from them. If that control meant that the justices believed a master but not a servant, then the justices took the master’s side.

Whereas indentured servants had contracts which masters were supposed to abide by, and were supposedly protected by the court system from abusive masters, convict servants did not have the same protection under the law. They were sent to the colonies as the result of criminal proceedings in England, and as a consequence were at the mercy of whoever bought their time. There was no control or attempt to regulate the treatment of convicts once they left the British Isles. Convicts were denied rights that indentured servants were allowed, such as payment of freedom dues at the end of their work contract. They could petition in court for grievances, but no cases were found in Augusta County records in which convicts preferred charges against anyone. Part of the reason may have been that convicts were not always identified in the records as convicts.

90 OB V, 311.

91 OB XV, 310B.

92 Ekirch, Bound for America, 3.

93 Hening, Statutes at Large, 6:358.
Convicts may also have expected less from their masters and the court system, so they did not use the court system to its fullest advantage.

The court seemed to treat convicts the same way that they treated indentured servants. Even though Ekirch asserted that convicts were feared in the colonies and that there was a greater desire to control their actions, this is not borne out by the severity of their sentences, at least in Augusta County. Crimes committed by convicts were generally limited to stealing and running away. The total number of convicts in Augusta County cannot be ascertained from the court records. Ekirch calculated that over 30,000 convicts were shipped to the colonies from 1718 through 1776, but of those, he asserted that very few were transported to the backcountry. In the four cases noted in which male convicts were accused of stealing, three were convicted by the justices who gave them punishments ranging from twenty-five lashes to thirty-nine lashes. The fourth case against the convict James Cachill was for picking pockets, but the court dismissed the case. Matters would probably have ended there, but evidently the court justices were not pleased with Cachill's conduct during the proceedings, which they termed "disorderly," and so Cachill was given ten lashes by the justices for his misbehavior. Less than three years later, Cachill had served his sentence and was a free man, but it was his misfortune to be murdered in 1755.

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94 Ekirch, *Bound for America*, 150. Ekirch stated that convicts were treated harshly and often abused, but court records for Augusta County reflect they were treated no worse than indentured servants. Again, records may not be completely accurate regarding these people.

95 Ibid., 23 and 119.

96 OB IV, 186; IX, 338; and X, 330.

97 OB III, 258 and 304.

98 OB IV, 375.
Female convict servants were treated by the court just as male convicts were. They accounted for one theft of a horse and one theft of money. The horse was stolen when two convicts, Bridget O'Dowland and Patrick Burk, attempted to run away. Both were sent to Williamsburg for trial.99 Two other female convicts, along with one male convict, were charged with larceny. The man was found guilty and sentenced to thirty-nine lashes. While one woman was acquitted, the other was convicted and given fifteen lashes. The justices stated that because they believed that this second woman had talked the man into committing the crime, she should be punished for it as well.100 No female convicts were mentioned having bastards, which may be attributed to the scarcity of their numbers or the lack of accurate court records.

Slaves, like indentured and convict servants, were part of the unfree labor force of Augusta County, but unlike indentured or convict servants, who could use the court system to protect themselves, slaves could not ask the courts for protection. They were under the direct control of their masters and mistresses, and usually came into court only when they were summoned for trials involving themselves or other slaves accused of capital offenses. Capital offenses included crimes against property, such as stealing and arson; crimes against persons, such as murder, attempted poisoning, rape and assault; crimes against the system, such as aiding runaways, passing forged papers or perjury; and insurrection.101 Slaves could not serve as witnesses against any white person, except in those cases where a slave was charged with a capital offense.102 Slaves could not even meet in groups that the court and the law considered illegal. If they did, the court justices,

99 OB I, 286.

100 OB IX, 339.

101 Schwarz, Twice Condemned, 15.

102 Hening, Statutes at Large, 6:107.
as well as the county sheriffs and constables, were directed by law to arrest them for having such meetings. The court justices directed that slaves be punished a maximum of thirty-nine lashes for attending such meetings.

