WITCHES, WIFE BEATERS, AND WHORES

The science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man. . . . Happily, the general and most important principles of law are not removed to a very great distance from common apprehension. It has been said of religion, that though the elephant may swim, yet the lamb may wade in it. Concerning law, the same observation may be made.

—James Wilson, *The Study of Law in the United States* (1790–92)

WITCHES, WIFE BEATERS, AND WHORES

COMMON LAW AND COMMON FOLK IN EARLY AMERICA

ELAINE FORMAN CRANE

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Liliana, Juliet, Sage, Madeline

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ELAINE FORMAN CRANE

Introduction

Jacob Vis had run up quite a tab at Geertje Teunis's New Amsterdam house where Teunis tapped beer for her thirsty neighbors. Shocked at the amount of his bill, an incredulous Vis questioned the accuracy of the account: "How can it be, that I am so much in debt here?" Teunis and Vis quarreled, and according to Salomon La Chair, who witnessed the shouting match, Teunis called Vis a drunken rogue—a nod, perhaps, to both his excessive consumption and unwillingness to ante up. Perceiving her verbal slap as an attack on his reputation, Vis demanded reparation of his honor (a legal formality that included an apology and cash).[1] Defending herself in front of the authorities, Teunis acknowledged the insult but insisted she hurled it only after Vis called her a whore and a beast. Thus, she reacted to his vocal assault with equally stinging words: "I hold you for a rogue and knave, until you have proved, that I am a whore," and, she declared, "I am from no beasts stock." Because the offensive accusations constituted slander, the court insisted that both Vis and Teunis provide proof of their cross-charges. Unfortunately for the warring litigants, Vis could not prove Teunis was a whore any more than Teunis could offer evidence that Vis was a drunken rogue. And since two other witnesses to the altercation claimed temporary deafness, the matter was dropped.

This historical shard is very telling, even if it only pinpoints a few isolated moments in one small community. The Vis/Teunis story is important

because it reflects the texture of early American life through the intimate experience of ordinary people. The episode involving these few people shows, on a very personal level, how matters with legal implications saturated everyday activities and how often people's lives were woven together through them. A tapster, a customer, a contested bill, witnesses, a social moment that turned into a slander case. This is only one example of how, on any given day, the law affected early Americans in various ways, whether they were at work or at leisure. Ordinances regulated the hours and days during which Geertje Teunis could sell beer. Ethical standards required Jacob Vis to pay his bill. Statutes prohibited slanderous language that impugned reputation. Judges demanded proof of the provocation. From an interpretive standpoint, the incident raises questions about the meaning of the word "whore."

All this is to say that Americans were keenly interested in and influenced by legalities, which on a quotidian basis included an assortment of dos and don'ts that separated right from wrong. Yet, if most people tried to balance life on a foundation of codified moral and ethical rules, it is equally true that the daily treadmill offered endless opportunities to stray from communal values. Occasionally men and women found themselves frustrated by situations with no easy resolution, which meant that they sometimes bent the law or defied it altogether.

The vignette about Geertje Teunis and Jacob Vis is what historians have dubbed microhistory. Although microhistory comes in many shapes and sizes, its value, as Richard D. Brown explains, "lies in its power to recover and reconstruct past events by exploring and connecting a wide range of data sources so as to produce a contextual, three-dimensional, analytic narrative in which actual people as well as abstract forces shape events." Directing attention to "the multiple contexts in which people made their decisions and acted out their lives," Brown makes a strong case for the importance of microhistory as a tool for unearthing the past.[2] In some ways it does so with greater effect than other strategies, since microhistory's narrow focus enables researchers to ferret out historical nuggets that wider studies overlook or ignore.[3] A deeper, more focused probe also reveals ambiguities and complexities that resist definitive historical answers. Such cases encourage as well as legitimize an informed speculation that offers tentative or alternative interpretations. Truth, after all, is elusive and, arguably, a matter of competing perspectives.

If small stories contain a potential to reveal aspects of the larger culture, devotees of microhistory are somewhat divided over any approach that assumes conclusions from one time and place can be extended to others. Allowing for wider implications if corroborating evidence permits a broader

brush, I would argue that such a debate deflects attention from the importance of microhistory as a historical tool. Microhistory has another, equally important role: it reinforces and humanizes traditional studies written on a grander scale. Since microhistory is so very personal, it draws the reader into a relationship with the protagonists who move the narratives. History in microcosm uncovers emotion in ways that more impersonal studies rarely do. Fear, frustration, and anger undulate through the pages as microhistory inverts the social order by exposing assertive females and passive males. It defies stereotypes by showing women mauling each other and men gossiping while shopping for dinner. Furthermore, by describing behavior that the community rejects, microhistory reveals the perimeters of permissible conduct. If historians are still ambivalent about microhistory's role in the development of a sweeping national thesis, it still contains the potential to change the way we think about the ongoing flow of history. Even more important, microhistory introduces the reader to the unexceptional people who make history happen.

