

**A “Peculiar Offence”: Legal, Popular, and Gendered Perceptions
of Rape in the Early American Republic, 1790 – 1850**

by

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Submitted in Partial Fulfillment of the Requirements

for the Degree of

Master of Arts

in the

History

Program

YOUNGSTOWN STATE UNIVERSITY

May, 2012

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Abstract

Rape was a constant topic in the Early Republic, whether in legal cases, factual newspaper articles, or fictional novels. This thesis examines the legal, popular, and gendered perceptions of rape in the Early American Republic (1790-1850) and demonstrates how the period's legal and social systems constantly influenced one another's conception of rape. Moving beyond the conclusions of previous scholars, this thesis argues that conflicting variations of rape existed in the Early Republic and that rape in this historical context cannot be simply defined as the male population's exercise of patriarchal power over the female population.

Chapter one analyzes rape from a legal perspective and examines cases of rape and attempted rape and the laws and statutes that governed them. It argues that the prosecution of rape in the Early Republic was extraordinarily arbitrary and greatly influenced by the popular perception of rape and sexual behavior. Chapter two examines from a social and cultural perspective and analyzes popular representations and perceptions of rape and sex in novels and newspapers. It argues that the legal and popular perceptions of rape in the Early Republic were more heavily rooted in fiction than in fact, creating a rape narrative that permeated rape prosecutions. Finally, chapter three addresses the role of gender and power in the legal and popular representations of rape in the Early Republic. It argues that in the process of being further victimized, Early Republic rape victims exercised agency through the legal and social systems' perceptions and expectations of them.

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Introduction

In June 1769, the *Virginia Gazette* reported a story in which a young man intended to kidnap and rape a young woman in order to force her into marriage. After learning of the plot, the young woman's brother disguised himself as his sister and allowed himself to be kidnapped instead. His kidnapper, unable to secure a priest for the marriage ceremony at such a late hour, placed the pretended female in bed with his sister until morning in an effort to preserve the bride-to-be's decency. After being left with the sister of his ravisher, the bride revealed himself and, in revenge, raped and impregnated the sister of his kidnapper. The next morning the bride escaped and, "to [his] great mortification and disappointment," the intended bridegroom discovered the truth. Following his escape, the "hero of the farce" was charged with rape by his victim's family and, after standing trial, was honorably acquitted.¹

The *Virginia Gazette* makes no mention of the exact location of this incident nor of any of the parties involved and, consequently, the veracity of the story is unknown. However, in this case, whether this account actually took place does not really matter. True or not, this story illustrates the complexities of rape in the Early American Republic, not only in terms of rape's legal, social, and cultural nuances, but also in its gendered meanings and ramifications. Defined as the commission of sexual intercourse by a man with a woman forcibly and against her will, rape in eighteenth and nineteenth century America was extremely complex, far more so than in the twentieth and twenty-first centuries.² Consequently, puzzling out the facets of rape in the Early American Republic was just as convoluted for those directly and contemporarily involved

¹ *Virginia Gazette*, June 29, 1769.

² Barbara S. Lindemann, "'To Ravish and Carnally Know:' Rape in Eighteenth-Century Massachusetts," *Signs* 10 (1984): 63-65.

as it is for modern scholars attempting to understand the topic today. Rape, as historian Sharon Block describes, was incongruous because it was both “pervasive and invisible” within Early Republic law, society, and culture. Sexual violence was widely regarded as a heinous crime that was perpetrated by a male against a female and worthy of “serious punishment.” However, in the Early American Republic rape was rarely so simple.³

Legally, rape was a serious offense that if proven could result in severe punishment. However, as evident in the example from the *Virginia Gazette*, just because rape was known to have occurred and the perpetrator was identified did not mean that the rapist would be held legally accountable for his crime. Rape did not exist in a vacuum, and its place within the legal context only represented one small facet of Americans’ consciousness of sexual violence. In the Early Republic Americans held varying understandings of what rape was, but many identified it or any kind of sexual violence as the type of crime that occurred loudly, often with witnesses, and was always quickly reported.⁴ Rape, though, was also a social crime, one that had an effect on the reputation of the victim, the perpetrator, and their families. It did not always occur where there were witnesses and victims were often afraid to come forward for fear of being socially ruined for a crime over which they had no control. To make matters worse, female victims who reported they were raped were often further victimized by the Early Republic legal system that tended to operate on the assumption that their testimony was suspect. Victims, in reporting their

³ Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2004), 1.

⁴ George Bishop, *Every Woman Her Own Lawyer* (New York: Dick & Fitzgerald, 1858), 182-183.

rapes, risked being charged with crimes themselves, such as fornication or adultery, or becoming social outcasts in the event that their claims were not believed.⁵

Physically, women were central to the perpetration of rape in the Early Republic, but often, this is where their direct involvement in a crime committed against their person ended. Instead, they frequently found themselves virtually erased or marginalized from the prosecution of the incident, whether in terms of the crime's official prosecution or of social or cultural fallout. While women regularly testified in court records regarding the sexual violence they were subjected to, other accounts of rape in the Early Republic largely excluded women. The report in the *Virginia Gazette* describes an attempted rape on one woman and the successful rape of another; however, more attention is paid to one man seeking revenge on another and his acquittal of a crime than to the trauma plotted and/or carried out against an innocent woman. This type of account, whether discussing an authentic report of rape in a newspaper or a fictional account in a short story or novel, was typical in the Early American Republic. Female victims often found themselves marginalized within the accounts that instead focused on the perpetrators of the crime and the victim's family in the non-fictional reports or the evil villains and brave heroes in the fictional representations.

Whether analyzing Early Republic sexual violence from a legal, social, or cultural standpoint, it quickly becomes apparent that rape was as much about gender roles as it was about sexual violence. The understanding of men's and women's sexuality and sexual roles in the Early Republic greatly affected the way rape was considered both in the legal and public spheres. Rape was a social crime in the Early Republic, but it was also a gendered one and the legal and

⁵ Merril D. Smith, *Women's Roles in Eighteenth-Century America* (Santa Barbara, Calif.: Greenwood Press, 2010), 47.

social understanding of rape and sexual violence was rife with gender-based double standards. Rape was physically committed against a woman, something that she was expected to help prove by quickly reporting the crime, providing evidence, and testifying in court during her attacker's trial. However, sexual victimization went against the proscribed gender roles of innocence and modesty to which women in the Early Republic were expected to adhere.⁶

Gender roles and their relationship to rape were further enforced by the literature on sexuality and rape available in the eighteenth and nineteenth century in advice literature, novels, and newspapers. These accounts helped create an unrealistic image of rape as something that was committed suddenly by a stranger or was an act of pseudo-seduction committed dangerously and romantically by a philanderer. Women were also depicted as resisting romantic and/or sexual overtures as a natural part of the courting process. This resistance was seen as something that not only enforced their femininity and their male counterparts' masculinity, but also clouded the fine line between consensual seduction and rape. In the midst of these warring expectations, women had no real legal power and were forced to rely on their husbands, fathers, or other male relatives to report the crime and otherwise act as their official voices. Consequently, rape was also a crime by men against other men, and as demonstrated in the example from the *Virginia Gazette*, rape sometimes took the form of a direct and deliberate attack of one man on another through the method of rape. Superficially, rape appeared to reinforce traditional gender roles in which men exclusively held power and authority over women. However, an in-depth analysis of the many facets of rape demonstrates that Early Republic society and culture unintentionally fostered a preliminary battle of the sexes.

⁶ Carol Lasser and Stacey Robertson, *Antebellum Women: Private, Partisan, Public* (Plymouth, UK: Rowman & Littlefield, 2010), 9-10.

The study of rape within the historical context of the Early American Republic is both old and new. As described by Sharon Block, discussions of rape was pervasive with American society beginning in the seventeenth and eighteenth centuries when early American bastions such as Cotton Mather and Thomas Jefferson commented on rape peripherally in their writings on other subjects.⁷ In modern times, the study of rape has undergone a transformation, not only in the methodology used but also in rape's consideration as an independent topic. Beginning in the nineteenth century, rape appeared in conjunction with the topics of sexuality and violence in a variety of works from multiple academic disciplines. However, until the middle of the twentieth century women's scholarly marginalization meant rape was occasionally discussed on the margins of other topics. At this point, a combination of changes in historical methodology and ideology and the second wave of feminism opened up both sexuality and rape to historical analysis as their own topics.

Beginning as early as the 1940s, historians such as Edmund S. Morgan and Herbert Moller examined the sexual patterns of early Americans, particularly the Puritans, in demographic studies.⁸ Similar studies continued into the 1970s and 1980s when other scholars such as Daniel Scott Smith and Michael S. Hindus, Lois Green Carr and Lorena S. Walsh, and Roger Thompson delved deeper into the ramifications of eighteenth century American sexuality in terms of procreation, popular perceptions, and differences in experiences.⁹ Other works,

⁷ Cotton Mather, "Pillars of Salt," in *Pillars of Salt: An Anthology of Early American Criminal Narrative*. Daniel E. Williams, Ed. (Madison, Wisc.: Madison House Publishers. 1993), 69-71; Thomas Jefferson to Edmund Peddleton, August 26, 1776, <http://yale.edu/lawweb/avalon/jefflet/let9.htm> (accessed April 3, 2012); Block, *Rape and Sexual Power*, 1.

⁸ Edmund S. Morgan, "The Puritans and Sex," *New England Quarterly*, 15 (1942): 591-60; Herbert Moller, "Sex Composition and Correlated Culture Patterns of Colonial America," *William and Mary Quarterly* 2 (1945): 113-53.

⁹ Daniel Scott Smith and Michael S. Hindus, "Premarital Pregnancy in America, 1640-1971: An Overview and Interpretation," *Journal of Interdisciplinary History* 4 (1975): 537-70; Lois Green Carr and Lorena S. Walsh, "The

including John D'Emilio and Estelle Freedman's *Intimate Matters: A History of Sexuality in America*, appeared in the late 1980s in an attempt to synthesize America's sexual history.¹⁰

Works on sexuality were also prevalent in the 1990s and 2000s, with many by scholars such as Merril Smith, Martha Hodes, and Richard Godbeer paying increasing attention to the lines of identity within sexuality, particularly in terms of gender and race.¹¹

At the same time, that interest in the historical study of sexuality in eighteenth and nineteenth century America was growing, so too was the related topic of rape and other forms of sexual violence. As a result, many of the works featuring discussions of eighteenth and nineteenth century American sexuality also focused on sexual violence. Overall, there have been three scholarly streams touching on or inclusive of rape in the Early Republic since the 1970s: 1970s and 1980s feminist scholarship focusing on rape in general, works on sexuality and/or gender that include discussions of sexual crimes, and works specifically focused on rape and related sexual crimes. Although these studies all examine different facets and interpretations of rape in eighteenth and nineteenth century America, many of them have one thing in common: the theme of power in sexuality and its related crimes.

One of the earliest works to include a discussion of early American rape was Susan Brownmiller's *Against Our Will: Men, Women, and Rape* (1975) that evolved directly out of

Planter's Wife: The Experience of White Women in Seventeenth-Century Maryland," *William and Mary Quarterly*, 3d Ser. 34 (1977): 542-571; Roger Thompson, *Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699* (Amherst, Mass.: University of Massachusetts Press, 1986).

¹⁰ John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (Chicago: University of Chicago Press, 1997).

¹¹ Merril D. Smith, ed., *Sex and Sexuality in Early America* (New York: New York University Press, 1999); Martha Hodes, ed., *Sex, Love, Race: Crossing Boundaries in North American History* (New York: New York University Press, 1999); Richard Godbeer, *Sexual Revolution in Early America* (Baltimore: Johns Hopkins University Press, 2002).

feminist scholarship and contains a section on sexual violence during the American Revolution.¹² Brownmiller's work is a prime example of feminist scholarship as it both focuses on the power dynamics of the sexual crime and attempts to make an overarching argument regarding a theory of rape. Although some scholars do still attempt to look at rape as a pattern that exists outside of a specific time period, many prefer instead to look at rape within historical contexts such as the Early American Republic as a way to examine specific facets of a given time period's society and culture. Trending with other aspects of women's experiences, historians in the 1980s, including Barbara S. Lindemann and Marybeth Hamilton Arnold, largely used rape-related court cases to expose the patriarchal power structures inherent in the Early Republic.¹³ In the 1990s and 2000s discussions of rape became more intricate, with scholars looking at the various intersections of racial, gender, and social identity that the sexual crime existed within. Scholars such as Cornelia Hughes Dayton, Kathleen Brown, and Clare Lyons included discussions of rape within their larger works on sexuality, power, race, and gender.¹⁴ Others, including Thelma Jennings, Martha Hodes, and Diane Miller Sommerville focused their discussion on the relationship between race and rape, looking at how black women were victimized through sexual crimes and how black men were treated as perpetrators.¹⁵ However, the most influential study of

¹² Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Ballantine Books, 1993).

¹³ Barbara S. Lindemann, "'To Ravish and Carnally Know': Rape in Eighteenth-Century Massachusetts," *Signs* 10 (1984): 63-82; Marybeth Hamilton Arnold, "'The Life of a Citizen in the Hands of a Woman': Sexual Assault in New York City, 1790-1820," in Kathy Peiss and Christina Simmons, eds., *Passion and Power: Sexuality in History* (Philadelphia: Temple University Press, 1989), 35-56.

¹⁴ Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995); Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996); Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006).

¹⁵ Thelma Jennings, "'Us Colord Women Had To Go though a Plenty': Sexual Exploitation of African-American Slave Women," *Journal of Women's History* 1 (Winter 1990): 45-74; Martha Hodes, *White Women, Black Men:*

the last decade was by far Sharon Block's *Rape and Sexual Power in Early America* (2006) that synthesizes the discussion of rape and sexual crime in America through 1820 and, in turn, provides a simultaneously fascinating and frustrating discussion of the differences between consensual and forced sex in this period.

To this point, the body of work discussing or mentioning sexual violence in the Early American Republic has matured, particularly considering that the sexuality of women and sexual crimes committed against them have only been analyzed in depth within the last fifty years. This thesis simultaneously builds upon and moves away from the previous scholarship by re-examining legal and cultural records of rape. At the height of the second wave of feminism when studies of rape cases increased in number, historical instances of rape became mired in the search for rape theory and the hyper-sensitized modern consciousness of rape. While the tendency for scholars to apply modern standards and understandings of rape to historical examples has diminished substantially, there remains a residual anachronistic theme within works on historical rape that can skew the reasons that rape occurred and its effects. Consequently, instead of looking at Early Republic sexual violence from a purely feminist perspective or in terms of the exercise of patriarchal power, as many previous scholars have done, this project examines how the contemporary diversity of interpretations across legal, cultural, and social spheres contributes to a multi-layered understanding of sexual violence.

This thesis demonstrates that no historical period better emphasizes the fluidity of the definition and understanding of rape than that of the Early American Republic, that for this purpose is defined as the period between 1790 and 1850. At a time when a system of patriarchal

Illicit Sex in the Nineteenth Century South (New Haven, Conn.: Yale University Press, 1997); Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004).

power, that placed men as the leaders of the family and larger society, was firmly entrenched, the accusation and prosecution of rape in Early Republic depended greatly upon arbitrary legal and social factors that were rarely consistent on a case-by-case basis.¹⁶ In keeping with British legal standards, Early Republic courts prosecuted rape as a felony; however, this legal consideration was directly affected by the custom, also derived from British precedent, of doubting women's claims. The intense scrutiny assigned to women's accusations of sexual violence accompanied women's lack of legal status in this period, where women were generally under the authority of their nearest male relative and depended upon them to bring a legal complaint.

Legal analysis exposes what Early American Republic society and government considered the official rules surrounding the perpetration of rape and similar sexual crimes. In her 1984 article "'To Ravish and Carnally Know: ' Rape in Eighteenth-Century Massachusetts,'" Barbara Lindemann summarizes that rape, as defined by British legal precedent and Early Republic courts, was the act of "ravishing and carnally knowing" a woman by force and against her will.¹⁷ While this definition may seem straight forward, the actual application of it to the prosecution of accused rapists was anything but. Records reveal, as Mary R. Block elucidates in an extraordinarily useful 1992 thesis, that Early Republic courts picked apart the details of both rape's legal definition and each case's circumstances, focusing heavily on factors of consent and passion.¹⁸ Consequently, rape-related legal proceedings and the actual rules they followed were changeable and arbitrary, greatly depending on how the judge and/or jury chose to interpret the law in each individual case. Complicating rape far beyond its legal parameters, this

¹⁶ Block, *Rape and Sexual Power*, xxxviii, 167.

¹⁷ Lindemann, "'To Ravish and Carnally Know,'" 63-65.

¹⁸ Mary R. Block, "'An Accusation Easily to be Made': A History of Rape Law in Nineteenth-Century State Appellate Courts, 1800-1870" (M.A. thesis, University of Louisville, 1992).

interpretation was rooted in countless other elements and reciprocally reflected the cultural and social implications of sexual violence inherent in the Early Republic.

Besides the cases of rape brought before the Early Republic legal system, that represented only a fraction of the acts of sexual violence actually occurring, consciousness of rape permeated Early Republic culture. As discussed by Sharon Block in her 2002 article “Rape without Women: Print Culture and the Politicization of Rape, 1765-1815,” eighteenth and nineteenth-century Americans’ cognizance of sexual violence was evident in a proliferation of print publications, both fiction and non-fiction, that frequently mentioned rape and sexual violence. Often, court proceedings were discussed and summarized in local newspapers. These newspaper discussions of rape frequently glossed over the victim or left her out completely, misleading the public and later scholars regarding the agency, even if it was minimal, that victims of sexual violence and other women possessed in rape-related court proceedings. Rape was also widely characterized in the fictional literature of the period that often greatly romanticized and/or stereotyped both sexual gender roles and the crime of rape. Within these stories, sexual violence appeared as a plot device to further a romantic storyline and the actual rape act and the victim’s perspective were excluded.

