

**Publicizing Private Life: Criminal Conversation Trials in Eighteenth-Century  
Britain**

by

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## Abstract

The project examines the gender relationships within the household, between master and mistress, master and servant, and within the servants' quarters, alongside gendered experiences in the courtroom and constructions of masculine and feminine identities in printed trial accounts, and how these changed during the century. The trials also provided a context in which the spatial boundaries between the private and public could be debated and therefore offer a unique window for examining the physical development of private space in contemporary architecture. The legal procedure of the trials and the published accounts reporting them indicate a growing awareness of a "private life," while the expanding print culture offered a perfect medium to maximize the publicizing of private life already unfolding in the court room. Crim. con. trials and the literature they inspired, therefore, represent a particularly rich set of sources for considering definitions of "public" and "private" in eighteenth-century Britain.

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## **Introduction: The Eighteenth-Century Criminal Conversation Trial**

In 1782, G. Lister published an account of the recent scandals surrounding the Earl of Coventry's daughters, promising an account, not only of *The Life and Amours of Lady Ann F--l--y*, but also "some curious anecdotes of her [Lady Foley's] sister, Lady Maria Bayntun."<sup>1</sup> *The Life and Amours of Lady Foley* was a report of the two legal actions filed by her husband, the Hon. Edward Foley: a divorce on grounds of her adultery, and the civil action against her lover, the Earl of Peterborough, for which Foley was awarded £2,500 damages. The latter suit was known as an action for "criminal conversation," where a husband sued his wife's lover for damages under the pretense of "trespass." These trials fed the market for scandal literature detailing the various sexual liaisons of the wealthy in and out of the bedroom. Often for as little as one shilling, people could purchase a lurid account of another person's private life. What readers got with *The Life and Amours of Lady Foley* was a description in both words and illustrations of Lady Foley's "sexcapades" in and around her estate in Herefordshire, all of which had been witnessed by various neighbors as well as servants within the household (who happily testified to the events in court).

"Crim. con." trials (as they were commonly abbreviated) did more than expose private indiscretions. Through the evidence presented, they documented everyday life as

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<sup>1</sup> *The life and amours of Lady Ann F-l-y: developeing [sic] the whole of her intrigues... Including the whole substance of the trial for Crim. Con. between the Hon. Mr. F-y and the Earl of Peterborough, ... Together with some curious anecdotes of her sister, Lady Maria Bayntum* (London, [1782?]).



people lived and experienced it within the domestic interior. They therefore reveal the co-existing and often conflicting ideas and realities concerning domestic sociability: how husbands and wives *should* interact, and how they *really* interacted; how a hostess and male guest *should* behave, and how they sometimes *misbehaved*; how domestic servants should remain out of sight, and how being “invisible” allowed servants to observe many things their superiors meant to go unseen. The trials also provided a context in which the spatial boundaries between the private and public could be debated. The “curious anecdotes” concerning Lady Foley’s sister, Lady Bayntun, almost always included the observation that her adultery, at least, was conducted in a less “public” and scandalous manner than her sister’s. While Lady Foley and her lover’s “clandestine” encounters took place outside the house, in the grotto, in the park, and even in the chaise when they traveled, Lady Bayntun’s adultery occurred in her bedchamber: “This Lady has not indeed been detected in a shrubbery, in the open face of day, to gratify the eyes of a peeping Tom.”<sup>2</sup> Implicit in this comment on discretion was an idealized concept of privacy that was located specifically in the domestic interior, and it was only within that physical space that “appropriate” sexual conduct should occur. The crim. con. trial illuminates the ubiquity of privacy in eighteenth-century Britain and the ways that contemporaries conceptualized, practiced, created, debated and built privacy. It informed their perceptions of themselves, their personal relationships, and social, cultural, and legal relations more broadly.

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<sup>2</sup> Ibid., 16. For additional details on these trials, see *Foley v. Foley* (1787), Divorce [adultery], Court of Arches MSS, Lambeth Palace Library, London: D 611; E 45/40; E 47/20; and *Bayntun v. Bayntun* (1782), Divorce [adultery], Court of Arches MSS, Lambeth Palace Library, London: Ee 11f.64; Eee 16ff. 8-21. (The Lambeth Palace Court of Arches records hereafter cited as LPCA.)

## **Divorce, Separation, and “Criminal Conversation”**

Lawrence Stone described Early Modern England as “the worst of all worlds: marriage was all too easy legally to enter into, but all but impossible legally to get out of.”<sup>3</sup> Indeed, England was not a divorcing society, and an official system of legalized divorce was not established until 1857.<sup>4</sup> By the eighteenth century, however, divorce remained technically prohibited but became possible in special circumstances by a private act of Parliament around 1700, although it was very difficult to obtain.<sup>5</sup> Only men could procure a Parliamentary divorce, and only on grounds of their wife’s adultery. Additional “qualifiers” limited the number of successful divorce petitions: one had to be a childless heir with an adulterous wife whose infidelity resulted in illegitimate offspring.<sup>6</sup> Parliamentary divorce therefore functioned primarily to protect the “patrilineal descent of property in the legitimate male blood line.”<sup>7</sup> Later in the century, officials acknowledged the inherent inequity of these stipulations for women and began requiring lawyers to prove no prior adultery by the husband that may have led to the wife’s adultery.<sup>8</sup>

This was a somewhat superficial legal overture, however. The underlying principle of the earlier standard persisted into the nineteenth century, as evident by an

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<sup>3</sup> Lawrence Stone, *Uncertain Unions: Marriage in England, 1660-1753* (New York: Oxford University Press, 1992), 4.

<sup>4</sup> Stone, *Broken Lives: Separation and Divorce in England, 1660-1857* (Oxford: Oxford University Press, 1993), 12.

<sup>5</sup> Stone, *Road to Divorce: England, 1530-1987* (Oxford: Oxford University Press, 1990), 20.

<sup>6</sup> *Ibid.*, 320-321. With the strict requirements imposed on petitioners, only thirteen divorces were granted in the first half of the eighteenth century.

<sup>7</sup> *Ibid.*, 320-321.

<sup>8</sup> *Ibid.*, 323.

1804 remark when a contemporary defended a legal double-standard on the principle that a husband's infidelity could not defraud the wife or children the way a woman's infidelity could by becoming pregnant by her lover.<sup>9</sup> This pervasive mentality has led scholars to describe this period as one in which "the defense of property was a higher priority than the defense of life."<sup>10</sup> Even with proof of the husbands' adultery, wives could not reclaim their marriage portion in a divorce. Husbands were required to provide some kind of maintenance, however, despite the wives' adultery.<sup>11</sup> England's policy made it the lone Protestant country in Europe without a legalized system in place to obtain a divorce with permission to remarry in cases of adultery, cruelty, and abandonment. This did not, however, prevent people in the pre-divorce era -- at least, those who could afford it -- from exploiting loopholes in the English legal system to escape unhappy marriages.<sup>12</sup>

One alternative was to obtain a legal separation in the ecclesiastical courts. Unlike petitions for Parliamentary divorce, both spouses could file for separation in the church courts, which was granted on grounds of adultery and life-threatening cruelty.<sup>13</sup> The canon law held that either spouse's adultery was grounds for separation, not just the wife's. Despite this, women almost never filed on grounds of adultery; when they did, these charges were usually coupled with allegations of cruelty (the most common

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<sup>9</sup> Ibid., 242.

<sup>10</sup> David Cannadine, *The Rise and Fall of Class in Britain* (New York: Columbia University Press, 1999), 49. See also Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. E. P. Thompson et al. (New York: Penguin Group, 1975), 17-63.

<sup>11</sup> Stone, *Road to Divorce*, 324.

<sup>12</sup> Ibid., 9-11.

<sup>13</sup> David Turner, *Fashioning Adultery: Gender, Sex and Civility in England, 1660-1740* (Cambridge: Cambridge University Press, 2002), 145.

complaint of wives seeking legal separation).<sup>14</sup> All matters relating to marriage, separation, and sexual behavior were traditionally addressed in the ecclesiastical courts, but legal separation was as far as the canon law reached and it did not allow either spouse to remarry.<sup>15</sup>

The church courts were not the only venue for contesting matrimonial issues. England had three legal systems in place: canon law, equity law, and common law. Each had its own courts and procedures, but all three exercised some authority over the laws of marriage, separation, and divorce. England's multiple, often-overlapping legal systems provided an alternative for spouses unwilling or unsatisfied with the prospect of legal separation. By the 1690s, and increasingly throughout the 1700s, people became more adept at manipulating these systems to their advantage. It was within this web of legal jurisdictions that the action for criminal conversation emerged as a viable avenue for ending a marriage.<sup>16</sup>

In the sixteenth and seventeenth centuries, the ecclesiastical courts punished adulterers by public confession and shaming. Justices of the Peace employed similar tactics at the local level by putting adulterers in the stocks or levying fines as punishment.<sup>17</sup> By the end of the seventeenth century, however, the church courts' authority to regulate morality was in decline. This coincided with a growing reluctance by local JPs to prosecute adultery for adultery's sake. This and other issues of morality

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<sup>14</sup> Ibid., 146. Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1987).

<sup>15</sup> Turner, *Fashioning Adultery*, 145.

<sup>16</sup> Stone, *Road to Divorce*, 24-25.

<sup>17</sup> Ibid., 232.

were viewed increasingly as “private” concerns that ought to be handled outside of the courtroom. Although it remained on the books as a criminal offense, by the 1730s, state prosecutions for adultery and other “private vices” had ceased almost entirely.<sup>18</sup>

The practice of husbands privately obtaining a monetary settlement from their wives’ lovers outside the courts was fairly widespread among men from the middling sorts in early modern England. The threat of publicity that might accompany a trial -- and, in the ecclesiastical courts, the public form of punishment handed down upon adulterers -- was sufficient incentive for a man to pay the husband in exchange for keeping the adultery private.<sup>19</sup> As Stone has observed, “[M]ost cases of litigation between individuals were intended merely to force the defendant to arbitration. For a majority of litigants...going to law was a tactical maneuver, part blackmail and part bluff, the object being to obtain an out-of-court settlement.”<sup>20</sup> While the perception that private life was no longer the jurisdiction of the state gained traction in this period, the practice did not disappear entirely from the public realm. The regulation of adultery and seduction transitioned into the common law courts, where it unfolded within the process of civil

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<sup>18</sup> Turner, *Fashioning Adultery*, 5. There is evidence of occasional adultery prosecutions (as a misdemeanor) up to 1746, but secular court records do not document further occurrences after this point. Stone, *Road to Divorce*, 232.

<sup>19</sup> *Ibid.*, 232, 244-245. Private correspondence between spouses and between a spouse and his or her lawyer reveal instances where the threat of public litigation was used to blackmail a spouse into submission. *Ibid.*, 19.

<sup>20</sup> *Ibid.*, 24. Stone estimates that the number of cases filed in ecclesiastical and civil courts that actually went to trial was somewhere between one-fifth to one-half of the total cases initiated. He contends this is a reflection of the plaintiffs’ ulterior motive, which was to use the suit (and its ensuing legal costs and publicity) as a threat to force the defendant into arbitration. The suits that did not result in a sentence were either settled out of court or dropped.

litigation in the form of the crim. con. trial.<sup>21</sup> These trials facilitated the negotiation of private life between civilians, rather than between a civilian and the state.

Crim. con. emerged in the common law courts around 1670 and were heard almost exclusively in the central common law courts in London, either in the Court of Common Pleas or, more frequently, in the Court of King's Bench, with the Lord Chief Justice presiding over the proceedings.<sup>22</sup> While it was a viable legal option in the seventeenth century, use of the action was very rare, especially among social elites.<sup>23</sup> Early cases were brought as actions of trespass, for assault and battery, but these trespass suits were soon given their own distinct title, "criminal conversation," and "provided monetary damages for the loss of male honour incurred through the seduction of a wife."<sup>24</sup> David Turner has speculated the name-change might have been intended to distinguish the suit from rape, but also possibly an attempt to attract a "politer sort of litigant."<sup>25</sup> The court records certainly support this theory, as crim. con. clientele were almost exclusively members of the aristocracy from the late-seventeenth century through the mid-eighteenth century (see Table 1). One reason for this was undoubtedly the high cost of filing the suit, which could only be heard in Westminster Hall, where the central common law courts of King's Bench and Common Pleas were located. Rising legal fees, combined with travel expenses and accommodations for the litigants and their witnesses

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<sup>21</sup> Ibid., 232-233.

<sup>22</sup> Ibid., 233. Scholars have attributed this to the charisma and efficiency with which Lord Chief Justice Mansfield ran the Court of King's Bench. Ibid. For more on Mansfield, see James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004).

<sup>23</sup> Stone, *Road to Divorce*, 296.

<sup>24</sup> Ibid., 296; Turner, *Fashioning Adultery*, 175.

<sup>25</sup> Ibid.

in London, limited litigants to the upper- and upper-middling orders of society.<sup>26</sup> In the following decades, as the proportion of elite litigants increased, the number of crim. con. cases nearly doubled.<sup>27</sup> By the end of the eighteenth century, crim. con. had developed into an established legal phenomenon.

*Men of Title Involved in Criminal Conversation Actions*

Date	Total actions	Men of title			Total plaintiffs & defendants	% of men of title
		Plaintiffs	Defendants	Total		
1700-49	23	6	7	13	46	28
1750-69	29	2	4	6	58	10
1770-89	68	10	9	19	136	14
1790-1809	124	14	14	28	248	11
1810-29	96	17	14	31	192	16
1830-57	c.80+	2	5	7	c.160	4
1700-1857	c.420	51	53	104	c.840	

Table 1: Men of Title Involved in Criminal Conversation Actions

### A Legal and Cultural Phenomenon

A confluence of factors contributed to the emergence of the crim. con. suit in its eighteenth-century form. In addition to England's prohibition of divorce and the overlapping legal systems that shared jurisdiction over matrimonial disputes, the ecclesiastical courts likewise declined as an efficient avenue for settling such disputes. An

<sup>26</sup> Stone, *Road to Divorce*, 247. Even when men from the middling ranks began bringing the suit in greater numbers after mid-century, aristocrats represented one or both parties in the highest-profile cases.

<sup>27</sup> *Ibid.*, 245-247. During the second-half of the eighteenth century many crim. con. actions were uncontested. Plaintiffs won their suits in the King's Bench by default and a sheriff's jury -- most often the Middlesex jury, due to the large number of plaintiffs who resided in London -- determined the damages. For plaintiffs residing outside of London, however, damages could be determined by a sheriff's jury in the assizes of the plaintiff's county of residence. *Ibid.*, 235.

additional factor was the decision in the common law courts to expand their function to include awarding monetary damages for any tort, which entailed broadening the definition of “trespass” beyond “a remedy for mayhem, battery, or wounding” to include a husband’s charge of “trespassing” against his wife’s seducer, which was defined as “criminal conversation.”<sup>28</sup> As an action of trespass, the offense of seducing a married woman entailed the violation of the husband’s property in his wife, and the legal language of crim. con. (and ecclesiastical) suits typically emphasized that the offender had had “carnal knowledge of the wife’s body.” The wife, therefore, was a passive figure in the crim. con. action, and could not testify or enter any evidence on her behalf during the trial.<sup>29</sup>

In the early period of the action, the husband brought the suit against his wife’s lover under the pretense of wounded honor, the objective being to collect monetary compensation for an injured reputation. By the middle of the eighteenth century, the principle of the action was recompense for the “loss of comfort and society” the husband experienced as a result of his wife’s seduction.<sup>30</sup> Scholars have pointed to this discursive shift as an indicator of changing notions of masculinity and male honor in eighteenth-

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<sup>28</sup> *Ibid.*, 237, 232-233; Turner, *Fashioning Adultery*, 6.

<sup>29</sup> This was due in part to the general rule prohibiting women from bringing suits in secular courts. Historians have pointed to women’s lack of legal agency in the common law system and argued that the Court of Arches provided an opportunity for women to defend their reputations against decisions made against them in lower courts. *Ibid.*, 146-147. See also Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996); Ingram, *Church Courts*; Tim Meldrum, “A Women’s Court in London: Defamation at the Bishop of London’s Consistory Court, 1700–1745,” *London Journal* 19 (1994): 1-20; Donna Andrew, “Adultery A-La-Mode’: Privilege, the Law and Attitudes to Adultery, 1770-1809,” *History* 82, Issue 265 (January 1997): 5-23.

<sup>30</sup> Stone, *Road to Divorce*, 287. Susan Staves, “Money for Honor: Damages for Criminal Conversation,” *Studies in Eighteenth Century Culture* 11 (1982): 279-297; Donna Andrew, “The Code of Honor and its Critics: The Opposition to Duelling in England, 1700-1850,” *Social History* 5, Issue 3 (October 1980): 499-434.



century Britain, and have linked this change to emerging attitudes towards marriage that emphasized domestic happiness and spousal companionship over the traditional view of wives as the property of their husbands.<sup>31</sup> The new legal description of the offense as an injury to spouses rather than an injury to the individual man of honor was certainly significant, but this development should not be interpreted as evidence of the declining importance of defending personal honor and reputation from insult.<sup>32</sup> Rather, it was precisely because of the continued importance of honor and reputation in society that crim. con. became popular in eighteenth-century Britain; articulating the offense as a “loss of comfort and society” was merely an extension of this. The nature of personal honor was shifting in this period, and contemporaries used these trials as a space for negotiating the defining features -- both positive and negative -- assigned to notions of status and reputation.

It was not only the premise of the crim. con. suit, but also the trial process that played a role in challenging and shaping notions of honor. The crim. con. jury confirms the importance of status and reputation not only in the trial itself, but in wider eighteenth-century society. While most jury trials featured jurymen from the lower-middling orders, crim. con. cases were tried by a special jury, composed of twenty-four “gentlemen of

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<sup>31</sup> Stone, *Road to Divorce*, 237-238, 241-242, 287. Recent scholarship on the family and notions of companionate marriage in early modern England highlights the uneven emergence of new marital practices and philosophies. See, for example, Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800* (Cambridge: Cambridge University Press, 2003); Naomi Tadmor, *Family and Friends in Eighteenth-Century England: Household, Kinship, and Patronage* (Cambridge: Cambridge University Press, 2001); Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (Harlow, England: Longman, Ltd., 1999); Alexandra Shepard, *The Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2003); Susan Staves, *Married Women's Separate Property in England, 1660-1833* (Cambridge, MA: Harvard University Press, 1990); Anthony Fletcher, *Gender, Sex and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1996).

<sup>32</sup> Stone, *Road to Divorce*, 237-238, 241-242, 287; Robert Shoemaker, “The Decline of Public Insult in London, 1660-1800,” *Past and Present*, no. 169 (Nov. 2000): 98-99.

fortune” from the upper-ranks of society. These men were deemed more qualified because they “were thought to be more sensitive to the value of honour to a gentleman than were” men of lower rank.<sup>33</sup> Special jurors initially included prominent freeholders, knights, and urban gentry, but by the second half of the eighteenth century, crim. con. trials were heard mostly by special juries comprised of wealthy London merchants, many of whom gained considerable experience by sitting on multiple crim. con. juries (occasionally in the same day<sup>34</sup>), which further increased their “qualifications.”<sup>35</sup> The main criteria for securing a guilty verdict was proof of the “seduction” (adultery), which relied heavily on circumstantial witness testimony, and no evidence of collusion between any of the parties. When determining the amount of the damages rewarded, however, the jury took the status and reputation of both the plaintiff and the defendant into consideration.<sup>36</sup> At the trial’s conclusion, the judge provided instructions to the jury with regards to relevant legal guidelines, pertinent details of the case, and the criteria for

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<sup>33</sup> Stone, *Road to Divorce*, 234-235.

<sup>34</sup> The 1790 crim. con. trials *Cecil v. Sneyd* and *Barttelot v. Hawker* were heard back-to-back in the Court of King’s Bench. *Two Actions for Criminal Conversation, With the Whole of the Evidence; Both Tried...On Wednesday, June 26, 1790: The first between Henry Cecil...Rev. William Sneyd. The second between Hooker Barttelot...and Samuel Hawker* (London, [1790]). This point was likewise made in *A New collection of trials for adultery, or, General history of modern gallantry and divorces: containing a variety of the most remarkable trials heard and determined in the Courts of Doctors' Commons ... from the year 1780 to the present time* (London, 1799). See also *Barttelot v. Barttelot* (1790), Divorce (adultery), LPCA: G 153/37.

<sup>35</sup> Stone, *Road to Divorce*, 234-35. Additional scholarship on eighteenth-century juries and jurors includes Thomas Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago Press, 1985); Peter King, “Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800,” *The Historical Journal* 27, no. 1 (1984): 25-58; J.S. Cockburn and Thomas A. Green, eds., *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, N.J.: Princeton University Press, 1988).

<sup>36</sup> Stone, *Road to Divorce*, 242-47. James Oldham, *English Common Law in the Age of Mansfield* (Chapel Hill: University of North Carolina Press, 2004).

assessing and awarding damages. The jury then deliberated the amount of damages (if any) that ought to be awarded to the plaintiff.<sup>37</sup>

Witnesses were almost always family, friends, or neighbors, with the most crucial among these being domestic servants. As the overwhelming majority of litigants in crim. con. cases were social elites, servants were a staple of their household family and had access to the most intimate behavior conducted in the home.<sup>38</sup> This demonstrates the range of groups and individuals in eighteenth-century British society that were involved with evaluating, debating, and enforcing notions of honor. These issues lay at the heart of the crim. con. trial and helped propel it from a burgeoning legal transpiration into a full-blown cultural phenomenon.

Stone has described the early history of the crim. con. action as an “era of stagnation,” with only fourteen cases occurring during the period spanning 1692-1730.<sup>39</sup> A closer examination of this period by decades, however, reveals that the suit was experiencing a steady rise in popularity, with the number of actions consistently increasing (see Table 2). If we extend the period by a decade to 1740, the total number of trials recorded increases from fourteen to twenty-three. There were seven suits that went

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<sup>37</sup> Ibid., 234. In eighteenth-century trials, juries reached a decision very quickly, sometimes in a matter of minutes. On some occasions the jurors did not even leave the room, and remained instead in the jury box where they conferred on the merits of the case in whispers. The average time of deliberation increased significantly in the early nineteenth century, a development Stone attributes to a growing sense of responsibility among jurors.

<sup>38</sup> Ibid., 211. See also Meldrum, “Women's Court in London;” Ingram, *Church Courts*; and Gowing, *Domestic Dangers*.

<sup>39</sup> Stone, *Road to Divorce*, 246. By 1800 a previous crim. con. action -- or a plausible explanation for the lack of one -- was required in order for Parliament to even consider granting a private divorce. This did not, as Stone points out, mean that all crim. con. suits were brought for this purpose, especially in the eighteenth century. Not every crim. con. suit was followed by a petition for divorce, and in the eighteenth century not every successful crim. con. suit guaranteed that Parliament would grant a divorce if a petition was filed. Stone also points to five cases in the eighteenth century where a crim. con. suit had ended in an acquittal or only “derisory” damages awarded, but Parliament still granted a private divorce. Ibid., 324-325.

to trial in the 1740s, and this number more than doubled in the 1750s and 1760s, with seventeen and eighteen actions each decade, respectively. The number doubled again over the following two decades, with thirty-six suits in the 1770s and thirty-seven brought in the 1780s. The apogee of the crim. con. action was the 1790s, when seventy-three cases

<i>Recorded Criminal Conversation Actions, 1680-1849</i>	
Decade	No.
1680-9	2
90-9	2
1700-9	3
10-19	3
20-9	5
30-9	7
40-9	7
50-9	17
60-9	18
70-9	36
80-9	37
90-9	73
1800-9	52
10-19	49
20-9	47
30-9	44
40-9	c.35

Table 2. Recorded Criminal Conversation Actions, 1680-1849

went to trial. The number of cases the following decade dropped relatively sharply to fifty-two, although this number was still higher than the thirty-seven actions recorded in

the decade preceding crim. con.'s "peak."<sup>40</sup> The number of trials continued to slowly decline during the first half of the nineteenth century until the action was formally abolished with the 1857 Divorce Act.<sup>41</sup>

Although its lifespan covers the period from the mid-seventeenth century through the nineteenth century, the eighteenth century was a singular moment in the history of the crim. con. suit. In the opening decades, the trials were deemed legitimate legal actions, but exposing such intimate matters in court for profit was not culturally acceptable. By the 1760s, however, crim. con. was not only tolerable, it was thriving as a legal and cultural phenomenon. What fueled the trial's popularity during this period? What motivated the litigants to bring the suit in the first place? The common law courts' expansion of the definition of trespass was certainly an effort to increase business, but this does not account for the crim. con. trial's appeal beyond the litigants inside the courtroom. As Stone rightly observed, "it was one thing to set up the legal machinery, and another to persuade the public to use it."<sup>42</sup>

While the issues of privacy and private life are fundamental to the eighteenth-century crim. con. trial, publicity was key in its evolution. At its inception, crim. con. was a tool for husbands to force their wives' seducers into private compensation for cuckolding them. This was still in practice in the early eighteenth century, its appeal

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<sup>40</sup> Many contemporaries were alarmed by the spectacular proliferation of suits in the 1790s. In 1800, Lord Auckland introduced a bill criminalizing adultery described as "for the purpose of doing away with the action for criminal conversation." While the bill was ultimately defeated, Stone notes that it enjoyed considerable support in Parliament and among the populace. *Ibid.*, 287-288.

<sup>41</sup> *Ibid.*, 290-91. The abolition of the crim. con. action was included in a clause for the 1857 Divorce Act. The amendment passed the House of Lords by a vote of 78-46, but when the bill reached the House of Commons, the members added a clause that retained a form of the crim. con. suit under a different name. This "action for damages for adultery" remained on the book until 1970. *Ibid.*, 294-295.

<sup>42</sup> *Ibid.*, 237.

being that it allowed the husband to receive financial compensation for the seduction without either parties having to endure the publicity of a trial.<sup>43</sup> Publicizing the adultery brought public shame for all the parties involved, which functioned as a deterrent in the beginning for elite litigants who could afford the legal process. The number of crim. con. trials increased in proportion to the publicity they received, which appeared also to be connected with the amount of damages awarded (see Table 3). In the period between

*Damages over £2,000 in Criminal Conversation Actions,  
1680-1857*

Decade	£2,000-2,999	£3,000-4,999	£5,000-9,999	£10,000 +	Total
1680-9			1		1
90-9					0
1700-9					0
10-19			1		1
20-9					0
30-9				1	1
40-9	1		1	1	3
50-9	2				2
60-9	1				1
70-9				2	2
80-9	2	1	1		4
90-9	4	5	5	4	18
1800-9	3	4	4	8	19
10-19	7	5	4	6	22
20-9	4	3	7		14
30-9	5	4		1	10
40-9	5	3	3	1	12
50-7	4	3			7
<b>Total</b>	<b>38</b>	<b>28</b>	<b>27</b>	<b>24</b>	<b>117</b>

Table 3. Damages Over £2,000 in Criminal Conversation Actions, 1680-1857

<sup>43</sup> Ibid., 244-245.

1692 and 1742, seven major crim. con. trials received extensive coverage in print form (out of roughly twenty-three cases tried), beginning with the Norfolk trial.<sup>44</sup> The Duke of Norfolk's divorce from his wife on grounds of adultery was initiated in 1692 and settled in 1700, and established a precedent not only as a legal avenue for wealthy litigants, but also in terms of the publicity and scandal the case generated. The 1690s was a crucial moment for the crim. con. trial not only for the precedent of the Norfolk scandal, but also for a significant development in Britain's print culture: the lapsing of the Censorship Act in 1695. This provided a "green light" for publishing material that was previously prohibited or at least very tedious to acquire permission for publication. *Norfolk v. Germaine* was the first widely-publicized crim. con. trial, and it provided printers with a sense of the potential profit to be made from publishing similar aristocratic scandals. Reproducing official court records provided legitimacy for publicizing illicit information pertaining to the sexual (mis)behavior in prominent people's private lives. The result was an expanding print culture that magnified the spectacle of the crim. con. trial.

Crim. con. publications developed out of a growing trend of publishing summary accounts of criminal trials begun in the mid-seventeenth century with the *Old Bailey Proceedings*.<sup>45</sup> These accounts evolved from brief abstracts to verbatim transcripts of trial proceedings. Official court records did not include the arguments of the lawyers and the judge's instructions to the jury.<sup>46</sup> In the eighteenth century, however, stenographers began

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<sup>44</sup> Ibid., 430; Turner, *Fashioning Adultery*, 180. They were: *Norfolk v. Germaine (Jermaine)*; *Dormer v. Jones* (1715); *Abergavenny v. Lyddel* (1730); *Gouldney v. Harvey* (1732); *Cibber v. Sloper* (1738, 1739); *Biker v. Morley* (1741); and *Morice v. Fitzroy* (1742).

<sup>45</sup> Stone, *Road to Divorce*, 249.

<sup>46</sup> Ibid., 45.

transcribing this information for use by members of the legal profession (many publications noted on the title page that the trial account had been “taken in short-hand by a civilian” -- usually a student of the civil law -- which infused the account with a sense of legitimacy for the readers<sup>47</sup>) and this information was included in printed crim. con. tracts.<sup>48</sup> Individual adultery trial accounts began appearing in the 1690s; by the end of the century such accounts were commonplace and were even popular enough to be organized into published collections of sensational trials, such as the seven-volume *Trials for Adultery* (1780).<sup>49</sup> This kind of literature emerged alongside other “intimate” genres such as “secret histories” and novels which provided readers access (real or imagined) into the private lives of others.<sup>50</sup>

### “Crim. Con.” and Eighteenth-Century British Society

Historians have studied crim. con. trials alongside other adultery trials to explore contemporary attitudes and practices related to the family, marriage, and divorce.

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<sup>47</sup> Urmi Bhowmik, “Facts and Norms in the Marketplace of Print: John Dunton’s *Athenian Mercury*,” *Eighteenth-Century Studies* 36, no. 3 (Spring, 2003): 351.

<sup>48</sup> Stone, *Road to Divorce*, 28.