As for the records from which microhistories are created, legal documents play a unique role. If the early American past is hard to pin down in the best of circumstances, the use of sworn statements—as opposed to other documents—has the capacity to close in on incidents deliberately or innocently shielded from view. Diary entries are composed by people who construct the self they want others to see. Letters contain just as much information as the writers want to share with the recipients. Newspapers sensationalize. But testimony, although based on personal perception, is taken under oath and therefore may represent (or even force) a less distorted version of an event. Did witnesses lie under oath? Sometimes they did, but perjury was a criminal offense. Besides, there is little doubt that many, if not most, early Americans took oaths seriously and that their statements were accurate reflections of memory. Not exactly "truth," perhaps, but the next best thing.

In this book I have used microhistory as the lens through which aspects of early American legal culture will be explored.[4] Unlike the vignette that opened this introduction, however, the following narratives are drawn from extensive bodies of evidence. I have written each chapter as a self-contained account, an independent story that provides an engaging way of reimagining the meaning of law as experienced by common folk. Jointly, the six chapters might also be thought of as the nonfiction equivalent of a fictionalized short story collection. Put another way, to the extent that they appeal to the reader by concentrating on individual lives captured at a dramatic moment, they have something in common with their fictional counterparts. Indeed, with

murder, illicit sex, shifty deals, ghosts, and witches rife throughout the pages, how could they not?

Despite these similarities, however, the following pages never blur the line between fact and fiction. If novelists and short story writers invent imaginary speech and incidents, I have drawn on trial transcripts and other relevant documents to "hear" what people actually said and "see" what they saw. No need for docudrama here: depositions and examinations make it easy to eavesdrop on the colorful statements of ordinary people. The book may read like fiction in places, but these are all factual accounts.

All this is another way of confirming the Bard: life was indeed a stage where everyday tensions and conflicts were played out as legal dramas. Values—carried across the Atlantic or born in North America—took effort to uphold, but were worth the struggle because they represented ideals that stood the test of time and place. That such contests were staged under cover of law suggests a trust in the power of formal legal proceedings as well as in improvised folk law. Moreover, I have deliberately chosen topics that span centuries and cross borders because the issues themselves are not bound by either chronology or geography. People assaulted and maligned each other in Virginia as well as New Amsterdam; witches (under other names) threatened Americans in the seventeenth century—and thereafter. Domestic abuse pervaded the colonies and then the states. Sexual assault and its collision with race and gender were never limited to Rhode Island, while debt and inheritance controversies plagued Americans wherever and whenever they lived (and died). Law mattered—and matters—because reputation, negotiated limits of violence, sexuality, race, economic standing, familial and communal relationships were and are issues of deep concern.

The topics of these microhistorical narratives may range widely, but their focus is nonetheless narrow. My intention is to illustrate a common theme: the ways in which legal culture and the routine of daily life were knotted together in early America. Collectively, they not only reveal the values that bound Euro-Americans despite their differences, but they also raise salient questions about the consequences of decisions based on those values.[5] Can a convicted wife beater be a patriarch? Should witches have the same civil rights as other offenders? How does a society protect speech and reputation at the same time? In what way do race and gender influence legal decisions? Should debtors be sent to prison? If some of these questions are closely linked to early America, others resonate in our own time.

All of the events in this book relate to some aspect of early American legal culture prior to 1800. The six case studies are representative, but hardly exhaustive of possible examples. All of them call attention to ordinary

people, which is key to understanding the complexities and ambiguities of seventeenth- and eighteenth-century society. Women as well as men amble, stumble, or collide throughout the pages, while black and white, rich and poor, mingle and confront each other. Different settlers, in various ways, turned to law not only to protect themselves but to stabilize their lives and reinforce their belief system. Drawing on actual incidents, each case illustrates the ways in which Euro-American law shaped life as it related to commerce, property, family, race, and gender—not to mention the supernatural. The array of cases, with their startling panoply of legal maneuvers, confirms the proposition that law was a matter of deep concern to the original settlers and that their knowledge of the legal process was surprisingly ingrained and extensive. It was also innovative.

Anglo-Americans did not import English precedent wholesale. They introduced and relied upon what they knew best and what had worked in the past, but questions regarding the untested conditions of North America occasionally required novel answers. Witches could not get a free ride in New England any more than they could in old England, but a vast continent seemed to offer free land for the taking, and colonists applied home-grown rules to the distribution of property. White males continued to reap benefits established by the patriarchal society across the Atlantic, but Native men on this side of the ocean became increasingly destabilized by laws that intruded on their way of life. If most English tolerated religious diversity and lawyers, Massachusetts Puritans did not. In the Chesapeake, a hoped-for cache of precious metals never materialized, forcing settlers to design and regulate an economy based on the next best thing: tobacco. All this required legal maneuvering.

