

WOMEN, LEGAL DISCOURSE, INTERPRETATIVE MANEUVERS AND NEGOTIATING SAFETY

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ABSTRACT

This essay examines three court documents revealing how late medieval and early modern English women employed rhetorical strategies or exploited the conventions of the legal system so as to negotiate another's safety, insist on a different knowledge of their economic and sexual position, and openly negotiate the terms of their subordination. It is to this different knowledge of both her economic and sexual position, and the negotiation of such terms that Agnes Barons' testimony in July 1636 bears witness. Joan Smith even more aggressively than Barons insists upon a different knowledge of both her and Elizabeth Moorfoote's socio-economic position and challenges the authority of a self-deputized constable in the second deposition under discussion, namely, the Elizabeth Moorfoote vs. William Crowther case of 1596. In the last deposition, Susan More challenges the socially inherited ideological constructs of single women as threats to economic stability and sexual order, family relationships and community, in the 1608 John Scales vs Thomas Creede case. Thomas Creede was Shakespeare's printer¹.

KEYWORDS

Women, Early Modern England, Depositions, Legal System, Alewives.

CAPITALIA VERBA

Mulieres, Nova Aetas Anglica, Depositio, Systema Legale, Alewives.

When historians broke open the study of depositions, and uncovered valuable testimonial evidence of women's active roles in the legal system, every discipline benefited. By repositioning those testimonies in a broader cultural role—here, late medieval and early modern England—we, in literature, language, law, sociology, etc., could now open them up to an analysis of women's interpretative maneuvers and rhetorical courage within legal (masculine) discourse. We could now, also, witness women devising forms of talk/conversation so as to insist on a different knowledge of their economic and sexual position, and to openly negotiate the terms of their subordination.

Because this essay deals so extensively with documents and interpretation which, in turn, involve one in attempts to constitute knowledge about the past, I must address a fundamental issue at this point—namely, the role of language in the creation of knowledge and “reality”. As linguists and semioticians have argued since the mid-twentieth century, we construct knowledge (i.e., our mental and discursive representation of “reality”) solely through language. However, language is itself a human construct. It is made-up set of units of sound: phonemes, morphemes, etc. There is no natural relationship between language and the world that we describe through language². There is nothing inherently “tree-ish” about the word “tree”, as the favorite example puts it. The point is that if we cannot even think about reality without thinking through language, if all thought is linguistic through and through³. Then the consequences for this essay are twofold: first, there is my part as the reader/interpreter. All representations that I make of the documents' implications are ultimately coded with my own meanings or desires, given that knowledge is a repository of accumulative meanings and experience. Second, there is the document itself. It, too, is coded: there is a deep structure to any text/document or deposition that is part of a larger (sign) system within which is encoded the experience, understandings, and power relationships of the witnesses testifying as well as of the notaries recording those testimonies. Encoded, too, are the epistemological assumptions of the language of the text, itself: i.e., the way the language of the period itself classified phenomena or “divide[d] up and interpret[ed] that world”⁴. Moreover, whatever liveliness, mental state or rhetorical maneuvering that I ascribe to the women subjects of this essay, those behaviors must be seen, in Carlo Ginsburg's words, as “both real and illusory”⁵. “Access to the past is always mediated, and, thus, always partial”, Ginsburg cautioned. And “since it is always mediated, always tied to a point of view, historical knowledge is by

1. Used abbreviations: DRO, Devon Records Office; LMA, London Metropolitan Archives.

2. de Saussure, Ferdinand. *Course in General Linguistics* (1916); new translation by Roy Harris: de Saussure, Ferdinand. *Course in General Linguistics*. London: Duckworth, 1983: 67, 69-69 and 117.

3. Or, in David Tracy's words, “all understanding is linguistic through and through” (Tracy, David. *Plurality and Ambiguity: Hermeneutics, Religion, Hope*. San Francisco: Harper & Row, 1987: 43).

4. Grace, George W. *The Linguistic Construction of Reality*. New York: Croom Helm, 1987: 7.

5. Ginsburg, Carlo. *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*. Baltimore: The Johns Hopkins University Press, 2013. Preface to the 2013 Edition, non-paginated.



definition perfectible, even when, as can happen, human error does not intrude”⁶. Alun Munslow cites Roger Chartier’s more direct view “[N]o text, even ‘the most apparently documentary, even the most ‘objective’, can ever ‘maintain a transparent relationship with the reality that it apprehends’”⁷.

As a writer looking at these depositions, I am therefore faced with two obligations: the first is to avoid privileging a single voice or a single interpretation; the second is to offer readers access to a complex of attitudes and codes of behavior, to surface alternative “truths”, other voices, and other, multiple, ways of knowing that are embedded in these non-transparent texts. This study attempts to take advantage of the multiple layers in language that inhere in depositions which are themselves a “re-representation” of “narrative” as well as of an historical event. As I will argue, within those re-representations appear to be specific narrative strategies, specific legal maneuverings, devised by women witnesses so as to insist upon a different knowledge of their economic and sexual position, and to openly negotiate the terms of their subordination.

It is to this different knowledge of both her economic and sexual position, and the negotiation of such terms that, I argue, Agnes Barons’ testimony in July 1636 bears witness. Joan Smith even more aggressively than Barons appears to insist upon a different knowledge of both her and Elizabeth Moorfoote’s socio-economic position in the second deposition under discussion, namely, the Elizabeth Moorfoote vs William Crowther case of 1596. In the last deposition, Suzan More openly challenges the socially inherited ideological constructs of single women as threats to economic stability and sexual order, family relationships and community, in the 1608 John Scales vs. Thomas Creede case.

Agnes Barons (of Devon, England), about 24 years old, was one of two maidservants in the kitchen when Audrey Rowell spotted Humphrey Harris at the kitchen window loading gravel. Rowell observed aloud that Annie Geffrey had cost William Harris (Humphrey’s father), forty pounds. The hint at sexual misconduct was unmistakable, particularly since Rowell then added that “there was not such an old whoremaster more in the country and... such a bawdye old knave in the country all which words she the said Audry did speake in raylinge and scoffinge manner of the said William Harris”⁸. The plaintiff, William Harris, sued Rowell, and called upon both Agnes Barons and Elizabeth Mills (the other maidservant) to give testimony. But Barons’ own sexual character and financial honesty now came under attack. As part of Rowell’s counsel’s defense strategy, they charged that Barons had been brought before a justice of peace by Mr. Done, her previous master, who had

6. Ginsburg, Carlo. *The Cheese and the Worms...*

7. Chartier, Roger. *Cultural History: Between Practices and Representations*. Cambridge (UK): Cambridge University Press, 1988: 43. Cited in: Munslow, Alun. *Deconstructing History*. New York: Routledge, 1997: 27.

8. DRO. Ms. Chanter 866, William Harris contra Audrey Rowell, f. 220v-222v, especially, f. 220v. A briefer discussion of the implications of Agnes Barons testimony appears in Chapter 3: “Women, Crime, Conversation and the Courts”, *Language as the Site of Revolt in Medieval and Early Modern England: Speaking as a Woman*, Mary C. Bodden, ed. New York: Palgrave MacMillan, 2011: 93-96.



accused her of leaving his employ without permission and of stealing food worth 18 pence (considered grand larceny). Rowell's counsel also alleged that Barons had borne an illegitimate child four years before. Simple and direct as Barons' response appears to be, it was, in fact, a careful threading through the troubled terrain of national debates about the economic and religious identity of women. The issues concerned "masterless women" versus women as subject to a master's authority, perceived as parallel to that of husbands, fathers, and the church. Linked to the economic independence of women were fears about women's sexual freedom (a view clearly subscribed to by Rowell's defense counsel). Barons' cultural experience, however, could reasonably suppose the "right to mobility", an economic value that gave servants "their most powerful weapon in negotiations for better wages and working conditions, whether from the current master or a different employer"⁹. Nevertheless, women's labor was "perceived as less 'free' than that of their male counterparts"¹⁰, and, in fact, local officials could "order unmarried women between the ages of twelve and forty years into service, for whatever wages the officials thought fit"¹¹. In Barons' own lifetime, women without employment, "found masterless", were typically "ordered to the House of Correction for a whipping"¹². Seventeenth-century court records contemporaneous with Barons' quitting of Mr. Done's service "are littered with orders to masterless individuals, frequently women, to put themselves into service"¹³. Consequently, despite Barons' having given her master the usual three months' notice of her intention to quit his service, presumably intending then to work for a Mr. Pomery in the same parish, he could expect the law to support his refusal to part with her.

Barons' answer is not simply personal, it is political:

And [Mr Done] did procure a process from Mr Cabell [justice of peace] to call [me] before him. And [I] went to the said justice, and there Mr Done did chardge [me] that [I] had made covenant to serve him, and that he would not release [me] of his service[.] And [I] then did refuse to goe to his service, and denied any such promise, as [I] justly might, and then Mr Cabell told the said Mr Done that he [Mr Done] had nothing to do with [my] service, except he could chardge [me] with any wrong [I] had done in [my] service, or had stolen any thinge. Where to Mr Done answered that he would not chardge [me] with any thinge[.] Yet afterwards

9. Mendelson, Sara H. "'To shift for a cloak': Disorderly Women in the Church Courts", *Women and History: Voices in Early Modern England*, Valerie Frith, ed. Toronto: Coach House Press, 1995: 3-18, especially, 8.

10. Mendelson, Sara H. "'To shift for a cloak'...": 9.

11. Mendelson, Sara H. "'To shift for a cloak'...": 3. The Statute of Artificers of 1563 was intended to "determine wage rates at the local level, to control conditions of employment for many workers including apprentices, and to restrict the mobility of labour" (Woodward, Donald. "The Background to the Statute of Artificers: The Genesis of Labour Policy, 1558-1563". *The Economic History Review*, 33/1 (1980): 32-44, especially, 32).

12. Crawford, Patricia. *Women and Religion in England 1500-1720*. New York: Routledge, 1993: 48. In Chapter 2, note 51, Crawford points out that there were "numerous cases in the Mayor's court book in Norwich".

13. Underdown, David. *Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660*. Oxford (UK): Clarendon Press, 1985: 37 and note 104.



in [the] presence of Mr Cabell, the said Mr Done did say to [me] that he could chardge [me] for a piece of beif which [I] gave away at his dore. And then Mr Cabell examininge the matter farther, the said Mr Done said that [I] gave awa[y] a peece of beif at his dore to a poore woeman worth 18 pence. And [I] did then presently prove before the justice by him that bought the beif that the peece of beif did cost but 14 pence, and that it was boyled in [my] master's house, and that ten people had the same at dinner. And [I] gave a litle of that which was left to a poore woeman at the door, and some of it [I] kept in the house till next day. And when Mr Cabell saw how he was abused by hearinge such a brable, he was very angry with Mr Done and did bynd over him and [me] to answer at the [Quarter] Sessions[.] And [I] was at the last Sessions at the Castle of Exeter but was not called nor questioned there, only [I] was willed to pay Mr Cabell's clerk the fees. And [I am] a single woeman and unmarried, and about fourteen years since, [I] was betrothed and had bannes published in the church[.] And the man left [me] and refused to marry [me], after he had abused [me] and brought [me] with child¹⁴.