<sup>49</sup> Stone, *Road to Divorce*, 28; *Trials for adultery: or, the history of divorces. [...] From the year 1760, to the present time. [...] The whole forming a complete History of the Private Life, Intrigues, and Amours of many Characters in the most elevated Sphere...*, 7 vols. (London [1779-]1780).

<sup>50</sup> Turner, *Fashioning Adultery*, 193. The crim. con. phenomenon can be situated within the context of the history of celebrity, and specifically the emerging form of “celebrity culture” in eighteenth-century Britain. For examples, see Leo Braudy, *The Frenzy of Renown: Fame and Its History* (New York: Oxford University Press, 1986); Mary Luckhurst and Jane Moody, ed., *Theatre and Celebrity in Britain, 1660-2000* (New York: Palgrave Macmillan, 2005); Anna Clark, *Scandal!: The Sexual Politics of the British Constitution* (Princeton: Princeton University Press, 2004); Paula Byrne, *Perdita: The Literary, Theatrical, Scandalous Life of Mary Robinson* (New York: Random House, 2004); Katherine Kittredge, ed. *Lewd and Notorious: Female Transgression in the Eighteenth Century* (Ann Arbor: University of Michigan Press, 2003). For an account of the parallel development in Britain’s colonies and across the Channel, respectively, see James Epstein, “The Politics of Colonial Sensation: The Trial of Thomas Picton and the Cause of Louisa Calderon.” *American Historical Review* 112, no. 3 (June, 2007): 712-741; Sarah Maza, *Private Lives and Public Affairs: The Causes Celebres of Prerevolutionary France* (Berkeley: University of California Press, 1993).



Scholars have also used these trials to investigate attitudes towards adultery, sexual morality, and gender roles, and have identified the importance of these sources as commentary on larger political and social issues with which contemporaries were faced. None, however, has treated the crim. con. trial independently, as an entity in which the myriad interrelationships displayed in the trial proceedings constitute a microcosm of eighteenth-century British society.<sup>51</sup> These trials reveal more than marital breakdown or the changing cultural meaning of adultery. The crim. con. phenomenon illuminates the profound and pervasive preoccupation with the private in eighteenth-century Britain. These issues generated enormous publicity in various forms. The 1730 *Abergavenny v. Lyddel* trial, for example, was printed and sold in pamphlet form at the time of the trial, and an account of the proceedings was included in collections of trials for criminal conversation and adultery published throughout the century. Crim. con. was likewise referenced in plays, newspapers, and even foreigners' travel letters.<sup>52</sup> Crim. con. trials and the literature they inspired, therefore, represent a particularly rich set of sources for considering definitions of "public" and "private" in eighteenth-century Britain.

Over the course of the century, the legal procedure of the trials, as well as the published accounts reporting them, indicate a growing awareness of a "private life."

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<sup>51</sup> Stone, *Family, Sex and Marriage in England, 1500-1800* (New York: Penguin Books, 1990); *Ibid.*, *Road to Divorce*; David Turner devotes a chapter to crim. con. in his analysis of public and private debates about the meaning of adultery in the late-seventeenth and early-eighteenth century in *Fashioning Adultery*, 172-193; Sarah Lloyd uses adultery trial publications, including crim. con. accounts, from the 1780s to trace the sexualization of popular landscape terminology, as editors of trial literature used these terms as "slang" for female genitalia, and her three main examples are divorce trials that were preceded by highly publicized crim. con. trials in "Amour in the Shrubbery: Reading the Detail of English Adultery Trial Publications of the 1780s," *Eighteenth Century Studies* 39, no. 4 (2006): 421-442); Susan Staves explores the link between civil damages and honor in "Money for Honor."

<sup>52</sup> Stone, *Road to Divorce*, 254; Shoemaker, "Decline of Public Insult," 120. For contemporary examples, see William Congreve, *The Way of the World* (1700), quoted in Stone, *Road to Divorce*, 254; and Lady Mary Wortley Montagu's letter to Lady Pomfret, 4 Nov. 1742, in Robert Halsband, ed., *The Letters of Lady Mary Wortley Montagu* (Oxford: Oxford University Press, 1965), 2:295.

Historians tend to begin the history of private life with the Reformation and the emergence of the internally-pious, privately-devotional Christian. The concurrent rise in literacy and the improvements in printing technologies fostered the emergence of a private self and “private sphere.”<sup>53</sup> The crim. con. action evolved during a transition in English legal philosophy concerning the role of the state in regulating private matters. The intersection of publicity, privacy, and the law is evident in the growing tendency to exploit private scandal for the “public good.” The expanding print culture offered a perfect medium to maximize the publicizing of private life already unfolding in the court room.<sup>54</sup>

In England, the most prolific crim. con. coverage was devoted to trials that involved members of the social elite, which frequently included members of the government and even on occasion members of the royal family.<sup>55</sup> These trials, and their popularity in print form, reveal more than political sentiments, however; they provide a window onto Britain’s dynamic society as a whole. The crim. con. trial can therefore be

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<sup>53</sup> Roger Chartier, ed, *A History of Private Life*, vol. III: *Passions of the Renaissance*, ed. Phillippe Ariès and Georges Duby, trans. Arthur Goldhammer (Cambridge, MA: Harvard University Press, 1989).

<sup>54</sup> There was a flourishing market for published accounts of sex scandals in both England and France during this period. Historians such as Anna Clark and Sarah Maza have illuminated the politically subversive nature of many of these publications and have shown how they were sources that both documented and shaped public opinion in the late eighteenth century. Clark, *Scandal!: The Sexual Politics of the British Constitution* (Princeton: Princeton University Press, 2004); Maza, *Private Lives and Public Affairs*.

<sup>55</sup> The sensational 1770 crim. con. trial of Lord Richard Grosvenor against the king’s brother, Henry Frederick, Duke of Cumberland generated an enormous amount of publicity. See, for example, *The whole proceedings at large, In a Cause on an Action Brought by The Rt. Hon. Richard Lord Grosvenor against His Royal Highness Henry Frederick ...* (London, [1770]); *The trial of His R. H. the D. of C.... For criminal conversation with Lady Harriet G-----r* (London, [1770]); *The genuine copies of letters which passed between His Royal Highness the Duke of Cumberland and Lady Grosvenor*, 5th ed. (London, [1770]); *A full and complete history of His R---l H---ss the D- of C-d, and Lady G---r; the fair adultress*, 2 vols. (Dublin, [1770]). Following his successful crim. con. suit, Lord Grosvenor brought another action in the Doctors Commons against his wife, Henrietta, for adultery. S. Bladon, *Trials for Adultery*, (London, 1779-80). The publisher devoted the entire fourth volume in this seven-volume collection to the adultery trial between Lord and Lady Grosvenor.

viewed as a medium that exposed the central foundations of eighteenth-century British culture. It was a space in which contemporaries attempted to organize and control the changing world around them, and rearticulate their place within it. This work uses crim. con. to investigate not only the ways in which contemporaries conceptualized various personal and social relationships, but also to explore changes in material culture, print culture, and definitions of gender, honor, and reputation. These developments, in turn, will each be examined within the larger framework of an evolving eighteenth-century culture of privacy.

The exposure in crim. con. was not limited to details of intimate personal interactions; the trials also provided a context in which the spatial boundaries between the private and public could be debated. In their testimonies witnesses paid as much attention to where in the house the adultery occurred as they did to the illicit behavior they had observed. For this reason, crim. con. trials also offer a unique window for examining the physical development of private space in eighteenth-century architecture.

Crim. con. trials were also a space for negotiating ideas of gender and a close analysis of crim. con. trial records complicates many of the categories used by historians—particularly historians of gender—studying eighteenth-century British society. Scholars typically employ the “separate spheres” model for studies of women’s and gender history, which identifies an emergence of two separate, gendered spheres -- a “private” or “domestic” sphere for women, and a “public” (and usually “political”) sphere for men -- in the late eighteenth- or early nineteenth-century. The public-private dichotomy has been a useful tool for historians, and gender analysis remains central to any evaluation of the

changing notions of public and private. However, the history of crim. con. demonstrates that definitions of “male” and “female” cannot be easily imposed onto strict distinctions between public and private. Rather, historians must consider such categories as sex and gender within each the respective notions of “public” and “private.” This examination of the evolution of concepts of privacy in criminal conversation trials will investigate gender relationships within the household, between master and mistress, master and servant, and within the servants’ quarters, alongside gendered experiences in the courtroom and constructions of masculine and feminine identities in printed trial accounts, and how these changed over the course of the eighteenth century. This research, therefore, will be in conversation not only with historians of eighteenth-century law, space, and print, but also with scholars of gender and culture who have explored the relationship between gender and the public-private dichotomy in a number of different historical contexts.<sup>56</sup> The significance of studying the private cannot be limited to its relation to gender. The tension between concealment and exposure of the private is paramount for understanding both the intimate minutiae of daily life and contemporary conceptualizations of society.

Historians have articulated multiple ways of investigating eighteenth-century society through the use of conceptual models that most frequently organize contemporary experiences into categories based on socio-economic status, political participation, and

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<sup>56</sup> The literature on gender and private life is vast, but some important examples include Amanda Vickery, “Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women’s History,” *The Historical Journal* 36, no. 2 (June 1993): 383-414; Robert B. Shoemaker, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres?* (Harlow, England: Addison Wesley Longman, 2001); Hannah Barker and Elaine Chalus, eds., *Gender in Eighteenth-Century England: Roles, Representations and Responsibilities* (Harlow, England: Longman, 1997); Karen Harvey, *Reading Sex in the Eighteenth Century: Bodies and Gender in English Erotic Culture* (Cambridge: Cambridge University Press, 2004); Shepard, *Meanings of Manhood*.

commercial activity.<sup>57</sup> These are generally formulated within one of three customary frameworks that conceptualize society either as a polarized, binary entity, as a triadic social system in which the “middle” group is ultimately the most dominant, or as a traditional hierarchical structure of ranks and orders.<sup>58</sup> Historians have used these models to explore various aspects of British culture during the “long” eighteenth century, often for the purpose of charting Britain’s transition from an early modern to a modern society. All of these models share another common theme: they depict, implicitly if not explicitly, the social conflicts that emerged out of contemporary struggles for power. Historical conceptions of this era are invested in the question of whether society was one of stability and order or one marked by conflict, either open or perpetually seething beneath the surface. Proponents of the social-stability interpretation are more likely to embrace the hierarchical model, whereas scholars that characterize contemporary society by conflict more often employ the dichotomous or triadic models.

We can explore these same questions of stability vs. conflict and premodern vs. modern, through the study of privacy. Ultimately, the underlying issue in the eighteenth-century crim. con. phenomenon is power. Crim. con. trial accounts reveal a struggle for power that was located in the control of knowledge about the private -- most importantly,

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<sup>57</sup> David Cannadine, *Rise and Fall of Class*; E.P. Thompson, *Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993); Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London, 1660-1730* (Berkeley: University of California Press, 1989); Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley: University of California-Berkeley Press, 1996); Lawrence Klein, “Politeness and the Interpretation of the British Eighteenth Century,” *The Historical Journal* 45, no. 4 (2002): 869-898; Paul Langford, *A Polite and Commercial People. England, 1727-1783* (Oxford: Oxford University Press, 1993); Kathleen Wilson, *The Sense of the People: Politics, Culture and Imperialism in England, 1715-1785* (Cambridge: Cambridge University Press, 1998).

<sup>58</sup> For a more detailed discussion of these social models, see Cannadine, “The Eighteenth Century: Class Without Class Struggle,” in *Rise and Fall of Class*, 25-58.

personal control over the concealment (or exposure) of one's own privacy. Power was also attainable through access to (and knowledge of) other people's private life, as well as through control of the media and technologies for publicizing the private. Organizing society according to levels of intimacy, rather than according to political, economic, or other divisions, offers a different perspective on eighteenth-century culture and provides new insight into the nature of contemporary struggles for power. In particular, it highlights a more nuanced power-struggle that pervaded eighteenth-century Britain than what is addressed in the traditional historiographical interpretations. Studying privacy reveals a power struggle rooted in knowledge, but particularly a knowledge of the private, or "intimate knowledge."<sup>59</sup> Scholars have discussed the emerging methods of social control during this period.<sup>60</sup> Crim. con. trials reveal a similar power struggle, but one that was not only focused on the physical control of bodies (through official punishment, imprisonment, transportation, or hospitalization). In this status-seeking society that valued reputation arguably as much as it valued life and property, access to privacy yielded power over reputation, thus it was control of the private -- one's own private life and intimate experiences as well as control of other people's knowledge of it -- that yielded power.<sup>61</sup>

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<sup>59</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977).

<sup>60</sup> Ibid.; Peter King, "Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800," *The Historical Journal* 27, no. 1 (1984): 25-58, esp. pp. 25-27; Randall McGowen, "Civilizing Punishment: The End of Public Execution in England," *Journal of British Studies* 33, no. 3 (July 1994): 257-282; ibid., "The Body and Punishment in Eighteenth-Century England," *Journal of Modern History* 59, no. 4 (December 1987): 651-679.

<sup>61</sup> Paul Langford, *A Polite and Commercial People. England, 1727-1783* (Oxford: Oxford University Press, 1993); Faramerz Dabhoiwala, "The Construction of Honour, Reputation and Status in Late Seventeenth- and Early Eighteenth-Century England," *Transactions of the Royal Historical Society* 6 (1996): 201-213.

My analysis of crim. con. reveals an eighteenth-century British society comprised of three layers of community that can be conceptualized as concentric spheres of relations. A defining characteristic of each layer is the level and nature of intimacy in those relations. Within the smallest layer -- the domestic realm -- relationships were more intimate and involved direct contact with other members of that community (the household, and members from other households in the surrounding geographic area). The next level of community was the legal realm, which featured direct and personal relations among members, but was a less intimate, more ritualized, depersonalized form of interaction. It was also a space in which notions of ideal relations were negotiated and applied to other levels of community, including the most intimate sphere. This included the struggle to define social and cultural identities such as gender, husband and wife, matron and patriarch, and servant, in order to regulate the “appropriate” social behaviors for each. The third (and largest) level of community was the most complex. It was in many ways both the most intimate and the least intimate, encompassing the greatest number of people but characterized by the least amount of direct personal interactions. This “public realm” exposed and circulated the most private details of life at the most intimate levels of community. People in disparate parts of the country could know the sexual indiscretions of a person whom they had never -- and would never -- meet. As crim. con. trials developed into a full-blown cultural phenomenon over the course of the century, there was a more concrete sense of a “private life,” but it was, ironically, only legitimized through its highly public exposure.

The domestic sphere was a site in which conceptions of privacy were physically constituted, but these meanings were constantly challenged by the transgressions of existing boundaries, especially by servants. Crim. con. trials illustrate how, through violating boundaries delineating private space, domestic servants also contested the social hierarchy of the household. Servants who attained knowledge of their superiors' privacy -- which, in crim. con., meant they had witnessed their mistresses' infidelity -- gained a sense of power over them. In order to retain power over the private and reassert the traditional social hierarchy in the household, husbands sought damages from their wives' lovers through actions for criminal conversation. The trials relied heavily on the witness testimony of servants, and the trial process functioned to remove control over the private from the servants and return it to the master of the house. The trials, however, ultimately succeeded only in returning servants to the bottom of the private-power hierarchy. Rather than regaining control over their privacy in the legal sphere, the plaintiff-husbands effectively surrendered any authority over the publicizing and circulation of knowledge of their private lives.

In the domestic realm, the circulation and dissemination of "private knowledge" was achieved through the direct, personal exchange of information between people (oral gossip). In the legal realm, as in the domestic, "private knowledge" was made public via oral transmission, but in a much more formal, regulated, and depersonalized fashion. Servant-witnesses had to testify in open court, with their identity (which included name, age, place of birth, profession/employer, and relation to the parties involved in the case)



then a matter of public record. Their “private knowledge” was revealed through responses to specific questions posed by the legal counsels.

The courtroom was traditionally an arena in which elites enjoyed considerable power. By the eighteenth century, however, the legal realm had expanded far beyond the walls that encased legal institutions, such as Westminster Hall and the Inns of Court, and even beyond the narrow audiences that formerly comprised legal professionals and members of the government or the court who had a formal or informal interest in the legal affairs. The jurisdiction of the central common law courts expanded in the eighteenth century to cover a wide array of offenses, including crim. con. suits. The broadening definition of trespass, coupled with a 1730 statute that mandated the translation of legal proceedings and decisions from Latin into English, meant that the range of private disputes settled in the courtroom were accessible (and legible) to a much wider audience.<sup>62</sup> Not only was the legal sphere expanding, it also intersected with the public sphere, particularly through the publication of trial proceedings. This practice gained in popularity during the long eighteenth-century and the publications formed their own genre of trial literature.

The legal realm was the most controlled, regulated layer of community. The private was exposed in public, but the people directly involved were all identified, publicly known. In the courtroom, the audience was also visible, which ensured that the people consuming the “private knowledge” were also known (or at least seen) by the

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<sup>62</sup> Statute 4 Geo. II c.26; William Blackstone, *Commentaries on the Laws of England*, 5th ed. (Oxford, 1773), 3:21, 322-323. Court records and legal decisions were translated from French to Latin during the reign of Edward III. They were temporarily kept in English under Cromwell, but reverted to Latin until the 1730 statute. Ibid.

plaintiffs. In this way, the men enjoyed a sense of control not only over the private details revealed by their servants' testimonies, but also because their status in the highly-regulated trial procedure fostered a sense of control over the publicizing of their privacy before the court. This level of control was mostly contained within the perimeters of the courtroom, however. The legal sphere beyond the court's physical structures expanded in the eighteenth century, and the private disputes brought before the law were recorded, printed, and published for profit. The popularity of published crim. con. accounts fueled the circulation and consumption of "private knowledge" about the litigants in the public realm of print. The plaintiff-husband's exercised little if any control of the publicity of their private affairs, thereby negating much of the power regained from their insubordinate servants during the trial.

The crim. con. trial testimonies reveal a social hierarchy of power-relations rooted in privacy. It was through challenging and contesting the boundaries of public and private -- whether by physically or visually transgressing material boundaries, by behaving contrary to prescribed social roles, by exposing the secrets of another, and even by simply knowing intimate details about someone's private life -- that individuals and groups could achieve and exercise agency in eighteenth-century Britain. In the domestic sphere, servants achieved this through spying on their mistress but withholding their knowledge from their master. The traditional hierarchy became inverted through this process and an alternative hierarchy was established in which the servants enjoyed power over their masters based on their possession of their superiors' secrets. The masters, once they became aware of the situation, brought a crim. con. action in London to reassert their

authority in the home. Within the legal sphere, there were dueling hierarchies. The traditional, patriarchal hierarchy was acknowledged, but reinforced only within the domestic realm. The crim. con. trial fostered another hierarchy in which legal professionals (lawyers and judges), along with merchant jurors, mediated and controlled the private life (and thus the power) of the aristocratic plaintiffs. Within the public sphere there was also a hierarchy based on “private knowledge,” with those who controlled the publicizing of “private knowledge” at the top, those who consumed or acquired “private knowledge” (via print, theatre, gossip, or other means) as the middling order, and those without control over their privacy at the bottom.<sup>63</sup>

Understanding eighteenth-century British society as one organized by levels of intimacy, therefore, produces a vision of a society characterized by the same dynamism, mercuriality, and mutual reciprocity as the one represented in traditional social histories of the period, and that likewise shares the same underlying power struggle rooted in knowledge. It differs, however, by privileging personal intimacy – by locating power in control of the private, the ability to keep one’s secrets. It reveals individuals and groups that were formerly separated according to socio-economic status, political activism (or political representation), or commercial interests, coexisting or in conflict within the different levels of the “intimate model.” Despite their pronounced socio-economic differences, most eighteenth-century Britons shared a preoccupation with the private, and

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<sup>63</sup> Robert Robson, *The Attorney in Eighteenth-Century England* (Cambridge: Cambridge University Press, 1959). For a broader account of the professions during this period, see Wilfred Prest, ed., *The Professions in Early Modern England* (London: Croom Helm, 1987), and Penelope J. Corfield, *Power and the Professions in Britain, 1700–1850* (London: Routledge, 1995).

this concept served as a means of contemplating the personal experiences, interpersonal relations, and the material environments each navigated in the course of their lives.

## Chapter One: The Space of the Home

*Quid enim sanctius, quid omni religione munitius, quam domus unusquisque civium?*  
[What more sacred, what more strongly guarded by every holy feeling, than a man's own home?]<sup>64</sup>

-- Marcus Tullius Cicero

Chapter one explores the eighteenth-century domestic interior. Just as the space of the home was the primary site of “criminal conversation,” this chapter lays the foundation for an historical analysis of crim. con. trials and establishes the context of their larger significance in eighteenth-century British society. Concerns about security pervaded British culture during this period. They were discernible in the laws on property and ownership and were equally prevalent in contemporary literature. The domestic realm was a primary site where this new concern was expressed. Eighteenth-century conceptions of private property celebrated the “Englishman’s castle” -- the house and its human and material occupants. The house was a symbol of power for those who were fortunate enough to own one, therefore it is unsurprising that the protection of the home was a top priority in the eighteenth century. There was a widespread preoccupation with the protection of private property, and Britons used both legal and material means to achieve this. The manner in which mechanisms of security developed within the domestic realm, however, reveals another concern that pervaded the period: privacy. The

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<sup>64</sup> Quoted in Blackstone, *Commentaries*, 4:223. This principle was established as common law a century earlier by Sir Edward Coke in *The Institutes of the Laws of England* (1628), when he stated, "For a man's house is his castle, *et domus sua cuique est tutissimum refugium* [and each man's home is his safest refuge]." Quoted in Amanda Vickery, “An Englishman’s Home is His Castle? Thresholds, Boundaries and Privacies in the Eighteenth-Century London House,” *Past and Present* 199 (May 2008): 154n12.

architectural styles, interior designs, curtains, cabinets, and lock-and-key mechanisms that became prominent features of the eighteenth-century home were all part of the effort to create a culture of privacy.

The crim. con. suit was a legal action where a husband sued his wife's lover in court for damages. The crime, "criminal conversation," was adultery, but crim. con. was about more than marital breakdown and moral indiscretions. The suits were brought in the common law courts of King's Bench or Common Pleas and were tried as an action of trespass. The domestic realm was a primary site where this new concern for security and privacy was expressed.<sup>65</sup> Crim. con. testimonies illustrate the ways contemporaries worked to create a culture of privacy. They also demonstrate that the concept of privacy developed unevenly. Privacy relied on the construction of boundaries, and trial transcripts reveal that the domestic realm was a site for contesting boundaries as much as it was for establishing them.

### **The Architecture of Privacy**

Crim. con. manipulated the traditional definition of trespass, but it did not completely abandon it. Even with its multiplicity of meanings, understandings of trespass were

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<sup>65</sup> This theme has been explored by scholars including Ariès and Georges, eds, *A History of Private Life*, especially the essays in Part Three, "Community, State, and Family: Trajectories and Tension," 397-608, and particularly Nicole Castan, "The Public and the Private," 403-445, and Alain Collomp, "Families: Habitations and Cohabitations," 493-529; Michael McKeon, *The Secret History of Domesticity: Public, Private, and the Division of Knowledge* (Baltimore, MD: Johns Hopkins University Press, 2006); Linda Pollock, "Living on the Stage of the World: The Concept of Privacy among the Elite of Early Modern England," in *Rethinking Social History: English Society, 1570-1920, and Its Interpretations*, ed. Adrian Wilson, 78-96 (Manchester, U.K.: Manchester University Press, 1993); Carolyn Sargentson, "Looking at Furniture Inside Out: Strategies of Secrecy and Security in Eighteenth-Century French Furniture," in *Furnishing the Eighteenth Century: What Furniture Can Tell Us about the European and American Past*, ed. Dena Goodman and Kathryn Norberg (New York: Routledge, 2007); Vickery, "Englishman's Castle," 147-173.

rooted in the private and intended to enforce its various demarcating boundaries. The crim. con. action prosecuted the defendant's sexual trespass upon a married woman's body (and the subsequent violation of her husband's honor, reputation, and marital and familial comforts). While this was technically the primary offense, lawyers and witnesses repeatedly emphasized the transgression of the husband's house during the trial. The private property that was trespassed in a crim. con. suit, then, was not just the plaintiff's wife; it was also his house. The legal maxim "the Englishman's home is his castle," suffused eighteenth-century British culture. The physical structure of the house conveyed the owner's status and taste and was treated as an essential right for Englishmen in common law theory and practice. To breach the threshold of a man's house, therefore, was a violation of physical and social boundaries, and crim. con. trial testimonies highlighted both forms of trespass.<sup>66</sup>

The physical perimeter of the house was sacrosanct under English law.<sup>67</sup> Law officers could not enter a house without a warrant. Even in the line of duty, when the occupant was clearly in violation of the law, a civil officer could not break a window or any locked passageway to enter the house; ingress was permissible only if the door was open or the premises were not sufficiently secured.<sup>68</sup> Securing the house conferred its legal status as "private." English common law placed the onus on the homeowner to properly fortify his "castle" from intruders. Records from the *Old Bailey Proceedings* reveal that victims of burglary whose security measures were found to be inadequate

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<sup>66</sup> Ibid., 154.

<sup>67</sup> Ibid., 153.

<sup>68</sup> Ibid, 155; Peter King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000), 174.

were not granted the maximum protection of the law. Many accused burglars successfully defended themselves from the charge by arguing that they had not had to break into the house to rob it, as a door or window was left open or unlocked.<sup>69</sup> Adequate efforts to secure the home, however, were fiercely defended under the law and the punishment for invading another's residence was severe. Burglary, for example, was a capital offense during this period.<sup>70</sup> These changes in the legal status of the home occurred during a period in which the social importance of the home also transformed. Not only does the law evince the significance of the house, transmutations in the physical structure and the social interactions within it likewise signify the centrality of the space of the home in eighteenth-century Britain.

For eighteenth-century elites, the private house symbolized personal reputation and public status. This period has been described as the "Golden Age" of the British country manor. The architectural designs of the eighteenth-century country manor physically embodied the polite values and social importance of the elite gentleman.<sup>71</sup> Country houses were built in the Palladian style in the early part of the century, and

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<sup>69</sup> Vickery, "Englishman's Castle," 157. They were not charged with burglary -- which was a hanging offense -- but were instead charged with the lesser crime of theft. Vickery investigates the presence of locks through burglary and robbery cases recorded in the Old Bailey Proceedings and uses this evidence to explore the ways privacy was materially constructed and experienced in eighteenth-century London's lodging-houses. See also King, *Crime, Justice and Discretion*, 174. The records of the *Old Bailey Proceedings* are accessible through the online database *Old Bailey Proceedings Online*, available at [www.oldbaileyonline.org](http://www.oldbaileyonline.org), 12 July 2010.

<sup>70</sup> Vickery, "Englishman's Castle," 154. Burglary was both a criminal and civil violation, so victims of burglars had a choice in how justice would be administered. This period witnessed a rise in civil suits against trespassers of private property. This recourse for civil damages became increasingly popular during the period, but its relevance as a *mentalite* -- even more than a law -- is evident in the way the law was manipulated and exploited in the form of the civil trials for criminal conversation. *Ibid.*, 155; Stone, *Road to Divorce*, 246-47.

<sup>71</sup> Mark Girouard, *Life in the English Country House: A Social and Architectural History* (New Haven, CT: Yale University Press, 1978), 204.



characterized more by the neoclassical style by the nineteenth century.<sup>72</sup> The rational construction of the house was paramount in the eighteenth century. Architectural styles projected the vision of a rational and ordered society in which elites, especially elite men, presided at the top.<sup>73</sup> In this way, the house reinforced the patriarchal social structure. Furthermore, it displayed the intellectual superiority of the resident patriarch.

The design and decoration of the interior likewise projected and reinforced elite ideals. The furniture of the country manor served the same purpose as the paintings, sculptures, and architecture of the house – it was intended to reflect superior tastes and the status and reputation of the owner.<sup>74</sup> Eighteenth-century furniture was “architectural in feeling,” although architects preferred the style and feel of Italian Baroque and, later, the lightness of French Rococo over the Palladian style that tended to complement the architecture of the room. The elegant furnishings were usually arranged symmetrically around the edges of the room. Changes in the domestic interior also included the establishment of rooms that were designated for distinct uses. Certain rooms, for example, were intended for social interactions between guests and the owners, such as the parlors, dining rooms, and breakfasting rooms. These designated “social” rooms were necessary in order to create and secure separate private, intimate spaces for personal use.<sup>75</sup>

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<sup>72</sup> Gervase Jackson-Stops and James Pipkin, *The English Country House: A Grand Tour* (New York: Little, Brown, 1985), 35.

<sup>73</sup> *Ibid.*, 231, 244.

<sup>74</sup> Christopher Christie, *The British Country House in the Eighteenth Century*, (Manchester: Manchester University Press, 2000), 232.

<sup>75</sup> Girouard, *Life in the Country House*, 231, 239).

The closet is arguably the domestic interior space most identified by contemporaries and historians alike with emerging notions of privacy in the early modern period.<sup>76</sup> Closets were usually smaller rooms that were adjacent to the bedchamber. It was a place of solitude and the occupant usually spent his or, more frequently her, time in private meditation or reading and writing. Most closets were furnished with books and a writing desk equipped with paper, pen, and ink. In elite residences these rooms were often ornately decorated, but closets of all ranks tended to include at least some decoration of personal items, such as portraits or drawings on the walls and a few objects on a shelf. The standard closet featured a door with a lock on the inside. Sash doors were fairly common in the eighteenth century and usually included curtains that could be drawn over the glass to conceal the closet's occupant. The glass door might function to allow light into the closet from the hallway or bedchamber (and a candle would be used when the curtains were drawn over the door), but these rooms had at least a small window whenever possible (and were sometimes called a "light closet" as a result).<sup>77</sup> By the early eighteenth century, the closet was an established symbol of personal privacy. Karen Lipsedge contends many Britons held the closet to be something of a right to which individuals were entitled.<sup>78</sup> This even applied to servants, who were often provided a closet of their own, although they were not as large as the masters' and were sometimes

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<sup>76</sup> Brown, "The Female *Philosophe* in the Closet"; Orest Ranum, "The Refuges of Intimacy," in *A History of Private Life*, 207-263; Karen Lipsedge, "'Enter Into Thy Closet': Women, Closet Culture and the Eighteenth-Century Novel," in *Gender, Taste, and Material Culture in Britain and North America, 1700-1830*, ed. John Styles and Amanda Vickery, 107-124 (New Haven: Yale University Press, 2006). For contemporary accounts of the closet, see Edward Wettenhall, *Enter Into Thy Closet: or, A Method for Private Devotion* (1663); Oliver Heywood, *Closet-Prayer a Christian Duty...Tending to prove that the Worship of God in Secret, is the indispensable duty of all Christians* (1668).