In eighteenth and nineteenth century America, women’s sexuality existed on two contradicting levels, one placing women as the social representatives of all that was moral and dignified, and another that considered them as wanton creatures desirous of sex. The conflicting representations of rape that pervaded Early Republic law and culture were direct products of the era’s social structure. For better or worse, the conceptions of sexuality and rape in the Early Republic constantly shaped rape’s legal and cultural meaning, creating a cycle of arbitrary definitions. Patriarchal power and lack of women’s legal rights, expectations of proper sexual

behavior, fears of the actions of blacks and slaves, rules regarding the proper deportment of women and girls, religion, and countless other factors all influenced Early Republic society's understanding and prosecution of rape and sexual violence. In turn, the emphasis placed on women's modesty and virtue directed both the legal and cultural behavior of Americans in regards to rape. Fear of social ruination led many victims to keep their experiences secret in order to preserve their reputations and, if single, their marriage prospects. Social rules regarding courting and marriage, in large part, had a great impact on the Early Republic's interpretation of rape as the use of force appears to have been acceptable to a certain degree within "normal" male-female relationships. Male perpetrators claimed innocence when confronted with their actions and often women who accused someone of sexual violence ran the risk of being faulted for sexual misbehavior as a temptress rather than as a victim of an assault.¹⁹

These legal and cultural interpretations of sexual violence, as impacted by and informing of Early Republic society, demonstrate the conflicting variations of rape that existed during this time period. While it is important to separate these different perspectives of analysis, it is nevertheless vital to note that they can only be separated from each other to a certain extent. The past fifty years of scholarship on sexual violence in the Early American Republic has used examples from all three areas of analysis, but has largely framed arguments by analyzing how these facets behaved in the scope of power. Doing so has contributed to the idea that rape in the Early Republic could be defined within one theme: as the male population's exercise of patriarchal power over the female population. Similarly, scholars have used this method of analysis to argue that sexual violence can exist outside of history and that a universal theory regarding the perpetration of rape can be realized.

¹⁹ Smith, *Women's Roles in Eighteenth-Century America*, 47.

Contrary to previous scholars, this thesis argues that attempting to understand rape in the Early American Republic is much more complicated than detailing the ways that legal, cultural, and social factors of sexual violence prove the wielding of patriarchal power suggests. Instead, through the strategic use of legal cases and fictional and factual cultural representations of rape, it is clear that achieving a unified understanding of rape in the Early American Republic is virtually impossible. These primary sources show that rape was extraordinarily complicated and did not fit neatly into the legal, cultural, or social definitions created by modern feminist scholars. It is important to note that this project does not focus on race, as the topic has already received in depth analysis from scholars like Diane Sommerville. This thesis *does* examine power within the dynamics of sexual violence; however, it does not do so in the strict sense of patriarchal power. Rather, this thesis argues that in the process of being further victimized, Early Republic rape victims were empowered through the legal, popular, and gendered perceptions of the crime. By analyzing the centrality of consent and passion to both the legal and cultural facets of rape, this thesis explores the contradictory understanding eighteenth and nineteenth century Americans possessed regarding the power they had over themselves and over each other. It demonstrates that multiple perceptions of rape, from legal to cultural to social, that existed throughout the Early American Republic point to a convoluted and diverse American understanding of sexuality and sexual crimes.

This thesis is divided into three chapters, each of which examines rape in a different context. The first chapter focuses on rape in the Early American Republic from a legal perspective by examining cases of rape and attempted rape and the laws and statutes that governed them. In particular, this chapter demonstrates the arbitrary nature of rape prosecution and the emphasis that the Early Republic legal system placed on the considerations of will, force,

consent, character, and physical age and appearance. The second chapter complements the first chapter by examining how rape functioned in Early Republic popular perceptions. In examining the social rules and expectations that governed sexual behavior and the factual and fictional representations of sex and rape in novels and newspapers, chapter two looks at how the popular perception of rape was more heavily rooted in fiction than it was in fact. Specifically, it demonstrates how a combination of the period's unrealistic sexual rules and the depiction of rape in novels and newspapers created a fictional narrative of the crime that permeated the Early Republic social and legal spheres. Finally, the third chapter uses the legal, social, and cultural research presented in chapters one and two to embark on an analysis of the relationship between rape, gender, and power in the Early American Republic. Moving away from previous scholarship that has focused only on the presence and exercise of patriarchal power, this chapter argues that a battle of the sexes occurred within Early Republic society in regards to rape, and male power was not always the winning party.

Chapter 1: The “Peculiar Offence of Rape”: Rape Law in the Early Republic

If someone living in the twenty-first century were deposited in the middle of an Early Republic rape trial, they would probably be horrified by much of what they witnessed. While the perpetration of rape and the general legal procedures of a criminal trial have remained largely unchanged, the atmosphere in which rape occurs and is prosecuted is vastly different today than it was two centuries ago. Today, rape is, legally at least, a devastating but relatively straightforward crime. It is perpetrated, reported, investigated, and prosecuted, with the experience and suffering of the victim at its center. However, in the eighteenth and nineteenth centuries rape was anything but simple and far from victim-oriented. Through an examination of state and appellate court records and the historical legal statutes and precedent that governed them, it becomes apparent that the prosecution of rape was centrally based around the considerations of force and consent. However, further analysis demonstrates that the Early Republic legal system also placed an emphasis on the factors of character, physical age, appearance, and assumed capability, that led to the arbitrary prosecution of rape cases and a multi-layered perception of what rape actually was.

The legal proceedings surrounding an accusation of “the peculiar offence of rape” were weighed down with circuitous legal definitions and tricky caveats, all of which were designed to judiciously attain the correct verdict, but often resulted in cases being reversed or thrown out on technicalities and semantic disagreements.¹ Built on English common law, Early Republic rape law was based on the concept that a female victim had been sexually assaulted against her will and without her consent -- an act that she was expected to try her hardest to prevent and later

¹ Joel Prentiss Bishop, *Commentaries on the Criminal Law* (2 vols.; Boston: Little Brown and Company, 1859), 2: 384.

prosecute. This legal process almost always came at the expense of the victim, however, who herself was compelled to carry the burden of proof in all of these criteria. To make the victim's battle even harder, Early Republic rape law was predisposed to believe the accused attacker, as opposed to the victim, and the female accuser ran the risk of exiting the legal process in a worse off social situation than before she entered it.

In order to establish an understanding of the foundation on which rape and attempted rape cases were tried in the Early Republic, it is vital to begin with the superficially simple definition taken from English common law traditions that established rape as a crime. The definition and rubric by which rape was judged was first formalized as law in two statutes enacted by English Parliament under the reign of Edward I in the thirteenth century that both declared rape as the forceful carnal knowledge of a female by a male. These statutes established rape as a felony punishable by death and/or castration -- a classification and suggested sentence that went unchanged until the sixteenth century. The next statute regarding rape, enacted by Parliament under the reign of Elizabeth I, maintained that rape was a felony, but removed castration from the proscribed list of punishments and established that the age of consent for girls was ten years old. This specification regarding age conveyed the belief that girls under the age of ten did not understand sexual contact and were therefore unable to consent to something they did not understand. Consequently, this statute created a new and separate offense under English law that established carnal knowledge of a girl under ten, with or without her consent, not as rape, but as carnal abuse of an infant that garnered a less severe punishment in the form of imprisonment.²

² Mary R. Block, "'An Accusation Easily to be Made': A History of Rape Law in Nineteenth-Century State Appellate Courts, 1800-1870" (M.A. thesis, University of Louisville, 1992), 13-1

Through the establishment of this Elizabethan statute, rape law became more complicated, introducing more variables on which rape would come to be interpreted and prosecuted in the centuries to come. During the seventeenth and eighteenth centuries, English rape statutes remained unchanged and instead modifications to rape law occurred predominantly within courts themselves. Through interpretations by judges, a gradual common law understanding of what constituted carnal knowledge, what was required to prove consent and force, who was capable of committing rape, and who could be defined as a victim was established.³ English jurists recorded these rules multiple times over the course of the seventeenth and eighteenth centuries. Although some difference in interpretation remained on a judge-by-judge basis, they were an intractable part of the English and American understanding of rape and were the foundation on which nearly all cases of rape and attempted rape were judged through the end of the nineteenth century.⁴

In his landmark seventeenth century legal treatise, renowned English jurist Sir Matthew Hale was one of the first to outline formally rape and all of its legal nuances. Born the son of a barrister in 1609, Hale was revered in England for his integrity and neutrality within his legal decisions, qualities that led him to be appointed the Chief Justice of the King's Bench under Charles II. By the time of his death in 1676, Hale was widely considered one of England's pre-eminent jurists, a view that was re-affirmed when his work *The History of the Pleas of the Crown*, published posthumously, was praised as a legal treatise "of the highest authority."⁵ He described rape as a "most detestable crime... [that] ought severely and impartially be punished

³ Ibid, 20-22.

⁴ Bishop, *Commentaries*, 2: 326.

⁵ John Hostettler, *The Red Gown: The Life and Works of Sir Matthew Hale* (Chichester, U.K.: Barry Rose Law Publishers, 2002), 2-5, 151.

with death.”⁶ Despite this scathing opinion of rape, Hale was quick to caution his fellow judges on the complications that could arise when prosecuting the crime, whose “heinousness...often many times transport[s] the judge and jury with so much indignation, that they are over hastily carried to the conviction of the person accused.”⁷ Hale warned that rape “is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, tho never so innocent.”⁸ This warning became a legal standard that judges in both Britain and the United States regularly administered to jurors prior to the commencement of rape trials in the eighteenth and nineteenth centuries.⁹ Though a fair and judicious admonition, particularly regarding the importance of maintaining a defendant’s innocence until they could be proven guilty, Hale’s convoluted appraisal of rape highlighted the highly contentious and arbitrary atmosphere in which rape was judged. Rape, according to Hale, may have been a detestable and heinous crime, but it was also one that an accuser could report intending “malicious and false witness.”¹⁰ In turn, it placed female accusers in exceedingly difficult positions as they attempted to report and later testify about very personal acts of sexual violence to a legal system that was predisposed to suspect their claims and informed larger society’s opinion of their characters.

Within this suspicious atmosphere, judges and juries had to consider the actual legal definition of rape. Drawn from English common law and the thirteenth and sixteenth century statutes, Hale’s *History of the Pleas of the Crown* categorized rape as “the carnal knowledge of

⁶ Sir Matthew Hale, *The History of the Pleas of the Crown*, 1st American ed., trans. W. A. Stokes and E. Ingersoll (2 vols. 1736; repr., Philadelphia: Robert H. Small, 1847), 1: 634.

⁷ *Ibid.*, 1: 636.

⁸ *Ibid.*, 1: 634.

⁹ Susan Estrich, *Real Rape* (Cambridge, Mass: Harvard University Press, 1988), 54.

¹⁰ Hale, *Pleas of the Crown*, 1: 636.

any woman above the age of ten years against her will, and of a woman-child under the age of ten years with or against her will.”¹¹ In this definition, Hale established consent as the most important factor in determining whether a rape had been committed, and it is on this standard that, by law, Early Republic rape cases were determined. He also, though, made a mistake when he established that the rape of a woman-child was rape, which it was not. In cases where a child under the age of ten was the victim of sexual violence, the court could not charge the perpetrator with rape and instead charged him with “carnal abuse of an infant.”¹² While this mistake was later rectified and did not have a substantial impact on the prosecution of rapes in England or America, it was indicative of the confusion and perplexities that often permeated rape law and prosecutions in the eighteenth and nineteenth centuries. Particularly, the mistake is an example of how definitions were extraordinarily important to rape cases, to the extent that judges and juries were so dependent on their exactness that any deviance from them could result in a miscarriage of justice.

Overall, Sir Matthew Hale’s legal opinions informed the majority of legal decisions made in the United States through the middle of the nineteenth century, with statements from his *History of the Pleas of the Crown* appearing as evidentiary support in an extensive number of Early Republic legal decisions.¹³ Hale’s opinions were supplemented by those of Sir William Blackstone, written in the eighteenth century, which expanded upon and clarified Hale’s

¹¹ *Ibid.*, 1:627.

¹² Hale, *Pleas of the Crown*, 1: 630-631; Bishop, *Commentaries*, 2:436; Block, “An Accusation Easily Made,” 42-44.

¹³ Nearly all of the court cases referenced in this thesis exhibit evidence and precedence from Hale’s legal commentaries.

interpretation of common law and similarly became important in American jurisprudence.¹⁴

Blackstone agreed with Hale that consent was at the center of the prosecution of rape accusations, but offered a slightly different definition of rape as the carnal knowledge of a woman “forcibly and against her will.”¹⁵ To this point, if the judge or jury felt that consent was present in a case of sexual intercourse brought before the court as rape, then the occurrence was not a rape and therefore was not a crime.

While Hale’s and Blackstone’s similar definitions aimed to make the determination and prosecution of rape clear and simple, the difference between consent and force in the Early Republic was often very small. This thin line between consent and force, as Sharon Block discusses in *Rape and Sexual Power in Early America*, revolved around what early Americans knew and thought about passion and desire and how those emotions could result in “an extension of normative sexual practices” into physically forceful sex.¹⁶ Incidents of rape in the Early Republic were often construed as having devolved out of normally initiated romantic or sexual relations, that when pressed towards sexual intercourse, were resisted or denied on the part of the female. The same language that Americans used to describe consensual sexual liaisons was also often used to describe instances of rape, that confused the two acts’ very distinct meanings. For example, in 1808 a Pennsylvania court convicted William Cress for the rape of his servant Rachel Davis. During testimony, Davis placed her master’s actions within normative sexual language and stated that he “frequently tempted her” to engage in sexual relations with him.

¹⁴ William Blackstone, *Commentaries on the Laws of England* (4 vols.; 1769; repr., Chicago: University of Chicago Press, 1979), 4: 209; Mary Block, “An Accusation Easily Made,” 20; Lawrence Friedman, *History of American Law* (New York: Simon and Schuster, 1985), 102.

¹⁵ Blackstone, *Commentaries on Laws of England*, 4:210.

¹⁶ Block, *Rape and Sexual Power*, 17.

Despite Cress' conviction, it is easy to see how the terms used to describe rape in the Early Republic could demonstrate a woman's willingness to participate in the sexual relationship. To be tempted implies interest on the part of the female – a connotation completely different from a victim reporting she was forced.¹⁷ In this way, accused rapists were able to define themselves as suitors who were attempting sexual relations, not as successful or attempted rapists' intent on violence. Early Republic society's conception of rape simply made them less likely to believe that rape could in fact occur within what may otherwise begin as normative sexual behavior.

To eighteenth and nineteenth century Americans, rape was stereotypically seen as a vicious crime that occurred suddenly and without warning as a vulnerable woman walked alone. An example of this is found in a case heard before the Supreme Court of Tennessee in 1848. In the original trial, the defendant, Phillips, was convicted of raping Celia Wilson after stopping her on the four-mile stretch of highway between her home and the general store.¹⁸ Wielding an axe, Phillips threatened Wilson, removed her from her horse, and led her away from the road where he forcibly raped her.¹⁹ This type of rape was how the majority of Americans in the Early Republic visualized the crime. This popular assumption, that rape could only be a brutal surprise attack, blurred the lines between true rape and an incident that was somewhere in between rape and consensual sex, consequently complicating women's ability to prove to a court that they had actually been attacked.²⁰

¹⁷ *Commonwealth v. William Cress*, February 1808, Pennsylvania Court Papers, Historical Society of Pennsylvania, Philadelphia as cited in Sharon Block, *Rape and Sexual Power*, 24.

¹⁸ The first name of the accused rapist is unknown.

¹⁹ *Phillips v. State*, 1848 Tenn. LEXIS 80; 9 Hum. 246 (Supreme Court of Tennessee, Nashville December 1848).

²⁰ Block, *Rape and Sexual Power*, 24-28.

Incidents brought before the court as rape were expected to be overtly violent, not something that began as a consensual and perhaps romantic tête-à-tête. To most eighteenth and nineteenth-century Americans this kind of occurrence was not a rape, but was instead another form of illicit sex that only turned violent when the victim refused to go any further. These kinds of cases, however, came with risks. Unable to prove that carnal knowledge was attempted or achieved through force and without their consent, victims ran the risk of being charged themselves with crimes of sexual misbehavior or being socially ruined for having loose morals.²¹ Consequently, the atmosphere in which a rape victim brought her accusation was often contentious and predisposed to disbelieve her claim – something that could be devastating in cases where women were truly raped.

After accusing someone of rape, women in the Early Republic were charged with proving that they had, according to the legal criteria, been ravished by force and against their will -- something very difficult to do without guaranteed witnesses or physical evidence and often comprised of their word against their attacker's. In 1818, the Supreme Court of Massachusetts heard a case in which the defendant was indicted for rape. In conjunction with American legal standards and English precedent, the jurors were charged with determining whether the victim had been carnally known by force and against her will. After deliberating, the jury announced that "one of their number was of the opinion that, if suitable resistance had been used, the crime could not have been committed" and that on the charge of rape no decision could be made. To prevent a mistrial, the judge reminded the jury that the lower offense of "assault with intent to commit the crime of rape" was built into the higher indictment and that they could find the

²¹ Ibid, 30-34.

defendant guilty on that count if they so chose. In agreement that an assault with the intent to commit rape had occurred, the jury found the defendant guilty of the lesser crime.²²

This example demonstrates the uphill battle that most female rape victims experienced during the early nineteenth century in providing the burden of proof that they were raped forcefully and against their will. As implied in this case, the court's understanding of how much force was necessary to overpower a rape victim versus how much force an accused rapist claimed that they used was never clear.²³ This made it easy for a victim's claims to be doubted and, when combined with the challenge of understanding the vagueness of what constituted necessary proof in a case of rape, made the victim's presenting of that proof exceedingly difficult. The guidelines for necessary proof were indeed vague, and in his *Commentaries*, Sir William Blackstone shied away from forthrightly explaining necessary proof. Instead, he hedged around the subject by saying that such factors of proof were "of such a nature, that though necessary...for the conviction of the guilty and the preservation of the innocent, ...are highly improper to be publicly discussed except only in a court of justice."²⁴ While Blackstone and the English and American legal systems were reluctant to openly discuss what constituted proof of rape, this did not mean that there were not very real factors of proof that were necessary to achieve a rape conviction.