★ ★ ★

To explore the intersection of people and law, a microhistorian slogs through legal documents. Starting from a simple case report, the historian tries to create a background by assembling supporting evidence from a variety of sources. Some of it will be found in published volumes. The more interesting material, however, is usually buried among the obscure handwritten documents secreted away in local archives. If the case is a criminal matter, the indictment can be quite revealing. Lists of jurors and the names of judges become as important as the identity of the defendant or litigants. Statements from witnesses help define the issues and provide details that will invariably prove ambiguous and vexing. Once the parameters of the case are established, other sources set the controversy or incident in context. Locally, census and tax data refine the identities of the participants. Collections of statutes (fre-

quently online) establish what laws were in place at the time. Occasionally a diary or letter written by someone close to the case will contain a pertinent reference. In the eighteenth century, newspapers reported sensational cases, and these accounts frequently offer tidbits of information unavailable elsewhere. Colonywide and even international events often affected local incidents and set them in context. Luck and persistence have much to do with a successful hunt, although there are limits to what will be found even after the most vigilant search. The survival of documents is never a sure thing, and in the end, the history detective is at the mercy of a collection, a friendly archivist, and a scribe with a sharp quill. The particular subjects on which I have concentrated raise multiple issues and reveal so much about the social values that mattered because they are based on material from evidentiary treasure troves that provide entrées into the past.

As historians develop microhistories, they often rely, as I have, on legal archives and case reports. Since my research included documents from both English and Dutch America, an understanding of both common and civil law was essential to the task. As a result of colonial membership in the British Empire, English common law—custom and court decisions, but eventually statutes as well—prevailed in the English colonies of Rhode Island, Maryland, and Bermuda. The Puritan bastion of Massachusetts turned to biblical strictures for legal guidance, although colony leaders never completely eschewed common law. New Amsterdam clung to civil or Roman law, which affected the structure of the court, although the content of the cases closely resembled those of the English colonies. And even New Netherland came under the sway of English law before the last third of the seventeenth century. Maryland's laws evolved after independence, but no one called for a complete overthrow of the legal system that existed before statehood. The New England courts were layered according to the severity of the crime, with the right to a jury trial established early on. Bermuda, too small for a diverse court system, also provided for trial by jury. Until New Amsterdam became New York, its court was headed by a *schout,* who wore the hats of both sheriff and prosecutor. He, along with a bench composed of two burgomasters and five *schepens* (aldermen), heard and decided cases without juries.

Microhistorians relish unexpected details, especially ones that were broadly experienced. Thus, it was of some interest to find a kaleidoscope of civil rights enjoyed by early Americans as early as the seventeenth century. Indeed, I found it nothing less than astonishing to see the safeguards that existed—and frequently employed—throughout both English and Dutch America. In the English colonies, a criminal charge was accompanied by a grand jury

indictment, bail for most crimes, the ability to challenge jurors peremptorily or for cause, and a trial by jury. Defendants were presumed innocent, and in some venues they had the right to an attorney—whether they could afford one or not. The accused were safe from self-incrimination and were entitled to face their accuser (admittedly problematical when a ghost played that role). Defendants charged with a crime could demand the papers involved in the proceedings. If convicted, they had the right to appeal the decision. White males fared best under these rules, but even if discrimination against women and people of color is readily apparent, they too were entitled to take advantage of legal protections.[6] Dutch America had slightly different rules, but there is no doubt about its commitment to proving the truth of an accusation through the judicial process.

Nevertheless, early American legal procedure was still embryonic. No police force patrolled a community. The most sought after seventeenth-century juror already knew the facts of the case and was familiar with the defendant and the incident. Was the defendant capable of the crime? His or her past history signaled yes or no. Did the body of a homicide victim bleed after the fact? If so, the person in contact with the corpse was clearly guilty of murder. Ghosts (through a human vehicle) could testify in front of a jury throughout the eighteenth century. And although the jury was the final determiner of guilt or innocence, if the judge was dissatisfied with an acquittal, he could send the jurors back without food or rest to rethink their decision. Punishments for legal infractions ordinarily included whippings and fines—but not incarceration. Warnings-out and banishment rid communities of undesirable inhabitants, as did an occasional hanging. Executions were public events and often combined with the festivities of market day. Justice was swift: most trials took no more than a few hours from beginning to end.

