Abstract

Upon marriage, women in early modern England became subject to the common law doctrine of coverture. Coverture had a number of consequences, all of which stemmed from a married woman’s lack of independent legal identity. These consequences largely manifested themselves in a married woman’s complete lack of property rights, but the lack of an independent legal identity created complications for assigning criminal responsibility to married women in the early modern criminal justice system. Coverture largely manifested itself in the criminal law through the defence of marital coercion, which held that a married woman who committed a crime – with the exceptions of murder and treason – was assumed to be acting under her husband’s coercion and was therefore not liable for her actions.

This study examines the perceptions, treatment, and experiences of married women in the northern assize circuit and London between 1640 and 1760, with particular attention to the defence of marital coercion. This thesis discovered that the household ideal, not the defence of marital coercion, was the most important factor in determining the perceptions, treatment, and experiences of married women with the criminal justice system. People in early modern England did not see coverture as the loss of rights, but rather the means through which to create a unified household. The household ideal manifested itself in various ways, including understandings of women’s household role, the tendency of people to treat husband and wife as a criminal unit rather than two separate individuals, the “suitability” of victims in murder trials, and the unique treatment of married women in the execution pamphlets.

The married women of this study were subject to the common law doctrine of coverture. While they did not feel its effects in their daily lives, their lack of an independent legal identity created complications in the criminal justice system. Above all, married women were both criminals and wives. Criminal actions may have removed these women from their husbands’ cover, but their experiences with the criminal law were still shaped by coverture and the corresponding household ideal.
Acknowledgements

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Marisha Christine Caswell, February 2012
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### Abbreviations

<table>
<thead>
<tr>
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<tr>
<td>Beinecke</td>
<td>Beinecke Rare Books and Manuscript Library, Yale University</td>
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<tr>
<td>BL</td>
<td>British Library</td>
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<tr>
<td>CUP</td>
<td>Cambridge University Press</td>
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<tr>
<td>Folger</td>
<td>Folger Shakespeare Library</td>
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<tr>
<td>HLS</td>
<td>Harvard Law School Special Collections</td>
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<tr>
<td>OBP</td>
<td><em>Old Bailey Proceedings</em></td>
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<tr>
<td>ODNB</td>
<td><em>Oxford Dictionary of National Biography</em></td>
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<tr>
<td>OUP</td>
<td>Oxford University Press</td>
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<tr>
<td>TNA PRO</td>
<td>The National Archives, UK, Public Record Office</td>
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Notes on the Text

Original spelling has been retained in the quotations, except for the letters u and i which have been modernized to v and j, where appropriate. Punctuation has also been modernised to aid in clarity. Abbreviations have been expanded and additions or corrections appear in square brackets. The spelling of names has not been modernized and follows what is present in the texts. The year is taken to begin on January 1.
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INTRODUCTION

In 1725, Joseph Gatfield accused John England and his wife Sarah of stealing three curtains, a pair of shoes, a looking glass, and a plate. The jury convicted Joseph and sentenced him to transportation, while it acquitted Sarah because she was “acting by the Consent, and under the Authority of her Husband.”¹ Similarly in 1744, William Griffiths accused James Haycraft, his wife Ann Henley, Samuel Smytheman, and Elizabeth Eaton of stealing a parcel of hardware worth 30s from his shop. At their trial, one of the court clerks produced Ann’s examination in which she claimed that “on Friday night last Samuel Smytheman said he wanted some money, and that they all went to Mr. Griffith’s shop, broke it open, and took away a parcel of goods, which they sold to one Whiting in Holborn.” The clerk also read similar confessions from Smytheman, Haycraft, and Eaton. It is therefore not surprising that the jury convicted these three. However, the same jurors acquitted Ann Henley “as being the wife of James Haycraft, and with him at the time the robbery was committed.”²

The acquittals of Sarah England and Ann Henley draw attention to the complicated legal status of married women in early modern England. As wives, these women were subject to the common law doctrine of coverture – the collective label for all of the legal disabilities that wives experienced during marriage.³ Upon marriage, a woman’s legal identity was subsumed under her husband’s. Without an independent legal identity, a married woman was unable to make contracts, sue or be sued without her husband, and assert her rights in court outside the presence of her husband. The most common consequence of coverture was a married woman’s almost

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¹ Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), August 1725, trial of John England and Sarah his wife (t17250827-61).
² Old Bailey Proceedings (hereafter OBP), May 1744, trial of James Haycraft, Ann Henley, Samuel Smytheman, and Elizabeth Eaton (t17440510-9).
complete lack of property rights since, as Mary Poovey explains, “most of a woman’s property became her husband’s absolutely when she married, whether she brought that property into the marriage or acquired it subsequently. All of a married woman’s income belonged to her husband.”

Despite historians’ emphasis on property, coverture affected more than just property rights. It ultimately created a system of gender relations which ensured married women’s subordination by subsuming their legal identities under their husband’s or at least within a larger household structure. This household ideal formed an important subtext to all aspects of married women’s lives.

Using the experiences of married women in the criminal courts between 1674 and 1760, this thesis asks the question: how did early modern observers assign criminal responsibility to married women, who were, in theory, not legally independent individuals? Coverture and a married woman’s lack of an independent legal identity carried consequences in the criminal justice system. This is evident in the limited liability of Ann Henley and Sarah England who benefited from the defence of marital coercion. This defence was a primary consequence of coverture in the criminal law. It held that a married woman who committed a felony with her husband – with the exceptions of treason and murder – was assumed to be acting under his coercion and was therefore not liable for her actions.

The presumption of marital coercion existed but, as will be demonstrated, its application was limited. Even with the defence and a married woman’s lack of an independent legal identity, ordinary people had little difficulty assigning criminal responsibility to them. Nevertheless, coverture was not absent from the treatment of married women in the criminal justice system and

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manifested itself in ideas about the household, which helped shape married women’s experiences with the criminal justice system and people’s perceptions of them within the same. Despite juries’ fitful application of the defence of marital coercion, coverture’s emphasis on the unified household and the paternalist assumptions it epitomized shaped the experiences of married women as defendants. Ultimately, the household – not the defence of marital coercion – played the most important role in determining the perceptions, treatment, and experiences of married women in the criminal courts.

According to Keith Wrightson, the early modern period was a time of “gradual but fundamental transition.” The world the women of this study faced in 1640 was different than the one that they faced in 1760. While 1750 is often understood as the end of the early modern period, this study ends in 1760. Extending the study by one decade allows one to see the extent of these changes and whether ideas about marriage and women were truly transformed by 1750.

Over the course of the early modern period, a society of hierarchical communal obligations was increasingly becoming a society of commerce and contract. Events such as the Civil War, regicide, and the Glorious Revolution combined with larger social movements such as commercialization and enclosure to challenge older views of society, which resulted in new understandings of the state, citizens, political obligation, social organization, and the self. The move towards a more atomized social and political environment surely introduced subtle but consequential changes in the way married women in particular experienced the law. Contemporaries, however, faced challenges when determining women’s place in the new social order.

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8 See for example Kahn, *Wayward Contracts*, 64, 79.
Married women’s experiences, both inside and outside the criminal courts, were not static and it would be misleading to assume that the changes of the period did not apply to them. The perceptions and experiences of married women in the criminal justice system provide an excellent way to examine how these changes affected women. This study uses a variety of sources to assess the treatment, perceptions, and experiences of married women in the early modern criminal justice system and to determine how these changed over the period. It starts by analysing the social and legal frameworks established in printed sources which shaped and constrained the understandings and treatment of married women in the criminal justice system. The social frameworks are found in printed marriage sermons and behavioural tracts. An analysis of legal treatises, handbooks for Justices of the Peace, and the personal writings of legal authorities demonstrate women’s ideal place within the law. These sources were ultimately prescriptive, but it is still important to analyse the ideas which informed people’s expectations of married women.

The main source for this study is the criminal records of the northern assize circuit (which was comprised of Cumberland, Westmorland, Northumberland, and Yorkshire) and the Old Bailey (London’s central criminal court). The northern and Old Bailey records provide some of the most complete coverage of experiences with the criminal justice system; the decision to use them was based largely on the nature of the sources rather than any other defining feature. This system was not only about criminal trials; a married woman’s criminal experience started with an accusation and ended either at the trial or with her punishment. This study therefore examines married women’s criminal experiences as a process using the accusations found in the northern depositions, jurors’ decisions from the northern gaol delivery books, records of trials from the Old Bailey Sessions Papers, and discussions of executions in the petty treason
pamphlets and *Ordinary of Newgate’s Accounts*.\(^9\) The analysis of these sources focuses on the three crimes of theft, coining, and murder. These were not only the most common crimes in the records, they also represent a variety of experiences and account for crimes that were both subject and not subject to the defence of marital coercion.