The three most important factors in proving the commission of a rape in the Early Republic was the victim's reporting of the crime, her testimony regarding the crime in court, and

²² *State v. Stephen Cooper*, 1818 Mass. Lexis 54, 15 Tying 187 (Supreme Court of Massachusetts June 1818).

²³ Bishop, *Commentaries*, 1:327.

²⁴ Blackstone, *Commentaries*, 4:212-213.

physical evidence that penetration had occurred during the assault. Ironically, penetration, that was required to demonstrate that the victim was “carnally known” by her attacker, was in many ways the easiest of these three factors to prove. English common law, as discussed by Blackstone, originally required that seminal emission take place during sexual intercourse for the incident to constitute rape.²⁵ However, this facet of English law did not universally transfer over into American law during the seventeenth and eighteenth centuries, resulting in the American courts’ acceptance that penetration alone, regardless of seminal emission, confirmed that the victim had been carnally known and acted as contributing evidence that rape had occurred.²⁶ According to nineteenth century legal writer George Bishop, “evidence of penetration, however slight” was enough to support the claim that a woman had been carnally known and that, in the American legal system, there was no need to demonstrate that a victim had been “deprived of her virginity” by proof of even complete penetration.²⁷ Within this assertion, however, Bishop never made clear how a victim was supposed to appropriately prove that penetration had occurred. While rape could not be legally proven if penetration was not evident, alone, penetration only proved that sexual intercourse had occurred and did not prove a rape accusation. The vast majority of the proof, according to Early Republic courts, rested in the actions of the victim during and immediately after the crime – actions that, if they failed to meet with the court’s expectations, could completely unravel a rape case.

Outlined by Hale and Blackstone and later discussed as part of American procedure by George Bishop, courts expected female rape victims to display an important combination of

²⁵ Ibid., 1: 628.

²⁶ *Pennsylvania v. Sullivan* 1 Add (Pa) 1798; Block, “Accusation Easily Made,” 33.

²⁷ George Bishop, *Every Woman Her Own Lawyer* (New York: Dick & Fitzgerald, 1858), 182.

behavior during and after they were raped. During the commission of the crime, victims were expected to cry out for help, especially if the crime was occurring in a place where the victim had a chance of being heard by witnesses. However, even if a victim's cries were not heard, George Bishop cites that "resistance to the atrocity is good evidence in favor of the prosecutrix," but not conclusive to proving the crime. Following the crime, female rape victims were expected to "commence prosecution as soon after the injury as possible" and not "conceal the outrage for an unreasonable time."²⁸ In addition, victims were expected to pursue their attackers if possible, either by searching for them themselves or immediately going to ask another to search for them. However, if the attacker was easily found and, presumably did not flee from the scene of the crime, the victim's claims of rape could be detrimentally affected as this kind of behavior on the part of the accused made it look like they had nothing to hide and had, in turn, not committed a crime.²⁹

Successful accusations of rape depended greatly on the believability of the female victim who through testimony brought evidence before the court as her own witness with sometimes successful and sometimes disastrous consequences.³⁰ In her testimony, a victim was expected to present to the court that she had acted as was expected of her, particularly in crying out for help during the crime, pursuing her attacker, and reporting the incident immediately. However, if the victim was not of good reputation or was of, as Blackstone described, "ill fame" then the court was given reason to be suspicious of the victim. Indeed, her failure to adhere to the behavior that was expected of her during and after the crime, combined with a less than pristine reputation,

²⁸ Ibid, 183.

²⁹ Blackstone, *Commentaries*, 4: 212-213.

³⁰ Bishop, *Every Woman Her Own Lawyer*, 183.

immediately caused the victim to be suspected of providing “testimony [that] is false or feigned.”³¹

An example of the ways that a victim’s actions and testimony was essential in the conviction of an accused rapist can be found in a case heard before the Supreme Court of Errors of Connecticut in 1830. While in some ways this case was different from other examples (the victim was deaf and mute), it nevertheless displays the importance of a victim’s actions and testimony, and how those two factors can work against her. In this case, the defendant Thaddeus De Wolf had been charged and convicted in a lower court of an attempt to commit rape on Celestia Bull who had been deaf and mute since infancy. Following the conviction, the case appeared on appeal in the Supreme Court of Errors of Connecticut on the claim that the original trial was carried out unfairly since the victim testified through sign language. On this count, the defendant claimed that since Celestia was able to write as well as sign, her testimony should have been delivered in writing. His vehemence on this point was bolstered by the statement of a corroborating witness that, instead of helping Celestia prove she had reported the crime soon after its occurrence, provided evidence that Celestia had previously written an account of the attack that was never submitted as official evidence. With the exception of this written account, that according to the witness was missing, Celestia had waited more than a year to officially accuse the defendant of attempting to rape her. This failure to report the crime in a timely manner, combined with the defendant’s objections regarding Celestia’s method of testimony and

³¹ Ibid., 183; Blackstone, *Commentaries*, 4: 212-213; Hale, *Commentaries*, 1: 634.

in spite of evidence supporting Celestia's good character, resulted in a new trial being granted to the defendant.³²

Celestia's failure to adhere to the court's expectations in the aftermath of De Wolf's attempt to rape her made her unreliable as an accuser, even with a corroborating witness testifying that she was of good character. Though Celestia's reputation was not directly questioned in this case, the reputation of the victim, as implied in the dictates described by Hale, Blackstone, and Joel Prentiss Bishop, was frequently an essential part of a defendant's attempt to escape from rape-related charges. Victims who were shown to be of "ill fame," unchaste, untrustworthy, or dishonest were often suspected of bringing forth false charges and attempting to wrongfully malign the character and actions of the accused for actions the court the defendant claimed they brought upon themselves by their history of lewd behavior. For example, in a case brought before the Supreme Court of Georgia in 1847, a man convicted of an assault with intent to commit rape appealed his conviction on the grounds that the judge and jury had not properly considered the victim's lack of chastity and general "ill famed" character in determining her credibility. According to the Supreme Court of Georgia, the "want of chastity of Cynthia Emeline Davis" could have been used to "impeach her [accusation's] credibility" during the original trial, and because of this, the court overturned the conviction and the defendant was freed.³³

English and Early American Republic courts took the label of ill fame very seriously, even to the point of denying American women due process under the law. For example, Early

³² *State of Connecticut v. De Wolf*, 8 Conn. 93; 1830 Conn. LEXIS 15 (Supreme Court of Errors of Connecticut June 1830).

³³ *Burton Camp v. State of Georgia*, 3 Ga. 417; 1847 Ga. LEXIS 122 (Supreme Court of Georgia September 1847).

Republic law made no provisions for the rape of a prostitute, and in fact, according to the law, a prostitute could not legally be raped under private statutory law. In his Commentaries, Blackstone points out that prostitutes were recognized as females able to be raped under the common law, however in regards to law between private parties, prostitutes did not have a right to claim rape. To Blackstone as well as to Early Republic courts, prostitutes had “forsaken that unlawful course of life” and made the practice of unlawful sex their livelihood. To the Early Republic legal system, prostitution provided the ultimate evidence of an ill-famed character. Even if a woman was not bringing forth accusations of rape and was simply acting as a witness, it was unlikely that her testimony would be permitted as evidence. An example of this can be found in an 1817 rape case heard before the Supreme Court of Massachusetts. A witness called to testify on behalf of the defendant, an accused rapist, was deemed untrustworthy due to her status as “the mother of seven bastard children” and her being known “notoriously [as] a common prostitute.” The court ruled that she was an inadmissible witness presenting suspect evidence as a “common prostitute must necessarily have greatly corrupted, if not totally lost, the moral principle, and of course her respect for truth and her regard to the sacredness of an oath.”³⁴

False accusations of rape were seen as something of an epidemic amongst legal writers in the nineteenth century, a concept that fell in line with Sir Matthew Hale’s original seventeenth century warning that rape was “an accusation easily to be made.”³⁵ Rape accusations were, according to an Ohio law journal article, a perfect “opportunity for black-mail” where persons

³⁴ *Commonwealth v. Stephen Murphy*, 14 Mass. 387; 1817 Mass. LEXIS 110; 14 Tyng 387 (Supreme Court of Massachusetts October 1817).

³⁵ Hale, *Commentaries*, 348; Block, “An Accusation Easily Made,” 81.

from lower classes regularly targeted persons from the upper classes.³⁶ Indeed, as the nineteenth century progressed and Victorian values regarding sexual conduct began to seep into Early Republic culture, women who accused men of rape charges were increasingly viewed negatively. As Mary R. Block discusses, medical and legal literature began to depict these women as “malicious and vindictive” persons claiming rape in an attempt to cover for their own scandalous sexual exploits.³⁷ The frequency with which defendants attempted to malign their accusers’ characters in court had a direct effect on how quickly many victims reported that they had been sexually assaulted, that went directly against the court’s expectations for necessary proof.

Rape was not only a legal crime, but also one that also carried very serious consequences for a woman’s reputation. In particular, a woman’s fall from grace in the Early Republic, whether through rape or other illicit sexual activity could ruin the standing of her family and her marriage prospects if she were single. For example, in a case heard before the Supreme Court of Mississippi in 1847, the defendant, Isaac Turney appealed his 1844 conviction for the rape of his step-daughter, Mary Folkes. In her testimony, Mary claimed that after Turney raped her, he attempted to dissuade her from revealing his crime because of the cost to her reputation. Turney assured Mary that not only would her rape “ruin her,” but “her friends would desert her [and]...it would hurt her mother’s feelings.” Although the outcome of Turney’s appeal (he was granted a new trial because of a technicality) did not have anything to do with this part of Mary’s testimony, it highlights how American society viewed rape as ruinous to a woman’s reputation.³⁸

³⁶ *Weekly Law Bulletin and the Ohio Law Journal* 10 (22 October 1883): 223; Block, “An Accusation Easily Made,” 81.

³⁷ Block, “An Accusation Easily Made,” 82.

³⁸ *Isaac Turney vs. The State of Mississippi*, 16 Miss. 104; 1847 Miss. LEXIS 3; 8 S. & M. 104 (Supreme Court of Mississippi January 1847).

As Barbara Welter describes, a young woman in eighteenth and nineteenth century America was expected to remain sexually pure in order to fulfill her duties of marriage and motherhood, and failing to do so, whether by rape or not, was socially disastrous for her future.³⁹ The fact of the matter was that, like Celestia Bull, a large number of rape or attempted rape victims in the Early Republic did not immediately report they had been injured to a legal authority. Also like Celestia, many victims reported the incident to family members or female friends first, seeking advice on whether they should take the incident to court. Early Republic rape victims faced the very real possibility that reporting the crime to the judiciary would backfire and instead of succeeding in prosecuting their attacker, they would irrevocably damage their reputation. Unfortunately, a ruined reputation could result from a rape accusation even if the victim was successful in proving that her attacker had carnally known her by force and against her will.

Victims, however, were not only worried about keeping their attack secret from authorities in the aftermath of an attack. While victims risked being socially ruined or charged with crimes such as fornication, many unmarried women feared to speak of what had occurred for fear of retribution from their parents. In fact, in her *Rape and Sexual Power in Early America*, Sharon Block discusses four cases between 1775 and 1812 where victims stated they waited or worried extensively prior to informing a parent of a sexual attack on their person. In several of these cases, the victims feared that their parents would physically beat them after they were informed of the incident, or as one victim reported, beat her before she was able to fully relate the story.⁴⁰ The consequences, whether legal or social, of reporting a successful or

³⁹ Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18 (1966): 154-156.

⁴⁰ Block, *Rape and Sexual Power*, 92-93.

attempted rape was a frightening prospect for many Early Republic women – one that many, if there were not visible consequences such as pregnancy, felt was not worth reporting in order to preserve their reputations. Compounding this fear of retribution, whether from family, society, or the law, was the real shame that many rape victims also felt in the aftermath of an attack. It is understandable that many victims asked themselves what they had done to precipitate such an act of violation, and until they could overcome their shame and/or feelings of responsibility, they were unlikely to report their attacks within a short amount of time.

While married rape victims faced the same kinds of legal and social processes as unmarried women, they also met with unique situations due to their married state. Just as unmarried women feared retribution from parents or other authority figures, married women had to face any possible repercussions from their husbands who were their legal guardians and representatives. Illicit sexual relations outside of marriage were bad enough for unmarried women, however, women's extramarital sexual liaisons constituted adultery against the husband, and both the male and female parties could be charged with the crime. Rape within marriage, however, was not a crime in the Early Republic. By the right of marriage, a man had near unlimited sexual access to his wife who was under his legal jurisdiction in all matters, including in sexual relations. According to George Bishop, "a husband cannot be found guilty of a rape upon his wife." However, a husband could be found guilty on charges that he "aided another to commit a rape upon [his wife]." In this type of case, if a husband was only an accessory to the rape of his wife, by law, he could be charged as a principal offender and be "equally liable" to the crime as the man he arranged to physically commit the rape.⁴¹

⁴¹ Bishop, *Every Woman Own Lawyer*, 183.

In addition to the generally un-prosecutable rapes committed by a husband on a wife, there were also other variations within rape law that affected how victims were either able or unable to seek justice for their attack. Beyond the definition that rape in the Early Republic was the carnal knowledge of a woman by force and without her consent, the ages of the victim and her attacker were also extremely important. Hale's original seventeenth century definition mistakenly states that the "carnal knowledge ... of a woman-child under the age of ten with or against her will" constituted rape.⁴² In these types of cases, Hale was inaccurate when he stated that sexual relations initiated after the child gave her consent could substantiate rape. Furthermore, he also mistakenly overlooked that, the Elizabethan rape statute that established sexual assault of a child under the age of ten as a crime separate and distinct from rape. According to George Bishop, this concept was often complicated by the fact that contemporaries tended to refer to the "the carnal knowledge and abuse of an infant," as the crime was technically known, as rape.⁴³ Overall, the "carnal knowledge and abuse of an infant" was seen as a dastardly crime that, according to Bishop, was an "offence against nature" that subjects the perpetrator to the "execrations of all his race."⁴⁴ In spite of this outlook, however, the "carnal knowledge and abuse of an infant" was not always considered as serious as modern thinkers might expect. According to the original sixteenth century English statute, sexual assault against a child was a capital offense punishable by death just like rape, but as time passed and the United States legal system made adaptations, this changed. Statutory evidence from various states in the Early Republic period demonstrates that the exact crime that took place when a child under ten was

⁴² Hale, *Commentaries*, 2: 627.

⁴³ Bishop, *Commentaries*, 2: 436.

⁴⁴ Bishop, *Every Woman Her Own Lawyer*, 182.

sexually assaulted varied from place to place and case to case. New Jersey law stipulated that sexual intercourse perpetrated on a female child under ten was the crime of carnal knowledge and abuse, but would be “punished as one who had committed a rape.”⁴⁵ Kentucky, on the other hand, did not originally have such a crime on the books, but added it in 1801. It followed the sixteenth century English statute to determine what constituted carnal knowledge and abuse of an infant, but changed it from a capital offense to one punished by imprisonment.⁴⁶

The confusion inherent in what crime a sexual assault against a child constituted regularly came up in appellate court hearings in the Early Republic, where appeals generally hinged on either the defendant’s or the prosecution’s ability to demonstrate that there had been a technical error during the original trial. An example of this can be found in an 1842 case brought before the Supreme Court of Tennessee in which the state of Tennessee appealed the dismissal of intended rape charges against a slave accused of attempting to ravish a child under the age of ten years. In the original trial, the judge sustained the defendant’s objections to his charges, that stated that the defendant had raped a “free white woman of the age of about six years.” The court found that there was a “manifest distinction between a woman and a female child” and that because of this the charges faced by the defendant were wrong. The state appealed this dismissal of charges, at which time the Supreme Court of Tennessee considered the case. The Supreme Court of Tennessee agreed with the lower court’s decision, stating that Tennessee statutes confirmed English common law precedent that held that the successful or attempted carnal knowledge of an infant under ten years old was not rape, and since the indictment referred to the

⁴⁵ Leigh Bienen, “Rape I,” *Women’s Rights Law Reporter* 3 (December 1976): 45; Block, “Accusation Easily Made,” 28.

⁴⁶ William Littell, *The Statute Law of Kentucky* (4 vols., Frankfort, Ky.: William Hunter, 1810), 2: 469.

victim as a woman, the charges were bad and the case could not proceed.⁴⁷ As evident by law and case examples, the question over how a sexual assault on a female child should be considered was a great point of contention in the Early Republic. Joel Prentiss Bishop himself discussed the difficulties inherent in these types of cases and when describing the ambiguity and arbitrariness of child rape laws, owned that the “whole subject [came down to] a matter of legislation in many, perhaps all, the States.”⁴⁸

Females, however, were not the only ones that faced age-related restrictions in Early Republic rape law. As perpetrators, males also were subjected to legal definitions that considered age as a determining factor. According to Blackstone, males under the age of fourteen were generally judged as being incapable of committing a rape because the “law supposes an imbecility of the body as well as mind” regarding the physical and mental abilities required to carry out a rape.⁴⁹ Derived from matrimonial law that said that a boy under the age of fourteen could not contract a valid marriage, it was the widespread assumption that boys under the age of fourteen had not yet reached the age of puberty and that in addition to being unable to consummate a marriage, they were also unable to commit a rape. This same legal understanding also operated on the assumption that a boy under fourteen was also unable to commit the crime of carnally knowing and abusing a girl under the age of ten years, “whatever be in fact his physical capacity” in comparison to that of the female child. However, just as in the disagreements that arose in the law regarding whether an assault against a female child under ten

⁴⁷ *Sydney v. The State*, 22 Tenn. 478; 1842 Tenn. LEXIS 133; 3 Hum. 478 (Supreme Court of Tennessee December 1842).