Folk law and custom existed outside the courtroom, which is only to say that in life "law" was an ongoing contest between formal authority and informal consensus, or a joust between those who declared themselves arbiters of right and wrong. Sometimes warring litigants in slander cases reached agreement and shook hands after a mere apology that restored honor to the aggrieved party. On other occasions a complainant, such as an alleged victim of attempted rape, might consider her best interest served by a creative accord not sanctioned by statute. The law concerning spousal abuse may have been on the books, but evidence suggests that many men circumvented it without fear of consequences, since custom recognized certain male prerogatives. Yet, as we will see in the chapter on domestic violence, sometimes groups of people intervened to ensure "justice." Not everyone was willing to participate in what might be called "community policing," but it was an

integral part of neighborhood dynamics, nonetheless. Formal and informal law worked in tandem in early America, an approach to conflict resolution that gave a vast number of unknown actors a role to play in the making and shaping of history.

Indeed, among the most striking features of the stories recounted below are the different ways that law was implemented from the bottom up. Ordinary people "made" law by establishing and enforcing informal rules of conduct. Codified by a handshake or over a mug of ale, confirmed by a skimmington (public ridicule of an offender), such agreements became custom, and custom became "law." Furthermore, by submitting to formal laws initiated from above, common folk legitimized a government that depended on popular consent to rule with authority. Some white males either wrote statutes or elected the legislators who passed them. But for those outside the electoral process—ineligible white males or white women—compliance implicitly sanctioned law. Still others, such as enslaved men and women, involuntarily abided by legislation that demeaned them, because they had little choice. Compliance hardly indicated consent, but awareness of what the law required and adapting to rules in the interest of self-preservation made the enslaved an integral part of a collective legal culture that owed as much to the bottom of the social order as it did to the top.

It is difficult to overemphasize the importance of those people clinging to the middle or bottom rungs of the social ladder. Their influence as lawmakers gave them a stake in society as it simultaneously democratized one community after another. The life, liberty, and property that men and women went to law to protect were best safeguarded in a public courtroom where hot tempers were cooled in a peaceful atmosphere. Private negotiations were not always successful, and riots, protests, and beatings were hardly unknown. Yet the fact that the majority of people were willing to live by the formal and informal rules they devised and valued reinforced a respect for law that did not go unnoticed.

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In each chapter I have emphasized the fresh insights that microhistory offers. The evidence I analyze in "In Dutch with the Neighbors" provides a new perspective on slander by suggesting that it was a novel response to underlying social grievances. In this context, the use of the word "whore" was less a sexual sting than a weapon of commercial rivalry, and Marretie Jorisen could not let it pass when Andries de Haas "scolded her as a whore." In court, she demanded proof of the slur, as did other women and men similarly maligned.

In the same way, when colonists in Bermuda spoke through legal documents, they confirmed that long-standing resentments could turn into metaphorical accusations of witchcraft, just as "whore" stood in for economic dislocation. "There is a witch amongst us," announced Elizabeth Middleton, and Bermudians, like colonists elsewhere, relied on law to rid the community of such a threat. More important, however, I would argue that by assuring witches of their day in court, the law humanized the spiritual world and invested man-made law with a power that trumped witchcraft.

Dysfunctional families who were troubled by domestic violence offer a rare opportunity to observe folk law in action—that is, the extralegal means by which networks of women encircled and protected neighbors who were victims of abusive husbands. Such a candidate was Sarah Rouse, who was "afraid her . . . Husband would Take away her Life." Alternatively, John Hammett's friends call attention to male bonding when they tried to shield him from the law after he pummeled his wife. The various assaults over time also raise what might be termed a revisionist question: if *prosecutions* for domestic violence declined without a commensurate decline in spousal abuse, does this imbalance call into question the rise of companionate marriage—a compatible union where a heavy-handed patriarchy allegedly fell from favor?

As Comfort Taylor and Cuff wend their way through the Rhode Island courts, the unusual imbroglio offers a rare view of the complex relationship between slavery and freedom by showing how the law mediated a system where a man was both person and property. Before the judges confronted this ambiguity, however, the protagonists demonstrated the importance of informal legal machinations as Thomas Borden considered Comfort Taylor's claim that "the Negro cuff had tried to kiss her and had bruised her very much" during an attempted rape.

By focusing on an individual, Samuel Banister's chapter captures the human side of debt and debt litigation. Much of his woeful tale takes place in a public courtroom—where the proceedings humiliated him and jeopardized his masculine role as family provider. Evicted for nonpayment of rent, Banister threatened "he would kill or Shoot the first man that should attempt . . . to take possession of his house." Set in the context of new commercial realities that stimulated both upward and downward mobility, Banister is a symbol of a man suffering from the anxieties and frustrations that are said to appear only later in the century as the American economy evolved. Legal history, in microhistorical form, pushes the clock back here, just as it does in the chapters about New Amsterdam and Bermuda.

A ghost and a disputed will are central to the last chapter. Apparitions had eagerly participated in criminal matters for hundreds of years, but the way

in which the ghost in this chapter operated reveals a spirit created to meet the needs of the new nation. In short, late eighteenth-century spirits were transformed by the economy, just as the economy altered business practices. Thomas Harris's ghost still came to avenge a wrong, but money, not murder persuaded him to intervene. There was no doubt of the ghost's identity: even his former horse "knew Thomas Harris."