<sup>77</sup> Lipsedge, "Enter Into Thy Closet," 110-111, 116; McKeon, *Secret History*, 40, 225.

<sup>78</sup> Lipsedge, "Enter Into Thy Closet," 112.

simply small alcoves or “nooks” rather than proper rooms. Another difference was that a servant’s closet rarely had a lock on the door, while this was a defining feature of their mistress’s closet.<sup>79</sup>

The spatial boundaries of the closet created a “community of one,” but the architectural mechanisms for intimacy were not limited to isolating one individual from the rest of the household. The domestic realm also featured spatial and social segregation between different groups in the home. The popularity of Neoclassicism, Palladianism, Rococo, and Gothic architectural styles fueled the frequent remodeling of the buildings’ exteriors and interior designs in this period. The use of interior spaces, however, was influenced less by aesthetic preferences than by social ones. While the eighteenth-century house was certainly a “social” site, the organization of the interior functioned to create a greater sense of privacy for the family. Separating “social” spaces from “private” spaces in the domestic interior entailed separating the family’s apartments from those of guests. This was most often achieved by moving the family’s rooms to the back or sides of the house while the guest apartments and visiting rooms remained in the front. Within the family apartments, some spaces were more private than others. The closet was not the only “private” room in the house, however. The bedchamber and dressing chambers were formerly “social” rooms that became designated as private spaces for the master and the mistress.<sup>80</sup> In the sixteenth and early-seventeenth centuries, owners received guests and performed numerous public activities in their bedrooms, but this began to change in the late seventeenth century. In the eighteenth century, receiving rooms were increasingly

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<sup>79</sup> Ibid., 111.

<sup>80</sup> Girouard, *English Country House*, 231.

located in another room in the family apartment. Dressing rooms usually attached to bedchambers, and also frequently doubled as sitting rooms. Women spent their mornings in the dressing room, but did not normally entertain guests there. By the mid-eighteenth century, this rule was fairly widely observed in the houses of London and other towns, although the practice still lingered in some country houses. Even then, however, the dressing room was for entertaining close friends rather than general visitors. A reception room might be added to the lady's dressing room and called a "sitting room" or "drawing room," "boudoir," or simply her "room," while the master of the house began receiving guests in his study. In some residences, receiving guests was strictly limited to a parlor or sitting room on the first floor.

In all instances, however, by mid-century it was deemed wholly unacceptable to entertain company in one's bedroom, particularly at certain times of the day and especially members of the opposite sex.<sup>81</sup> A late-night visit by a gentleman could only mean one thing, and British men and women violated this rule at their peril, as the evidence employed in crim. con. trials frequently demonstrated. The arguments for the plaintiff in the 1794 crim. con. trial *Cadogan v. Cooper*, for example, appealed to these standards as evidence of adultery between the defendant and the plaintiff's wife. Servants testified during the trial that they waited up one night to witness a suspected late-night rendezvous. Although they did not directly observe their mistress and her lover in the act of adultery, they described Reverend Cooper entering Lady Cadogan's apartment in the middle of the night in a state of undress. The lawyers asserted that, although the

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<sup>81</sup> Ibid; John Fowler and John Cornforth, *English Decoration in the Eighteenth Century* (Princeton: Pyne Press, 1972), 81.

witnesses only saw Cooper enter the green room, which connected to both the bedchamber and the lady's drawing room, it was obvious which room he entered after the green room. Emphasizing the fact that he was undressed, they inquired rhetorically as to why he would go to sit naked in a dressing room, when the lady he had been lusting after was in the next bedchamber?<sup>82</sup> Cooper and Lady Cadogan's failure to observe the prescribed social etiquette assigned to that particular domestic space confirmed their guilt. In the 1730 crim. con. trial *Abergavenny v. Lyddel*, a servant testified that her mistress, Lady Abergavenny, once ordered her out of the room when a frequent male visitor, Richard Lyddel, was there. The request piqued the servant's curiosity, as her lady did not usually receive visitors in her bedchamber, and only entertained guests in her adjoining dressing room with her maid present.<sup>83</sup> A man in a woman's apartment left no doubt in the minds of the jurors as to what occurred behind closed doors.

Within the bedroom, the bed -- and by extension any activities conducted upon it -- was also identified as a private space. Customs that required the presence of neighbors or people outside the family in the bedroom were no longer in vogue in the eighteenth century. The practice of having a group of onlookers tuck newlyweds into bed and greet them again in the morning declined in the sixteenth- and seventeenth centuries.<sup>84</sup>

Christenings were formerly performed in the bedroom, with the mother and child in her

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<sup>82</sup> *Cadogan v. Cooper* (1794), 19-20, 29-30. This particular publication is entitled *The Trial at Large of the Right Honourable Lady Cadogan for Adultery with The Rev. Mr. Cooper* (London, 1794), but its contents are the crim. con. proceedings for *Cadogan v. Cooper*. Hereafter cited as *Cadogan v. Cooper*.

<sup>83</sup> *The Whole Tryal of Richard Lyddel...For Carrying on a Criminal Conversation with the late Lady Abergavenny* (London, 1730), 6-7.

<sup>84</sup> Ariès, introduction to *History of Private Life*, 5.

bed, but in the eighteenth century this ceremony moved from the bedroom to another chamber in the house, such as the drawing room, or even to a church.<sup>85</sup>

Architectural mechanisms -- an alcove, for example -- further reinforced the intimacy of the bed. Beds also tended to have canopies from which the curtains were draped with cords to draw them open or closed around the bed as desired. An alternative to the canopy was to hang the curtains directly from the ceiling, a practice that emerged in this period. Even a sofa bed in a sitting room might have a canopy with curtains.<sup>86</sup> The privacy of this space was identified with spousal intimacy, although this was not always a sexual association. The bed was also a place where a husband and wife could have a private conversation at the end of the day, even though popular references to this practice represented the moment as an ample opportunity for women to corner their husbands and nag them.<sup>87</sup> With both the closet and the bed, curtains allowed the occupants of that space to not only withdraw physically from the presence of others, but also to conceal themselves from view.<sup>88</sup>

Architectural innovations not only created greater space between the owners and the guests in their house, but also separated those of superior rank from those of the lowest rank, especially domestic servants. These features were components of the

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<sup>85</sup> Girouard, *English Country House*, 231.

<sup>86</sup> Fowler and Cornforth, *English Decoration*, 81; Ariès, introduction to *History of Private Life*, 9.

<sup>87</sup> This was known as a “curtain lecture,” which Samuel Johnson defined in his 1755 *Dictionary* as, “a reproof given by a wife to her husband in bed.” Quoted in McKeon, *Secret History*, 243.

<sup>88</sup> This was cause for concern for some contemporaries, however, who depicted the closet in particular as a “locus of liberation and licence,” because it facilitated women’s withdrawal from the authoritative gaze of men in the house and allowed them to engage in clandestine intellectual and even sexual affairs. Quoted in Lipsedge, “Enter Into Thy Closet,” 112.

widening gap between elite and plebeian cultures in eighteenth-century society.<sup>89</sup> The presence of domestic workers in close proximity to their social superiors in the household became an affront to elite sensibilities, and this necessitated the removal of servants from sight as much as possible. This distancing of servants from elites manifested both in emerging modes of polite sociability and in new architectural styles for the domestic interior. It was common practice to designate the basement or the garrets as servants' quarters, relegating them to the periphery of the house so that elites could inhabit the main apartments. This separation was reinforced by other architectural mechanisms for privacy, such as back hallways and stairs, servants' bells, and lock-and-key features, among others. The inclusion of back hallways and staircases enabled servants to move from different parts of the house to perform their various duties without bringing them into direct contact with elites.<sup>90</sup> Renowned architect Isaac Ware explained in 1768 that, "a good house should always have two staircases, one for shew and the other for domesticks."<sup>91</sup> Servants' bells were also gaining prominence in this period. Many houses were equipped with a bell in various chambers, especially in parlors and dining rooms, and they served the same purpose as back hallways and stairs. The bells allowed elites to summon an attendant from other parts of the house, making it unnecessary for servants to remain in close proximity in order to hear their master's call. This enabled the widening

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<sup>89</sup> Thompson, *Customs in Common*, 16-36.

<sup>90</sup> Girouard, *English Country House*, 138; Isaac Ware, *A Complete Body of Architecture. Adorned with Plans and Elevations, from Original Designs* (London 1768), 322, 325. Tim Meldrum notes the exceptions to this trend and takes into account the particular roles of certain servants, such as the mistress's personal maid, who often was supposed to be near her lady at all times, unless otherwise instructed. Meldrum, "Domestic Service, Privacy and the Eighteenth-Century Metropolitan Household," *Urban History* 26, no. 1 (1999): 37-38.

<sup>91</sup> Ware, *Complete Body of Architecture* (London, 1768), 325.

distance between servants and masters in the home and provided a greater sense of privacy for elites in the domestic sphere.

Drawn curtains and servant bells were two features that eighteenth-century Britons used to effect intimacy in the home, but the primary mechanism for achieving this was the door. An emerging notion of private or personal space materialized in the inclusion of chamber doors that opened into hallways. The practice of having various chambers strung together fell out of favor, as people began to complain of the inconvenience of having to pass through multiple rooms -- and encounter multiple inhabitants -- to reach a certain chamber. Ware demonstrated he was attuned to the intrinsic desire for privacy in the home when he explained that the architect's job was to "contrive secret ways to them all" to avoid this inconvenience.<sup>92</sup> In 1757, architect Abraham Swan published the two-volume *A Collection of Designs in Architecture*, in which he also distinguished between private and public space in the home based on direct entry to the rooms: "All the Rooms in his House are *private*, that is there is a Way into each of them without passing through any other Room; which is a Circumstance that should always be attended to in laying out and disposing the Rooms of a House."<sup>93</sup> He utilized other architectural features to ensure this. His design in the opening plate of the second volume features "Two Stair cases which are so placed that every Room in the House is private," and goes on to identify which set of stairs is for the servants' use (not the "best Stair-case," but the other set).<sup>94</sup>

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<sup>92</sup> Ibid., 328.

<sup>93</sup> Abraham Swan, *A Collection of Designs in Architecture* (London, [1757]), 1:2.

<sup>94</sup> Ibid., 2:1.



## Securing Privacy in the Home

While doors and staircases created privacy, locks were necessary for maintaining it. During this period the ability to close (or “fasten”) a door and lock it was essential for creating and maintaining privacy in the home. In fact, this conferred the legal status of “private” upon a house, as legal protection from a house robbery hinged upon owners’ adequate measures for securing it. Similarly, the legal criteria for identifying a “private” room was whether the door was shut and locked.<sup>95</sup> It was not simply the ability to physically enclose one’s self (or one’s things) in a room that made the space intimate; the seclusion needed to be secured. The locks on the closet door -- and the ability to lock it from the inside -- as well as locks on bedroom doors achieved this.<sup>96</sup> Seventeenth- and eighteenth-century writers described the closet with specific references to the features of a closed and locked door – the purpose being to seclude the person inside and to exclude other persons outside.<sup>97</sup> Locks also regulated access to “social” rooms such as parlors, drawing rooms, dining rooms, or music rooms. This allowed the person or persons occupying a particular room to render it “private” at any given moment by simply closing or locking the door.

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<sup>95</sup> Turner, *Fashioning Adultery*, 158. In elite residences, this distinction sometimes depended on whether the door was closed and latched, or also locked.

<sup>96</sup> Lipsedge argues that Samuel Richardson’s prolific protagonist Clarissa exercises power by being able to control her private space of the closet when she locks the door and draws the curtain to exclude Bella’s unwelcome lecturing. Lipsedge, “Enter Into Thy Closet,” 116-19.

<sup>97</sup> McKeon, *Secret History*, 40. For example, see Wettehall, *Enter Into Thy Closet*; Heywood, *Closet-Prayer a Christian Duty*.

This period saw major improvements in lock security, and professional locksmiths began to patent their products in the last quarter of the century.<sup>98</sup> In a printed “how to guide” for the various arts of smithing (originally published in the 1690s), the section on locksmiths included a short-list of the types of locks one might encounter in the trade. There were different locks for different purposes: street-door locks (street locks), chamber-door locks (spring locks), cupboard locks, chest-locks, trunk-locks, and padlocks (also known as “secret-locks”<sup>99</sup>), among others.<sup>100</sup> In the third edition of *The City and Country Purchaser's and Builder's Dictionary*, published in 1736, the entry for “Locks” included a disclaimer for the abridged description: “These are some of the Names and Prices of Locks; for to enumerate them all, were needless; and besides, there is no Price, from a Groat, or Sixpence, to 50 *l.* but a Lock may be made to deserve, according to some.”<sup>101</sup> These developments in lock and key mechanisms were not strictly the product of technological innovations. The proliferation of locks on items ranging from the doors of public and private buildings to desks, cupboards, chests, and individual lock-boxes, represents the physical manifestation of underlying notions about personal ownership of property and the need to protect it, which fueled the development of more effective technologies to secure those possessions.

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<sup>98</sup> The first patent for locks was in 1778; Joseph Bramah received a patent for his new lock design in 1785, and he promoted the ingenuity and necessity of his lock in a published account entitled *A dissertation on the construction of locks* (London, [1785?]).

<sup>99</sup> Richard Neve, *The city and country purchaser's and builder's dictionary: or, the complete builder's guide*, 3rd ed. (London, 1736), 207.

<sup>100</sup> Joseph Moxon, *Mechanick exercises: or, The doctrine of handy-works. Applied to the art of smithing in general* (London, 1693-1694), 21.

<sup>101</sup> Neve, *builder's dictionary*, 207.

Locks also became features on a range of “domestic” items, including cabinets, drawers, lids, and doors.<sup>102</sup> These and other mechanisms for domestic security -- such as improved latches, curtains, street lights, or “entry bells” -- on doors and windows to the outside, on doors to interior chambers, on cabinets and drawers in the kitchen, study, and bedchambers, were all constructed in increasingly intricate and precise detail in order to enhance the protection of the contents and prevent breaches of that security by intruders. Amanda Vickery has investigated the methods used to secure the perimeter of the home from external breaches in eighteenth-century London. This was so important to contemporaries that it developed into a daily ritual known as “shutting in.” This practice began at nightfall and entailed methods for safeguarding the house at multiple points of entry that could range from the use of an assortment of locks, bolts, and bars for windows and doors, to stationing servants and/or attack dogs at entrances during the night, to keeping more conventional defensive weapons on hand.<sup>103</sup>

Concerns over domestic security did not only apply to preventing a breach of the exterior, however. Locks were also essential to the fortification of internal boundaries within the house.<sup>104</sup> Many British men and women considered their private property to be particularly vulnerable to theft by domestic workers.<sup>105</sup> The characterization of the

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<sup>102</sup> Bramah, *Dissertation*, 7.

<sup>103</sup> Vickery, “Englishman’s Castle,” 156.

<sup>104</sup> *Ibid.*, 153-163.

<sup>105</sup> Bramah claimed that this threat was his primary focus as he developed his patented design for an “un-pickable” lock in 1784. Homeowners’ anxiety over this issue was not entirely misplaced, however, as the records of the Old Bailey Proceedings reveal significant numbers of servants who were found guilty -- and many were subsequently sentenced to death -- for stealing from their master’s home. For an early example from 1715, see *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), 10 June 2010), 27 April 1715, the trial of Mary Nash (t17150427-2).

servants in crim. con. trials fit within a larger discourse of a “servant problem” in eighteenth-century Britain that reinforced notions of the threat they posed to domestic tranquility. A 1728 pamphlet by a “Converted Thief,” entitled *Street-Robberies, Consider’d: The Reason of Their Being so Frequent, with Probable Means to Prevent ’Em*, portrayed servants as a danger to home security.<sup>106</sup> The author advised homeowners to be vigilant about their servants, especially elites since their households required a greater number of domestic workers. He recalled that a number of robbers found jobs as servants “on no other Design than to facilitate the robbing of the House.” He emphasized the importance of a servant’s reputation and advised against hiring maids who lacked a good recommendation. He warned employers not to be fooled by the air of innocence surrounding the young country girls who had arrived in town fresh “out of a Waggon” and looking for work, and estimated that half these women were merely putting up a front to secure employment in a nice house.<sup>107</sup>

The account portrayed female servants as particularly dangerous, as the ones who were not thieves themselves could unwittingly facilitate a robbery. Even if a maid was honest upon her arrival in the house, the author argued, she was likely to be corrupted, as young women were love-sick romantics by nature and therefore easily seduced by robbers, who were then able to persuade the maids to let them into their master’s house at night.<sup>108</sup> He identified as high-risk maids who have too many male acquaintances and

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<sup>106</sup> Converted Thief, *Street-robberies, consider’d: the reason of their being so frequent, with probable means to prevent ’em* (London, [1728]), 69.

<sup>107</sup> Ibid.

<sup>108</sup> “For there are Setts of Fellows that make it their Business to gain upon the Inclinations of the Maids, who are susceptible of Love, to gain an Opportunity of robbing the House.” Ibid.

recommended that these women be fired promptly. He advised housekeepers to pay them a month's wages and make their termination effective immediately, rather than give them the customary month's notice: "For many Servants will do more Mischief in that Month, than perhaps ten times their Wages would come to." He admitted, however, that there might be exceptions to this rule, and for these honest servants an alternative method of dismissal would be more appropriate.<sup>109</sup>

Other tracts likewise warned homeowners of the potential threat servants posed to private property. Joseph Bramah introduced his new patented lock in his 1785 publication *A Dissertation on the Construction of Locks*. He explained the necessity of a new type of lock that could provide better security than the models currently in use. He included illustrations and detailed descriptions of the construction of the most commonly used locks and exposed the flaws in their designs that made the locks easy to "pick."<sup>110</sup> Rather than emphasizing the purpose of his new lock-and-key model for securing the entries to a house from robbers and burglars, Bramah explicitly located the value of his design in its application to the domestic interior. He explained to his readers that when designing his "unpickable" lock, his "chief attention...was applied to contrive a security against the advantage, which a *domestic* enemy possesses, in the opportunity of executing his purposes at his leisure."<sup>111</sup> Because servants were in the house most of the time, they had access to all of their master's secured possessions and could take advantage of the owner's absence to break the locks and abscond with the stolen items.

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<sup>109</sup> Ibid.

<sup>110</sup> Bramah, *Dissertation*, 5-7.

<sup>111</sup> Ibid., 26 (emphasis is Bramah's).

Bramah's tract demonstrates that contemporary concerns with security were rooted in the private -- the private property of the home, one's money and material possessions, and the concealment and protection of personal items. In the domestic sphere, security and secrets went hand in hand for contemporaries, as the presence of a lock indicated that the content beyond it was in need of protecting.<sup>112</sup> Owners used "locked spaces" not just for storage, but also to hide things, their purpose being "the creation and maintenance of a secret, the knowledge of whose existence was the object of protection."<sup>113</sup> Desks, cabinets, and other furniture pieces functioned to conceal inanimate objects such as love letters, diaries, and jewelry, from unwelcome eyes. Studies of the intricacies of eighteenth-century furniture reveal how meticulously devoted contemporaries were about creating and maintaining their secrets. A desk, for example, might have a lock on its drawer, but inside the drawer there might be a hidden compartment that functioned to hide secret items.<sup>114</sup> The lock, therefore, was a tool used not only for security but also for concealment.

### **Servants and the (In)security of Secrets**

Masters and mistresses were not only concerned with securing their material possessions from their servants, however. In cases of criminal conversation, the mechanisms for

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<sup>112</sup> Carolyn Sargentson makes this connection between the presence of locks and protecting a secret in her study on eighteenth-century French furniture. Sargentson, "Strategies of Secrecy," 206-207.

<sup>113</sup> *Ibid.*, 207.

<sup>114</sup> *Ibid.*, 207-208. For more studies on the role of furniture and objects in creating and maintaining, or facilitating the exposure of, secrets within the domestic interior, see Mimi Hellman, "Sociability, and the Work of Leisure in Eighteenth-Century France," in "Sites and Margins of the Public Sphere," special issue, *Eighteenth-Century Studies* 32, no. 4 (Summer 1999): 415-445; Mike Blackwell, ed. *The Secret Life of Things* (Lewisburg: Bucknell University Press, 2007); Brown, "Female *Philosophe* in the Closet;" and Ariès and Georges, *History of Private Life*.

secrecy were meant to conceal *people*, rather than objects. In his study of eighteenth-century architecture, Mark Girouard observed that “Apartments are planned so that all ways of access can be sealed off at will, independence secured as a result, and the surprising discovery of secrets made impossible.”<sup>115</sup> In most instances, the mechanism for secrecy was a closed door that was either locked or fastened, enclosing the wife and her lover on the inside and concealing them from the view of the servants on the outside. Locked doors proved to be a superficial barrier much of the time, however, as prying eyes merely found their way to the keyhole instead. As Carolyn Sargentson notes, “The discovery of secrets was, of course, never an absolute impossibility, and therein lay the significance of the fine line between concealment and exposure, the treading of which seems to have been such a central feature of eighteenth-century social life and gender relations.”<sup>116</sup> Discovering a secret relied heavily on the investigator’s ability to navigate the mechanisms employed for protecting the secret:

The investigative fingers of a determined seeker of secrets, informed by a certain familiarity with similar objects and motivated by familial strategies or subterfuge, might probe for spaces disguised by clever cabinetmakers. Here the legibility of furniture was a key to discovering the secret.<sup>117</sup>

In this way, the domestic servants were among the key offenders in crim. con. trials. They comprised the bulk of the witnesses to the adultery, but their methods of observation were as much a cause for concern as the adultery itself. They were not only familiar with the mechanisms of secrecy employed by their mistress, they were driven by an apparently insatiable desire to discover what was being kept from them. The lovers’ attempts to

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<sup>115</sup> Quoted in Sargentson, “Strategies of Secrecy,” 221.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

maintain a clandestine affair in a house full of people were consistently undermined by curious servants, who constructed a culture of curiosity that was perpetually in conflict with the culture of privacy. If curious servants could not observe what was happening beyond the door, they might strategically situate themselves within the vicinity of the room so they could at least be privy to any incriminating behavior after the fact, even if it was simply witnessing any attempts at a discreet escape through a back exit.<sup>118</sup>

This is evident in the 1794 crim. con. trial *Cadogan v. Cooper*, where the plaintiff's counsel capitalized on servants' manipulation of architectural mechanisms for secrecy to spy on their mistress. In fact, Lord Cadogan's lawyer, Thomas Erskine, presented a floor plan of Cadogan's London house to demonstrate the architecture of adultery to the jury. He used it to illustrate the lovers' attempts to maintain the secrecy of their affair through their use of connecting rooms and back hallways. He also laid out the servants' plan of observation to support testimony that they witnessed the adultery from various vantage points in the house and assured the jury that if there was any doubt that they could see the actions they described, he would refer to the floor plan for proof, and asserted, "Gentlemen, you will easily see how necessary it was for Lady Cadogan and this gentleman (Mr. Cooper) to conceal their amours from the view of an injured husband."<sup>119</sup>

The space of the home was the primary site of "criminal conversation" in eighteenth-century Britain and provided a stage for negotiating meanings and practices of privacy both within the house and beyond. Crim. con. trial records illustrate how a

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<sup>118</sup> This can be seen in *Cadogan v Cooper* and *Harris v. Craven*, to name a few.

<sup>119</sup> *Ibid.*, 12-13, 18.



culture of privacy developed in the domestic realm, but they also illuminate the concomitant emergence of a culture of curiosity among domestic servants. A woman's attempts to conduct intimate relations free from observation existed in constant tension with her servants' unrestrained curiosity. Crim. con. testimonies illustrate just how precarious secrecy was, even at the most intimate level. The line between concealment and exposure was tenuous at best and, in crim. con. trial testimonies at least, the ease with which boundaries were breached reduced all security to what Bramah described as "imaginary security."<sup>120</sup> The trial records demonstrate that servants proved remarkably adept at contravening any mechanisms of secrecy their mistress employed, perpetuating the constant tension between curiosity and privacy in the household. Crim. con. trial testimonies reveal that this tension was a defining characteristic of the relations between servants and masters in eighteenth-century Britain.

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<sup>120</sup> Bramah, *Dissertation*, 5.

## Chapter Two: Servants and Masters

### Servant Resistance to “Domestic Enclosure”

Elites appropriated the practice of enclosure in their efforts to create a culture of privacy in the home, a parallel development that can be described as “domestic enclosure.” The enclosure of lands in the English countryside began during the late medieval period, but the process took on a new form in the eighteenth century and had a significant impact on contemporary English society.<sup>121</sup> One result of land enclosure during the seventeenth and eighteenth centuries was that it necessitated the migration of many rural inhabitants to English towns, particularly London, to find work. Historians have linked this development to the rise in various forms of service, from domestic labor to apprenticeships, as the number of people seeking wage-based employment grew. Those who found work as domestic servants encountered another form of enclosure in the domestic realm, however. Enclosing formerly-common land entailed constructing fences around areas to designate private property and establish physical boundaries that were not to be breached. This privatization was one aspect of a growing culture of privacy in eighteenth-century Britain, and chapter one explored the ways that contemporaries constructed similar boundaries within the domestic sphere, most notably through

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<sup>121</sup> J. M. Neeson explores the social impact of enclosures on the “commoners” during the eighteenth-century in Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge: Cambridge University Press, 1993). Thompson also addresses the subject in two of his works: *Customs in Common*, and *The Making of the English Working Class* (London: Penguin Books, 1991). In the latter work, Thompson contends that enclosures amounted to “a plain enough case of class robbery.” *Ibid.*, 218.

architectural innovations. Elite households secured private property and spaces with improved lock-and-key mechanisms, concealing secrets as well as protecting physical items. Enclosure in the home removed servants to the periphery and limited their access to newly-“private” spaces and goods they were previously permitted to use with relative freedom.<sup>122</sup>

Crim. con. trials show how servants resisted attempts at “domestic enclosure.” They constantly tested and transgressed the boundaries elites imposed to secure “distance” from their subordinates. The more barriers elites constructed, the more aggressively servants worked to overcome them. A latched or locked chamber door made servants suspicious of what was being secured inside the room that was suddenly inaccessible to them. In an age where natural curiosity was increasingly praised as a virtue,<sup>123</sup> mechanisms of secrecy encouraged the invasion of privacy far more than it discouraged it. Nowhere is this more evident than in the phenomenon of the crim. con. trial.

Trial records described the impressive efforts taken by servants to observe their mistresses’ conduct behind closed doors. Crim. con. testimonies documented the various sites in the domestic interior where clandestine encounters took place. These accounts illustrate the tension between elites’ efforts to establish privacy and servants’ desire to discover what was being hidden from them. Many times the same architectural innovations that elites employed to create a culture of privacy in the home were exploited

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<sup>122</sup> Peter Linebaugh, “The Cat Likes Cream: The Waging Hand in Five Trades,” in *The London Hanged: Crime and Civil Society in the Eighteenth Century*, 2nd ed., 225-255 (New York: Verso, 2003).

<sup>123</sup> Barbara M. Benedict, *Curiosity* (Chicago: University of Chicago Press, 2001), especially the introduction.

by servants to observe private behavior. The role of the closet in crim. con. testimonies in many ways encapsulates the tension between servants and masters and concealment and exposure. This is due to the closet's prominence as a symbol of privacy in this period, particularly for women.<sup>124</sup> Although it was meant to be a site for removing the person from the view of others in order to conduct themselves in private, crim. con. testimonies reveal that closets were utilized as spaces for both maintaining and exposing adultery.

A notorious example of this appears in one of the most sensational crim. con. suits of the century. In the 1757 trial, *Knowles v. Gambier*, a servant named Elizabeth Bentley told the court that Mrs. Knowles and Captain Gambier arrived in London from Jamaica, where Admiral Knowles remained on duty. Upon their arrival, Mrs. Knowles and the captain cleaned out a closet in her bedchamber and Knowles "fitted himself to it, that, in case of the sudden arrival of the Admiral, the Captain might hide himself there."<sup>125</sup> Bentley further deposed that, "I saw him go in and try the closet, and he told me, it would do for the purpose; and the key was put inside."<sup>126</sup> Mrs. Knowles's closet was accommodated specifically to conceal her lover in the event of a surprise visit from her husband. Ultimately, however, that fact served as evidence against Gambier.<sup>127</sup>

There were other instances where closets facilitated the discovery of a "criminal conversation" rather than concealing it. In *Abergavenny v. Lyddel* (1730), three witnesses concocted a plan to catch the Lady Abergavenny with her paramour. They hid in the

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<sup>124</sup> Lipsedge, "Enter Thy Closet," 112. For additional discussions on the closet and privacy, see Brown, "Female *Philosophe* in the Closet;" and Ranum, "The Refuges of Intimacy," in *A History of Private Life*, 207-263.

<sup>125</sup> *Knowles v. Gambier* (1757), in *Trials for Adultery*, 5:24.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

bedroom closet early one morning and waited for indications an adultery was taking place. The witnesses then burst from the closet, threw back the bed curtains and found their mistress “in a very indecent posture,” lying on her back with her dress pulled down to her knees, so that her thighs were exposed.<sup>128</sup> Similar “discovery scenes” were described in other crim. con. trials and were depicted in illustrated trial accounts (see fig. 1).<sup>129</sup> These trials illustrate the way elites attempted to create spaces of intimacy in the home where they withdrew into seclusion from other members of the household, but found their efforts thwarted by the very people from whom they wished to be isolated.