⁴⁸ Bishop, *Commentaries*, 2: 448.

⁴⁹ Blackstone, *Commentaries*, 4: 212-213.

years of age could amount to rape, so too did disagreements regarding whether the actions of boys under that age of fourteen could negate the dictates handed down in the common law. An 1824 case brought before the Supreme Court of Massachusetts appealed the conviction of a boy under the age of fourteen who had been found guilty of an assault with the intent to commit rape. His counsel argued that according to common law, a boy under fourteen could not commit a rape and consequently that he should also not be able to commit an assault with the intent to commit rape. The Supreme Court of Massachusetts rejected the defending counsel's argument and affirmed the original verdict, stating that even if a boy under fourteen could not be found guilty for rape under the law, because the "intention to do an act does not necessarily imply and ability to do it." Interestingly, the court went on to compare this type of defendant with a "man who is emasculated," who could assault with the intent to rape, but not actually be able to rape and therefore could not be charged with the crime of rape.⁵⁰

As this case demonstrates and as Joel Prentiss Bishop himself mentions in his legal treatise, as the nineteenth century progressed, states such as Ohio and New York began adopting new rules that allowed boys under the age of fourteen to be charged with rape, intent to commit rape, or carnal abuse of an infant if there was sufficient evidence that they had reached puberty.⁵¹ An example of this can be found in an 1846 case brought before the Supreme Court of Ohio where a defendant appealed his conviction of an assault with the intent to commit rape. The defendant, who was under the age of fourteen at the time the crime was supposedly committed, claimed that according to the common law's restrictions on age he could not be found guilty of

⁵⁰ *Commonwealth v. Eli Green*, 19 Mass. 380; 1824 Mass. LEXIS 47; 2 Pick. 380 (Supreme Court of Massachusetts September 1824).

⁵¹ Bishop, *Commentaries*, 2: 326.

the crime. The Supreme Court of Ohio, however, determined that in a case where enough evidence was provided to demonstrate that a male under the age of fourteen had reached puberty, the male child could be charged and found guilty of the crime. Consequently, the lower court's conviction was upheld because proof of puberty rebutted the presumption that a male under fourteen could not enter into sexual relations.⁵²

The age of the accused rapist or his victim was not the only factor on which the Early Republic legal system determined whether the commission of rape was possible. The relationship of the accused rapist to his victim was also particularly important in the prosecution of rape cases during this period. As defined by Hale and Blackwell and solidified by Early Republic legal decisions, the rape of a female by her father was incest and not rape, even though the term rape was commonly used to describe the incident. Charges of incest predominantly occurred with the sexual assaults of children under the age of ten, thereby combining the two concepts of age and relationship in determining rape -- something that further complicated the crime's definition. Unfortunately, the distinction in Early Republic law that incest was not rape was frequently even more complicated in actual court cases. In a way, the act of incest committed by a father against his female child straddled the boundary between the recognized heinousness of rape and the grey area of marital rape that was not a crime.

The Early Republic legal system was so concerned with accurately upholding the laws of rape and the principles of patriarchal power that it ended up completely overlooking the connections between incest and rape and their combined heinousness. An example of this can be found in case presented before the Supreme Court of Indiana in 1850 in which the defendant,

⁵² *Joseph Williams v. State of Ohio*, 14 OHIO 222; 1846 Ohio LEXIS 259 (Supreme Court of Ohio January 1846).

Elijah Williams, was appealing his conviction of committing incest on his daughter Elizabeth. In the case, Williams contended that his original indictment was flawed because it did not specifically state that a father was required to know it was his daughter with whom he was having sexual intercourse. The Supreme Court of Indiana agreed with Williams, finding that describing a father engaging in intercourse with his daughter as unlawful was not sufficient in stating the crime, overturned Williams conviction.⁵³ The defendant and the Early Republic court system was well aware that Elizabeth was Williams daughter, but his conviction was reversed anyway because there was a theoretical possibility he did not know she was his daughter. As evidenced in this case, when it came to giving the accused a fair trial, the Early Republic legal system could completely overlooked the role of the victim and acquit someone of a crime that was known to be illegal.

While concerned with the crime of incest, the case of Elijah Williams highlights another predominant problem within the prosecution of rape in the Early American Republic: the comparison of rape and incest with other illicit sexual behaviors. In his opinion, the judge in the Williams' case stated that the main reason the conviction must be reversed was because without specifying that Williams' had to know that Elizabeth was his daughter, the sexual intercourse could have been any illegal sexual act including rape, adultery, or fornication. The judge's comparison of these two very different types of crimes demonstrates how the prosecution of rape and incest within the Early Republic legal system easily converged with other sexual actions that did not involve the traits that defined rape. In the abstract, rape in the Early Republic was widely recognized as a heinous crime that required serious prosecution and punishment. However, cognizance of this heinousness often did not translate into actual rape prosecutions. When Early

⁵³ *Williams v. The State*, 2 Ind. 439; 1850 Ind. LEXIS 187 (Supreme Court of Indiana November 1850).

Republic courts considered accusations of rape, sometimes the fact that carnal knowledge had been committed by force and without the victim's consent was not enough.

The Early Republic legal system prosecuted rape arbitrarily, and though it was defined based on consent and force, its prosecution depended just as heavily on the factors of the character, appearance, capability, and physical age. In opposition to the studies of rape produced in the aftermath of second wave feminism, an analysis of rape in the Early American Republic demonstrates that rape is not a singular entity that remains unchanged through history nor is it plausible to attempt to identify a single theory that explains why rape occurs. Instead, as more recent historians such as Sharon Block, Barbara Lindemann, and Mary Block discuss, rape is best understood within its particular historical context. Rape functions differently within different historical legal environments and, subsequently, the prosecution of rape in this period was far more nuanced than the law defined. Often prosecuted at the expense of the victim, the Early Republic could separate the legalities of rape from other sexual activities – something that was a direct consequence of the influence society and culture's conceptions on sexuality and rape had on the crime's prosecution.

Chapter 2: Mixed Messages: Sexuality and Rape in Early American Republic Culture

On November 13, 1817, Reverend William Andrews delivered a sermon in Danbury, Connecticut at the execution of a convicted rapist named Amos Adams. In his sermon, Andrews cautioned listeners against the slippery slope of sexual misbehavior that existed within Early American Republic society -- misbehavior that could quickly devolve from illicit consensual sex to a crime punishable by death. Specifically, Andrews warned of the easy “transition from fornication to adultery, and from adultery to the crime for which life must be taken.”¹ Sermons like Andrews’s were common in the Early Republic and were given at the executions of prisoners convicted of a variety of capital crimes, such as murder and rape, as a means of conveying “cautionary tales about the consequences of sinful living.” In a similar sermon from 1790, Reverend James Dana catalogued the rioting, gambling, debauching, and thieving sins of a condemned rapist, asking how many he had seduced throughout his lifetime of sin to bring him to his present state of condemnation. In much the same way that accused rapists attempted to debase the characters of their accusers during rape trials, Early Republic clergy focused on the dissolute behavior of the condemned. Rather than discussing the specific crime for which rapists were convicted, clergy instead placed the impending executions in the context of men’s sinful lives.² In doing so, sin and not rape became the more important transgression. Andrews and Dana placed rape alongside the illicit sexual acts of fornication, adultery, and seduction --

¹ William Andrews, *A Sermon Delivered at Danbury, Nov. 13, 1817, Being the Day Appointed for the Execution of Amos Adams for the Crime of Rape* (New Haven, Conn.: T.E. Woodward, 1817), 16.

² Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2004), 32.

completely ignoring the fact that rape was an attack and not simple misbehavior.³ Consequently, the legal definition of rape on which the prisoners were sentenced to death was often not translated to the sermonizer's audience or to later readers of the sermon's printed version. For clergy and their audiences, rape formed a metaphor for an unclean life to be avoided at all costs - a popular representation of the crime that subsequently worked to skew rape's legal meaning and significance.

In the legal context of the Early Republic rape rested on definitions -- whether consent was absent, force used, capability present, and character clean. It was also, as established in the law, far different from the illicit sexual behaviors of fornication, adultery, and seduction as Andrews and Dana suggested. Legally, rape hinged on the factors of consent and force, and if either or both of those characteristics were absent from an account of accused rape, then the accuser's case stood a high chance of falling apart.⁴ Unfortunately, however, rape was not only a legal crime judged within the strict edicts of the courtroom. It was also an assault that took place within a social and cultural context -- a context that was nearly impossible to keep separate from the legalities of the crime, particularly in terms of popular perception. Throughout the Early Republic, the popular perception and depiction of rape seeped into the legal consciousness of the crime and the legal and popular spheres reciprocally influenced each other. This affected the biases that judges and juries used when determining rape's perpetration and influenced what they perceived as the necessary burden of proof for victims to carry. Furthermore, it also affected how victims and/or their families viewed the occurrence of rape and influenced when and to

³ James Dana, *The Intent of Capital Punishment* (New Haven, Conn.: T.S. and Green, 1790), 23; Sharon Block, *Rape and Sexual Power*, 32.

⁴ William Blackstone, *Commentaries on the Laws of England* (1769; repr., Chicago: University of Chicago Press, 1979), 1: 628.

whom they reported that a crime had been committed. Rape may have been regularly categorized as a heinous crime in both legal and popular perception, but when it came down to making a determination of innocence or guilt, the perceived difference from other illicit sexual acts was often slight.⁵

While the legalities of rape revolved around the actions of the accused and his accuser before, during, and after an assault, the social and cultural conceptions of rape were often concerned with appearance. As Sharon Block establishes in her work *Rape and Sexual Power in Early America*, rape pervaded popular culture throughout the Early Republic period.⁶ References, both factual and fictional, appeared frequently in newspaper accounts, short stories, almanacs, sermons, and novels. However, the disconnect that existed between these representations of rape was often great when compared to the actuality of the crimes' true circumstances. Factual accounts of rape in newspapers and other publications glossed over the actions of the accused rapist or the suffering of the victim, and instead left readers with extremely vague or highly sensationalized accounts of real or imagined rape scenarios.⁷ For example, a September 1, 1819 article printed in the *New York Cabinet* reported a rape committed by two men against a 16-year-old girl. Except for the two accused perpetrators' names, the article mentions no details of the crime citing that the newspaper is "forbear[ing] particulars, as [the accused] were both apprehended the same evening...to await their trial and punishment."⁸

While this particular article was both very short and very vague, other articles offered sensational

⁵ *Phillips v. State*, 1848 Tenn. LEXIS 80; 9 Hum. 246 (Supreme Court of Tennessee, Nashville December 1848); Block, *Rape and Sexual Power*, 24-28.

⁶ Block, *Rape and Sexual Power*, 1.

⁷ Sharon Block, "Rape Without Women: Print Culture and the Politicization of Rape, 1765-1815," *The Journal of American History* 89 (December 2002): 849-853.

⁸ *New York Cabinet*, September 1, 1819.

– almost farcical – accounts of rape that focused on the outrageous circumstances of the particular crime and not on the victim’s experience. For example, an article printed in the *Courier of New Hampshire* on August 2, 1800 demonstrates how Early Republic newspaper accounts of rape could simultaneously provide details about a crime’s context and prevaricate about what actually happened to those involved. The account discusses the “rape of a child of scarcely 14 years” by a 40-year-old man “with every mark on his face of a crafty, unprincipled villain,” and provides very little information of the actual rape. Instead, the article is largely an outrageous narrative of the characters of the accuser and the accused, demonstrated by her “pallid countenance and trembling accents” and his lack of “other apology, than, that she was a whore.” In contrast to the short and vague article in the *New York Cabinet*, this article represented how newspapers were so engrossed in weaving tales of entertainment for their readers about “demon[s] so artful and brutal” that they completely lost sight of the victim.⁹

The sensationalism inherent in many of these factual accounts, which was typical in all types of newspaper reports, was also rooted in a narrative style that highly resembled the popular romance and seduction novels of the period, that further blurred the boundaries between consensual and forced sex.¹⁰ The perception of rape in the Early American Republic existed within a cycle of reciprocity where the boundary between factual and fictional accounts of rape and how they were adjudged was slim. As described by Lara Langer Cohen, this easily permeated boundary between the factual and fictional “stems from a familiar problem of representation” because literature cannot “represent or misrepresent ‘matters of fact.’” American literary production increased in the first half of the nineteenth century, that led Americans to look

⁹ *Courier of New Hampshire*, August 2, 1800.

¹⁰ Isabelle Lehuu, *Carnival on the Page: Popular Print Media in Antebellum America* (Chapel Hill: University of North Carolina Press, 2000), 45.

increasingly to literature as cultural formations of fact. However, as Cohen contends, some Early Republic authors engaged in a “fraudulence” that resulted in readers and critics “hopelessness of distinguishing”: fact from fiction.¹¹ Heavily influenced by society’s underlying interpretation of what constituted proper sexual behavior, fictional accounts of rape, seduction, and other illicit sexual behaviors created a romanticized, inaccurate, and ambiguous perception of rape. In turn, these traits seeped into newspaper accounts of actual cases where legal statutes and precedent were supposed to be the sole determining rubric of guilt or innocence. Consequently, this mixing of fact and fiction led to an increasingly multi-layered perception and definition of rape during the Early Republic, not only in culture and society but also in the legal sphere.

All forms of sexual relations, whether normative, illicit, or violent, during the Early American Republic period took place within a larger conception of what constituted proper sexual behavior. The continuum of sexual practices was indeed a multi-layered and at times contradictory patchwork of traditional European and Puritan values warring with ever-evolving democratic-republican and capitalist ideas. As the early nineteenth century progressed, moral values increasingly pushed against each other creating an America where conceptions of sanctioned sexual behavior fluctuated depending on situation, gender, and location.¹² By the beginning of the nineteenth century, the United States’ larger and increasingly mobile society, influenced by democratic values and the coming of the market revolution, increasingly began to test the limits of proper sexual behaviors. While sexual relations were considered appropriate only within marriage, the control that religion and the patriarchy had over illicit sexual practices

¹¹ Lara Langer Cohen, *The Fabrication of American Literature: Fraudulence and Antebellum Print Culture* (Philadelphia: University of Pennsylvania Press, 2012), 2.

¹² John D’Emilio and Estelle B. Friedman, *Intimate Matters: A History of Sexuality in America* (Chicago: University of Chicago Press, 1997), 60-62; Block, *Sexual Power in Early America*, 35-42.

and pre-marital or extra-marital sexual behaviors during the colonial period began to erode. As the eighteenth century progressed and the United States was founded, church discipline lost traction as the new American government established laws that “took a laissez-faire attitude toward the regulation of the family in general and of sexuality in particular.”¹³ Although clergy, like Reverends Andrews and Dana, continued to espouse the importance of living without sin throughout the nineteenth century, sermons no longer carried the same weight with Americans in an increasingly freer society. With old tactics of “sham[ing] individuals into conformity” in decline, America’s growing publishing industry filled the void with the publication of numerous works on proper moral behavior, including specific instructions on proper sexual behaviors.¹⁴

America “claimed a reputation as a nation of readers” long before the Revolution and by the turn of the nineteenth century “print was a ubiquitous presence” in daily life.¹⁵ Until 1800, Americans were intensive readers, “ponder[ing] the same texts over and over” due to the scarcity and expense of books. However, following the publishing revolution in the early nineteenth century Americans changed their reading habits and began to read extensively, devouring all sorts of printed materials as novels and newspapers replaced Bibles and almanacs as common reading.¹⁶ As much as Americans’ new tendency for extensive reading was about reading widely, it was also completely concerned with reading quickly. Early Republic readers rushed through books and, in their impatience to learn the story’s outcome, ended up missing authors’ ponderous tones and educational intentions that, unlike the number of books being printed, had

¹³ D’Emilio and Freedman, *Intimate Matters*, 67

¹⁴ Block, *Rape and Sexual Power*, 66-67.

¹⁵ Robert Gross, “Reading for an Extensive Republic,” in *An Extensive Republic: Print, Culture, and Society in the New Nation, 1790-1840*, ed. Robert Gross and Mary Kelley, vol. 2 of *A History of the Book in America* (Chapel Hill: North Carolina University Press, 2010), 516, 524.

¹⁶ *Ibid.*, 532.

not changed. Consequently, not only did the burgeoning publishing industry work to curb immoral sexual behaviors in readers, but also attempted to reinstate the qualities of intensive reading in America's increasing population of extensive readers.

Advocates of intensive reading found ways to work around this issue by continuing to infuse their works with meaning rather than simply entertainment and by churning out as many publications as they could. One such advocate was American physician and educator William Alcott who, in 1833, wrote and published a book titled *The Young Man's Guide*. The work, a prime example of intensive reading, provided advice to young men on a variety of fronts, from how to conduct business and avoid intemperate habits to how to dress properly and politely greet others.¹⁷ While Alcott's work was primarily practical, it was tinged with morality and offered extensive instruction on the licentious behaviors young American men should avoid. Alcott left his readers with a warning on the work's final page that "He who sinneth against God, destroyeth his own soul."¹⁸ One of many works published throughout the nineteenth century offering sexual advice as part of a growing health reform movement, Alcott's book underscored the Early Republic's struggle to cement sexuality as a practice best maintained within the bounds of marriage.¹⁹ As historian Carroll Smith-Rosenberg discusses, nineteenth century society was obsessed with "categorizing the physical...[and] the sexual" in an effort to "impose order upon the chaos of the nonsexual world." In consequence, society created "systems of sexual control"

¹⁷ Robert Gross, "Reading for an Extensive Republic," in Gross and Kelley, *A History of the Book in America*, 536-540.

¹⁸ William Alcott, *The Young Man's Guide* (Boston: Lilly, Wait, Coleman, and Holden, 1834), 316.