Notwithstanding my efforts to expose the past in a very personal way, I have been unable to induce the subjects of the narratives to yield definitive answers to some of the more provocative questions they raise. Despite the most intensive probing, we will never really know what Andries de Haas meant when he allegedly "scolded" Marretie Jorisen as a "whore," or whether John Middleton actually thought Christian Stevenson was a witch. No matter how thorough the research, even the most garrulous early Americans deny access to their inner thoughts or motives. Thus, with nothing more than circumstantial evidence proving his guilt, only Comfort Taylor and Cuff knew if he really attempted to rape her. Similarly, every effort fails to verify William Briggs's confrontation with Thomas Harris's ghost. And with Samuel Banister's jurors unwilling to share their deliberations, it is impossible to know why the jury acquitted him of murder.

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Beyond consideration of fresh insights and unanswerable questions, an alternative reading reveals the common features that splice the individual chapters together. Such an analysis uncovers parallels that readily turn diverse stories into a sort of *e pluribus unum* of case studies. As complementary themes crisscross chapters, they reveal analogies that are sometimes obvious, sometimes unforeseen. All, however, confirm a connection between law and intrinsic American values.

If, for example, the various chapters appear to be based on unrelated legal issues, a closer reading suggests that in each case commerce and property were fundamental factors. While such a connection may be yesterday's news, it is still revealing to read beyond the headline into the small print. On the surface, slander hurt reputations in general, but it was reputation in the marketplace (more so than the marriage market) that counted. Neither men nor women could prosper if they were not trustworthy businesspeople. Witchcraft, too, may have been prosecuted under criminal law, but the underlying grievances revolved around marketable property: theft of hog feed, pigs that died, butter that wouldn't churn, and petty trade goods. Quakers preached egalitarian land redistribution, a terrifying prospect that threatened the economic status quo on Bermuda.

One could argue that given their rights under the law, patriarchal men considered their wives as property to be vigorously controlled. Yet if such an interpretation remains below the surface in the chapter on domestic violence, the chapter on Comfort and Cuff is overtly about property, once the criminal action is concluded. Cuff himself was property, and Comfort sought compensation in the form of property for the attempted rape. And even if Samuel Banister was ultimately charged with murder, his crime was stimulated by financial distress and activated in defense of property he believed to be rightfully his. Finally, a dispute over Thomas Harris's estate precipitated the appearance of his ghost. If Americans were fixated on the law, they were no less infatuated with the possession of property. In each of the chapters, law became the means by which individuals sought redress for actual or potential hurt to their possessions. Similarly, they attempted to resolve disputes through the acquisition of property.

Looked at from still another perspective, it is clear to me that early Americans—even those with little money and less education—had considerable knowledge about laws that mattered. Whether that information was culled from scaffold confessions, execution sermons, books, an oral tradition, or experience is of less consequence than the accumulation of legal know-how and the surprising frequency with which that general knowledge was put to use. Of even greater moment are the arcane points of law that lay dormant in the popular mind, ready to be roused as occasion demanded. In *Witches, Wife Beaters, and Whores* I illustrate both the extensive knowledge and consistent use of law by an astonishing number of people.

Take, for example, Samuel Banister. Banister's acquaintance with the legal process began long before he was tried for murder. As a bookkeeper and merchant he was a familiar courtroom figure. For a while he seems to have prospered, but eventually fortune abandoned him and debt pursued him. Defiant in the face of eviction from his home, Banister claimed "he knew something of the Law." No doubt he did.

Battered women in New England were aware that the law protected them—at least in theory—from abusive husbands. But they were reluctant to bring charges, knowing that the response of the authorities would be lukewarm at best, and that they might face reprisals from husbands angered by their defection. In such circumstances, knowledge of formal law did little to protect those for whom it was designed. Instead, folk law—popular action based on a desire to thwart a "wrong"—rescued women when statutory law deserted them.

Comfort Taylor's screams, immediate revelations, and exhibition of bruises indicate her understanding of what the law required from a woman who was

pressing charges of attempted rape. She also tailored her multiple appeals to the fine print in Rhode Island's statute books, which allowed her to hold her assailant as both person and property.

Ordinary Bermudians, despite their isolation, had mastered a surprising amount of legal minutiae, the sum of which competed with whatever their brethren on the mainland had absorbed. Routine civil matters clogged the calendar, but by the time Satan settled on the remote island, the English colonists there were well prepared for a legal battle with him. Indeed, John Middleton, an accused witch, became a leading authority on the physical manifestations of witchcraft and gave detailed advice on how to "discover" a witch. John Makaraton, Middleton's accuser, was also keenly aware of the fine points of witchcraft, information he used to craft charges against Middleton.

