

A MOST EARNEST PLEA: PREGNANT WOMEN FACING CAPITAL PUNISHMENT IN
THE AMERICAN COLONIES

A Thesis by

Jillian Amber Overstake

Bachelor of Arts, McPherson College, 2010

Submitted to the Department of History
and the faculty of the graduate school of
Wichita State University
in partial fulfillment of
the requirements of the degree of
Master of Arts

May 2012

© Copyright 2012 by Jillian Amber Overstake

All Rights Reserved

A MOST EARNEST PLEA: PREGNANT WOMEN FACING CAPITAL PUNISHMENT IN
THE AMERICAN COLONIES

The following faculty members have examined the final copy of this thesis for form and content, and recommend that it be accepted in partial fulfillment of the requirement for the degree of Master of Arts, with a major in History.

Robin Henry, Committee Chair

Jay Price, Committee Member

Rhonda Lewis, Committee Member

DEDICATION

For Cody, my biggest fan

“Well-behaved women seldom make history.”
-Laurel Thatcher Ulrich

ACKNOWLEDGMENTS

I would like to thank my professors and advisers in the history department, Dr. Robin Henry, Dr. Jay Price, and Dr. John Dreifort for fully backing me and this project throughout my academic career at Wichita State. I must also thank the superb librarians who helped me with my research, in particular Matt Upson at McPherson College. Finally, this work would never have developed without the influence of Dr. Ken Yohn at McPherson College whose question: “What do you want to write about?” inspired me to research the women in this work.

ABSTRACT

This research examines three case studies involving four pregnant women facing capital punishment in seventeenth and eighteenth century colonial America. A relevant biography, background, and criminal history are given for each woman as well as a thorough overview of related legal proceedings. This work implements trial transcripts, letters, journals, and newspaper articles to fully portray each woman's story as precisely as possible, as well as modern sources to help interpret laws and procedures. This work also includes an overview of the legal process a woman must go through if facing capital punishment when pregnant.

The purpose of this work is to tell the women's stories and explain why the courts made the decisions they did in each case. In order to understand the courts' decisions, the role of women in crime is examined. By allowing the women to "plead their bellies," the courts acknowledged motherhood as significant enough in women's societal roles to override a death sentence. Although crime itself was seen as masculine, pregnancy allowed criminals to assume a feminine role once more. The aftermath of a plea when granted or denied is also examined, as each individual case differs.

TABLE OF CONTENTS

Chapter	Page
1. INTRODUCTION	1
2. HISTORIOGRAPHY & OVERVIEW	7
“Execution of the Sentence Might Be Stayed:” Pleading the Belly and Capital Crime	
3. CASE STUDY #1	31
The Innocent One: Elizabeth Proctor and Witchcraft in Salem	
4. CASE STUDY #2	49
“Most Notorious:” The Pirates Anne Bonny and Mary Read	
5. CASE STUDY #3	71
Hanged: The Execution of Bathsheba Spooner	
6. CONCLUSION	89
BIBLIOGRAPHY	93

CHAPTER 1

INTRODUCTION

In Phanthong prison in Laos, a young woman named Samantha Orobator was in trouble. She was accused of boarding a flight from Laos to Thailand smuggling 680 grams of heroin. Under Laotian law, that amount of illegal substances could result in execution by firing squad. Orobator, a British citizen, had only one thing that could certainly save her: she was pregnant. Laotian law does not allow the execution of pregnant women, but when Orobator was arrested in August, 2008, she showed no signs of pregnancy. Police said that it was not until March 2, 2009, that Orobator produced a positive pregnancy test. One of the mysteries of Orobator's pregnancy was that she was held in a women's prison. During her trial, prosecutors read a statement claiming that she had artificially inseminated herself with the semen of a fellow British prisoner, but there is no proof of this. Some think that Orobator was raped or perhaps seduced a guard in order to become pregnant. This extreme behavior may seem risky and unrealistic, but based upon the treatment of pregnant criminals on death row, Orobator made a wise choice with historical precedent.¹

For most of human history, pregnant criminals sentenced to death have been pardoned, reprieved, or had their sentences commuted. Orobator's pregnancy granted her a few perks: she was transferred back to her home country of Great Britain from Phanthong Prison, a place described by another prisoner as a "terrible, terrifying place" where prisoners are served pig fat soup or a paste made of diseased catfish from the disgusting prison ponds. It is not the place for a pregnant woman. Luckily for Orobator, the health of her child became more important than

¹ Kiko Rosario, "Samantha Orobator, Pregnant Briton Jailed in Laos, Going Home," http://www.huffingtonpost.com/2009/08/06/samantha-orobator-pregnant_0_n_252672.html, accessed June 13, 2011.

-serving her prison time in Laos. The woman was extradited back to Britain only a few weeks before she was scheduled to give birth and she is expected to serve the remainder of her sentence in British prison. She gave birth to a baby girl in late August 2009. As is common with many pregnant criminals, Orobator's life sentence was shortened. She is currently serving an eighteen-month sentence. Her daughter remains in jail with her.²

In ninety-three countries, it is legal to put criminals to death. Of those countries, eighty-four have passed laws stating that it is illegal to put a pregnant criminal to death. Similar laws are found in the laws of Ancient Rome and throughout British history. In America and other countries around the world, women still face capital punishment. But being with child often spares them, according to the moral beliefs of lawmakers about killing an unborn child who is innocent, although their mother might be guilty. In fact, only one country allows the execution of pregnant women, the small island nation of St. Kitts and Nevis, which has never implemented the practice. In the modern world, pleading the belly is a justifiable reason for a court to grant a stay of execution and even after the child is born, more time is usually given to the mother to care for the young infant and often, the execution is changed to a term of life in prison.³

Because of the stressful situation of a jail-bound pregnancy, today women like Orobator are given permission to give birth in a nearby hospital under guard. But before modern medicine, pregnancy tests, and hospital births, pleading the belly was a completely different situation. Because of the short jail sentences (usually just a few days) of the seventeenth and eighteenth centuries, a female prisoner would not be able to get pregnant in jail in order to achieve a stay of pregnancy. The reason was because of a concept called quickening, in which a fetus moves for

² "Laos heroin smuggler Samantha Orobator gives birth." Accessed June 13, 2011, <http://www.dailymail.co.uk/news/article-1213116/Smuggler-baby-halted-death.html>.

³ This information was found at the Death Penalty Worldwide database powered by the Northwestern University School of Law at <http://www.deathpenaltyworldwide.org>, last updated January 1, 2011.

the first time, around four to five months into a pregnancy. Before quickening, a fetus in the womb was not regarded as a person and therefore the mother could be executed. This concept is more thoroughly discussed in chapter one. Pleading the belly came when a colonial woman knew she was quick with child and asked the courts to confirm it true, usually resulting in a stay of execution. Although the plea usually followed the same procedure, pleading the belly in colonial America and the Caribbean varied from region to region. This paper focuses on three case studies involving four women found guilty of capital crimes who pleaded their bellies in Britain's New World colonies during the seventeenth and eighteenth centuries.

The first chapter of this work gives a general overview of the customs of seventeenth and eighteenth century capital punishment. Included are the legal process of the appeal of pregnancy, women in the law and their roles in society, jail life, and brief overviews of each case study. A comprehensive analysis of pleading the belly in the Americas does not exist, but the three cases examined here have enough documentation and notoriety that the stories can be told to explain a larger concept. Those cases involve Elizabeth Proctor and the Salem witchcraft trials, the pirates Anne Bonny and Mary Read, and murderer Bathsheba Spooner. The proceedings, court documents, and personal narratives of these women allow for a detailed analysis to take place.

Some things in this work are speculative; for example, the exact procedure of Proctor's, Bonny's, and Read's examinations are assumed because the documents regarding those procedures are missing. In chapters two, three, and four, the cases that follow are in chronological order starting with a trial in Salem, Massachusetts, in 1692, Port Royal, Jamaica, in 1721, and Worcester, Massachusetts, in 1778. The three cases were chosen because of the high volume of primary documents available on each of them. They are historically significant for their narration on criminal law as well as for their cultural context. Each case represents a

different location and time, differences that significantly impacted the laws, proceedings, and rulings of each court. While they are related because each woman pleaded her belly, there are few other similarities. They connect thematically because each woman was given the opportunity to prove her pregnancy; regardless of if the appeal was granted or not. It is evident, therefore, that the courts in each case upheld the value of the female ability to give birth by allowing the plea of pregnancy. The cases are unique in the crimes committed, the background of each character, the location, the time period, and the outcomes of the legal proceedings. In order to form a cohesive picture of every case and because they are all individual with the exception of the plea of pregnancy, each case can be read as a separate piece and the three do not flow together in one narrative. This way, attention is given to each case as needed, and because the trials themselves are preceded by crimes, the crimes are given detailed descriptions. Fortunately, the crimes are documented in several ways. By implementing everything from personal journals to the court cases to contemporary newspaper articles, an attempt has been made to describe the crimes the women committed with utmost clarity.

We know that there were several types of documents used in the appeal of pregnancy because the case of Bathsheba Spooner is complete. Her case is detailed wonderfully through journals, letters, official documents, and newspaper articles, and the entire story may be found in chapter four. There is one book written on Spooner, although her case is mentioned in several books in small snippets. Deborah Navas's *Murdered by his Wife: An Absorbing Tale of Crime and Punishment in Eighteenth Century Massachusetts* is valuable for the fact that Navas has painstakingly transcribed every primary document relating to Spooner and the case in the appendixes, leaving few questions unanswered.⁴

⁴ Deborah Navas, *Murdered by his Wife: An Absorbing Tale of Crime and Punishment in Eighteenth-Century Massachusetts* (Amherst: University of Massachusetts Press, 1999).

The other two cases are unfortunately incomplete. In chapter two, the story of Elizabeth Proctor, an accused witch in Salem, is told. It has just a few missing pieces, but they are important to the overall narrative of her story. Proctor's case is missing the official plea of pregnancy, the sentencing documents, and the jury of matrons' examination. Proctor is one of the few women who left a paper trail after the court case, making her story particularly interesting. Documents regarding Proctor are found bound in one volume that holds every known document on the Salem trials, *Records of the Salem Witch-Hunt*, edited by Bernard Rosenthal.⁵

The other case is probably the most famous, although not for the plea of pregnancy. The two women, Anne Bonny and Mary Read, are more famous for dressing the male and attacking merchant and fishing ships than their plea of pregnancy, but their crimes show a distinctly different side of womanhood in the colonial era. A hotly debated source on the pirates is that of Captain Charles Johnson, who wrote *A General History of the Pyrates* just a few years after the women were tried. It gives biographies of both Bonny and Read in an illustrative, flamboyant fashion and provides no documentation. Johnson's accounts of other pirates in the work have been proven true through primary documents, although no such sources have turned up for Bonny or Read. Bonny and Read's tale of crime on the seas can be found in chapter three.⁶

Although the three cases represent women of different decades, places, and situations, the binding agent is their plea. Unfortunately, not all of the pleas of pregnancy were granted. Not every woman ended up in a good place after the plea, and the struggle for survival was certainly not over after a reprieve was given. But the courts upheld above a sentence of death the physical ability of pregnancy in women, which gave women power over the law. Even today, as we can see from Orobator's case, the legal system struggles with what to do with pregnant criminals.

⁵ Bernard Rosenthal ed., *Records of the Salem Witch-Hunt* (Cambridge: Cambridge University Press, 2009).

⁶ Captain Charles Johnson, *A General History of the Pyrates* (Guilford, Connecticut: The Lyons Press, 2002); *The Tryals of Captain John Rackam, and Other Pirates*, (Jamaica: Robert Baldwin, 1721).

Orobator is still in jail, and whether her fate would be different if she had not pleaded her belly is a question that will go unanswered. But the courts of modern nations still upheld her pregnancy over a capital sentence. The stories of four women who used their pregnancies in order to save their lives are remarkable and strange. It is purposeful in this work to bring about feelings of disgust, anger, and questions regarding human life before it enters this world. It can be shown clearly here that the system of law that condemns a person also has the powerful ability to save.

CHAPTER 2

“EXECUTION OF THE SENTENCE MIGHT BE STAYED:” PLEADING THE BELLY AND CAPITAL CRIME

Capital punishment has been used for centuries on crimes deemed so horrible that death was the only reparation. Although controversial and strongly debated, it has prevailed as a form of punishment throughout history. Capital punishment excuses no one: people of all races, religions, mental capacities, men, women, elderly, and even children have been executed for their crimes. But a different kind of innocence also deserves attention. In capital punishment, women are not excused. Neither are pregnant women.⁷

Capital punishment was common in the seventeenth and eighteenth centuries, but it was often associated as a punishment from God, or a necessity to cleanse the community. Pregnancy represented a supreme act of marital love: the birth of children signified the carrying on of a family name while the ability to raise children was a blessing from God. The mix of the blessing of pregnancy and the punishment of death contradicted one another. It is important to keep in mind that pregnant women are capable of committing serious crimes, but it goes against what society has deemed is appropriate during pregnancy. Carrying an unborn child has a certain sense of godliness about it, tied in to the sense that motherhood should be wonderful, calm, and caring. Pregnant women were thought of as delicate beings. But that does not excuse the fact that a mother-to-be could be a person guilty of a capital crime. Certainly a pregnant woman should never face the gallows while pregnant, but in some cases pregnancy did not excuse a woman from her sentence.

⁷ John Laurence, *A History of Capital Punishment* (New York: The Citadel Press, 1960), 1-6.

The act of a woman using pregnancy to delay a death sentence in the seventeenth and eighteenth centuries was called pleading the belly. Courts and society have struggled to combine pregnancy and capital punishment because the innocence of a child in the womb contradicts the guilt of a criminal. Therefore, pleading the belly became a natural choice for women who were pregnant (or who were not and used the plea as a tool to buy more time). The appeal itself dates back hundreds of years.

Pleading the belly originates in Roman law and appears for the first time in England in the early thirteenth century. It appears to have become established after appearing on a plea roll several times in 1222 and 1223, although no transcript exists of those pleas. The first documented case of pleading the belly appears in 1387 and involved Elizabeth Walton, who was convicted of conspiracy to murder. Other such cases exist in England in the Old Bailey Sessions Papers (fully transcribed court cases of the non-elite) and in the Assize records (county court records), as well as in colonial archives, although they are not archived as well as in England. Almost half of the women who were sentenced to death pleaded their bellies, but only about forty percent of them had their plea granted. There were five typical outcomes listed in the Assize records: Prisoners were examined by a jury of matrons on the day of their conviction and the plea was granted, prisoners were remanded without a jury of matrons' inspection, prisoners were remanded with an examination some time after their sentencing by a jury of matrons, prisoners were found not with child by a jury of matrons, or a simple "found pregnant" or "found not pregnant" with no further comment. There has not been a comprehensive study of women who pleaded their bellies in colonial America and the Caribbean, but a few famous cases are known.⁸

⁸ James C. Oldham, "On 'Pleading the Belly;' A Concise History of the Jury of Matrons," *Criminal Justice History* 6 (1985): 9-11; J.S. Cockburn, *Introduction to the Assize Calendars* (London: Stationery Office Books, 1985), 164.

In several cases in colonial American and Caribbean history, pregnant women have been sentenced to death. When they plead their bellies, like Elizabeth Proctor at the Salem witchcraft trials, the infamous pirates Anne Bonny and Mary Read, and Bathsheba Spooner, who conspired to kill her husband, the pregnancies were not revealed until sentencing was brought down. It is impossible to know what actions the court would have taken if the pregnancies were revealed during initial court proceedings. Perhaps the lives of unborn infants were taken into consideration regardless of the legal wrongdoings of the in-uteri's mothers; surviving documents have provided insights into what the judicial system did with pregnant women facing the death penalty. There were three legal ramifications involved with pleading the belly. The pregnancy had to be confirmed by a jury of matrons, the woman had to be quick with child (that is, around four to five months along), and punishment was still supposed to be carried out, although execution was delayed. A woman who had not delivered by the next court date, but still exhibited signs and symptoms of pregnancy, would have her execution delayed again. If she were found in the second court session to not be pregnant, the convicted woman was executed. In the case of a woman who gave birth and then appeared to be pregnant a second time while in jail, her sentence was carried out. As with many complicated legal proceedings, the plea of pregnancy did not always follow every aspect of the judicial system's desired plan.⁹

Usually, a stay of execution with a plea of pregnancy was granted after a trial, of which there should be transcripts. After the trial, the accused was sentenced and a warrant was issued for execution if the sentence was death, providing at least one more document. After sentencing, the pregnant woman would plead her belly, which would require another set of legal proceedings. A pregnant woman was required to be examined by a jury of matrons (further discussed in chapter one), who would provide documentation to the courts in order to confirm or

⁹ Thomas R. Forbes, "A Jury of Matrons," *Medical History*, 1988, 32: 26.

deny if the woman was indeed pregnant. After the examination, the judge should have produced another document stating what the findings allowed; generally, if the jury of matrons confirmed pregnancy, sentencing was delayed until after birth. If pregnancy was not confirmed, sentencing was carried out. Regardless of the findings of the jury of matrons, another document must exist, that of the fate of the prisoner. Whether she was hanged, imprisoned, or released, jail keepers, sheriffs, and the courts had a record. However, as with many court cases that are over 200 years old, there are pieces missing, particularly that of the examinations of the jury of matrons and documents regarding the fate of the prisoner.

Some courts allowed women who knew they were pregnant to have their contracted midwife or surgeon testify on their behalf. These women had their own medical professionals submit affidavits that stated the defendant was quick with child, but the courts still required a jury of matrons to examine and care for the pregnant woman. The definition of matron has changed since the seventeenth century – then, it referred to a woman who had experience in childbirth or childcare. In many cases, if the jury of matrons were all women, they were required to be married or widowed, mothers, and respected members of the community. In other cases (although uncommon), medical men were brought in. Regardless of who performed the examination, what the courts called a writ *de ventre inspiciendo* (Latin for inspection of the belly); the process was brutal and cruel. Women who had their own surgeons or midwives submit affidavits did so to prevent humiliating and painful examinations. Often, the jury of matrons was not just determining if the person was quick with child, they often passed judgment on the accused, and oftentimes were wrong, which resulted in brutal examinations. The women were not treated kindly, and sometimes physical force was used to examine them. Such was the

case for Bathsheba Spooner. According to a court record, she was so weak after her first examination by a jury of matrons that she was unable to walk.¹⁰

In order to understand the process of pleading the belly and how women were put into situations that called for them to make such an appeal, it is important to understand the history of the death penalty in British Colonial America and the Caribbean and the reasons the court systems implemented capital punishment frequently.

A Brief History of Capital Punishment in North America and Reasons for the Death Penalty

As British colonies, capital punishment in North America and the Caribbean was similar to the British codes. Crimes considered punishable by death varied from colony to colony and some colonies had capital crimes directly related to its culture or environment. Massachusetts and Jamaica, the setting of the three court cases documented, varied because of culture, climate, and jurisdiction. Proctor lived in Salem, Massachusetts, where she was kept in jail and faced the courts, and nearly one hundred years later and seventy miles west, Bathsheba Spooner's trial took place in Worcester, Massachusetts. Bonny and Read's trial took place in Jamaica, although their crimes spanned most of the eastern Caribbean.