There were slaves in Augusta County, but they were not numerous. Robert Mitchell has estimated that by 1755 there were fewer than one hundred slaves in the upper Valley of Virginia, of which Augusta County was a part. Even after 1755, slavery did not flourish west of the Blue Ridge, if only because the crops raised there were more diverse, not limited primarily to tobacco and hemp. Slaves were in a class of servitude by themselves. They had no contracts with their masters, who were free to treat them in any way that they desired. Virginia laws did tell how masters were to treat slaves but left much of the treatment up to their masters. Masters and mistresses were in complete control of their slaves’ lives, the court only becoming involved in instances where serious crimes had been committed by the slaves. In these cases, the court convened in a special session of Oyer and Terminer. The justices decided whether or not a slave should be whipped, have an ear cut off or be hung for his or her offense.

On May 1756 Thomas Lewis, a “gentleman,” as the court records indicated, came into court and complained that his slave, Hampton, had been generally unruly, had frequently run away, and had attempted to “ravish” a white woman. No record of the court indicates that Hampton or any other slave testified on his behalf, even though such testimony was allowed by law. Therefore, the court justices decided that Hampton should

103 Ibid., 109.

104 Ibid., 108. Unlawful meetings were those in which five or more slaves from one plantation visited another plantation’s slaves for more than four hours on any one day.


106 Hening, Statutes at Large, 4:426.
be castrated. The law of 1723 stated that a slave could be dismembered for being a habitual runaway as long as it did not kill him.\textsuperscript{107}

Seventeen months later, Hampton was again in court, and this time his master charged that he had attempted to run away, had stolen money from whites and clothing from other slaves, and was "bothering" a white woman. The court decided that enough was enough, and ordered that Hampton was to be hung.\textsuperscript{108} His value was noted by the court and the sentence was carried out. Again, no testimony from Hampton or other witnesses on his behalf was found in the records. Kulikoff found that rape or attempted rape of a white woman by a slave was rare in eighteenth-century Virginia, averaging one per county every fifty years.\textsuperscript{109} Hampton’s misfortune may have been that he was accused of numerous offenses over a period of years, and the justices agreed with his master that he was just not worth all the trouble and money it took to control him.

When a slave murdered a white in Augusta County, the court ordered that the slave be hung and his or her head cut off and fixed on a pole, as a warning to other slaves. Murder by slaves was rare in Augusta County. Two murders were committed by slaves in 1763 and 1772. In the first, the slave Tom was charged with murder, confessed, and was hung.\textsuperscript{110} Another slave, Fanner, was also charged with murder, but was found innocent by the court.\textsuperscript{111} In this case the justices made the decision to execute one slave and let the second go. Philip Schwarz noted that during the Revolutionary War, justice for slaves began to be tempered as the courts developed a heightened awareness of extenuating

\textsuperscript{107} OB V, 125 and Hening, \textit{Statutes at Large}, 4:182.

\textsuperscript{108} OB VI, 35.

\textsuperscript{109} Kulikoff, \textit{Tobacco and Slaves}, 390.

\textsuperscript{110} OB VIII, 324.

\textsuperscript{111} Ibid., 385.
circumstances and recognized that slaves sometimes had "temptations." Perhaps, in Fanner's case, this awareness had developed faster in the frontier region, and so the justices decided that Fanner was innocent. In the second murder case, two slaves were hung and their heads put on poles. According to the law their masters were reimbursed by the assembly of Virginia for their losses. In this instance the court justices only said that the slaves were "guilty" and no witnesses or testimony of the slaves themselves was entered into the record. It must be remembered that slaves had little power in the court system. They had to rely on the fairness of the justices for their lives and well-being.

A slave was also in danger of losing his or her life through no fault of their own. In one such case in 1762, a debt was owed to one man by another couple. When this couple did not fully pay their debt, the man seized one of their slaves in payment of the debt. When the slave ran away, two other men apprehended him. Afterwards, the slave was accidentally killed by these two men. When the case came before the court justices, no reasons were given as to why the slave had been killed. The two men responsible for his death were prominent members of Augusta society, one a justice while the other would become a justice two years later. The slave was not even named in the court proceedings, and both men, James Lockhart and Sampson Mathews, were not charged with any crime and did not have to pay any fines or reparations to the slave's owner. Virginia law stated that if any slave was killed accidentally by a master then that master was not guilty of murder but rather of accidental homicide, which was not punishable by law. This slave was killed by someone other than his master, yet these men were, according to the same

113 OB XIV, 362.
115 OB VII, 173.
law, not to be punished for his death in any way. Slaves were considered property, and the court had no qualms about deciding that the death of one was purely an accident.