She was only a servant, yet an emphasis on female agency surfaces everywhere in Agnes (or Anne) Barons' deposition. She actively insisted on a different knowledge of her economic and sexual position—all the while dialoguing with the community by referencing community mores and its culture, even as she intended to liberate herself from the cultural expectation of obedience to the master. Barons' unapologetic "[I] did refuse to go to his service", and her description of having "justly" denied his claim of a covenant between them, emphasized her agency and silently reminded the community that she had availed herself of the socio-legal custom of giving notice on Lady Day, March 25, the first of the quarter days when servants could be hired or terminated, and rents were due. What is more, she aligned herself as pro-active in positive female community activities, dispensing charity. In fact, in her deposition female agency, consistently compared to male agency, emerges as knowledgeable and honorable: unlike Mr. Done, she had not lied about a covenant, she had not falsely accused anyone of theft, and she had not falsely mistated the monetary value of the beef. And unlike the (male) counsel's deliberate intention to cast doubt on her sexual chastity, she re-asserted her right to an honorable sexual reputation while simultaneously revealing the desertion by the man betrothed to her after the banns for their marriage had been published. Published banns were key to the community's view of her position. Many couples regarded the official betrothal "as a warrant to initiate sexual relations, taking pregnancy as an urgent cue for marriage. Such mores were based on mutual trust and the vigilance of informal community sanctions"¹⁵. Martin Ingram's position is more qualified: "Attitudes to antenuptial fornication are best summed up as ambivalent" and the "narrow dividing line between bridal pregnancy and bastardy" "made it impossible for local communities to regard sex before marriage in church as wholly licit"¹⁶. The fact is, however,

14. DRO. Ms. Chanter 866, f. 221r-221v.

15. Mendelson, Sara H. "To shift for a cloak'...": 9.

16. Ingram, Martin. *Church Courts, Sex and Marriage in England, 1570-1640*. Cambridge (UK): Cambridge University Press, 1987: 230. Ingram's studies lead him to ask "just how firmly engaged were such couples" who were court defendants accused of sexual relations before marriage. He notes that while "as



that Barons' defense —however mediated by the court clerk— had reconstructed the hegemonic ideology (respect for economic property, charitable obligations, marriage accountability) and had shown the dominators (men) to be the violators of the ideological standards propagated by themselves. The judge's anger over the "brabble" was aimed at Mr. Done, not at Barons (even though both were to appear at another Sessions, where Barons noted that she was left unsummoned, implying her silent acquittal).

Women's legal powers, their domestic status, their financial vulnerability, their community standing, their legal identity itself were understood (by women and men) in terms of the men's authority, male constraints, male hierarchal powers; in other words, the male sphere. The male sphere shaped women's discourse, determined their rhetorical strategies, and their framing methods. In such a world of inequities where solely language (not speech... because speech was itself frequently criminalized) was as available to women as to men, it makes sense, in my view, that language, along with, eventually, speech and discourse became the arena in which women frequently outmaneuvered the interpretative practices of men. The very instability of language disallows any closed process of meanings. Devising narrative strategies that can disrupt and subvert culturally inherited truths dependent upon that instability could save lives, keep women out of the stocks, and out of jail.

Perhaps the greatest need for such narrative strategy would be among women whose public image already severely disadvantaged them, namely, alewives or alehouse keepers. Two alehouse keepers, Joan Smith and Elizabeth Moorfoote, not only challenge the stereotype of drunkenness and moral disrepute but they may also be evidence that alewives had more authority, social power, and community standing than history and literature have granted them.

Sometime in March of 1589, Elizabeth Moorfoote had persuaded Joan Smith to go with her and two other women to Kingsland in Hackney (outside London), where she lived, to give testimony about a past financial transaction¹⁷. They stopped to drink at Moorfoote's alehouse on Kingsland Street in Kingsland and drank a pott or two of beer. Smith then left to visit Simmons, an old acquaintance, nearby. As she was leaving Simmons, Smith spied Sybil Dodd quarreling in the street with one of the women who had accompanied her and Moorfoote. At the same time, a certain Mr. William Crowther, on the way to his own house, hearing the noisy brawl came along and grabbed Elizabeth Moorfoote who was not involved in the fracas and shouted at her, "this is your doing, Elizabeth Moorfoote", and he added, "I will have yow carted owte of the towne". Moorfoote countered, as one witness said, "in faithe Mr. Crowther keepe yow yor self aswell from hanginge as I will

many as 70 per cent of cases in the court of the archdeacon of Salisbury in the year 1627-1629" alleged prior intention to marry, such allegations were rarely made by defendants in Wiltshire (229). Informal promises seem to co-exist with the (declining) practice of "formal spousals" (229).

17. "what money one George Goodman(n) did spende in [Joan Smith's Alehowse] in the companeye of Elizabeth Moorfoote" (LMA. DL/C 213 (c.1590), 658-664, and 662). In the body of this essay all subsequent quotations from this manuscript will be immediately followed by the page numbers on which that quote appears.



keepe me from carting and then yow shall not neede feare the gallowes". Crowther, "in a greate rage and choller", replied, "godes blood[,] you arrant whore and with that he gave her a box upon the eare that she fell withall"¹⁸.

Crowther then hauled Moorfoote off to the stocks and set her in, threatening to do the same with Mrs. Smith. Moorfoote did not go quietly. She scratched Crowther's face, tore his ruff from his neck, and the ruff from his wife's neck as well —his wife having joined her husband, presumably to assist him.

When this matter was first brought before Justice Machell, Machell sentenced Moorfoote to be dunked for a scold. However, one of the witnesses, a Mr. Fabian Crookehorn (who had leased a house owned by Crowther) along with Mr. Harman (the town constable) went to Justice Machell, and offered a fuller account of the altercation. Machell then reversed his judgment, dismissed Moorfoote, and bluntly chastised Crowther with "some hard speeches".

A year later, in 1590, Elizabeth Moorfoote now brought a suite against Crowther for defamation of character arising out of Crowther's conduct, and arising also out of her public humiliation of being set in the stocks and initially sentenced to be dunked as a scold. This case, as I see it, is not so much about the breaking of the law or personal assault, as it is, rather, about social power and public reputation. Bringing Crowther to court was an extraordinary move by Moorfoote, given the exceptional powers that constables had in this period¹⁹. Even Fabian Crookehorn, a gentleman, took care to avoid retaliation by Crowther by telling Crowther that he was testifying against his will, and by ensuring that Elizabeth Moorfoote explicitly served process on him to serve as a witness rather than risk being thought as volunteering testimony against Crowther²⁰. It is Joan Smith's deposition (Smith having been called back to Kingsland to be deposed as a witness) that offers such a powerful example of how women seem to have understood the specialized discourse of the law and the networks of power codified in judgments. Her opening lines already negotiate her reputation and align her interests with the peace-keeping role of the judge: Smith first cast herself as a mediator, saying that while she was:

at Simmons house as aforesaid Dodds wife and wedow wyatt if so she be called revvyed an old quarell that was betweene them and this examinante when she

18. LMA. DL/C 213 (c.1590), 660.

19. Briggs, John; Harrison, Christopher; McInnes, Angus; Vincent, David. *Crime and Punishment in England: An Introductory History*. London: University College London Press, 1996: 53-54, point to the power of the English constable, asserting that by the "close of the sixteenth century hardly any aspect of law enforcement at the local level lay outside his brief" (53).

20. LMA. DL/C 213, 662. Fabian Crookehorn "did tell Wm. Crowther that he came to testifie againste his will and that he was served process which he did of purpose to understand wether Wm. Crowther wold take it well or ill that he came testifie and perceaving Crowther to take it ill he this respondent refused to appeare that corte day and enformed the Moorfootes wife to serve him with process before he wolde come to testifie which process was served upon him before the nexte corte daye then nexte following".



sawe them fighting togethers devyded them as well as she cold and pulled the one from thother²¹.

Smith's tactic wasn't some simple epistemic assumption that her peacemaking activity would privilege her testimony. Her strategy, rather, effectively casts Sybil Dodd and Widow Wyatt as women unable to let an old quarrel die, and (even more socially reprehensible) as women willing to take their quarrel to a public and physical level. There is a particular rhetorical device at work in Smith's construction of the event, namely, the technique of an implied comparison: compared to Sybil Dodd and Widow Wyatt, Moorfoote appears as a model of social and communal stability, and Smith herself appears expressly to be an agent of responsibility and communal concern.

Smith then volunteered apparently non-essential information: she expanded on the escalating violence between Widow Wyatt and Dodd's wife:

and yet Dods wife was so furious that notwithstanding that the said wyatt wedow was takinge her waye to London warde she followed her with a fagott stick in her hand intende to strike her and the wedow perceaving her intent turned her selfe abowte and tooke the sticke owte of Dods wifes hand and strucke her upon the hed with the same and broke her hed and then came Crowther busyle to make an ende of that quarrel and began another²².

It may have been non-essential information, but it was rhetorically effective: the violence of Sybil Dodd and Widow Wyatt alone was referenced; Smith did not associate Moorfoote with the fracas. The greater rhetorical maneuvering, however, was her explicit linking of Dodd's and Wyatt's instigating of disorder to Crowther's instigating disorder, himself: Crowther was described as coming along "busyle". Some lines earlier (p. 663) she had already testified to Crowther's "busyle" nature, and at that point she had already linked his busy-body nature to the instigation of the clash between him and Elizabeth Moorfoote. She added that Crowther, after calling Moorfoote "thow arrant queane Moorfootes wife, this is long of thee", then

called the said Moorfootes wife arrante whore and saied he wold have her carted owte of the towne and therwith he gave her a blowe upon the cheeke that she fell and laye sprawling upon the grounde And when she arose againe she saied unto him well Mr. Crowther hast thou stricken me: And upon some speeche of Mr. Crowther uttered to her againe she the saide Moorfootes wife bad him keep himself aswell from hanginge as she wold keep her selfe from carting and he shold not neede to feare the gallowes with manie other such lyke wordes that passed betweene them but she saie the firste begynninge of the brawles betweene Crowther and Moorfootes wife he the said Crowther did begyn with the said Moorfootes wife she gyving him no occasion of offence nor beinge anie cause

21. LMA. DL/C 213 (c.1590), 664.

22. LMA. DL/C 213 (c.1590), 664.



of the brawle betweene Dods wife and the other woman [insert: as everie bodie reported that was there]²³.