In the Massachusetts Bay Colony, the list of capital crimes was extensive. The first execution took place in 1630, even although capital statutes did not exist until 1641. The colonies had existed long enough by then to create their own set of laws that were specific to the area although they still took direction from English Common Law. The Massachusetts Body of Liberty was written in 1641, and with it came a change in capital crimes. The extensive list included murder, manslaughter, sodomy, idolatry, witchcraft, blasphemy, poisoning, bestiality, adultery, man-stealing, false testimony, and rebellion. Most of the crimes can be directly linked

¹⁰ Forbes, "A Jury of Matrons," 29-32; Deborah Navas, *Murdered by his Wife: An Absorbing Tale of Crime and Punishment in Eighteenth-Century Massachusetts* (Amherst: University of Massachusetts Press, 1999), 166-168.

to Old Testament canon in which similar punishments were given. Eventually, rape, arson, and treason were also made capital crimes. In the 1780s, after the American Revolution, the capital codes changed, and the list of capital crimes dropped to seven: murder, sodomy, rape, burglary, arson, treason, and bestiality. This was mostly because of a desire to leave behind the strict and murderous codes of Britain and her laws. The seven capital crimes dealt specifically with Biblical law, and treason remained on the list due to fears the new country had with betrayal.¹¹

Most of the other British North American Colonies had laws that reflected the change from British to American rule: of administrations, populations, and religions. The colonies and states were also similar in the fact that sentencing was determined by the crime itself, and was rarely individual in its adjudication as it is today. If a defendant was found guilty of a capital crime by a jury, the only sentence was death. This gave the jury the opportunity to give a lesser sentence to a criminal by finding them guilty of a different crime, like manslaughter instead of murder. Mandatory capital punishment made the jury more apt to avoid a guilty sentence in circumstances in which the defendant was found to be repentant or morally excusable. In these cases, jury nullification allowed the jury to convict for a lesser crime to avoid execution. Pleading the belly is a form of jury nullification, but is more along the lines of a respite, which was also common when individuals on death row appealed for religious reasons to the courts for a stay of execution. Now, Massachusetts does not implement the death penalty.¹²

The most common form of execution in the Massachusetts Bay Colony was hanging. But other forms were not unusual. Gruesome crimes usually indicated the guilty party was to be executed in an equally gruesome way. According to Stuart Banner, colonial executions could be as common as a hanging, or as extravagant as a public dissection. One famous brutal execution

¹¹ Hugo Adam Bedau, *The Death Penalty in America* (N.Y.: Oxford University Press, 1982), 4-9.

¹² Bedau, *The Death Penalty in America*, 7-9.

was that of Giles Corey, whose involvement with the Salem witchcraft trials led to *peine forte et dure*, in which Corey was pressed to death with large stones. Guilty parties were also burned alive, or worse, drawn and quartered. In cases of drawing and quartering, treason was usually the crime. Criminals' disfigured bodies were put on display as an act of deterrence. Most often, the severity of the crime determined the brutality of the execution. Brutal criminal punishment was a trend throughout the colonies, as well as in the Caribbean.¹³

Jamaica's capital punishment laws were almost synonymous with England's, but took some cues from Spanish law. Jamaica was first ruled by the Spanish, then England after 1655. In 1670, Henry Morgan (England's governor in Jamaica) had great success in pillaging several islands and the Isthmus of Panama signaling to the Spanish that an end had come to their reign of Jamaica. The Treaty of Madrid gave the island to Great Britain. Because Jamaica was filled with citizens from Europe, the Caribbean, and Africa, laws were different than that of Britain and were based on a series of codes written in the 16th century called the *Leyes de Indes*, or Laws of the Indies. The laws changed along with the administration. According to the *Leyes de Indes*, criminal punishment was mostly pecuniary. The change from Spanish to British rule meant the introduction of capital punishment to the island for crimes like theft and arson that formerly garnered only fines. Along with the Bloody Code's introduction, British citizens had an advantage. Anyone born in Britain still had the same rights and privileges of the Englishman, but foreign-born individuals were not given the same rights, and neither were natives. For example, if native Taino Indians did not give required payment of gold or cotton to the governing officials, punishment included amputation of hands during which individuals were left to bleed to death. The governing officials created the rules, but did not hold ultimate power. A representative council was elected (all of whom were Englishmen) to act as an advisory and executive body,

¹³ Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press), 53-73.

and mostly to uphold the laws of Great Britain for the island, but it was soon discontinued as it began to show too much power.¹⁴

After 1677, Britain curtailed the power of Jamaican lawmakers and laws were written in England and sent to Jamaica for approval. This reverse of roles showed the lack of confidence Great Britain had in her colonies, and Jamaica fought the change. Until 1865, the island colony created its own laws, which were similar to Great Britain's because the administration in Jamaica was British by requirement. Therefore, capital punishment laws were in direct correlation with British laws; under the Bloody Code, England's list of crimes punishable by death reached 220 by the beginning of the nineteenth century. Jamaica's most numerous executions were the results of piracy and theft. Execution styles were similar to that of Britain's: hanging, burning, and particularly in the case of pirates, the use of gibbeting. Gibbeting in Jamaica displayed the bodies of executed pirates in cages on small islands near popular harbors. Gibbeting served as a form of deterrence, which led citizens who witnessed such punishment to avoid committing similar crimes.¹⁵

Colonial law was frequently influenced by religion, British law, and moral customs of the time. Therefore, there were several reasons for applying a mandatory death penalty to several crimes. Religious implications were taken into consideration when the courts dealt with capital cases. Oftentimes, execution dates were pushed back to allow the criminals time to make amends with God and cleanse their soul to be accepted into the afterlife. Clergy often helped inmates come clean by writing "dying declarations" in which criminals repented for their crimes and often gave in-depth confessions. In some cases, the dying declarations were used against inmates

¹⁴ Philip Sherlock and Hazel Bennett, *The Story of the Jamaican People* (Kingston: Ian Randle, 1998), 77-87; Kirkpatrick Sale, *The Conquest of Paradise: Christopher Columbus and the Columbian Legacy* (New York: Plume, 1995), 155.

¹⁵ Steven Wilf, *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (Cambridge: Cambridge University Press, 2010), 139.

in their criminal trials. In most circumstances, dying declarations served as a playbill of sorts at executions and often sold in great numbers. It is fortunate that dying declarations were written because historians can gather much from them, including the ideas of repentance, penitence, and salvation.¹⁶

Our modern prisons are often called “penitentiaries” and for good reason. The root of the word comes from *penitence*, which in the seventeenth and eighteenth centuries was one crucial reason for the death penalty. When criminals were faced with the death penalty, they often sought God (and therefore redemption and heaven) with the help of the courts. In the case of Bathsheba Spooner, convicted of murdering her husband, her fellow conspirators James Buchanan, Ezra Ross, and William Brooks were allowed a stay of execution to right themselves in the eyes of God. They wrote a dying declaration that was distributed at their hanging, in which they confessed to their crimes and repented of their wrongdoings, saying at the time of the murder they had “no fear of God before our eyes.” Typically the time period between sentencing and hanging was an average of five days, but when asking for time to make amends with God, prisoners were given a few weeks. Clergy members were often brought in to assist the accused in preparing their souls. The clergyman who helped Buchanan, Ross, and Brooks wrote in his diary that “murder... may be repented of... and pardoned by God.”¹⁷ This gave reason for the execution to take place with satisfaction. The accused had made peace with their god, and their souls were cleansed of any sins. It was the perfect time to accept death with grace, and almost seen as a blessing to know their soul was not fouled before they swung from the gallows.¹⁸

¹⁶ Banner, *The Death Penalty*, 16-17.

¹⁷ Deborah Navas, *Murdered by his Wife*, (Amherst: University of Massachusetts Press, 1999), 96-97.

¹⁸ Banner, *The Death Penalty*, 16-17; Navas, *Murdered by his Wife*, 96-97.

By giving the condemned a few weeks' time to make right their souls, the courts also allowed word of the execution to spread. Executions drew crowds of hundreds, sometimes thousands, who brought commerce to the city and reason for the courts to make an example of their criminals. The courts would show the crowd the accused, let them learn of their crimes in detail, and let the public watch them die. Crowds knew of the brutality of some of the executions that took place, yet children and women were frequent visitors, and families often brought their children to keep them from a life of crime. It is unknown if it worked, but with the severity of the punishments it is likely people had violent reactions to what they witnessed. The dying declarations had an impact on crowds, as did the act of execution itself. Even after the criminal was dead, their bodies were put on display as a warning. This practice was common for executed pirates, as in the case of Captain John "Calico Jack" Rackham, whose real life eccentricities inspired the famous Captain Jack Sparrow of Disney fame. Rackham's body was placed in a gibbet (a cage-like object used to house Captain Kidd's body, as well) on a sand spit renamed for him off the southern coast of Jamaica, after his 1720 hanging. Rackham's Cay and the body that rotted in the cage on its white beach served as a warning to others who committed acts of piracy in the Caribbean: even the notorious cannot escape punishment.¹⁹

Salvation for a criminal was possible as well, but rare and complicated. A criminal in question would have to be rid of all sins to make his or her life valuable once more and gain the approval of the community. Communities in colonial times were very important and collectively, the community could blame itself for one person's actions. People were individuals, and their actions simply signaled that the particular person in question was flawed and therefore harmful to society. In order for the entire community to reach salvation, the bad seed had to be weeded out. Killing one bad member of society to save the entire community as a whole was widely

¹⁹ *The Tryals of Captain John Rackam, and Other Pirates*, (Jamaica: Robert Baldwin, 1721).

acceptable and seen as needed. It was deemed morally necessary to purge the community of bad blood. This is easily seen in the Salem witchcraft trials, in which people were executed using only spectral evidence. The evidence against them, however, was enough to speculate that they were not functioning as moral members of a community. Therefore, their lives were not fulfilling their purpose, and death was the only way to save the community from further harm. In allowing a pleading of the belly, the courts gave the child in-utero a chance to redeem the mother by being born. The mother could give to the community a new life, and a new person who had not gone down the wrong path. Oftentimes, after the child was born, the courts saw the usefulness of the criminal as a mother and let her live, like in the case of Elizabeth Proctor.²⁰

Elizabeth Proctor is perhaps the most famous accused person of the Salem Witchcraft Trials. Portrayed in Arthur Miller's *The Crucible*, and many dramatic portrayals afterward, Proctor is best known for being accused of witchcraft in Salem alongside her husband, John. Proctor was spared the gallows because of her pregnancy. Her husband was executed regardless of appeals he made to the courts. Proctor's case is special because after the birth of her son, whom she named in honor of her late husband, she was acquitted by the governor and allowed to go free. Her troubles were not over however. As a result of her conviction she was dead in the law, which meant she had no legal rights whatsoever. Proctor is one example of the courts seeing motherhood as more important than punishment for a crime. Proctor's case embodies several elements: Britain's Bloody Code (of which witchcraft was included), laws of Massachusetts, and several reasons for punishment including penitence, deterrence, and religion. Her case of pleading the belly is a prime example of what can happen when an appeal is granted. Pleading the belly, however, can have several different endings.

Pleading the Belly: Pregnancy and Crime

²⁰ Banner, *The Death Penalty*, 18-19.

Pleading the belly continued into Britain's Bloody Code, under which there were dozens of capital crimes including adultery, murder, treason, rape, manslaughter, blasphemy, and idolatry. Women who committed such crimes and were pregnant were subject to an inspection called *de ventre inspiciendo*, inspection of the belly. In the seventeenth and eighteenth centuries, fetuses in the womb were not considered living people until the fetus had begun to obviously move inside the womb, a concept called quickening. Quickening, since dismissed by modern medicine, occurs around the eighteenth to twentieth week of pregnancy, is the first tiny fluttering of a fetus in-utero. When a woman was accused of a capital crime and entered a plea of pregnancy, she was inspected by a jury of matrons.²¹

A jury of matrons was not just used in criminal cases. In civil cases, especially in regards to inheritance disputes of recently widowed women, a jury of matrons was used to determine if an inheritance to all children should be postponed until another child was born. Usually quickening did not play a part in this because the mother's life was not in jeopardy. A jury of matrons was also used to grant divorces in cases where a marriage had not been consummated. The jury would inspect the woman to determine if she was indeed a virgin and, depending on their findings, a divorce might be granted. In criminal cases such as infanticide, a jury of matrons was used to determine if a woman had recently given birth, and therefore could be guilty of killing her newborn. It was, in some cases, easier to tell if a woman had just given birth than if she were pregnant. Each jury of matrons had a specific role – to be discreet and honest.²²

A jury of matrons usually included midwives, medical professionals, or women of high standing in the community who had experience with medical matters. The jury of matrons was an integral part of pleading the belly, as their report to the judge is what allowed for the stay to

²¹ Forbes, "A Jury of Matrons," 23-33.

²² Oldham, "On 'Pleading the Belly,'" 1-64.

be granted or denied. Women had to prove their pregnancy through examination by a group of respected and usually older members of the community. They were midwives (who were not always women) or lay persons, had several children, were married or widowed, and often had experience in some kind of medical field. The jury performed a series of examinations on the accused criminal to determine if she were pregnant, and also to determine if she were “quick” with child. If quick with child, the pregnant woman was allowed to give birth and then face her sentence. If the woman exhibited signs of pregnancy but not signs of the fourth or fifth month of pregnancy, her sentence was carried out because the fetus was not considered alive until quickening. Often, accused criminals who were granted a stay of execution were given enough time to find new witnesses, refine their cases, and get a pardon in order.²³

A reprieve provided time for the accused to be reevaluated, which resulted in being pardoned. In most cases, an appeal granted on the grounds of pregnancy was often as good as a pardon. The courts were lenient with pregnant women, especially after they were forced to give birth in jail, and afterward cared for newborns while incarcerated. They were traditionally more lenient on women who pleaded their bellies, and even those not yet found quick with child by a jury, just like Daniel Defoe’s famous Moll Flanders. Some women faked pregnancies in their claims; one even chugged ale to make her stomach swell and used a pillow as a false belly. Surprisingly, her appeal was granted. It is likely the jury was hand-picked by the judge. Most often, the jury members were in the audience during the court proceedings and therefore were not selected with great care, but their qualifications still stood. The ultimate reason for using the

²³ Forbes, “A Jury of Matrons” 23-33.

jury was to discover if the criminal was indeed pregnant. The jury knew signs and symptoms of pregnancy to look for in order to make their decision.²⁴

According to Alan Frank Guttmacher, the founder of Planned Parenthood, in his book *Into this Universe: The Story of Human Birth*, there are several ways in which a doctor (or in this case, a jury of matrons) could tell if a woman was pregnant. First, a thorough history of the patient was taken. Women know their menstrual cycles and often could tell symptoms of pregnancy. Changes noted by the accused criminal were taken into account, as well as an examination of the breasts. In examining the breasts, a jury of matrons or a doctor could have milked colostrum from the nipples and seen swelling. Even from these examinations, pregnancy should have been obvious. Then the jury examined the belly.²⁵

Abdominal changes occur about the tenth week of pregnancy, when “a discrete, midline swelling, globular and softish” appears. The discovery of a mass could have led a jury to approve the appeal of pregnancy. It was not until the sixteenth to twentieth weeks of pregnancy that a “palpitation” can be felt. The head and body of the fetus could be felt through a series of pressures of hands on a belly. This palpitation is almost unmistakable proof of pregnancy. Usually at this time a doctor or midwife was able to establish pregnancy with no question. There was, however, one absolute sign of pregnancy: movements of the fetus in utero. If fetal movements were not felt, regardless of other signs, a jury of matrons was likely to deny the appeal of a pregnant criminal.²⁶

Fetal movements are described as soft and subtle, almost like the stirrings of a butterfly. Examiners placed the flat of the hand on the lower stomach and waited for a kick, a hiccup, or a

²⁴ Captain Alexander Smith, *The History of the Lives of the Most Noted Highway-men, Foot-pads, House-breakers, Shop-lifts and Cheats of both Sexes, etc.* (London, 1714), 2:184-185.

²⁵ Alan Frank Guttmacher, *Into this Universe: The Story of Human Birth* (New York: The Viking Press, 1937), 50-52.

²⁶ Guttmacher, *Into this Universe*, 50-52.

jolt caused by foreign fingers. The fetus can be encouraged to move with specific prodding, oftentimes two fingers held against it in the right place and time. Some jurors used ice or cold water to stimulate movement, while others felt bellies with their cheeks instead of hands. In most cases, there was irrevocable evidence that women were pregnant. In other cases, the jury failed to notice the pregnancy and the woman and her child were executed.²⁷

Scheduled executions of pregnant women were special cases in which each individual suit needed unique care to be just and lawful. Killing another human was a capital offense in many colonies; therefore the question of killing a child in-utero had to be considered by judges and juries as well as the punishment the judicial system had to deliver to the guilty party. A question rose as to whether the child in the womb was a person or not. This question still affects our laws and court systems today. The *Roe v. Wade* (1973) United States Supreme Court case proves that American law still struggles with the legal rights of a person in the womb. In the colonies, Puritanical religious beliefs indicated that a fetus in the womb did not have a soul until it could move, and only after quickening it was established that the child was a person and therefore had legal rights. Assisting in the killing of a fetus after the moment of quickening was considered a crime itself. For pregnant criminals in the seventeenth and eighteenth centuries, the technology was not available to determine if pregnancy was 100 percent, and the rule of quickening did not acknowledge pregnancy until the fourth or fifth month. Therefore, a woman could be legally executed if she were in the first trimester of pregnancy. If a woman was exhibiting signs of quickening, however, the courts could provide a stay of execution.²⁸

Pregnancy was complicated medically and also socially. Pregnancy in early America was usually perceived as a common necessity in increasing the size of a family, as “expected pledges

²⁷ Guttmacher, *Into this Universe*, 48-52.

²⁸ Reva Siegel, “Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection,” *Stanford Law Review*: Vol. 44, No. 2 (Jan., 1992), 261-381.

of matrimonial love”²⁹ and thus expected. If a pregnancy occurred outside of marriage as a result of consensual premarital sex, the couple would sometimes hastily wed. In Massachusetts, sexual intercourse between unmarried persons was a crime, and usually the woman was punished for fornication. If the couple did not wed, the woman could sue for paternity rights in court if she had an out-of-wedlock birth. If the couple was not able to wed (or chose not to) due to social restrictions such as race, class, or one of the partners was married to someone else, the child was born a bastard and the mother would usually marry later in life. Bastard children were not uncommon. If a pregnancy occurred as a result of rape, the pregnancy was sometimes terminated or the newborn killed immediately after birth, although both rape and abortion were capital crimes and rarely occurred. Rape itself was difficult to prove and a rare thing to be brought before the courts.³⁰

Pregnancy therefore was a complicated thing in British Colonial America. The physical demands on a woman were one thing but there were certain social expectations that went along with pregnancy, which Proctor, Bonny, Read, and Spooner did not follow. The women in this work did not use their pregnancies as tools to increase their family size, nor as a means to secure paternal rights. Only two of the women, Proctor and Spooner, were still living with their husbands and may have had marital sex to conceive their children. Bonny, although still legally married when arrested, had an affair with the pirate Captain Jack Rackham and could not verify the father of her child. Read was a widow and the partner with whom she conceived her child was unknown. Therefore the four women did not use the court system to prove a father and gain paternal identification for their children, as many women did. Their use of the legal system and

29 Susan E. Klepp, “Revolutionary Bodies: Women and the Fertility Transition in the Mid-Atlantic Region, 1760-1820,” *The Journal of American History*, Vol. 85, No. 3 (Dec., 1998), 910.

³⁰ Laurel Thatcher Ulrich, *A Midwife’s Tale: The Life of Martha Ballard Based on her Diary, 1785-1812* (New York: Vintage Books, 1990), 115-21, 147-60.

pregnancy was unique. The four women used their pregnancies to save their own lives. They implemented pleading the belly as a different function of pregnancy than what was commonly seen among women in the colonies: as a tool to evade punishment and extend their lives. The process in which to do so, however, was complicated.

After a woman was proven pregnant and the courts allowed her a stay of execution, complications arose. The prisoner was to be held in jail for the duration of her pregnancy. Jails during the colonial period were not separated by sex and were not long-term solutions for criminals. Often they were holding cells for people awaiting trial and as soon as a verdict was given, that person's sentence was carried out or they were released. Debtors were some of the only inmates who spent extended time in jail. The amount of prisoners at any given time varied greatly, which meant the risk for disease, infection, and exposure was high. Colonial jails were often no bigger than twenty square feet, made of wood and iron bars. Often, jails were as small as fifteen feet square and were crowded. A prisoner's possessions depended on if he could pay the jail keeper, who decided who got comforts: food, blankets, and medical necessities. A pregnant woman in jail was in a desperate situation.³¹

Pregnant women who were expected to give birth in jail also faced risk of dying of "gaol fever" or smallpox before their children were born, as well as premature births, birth defects, or the death of the fetus. The lack of fresh water, damp facilities, and poor nutrition plagued the jail systems in the colonies. It is no surprise that Mary Read, a convicted pregnant pirate, died of fever in jail. Jails were not intended to be long-term solutions for criminals. Pregnant women waiting to be executed were oddities because of the amount of time they spent in jail.³²

³¹ Scott Christiansen, *With Liberty for Some: 500 Years of Imprisonment in America* (Boston: Northeastern University Press, 1998), 61.

³² Christiansen, *With Liberty for Some*, 61-63.