The experience of married women in the English criminal justice system during the early modern period is ultimately a story of limited continuity. There were changes, but these were slight, and perceptions of married women were relatively stable between 1640 and 1760. Coverture and the defence of marital coercion existed throughout the entire period. Their application helped ensure that married women remained subordinate to their husbands, that women as a whole were excluded from the formal political process, and that at best women enjoyed limited citizenship. Married women, however, felt coverture most readily in relation to the household structure it created rather than its legal disabilities. Above all, married women remained firmly part of this household structure, which influenced people’s ideas about them and their experiences within the criminal justice system. Their roles as wives and mothers decisively shaped how people understood them and their criminal liability before the criminal courts. This prevented the complete collapse of the doctrine of coverture, even as the broader pressures of growing commercial and contractual society weighed against its relevance.

As Judith Bennett notes, patriarchy was an adaptable rather than a continuous force.\(^{10}\) Coverture’s strength was its flexibility and ability to become different things depending on the context. By not applying coverture rigidly, people helped to ensure both its survival and the

\(^9\) The chapters using each source contain a more thorough evaluation of the sources and their problems.

maintenance of the predominant gender order which held that a wife’s legal identity was part of a larger household instead of an independent entity which could be part of the larger social and political world. An examination of the experiences of married women in the criminal justice system in light of changing social and political ideas requires an examination of three broad historiographies: the role of gender in the changing social structure, coverture, and the early modern criminal justice system. It is to them that we now turn.

I

The household was one of the most important social structures in early modern England. The term household refers to “a unit of residence and authority: a group of people living under the same roof and under the authority of the household head – usually, though not always, an adult male.”11 This unit was fundamental to early modern conceptualizations of the state as well as the social and economic world. Contemporaries saw the household – or family – as a model of the commonwealth. Since people in the seventeenth and eighteenth centuries lived in a hierarchical world, this was not a far-fetched idea. As Paul Withington argues, there was an “early modern concept of place that positioned the person in a variety of structures – institutional, geographical, and architectural – which was used within a number of political traditions.”12 The family, or household, was the most important of these structures, but it was one part in a series of structures. Combined, these structures composed the polity and provided a way for people to see themselves and their relation to the larger world.

12 Paul Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (CUP, 2005), 122. Similarly, Susan Amussen argues that the familial analogies were politically significant because “they offered meanings to authority which could be based as much on popular experiences as theoretical descriptions, and thus provided an avenue by which everyone could understand politics.” Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1988), 62-3.
Sir Robert Filmer’s comparison of the rule of the father to the monarch in *Patriarcha* provides one of the best conceptualizations of this worldview.\textsuperscript{13} As Filmer explained:

If we compare the natural duties of a father with those of a king, we find them to be all one, without any difference at all but only in the latitude or extent of them. As the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct and defend the whole commonwealth. His wars, his peace, his courts of justice and all his acts of sovereignty tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people.\textsuperscript{14}

This theory reflected the commonly held belief that society was composed of a number of miniature commonwealths, in which each head of household held political power and represented his subordinates, who subsumed their identities under his authority. This worldview was not about a series of competing individuals, but rather institutions and their unity within the larger whole.\textsuperscript{15} It was the unity of the whole rather than individual will which was ultimately important in this worldview.

The commonwealth view of society was challenged over the course of the seventeenth and eighteenth centuries, which resulted in changing social structures, economics, and ideas about society. The household remained an important element of society, but its role in social organization changed. As Wrightson explains, by 1750, people “still conducted their economic lives in household units, but in households operating in a context which had changed.

\textsuperscript{13} According to Johann Sommerville, Filmer was the most famous patriarchal theorist. His most famous work was *Patriarcha* within which he "explored the implications of patriarchal political theory in greater detail than any previous writer. But, as we have seen, the theory itself was not original. Indeed, much of Filmer’s work was derived from earlier authors, and he often quoted from them at length.” Johann P. Sommerville, “Introduction,” in Sir Robert Filmer, *Patriarcha and Other Writings*, ed. Johann P. Sommerville (CUP, 1991), ix, xx.


\textsuperscript{15} As Michael Mendle argues, “the political thought of the day did not allow the various political hopes to be taken individually. Every aspect of public life was seen as part of a single whole. The parts of the kingdom flourished only when the whole flourished. The whole worked well only when each part worked well. The age had its special language for it, the metaphor of the body politic.” M.J. Mendle, “Politics and Political Thought 1640-1642,” in *The Origins of the English Civil War*, ed., Conrad Russell (London: Macmillan, 1973), 219.
dramatically over two centuries.” Similarly, in an analysis of the family-state analogy, Su Fang Ng explains that while “Filmer’s brand of patriarchalist politics did not last, the family was still a powerful way to think about the organization of the state.” The analogy did not disappear in the eighteenth century, although it took a different form. These new ideas were reflected in a number of areas including the economy, ideas about rights and liberty, the growth of the middle class, politics and political theory, ideas about the self, and the growth of an individual as a political and economic actor.

Perhaps the most influential development was the growth of what we now refer to as individualism. Under the new worldview, individuals – not the household – were the most important entities of social organization. The birth of the modern individual is connected with the rise of the modern state, the commercial revolution, the French and American Revolutions, as well as the eventual rise of liberalism, all of which affected women, who were eventually incorporated into larger understandings of political individualism. It is hard to avoid the charge

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16 Wrightson, Earthly Necessities, 268.
18 The concept of political individualism is complicated. This thesis uses Wolfgang Weber’s definition, in which “Individualization means, on the one hand, the process of forming the self-confident, rationally thinking, rational acting and to this extent – ‘modern’ individual. On the other hand, individualization implies the process of metamorphosis, both ideal and actual, of socio-political life towards the individual or with the individual as a reference point. The expression does not, therefore, indicate a goal from the perspective of which past conditions can be reviewed (and of necessity found unfinished), but a process of development that is open in principle – one in which every stage of evolution has its own specific weight.” Wolfgang Weber, “Rulers and Subjects: The Absolutist Making of the Individual,” in The Individual in Political Theory and Practice, ed., Janet Coleman (Oxford: Clarendon Press, 1996), 192. The idea of individualism is important because, as Jerrold Seigel explains, “More than any other world culture, the modern West has made the debate about individuality and selfhood a central question – perhaps the central question – of its collective attempts at self-definition. Hence those who belong to this culture, or who are moved to conceive of themselves in relation to it – even if the relation be one of rejection – have much reason to care about the self.” Jerrold Seigel, The Idea of the Self: Thought and Experience in Western Europe since the Seventeenth Century (CUP, 2005), 4. See also: Geoff Baldwin, “Individual and Self in the late Renaissance,” Historical Journal 44:2 (2001), 341-64.
19 As Mary Lyndon Shanley argues “The theoretical arguments which emerged from these debates over political sovereignty eventually – although very slowly – became the basis for Liberal arguments about female equality and marriage.” Mary Lyndon Shanley, “Marriage Contract and Social Contract in Seventeenth-Century English Political
of teleology when discussing the birth of any political or intellectual development as central to modernity as individualism. In order to combat this problem it is important to note that the birth of the political individual is a long term story of unintended consequences rather than something that occurred overnight or with the appearance of a particular political tradition. It is also important to recognize that what we conceive of as modern liberal individualism was at best half developed in the seventeenth and eighteenth centuries.

Numerous scholars have sought to explain this development of individualism and its relation to liberty, equality, the state, and social formation. However, as Margaret Hunt notes, “Much of the discussion of ‘individualism’ in the early modern period has suffered from the failure of too many commentators to recognize the obvious – that some people (women, servants, }

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slaves) were simply expected, liberal theory or no, to be significantly less individualistic than others.”