What is clear, according to Smith, was that Moorfoote's bristly defense was solely in response to Crowther's assault of Moorfoote.

Framing Smith's representation of the event, above, were certain critical social and political circumstances bound to affect the social and political consciousness of both jury and judge²⁴. Every woman's (and man's) testimony in aid of an accused woman was (and is) by definition an exposition of the social practices and structures that oppress women because every deposition reflected its narrator's understanding of (at least) three social systems: communal relationships, networks of power, and social rules. In the context, and in this period, the networks of power and social rules favored men. Necessarily, then, women's (and men's) testimony in favor of other women over a male accuser inherently involved subverting (even if unconsciously) the ideological assumptions supporting those networks.

One particular aspect of that power was the fact that the dominant (male) power interests controlled the depiction of legal reality, legal stability, and legal priorities²⁵. Nevertheless, these two women's testimonies, especially Smith's, found ways of destabilizing the legal repertoire and its mechanics of constructing meanings that interpret and sanction hierarchical relations. For example, Smith had introduced non-essential but rhetorically effective information when she detailed the escalating fight between Dodd's wife and Widow Wyatt. This not only emphasized Moorfoote's innocent bystander position before Crowther grabbed her, but it also raised questions about Crowther's judgment: why single out Moorfoote when two other women were conspicuously breaking the peace? Smith also verbally constructed different subject positions that hinted at improvident attitudes toward communal relations and social rules. The one having perhaps the greatest impact on the jury and the judge was not only Crowther's "busyle" coming along, but, more dramatically, Crowther's inability to put a woman into the stocks after wrestling for an hour with her):

23. LMA. DL/C 213 (c.1590), 663.

24. Any representation of an event is a linguistic and discursive practice, and given the poststructuralist view, in Joe Kincheloe's words, "that there is no such thing as neutral format of representation". Susan Amussen adds, linguistic and discursive practices "are certainly one dimension of oppression" (Kincheloe, Joe. "Fiction Formulas: Critical Constructivism and the Representation of Reality", *Representation and the Text: Re-Framing the Narrative Voice*, William G. Tierney, Yvonna S. Lincoln, eds. New York: State University of New York Press, 1997: 57-79, especially, 63; Amussen, Susan D. "Elizabeth I and Alice Balstone, Gender, Class, and the Exceptional Woman in Early Modern England", *Attending to Women in Early Modern England*, Betty S. Travitsky, Adele F. Seeff, eds. Newark: Associated University Press, 1994: 219-240, especially, 230). This, of course, raises questions about my own positionality as an "authoritative truth teller" interpreting Smith's narrative voice (Kincheloe, Joe. "Fiction Formulas...": 63).

25. Herrup, Cynthia B. "Law and Morality in Seventeenth-Century England". *Past and Present*, 106 (1985): 102-123, especially, 104.



said Crowther did putt Moorfootes wife into the stocks and was struggling with this respondent the space one of one hower almost of intente to have putt this respondent into the stocks bycause she called him knave for striking of a woman meaning Moorfootes wife but this respondent gyvinge no other cause of offence but onely that wold not permit him to stocke her and especiall ye for avoyding further revenged upon Crowther if he had done it but bycause she gott the vycctorye in that matter she wold never lett her husbände knowe it for feare least Crowthers cote should have byn well lined for his foolishe attempte²⁶.

Here, Smith constructed a powerless male authority in Crowther: he cannot manage the duties of a constable.

Both Barons and Smith critiqued male power and male weakness: each incorporated insights into the cultural expectations of men and thus delegitimized their social status when, for example, Barons related the judge's disgust with Mr. Done and when Smith described Crowther "struggling" for the "space of one hower almost" to put her, unsuccessfully, into the stocks. Both Barons and Smith also employed irony as a comment on ideological expectations of men's superior moral condition and men's superior strength: Barons represented herself as honorable and truthful: unlike Mr. Done, she had not falsely accused anyone of theft, and she had not falsely misstated the monetary value of the beef mostly consumed by Done's household, and she acquitted her pregnancy as legitimate.

Smith's narrative techniques seemed to anticipate and (to intend to?) confound the likely dominant interests of the court —namely, their inclination to support masculine authority represented in Crowther's actions— even when a clear rightful verdict should have favored Moorfoote or any assaulted innocent woman. As one of my graduate students expressed it in our seminar examining various depositions: "Policing women was the responsibility of men; Crowther was a man punishing a woman for (supposedly) originating and then exacerbating a breach of the peace. Legally punishing Crowther for his exercise of power might have been seen by the jury as a blow against male authority"²⁷.

All the more impressive, then, was Mrs. Smith's framing of legal discourse so as to negotiate Moorfoote's safety, and publicly critique cultural "truths" or inherited legal discourse. In Smith's three or four sentences, above, concerning Crowther's putting Moorfoote in the stocks and struggling with Smith herself, there are embedded at least three or four discursive practices that tap into problems central to the culture of the period. In the first place, William Crowther was not the town's constable; he appears, according to others' testimony, to have deputized himself; there is a hint in one of the testimonies that the town's official constable, Constable Harman, was sick. It is therefore striking that a self-appointed authority not only took extreme measures with an innocent woman, Moorfoote, but also attempted to do the same with her companion, Smith. He seems not even to have served a warning to the brawling Widow Wyatt and Sybil Dodd. And even more striking is the fact that he

26. LMA. DL/C 213 (c.1590), 664.

27. Parkison, Sean. Graduate Seminar: "Gender and Crime", Marquette University, Spring 2010.



was successful in having the Justice of Peace sentence Moorfoote to be dunked as a scold—a brutal form of torture reserved for scolds and witches—and successful, too, in bringing Smith before the judge.

Second, would Crowther have taken such measures against women with not so public a profile as alehouse keepers had? His initiative, it is to be remembered, was at first supported by the judge. Given the national, religious, and legal, view of alehouses as sites of violence and disorder, the judge's support is not surprising. Then, too, it was outside Moorfoote's alehouse, after all, that the public brawling took place. In this period, alehouses' association with vice and crime seem environmentally of a piece, being usually squalid, poorly furnished and small. And they were more suspect than inns or taverns because they were more likely to host vagrants who could present a threat to the community, according to Peter Clark²⁸.

Third, these symbols of "social decadence and disruption"²⁹, as Kevin Sharpe described alehouses, had long been the subject of government and municipal policies. In the late tenth century, King Edgar abolished all alehouses except one in each borough or small town; in 1285, Edward I signed a statute that imposed a curfew on alehouses and taverns, a statute that was copied in the *Liber Albus* in the early fifteenth century³⁰. Edward VI (statute 5 and 6, chap. 25) determined that "none should keep an alehouse without a licence by two justices of the peace"³¹. Ten years after the Moorfoote vs. Crowther case, there was, in 1599, a royal proclamation "suppressing the unnecessary number of ale-houses"³². Edward VI's statute (5 and 6, chap 25) had given "power to the justices to suppress unnecessary tippling-houses, but it was chiefly directed against disorder, not against excessive drinking"³³. With Elizabeth I, the control and restrictions against alehouses lay in their being perceived as sites of theft, disorderly behavior, and the squandering of money. Garthine Walker writes that "between 1576 and 1610 there were thirty-five parliamentary bills concerning drunkenness, inns, and alehouses"³⁴. Crowther could well assume that the community might more readily sanction his actions than question them.

Fourth, contemporary literature seems to reflect the special targeting of female alehouse keepers. For one thing, alehouse proprietors were more frequently women than men, according to Rodney Hilton³⁵. Seen as sexually aggressive, serving

28. Clark, Peter. *The English Alehouse: A Social History 1200-1830*. London: Longman, 1983: 12-13.

29. Sharpe, Kevin. *The Personal Rule of Charles I*. Avon: The Bath Press, 1992: 482.

30. Hanawalt, Barbara A. "Of Good and Ill Repute": *Gender and Social Control in Medieval England*. Oxford: Oxford University Press, 1998: 111, 114.

31. Comyns, Sir John; Kyd, Stewart. *A Digest of the Laws of England: Volume 4*. Dublin: Luke White, 1793: 558.

32. Iles, C. M. "Early Stages of English Public House Regulation". *The Economic Journal: The Quarterly Journal of the Royal Economic Society*, 13 (1903): 251-262, especially, 257.

33. Cunningham, William. *The Growth of English Industry and Commerce in Modern Times*. Cambridge (UK): Cambridge University Press, 1892: 160, n. 6.

34. Walker, Garthine. *Crime, Gender and Social Order in Early Modern England*. Cambridge (UK): Cambridge University Press, 2003: 226.

35. Hilton, Rodney. *Class Conflict and the Crisis of Feudalism: Essays in Medieval Social History*. London: Hambledon Press, 1985: 215.



diluted (sometimes contaminated) ale, overpricing their ale, and inciting disorderly behavior, they are featured in ballads, tracts, church sculpture, plays and poetic narratives³⁶. Then, too, female gatherings, women's alliances, women grouping together in alehouses threatened patriarchal control and community stability, as the anonymous poem, "Gossip mine", as well as "Jyl of Brentford's Testimony", and "The Kind Beleeving Hostess" dramatize. Crowther's aggressive attitude towards Moorfoote as an alehouse keeper was, it seems, a natural part of a fundamental and cultural distrust of the ale trade and alewives.