Lesser offenses tried in the court of Oyer and Terminer included such crimes as housebreaking and stealing. In May 1768, the slave of Robert Bratton, Tom, was judged guilty of housebreaking and stealing a horse. He was given thirty-nine lashes and had his ear “cropped” off. A similar crime of housebreaking by two other slaves, George and Poll, was committed in the same year. They received thirty-nine lashes each and one of their ears cut off. The court records state that the court was “lenient” with these two men, because they had been under the “influence” of a white man, not identified or apprehended. Perhaps the court justices were influenced when sentencing these slaves as the slaves did not belong to anyone in the county, but were the property of someone residing in North Carolina. This fact came out three months later when someone noticed that the two slaves were still in jail. The justices were notified and decided that the slaves should be fitted with iron collars and hired out until their master came to claim them.

One of the oddest cases found in Augusta County court records concerned Jacob, a slave charged with housebreaking. He was cleared of this charge, but was found guilty of the crime of shooting at a man’s children. The court sentenced him to thirty-nine lashes. It would seem that violence against children was considered by the court to be less serious than violence against property, for Jacob, unlike George and Poll, kept both of his ears.

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116 Ibid., and Hening, Statutes at Large, 6:111.
117 OB XII, 133.
118 OB XIII, 72.
119 Ibid., 109.
120 OB XIV, 59.
Sometimes a freed slave or other non-white was mistaken for a slave. John Anderson came into court in February 1763 to complain that he had been detained and used as a slave by the Reverend John Craig. The court allowed Anderson, a mulatto, to call witnesses, and he was freed four months later.\textsuperscript{121} Reverend Craig was not fined or admonished in any way by the court. Just as in the case of people mistakenly taken as servants, people who forcibly took others for slaves were not fined or punished by the court justices. The fact that the Reverend Craig was a member of the elite of Augusta County society also had some bearing on the case, as justices identified more closely with their fellow men rather than those they considered lower class, such as servants, slaves and non-whites.

Nat, an Indian boy, suffered a similar fate in 1777. He charged in court that Mary Greenlee had taken him up as a slave, and used him “inhumanly.”\textsuperscript{122} Again, witnesses were called, this time from the Carolinas, and Nat was eventually freed after eight months of involuntary service to Greenlee.\textsuperscript{123} Slaves, those of mixed parentage, and Indians did not have the same legal privileges as whites according to the law. In isolated cases their right were upheld by the court system and the justices treated them fairly.

Attitudes towards servants and slaves, in Edmund Morgan’s opinion, were basically the same, at least before slavery became the prevailing form of labor in Virginia in the latter part of the seventeenth century. Both slaves and servants were considered by early colonists to be lazy, shiftless, irresponsible, unfaithful and dishonest, and neither group worked hard enough or regularly enough.\textsuperscript{124} Kulikoff, speaking of Chesapeake

\textsuperscript{121} OB VII, 462 and VIII, 122.

\textsuperscript{122} OB XVI, 230 and 243.

\textsuperscript{123} Ibid., 302.

\textsuperscript{124} Morgan, \textit{American Slavery, American Freedom}, 319.
society in the eighteenth century, felt that slaves on larger plantations took advantage of the division of power and ownership between overseers and owners. Slaves could afford to work less for some overseers because they knew that masters could interfere and countermand an overseer’s orders that they considered too harsh.\textsuperscript{125} Small planters, in Kulikoff’s opinion, worked more closely with their slaves. He asserted that the work of a single slave on a small plantation was more important than that of a slave on a larger one: a slave on a small plantation or farm could run away and cost a master more money due to a lost harvest, because the master depended more heavily on his few slaves.\textsuperscript{126} Slaves and servants in Augusta County were also important to their masters, but they belonged to a more intimate and smaller society. There were less people in Augusta County than in the Chesapeake that Kulikoff referred to, and so there was probably more interaction between servants and their masters and slaves and their masters. Masters may have worked alongside of slaves or servants, forging stronger personal ties. Yet, in the final analysis, servants and slaves worked to support someone else, and that support meant that they had to be controlled, first by their masters, and secondly by the court system and its justices.