Women’s exclusion from emerging ideas of individualism stems from problems associated with what Hilda Smith defines as the false universal, which refers to terminology which seems to apply universally, but in reality only applied to men. In this sense, while women may have been part of the ageing processes, ranks, and social categories necessary for citizenship, they were “definitionally excluded from the qualities attached to these categories. . . . While women might have done what they were definitionally excluded from doing, discussions of these supposedly human categories were based only on male models.” This leads to the situation which Marcus Nevitt describes, where “If men were ‘naturally born free’ we are left wondering on these terms at least, if women were ever born at all. At the very best they are a silent presence, born to obey and not to command.”

The move from a society which emphasised households to one which emphasised individuals affected all aspects of seventeenth- and eighteenth-century England, including women’s lives. Women, however, felt the effects differently than did men. Take, for example the role of women in contract theory. While contract theory was an important political development, it is important to note that it reflected and attempted to justify social changes; it did not cause them. Contract theorists such as Hobbes and Locke argued that individuals were naturally free, and their consent was necessary for the creation of a sovereign. These individuals were, however, male. According to Carole Pateman, contract theorists “incorporated conjugal right into

their theories and . . . transformed the law of male sex-right into its modern contractual form” in order to ensure this situation. Thus, “Only masculine beings are endowed with the attributes necessary to enter into contracts, the most important of which is ownership of property in the person; only men, that is to say, are individuals.”

Pateman’s sexual contract is an important concept, but it is better understood as a marital contract, or at least a corollary to early modern understandings of marriage and coverture. Coverture was central to this exclusion since, as Quentin Skinner explains, the possibility of recognizing women as liberi homines “was admittedly blocked off in English law by the fact that a woman’s property as well as her person became subject upon marriage to the will of her husband.”

The unity that coverture required conformed to earlier understandings of the household, which the changes of the seventeenth and eighteenth centuries challenged. However, coverture continued to place women firmly within the household, which ensured that their place within society was ultimately one of continuity. Since coverture affected so many areas of married women’s lives, it is necessary to determine how historians have understood its operation and consequences.

26 It is important to note that the marital contract was not the same thing as a social contract. As Elizabeth Fowler explains, “Despite the equal footing of their consent, the parties to a marriage contract do not consent to the same thing, whether in the twelfth or the twentieth century. The equitable form of entrance into marriage and of the so-called sexual ‘deb’ within it masks the inequitable nature of the contract itself.” Elizabeth Fowler, “Civil Death and the Maiden: Agency and the Conditions of Contract in Piers Plowman,” Speculum 70:4 (1995), 768. As Julia Rudolph argues, the belief that women had to enter the marital contract prior to anything else created a situation in which “Woman is both free and unfree: she is envisioned consenting to marriage, but her choice is constrained and her subordination necessary; she is capable of entering into a marriage contract, yet she is unable to join the social contract.” Julia Rudolph, “Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought,” JBS 39:2 (2000), 170.
II

Marriage was central to early modern women’s lives, and marital status was an important category of difference. Approximately one third of early modern English people were married. This meant that only one-third of English women were subject to coverture. The remaining two-thirds of women were either single or widowed, and they were not subject to coverture, nor did they share the same legal identity as their married counterparts. Works which assume all women were married ignore these statistics and often assume that coverture and married women’s legal disabilities were set in stone. In theory, coverture and the marital contract were harsh. Marriage entailed severe legal disabilities – the complete loss of property, a loss of an independent legal will and identity, as well as a wife’s subjection to her husband. This thesis does not dispute these conclusions. However, the work of historians of coverture has demonstrated that how people understood and applied coverture was more nuanced, and many women did not experience its harsher elements in their daily lives. Coverture needed social compliance in order to work effectively, and in order for it to gain this compliance, it needed to

29 Anne Laurence, Women in England, 1500-1760: A Social History (London: Weidenfeld and Nicholson, 1995), 33. Even though only about one third of women were married at any given time, the assumption of universal marriage is not in itself surprising. This is because, as Amy Froide explains, “Early modern England was a patriarchal society in which contemporaries thought of women in terms of their familial roles: as daughter, wife, mother, and widow.” For the most part, these roles were related to one’s marital status, which shaped ideas about all women throughout the period. As Will Coster explains, “Marriage may not have been the statistical norm, but it was the social and psychological norm by which the people of early modern England constructed their society.” Froide, Never Married, 17; Will Coster, Family and Kinship in England, 1450-1800 (London: Pearson Education, 2001), 59.
limit some of its more restrictive elements in practice. Perhaps this was why there was no outright rebellion against marriage, and why many wives accepted their subordinate status.\textsuperscript{31}

According to Christine Churches, “The operation of the English Common Law governing the ownership and inheritance of property seems to offer compelling proof of the utter subjection of women.”\textsuperscript{32} Coverture entailed a complete loss of property rights. A married woman had no possessions to call her own and her support depended on her husband’s goodwill and generosity. This was problematic since, as Margaret Hunt points out, men could and did use “their property rights and their economic security as weapons.”\textsuperscript{33} A husband’s economic power over his wife was particularly harmful in abusive relationships since divorce was only possible through a formal Act of Parliament.\textsuperscript{34} Leaving an abusive marriage left a woman economically vulnerable. Since she neither owned nor could own anything, a woman who left her husband effectively declared herself an outlaw.\textsuperscript{35} Although wives were not their husbands’ property, coverture ensured that under the law, husbands had a great deal of power over their wives.\textsuperscript{36}


\textsuperscript{35} Stone, \textit{The Road to Divorce}, 4-5; Hunt, “Wife Beating.” 19.

Early modern men and women did not see marriage as the loss of identity and rights, but rather as the combination of two persons into one household unit. The idea of a unified household shaped their understandings of marriage and coverture. Focusing on the loss of individual rights ignores the importance early modern people placed on this concept. Moreover, a successful marriage demanded cooperation. Contemporaries felt that coverture enabled husband and wife to live together in harmony by nature of their shared interest in the household. As Joanne Bailey notes, all married couples had the common ambitions “to manage their household economies efficiently and protect their individual and household credit and creditworthiness.”

Coverture entailed a joint interest in which husbands and wives relied on each other’s credit, economic contributions, and household management. This situation created an emphasis on the familial and household benefit rather than individual earnings, which gave married women a stake and place of authority within the household. Marriage was a co-dependent relationship or a hierarchical partnership not a struggle between individuals; coverture’s common household economy attempted to ensure this situation.

Supporting the unified nature of the ideal household did not necessarily extend to unilaterally following its property restrictions. By taking precautions before marriage, some women avoided some of these. Equity courts recognized that married women could have separate property in the form of trusts and jointures, which, as Susan Staves argues, “broke the...
hegemony of the common law rules giving husbands control over wives’ property.”  

Trusts and jointures kept property out of a husband’s hands and enabled women to be secure in the knowledge that they would have an income in their widowhood, even if their husband squandered his fortune. Jointures and trusts were also important in separation cases since they gave women a greater degree of economic freedom. However, it is important to note that separate property settlements did not mean that women gained control of their property. They were often designed to protect family interests and to keep money and property out of a potentially bad son-in-law’s hands rather than giving the money or property to the woman under coverture.  

In addition, women often saw their separate property as something they would use during their widowhood rather than within marriage.

Focusing on separate property however misses the importance of the household as well as the implications marriage had for men. As Alexandra Shepard argues, “While men were often better placed to benefit from them, patriarchal imperatives nonetheless constituted attempts to discipline and order men as well as women.”  

Marriage was not a one-way property transfer. In return for his wife’s property, a husband assumed responsibility for his wife’s actions, including her debts and even some of her crimes. A husband was also responsible for his wife’s

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Both men and women saw coverture as a trade-off which carried corresponding restrictions, duties, benefits, and drawbacks.

Coverture changed women’s legal status and affected the lives of both men and women. The historiography of coverture which examines how it worked in practice demonstrates that people understood, experienced, applied, and negotiated coverture in various ways. Take for example women’s economic roles. In her study of women’s occupations, Amy Erickson notes that “the great majority of wives in eighteenth-century London continued to work in the labour force after marriage.” Many of these women remained active in their premarital occupations and trades. It is therefore reasonable to assume that marriage did not result in the end of women’s employment, although coverture still affected their economic position. In order to circumvent some of coverture’s economic restrictions, women often applied for feme sole trader status. A feme sole trader had the right to trade and be treated as though she was single. While this independent position seems beneficial, Marjorie McIntosh found that it carried potentially serious drawbacks and considerable economic and legal risk. As a result, many women chose not to formally declare themselves femes soles. By remaining subject to coverture, a woman was thus able to “manipulate the confusion surrounding her status to her own advantage,” especially

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when it came to her responsibility for debts. McIntosh’s work demonstrates that while
coverture affected women’s economic lives in various ways, women were often capable of
manipulating these effects to their own advantage.