But that is, in fact, what makes the Moorfoote case so intriguing. Both Moorfoote and Smith were, as stated, alehouse keepers. Moorfoote, however, was, by her neighbors' accounts, a thoroughly upright citizen. In her deposition, Smith presents herself as a socially and financially respectable citizen (she had accompanied Moorfoote to Kingsland in the first place in order to serve as a witness regarding a financial transaction at Smith's alehouse). Despite their alewife status, both Moorfoote and Smith appear to have considerable social power. Not only Fabian Crookhorn, a witness of gentleman status, but also the town's Constable, Constable Harman, went to Judge Machell to argue on Moorfoote's behalf. Both were local men of considerable standing, suggesting that Moorfoote's own social position was worth their intercession. Judith Bennett remarks upon the "ambivalence and hostility as well as approval" that greeted "the authority that women derived from brewing"³⁷. People "felt anxious about the seemingly excessive power of brewsters," she says³⁸. Commercial brewing appears to have been exceptionally profitable work for a woman, as well as opening up "some exceptional public roles to women, especially in terms of legal capability"³⁹. Women generally could not serve as compurgators⁴⁰, but, as Bennett records, "in some borough courts, this rule was

36. As Judith M. Bennett notes, alewives themselves were often colored as a disreputable lot. Among the best known representations of alewives at the time mentioned by Bennett are Elynour Rummyng, a grotesque, aged, profane, and sexually aggressive alewife from a Skelton poem; at the end of the Chester Mystery Cycle, we find an alewife, a damned soul, who served watered-down hooch before finding her way to hell; and Mother Bunch, purportedly based on a real alewife, is the female narrator of the 1604 book *Pasquil's Jestes* (Bennett, Judith M. *Ale, Beer, and Brewsters in England: Women's Work in a Changing World, 1300-1600*. Oxford (UK): Oxford University Press, 1996: 122-130). Bunch was another jovial and physically gross alewife of folk literature in the manner of Rummyng or the similar Long Meg of Westminster, only more so. For instance, in the book Bunch is described as possessing such prodigious flatulence that "Shee was once wrung with wind in her belly, and with one blast of her taile, she blew down Charing-Crosse, with pauls aspiring steeple [...]" (Bennett, Judith M. *Ale, Beer, and Brewsters*, cites *Pasquil's Jestes with the merriments of Mother Bunch* [London, 1629]: 8). See also: *Jyl of Brentford's Testament*, and *The Canterbury Tales*. See also the early fifteenth-century carving of the devil carrying off the alewoman to hell. 7 January 2012. <http://www.paradoxplace.com/Photo%20Pages/UK/Britain_Centre/Ludlow/Ludlow_misericords.htm>.

37. Bennett, Judith M. *Ale, Beer, and Brewsters*....: 35.

38. Bennett, Judith M. *Ale, Beer, and Brewsters*....: 35.

39. Bennett, Judith M. *Ale, Beer, and Brewsters*....: 35-36.

40. A compurgator is one who bears witness to the truth or the innocence of another.



mitigated for brewsters, who were allowed to bring other women to swear on their behalf⁴¹.

It is telling, therefore, that Moorfoote had two such local men to stand up for her, men of social and legal standing, to convince the judges. If Constable Harman, the official constable⁴², gave witness for Moorfoote, we might assume that Moorfoote's alehouse had not generally posed a problem for the constable in keeping the peace. On the other hand, as Judith Bennett points out, "More than many other women, alewives threatened the proper patriarchal order: in flirting with customers, they undermined the authority of their husbands; in handling money, goods, and debts, they challenged the economic power of men; in bargaining with male customers, they achieved a seemingly unnatural power over men; in avoiding effective regulation of their trade, they insulted the power of male officers and magistrates; and perhaps most importantly, in simply pursuing their trade, they often worked independently of men"⁴³. In her 2009 Dissertation, Katherine Karlin notes "evidence of countervailing attitudes towards working women", including alewives. She admits that these are minority voices, but the point relevant to this essay is that those countervailing attitudes toward alewives' "presence in the popular theater attests to the range and heterogeneity of opinion"⁴⁴. All of this suggests that, while Moorfoote's status as an alewife may have been problematic, the position itself held a certain civic power.

The view of women and the law is still emphatically cautionary, even as late as 1996. As Radha Jhappan notes regarding Carol Smart and her 1996 discussion of "Feminism and the Law", "women should be extremely cautious of resorting to law because it disqualifies women's knowledge and experience"⁴⁵. Yet Moorfoote did precisely that—in the face of three facts that would ordinarily have rendered a jury's or judge's decision in William Crowther's favor: first, controlling women was the civic and moral responsibility of men; second, Crowther, whether deputized or not, was exercising a male privilege to punish a woman for (presumably) initiating—the quarrelling took place outside of her establishment—and then aggravating a breach of the peace; third, deputized or not, the petty or parish constable was the "leading law-enforcement officer at parish level", and "by the close of the sixteenth

41. Bennett, Judith M. *Ale, Beer, and Brewsters...*: 36.

42. Harman was the town constable. Three witnesses, John James, Fabian Crookehorn, and Joan Smith reference Harman as the rightful constable of Kingsland. LMA. DL/C 213, p. 659, l. 41 (John James' testimony), 661, ll. 30-40 (Fabian Crookehorn's testimony), and p. 662, l. 56, and p. 662, ll. 30-31 (Joan Smith's testimony).

43. Bennett, Judith M. "Misogyny, Popular Culture, and Women's Work". *History Workshop*, 31 (1991): 166-188, especially, 177.

44. Karlin, Katherine L. *Alewives and Factory Girls: Representations Of Working Women (A Critical Study) And Freedom Of Information (A Novel)*. Los Angeles: University of Southern California (PhD Dissertation), 2009: 15. 5 March 2012 <<http://digitallibrary.usc.edu/assetserver/controller/item/etd-Karlin-2996.pdf>>.

45. Jhappan, Radha. "The Equality Pit or the Rehabilitation of Justice?", *Women's Legal Strategies in Canada*. Toronto: University of Toronto Press Incorporated, 2002: 175-234, especially, 179. Jhappan is paraphrasing Carol Smart's argument in Smart's 1996 essay "Feminism and Law: Some Problems of Analysis and Strategy".



century hardly any aspect of law enforcement at the local level lay outside his brief" including administering the vagrancy acts, supervising all alehouses within his area of jurisdiction, and placing an offender (even an offender of a breach of peace about to take place) "in the stocks or in some other secure place until justice could be done"⁴⁶; fourth, this same woman not only publicly challenged a man's (Crowther's) authority, but also publicly renewed that challenged by bringing him to court on a defamation suit. Nevertheless, the legal outcomes of the original case are remarkable: a judge reversed his decision, a judge publically chastised the male authority who is attempting to restore order, two local citizens sought out the judge to offer testimony in favor of an alewife against a landowner (Crowther is a landowner; Fabrian Crookhorn has a lease from him), and, finally, Moorfoote herself brought the case to court a year later, reviving the public memory of Crowther's disgrace and retrieving her public reputation. Moorfoote and Smith, as well as Agnes Barons, "resorted to law" in negotiating the relationship between power and community and law that governed their lives. Their interpretative maneuvers and rhetorical courage changed legal realities and legal priorities, at least for that day.

Interpretative maneuvers prove to be even more critical in Suzan More's (of London) testimony in the case of John Scales contra Thomas Creede (June 18, 1608) not only because the subject matter, rape, exemplifies the limits of language itself, that is, the "limits within which the sexual body [could be] presented in legal records"⁴⁷, but also because her narrative illustrates the politics of recognition and its deeper layer of misrecognition of the fundamental conditions of her existence. More's testimony exposing Thomas Creede, Shakespeare's printer, as an unscrupulous individual smugly confident of raping servant girls without his having to suffer either financial or legal consequences is especially relevant here: it raises the issue of what happens to female solidarity when women must respond to another woman's illegitimate pregnancy.

Suzan More, 25 was in the service of a bookseller Randall Birke and his wife (Anne Birke), not as a maidservant⁴⁸, but rather as a "point-maker" (lace-points), a skill that made her valuable to Mrs. Birke who was "using the trade of point making"⁴⁹. Thomas Creede's business as a printer brought him naturally (and frequently) to Birke's house. There, as More testifies, he chatted her up, asking her persistently, "if she would go drink with him some time"⁵⁰ but More refused. Creede then applied to her "maistress mrs Birke, for 'leave for her' to go, even asking 'mrs Birke to goe with them herself[.] which she often denied'"⁵¹. After some time, both Mrs.

46. Briggs, John; Harrison, Christopher; McInnes, Angus; Vincent, David. *Crime and Punishment...*: 53-54.

47. Gowing, Laura. *Common Bodies: Women, Touch and Power in Seventeenth-Century England*. New Haven: Yale University Press, 2003: 86.

48. More receives no wages other than those for pointmaking. In her response to the 15th Interrogatory of Creede, she deposes that she "had no wages but wrought her points by the gross and was paid by the gross, viz [namely] 5s. 4d a gross" (LMA. DL/ C 218, 144).

49. LMA. DL/ C 218, 138.

50. LMA. DL/ C 218, 138.

51. LMA. DL/ C 218, 138.



Birke and More agreed to go with Creede for a drink of wine, and More testified that Creede came “sondrye times after that to get More ‘to goe with him to drinke wine’”⁵². However, in midsummer, when she went with Creede to the Sun Tavern in Aldersgate Street, he gave her so much wine that More “was drunk and sick withall”⁵³, and then “Creede had her this deponent [More] to one widdow Grimes house by Pickt-Hatch”⁵⁴ an alehowse and had her upp into a chamber wheare she this deponent as she saythe lay downe on a bed to sleepe and she saythe that at that time he the same Thomas Creede had the carnall knowledge of her this deponents body”⁵⁵, a situation which we would now construe as date rape. From that point on, when More refused to go with him to the taverns, “he would be very angry and then he would sett others sometimes taverne boyes and sometimes the boyes of the forenamed widdow Grimes”⁵⁶ to stand in front of the Birke’s house, barring her progress and beckoning her to go to the tavern. More testified that twice after that, Creede had “carnall knowledge of her... body” at “widdow Grimes howse”⁵⁷. (It is from Widow Grimes’ collusion and Thomas Creede’s predatory behavior that More very likely saved Blanche Howell, the kitchen maid: “Blanche Howell...coming one daye home to Randall Birkes howse with som extraordinarie behavior and her face red”⁵⁸, Suzan More “perceyved she had byn drinking wine [...] thorougher her this deponents [More’s] importunitie”, Blanche Howell “confessed unto her this deponent that she had byn with Mr. Creede and he had willed her to bring home her mrs child which she then had and then meet him at goodwief Grimes howse but she this deponent [More] would not suffer her to goe at that time”⁵⁹. Even Anne Birke was not off limits to Creed’s sexual advances. More testified that after she, Mrs. Birke and Creede had been for the first time at the taverne, Creede bragged that if he had given Mrs. Birke “but a pynt more he sayed he could have don what he had would with her”⁶⁰. Anne Birke herself testified that among his many sexual overtures, Creede had told her that she “had a sweet pair of lips, and if she were a good wench she would let him have some part with her husband”⁶¹).

52. LMA. DL/ C 218, 139.

53. LMA. DL/ C 218, 139.

54. Pickt-Hatch (see: *The Dramatic Works of William Shakespere [sic], from the Text of Johnson, Stevens, and Reed*, ed. Nicholas Rowe, London: George Routledge & Co., 1856: 16, footnote unnumbered. Falstaff refers to Pickt-Hatch in Act II, sc. ii of the *Merry Wives of Windsor*. According to the footnote, Pickt-Hatch was in Clerkenwell. Ben Jonson references Pickt-Hatch in Epigrams, book I, XII: *On Lieutenant Shift*: “Shift, here in town, not meanest amongst Squires. That haunt Pickt-Hatch, Mersh-Lambeth, and Whitefryers. In Thomas Middleton’s *Black Book*, featuring Lucifer as a tourist in London, Lucifer calls Pickt-Hatch: “the very skirts of all brothel-houses” (117).