Slaves relied totally on the mercy of first their masters and mistresses, and then on the court system. The court was often harsh with them, yet sometimes it did appear that fairness prevailed. Sometimes slaves were fortunate, as in the case of Fanner, who was judged innocent for a crime while a second slave was hung. Often the judgment of the court was swift and harsh as when ears were cut off: a warning to other slaves to obey their masters and not cause trouble or commit violent acts. The court also had the power to hang those slaves it considered troublemakers, such as Hampton. His biggest crime may have been his habit of running away, and his master and the court justices tired of it

\textsuperscript{125} Kulikoff, \textit{Tobacco and Slaves}, 410-11.

\textsuperscript{126} Ibid., 411.
and decided Hampton's death was the only sensible action to take. White servants, both indentured and convict, were more fortunate in that their sentences were less harsh. No servants ever had their ears cut off. Neither were they accused of attempting to ravish women and dismembered for that offense.

Slaves could not use the court to complain of abusive masters. Servants, even though they could use the court to bring grievances against their masters, had to prove their cases in court to the satisfaction of the justices. They had to prove their time of indenture was up. They had to petition the court to get their masters to pay their freedom dues after proving that they were free. They were abused by masters and sometimes the court justices believed them, but usually they did not. When they were not believed, servants could expect harsher punishment such as whippings or extra days of service added onto their contracts. Female servants had to work for masters that physically abused them while the justices considered their accusations. Often females were not believed, and even when they were, masters were let off lightly, with verbal reprimands or small fines. If the court system did not protect them, servants sometimes tried to escape. This only heightened their punishment once they were caught, punishment that was handed out by the county court and its justices.

Only the court stood between harsh masters and their less powerful servants and slaves. The ruling elite and its justices favored the masters over their servants, and while the justices appeared to listen to the servants, in reality the word of a master carried more weight than that of a servant. Additionally, servants and slaves were unpaid labor, important factors in supporting the lifestyles of their Augusta County masters and mistresses. Justices took into account the value of a servant's or slave's work when reaching any decisions in court regarding them and their masters. Because any adverse actions by servants or slaves had an immediate and direct impact on the economic lives of masters, it was imperative that the court system and its justices be able to control these
people. Cases brought by servants against masters also forced the justices to take sides, either for or against their fellow masters. Justices had more in common with masters, and therefore did not usually side with the interests of servants. Additionally, because they were totally without power, any actions by a slave, that went against the wishes of his or her master, was a challenge also to the authority of the ruling classes and had to be punished swiftly. Therefore, even though few serious crimes by slaves were found in the records, their punishments were often harsher than those for white servants. In this way, the justices and the other masters and mistresses of Augusta County reinforced their rule over their most powerless people. Servants and slaves had to work within this system. Servants could use the court system to protect themselves, while slaves had to depend on the court for their very lives. They could not complain about harsh masters as servants could, and if they ran away, their punishment was usually death, while servants usually had more time added onto their contracts. Both groups lived in a harsh environment in which their economic worth, and their lack of social status, dictated what decisions the court justices would make.
CHAPTER V
FINDINGS AND INTERPRETATIONS

The court and its justices exerted a great deal of power over the people of Augusta County. The justices oversaw all facets of the economic life of the county, everything from granting licenses to directing the building of roads, allowing church meeting houses to be designated, and regulating the price of bounties for animals killed. Court justices appointed administrators and executors of estates. It was the court that punished citizens for crimes committed, controlled the binding out of children, chose other children's guardians, and served as the repository for all vital records pertaining to the births, deaths, and marriages of its inhabitants. The court justices controlled what people said and did, punishing those it felt did not live up to the demands that society, and the court itself, had imposed upon them.