The historiography of coverture shows that assumptions about coverture’s universal
application ignore the wide variety of married women’s experiences with their unique legal
status. Coverture may have had undeniably negative consequences, but the majority of married
women in early modern England did not feel its effects in their daily lives. It largely hung as a
sword, or threat, over them and remained applicable throughout the period, even if its application
largely depended on its context. It was within these flexible experiences that married women
lived their lives and dealt with coverture’s implications, including those in the criminal justice
system.

These studies of coverture are important, but their primary focus on property – or at least
economics – provides a narrow view. The emphasis on property is not surprising given the
importance of property in early modern England, the significant effects coverture had on married
women’s property rights, and the numerous records that dealing with these effects created.

However, coverture affected more than economic and property rights. Marital status was a legal
category which carried important implications in all areas of the law, including its civil and

48 In her examination of coverture’s role in the changing consumer culture, Margot Finn argues, that “at the level of much day-to-day life, the law of coverture is best described as existing in a state of suspended animation. By this I mean to suggest that wives’ legal inability to contract and litigate debts was often ignored or attenuated in practice, but also to indicate that the norms of coverture shaped or animated women’s experiences of debt even in their suspension.” Finn, “Consumption and Coverture,” 707.
49 As Amy Erickson reminds us, “the only people to whom property was unimportant in marriage were the vagrant poor.” Erickson, Women and Property, 85.
criminal sides. By not addressing the role that a married woman’s lack of an independent legal identity played in the criminal law, historians ignore the full legal consequences marriage had on women’s lives. As wives, married women accused of crimes coped with their unique legal status and this study attempts to address these experiences.

III

An analysis of married women within the early modern criminal justice system offers an excellent way to move the discussion of coverture beyond property rights and address all the legal implications of coverture. Crime as a focus of study is interesting for a number of reasons. According to Edward Muir and Guido Ruggiero, “what societies label crime usually represents perceived ruptures or breaks in the ties that bind people together, the little deaths of social life. These moments of literal destructuring usually have a history because they warranted a defensive response in the form of ‘justice’, which often left extensive records.”50 It is in these moments of conflict that one can recover the contours of acceptable behaviour in historical situations, how actors transgressed these limits and how they could be re-incorporated into society. What society deems acceptable and unacceptable changes over time, and one can chart these shifts by examining the criminal records.51 In addition, the criminal justice system brought together various groups of people with differing backgrounds and social orders in one arena, often with a common purpose.

51 As Bruce Lenman and Geoffrey Parker explain, judicial systems recognized the difference between offences which deserved the full rigour of the law and those that did not, and it was only when offences “reached a level or achieved a barbarity which was seen by society as a threat were suspects readily reported, keenly prosecuted and severely punished.” Bruce Lenman and Geoffrey Parker, “The State, the Community and the Criminal Law in Early Modern Europe,” in Crime and the Law: The Social History of Crime in Western Europe since 1500, ed., V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker (London: Europa Publications Limited, 1980), 14-15. Carol Smart argues that ‘The law therefore does not simply reflect ‘public opinion’ (itself a controversial concept), it is part of the production of consensus around such issues as the importance of law and order, the sanctity of private property and the sacred nature of the family.” Carol Smart, The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations (London: Routledge and Kegan Paul, 1984), 21.
There are very few studies which address married women and the criminal law, largely because married women accounted for less crime than any other group. Historians often use the defence of marital coercion to explain these small numbers, and argue that it was part of the law’s lenient treatment of women, especially married women. In his examination of life-cycles and crime, Peter King argues that the defence of marital coercion applied universally and the concept of co-defendant immunity ensured that more single women were prosecuted than married women. Moving beyond pre-trial processes, Robert Shoemaker argues that “coverture seems to have resulted in [married] women being discharged without punishment or receiving milder punishments than men, rather than their not being prosecuted or punished at all.” Shoemaker’s discussion of coverture does not assume that the defence of marital coercion prevented the prosecution and conviction of married women, but it does hint at the lenient treatment married women supposedly enjoyed, suggesting its presence and influence in the minds of seventeenth- and eighteenth-century prosecutors and juries.

The problem with works such as Shoemaker and King’s is that despite the emphasis on the discretionary nature of the criminal law, they assume that juries consistently applied the defence of marital coercion and used it to excuse all married women’s criminal actions. Not only does this ignore those married women who were accused without their husbands and those who committed crimes such as treason or murder, it creates a situation in which the defence of marital coercion was the one element of the criminal justice system that was not discretionary. Coverture did not mean that married women did not commit crimes or were not accused of crimes, nor did it mean that they were never held liable for their actions. Rather, coverture and the defence of

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marital coercion meant that married women had a differing legal status in the courts, which could affect their treatment.

In her study of gender and discretion in the criminal justice system, Deirdre Palk argues that the doctrine of coverture was not “directly applicable in common law or statute criminal matters.” Instead, the idea of marital coercion acted as a form of legal protection that “might, in specific, narrow circumstances, be available to married women, because of their ‘civil subjection’ to their husbands. It was a legal excuse which could be used if there might have been ‘civil subjection or compulsion by another to perform a criminal act.’”54 Palk found that legal authorities in the late-eighteenth and early-nineteenth centuries were uncertain as to what this civil subjection actually meant, and they disagreed over whether a married woman could be liable for her criminal actions. Despite assumptions of the defence of marital coercion’s universal application, Palk argues that in practice, “the excuse of marital coercion was possible only in very limited circumstances, far too few to provide an explanation for lenient treatment of women in criminal cases.”55

Palk’s discussion of the defence of marital coercion comprises a small part of her study on gender and discretion in the criminal justice system. Yet it still demonstrates the importance of examining married women’s experiences within this system rather than simply assuming the arguments of legal authorities such as Blackstone represented what actually happened in the same system. Just as the historiography of women and crime argues that women should be considered as criminals in their own right, so too should married women. Doing so requires an examination of married women’s criminal behaviour rather than simply discounting their actions. In analysing married women as criminals rather than paler reflections of their male or single

54 Deirdre Palk, Gender, Crime and Judicial Discretion, 1780-1830 (Woodbridge: The Boydell Press, 2006), 23.
55 Ibid, 29.
counterparts, this study moves beyond the argument that the defence of marital coercion was a universal assumption, and provides a more differentiated picture of how coverture worked within the criminal justice system.

There are only four articles which directly address married women’s criminal behaviour in the early modern period. These studies specifically acknowledge that discretion played a role in how legal authorities understood and applied coverture in the criminal justice system. The largest debate concerns the phenomenon of married spinsters. Seeking to explain this paradox, Carol Wiener argued that contemporaries absolved married women who committed crimes under their husband’s coercion, and believed married women should be held accountable for heinous crimes such as murder and treason and for crimes they committed without the knowledge of their husbands. In order to resolve questions about felonious thefts and other trespasses, prosecutors and legal officials relied on the legal fiction of married spinsters. This ensured that married women who committed crimes were punished for their actions while simultaneously excusing their respective husbands from criminal liability. The legal fiction of married spinsters was useful because it enabled legal officials to bypass the problems created by marital coercion without fundamentally challenging coverture and the system it created.

In response to Wiener’s conclusions, J.H. Baker questioned whether the term spinster referred to an unmarried woman, arguing instead that it referred to occupation rather than marital

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58 As Wiener explains, “By calling married women ‘spinsters’ when it suited them, perhaps the JPs had found a way to live happily in two separate worlds: a practical world in which wrongdoers must be punished according to their wrongs and an ideological world in which the law, as written in law books, actually worked.” Wiener, “Spinster an Unmarried Woman,” 31.
status.\textsuperscript{59} Valerie Edwards, on the other hand, argues that Wiener’s argument may have held true in the Elizabethan period, but mid-seventeenth century justices were more knowledgeable than their Elizabethan counterparts.\textsuperscript{60} Furthermore, by the mid-seventeenth century, women were also sufficiently knowledgeable of the law, and used marital status as a way to escape conviction in much the same way that men used the benefit of clergy.\textsuperscript{61} As will be demonstrated, women did not use the defence of marital coercion to the same effect as benefit of clergy. Regardless of their findings, the debate about married spinsters is important in that it draws attention to the discretionary application of the defence of marital coercion, which corresponds to the characteristics of the criminal justice system more generally.