55. LMA. DL/ C 218, 139.

56. LMA. DL/ C 218, 139.

57. LMA. DL/ C 218, 139.

58. LMA. DL/ C 218, 142-43.

59. LMA. DL/ C 218, 143.

60. LMA. DL/ C 218, 142.

61. LMA. DL/ C 218, 163 (Anne Birke’s testimony).



When More became pregnant, Creede turned churlish: “if you had gone from your maister and left his house and would have byn at my discrecion” as I asked you, “I would have provided for you”, but seeing that you didn’t, “Goe seek you another ffather to your child of your will for I meane not to ffather it”⁶². In any case, he added, “I will shift it of well enoughe and my weif will helpe to cleare me of this matter and to shift it of us as she hath shifted me of suche matters as this is before now”⁶³. When More told Mr. & Mrs. Birke of her condition, they “being much grieved sent for him the same Thomas Creede to a tavern”⁶⁴, to which Creede came with his wife. There Creede’s wife proved her husband’s warning to be true, facing down More with such fierce threats that More was too “terrifie[d]” to know “what to do”⁶⁵. Later, Mrs. Creede, who seems to have eventually believed More’s story, gave her ten shillings to have the Cambridge Carriers cart More to the country to deliver her baby. But this happened in the “great frost time”⁶⁶, and More could not “endure the uneasie going of the waggen”⁶⁷, and returned to London where, unable to get a place to stay, she “laye about in the streets”, until a poor woman in Gravell Lane in Houndsditch took her in where “she laye too dayes and too nightes without meat or drink”⁶⁸. Eventually through the efforts of Anne Birke, More found a place to lay in at Rebecca and Edward Handley’s house where her delivery was attended by a midwife, Philippa Webb and Isabel Chaundler (a neighbor of the Handleys). When more finally delivered her baby, neither Mrs. Creede, nor Mrs. Birke were there in time.

In Suzan More’s testimony interpretative strategies were perilously critical: the limits of language itself were (and still are) what every woman testifying to rape, —or sexuality itself— faced. It is not a matter of linguistic impoverishment; it is, rather, that the discourse of law has long been already colonized by the ethos of power asymmetry, male subjectivity, and the social and political practices of dominant interests. The effect was to rigorously set the “limits within which the sexual body [could be] presented in legal records”⁶⁹.

1. Rape narratives and the limits of language

Garthine Walker argues that rape narratives “were by definition *legal* narratives”, and their representation was formed by certain “legal constraints, demands,

62. LMA. DL/ C 218, 139-140.

63. LMA. DL/ C 218, 140.

64. LMA. DL/ C 218, 140.

65. LMA. DL/ C 218, 140.

66. LMA. DL/ C 218, 141.

67. LMA. DL/ C 218, 141.

68. LMA. DL/ C 218, 141.

69. Gowing, Laura. *Common Bodies*...: 86.



conventions, and the inherent values of rape law", and its "extra-legal associations"⁷⁰. It isn't just the "intentions of the storytellers" that are embedded in the narratives, Walker cautions. In the "act of telling her story a woman defined a reality about rape and its meaning, which was at the same time conditioned by available languages"⁷¹ —a condition, Walker observes, not unlike the juridical discourse of modern rape law famously critiqued by Catharine MacKinnon, namely, that "under law, rape is a sex crime that is not regarded as a crime when it looks like sex"⁷². And in the early seventeenth century jurists' views, rape was beginning to look like sex. Indeed, long before the jurist Matthew Hale's (1609-1676) influential work⁷³ defining rape unequivocally as a sexual crime, the shift from viewing rape as a property crime to construing it as a sexual crime was well underway. Hale insisted that *carnaliter cognovit* ("carnally knew") was essential to the definition of rape, as well as *rapuit* ("ravished", or "[forcefully] carried away")⁷⁴. That "there must be an actual penetration or *res in re*" simply strengthened the sexual nature of the act and distanced it yet further from its former view as an offense against property. This shift in the legal perception of rape had enormous consequences: the focus, no longer being the person's property, became, rather, the victim's resistance and moral character, including (her) state of mind (i.e., her consent). As Gowing succinctly puts it: "the more rape was undersood as sexual, the harder it was to believe women"⁷⁵.

The impact of this focus upon their sexuality or reputation, led women to change the ways that they talked about rape. Gowing states, "Women's testimonies typically underplayed or erased the actual act of sexual penetration that defined rape legally"⁷⁶. Their testimonies "strove to write sex out of it".⁷⁷ Walker sums up its effect: "By definition, speech about rape was semantically restricted"⁷⁸. And the legal system's structure naturally reinforced that semantic restriction. The legal structure —"Judges, magistrates, constables, commissioners and trial jurors were all male, in Tim Stretton's words; "it was men who made laws, men who staffed

70. Walker, Garthine. "Rereading Rape and Sexual Violence in Early Modern England". *Gender & History*, 10/1 (1998): 1-25, especially, 3.

71. Walker, Garthine. "Rereading Rape...": 5.

72. MacKinnon, Catharine A. *Toward a Feminist Theory of the State*. Cambridge (Mass.): Harvard University Press, 1989: 172. Walker paraphrases this particular quote about rape by Catharine MacKinnon.

73. Hale, Matthew. *Historia Placitorum Coronae. The History of the Pleas of the Crown*. London: Sollom Emilyn, 1800: I, 626-636 (ebook). 10 July 2012 <books.google.com/books?isbn=1584772824>. *Historia Placitorum Coronae, The History of the Pleas of the Crown* was directed around 1680 and published c. 1736.

74. Hale, Matthew. *Historia Placitorum...*: 627. Matthew Hale (631) references the "opinion of Mr. Finch cited by Dalton...and by Stamford out of Britton [14th-century text considered the earliest summary of the law of England in the French tongue], that it can be no rape, if the woman conceive with child, seems to be no law, *mulier enim vi oppressa concipere potest*". The electronic version of the book says page 631, but the actual page number printed at the upper right hand of the scanned text is p. 731.

75. Gowing, Laura. *Common Bodies...*: 92.

76. Gowing, Laura. *Common Bodies...*: 92.

77. Gowing, Laura. *Common Bodies...*: 93.

78. Walker, Garthine. "Rereading Rape...": 5.



the courts, men who took down the testimony of witnesses and recorded judicial decisions and orders”⁷⁹.

2. The linguistic consequence

There was a momentous linguistic consequence to this. On the one hand, these constraints, demands, and possibilities of the legal system constituted social practices and a political ordering of social relations (political, insofar as it is based, as is every political impulse, on some form of exclusion). On the other hand, they operated as a linguistic device that reorganized More's and every assaulted woman's ways of representing their role in the rape and representing, too, the (assumed) degree of their consent and desire. If sex were now written out, what sort of narrative was available to victims of rape and assault? Laura Gowing's research in court records offers an intriguing and illuminating answer: in “court, women's stories of their sexual experiences emphasised one thing above all others: passivity. Defending themselves, women described ‘condescending’ to men, being ‘persuaded to give in to the satisfying of his lust’, being ‘tempted unto uncleanness’, ‘yielding up her body’”⁸⁰. They declared themselves to be “weak, repentant, ‘defiled’”⁸¹. Some of this passivity, Walker writes, was linked to the fact that “talking about rape formally before male officials might have produced a differently nuanced account from, say, that which a young woman told her own mother”⁸². Moreover, for women, “[r] esponsibility for sex, and the blame and dishonour that went with it, was feminised in ways that made sexual language an inappropriate medium through which to report a rape”⁸³. Even “the language which signified sexual intercourse was itself one of female complicity”⁸⁴. Melissa Sanchez adds another feature that played into the “legally passive femininity”⁸⁵ posture: “Rape survivors risked appearing disorderly and unfeminine if they represented themselves as aggressively fighting their assailants”⁸⁶. The effect on their testimonies is significant: “Consequently, in their testimony many women depict themselves as passive objects of brutal male lust, denying themselves agency in an attempt to remove any trace of accountability”⁸⁷. (Unquestionably, women—as decades of scholarship have established—commanded

79. Stretton, Tim. *Women Waging Law in Elizabethan England*. Cambridge (UK): Cambridge University Press, 1998: 220.

80. Gowing, Laura. *Common Bodies...*: 86.

81. Gowing, Laura. *Common Bodies...*: 86.

82. Walker, Garthine. “Rereading Rape...”: 4.

83. Walker, Garthine. “Rereading Rape...”: 5.

84. Walker, Garthine. “Rereading Rape...”: 6.

85. Gowing, Laura. *Common Bodies...*: 86.

86. Sanchez, Melissa E. *Erotic Subjects: The Sexuality of Politics in Early Modern English Literature*. Oxford (UK): Oxford University Press, 2011: 88.

87. Sanchez, Melissa E. *Erotic Subjects...*: 88.



both domestic and public authority and power in a variety of discursive fields⁸⁸; the passivity referenced in the latter half of this essay refers solely to rhetorical strategies women appear to have adopted in response to the legal discourse available for their representation of rape and sexual assault). The volume of testimonial evidence in so many of the church courts across England confirms Walker's point: "The ease with which confessions reproduced these formulas itself says something about available languages and meanings"⁸⁹.

3. The politics of recognition

Significantly, the ease with which confessions reproduced these formulas also says something about the way that identity and subject position became constructed for women in the discourse of the law. Gowing's examination of the court records indicates that the legal representation of rape and assault as a sexual crime —itself a linguistic practice— led women in court to adopt a countering linguistic practice. Internalizing the ideology that encoded their sexual reputation as part of the definition of rape, they now struggled to recode their subject position in the rape or assault act. They presented themselves as sexually passive. It is classic Althusserian structure of misrecognition. (It also echoes the initial argument of Seyla Benhabib's situated and contextualized subjectivity —to be touched upon later). Althusser's thesis is that we acquire our subject position or identity through historically rooted cultural narratives that tell us the "way things should be". In Althusser's analogy, we are "hailed" by these narratives, these ideological constructs, much "along the lines of the most commonplace everyday police (or other) hailing: 'Hey, you there!'"⁹⁰. A person so interpellated or hailed recognizes "that the hail was 'really' addressed to him, and 'that it was *really* him who was hailed (and not someone else)'"⁹¹. But in Althusser's view this "recognition" of being hailed is actually "misrecognition"⁹²

88. Fletcher, Anthony. *Gender, Sex and Subordination in England 1500-1800*. New Haven: Yale University Press, 1995; Livingston, Sally. *Marriage, Property, and Women's Narratives*. New York: Palgrave Macmillan, 2012; Wall, Wendy. *Staging Domesticity: Household Work and English Identity in Early Modern Drama*. Cambridge (UK): Cambridge University Press, 2002; Walker, Garthine. *Crime, Gender and Social Order in Early Modern England*. Cambridge (UK): Cambridge University Press, 2003; Brown, Pamela A. *Better a Shrew than a Sheep: Women, Drama and the Culture of Jest in Early Modern England*. Ithaca: Cornell University Press, 2002.