¹⁹ D'Emilio and Freedman, *Intimate Matters*, 67.

that were not real and generated an environment in which sexual double standards flourished.²⁰ This proliferation of advice literature aimed to package sexual relations as something detrimental and to be controlled outside of marriage and something powerful within marriage. In books like Alcott's, illicit sexual relations were described as dangerous vices that could, if carried out, leave the participant suffering from various "diseases of licentiousness" such as epilepsy, blindness, idiocy, apoplexy, or hypochondria.²¹ Associating illicit sex with these ills, doctors felt, would deter American men from engaging in immoral sexual behaviors and instead "channel desires toward procreative, marital relations."²² Emphasis was placed on the idea that human happiness and progress could only come from successful, healthy marital relations and that any sexual activity in opposition to procreation was dangerous to men's health, souls, and civilization.²³ Indeed, nineteenth century society believed that men's inappropriate sexual urges combined with other unhealthy indulgences would "destroy the body's hierarchical order," resulting in death.²⁴

Women in the Early Republic were not immune to sexual advice, and illicit sexual behavior, whether consensual or forced, was far more socially dangerous for them than it was for their male counterparts. Just as works such as William Alcott's steered men toward marriage as the only place for true sexual congress, other nineteenth century health writers, such as William Acton, reminded women to maintain control over their sexual desires and save them solely for

²⁰ Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Oxford University Press, 1985), 91.

²¹ Alcott, *Young Man's Guide*, 305-308.

²² G.J. Barker-Benfield, *The Horrors of the Half-Known Life: Male Attitudes Toward Women and Sexuality in Nineteenth-Century America* (New York: Routledge, 2000), 156-158; D'Emilio and Freedman, *Intimate Matters*, 69.

²³ D'Emilio and Freedman, *Intimate Relations*, 69-70.

²⁴ Carroll Smith-Rosenberg, *Disorderly Conduct*, 92.

the marriage bed.²⁵ Early Republic society's conception of women's proper sexuality and behavior, however, was more complicated than that of men's. Throughout the eighteenth century and per Western European tradition, women's sexuality was largely viewed within the scope of the Biblical Eve, with women being cast as a sexual temptress of whom men needed to beware.²⁶

However, this conception of women's sexuality began to evolve in the United States during the early nineteenth century.²⁷ As historian Barbara Welter defined in her landmark work and multiple other Early Republic scholars have subsequently discussed, women's roles in the post-Revolution period existed within a wider "cult of True Womanhood" that proscribed women as possessing certain qualities. These qualities, as Welter describes, consisted of "four cardinal virtues – piety, purity, submissiveness, and domesticity" to which nineteenth century society expected women to adhere.²⁸ As sociologist Natasha Kirsten Kraus discusses, the concept of True Womanhood created a morality that pervaded Early Republic society, that perpetuated further as the image was continually repeated in the period's print culture. In keeping with this theme, much of the medical and/or sexual literature treated women as the passive receivers of sexual overtures and the maintainers of the home and family structures, as opposed to men who were viewed as the aggressors and initiators of sexual relations.²⁹ Within this scope, Early Republic women were innocents whose dormant sexual desires were waiting

²⁵ Ibid., 70.

²⁶ Merril D. Smith, *Women's Roles in Eighteenth-Century America* (Santa Barbara, Calif.: Greenwood Press, 2010), 47.

²⁷ Catherine Clinton, *The Other Civil War: American Women in the Nineteenth Century* (New York: Hill and Wang, 1984), 147.

²⁸ Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18 (1966): 152.

²⁹ Block, *Rape and Sexual Power*, 20; Natasha Kirsten Kraus, *A New Type of Womanhood: Discursive Politics and Social Change in Antebellum America* (Durham, N. C.: Duke University Press, 2008), 26.

for marriage to be awakened. Women were cast as sexually pure ideals – a characterization that stood in sharp contrast to the temptress stereotype to which they were traditionally relegated.³⁰

While ideas about male and female sexuality began to change as the early nineteenth century progressed, the concepts presented regarding sexual practices in new nineteenth century publications had negative consequences, particularly for women. As women were increasingly viewed as sexual innocents, those who did engage in illicit sexual behaviors came to represent the antithesis of pure womanhood or women who had “fallen” from purity and respectability.³¹ As bastions of purity, women became representative of civilized culture, in particular as the “everlasting barrier” that repelled men’s sexual urges with the purpose of maintaining moral order.³² Sexual practices did not occur in a vacuum and just as some women embodied the “fallen woman” stereotype, so too did men fail to curb their sexual desires and women fail to fight against them in an attempt to preserve purity. The fact is that the new ideas and publications regarding sexual practices in the Early Republic were just that – new. These ideas did not control the actions of early Americans, but only offer insight into the standards of behavior to which society expected them to adhere. Tradition and long-held beliefs from the eighteenth century and earlier were hard to dispel and often sexual relations, whether consensual or forced, were popularly perceived through an amalgamation of these old and new standards.

The sexual realities of the Early Republic placed men and women in almost impossible positions. There were double standards for both parties’ behaviors, and those double standards

³⁰ Clinton, *The Other Civil War*, 147; Lasser and Robertson, *Antebellum Women: Private, Partisan, Public*, 9-10.

³¹ D’Emilio and Freedman, *Intimate Matters*, 71.

³² Eliza Duffey, *What Women Should Know*, (Philadelphia: J.M. Stoddart, 1873), 313; Welter, “The Cult of True Womanhood: 1820-1860,” 154.

likely caused confusion for both the participants in the sexual activity and for society at large.³³

In their sexual liaisons, men were expected to be dominant over their female partners and possess the knowledge necessary to lead them through the sexual encounter. At the same time, men were expected to avoid committing the illegal crime of rape and know that sexual intercourse should never be forced and only be initiated with the consent of their female partner. Like men, women were expected to adhere to their proscribed role, maintaining sexual stability by embodying the ideal of female purity with which Early Republic society increasingly associated them. While exuding this sexual pureness, women were also expected to avoid becoming temptresses and remain the passive receivers of sexual relations who prevented men's passions from escalating into illicit sexual actions.³⁴ A comparison of men's and women's sexual rules and roles in the Early Republic demonstrates that expectations were contradictory and intentions ambiguous within sexual encounters, leaving tremendous room for errors in judgment and understanding.

Rape was undeniably a horrendous act in which a man explicitly forced a woman to engage in sexual intercourse against her will. As discussed in chapter one, the legal prosecution of rape in the Early Republic was often arbitrary. Largely dependent on the American legal system's roots in English common law, judges and juries infrequently rendered analogous verdicts in cases of similar crimes. Rape was truly seen as a "peculiar offence" that, in theory, was extremely serious, but in reality was easily doubted. In the abstract, men who perpetrated and were convicted of rape were easily considered monsters, but at the same time women who accused men of rape were required to carry the burden of proof throughout the prosecution. Rape

³³ Clinton, *The Other Civil War*, 55.

³⁴ Smith-Rosenberg, *Disorderly Conduct*, 109-111; Smith, *Women's Roles in Eighteenth-Century America*, 47.

existed on multiple levels of perception in the Early American Republic and as those levels of perception constantly interacted and influenced one another, society's perception of rape was often different from what rape was in reality. To Early Republic society, rape was often seen as a despicable act of depravity and violence that happened suddenly and with great ferocity.³⁵ Rape was perpetrated by an evil person, often a stranger, and was not something considered as commonly occurring between acquaintances or evolving out of normal social interactions. The legal records show, however, that rape in the Early Republic could be all of these things. Rape was not always a stereotypical attack by an evil man on a defenseless female on the side of the road. Often, rape victims knew their attacker or had more than a passing association with them and rapes devolved out of misunderstandings – both of each other and of what were considered appropriate sexual actions.

Men expected women to resist their sexual advances as a matter of course, but in being the dominant actor, men also expected that they could push through women's protests and end up engaging in consensual intercourse. Consequently, it was not always simple for Early Republic men to distinguish when protests were merely for show or when they were in earnest. For example, a May 11, 1835 account in the *Philadelphia Inquirer* described the attempted seduction and rape of a young woman whose name the newspaper withheld. According to the account, the accused perpetrator "had for several months visited [the victim] as a suitor" and been repeatedly rebuffed, despite his "fervent and honourable attachment." Although the account does classify the perpetrator's actions as "crimes of the direst and blackest description," the account highlights

³⁵ *Commonwealth v. William Cress*, February 1808, Pennsylvania Court Papers, Historical Society of Pennsylvania, Philadelphia as cited in Block, *Rape and Sexual Power*, 24.

the thin line that existed between consensual relations and rape.³⁶ A woman's protests against romantic or sexual overtures could be interpreted as an attempt to increase a suitor's desire by refusal.³⁷ Consequently, a woman's resistance could be construed as permission to act with more force and propel the overall process. During the New York rape trial of Henry Bedlow in 1793, the defendant reported that he "asked consent, three or four times" of his accuser Lanah Sawyer to engage in sexual relations. Prior to this incident, Sawyer and Bedlow had seen each other socially several times, walking together in public and eating ice cream. When Sawyer refused his attempts to engage in sexual relations, Bedlow forced himself on her, interpreting her resistance as part of a woman's game. Bedlow's defense attempted to categorize his actions against Sawyer as a facet of normal sexual interaction, stating that Sawyer's continued acquaintance with Bedlow made her guilty of "desire of gratifying her passions." Indeed, according to Bedlow's defense attorney, "any woman not an abandoned prostitute, will appear to be averse to what she inwardly desires" and instead will pretend resistance to prove virtue.³⁸

The social rules of sex in the Early American Republic were so extensively confusing and skewed that when rape did occur and was brought to trial, victims faced an even harder battle than the legal system handed them in the first place. Not only were they expected to carry the burden of proof for a crime committed against them, but they were also expected to navigate the murky waters of society's perception of sex that flooded both their private lives and the courtroom. These women risked becoming the fallen, the "vilest of [their] sex," who had failed to maintain their feminine purity, keep men's passions in check, and remain the passive receivers

³⁶ *Philadelphia Inquirer*, May 11, 1835.

³⁷ Smith, *Women's Roles in Eighteenth-Century America*, 47-48.

³⁸ William Wyche, *Report of the Trial of Henry Bedlow for Committing a Rape on Lanah Sawyer* (New York: Printed According to an Act of Congress, 1793), 3, 5-14, 45; Block, *Rape and Sexual Power*, 40.

of sexual attention. Early Republic society gradually moved further away from viewing women as temptresses, however the change did not occur overnight and, in many circumstances, the temptress vs. innocent double standard endured in cases of rape. Even when viewed as innocents, women who failed to curb men's sexual desires nonetheless became the temptress.

For all the advice literature in the early nineteenth century that cautioned men against giving into to their baser behaviors and characterized them as the instigators and facilitators of sexual activity, in other forms of literature, primarily novels, it was not uncommon for women to ultimately be held responsible for their sexual indiscretions. The culpability of is interesting in and of itself since, as Marion Rust points out, women were not only the primary readers of novels, but also their primary producers.³⁹ Women readers and authors in the Early Republic lived in an environment of competing norms, where women were increasingly granted agency as writers and readers, but simultaneously “suffer[ed] the effects of ideological strictures” regarding their behavior that translated into the novels they wrote and the female characters therein.⁴⁰ Print culture was an extremely powerful tool in the Early Republic period, both for the educational messages authors attempted to inscribe within them and for the unintended messages they conveyed to and about larger society.⁴¹ As discussed by Elizabeth Barnes, the primary type of novel published in the United States was the romance or seduction novel – a genre whose popularity dominated in American culture through the middle of the nineteenth century.

Interestingly enough, many romance-seduction novels were meant to warn young women against

³⁹ Marion Rust, *Prodigal Daughters: Susanna Rowson's Early American Women* (Chapel Hill: University of North Carolina Press, 2008), 8.

⁴⁰ *Ibid.*, 9.

⁴¹ Lasser and Robertson, *Antebellum Women: Private, Partisan, Public*, 9-11.

the dangers of succumbing to sexual passions.⁴² For example, Early Republic novels like William Hill Brown's *The Power of Sympathy* and Hannah Webster Foster's *The Coquette*, were described by their authors to be based on true stories, imbuing the works with moral legitimacy.⁴³

Readers of these novels of "sexual and social danger" were supposed to recognize that virtuous behavior and avoidance of seduction was the only path to felicity and social acceptability.⁴⁴ However, at the same time, these novels depicted a social environment in which such behaviors of illicit sexual relations and seduction could be viewed with great sympathy.⁴⁵ The romance-seduction genre boasted novels filled with sentimentality. Even though the female characters met bad consequences for their behaviors, such as pregnancy out of wedlock and premature death, many of the seductive behaviors exhibited by male characters were looked upon with feelings of sympathy and forgiveness. The sentimentality of these novels was rooted in the eighteenth century's backlash against seventeenth century stoicism that largely viewed the actions of individuals as self-centered and motivated by self-interest. Consequently, the novels, even while condemning the female characters for their behavior, placed an emphasis on the goodness of human beings and turned away from the idea that humanity was depraved.

These novels, first published in the United States as British imports in the mid-eighteenth century and later written in their own right by American authors following the Revolution, are remarkably informative about the Early Republic's conceptions of sex, seduction, and rape. In

⁴² Elizabeth Barnes, "Word and Image, Part Two: Novels" in Gross and Kelley, *A History of the Book in America*, 444.

⁴³ *Ibid.*, 445.

⁴⁴ Hannah Webster Foster, *The Coquette* (1797; repr., New York: Oxford University Press, 1986), 421; Block, *Rape and Sexual Power*, 45 -46.

⁴⁵ Mary Kelley, "Genres of Print: Introduction," in Gross and Kelley, *An Extensive Republic*, 386.

analyzing examples of romance-seduction novels popular in the Early Republic, it quickly becomes apparent that the popular romance-seduction novels were socially and culturally influential. Works such as Hannah Webster Foster's *The Coquette* and Susanna Rowson's *Charlotte Temple*, conveyed a myriad of messages that gave insight into the United States' social and cultural understandings and their legal interpretations of sexual behavior and rape. Overall, these examples firmly entrenched the responsibility of women's sexual behavior and any consequences as their own fault, even when the novels simultaneously acknowledged that their male counterparts had also done wrong. In both *The Coquette* and *Charlotte Temple*, the main characters follow similar patterns, eschewing society's expectations of proper female behavior and embarking on a path of illicit sexual behavior that leaves them abandoned and pregnant. While the authors criticize the behavior of both the male and female main characters, only the female characters meet with any truly serious consequences, including death following the birth of their illegitimate children. While the female character became the "fallen woman," suffered pregnancy out of wedlock and, in both novels, eventually dies, the male character directly involved in their sexual downfall does not always encounter such a fate. While romance-seduction novels commonly recognized that men were directly involved in the sexual conduct and even instigated it, the women received the larger and more severe consequences.⁴⁶

The death of the main female character is a common theme in both *The Coquette* and *Charlotte Temple*. It is also a common theme in Early Republic society's conception of the damage rape and/or illicit sexual behavior had on women's reputations and virtue. As Sharon Block discusses, a woman's willingness to embrace death in the aftermath of seduction or rape was one of the only ways, without witnesses, that she could prove her innocence. Death could act

⁴⁶ Trish Loughran, *The Republic in Print: Print Culture in the Age of U.S. Nation Building, 1770-1870* (New York: Columbia University Press, 2007), 186.

both as the ultimate example of resistance and as the ultimate redeemer of a woman's honor, however, death in either case still hinted at the woman's culpability.⁴⁷ She pays the ultimate price for her sin, and in keeping with the sentimentality and sympathy inherent in the genre, works to absolve her indiscretions.⁴⁸ In Hannah Webster Foster's *The Coquette*, main character, Eliza Wharton, is depicted as a shameless flirt whose indecision between two suitors leads her down a path of illicit sexual misbehavior. When Sanford, the suitor she prefers, marries another, he continues to pursue Eliza and she accepts his advances, becoming pregnant with his child. Eliza dies in shame amongst strangers from complications of childbirth, and it is months before her family learns her fate.⁴⁹ When the "drama [of Eliza's ordeal] is over" with the event of her death, her friends condole with each other and describe how the "melancholy intelligence" was reported in the public papers.⁵⁰ Eliza's story is not her own, it also directly affects her family and friends and becomes fodder for the masses. The story of Eliza in *The Coquette* is meant to be a message to young women in the Early Republic – avoid entanglements, maintain purity, and resist seduction. Eliza's actions caused her to lose her virtue and utterly disgrace herself, something for which only her death could redeem her.

The Coquette firmly places the fault at Eliza's feet, even as her lover continually discusses his own involvement and guilt in the occurrence. While he did not rape Eliza and he was not the only active and willing participant in their sexual relationship, Sanford is left alive at the end of the novel, suffering from devastation at Eliza's death. Even as Sanford admits his

⁴⁷ Block, *Rape and Sexual Power*, 44-45.

⁴⁸ Rust, *Prodigal Daughters*, 37, 201-203.

⁴⁹ Foster, *The Coquette*, 393, 419-21.

⁵⁰ *Ibid.*, 402-404.

“guilt in seducing” Eliza and reveals the “upbraidings of [his] mind which accuses [him] as the murderer of Eliza,” his character is not quite willing to own to all of the blame. In the midst of his mournful tirade, Sanford tells his friend that to Eliza “he lays not the principal blame, as in like cases, [he does] to the sex in general” because of his persistence in seducing her.⁵¹ In her characterization of Eliza and Sanford, Hannah Webster Foster highlights the widely held beliefs of the Early Republic period. She illustrates that both men and women were responsible for controlling their sexual passions but that, ultimately, women were expected to help temper men’s sexual advances and, should they fail to do so, accept the ruinous and sometimes deadly consequences.⁵²

While the consequences of illicit sexual actions within Early Republic novels were often at the forefront of the plot, the specific actions that resulted in women garnering the label of “fallen” or “ruined,” or in finding themselves pregnant, remained ambiguous. It has been noted in previous scholarship that analyses of this kind often overlook the centrality of the sex act and its overall importance in understanding not only what occurred in that particular circumstance, but also its effect on the outward perception of sexual relations.⁵³ In terms of rape, particularly when it comes to legal analysis, the sex act is everything. Legally, rape is only rape when sexual intercourse has been forced on a victim against her will, so if the sexual act remains ambiguous, then a conviction can never be achieved. Seduction novels were meant to be informative, but not

⁵¹ Ibid., 396.