Moving beyond the discussion of married spinsters, Garthine Walker argues that since married women were part of a household, we need to view crime as a household activity. Walker focuses on offences where family members used force to retain and protect property such as forcible entry, detainer, and dissein.\textsuperscript{62} These crimes are particularly suited to the discussion of the household since the protection of property concerned the entire household, not just the male head. As Walker explains, “The prosperity of households, and sometimes their very social and economic survival, made it incumbent upon women and men who lived together to commit unlawful acts both individually and collectively.”\textsuperscript{63} In this sense, husbands and wives committed crimes together because it was in the interest of the household, rather than because of any sense of coverture. This is important to consider, but it is important to note that forcible entry, detainer,

\textsuperscript{59} Baker, “Male and Married Spinsters,” 255, 259.
\textsuperscript{60} Edwards, “Case of the Married Spinster,” 260.
\textsuperscript{61} As she argues, it is “tempting to conjecture that women were probably as aware of the possibilities of the defence of marital coercion as men were of their much wider right of benefit of clergy. They perhaps pleaded it habitually and automatically as a last straw, whether entitled or not, just as illiterates pleaded benefit of clergy in the hope of being able to recite the ‘neck verse’ with sufficient accuracy to convince the court.” Edwards, “Case of the Married Spinster,” 264.
\textsuperscript{62} Detainer refers to the wrongful withholding of property from another person. Dissein refers to wrongfully dispossessing a freehold interest in land.
\textsuperscript{63} Walker, “Keeping it in the Family,” 85.
and dissein are particularly suited to discussions of the criminal household. Furthermore, Walker does not address the experiences of married women accused of crimes without their husbands. However, as will be demonstrated, ideas of the household informed the understandings and treatment of married women in all crimes.

While historians largely ignore or discount the experiences of married women in the criminal justice system, one should note that these women were both wives and criminals. As such, we need to analyse historians’ understanding of crime more generally. According to Krista Kesselring, the 1975 publication of Albion’s Fatal Tree “galvanized interest in a ‘new legal history’ that moved from teleological explorations of the inefficiencies of past legal systems to seek a broader understanding of their social importance and functions in their own time and place.”64 The most significant essay from this collection was Douglas Hay’s “Property, Authority and the Criminal Law.” Using a distinctly class-based analysis, Hay attempted to explain why the execution rate did not match a dramatic increase in capital offences throughout the early eighteenth century.65 Hay argues that the elites of eighteenth-century England used a number of discretionary tools, especially pardons, to limit the severity of the law. This emphasised justice’s dual aspects of mercy and authority. Hay was particularly concerned with the authority of the criminal law, and the creation and maintenance of “bonds of obedience and deference” which were central to the ideology of the legal system itself. The discretionary nature of the criminal law, and the widespread support it received ultimately maintained upper class hegemony in a “conspiracy” to keep the lower classes subdued and to protect private property above all other.

65 This question is central to the history of crime. A prime example of the increasing severity of the law was the 1723 Waltham Black Act, which transformed approximately 250 offences into capital offences. However, the execution rate did not rise in response to this increasingly harsh criminal law. See in particular: E.P. Thompson, Whigs and Hunters: The Origin of the Black Act (NY: Pantheon Books, 1975); Donald Rumbelow, The Triple Tree: Newgate, Tyburn and the Old Bailey (London: Harrap Limited, 1982).
concerns.\textsuperscript{66} Mercy and terror combined to maintain the existing hierarchy central to the status quo. The strength of this system was its discretionary nature, which ensured that the criminal law and its administration enjoyed popular support and experienced few challenges throughout the eighteenth century. While Hay did not discuss married women, they were still subject to this system.

Despite critiques of Hay, historians of crime subscribe to his argument that the criminal law was discretionary.\textsuperscript{67} In fact, it is the only thing on which they all agree. The law as written did not correspond to the law as practised, and this was an intentional, lauded, and even accepted aspect of the criminal justice system. Discretion applied to all aspects of the criminal justice system, and it was not unique to the eighteenth century.\textsuperscript{68} As Joanna Innes and John Styles argue, although Hay’s thesis about the “trial and sentencing procedures [that] strengthened the hands of a relatively small ruling elite” is open to criticism, “it must be noted too that, at a certain rarefied level, Hay’s original interpretation [of the criminal law’s discretionary nature and application] is scarcely open to falsification.”\textsuperscript{69} This acceptance of the importance of the criminal law’s discretionary nature explains why Hay’s thesis remains influential despite its age and the criticism it has received.


\textsuperscript{68} For an analysis of discretion in the sixteenth and seventeenth centuries see: Kesselring, Mercy and Authority; Cynthia Herrup, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (CUP, 1987).

The purpose of the early modern criminal law was not to punish every offender, but rather as John Langbein explains, “to winnow down the number of applications of the capital sanction.” The law contained a careful balance between mercy and terror, and discretion played a key role in maintaining this balance. Decisions about who to prosecute, convict, and then pardon or execute were crucial to maintaining the criminal law’s ideological legitimacy. Authorities could not execute too many people who would elicit public sympathy. Sympathetic offenders included women and children, although this depended on the circumstances and type of crime as much as on the age or sex of the condemned. The point was to deter potential offenders rather than punish all of them. Therefore, it was not necessary for the conviction and execution rates to match the severity of the written law.

A number of people limited the severity of the law, starting with the individual victims of crime who decided whether or not to prosecute an offender. Today, the Crown prosecutes offenders, but in the early modern period individual victims of crime chose who to prosecute and brought the offenders to trial. According to Peter King, this meant that “The key decision-maker

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71 As John Beattie explains, “the capital laws continued to be administered with some concern for the broad effect that executions would have on society at large, and from a conviction that while too much leniency might encourage crime, too many executions might both weaken the law’s acceptance and harden further the hearts of those whose exemplary punishments were designed to reach and control.” J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 587. Executions were essential to the symbolism of the law. As Paul Griffiths explains, the “gallows ceremony . . . publicly expressed authority, morality, and sound religion in displays, sermons and speeches from the gallows.” The symbolism of this ceremony “were important aspects of the visual validation of order. They could be marks of reassurance as well as deterrence.” Paul Griffiths, “Introduction: Punishing the English,” in *Penal Practice and Culture, 1500-1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths (London: Palgrave Macmillan, 2004), 1, 26.
72 As Peter Lawson argues, “women, like children, were viewed as dependent and inferior, and the sight of too many of them suffering the ultimate sanction would have brought the whole process into disrepute.” Peter Lawson, “Patriarchy, Crime and the Courts: The Criminality of Women in Late Tudor and Early Stuart England,” in *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie*, ed. Greg T. Smith, Allyson N. May, Simon Devereaux (Toronto, 1998), 42.
in the eighteenth-century criminal law was the victim himself.74 Discretion, however, went beyond the decision to prosecute. Even if an individual chose to prosecute, the jury could acquit the defendant or undervalue the goods stolen so that the charge did not carry the death penalty (a partial verdict); the judge could direct the jury not to convict; the offender could plead benefit of clergy; or the king could exercise his mercy and pardon the offender.75 Victims were not the only decision makers, and the discretionary nature of the system ensured that numerous people had an important role to play within the criminal justice system.