Women were not uncommon in jail, but it was not until prison reform in the early nineteenth century that women and men were separated. During the colonial period men and women were imprisoned together within proximity, making pleading the belly more complicated if a woman got pregnant in jail. In that case, quickening took a major role. Because jail times were short, a woman trying to intentionally get pregnant in jail to achieve a stay of execution would not have experienced quickening, and therefore her execution was carried out. Mothers in prison were also subject to differential treatment and often their children were brought to jail to live with them until their sentence or court date was over. The dire conditions of prisons were certainly no place for children, but administrators often had no other choice. If no relatives were able to care for the children of the accused, then living with their mother in jail was not uncommon. Being pregnant in jail got the prisoner no special treatment, as the role of the woman was still considered to be one of domesticity and therefore presumed that she would know how to care for her condition while incarcerated. Each jail presented its own special set of circumstances based on location and administration. In places where winters were cold, little could be done to stay warm. For example, prisoners in Salem, Massachusetts, were forced to purchase food and blankets, even in the frigid winter months. During the Salem witchcraft trials, it is estimated that at least five people died while imprisoned, but some historians believe the number of dead could be more than ten. In the Caribbean, a slew of diseases like smallpox, yellow fever, and tuberculosis spread in tightly populated areas, making jails even more dangerous. The straw kept on the floors that served as bedding was not cleared out when people died of disease on top of it. The poor ventilation and suffocating heat allowed infection to thrive, killing hundreds like Mary Read.³³

³³ Mark E. Kann, *Punishment, Prisons, and Patriarch: Liberty and Power in the Early American Republic* (New York: New York University Press, 2005), 125-126.

As with jail conditions varying from location to location, court systems and laws varied as well. Most British colonies in North America followed the same set of laws and legal systems, but a few differences existed from colony to colony. Jail, courts, and appeals processes varied from place to place, but overall, the majority of colonial courts followed Britain's Bloody Code.

The Role of Women in Law

The role of women during the colonial period must be taken into consideration. Women during the seventeenth and eighteenth centuries were expected to behave in certain ways. The gendered norms of the times indicated that the ideal woman should marry, have children, raise a family, and take care of her husband. Domestic life was important, but many women worked outside the home to help their families prosper. Elizabeth Proctor, the accused witch, ran her family's tavern successfully and her practices gained her a reputation in the community of being a shrewd businesswoman. She did not allow people to start tabs at the tavern and demanded payment upon the receipt of goods, ensuring her business would thrive. The economic roles of early American women were more focused on the domestic sphere, but middle and lower class women worked just as hard as their husbands to help those domestic lives thrive. Some women had trades and special skills like embroidery, upholstery, and those that ran businesses and taverns had basic mathematic and literacy skills. But even with skills or business sense, married women were bound by coverture. Coverture bound women to their husbands, making them one entity in the eyes of the law. Therefore women could not own their own property or land, and had limited rights, especially if they were married. Women who were single could own property and sign contracts, but marriage gave those rights to a husband. The main purpose of a woman in colonial America in particular was to reproduce and care for a family, while implementing both domestic work and outside work to accomplish that purpose. Domestic skills were seen as

valuable and the ideal woman sought out perfection in domesticity and as a wife. A woman who bore children and worked outside the home was fulfilling her duties as a woman as well.³⁴

One role of lawmakers in this era was to uphold gender norms. Women's roles, during the colonial period, particularly if they were married, were usually as wives and mothers. A married woman no longer had legal standing. With the contract of marriage, a woman's husband assumed all legal responsibility for the woman. She was not allowed to enter into legal contracts because doing so would deprive the husband of the right to govern his wife. By allowing women to fulfill their role as mothers during a pleading of the belly, the courts upheld gender norms by acknowledging the value of motherhood. Courts followed the law because a quickened pregnancy could not legally be terminated. The legality of terminating a quickened pregnancy stems from religious beliefs in which the fetus in utero gains a soul after it begins to move, so in a way, pleading the belly was both legally and religiously tied. The courts were making a statement about the roles of women in society by not putting pregnant criminals to death. Women helped fulfill a female role by being a mother, which was seen as more important than being punished for crimes. On top of that, capital crimes were often seen as masculine, and women were valued more when they were feminine. To allow them to have their children without punishing the crime first also allowed the women to be feminine, and useful, members of society. In contrast, their criminal actions de-womanized them, making their pregnancies all the more important in defining femininity. There are other factors involved with such a policy.³⁵

³⁴ Karin Wulf, "Women's Work in Colonial Philadelphia," in *Major Problems in American Women's History*, 4th edition, eds. Mary Beth Norton & Ruth M. Alexander (Boston: Houghton Mifflin Co., 2007), 93-105; Mary Beth Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692* (New York: Vintage Books, 2002), 71; Mary Beth Norton, "The Evolution of White Women's Experience in Early America," *The American Historical Review*, Vol. 89, No. 3 (June, 1984), 597.

³⁵ Banner, *The Death Penalty*, 23.

As previously discussed, an ideal woman's role was to raise children and a family. Depending on their marriage and community environments, middle and lower class women acted as partners to their husbands but were more often subservient to them. The four women in the case studies that follow this chapter represent lower, middle, and upper classes. The two pirates came from both lower and middle class families. Mary Read, of the lower class, was widowed when she took to the seas but before her husband's death she helped him run a tavern. Anne Bonny's father was a Carolinian planter. Bathsheba Spooner had a wealthy background, and maintained the same upper class status in marriage. Her father was a high-ranking British military man, but when Spooner married her wealth was not equal to that of her father's. There is no evidence that she worked outside the home, as she had no need to. Elizabeth Proctor and her husband got wealthy from farming and the family tavern, both of which Elizabeth had a hand in. The three women in the lower and middle classes represent a large portion of married and widowed women who lived and worked in the colonies. The only difference between them and an average woman of the time is that they were accused of capital crimes.³⁶

Women who challenged given roles risked their lives and the court system sought not to just punish them because of the crimes they committed, but also because the women chose to break societal norms. A woman who sought power or change, or displayed either of those things was a terrifying person in the eyes of the courts and of men, who ran the courts and wrote the laws. An example of this is William Byrd II, a founder of Richmond, Virginia, who wrote a commonplace book that had much to say about the role of women. "Next to a man's being

³⁶ Navas, *Murdered by his Wife*, 26-32; Bernard Rosenthal, *Salem Story: Reading the Witch Trials of 1692* (Cambridge: Cambridge University Press, 1995), 45-47; Marcus Rediker, "Liberty Beneath the Jolly Roger: The Lives of Anne Bonny and Mary Read, Pirates," in *Iron Men, Wooden Women: Gender and Seafaring in the Atlantic World, 1700-1920*, ed. Margaret S. Creighton et al. (Baltimore: Johns Hopkins University Press, 1996), 8.

governed by his mistress, the greatest Reproach is to be governed by his Wife,”³⁷ Byrd wrote in the early eighteenth century. Women were supposed to be submissive and passive, but as the pirates Anne Bonny and Mary Read and the adulteress Bathsheba Spooner show, some women broke that role.³⁸

Often women are portrayed in the writings of seventeenth and eighteenth contemporary writings as completely submissive to men, without a voice or even thoughts of their own. Byrd was a firm believer that women should govern their tongues, were undeveloped intellectually, and foolish in their character. One of his acquaintances had a wife who slept long hours, and he thought the hours while she was not speaking to be “the most innocent and peaceable part of her life.”³⁹ In actuality, the courts show cases involving women who broke the rules. They murdered, lied, stole, and were taken to court for their problems as often as men. These “disorderly women” were negating manly citizenship. They broke gender norms and were seen as delinquents in society. According to Monica C. Witkowski, women in the colonies were familiar with laws, crime and punishment, and the court system because they were frequently involved in courts, although mostly for what were classified as “womanly crimes.” Womanly crimes included prostitution, abortion, and infanticide, as well as theft, stubbornness, fornication, and adultery. Capital crimes were commonly seen as male oriented and women who committed such crimes often claimed to have been under the influence of a male during the illegal activities.⁴⁰

Trial transcripts and declarations offer personal looks at female criminals, particularly in the case of Bonny and Read, whose trial transcript provides a physical description of the women

³⁷William Byrd, *The Commonplace Book of William Byrd II of Westover*, ed. Kevin Berland et al. (Williamsburg, VA: Omohundro Institute of Early American History and Culture, 2001), 132.

³⁸James M. Volo and Dorothy Denneen Volo, *Family Life in 17th and 18th Century America* (London: Greenwood Press, 2006), 196-197.

³⁹Byrd, *The Commonplace Book*, 142.

⁴⁰Monica C. Witkowski, "Justice Without Partiality: Women and the Law in Colonial Maryland, 1648-1715" (PhD diss., Marquette University, 2009); Kann, *Punishment, Prisons, and Patriarchy*, 80-83.

alongside vivid descriptions of their crimes. The shock of the witnesses that Bonny and Read were committing crimes of piracy (deemed a man's crime) and were dressed in men's clothing is evident in their comments:

Two women, prisoners at the bar, were then on board the said sloop, and wore mens jackets and long trousers, and handkerchiefs tied about their heads; and that each of them had a machete and pistol in their hands, and cursed and swore at the men, to murder the deponent...⁴¹

While women were supposed to act the role of the housewife and mother, their lives often reflected a necessary evil: sometimes life was hard, and actions had to be taken in order to survive, thrive, or heaven forbid, become independent. The cases of Proctor, Bonny, Read, and Spooner are all examples of the quest for independence, livelihood, and defining womanhood. The women involved with pleading their bellies faced difficulty by negating the norms of their cultures and times. The pirates were influenced by new laws and took to the seas to avoid punishment. The accused witch was a victim of a cultural phenomenon fed by corrupt male officials. The adulteress was swept into a love triangle made possible by a time of war. Each environment led to a different answer to the same problem: what could be done to stay alive, prosperous, and happy in a time when women were supposed to be subjects of their male counterparts and the courts had blatant gender biases.

The three cases focused on involve four women who were once ordinary individuals in extremely dangerous situations. Each woman was pregnant, which was difficult enough in colonial times, especially while in jail. They also had committed crimes (or were accused of crimes) so serious that they faced the gallows. The reflections of the courts on their appeals upheld the seriousness of each situation. Rulings based upon the findings of juries of matrons

⁴¹ *Tryals of John Rackham*, 1721; Kann, *Punishment, Prisons, and Patriarchy*, 80-83.

gives evidence to the fact that the courts were sensitive to pregnancy and new life. The following three cases reflect three different outcomes of pleading the belly: a woman whose appeal was granted and documents record her release from jail, women whose appeals were granted and jail took the life of one, while the other disappeared from record, and a woman whose appeal was not granted. Although their crimes, lives, and the ending of their stories vary greatly, all four women pleaded their bellies and all four women fought to save not just their own lives, but the lives of their children. If their thoughts were on their unborn children or on their own lives, it is hard to say.

CHAPTER 3

THE INNOCENT ONE: ELIZABETH PROCTOR AND WITCHCRAFT IN SALEM

Elizabeth Proctor⁴² and her husband John were accused of witchcraft and torturing their young neighbors in the most famous set of witch trials in American history – Salem. Salem has been the subject of historical analysis and debate for decades, yet the Proctor’s story has been somewhat overlooked. Elizabeth and John Proctor were indicted for “high suspicion of sundry acts of witchcraft” against Abigail Williams and John Indian on April 4, 1692. Ultimately, John Proctor was executed and Elizabeth, although convicted of the same crime and tried by the same jury, survived because she was pregnant. By pleading the belly, Elizabeth escaped punishment of one of the most high profile series of executions in recorded history. Interestingly, her plea is not analyzed in any modern history. While it is known that she was pregnant and that was the reason behind her stay of execution, a record or study of Proctor’s plea is missing from the vast works on Salem. This couple was different than other Salem “witches.” They were the first accused as a pair, John was the first man accused, and they were also two of just a handful who had several petitions and pleas written either on their behalf or about them. Without Elizabeth’s pregnancy, her life would have ended alongside her husband. Her ordeal with the law did not stop after a mass pardon by the Massachusetts governor, however. The Salem trials haunted Elizabeth Proctor long after she gave birth in jail.⁴³

⁴² In some documents, Proctor is spelled Procter. For consistency throughout this document, the spelling of Proctor will prevail except in the cases of direct quotations.

⁴³ *Records of the Salem Witch-Hunt*, ed. Bernard Rosenthal (Cambridge: Cambridge University Press, 2009), 170-171.

Salem's story is well known by many and the Proctors usually serve as minor players in the overall narrative. The key people are recognized easily as their names have contributed to modern literature both fiction and non-fiction. Those people include the accusers Abigail Williams and Mercy Lewis, Reverend Cotton Mather, the accused slave Tituba, and viciously executed by *peine de forte*, Giles Corey. The Proctors were a unique case in Salem because of Elizabeth's pregnancy and the trial's aftermath. Elizabeth's life after the trials was difficult and complicated as her conviction did not allow her access to her husband's property. In accordance to law, because Elizabeth was convicted of a crime and her husband did not include her in his will, she had no legal rights, which left her destitute for years. The entirety of the Proctors' story starts on Monday, April 4, 1692 when a formal complaint was issued against them.⁴⁴

The formal complaint of witchcraft could have been issued against the Proctors for several reasons. Elizabeth was a midwife whose medicinal advice had been ignored by neighbors who later died of their illnesses; she was blamed for their deaths. But several accusations stem from the employment of a young servant, Mary Warren, who was participating alongside the many accusers in Salem. John Proctor employed Warren, who suffered from fits and blamed other's specters for their cause. Specters were what the Salem accusers called the spirits of witches who were sent to torture and torment them – "spectral evidence" was usually the only evidence of witchcraft in court, and it was only eyewitness accounts and descriptions that condemned many. It was Proctor's reaction to Warren's fits that garnered attention from neighbors. He had a conversation with neighbor Samuel Sibley of Salem Village, where the majority of the witchcraft accusations took place. Salem Village was a small rural community that was separate from the town of Salem but relied on the town for economic reasons. During the conversation with Sibley, Proctor expressed disgust at the recent accusations of witches in

⁴⁴ *Records of the Salem Witch-Hunt*, 167.

the community and “threatened to thresh” Warren for her recent obsession with demonic sightings. Based on that conversation, Sibley saw reason to suspect that Proctor was a witch. The accused witches had been condemned by the church and the law, and therefore Proctor was criticizing the church and to the community, that was something only a witch would blatantly do.⁴⁵

Warren followed the crowd at accused witch, Rebecca Nurse’s, examination when she thrashed in “fits” on the floor. Proctor’s comment to Sibley implied that he thought Warren was faking her fits and that beating her would make her stop. When the group of girls who accused the majority of the Salem witches accused the Proctors, they claimed Warren was their victim. John Proctor developed a hatred for his young servant, and told her blatantly that she accused “innocent persons.” The Proctors, while by no means poor, were not in a good position to care for Warren, which might explain her behavior. They had eleven children between them (six from previous marriages) and ran both a farm and a successful tavern. They were wealthy in the community and as a couple were shrewd businesspeople. Their busy lives might have left Warren feeling ignored or mistreated.⁴⁶

Warren’s past is one that lends explanation to the entire Salem story. Her parents were killed by Indians in King Philip’s War in Maine and her only surviving relative was a deaf-mute sister. Her placement as the Proctor’s servant indicates that she was of low class. Many people involved with the Indian wars and who survived moved to larger settlements and towns in Massachusetts to escape the violence. An amount of jealousy arose among families who had lost several people against those who had lost none. One explanation for surviving the Indian attacks was the use of witchcraft, or a contract with the Devil. Warren’s claims of her employer’s

⁴⁵ *Records of the Salem Witch-Hunt*, 538.

⁴⁶ Bernard Rosenthal, *Salem Story: Reading the Witch Trials of 1692* (Cambridge: Cambridge University Press, 1995), 45-47.

witchcraft were most likely listened to because she had lost her whole family to native peoples, who, under Puritanical beliefs customary to the time, were in direct connection with Satan. Without the Indian wars and the fear of witchcraft, paranoia that swept Salem might have been squelched before nineteen lives were lost. Another reason the community suspected the Proctors of witchcraft was their adamant opposition to the entire situation.⁴⁷

John Proctor was a smart man and could have been spared if it were not for his public opposition to the witchcraft trials. His opposition to the Salem trials was clear from the beginning. He thought the trials and especially the role of city officials in the trials preposterous. His cynicism indicated to the courts that he was in contract with the Devil, as no man with a relationship with God would challenge the church. He was not the first to believe the church was wrong; some famous Massachusetts residents were exiled for their opposition to the church including Anne Hutchinson and Roger Williams. Proctor's Quaker ties were another nail in his coffin. Before the 1690s, Quakers were persecuted and often driven from Massachusetts. Puritanical beliefs did not allow people of other religions to live or worship within the same community. The English Act of Toleration in 1692 required that Massachusetts allow Anglicans, Baptists, and Quakers to live and worship in peace. The Puritans generally complied with the orders of the act, but discrimination certainly existed. This law made it illegal to discriminate against John Proctor, but the accusation proved his faith could have been a contributing factor to his demise. Although Proctor had Quaker ties, his tavern was important and popular. It was his

⁴⁷ William S. Simmons, "Cultural Bias in the New England Puritans' Perception of Indians," *William and Mary Quarterly*, Third Series, Vol. 38, No. 1 (Jan., 1981), 51-72; Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692*, 71.

unwillingness to accept the claims of young girls who accused him of witchcraft that made him unpopular.⁴⁸

Before the couple was formally charged, a scene at a local tavern owned by the Ingersoll family brought about more suspicion. Members of the community familiar with the newly-started trials and with the Proctors had a conversation about rumor, and told the crowd that Elizabeth Proctor was soon to be examined. At this point, she had not been arrested or charged. The tavern keeper told them that this was not true, as his wife was one of the chief complaint makers and they had heard nothing of Proctor in the proceedings. At that moment, some of the other accusers gazed upward and claimed “Goody Proctor” stared at them from the rafters of the bar. This “spectral visit” was enough to suspect the Proctors were indeed in cahoots with the Devil, and a formal complaint followed shortly.⁴⁹

On April 4th, Elizabeth Proctor was accused of witchcraft by Abigail Williams and John Indian. A warrant was issued four days later accusing Proctor of “sundry acts of witchcraft” against Williams and Indian, and she was arrested. Proctor’s husband was accused shortly after and was the first male to be called before the judges. Proctor’s defense of his wife and criticism of the possessed were reason for his arrest. Once in jail, Elizabeth and a fellow prisoner Sarah Cloyce were examined. Abigail Williams, John Indian, Mary Walcot, and Ann Putman all claimed that Cloyce and Proctor harmed them physically. The accusers claimed they pinched, choked, “brought the book” of the Devil, bit, and caused them to “fall into fits.” Proctor and Cloyce attempted to defend themselves and claimed they had never done any of the things the accused said. Several of the girls who testified against Proctor went into fits or were in “trances” throughout the trial. Williams and Putman attempted to “strike at” Proctor but when William’s

⁴⁸ Peter Charles Hoffer, *The Salem Witchcraft Trials: A Legal History* (Lawrence: University of Kansas Press, 1997), 108-110.

⁴⁹ Hoffer, *Salem Witchcraft Trials*, 109-110.

hand came near her, her fist unfurled and touched Proctor only lightly. When her hand touched Proctor's hood, Williams "cried out, her fingers, her fingers, her fingers burned." Shortly after, John Proctor's specter appeared sitting on a beam in the rafters.⁵⁰

The unruly court scene was not out of character for the entire series of trials. The judges involved with the trials did not stop the outbursts of the young girls, which were exactly what John Proctor thought outlandish. Their belief system was the reason why – the economics of the town had recently started to fail, and the judges blamed the presence of the Devil in Salem for their financial misfortunes. The belief that Satan was responsible for personal problems and community issues was common; the Puritanical beliefs of the community overruled the strange occurrences in the court. Puritanism was not just church to the people of Salem. Salem and Massachusetts had a theocratic legal system that recognized the presence of the Devil. The ministers were also leaders whose roles went beyond that of the Sunday pulpit: they were to help uphold the laws. They taught reading and writing, tended to the sick and dying, performed funerals, and helped solve disputes both legally and domestically. Puritan clergymen were supposed to keep the community on a pure and sacred road, and keep track of the problems within to provide religious-based solutions. Attendance in church was mandatory, and lengthy sermons preached the honor of God and Jesus as well as the temptations of Satan, to which any person was vulnerable. Belief in both God and Satan were expected in the church, and so was the belief of evil, in which witches were no exception.⁵¹

For Elizabeth Proctor, the outcome looked grim. Her examination had not gone well; the girls who testified against her and John were ruthless and determined to punish the couple. Although there was no substantial evidence that the Proctors had committed any crimes, they

⁵⁰ *Records of the Salem Witch-Hunt*, 173-174.