89. Gowing, Laura. *Common Bodies...*: 86.

90. Althusser, Louis. "Ideology and Ideological State Apparatuses (Notes Towards an Investigation)", *Lenin and Philosophy, and Other Essays*, Louis Althusser, ed. New York: Monthly Review Press, 1972: 174.

91. Althusser, Louis. "Ideology and Ideological State Apparatuses...": 174.

92. "Jacques Lacan has described how the moment when a child recognizes its own image in the mirror is crucial for the constitution of the ego". "The mirror phase occurs at a time when the child's physical ambitions outstrip his motor capacity, with the result that his recognition of himself is joyous in that he imagines his mirror image to be more complete, more perfect than he experiences his own body. Recognition is thus overlaid with misrecognition: the image recognised is conceived as the reflected body of the self, but its misrecognition as superior projects this body outside itself as an ideal ego" and "gives



because in the very act of turning to respond to the hailing, indeed, in the act of perceiving that one is being called, the person has already acknowledged her/his subject position in relation to that "hailing". "Misrecognition" does not, here, mean misrecognizing because the assigned identity is not one's "true" one (although no single identity is ever one's true one)⁹³. It means, rather, that the "recognition" is actually retroactive: you become conscious of being a subject only "after" being born into pre-established social relationships; you are responding to the "already there". So, too, we acknowledge or "misrecognize" the various cultural narratives into which we are born. Moreover, we are hailed ceaselessly; we go through the rituals of ideological (mis)recognition from person to person and discourse to discourse. Pierre Bourdieu provides a particularly lucid, practical example: our ordinary qualifications, our competencies and skill (in other words, our "cultural capital"), can also be a source of misrecognition and symbolic violence. "Therefore working class children can come to see the educational success of their upper- and middle-class peers as a legitimate" because what is actually often class-based inequality is seen by these children, instead, as the result of hard work or even natural ability⁹⁴. One can see why Patchen Markell, drawing on Hannah Arendt's notion of the non-sovereign character of human action, concluded that the practice of recognition always involves a "'misrecognition' of a different and deeper kind: not the misrecognition of an identity, either one's own or someone else's, but the misrecognition of one's own fundamental situation or circumstances"⁹⁵.

The problem is that our subject positions are often reinforced by "the misrecognition of others", Charles Taylor wrote, "and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves"⁹⁶. Centuries of ideology had long proposed that the women are excessively sexualized beings. And women being "hailed" thus, (mis)recognize themselves within that ideological construct. (Mis)recognition obscures every subject's "real conditions of existence" and, in women's case, it naturalizes their acceptance of their inferiority in the pre-established social roles. In the late sixteenth and early seventeenth

rise to the future generation of identification with others. This mirror-moment predates language for the child". As Laura Mulvey goes on to say, "it is the birth of the long love affair/despair between image and self image" (61). Mulvey, Laura. "Visual Pleasure and Narrative Cinema": 57-68 (originally published in *Screen*, 16/3 [1975]: 6-18), 8 March 2012. <<https://wiki.brown.edu/confluence/display/MarkTribe/Visual+Pleasure+and+Narrative+Cinema>>.

93. The term "misrecognize" does, however, begin to include the concept of "not recognizing" one in later theorists, e.g., Axel Honneth (the issue of social death), Charles Taylor, Amy Gutmann (especially in the context of multiculturalism), Nancy Fraser (recognition as an aid to the redistribution of power and wealth), Anthony Appiah, Ernst Bloch (misrecognition as disrespect), etc.

94. Van den Berg, Hendrik. "A Reflexive Sociological Case for Heterodox Economics": 11. *International Confederation of Associations for Pluralism in Economics (ICAPE)*. 20 October 2012 <<http://www.icape.org/g5-van%20den%20berg.pdf>>.

95. Markell, Patchen. *Bound by Recognition*. Princeton: Princeton University Press, 2003: 5.

96. Taylor, Charles. "The Politics of Recognition". *Multiculturalism*, Amy Gutmann, ed. Princeton: Princeton University Press, 1994: 25-73, especially, 25.



century, the evolving definition of rape makes it clear that sexuality —closely allied with women and not so much with men— was inherent to the definition of rape. Women’s nature was defined by their sexuality, rape’s nature was defined largely by the sexuality of the act. There is a pernicious reciprocity of (mis)recognition in these imperfect terms of exchange: women’s sexual identity as socially constructed overlaid by rape’s sexual identity as socially encoded into law.

4. Suzane More: misrecognition and legal passivity

The first three pages of Suzan More’s five and one-half page deposition classically illustrates the misrecognition of the “legally passive femininity” posture referenced by Gowing, Walker, Chaytor, Sanchez, and others. Based on the cultural conviction⁹⁷ that “women barely owned their own bodies”⁹⁸, and the assumption that those bodies were “persuadable beyond the limits of rational consent,” women tended to frame the greater part of their sexual narratives as an account of “how men persuaded them into sex”⁹⁹. More’s three pages detail the unrelenting badgering pursuit of her by Thomas Creede. She describes Creede’s first “carnall knowledge” of her body as occurring only after a number of inappropriate¹⁰⁰ but innocent meetings for wine with him over a period of weeks, and only after he had given her so much wine that she became drunk and ill, was taken to an upstairs chamber of an alehouse where, in her drugged state, she was raped (as current legal views would characterize it, given that there could have been no legally willing consent). Further, More portrays her few other assignations with Creede as being “enticed” by Creede, and she stresses the harassment that met her subsequent determinations not to meet him. Creede’s literal deployment of physical forces is quite shocking in its publicly questionable intentions: not only did he send boys from the tavern to intercept and hound More, but he was joined in this also by widow Grimes’ sending a reinforcement of boys from her own alehouse’s staff.

97. Such as “The Merry Conceits and Passages of Simon and Cisley, Two Lancashire Lovers”, along with “Susan and William Her Apprentice,” and the “Merry Dialogue between Andrew and His Sweetheart Joan”, in: Spufford, Margaret. *Small Books and Pleasant Histories: Popular Fiction and its Readership in Seventeenth-Century England*. London: Methuen & Co., 1981, Chapter VII and Chapter III, respectively. Most of these are taken from Samuel Pepys’s “Penny Merriments”, Volume I and II, listed in Chapter VI of Spufford’s *Small books and Pleasant Histories*. See also her discussion of the wooing letters and love letters found in early seventeenth-century chapbooks.

98. Gowing, Laura. *Common Bodies...*: 86.

99. Gowing, Laura. *Common Bodies...*: 87.

100. Anne Birke, looking for Suzan, found her at the tavern with Creede, and reproached them both about the inappropriate nature of a married man spending money on a maidservant at a tavern. LMA. DL/C 218, 156-157.



5. More: dissent and the socially accountable ordered self

But More's testimony is significant because it did not finally settle for a passive discursive stance. And in that respect, it becomes exemplary of Bert Van der Brink's strongly worded observation: "Recognition would not be one of the most debated terms in social and political theory if claims as to the misrecognition of individuals did not play a distinctive role in processes of...emancipation"¹⁰¹. How did More or how does anyone contest the cultural narratives into which they are born? How challenge the misrecognition of aspects of one's own identity? Althusser provided the possibility of our responding to a variety of discourses: because a variety of discourses necessarily conflict with and thereby comment on other discourses, they invite examination of the status quo. Benhabib argues that we "become aware of who we are by learning to become conversation partners in these narratives. Although we do not choose the webs in whose nets we are initially caught, or select those with whom we wish to converse, our agency consists in our capacity to weave out of those narratives our individual life stories, which make sense for us as unique selves"¹⁰². That is indeed a certainty, particularly for the authentic self, but an acute provocation or stimulus seems fundamentally necessary to challenge the misrecognition in the first place. Axel Honneth's concept of conflicts as part of the politics of recognition brings us a bit closer to Suzan More's situation, namely, marginalized and excluded groups. In his book *The Struggle for Recognition*, Honneth maintains that conflicts make clear that persons are "vulnerable to moral injury"¹⁰³. Marginalized or excluded groups, he argues, develop "a consciousness of injustice" that evaluates how social circumstances rob them of chances to voice injuries". Conflicts between individuals and groups, in his view, are, at bottom, moral identity-claims¹⁰⁴.

However, the most useful and productive means of inducing misrecognition is perhaps the more powerfully charged concept of "disaster". Disasters constitute "fruitful sites...because they disorient us and expose what otherwise tends to remain obscured in the course of everyday life"¹⁰⁵. Those moments of disorientation, Schiff

101. Statement of Rationale: "Recognition and Power: A Symposium", Utrecht University, March 2003. 25 June 2012 <<http://www.phil.uu.nl/recognition/>>.

102. Benhabib, Seyla. *The Claims of Culture: Equality and Diversity in the Global Era*. New Jersey: Princeton University Press, 2002: 15.

103. Honneth, Axel. *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge (UK): Polity Press, 1995: 48. Michael Spång argues that Honneth views "the moral disapproval of social events and circumstances, misrecognition, as a motive for resistance and struggles for recognition, in terms of a set of relations of recognition" (Spång, Michael. "Recognition, Misrecognition, and Capitalism". *The Global Site*. 2001. 28 June 2012 <<http://www.theglobalsite.ac.uk/press/112spang.htm>>). Subjects are informed of the absence of this recognition, Honneth writes, "by experiencing disrespect in such a way that they see themselves obliged to engage in a 'struggle for recognition'" (Honneth, Axel. *The Struggle for Recognition*...: 69).

104. "Justice is a matter of conflict". Deranty, Jean-Phillipe; Renault, Emmanuel. "Politicizing Honneth's Ethics of Recognition". *Thesis Eleven*, 88 (2007): 92-111, especially, 96-97 (quotation is on p. 97).

105. Schiff, Jacob. "The Persistence of Misrecognition". Paper: Political Theory Workshop. 12 January 2009. University of Chicago. 22. 24 September 2012 <<http://ptw.uchicago.edu/Schiff09.pdf>>.



says, can be moments of possibility because in dislocating routine, they disrupt our experience of the normal, and can re-align our attention or re-situate us vis-à-vis that experience. In looking back at that experience, we necessarily look back at the ideological construct of which it is part. We look back, in other words, at the validity of the culturally constructed views of one's moral and social self. It is in such moments—which Bourdieu calls “crises”—“that the possibility of overcoming misrecognition emerges”¹⁰⁶.