⁵² Joanne Dobson and Sandra Zagarell, “Women Writing in the Early Republic,” in Gross and Kelley, *An Extensive Republic*, 371-372.

⁵³ Marion Rust, “What’s Wrong with Charlotte Temple?” *William and Mary Quarterly* 60 (January 2003): 99.

on the mechanics of sexual intercourse.⁵⁴ Consequently, a lack of forthright description in women's novels is not surprising in a period where jurists and judges found it difficult to discuss the act in legal treatises and courtrooms. The pattern of ambiguity present in the description of sexual actions further illuminated the appearance that seduction novels gave to illicit sexual acts and to their consequences.

For example, in Susanna Rowson's *Charlotte Temple*, the main character is taken from England to America by a soldier who seduces, impregnates, and abandons her. Rowson describes Charlotte's reactions to her seducer Montraville's "kindness and attention" on their voyage from England to America and her appreciation for his "agreeable person," however, she leaves much of the rest of the sexual process in the dark. She avoids discussing how Charlotte goes from enjoying the seemingly honorable attentions of Montraville to bursting into tears over the "visible situation" of her pregnancy.⁵⁵ The sex in *Charlotte Temple* "exists only in its after-effects," and the steps that lead Charlotte from engaging in a flirtation with Montraville to succumbing to his sexual advances are largely missing. By and large, sex was not absent from the overall collection of Early Republic literature, and as Marion Rust discusses in her article on *Charlotte Temple*, Susanna Rowson herself was adept at discussing sex in detail within her other works.⁵⁶ However, it was ambiguous, and that ambiguity directly affected women's ability to describe their own sexual encounters, particularly if they were raped.

Overall, the depiction of culpability of both men and women in Early Republic romance-seduction novels closely matches how the parties were treated in rape cases during the period.

⁵⁴ Rust, *Prodigal Daughters*, 61.

⁵⁵ Rowson, *Charlotte Temple*, 24-25, 42, 62; Rust, *Prodigal Daughters*, 60, 65, 283.

⁵⁶ Rust, "What's Wrong with *Charlotte Temple*," 101.

Rape received an extensive amount of attention in legal circles and repeatedly had been established as a heinous crime that only the vilest persons committed.⁵⁷ However, when it came to actually prosecuting rapes, the focus tended to turn to the actions of the victim rather than the accused perpetrator. As highlighted in *The Coquette*, the actions of the woman were front and center in any consideration of illicit sexual conduct and even when the man's culpability was recognized, the woman bore the brunt of the consequences. In turn, even if a woman felt confident that she could prove that she was raped, she was hesitant to come forward with her accusation for fear of what could befall her socially and even physically.⁵⁸ When a victim did report that she was raped, she was expected by the legal system to be able to demonstrate that she had been carnally known by force and without her consent. An explanation of what constituted this burden of proof, just like the descriptions of what led to Charlotte becoming pregnant in *Charlotte Temple*, were left ambiguous. Despite the acknowledgement by society that rape was a terrible crime, it was still lumped together with other illicit sexual acts in popular perception. A victim's ability to prove that force and lack of consent was present was vital to an accused rapist's conviction. In the face of all this, rape victim's stories were still doubted. Even though they were attacked and not seduced they, like Eliza Wharton in *The Coquette*, had failed to maintain their purity and had failed to keep their male attacker's sexual appetites under control.

While the majority of seduction novels in the Early Republic period were directly related to society's expectations of men's and women's behavior and the consequences that illicit sexual encounters could generate, the stories also depicted unrealistic romantic scenarios. A common

⁵⁷ Block, *Rape and Sexual Power*, xiv.

⁵⁸ Smith, *Women's Roles in Eighteenth-Century America*, 46-48.

plot in seduction novels involved the kidnapping of the main female character at the hands of an evil villain who planned to rape her. However, unlike stories such as *Charlotte Temple* or *The Coquette* where the main character is ruined and meets a tragic fate, in this form of captivity narrative the female victim is rescued by a hero before the villain can carry out his plans to rape her. An example of this type of story can be found in Henry MacKenzie's *The Man of the World*, in which the main character Lucy is kidnapped by the dastardly Sir Sindall.⁵⁹ After she is kidnapped, Lucy's brother and suitor search for her and upon finding her in Sir Sindall's clutches are able to rescue her before he can rape her.⁶⁰ Unlike the characters in *Charlotte Temple* and *The Coquette*, Lucy's honor is preserved by her rescue. While she had no control over what Sir Sindall was about to do to her, the construction of the story absolves Lucy of any fault and at the end she is happily married to her suitor/rescuer.⁶¹ Ironically, these archetypal rape-rescue stories granted relatively happy endings to their main female characters, whereas the result of a rape or attempted rape was rarely ever the same in real life. The rape-rescue stories that were popular within the romance-seduction genre placed an intensely unrealistic and overly romantic conception of rape within the psyche of American society. Rape was far from romantic. It involved real people who were held to both the legal and social standards of the period, and happy endings were few. Despite the disconnect between fictional rapes and real instances of rape, the written accounts depicting them had quite a bit in common.

⁵⁹ Henry Mackenzie, *The Man of the World* (Boston: Manning and Loring, 1795), 317-19.

⁶⁰ Elizabeth Barnes, "Word and Image, Part Two: Novels" in *A History of the Book in America*, ed. Robert Gross and Mary Kelley, vol. 2 of *An Extensive Republic: Print, Culture, and Society in the New Nation, 1790-1840*, 441, 444.

⁶¹ *Ibid.*, 257-261.

Just as rape was regularly a plot point in novels, it too was commonly mentioned in newspapers of the period. As historian Robert Gross discusses, newspapers in the Early Republic were not simply conveyors of information that were read and then easily disposed. In a period where the ability of people to afford books was increasing but limited, newspaper readers viewed newspapers as something to hold on to and re-read later on. In fact, Early Republic newspaper readers went as far as having their newspapers bound into books at the end of the year in order to preserve them. Consequently, newspapers were not only meant to be informative, but also entertaining – something that both held immediate value and perpetual value to readers.⁶²

While newspaper accounts of rape were sometimes just short, informative blurbs, they were often longer narrative-style editorials and fed into a wider sensationalism surrounding the circumstances of the accused crime. Regardless of whether the article was long or short, narrative or informative, many avoided the particulars of the crime.⁶³ The articles typically described what occurred in vague language and instead focused on those involved in the incident and their reputations. The details of the crime or of the prosecution that were provided were also almost always male centered, focusing on the actions of the rapist and not the suffering of the victim. Though not at all affiliated with the legal system that ultimately was charged with deciding whether a crime had been committed, newspaper accounts of rape did not shy away from editorializing on the circumstances or outcome of a rape and/or prosecution. Newspaper accounts of rape provide insight into the biases with which judges and jurors entered the courtroom and reveal how appearance and perception could be more important than legal evidence.

⁶² Robert Gross, “Reading for an Extensive Republic,” in Gross and Kelley, *An Extensive Republic*, 535-538.

⁶³ Block, *Rape and Sexual Power*, 200-204.

According to United States law, if a woman brought forth an accusation of rape in the Early Republic, the court system expected her to be able to provide evidence that she had been carnally known by force and without her consent.⁶⁴ Furthermore, the legal precedent expected a woman to adhere to typical actions during and after the commission of a rape, such as crying out for help, pursuing her attacker, and immediately reporting the crime. However, as analysis of court cases demonstrates, these factors were not the only things by which rape accusations were considered. To those considering a victim's accusation of rape, the real possibility existed that she was lying to cover up illicit sexual behavior or a tarnished reputation.⁶⁵ According to rape's legal definition, it was supposed to be cut and dry. However, within newspaper accounts rape accusations were far from simple and more closely resembled the sensational novels of the period than they did the legal definition. Newspaper accounts desensitized Early Republic society from rape's atrociousness while simultaneously commenting on it, focusing on the "excitement" surrounding the crime, the importance of the characters of the victims and accused attackers, and the dramatic circumstances in which rapes could occur. In turn, these attributes transferred into how rapes were considered in the legal system and created a narrative model by which rape was assumed to be committed – something that, if absent, could literally ruin a victim and derail her case.

One of the largest overarching themes present within newspaper accounts of rape in the Early Republic was the emotion with which writers described the dastardly nature of the crime. Newspaper accounts in the Early Republic were sensational overall; however, since the popular perceptions and representations of rape fed into rape's legal context, the way in which rape was

⁶⁴ Barbara S. Lindemann, "'To Ravish and Carnally Know: ' Rape in Eighteenth-Century Massachusetts,'" *Signs* 10 (1984): 63-65.

⁶⁵ Block, *Rape and Sexual Power*, 57, 187.

depicted in newspapers was especially important.⁶⁶ In comparison to the suspicious treatment rape accusations often received within the legal system, the either true or affected horror and disgust with which newspapers described rapes is almost laughable. Within these accounts, writers regularly “shudder[ed]” at the “heinousness” of the “outrage” of rape, that was often seen as a “crime of the darkest and blackest description.”⁶⁷ Every rape account seemed to be equally as terrible and equally as new and unbelievable of an occurrence. In a way, newspaper writers acted as if this type of crime was not regularly committed throughout the United States in the Early Republic period and that they were genuinely surprised upon its commission. Even an article printed in New Hampshire’s *Farmer’s Cabinet* on November 13, 1824 described the rape case detailed within as a “singular” event.⁶⁸ Of course, they were not surprised. They were simply playing into the business of sensationalism that sold papers and embroiled a majority of the rape accounts printed.

On April 27, 1843, the *Maryland Sun* reprinted a story from Indiana’s *Cordigan Gazette* that described a rape trial in which a priest stood accused of raping a married Evansville woman. While the details of the case are not necessarily important, the article related how the fate of the accused was still undecided as the jury could not come to a unanimous decision. In the last line of the article, the writer described how the case “has caused much excitement at Evansville and elsewhere” as the particulars of the case were considered.⁶⁹ Rape cases, as reported in

⁶⁶ Isabelle Lehuu, *Carnival on the Page*, 44-45, 56.

⁶⁷ *Albany Argus* (New York), April 10, 1832; *Connecticut Columbian Register*, April 20, 1833; *Philadelphia Inquirer*, May 11, 1835.

⁶⁸ *New Hampshire Farmers Cabinet*, November 13, 1824.

⁶⁹ *Maryland Sun*, April 27, 1843.

newspapers, carried entertainment value – something very evident in the ways rapes were described. In another re-printed article that appeared in the *Maryland Sun* on September 6, 1842, the writer describes an attempted rape in which the alleged perpetrator escaped. Rather than spending more than a moment discussing the actual crime and completely ignoring the plight of the victim, a married woman, the writer instead advises a friend of the paper to use the attempted rape in his next publication of English literature.

Similar to the way that the April 27, 1843 article describes the excitement of readers of the priest's rape trial, this article depicts the attempted rape on "the wife of Mr. Jacobs" as "about as 'rich' a piece of English literature" as has ever been read and that in one word, the story of Mrs. Jacobs' rape is "glorious."⁷⁰ While these articles directly used specific language and comparisons to lend a narrative and sensational bent to real rape cases, other articles simply used italics and punctuation to make factual accounts of rape resemble fictional representations. For example, an article printed in Maine's *Eastern Argus* newspaper on May 31, 1836 describes the attempted rape of a twelve-year-old girl committed by an approximately fifty-year-old Canadian peddler. The article is brief and gives very little information on the actual circumstances of the crime. However, multiple lines, particularly those concerning the ages of the victim and the accused attacker were italicized and followed by exclamation points, in an effort to create dramatic effect.⁷¹

While drama and sensationalism helped sell papers, at their heart, rape cases were almost always about guilt versus innocence. Officially, the American legal system was the only body

⁷⁰ *Maryland Sun*, September 6, 1842.

⁷¹ *Eastern Argus* (Maine), May 31, 1836.

that could determine whether a rape accusation was factual; however this did not mean that newspapers did not have their say. While some newspaper accounts of rapes offered very little information and barely any interpretation to readers, other articles were decidedly opinionated in favor of either the female accuser or the male accused. A June 3, 1819 article from Pennsylvania's *Franklin Gazette* describes "a most outrageous act of violence" carried out against a married woman. Describing the accused rapist as an "inhuman monster," the paper assures its readers that the "sentence of the law...will undoubtedly be executed rigorously."⁷² While this article took the side of the victim, other articles took the side of the accused. One example of this lies in an *Eagle of Maine* article that appeared on September 23, 1802. In this case, Jonathan Hadgdon, a man "highly honorable to his profession, justice, and humanity," was accused of raping Mary Sargent. When Hadgdon was acquitted at the end of the court proceedings, the *Eagle of Maine* vociferously applauded the verdict of not guilty, that was a "great satisfaction to the friends of justice and humanity."⁷³

Some newspapers even went as far as lobbying for certain outcomes in rape cases. A November 3, 1842 article reprinted in the *Daily Ohio State Journal* from the *Boston American* discusses the account of an attempted rape against a "poor factory girl" by Colonel Pearce. Though the article does not discuss any of the particulars of the assault or the ensuing court case, it advocates for the women's suffrage groups in the surrounding area to take up the cause of ending the accused's "intolerable sufferings" in a "'loathsome' prison."⁷⁴ In addition to its important insight into the popular perception of rape, the article re-printed in the *Daily Ohio*

⁷² *Franklin Gazette* (Pennsylvania), June 3, 1819.

⁷³ *Eagle of Maine*, September 23, 1802.

⁷⁴ *Daily Ohio State Journal*, November 3, 1842.

State Journal also highlights the value that readers in the Early Republic placed on newspapers and the importance of entertainment within them. The fact that this article was re-printed from a newspaper published nearly 1000 miles away demonstrates that Early Republic newspapers were not simply concerned with reporting the news nor were they concerned with doing so in a non-biased manner. Newspapers wanted to keep their readers entertained, and in this case, the story of an accused rapist suffering unfairly in prison was entertaining – even if it came at the expense of his victim. The depiction of rape in newspapers was complicated by the needs of readers, however, newspapers’ skewing of rapes realities also influenced society’s perception of the crime and the legal systems prosecution of it.

In general, society’s cultural standards and legal precedent tended to place more responsibility and pressure on the female victim than on the accused perpetrator, particularly in terms of both parties’ reputations, believability, and adherence to legal and social expectations. Newspapers frequently made direct evaluations of the character of those involved, describing whether the accuser was a “respectable married woman,” “a well-looking girl,” a female of “fair-character,” or a “foolish woman” whose credibility was poor.⁷⁵ Accused attackers were also subjected to having their character analyzed in newspaper accounts that deemed them “villains of the deepest dye” or “honorable” men from a “respectable families.”⁷⁶ As can be imagined, the language used by newspapers to describe the accused perpetrators and victims of rape generally aligned with the editor’s opinion of the case. In an article printed in the *Albany Argus* on February 28, 1840, the paper has no hesitation in calling the accused, whose names were withheld because they were of respectable families, “villains of the deepest dye” and calling for

⁷⁵ *Albany Argus* (New York), April 10, 1832; *New Hampshire Farmer’s Cabinet*, November 13, 1824; *Maryland Sun*, April 7, 1840; *Eagle of Maine*, September 23, 1802.

⁷⁶ *Albany Argus* (New York), February 28, 1840; *Daily Ohio State Journal*, November 3, 1842.

them to “be exposed and punished to the extreme penalty of the statute.”⁷⁷ The same pattern applied in articles where the newspaper advocated for the innocence of the accused rapist, that usually maligned the character of the accuser, such as in the September 23, 1802 article printed in the *Eagle of Maine* that refers to the accusing victim as a “foolish woman.”⁷⁸

Sadly, the victim could often be the last person for which society or the legal system advocated. Women were lucky if newspaper articles believed their accusations of rape and chronicled their cases kindly, giving them somewhat of an edge in defending their virtue in an Early Republic society that took reputation very seriously. However, like novels of the period, newspapers were just as capable of being sympathetic towards the accused rapist as they were towards the purported victim. Consequently, the way in which newspapers described rape cases demonstrates the real risk that women took in reporting their rapes to authorities. Sometimes even a good character could not save a rape victim from being denigrated in a rape account. For example, a *Maryland Sun* article appearing October 11, 1844 discussed the rape trial of John McGee who was accused of committing a rape on an “idiot woman” outside of a poor house in Rochester, New York. While McGee was convicted, he was only sentenced to ten years in prison for his crime, a punishment that the newspaper found fitting since “life would have been [severely] too long.”⁷⁹ Even the poorest and most vulnerable of the Early Republic’s citizens could not find assurance that the crime committed against them would be taken seriously. Newspapers did not merely report the facts of a rape case, they created a fiction surrounding it as

⁷⁷ *Albany Argus* (New York), February 28, 1840.

⁷⁸ *Eagle of Maine*, September 23, 1802.

⁷⁹ *Maryland Sun*, October 11, 1844.

well – one that not only directly affected the cases they were discussing but also the lives those cases concerned.

While rape accounts in Early Republic newspapers attempted to bring the truth of ongoing cases to their readers, they ultimately failed to do so factually. Instead, newspaper writers reciprocally borrowed from and fed into the narrative style that simultaneously characterized fictional representations of rape and reinforced the expectations Early Republic society and courts had of the actions that were supposed to surround a legitimate rape. For example, an article printed in Massachusetts' *Barre Patriot* on May 28, 1847 describes how a thirteen year old girl was lured by an attacker into a home where he proceeded to rape her. While romantic novels of the period generally did not involve very young girls as main characters, the construction of the article in narrative form with its story-like properties conjures an image of the romantic storylines of contemporary novels. Rather than including any semblance of discussion on the victim's suffering, the account focuses instead on the surrounding details and placing readers in suspense. In addition to having factors in common with fictional representations of rape, this example also reinforces some of society's expectations of what rape was. The perpetrator is described as surprising the victim on the road, and after using the excuse of having a note for her to take to the school mistress, attacks and rapes her. Also in keeping with popular perception, following the rape, the attacker threatened the victim with her life and absconded from the scene of the crime. These attributes perfectly fit with the expectations of how rape was supposed to occur, with sudden attacks, violent behavior, and the flight of the perpetrator.