⁵¹ Carol F. Karlsen, *The Devil in the Shape of a Woman* (New York: W.W. Norton & Co.: 1987), 4-5.

were jailed. There was no physical proof of criminal activity performed by the Proctors, only words of torture and haunt from the young Salem accusers. What the girls did not know was that Elizabeth Proctor was pregnant during her examination, and that her child would save her life. John and Elizabeth were subjected to physical examinations after their questioning. Physical examinations were used to find any abnormalities that could resemble Devilish traits, including strange markings in the shape of moles, birthmarks, or scars, extra nipples, and swollen nodules. These markings were thought to indicate the mark of the Devil: when a person made a covenant with Satan, it was thought that he left his mark on that person. The search could also reveal where familiars (usually animals or demons) would suckle from witches. In the case of the Proctors, the inspectors found nothing unusual. Although their bodies did not reveal any mark of the Devil, it did not excuse them from their charges nor change their situation.⁵²

The physical examinations of John and Elizabeth took place on June 2nd, almost two months after their oral examination. The heat of summer started to suffocate Massachusetts and the poor conditions in the jail made living difficult. Jails were typically used as holding cells but in the case of the Salem trials, people were forced to stay incarcerated for long stretches of time. Jails were not suitable living environments and conditions were harsh. Starvation, dehydration, infection, and disease were common. Because of the poor living conditions, people began dying in prison, but not before the executions began. Bridget Bishop was executed and Roger Toothaker died in jail just days after the Proctors were physically examined. The reality of the trials became clear: people were dying because of the claims of children based on spectral evidence, but John Proctor did not sit idly by and wait for his trial.⁵³

⁵² *Records of the Salem Witch-Hunt*, 362-363.

⁵³ *Records of the Salem Witch-Hunt*, 395.

John Proctor wrote to the ministers in Boston on July 23, 1692, and claimed the courts in Salem had “condemned us already before our trials,” and that the members of the court were “incensed and engaged against us by the Devil.”⁵⁴ He attempted to persuade the “reverend gentlemen” of Boston that all of the accused were innocent people. In his letter, Proctor also indicates that his son William was tortured by officials during an examination, and that the actions of the ministers in charge were “very like the Popish cruelties.” Proctor’s main reason for writing the petition was to convince the ministers to move the trial to Boston and replace the ministers in Salem. His request was ignored, although it showed his great courage and determination. His comment about Popish cruelties turned Reverend Cotton Mather’s anti-Catholic sentiments back on the officials, and did not help his case. By this time, executions had started of the accused witches. The tension and fear in the jail cell the “witches” shared had to have been impossibly desperate.⁵⁵

Almost a month after executions began Elizabeth was indicted for “afflicting Mary Walcott.” Walcott claimed she “was and is tortured, afflicted, pined, consumed, wasted and tormented”⁵⁶ by Proctor. Three witnesses signed the indictment: Walcott, Ann Putman, and Mercy Lewis. Elizabeth’s servant Mary Warren was silent, claiming she “never saw her so to be hurt by her.”⁵⁷ Lewis’s indictment against Proctor came the same day and had identical wording. Another complaint came from Stephen Bittford who testified that while in the same room as Proctor and another accused Rebecca Nurse, he suffered from great pain in his neck and although could not “say that it was they that hurt”⁵⁸ him, he could not move his neck for two or three days.

⁵⁴ *Records of the Salem Witch-Hunt*, 486.

⁵⁵ *Records of the Salem Witch-Hunt*, 486.

⁵⁶ *Records of the Salem Witch-Hunt*, 440.

⁵⁷ Paul Boyer and Stephen Nissenbaum, eds., *The Salem Witchcraft Papers: Verbatim Transcripts of the Legal Documents of the Salem Witchcraft Outbreak of 1692* (New York, 1977), 3v. 2: 667.

⁵⁸ *Records of the Salem Witch-Hunt*, 441.

A common pinched nerve could have been Bittford's problem, but because his symptoms occurred in the presence of accused witches, and pain was associated with evil, his assumption helped condemn Proctor. It is not known if her pregnancy was known to the courts at this point.⁵⁹

More accusers came forward to testify against Proctor and included Elizabeth Booth who claimed Proctor bit her neck, killed a neighbor through malpractice, killed another in an argument, killed one because he refused to loan them a linen wheel, and another because he did not pay for a pint of cider. The list against Proctor grew. She allegedly murdered around ten people because of theft, disagreements (including a dispute about apples), and jealousy. Booth also claimed that Proctor crippled several neighbors out of pure spite. Mostly, however, the girls who accused Proctor of witchcraft were victims themselves who were bit, choked, or pinched in order to get them to sign the Devil's book. John's accusers were no different. The girls who accused him told the judges that they were tortured and told to sign the Devil's book. One told the judges she was forced to drink a red liquid she thought was blood, and when she refused he vanished. The Proctor's fate seemed bleak. The plea of pregnancy, however, spared Elizabeth's life. According to British law, any woman facing capital punishment while pregnant was given a stay of execution.⁶⁰

During the trials, legal documentation never mentioned that Proctor was pregnant. During her physical examination, there was no indication that anyone noticed her pregnancy, either, but it would have been difficult to notice as she was only around four weeks along. Her son John Proctor III was born January 27, 1693, with the assumed date of conception somewhere around May 2 to May 10, 1693, if Elizabeth's gestation was exactly forty weeks. Elizabeth was imprisoned in mid-April, and regardless of if she gave birth to her son a few weeks late or early,

⁵⁹ *Records of the Salem Witch-Hunt*, 440-441.

⁶⁰ *Records of the Salem Witch-Hunt*, 440-447.

at the time of conception, Proctor was in jail. Whether or not she purposely got pregnant to save her life is unknown, but it is possible. There was no gender segregation in jails in the seventeenth century, and pleading the belly was known to help the condemned avoid execution.⁶¹

Elizabeth Proctor's plea of pregnancy is not known in documentation, but the birth of her son John Proctor III is recorded. Because the documents of Proctor's plea, examinations, and reprieve are missing, one can only speculate what happened. It be assumed Elizabeth's process was similar to another highly documented Massachusetts case of pleading the belly, that of Bathsheba Spooner's. Most likely, after Proctor was found guilty alongside her husband, she would have told the court that she was pregnant. In the court document that revealed the guilt of the Proctors, it is likely that after the sentencing was brought down the accused were given a chance to say something, during which Proctor would have revealed her pregnancy and the courts would have ordered an examination to prove it true. Her examination would have been carried out by a jury of matrons. The jury of matrons from Salem would have been twelve women (perhaps a few men would have been included) of high standing in the community. The examination itself would not have differed much from her first physical examination. From head to toe, the matrons would carefully inspect every feminine aspect of her body. They would check her breasts for swelling and signs of milk production, her stomach for signs of a growing womb, and her vaginal area for signs of pregnancy. If the signs and symptoms were evident, the matrons would perform a check on the fetus itself by resting a cheek or hand on the swollen belly of Proctor to determine if the fetus had quickened, or experienced its first movement. If movement

⁶¹ *Records of the Salem Witch-Hunt*, 884.

was detected, the jury of matrons would sign a petition to the courts claiming that Proctor was quick with child.⁶²

In some cases, a jury of matrons was not used to determine pregnancy if a woman was far enough along that she was undeniably pregnant. It is possible that Elizabeth Proctor did not have a jury of matrons examine her, which would explain the lack of documentation on the subject. Because Proctor's son was born in January and the hanging of her husband (at which Elizabeth was supposed to be hanged as well) was in August, it is likely that she had an examination to prove she was quick with child. In either case, her pregnancy was proven and the documentation stating so was sent to the magistrates. The courts would then give a reprieve, or a stay of execution, to Proctor, with the stipulation that her sentence be carried out after she gave birth. Proctor gave birth January 27, 1693, to a baby boy, but her sentence was not carried out. But because Proctor was found guilty of a capital crime, her legal rights were no more. The only way Proctor would have any rights (if she survived her ordeal, which was not likely) was if her husband left his estate to her in his will. The matter of John Proctor's will indicated that he did not expect Elizabeth to survive.⁶³

John Proctor's will was strange for several reasons. It was common for wills of estate and property to be written in such a way that if a wife survived, she continued with the same duties as before her husband died. If the woman remarried, half of her estate went to the children. In the case of the Proctors, this would mean Elizabeth would have resumed running the family inn. Sons would inherit equal pieces of land and livestock, and maybe the family business if there was one. If the mother in the family was not allowed charge of any business, it was typical that she be written into the will to be taken care of. But Elizabeth Proctor was not mentioned in

⁶² James C. Oldham, "On 'Pleading the Belly,' A Concise History of the Jury of Matrons," *Criminal Justice History*: 6, 1985, 9-11.

⁶³ Oldham, "On 'Pleading the Belly,'" 9-11.

John's last will and testament. One possible reason for this was that John assumed Elizabeth would be hanged alongside him. Elizabeth herself suspected that John was brought the will in jail and was forced to sign it without reading it, and was under a great deal of distress at the time of signature. This most likely means that John was under the impression Elizabeth would be executed. It also does not give clarity as to if her pregnancy was known to her husband.⁶⁴

Regardless if Proctor knew his wife was pregnant, by the end of the summer he was preparing for his own death. Not everyone was against the Proctors, however, and many people in Salem produced and signed petitions in an attempt to free the pair. This was not uncommon, and several petitions exist for other people on trial for Salem, like Sarah Cloyce and Mary Esty. The community had produced several petitions for the Proctors in the hopes to help with their defense; they wrote of the couple:

We never heard or understood that they were ever suspected to be guilty of the crime now charged upon them and several of us being their near neighbors do testify that to our apprehension they lived Christian life in their family and were ever ready to help such as stood in need of their help.⁶⁵

The petitions were signed by dozens of people, both neighbors and strangers. None of the signees were accused of witchcraft after the petitions were presented to the courts, which was a general fear of many who defended the accused. Although none were punished for signing the petitions, the petitions were not enough to sway the courts to free the Proctors. Neither were the statements from William Rayment, Jr., Samuel Barton, and Daniel Elliott, who were present at the tavern where Elizabeth's specter appeared in the rafters, claimed the entire situation "a jest," and that when they claimed to see her specter in the rafters, they "did it for sport." Other

⁶⁴ *Records of the Salem Witch-Hunt*, 844; Joan R. Gunderson and Gwen Victor Gampel "Married Women's Legal Status in Eighteenth-Century New York and Virginia," *The William and Mary Quarterly* 39, (Jan., 1982), 118-120. Although the title indicates otherwise, this article deals with seventeenth century women and wills in other colonies as well as eighteenth century women in just New York and Virginia.

⁶⁵ *Records of the Salem Witch-Hunt*, 533-539.

testimonies for Elizabeth claimed the girls who accused her were lying. The testimonies given on behalf of Elizabeth and John did not help their case. After the defense, Mary Walcott and Elizabeth Hubbard brought another piece of evidence against the couple. They claimed that they had witnessed the Proctors torturing a man by pressing on his stomach and “tormenting him most gruesomely.” Their seemingly violent acts overpowered the many defense statements made. The Proctors were found guilty.⁶⁶

The warrant for execution for the Proctors, George Burroughs, Martha Carrier, George Jacobs, Sr., and John Willard does not exist. Whether it was damaged, destroyed, or disappeared, or even still yet to be found, it is the last piece of the puzzle in confirming Elizabeth’s pregnancy. A birth record exists in many family trees and genealogy records for the Proctor family that proves she gave birth to a baby boy in January, 1693.⁶⁷ The execution warrant would have been similar to if not identical to the “Warrant for the Execution of Bridget Bishop, and Officer’s Return.” The sheriff, George Corwin, signed the death warrant for Bishop to be hanged by neck until dead sometime between eight in the morning and twelve in the afternoon, on June 10th. The execution warrant for the Proctors would have included George Burroughs, Martha Carrier, George Jacobs, Sr., and John Willard and was served Friday, August 19, 1692. Elizabeth’s stay of pregnancy would likely have been present on this document, as it is known that Elizabeth was spared the gallows because she was quick with child. The crowd that gathered to watch the executions of Burroughs, Carrier, Jacobs, Willard, and John Proctor were astonished when Burroughs recited the Lord’s Prayer without a stumble and in perfect pitch. According to the beliefs at the time, someone in contract with the Devil was not able to recite Biblical passages,

⁶⁶ *Records of the Salem Witch-Hunt*, 533-539.

⁶⁷ In some documents, John Proctor III’s birth year is recorded as 1692. This is because until 1752, colonial courts used a different style of dating in which the new year began on March 25. For our purposes, it is easier to say John III was born January 1693.

verses, or the Lord's Prayer. The crowd called for Burroughs to be spared but Reverend Cotton Mather denied them their request and hanged the five accused.⁶⁸

The execution of the five did not slow the process of the trials. A month later, a mass execution took place. Giles Corey was pressed to death by stones the same week. Elizabeth Proctor was given a stay of execution, forced to give birth in jail, and mothered her newborn baby in the cold Salem winter in a jail cell. The trials had garnered the attention of Governor William Phips, who wrote letters and forced a gag order on any publications dealing with the trials. In October, he “found the found that the name and shape of several persons who were doubtless innocent” and forbade any more people from accusing witches in the community. Surely Governor Phips thought he had solved the problem, but Salem's jail was still full of accused witches. In February, Phips revisited Salem and found at least fifty people still incarcerated. His orders had been ignored, and among the newest accused was his wife. He acknowledged the failure of his lieutenant governor in diffusing the situation. He had assigned the lieutenant governor to proceed as the head judge over the proceedings of fifty two accused witches, in which all but three were acquitted. After Phips learned that the three were to be executed, he sent a reprieve immediately and spared their lives. Unfortunately, the lieutenant governor had also given permission for all property of the accused to be “seized and disposed of” without the governor's consent. For Elizabeth Proctor and others, freedom was given, but their property was destroyed or gone, and their lives were irrevocably changed.⁶⁹

Elizabeth Proctor was released from prison alongside dozens of others in the spring of 1693. She hoped to go back to her tavern-keeping, but because John's will had not included her, she was left with nothing. Under the binds of coverture, a widow would typically have more

⁶⁸ *Records of the Salem Witch-Hunt*, 394, 547.

⁶⁹ *Records of the Salem Witch-Hunt*, 809-814.

rights than a married woman, but only if the husband who passed left her legal documents proving that the business (be it a farm, tavern, or shop) was left to her care. If legal documents did not exist that provided proof of the husband's last wishes for his wife to take over the management of the business, the wife had no legal rights to the property. In addition, Proctor's will had no indication that Elizabeth should receive a single penny, piece of property, or anything else tied to their family, including her dowry. With young children, it is common for the husband to give his wife property after his death. Usually after a child is old enough, they will then inherit the property their father left to them. But in the case of the Proctors, nothing was left to Elizabeth. It is unlikely he had written her out of his will, it more likely he honestly thought she would not survive the legal proceedings after his execution. Because Elizabeth had been convicted of a crime, she was also "dead in the law," as convicted criminals had no legal rights; but because Governor Phips had issued a pardon to her and the other accused witches, her legal status could have been saved if only John had written her into his will. By leaving Elizabeth out of his will, John Proctor sentenced her to a kind of hell on Earth.⁷⁰

Three years after being released from jail, Elizabeth wrote a petition to recover her estate. In her tense letter it is clear her life had fallen apart. She had not a penny, and her entire estate had "been disposed of." Her petition to the courts asked for them to make use of the law to help her recover what had been lost to her. At this point, Elizabeth had twelve children, although some of them were out of the house with families of their own. With a family, no husband, no status, and no livelihood, her life was unbelievably difficult. She was not the only person to write a petition to the court. Others followed, and in 1703, a petition was given to the courts to clear the records of nine convicted witches, including John and Elizabeth Proctor. The petition stated

⁷⁰ *Records of the Salem Witch-Hunt*, 844.

that Elizabeth's innocence had long been established and believed, and that condemnation still stood in public record and should be washed clean. Other petitions included itemized lists of what had been taken from the homes of the prisoners while they were incarcerated. The courts began making reparations to the victims of Salem.⁷¹

Although Proctor's jury of matrons papers are not available, she is one of few women who do not disappear from the records after her initial trial. Her petitions to the General Court in Boston are documented as well as her children's petitions to receive reparations for the death of their father. It is known that she remarried in 1699 to Daniel Richards of Lynn, Massachusetts, and that her ultimate goal was reached. In 1703, the Massachusetts General Court forbade the use of spectral evidence in the courtroom and declared Elizabeth Proctor and others were "reinstated in their just Credit and reputation." Elizabeth Proctor petitioned for an allowance for her imprisonment, as well as for her charges to be formally erased from the record books. Her sons asked for £150 in reparation for their father's death. On October 17, 1711, the General Court of Massachusetts Bay cleared the record of John Proctor and several others who were executed in Salem. Payment of the £150 was granted on December 17, 1711. The Proctors received the largest sum of damages payments out of any other victim. Each of the Proctor children received part of the sum, and several of them asked for reparation for other reasons, none of which were granted. But Elizabeth Proctor received her money and her legal status was restored, helping her regain some of the life she had lost in jail.⁷²

Proctor's son John was nearly twenty when his family received the compensation due to them. Being born in Salem's jail perhaps encouraged him to sign the many petitions on which his name appears: those for repayment, for his mother's legal status to be reinstated, and for

⁷¹ *Records of the Salem Witch-Hunt*, 844-886.

⁷² *Records of the Salem Witch-Hunt*, 844-905.

individual pain and suffering. Elizabeth Proctor was granted her dowry and more. Her plea of pregnancy truly saved her life, therefore she owed her life to the son she named for her late husband.⁷³

Elizabeth Proctor's innocence was reinforced because she was given a governor's pardon. This is one case where it is without a doubt her plea of pregnancy that saved her life. It is almost surprising that the courts did not execute Proctor regardless of her plea, as they were so brutal with other accused witches. Because George Burroughs attempted a form of the benefit of clergy by reciting the Lord's Prayer on the gallows standing near John Proctor and was still hanged, it is clear that the courts were not merciful to the accused. The courts saw the value in the life of her unborn child and saved her based solely on her pregnancy. Unlike the other women in this work, Proctor's role as a woman was not challenged during her legal trials. She upheld every expectation of a woman: she worked alongside her husband while maintaining the household and raising children and she showed femininity by being with child. She was accused of a crime usually associated with women. Witchcraft was usually associated with women, who were called "the weaker sex" and were more susceptible to seduction from Satan. The other women in this work tested their gender roles. As pirates, murderers, and adulterers, the other women were accused of crimes not typically associated with women. Therefore their plea of pregnancy was a way of leveling out their male-oriented crimes. Elizabeth Proctor is also the only woman in this work who was innocent of the crimes she was accused. Most of all of Salem's witches were forgiven by the courts and community, and it is widely speculated that there was never any sort of true witchcraft associated with the Proctors..⁷⁴

⁷³ *Records of the Salem Witch-Hunt*, 850, 891, 905.

⁷⁴ *Records of the Salem Witch-Hunt*, 844, 850.

In the next chapter, two women are found guilty of piracy, dress as men, and only validate their womanhood through pleading their bellies. Unlike Elizabeth Proctor, the notorious pirates Anne Bonny and Mary Read challenged gender roles, successfully applied for stays of execution, and ended their recorded lives most mysteriously.

CHAPTER 4

“MOST NOTORIOUS:” THE PIRATES ANNE BONNY AND MARY READ

Two busty women onboard a pirate ship in 1720 brandished cutlasses, guns, and swore alongside their male companions. Full members of the crew, the two women dressed in men’s clothing, and acted the part of the male. When the entire crew was caught by officials during a drunken nighttime raid, the women were the only two who held their own. They slashed swords through Royal Navy officers and spit in the faces of their wasted comrades. They were arrested on charges of piracy and sentenced to hang off the coast of Port Royal, Jamaica, where their bodies would serve as a warning to other pirates. After their sentencing, the women revealed a scandalous secret: they were both pregnant, and pleaded their bellies for a stay of execution. This story may seem like the plot of the newest Hollywood blockbuster, instead it is the real life of the notorious pirates Anne Bonny and Mary Read.⁷⁵

Popular culture presents an image of pirates in Hollywood and literature as swashbuckling, rum-drinking, adventure-seeking crews in romantic settings. The reality of it was much harsher. Piracy was a brutal profession, often ending in the hanging death of its mostly male participants. Disease was rampant onboard ships, and work on such ships was incredibly difficult and dangerous. Skilled laborers and sailors were needed for the ships to make it from port to port, and even more skill was needed to navigate pirate ships to their intended targets. While some ships and crews had bounties of treasure, their treasure was not often the gold and jewels of myth, but instead indigo, sugar, coffee, and other luxury staples. Most often, piratical

⁷⁵ *The Tryals of Captain John Rackam, and Other Pirates* (Jamaica: Robert Baldwin, 1721).

vessels would attack small fishing boats and rob the sailors onboard instead of attacking large treasure-filled vessels.