Other witness testimonies likewise illustrate servants’ familiarity with architectural mechanisms for privacy, and their willingness to exploit those mechanisms for their own ends in order to spy on their superiors. Trial records further reveal that in the household community very little was outside the purview of domestic servants. In 1730, Lord Abergavenny brought a crim. con. suit before the Court of Common Pleas against Richard Lyddel. The evidence provided came almost entirely from household servants. The footman’s bedchamber in the Abergavenny’s country manor was located beneath the guest apartment, where Lyddel stayed during his visits. During the trial, the footman described an incident when, upon hearing the bed creaking in Lyddel’s apartment, he went upstairs to see who came out of the bedchamber. When Lyddel peered out of the room and saw the footman approaching, he sent him to fetch his personal servant. The footman agreed, but he suspected the “guest” was leaving another way and

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<sup>128</sup> *Abergavenny v. Lyddel* (1730), in *Adultery Anatomized: in a Select Collection of Tryals, for Criminal Conversation* (London, 1761), 95-96.

<sup>129</sup> Fig. 1: “Mrs. Collet discovered in bed with John Branch, by Edward Chapman and others,” *The Trial of Anne Charlotte Collet* (1770), in *Trials for Adultery*, inserted between pp. 2:4-5.



*M<sup>rs</sup> Collet discovered in bed with John Branch, by  
Edward Chapman and others. See Trials for Adultery 2<sup>d</sup> vol. pa. 4.  
Published as the Act directs by S. Bladen, 20, Sept 1770*

Fig. 1. "Mrs. Collet discovered in bed with John Branch, by Edward Chapman and others," *The Trial of Anne Charlotte Collet* (1770), in *Trials for Adultery*

quickly rushed up the back stairs and through the long gallery just in time to see Lady Abergavenny exit Lyddel's apartment looking very red and disheveled.<sup>130</sup> The footman further testified that the following morning he heard the bed creaking in Lyddel's chamber again. In order to see if his lady was in Lyddel's bedchamber, he went into the gallery, removed his wig and laid low on the floor to avoid being detected. Once the creaking stopped, he heard the door unbolt, after which Lyddel opened the door, peaked out into the hallway, and returned inside. Then he saw Lady Abergavenny exit, pressing down her petticoats, presumably, the footman conjectured to the court, to keep the guest in the next room from hearing the rustling of her silks.<sup>131</sup>

Other servants also took advantage of the layout of the interior to spy on their mistresses. The architectural trend of removing servants' areas from the main part of the house could backfire. In fact, the testimony of another witness in this same trial suggests that this practice actually facilitated the observation of the mistress's adultery, rather than provide an obstacle to be overcome. The laundry maid, who deposed that "the Building of the Laundry is a back Building cross the Gravel Court, right against her Lady's Dressing Room," described one occasion when the window shutters that were usually closed were opened just wide enough that she could see inside the chamber, where she observed Lyddel pull Lady Abergavenny "by the pinner"<sup>132</sup> and kiss her. She testified

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<sup>130</sup> *Abergavenny v. Lyddel* (1730), in *Adultery Anatomized*, 91-92.

<sup>131</sup> *Ibid.*, 92; *Trial of Richard Lyddel*, 11.

<sup>132</sup> A "pinner" was a type of vestigial cap that was pinned to the top of the head. It was dressier than a regular cap and was often made mostly of lace. A pinner could have lappets, which were two long strips of fabric that hung down in the back or could be pinned up on top. These lappets are probably what the maid saw Lyddel "pulling" as he kissed Lady Abergavenny. For a glossary of terminology for eighteenth-century costume, see Sue Felshin, *Glossary of 18th Century Costume Terminology*, <http://people.csail.mit.edu/sfelshin/revwar/glossary.html> (accessed July 13, 2010).

that she continued watching this episode for a quarter-hour, and claimed she witnessed similar encounters on more than one occasion.<sup>133</sup> A maid named Elizabeth Hopping also described the suspicious incidents she had observed between Lyddel and Lady Abergavenny. On numerous occasions, she claimed, she had seen them kissing in her Lady's dressing room and "thought the Familiarity was too great betwixt them." While rooms began to feature doors for direct entry from hallways or stairs, many of these "social" rooms were also adjoined by a connecting door. One morning when they were alone in the dining room, Hopping snuck into the adjacent withdrawing room to watch them through the keyhole. She described seeing her Lady with her petticoats pulled up and Lyddel pressed against her, "doing something that a man ought not to do" (see fig. 2).

Clearly, the lock-and-key feature on doors to interior chambers could be breached by clever servants. This threat was palpable enough to merit depictions in contemporary literature of maids watching through keyholes (see fig. 3). Mary Bewicke and William Vaughan tried to preempt any keyhole-prying by pinning a handkerchief over the door knob, but they forgot to remove it on one occasion and the maid found it. This aroused suspicion among the servants, who determined to watch Bewicke closely to discover the secret their mistress was shielding from them with her handkerchief.<sup>134</sup> A less conspicuous mechanism for secrecy was the bed curtain.<sup>135</sup> Curtains created a greater sense of intimacy for the bed's occupants, be they amorous spouses or adulterous lovers,

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<sup>133</sup> *Abergavenny v. Lyddel* (1730), in *Adultery Anatomized*, 84-88, 95-96; *Trial of Richard Lyddel*, 7.

<sup>134</sup> *The Trial of Mary Elizabeth Bewicke...for Adultery with William Welby Vaughan* (1793), in *The cuckold's chronicle; being select trials for adultery, incest, imbecillity, ravishment, &c.* (London, 1793), 2:266.

<sup>135</sup> Collomp, "Families: Habitations and Cohabitations," in *A History of Private Life*, 509.





*Lady Abergavenny & M.<sup>r</sup> Liddel, amusing themselves.*  
*See N<sup>o</sup> 7. of Trials for Adultery, p. 3.*  
*Pub. 23 Dec<sup>r</sup> 1780, by S. Blanton.*

Figure 2. "Lady Abergavenny & Mr. Liddel, Amusing Themselves" in *Trials for Adultery* 1



Curiosity, 1817

Figure 3. *Curiosity* (1817), in Stone, *Road to Divorce*.

but for Bewicke and Vaughan, it merely provided them with an imaginary cloak of security. One of Bewicke's maids testified that she peered through the partially-opened door of a spare room and saw her mistress and Vaughan committing adultery. They had drawn the curtains closed on the side of the bed that was visible from the door without realizing that the mirror on the opposite wall exposed the bed's occupants to full view.<sup>136</sup>

A servants' bell was another feature of domestic architecture intended to assist in distancing masters from servants.<sup>137</sup> Like the other mechanisms, however, the servants' bells did not guarantee absolute privacy. In Sarah Worgan's 1768 adultery trial, a servant, Anne Nichols, told the court that after Worgan and Robert Rowe "had been in the [parlor]...alone for a considerable time," Worgan rang the parlor bell to summon her maid. Nichols, who was "just then coming down stairs, opened the parlour door almost as soon as the bell rung." The pair, not having anticipated the maid's immediate arrival, had not had time to fully dress and compose themselves, and Nichols observed that they were "very much confused and hot" when she entered the room.<sup>138</sup> In another trial, a servant described an instance where he listened through the parlor keyhole to his mistress and her lover committing adultery. He deposed that when they were finished his mistress, unaware that her servant had been spying on them outside the door, rang the parlor bell to summon him for food and wine. He cleverly hurried down the hall, "then turned about,

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<sup>136</sup> *Trial of Mary Bewicke* (1793), in *Cuckold's Chronicle*, 2:268, 272.

<sup>137</sup> Girouard, *English Country House*, 264-65.

<sup>138</sup> *The Trial of Sarah Worgan* (1768), in *Trials for Adultery*, 7:52; *ibid.*, in *Crim. Con. Biography*, 1:338.

and appeared as if coming up stairs” so his mistress would not discover what he had been doing.<sup>139</sup>

### **Curiosity, Camaraderie, and the Servant Community**

The new culture of privacy meant a loss of traditional rights and privileges that servants had come to expect as part of their employment.<sup>140</sup> Servants resisted these attempts at “domestic enclosure” and quite were adept at circumventing the barriers emplaced to regulate their presence in the home. These efforts fostered camaraderie and a sense of community among household servants. Social roles were far from universal in the eighteenth-century British household, and servant-master and servant-servant relations varied at different times and different places. Even where behaviors appear uniform, the motives driving those actions could be remarkably diverse. (Although, the larger body of evidence relating to servant vigilance in crim. con. trials indicates that the majority of witnesses seemed to spy out of curiosity and camaraderie more than any other reason.) Motives aside, however, trial records reveal a nebulous servant community in the eighteenth century, but one that elites often perceived as a palpable threat that needed to be addressed. A burgeoning and increasingly self-conscious servant community compromised the ideal of patriarchal authority and highlighted the unreliability of servant subordination to their superiors. There was a subtle acknowledgement in crim. con. trial

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<sup>139</sup> *Elizabeth Campbell Trial for Adultery* (1777), in *Trials for Adultery*, 2:19. This case was preceded by the crim. con. trial *Campbell v. Wade* (1777).

<sup>140</sup> Linebaugh, “The Cat Likes Cream,” 225-255.

accounts of a “domestic allegiance” that undermined the authority of both the master and the mistress: loyalty to the servant community.

The issue of servant loyalty suffused the crim. con. trial. Servant-witnesses provided testimony in court on behalf of either the husband-plaintiff or the seducer-defendant (and the adulterous wife), which essentially established an allegiance to one side or the other. Despite this, trial transcripts reveal a heightened apprehension of an alternative loyalty among servants. The line between concealment and exposure was certainly thin, but a servant’s discovery of his or her mistress’s secret did not always mean a full disclosure of the fact. Servants frequently concealed their knowledge of the adultery from their mistress, and rarely did they expose the affair to their masters. Masters interpreted this as neutrality and treated it as an act of disloyalty when in reality, servants were very much practicing loyalty, but to each other rather than their superiors. The servants did not merely withhold their intimate knowledge from their masters and mistresses, but in many cases actively sought these secrets collectively, then shared their discoveries with the other servants in the home.

Attaining knowledge of the secret adultery gave them a sense of power over their superiors. This is evident by the fact that servants often made sure to avoid detection themselves as they spied on their mistress. Knowledge of the lovers’ secret was the servants’ secret, one they often shared only amongst themselves and rarely with their mistress or master. In most trials servants testified that they had no intention of revealing the adultery to their master unless they were directly confronted about it by him.<sup>141</sup> This

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<sup>141</sup> *Cadogan v. Cooper and Abergavenny v. Lyddel*, among others.

evidence indicates the widespread inability of elites to maintain control of the mechanisms for protecting (or exposing) household secrets. Servants could, and did, keep their masters' secrets "locked rankling in their breasts,"<sup>142</sup> and the power to conceal or expose secrets was in the hands of those servants. An unregulated, curious servant community, then, posed a threat not only to the mistress or the authority of the patriarch, but potentially to the entire social hierarchy.

Trial testimony often reads like a game of "hide and seek" between servants and their mistresses. It was a battle of wits, and the servants usually won. Dorothy Hanckwitz's trial for adultery in 1772 was preceded by a crim. con. trial in December 1771 between her husband and her lover, George Lambertson, in which her husband was awarded £500 damages plus the cost of suit.<sup>143</sup> The witnesses in these trials testified to an incident when Lambertson unsuccessfully tried to trick them into thinking he had gone to bed in his room. They told the court that he walked very loudly up the stairs to his bedchamber, to make sure the servants heard him leave Mrs. Hanckwitz's room. The two teenaged servants, Elizabeth Fulcher and Jane Yeomans, pretended to go to sleep, but waited up, as they were "curious to know where the said George Lambertson and Dorothy Godfrey Hanckwitz would lay that night." Fifteen minutes after he loudly exited their lady's bedchamber, they heard someone sneaking into her room. Because they anticipated his return, they were still waiting and watching, and when the door opened,

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<sup>142</sup> *Cadogan v. Cooper* (1794), 41.

<sup>143</sup> *Trial of Dorothy Godfrey Hanckwitz* (1772), in *Trials for Adultery* 3. Also see this trial in Francis Plowden, *Crim. Con. Biography* (London, 1830), 1:367-369, 2:3-9.

the candlelight in her room was sufficient for the maids to identify her late-night visitor as Lambertson.<sup>144</sup>

Their superiors' desire for secrecy meant little to the servants. If anything, it piqued their curiosity and made them more determined to observe potential indiscretions. The fact that they made a point to mention in their testimony the detail about Lambertson's noisy production of leaving Hanckwitz's room and returning to his own reveals not only the efforts at secrecy by the two lovers, but the cleverness of the servants who anticipated the scheme and artfully undermined it. These details were sprinkled throughout their testimony. For instance, following a rendezvous in Lambertson's room, the couple apparently attempted to reshape the mattress to hide the fact they had just been in bed together. Hanckwitz and Lambertson were wise enough to realize the servants could discover them, but once again underestimated their cunning. When the maid, Mary Bassett, saw them leave the bedroom together, she determined to find out what they had been doing in there. She inspected the bed and discovered a dent, but made sure to note in her testimony that they had tried, unsuccessfully, to conceal the impression from her and the other maids by commenting that, "an attempt had been made to put the bed to rights in some measure, though the dent was very discoverable."<sup>145</sup> This type of back-and-forth between the clandestine lovers and their watchful servants played out very much like a game, and reading the servants' testimony reinforces who the victors were.

According to the evidence from crim. con. trials, when servants suspected or witnessed their mistress committing adultery, they also rarely rushed to confront their

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<sup>144</sup> Ibid., 3:22-23, 30, 34, 37.

<sup>145</sup> Ibid, 20, 28-29, 34.

master or mistress with the information. Instead, they usually discussed it amongst themselves and waited for new opportunities to observe their superiors' misbehavior. One example of this can be seen in the testimony of Sarah Simmons and Elizabeth Holden, both maids, and John Appleton, the footman, in the 1776 crim. con. and adultery trials John Potter Harris filed against Rev. John Craven and Harris's wife, Elizabeth. Like most servant-witnesses in these trials, the servants in the Harris household did not seem in a rush to divulge their secret to Mr. Harris. They suspected the affair for months and had witnessed Elizabeth's adultery many times. Rather than promptly reporting to their master, they collectively connived at different ways to observe the "criminal conversations." On one occasion when Mr. Harris was away and Craven was a guest in the house, Appleton suspected Craven and Mrs. Harris would sleep together that night. He wanted "to find out whether his suspicions were well founded," so he pretended to go to sleep and waited until everyone went to bed. He was "determined to listen at the door of Mr. Cravens' room, ...[so] he pulled off his shoes, and put out his candle, and went to Mr. Craven's room-door and listened."<sup>146</sup> When he heard the bed creaking and clothes rustling, he went and fetched Sarah Simmons to listen with him. They listened at the door until they heard the lock unbolt and the door handle move, at which point they hurriedly returned to their respective apartments. Appleton continued watching through his cracked bedroom door and saw Mrs. Harris leave Craven's room and go into her sister's room, who was also a guest in the house, where she stayed for a short while. Afterwards, she

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<sup>146</sup> *The Trial of Elizabeth Harris (1776)*, in *Trials for Adultery*, 5:46.



returned to Craven's bedchamber and, his curiosity apparently satisfied, Appleton returned to bed.<sup>147</sup>

In Henrietta Arabin's trial for adultery with Thomas Sutton, one witness suspected Arabin and Sutton were alone in the parlor and peeked through a keyhole to see. His reaction when his suspicions were confirmed was to run and get another male servant to join him and watch the lovers commit adultery. The next day, they sought further evidence of the affair and inspected the parlor, where they found powder and pins on the furniture and carpet. They also found a footprint on the windowsill where Sutton snuck in "to avoid detection."<sup>148</sup> It is possible that the initial spectator ran to get the other servant in order to have a second witness to support his story when he told his master. However, there is no indication that they told him right away. They waited at least one day, based on their testimony about inspecting the parlor the following day, but even this investigation was a joint mission. They deposed that they watched and listened to the adultery through the parlor keyhole for the duration of the amorous encounter, a decision that was neither explained nor questioned by the witnesses or the lawyers. Once they were sure of what was occurring on the other side of the door, there was no need to remain, yet they did. This made going back to inspect the parlor floor and furniture the following day somewhat redundant, as they could already provide two eye-witness accounts to the affair. If they were after evidence, they had enough, yet they persisted in their observations. All of this suggests that they were mostly motivated by idle curiosity,

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<sup>147</sup> Ibid, 46-47.

<sup>148</sup> *The Trial of Henrietta Arabin* (1768), in *Cuckold's Chronicle*, 2:30; *Arabin v. Arabin* (1787), Divorce [adultery], LPCA: E 47/19.

they wanted to know what was being hidden from them, and the more knowledge about the adultery they could acquire, the better. In this way, the discovery of powder stains and loose pins was necessary, not for proving the affair, but for enhancing their knowledge of it. This in turn enhanced their power over their mistress.

### **Prying for Power**

Some servants did confront their mistress about her behavior, however, and used the power of their knowledge for their own personal benefit. In Elizabeth Harris's adultery trial, Sarah Simmons testified that the morning after she had witnessed Craven sneak out of Elizabeth's bedchamber, she told her lady what she had seen. After breakfast, Craven asked Sarah for her assistance with putting on his coat to leave, at which time he gave her a guinea "and said something to her which she did not understand." She told the court that such compensation from Rev. Craven was unusual. Later that afternoon, Elizabeth summoned Sarah to her bedchamber and gave her a gown, petticoat, and a few other items, but warned her "not to tell tales, for...servants never got any thing by it."<sup>149</sup>

Despite these bribes, Sarah Simmons was relatively aggressive in her vigilance. One morning, when Mrs. Harris and Craven were alone in the parlor, Elizabeth Holden told Sarah their mistress had requested that they place the firewood for the parlor fireplace outside the door, as Mrs. Harris planned to build the fire herself. Elizabeth had already observed one encounter between the lovers that morning, and Sarah was determined to witness further indiscretions. Instead of placing the firewood outside the

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<sup>149</sup> *Trial of Elizabeth Harris* (1776), in *Trials for Adultery*, 5:25-26.

door, she walked into the parlor where she found Mrs. Harris and Mr. Craven standing in front of the fireplace with their arms wrapped around each other. Surprised by the sudden intrusion, “they immediately started up, in seeming confusion,” and Mrs. Harris told Sarah to leave the wood, that “she would put it on the fire herself; and [she] accordingly put down the wood, and went out of the room, leaving Mrs. Harris and Mr. Craven together.”<sup>150</sup>

This “discovery scene” was depicted in an illustration included in *Trials for Adultery* (see fig. 4). The image shows Mrs. Harris and Rev. Craven situated as Sarah described in her testimony: Harris is leaning forward against the fireplace as Craven, standing behind her, has his arm wrapped around her waist and is caressing her. The wall behind them is unadorned except for two individual portraits of Mr. and Mrs. Harris. In the background, Sarah is shown entering the room carrying a bundle of firewood in her arms. Although she is barely through the door, her gaze is fixed intently on her mistress and Rev. Craven, which suggests she anticipated the scene she discovered and deliberately interrupted it. Readers know from her testimony, however, that the episode ended with Sarah setting down the firewood and exiting the room without any fanfare, shrouding her motives in ambiguity. The situation is less ambiguous for the amorous couple. The image depicts the moment before the lovers realize they have been discovered, as they are engaged in their affair and completely unaware that a servant is behind them, watching. The power inversion is emphasized by the juxtaposition of the blissfully ignorant elites in the image foreground, and their surreptitiously enlightened

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<sup>150</sup> Ibid, 14-15.



Figure 4. "The Rev. Mr. Craven and Mrs. Harris Discovered by Sarah Simmons in Amorous Dalliance," in *Trials for Adultery*

servant emerging from the shadows in the background. The ambiguity of Sarah's intentions -- why did she enter the room unannounced (and against her mistress's direct orders)? Why did she leave without acknowledging the adultery? -- only heightens the sense of bemusement for the elites and the viewers.<sup>151</sup>

It is not clear why Sarah interjected herself into the dalliance only to leave without a word. Perhaps this enhanced her leverage when she confronted her mistress later, as both Harris and Craven knew that she had caught them in a very compromising situation. There is no direct evidence of blackmail, but it is difficult to imagine what she stood to gain from such a revelation to her mistress, other than the gifts that Harris and Craven promptly provided her. Furthermore, her testimony indicated she had no intention of exposing her mistress, as she and the other servants indulged their curiosity for quite some time without a word to anyone but each other. Sarah seemed acutely aware of the power-inversion that resulted when servants spied on their superiors, particularly that the mistress stood to lose far more from the exposure of her adultery than the servants did from insubordination, and she maximized her personal gains from her newly-obtained power.<sup>152</sup> Sarah's confrontational method of observation was an exception rather than the rule in crim. con. trials, but it was precisely the covert nature of servant curiosity that made it so threatening to elites.

Trial documents reveal that the social hierarchy of the household could be quite complex and this could influence servant loyalties in different ways. In *Campbell v. Wade*, for example, Joseph Harris's loyalty to his master reinforced John Campbell's

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<sup>151</sup> Ibid, 15.

<sup>152</sup> Ibid.

patriarchal authority, but his adherence to the traditional household hierarchy might have stemmed from his own position of authority.<sup>153</sup> In the seventeenth century, footmen were among the lowest-ranked domestic workers in the household, but they rose to the top of the servant hierarchy in the eighteenth century.<sup>154</sup> Trial testimony indicated that Harris had his own room in the house, “beyond the servants-hall” but clearly on the same floor as the other domestic workers (which was the basement, below the main apartments).<sup>155</sup> One of the ways to distinguish “elite” servants, then, was to provide them with their own living space. The idea of privacy or personal space carried a value for servants and elites alike, so much so that it conferred status on those who possessed it, and with that status came authority. This was evident in testimony that showed the other servants respected Harris’s authority in a particular incident in which Harris vetoed a plot concocted by the servants to spy on the lovers during the night.<sup>156</sup> For Harris, then, his elevated status meant that he was entitled to some sense of privacy or personal space, at least from the other servants in the house.

This trial also shows that the concept of a “community of one” in the domestic sphere could extend beyond elites to include servants. If the closet symbolized the concept of the private self in the eighteenth century, the fact that employers provided

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<sup>153</sup> And he was rewarded for that: in his deposition, Harris was sworn in as a servant to John Campbell despite being fired by his wife, while the other servants who had been dismissed -- and who did not, apparently, go out of their way to alert their master to the adultery -- were forced to find employment elsewhere. For example, William Jenkins was Elizabeth Campbell’s coachman when she fired him, and he was listed as the coachman for a Mr. Hankey in Middlesex County in his deposition. *The Trial of Elizabeth Campbell* (1777), in *Trials for Adultery*, 2:27.

<sup>154</sup> Girouard, *English Country House*, 141.

<sup>155</sup> *Trial of Elizabeth Campbell* (1777), in *Trials for Adultery*, 2:18, 34.

<sup>156</sup> *Ibid.*, 15-18, 32.

servants with one if possible, even if it was not as elegant as the elites' closets, demonstrates that privacy could be enjoyed by individuals of all ranks. Joseph Harris demonstrated a sense of personal ownership and a desire to secure certain possessions in order to maintain secrecy that was shared by elites, and equally precarious. He had a lock-box of his own in which he could secure his intimate belongings or, in this case, his mistress's intimate belongings. Just as Harris felt entitled to transgress the boundaries of privacy his mistress had established, Elizabeth Campbell did not believe that her servant had any right to privacy from her and felt free to go through his locked compartments in search of the letters.

In *Campbell v. Wade*, Joseph Harris's position within the household hierarchy influenced his loyalty to his master. *Cadogan v. Cooper* demonstrated that elevated status sometimes engendered servant-employer loyalties to the mistress: Farly Bull was Lady Cadogan's personal maid and assisted her mistress in conducting and concealing her affair with Mr. Cooper.<sup>157</sup> Farly was not only a threat to patriarchal authority, however, she was also a renegade in the servant community. She was an active participant in concealing the adultery not just from her master, but from the prying eyes of her fellow servants. In their testimony, other servants depicted Farly as an obstacle they had to overcome in order to observe Lady Cadogan's adultery. One servant recalled an incident where she went up to make her lady's bed, but found the door was locked. She immediately suspected that Cooper was in the room because she had not seen him leave the house and there were no other guests who would warrant locking the door to prevent

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<sup>157</sup> *Cadogan v. Cooper* (1794).

unwanted company from intruding. The lawyer narrated the maid's testimony for the jury, and told how, "She went downstairs full of suspicion... One servant made this observation to another. They watched."<sup>158</sup> They knew Cooper would attempt to leave the room undetected, and the lawyer used the floor plan to illustrate how they were able to observe his exit without him knowing he had been seen.<sup>159</sup> As the servants waited and watched to see who came out of the room, Farly emerged to disperse the crowd of potential witnesses by sending them on various errands and chores. When she thought all the servants were gone, she twice uttered "[a]hem!" to signal the coast was clear, "and then out walks Mr. Cooper, imagining he had got out without observation."<sup>160</sup> He quickly left the bedchamber and went downstairs, where Farly let him out at the street door. They were unaware, however, that another maid, who suspected their ruse, had positioned herself on the stairwell that overlooked the passageway from Lady Cadogan's bedchamber and witnessed Cooper's exit.<sup>161</sup> The lengths to which Farly had to go in an attempt to evade other servants, and the fact that despite those efforts another servant still saw everything, underlines the salience and complexity of the servant community in the domestic sphere.

In the case of crim con. trials specifically, curious servants amplified the threat to patriarchal authority already being posed by the "criminal conversation" itself. The combination of an adulterous wife, a libertine male house guest, and "disloyal" servants

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<sup>158</sup> Ibid., 15-16.

<sup>159</sup> Ibid., 15-16.

<sup>160</sup> Ibid, 16.

<sup>161</sup> Ibid, 15-16. The lawyer used the floor plan to demonstrate where the servant positioned herself and how her location did not restrict a full view of the scenario.



created a house in total disorder. One of the most extreme examples of disorder in the household, then, combined all these threatening elements: an adulterous wife who had an affair with a servant. This was the situation in *Dormer v. Jones*, one of the earliest highly-publicized crim. con. trials of the eighteenth century. A published account of the trial appeared in *Cases for Divorce for Several Causes* in 1715, the same year as the trial, and included a preface that warned the reader that he or she was about to encounter a despicable and appalling case of the worst kind of adultery.<sup>162</sup> The exceptional nature of the crime was the rank of the seducer, Tom Jones, who was the Dormers' footman. The social status of the two men colored the discussions of character and crime throughout the trial. Lawyers, witnesses (including other servants), and editorial comments portrayed Dormer as a gentleman and Jones as the lowest sort in society. When they were not referred to as "Plaintiff" and "Defendant," it was always "Mr. Dormer" and "Tom." During the testimony of "a gentlewoman," Jones was not even referred to by name but merely by his profession, although she adjusted his title to emphasize his inferiority: he was referred to condescendingly as a "foot-boy," as his station and conduct were so low she did not even consider him fully a man. The trial testimonies made it clear that Jones's crime was a social transgression more than a moral or legal one.<sup>163</sup>

### **Containing Secrets Within the Household Community**

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<sup>162</sup> *Dormer v. Jones* (1715), in *Cases for Divorce for Several Causes* (London, 1715), Preface. This trial was also included or referenced in later collections, including *Adultery Anatomized* (1761) and *Cuckold's Chronicle* (1793).

<sup>163</sup> *Dormer v. Jones* (1715), in *Cases for Divorce*, 45.

In *Dormer v. Jones*, the footman Tom Jones was guilty of a social transgression, of violating the established hierarchy of the household, but his lack of discretion in conducting the affair exacerbated his crime. Witnesses testified to hearing Jones mock Dormer for being a cuckold and brag about being the man who made him so. One witness described a performance of “rough music” where Jones threw pebbles at Dormer’s window while singing a ballad about cuckolds. Dormer’s attorneys insisted that Jones’s efforts to publicize the adultery beyond the household into the local community aggravated the injury.<sup>164</sup> After all, the key element of “rough music” was its public character, the purpose of which was to maximize the humiliation of the target(s).<sup>165</sup> In the Dormer case, not only had the husband’s wife committed adultery with his footman, but the public exposure of his cuckolding amplified his humiliation. Notably, the lawyers felt compelled to make this point immediately following testimony describing the footman bragging about making his master a cuckold, as though there was a need to publicly and officially reaffirm Dormer’s authority to counter the humiliating details of his wife’s infidelity with a servant in his own household.<sup>166</sup> Insubordinate servants, therefore, were not only a threat in the domestic realm, but they could potentially undermine a man’s authority in the wider community. This meant that the plaintiffs in crim. con. trials not only needed to reaffirm their authority over servants *in* their own homes, they also needed to gain some form of control over their conduct outside the home, at least as it might pertain to their elite employers.

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<sup>164</sup> Ibid, 57-58.

<sup>165</sup> Thompson, *Customs in Common*, 524-25, 530.

<sup>166</sup> *Dormer v. Jones* (1715), in *Cases for Divorce*, 57-58.

The culture of curiosity was not limited to the domestic realm, so it is not surprising that curious servants found other inquiring minds with which they happily shared their masters' secrets. One prominent social practice that characterizes early modern cultural history is gossip, which Benedict defines as "an unregulated exchange of an unverified information that commodifies others."<sup>167</sup> In crim. con., at the most intimate level of community, the curiosity of servants inspired them to spy on their masters. Rather than exposing the secret to regulate or enforce a common sexual morality, the servants merely shared the secret amongst themselves, fostering the development of a servant sub-community within the domestic community. These horizontal solidarities often extended beyond a single household to include servants from other households or people of a similar social status in the surrounding community. Gossip was one way to foster these solidarities.<sup>168</sup>

Trials presented the communication of secrets outside the home as particularly significant. Crim. con. lawyers portrayed the discussion of adultery among the wider community as gossip by deploying linguistic phrases such as "confiding secrets" or "confiding intimacies." Legally, this established that certain relations conducted in the domestic sphere (between elites, at least) were secret, or intimate, and not meant to be shared with people outside the household community. Many trial records referred to servants and others gossiping about the adultery and argued that it aggravated the offense.