One hundred and fifty years later in Maryland, Thomas Harris's ghost (through his interlocutor, William Briggs) employed arcane legal strategies to make sure his illegitimate children would be the beneficiaries of his small estate. Harris, however, did not have to rely on legal training that was handed down by word of mouth. As literacy expanded in early America it enhanced the ability of people to read written laws. That same extension of literacy also drew more people into the legal lives of others. A proliferation of newspapers, wide readership, and sustained interest in criminal behavior created a broadly dispersed reading public with intimate knowledge about people they would only know vicariously. Most early Americans, like Samuel Banister, "knew something of the Law."

Early Americans put that knowledge to use in defense of values that mattered. Not surprisingly, deeply held beliefs about rights to real and personal property precipitated the bulk of courtroom controversies. But people also went to law to safeguard intangible property such as honor, an amorphous attribute that was tangled up with reputation. Honor and reputation shadow the chapters because good names were valued enough to be protected through the legal process. Moreover, honor and dishonor were perpetuated by gossip, whispers that provided a window into the intimate lives of others—and eventually affected legal outcomes.

The New Amsterdam court records reveal that despite language differences in this tower of babble, gossip frequently degenerated into slander, and just as often provoked retaliation. Thus, New Amsterdam's slander suits illustrate the intersection of reputation and gossip most vividly, with insults satisfied in each case only by "reparation of honor." When Lysbet Ackermans allegedly accused Grietje Pieters of New Amsterdam of stealing a beaver pelt, Pieters worked feverishly to refute the accusation while the gossip net-

work operated overtime to sort out what had happened. Mary Pia "heard it from others" that Pieters had pilfered the pelt. If Pieters could not prove her innocence, who would do business with her? And when Geurt Coerten and his wife slandered Madame Beeckman, they excused themselves by "saying they heard it from the mouth of Aert Willemsen." Although the couple was at fault for "propagating the report," the law's deepest frown was reserved for "the first promulgators and calumniators" who ignited the verbal firestorm.[7]

Witchcraft thrived on gossip. Bermudians knew who was suspect and why. If butter did not congeal, if children sickened unexpectedly, if items disappeared without cause, suspicion fell on people known through hearsay to have Satan's ear. Christian Stevenson's neighbors were long aware of her ability to do the devil's work, and tried to avoid dealing with her—which only infuriated Stevenson. Alice Moore's barefoot treks and predictions about the death of barnyard animals stirred up gossip, as did the accusation that Jane Hopkins had threatened the welfare of an entire ship because of her trickery. In Bermuda, as elsewhere, charges of witchcraft always threatened reputations; but if other slanderous allegations could be forgiven and forgotten courtesy of an apology or cash, witchcraft accusations were not easily shaken off, and honor was never effectively restored.[8]

The concept of a patriarchal society rested on the premise that a male household head had the right to control his wife. For the men analyzed in the chapter on domestic violence, that control degenerated into physical violence. But small communities reveled in gossip and allowed rumors to travel quickly, which meant that domestic violence and the men who perpetrated it did not go unnoticed. Battered wives confided in friends, and neighbors interceded with abusive husbands as a result of such confessions. Furthermore, such gossip raised a perplexing question: Since justice was often blind to spousal abuse, did a wife beater retain his honor in spite of his malevolent behavior?

Comfort Taylor's reputation and her credibility were at stake when she turned down Thomas Borden's offer of a private settlement in favor of a public trial in order to shame both Cuff and his owner. Truth and falsehood were at the core of Comfort's accusations against Cuff, and the rumor mill (which must have included the entire town of Newport) churned out chatter as townspeople debated the merits of her thousand-pound claim against an enslaved ferry operator whose reputation, not to mention life, were also threatened by her charge.

The lawsuits against Samuel Banister proclaimed to one and all Banister's failure as a businessman, and as small talk traveled, the people with whom

he dealt became aware of his predicament. Banister surely knew that people were speaking unfavorably about him behind his back as rumors of his insolvency motivated business associates to institute suits for debt. The public nature of the cases humiliated him and, by extension, his family. In an effort to protect the family honor—as well as his brother's reputation—John Banister paid his brother's legal fees. Samuel's damaged reputation cost him dearly as creditors lined up to sue him, and the court put him behind bars until he made good on the claims. Restitution, not punishment, was the point of his incarceration, although everyone realized Banister's ability to pay up was hampered by his confinement.

Bastardy was common enough in early America, yet bearing children out of wedlock was still a matter of some concern in a culture that strongly discouraged illegitimacy. This proscription did not prevent Thomas Harris and Ann Goldsborough from producing four illegitimate children (a feat even in fecund early America), but the affluent and respectable Goldsborough family appears to have been concerned enough about honor and reputation to keep the young couple out of court and away from public scrutiny. Nevertheless, gossip followed them years after their liaison ended. News that Thomas Harris's ghost would testify through his friend, William Briggs, was common knowledge for at least a year before the actual event. When the case finally reached court, gossip included tales about the unmarried couple, an uncle who siphoned off the inheritance of his nephews and niece, and speculation, one might suppose, about whether a ghost could be counted on to tell the truth. Honor was an integral component of legal culture in this world and the next.