The multiplicity of actors and room for individual initiative meant that the operation of criminal justice often reflected communal rather than elite values. In her examination of how people applied the law in the seventeenth century, Cynthia Herrup found that “Legal decisions reflected not the values of the gentry but the common ground between the values of the legal elite, the gentry and local men of middling status.”76 Circumstances dictated that the law was applied flexibly and negotiated to suit the particular purposes of the community. An idea of common justice existed, which appealed to everyone in the community rather than an elite understanding of law and morality.77 The study of how this common justice played out provides particular insight into married women’s legal lives, and enables us to examine how ordinary

74 King, “Decision-Makers,” 27.
75 As Allyson May reminds us “Offenders who were apprehended might never be tried let alone executed . . . [and] even if a legal prosecution did ensue there were various ways in which the execution of an offender could be avoided: the exercise of discretion was available at virtually every stage of the criminal proceedings.” Allyson N. May, The Bar and the Old Bailey, 1750-1850 (Chapel Hill: UNC Press, 2003), 132. See also: Peter King, Crime, Justice, and Discretion in England, 1740-1820 (OUP, 2000). Benefit of clergy was a remnant of medieval law. Secular authorities were not responsible for the behaviour—criminal or otherwise—of the clergy or other members of the Church. If a member of the Church was convicted of a felony, he simply had to plead benefit of clergy to avoid hanging. Secular authorities could not punish these men, which meant that they turned these men over to the Church in order to receive non-capital punishment. In order to prove that they were members of the clergy, these men typically had to prove literacy, or recite Psalm 51 which became known as the “neck verse.” After the Protestant Reformation, the existence of a separate legal system for clergy members disappeared, but the benefit of clergy remained a powerful way to avoid execution. It was not extended to women until the 1690s.
76 Herrup, Common Peace, 6.
77 Herrup, Common Peace, 193-5.
people thought of coveture’s role in married women’s lives, not just in relation to their property rights.

One should note that the people accused of crimes were not passive victims of a discretionary system; early modern people negotiated their own legal positions. By recognizing people as actors rather than victims and the criminal law as a tool for everyone, Herrup draws attention to the criminal law as a “multiple-use right.” Various people, including married women, used this tool in different circumstances for various purposes. Determining how people used the law helps to demonstrate larger ideas about crime, society, and the offenders, all of which are particularly important for this thesis.

Just as the study of larger political changes often assumes a false universal, so too does the historiography of the criminal justice system. Since women accounted for approximately 20 percent of overall criminality in the early modern period, most of the historiography of early modern crime has either ignored women accused of crimes or discounted them as unimportant. Studies which address women largely seek to explain this figure. According to Garthine Walker

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79 According to Susan Sage Heinzelman, the belief in the neutrality and objectivity of the law leads to the mistaken argument that since the system is ungendered, “the representation of gender within that system must be, by definition neutral and objective.” Susan Sage Heinzelman, “Women’s Petty Treason: Feminism, Narrative and the Law,” *Journal of Narrative Technique* 20:2 (1990), 90.

80 Garthine Walker’s study of Cheshire between 1590 and 1660 shows that women accounted for 18 to 25 percent of all prosecuted offences while Peter Lawson’s study of Elizabethan and Stuart Hertfordshire argues that women accounted for 12.9 percent of the prosecution for property crimes and 20 percent of prosecutions for crimes against the person. Garthine Walker, “Women, Theft and the World of Stolen Goods,” in *Women, Crime, and the Courts in Early Modern England*, ed. Jenny KerMODE and Garthine Walker (Chapel Hill: UNC Press, 1994), 82; Lawson, “Patriarchy, Crime and the Courts,” 22; Sharpe, *Crime in Early Modern England*, 154-5. General histories of crime such as Sharpe’s *Crime in Early Modern England* (1999) or Beattie’s *Crime and the Courts in England* (1986), focus on crime as a masculine activity and then mention the examples of women accused of crime in passing. Sharpe, for example, only devotes six of his 270 pages to the “sexual division of criminality.” This leaves readers with the impression that female criminals are anomalies tacked on to the real historiography of crime.
and Jenny Kermode, the historiography of early modern crime’s emphasis on statistics and the belief in the “chivalry thesis,” has led to a singular focus on the male offender and the corresponding assumption that crime was a particularly masculine activity. They argue that “with the exception of prostitution, women were simply not suspected as potential criminals.” Similarly, in his examination of eighteenth-century transportation statistics, A. Roger Ekirch explains that the higher number of men transported “reflected the degree to which most crime, especially serious crime, was committed by men.”

Although women committed a smaller proportion of crimes than men in the period, it does not mean that they were entirely absent from the criminal justice system. The problem instead lies in our interpretation of these occurrences. We need to therefore examine women’s crime on its own rather than comparing it to men’s crime. As Barbara Hanawalt argues, “Because the crime pattern of women differs somewhat from that of men in amount, methods, motivations, and types of crime, a special study of their criminality is warranted.” Articles by John Beattie and Carol Wiener in a 1975 edition of The Journal of Social History sought to fulfill this call. Both Beattie and Wiener attempted to explain the crime differential and came to

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82 Shoemaker, Gender in English Society, 297.
similar conclusions. According to Beattie, women committed fewer crimes than men because they were socialized into dependant and passive roles. These roles meant that women did not take the initiative required for criminal action.\textsuperscript{85} Wiener argued that female criminals were less daring than their male counterparts. They committed crimes that did not require much bravado or initiative, such as receiving stolen goods or acted as accessories to male crimes. Women took what was readily available to them and left the entrepreneurial theft to men.\textsuperscript{86}

While Beattie and Wiener’s works are important because they actually consider women on their own rather than as a subsidiary to “real” (i.e. male) crime, their characterization of early modern female criminality needs to extend further than an explanation of socialization. As Peter Lawson explains, the “social roles” approach manages to link ideas of the “female role” to women’s criminal behaviour but “it fails to make sense of the behaviours themselves. Indeed, the ‘social roles’ approach would seem to beg the crucial question of why and how these roles operated as they did.”\textsuperscript{87} According to Lawson, the functioning of patriarchy, especially its controlling mechanisms, explains why women were socialized into passive roles, which in turn explains why they accounted for less criminality.\textsuperscript{88}

Scholars often point to a supposed leniency within the law towards women to explain why women’s overall crime rate was so low. This argument stems from Otto Pollak’s chivalry thesis which held that “Men hate to accuse women and thus indirectly send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty and so on.”\textsuperscript{89} According to Frank Lawson, this belief that “male

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\textsuperscript{86} Wiener, “Sex-Roles,” 42-3.
\textsuperscript{87} Lawson, “Patriarchy,” 44.
\textsuperscript{88} Lawson, “Patriarchy,” 56-7.
\textsuperscript{89} Pollak, \textit{The Criminality of Women}, 151.
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dominated systems of justice are in some fundamental sense guided by a need to protect women” leads to the conclusion that only men had to face the full force of the law.⁹⁰ Studying accusations of theft before the Old Bailey, Lynn MacKay found that “women were almost twice as likely to be found not guilty or to have their sentences reduced as were men who pleaded distress or who asked for mercy.”⁹¹ Similarly, Peter King argues that women had the advantage of discretionary processes such as “informal sanctions, negotiated settlements and summary prosecutions,” which limited a sense of their culpability at the pre-trial stage. This leniency was also reflected at trial, where patriarchal assumptions of female roles influenced judges and jurors who decided the fate of the accused and resulted in women’s favourable treatment.⁹²

Ideal gender roles still shaped this supposed lenient treatment. As McLynn explains, lenience depended on more than the sex of the accused. Jury “partiality” towards women accused of crimes “required the accused woman to behave with proper deference and submission.” Juries did not treat women who “broke the unspoken rules of gender” with any leniency.⁹³ Judges and juries treated women who portrayed themselves as subordinate and dependent more leniently than those women who showed initiative and “acted like men.”⁹⁴ In this sense, the perceived chivalry of the criminal justice system was actually a way of upholding ideal gender roles.

Comparing the actions of men and women also ensures that men are established as the criminal norm and female criminals stand outside both criminal and female behaviour.⁹⁵ This is why Walker and Kermode’s argument that we need to examine women as criminals on their own

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⁹² King, Discretion, 199-200, 280-285.
rather than subsidiaries to male crime is so important. According to Mary Hewlett, Walker and Kermode’s argument challenges the “complacent assumptions and methods that have developed in social and gender history” to show that women were not simply dependents, accessories, or victims. In doing so, Walker and Kermode have moved the discussion away from explaining why women accounted for less criminality than men to an explanation of female criminality. Studying women as criminals in their own right allows us to see how ideas about gender interacted with the criminal justice system, and highlights the multiple experiences women had within the same.

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The study of married women’s experiences in the criminal justice system reveals that notwithstanding their lack of an independent legal identity, people had little difficulty perceiving married women as criminals. Despite this situation, married women remained subject to the constraints of coverture, most notably when it came to ideas about the household, which framed people’s perceptions and representations of married women in the criminal justice system. Coverture and the defence of marital coercion meant different things at different times, but their strength was in their adaptability. As a result, people’s application of coverture adapted to larger social situations while still ensuring the maintenance of the system that coverture created. This ultimately helped to guarantee that the household ideal persisted throughout the period.