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<sup>167</sup> Benedict, *Curiosity*, 2.

<sup>168</sup> Bernard Capp, *When Gossips Meet: Women, Family, and Neighborhood in Early Modern England* (Oxford: Oxford University Press, 2003), 170-172; Castan, "The Public and the Private," 416-418; Vic Gatrell, *City of Laughter: Sex and Satire in Eighteenth-Century* (New York: Walker & Company, 2006), 170; Lucy Delap, "Kitchen-Sink Laughter: Domestic Service Humor in Twentieth-Century Britain," *Journal of British Studies* 49 (July 2010): 628, 651.

In *Abergavenny v. Lyddel*, the lawyers asked servants to disclose all the people they discussed their discovery with in an attempt to establish a genealogy of the “public” adultery and gauge the notoriousness of the scandal.<sup>169</sup> Indeed, it was part of the criteria in adultery trials -- the extent to which the transgression was “true, public, and notorious” -- for assessing the extent of the injury to the plaintiff and the subsequent damages he was awarded.<sup>170</sup>

Thus, husband-plaintiffs used the crim. con. trial to reassert their authority in the home, which buttressed their reputation beyond it, by regulating curiosity and gossip about their private affairs. For elites, the trial was necessary to curtail the threat that curiosity and gossip posed to their power. These practices eroded patriarchal authority in two ways: the primary participants were their social inferiors (servants and women), yet they were behaving contrary to their subordinate positions; furthermore, the nature of the information being exchanged undermined the master’s control over his private life. Regaining control of the private was imperative, and husbands sought to “lock the door,” so to speak, on spreading secrets outside the domestic sphere. Through the trials, by bringing witnesses -- subordinate servants, mostly -- into court, they established an “official” account of the incident on the record that usually, though not always, presented a sympathetic and favorable portrayal of the plaintiff and his circumstances. (Of course, the financial compensation from the defendant was an added perk, no doubt.) By the end of this process, the popular gossip transitioned from “an unregulated exchange of an

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<sup>169</sup> *Tryal of Richard Lyddel*, 5-7, 15, 30.

<sup>170</sup> The expression that something was “true, public and notorious” appeared in nearly every adultery trial deposition, as it was criteria for libel cases brought in the ecclesiastical courts and particularly in divorce proceedings in the Court of Arches. For examples, see LPCA cases listed in the bibliography.

unverified information” to an official, “final” version of a story about someone’s private life. The revised account of the adultery returned some authority to the cuckolded husband. The reliance on servant testimony served a similar purpose. As we saw above, testifying in court gave the servants an opportunity to publicly display their power over their superiors in the domestic realm through their accounts of successfully thwarting elites’ efforts to impose boundaries on them through a process of “domestic enclosure.” At the end of the day, however, they confessed their knowledge to their master and testified on his behalf. A successful crim. con. trial, then, brought spying servants back under the control of their master, punished the male lover financially, publicly exposed the adulterous wife, and laid the groundwork for a successful separation or divorce. In short, it restored order to the household.

The imperative of securing the “domestic enclosure” of their secrets led masters into the courtroom. Elite men used this arena to reinforce their cultural hegemony, not only by demonstrating their symbolic authority, but also by making it “official” via the common law courts. Paradoxically, legitimizing domestic privacy was achieved through very public venues, particularly since the crim. con. trial, in the early stages of an emerging mass media culture, enjoyed a level of publicity that was unprecedented. This highlights the existence of a concept of privacy and private life located in the home, but also exposes the tensions that persisted between competing notions or “private” and “public” in the eighteenth century.

### Chapter Three: The Legal Imperative

The struggle to maintain control over the private extended beyond the home and into the courtroom. The legal sphere represented a site for negotiating boundaries of public and private in both the legal realm and the domestic realm. Elite masters also used the legal arena to reassert the social hierarchy that had been undermined by insubordinate servants. One of the underlying goals of the action was to put servants' spying and gossiping about their superiors' private affairs to an end, or at the very least, to bring it under the control of the patriarch. While husbands succeeded in reinforcing their authority over their servants, however, they also unwittingly undermined their position against an emerging group challenging the ruling elites for authority in eighteenth-century Britain: the "professional" class of merchant traders, lawyers, judges, and publishers.

The historiography of eighteenth-century Britain has described an emerging conflict between "two political nations -- a ruling oligarchy and a broader, more inclusive one."<sup>171</sup> Bob Harris stresses the importance of a nuanced consideration of this development, however, particularly the fact that the ruling elites maintained their hegemony through "a series of negotiations and compromises" with the lower orders of society.<sup>172</sup> The crim. con. trial itself could be seen as one example of this process of "negotiations and compromises." In the seventeenth century, publicizing private strife,

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<sup>171</sup> Bob Harris, *Politics and the Rise of the Press: Britain and France, 1620-1800* (New York: Routledge, 1996), 29.

<sup>172</sup> *Ibid.*, 30. See also Thompson, *Customs in Common*.

particularly in the form of collecting damages from a wife's seducer, was considered beneath persons of elevated rank.<sup>173</sup> Despite a pair of high-profile precedents set in the 1690s by the Duke of Norfolk and the Earl of Macclesfield, members of the aristocracy were reluctant to settle marital disputes publicly. That gradually changed during the first half of the eighteenth century, and during the second half, it appeared as though crim. con. was very much in vogue among elites. There was a difference between the 1690s trials and their eighteenth-century counterparts: Norfolk and Macclesfield brought their complaints before Parliament; crim. con. litigants filed suit in the central common law courts of King's Bench or Common Pleas.

The eighteenth century was an especially litigious age, which was characterized in part by a significant growth in civil tort actions. It has been suggested that the rise in civil cases during this period was due to changing cultural perceptions concerning proper recourse to defend one's honor, particularly that dueling was too risky and no longer appropriate.<sup>174</sup> A new culture of "politeness" emerged in the early eighteenth century that emphasized "genteel modes of expression and the display of benevolent generosity and accommodation to one's companions."<sup>175</sup> For the Englishman, one performed one's manhood and status as "Gentleman" through public forms of sociability and defined against other men.<sup>176</sup> With manhood and honor defined increasingly by public conduct,

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<sup>173</sup> Stone, *Road to Divorce*, 233.

<sup>174</sup> C.R. Kropf, "Libel and Satire in the Eighteenth Century," *Eighteenth-Century Studies* 8, no. 2 (Winter, 1974-1975): 153.

<sup>175</sup> Turner, *Fashioning Adultery*, 14.

<sup>176</sup> *Ibid.*, 14, 16.

publicly defending one's honor in a civil suit gradually gained acceptance as a legitimate course of action.

### **Patriarchy, Politeness, and Control of the Private**

Wives, lovers, and servants manipulated architectural components of the domestic realm to create and contest secrecy and security, but the stakes in the crim. con. *trial* pertained to the husband in the form of his social, legal, and material security. First at stake was his role as patriarch and master of the household. Second, it was the security of his property in the form of his house and his wife, both of which had been trespassed by her lover. This entailed the security of his lineage under threat by illegitimate children. Finally, the protection of his reputation was at stake, and the cultural value of one's reputation was worth as much as any monetary wealth. For aristocrats, it could have meant more, as their hegemony in the eighteenth century was essentially dependent upon their symbolic power, which was maintained through public displays of authority and linked to their status as property owners.<sup>177</sup> The husband's manhood was primarily located in the domestic realm. This identity, however, and the authority of the patriarch, was a cultural construct that was reinforced in the legal realm, inside the courtroom and within the legal sphere. Crim. con. testimonies reveal that husbands, however, were rarely ever home, and these extended absences from the house undermined any real authority they might have had. The husbands relied on the symbolic power assigned to their domestic space, as

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<sup>177</sup> This theme is explored in the collection of essays edited by Douglas Hay et al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Penguin Group, 1975).



patriarch. When their authority came under attack, they entered the space of the courtroom to reinforce patriarchal power.

On the surface, the action for criminal conversation was the pursuit of monetary damages from an alleged seducer for “trespassing” another man’s property in his wife and house. There was another form of “trespass” on trial, however, that the plaintiff sought to rectify through the legal system, and that was the transgression of established boundaries in the master’s home. Trial transcripts reveal that the “criminal” breaches were not limited to physical spaces and bodies. They also violated the established social hierarchy. In this way, the paramours, the domestic servants, and, although passively, the wives, were also on trial. Elite husbands went to court to regain control of the private and reassert their power over these insubordinate groups.

The servants’ testimony during crim. con. trials publicly confirmed their power over their superiors, yet simultaneously brought them back under the control of elite males. Through the trial process, servants became objects of inquiry for lawyers due to their knowledge of intimate information about their mistress and her lover. In agreeing to testify in court, servants surrendered their knowledge of their masters’ private lives to the legal elite. The dissemination and use of this information was subject to the control of courtroom ritual, lawyers’ inquiries, and the judges’ and juries’ evaluation. Not only did servants relinquish their power to the legal authorities, it was often to their masters’ benefit more than their own. Crim. con. trials also provided lawyers and commentators with an opportunity to reinforce servants’ subordinate role in the household and social hierarchy by representing their curiosity and gossiping in a negative light or by

describing it in terms of their master's honor. Reinforcing the social transgression of their pursuit of secrets reinforced servants' inferior status to their masters and mistresses both.

Patriarchal anxiety was the underlying concern in crim. con. trials, and mistress-servant adulteries represented the ultimate undermining of a man's authority in the home.

When the male lover *was* the servant, he did not merely challenge or undermine patriarchal hierarchy, he inverted it.<sup>178</sup> When a gentleman's servant usurped his sexual, marital, and patriarchal role, the household community was "turned upside down."

Lawyers reinforced the master's social and sexual superiority over his servants in the courtroom. In *Middleton v. Rose*, Middleton's attorney explained to the jury why a wife's adultery "with [her husband's] own servant, it was much fouler than if it had been with any other person." It violated the trust between a master and his servants. A man must be able to rely on his servants because the nature of their relationship<sup>179</sup> provided servants with "opportunities of committing not only frauds upon the property, but frauds upon the master's comfort and tranquility, beyond what any other character can have." A man could only grant that kind of access to a person in whom he could have full confidence. A trustworthy servant was a most valuable friend to the master, but a dishonest "domestick" was "one of the bitterest enemies, and one of the keenest-biting vipers that can find its way into human society."<sup>180</sup> The connection between the threat a servant

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<sup>178</sup> Tim Meldrum notes the tension and disruption of daily life in the household that resulted from the Dormer-Jones affair, particularly Jones's elevation by Mrs. Dormer to "favorite," which gave him free reign to exercise authority over other servants and caused considerable vexation among them. Meldrum, *Domestic Service and Gender, 1660-1750: Life and Work in the London Household* (Essex, U.K.: Pearson Education, Ltd., 2000), 199.

<sup>179</sup> A term he defends by saying "The duty and relative situation of master and servant is a degree of relationship." *Middelton Versus Rose. A report of an action...by William Middelton, of Stockeld Park, esq. against John Rose, his groom, for Criminal Conversation* (London, 1795), 10.

<sup>180</sup> *Ibid.*

could pose to a man's property and the threat he could pose to a man's wife is significant. The two concepts were conflated in crim. con. trials. Lawyers, witnesses, and commentators emphasized the defendant's trespass upon the man's real property as much as they did the trespass upon his property in his wife's person. In many cases, the two forms of trespass could not be separated.

Trustworthiness was imperative for female servants as well. The issue of servant loyalty in general became more and more prominent in the eighteenth century. During the trial, lawyers cast aspersions on servants who actively assisted their mistress with maintaining the secrecy of an affair from the husband. This subversion of patriarchal authority was increasingly presented as a betrayal on the same level as the wife's infidelity to her husband. In the 1794 crim. con. trial between Lord Cadogan and Henry Cooper, the counsel for the plaintiff extended the charge of seduction against Cooper to include Lady Cadogan's personal maid, Farly Bull. In his opening he told the jury how, after Cooper seduced Lady Cadogan, "he seduced her servant to be the criminal agent in that conspiracy against the husband," and thus "the Plaintiff has lost one witness."<sup>181</sup> Even so, he warned, "She deceives herself, if she thinks to deceive his Lordship and you."<sup>182</sup> Farly Bull was Lady Cadogan's personal maid, but her ultimate loyalty, ideally, should have been to her master. During the trial, lawyers went so far as to compare Farly's role in concealing the affair from her master as treason. In this way, a crime against patriarchal society was likened to a crime against the state. This was one of the more extreme analogies deployed by crim. con. lawyers and was playing off of public

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<sup>181</sup> *Cadogan v. Cooper* (1794), 11.

<sup>182</sup> *Ibid.*, 12.

emotions surrounding a recent naval battle and dramatic victory for Britain by Lord Howe against France.<sup>183</sup> In the 1792 crim. con. trial, *Duberley v. Gunning*, the plaintiff's counsel made the following appeal to the jury: "I conjure you, by your regard for the public good; if such persons as the defendant are not punished, and if men's domestic comforts are thus to be invaded with impunity, the energy that unites the human race will be lost, and the welfare of the state at large endangered, -- for the state is but the model of a private family."<sup>184</sup> Although extreme, the analogy was not exceptional. The more common comparison, however, presented servant-mistress loyalty as tantamount to theft from the master, as the counsels articulated in the Cadogan trial.

This spoke to the plaintiffs' authority as masters of the house, but it was the lawyers who articulated their clients' power and it was they who likewise controlled the discourse on servants' loyalty, servants' spying, and essentially servants' power. Unsurprisingly, competing narratives emerged as the opposing counsels argued cases. In *Cadogan v. Cooper*, Cadogan's lawyer portrayed Farly Bull as a sort of traitor to her master for helping to conceal her mistress's affair, but Cooper's lawyer questioned the sincerity of the "loyal" servants who testified to the adultery in court. He observed to the jury that they "have kept this secret locked rankling in their breasts, till they had an opportunity of divulging it."<sup>185</sup> In fact, when lawyers asked the servants when they

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<sup>183</sup> *Ibid.*, 23. One of the counsels for the Plaintiff referenced Howe's victory in his opening address to the jury, and the transcriber or publisher included a notation at the bottom of the page: "This speech was delivered the next morning after intelligence was received of Earl Howe's victory over the French fleet." *Ibid.*

<sup>184</sup> *The Trial of Major-General Gunning...for Criminal Conversation with the Wife of the Plaintiff* (London, 1792), 11.

<sup>185</sup> *Cadogan v. Cooper* (1794), 41.

planned to alert their master to his wife's infidelity, two of them replied that they had no intention of exposing their mistress and added that they only revealed the affair when Lord Cadogan confronted them about it.<sup>186</sup> Cadogan's lawyers defended the servants' credibility and justified their initial reticence, then resolve for coming forward with their information. They were not trying to hurt their mistress by inventing evidence, he explained, nor did they mean to hurt their master by concealing it from him. They simply wanted to be sure their suspicions were correct before burdening Lord Cadogan with their discovery.<sup>187</sup> Cooper's lawyer countered by emphasizing the secretive nature of the servants and reminded the jury that they "kept the secret concealed in their own breasts, and had thereby been guilty of a breach of duty to their master, in not revealing it sooner, if they really believed his honour had been invaded."<sup>188</sup> This trial highlights two themes that emerged in crim. con. trials regarding servants: their secretive nature and their subversive tendencies. That servants were privy to their masters' most personal secrets was a cause for concern, and their furtive methods of observation compounded elite anxiety. Elite husbands, through their lawyers, were able to reassert their superiority over their servants during the crim. con. trial. The negative representation of servants was not limited to the legal sphere. Their curiosity made the servants themselves "curiosities"

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<sup>186</sup> Ibid. One of the maids, Mary, did not reveal the affair to any elites until she was directly asked about it (35), and Lord Cadogan's personal servant, Lloyd, admitted the same upon questioning (39). The affair was only brought to light after an unnamed servant told Lord Cadogan's son from a previous marriage, Rev. Dr. Cadogan, who then told his father (28). This was not uncommon in crim. con. trials. In *Abergavenny v. Lyddel*, a lawyer asked the maid why she did not immediately alert her master to the affair, and she claimed she thought he would not believe her: "Being ask'd, how it came to pass when she saw so notorious a Fact, that she did not discover it presently to her Lord, [she replied] that no Person dare open such a Thing to his Lordship, that it was discovered [to Abergavenny] by her, but not 'till her Lord had asked her about it." *Trial of Richard Lyddel* (1730), 5.

<sup>187</sup> *Cadogan v. Cooper* (1794), 17.

<sup>188</sup> Ibid, 43.

within the social and legal worlds of eighteenth-century Britain. The growing publicity surrounding crim. con. trials facilitated the proliferation of these representations.

The print media portrayed curious servants in the press depicted their inquisitiveness as a danger, both to the servants themselves and to society as a whole. The danger of spying servants lay in the publicity of both what they observed and of their acts of insubordination. The 1733 tract *Modern Amours* included an essay entitled “The Unhappy Adultery,” which was a “secret history” of Lady Abergavenny, the seduced wife at the center of the 1730 crim. con. trial between Lord Abergavenny and Richard Lyddel.<sup>189</sup> The author presented a defense of Lady Abergavenny’s -- or “Castilia,” as she was called in the essay<sup>190</sup> -- honor and reputation, and accused her husband of orchestrating the adultery in order to have cause for legally ridding himself of his wife without ridding himself of her fortune.<sup>191</sup> To succeed in his plan, the author claimed, Lord Abergavenny enlisted the assistance of his servants to spy on their mistress and report any discoveries to him. The servants were “over-officious” in their quest to

insinuate themselves into [their master’s] Favour; and without dispute they were reasonably paid for swearing what they never saw; for had they not been order’d, what Servant would have dar’d to have had the Impudence and Assurance to peep through a Key-hole, to see what her Lady was doing? non but a Person that had been in Bed with a Footman, and might be willing to persuade herself all Flesh has its Frailties; and there was willing to satisfy her Curiosity so far as to see if her Lady [was guilty of the same “Errors”].<sup>192</sup>

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<sup>189</sup> [Lydia Grainger], *Modern amours: or, a secret history of the adventures of some persons of the first rank. Faithfully related from the author's own knowledge of each transaction. With a key prefixed.* (London, 1733). The affixed key listed “The Unhappy Adultery” under the title “The fatal History of Lady A- ---y.”

<sup>190</sup> “Castilia” was probably meant to be “Calista,” the tragic heroine of Nicholas Rowe’s play *The Fair Penitent* (1703). See Turner, *Fashioning Adultery*, 184-186, and n230 below.

<sup>191</sup> [Grainger], “The Unhappy Adultery,” in *Modern Amours*, 37.

<sup>192</sup> *Ibid.*, 48-49.

The portrayal of the servants in this publication reduced them to pawns of their superiors, and suggested that, while inherently curious, a servant would only be so bold as to indulge that curiosity if she had been encouraged by her master. (Innate curiosity is one matter, but to suspect a virtuous and revered woman as Lady Abergavenny? The author bluntly explained to the reader that that particular form of curiosity stemmed from the maid's moral corruption due to her own sexual affair with the footman.) This sort of behavior was far too "curious" for the author not to assume that Lord Abergavenny had orchestrated it "behind the scenes."<sup>193</sup> That a husband needed to employ his servants to spy on his wife and report their findings to him indicates that the husband was unable to observe her himself because he was away from home.

The 1777 crim. con. trial [*John Hooke*] *Campbell v. [William] Wade*, and the subsequent adultery trial against Campbell's wife Elizabeth, demonstrated that this contributed to the limits of patriarchal ideals.<sup>194</sup> Husband-plaintiffs entered the courtroom to reassert their patriarchal authority, but in the process exposed their absence in the home. Each witness's testimony reiterated the fact that John Campbell was rarely under the same roof as his wife and five children. One servant-witness offered an explanation for this, saying that he believed his master's long absences from his wife were due to the renovations and improvements being made to their estate in Pembrokeshire, Wales, which

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<sup>193</sup> *Ibid.*, 30.

<sup>194</sup> *Trial of Elizabeth Campbell (1777)*, in *Trials for Adultery 2*.

required his presence as overseer.<sup>195</sup> This same servant, Joseph Harris, was a key player in this particular trial. When Mrs. Campbell requested that Harris mail her love letters to Wade in Bath, Harris sent them to Campbell's business associate in London and requested that they be forwarded to his master.<sup>196</sup> This suggests that Campbell traveled often and his itinerary rarely included trips to see his family. The most sensational crim. con. trials tended to feature absentee-patriarchs. This underscores the symbolic nature of their authority and offers another reason as to why elite men felt it necessary and were willing to publicize their private lives in the courtroom. In bringing suit, however, husbands put themselves on trial. In the courtroom, these plaintiffs subjected themselves to judgment by their "peers" not only as authoritative or impotent (or "absentee") husbands and masters, but also as men.

### **Reputation and the Power of "Peers" in the Courtroom**

The crim. con. trial offered husband-plaintiffs an opportunity to respond to the multiple threats to their power. In addition to reasserting their authority over insubordinate servants, husbands also addressed the challenge posed by the defendants. This threat was two-fold. Seducers usurped the plaintiffs' role as husband and in the process subverted the patriarchal ideal of a man's sexual control over his wife. As elite men's public status was tied to their patriarchal identity, the adultery also injured the husbands' honor and

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<sup>195</sup> *Ibid.*, 27. It is unclear which side -- the husband's or the wife's -- brought it up, but it seems that Harris was responding to a question that was posed to him. Women had a greater opportunity to defend themselves or mitigate the punishment in adultery hearings, so her lawyers might have raised the issue. During the second-half of the eighteenth-century, crim. con. defenses increasingly emphasized the husband's absence from his home (and his wife) as a way of shifting the responsibility of the affair to him for neglect.

<sup>196</sup> *Ibid.*, 2:33-3, 20-22.



reputation. The primary malefaction was a social violation, but one that also entailed the transgression of the physical boundaries that were intended to signify and enforce social relations. Male seducers undermined the symbolic power elite husbands derived from the space of the home. The legal proceedings presented the offense as a violation of a man's property in his private place of habitation (the physical structure of the house) and of his private life (which was often described as an invasion of a man's domestic comforts).<sup>197</sup> The connection between man and house was not new in this period, but it gained in importance among the upper orders of society. This resulted from the increasing wealth being accumulated by the rising middle class, who promptly converted their economic capital into cultural capital by purchasing a country estate and building a mansion.<sup>198</sup> This simultaneously displayed and cemented their newly-elevated status in society. Indeed, the eighteenth century is considered the Golden Age of the British country house, as approximately 150 new houses were built in England alone in the first half of the century.<sup>199</sup> The building of country manors during this period was of national importance because they were understood to be critical expressions of artistic, political, and economic ventures. The house served to display the owner's status as a gentleman. Breaching the house's perimeter was therefore an especially heinous offense.<sup>200</sup>

Crim. con. testimonies underscored the cultural values that linked a man and his manhood to his home. As Amanda Vickery has noted, "The house had long been a

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<sup>197</sup> One example can be found in a published account of the 1792 crim. con. trial, *Duberly v. Gunning: The Trial of Major-General Gunning*, 4, 6, 11.

<sup>198</sup> Pierre Bourdieu, "The Forms of Capital," in *Handbook of Theory and Research for the Sociology of Education*, ed. J. Richardson (New York: Greenwood, 1986), 241-258.

<sup>199</sup> Christie, *British Country House*, 4.

<sup>200</sup> *Ibid.*; Girouard, *English Country House*, 189.

universal metaphor for the person and the body” in English culture, and trespassing these physical demarcations indicated a sexual transgression, especially in crim. con. trials.<sup>201</sup> Trial records often noted where the adultery took place, and emphasized that the sexual iniquity was compounded by the violation of the husband’s hospitality in the home. This was a social offense rather than a sexual one, although it is unsurprising that in an era celebrated for its “politeness,”<sup>202</sup> crim. con. suits tended to weigh social violations at least equally, if not more heavily, than sexual misdeeds. The published account of the *Duberly v. Gunning* crim. con. trial, for example, noted that Mr. Duberly frequently hosted General Gunning in his house “with great hospitality,” and emphasized the “crime” of having an affair in the home of someone who is providing room and board for you.<sup>203</sup> In another trial, a maid described how her lady’s lover took no notice of the servant on his way to the lady’s bedchamber (despite the deponent looking directly at him and uttering her disapproval as they passed each other in the hallway). This prompted the maid to observe that, “he seemed to be perfectly easy, as if he had been master of the house.”<sup>204</sup> The husband’s ownership of the house was likewise emphasized throughout Sarah Worgan’s trial depositions. For example, it was noted that the adultery occurred “in a parlour in her husband’s house” -- a point mentioned several times.<sup>205</sup> The husband’s authority, linked to his role as patriarch, was undermined by his wife’s adultery when it

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<sup>201</sup> Amanda Vickery, “Englishman’s Castle,” 153; Turner, *Fashioning Adultery*, 177.

<sup>202</sup> Paul Langford, *A Polite and Commercial People. England, 1727-1783* (Oxford: Oxford University Press, 1993).

<sup>203</sup> *Duberly v. Gunning* (1792), in *The Cuckolds Chronicle*, 2: 132.

<sup>204</sup> *The Trial of Lady Carmarthen* (1779), in *Trials for Adultery*, 2:21.

<sup>205</sup> *Trial of Sarah Worgan* (1768), in *Crim. Con. Biography*, 336.

occurred in his own house. Servants' depositions in the Worgan trial highlighted this as witnesses testified that Mrs. Worgan's lover, Robert Rowe, bragged that he could do whatever he wanted in Mr. Worgan's house.<sup>206</sup>

Lawyers for plaintiffs highlighted the violation of polite modes of conduct -- a guest misbehaving in another man's home -- in cases against defendants, and often with success. In the eighteenth century, private patriarchal honor and public politeness were not mutually exclusive concepts of manhood. The two frequently intersected in the trials for criminal conversation.<sup>207</sup> The primary difference between the patriarchal man of honor in the seventeenth century compared to the eighteenth century was the shift in focus from the wife as the cuckold-maker, or main agent in the adultery, to the male seducer. The plaintiff's lawyers typically berated the seducer for violating the codes of polite gentlemanliness, but the underlying offense was his cuckolding the husband. Patriarchy was still the framework for defining one's manhood, and a husband's ability to control his wife's sexuality was still a crucial component of how a man defined himself. The public performance of polite gentlemanliness in relation to other men was of growing importance in the eighteenth century, however, and the crim. con. trial provided a perfect stage for such a spectacle.

The reputation of both litigants was a major factor in the trials, and their personal conduct over the course of the affair could impact the amount in damages awarded by the

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<sup>206</sup> Ibid. Yet another example is found in the Errington trial account included in *The Cuckold's Chronicle*, in which the editor observed that Buckley acted as if he were master of the house. *The Trial of Harriet Errington*, in *Cuckold's Chronicle*, 1:118.

<sup>207</sup> In fact, Turner has argued that the language of politeness pervaded these trials. Turner, *Fashioning Adultery*, 163.

jury.<sup>208</sup> Men were punished for disrupting another man's domestic peace and wreaking havoc within his home. Crim. con. exposed disorder in the household in the form of male guests enjoying liberties that belonged to the master, wives engaging in illicit activities when their husbands were away, and servants flouting the domestic power structure by spying on their superiors. Disorder within the house reflected poorly on the patriarch. A man's inability to run his household effectively undermined his manhood. His inability to control his wife sexually already emasculated him in one sense, and having another man enter his home and violate the code of politeness that existed between two gentleman by seducing his wife exacerbated the patriarch's emasculation even further.<sup>209</sup> A wife's adultery not only affected a husband's relationship with his family, it also damaged his reputation, and particularly his masculinity.<sup>210</sup>

In the courtroom, the husband and his counsel adopted cultural stereotypes that held meaning for the jury and the public in order to effectively discredit the defendant and encourage sympathy for the plaintiff. They employed labels such as "rake" and "fop" to describe the defendant in the counsel's arguments and witness testimony, while referring to the plaintiff as a "gentleman" and "polite," and praising his embodiment of the ideal master or husband. Their method was to publicize the plaintiff's private life through gender stereotypes. Over the course of the century, they formulated a script for a crim. con. narrative that was performed in the courtroom time and again. The intention

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<sup>208</sup> Stone, *Road to Divorce*, 242-47, 296; Turner, *Fashioning Adultery*, 175.

<sup>209</sup> Michele Cohen, "'Manners' Make the Man: Politeness, Chivalry, and the Construction of Masculinity, 1750-1830," *Journal of British Studies* 44 (April 2005): 312-329; Foyster, *Manhood*, 4; Shepard, "From Anxious Patriarchs to Refined Gentlemen? Manhood in Britain, circa 1500-1700," *Journal of British Studies* 44 (April 2005): 282.

<sup>210</sup> Oldham, *English Common Law*, 340-41; Stone, *Road to Divorce*, 262.

was undoubtedly to appeal to popular, recognizable categories that would easily inspire a positive or negative reaction or association from the audience with regards to how they received and interpreted information about the plaintiff's private life. In the more controlled arena of the court room, the plaintiff held the advantage. After the trial, however, the narrative was transposed to print editions and introduced into the public sphere, a realm in which the plaintiff had considerably less control over the intimate details contained within his narrative.

There were myriad webs of power in eighteenth-century Britain and the ruling elites maintained their hegemony through "a series of negotiations and compromises" with the groups competing for authority.<sup>211</sup> The crim. con. trial was one way in which elites negotiated and compromised as they attempted to preserve their social prominence. In order to reassert their authority in the home, husband-plaintiffs transferred power over their reputation and private life to the legal authorities in the courtroom. In this arena, lawyers controlled the discourse on elite masculinity and reputation, but husband-plaintiffs relinquished a different form of power over their reputation to a jury of their "peers."