As unlikely as pirates were to have x-marked treasures (something made famous by Robert Louis Stevenson's *Treasure Island*), they were even less likely to be female. During what historians call "The Golden Age of Piracy," from around 1650 to 1730, women were connected to the sea as sailor's wives or mothers. The numbers of female pirates recorded during this Golden Age are small. A number of women may have been involved in piracy during its height were dressed in men's clothing, and therefore were indistinguishable from their male partners. These women could not have been fragile, weak, or feminine. The work they were expected to do on board a ship was not anything less than any other sailor. For that reason, women were seldom aboard ships. The work was too much for them and social norms did not allow women to frequent pirate crews. It is remarkable, therefore, that two women were pirates on Captain John "Calico Jack" Rackham's ship *William*. It is even more remarkable that they were accepted by the crew and avoided capital punishment because they pleaded their bellies.

Piracy laws in the eighteenth century stemmed from a time of peace among the five largest and most powerful empires on the planet: Spain, Portugal, the Netherlands, France, and England. Each imperial power had cross-Atlantic trade routes that operated through valuable port cities on both ends of the ocean. These five empires were constantly at war over ports, power, and goods from the Caribbean. When they were at peace, the pirate population grew. Pirates were seafaring men (and, rarely, women) who were usually employed by the navy during times of war as privateers. Privateers had bills of marque that allowed them to pillage and attack enemy ships for the good of the crown under which the privateer was employed. When these nations were at peace, especially after the War of Spanish Succession (1701-14), the navies were

demobilized and bills of marque expired, which meant the privateers were no longer protected under the crown. Therefore, any person involved in acts of piracy was involved in illegal acts, regardless of if their actions were legal during the war. The seamen who still practiced the once-legal act of privateering were targeted as pirates and their actions were criminalized. The reason for criminalizing the actions of pirates was because they disrupted essential trade routes when they attacked and plundered ships en route to Europe from Caribbean ports. While the empires using the Atlantic for trade certainly patrolled routes, there was too much ocean to protect their ships completely. Because of the severity of the problem, a law was enacted first in the 1690s and then revised again in the early 1700s stating that pirates were subject to capital punishment without the benefit of clergy.⁷⁶

Some pirates avoided capture by agreeing to a King's Pardon, by which several were released in the 1720s. Any pirate who gave himself up and essentially made a vow to stop practicing piracy was not arrested. Not all pirates accepted the pardon, and overall it did not stop acts of piracy. Most pirates took the vow and continued acts of piracy because their activities were so scattered through the Atlantic that the chances of capture were slim. Others, like Calico Jack Rackham, refused to take the vow at all and saw it as a form of surrender. There were men who were given commissions to track these dissenting pirates and force them to take the pardon or send them to the gallows. One of these men was in charge of eradicating piracy around the Bahamas, an area so populated with pirates that King George I gave Governor Woodes Rogers a commission to completely remove and punish pirates in the Caribbean.⁷⁷

⁷⁶ Marcus Rediker, *Villains of All Nations: Atlantic Pirates in the Golden Age* (Boston: Beacon Press, 2004), 19-28.

⁷⁷ "Great Britain: from the London Gazette, dated Dec. 6. at the Court of St. James's, the 3d of December, 1718" *The Weekly Jamaica Courant* No. 38, Wednesday, February 11, 1718, 1-3; "His Majesty's Commission to Woodes Rogers to be Governor of the Bahama Islands," Court of St. James, London: 16 January 1718 in *Calendar of State Papers, Colonial Series: America and the West Indies*, 1717-1718, No. 220i, 110-112; Rediker, *Villains of All Nations*, 28-31.

Anne Bonny and Mary Read pled their bellies in 1720, at the end of the Gold Age of Piracy after they were captured by the notorious pirate-catcher Governor Woodes Rogers of the Bahamas. His capture of Calico Jack's ship marked a sharp decline of piracy in the Caribbean. Just two years before Calico Jack's capture, sailors under Rogers's orders ended the reign of William Teach, better known as Blackbeard. Rogers, once a privateer himself, was hell-bent on removing piracy from the Caribbean. Bonny and Read were on his list because of an association with Calico Jack and because of their gender. Calico Jack had accepted a pardon from the king in return for privateering services during the War of Spanish Succession (1701-14), but returned to piracy when his money ran out. Rogers believed that the women set a terrible example for other women of the time, another speculated reason Rogers put a mark on the *William*. The women were not simply passengers on board. According to contemporary accounts, the women were full members of the crew, and were guilty of swearing and dressing like their comrades. It is unknown how many of the crew knew that Bonny and Read were women in the beginning. Toward the end, and certainly after being caught, their sex was revealed. Because of generalized bias toward women aboard ships, it is most likely that Bonny and Read concealed their sex initially, and had to do so in more than costume alone. Their actions aboard the ship had to be male, too. Eye witnesses alone identified them as women to the government.⁷⁸

The women's physical capabilities were extraordinary. Without youth and physical strength, the daily tasks of a sailor or pirate would have been almost impossible for them to complete. Under the stress and intense work of sailing a ship, women would have struggled with the tasks demanded of them at sea, especially if they were trying to pass as men. Because of different upbringings and expectations, a woman during the early eighteenth century would

⁷⁸ "Governor Nicholas Lawes to the Council of Trade and Plantations, America and West Indies: June 1721, 1-15," in *Calendar of State Papers Colonial Series, America and the West Indies*, Volume 32: 1720-1721 (1933), 329-346.

usually not have had the particular skills and practices of males to become sailors.. The great physical strength and stamina needed to perform early modern maritime labor would have been much more than any sea-port wife could have tolerated or would have been expected to bear. Marcus Rediker calls the strain of ship-faring life “too hard on the body,” resulting in “lameness, hernia, a grotesque array of mutilations, and often premature death.”⁷⁹ Consider the daily routine: sailors hoisted heavy canvas sails; loaded and unloaded cargo; wielded heavy weapons; used pulleys and tackle; and operated a ship’s pump to help clear the overflowing water from the hull. These women would have been strong, and they were lucky to have all of their limbs by the end of their careers. Bonny and Read would have been skilled sailors for their work to be accepted by their shipmates, but considering that both of them ended up pregnant, it is clear their sex was noticed by future partners. Both Bonny and Read were presumably impregnated by fellow crew members, but it cannot be proven. Bonny’s presumed partner was Calico Jack, while Read’s partner remains an unnamed, unknown sailor. Because Bonny and Read had to be quick with child to receive stays of execution, they had to have been at least four months pregnant during their trial in late November, 1720. Because the trial transcript only dates back to September, 1720, it cannot be proven that Bonny and Read were onboard the *William* when they became pregnant.⁸⁰

Unfortunately, Bonny and Read provided no primary documents describing the struggles a woman may have faced aboard a ship. Their piratical actions are only proven true by crown documents including a trial transcript, snippets of newspapers up the eastern seaboard, and a contemporary biographer whose work has been debated for generations. If it were not for the

⁷⁹ Marcus Rediker, “Liberty Beneath the Jolly Roger: The Lives of Anne Bonny and Mary Read, Pirates” in *Iron Men, Wooden Women: Gender and Seafaring in the Atlantic World, 1700-1920*, eds. Margaret S. Creighton, Lisa Norling (Baltimore: Johns Hopkins University Press, 1996), 8.

⁸⁰ Marcus Rediker, “When Women Pirates Sailed the Seas,” *Wilson Quarterly* 17 (1993): 105.

crown documents and trial transcript, Bonny and Read's story would remain legend. Rogers sent out a proclamation of warrant for the arrest of Bonny and Read. The warrant confirmed the fact that the women were wanted by the government, and highlighted what they had stolen in their wild escapades on the sea. Interestingly, Rogers's proclamation specifically names Bonny and Read, who were not in high standing on the ship, but names no other lesser pirates. The omission of equally positioned male pirates onboard makes it clear that their gender was a reason they were highlighted in the warrant. As well as a warrant, the Council of Trade and Plantations was also involved in correspondence involving Bonny and Read.⁸¹

The Council of Trade and Plantations was part of the Privy Council of England. It served as a legal advisory board to the crown, as well as an official inquiry group. Members were typically senior and honored members of society and their expertise in the Caribbean generally dealt with trade issues. Nicholas Lawes, governor of Jamaica from 1718-22, had a series of correspondence with the Council of Trade and Plantations (often called the Board of Trade and Plantations) regarding Bonny and Read. Governor Lawes also presided over the trials of Rackham and his cohorts and Bonny and Read. He called the women "spinsters of Providence Island," and sent a copy of their trial transcript to the Council. Lawes mentions the women "were proved to have taken an active part in piracies, wearing men's clothes, and armed etc. Being quick with child, their sentence was suspended." Lawes's writings prove that there was a sense of novelty about female pirates especially because they cross dressed and were pregnant. In other correspondence about pirates, little personal details are given in the conviction and hanging notices. Bonny and Read garnered more attention. Unfortunately, Lawes does not mention

⁸¹ "Governor Nicholas Lawes to the Council of Trade and Plantations, America and West Indies: June 1721, 1-15," in *Calendar of State Papers Colonial Series, America and the West Indies*, Volume 32: 1720-1721 (1933), 329-346.

anything about the jury of matrons that must have examined Bonny and Read, nor any further correspondence about their fates.⁸²

The jury of matrons that examined Bonny and Read remains a mystery. It can be assumed that some of the documentation involving the jury of matrons was destroyed during the destruction of Port Royal. These women could have been documented or written about in the *Port Royal Courant*, but we will never know. Almost all copies of the *Port Royal Courant* were lost after a series of natural disasters struck the port. First, an earthquake in 1692 destroyed more than 90 percent of the city. Two hurricanes flooded the city, first in 1722 and again in 1774. Its wealth of archival knowledge was lost to the sea, including hundreds of copies of the local newspaper, the *Port Royal Courant*. It is likely that more than one issue of the *Courant* mentioned Bonny and Read, as was common when notorious criminals were put on trial. Their pasts may have been examined then, but no record of any kind has yet been found. It is most likely that all records from Port Royal containing information on Bonny and Read were destroyed. The slim number of primary sources about Anne Bonny and Mary Read reflect this unfortunate truth, but their scattered pasts are documented.⁸³

Some sources survive, however. Captain Charles Johnson published a small plain book in 1724 that became so popular that five editions were printed in a decade. *A General History of the Robberies and Murders of the Most Notorious Pirates* contains the biographies of Bonny and Read, as well as dozens of other famous pirates from the Golden Age of Piracy. Little is known of Captain Johnson's identity, including whether he was actually a captain, or just claimed to be. At one point it was widely accepted that Johnson was actually a pseudonym for Daniel Defoe,

⁸² "Governor Nicholas Lawes to the Council of Trade and Plantations, America and West Indies: June 1721, 1-15," in *Calendar of State Papers Colonial Series, America and the West Indies*, Volume 32: 1720-1721 (1933), 329-346.

⁸³ E. Heath, "A Full Account of the Late Dreadful Earthquake at Port Royal in Jamaica," June 22 and 28, 1692; Stephan Talty, *Empire of Blue Water: Captain Morgan's Great Pirate Army, the Epic Battle for the Americas, and the Catastrophe that ended the Outlaw's Bloody Reign* (New York: Crown, 2007), 57.

however this claim has since been proven inaccurate. Johnson's work gives detailed accounts of the most famous pirates in history. It is partially because of Johnson's work that these pirates became famous; the outlandish stories, beautiful illustrations, and enchanting narrative seem something out of fiction. Johnson's accuracy is proven in several cases: Jack Rackham's story told by Johnson is proven through court documents, as are Blackbeard's and Stede Bonnett's. But in the case of Bonny and Read, Johnson seems to be the only person familiar with their childhoods, and it is not clear why he knew what he did.

That being said, it is likely that Bonny and Read's biographies from Johnson's bestseller are true because other events can be proven. The childhoods of these women give reason to why they eventually faced the gallows. Their lives were not pleasant, nor were they normal.

According to Johnson, Anne Bonny was born a bastard child to lawyer William Cormac and his maid, Mary Brennan in Ireland, 1698. Cormac led many to believe that his daughter was a child of a relative entrusted to his care. Around 1710, Cormac fled to the colonies. In the Carolinas near Charles Town he became a prominent planter and raised Anne alone after her mother died. Anne was a troubled child and often had violent, unexpected outbursts. When she came of age, her father tried continuously to set up his daughter with eligible suitors, but the rebellious Anne would have none of them. She married James Bonny of whom her father did not approve. Bonny was a small-time pirate and snitch for the governor about pirate activities. Anne was disowned by her father, and the Bonnys then moved to Nassau, Bahamas.⁸⁴

While in the Bahamas, Bonny apparently grew tired of her husband. She fell in love with a notorious pirate, once quartermaster for Captain Charles Vane, Captain John "Calico Jack" Rackham. An affair began, and Bonny and Rackham were turned in to Governor Woodes Rogers. Adultery was illegal then, and could result in imprisonment or public flogging if caught.

⁸⁴ Captain Charles Johnson, *A General History of the Pyrates* (Guilford, Connecticut: The Lyons Press, 2002), 130.

Typically, public flogging was used on women, who were to be beaten by their husbands or by their lovers. Divorces were also rarely granted, and it is unknown what was on the divorce documents, which would have given a reason for the request. Usually special circumstances would allow for divorce, but adultery would nullify Bonny's petition. Rogers threatened Bonny and Rackham with imprisonment, and the punishment that Rackham would have to flog Anne himself, a common practice for punishment for adultery at the time. The two, unable to cope with the consequences of their actions, took to the sea to escape.⁸⁵

This was Bonny's first brush with the law. She was an enemy of the state, and was suddenly a person of interest to Governor Rogers. Rogers did not play games when it came to pirates. It almost seems as if Rogers was waiting for the perfect opportunity to capture them. He did not send any of his troops after the pair, and Bonny and Rackham went on a rampage of piracy in the Caribbean. They were joined shortly by Mary Read.⁸⁶

It was not an uncommon occurrence for Mary Read to be confused for a man. According to Johnson, the pirate was raised as a boy, went to war for her country masquerading as a soldier, and even challenged another man to a duel, securing her lover's loyalty by winning. Mary Read was born to the widow of a sea captain although the year of her birth is debatable. Her mother's pregnancy was described by Johnson as "an accident." Read's mother had lost a son and disguised Read as a boy to take his place. Her mother did this to fool her mother-in-law and continued to gain financial support because of Read's disguise. Read was dressed as a boy and forced to take her dead brother's place in life. Read was never given a chance to form a female identity, and was raised as a male, giving her an edge on the ship that Bonny could not have had.

⁸⁵ Johnson, *History of the Pyrates*, 130-131.

⁸⁶ Johnson, *History of the Pyrates*, 122.

Read's skill set, outlook, and identity were very different from Bonny's. It is easy to speculate that Bonny looked to Read as an example.⁸⁷

As unfair as her childhood may have seemed, Mary did not seem to protest, and even embraced the role. According to an 1897 book by Frank Stockton, Read "ran away...and enlisted on board a man-of-war as a powder monkey."⁸⁸ Read's female identity seemed lost, but love interests proved she had not lost all of her femininity. While masquerading as a British soldier, Read fell in love with a Flemish comrade; this man discovered her "true identity" in what Johnson claims was an unexpected romp in a tent. Read and her soldier married. The two ran an inn together, "Three Trade Horses," in the Netherlands, until her husband unexpectedly died. After business slowed due to the Peace of Ryswick, Read boarded a ship headed to the Caribbean, and it was taken by pirates.⁸⁹

Read was taken in by the crew, and began a life of piracy. Soon, the crew took advantage of the King's proclamation that allowed for crimes of piracy to be forgiven in exchange for loyalties and service to the crown. The Dutch Indiaman Read was on put to shore on New Providence. Read stayed on the island long enough to grow restless and join in privateering ventures. After one of her ships was taken by Rackham, she joined his crew, "which consisted in the main of converted freebooters." Converted freebooters were pirates who had grown tired of Rogers's promises and wished again to go to the sea without orders from the crown.⁹⁰

Embarking again on missions of piracy, the crew thought that she was a man. She let Bonny know she was a woman only after Bonny "took a particular liking to her," mistaking her for "a handsome young fellow." After the initial confusion, Read fell in love with a fellow

⁸⁷ Johnson, *History of the Pyrates*, 117.

⁸⁸ Frank R. Stockton, *Buccaneers and Pirates of Our Coasts* (New York: Grosset & Dunlap, 1897), 254.

⁸⁹ Johnson, *History of the Pyrates*, 120.

⁹⁰ E.O. Hoppe, "Deadlier than the Male: Anne Bonney and Mary Read" in *The Mammoth Book of Pirates*, ed. John E. Lewis (New York: Carroll & Graf, 2006), 212.

unnamed, unknown pirate aboard Calico Jack's ship, despite the fact that she was in men's clothing and the only people who knew she was a woman were Bonny and Rackham. Johnson tells a story in which her lover was challenged to a duel by another pirate. Read got into a spat with the pirate two hours before the duel was scheduled. She "killed him upon the spot," saving her lover's life. Her passion for her lover was marked by Johnson, "she cared more for his life, than she did for her own." Johnson also comments frequently on her gender: although she was tough and a good fighter, sailor, and a believable male, Read was still subject to men's charms and desired affection from them. Her expression of gender, therefore, was in her love for and attraction to men. Read's previous marriage and new lover signaled that her cross-dressing did not affect her heterosexuality.⁹¹

The women were full members of the crew, cross-dressing to hide their sex, although their identities were most likely not always hidden onboard. It is generally accepted by Johnson that after some time, their gender became known and accepted because they had proven their worth as crew members. Although many viewed women on pirate vessels as bad luck, a source of conflict, or distraction, if the women could do work like men and in times of battle and pillage be useful, they were accepted. Theresa Braunschneider approaches the topic of women "passing" as men in the eighteenth century. She claims that while the women did indeed gain attention for their roles as men, they perhaps changed their appearance not "to pursue a husband," but to go on "manly adventures for their own sake." While this resonates strongly in Read's case, it is not so much the case for Bonny, who did not try to pass as a man until she met Rackham.⁹²

Interestingly, however, the disguise the women put on did not fool everyone. A physical description of Bonny and Read from trial witness Dorothy Thomas is a crucial piece of

⁹¹ Johnson, *History of the Pyrates*, 123.