The popular perception of rape in the Early Republic was an amalgam of expectations and appearances – sexual expectations of women and men, the appearance of rape in comparison to seduction, the expectation of how rapists acted and victims reacted, and the appearances of the

reputations of those involved. Built upon the period's sexual rules, novels and newspapers aided in creating a fictional narrative of rape that pervaded America's society and legal system, desensitizing the Early Republic from the heinousness of rape that they claimed to understand. With directed on how rape cases appeared, popular perception of the crime the legal system from objectively prosecuting rape claims. Ultimately, the packaging of rape within a narrative of expectations paralyzed society from being able to understand the crime.

Chapter 3: Battle of the Sexes: Power, Gender, and Rape in the Early Republic

As much as rape pervaded popular perception during the Early Republic period, it too has been a predominant topic of analysis within academic circles since the rise of second wave feminism in the late 1960s. In conjunction with the increasing popularity of social history, feminist scholars began tackling rape as a topic of study, analyzing how modern rape was treated and perceived within the legal and social spheres of twentieth century America. Many of the groundbreaking works that came out of this school of thought focused on the personal side of rape, not only examining the often-overlooked sufferings of the victim and the underlying reasons that men committed rape but also placing the analysis within a discussion of the author's own experiences with rape and sexual violence. For example, in her book *Real Rape*, Susan Estrich framed her discussion around her own rape in 1974. In writing about rape, Estrich was "writing about [her] own life," and, in turn, placed her modern analysis on all rape regardless of when it occurred.¹ These works were mainly concerned with theoretical approaches to sexual violence and puzzling out why men committed rape. In their attempt to seek an answer for rape, early rape scholars marginalized the importance of historical context and environment in cases of rape. For example, in *Against Our Will* Susan Brownmiller asserted that rape is a "conscious process of intimidation by which *all* men keep *all* women in a state of fear."² While it is true that the possibility of rape is a real specter in the lives of modern women, Brownmiller demonstrated great bias when she used historical examples to support her very modern argument. Despite the problems inherent in works such as Estrich's and Brownmiller's, they nonetheless established that an analysis of gender is inherently important in the examination of rape. The inroads made

¹ Susan Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1988), 3.

² Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Ballantine Books, 1993), 15.

by and lessons learned from scholars like Brownmiller and Estrich paved the way for twenty-first century scholars to examine historical cases of rape through a gendered lens but retain the integrity of the historical context in which they occurred.

Rape analysis, regardless of the era in which it is grounded, is extremely difficult – particularly when it is examined through the lens of gender. Gender means different things to different people, has different connotations in different situations, and constantly fluctuates across the span of time. As Catherine Clinton discusses, the codes of behavior by which women lived in the Early Republic were very important facets of their daily lives, even if they sound very stereotypical to twenty-first century ears. The lives of women in the early nineteenth century “were rigidly circumscribed” and these codes “had a major impact on women’s choices.”³ Within the legal, social, and cultural contexts of Early Republic rape, gender functioned quite differently than it did in the twentieth century cases that Brownmiller and Estrich considered. Gender in the Early American Republic, particularly as it applied to rape, was vastly complicated and appeared in different ways within the period’s legal, social, and cultural spheres.

Early scholars of rape and sexual violence were guilty of presentism – of anachronistically trying to place their modern conceptions of gender, violence, sexuality, and the legal process on rape cases from multiple eras.⁴ Brownmiller’s conjecture that all men purposefully intimidate all women through the threat of rape is difficult to support in the twenty-first century, let alone in the nineteenth. Historical rape analysis cannot rely on modern

³ Catherine Clinton, *The Other Civil War: American Women in the Nineteenth Century* (New York: Hill and Wang, 1984), 164.

⁴ Joan Scott, "Gender: A Useful Category of Historical Analysis," *American Historical Review* 91 (December 1986): 1053-75.

conceptions of rape, nor can it plug modern conceptions of gender into the roles that historical men and women embodied. While it is difficult to place historical rape analysis within the concept that all men individually rape and subjugate women, rape in the Early Republic did undeniably take place within a system of patriarchal power that afforded men much more agency than their female counterparts.⁵

More recent Early Republic rape scholars such as Sharon Block have demonstrated that, unlike Brownmiller's argument, rape in the Early Republic as a reflection of how patriarchal power operated, both in terms of how it was interpreted in the legal system and in popular perception. Block's analysis, however, almost exclusively focuses on how cases of rape reinforced that patriarchal system and rendered women powerless within it. Patriarchal power did exercise a great deal of power over the lives of Early Republic women. However, the roles that rape victims were expected to embody in the legal system and in sexual behavior, how they were regarded when they failed to meet society's expectations, and how they were represented in popular perception demonstrated that women did have agency within that patriarchal system.⁶ That agency did not necessarily have power over patriarchy nor did it make any real headway in overcoming how rape victims were perceived. Instead, much of that agency took place underneath the umbrella of patriarchal power and was, ironically, directly caused by its structure and the restrictions it placed upon women's lives.

⁵ Merrill D. Smith, *Women's Roles in Eighteenth-Century America* (Santa Barbara, Calif.:Greenwood Press, 2010), 48.

⁶ Sharon Block, *Rape and Sexual Violence in Early America*, (Chapel Hill: University of North Carolina Press, 2004), 3, 36, 62.

Legally, rape was the carnal knowledge of a woman by force and without her consent. It was also a crime that could only be perpetrated by a man and against a woman.⁷ Consequently, to a casual observer, the role of gender in Early Republic rapes may seem obvious. Men raped women, men exerted control over women's bodies, men controlled the legal system, men were the dominant gender, men held the power.⁸ Much scholarly analysis of rapes in the Early Republic demonstrate that these conclusions about gender were true, particularly the centrality of power to the role of gender in rape. However, a comparison of rape in the legal, social, and cultural contexts demonstrates that this was not always the case. Just as rape was made up of multi-layered definitions and perceptions in the Early Republic, gender too was a fluctuating amalgam within those perceptions. Through an analysis of legal cases and cultural representations of rape in the Early Republic, it becomes apparent that gender did not always function according to social expectations in cases of rape. Women were expected to defer to the authority of men in the Early Republic, however that patriarchal power was not absolute. Women did wield power, influence, and agency within the system that rendered them subordinate.⁹ There was a battle of the sexes occurring within Early Republic society in regards to rape, and male power was not always the winner.

Within the legal context of rape in the Early Republic, gender was a constant presence. Only men could commit a rape against a woman, so from the very starting point of rape's occurrence and prosecution there was already a tangible distinction between the genders. Beyond

⁷ Joel Prentiss Bishop, *Commentaries on the Criminal Law*. (2 vols.; Boston: Little Brown and Company, 1859), 2: 384.

⁸ Mary Kelley, *Learning to Stand and Speak: Women, Education, and Public Life in America's Republic* (Chapel Hill: North Carolina University Press, 2006), 43.

⁹ Smith, *Women's Roles in Eighteenth-Century America*, 48.

this distinction, the legal system assigned roles and expectations to those involved in a case of rape by gender. Male rapists were immediately given the upper hand in legal cases of rape, even though they had illegally used that power to commit a crime. Rape cases focused on the victim's accusation and not necessarily the accused perpetrator's actions, that placed the defendant at an advantage at the beginning of a rape prosecution. Unlike their female victims, they were often given the benefit of the doubt and were truly assumed innocent until guilt could be proven. With these concepts in mind, it is easy to see how an emphasis on patriarchal power, particularly through the recent scholarship of historians such as Sharon Block, has permeated the way in which Early Republic rape was thought to be gendered. While rape can be viewed as a crime that one man commits against another, the conception that rape "marked the distortion...of a man's sexual access to his wife and control over other men's sexual access to his dependents" only goes so far.¹⁰ There is no denying that patriarchal power was the reigning influence within Early Republic law, society, and culture.¹¹ However, as Carroll Smith-Rosenberg states, while women lacked power in a male-centric society, they were not simply "actors in a male play."¹² However, as much as the legal definition of rape and the initial construction of a rape case placed women at a gendered disadvantage, the Early Republic legal system actually, however unfairly, placed women in positions of power at different points within the commission and prosecution of rape.¹³

¹⁰ Block, *Rape and Sexual Violence in Early America*, 11.

¹¹ Smith, *Women's Roles in Eighteenth-Century America*, 48.

¹² Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America* (New York: Oxford University Press, 1985), 17.

¹³ Clinton, *The Other Civil War*, 42.

According to the laws outlined by George Bishop in *Every Woman Her Own Lawyer*, rape victims were entitled to act as their own witnesses and “adduce presumptive evidence of the perpetration of the crime.”¹⁴ In fact, rape victims were expected to bring forth evidence and carry the burden of proof that they had been raped. In addition to supplying any physical evidence on their person that supported their accusation, victims were also charged with showing they acted in the manner society anticipated of them during and after a rape.¹⁵ Society, whether it realized it or not, also empowered women when they were expected to verbally and physically resist their attackers, follow them after the crime was committed, and immediately report the occurrence.¹⁶ Although the conviction of a rapist did not always rest solely in the hands of the female victims (due to the various other factors involved), the successful prosecution of the accused often hinged on the evidence a woman could provide.¹⁷ An example of the kind of power that raped women could wield within the Early Republic legal system can be found in Mary Beth Norton’s discussion of the seventeenth century Salem Witchcraft Trials. Despite the different circumstances, the power that the Early Republic legal system granted rape victims was similar to the power wielded by the young girls who reportedly saw women using witchcraft in Salem, Massachusetts.¹⁸ Unlike rape victims in the Early Republic, the girls involved in the Salem Witchcraft incident demonstrated great power as accusers. Early Republic women accused their

¹⁴ George Bishop, *Every Woman Her Own Lawyer* (New York: Dick & Fitzgerald, 1858), 183.

¹⁵ Mary R. Block, “‘An Accusation Easily to be Made’: A History of Rape Law in Nineteenth-Century State Appellate Courts, 1800-1870” (M.A. thesis, University of Louisville, 1992),” 87-88.

¹⁶ Blackstone, *Commentaries*, 4:212-213.

¹⁷ Kathleen Brown, “‘Changed...Into The Fashion of Man’: The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement,” in *The Devil’s Lane: Sex and Race in the Early South*, ed. Catherine Clinton and Michele Gillespie (New York: Oxford University Press, 1997), 50.

¹⁸ Mary Beth Norton, *In the Devil’s Snare: The Salem Witchcraft Crisis of 1692* (New York: Vintage Books, 2003), 191.

rapists, but did not wield great power in the simple accusation. Instead, they were empowered in their fight to prove that accusation, even when that fight was unfair, further victimized them, and reinforced the patriarchal system in which they lived. Regardless, in interpreting the Early Republic principle in which women's legal identities were absorbed by their husbands or fathers, the fact that women were even given the chance to represent themselves in court was its own form of power. In horrendous circumstances, women were granted power and agency by Early Republic society that allowed them to help bring their rapists to justice.¹⁹

This was particularly true because “nineteenth-century law did not permit [accused rapists] to take the stand in their own defense,” even though they could have witnesses called to help exonerate them.²⁰ According to the Early Republic legal system, then, the power for conviction rested largely in the victim's hands during both the commission and prosecution of rape. In order to achieve justice, women needed to be able to demonstrate that successful or attempted intercourse had occurred without their consent and that they had resisted their attacker to their utmost ability during the incident. If they were not able to demonstrate this, or if the jury did not believe them, they ran the risk of seeing their rapist set free. For example, in a case heard before the Supreme Court of Massachusetts in 1819, a jury was unable to come to a unanimous decision of guilt because one juror felt the “crime could not have been committed” if the victim had used “suitable resistance” during the crime.²¹ A woman's demonstration of resistance was a

¹⁹ Clare Lyons, *Sex Among the Rabble: An Intimate History of Power and Gender in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006), 42; Carol Lasser and Stacey Robertson, *Antebellum Women: Private, Partisan, Public* (Plymouth, UK: Rowman & Littlefield, 2010), 4; Nancy Thierot, *Mothers and Daughters in Nineteenth-Century America: The Biosocial Construction of Femininity* (Lexington: University Press of Kentucky, 1996), 34.

²⁰ Block, “An Accusation Easily Made,” 93.

²¹ *State v. Stephen Cooper*, 1818 Mass. Lexis 54, 15 Tying 187 (Supreme Court of Massachusetts June 1818).

tricky thing in the Early Republic -- not only did they need to put up a struggle during a rape, but also they needed to put up *enough* of a struggle. The problem was that the power that Early Republic law assigned to women in this instance was not interpreted by those wielding it, but by those observing.²² Women were expected to demonstrate “utmost resistance” against their attackers, but they did not make the rules about what that “real absence of assent” entailed.²³ In cases like this, the power that the Early Republic legal system afforded women simply could not overcome the doubts of male jurors. However, in other instances the power women wielded was simply rendered worthless before it could even be used.²⁴

The expectation that women would demonstrate “utmost resistance” during a rape did not apply only to physical resistance. Rape victims were also expected to verbally resist their attackers and call attention to themselves during the commission of the crime. This literally gave women vocal power in the incidence of rape that, if used properly, could bring witnesses to the scene of the crime. This power, however, sometimes became a woman’s worst enemy. For example, in a case heard before the New York Court of Appeals in 1842, an unnamed defendant appealed his conviction for raping his niece Hilda Hulse on board the ship of which he was captain. Although the court overturned the conviction on a technicality, both the original case and the appeal represent an important example on the significance of a victim’s verbal resistance. According to Hulse, her uncle attempted to rape her on three different occasions, only succeeding on the third attempt. During the first failed attempt, Hulse, as expected by the Early

²² Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 13.

²³ Bishop, *Every Woman Her Own Lawyer*, 182; Block, “An Accusation Easily Made,” 93.

²⁴ Block, *Rape and Sexual Power*, 71.

Republic legal system, cried out for help but no one came to her aid. Believing that no one “would make [an] attempt to assist her,” Hulse chose not to cry out during her uncle’s second and third attempts – a factor that became a point of contention during the original trial. Since Hulse’s uncle could not testify for himself, he attempted to demonstrate that his niece had not exercised her power of resistance by having members of his ship’s crew testify that they did not hear her cry out. Luckily, for Hulse, this factor did not convince the jury to acquit the defendant in the original trial. However, when the defendant appealed, Hulse’s lack of verbal resistance once again came up, this time in the judge’s opinion. Even though the judge ruled that the “court erred” on an evidential technicality, he “diverted his attention...to write about the issue of...resistance.” The judge ignored Hulse’s claim that she physically fought her uncle’s attempts to rape her on two of the three occasions and stated his belief that Hulse’s lack of verbal resistance during the second and third incidents proved that she might have “half consented to the ravishment.”²⁵ As accusers of rape, the Early Republic legal system gave women agency at the same time it rendered them powerless within the overarching patriarchal system. The legal system was capable of twisting that agency to their disadvantage, even when their failure to wield that power as expected had no impact on their specific case.²⁶ As opposed to the colonial period where women were viewed as temptresses automatically, in a skewed manner, the Early Republic legal system attributed to women the ability to control their own sexual drive and that of their male counterparts.²⁷ Consequently, the agency given to women in the Early Republic

²⁵ *People vs. Hulse*, 3 Hill (NY) 309 (New York Court of Appeals 1842)

²⁶ Block, *Rape and Sexual Power*, 93.

²⁷ Smith, *Women’s Roles in Eighteenth-Century America*, 46-50.

made them suspicious figures and further victimized them when society refused to believe they had used it fully.

The legal system even unwittingly granted characteristics of power to those who it did not trust and refused to admit to the court as credible witnesses. As much as the successful prosecution of rape cases during this period relied upon the evidence the victim could provide, it also heavily depended upon whether the victim or any other supporting witness possessed a respectable and credible character. Overall, the way that the legal system viewed rape victims as possessing the ability to be “vindictive and malicious” women whose accusations of rape were “easily made” was detrimental to the social roles of women, their chances of having their rapist convicted, and their willingness to come forward with an accusation in the first place.²⁸

However, in a twisted and negative way, society’s suspicion of these women established that they held power. For example, a case heard before the Supreme Court of Vermont in 1832 highlights how women’s reputations were central to sex-related court cases and how they, as accusers, were treated with suspicion. Although it does not specifically deal with a rape, in this case the plaintiff Parmelia Morse sued John Pineo for support of a bastard child that Morse claimed Pineo had fathered. During the trial, the defense established Morse’s well-known reputation as a “common prostitute” and accused Morse of simply using Pineo as a scapegoat for her situation.²⁹ Indeed, the Early Republic legal system recognized that rape accusations were the perfect “opportunity for blackmail.”³⁰ As Susan Block discusses, the delicate balance within the

²⁸ Hale, *Commentaries*, 348; Block, “An Accusation Easily Made,” 81; Clinton, *The Other Civil War*, 159; Block, *Rape and Sexual Power*, 34-42; D’Emilio and Freedman, *Intimate Matters*, 32-27, 45, 59-65.

²⁹ *Parmelia Morse v. John J. Pineo*, 4 Vt. 281; 1832 Vt. LEXIS 33 (Supreme Court of Vermont March 1832).