English men and women considered a trial before a jury of one's peers a right dating back to the *Magna Carta*.<sup>212</sup> Crim. con. suits that went to court were tried by a special jury. The composition of these juries reflects the importance of the issues of status and reputation and their relationship to personal wealth and fortune not only in the crim.

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<sup>211</sup> Ibid., 30. See also Thompson, *Customs in Common*.

<sup>212</sup> Blackstone devotes a chapter to the jury trial in his *Commentaries*. Blackstone, "Trial by Jury," in *Commentaries* 3.

con. trial, but in wider eighteenth-century society. Crim. con. juries were composed of twenty-four “gentlemen of fortune” who were deemed more qualified because they “were thought to be more sensitive to the value of honour to a gentleman than were” men of lower rank.<sup>213</sup> Special jurors initially included prominent freeholders, knights, and urban gentry. By the second half of the century, however, these juries were comprised predominantly -- if not exclusively -- of wealthy London merchants.<sup>214</sup> They were, in many instances, of equal or greater wealth than the aristocratic litigants, and the tension that resulted from the (diminishing) distance between the landed elites and the rising merchant class manifested in many forms in eighteenth-century British society.<sup>215</sup> Yet, in the case of crim. con., aristocratic plaintiffs willingly placed their cases in the hands of their merchant-peers, and entrusted them with the task of ultimately assigning a value to the plaintiff’s (and defendant’s) reputation, his relationship with his wife, and his performance as a husband and master, in the form of damages rewarded. Thus, the “professional” class could directly exercise their authority over their social superiors in the courtroom through judges’ and juries’ decisions and lawyers’ services.

The power vested in the special jurors and other members of the “legal elite” in the common law courtroom fueled the elevation of their status in British society. Many special jurors gained considerable experience by sitting on multiple crim. con. juries

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<sup>213</sup> Stone, *Road to Divorce*, 234-235.

<sup>214</sup> Ibid. Additional scholarship on eighteenth-century juries and jurors includes Green, *Verdict According to Conscience*; King, “Decision-Makers;” Cockburn and Green, eds., *Twelve Good Men*.

<sup>215</sup> A sample of works that explore this development include Langford, *A Polite and Commercial People*; Maxine Berg, *Luxury and Pleasure in Eighteenth-Century Britain* (Oxford: Oxford University Press, 2005); and John Cannon, *Aristocratic Century: The Peerage of Eighteenth-Century Britain* (Cambridge: Cambridge University Press, 1985).

(occasionally in the same day<sup>216</sup>), which further increased their “qualifications” and propelled their elevation to a “professional” status.<sup>217</sup> In the last quarter of the century, the names of the special jurors were included on the title or opening pages of crim. con. trial accounts, along with the representing counsels and the presiding chief justice (whose name was featured regularly on published accounts by mid-century).<sup>218</sup> The common law was established as an official field of study at Oxford in 1753, and the proliferation of published trial accounts and histories of English law, legal decisions, and legal philosophies, demonstrate its popularity outside official legal and academic institutions.<sup>219</sup>

### **Trial Publicity and the Crim. Con. Spectacle**

Crim. con. trials acquired a new dimension in the eighteenth century -- publicity. In the opening decades of the eighteenth century, civil trials for adultery were deemed legitimate, but not culturally acceptable. By the 1760s, however, they were not only culturally acceptable, they had become fashionable. Implicit in the various interpretations

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<sup>216</sup> *Cecil v. Sneyd and Barttelot v. Hawker.*

<sup>217</sup> Stone, *Road to Divorce*, 234-35. Robert Robson, *The Attorney in Eighteenth-Century England* (Cambridge: Cambridge University Press, 1959). For a broader account of the professions during this period, see Wilifred Prest, ed., *The Professions in Early Modern England* (London: Croom Helm, 1987), and Penelope J. Corfield, *Power and the Professions in Britain, 1700–1850* (London: Routledge, 1995).

<sup>218</sup> For example, see *The whole proceedings at large, In a Cause on an Action Brought by The Rt. Hon. Richard Lord Grosvenor against His Royal Highness Henry Frederick Duke of Cumberland; For Criminal Conversation with Lady Grosvenor* (London [1770]); *The trial, with the whole of the evidence, between the Right Hon. Sir Richard Worsley...and George Maurice Bisset... for criminal conversation with the plaintiff's wife. Before the Right Hon. William Earl of Mansfield, and a Special Jury, in His Majesty's Court of King's-Bench, Westminster-Hall, on Thursday the 21st of February, 1782.* (London 1782); *Trial between James Duberly, Esq. plaintiff, and Major-General Gunning, Defendant, for Criminal conversation with the wife of the plaintiff. tried before the right Hon. Lord Kenyon, and a Special Jury* (London, 1792).

<sup>219</sup> Oldham, *English Common Law*; David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford: Oxford University Press, 2003); and *ibid.*, ed., *The British and Their Laws in the Eighteenth Century* (New York: Boydell & Brewer, 2005).

and applications of the action of civil trespass were expanding definitions of public and private (and a simultaneous broadening of the appropriate arenas in which those definitions could be negotiated). Whether adultery was a private matter or subject for public regulation was an underlying question being debated in the crim. con. trials.<sup>220</sup> The act of adultery itself remained a fundamentally private issue, and a spouse or their lawyer sometimes used the threat of public litigation to coerce the other partner into submitting to particular terms of an agreement.<sup>221</sup> The crim. con. action placed the dispute between the husband and his wife's lover, but the possibility of publicizing the adultery through the trial process involved the wife's reputation as much as the actual defendant in the cause. In the legal realm, publicizing the wife's adultery was "step one" on the husband's path to reasserting his authority over his household and re-establishing his manhood in a legal "duel" with his wife's seducer.

English law had to contend with publicity beyond the philosophical debate over public regulation of "private vice." The trial itself was a social event in London, especially the trials brought before the Court of King's Bench. The physical layout of the court facilitated this function. Located in a corner of Westminster Hall, it featured open and fully "exposed" proceedings until around 1740, when a partition was built to create an enclosed space into which all protagonists and spectators crammed for trials. The

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<sup>220</sup> David Turner explores the changing cultural meanings of adultery in the first-half of the eighteenth century in *Fashioning Adultery*, 173.

<sup>221</sup> Stone, *Road to Divorce*, 19. Stone elaborated further: "[M]ost cases of litigation between individuals were intended merely to force the defendant to arbitration. For a majority of litigants...going to law was a tactical maneuver, part blackmail and part bluff, the object being to obtain an out-of-court settlement [to restore order]." *Ibid.*, 24.



effect was something like a stadium which hosted public spectacles (see fig. 5).<sup>222</sup> The 1757 trial against Captain Gambier for criminal conversation with General Knowles's wife attracted such a large crowd that it obstructed the jurors from entering the courtroom and being sworn in.<sup>223</sup>

The spectacle of these trials perplexed some contemporaries, who complained that they violated a space that should be treated as sacred. In his 1788 tract, *Speculations upon law and lawyers*, Samuel Paterson criticized the courtroom for having devolved into a scene of jests and merriment. "People flock to Westminster whenever any thing droll is expected (that is, something *ruinous* to the peace of families, and the reputation of individuals). [...] The audience turn out of court with vast satisfaction, and in full titter!" Paterson went on to cite an assault case where the plaintiff was awarded one shilling: "But why give him anything? you'll say -- O, for the joke's sake! -- for the poor man went by the name of FARTHING-NOSE ever after -- Ha! ha! ha!" Civil actions to settle personal injuries were so common-place by 1788 that, not only did the litigants become a source of mockery, but the trials, the lawyers, and even the legal system itself were viewed as folly.<sup>224</sup>

Did the trial drive the case's publicity, or did the case's publicity drive the trial? It is impossible to know for certain. Many cases did, however, open with the attorneys

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<sup>222</sup> Ibid., 233.

<sup>223</sup> *The Trial of Captain Gambier, for Crim. Con. with Adm. K's Lady*, 5th ed. (London, 1759); Preface to *Knowles v. Gambier* (1757), in *Trials for Adultery* 5. Other trials were notable for drawing such large audiences, including *Boddington v. Boddington* (1797); *Kelly v. Williamson* (1797), among others.

<sup>224</sup> Samuel Paterson, *Speculations upon law and lawyers; applicable to the manifest hardships, uncertainty, and abusive practice of the common law* (London, 1788), 37-38. Paterson wanted to check the growing influence and grandeur of the common law, especially "in the persons of professional lawyers," as it had increased - and continued to increase - "far beyond their original and constitutional standard." Ibid., 94.



Figure 5. Rowlandson, *Court of King's Bench* (1808), in Stone, *Road to Divorce*

acknowledging that members of the jury (and presumably the “audience”) “must have had previous knowledge of this business through the various channels of information;” or “...that the Jury who lived in this great town [London], could not be altogether strangers to them.”<sup>225</sup> The primary concern in these cases was that extensive coverage in the print media created a bias against the defendant, but it could also work against the plaintiff. In the 1737 crim. con. trial between the famous actor Theophilus Cibber and William Sloper, Cibber’s lawyer observed “[t]hat there had been a good deal of Pains taken to spread a Report about Town, as if the Plaintiff had been consenting to the Wrong the Defendant had done him; but this was only to blast the Credit of the Plaintiff’s Cause before the Trial; and that it might come with Prejudice before the Jury.”<sup>226</sup> The growing publicity surrounding these trials had to be navigated carefully by lawyers in earlier trials. They struggled with how to reconcile discussing private matters in open court. In the 1742 trial of Lord Augustus Fitzroy for criminal conversation with Sir William Morris’s wife, Morris’s attorney used his opening remarks to justify bringing the suit before the court, rather than the more typical formula of opening by detailing the defendant’s crime and proclaiming his guilt:

Among the many Miseries and Calamities that a Transactions of this Kind brings on the Person injur’d, even this Prosecution, at this Instant Time, is none of the least; by Reason of his being under a Necessity to expose to the Public the Misconduct and Failings of a Person who stands in the nearest Relation to him [his wife]; [...] I say, that even this Calamity must render the case extremely afflicting, ...to lay open before

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<sup>225</sup> Erskine, while representing Valentia, in *The genuine trial of John B. Gawler, Esq: For criminal conversation with the Right Hon: Lady Valentia* (London, [1795]). An account of this trial was also included in *A New collection of trials for adultery* (London, 1799). A sampling of trial coverage in newspapers and gossip magazines can be found in *Grub Street Journal* 6, 12 Feb. 1730; *Whitehall Evening-Post*, 1179, 17 Feb. 1730; *Daily Universal Register*, 27 April 1782, 2 Sep. 1785, 26 June 1786; *London Chronicle*, 23–25 June 1785; *Morning Post*, 2 Aug 1785. Sarah Lloyd, “Amour in the Shrubbery,” 440–441.

<sup>226</sup> *A Collection of Remarkable Trials, viz. I. The Trial Between Theophilus Cibber...and William Sloper* (Glasgow, 1739), 5.

you a Thing of this Nature: But as there is an absolute Necessity for so doing, in order to the Preservation of the Family, and receiving such Satisfaction and Justice as the Law allows, by Way of Punishment for such an heinous Offence and Injury, I shall lay the Case briefly before you.<sup>227</sup>

The lawyer defended his client's decision to file suit by arguing that exposing the wife's sexual misconduct was necessary not only to secure the justice and satisfaction to which the husband was legally entitled, but also out of a larger duty to defend the family. He was referring, in particular, to the Morris family and, more broadly, to "the family" as a social unit. He emphasized the threat adultery posed, describing it as "the most injurious and scandalous, cruel and barbarous, [crime] that can be introduced into a Family."<sup>228</sup> This crim. con. trial, he proclaimed, functioned not only to deliver personal justice to the plaintiff, but also to protect society from moral collapse by publicly prosecuting and punishing men like Lord Fitzroy who seduced married women.

That the plaintiff's side needed to open the proceedings with such a defensive speech suggests that in 1742, prosecuting private (mis)conduct in open court was still viewed as a gross violation of privacy by many Britons. A form of justice that punished adultery but reduced the wife's private life to "collateral damage" did not yet enjoy widespread validation. This changed noticeably after 1760, as the burgeoning print culture augmented the spectacle of the crim. con. trial and helped transform this legal

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<sup>227</sup> *The Tryal Between Sir W[illiam] M[o]rr[i]s, Baronet, plaintiff, and Lord A[u]gst[u]s F[i]tz-R[o]y, defendant, for Criminal Conversation with the Plaintiff's Wife* (London, 1742), 2.

<sup>228</sup> *Ibid.*

institution into a cultural phenomenon.<sup>229</sup> During the second half of the century, the number of suits increased rapidly, as did the scandal associated with them. The spectacle of crim. con. expanded beyond the legal realm and into the public sphere.

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<sup>229</sup> Lord Abergavenny was the subject of particularly harsh criticism because his wife passed away shortly after the discovery of her affair. There was a sense of public outrage directed towards her husband for sullyng her name with the trial. The public romanticized her death as a tragedy, and several poems were published in the wake of her death and the trial that portrayed Lady Abergavenny as “Calista,” the tragic heroine of Nicholas Rowe’s play *The Fair Penitent* (1703), whose remorse for betraying her husband with adultery drove her to suicide. In fact, in the week after the trial, two performances of *The Fair Penitent* were staged before sell-out audiences, “at the particular Desire of several Ladies of Quality.” Turner, *Fashioning Adultery*, 184-186.

## **Chapter Four: Publicizing the Private**

### **The Publicity Paradox**

As argued in the previous chapter, the legal sphere was a site for negotiating boundaries of public and private in both the legal realm and the domestic realm. Just as transgressing boundaries of public and private signified power for the spying servants, exposing their wives' adultery in a public courtroom demonstrated the husband-plaintiffs' power over their (and their wives' and the defendants') private lives. If one underlying goal of the crim. con. action was to reassert patriarchal authority in the home, the decision to expose the most intimate details of elite families' private lives in court ultimately undermined the masters' symbolic authority outside of the home. Aristocratic plaintiffs entered the legal arena of crim. con. with a sense of entitlement and presumption of authority that was better suited in the realm of Parliament among their literal peers. Their hegemony did not extend into the common law courtroom, at least not unequivocally. In bringing a suit for criminal conversation, husband-plaintiffs placed control over their status and reputation in the hands of the legal elite and an emerging group of middling sorts in the midst of challenging the ruling elites for authority in eighteenth-century Britain.

It was a voluntary transfer of power that husband-plaintiffs perhaps viewed as innocuous for two reasons. It was relinquished to a select group of men of equal if not greater wealth, which would work to the husbands' advantage against their servants. It was also contained, in theory, within an identifiable and controlled space (the courtroom),

and they believed that within that space they were the dominant authority. The crim. con. phenomenon was not enclosed within the courtroom, however. Elite husbands understood the threat that exposure posed to their wives and the defendants, but they overestimated their power to control it beyond the legal realm. If the “professional” sorts could directly exercise their authority over their social superiors in the courtroom through judges’ and juries’ decisions and lawyers’ services, a larger segment of the middling classes exerted even greater authority in the public realm of print media. Testimonies and arguments were a matter of public record, and the moment the details were exposed to the court, they were eligible -- and, in the case of crim. con. trials, practically guaranteed -- to be published and circulated among the public.

The expanding print culture of eighteenth-century England magnified the spectacle of the crim. con. trial. Pamphlets and newspapers enjoyed a growing influence in Britain, especially after 1760, when pamphlet-printing developed into an important industry. The production of pamphlets for individual crim. con. trials, then, emerged out of an established network of printers and publishers that made it easier to diffuse these stories to a broad audience.<sup>230</sup> The crim. con. trial publication format of “official” accounts of legal arguments and testimonies about real people’s indiscretions fostered a sense of intimacy that allowed readers to imagine a connection with the subjects, and infused the trial accounts with a subjective rationale for publicizing private matters. They also contributed to the cultural conversation and debate on issues ranging from adultery and masculinity to aristocratic vice and social stability. Crim. con. trials became more

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<sup>230</sup> Harris, *Politics*, 39, 45.

sensational as witness testimonies described the sexual encounters between the defendant and the plaintiff's wife more explicitly and published trial accounts included all the prurient details.

The legal counsels representing the plaintiff-husbands acknowledged the public unease over the nature of the material revealed during the trial. There was also a tacit acknowledgement of the audience physically present in the courtroom as well as the wider "public" who would be granted access to the proceedings thanks to new laws concerning the recording and reproduction of legal documents. Critics voiced their objections to the growing publicity of private scandals more than a century before the 1857 Divorce Act, however. In an essay in the September 1732 issue of the *London Magazine* entitled "Against Immodesty," the author noted that the documented accounts of private transgressions that formerly "lay happily concealed in Manuscript, or in a foreign Language, now [are] publickly expos'd to every common *English* Reader."<sup>231</sup> The author specifically identified "The Proceedings of our Courts, in the Trial of Rapes, criminal Conversations, and something still more abominable" as the most offensive of these publicized accounts.<sup>232</sup> The prurient information documented during the proceedings was, at one point, considered to merit a warning to the more "delicate" spectators attending the trial so that "whenever they came on, the late Lord Chief Justice *Holt* would often give Notice to his Female Auditors."<sup>233</sup> Such courtesies were relics of the past, as far as the author was concerned. Not only were the people present during the

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<sup>231</sup> "Against Immodesty," in *The London Magazine; or, Gentleman's Monthly Intelligencer* (September, 1732), 298.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.



trial exposed to all the lurid revelations, but that information was “now printed in Words at Length, or with such Marks and Breaks as are easily intelligible.”<sup>234</sup> While current trials were documented in this manner, older proceedings from the Doctors Commons were being translated simultaneously into English from Latin, providing even more examples of prurient material for eager readers. The combined efforts meant that not only could common people read accounts of intimate personal details, the author complained, but they were also able to (and did readily) engage in their own conversations about the material by publishing and circulating “whole Tracts and Essays upon such Subjects as it would be offensive even to mention.”<sup>235</sup>

“Against Immodesty” highlighted the complexity surrounding the danger of publicity. There were multiple levels of exposure of the “immodest” information revealed during the trial. Its placement on the “official record” in the form of witness depositions and other procedures of inquiry was formerly disclosed before a predominantly male audience, and then “decently concealed” from lay readers by being recorded in Latin. As those controls were removed, the intimate details were made available to a larger audience.<sup>236</sup> The information being exposed was one layer of the danger of publicity, then, and its new audiences another. Developments in communication and transportation technologies broadened the realm of print and enabled the reproduction and dissemination of lurid information to an audience that was more expansive in both numbers and distance. An additional threat lay in the composition of the new audience,

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<sup>234</sup> Ibid.

<sup>235</sup> Ibid., 298-299.

<sup>236</sup> Ibid., 298.

which included groups that previously could not access these accounts, including the “common” people, and women in particular. Thus, crim. con. publicity facilitated a conversation among a broader segment of society that entailed criticizing social elites through publicly commenting on their private lives. If technological improvements made printed materials more accessible in general, the public demand for sensational information precipitated the emergence of a network of newspapers, periodicals, and satirical prints devoted to the latest rumors or scandals involving the most prominent members of society.

The publicity surrounding these trials during and after proceedings contributed to the spread of this form of inquiry into people’s private affairs beyond the courtroom into the most expansive realm of society. The rate at which Britain’s dynamic print culture emerged in the eighteenth century undermined the husband-plaintiffs’ ability to control the publicity surrounding their private lives. In the courtroom, the husband-plaintiff exposed the adultery in terms that favored his character at the expense of the other persons involved. In the realm of print, however, authors, artists, and printers seized control of the crim. con. “script” and, subsequently, the litigants’ reputations.

The public sphere could also offer a site for defending reputations sullied in the courtroom or for attacking the husband-plaintiffs’ characters. Lydia Grainger’s anonymous commentary on the “secret history” of “Castilia” (Lady Abergavenny) did both by simultaneously highlighting the publicity paradox and emphasizing the sacredness of private life, which the husband (Lord Abergavenny) had violated by

bringing the crim. con. action.<sup>237</sup> Grainger opened her essay with an apology and explanation for her unkind conjecture against Lord Abergavenny. She defended her depiction of his character, however, by insisting that it was truly the most generous interpretation she could extract from her analysis of “such odd Proceedings,” by which she meant the crim. con. trial itself, the testimonies presented by witnesses, and their illumination of the husband’s and servants’ conduct.<sup>238</sup> The scandal, for this author, was not the wife’s infidelity, but rather “the unheard of Proceedings, and treacherous Plots that were contriv’d, carry’d on, and executed, to ruin poor *Castilia*.”<sup>239</sup> She described how the husband returned to his country seat from London with his charismatic male friend, “Philander” (Richard Lyddel), urged his wife to be extra attentive to his dearest friend’s every need, then abandoned the two of them in the country and returned to court.<sup>240</sup> Why would a husband be so careless as to introduce such an appealing rival for his wife’s affections and encourage the development of an intimate relationship in his home and in his absence? The author determined that Lord Abergavenny’s request was incomprehensible and could only mean that he had a “premeditated Design...to tempt his Wife, to make an Addition to her Fortune of ten thousand Pounds [the amount Lord Abergavenny was awarded in damages in his crim. con. trial], at so dear a purchase as her Virtue, Honour, and Reputation.”<sup>241</sup> Grainger criticized Abergavenny for being a sort of

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<sup>237</sup> [Grainger], “The Unhappy Adultery,” in *Modern Amours*.

<sup>238</sup> *Ibid.*, 30-31.

<sup>239</sup> *Ibid.*, 37.

<sup>240</sup> *Ibid.*, 33-34, 36.

<sup>241</sup> *Ibid.*, 36.

absentee-husband who not only neglected his wife, but conspired against her virtue and reputation to make a profit.

Even more reprehensible was the husband's apparent eagerness to expose the adultery before "the Eyes of the World."<sup>242</sup> It not only publicized his wife's transgressions, it illuminated his own status as a cuckold, something Grainger highlighted in her observation that, "I fear there are too many of these modern Husbands in this Age, that would be contented to have themselves register'd in the illustrious Roll of Cuckolds, for the bare Lucre of the Damages that might be brought in for their intended Sufferings.\*"<sup>243</sup> She offered another explanation for husbands who were willing to publicize being cuckolded. Besides the financial compensation they receive for their perceived injuries, "another great Conveniency attends; they get rid of their Wives by the Bargain, without returning their Fortunes."<sup>244</sup> The author went on to warn Lord Abergavenny and this new breed of "modern husbands" inclined to litigation that the financial and legal "remedies" they attained from the crim. con. trial were ephemeral, but the infamy from publicizing their indiscretions would be preserved in perpetuity: "My Lord may imagine he has acquir'd no Imputation on his Fame, through such dark and mysterious Proceedings; but succeeding Generations will repeat the Story of Castilia's

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<sup>242</sup> This expression, in reference to the public (or audience), was used multiple times in the essay. Ibid., 57-58.

<sup>243</sup> Ibid., 37. The asterisk signified the following comment at the bottom of the page: "*Sir W. Y*" [Likely, William Younge]. For a defense of Younge's wife from the public shame she endured during his crim. con. and adultery trials, and ultimately Parliamentary divorce proceedings in 1724, see Mary Wortley Montagu's poem, "The muse in distress: a poem. Occasion'd by the present state of poetry; humbly address'd to the Right Honourable Sir William Yonge," (London, 1733).

<sup>244</sup> [Grainger], "The Unhappy Adultery," in *Modern Amours*, 37. Placing ads regarding credit was a way of shifting public shame from husband to wife and lover; in this case, publicity could be a means of saving a man's credit rather than damaging it. Turner, *Fashioning Adultery*, 111.

Fate, and shed Tears of Compassion on her Tomb.”<sup>245</sup> The husbands might have enjoyed the advantage of authority in the legal realm, but their personal legacy would be reified in the realm of print through a public of “curious consumers.”<sup>246</sup>

Grainger warned plaintiff-husbands of their lack of control over their private lives once they willingly exposed them, proclaiming that justice prevailed in the “court” of public opinion even though it was denied in the Court of Common Pleas.<sup>247</sup> The same lurid details that incriminated the wife and her lover in the more controlled arena of the courtroom could incriminate the husband or servant-witnesses in print. For example, a published collection that featured a crim. con. trial account alongside an impotency trial presented an opportunity for the reader to interpret the woman’s preference for a man other than her husband as a reflection on the plaintiff’s sexual deficiencies rather than the defendant’s or wife’s lack of moral character.<sup>248</sup> Publicizing intimate details of one’s private life, then, was a double-edged sword for litigants in eighteenth-century Britain. It provided a platform for reasserting the husband’s power over those directly subordinate to him. Paradoxically, however, the manner in which he accomplished this -- through the spectacle of a crim. con. trial -- placed himself, along with the scandalous details he had revealed about his private life, at the mercy of a curious public. The result was that, despite having consolidated some power by restoring a sense of order within his

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<sup>245</sup> [Grainger], “The Unhappy Adultery,” in *Modern Amours*, 49.

<sup>246</sup> Benedict, *Curiosity*, 9.

<sup>247</sup> [Grainger], “The Unhappy Adultery,” in *Modern Amours*, 49.

<sup>248</sup> For example, an account of the *Dormer v. Jones* crim. con. trial was included in the 1715 collection, *Cases of Divorce for Several Causes*, which also featured the infamous impotency trial *Weld v. Weld*.

traditional communities of control, the plaintiff-husband enabled his authority to be undermined by forces beyond his sphere of influence.

### **The Pleasures of Publicity**

If we judge by the growing popularity of crim. con. trials and published crim. con. accounts during the eighteenth century, not everyone felt that publicity was “dangerous” for readers. Crim. con. cases circulated in many forms, from formal trial accounts to moral prescriptive essays and tracts on masculinity and national security. Many editors defended publicizing intimate details of private lives by professing a sense of civic duty, justifying the publicity as being for the “public good.” The preface for the 1715 collection, *Cases of Divorce for Several Causes*, proclaimed that the work was legitimate and was intended to correct loose morals rather than incite them. The author assured readers there was no intention to make light of such serious issues, and warned that if it did lead to emulating the cases’ immorality, it was the readers’ fault for misinterpreting the author, scribe, publisher, and illustrator’s honest and pure intentions.<sup>249</sup> A similar situation accompanied the published account of Catherine Newton’s 1778 adultery trial. The details in the case were particularly lewd, which prompted the editor to preemptively defend himself from any accusations that the trial might incite. He argued that it was

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<sup>249</sup> Preface to *Cases for Divorce* (1715) [no pagination]. The author went on to characterize those who censure such publications as religious zealots (specifically talking about the Society for the Reformation of Manners and similar associations) and proclaimed that they had no business trying to “intermeddle in affairs that no ways concerns them.” Ibid. The decline of church courts’ authority in prosecuting adultery at the local level in the late 17th-early 18th centuries left a hole in the regulation of morality which the private Societies for the Reformation of Manners attempted to fill, although emphasis was placed more on prostitution, blasphemers, and Sabbath-breakers than adulterers. Their impact was minimal and their efforts ultimately unsuccessful, and these societies faded from existence by the 1720s. Stone, *Road to Divorce*, 232-233.

okay to publicize the Newton trial evidence and insisted that it was not an affront to public virtue; rather, “the exposure of such circumstances to public view” produced disgust in the hearts and minds of those who encountered it and thus discouraged sexual immorality.<sup>250</sup>

Publishers -- and, as we saw in chapter three, the counsels for the plaintiffs in crim. con. trials -- justified publicizing the “private” through a conceptualization of a “public” in whose interests they had a right, and even an obligation, to act. The boundaries between “public” and “private” were constantly shifting, especially by the late eighteenth century, and there were many proponents of the principle that published accounts provided moral instruction through detailing other people’s private lives, all in the name of the “public good.” The two concepts were mutually-reinforcing. Some publishers espoused “purist” principles and simultaneously pushed their publications to a less discerning clientele. Edmund Curll used the preface to *Cases of Divorce* to advertise the impious nature of the cases included in the collection, and his appeal to the “public interest” in reference to his publishing the details of *Dormer v. Jones* was based on the “enormous amusement and entertainment” the trial inspired.<sup>251</sup> It was nearly impossible to separate private and public in crim. con. publications. While there were those who objected, it was precisely this blurred distinction that imbued trial accounts with their fundamental appeal. The pleasure crim. con. provided for contemporaries had two distinct characteristics: it was a source of amusement and of erotic enjoyment.

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<sup>250</sup> *Catherine Newton Trial for Adultery* (1778), in *Cuckold's Chronicle*, 1:111.

<sup>251</sup> Turner, *Fashioning Adultery*, 182-83.

The eighteenth century was a period known for the pursuit of pleasure. New forms of entertainment emerged in London and throughout Britain, from new seaside resorts to the spa towns of Bath and Tunbridge Wells.<sup>252</sup> The popularity of criminal trial publications was an extension of this pursuit of pleasure and were a source of entertainment for contemporary Britons. These accounts amounted to printed gossip, quite similar to the activities of the spying servants discussed in chapter two. Although polite society considered this behavior most unbecoming, and particularly so for “ladies of quality” (by the end of the century gossip is an almost irreversibly feminized term),<sup>253</sup> the upper ranks enjoyed idle gossip and lewd humor as much as anyone in eighteenth-century Britain.<sup>254</sup> In fact, they incorporated scandal-mongering into country-house sociability. Aristocrats sometimes kept satirical prints on hand so that, when the host and guests engaged in the “country-house habit of perusing portfolios,” they were assured at least one amusing item and took extra pleasure in their laughter “if at the expense of a

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<sup>252</sup> John Brewer, *Pleasures of the Imagination: English Culture in the Eighteenth Century* (Chicago: University of Chicago, 1997); Berg, *Luxury and Pleasure*; John Brewer and Roy Porter, eds., *Consumption and the World of Goods* (New York: Routledge, 1993); Ann Bermingham and John Brewer, *The Consumption of Culture 1600-1800: Image, Object, Text*, New Edition (New York: Routledge, 1997); J. H. Plumb, “The Commercialisation of Leisure,” in Neil McKendrick, John Brewer and J.H. Plumb, eds., *Birth of a Consumer Society* (New York: HarperCollins, 1984); Phyllis Hembry, *The English Spa, 1560–1815: A Social History* (Cranbury, NJ: Associated University Presses, 1990); Terry Castle, *Masquerade and Civilisation: the Carnavalesque in Eighteenth-Century English Culture and Fiction* (Palo Alto, CA: Stanford University Press, 1986).