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An American legal culture, based on shared values, took root through a common language that sped from person to person and from place to place, confirming established principles en route. As words traveled, they created a ripple effect by expanding the circle of people drawn into an action that began with only two litigants (or a prosecutor and defendant). When New Amsterdammers debated the merits of a slanderous accusation, when travelers from Newport discussed Comfort Taylor in Boston, and when news of witchcraft executions on Bermuda reached ears and eyes on the mainland, early Americans were being immersed in a legal culture without realizing the extent of their benign indoctrination. As time went on, assorted "facts" about such incidents were spread via print media as well as through personal contact, and by the mid-eighteenth century backdoor newsmakers competed with front-stoop newspapers. With no pretense of neutrality, tabloid items about

Samuel Banister's murder of James Osborne and Cuff's attempted rape of Comfort Taylor helped sensationalize the legal process. How far words traveled, how deeply they became embedded, is best illustrated by the Harris ghost case, a controversy that crossed an ocean and survived a century of print.

Notwithstanding the ways common social values operated under a legal umbrella in early America, they may also be read from a competing perspective. By resisting the established order, people offered counternarratives as well as mainstream ones. Parsing even further, I would argue that most men and women flouted the established value system by deviant behavior; fewer rejected that value system altogether. Slanderers did not advocate a competing social order; none of the word-slingers objected to laws controlling speech. Samuel Banister did not campaign for a retraction of statutes governing debt. Thomas Harris's ghost argued for the implementation of well-settled inheritance laws, not the repeal of those laws. Accused witches took no stand against witchcraft itself, nor did they protest punishment for convicted perpetrators. Conversely, Cuff's values—his sense of right and wrong—were at odds with early American society. By stealing himself, Cuff spurned the consensual view that it was lawful for one person to own another. His escape was a personal challenge to laws favoring slavery. Abused women took a position somewhere in between: they surely favored laws that condemned spousal assault, but they just as surely rejected the social climate that exonerated men who battered their wives.

Since Nathaniel Alcock, Samuel Banister, and Comfort Taylor were all mid-eighteenth-century Rhode Islanders, they may have known each other—even though they appear in different chapters and for different reasons. Yet even if none of the other characters I have written about ever crossed paths, they all illustrate the ways in which law permeated daily life and created a legal culture. I agree with David Hall that "religion was embedded in the fabric of everyday life" in early America, but I would emphatically add that law was woven into that fabric as well.[9] Notwithstanding the complementary (if sometimes fractious) relationship between religion and law, there are major differences in the way the two influenced belief and behavior. Religion abetted privacy in a way that law did not. Belief itself remained fixed in the recesses of the heart and mind, and although church membership was encouraged, no colony or state demanded it. But if law required group affiliation (that is, universal adherence to it tenets), as well as faith in the judicial process, then there was no escape from its oversight. Legal culture was inherently inclusive and public. Law—that is, its basic principles—also unified early Americans, whereas competing religious doctrines were divisive factors that left bitter conflict unresolved.

More often than not, disputes parried in a formal legal setting avoided street fights and battlefields. That being so, going to law frequently resulted in peaceful settlements and a harmony that might otherwise have eluded the litigants. Yet positive results came at a cost: law imposed itself into the most personal human relationships: sex and marriage. Not satisfied with regulating the lives of one generation, law determined inheritance rights and divided property. It defined the boundaries of speech by deciding what one person could say to another. It eased access to commercial markets for some, and built roadblocks for others. The law advanced upward mobility and severely punished debt with a bias that enhanced or destroyed reputations. Law irreparably damaged race relations by establishing rules making some people freer than others and creating societies where skin color offered privileges—or not—and where there was little refuge from discrimination.

Collectively, the individuals portrayed in these chapters illustrate these issues as well as others, and as they do, they confirm the omnipotence and omnipresence of value systems that transcended geographical boundaries. The glut of "matters" in early America (that is to say incidents, cases, negotiations, folk law remedies) reflected an unwavering confidence in and reliance on legal devices to uphold values and to solve problems. So widespread was law's influence, so inextricably intertwined with everyday experience, legal culture ultimately became fused with other enduring American traditions. This synergism not only cemented American society, but also perpetuated social stability by transmitting cultural messages over invisible wires to future generations. The people introduced in the following chapters were probably unaware that they would leave such a legacy, but there can be little doubt that early American common folk and common law shaped what would become a uniquely American national identity.