⁹² Theresa Braunschneider, "Acting the Lover: Gender and Desire in Narratives of Passing Women" *Eighteenth Century: Theory & Interpretation* 45 (2004): 212.

information. It is rare that historians are presented with physical descriptions of people who are not wealthy enough to have their portrait painted. Even with upper class citizens, a physical description is priceless and deeply cherished information because it is the most private and perhaps the most endearing part of history. Their descriptions in the trial transcript help the victims identify Bonny and Read, who were not in their full costume in court, as the pirates they saw aboard the ship, “acting the male.” To know what Bonny and Read were wearing, and that they both had “Handkerchiefs tied about their Heads; and that each of them had a Matchet and Pistol in their Hands” creates an image of what these women looked like. Although it was used for legal purposes to supplement the argument of the courts that indeed these women were the pirates seen by the witnesses, the descriptions also give valuable imagery. Thomas goes on to say she only knew they were women “by the largeness of their Breasts.”⁹³

Both women had different reasons to cross dress and join the pirates, but they did it out of necessity. They lend support to the fact that women’s history depends on men: in Read’s case, a discrimination against hiring girls for apprenticeships or any odd job ruled her. After she was grown, she found a living in the military to be far more suitable to her rough-and-tumble upbringing and she was a skilled soldier, but the fact remains: she would not have been able to join as a female. Bonny would have been punished more severely for committing adultery as a woman than her lover, Calico Jack. This disadvantage came from the assumption that women were property who shall not disobey their owners - in this case, husbands - at any cost. Women’s punishment often was public flogging. Women, as Ulrike Klausmann, author of *Women Pirates*

⁹³ *The Tryals of Rackam.*

and the Politics of the Jolly Roger, wrote “were forced to acquire a man as protection, for a woman who belonged to no man effectively belonged to all of them.”⁹⁴

The most important facet of their femininity came after their wild summer on the clear blue Caribbean, when they committed acts of piracy and enraged Rogers. It was not long after they were on board Rackham’s ship that the two found themselves embroiled in dangerous affairs. At the end of their adventure, their lives were judged solely on the children they were supposed to bear. Rackham had an unhealthy appetite for piracy and put his crew at risk often. Rogers knew that Rackham was trouble because he had returned to the seas as a pirate and had ignored the King’s Pardon of a position as a privateer. He was one of many dissenters of the pardon, and he gave up his freedom to go back to the trade at which he thrived. This made Rogers’s hunt for Rackham serious.⁹⁵

Although the proclamation issued by King George I on September 5, 1717, was called a “pardon,” it was more of a call for all pirates to surrender or be hunted and forced to surrender. They were given a year to give themselves up “to one of our Principal Secretaries of State in Great Britain or Ireland,” or to any governor or deputy governor in the islands Britain claimed. If anyone participating in piratical activities did not surrender by September 6, 1718, they would be hunted and “may be brought to justice.” Justice for piracy was death. The crown was tired of their trade routes being interrupted and therefore issued not only a threat, but also a reward for turning in pirates. The crew aboard the *William* did not surrender. Rackham and his entire crew were at risk of hanging.⁹⁶

⁹⁴ Ulrike Klausmann, *Women Pirates and the Politics of the Jolly Roger* (Montreal: Institute of Policy Alternatives of Montreal, 1997), 197.

⁹⁵ Klausmann, *Women Pirates*, 112.

⁹⁶ “A Proclamation for Suppressing of Pyrates,” September 5, 1717, PC 2/86, fol. 21, The National Archives; *London Gazette*, September 17, 1717.

When the women joined Rackham's crew, he seemed to get lazy with his practices. Before the King's Pardon, navigating the waters of the Caribbean was easier because there was little opposition, but with the governor's ships in hot pursuit of the rebellious crew, Rackham was in trouble. After evading capture for two years after becoming captain, Rackham was caught. According to both legend and Johnson, they were not caught because the governor's men were finally navigating their sloops in a faster manner than Rackham's skilled seamen nor because they outsmarted his crew; Rackham was only caught because he and his crew were drunk.⁹⁷

When the crew stole a twelve-ton sloop called *William* from Nassau harbor, directly under Rogers's nose, it became clear that Rackham's bold moves could no longer be tolerated. Rogers sent out a sloop with forty-five men aboard, then another with fifty-four men, hoping to catch one of the last great pirate kings. Three weeks went by and Rackham was still on the loose capturing little fishing boats and harboring his crew and loot aboard the huge *William*. He sailed westward and finally rested at Negril Point, the western tip of Jamaica.⁹⁸

Captain Jonathan Barnet had a commission from Rogers to capture pirates and bring them to trial. He was aboard one of the ships commissioned by Rogers to hunt down Rackham. Barnet found Rackham, and began following him, but at first was eluded by *William*. At ten o'clock at night, however, Barnet found Rackham again. He called out to the ship, asking who was aboard. Rackham clumsily answered with his own name, "John Rackham from Cuba." According to Johnson, the men on Barnet's ship were then invited "to come on board, and drink a bowl of punch." The men on Rackham's ship were drunk, with the exception of the two

⁹⁷ Johnson, *History of the Pyrates*, 114.

⁹⁸ Cordingly, *Under the Black Flag*, 58-59.

females on board. Nine men from Barnet's sloop boarded, and the drunken pirates stood no chance.⁹⁹

Anne Bonny and Mary Read fought tooth-and-nail to save the lives of their comrades, spare their captain, and save their ship. Barnet fired on *William*, taking the ship's boom down, which rendered the sails useless. Bonny and Read were armed with cutlasses and muskets, "cursing and swearing much" as they tried to rally their shipmates, the majority of whom had cowardly descended to the belly of the vessel. In her frustration, Mary Read "fired her pistol down among her erstwhile comrades," killing one and wounding several others. Regardless of their quick action and their determination, Bonny and Read did not win their last battle at sea.¹⁰⁰

The entire crew was taken under the charge of Major Richard James and was deposited in Spanish Town's jail to await their fate. Governor Nicholas Lawes wrote to the Council of Trade and Plantations that "Jonathan Barnet did us a very good piece of service" when he brought in Rackham and his crew. On November 17, 1720, the Admiralty Court condemned Rackham and his men to death. Admiralty courts tried criminals whose crimes dealt specifically with the sea, maritime matters, or piracy. The women's trial was postponed. Rackham was allowed to see Anne Bonny before being hanged at Gallows Point in Jamaica. It is when he saw her last that Anne Bonny reportedly uttered famous words to her lover: "If you had fought like a man, you needn't have hanged like a dog."¹⁰¹

According to the trial transcript, Anne Bonny and Mary Read were sentenced to hang November 28, 1720. They were tried for "piracies, robberies and felonies," and pleaded not

⁹⁹ Johnson, *History of the Pyrates*, 114.

¹⁰⁰ *The Tryals Rackam*; Joan Druett. *She Captains: Heroines and Hellions of the Sea* (New York: Simon & Schuster, 2000), 92.

¹⁰¹ "Governor Nicholas Lawes to the Council of Trade and Plantations, America and West Indies: June 1721, 1-15," in *Calendar of State Papers Colonial Series, America and the West Indies*, Volume 32: 1720-1721 (1933), 187-195; Johnson, *History of the Pyrates*, 131.

guilty. Although charged with the same crimes as their male companions, they were tried separately as was common with women in legal trials. The women had five witnesses brought to testify against them. The court asked if “they, or either of them, had any thing to say, or offer, why sentence of death should not pass upon them?”¹⁰² This question was unanswered. The verdict was then delivered. Anne Bonny and Mary Read were guilty, and their punishment was death. Sir Nicholas Lawes gave the sentence: “You...are to go from hence to the place from whence you came, and from thence to the place of execution; where you, shall be severally hang’d by the neck, ‘till you are severally dead.”¹⁰³

The women were not sentenced to death simply for their crimes. They were also sentenced to set an example. In fact, after Rackham and his male crew were hanged, Governor Lawes wrote to the Council of Trade and Plantations: “Rackham the Pirate and ten more have been tried and executed which I hope...will have a good effect” on the pirate situation that plagued the Caribbean. The pirates’ bodies were hanged near Port Royal’s harbor, where other such criminals would see their bodies and take warning. Rackham was placed in a gibbet, a type of cage, and placed on a cay later renamed for him. At low tide, the cay still is seen off of the southern coast of Jamaica. It seemed as although the women being executed and put on display would please the governor in a similar way. They were both sentenced to hang. The trial transcript is brief - it simply states that after judgment was passed the women told the court that they were “quick with child” and, pending inspection, the sentence would be delayed. The women had “pleaded their bellies,” and were sent back to their cells.¹⁰⁴

¹⁰² *The Tryals of Rackam.*

¹⁰³ *The Tryals of Rackam.*

¹⁰⁴ Governor Nicholas Lawes to the Council of Trade and Plantations from: “America and West Indies: December 1720,” *Calendar of Sate Papers Colonial, America and West Indies*, Volume 32: 1720-1721 (1933), 212-228; *The Tryals of Rackam; The Boston Gazette*, February 6-13, 1721.

Captain Samuel Lancelot, a Commander from Jamaica traveling through to the colonies gave a report to the *Boston Gazette*: “Captain Rackum and ten of his men were excuted..for piracy and hung up in chains, two women...were condemned but pleaded their bellies.” This news reaching the Americas was surely a sign that the case was notorious, and also offered deterrence for those unable to witness the execution in person. The fate of the women was, as Lancelot’s report delivered, unknown.¹⁰⁵

The women were to be presented again to the court on December 19, 1720. The record of that particular follow-up trial has not been found. It can be assumed that Bonny and Read were given a stay of execution as indicated by the trial transcript. The women were to be inspected by a jury of matrons, of whom the members are unknown. It is known, however, that the pirates were not hanged. An execution record does not exist, although Mary Read’s tombstone is located in St. Catherine’s Cemetery. Parish records conclude she died in 1721, most likely of fever in jail. It is unknown, yet unlikely, if Read gave birth to her child. The plea of pregnancy was obviously granted, however, because Read’s execution was not performed. There are no execution records for her, nor are there parish records for a birth. The courts would have been informed of the birth of Read’s child so that her sentencing could be carried out, but they were not. If so, Read would have been executed quickly. Generally, executions were performed within a matter of days after trial, sometimes longer (like in the case of Bathsheba Spooner) if the criminals needed time to prepare for their death, usually to allow pastoral counseling and care. Religious reasons would allow a judge to extend a sentence of execution, similar to the pleading of the belly. If an execution took place, it was necessary that a record of the hanging was sent to

¹⁰⁵ “New York Dispatch, Jan 31st.” *The American Weekly Mercury*, February 7, 1721: 1.

the crown. There is no such document regarding Bonny and Read. Instead of preparing for their deaths, however, the women were preparing to fulfill their womanly duties by giving birth.¹⁰⁶

As further proof that the women were not hanged, no record exists in newspapers or in pamphlets of any hanging. The notorious pair would have had an enormous crowd at their execution. Executions were a main form of entertainment, particularly for famous pirates. An execution of female pirates probably would have gathered hundreds if not thousands of spectators, especially because Bonny and Read were famous. Families would have probably brought their children to the hanging as well, to use Bonny and Read as examples of what not to do. Government officials would have used Bonny and Read, as they did Rackham, as a means of deterrence. It would have been a well-attended execution in Jamaican history. But no execution pamphlets exist. Essentially what would have been playbills, oftentimes filled with poems, portraiture, or the story of the criminal's miserable life, pamphlets served as a guide to the audience at most executions. Public punishment served as deterrence, especially in the case of Jack Rackham. Even after the criminal was dead, their bodies were put on display as a warning. Rackham's Cay and the body that rotted on its white beach served as a warning to others who committed acts of piracy in the Caribbean: even the notorious cannot escape punishment.¹⁰⁷

Unfortunately, the paper trail on Bonny and Read runs out after the initial trial. Despite an indication from the original transcript that another trial was to be held, the record has either been destroyed or the trial never occurred. It is possible the case was closed for different reasons. Although there is no proof, the case could have ended because of Read's untimely death. Whether she died giving birth or from illness, it is likely that what happened to her had an impact on Bonny's sentence. Bonny disappeared from the records in Spanish Town's jail. There is not a

¹⁰⁶ *The Tryals of Rackam.*

¹⁰⁷ *The Tryals of Rackam.*

gravestone or a record of death for her. There is no record of her execution, either. It is possible that Bonny's father, William Cormac, saved her. Some, including preeminent pirate historian David Cordingly, believe that Bonny's estranged father, who would have had access to newspapers that printed information about Bonny's trial and pending execution, sent traders or travelled himself to Jamaica to retrieve his daughter. Keep in mind that Cormac's relationship with Bonny was unique. Bonny was a trouble maker and a bastard child. Because Cormac took Bonny with him to the Americas, it can be assumed she meant something to him. He could have disowned her, sent her to a home, or abandoned her altogether. It is not out of the question that her father rescued her. In the records in Charleston, South Carolina, there exists a record for a "plat" of 50 acres of land to a William Cormack in Craven County outside of Pee Dee. The writ was granted on May 29, 1735, almost fifteen years after Bonny's trial in Jamaica. Bonny would have been 37 years old at this time, and presumably married to Joseph Burleigh. It is entirely possible that this entry is Bonny's father, which gives significant evidence to the fact that he remained in the Carolinas. Unfortunately, there is no mention of Bonny in this record.¹⁰⁸

Anne Bonny's future after her sentencing remains something of a mystery. According to private documents and the *Oxford Dictionary of National Biography*, she married a man in Charles Town named James Burleigh and had eight children by him. Rackham's son by Anne Bonny was named John in his memory, and it is unsure if his mother ever told him that he saved her life before he was born. According to the Oxford Dictionary, Anne Bonny died at the age of eighty-four and still has descendants in South Carolina. Unfortunately no burial records of an

¹⁰⁸ "Cormack, William, Plat for 50 Acres of Land in Craven County," in *S213184: Colonial Plat Books (Copy Series)*, South Carolina Archives and History, Accessed December 17, 2011, <http://www.archivesindex.sc.gov/onlinearchives/Thumbnails.aspx?recordId=92709>; David Cordingly, *Women Sailors and Sailors' Women: An Untold Maritime History* (New York: Random House, 2001), 87.

Anne Bonny, Anne Cormac, or Anne Burleigh exist at the time of her alleged death in the Carolinas.¹⁰⁹

As for Mary Read's fate, Johnson speculates that she had no fear of hanging: "She thought it no great hardship, for, were it not for that every cowardly fellow would turn pirate."¹¹⁰ It is hard to say what the women experienced as they sat in their damp jail cells, only spared from their crimes by the innocent children they were to birth. Read never faced the gallows, however. The parish registers for St. Catharine's Church confirm she was buried April 28, 1721. There is no record of what happened to her child.¹¹¹

This case provides the least amount of documentation of the actual plea of pregnancy for a stay of execution. It is important; however, not only because these women were challenging gender roles during the eighteenth century, but they were allowed a stay of execution because they were also fulfilling gender roles. This contradiction suggests that although Bonny and Read did not follow typical gender norms of the time, they were fulfilling their womanly duties by producing children. The role of a woman during the early eighteenth century, particularly before the American Revolution and the introduction of Republican Motherhood, was one of almost pure domesticity. Their economic status was completely reliant on their husbands or fathers. Patriarchy ruled, and women's roles were often no more than housekeepers or wives. Bearing and raising children went hand-in-hand with domestic duties, although women were not allowed to punish their children and were not at the top rung as far as parenting was concerned. This is the reason law allowed for a pleading of the belly: gendered norms dictated the most important part of a woman was her ability to produce and care for children and families. Bonny and Read may not have been bearing children conventionally, but the fact that the judges allowed them to

¹⁰⁹ Cordingly, *Women Sailors and Sailors' Women*, 87.

¹¹⁰ Johnson, *History of the Pyrates*, 124.

¹¹¹ Clinton V. Black, *Pirates of the West Indies* (Cambridge: 1989), 117.

live out their pregnancies is significant when defining women's roles in the early eighteenth century.¹¹²

Therefore, it is clear that Bonny and Read challenged the gender roles more than other prominent women who pleaded their bellies. Their crimes were more common among men, making their pregnancies all the more shocking. It is interesting, then, that the women were not hanged. Deterrence was important to the crown, as is clear with the display of Rackham's body, so why let off two women who committed such heinous and unladylike crimes? The answer lies in their plea: the womanly action of being mothers spared their lives.

One can only speculate as to the fate of the famous pirates. Whether Anne Bonny became a grandmother and told stories of the bright azure waters of the Caribbean to her children's children is not proven. Her child could certainly have dreamed of his or her hanged father's time aboard a pirate ship, if he or she was told of the summer of rebellion in the Caribbean. If Mary Read gave birth before she died is unknown. It is unlikely. Read's child, if alive, could have wandered this earth, however, and maybe even felt a pull toward the sea, or had an insatiable thirst for adventure. So many uncertainties lie in this whale of a tale, but a few things are undoubtedly true. There is a sandbar near Jamaica that showcased the body of a pirate. Two women were spared from gallows because of their pregnancies. Even although they committed masculine crimes, the women were allowed to fulfill their female duties when the courts allowed them a stay of execution to give birth. What is most certain, however, is that the punishments of Mary Read and Anne Bonny were delayed for the sake of unborn children. Even masculine pirates were allowed to be women for the sake of what was deemed right in the eyes of law. Female roles were upheld, even in the most masculine of criminal cases.

¹¹² James M. Volo and Dorothy Denneen Volo, *Family Life in 17th and 18th Century America* (London: Greenwood Press, 2006), 196-197; Norton, "The Evolution of White Women's Experience in Early America," *The American Historical Review*, Vol. 89, No. 3 (June, 1984), 597.

In comparison to the other two cases discussed in this work, Bonny and Read have a few unique characteristics. Their crimes were generally associated with men. The gender roles were broken down because of the association of piracy as a men's crime and because they were cross dressing. Elizabeth Proctor's witchcraft accusations were not uncommon for her time, yet her case still received notoriety because of the number of accused witches and the fame of the Salem trials as a whole. Proctor's pleading of the belly was not as surprising because the crime of which she was accused was often associated with women. Bonny and Read, however, surprised society by their pleads because it was strange that women who committed such a male-oriented crime could be pregnant, a strictly feminine characteristic. Bathsheba Spooner, who plotted to kill her husband and will be discussed in the next chapter, was not as lucky as the other three women discussed. Her crimes were multiple. She essentially hired hit men to kill her husband, all the while promising sexual favors as reward. Spooner's crimes of adultery and conspiracy to murder were not uncommon for women. Divorces were rarely granted in colonial times, and Spooner's case of an unhappy marriage was a common reason to commit such crimes. Political reasons, however, led to her hanging.

CHAPTER 5

HANGED: THE EXECUTION OF BATHSHEBA SPOONER

In 1778, a woman stood on the gallows in Worcester, Massachusetts. The crowd that gathered ate fruit from vendors in the town square and bought poems and literature to serve as programs. They treated the occasion like a social event, as was common during the time. But this crowd was more hostile than most. They hated the woman with the noose around her neck. She was an adulteress, a murderer, and a seductress. Bathsheba Spooner lost her life in front of jeering peers, and it was not until after her autopsy that the people felt remorse for their presence at her hanging. It was during her autopsy that they discovered that what Spooner had told them from the beginning was true. She had pleaded with the courts for weeks to pardon her from the gallows. After two appeals and two painful and humiliating examinations, Bathsheba Spooner's pleas for mercy were found to be justified. She was pregnant. Her execution had killed her and her unborn child as well.

Bathsheba Spooner was sentenced to hang after planning the murder of her husband, Joshua. The crime was carried out by her lover, a young Revolutionary soldier, and two runaway British prisoners of war. They beat Joshua Spooner to death outside of his home and put his body in the family well on the property, acting on Bathsheba's orders. Bathsheba Spooner did not have any legitimate reason to want to kill her husband, but contempt for him started well before she fell in love with another man.¹¹³

Bathsheba Ruggles married Joshua Spooner in what could have been an arranged marriage. Her father, Brigadier General Timothy Ruggles, was a controversial figure in the

¹¹³ "Murder of Joshua Spooner of Brookfield," *Freeman's Journal*, May 12, 1778.

American Revolution. Although he was a Tory, Ruggles refused to sign the Stamp Act, putting him at odds with the British army. Ruggles was a known opponent to the Patriot cause during the Revolutionary war. He was elected president of the congress that openly declared in a 1765 declaration their opposition to the Stamp Act. The Stamp Act was a series of taxes placed upon all paper goods, among other things in the colonies. Ruggles, expected to oppose such an act, did not. He was one of two delegates who did not sign the declaration of rights intended to stop the Stamp Act. He was at once placed in the category of enemy to the colonies. Because of his uncertain role in the army, Ruggles married off his daughter to a safer and more stable life. Bathsheba's marriage took place just two months after Ruggles refused to sign the Stamp Act, an indication of a quick arrangement. She married Joshua Spooner, a son of a wealthy Boston merchant, on January 15, 1766. It is not certain why she married Spooner; perhaps her heart told her to do so, or perhaps her father did. In any case, she soon came to loathe her husband.¹¹⁴

The Spooners had four children, three of whom lived past infancy. Emblematic of their wealth and standing, each family member wore the latest fashionable clothing and silver buckles on their shoes. They had a two-story house and several servants, marks of wealth in colonial times and, despite their Tory alliances, were prominent members in the community. The community, however, noticed that Joshua Spooner was not always a good husband. They called him a drunkard, a "bad man," and unable to support his family through "manly importance." We have no real insight into what kind of man Spooner was, just that his wife detested him enough to start an affair with a person she met by chance.¹¹⁵

The geographical location of the Spooner home was one reason for her infidelity.

Brookfield, Massachusetts, marks a stopping point between New York and Boston. The highway

114 Deborah Navas, *Murdered by his Wife: An Absorbing Tale of Crime and Punishment in Eighteenth-Century Massachusetts*, (Amherst: University of Massachusetts Press, 1999), 28.