<sup>253</sup> By the eighteenth century, gossiping was a feminized trait that was strongly associated with women of the lower orders of society. Castan, “The Public and the Private,” 416-418. Servants had a reputation for spreading rumors: The *OED* definition of “gossip” not only identifies its feminine connotations, but the example sentences, particularly the ones from the eighteenth century, refer to maidservants who are off gossiping with friends. *Oxford English Dictionary*, s.v. “gossip.” See also Bernard Capp, *When Gossips Meet: Women, Family, and Neighborhood in Early Modern England* (Oxford: Oxford University Press, 2003), 170-172; Patricia Meyer Spacks, *Gossip* (New York: Alfred A. Knopf, 1985); and Meldrum, “Women's Court in London.”

<sup>254</sup> Cindy McCreery, “Keeping up with the *Bon Ton*: The *Te^te-a-Te^te* Series in the Town and Country Magazine,” in *Gender in Eighteenth-Century England: Roles, Representations, and Responsibilities*, ed. Hannah Barker and Elaine Chalus (Harlow, England: Longman Limited, 1997), 207–29; Spacks, *Gossip*; Gowing, *Domestic Dangers*.



particular friend.”<sup>255</sup> Lady Worsley and the Countess of Strathmore were the sources of much entertainment and conversation among their peers in the 1780s. Many elites owned caricature prints inspired by the women’s sensational and widely publicized trials.<sup>256</sup> Worsley’s trial was a crim. con. action brought in 1782 by her husband, Sir Richard Worsley, against her lover Captain George Bisset.<sup>257</sup> The Strathmore scandal involved two trials. The first was the divorce suit initiated by the Countess in 1785 on grounds of cruelty (life-threatening abuse). This was followed by her husband’s criminal trial the same year for kidnapping and assaulting his wife in order to prevent her from leaving him (and taking her fortune with her), for which he was found guilty and imprisoned, ultimately paving the way for their divorce.<sup>258</sup>

Their laughter was not necessarily vicious, although in the Countess of Strathmore’s case it may seem shockingly insensitive (to modern readers, at least), especially considering that her husband, Andrew Robinson Bowes, beat her so badly after kidnapping her that she was unable to walk or stand for a month.<sup>259</sup> Aristocratic interest in these scandals was often driven by the same idle curiosity that inspired domestic servants to spy on their superiors. Surviving correspondences between town and country reveal that many aristocratic women were simply bored in their country manors while their husbands were away for extended periods of time and often wrote to their friends in

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<sup>255</sup> Gatrell, *City of Laughter*, 240.

<sup>256</sup> *Ibid.*, 236.

<sup>257</sup> See *The Trial With the Whole of the Evidence, Between Sir Richard Worsley and George Maurice Bisset for Criminal Conversation*, 7th ed. (London, 1782).

<sup>258</sup> Anna Clark, *Scandal*, 68-69.

<sup>259</sup> Gatrell, *City of Laughter*, 341. An account of the trial is included in *A New collection of trials for adultery* (London, 1799).

London seeking the latest gossip. Their friends happily obliged with written updates and sent them newspapers and magazines that documented London's flourishing social scene.<sup>260</sup> Images, such as the humorous prints of Lady Worsley and Countess of Strathmore, often accompanied these reports.<sup>261</sup>

The exchange of information between London and the countryside increased in this period as it became more efficient, and metropolitan gossip was a key export to rural estates.<sup>262</sup> Idle women were not the only gossip-mongers residing in the countryside, however. A Piccadilly printseller sued a man in King's Bench for failing to pay for the set of satirical prints he ordered. Thomas Erskine represented the printer and told the court that the defendant was seeking to amuse himself and, since he resided in the countryside, desired "and opportunity of being acquainted, though at a distance," with the quizzical "odd fishes" among London's population.<sup>263</sup> He contended that "it was natural to suppose that a gentleman residing in a remote part of the country should wish to be acquainted with the fools that inhabit the metropolis."<sup>264</sup> For Erskine, this sort of personal curiosity for idle entertainment was quite common in men. And he was quite right, as men and women of all ranks indulged in printed materials depicting real, personal subjects for their own amusement.

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<sup>260</sup> Ibid., 359

<sup>261</sup> Ibid., 236.

<sup>262</sup> Ibid., 239. Oliver Goldsmith commented on the fervent communication of news and follies from London to the countryside. He opened his 1773 play, *She Stoops to Conquer*, with the character Hardcastle lamenting, "I wonder why London cannot keep its own fools at home. In my time, the follies of the town crept slowly among us, but now they travel faster than a stage-coach." Goldsmith, *She Stoops to Conquer: or, the Mistakes of a Night* (London [1773]), Act I, scene 1.

<sup>263</sup> Quoted in Gatrell, *City of Laughter*, 240.

<sup>264</sup> Quoted in *ibid.*

The prevalence of crim. con. accounts in the form of “secret histories” and idle gossip, a more burlesque than “polite” literary style, reveals an underlying stratum of jest and mockery of real individuals that served as the basis for the trials’ popularity. One way to circumvent official censure for publicizing defamatory details of an aristocrat’s private life was to replace letters of the individual’s name with dashes in order to “conceal” their identity. This was a hollow effort by printers, and the author of “Against Immodesty” observed that trial proceedings were now “publicly expos’d to every common *English* Reader...[and] are now printed in Words at Length, or with such Marks and Breaks as are easily intelligible.”<sup>265</sup> This was evident in *The Modern Amours*, in which a key was affixed as a “Table of Contents” that listed Grainger’s essay, “The Unhappy Adultery,” as “The Fatal History of Lady A-----y.”<sup>266</sup> The essay opened with a background on the character Castilia that documented her birthplace, her father’s profession, her husband’s profession, and their place of residence.<sup>267</sup> This method of “disguising” an individual’s identity was clearly subterfuge, especially when combined with the details included in the text.

A later example can be seen in the printed and illustrated accounts of the sensational 1782 crim. con. trial brought by Sir Richard Worsley against Captain George Bisset for adultery with Lady Mary Worsley.<sup>268</sup> A published defense of Worsley, who was publicly lampooned when a jury awarded him embarrassingly low damages of one

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<sup>265</sup> “Against Immodesty,” in *London Magazine*, 298.

<sup>266</sup> [Grainger], “The Unhappy Adultery,” in *Modern Amours*.

<sup>267</sup> *Ibid.*, 29-30.

<sup>268</sup> *The Trial with the Whole of the Evidence Between Right Hon. Sir Richard Worsley, Bart., and George Maurice Bisset, Esq., for Criminal Conversation with the Plaintiff’s Wife*, Seventh Edition (London 1782).

shilling after he was exposed during the trial as actively encouraging his wife's many affairs, quite needlessly employed dashes in the individual names listed in the title: *The Answer of S-r R---d W---y, Bart. to the Epistle of L---y W-----y*.<sup>269</sup> Satirist James Gillray used similar techniques in the titles of two prints that ridiculed Lady Worsley's promiscuity, entitled *A Peep into Lady W!!!!y's Seraglio* (see fig. 6) and *Sir Richard Worse-than-Sly, Exposing his Wifes Bottom -- O Fye!* (see fig. 7).<sup>270</sup> The latter print depicted an infamous incident revealed during the trial in which Worsley, after shouting his intentions to his wife, lifted Bisset onto his shoulders so he could observe Lady Worsley getting dressed after emerging from a bath. Both the subjects of the prints and the story behind the scene depicted would have been obvious to contemporary observers. Encoded titles merely heightened the sense of scandal associated with the content.

Quite similar to the spying servants in the domestic realm, this exchange of scandalous information depicting elites' private lives was much like a game, and crim. con. was a form of entertainment for a curious readership. Another element of appeal for the printed form of crim. con. "gossip" -- filling in the "dashes," piecing together textual "clues" -- was that it allowed readers to "discover" the secret themselves, instead of relying on vicarious voyeurism through servants' testimony. The partial concealment provided by the dashes, the "keys" that were either affixed to the publication or printed separately, all seemed to invite the reader to "play" the guessing-game. It was much like a riddle, and if you solved it correctly, you discovered a secret.

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<sup>269</sup> *The Answer of S-r R-----d W-----y, Bart. to the Epistle of L---y W-----y* (London, 1782),

<sup>270</sup> James Gillray, *A Peep into Lady W!!!!y's Seraglio* (1782) and *ibid*, *Sir Richard Worse-than-Sly, Exposing his Wifes Bottom -- O Fye!* (1782). Both of these images are reproduced in Gatrell, *City of Laughter*, 2-3.

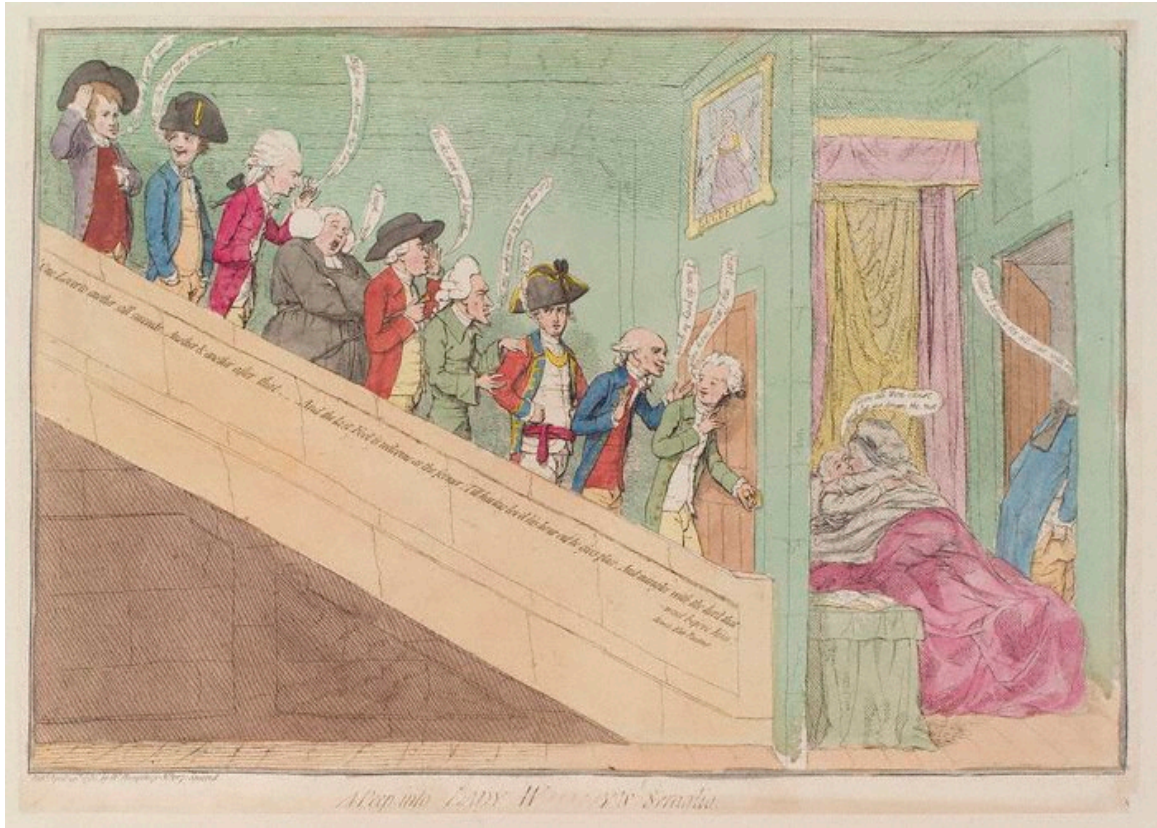


Figure 6. Gillray, *A Peep into Lady W!!!!y's Seraglio* (W. Humphries, 1782), in Gatrell, *City of Laughter*.



Figure 7. Gillray, *Sir Richard Worse-than-Sly, Exposing his Wifes Bottom -- O Fye!* (W. Humphries, 1782), in Gatrell, *City of Laughter*.

In *City of Laughter: Sex and Satire in Eighteenth-Century London*, Vic Gatrell finds that contemporaries' love of pleasure manifested in a shared love of laughter. The eighteenth century has been described as the Age of Satire, with Alexander Pope's biting wit symbolizing the genre for many. Yet Gatrell demonstrates that Pope's humor was not representative of what contemporary Britons found funny. Satire flourished, but its "smiling" form enjoyed greater prominence than did "savage" humor.<sup>271</sup> In fact, Most satirical prints are better characterized as "celebrations" of the subject for sheer entertainment, not as deliberate attempts to correct inappropriate behavior, and Gatrell illustrates how this form of satire fit within a contemporary culture that relished laughter and amusement more than blunt criticism.<sup>272</sup> In the case of crim. con. trials, the scandalous details were printed in the emerging network of gossip magazines, then became the target of satire and public scorn.<sup>273</sup> Depictions of aristocratic excess were more humorous than biting and intended to evoke laughter for general amusement. Scholarship on satire tends to focus on its political component, but it was the distinctly non-political nature of many eighteenth-century British humor prints that allowed these sources to permeate and shape contemporary culture more broadly and profoundly than the explicitly political commentary could.<sup>274</sup> This had important implications for the

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<sup>271</sup> Gatrell, *City of Laughter*, 141.

<sup>272</sup> *Ibid.*, 167-176.

<sup>273</sup> *Ibid.*, 141. Although moralistic criticism abounded, Gatrell has warned against interpreting eighteenth-century British satire as overtly political attacks on aristocratic vice, noting the prominence of "smiling" satire over the more "savage" form.

<sup>274</sup> Gatrell explains that the prominence of "smiling" satire was not necessarily "anti-political" -- the proliferation of the relatively innocuous, albeit unflattering, images did not subliminally transmit negative perceptions of the aristocracy that evolved later. *Ibid.*, 154.

individuals or groups being laughed at, and nevertheless chipped away at the aristocracy's cultural hegemony.

Gatrell describes eighteenth-century satire as a "great leveler" because it demonstrated the "similitude of manners in high and low life" by illustrating elites' indulgence in the same vices that polite society deemed "vulgar" and associated with the lower sorts.<sup>275</sup> The (mis)behaviors highlighted in the satire were not the only similarities between the rich and the poor, however. The mentalities and practices that drove interest in the material further "equalized" the cultural consumers. Indeed, curiosity about other people's private lives can be more accurately understood as more of a universal "habit" than one more closely identified with either "high" or "low" society. The subjects of the most sensational scandals, however, represented the upper orders disproportionately. This meant that "smiling satire" was far from harmless for elites. Being the source of lurid gossip and idle entertainment was a threat to husband-plaintiffs because they could not control the manner in which their private character was represented in the print media and interpreted by curious consumers. In fact, during a late-century trial the lawyer Thomas Erskine, who frequently represented plaintiffs and occasionally defendants in crim. con. suits brought in King's Bench, argued that satirizing character was practiced with such frequency it was now a problem that needed to be addressed and had become more dangerous to its victims than text libel.<sup>276</sup> Images were especially threatening because "they remained beyond the control of language" and were open for interpretation.<sup>277</sup> Even

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<sup>275</sup> Ibid., 142.

<sup>276</sup> Ibid., 223.

<sup>277</sup> Ibid., 227-28.



illiterates could read them. This meant that not only could husbands not control how people viewed the representations, they essentially could not even *know* how they were being perceived by the rather anonymous public of readers and viewers. Such knowledge had to be both frustrating and threatening on some level, particularly as the breadth and nature of publicity in British print culture was so new.

Thus, in the public realm, the inability to control the publicity of one's private life effectively rendered one powerless over one's own reputation. Even though "[t]he satirical engraver himself had come to be regarded as something of a licensed jester"<sup>278</sup> in the flourishing form of "smiling satire," some contemporaries lambasted satirists like Gillray for being a "caterpillar on the green leaf of reputation...a sort of public and private spy."<sup>279</sup> Earlier critics of satire expressed similar anxieties. Early eighteenth-century satire highlighted particular actions over the perpetrators, as proponents of "polite" laughter promoted humor but rejected ridicule that targeted individuals.<sup>280</sup> This policy was not always put into practice, however, and Joseph Addison, for example, remarked disapprovingly on satirists' "secret stabs to a man's reputation."<sup>281</sup> Satire became more personalized later in the period, and the "stabs" were far less subtle -- contemporary men and women knew *who* as well as *what* they were laughing at.<sup>282</sup> The tools printers used to conceal the subject's identity were opaque cloaks that merely amplified the pleasure of consuming the scandal.

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<sup>278</sup> Ibid., 136.

<sup>279</sup> Quoted in *ibid.*, 136.

<sup>280</sup> Ibid., 257.

<sup>281</sup> Joseph Addison, *Spectator*, no. 23 (March 1711), quoted in *ibid.*, 172.

<sup>282</sup> Ibid., 257.

## Erotica

The pleasure derived from crim. con. accounts was both humorous and erotic. Many critics attacked crim. con. publicity for rousing prurient interests, but this was also part of its appeal. On the surface, the widespread appeal of sex scandals to the general public may seem to contradict popular conceptions of eighteenth-century British society as “polite.” Historians who have attempted to reconcile this duality have tended towards either dismissing the prominence of the “polite” model or by representing less “polite” sexual experiences as a subculture. Karen Harvey has argued for a more balanced consideration of these “two Englands,” as co-dominant cultures of “restraint and license.” She identifies erotic material as an important navigation tool, both for contemporaries and present-day historians, because it was situated “in contexts with pretensions to refinement.”<sup>283</sup>

The concept of eighteenth-century polite masculinity and the practice of measuring manhood through public manners and against other men developed in tandem with the rise of the public sphere.<sup>284</sup> Because polite sociability demanded discretion and propriety in one’s public conduct, bringing an action for criminal conversation might seem contrary to those ideals. However, the plaintiffs, through their counsel’s arguments and witness testimonies, usually styled themselves as the embodiment of the “polite

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<sup>283</sup> Harvey, *Reading Sex*, 1, 36. See also Langford, *A Polite and Commercial People*; Roy Porter and Lesley Hall, *Facts of Life: The Creation of Sexual Knowledge in Britain, 1650-1950* (New Haven, CT: Yale University Press, 1995).

<sup>284</sup> Carter, *Polite Society*, 44-45. The seminal work on the public sphere in eighteenth-century Britain is Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Thomas Burger, trans. (Boston: MIT Press, 1991). See also, Langford, *A Polite and Commercial People*; and Clark, *Scandal*.

gentleman.” The importance of public reputation and defining one’s manhood against other men brought the crim. con. trial firmly into the realm of politeness. As the century progressed, many husbands were increasingly willing to exploit their private lives in the public courtroom, as the need to defend their manhood, formerly achieved through more private avenues, merged with the desire to exact public (and financial) revenge. These needs, combined with the public thirst for accounts of private indiscretions, thrived in a culture with a growing infatuation with scandal --particularly involving elites -- and emerged at a time when such scandal became increasingly available for public consumption.<sup>285</sup>

In the courtroom, lawyers articulated and controlled the discourse of aristocratic men’s honor and reputation. They adopted cultural stereotypes and commonly employed terms, such as “rake” and “polite gentleman,” that the jury was likely to identify and interpret positively, or at least sympathetically, in the plaintiffs’ favor. Their control did not extend into the public sphere. In this realm, control over aristocratic litigants’ private lives was firmly in the hands of printers and journalists. They adapted the lawyers’ narrative and the gender-formula of the crim. con. “script” for published trial accounts, and supplemented the transcripts with editorial commentary and illustrations. In some cases, when possible, they combined proceedings from the wife’s adultery trial in the Doctors Commons in order to maximize the scandalous details they could reveal to the public. In doing this, the printers appropriated the litigants’ formula for publicizing their private lives and effectively usurped the husband’s control of it in the public realm. The

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<sup>285</sup> Ibid., 2.

trial now told the story, mainly from the perspective of the spying servants, of a cuckolded aristocrat whose “loose” wife easily succumbed to the advances of the charming but amoral gallant. The husband’s “identity” as a cuckold was amplified in the published accounts and diffused across eighteenth-century British culture in multiple printed editions and trial collections. The husband’s lack of power was two-fold in the public sphere: not only did the print media replace his self-fashioned image as a gentleman with wounded honor with the persona of a cuckold who was unable to control his wife sexually, the husband was also utterly powerless to curtail or control the circulation of his emasculated reputation. These trial accounts demonstrate that despite the value placed upon the variegated modes of performed manliness, including “politeness” and “sensibility,” contemporary conceptions of manhood were predicated on male sexual prowess.

The ability to control one’s wife by satisfying her sexually continued to be an important component of ideal masculinity throughout the eighteenth century. The cuckold already carried the connotation that the man was sexually inadequate, but many publications further reinforced the husband’s emasculation by supplementing the published crim. con. themes of cuckoldry and virility in trials for impotency. The 1715 collection *Cases of Divorce*, featured the crim. con. trial *Dormer v. Jones*, but concluded with the issue of impotency. Depositions from the well-known case of Lady Frances Howard, who filed for divorce from her husband in 1613, on the grounds that he was unable after three years of trying to consummate their marriage, are included along with a

series of diverse official commentaries about impotency and its impact on marriage.<sup>286</sup> In all of the cases, consummation as a mark of legitimacy for a marriage plays a key role, while the man's role in consummating (or not consummating) the marriage is especially highlighted. The 1761 publication of a self-styled "history of cuckoldom" entitled *Adultery Anatomized*, likewise highlighted the link between manhood and sexual performance through its inclusion of impotency cases with its collection of crim. con. trials.<sup>287</sup> Presenting the reader with a series of scandalous cases that depicted the men being cuckolded on multiple occasions begged the question of why the wives were unfaithful to their husbands. It was not only the inquiring minds of readers that wanted to know. The plaintiff's counsel in crim. con. trials tacitly acknowledged the insinuation by offering various explanations to the court that located fault in the wife or the defendant. These ranged from the wife's insatiable lust to her inherent weakness and inability to resist sexual corruption by a relentless seducer. Through their inclusion of impotency cases, however, the publishers implied another reason for the wife's infidelity: the failure of the husband to perform sexually. Publishing crim. con. trials alongside impotency trials highlighted the patriarchal notion of manhood through its inversion, the cuckold, by linking cases of a wife's adultery to cases of a man's inability to satisfy his wife sexually.

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<sup>286</sup> George Abbot, *The Case of Impotency as Debated in England, in That Remarkable Tryal an. 1613. Between Robert, Earl of Essex, and the Lady Frances Howard,...for Impotency*, 2 vols. (London, 1715).

<sup>287</sup> For example, in *Adultery Anatomized* the final case in the collection is the *Weld v. Weld* (1730) trial for divorce on grounds of impotency. Also see, *The Whole of the Proceedings...Between the Hon. Mrs. Catherine Weld, Daughter to the Lord Aston, and Edward Weld Esquire, her Husband. Containing, I. Her Libel Exhibited Against him for Impotency* (London, 1732). This trial account went through several editions and remained popular throughout the eighteenth century. Curll also published a separate account of the Howard trial (which he included in *Cases for Divorce*): *The Case of Insufficiency Discuss'd; ...the Divorce Between the Lady Frances Howard, and Robert Earl of Essex,...for Impotency, 1613* (London, 1711).

Crim. con. trial accounts further amplified the husband's emasculation by juxtaposing him with a seducer-stereotype that embodied the cuckold's opposite, the virile British man with a physically aggressive sexuality. An early example of this can be found in the popular 1757 crim. con. suit, *Knowles v. Gambier*. During the trial, the plaintiff's lawyer asked the chambermaid, Elizabeth (Betty) Bentley, to recount seeing Captain Gambier and Mrs. Knowles in bed together, and instructed her to "speak a little louder, that my lord, and the gentlemen of the jury may hear you."<sup>288</sup> She described an incident she observed through the key hole to Mrs. Knowles's bed chamber. After Gambier and Mrs. Knowles undressed into their nightgowns, the captain flung her onto the bed and leapt on top of her, but she then "disengaged" and ran around the bed, making him chase her. When she grew tired, he "took advantage" of the opportunity and forced her onto the bed again, threw himself on top of her, and pulled the covers over them.<sup>289</sup> Betty also described other instances where she witnessed Captain Gambier groping Mrs. Knowles's breasts and putting his hands in her pocket holes and up her petticoats, to which Mrs. Knowles's response was to "beat, pull, and strike him amorously."<sup>290</sup> Published accounts highlighted the physical aggression of the seducer (in *Knowles v. Gambier*, Mrs. Knowles had to literally fight him off), but the message was clear. The wife seemed to find his behavior more sexually appealing than her husband's more polite and restrained manner.

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<sup>288</sup> *Knowles v. Gambier* (1757), in *Adultery Anatomized*, 180.

<sup>289</sup> *Ibid.*, 183-184.

<sup>290</sup> *Ibid.*, 184.

Publicity swirled around *Knowles v. Gambier* at the time of the trial, and the scandal continued circulating in the public realm in multiple editions of published accounts and trial collections well into the nineteenth century.<sup>291</sup> The descriptions in widely-publicized trials helped construct an archetypal “female resistor” that featured prominently in cultural representations of women’s sexuality throughout the century. Bentley described Mrs. Knowles as responding to Gambier’s physical aggression in-kind, but the primary aggressor in these and other trial scenes was the male lover. Trial accounts that depicted female aggression usually portrayed it as a response to the man’s advances, or as a method of resistance. As with Mrs. Knowles, however, women’s resistance to manly aggression was portrayed as sprightly and insincere, even amorous. Labeling Knowles’s behavior “amorous” imbues her resistance to Gambier’s sexual advances with an erotic charge and an underlying consent. Scenes like the one to which Betty Bentley testified were characterized as merely two lovers at (fore)play. In the public sphere, it fostered a cultural perception of female resistance being a universal mask for sexual desire. After 1770, this was further reinforced by the proliferation of published trial accounts that featured illustrations depicting a particularly amorous or sensational scene revealed during the trial (see fig. 8). The husband is practically non-existent in the crim. con. trial accounts (in many cases he is reduced to a portrait on the wall overlooking the affair), yet his sexuality and inferior manhood is apparent in the juxtaposition of the seducer. Although he was the lead actor in the legal arena, in the realm of print he joined his wife as passive recipient of the virile British man.

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<sup>291</sup> In addition to multiple editions of individual published accounts, the trial was featured in various trial collections, including *Adultery Anatomized* (1763), *Trials for Adultery* (1780), *Cuckold’s Chronicle* (1793), *A New collection of trials for adultery* (1799), and *Crim. Con. Biography* (1830).



Figure 8. “Captain Gambier and Lady Knowles habited in loose Gowns and toying together” in *Trials for Adultery* 5



Eroticized depictions of aggressive physical encounters were particularly prominent in characterizations of the defendants in sex trials during the last quarter-century, as evident by the two-volume 1793 publication, *The Cuckold's Chronicle*. Despite the title's emphasis on cuckoldry, this collection included any type of trial that involved male sexual conduct, from adultery and rape to impotency, and judging by the nature of the sexual acts described, late-century masculinity was defined increasingly by violent sexual aggression towards women.<sup>292</sup> The intensified emphasis on physical strength as a primary component of masculinity, when combined with the traditional emphasis on men's sexual relations with women, had potentially dangerous implications. This version of celebrated masculinity privileged virility to the point where the line between vigorous, "manly" pursuit and excessive (non-consensual) force was difficult to distinguish. Some crim. con. trial testimonies described incidents that amounted to rape in everything but name, only the witnesses and lawyers framed the sexual interactions within the context of aggressive seduction.

In the 1789 trial *Baxter v. Coates*, for example, a witness testified that, as he passed by the Baxter residence, he overheard Coates trying to seduce Baxter's wife.<sup>293</sup> The deponent approached the window and observed Coates's unsuccessful attempts to coax Mrs. Baxter to sleep with him. When she refused and retreated to the upstairs

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<sup>292</sup> Robert Shoemaker, "Reforming Male Manners: Public Insult and the Decline of Violence in London, 1660-1740," in *English Masculinities, 1660-1800* (Harlow, England: Longman, 1999), 149-150. Shoemaker argues that there was an overall decline (but not disappearance) of violence in London in the eighteenth century, and he attributes this to the growing emphasis on public manners, which led to violent behavior being replaced by public insult. The increase in aggression displayed by the men in crim. con. trials, especially in the *Cuckold's Chronicle*, may not reflect a wider trend in society, but these examples of violence show that some men were grappling with anxiety that was expressed through aggressive physical and sexual behavior towards women.

<sup>293</sup> *Baxter v. Coates* (1789) in *Cuckold's Chronicle*, 2:146.

bedroom, Coates apparently followed her, locked them both in the bedroom and placed the key in his pocket. The witness then located a convenient seat on the penthouse roof, which provided him a perfect view of the action taking place in the bedroom. From there, he testified that he watched as Coates, despite Mrs. Baxter's protests, undressed her, threw her onto the bed, and had sex with her.<sup>294</sup> This testimony indicates a rape occurred, but the witness did not present it as such (nor did the pamphlet's publisher, the attorney, judge, or jury).<sup>295</sup> In fact, the publisher included an illustration of the scene that did not depict the wife in a state of distress or genuine resistance. Rather, while her body is leaning away as she is pushes him back with her arm, she is looking at him with a coy smile, clearly enjoying his advances (see fig. 9).<sup>296</sup> That is not to argue that this should have been a rape trial rather than a crim. con. trial, however. Other witness testimonies depicted separate sexual encounters between Mrs. Baxter and Coates that appeared to have been entirely consensual.<sup>297</sup> Regardless, although the witness to the scene in question did not accuse Coates of rape, he did not describe Mrs. Baxter eventually welcoming Coates's advances, either. Instead, he described her as resisting the entire time, and he sat on the penthouse and watched this scene unfold without any inclination to intervene on her behalf.