In order to examine how coverture operated in the criminal law, this thesis is divided into two sections. The first examines the frameworks within which people understood marriage, coverture, and married women. Chapter One explores the representation of ideal marriage within

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printed sermons and behavioural tracts. It demonstrates that the idea of unity was paramount to these authors. The emphasis these authors placed on household unity demonstrates the key characteristic of marriage, and one can see numerous attempts to maintain household unity beyond the prescriptive tracts throughout the period. Chapter Two focuses the legal frameworks of coverture and the defence of marital coercion by examining how authors of legal treatises and JP handbooks explained coverture and how legal officials understood these lessons.

The second section examines the actual experiences of the married women within the criminal justice system. Chapter Three looks at the representations of married women in the northern assize depositions. These were pre-trial statements consisting of accusations, witnesses’ testimony, recognizances, and quite often an accused felon’s response to her charges. This chapter reveals that ordinary people saw married women’s criminal behaviour within larger understandings of the household, although this understanding changed subtly over the period and was not the sole determinant of a married woman’s perceived guilt. Chapter Four moves beyond the pre-trial period to determine how juries assigned guilt to married women in the northern circuit. Chapter Five examines the married women at trial in the Old Bailey Sessions Papers. It becomes apparent in these two chapters that the defence of marital coercion existed, but ideas about the household were often more important than coercion and underlay the verdicts married women received. Chapter Six discusses what sorts of married women were executed and how they were portrayed in the popular criminal literature of the period. It demonstrates that while people saw these women as criminals, they could not fully escape their marital identity. Hence representations of them were influenced by larger ideas of the household and understandings of marital roles.
Coverture as written was not the same thing as coverture as practised. Its application depended on numerous circumstances, and it meant different things throughout the period. The exercise of the criminal law was also discretionary, which suggests that the experiences of married women in the criminal courts depended on more than their marital status and the defence of marital coercion. The historiographies of crime and coverture demonstrate the importance of examining actual experiences and we need to apply these lessons to the experiences of married women in the criminal justice system. There was no overarching experience, although married women’s subjection to coverture meant that their legal position and criminal experiences were complicated. Ideas about the household combined with larger ideas about society and changing contexts to inform people’s perceptions of married women. The criminal courts offer an interesting arena in which one can see the intersection of these ideas, their practical application, and the understandings and experiences of ordinary people.
PART I: FRAMEWORKS


CHAPTER 1: MARITAL FRAMEWORKS

In the 1640 poem *Gameli*, Hugh Rogers praised a newly married couple when he said “That they scarce differ but in Name. / They seem to mee as if they had / Bin Man and Wife by Birth, not made.”¹ Echoing this principle in a 1660 sermon, William Seeker explained that “Husband and wife should be like two candles burning together, which makes the house more lightsome, or like two fragrant flowers bound up in one Nosegay that augment its sweetness; or like two well tuned instruments, which sounding together, makes the more melodious musick.”² These statements illustrate the unity people in early modern England believed was necessary for a good marriage, but they fail to take into account the difficulty inherent in achieving this ideal.

According to English professor Frances Dolan, “marriage only has room for one full person.”³ However, as Margreta de Grazia explains, “Coverture did not incorporate two Lockean individuals, each of whom could be ‘seen essentially as the proprietor of his own person or capacities, owing nothing to society for them.’ For neither is self-owned.”⁴ Marriage was a combination of two persons into one household unit, which subsumed both the husband and wife’s identities. The primary characteristic of this ideal household was unity, or at least harmony. Coverture was one of the primary methods designed to uphold this ideal. But unity was about more than subsuming a wife and her legal identity; it was a way to govern the household and was designed to benefit its members and society as a whole. An examination of marriage sermons and behavioural manuals reveals that although there were small changes within the commentators’ arguments, the underlying message of a unified household remained. This

¹ Hugh Rogers, *Gameli*, On the happy marriage of the most accomplished pair (London, 1640), STC/2102:11, 11.
continuity informed people’s understandings of and ideas about married women in a number of contexts, including the criminal law.

The perceptions and experiences of married women in the criminal justice system were influenced by both legal and marital frameworks. Commentators, including ministers and secular authors, established the outline of the marital framework in their published marriage sermons and behavioural tracts. Within these sources, authors instructed people on how to live their lives. While there were a number of printed sermons and behavioural tracts, it is difficult to determine the extent of their popularity. Some texts were reprinted throughout the period, which suggests a considerable degree of popularity, but this was not always the case. Nor can we determine how representative these texts were or whether people actually followed their guidelines. Despite their limitations, however, these tracts outlined the framework within which people viewed, perceived, and understood marriage and women’s place within it. As such, they provide a window into the official discourses of marriage in early modern England.

Contemporaries felt marriage was important, because God created marriage in the Garden of Eden, intending Adam and Eve to be man and wife from the moment of their creation, but also because it was central to a well-ordered society. In a 1695 sermon, Joseph Fisher argued “We of all God’s Creatures are born for Society; of which Husband and Wife are the first two, a whole Family the next part, a City the third, and so on till you come to the last Complement or Combination of it.” Marriage formed households, which were the building blocks of society, and this passage demonstrates the importance contemporaries placed on this process. As Susan Amussen argues, the family was both “the fundamental economic unit of society . . . [and] the

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5 Joseph Fisher, *The Honour of Marriage* (London, 1695), 18. In 1620, Thomas Gataker argued that the relationship between husband and wife was “the first that ever was in the world: and therefore as it was first in nature” it is “the fountain from whence the rest [of societal relationships] flow.” Thomas Gataker, *Marriage duties briefly couched together* (London, 1620), 3.
basis for political and social order.” Political and social thought drew on ideas of the family and wove it into various aspects of English society and history.⁶

As previously discussed, ideas about marriage were never fully free from discussions of politics. While political ideas may have informed their characterizations of marriage, the authors of the sermons and marital tracts examined in this chapter were primarily concerned with marriages themselves and the roles that men and women were expected to play. In outlining this behaviour and these ideals, these men – and they were overwhelmingly men – set out the frameworks within which people understood marriage and married women’s places within society as a whole. Above all, these men – despite their political and religious affiliations – emphasised that unity was essential to a good marriage, and this affected men as much as women.

**One Flesh to One Purpose**

In Genesis 2:23-24, “Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and cleave unto his wife: and they shall be one flesh.”⁷ This characterization of the relationship between husband and wife as one flesh was the biblical foundation for marriage and underlay the ideas which formed the legal doctrine of coverture.⁸ Authors of religious and behavioural tracts emphasised the idea of one flesh in their own writings, such as Thomas Gataker who in his *Marriage duties briefly couched together* (1620), explained:

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⁷ All biblical references are taken from the King James Version.
Man & wife, they are *one flesh*, conjoined not severed. By originall creation, as she came of the man, she is part of his flesh, *flesh of his flesh, and bone of his bone*, but severed as it were now from him: but by nuptial conjunction being joyned to him as his wife, shee becommeth not onely *part of his flesh* as taken from him, but *one flesh* conjoyned with him. For as *bodie and head*, or flesh and soule make one man, so man and wife make one flesh.9

Both the marriage ceremony and the Homily on Marriage, which the minister read after the ceremony, discussed the idea of one flesh. With few exceptions, the married women considered in this study were married by a minister of the Church of England according to the prayer book liturgy.10 Problems about the standardization of marriage existed well into the eighteenth century, but the marriage ceremony within the Book of Common Prayer provided ministers with the proper format to conduct the marriage ceremony. This ceremony remained remarkably stable, and one can still hear many of its elements in marriages performed today.

Marriage vows emphasized love, honour, fidelity, the indissolubility of marriage, and in the case of women, obedience. After the vows, the minister explained that God “didest appoint that out of man (created after thine own image and similitude) women should take her beginning, and knitting them together, didest teach that it should never be lawful to put a sunder those whom thou by matrimony hadest made one.”11 Drawing on Ephesians 5:22-33, ministers also compared the union of husband and wife to that of Christ and his church, and emphasised how

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10 These exceptions could include women from dissenting congregations as well as those who had not legally married their husbands. Cohabitation and informal marriage existed during this period, and it is difficult, if not impossible, to determine if the women of this study were legally married. For the purposes of this study, I counted a woman as married if the documents concerning her indicated she was married, either by mentioning her husband, stating she was the “wife of” someone, if she claimed she was married, or if other people indicated that she was married.