115 "Murder of Joshua Spooner of Brookfield," *Freeman's Journal*, May 12, 1778.

was well-travelled during the American Revolution, particularly by soldiers. Ezra Ross was a young and apparently handsome continental soldier. He was walking the highway from General George Washington's camp at Morristown when he met Spooner. It was a typical New England winter: harsh weather, poor conditions, and diseases were common. Ross's walk home to Ipswich was no less than 200 miles. He grew ill near the Spooner household, and Bathsheba Spooner took him in. It is not clear how the interaction between Spooner and Ross began. Perhaps they met in town, or he knocked on her door. Regardless of how the two initially met, it is what happened while Ross was in Spooner's care that is important. They began an affair, and Spooner fell in love with the sixteen year old.¹¹⁶

It is important to understand Bathsheba Spooner at this point. She was thirty one, had three children, and was married to a man to whom she professed an "utter aversion." Spooner was described several times in primary sources as a startlingly beautiful woman, and it is known that her husband was oft to leave her for long stretches of time without companionship, or to frequent the taverns in town. Spooner was beautiful, lonely, and unhappy – and a strapping young soldier needed her. It is easy to speculate what she must have felt. It is curious that her husband suspected little of the sick soldier his wife tended to. Ross left the Spooner household in good condition in the spring of 1777. He came back in August, then again in the fall, staying for longer durations each time. It was the visit to the Spooners in autumn that changed the household forever.¹¹⁷

In late January, Bathsheba became pregnant. It is impossible to know if she was still having sexual relations with her husband when Ross was visiting their household. Ross confessed to having relations with Spooner after Joshua Spooner's death. But even with his

¹¹⁶ Navas, *Murdered by his Wife*, 10-11.

¹¹⁷ Thaddeus Maccarty, "Account of the Behaviour of Mrs. Spooner after her Commitment and Condemnation for being Accessory for Murder of her Husband at Brookfield, March 1, 1778," Early American Imprint Series, Readex.

confession it will never be clear who the father of Bathsheba Spooner's unborn child was. Bathsheba herself claims the child was "lawfully begotten" in one of her appeals to the court. Even if she were telling the truth, no one would ever know. It can be assumed that Bathsheba panicked because she began concocting a scheme to kill her husband.¹¹⁸

In her first attempt to rid the world of Joshua Spooner, Bathsheba convinced Ross to poison him with nitric acid. Nitric acid is now used in rocket fuel, and is not a subtle poison. It has a terrible taste, and Spooner spit out the drink into which Ross had put the poison. Ross's attempt to kill Spooner failed. The two men were on a trip to Princeton when the attempt was made. Ross parted ways with Spooner after this, although Spooner did not express any worry about the situation. Ross was most likely terrified after his attempt to kill his lover's husband. Ross did not return to the Spooner household until the day before Joshua's murder. It appeared to Bathsheba that Ross was not strong enough to deliver the attack she desired. The murder may not have happened if it were not for the Revolution. The number of soldiers in Massachusetts grew by the day, and it was through two deserters that Bathsheba found the means to commit murder. Private William Brooks and Sergeant James Buchanan were escaped British prisoners of war, and Spooner convinced them to kill her husband.¹¹⁹

Brooks and Buchanan were invited into the Spooner household by one of the servants. Joshua Spooner was on the trip to Princeton during this time, and so Bathsheba had the opportunity to treat her guests with class. Buchanan said they "were never in better quarters" than they had been that night. Certainly their treatment by Bathsheba helped in her persuasions. It snowed heavily over the next few days, forcing the men to stay in the Spooner household, and conversation grew more intimate. The men revealed that they had no desire to leave, and stayed

¹¹⁸ Navas, *Murdered by his Wife*, 38.

¹¹⁹ *Massachusetts Spy*, May 7, 1778.

ten or eleven days in the Spooner household. They were surprised at how open Bathsheba was about the dislike she had for her husband, and even revealed the plot she and Ross had concocted to poison Joshua. Bathsheba had not expected Joshua to come home at all, expected Ross to have poisoned him by now. But Joshua Spooner did come home, without Ross. He was surprised to see two strangers in his house, and angered after his bar tab had been used. He told the men to leave.¹²⁰

During the murder trial, Spooner testified that she was surprised that her husband had come home, but the fact that she solicited Buchanan and Brooks to kill him is confusing. If she, in fact, did not expect her husband to come home, she could have seduced the men then and there and never recruited them to kill Joshua. But it is clear that her intentions were not just for sex as she did not seduce them. She must have known there was a chance that Ross's attempt to poison Joshua would fail. We know of the multiple attempts, plans, and circumstances surrounding the murder of Joshua Spooner because Buchanan, Brooks, and Ross wrote a "Dying Declaration," in which they describe in detail every aspect of the murder plot. Dying declarations were common and in some circumstances are still used, particularly in homicide cases. Essentially, dying declarations are death row inmates' last words. Sometimes, the confessions are enough to secure acquittals, and in other cases, serve as entertainment. The dying declaration written by the three soldiers became popular to read during the trial, and it implicated Spooner in a clear fashion. She was responsible for the planning, seduction, and execution that led to her husband's death.¹²¹

¹²⁰ James Buchanan, Ezra Ross, and William Brooks, "The Dying Declaration of James Buchanan, Ezra Ross, and William Brooks, Who were executed at Worcester, July 2, 1778, for The Murder of Mr. Joshua Spooner," in *Murdered by his Wife*, 111-118. A full transcript of "The Dying Declaration" is available in Appendix A in Navas's *Murdered by his Wife*. A microfiche of the declaration is also available from the University of Michigan, but it is difficult to read.

¹²¹ Buchanan, Ross, and Brooks, "The Dying Declaration."

Buchanan, Brooks, and Ross's "Dying Declaration" reveal that Bathsheba was desperate enough to concoct a backup plan in the result of Ross's failure. This indicates two things: she truly detested her husband, and her pregnancy was the underlying cause for her plot. If she were pregnant with her husband's child, there was no real reason to kill him. But if the couple were no longer intimate, then Joshua Spooner knew the child Bathsheba Spooner bore could not be his. She could not take any chances that Joshua suspected an affair because adultery was illegal and could result in severe public punishment and humiliation. Spooner most likely decided to kill her husband out of hatred, panic, or a combination of both. The declaration revealed that Joshua Spooner feared the men in his house. He thought them thieves. Spooner asked the men to leave, but Brooks and Buchanan were allowed to stay because of the cold. During their last night in the house, Joshua Spooner stayed up guarding his money box, and made a comment to a friend that he feared the men for "two coppers would put him into the well." It is startling how right he was.¹²²

The desperation Bathsheba Spooner felt must have seemed inescapable. She enlisted two strangers to murder her husband, convinced her young lover to poison him, and was pregnant with another man's child. Her behavior was erratic and strange, enough so that when her husband came home, he fed off of her nervous energy and became frightened. In order to convince the men to leave, he gave his servant money to take the men to lunch and told the men to be on their way. Brooks and Buchanan did not leave town, however, as they wanted to bid farewell to Bathsheba. The servant sent news to the two that Joshua was in bed, and they snuck back to the Spooner household and plotted to kill Joshua Spooner. They concocted several plans: beat him in his bed and make it look like he had fallen, kill him among the horses in the barn and rile up the horses so as to make it appear he had been trampled, and again, poisoning him. The

¹²² Buchanan, Ross, and Brooks, "The Dying Declaration."

sickening images in Bathsheba Spooner's head were demented and cruel, as well as ill-conceived. She had not planned to cover anything up, nor to escape, nor what to do about the soldiers she was seducing. The only thing she knew was that she wanted her husband dead.¹²³

Brooks and Buchanan hid in the Spooner barn, and made themselves comfortable on food delivered by servants every day. It is unlikely Joshua knew the men were there. They spent at least three days sleeping in the barn and keeping company at the tavern in town. Their presence was explained because of Worcester's location in between military winter camps. After a few weeks, the men approached the house and found there was a visitor there. Ross was back in the Spooner household, secretly armed with two dueling pistols. At this point, all three men were with Bathsheba and promised to kill her husband. Ross's pistols seemed to be the best idea, until Buchanan said the noise of a gunshot would wake the neighbors. This was another indication that the plans they made together were poorly concocted. They finally planned to beat Joshua Spooner to death and put his body in the family well. The plan was enacted the next night. Spooner was out that night, and the men waited for him. Brooks stood watch outside and when he saw Spooner coming, he ran to the door to warn his accomplices, then back outside to silently wait by the garden gate. Spooner approached his home and was attacked by Brooks.¹²⁴

According to the soldiers' confessions, Brooks struck Spooner first and the blow did not kill him. Spooner cried out in the cold February night, but Brooks choked him until he was silent, and then repeatedly hit him. Buchanan and Ross helped Brooks shove Spooner into the small family well head first. It is unknown if Spooner was dead or if he drowned in the well. Buchanan pulled off his shoes (their silver belt buckles were engraved with his initials), carelessly leaving one shoe in the well bucket. Bathsheba was in the sitting room during the murder, and when they

¹²³ Buchanan, Ross, and Brooks, "The Dying Declaration."

¹²⁴ Buchanan, Ross, and Brooks, "The Dying Declaration," Navas, *Murdered by his Wife*, 62-63.

came inside she rewarded them. The men commented that she seemed confused. She opened her husband's moneybox and paid them, and took their bloody clothes, which she replaced with her husband's. They burned the soiled clothing. Strangely, Bathsheba then requested her servant to get water from the well. The servant, having seen the whole murder, did not dip the bucket. When Bathsheba asked why, the servant commented that he knew the body of Mr. Spooner was in the well. Bathsheba replied that it was not.¹²⁵

Bathsheba Spooner was probably in shock. The entire scene must have been very peculiar; and it is still not clear why the three soldiers agreed to do what they did. They had all supposedly been promised affection from Bathsheba, but as far as sexual advances go, most men do not appreciate their woman offering the same sexual rewards to their friends. It is not revealed what she said to persuade them in their dying declaration. But still, the three men did Bathsheba's bidding. Joshua Spooner was dead, her goal was met, and what they planned to do next as a group was unclear. The men travelled to the next town over, where they began drinking at a tavern. Their thoughts must have been clouded, for each one of them wore an article of Joshua Spooner's clothing, including his silver shoe buckles on which his initials were plainly engraved. The other bar patrons noticed the silver buckles, the ruffled dress shirt, the large sum of money, the silver watch the men possessed. They had all belonged to Joshua Spooner.¹²⁶

Ross, Buchanan, and Brooks were caught within a matter of hours after arriving at Worcester's tavern, about twenty miles from the Spooner home. Brooks and Buchanan were drunk, and one of them tried to escape by jumping out of a window. Ross's guilt was too much to bear. He had separated himself from the other two men. He stayed sober, and he attempted to hide from police, but was soon seized. Bathsheba attempted to cover her tracks, however. She

¹²⁵ Buchanan, Ross, and Brooks, "The Dying Declaration," Navas, *Murdered by his Wife*, 64-65.

¹²⁶ Buchanan, Ross, and Brooks, "The Dying Declaration."

asked one of her servants to ride into town where Joshua had been the night of his murder and ask where he was, making it seem like he had never made it home to her. The people who were with Bathsheba's husband marked it a strange night for Joshua: he stayed sober. They soon went to the Spooner household to investigate, found Spooner's hat and blood on the curb, and shortly found his bruised body in the well.¹²⁷

Bathsheba Spooner and two of her servants were arrested. Because of the notoriety of her father's name, Spooner's arrest was more exciting to the community, who abhorred her loyalist father. In an attempt to save them, Spooner insisted her servants should not be implicated in the crime, that she had bribed them. All six people were held in the Worcester jail. They were all represented in court by the same inexperienced lawyer, Levi Lincoln. It is interesting that he represented all six defendants, as they all had very different roles in the murder. The only person guilty of murder in this case was Brooks. The others were conspirators, or harbored a guilty person, but were not guilty of the physical act of murder. It can be said that having the same defense attorney, writing the "Declaration of Death" prematurely (which was used in the trial as evidence against them), and the overall dislike for Bathsheba Spooner is what sealed the fate of the prisoners. They were very guilty – but heavily influenced by Bathsheba.¹²⁸

At the trial, the servants escaped prosecution in return for testimony. They implicated Bathsheba and the three soldiers as the murderers, and told the courts that Bathsheba was behind everything. Levi Lincoln's defense did not help the four. They were all found guilty and sentenced to hang on June 4, 1778. The male prisoners requested a stay of execution to prepare spiritually for their deaths. They were granted a stay, and the execution was rescheduled for early July. Bathsheba Spooner had a different appeal to file. She pleaded her belly. If she were

¹²⁷ Navas, *Murdered by his Wife*, 71.

¹²⁸ Navas, *Murdered by his Wife*, 78-81; Peleg W. Chandler, "Trial of Mrs. Spooner and Others," *American Criminal Trials*, Vol. 2 (Boston: T.H. Carter, 1844), 7-8.

pregnant, the courts could delay her execution until after the birth. If she were found to be with child but not yet quick with child, however, her execution would take place. To a woman, this was an indication that her pregnancy was viable and the uterus inside her was a human with a soul and therefore had legal rights as a person. It is unlikely to feel a child move if quickening has just occurred however, therefore it was difficult to know if Bathsheba Spooner was quick with child in a time when modern medicine was not scientific enough to tell a gestational period with accuracy.¹²⁹

Bathsheba Spooner's examination was not kind. There were several ways to tell whether a woman was pregnant in the eighteenth century. A jury of matrons usually consisted of a group of both men and married, older, respected women who have some kind of medical background. Male and female midwives were common choices for the jury, but any woman who had high standing in the community and had been present at births, had a number of children, or was consulted by mothers in the community could have been chosen. Spooner's jury had two men and twelve women. The twelve women in Spooner's jury of matrons knew her and the case before she was examined. They were all prominent Worcester matrons who were well respected in the community. One was the town clerk's wife, and the two male midwives were also successful businessmen. They were of middle and upper class. Their role was to determine if Spooner was lying about her pregnancy. The examination they most likely conducted was first of Spooner's breasts, abdomine, and an attempt to feel the fetus's movement. Spooner was around fifteen to twenty weeks pregnant at this point, and a fetal outline could have been seen and felt as a firm irregular mass. Usually during the gestational period Spooner had reached, pregnancy can

¹²⁹ Navas, *Murdered by his Wife*, 84-85; Alan Frank Guttmacher, *Into this Universe: The Story of Human Birth*, (New York: The Viking Press, 1937), 51-52.

be proven with 100 percent certainty from a simple physical examination. But it was the fetal movement that allowed the jury of matrons to prove pregnancy.¹³⁰

The gnawing question that we will never know is if the jury of matrons held a strong bias against Spooner because of her actions or remained objective. It is also unknown if Spooner's pregnancy was a result of her relationship with Ross or her husband. Although Spooner signed a writ stating her pregnancy was legal, it is most likely that her pregnancy was the result of a sexual relationship with Ross. This probably weighed on the jury of matrons, although it is difficult to speculate if they made their decision out of hatred, or actually believed Spooner was not with child. It is also possible that the jury of matrons knew Spooner's child might not be her husband's offspring, and made their decision based upon that fact. What we do know is that her pregnancy should have been obvious, but the jurors did not see it.

On June 11, 1778, every member of Bathsheba Spooner's jury of matrons signed a petition that she was not pregnant. Because Spooner was a thin woman, it should have been clear that she was with child just from simple physical examination. It is likely that the jury of matrons had dislike for her, however. According to Spooner's one and only friend in the process, Reverend Thaddeus Maccarty, the examination was cruel and vicious; humiliating for Spooner because she would have been naked in front of the mixed-sex jury. There was a brutal vaginal examination that left Spooner unable to walk. There should have been undeniable proof she was pregnant at four months. But the jury, by choice or not, did not recognize the signs. Spooner wrote another petition to the court to save her unborn child's life. They rejected it at once, but a few days later she was examined again. This time, a smaller jury of matrons that included new jury members examined her. Their decision was split: the two men of the jury changed their minds. Elijah Dix and Josiah Wilder reported that Spooner was indeed quick with child. Two

¹³⁰ Guttmacher, *Into this Universe*, 49-51; Navas, *Murdered by his Wife*, 84-88.

women, Elizabeth Rice and Molly Tattman, did not change their opinion. The court ignored the second examination that seemed to be more taxing on Spooner than the first. The second exam was described as “indecent and cruel.” Spooner was not the only person who begged the courts to spare the child she carried. A letter from Maccarty asked the judges through “principles of humanity and Christianity” to spare Spooner from the gallows. The courts seemed to ignore every petition.¹³¹

It is fortunate that we have the documents from Spooner’s jury of matrons. Such documents are missing from Bonny, Read, and Proctor, but most certainly they existed. It was common for women who pleaded their bellies to get an official document describing the procedure and findings to be presented in court. These documents are proof to the judge that Spooner was pregnant, even if the findings were presented after a second examination. Regardless of timing, the evidence was clear that Spooner was pregnant and the courts ignored the findings, executing her anyway. The testimonies from the jury of matrons are especially interesting, as during the second examination it was still not certain that Spooner was pregnant. In fact, two of the jury of matrons wrote a separate writ to the judge that said Spooner was not pregnant, regardless of what the other jurors said.¹³²

The letters indicate more than just a division among the jury of matrons, it indicates conflict. On June 23, 1778, the sheriff of Worcester County, William Greenleaf, confirmed the jury of matrons’ petition. They concluded that Spooner was not quick with child, and the sheriff informed the courts that her execution should go forth. But four days later, the jury gave a

¹³¹ Navas, *Murdered by his Wife*, 91; Ann Jones, *Women Who Kill* (New York: The Feminist Press at the City University of New York, 2009), 88-89; Thaddeus Maccarty, “Reverend Maccarty’s final plea to the Council supporting Bathsheba’s pregnancy,” 26 June 1778. Executive Council Records. Massachusetts State Archives, Boston.

¹³² A complete transcript of the jury of matron’s examination letters exists in Navas’s *Murdered by his Wife*, 166-168.

different answer. They examined Bathsheba Spooner again, and this time had “reason to Think that she [was] now quick with child.” Another person had been added to the jury, making the number of males three. The three male midwives had gone back on their original findings, as did one woman, Hannah Mower. But the same day, two other female midwives presented the sheriff with the same findings as before: in a contradiction to the two head male midwives, Elizabeth Rice and Molly Tattman kept with their original conclusion. The courts would follow the jury of matrons’ ruling because the members of the jury were supposed to speak the absolute truth. The jury said Spooner was not pregnant, and with a conflicting opinion from the jury of matrons, the courts decided to hang Spooner.¹³³

Bathsheba Spooner was hanged July 2, 1778, alongside the three men she convinced to kill Joshua Spooner. An estimated 5,000 people attended the public hanging, and it was only afterward during her autopsy that Bathsheba’s pregnancy was confirmed. Later, people in the crowd expressed disgust at their actions. They believed Spooner a liar and assumed the pleading of her belly was a lie, as well. The court had sanctioned the death of an innocent unborn child. It is notable that her death warrant was signed by Joshua Spooner’s stepbrother. No one in the community showed Bathsheba mercy, and still she appeared calm and collected while she stood with a noose about her neck. She had dressed in her finest clothes, and the last examination by the jury of matrons had left her so wounded that she had to be carted to the stand.¹³⁴

One must wonder what would have happened to Spooner if her appeal had been granted. In most cases, a woman who pleaded her belly was allowed to give birth and then have her sentence applied. Usually this resulted in a lesser sentence or even an acquittal. In Spooner’s

¹³³ A complete transcript of the jury of matron’s examination letters exists in Navas’s *Murdered by his Wife*, 166-168.