While the demands of county society were applied to all, women, children, and servants were the most affected by these demands. Since they had no political power, they depended upon the court and its justices to exercise their power judiciously and fairly. The court could make decisions that were in the interests of the justices and the ruling gentry, rather than in the interests of the people themselves. Yet, the women, children, and servants did have some rights within the court system, and they used those rights to empower themselves and gain what they wanted from that system.

Free white women interacted with the court in three general ways. First, they interacted economically, as in the cases where unmarried or widowed women conducted business activities, managed estates, or were the beneficiaries of their husband's wills. Second, women interacted with the court in matters of a family nature, such as when they came into court to ask for protection from abusive husbands or came into court on behalf of their children. Third, free white women interacted with the court system when they were accused of criminal activities, ranging from sexual crimes such as bastardy,
fornication, and adultery; to crimes against persons such as verbal and physical assault and infanticide; to crimes against property, such as stealing.

In economic matters, women who were financially independent fared well when dealing with the court and its justices. For example, Euphemia Hughes, who ran an ordinary, had herself appointed guardian of her children, and sued two other prominent men of the Augusta County community. Another woman, Mary Preston, ran her own farm, used the court system to sue for an impressed horse, and had two girls bound to her. Elizabeth Taylor conducted her own hemp business and presented certificates to the court for her crops grown. The court justices allowed these women, and others like them, to conduct their business affairs without undue interference from the court. Perhaps this was because these women were financially able, or perhaps the court gave them this freedom because it perceived that they, along with other free white men in the county, belonged to the upper layers of society and so were more deserving of the court’s assistance.

As estate managers, women depended upon the justices for their powers, either as administrators of their husband’s estates, or as executors of the same. It was up to the court to decide who was financially able to manage an estate. The court justices were the final decision makers, requiring securities from those that were named both as executors and those they designated as administrators. When the court justices made decisions as to who would administrate estates, they usually chose the widows. This would seem to indicate that the justices felt that widows were the most qualified to run their husband’s estates. Yet, upon closer inspection, it can be seen that the justices closely controlled the management of estates by widows: this they did by requiring widows to put up securities when they were designated as administrators or executors, and counter-securities when they remarried. In this way, the court kept a tight control over the administration and management of estates. When men who administered estates were widowed and then remarried, the court did not require them to put up counter-securities. The justices were
concerned that when widows ran estates they would do so properly and correctly. When widows remarried, the court was concerned that the new husbands would not properly manage the estates, and so they required counter-securities from new husbands and their wives.

Widows could argue against the wills that their husbands had left, but the court justices were the ultimate authorities, deciding what provisions would stand, and which would not. If a widow asked that a will be disallowed, the justices could find for or against her request, citing the interests of the estate over her interests. This was done on occasion by the justices, finding for the estate heirs and not the widow. Again, the court was concerned with the stability of the estate, not the needs or wants of the widows.

It was required that the wives of men selling land had to be examined by the justices before land could be sold. Many examinations of wives were conducted in the early years of the county, but by the 1760s, these examinations had dwindled to two or three a year, many months going by without a single examination. This indicates that the court justices either did not want to ask wives for their opinions regarding land transactions, or they took it for granted that wives were agreeable to such transactions before their husbands appeared in court to sell the land.

Therefore, on the surface, it would appear that free white women had some measure of economic power. This was true, but only for those women that had some degree of financial independence. Women that were financially able were treated by the justices on a par equal to men in matters such as business licenses, crop certificates and even when having children bound to them. But women were still controlled by the court in various ways when it came to managing their late husband’s estates. The court required assurances that widows who had remarried were financially stable and imposed counter-security requirements on both them and their new husbands. Therefore, the court system controlled the women and their management of their estates.
Free white women also interacted with the justices in matters relating to their families. They could petition on behalf of their children regarding a child's estate. They could ask for protection for their children from abusive masters the children had been bound out to. They could also ask for protection for themselves from abusive husbands. When wives accused husbands of abuse, no instances were found in which the wives were granted the privilege of separate maintenance from their husbands. Except for one case in which the husband and wife did not appear, and the case was dropped, all other cases resulted in fines for the husbands with all wives directed by the justices to return to their husbands. Therefore, the court justices did not interfere in the family structure by allowing wives to live separately from their husbands. The court did afford a small degree of protection for wives by requiring husbands to behave in the future, but did not go further than fining those men for their behaviors.