Chapter 1

In Dutch with the Neighbors

Slander "in a well regulated Burghery"

It is difficult to imagine the Manhattan of soaring skyscrapers as New Amsterdam. In the early seventeenth century, trees blanketed the greater part of the island, while hogs and dogs ran wild in the small town clinging to its southern tip. Occasionally, an agile canine would catch a slow-moving hog and chomp on a porcine ear. Less often, a scrawny mutt would bite an even mangier goat to death. Indians, English, and Swedes threatened from all sides, while the well-being of the Dutch colony rested on soldiers who spent as much time drawing knives on each other as on their enemies. Rich and poor alike scandalously and shamefully engaged in "unseasonable drinking," so that by 1648 "nearly the just fourth of the city of New Amsterdam consist[ed] of brandy shops, tobacco or beer houses." Complaints of drunken Indians, cheating, fraud, and smuggling followed the excessive consumption of alcoholic beverages. Tavern fights erupted with alarming frequency, and some unlucky patron—like that unfortunate pig—could lose his ear, albeit to a cutlass rather than to a cur.[1]

If, as estimated, some five hundred men lived in New Amsterdam prior to the devastating Indian wars of the early 1640s, and if those wars considerably reduced that number to one hundred males in 1648, then it is possible the town may have contained no more than a thousand people and 120 houses in 1656. On the other hand, only a building frenzy would account for the 350 houses said to exist by 1660, although the number of dwellings may have

been enhanced by the theft of timber, an ongoing problem.[2] For reasons of their own, builders also constructed chimneys of wood and roofs of reeds, a combustible combination not outlawed until 1648. Owners and renters chose to preserve the cleanliness of their interiors by disposing of "rubbish, filth, ashes, and dead animals" in the streets.[3]

Despite their difficulties, however, the inhabitants of New Amsterdam did not seem starved of either food or material goods. Bakers provided bread, butchers prepared meats, fishermen hooked and netted fish, farmers grew vegetables, and traders/spinners/weavers/tailors sold sheets, pillowcases, garments, and stockings to the local populace. A few women wore pearls, but whether the jewelry arrived by ship from Holland, Brazil, Guinea, the West Indies, or courtesy of the indigenous oyster population is unknown. Beaver skins found their way into the local economy as a trading commodity, a component of the local currency, and as wearing apparel. Sewant (or wampum) and tobacco were mediums of exchange as well.

Figure 1. New Amsterdam by Arnoldus Montanus (c. 1625–83). First published in 1671, this view shows New Amsterdam in 1651. Bert Twaalfhoven Collection, Fordham University Library, Bronx, New York.

New Amsterdam was ethnically and religiously diverse. Unlike their New England neighbors, who were far more homogeneous, the Dutch in Manhattan rubbed elbows with French, Spanish, Portuguese, Swedish, and English inhabitants on a daily basis. Jews, Catholics, and Baptists established homes there as well. Enslaved Africans contributed to the labor force, and the Dutch maintained an uneasy relationship with the Indians who surrounded—and outnumbered—them. Given this assortment, it is easy to conjure up a baffling babble of languages as people went about their business or paused for a short conversation. It would be too much to say that the Dutch welcomed this diversity, but the inhabitants did coexist surprisingly well, given time and place. Local ordinances played no role in promoting such coexistence; the Dutch West India Company demanded it in the interests of a flourishing trade. If, thousands of miles from Amsterdam, the colonists could claim a small degree of local power, the Dutch West India Company trumped that power with long-distance authority. In turn, the colonists were resigned to using ethnic and religious slurs in an occasional display of one-upsmanship.

The elite governing body of New Amsterdam understood all too well the volatility of the small community and was committed to taming it in the interest of good government. In its early years, theft, violence, and a general immorality among soldiers were "matters of serious consequence," which could not "be tolerated." Indeed, "leading a scandalous life" was "highly dangerous" in an "infant Republic." That they thought of themselves as a republic suggests a desire to emulate the world they left behind; but whether infant republic or trading outpost, no matter—for the next several decades the authorities drove home the same point: physical violence and unbecoming behavior were offenses "not to be tolerated in a well ordered province." To the end of their half-century rule, burgomasters and schepens (aldermen) attempted to confine the community to people worthy of living "in a well regulated Burghery."[4]

Slander was among the many wrongs that needed to be addressed. Thus, the small coterie of settlers was put on notice that "speaking ill of someone" or using "bad and unbecoming language" would not be tolerated "in a well ordered place," a utopian vision that remained an aspiration rather than a reflection of the current state of affairs. Nevertheless, it was commonly held that "injurious and foul words" undermined authority, ruined reputations, and destroyed honor. Furthermore, as the unruly inhabitants were reminded, such language was "directly contrary to the customs and provisions of the laws."[5]

The laws that governed New Amsterdam were the same laws that governed the colony of New Netherland as well as the provinces in the Neth-