¹³⁴ Navas, *Murdered by his Wife*, 97-99. A complete transcript of the hanging exists in Nava’s *Murdered by his Wife*, 155-159.

case, the detest she faced from the community might not have allowed her to live in any circumstances. Her children were sent to a cousin's house. If her son would have been born, it is likely that he, too, would have been taken care of by the Spooners. But because his father's identity could not have been proven, that Joshua Spooner's family would have taken him in remains uncertain. It is notable that in the dying declaration written by Brooks, Buchanan, and Ross, there is no mention of sexual relationships with Spooner, or of her being pregnant. If the men who helped kill her husband knew she was pregnant, they did not acknowledge it to the courts. The repercussions of Bathsheba Spooner's death were almost immediate. Women were not hanged in Massachusetts for another fifty years, and even then, a prison term usually took the place of a hanging. Instead of feeling like her hanging was justified, people who saw Spooner die were "neutralized by pity for her sufferings." Not just her life, but the lives of her son, and her husband, and her lover, were over.¹³⁵

Bathsheba Spooner's crime, trial, and execution are uncommon for her time. Women were expected to stay in marriages no matter how much they disliked their husbands. They were expected to stay faithful to their husbands because women were not to have individual needs and wants. The role of the woman in the Spooner household defied the times, and so did her execution. The strangest thing about Spooner's execution is her pleading the belly. Infanticide was thought of as devilish during the time, and people were punished for it severely. In this case, however, Massachusetts itself put an innocent child to death. The newspapers, judges, and other officials did not mention this fact until almost a century later. It is speculated that the death of Spooner's child was a product of "the unsettled condition of the state governments during the

¹³⁵ Jones, *Women Who Kill*, 89.

war of the revolution,”¹³⁶ as well as a distinct bias versus Spooner because of her father’s loyalty to the crown, “the worst of traitors.”¹³⁷

Bathsheba Spooner and the child she tried to save are buried together somewhere near Worcester. The location of their shared grave is unknown; presumably it was a secret passed down through generations of Spooner’s still-loyal relatives and the location was lost. She was famous in Worcester for years after her hanging, although the refusal of the council to accept her respite more famous. To the Worcester community, before her pregnancy was revealed, Bathsheba was cold, calculating, and manipulative. Yet she appealed to save her unborn child, which softened her reputation in the community. More than the four hanged people were guilty that day. Every member of the jury of matrons, the courts, and the people in the crowd allowed the unthinkable to happen. The loss of the fetus Spooner carried was a tragedy then as it is now.¹³⁸

The women who pleaded their bellies were practicing a part of the courts that was feminine in every aspect. Interestingly, Spooner was the first woman to be hanged on American soil after the Revolution. Spooner’s case was only different for the fact that the appeals process failed her. The social event of her hanging was a disturbing scene. Bathsheba Spooner was dead, and the people who watched her die for entertainment did not know that five people died on the gallows that day. After it was revealed, the thought of her unborn child dying in what was a slow and cold death haunted her peers for the remainder of their days. It impacted the courts, the people, and the appeals process forever.

¹³⁶ Chandler, *American Criminal Trials*, 57.

¹³⁷ Chandler, *American Criminal Trials*, 7.

¹³⁸ Chandler, *American Criminal Trials*, 56-58.

It is puzzling why Spooner was executed and Bonny, Read, and Proctor's appeals were granted. Certainly the jury of matron's decision had much to do with the court's actions in Spooner's case. If the courts would have acknowledged Spooner's second examination, her sentence would have been stayed. As far as crime goes, Bonny and Read were just as guilty as Spooner. Perhaps they were farther along in their pregnancies and the quickening of the fetus in-utero was blatantly obvious. It is the assumption of some, like historian Deborah Navas, that Spooner was executed for more political reasons.

It is no surprise that Bathsheba Spooner was executed just two years after the Declaration of Independence was signed. The Revolutionary war had taken over the community, as seen by the vast number of soldiers travelling through the area. The community of Worcester, Massachusetts, was highly patriotic. They knew of Spooner's famous father and his loyalist ties. It can be assumed that part of the reason they ignored her stretched and swollen belly and hanged her for her crimes was because of her father's ties to the crown. People of New England were not sympathetic to loyalists during this time, and even although Bathsheba Spooner did not publicly proclaim one position or the other, her family ties were enough. Bathsheba might have escaped the noose if it were not for a panicked plot: in 1777 Massachusetts, punishment for adultery was not death. Women guilty of adultery were stripped to the waist and publicly flogged. But loyalists were treated differently. Many had been tarred and feathered for no real reason other than their loyalist ties. Tarring and feather is now seen as comical and cartoonish, but it caused severe burns and was extremely painful. It is unknown what Spooner feared. Whether it be humiliation through tarring and feathering or flogging, her fate was much better before she conspired to kill her husband. Spooner sealed her own fate when she conspired to murder.

Irrational thinking, ties to the British crown, and manipulation are only a few reasons Spooner's life was taken by the courts. A man had died under her orders. She was guilty of adultery. Her crimes were obvious, but she should have received a stay of execution like Bonny, Read, and Proctor. Although human error can be blamed for missing Spooner's pregnancy, it is likely her jury of matrons knew her family background, her crimes, and had an utter dislike for her based on the fame of her father and the small size of the community. The second examination of her belly proves the jury members' consciences were clouded. Of the thousands of people in the crowd at her hanging, it is unknown if the jury members watched. Certainly the pit in their stomachs never eased as they watched her slowly strangle. They had not only killed Spooner (who, in reality, had only conspired to murder and had not herself committed the crime), but an innocent, unborn son. Out of all of the women who pleaded their bellies, Spooner's case is the most striking. Her womanly duty to produce children and give birth was ignored by the courts and her jury of matrons. Instead, political ties and a dislike for Spooner as a person overruled the typical plead of the belly.

In comparison to Bonny, Read, and Proctor, Spooner was a more complex case. She was made an example of, and deterrence for the crowd that watched her had more than a message of aversion from murder and adultery. The crowd knew of Spooner's loyalist ties. They were given a message to support the patriot cause for the American Revolution. After all, the hangings of three British soldiers and the woman who had seduced them and convinced them to commit murder was another testament to the evil impact of the British crown on the colonies. Surely patriots would not have committed such crimes, and so the crowd did not just attend the hangings of murderers, they attended the hanging of loyalists. Deterrence, in this case, was politically charged.

Bathsheba Spooner's life was taken in a time when young America was trying to gain support for independence. As punishment for her crimes, she was made an example of. Pleading the belly did not work in her case, but did create an impact. Capital punishment for women became more lenient. Many presume Massachusetts lawmakers feared a result like the Spooner hanging. In any case, Spooner's life and death had an impact on the community and history forever.

Spooner's death was strangely ignored by contemporary presses, particularly the fact that she was pregnant when she died. Her story is the most disturbing of the three told, and of the four women highlighted, it is probable that she was the most hated. Although she plead her belly, used penitence in an attempt to make her actions right in the eyes of God and the courts, and filed multiple pleas for reprieve, it was not enough to save her or her child. The American Revolution was changing everything, including the process of the courts because of the organization of state laws and a bias toward loyalists. Spooner's jury of matrons was suspected of holding a grudge against her and their pettiness showed. She, unlike Proctor, Bonny, and Read, was not given her much-needed reprieve.

CHAPTER 6

CONCLUSION

It is almost disturbing to think that while Bathsheba Spooner stood on the gallows, she probably felt her heart beat hard and fast, as most hearts do when faced with terror, and also the soft stirrings of the fetus in her womb. The execution of Bathsheba Spooner was as startling then as it is now. The “perfectly formed fetus” found during her autopsy represented the loss of a legal precedent intended to save the innocent from the punishment to which their mothers were subjected. In the cases of Bonny, Read, and Proctor, the rulings of the courts upheld the physical ability of women to produce life therefore valued life over punishment. By allowing Spooner a jury of matrons and taking every step legally allowed, the courts did the same for Spooner regardless of the results found by the jury of matrons. She was afforded these conditions because she asked, as it was her legal right. Of the four women who pleaded their bellies, only two lived. The conditions they faced in colonial jail cells killed one and undoubtedly made all of their pregnancies difficult. The series of examinations and court dates complicated their lives further while incarcerated.

The legal proceedings that followed a plea of pregnancy depended on more than just the woman’s word, as shown through the case of Spooner. Courts had a precedent to follow when a criminal claimed to be with child, including the jury of matrons and official documents stating their findings. The jury of matrons was crucial in determining the fate of any such plea. Without an accurate inspection, the woman in question would fail to gain her stay of execution. Now, technology has allowed for an easier process and the ability of unquestionable validity on pregnancy and the courts still wait to execute pregnant women.

Colonial women and the courts still need research as a whole. As a more compact topic, pleading the belly needs more direct research as well. In order to fully understand the plea and create a cohesive picture from the British empire and North America of what the process was like for every woman who made such a plea, it will be necessary to comb through the archives of the thirteen original colonies as well as Britain's colonial holdings in the Caribbean and elsewhere. Only after a full analysis of all relevant court cases is made can the findings be substantial enough to claim a better understanding of American cases involving pleading the belly. The three cases studied here represent the most famous cases, and the easiest of which to find documentation and because the three have shared similarities, there can be arguments made about them. There are undoubtedly hundreds of others like them waiting to be studied in the archives of New England and the Caribbean. Early Republic American women who pleaded the belly are also in need of a thorough analysis, as the courts were no longer required to send correspondence to England regarding legal cases and therefore the documentation is more difficult to locate. This research is important to further understand the role of women and the value of pregnancy in the court system. This work would take years to complete, but in order to tell the American story of pleading the belly, pregnant women in crime, and add a significant addition to the narration of women and law, it is necessary. It is also necessary so scholars can understand the laws passed in our own time regarding pregnancy and its value in a court of law.

In 2004, Laci and Conner's Law (H.R. 1997) was signed into law by President George W. Bush, protecting unborn children from assault and murder, including those of pregnant criminals. According to the law, anyone who causes the death or bodily injury to a child in utero is guilty of a crime. This law recognizes that a fetus in utero can be the victim of a violent crime. The law does not require proof that "the person engaging in the conduct had knowledge or

should have had knowledge that the victim of the underlying offense was pregnant.” This law does not include abortion, which requires the consent of the pregnant woman. Under this law, the execution of Bathsheba Spooner would have resulted in prosecution of the courts, jury of matrons, and hangman. A similar bill was proposed in 2001 but was abandoned due to pro-choice advocates who thought the bill would be translated as an anti-abortion law, although the law plainly states abortion was not covered under the law.¹³⁹

By allowing the fetus to have legal rights, the courts recognize that women who plead their bellies should be allowed the chance of a stayed execution in order to save their child. The system of criminal courts in the United States and around the world has the ability to condemn and to save, and in the case of the four women in this work, the courts did just that. Although they did not escape punishment completely because the jail terms they served were harsh and Bathsheba Spooner was executed, the women’s stories showed the court system was willing to hear the pleas of women fulfilling their roles as mothers. Pregnancy and criminality are topics not generally associated with one another, but the colonial courts addressed the two concepts with legal precedence that clearly showed the importance of childbirth and pregnancy over the punishment of criminal activities committed by mothers-to-be.

The plea of pregnancy is still relevant in our world, as is shown with the case of Samantha Orobator. Her story along with the four other women’s told here prove the courts see the value in a woman’s ability to give birth. Whether they became pregnant by choice to escape the noose or it was chance that their pregnancies occurred in a time when they became life-saving measures will always be debatable. But the fact remains that an appeal of pregnancy saves

¹³⁹ “Unborn Victims of Violence Act of 2004 – Laci and Conner’s Law” Accessed June 13, 2011. <http://news.findlaw.com/hdocs/docs/abortion/unbornbill32504.html>

the lives of two people, upholds gender norms of the seventeenth and eighteenth centuries, and gives value to the female reproductive process in a court of law.

BIBLIOGRAPHY

BIBLIOGRAPHY

Primary Sources

The Boston Gazette, February 6-13, 1721.

Buchanan, James, Ezra Ross, and William Brooks. "The Dying Declaration of James Buchanan, Ezra Ross, and William Brooks, Who were executed at Worcester, July 2, 1778, for The Murder of Mr. Joshua Spooner."

Calendar of State Papers, Colonial Series: America and the West Indies. Volume 30: 1717-1718, (1933).

Calendar of State Papers, Colonial Series, America and the West Indies. Volume 32: 1720-1721, (1933).

"Cormack, William, Plat for 50 Acres of Land in Craven County," in *S213184: Colonial Plat Books (Copy Series)*, South Carolina Archives and History, Accessed December 17, 2011, <http://www.archivesindex.sc.gov/onlinearchives/Thumbnails.aspx?recordId=92709>

"Great Britain: from the London Gazette, dated Dec. 6. at the Court of St. James's, the 3d of December, 1718" *The Weekly Jamaica Courant* No. 38, Wednesday, February 11, 1718, 1-3.

Heath, E. "A Full Account of the Late Dreadful Earthquake at Port Royal in Jamaica." June 22 and 28, 1692.

"Laos heroin smuggler Samantha Orobator gives birth." Accessed June 13, 2011, <http://www.dailymail.co.uk/news/article-1213116/Smuggler-baby-halted-death.html>.

London Gazette, September 17, 1717.

Maccarty, Thaddeus. "Account of the Behaviour of Mrs. Spooner after her Commitment and Condemnation for being Accessory for Murder of her Husband at Brookfield, March 1, 1778," Early American Imprint Series, Readex.

Maccarty, Thaddeus. "Reverend Maccarty's final plea to the Council supporting Bathsheba's pregnancy," 26 June 1778. Executive Council Records. Massachusetts State Archives, Boston.

Massachusetts Spy, May 7, 1778.

"Murder of Joshua Spooner of Brookfield," *Freeman's Journal*, May 12, 1778.

“New York Dispatch, Jan 31st.” *The American Weekly Mercury*, February 7, 1721: 1.

“A Proclamation for Suppressing of Pyrates,” September 5, 1717, PC 2/86, fol. 21, The National Archives.

Rosario, Kiko. “Samantha Orobator, Pregnant Briton Jailed in Laos, Going Home.” Accessed June 13, 2011, http://www.huffingtonpost.com/2009/08/06/samantha-orobator-pregnan_0_n_252672.html.

The Tryals of Captain John Rackam, and Other Pirates. Jamaica: Robert Baldwin, 1721.

“Unborn Victims of Violence Act of 2004 – Laci and Conner’s Law” Accessed June 13, 2011. <http://news.findlaw.com/hdocs/docs/abortion/unbornbill32504.html>

Secondary Sources

Banner, Stuart. *The Death Penalty: An American History*. Cambridge: Harvard University Press, 2003.

Bedau, Hugo Adam. *The Death Penalty in America*. New York: Oxford University Press, 1982.
Christiansen, Scott. *With Liberty for Some: 500 Years of Imprisonment in America*. Boston: Northeastern University Press, 1998.

Black, Clinton V. *Pirates of the West Indies*. Cambridge, 1989.

Boyer, Paul, and Stephen Nissenbaum, eds., *The Salem Witchcraft Papers: Verbatim Transcripts of the Legal Documents of the Salem Witchcraft Outbreak of 1692*. New York, 1977.

Braunschneider, Theresa. “Acting the Lover: Gender and Desire in Narratives of Passing Women” *Eighteenth Century: Theory & Interpretation* 45 (2004): 211-230.

Byrd, William. *The Commonplace Book of William Byrd II of Westover*. Edited by Kevin Berland, Jan Kirsten Gilliam, and Kenneth A. Lockridge. Williamsburg, VA: Omohundro Institute of Early American History and Culture, 2001.

Chandler, Peleg W. “Trial of Mrs. Spooner and Others,” *American Criminal Trials*, Vol. 2. Boston: T.H. Carter, 1844.

Cockburn, J.S. *Introduction to the Assize Calendars*. London: Stationery Office Books, 1985.

Cordingly, David. *Women Sailors and Sailors’ Women: An Untold Maritime History*. New York: Random House, 2001.

Druett, Joan. *She Captains: Heroines and Hellions of the Sea*. New York: Simon & Schuster, 2000.

- Forbes, Thomas R. "A Jury of Matrons." *Medical History* 32 (1988): 23-33.
- Gunderson, Joan R., and Gwen Victor Gampel "Married Women's Legal Status in Eighteenth-Century New York and Virginia," *The William and Mary Quarterly* 39, (Jan., 1982): 114-134.
- Guttmacher, Alan Frank. *Into this Universe: The Story of Human Birth*. New York: The Viking Press, 1937.
- Hoffer, Peter Charles. *The Salem Witchcraft Trials: A Legal History*. Lawrence: University of Kansas Press, 1997.
- Hoppe, E.O. "Deadlier than the Male: Anne Bonney and Mary Read" in *The Mammoth Book of Pirates*, ed. John E. Lewis. New York: Carroll & Graf, 2006.
- Johnson, Captain Charles. *A General History of the Pyrates*. Guilford, Connecticut: The Lyons Press, 2002.
- Jones, Ann. *Women Who Kill*. New York: The Feminist Press at the City University of New York, 2009.
- Kann, Mark E. *Punishment, Prisons, and Patriarch: Liberty and Power in the Early American Republic*. New York: New York University Press, 2005.
- Karlsen, Carol F. *The Devil in the Shape of a Woman*. New York: W.W. Norton & Co.: 1987.
- Klausmann, Ulrike. *Women Pirates and the Politics of the Jolly Roger*. Montreal: Institute of Policy Alternatives of Montreal, 1997.
- Klepp, Susan E. "Revolutionary Bodies: Women and the Fertility Transition in the Mid-Atlantic Region, 1760-1820," *The Journal of American History*, Vol. 85, No. 3 (Dec., 1998), 910.
- Laurence, John. *A History of Capital Punishment*. New York: The Citadel Press, 1960.
- Navas, Deborah. *Murdered by his Wife: An Absorbing Tale of Crime and Punishment in Eighteenth-Century Massachusetts*. Amherst: University of Massachusetts Press, 1999.
- Norton, Mary Beth. *In the Devil's Snare: The Salem Witchcraft Crisis of 1692*. New York: Vintage Books, 2002.
- Norton, Mary Beth. "The Evolution of White Women's Experience in Early America," *The American Historical Review*, Vol. 89, No. 3 (June, 1984): 593-619.
- Oldham, John C. "On 'Pleading the Belly;' A Concise History of the Jury of Matrons." *Criminal Justice History* 6 (1985): 1-64.

- Rediker, Marcus. "Liberty Beneath the Jolly Roger: The Lives of Anne Bonny and Mary Read, Pirates." In *Iron Men, Wooden Women: Gender and Seafaring in the Atlantic World, 1700-1920*, ed. Margaret S. Creighton and Lisa Norling, Baltimore: Johns Hopkins University Press, 1996.
- Rediker, Marcus. *Villains of All Nations: Atlantic Pirates in the Golden Age*. Boston: Beacon Press, 2004.
- Rediker, Marcus. "When Women Pirates Sailed the Seas." *Wilson Quarterly* 17 (1993): 102-111.
- Rosenthal, Bernard. *Salem Story: Reading the Witch Trials of 1692*. Cambridge: Cambridge University Press, 1995.
- Bernard Rosenthal, ed. *Records of the Salem Witch-Hunt*. Cambridge: Cambridge University Press, 2009.
- Sale, Kirkpatrick. *The Conquest of Paradise: Christopher Columbus and the Columbian Legacy*. New York: Plume, 1995.
- Sherlock, Philip, and Hazel Bennett. *The Story of the Jamaican People*. Kingston: Ian Randle, 1998.
- Simmons, William S. "Cultural Bias in the New England Puritans' Perception of Indians," *William and Mary Quarterly*: 38, 1 (Jan., 1981), 51-72.
- Siegel, Reva. "Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection," *Stanford Law Review*: 44, 2 (Jan., 1992), 261-381.
- Smith, Captain Alexander. *The History of the Lives of the Most Noted Highway-men, Foot-pads, House-breakers, Shop-lifts and Cheats of both Sexes, etc.* London, 1714.
- Stockton, Frank R. *Buccaneers and Pirates of Our Coasts*. New York: Grosset & Dunlap, 1897.
- Talty, Stephan. *Empire of Blue Water: Captain Morgan's Great Pirate Army, the Epic Battle for the Americas, and the Catastrophe that ended the Outlaw's Bloody Reign*. New York: Crown, 2007.
- Ulrich, Laurel Thatcher. *A Midwife's Tale: The Life of Martha Ballard, Based on her Diary, 1785-1812*. New York: Vintage, 1990.
- Volo, James M. and Dorothy Denneen Volo. *Family Life in 17th and 18th Century America*. London: Greenwood Press, 2006.

Wilf, Steven. *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America*. Cambridge: Cambridge University Press, 2010.

Witkowski, Monica C. "Justice Without Partiality: Women and the Law in Colonial Maryland, 1648-1715." PhD diss., Marquette University, 2009.

Wulf, Karen. "Women's Work in Colonial Philadelphia." In *Major Problems in American Women's History*, 4th edition, edited by Mary Beth Norton & Ruth M. Alexander, 97-102. Boston: Houghton Mifflin Co., 2007.