The disaster for More was, of course, her seduction by Creede, her pregnancy as a single woman, the loss of her job¹⁰⁷, the loss of her reputation (Mrs. Worralls named her as “Creede’s whore” in the Birke’s household), and the public humiliation by Creede and his wife. Every one of these components plays into the cultural narratives concerning the single servant woman: he pre-established role of women’s inferiority, “contemporary ideas about women’s sexual drive and moral frailty”¹⁰⁸, the single woman’s threat to family relationships, women in taverns, etc. For More this “moment of disorientation” seems to have become a moment of possibility. In looking back on the experience, she has, it seems, conducted a narrative herself whereby the socially acquired ideological constructs and their narratives—women’s sexual drive, their moral frailty, etc.—are all challenged.

More’s was a discursive strategy that used at least three registers: the first was a narrative of self and community; that is, she represented herself as a single woman whose good work mentality and whose code of behavior was seemingly supported by people of status in the community, —in other word, hers was a coherent, socially accountable ordered self. With the second discursive strategy, she represented Creede’s persistent violation of the accepted model of male conduct: not only was his not a socially accountable ordered self but also his willful abuse of his business alliances and their staffs (including the Birkes and Widow Grimes) as well as the abuse of his spousal partnership testified to a contemptuous and felonious relationship with the community. Third, she represented her own collaboration with Creede’s reprehensible behavior. Not surprisingly she was at times complicit with the dominant narratives. Representing her relationship necessarily revealed issues of human rights and socio-political wrongs. In this she challenged the imaginary, comprehensive quality of the dominant grand narratives by using “little narratives to undermine grand narratives”¹⁰⁹.

Representation is the key. “[R]epresentation... ushers dissent into being”¹¹⁰, Rita Copeland laconically puts it. If one is required to defend one’s social or moral self,

106. Schiff, Jacob. “The Persistence of Misrecognition”...: 4.

107. LMA. DL/C 218, 138: More testifies to now working for Hugh Jackson in Fleetstreet, London, and earlier in the house of Edward Handby for 10 weeks or thereabouts in months following her pregnancy.

108. Capp, Bernard. *When Gossips Meet: Women, Family, and Neighborhood in Early Modern England*. Oxford (UK): Oxford University Press, 2003: 227.

109. Allen, Julia M.; Lester Faigley. “Discursive Strategies for Social Change: An Alternative Rhetoric of Argument”. *Rhetoric Review*, 14/1 (1995): 142-172, especially, 170, n. 11.

110. Copeland, Rita. *Pedagogy, Intellectuals, and Dissent in the Later Middle Ages: Lollardy and Ideas of Learning*. Cambridge (UK): Cambridge University Press, 2004: 148.



such representation necessarily produces dissent because the discursive process of dissent confronts and examines the legitimacy of views that claim to constitute one's social and moral self. Law, of course, is one of the chief ways of producing such dissent because law, by nature of dealing with conflict, compels oppositional recognition. And in doing so, it likewise compels us to examine the narratives that organize those ideological constructs.

This is the critical moment that Copeland speaks of, when "dissent" becomes "the hermeneutical moment that finds no adequate articulation or representation, that key moment in ideological formation that Althusser (drawing on Lacan) describes in terms of the 'structure of misrecognition' between the law and the subject that it commands, where the meanings produced by either side confound and exceed all signifying intentions"¹¹¹.

6. More: representation of the self and the community

More's representation of herself and her character occur already in the deposition's opening formula providing the background of the witnesses. We can assume a fundamentally good character in More: under oath, she has testified to a history of living and working in four places over a period of five years and three months with no incidents¹¹². (It was not uncommon for single women servants to migrate from job to job¹¹³). Even more important, this case against Creede came to the Consistory Court not through More's efforts or through the churchwardens who ordinarily would present it as a disciplinary complaint. Indeed, More had no intention of bringing any court action. She represented herself as having refused in mid-winter, in want and near starvation to seek legal help offered through a kinsman who having heard of her extreme straits had come to her as she lay in a poor woman's

111. Copeland, Rita. "Introduction: Dissenting Critical Practices", *Criticism and Dissent in the Middle Ages*, Rita Copeland, ed. Cambridge (UK): Cambridge University Press, 1995: 14.

112. LMA. DL/ C 218, 138: Suzanna More, servant of Hugh Jackson in the parish of St. Briggitt in Fleet Street, London, and where she stayed for 6 or 7 weeks and before that she lived in the house of Edward Handby for 10 week or thereabout, and before that with a certain Randall Birk in the parish of St. Giles outside Cripplegate for about a year, and before that in Holy Trinity Minories with a certain Mistress Longe for three months or thereabout, and before that with a certain Arthur Goodgame in the parish of St. Lawrence Pountny for one year, and before that with a certain Mistress Lambert in the parish of St. Margaret New Fish Street for a year or thereabouts, and before that with Mistress Lynsey, widow, in the parish of St. Peter Cornhill for nearly two years, and before that in the city of Cambridge she was born and live, and she said that she is 25 years of age, and she has known John Scales for seven years or longer and Thomas Creede since Easter 1607 and before that.

113. Hubbard, Eleanor. *City Women: Money, Sex, and the Social Order in Early Modern London*. Oxford (UK): Oxford University Press, 2012: 35. Hubbard writes, "maidservants were highly mobile: when they switched services, they usually switched parishes as well, sometimes moving across London. For example, Joan Clay from Essex left her service in Aldersgate Street to serve an apothecary in nearby Cheapside. Then she moved to St. Mary Bermondsey across the Thames, where she stayed for two or three years, before moving north again to St. Sepulchre".



house without meat or drink¹¹⁴ and offered to ensure some aid for her if she would “procure him the same Creede to be called before som justice”. Rather, the case was prosecuted by a certain John Scales under the cause of ecclesiastical order (which included questions of paternity). More was prevailed upon to be a witness: she testified that “she cameth to depose the truth in this cause at the request and perswasion of John Scales”¹¹⁵, whom she had known for seven years or longer, and who she thought, but wasn’t certain, was “somewhat of kyn unto” her¹¹⁶. Scales was able to procure a warrant bringing Creede before Sir Stephen Soame (c. 1544–1619) mayor of London (1598) and member of the House of Commons (1601), who undertook to hear Creede’s versions (accompanied by his wife) before he examined More. More testified that when she came into Sir Stephen Soame’s presence for her examination, she heard Sir Stephen say, “Indeed” —apparently in response to Creed and his wife having just “towld their tale” to him. More added, significantly, “but after Sir Stephen had privately examined her this respondent [More]”, “Sir Stephen was then of another mynd and opinion, and bound Creede over to the sessions” —the very session, presumably, in which Suzan More was now testifying in the *John Scales contra Thomas Creede* case. Quoting Sir Stephen’s single emotional “indeed”, Suzan More’s narrative conveyed the immediacy of her fear of being disadvantaged by her social superiors, the Creedes, and by the historically rooted cultural narratives in their favor. If Schiff’s theory is correct (i.e., disruption and dislocation cause us to look back at the ideological construct of which it is part), More’s adding that single further remark regarding Sir Stephen’s change of mind, re-situated her vis-à-vis her experience. It attests, in my view, to the power of More’s having organized all the individual fragments of her past year to create a coherent profile of details that captured the contingency of her situation in sharp contrast to Creede’s obsessive and ruthlessly schematic pursuit that viewed her sexual integrity and her livelihood as disposable.

Moreover, More never asked for money or support from Creede, but only to have a place or a house in which to deliver her baby, and she testified that after returning from the harrowing wagon trip, she lay five nights in an old house “neere unto Birkes howse”¹¹⁷ before ever Birke or his wife knew of her this respondents being there¹¹⁸. Given that this was England’s worst winter in fifty years when ice split trunks of trees, birds and animals died, and the freezing of the Thames hindered the importing food to London from neighboring counties, inducing critical food

114. LMA. DL/ C 218, 141, following More’s description of lying in a poor woman’s house in Gravell Lane in Houndsditch “too dayes and too nightes without meat or drink”, she says that her kinsman, More, “ther came unto her”.

115. LMA. DL/ C 218, 143, article 8, Interrogatory.

116. LMA. DL/ C 218, 143, article 2, Interrogatory. Regarding John Scales, More adds: “but in what degree she knoweth not only she saythe she hathe heard her ffather saye that he the same Scales was of kin unto her grandmother”.

117. LMA. DL/ C 218, 146. Eleanore Hubbard, *City Women*, reads “Birke’s House” as Brickhouse, but it appears to be “Birkes” (84).

118. LMA. DL/ C 218, 146.



shortages and raising food prices, it says a great deal about More's character that she didn't ask for shelter from the nearby Birkes who had proven to be friends to her. Admittedly, she may well have been wary: it was more than possible that she would have been carted out of town immediately, again, as was the practice of so many villages and towns toward unwed mothers about to give birth. But it also references her character, suggesting that she was not the scheming woman as the master narratives implied. Finally, the combination of these gentlemen, Birke, Scales, and Sir Stephen Soame, supporting Suzan More points to More's considerable support within the power structures, and in turn, attests to her at least quondam good citizenship.

7. Creede's violation of the accepted models of male conduct

Creede's behavior toward business associates and the community was exposed as not only sexually scandalous but also as criminal. More referenced the constant coercion—not simply in Creede's setting the squads of boys to stalk More as she left her house, but also in coercing her, first, to bring a defamation suit against Mrs. Worrall, and then to suborn herself: he

*earnesley perswaded her [...] to clere him of his incontinentie with her [...] and to save his credit[,] he sometimes speaking her fayre sometimes threatening her that he would have her to Bridewell [...] [so that] she [...] did saye before all the company that then was ther being 2 or 3 of Mrs. Worralls neighbors that Mr. Creede never lyed incontinently with her*¹¹⁹.

Bridewell was no empty threat (even Mrs. Creede used it later to try to terrify More into naming someone else as the father of her unborn child): Bridewells (or houses of correction) were part of a "punitive trend, and increased the possibility that women would be disproportionately punished for bearing children out of wedlock"¹²⁰. The 1610 revision of the 1576 bridewell statute required justices of the peace "to incarcerate in bridewells all unmarried mothers whose children were chargeable to the parish"¹²¹. Steve Hindle points out in fact that at the turn of the century, punishment of unwed mothers in Essex, for example, "gradually intensified... from a few hours in the stocks, to lashes 'moderately given' at the cart's tail, to public whippings until their backs was [sic] bloody"¹²². Creede's threat of putting a maidservant in Bridewell unless she brought (false) charges against a married woman, Mrs. Worrall, approaches terrorizing: fornication was a legally

119. LMA. DL/C 218, 145.

120. Peters, Christine. *Women in Early Modern Britain, 1450-1640*. Houndmills-Basingstoke: Palgrave MacMillan, 2004: 85.