³⁰ *Weekly Law Bulletin and the Ohio Law Journal* 10 (22 October 1883): 223; Block, “An Accusation Easily Made,” 81.

system of patriarchal power in the Early Republic was perfectly evidenced in cases of rape. While the commission of a rape by a man was his demonstration of power over a woman, a false accusation of rape made by a woman could be her demonstration of power. A similar situation to this occurred, as described by Mary Beth Norton in *In the Devil's Snare*, during the Salem Witchcraft Trials in Massachusetts in 1692. Patriarchal power was firmly in place during the colonial period as well and the image of women wielding a great amount of power over men in society was an anomaly. However, the accusations made by the young girls against the mostly female suspects were an indirect admission by the male colonial court system that a group of women was holding that society hostage through its actions.³¹ The system that was designed to subjugate women was, in its quest for legal redress, actually granting, or at least projecting, power onto them. The same idea proved true in cases of rape in the Early Republic. The legal and social systems' fear of women's possible blackmail was an admission that sanctioned the idea that women were capable of extortions and threats – something that required intelligence and power. The Early Republic legal system exercised patriarchal power over women, however, like in Salem, it projected power onto women who accused others of rape.³²

There are also two other rules, one positive and one negative, within the Early Republic rape-related legal statutes that unwittingly attribute power and/or influence to women over men. The first, that is generally positive, relates to the age restrictions that laws placed on who could and could not be a victim or perpetrator of rape. Within the legal precedent, girls under the age of ten could not be raped and men who were accused of sexually assaulting them were charged

³¹ Norton, *In the Devil's Snare*, 10-14, 79, 116.

³² Block, *Rape and Sexual Power*, xiiii.

with “carnal knowledge and abuse of an infant.”³³ At the same time, the Early Republic legal system similarly adjudged boys under the age of fourteen as not being able to commit rape, as they did not possess the “physical capacity” to perform the crime.³⁴ Outwardly, this distinction between the ages of girls and boys demonstrates that girls were valued as less important than women -- even if sexually assaulted in the same manner. Concurrently, it also devalued the attack a woman endured if committed by a boy under fourteen who very well could have possessed the capacity to perform rape. While these two attributes of Early Republic rape law represented how justice could be miscarried for victims, they also gave insight into some of society’s odd conceptions of gender, capability and power.

A comparison of the two rules shows that technically, girls between the ages of ten and thirteen were viewed by the American legal system as possessing more capability than their “infant” male counterparts.³⁵ Interestingly, however, girls under the age of ten also wielded an immense amount of power in conjunction with the adult men accused of carnally abusing them.³⁶ Unlike rape where the issue of consent was vital, in cases of the carnal abuse of an infant, girls were not required to prove that consent was absent since the child’s age made “the want of consent not an element.”³⁷ As a case heard before the Supreme Court of Judicature of New York demonstrates, a female infant under ten wielded power over her adult attacker even if she

³³ Bishop, *Every Woman Her Own Lawyer*, 182; Leigh Bienen, “Rape I,” *Women’s Rights Law Reporter* 3 (December 1976): 45; Block, “Accusation Easily Made,” 28; William Littell, *The Statute Law of Kentucky* (4 vols., Frankfort, Ky.: William Hunter, 1810), 2: 469.

³⁴ *Sydney v. The State*, 22 Tenn. 478; 1842 Tenn. LEXIS 133; 3 Hum. 478 (Supreme Court of Tennessee December 1842); Bishop, *Commentaries*, 2:448; Blackstone, *Commentaries*, 4: 212-213.

³⁵ Smith, *Women’s Roles in Eighteenth-Century America*, 43.

³⁶ Block, *Rape and Sexual Power*, 12, 83, 92.

³⁷ Bishop, *Commentaries on Criminal Law*, 2: 643.

voluntarily went with him and he never touched her. However, under the legal protection of her father, the victim, Maria Webb, merely in her status as a female child wielded the power within the Early Republic legal system to aid in the prosecution of an adult male who, it turns out, never even touched her.³⁸ Even though they were still victims of successful or attempted sexual assault, girls under the age of ten indirectly possessed an impressive amount of power in comparison to their male attackers during the Early Republic period.

While this power and capability that girls could wield over boys their own age was not exactly a positive thing, the other way in which women could be interpreted as having power within cases of rape is decidedly more negative. In Early Republic rape law, only men were able to commit and be prosecuted for the crime of rape, leaving women only in the role of possible victim. However, there was an additional aspect of rape law that, in a roundabout way, did give women the power to be legally recognized as responsible for the commission of a rape. In his legal work, *Every Woman Her Own Lawyer*, George Bishop discusses the difference between principal perpetrators and accessories in crimes of rape. While he confirms that women cannot be considered as principal offenders, he categorizes that “all present, of either sex, as aiders and abettors, in the commission of a rape, are, in law...liable.” This establishes that Early Republic society did consider women capable of acting as accessories in the crime of rape on another woman, even though they were not able to principally perpetrate the crime itself.³⁹

Women were not only granted power by the legal system when it came to rape. The treatment of the crime in Early Republic culture also spoke to the power that women possessed

³⁸ *People v. Hays*, 1 Hill 351; 1841 N.Y. LEXIS 83 (Supreme Court of Judicature of New York 1841).

³⁹ Bishop, *Every Woman Own Lawyer*, 183.

in comparison to men and highlights a social battle of the sexes that the period's sexual rules and expectations created amongst the genders. Early Republic society possessed very specific expectations regarding proper sexual behavior. Men were characterized as the aggressors and instigators of sexual actions, and women were characterized as the passive receivers of their attentions.⁴⁰ Society's conceptions of women's sexuality during this period, however, were far more complicated than that of men's. No longer wholly viewed as the Biblically based temptress, women were seen as innocents who could control not only their own sexual desires but also the desires of the men with whom they interacted.⁴¹

Women were the sexually pure ideals, and within this scope of thinking women wielded sexual and controlling power over men who seemingly were incapable of self-regulation.⁴² The way in which Early Republic society viewed women's sexual roles and responsibilities simultaneously gave them power over their male counterpart while also making them sexually inferior. The "idea that women's moral nature overcame the physical" was not solely oppressive but also "implied women's moral superiority" over men.⁴³ Although it did not speak specifically to women's sexual roles, Sydney Owenson's 1806 novel *The Wild Irish Girl*, widely popular in the United States, demonstrates the influence of women's proper behavior on their male counterparts. The novel's hero, Horatio, is exiled to his father's country estate for indulging in inappropriate behaviors at the expense of his studies. While there he falls in love with a virtuous woman whose embodiment of proper womanhood "reforms his character, reconciles parent and

⁴⁰ D'Emilio and Freedman, *Intimate Matters*, 70; Sharon Block, *Rape and Sexual Power*, 20.

⁴¹ Smith, *Women's Roles in Eighteenth-Century America*, 47.

⁴² D'Emilio and Freedman, *Intimate Matters*, 71; Eliza Duffey, *What Women Should Know*, Philadelphia 1873, 313; Barbara Welter, "The Cult of True Womanhood: 1820-1860," *American Quarterly* 18 (1966): 159-161.

⁴³ Nancy Cott, *The Bonds of Womanhood* (New Haven, Conn.: Yale University Press, 1977), 189.

child, and redeems patriarchy.”⁴⁴ Women were expected to act as the barrier between men’s passions and their own purity, a social concept that granted women the power to maintain propriety and the balance of civilization at large.⁴⁵ Popular novels in the Early Republic such as Hannah Webster Foster’s *The Coquette* and Susanna Rowson’s *Charlotte Temple* represent the ways in which power dynamics functioned in cases of rape and other illicit sexual behaviors.⁴⁶ The main female characters in both books are participate in sexual activity in which Early Republic society gave them a position of power, whether over their own actions or over those of their male counterparts. Their failure to use that power properly leads to their downfall as characters and serves as an example to readers.

In *The Coquette*, the main character of Eliza Wharton becomes pregnant after engaging in illicit sexual behavior with her married former suitor Sanford and dies of complications of childbirth. Within this example, a demonstration of the power that Eliza wields within Early Republic society is depicted in what she fails to do. Contrary to the period’s real social expectations, Eliza fails to use the power she holds to prevent both herself and Sanford from engaging in illicit sexual activity -- something that in turn creates problems for herself and her friends and family.⁴⁷ Webster Foster’s story of Eliza, however, also exercises social power in a way that goes beyond the actions of her main character. Like many of the romance-seduction novels popular in the Early Republic period, *The Coquette* was, in addition to its function as

⁴⁴ Miss Sydney Owensen Morgan, *The Wild Irish Girl; A National Tale* (Philadelphia: T.S. Manning, 1807), vi; Robert Gross and Mary Kelley, eds., *An Extensive Republic: Print, Culture, and Society in the New Nation, 1790-1840* vol. 2 of *A History of the Book in America* (Chapel Hill: North Carolina University Press, 2010), 536-537.

⁴⁵ Lasser and Robertson, *Antebellum Women: Private, Partisan, Public*, 9-10.

⁴⁶ Hannah Webster Foster, *The Coquette* (New York: Oxford University Press, 1986); Susanna Rowson, *Charlotte Temple and Lucy Temple*, ed. Ann Douglas (New York: Penguin Books, 1991).

⁴⁷ Foster, *The Coquette*, 402-404.

entertainment, meant to convey lessons about proper sexual behavior to its readers.⁴⁸ Novels of “sexual and social danger,” such as *The Coquette* and *Charlotte Temple*, gave female characters and authors the power to affect social change and promote that failure to adhere to virtuous behavior was potentially ruinous.⁴⁹ Seduction novels empowered female characters and authors to inform Early Republic society on the ways to achieve felicity and social acceptability.⁵⁰ They demonstrated that women were at fault in illicit and criminal sexual situations, even if the male character owned to his responsibility as Eliza’s seducer Sanford does in the conclusion of *The Coquette*.⁵¹

In addition, the educational messages in these novels promoted another kind of power that women held: absolution of their sinful behavior by means of death. The death of the main female character was a common factor in many Early Republic romance-seduction novels. This trend plugged into the genre’s theme of sympathy and sentimentalism that sought, in each book, to establish that the characters were forgiven for their bad deeds and that humanity was ultimately good. Eliza in *The Coquette* and Charlotte in *Charlotte Temple* both die at the end of their novels from the consequences of their behavior, pregnancy.⁵² However, other novels in the period did not treat the death of the main female character in quite the same way. In the novel *Clarissa* by Samuel Richardson, the main character Clarissa Harlowe is kidnapped and raped by her suitor Lovelace whom Clarissa’s family was trying to prevent her from marrying. After the

⁴⁸ Lasser and Robertson, *Antebellum Women: Private, Partisan, Public*, 9-11.

⁴⁹ Foster, *The Coquette*, 421; Block, *Rape and Sexual Power*, 45-46.

⁵⁰ Marion Rust, *Prodigal Daughters: Susanna Rowson’s Early American Women* (Chapel Hill: University of North Carolina Press, 2008), 25, 37, 91.

⁵¹ Foster, *The Coquette*, 396.

⁵² Foster, *The Coquette*, 393, 419-21; Rowson, *Charlotte Temple*, 398.

rape, Clarissa escapes from Lovelace and falls ill, traumatized by her experience with Lovelace. Rather than attempting to fight off her illness, Clarissa beckons death to come to her to relieve her suffering and restore her virtue.⁵³ At the same time that it reinforces the concept of rape's relationship to other illicit sexual behaviors, Clarissa's desire for death demonstrates that payment of the ultimate price could wash away sexual sins. Within this scope, the power for self-redemption lay in the woman's hands and it did not involve asking for forgiveness. Victims of rape were, sickeningly, given power – permission, even – by Early Republic society to absolve their loss of virtue through death.⁵⁴

The deaths of characters in novels such as *The Coquette*, *Charlotte Temple*, and *Clarissa* separately represent the twisted success and failure of the power Early Republic society afforded them. However, at the same time the characters' deaths represent how the power of men in Early Republic society constantly pushed against the influence that women did possess. Unconscious of it or not, male society in the Early Republic was constantly attempting to maintain a balance of civilized behavior and since women were often viewed as the maintainers of the home and family, their behavior and any power they possessed were targets for scrutiny. Newspaper accounts of rapes provide some of the best examples of how male power and influence worked to suppress the power that women had within their own rape cases.

In the prosecution of Early Republic rape cases, the victim was central to proving the defendant's guilt and without her testimony and presentation of proof, the case would not have been viable. The way newspaper accounts discussed rape, however, greatly reduced the power that women could actually wield. Women were often virtually erased from the accounts of their

⁵³ Samuel Richardson, *Clarissa* (London: Harrison and Company, 1784), 557-562, 610-612.

⁵⁴ Block, *Rape and Sexual Power*, 44-45; Smith, *Women's Roles in Eighteenth-Century America*, 48-49.

own rapes with the newspapers instead focusing on the atmosphere of the crime or the male actors. An air of sensationalism surrounded rape accounts and the use of narrative styles, creative punctuation, and descriptions of the case's "excitement" completely took away from the fact that a crime had been committed against a real person.⁵⁵ When women were included directly in newspaper accounts of rapes they were often described in delicate terms, characterization that certainly belied the power society expected women to use in an attempt to prevent their rape from occurring. For example, an article printed in Pennsylvania's *Public Ledger* on November 17, 1836 describes the arrest of three Irish-American laborers for the rape of an "unfortunate" Irish woman who had visited a factory in search of her husband. While simultaneously reinforcing the importance of marriage, the article establishes that rape victims were often characterized as unfortunate or downtrodden in some way. While such a moniker can be attributed to sympathy on the party of the newspaper, it also raises questions about society's expectations of women's abilities. Early Republic society set a double standard of behavior for women. It expected them to remain firmly within the scope of femininity and family life but also to paradoxically possess the power to overcome socially stronger men.⁵⁶

In addition to this kind of categorization, women were also erased within newspaper accounts of rape due to how they were frequently mentioned in conjunction with the name of their guardian.⁵⁷ Rapes during this period were committed on the "wife of a Mr. Jacobs," the "wife of a machinist," a "married woman," the "wife of...Slade or Sledge," the "daughter of Mr.

⁵⁵ *Maryland Sun*, April 27, 1843

⁵⁶ *Public Ledger* (Pennsylvania), November 17, 1843.

⁵⁷ Robert Gross, "Reading for an Extensive Republic," in Gross and Kelley, *A History of the Book in America*, 535-538; Block, *Rape and Sexual Power*, 73-82.

B. Furlong,” and countless other nameless women.⁵⁸ This style of reference within Early Republic society took women out of the rape equation within popular perception, completely going against society’s expectations of them within the legal sphere and their depiction within fictional novels. Within newspaper accounts, women were stripped of their power to bring rapists to justice. In fact, within these factual representations of rape they barely even registered as someone involved in the crime, let alone as the victim. The discussion of rape in newspapers completely lost many of the facets that legal and fictional discourse assigned to women in crimes of rape. The power of women in these cases was relegated to the periphery.

As evidenced in an analysis of roles and proscribed duties of women regarding sexuality and rape, it is clear that they were expected and capable of possessing an impressive amount of influence in the period’s legal and cultural spheres. Despite the fact that patriarchal power was alive, well, and reigning throughout the Early Republic period, women’s experiences in conjunction with crimes of rape often revolved around the power they had in working to prove the guilt of their attacker and/or prevent the resignation of men’s self-control over to passion. Rape in the Early Republic was not simply about men asserting their power and strength over women. Instead, the incidence of sexual violence in the eighteenth and nineteenth centuries was very much about a back and forth assertion of power between the sexes, of which men were not always the winners.

⁵⁸ *Maryland Sun*, September 6, 1842; *Maryland Sun*, February 14, 1842; *Franklin Gazette* (Pennsylvania), June 3, 1819; *Eastern Argus* (Maine), May 31, 1836.

Conclusion

In the end, in the Early American Republic rape was a legal, social, and cultural entity that straddled the conceptions of law, expectation, and appearance. Legally defined as the “carnal knowledge of a woman by force and without her consent,” rape was as important in Early Republic society and culture as it was in the period’s legal system. Far different from rape cases in the twentieth and twenty-first centuries, Early Republic rape placed the burden of proof squarely on the shoulders of the victim, instead giving the accused male perpetrator the benefit of the doubt. This legal conception of rape made it a very difficult crime to prove one even more difficult to prosecute. Heavily influenced by the sexual rules and popular conceptions of the crime, the prosecution of rape was extraordinarily arbitrary and dependent not only on the factors of force and consent, but also on the cleanness of the victim’s character, her believability as an accuser, and her actions during and after the rape. Often, instances of injustice within rape prosecutions occurred because the victim did not adhere to the behavior expected of her. Early Republic rape cases did not focus on the fact that rape was a sexual crime perpetrated by a man against a woman. Instead, the system picked apart individual cases and adjudged them on a highly changeable basis, losing sight of the original crime.

Rape was often complicated far beyond its legal parameters by the influence that Early Republic society and culture had on the crime’s commission, perception, and prosecution. Rooted in the contradictory sexual rules of the period, in which women were largely assigned the role of tempering men’s passions, rape fell in line with other illicit sexual behaviors that desensitized Early Republic society from the heinousness of the crime. The genre of romance-seduction novels popular throughout the period only served to reinforce the fictions of the crime that permeated popular and legal thought. Painting rape victims as women unable to control their

own and their attacker's passions or as players in a romantic adventure, seduction novels skewed the meaning of rape in popular perception.

These fictional representations of rape seeped into both the factual representations of the crime in Early Republic newspapers and into the psyches of those dealing with rape in the legal system. The entirety of rape in the Early Republic came to be about the intersection of the hypotheticals of the crime's legal definition and society's expectations of women's behavior with what actually happened. Caught between two different fantasies of stereotypical rape and romantic seduction, real rape and its victims suffered within this world of tricky definitions, unrealistic expectations, and suspect appearances. Regardless of whether those unrealistic expectations were manifested in fiction or manifested in actual socio-cultural perception, women in the Early Republic could simply not live up to everyone else's expectations of their behavior.

Stunningly, however, (and in opposition to what many scholars have stated about women's lack of power in cases of Early Republic rape), an analysis of how women were perceived in conjunction with sexuality and rape in the Early Republic demonstrates that they did possess agency in the social, cultural, and legal spheres. Despite the fact that this power often led to the further victimization of raped women, they were granted an immense amount of social power over men in the execution of sexual relations and in the prosecution of rape. Patriarchy reigned, but did not necessarily always win.

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