The court appeared to believe that women should be the primary caregivers of children. In the thirteen cases in which people were accused of not bringing up their children properly, seven cases were brought against unmarried fathers, four against unmarried mothers. This would indicate that the court did not look favorably upon unmarried men raising children. Yet, when it was to be decided who would receive bound out children, unmarried women were in the minority, only receiving eight of a total of 275 children bound out. This may have been because only unmarried women who were financially stable were considered as proper recipients of bound children, and there may not have been many such women in the county. The court may also have assumed that men could afford to take care of children better than women by themselves. Children were often bound out if the father had died, regardless of whether the mother was living or not. In these cases, the financial stability and ability of the family was the determining factor, with children bound out if the court decided that they might be a future burden on the community. If a mother disagreed with the court's decision, then she had to appear
and give reasons as to why her children should not be bound out. The court exerted control over the children of a marriage and only a mother who could prove her financial worth could hope to retain her children, and then only if she fought the decision in court.

When people committed crimes, it was the court and its justices who were in charge of punishing them. While women were not responsible for many crimes, they did come into contact with the court system in two general ways. In the first, they were accused of crimes involving those against persons and property, such as stealing, assault and infanticide. Secondly, women were involved in crimes of a sexual nature, to include adultery, fornication, and bastardy.

The few women involved in crimes such as stealing were punished the same as any male involved in a similar crime. Women were just as likely to be whipped in public for stealing, or were sent to Williamsburg just like men were, for stealing large amounts of money or goods. In assault cases, women were less evident, being accused of verbal rather than physical assaults. Of the two cases noted, one woman was punished by being remanded to the custody and control of her husband, a clear message to her and other women that a woman’s place was under her husband’s control and guidance. In the three cases of infanticide, the court relied on women’s testimony, but only in conjunction with that of their husbands and sons who corroborated their testimony.

In crimes of a sexual nature, in which women were accused of fornication and adultery, men were named just as often as women by the justices. In cases involving bastardy, however, the names of fathers were not noted on a regular basis. In two cases in which a man was accused of fathering an illegitimate child, one man was arrested as he did not appear in court. The other man charged occupied a place of high standing in the community. He was found not guilty by the court and exonerated of all charges. In this situation, the status of the alleged man undoubtedly helped him to win this case and emerge unharmed from the event.
When children interacted with the court system, it was usually because they had been orphaned. Children went into court to receive or choose guardians, or because they were being bound out. Children’s fates depended on their financial standing in the community. If their mother or their family was financially able, the court allowed them to remain at home. They could choose a guardian or the court would appoint one for them. If an orphan’s mother or family was unable to care for him or her, then the court stepped in and bound the orphan out to another family, usually headed by a male. Therefore, the court had complete control over a child’s life, and could decide where they would live, and who they would live with, or who would be their guardians and so protect and nurture them to adulthood. Sometimes, the court decided that married couples were not raising their children properly. In these cases the justices could take the children away and bind them out to other families.

Servants had no political power in the county, but did have some legal rights within the court system, although they were under two disadvantages when coming into court. One was that they were not of the same status as the masters they complained about. Servants came into court to complain of masters for many reasons. Sometimes it was for not paying their freedom dues, or for keeping them past their times of indenture. Other instances occurred in which servants complained of physical abuse or general dissatisfaction with their masters. By bringing these complaints to the court, servants were in effect disparaging the actions of a group of people, those who owned and used indentured or convict servants. The justices had more in common with the masters and mistresses than they did with the servants. Therefore, justices identified with the masters rather than the servants, and decided cases accordingly. The other disadvantage regarding servants was that they were without political power. Therefore, when servants committed crimes, the justices had no interests in protecting servants or being lenient
towards them, as servants were not part of the base upon which justices built their own power and prestige.