121. Peters, Christine. *Women in Early Modern Britain...*: 85.

122. Hindle, Steve. *The State and Social Change in Early Modern England, c. 1550-1640*. New York: St. Martin's Press, 2000: 161.



punishable act. Bridwell Court Minute Books record that between 1565 and 1606 even women's simple cross-dressing, suggestive, it was thought, of a loose life, sent women to the work-house in Bridewell. Indeed, according to Jean Howard, most of the (cross-dressed) women incarcerated in Bridewell "appear to be unmarried women of the serving class eking out a precarious living in London"¹²³. Moreover, Worrall's married status greatly disadvantaged More. A married woman's cultural capital gave her greater value to society in terms of power and status than a single maidservant could claim. Only dire intimidation could compel More to bring the suit, she later confessed to Anne Birke. Under oath, therefore, she asserted that she had never lain with Creede. She admitted, as well, that her oath compelled Mrs. Worrall both to ask public forgiveness of them and to pay the court charges.

The willingness of Creede to misuse the court system was of a piece with his aggressive mistreatment of women. One of the most startling testimonies about the breadth of Creede's illicit sexual activities occurs in Anne Birke's deposition: as she and Mrs. Creede accompanied Suzan More to meet the Cambridge carrier departing from the Bull in Bishopsgate, More disclosed to them further details about Creede's affairs at the widow Grimes' house: "he used to have other women besides her there, as namely one from Lambeth, another that had a great belly, and a third that was there in the same widow Grimes' house but she being grown now something old she said that he had told her that he cared not for her now"¹²⁴. Mrs. Creede, learning this for the first time, wept later with Anne Birke and Randall Birke that her husband:

*was bare of money and much behindhand or at least nothing aforehand, and oftentimes wanted money for his necessary use, and she was constrained to make shift for it. "Ay, sometimes" quoth she, "to pawn my own clothes to my back, and", quoth she, "thus this way doth he waste his money", she meaning by his unchaste life. And further said thus: "It is not yet", quoth she, "above eight weeks ago since I was fain to shift off a like matter for him as this is"*¹²⁵.

It was scarcely surprising that John Scales and eight witnesses from the community would finally bring Creede forward for prosecution for bastardy.

123. Howard, Jean E. "Cross-Dressing, the Theater, and Gender Struggle in Early Modern England". *Crossing the Stage: Controversies on Cross-Dressing*, Lesley Ferris, ed. London: Routledge, 1993: 20-46, especially, 22. Johanna Rickman notes that the bill of 1628 suggests the penalty for fornication and adultery to be whipping, and Ian Archer asserts that "[i]ncontinent persons were carted, sent to Bridewell, and presented to the church courts" (Rickman, Johanna. *Love, Lust, and License in Early Modern England: Illicit Sex and the Nobility*. Burlington: Ashgate, 2008: 24; Archer, Ian W. *The Pursuit of Stability: Social Relations in Elizabethan London*. Cambridge (UK): Cambridge University Press, 1991: 235; see also 251).

124. LMA. DL/C 218, 159; Anne Birke.

125. LMA. DL/C 218, 160-161; Anne Birke.



8. Representation of more's collaboration with creede

Scrutinizing her experience with Creede, under oath, compelled More to confront her morality. Although she testified to meeting Creede for drinks several times more, and to having sex with Creede at Widow Grimes place twice more, the geater and more dramatic part of her narrative focuses upon her resistance. Resistance and dissent are everywhere: resisting Creede's multiple, draining attempts to get her to drink with him; resisting Creede's pressure that she quit the Birkes and be "at [his] discretion"; resisting Creede's stratagems to lay the blame for her pregnancy upon Randall Birke; and finally, resisting the pressure to bring suit against Creede.

Her resistance and dissent frame Creede's conduct as legally actionable. When she stressed her self-control in the face of Creede's relentless pressure to coerce her into drinking with him, she stressed, at the same time, the uncivilized and irrational nature of Creede: "he would be very angry and then he would sett others", using a staff of tavern boys and Widow Grimes' alehouse boys, to position themselves in front of the Birkes' house so as to harass her with signals to come to the tavern. When Creede turned on her after she acquainted him with her pregnancy, More represented him as not denying having fathered the child; rather, she quoted his objection to her not having left both her employment and the Birkes' house to be, as he said,

*"at my discretion" whereby "I would have provided for you, and you should have wanted nothing but seeing you have continued still ther at Mr. Birkes goe seek you an other ffather to you child of your will for I meane not to father it, I will shift of it well enoughe and my wife will helpe to cleare me of this matter and to shift it of us as she hathe shifted me of such matters as this is before now"*¹²⁶.

Given Creede's cool self-assurance and implied past of bastardy, the justice of peace would have understandably wondered at Creede's word "discretion,"—which had always meant "pleasure", as well as "judgment". He would have certainly found irregular Creede's insistence that More leave her employment and her place of residence to be at Creede's discretion. Did Creede have in mind the same future (prostitution) for Suzan More that he seemed to have devised for his other maidservants liaisons still ongoing at Widow Grimes alehouse?

More's resisting of Creede's stratagems to lay the blame for her pregnancy upon Randall Birke took an interesting turn in the presence of Justice Soame. When More told Justice Soame that Creede would say to her "in a perswading manner... to say that her master loved her for he would saye thus unto her...: 'Do not thy master love thee [?] His wife is a fowle sow and if I had so prettie a wench in my howse as thou art I must needs love her'"¹²⁷, Soame immediately stipulated that More's delivery be attended by a neutral party: "'it were good there should be a strange

126. LMA. DL/ C 218, 139-140; Suzan More.

127. LMA. DL/ C 218, 147, 148-149; Suzan More.



midwife', he said expressly, 'thus not provided by you, Mistress Creede, nor yet by Birke'". Soame recognized the legal consequences of Creede's speech: it was a ploy to impugn Randall Birke as the putative father.

9. Overcoming misrecognition

Those three registers—More's narrative of self and community, her representation of Creede's character as ignoble and irrational, and her account of her complicity—were the social and legal consequences of More's thorough inquiries of her legal culpability. They are the little narratives that undermine the "grand narrative" of dominant interests. The crisis that could produce the possibility of overcoming misrecognition had occurred, as Bourdieu theorized. On the one hand, Suzan More comprehended her own blameworthiness. On the other, she exposed the speciousness of the cultural narratives that view her (and all women) as the sexually driven and morally frail humans, with men being, presumably, morally superior. She was indeed morally culpable, but Creede's conduct not only included criminal acts, but also involved the community in his sexual predation.

10. Conclusion

Three women other than More appear in this deposition: Anne Birke, Margery Creede, Blanche Howell. Yet, none of them gave her shelter despite More's pregnancy's nearing its delivery and despite the freezing temperatures of an historically brutal winter. One woman, a "poor woman", although she allowed More two days and nights in her house, apparently offered not a morsel of bread or a drink of water. At first glance there seemed to be not only no alliances, but also almost no compassion either. Linda Pollock's observation that "alliances were highly context dependent" is undeniable¹²⁸. In this case, the context is that of single women who were pregnant. In London, for example, "harbouring" a single pregnant mother was a crime, and the church courts prosecuted it regularly. Agnes Goddard, for example, "was prosecuted at the church courts in 1610 for harbouring and delivering a single woman 'without enquiring her name and who was father thereof'"¹²⁹. Some networks appear to have been available to help a single woman giving birth, but these networks were known largely only through a series of references and private communications, and

128. Pollock, Linda A. "Childbearing and Female Bonding in Early Modern England". *Social History*, 22/3 (1997): 286-306, especially, 287.

129. Gowing, Laura. "Giving Birth at the Magistrate's Gate: Single Mothers in the Early Modern City", *Women, Identities and Communities in Early Modern Europe*, Stephanie Tarbin, Susan Broomhall, eds. Aldershot-Hampshire: Ashgate, 2008: 137-150, especially, 141.



operated on “an ability to forget, or not ask, names of those involved”¹³⁰. On the other hand, Anne Birke ultimately proved to be a single mother’s greatest champion. When she found out that Suzan had returned to London from Canterbury, she tried to persuade the Creedes to take responsibility, but they refused. She then mustered two citizens to track Suzan down and charged them with examining her closely¹³¹. On learning that Suzan maintained her story about Creede, she was instrumental in convincing Suzan to have Creede called before a Justice. Birke also arranged for More to lay in for her birthing with Rebecca and Edward Handly in Westminster. Creede was to pay the charges for this, and later, was compelled to assume charge of More’s baby which he and his wife put out to nurse in the country¹³². That Suzan More, at the time of this deposition—some seventeen weeks after the birth of her child—was working for a Hugh Jackson, Stationer in Fleet Street, might also have been at least partly the consequence of Anne Birke’s efforts: More would have needed references, and Hugh Jackson, like Randall Birke, was a stationer. Whatever the connections, it is clear that Suzan More, as Eleanor Hubbard put it, “did not sink irretrievably into prostitution”¹³³. Rather, she resisted the cultural narratives of women’s economic and sexual position into which she had been born: she did indeed—as was true of many single pregnant women—“have trouble making even the most basic arrangements for lying in”, yet, she was not driven from parish to parish by self-deputized neighbors and local officials¹³⁴; she shouldered the burden of her responsibility, asking no money from Creede and no help from her employers, the Birkes; she was clearly regarded by members of the community—the Birkes, John Scales, and her kinsman—as a viable economic and social member of the community, and in the end, the judgment for her indicates that her narrative of self and community, her representation of Creede’s character as ignoble and irrational, and her account of her complicity, ultimately outmaneuvered the interpretations of (male) legal priorities and depictions of legal realities.

130. Gowing, Laura. “Giving Birth at the Magistrate’s Gate...”: 142.

131. LMA. DL/ C 218, 161-162; Anne Birke.

132. LMA. DL/ C 218, 186; Randall Birke.

133. Hubbard, Eleanor. *City Women...*: 85.

134. Hubbard, Eleanor. *City Women...*: 86, citing: Mendelson, Sara; Crawford, Patricia. *Women in Early Modern England 1550-1720*. Oxford: Clarendon Press, 1998: 268; Gowing, Laura. *Common Bodies...*: 117-118; Gowing, Laura. “Giving Birth at the Magistrates Gate...”: 141, makes the same observation: “When single women gave birth in the city, they were likely to be excluded from every established routine for women lying in”.