Employing the trope that women who resisted men's sexual aggression secretly desired it enveloped crim. con. trial accounts with erotic ambiguity. This tactic was

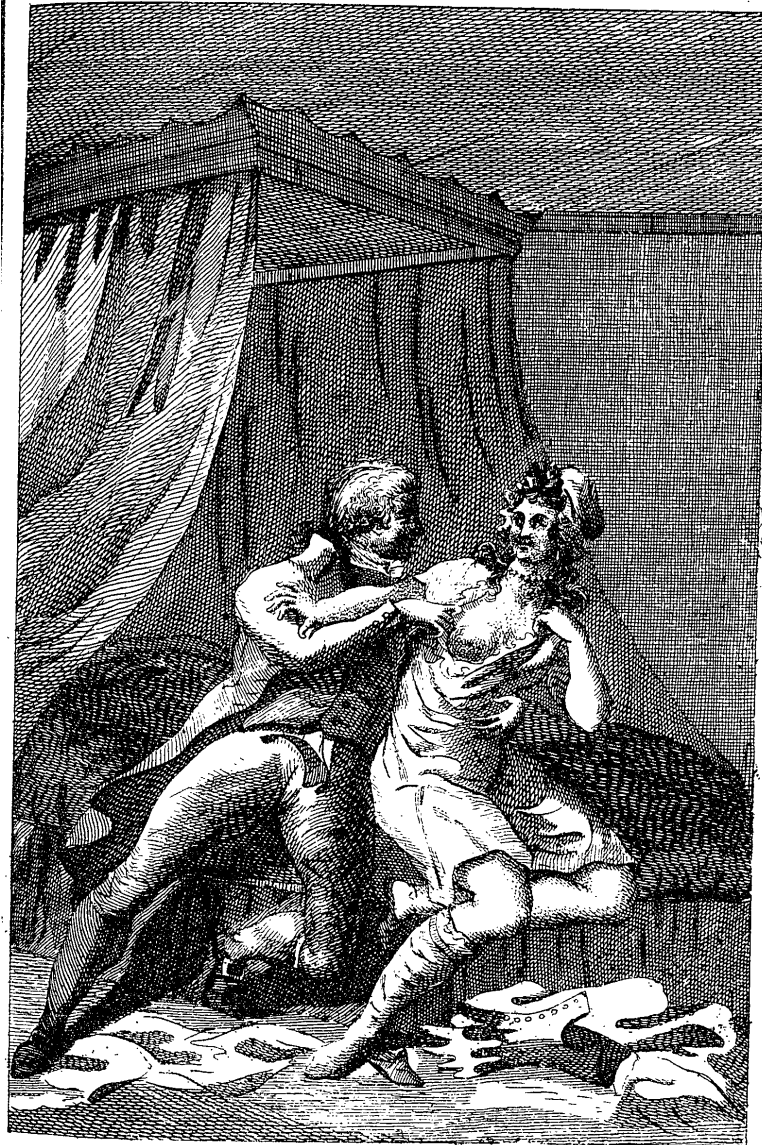
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<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

<sup>296</sup> "Mr. Coates Undressing Mrs. Baxtor," in *Cuckold's Chronicle*, inserted between pp. 146-147.

<sup>297</sup> *Baxter v. Coates* (1789) in *Cuckold's Chronicle*, 2:147.



*Mr. Coates, undressing Mrs. Baxter. scap. 150.*

Figure 9. "Mr. Coates Undressing Mrs. Baxter," in *The Cuckold's Chronicle*

likewise applied to emphatically less ambiguous situations throughout *The Cuckold's Chronicle*, perhaps most disturbingly in the trial accounts for rapes. These images did not always present the woman as necessarily enjoying the sexual encounter. They did, however, depict rape in a highly eroticized manner, presenting the victim more as a damsel in distress who is overcome by the robust man. She is a highly sexualized figure and is often shown lying down as he overpowers her, with one or both of her breasts exposed and usually being groped by the attacker. The style and imagery of the illustrations are very similar to the illustrations of crim. con. scenes and erotica (for illustrated examples of this to compare with Coates's assault on Mrs. Baxter, see figs. 10-11). The two images seem to suggest that some men, at least, were not capable of controlling their sexual desires and could not help but satisfy those urges. When the images are viewed in tandem with the trial accounts the message is even clearer. The result for someone reading a printed transcript of the trial is an explicit description of sexual intercourse and an eroticized illustration of the scene that amplifies the sexuality of the woman and the impending event, while minimizing her resistance. The trials that concluded with a verdict of not guilty consistently downplayed this lack of consent. Trials that ended with a guilty verdict (they were rare among the rape trials included in *Cuckold's Chronicle*) concluded instead with a postscript from the editor impugning the rape by questioning the verdict or the victim and/or witness testimony.<sup>298</sup>

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<sup>298</sup> See the Motherhill and Davidson trials discussed below.

The collection included an account of the 1786 trial of John Motherhill for the rape of Catherine Wade.<sup>299</sup> Wade was questioned, cross-examined and re-examined numerous times, forcing her to recall in painstaking detail her account of Motherhill raping her. Defense attorneys seized upon some contradictions in her story. In particular, they questioned her assertion that when he first approached her and grabbed her, she did not realize he intended to rape her (which is why she did not scream for help and immediately run away).<sup>300</sup> The defense was able to raise reasonable doubt, and the jury found Motherhill not guilty.<sup>301</sup> The editor included an illustration of the rape (fig. 10), again depicting an account of a “ravishment” from a trial which ultimately ended with the defendant’s acquittal. This is an example, as Karen Harvey has written, of the use of “metaphor and suspended denouements” in order to create “a decorous distance between reader and text” that she identifies as a defining characteristic of erotica.<sup>302</sup> It is the moment just before the alleged rape (that the jury determined was not proved beyond doubt), and thus viewers can relish Motherhill’s physical and sexual dominance of the petite and beautiful Miss Wade, without actually condoning the rape they are visually consuming.

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<sup>299</sup> *The Trial of John Motherhill for Rape Upon the Body of Catherine Wade*, in *Cuckold’s Chronicle*, 1:45-93.

<sup>300</sup> *Trial of John Motherhill*, 69. That is not to suggest that this practice by lawyers of exploiting subtle contradictions to raise a reasonable doubt about the defendant’s guilt was exceptional to the eighteenth century; however, the editor of *The Cuckold’s Chronicle* (if not others) used the “reasonable doubt” as an opportunity to perpetuate the notion that women were being disingenuous when they resisted men’s sexual advances.

<sup>301</sup> *Ibid.*, 91.

<sup>302</sup> Harvey, *Reading Sex*, 1.



JOHN MOTHERHILL'S *first attempt on* MISS WADE

Figure 10. "John Motherill's First Attempt on Miss Wade," in *The Cuckold's Chronicle*

There is also a scene from the 1774 trial of George Davidson for the rape of Isabella Blair (fig. 11).<sup>303</sup> The illustration depicts Blair being pinned down by Davidson, with his hand groping her exposed breast -- a familiar image to the reader at this point in the *Chronicle*. Her facial expression indicates surprised panic, but her body is not portrayed in an especially defensive position: her arm that is farthest from the viewer's vantage point is pushing Davidson away, but it is heavily shaded compared to the rest of her body, which is in a rather less resistive position. The jury found Davidson guilty and he was sentenced to death, but the editor questioned the verdict and insinuated that Blair might have provoked Davidson's sexual assault by inviting him back to her house at one point, despite his "threat, or rather bargain," as the editor described it, that he would "kiss her or lye with her" if he went home with her.<sup>304</sup> He attributed the barbarity of Davidson's actions to the fact that he was extremely drunk, and suggested that the punishment did not fit the crime when he noted that "the state of [Davidson's] intoxication, and what followed as the consequences of it, though tinctured with wantonness and barbarity, was dearly atoned for, in the *sacrifice* of a life that might probably have repaired the injury sustained."<sup>305</sup> His opinion that Davidson's state of mind was to blame for his sexual aggression is reaffirmed by the illustration, entitled "The Barbarity of a Ravisher," where the depiction of Davidson, particularly his facial expression, clearly indicates some sort of mental incapacity, thus undermining the labels of guilt and barbarity that normally applied to a rapist.

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<sup>303</sup> *The Trial of George Davidson for Rape Upon the Body of Isabella Blair* (1774), in *Cuckold's Chronicle*, 1: 412-420.

<sup>304</sup> *Ibid.*, 418-419.

<sup>305</sup> *Ibid.*, 419.



BARBARITY of a RAVISHER.

Figure 11. "The Barbarity of a Ravisher," in *The Cuckold's Chronicle*



Although manly sexual aggression was often celebrated to a fault in the later eighteenth century, excessive physical violence against women was portrayed as contrary to notions of British masculinity. *The Cuckold's Chronicle* included an account of the 1785 trial of navy captain Isaac Prescott to illustrate this point.<sup>306</sup> Prescott was prosecuted for abusing his wife and witness testimonies described how frequently and savagely the captain beat Mrs. Prescott. The author did not extend the empathy to Prescott that he did for the rapists; he did not challenge the sworn statements or question the witnesses' credibility or character. Rather, he presented Prescott as the embodiment of what the "British Man" was *not*. First and foremost, then, he was not an abusive husband. On the surface, the condemnation of domestic violence may seem to be the corollary of a more benevolent and chivalrous view of women and how men should treat them. The author berated the captain for abusing "a poor defenceless woman."<sup>307</sup> This mentality defended female victims of male violence while simultaneously reinforcing women's status as the "weaker sex." Furthermore, this was immaterial to the author, as the sex of the victim was only relevant insofar as it related to the male aggressor and notions of manhood more generally. The author's emphasis on the "singularly remarkable" fact that Prescott's violent behavior was only ever directed against women and not men presented a nuanced understanding of British masculinity.<sup>308</sup> Wife-beating was emasculating not because it victimized women, but because the abuser gained a false sense of manliness from his physical dominance. Brute masculine strength could not be proven against an inferior

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<sup>306</sup> *The Trial of Isaac Prescott, Esq. a Captain in the Royal Navy, for wanton, tyrannical, unprovoked, and savage cruelty, towards Jane Prescott, his Wife* (1785), in *Cuckold's Chronicle*, 1:139-147.

<sup>307</sup> *Ibid.*, 142.

<sup>308</sup> *Ibid.*

opponent, which included all women. This facet of manhood was measured against other men. One proved his manhood with women sexually.

Measuring manhood against other men was a tenant of “polite gentlemanliness,” but this was the only one presented positively in the *Cuckold’s* trial account. The author put politeness on trial alongside Prescott by linking his character flaws to polite principles. When acquaintances (possibly sworn in as character witnesses for the defendant) described their public encounters with Prescott and portrayed him as kind and dignified, the author scoffed, “He was not without his pretences to honour and exterior etiquette!”<sup>309</sup> His comments were not without merit, however, as witness testimonies detailed Prescott’s savage treatment of Mrs. Prescott alongside accounts of his gentility when others were present to observe him. The captain intended to maintain his false public character and one witness testified to Prescott’s rage on an occasion when he realized he was about to be exposed. He described how Prescott heard someone approaching his room just as he had finished beating his wife and, as she lay crying on the floor, yelled “Damn you, damn you, you bitch, the servants shall see you!”<sup>310</sup> The author referred to the Captain’s duplicitous nature multiple times and criticized him for performing the part of gentleman in public while being an abusive coward in private.

The trial account featured an illustration of a scene described in witness testimonies entitled “Sensual Barbarity: or, Refinement on Navel [sic] Discipline” (fig. 12). The image reinforced Prescott’s failure to meet any standard of manliness, much less that of the ideal “British Man.” In Prescott’s trial alone, the author addressed multiple

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<sup>309</sup> Ibid., 144.

<sup>310</sup> Ibid., 145.



*Sensual Barbarity; or, Refinement on NAVEI Discipline.*  
*Published as the Act directs, by J. Lemoine, April 1<sup>st</sup> 1793. See Page 145*

Figure 12. "Sensual Barbarity: or, Refinement on Navel [sic] Discipline" in *Cuckold's Chronicle*

masculinities, not just the “polite gentleman.” He highlighted Prescott’s shortcomings as a patriarchal figure as well. His eleven-year-old daughter often witnessed him abusing her mother, and court depositions allege that the captain’s abuse escalated when his wife was pregnant.<sup>311</sup> Testimonies described Prescott’s fury over his servants discovering his abuse, and the image depicts a servant entering the room with a horrified expression on his face when he see his mistress on the floor in tears and his master hovering over her menacingly. The servant had been summoned to the room by the captain’s young daughter, who is cowering in the corner, terrified. Jane Prescott is sympathetic, yet still portrayed as a passive, sexualized figure. She is leaning away from her husband and taking a subtle step backwards, clutching the edge of her skirt with it pulled up above her knees, one exposed leg prominently extended and her breasts barely contained in her gown. The captain is dressed in full navy uniform, quite fat and unattractive with a scowl on his face. The facial expressions and body languages of the members of his household who are in the room display a range of emotions -- agony, fear, horror -- all negative, and all inspired by and directed towards the patriarch.

By the author’s standards, at least, rape could pass as an acceptable, or at least forgivable (and even pleasurable) act of violence, but spousal abuse did not. The distinguishing factor between acceptable and unacceptable physical aggression was sex. This view of physical violence resulted from the combination of the changing notions of human sexuality and a rampant male chauvinism. Contemporaries began to evaluate human behavior according to notions of a basic human “nature” which held that certain

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<sup>311</sup> Ibid., 145-46. “Sensual Barbarity: or, Refinement on Navel [sic] Discipline” in *Cuckold’s Chronicle* 1, inserted between pp. 144-145.

impulses and dispositions were “natural” and therefore, to an extent, unavoidable.

Humans -- males and females alike -- were viewed as fundamentally sexual beings.<sup>312</sup>

When a heightened chauvinism carried this theory to its extreme, male sexuality was not only natural, but was also celebrated as the ideal form of British masculinity. In this way, one could view a rape victim’s refusal of a man’s sexual proposition as both “unnatural” and “unpatriotic,” two traits that were especially unlikely to garner sympathy in the final, “revolutionary” decades of the century.<sup>313</sup>

The rape trials and the Baxter crim. con. trial, along with their accompanying illustrations, display an image of masculinity that is characterized by the men’s sexual control of women. The 1793 collection presented physical sexual aggression as an ideal, but the line between virility and rape, and to what extent a woman’s body was an object for male ownership, was incredibly blurry. Even when a jury determined that that line had been crossed, some -- like the editor of *The Cuckold’s Chronicle*, through his comments and illustrations, and the people who purchased the *Chronicle* for their reading or viewing pleasure -- appear to have been less certain. What is certain from these trials is

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<sup>312</sup> Tim Hitchcock, “Redefining Sex in Eighteenth-Century England,” *History Workshop Journal* 41 (Spring 1996): 72-90. Randolph Trumbach and George E. Haggerty situate homosexuality within the increasingly heterosexual culture (per Hitchcock) in eighteenth-century Britain. See Trumbach, “Sex, Gender, and Sexual Identity in Modern Culture: Male Sodomy and Female Prostitution in Enlightenment London,” *Journal of the History of Sexuality* 2 (1991): 186-203; and Haggerty, *Men in Love: Masculinity and Sexuality in the Eighteenth Century* (New York: Columbia University Press, 1999). Another influential work on eighteenth-century sexuality is Michel Foucault, *The History of Sexuality, 1: An Introduction* (New York: Vintage, 1990).

<sup>313</sup> Historians have noted the heightened sexual anxiety among men during the later eighteenth century and some have posited a connection to rising national military-imperial anxieties. For example, see Dror Wahrman, “Percy’s Prologue: From Gender Play to Gender Panic in Eighteenth-Century England,” *Past & Present*, no. 159 (May 1998): 113-160; Linda Colley, *Britons; and* Kathleen Wilson, *The Sense of the People: Politics, Culture and Imperialism in England, 1715-1785* (Cambridge: Cambridge University Press, 1998).

that the courtroom was still as much a site for debating the meaning of masculinity at the end of the eighteenth century as it was at the beginning, and the cuckolded patriarch remained a key player. The plaintiff's lawyers typically accused seducers in crim. con. trials of undermining polite codes of conduct, and this characterization was echoed by the editors and publishers of crim. con. trial publications throughout much of the century. As we have seen, during the last two decades of the century manhood was still the key issue in crim. con. trials, and the image of the cuckold remained prominent, but the husband was juxtaposed with a new virile kind of manliness. The emergence of this brand of masculinity can be understood in the context of Britain's growing involvement in military conflicts in the closing decades of the eighteenth century. Having lost the American colonies in the 1780s, Britain remained involved in India and the West Indies, and declared war on revolutionary France in 1793 (the year that *Cuckold's Chronicle* was published). Wartime tends to amplify national masculine anxieties and can result in increasing male violence and concerns with male sexual potency and procreation as a matter of national survival. In one sense, the meaning of manhood had come full circle from the previous century's conceptions, with manliness associated once again with physical aggression and sexual control over women.<sup>314</sup> Ultimately, one must conclude that, much as Alexandra Shepard has demonstrated for the seventeenth century, there were likewise many different meanings of manhood in the eighteenth century.<sup>315</sup>

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<sup>314</sup> It would be interesting, for example, to investigate if these seventeenth-century conceptions of masculinity were linked to the experience of the Civil War and Interregnum.

<sup>315</sup> Shepard, *Meanings of Manhood*.

Furthermore, these trial accounts blur the line between crim. con. trial accounts and erotica, but intentionally so. The ambiguity provides readers more freedom to interpret the crim. con. details as they please, even if that means viewing a rape as a highly aggressive -- but ultimately welcome -- sexual dalliance. The general opaqueness of crim. con. trial accounts facilitated its broad appeal in the public sphere, more than other trial accounts and erotic literature might have enjoyed. The crim. con. phenomenon cannot be explained strictly by its sex appeal, however. Published trial accounts were sources of pleasure for those who were simply seeking amusement. The “non-political” material of “smiling” satire trial prints, intended to entertain rather than rebuke, was emphatically personal, as the value of the material was its stake in the private. The “harmless” humors of crim. con. accounts was indeed a great leveler. It obliterated the traditional hierarchy and replaced it with a power structure predicated on privacy.

### **Conclusion: The Crim. Con. Phenomenon and the Eighteenth-Century Cabinet of Curiosities**

The concept of the “cabinet of curiosity” is a useful heuristic device for exploring the eighteenth-century crim. con. phenomenon in Britain. The cabinet of curiosities was adapted in the seventeenth century from its Renaissance predecessor and comprised an entire private room (in both private houses and public institutions) in which the owner exhibited a hodgepodge collection of objects from the natural world. Eighteenth-century “cabinets” continued to display “natural wonders” predominantly, but collections increasingly incorporated examples of nature’s oddities, along with specimens of natural beauty and the occasional man-made curiosity.<sup>316</sup>

Those who sought curiosities of natural history were ultimately seeking “truth,” looking for what was “real” in the world. By mid-century, many Britons had become disillusioned with the superficialities of the age, an unavoidable fault in a “polite” society that emphasized display and appearances over genuine character. The emerging preoccupation with the “real” did not completely replace “politeness” and its perceived artificialities, but it gained currency with a growing portion of the population.<sup>317</sup>

Descriptions of natural curiosities took care to evince the truth of the wonders by

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<sup>316</sup> For an account of this phenomenon in the seventeenth-century, see Barbara Shapiro, *A Culture of Fact: England, 1550-1720* (Ithaca, NY: Cornell University Press, 2003); *ibid.*, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships Between Natural Science, Religion, History, Law, and Literature* (Princeton, NJ: Princeton University Press, 1983); and Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth-Century England* (Chicago: University of Chicago Press, 1995).

<sup>317</sup> See, for example, Gattrell, *City of Laughter*; Harvey, *Reading Sex*.



presenting them in a “matter of fact” reporting style that emphasized accuracy and attention to detail.<sup>318</sup> This desire to know and understand “real life” was an elite preoccupation in the early years of the Enlightenment, but it was a popular concern by the later-eighteenth century and broadened to include an interest in people as well as nature.<sup>319</sup> Curiosity about human nature and human society fueled studies in the social sciences, and the legitimacy of this form of inquiry in contemporary British culture was evident in a pervasive desire to know (real) people’s private lives. The crim. con. phenomenon was a testament to this.

Curiosity collections sought to represent the world with all its idiosyncrasies in one place. The crim. con. trial ought to be understood as a similar type of cultural phenomenon.<sup>320</sup> Curiosity was linked to materiality, as “elite” curiosity involved an appreciation of finely-crafted objects, such as those displayed in the houses, collected or modeled after the Grand Tour, or craftsmanship as a skill, but strange and unusual human beings likewise qualified as curiosities.<sup>321</sup> Curious items were usually notable for being rare or novel, but everyday objects could be considered curiosities if they were combined with a wonderful “backstory.”<sup>322</sup> The crim. con. trial offered a glimpse inside the aristocratic home and exposed the “real” behavior of elites behind closed doors, behavior

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<sup>318</sup> Katie Whitaker, “The Culture of Curiosity,” in *Cultures of Natural History*, ed. Nicholas Jardine, James A. Secord, and Emma C. Spary (Cambridge, MA: Cambridge University Press, 1996), 84.

<sup>319</sup> *Ibid.*, 78. See also Larry Stewart, *The Rise of Public Science: Rhetoric, Technology, and Natural Philosophy in Newtonian Britain, 1660-1750* (Cambridge: Cambridge University Press, 1992); and Porter and Hall, *Facts of Life*. For contemporary texts concerning human nature, see John Locke, *An Essay Concerning Human Understanding* (1690); David Hume, *A Treatise of Human Nature* (1739), and *An Enquiry Concerning Human Understanding* (1742).

<sup>320</sup> Whitaker, “The Culture of Curiosity,” 88.

<sup>321</sup> *Ibid.*, 76, 78.

<sup>322</sup> *Ibid.*, 78.

that contrasted rather starkly with the image presented to visitors on guided tours or in commissioned portraits.

The eighteenth-century country house functioned like a “cabinet of curiosities,” as a site that (literally) housed aristocrats and their peculiar world of luxury goods and lavish furnishings that adorned the walls, lined every hall, and were situated perfectly in each room. Aristocrats likewise treated their manors as curiosity cabinets.<sup>323</sup> Curiosity was a celebrated “attitude of mind” among elite British men; they were “trained” in curiosity as part of their Grand Tour education.<sup>324</sup> They embarked on the Grand Tour and spent several months, and occasionally years, traveling the continent and socializing with the European nobility, while immersing themselves in Europe’s high culture of art, literature, and music.<sup>325</sup> Over the course of their travels, the landed gentleman accumulated a small collection, usually consisting of literary and philosophical works, paintings and sculptures, then returned to his country manor with his “tour décor” and re-fashioned the house as a sort of “museum of Taste.”<sup>326</sup> The function of the aristocratic house was to publicly display the owners’ power and status, which required public viewing to be legitimized.<sup>327</sup> There were multiple ways of accomplishing this, including the publication of books of views describing the grandeur of various country estates,

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<sup>323</sup> Ibid., 85.

<sup>324</sup> Ibid., 75; Jeremy Black, *The British and the Grand Tour*, 234, 246-47.

<sup>325</sup> Jeremy Black, preface to *The British Abroad: The Grand Tour in the Eighteenth Century* (Gloucestershire, U.K.: Stroud, 2003), [no pagination]. For a discussion of the various cultural attractions in which travelers frequently indulged, see “The Arts,” in *ibid.*, 277-314. For an account of women’s experiences of the Grand Tour, see Brian Dolan, *Ladies of the Grand Tour: British Women in Pursuit of Enlightenment and Adventure in Eighteenth-Century Europe* (New York: HarperCollins, 2001).

<sup>326</sup> Ibid.

<sup>327</sup> Christie, *British Country House*, 29.

illustrated accounts and guides, and designated public viewing days opened the manor to visitors who wished to personally observe the “taste” of the owner.<sup>328</sup> By controlling the viewing process -- what was viewed, when and by whom -- the landed gentleman was able to construct and reinforce his superiority. He fashioned his reputation through his material milieu.

Eighteenth-century British society became more “public” as the groups vying for power expanded with the influx of wealthy merchants, traders, and professionals. Their ability to maintain power, however, did not only come from public titles or money or public institutions. Social status still depended heavily on reputation. The new emphasis on “polite” sociability meant that status was legitimized by being performed between individuals, or at least in the presence of other observers. The importance of public display for reputation meant that any behavior contrary to “polite” values must be concealed from view. This concept was not necessarily new, but contemporary developments both amplified its importance and posed unprecedented challenges. New technologies for publicity emerged in this period that could produce and circulate representations of a person’s character -- beyond his or her control -- to an expanding market of cultural consumers. Thus, protecting one’s reputation (and by extension one’s power) was becoming increasingly necessary at the same time that publicizing private behavior was achieved with greater ease, and consumed with greater fervor. Personal power, then, was rooted in privacy and one’s ability to control its concealment and exposure.

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<sup>328</sup> Ibid.

The “culture of curiosity” that characterized the period of the Enlightenment enhanced the value of things unknown and rare or novel, particularly if their discovery yielded an improved understanding of the world. To stretch the analogy a bit further, crim. con. trials allowed Britons to discover the secret conduct of the “beau monde” (a label -- which translates as the “beautiful world” -- contemporaries applied to the fashionable elites) behind closed doors where, so they believed, they were hidden from view. The inherent value of secrecy was further amplified by the culture of privacy that was manifest throughout eighteenth-century society, for example in architecture, security mechanisms, legal theory and practices, politics, and social relations. A pervasive and multifarious system of enclosures signified ownership over items and spaces and subsequently isolated non-owners’ access to these things, often for the first time. Thus, domestic servants were removed to the periphery of the household and suddenly found themselves locked out of cabinets, closets, and chambers to which they had previously enjoyed unlimited access. The owners saw a need to protect their property by concealing and securing their possessions, yet in many cases, as crim. con. trial testimonies revealed, this only piqued the servants’ curiosity about what was being kept from them. The private possessions were valuable to both the owners and the inquisitive servants alike.

The practice of collecting was a practice of power, as it entailed the production of knowledge in the form of taxonomies and other classification systems for natural phenomena.<sup>329</sup> Curiosity cabinets not only displayed the knowledge and status of the owner, they also displayed his power *over* knowledge through his ability to both produce

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<sup>329</sup> Foucault, “Panopticism,” in *Discipline & Punish*, 195-228.

and possess it. The Renaissance habit of collecting was an elite endeavor, but by the mid-eighteenth century, non-elites also engaged in the practice of organizing and classifying social phenomena. Those with access to print media, for example, used those networks to represent, evaluate, and disseminate “classifications” of identity categories that suffused eighteenth-century culture and continued to circulate in the next century. Published crim. con. accounts articulated taxonomies of masculinity that ranked the myriad manhoods from the ideal, which included at various times the polite gentleman, the man of feeling, and the virile British male, to the offensive, which almost always featured the cuckold, the fop, and the macaroni among its ranks, if not the libertine rake and blackguard. These were the types of “curiosities” one encountered in the crim. con. “cabinet,” along with the noblewomen who slept with their footmen, spying servants, husband-pimps, military gallants, and even the occasional nymphomaniac. These “characters” represented real people, however, prominent people, and these representations were drawn from their (alleged) conduct behind closed doors. They no longer controlled the representation of their house as a self-fashioned curiosity cabinet. Crim. con. litigants became the objects of curiosity.

In response, husband-plaintiffs sought to fence in the domestic realm and essentially close the door on servant gossip about the private household. To achieve this husbands employed the crim. con suit as a form of counter-gossip in an attempt to discredit any defamatory information and introduce the “true story” for their audience. The husband-plaintiffs’ counter-gossip was to bring the crim. con. suit and use the trial to write a final and “official” crim. con. “script” to replace the unregulated gossip and

rumors already circulating. Exposing their private lives in the public courtroom might seem contrary to the goal of eliminating gossip, but the husband-plaintiff could establish a version of events that exposed the private lives of the litigants but presented himself favorably. Masters reverted the household power-relations to their “proper” patriarchal order through the crim. con. trial, but they achieved this at their own expense by placing themselves in another web of power. Husband-plaintiffs had to submit their cases (through their legal counsels) to the judges and special merchant juries, which effectively placed the value of their private lives in the hands of the juries and other legal professionals. This, by extension, transferred the power over aristocratic men’s reputations to these elites of the legal realm.

These trials were not private hearings. They were public -- and widely publicized -- and were therefore presented to an audience who had, especially in the more sensational trials, crammed into the courtroom to witness the spectacle of crim. con. firsthand. The crim. con. “audience” extended beyond the courtroom, however, and into the public realm where the revised crim. con. “script” circulated most prominently through published accounts. As Benedict notes that “Although status-enhancing accumulation meant physical acquisition, it traditionally also extended to the mental possession of learning, and this forms one of the roots grounding spectatorship as an aspect of curious acquisition.”<sup>330</sup> Along with the “legal elites,” these observers of crim. con. curiosities likewise attained a sense of power over the litigants whose private lives were laid open for observation.

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<sup>330</sup> Benedict, *Curiosity*, 18.

The attempt to secure “domestic enclosure” through the crim. con. trial backfired for the plaintiff-husbands. Instead, they turned their household into a cabinet of curiosity, “enclosed” in a sense by the publishing industry and a viewing public. In addition to losing the ability to control knowledge of their private lives, the litigants’ power was further depleted because they were reduced to objects of curiosity and subjected to a form of surveillance where the most intimate moments of their lives were accessible to relatively anonymous spectators.<sup>331</sup> Finally, the crim. con. phenomenon illuminates another public-private paradox: contemporary interests in crim. con. were fueled by a pervasive curiosity about real, private lives, but the manner in which eighteenth-century Britons pursued intimate knowledge of social elites rendered the litigants curious objects more than human subjects. With a sense of a private self emerging within the “community of one” and developing notions of personality in this period, the value associated with intimate knowledge of real people was firmly rooted in its private nature, yet its consumption by the communities in the more expansive public realm depersonalized the individuals. In this way, the legal institution of the crim. con. trial and the publicity which accompanied it demonstrated the ways in which the emerging public sphere threatened “private life” from the earliest moments of its creation.

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<sup>331</sup> Foucault, *Discipline and Punish*, 210.

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