Servants complained of abusive masters for a number of reasons. Masters neglected to pay freedom dues when servants were released, and the servants had to petition the court for those dues. No masters or mistresses were fined by the court for this omission, even if the requests by the servants were considered valid. At other times, servants came into court to accuse masters of keeping them over their times of indenture. Again, masters were not fined or chastised, and servants who could prove their time served were freed. Those that had insufficient evidence had to return to their masters as directed by the justices. Occasionally people who were not really servants would be taken up and the burden of proof would be on them to prove to the justices that they were not servants. Those that unjustly detained them as servants were not punished in any way by the court justices.

Sometimes servants were punished for bringing charges against their masters, if the court decided that the charges were fraudulent or frivolous. Two cases were identified in which male servants were whipped because their accusations were dismissed. Female servants complained of physical abuse at the hands of a master. In the five cases found in which females complained, all of them were directed to return to their masters. One master was fined, one was reprimanded, two cases were dismissed, and the fifth case’s resolution was not found in the records. In one instance, the servant was whipped for her first complaint. Two years later a second complaint by the same servant was dismissed by the court with no action taken by the court against the master. The court justices related more closely to the masters than they did to the female servants for two reasons. First, the servants were female, and the justices probably felt that moderate correction of females was excusable by any master. Second, those bringing the charges were servants, and the justices identified with, and held interests in common with, the masters, not the servants.
Complaints against masters were complaints against society as a whole, and justices had a stake in protecting that society and way of life.

When runaway servants were punished, men fared worse than women, often receiving extra time out of proportion to the time they had been gone. The justices were the ultimate authority as to how much time was added on to a servant's contract of indenture. Because male servants worked in the fields and females in the houses, it was likely that the absence of a male servant cost the master or mistress more money and time wasted than the absence of a female servant.

When female servants had bastards, no records were found in which the fathers of these children were identified. If the fathers had been other servants perhaps their names would not have been mentioned, but if they had been masters or other free men, then their identities should have been ascertained, so that they could support the children in accordance with Virginia law. The justices were not concerned with identifying any fathers, most likely because they were masters and other free men, and the justices were looking out for the interests of those that held political power in the county, not wishing to embarrass or denigrate their constituents.

Slaves were the most powerless people in the county, and relied totally on their masters and the court system for protection. When slaves committed serious crimes, the court would decide their punishment. The court did take into account the motives behind some actions, in one instance finding a slave guilty of murder while another one was found innocent of the same charge. The justices may have been considering true guilt or innocence, or they may have been motivated by economic considerations. Destroying two slaves cost an owner a lot of money: by hanging the one slave and letting the other one go free, the court may have succeeded in warning other slaves and at the same time not have caused undue economic hardship to the second slave's owner.
Economic considerations played a large part in most of the decisions made by the court system. The court justices exerted control and jurisdiction over everyone's lives, but they exerted the most control over those that could not afford to stand up to them, either because they were politically powerless or financially unable to do so. Women were usually both, and only those women with some degree of financial resources, such as unmarried widows, could interact with the court system on a somewhat equal footing. The treatment of children by the court also depended upon their financial status: children from poorer families were bound out when orphaned, while those from more well-off families were allowed to choose guardians or the court appointed guardians for them. Servants, part of the unpaid labor force of the county, were managed as the court justices saw fit. Justices decided cases involving servants, both convict and indentured, on the basis of economic considerations revolving around the value of their work. Decisions were also based on the lower status of servants as compared to the relatively higher status of their masters. Slaves were the truly powerless of Augusta County society, and only their economic worth was taken into consideration when justices heard their cases.

This thesis reviews how the county court and its justices exerted a large amount of control over the lives of the less powerful of Augusta County society, its women, children, and servants, in the years from the inception of the county until the beginnings of the American Revolution. It also shows how these people, that were under the jurisdiction of the courts, used that system to their own advantage, wresting some small amount of power for themselves. Augusta County society was one in which people lived somewhat harmoniously with each other because they had learned to adapt and cooperate amongst themselves. The justices, while they certainly had more in common with the other males of the county, who did have political power, nevertheless were protected the rights of all groups in Augusta County, to include its women, children, and servants. These people, in return, often chose to cooperate with the justices and the court system, in order to
empower their own lives. This was a society based on mutual give and take, no group totally in control of the other, and all benefitting from the system they had chosen to live within.
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