Christ loved and cherished “his spouse the Church . . . as his own flesh.” Just as members of the church were part of a larger whole, so too were husband and wife.

The Homily on Matrimony, which a minister was supposed to read immediately following the marriage ceremony, was largely concerned with telling a husband and wife their proper duties. The Homily told wives that although they were to “control or command” their children, this did not extend to husbands; “them they must obey and cease from commanding and perform subjection.” On the other hand, the Homily instructed husbands to temper their rule, explaining that the duty to rule was not a license to beat one’s wife. “God forbid that, for that is the greatest shame that can be, not so much to her that is beaten, as to him that doeth the deed.”

The Homily also told husbands that “she is thy body and made one flesh with thee.” The idea of one flesh created the marital unity which was pivotal to ideas of coverture.

Ministers also echoed the principle of one flesh in their printed sermons throughout the period. In *Love and Fear: The Inseparable Twins of a Blest Matrimony* (1653), Nathaniel Hardy explained that: “as they are one flesh so the Law maketh them one person, man and wife, what are they but as two springs meeting and so joyning their streams that they make but one current, so that the water of one and the other cannot be severed.” Four years later, Edward Reyner held

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12 Ibid, 8-9. Ephesians 5:22-33 reads: “Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so let the wives be to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word, That he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man has ever yet hated his own flesh; but nouriseth and cherisheth it, even as the Lord the church: For we are members of his body, of his flesh, and of his bones. For this cause shall man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh.”


14 Ibid, 21.

15 Ibid, 23.

that “Man and wife are in Law one flesh by Gods Ordinance.”\textsuperscript{17} Similarly in a 1742 sermon, Thomas Humphreys explained that in a state of perfect innocence, Adam and Eve joined together as man and wife, where the “two became one flesh.”\textsuperscript{18}

Religious discussions of husband and wife as one person or one flesh carried obvious implications for larger social relations, specifically the idea of coverture.\textsuperscript{19} However, marriage was about more than one flesh, and even the marriage ceremony and the Homily on Marriage recognized the idea of a cooperative and unified household. According to the marriage ceremony, marriage had three purposes: the procreation of children, acting as a remedy or safeguard against sin and fornication, and “for the mutual society, help, and comfort that the one ought to have of the other, both in prosperity and adversity.”\textsuperscript{20} Similarly, the Homily explained that one of the three purposes of marriage was God’s “intent that man and woman should live lawfully in a perpetual friendly fellowship.”\textsuperscript{21} Most people who heard the marriage ceremony would have probably focused on this idea of “mutual help and society” rather than discussions of one flesh. This idea not only described a more practical element of coverture, but underlay many perceptions of marriage and the household, which people understood and expressed in various contexts. Moreover, authors of sermons increasingly emphasised this unified household.

In their published sermons, ministers used the idea of marital unity to demonstrate the importance of husband and wife working together for a common good. They based this on Genesis 2.18 and its explanation of how God made a “help meet” for Adam. This idea was less

\textsuperscript{17} Edward Reyner, Considerations concerning marriage the honour, duties, benefits, troubles of it (London, 1657), 24.
\textsuperscript{18} Thomas Humphreys, Marriage an honourable estate (London, 1742), 8. See also: Fisher, Honour of Marriage.
\textsuperscript{19} As Norma Basch explains, “the legal invisibility of the wife” was the corollary of the “legal oneness of the husband and wife.” And this “equation in which one plus one equals one by virtue of the woman’s invisibility was a vivid symbol of male domination in a cultural as well as a legal context.” Norma Basch, “Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America,” Feminist Studies 5:2 (1979), 347, 354.
\textsuperscript{20} “Solemnization of Matrimony,” 5.
\textsuperscript{21} “Homily on Marriage,” 13.
about subsuming a wife’s identity than it was an emphasis on cooperation. One can see this in

_The Rib Restored_ (1656), a wedding sermon Richard Meggott delivered at St. Dionis Backchurch in London. In this sermon, Meggott explained that:

> marriage is called _conjugium_ from _jugum_, a yoke; when those that are joyned together, have a reciprocall and relative interest in each others actions, both promoting the same designe, in their severall capacities. Where cattell are yoked together, should one draw, and the other stand still, much more if the one pull forward, and the other hale backward, they would but tire each other, both must put to their strength proportionably.

Meggott recognized husband and wife as two separate entities with a common goal, which created the unity necessary for a good marriage. Meggott was still careful to reference the idea of one flesh in his sermon, but his emphasis on a common household cause demonstrated the need for husband and wife to work together as one entity.

In his sermon _The Wedding Ring_ (1658), William Secker also used Genesis 2:18 and explained how husband and wife “should be as the two Milch-kine, which were coupled together to carry the Ark of God; or as the two Cherubins that look’t upon one another, and both upon the Mercy Seat: or as the two tables of stone, on each of which were engraven the Laws of God.” This statement reflects the need for cooperation within marriage, but it also moved the discussion beyond ideas of one flesh. Secker held that in marriage, husband and wife, along with their “particulars”, were “bound up in one general, and like Hippocrates’s twins, they live and dye together.” Here, husband and wife became one entity – a household – upon marriage, and this entity was more than the sum of its parts. Secker’s sermon was printed nine different times from 1658 to 1732. Eighteenth-century sermons echoed his characterization of a good marriage as one in which husband and wife worked together for the household’s, rather than their own separate,

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24 Secker, _Wedding Ring_, 18.

25 Secker, _Wedding Ring_, 27. See also: John Cockburn, _The dignity and duty of a married state_ (London, 1708), 10.
good. The ideas within these commentators’ works were less about the idea of one flesh than cooperation, and it was this principle of cooperation which informed many people’s understandings of marriage between 1640 and 1760.

In The advantages and disadvantages of the married state (1753), John Johnson used the allegory of four brothers on a journey from Babylon to Canaan to demonstrate the importance of a suitable companion through life. This journey represented man’s constant search for Christ, and Johnson’s used the brothers’ separate journeys and corresponding travel companions to prove his point. The first three brothers were unsuccessful in their attempts to reach Canaan, largely because of the Babylonian women they chose to travel with. The fourth brother, on the other hand, refused to travel with a Babylonian woman, choosing instead to “wait till he should find a true Companion.” The fourth brother and his companion managed to reach Canaan by working together rather than competing against each other. As Johnson explained:

they were sincere Friends, pleasant Companions, faithful Partners, and useful Assistants, to each other. If they met with Difficulties by the Way, they would take each other by the Hand, to support them. In Dangers, they would counsel, and stand by one another. In sorrows, they would sympathize, and comfort one another. If beset with Enemies, one would watch while the other slept.

Johnson used this journey to demonstrate that “two [were] better than one,” yet he did not see these two travellers as separate, and “knew not whether to call them, two Souls dwelling in one Body, or one Soul inhabiting two Bodies; but it appeared very conspicuous that two were become one.”

In sharing the burdens of the journey, husband and wife demonstrated their united purpose.

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26 An ESTC search reveals reprints in 1660, 1661, 1664, 1678, 1690, 1700, 1707, 1709, 1715, 1729, and 1732.
27 Johnson was a Baptist minister from Cheshire. He published many of his sermons and works of theology. The advantages and disadvantages of the married state was the most popular of these works. S.L. Copson, “Johnson, John (1705/6-1791),” ODNB, OUP, 2004 [http://www.oxforddnb.com/view/article/14894, accessed 30 Sept 2010].
30 Ibid, 35.
Here, Johnson echoed the principle of one flesh, but he placed greater emphasis on husband and wife working together for a common goal. This was a subtle, yet important difference, which underlay the majority of people’s understandings of marriage and men and women’s roles within the same. A good marriage, like a successful journey to Canaan, was one in which a husband and wife was united by a common purpose, which overrode individual concerns. Marriage and coverture were about uniting husband and wife into one household. Marriage sermons which emphasized a husband and wife’s common goal demonstrated that marriage was less about the loss of identity than the creation of a household.\textsuperscript{31} This idea of the unified household informed people’s understandings of married women, and played a central role in a number of areas, including married women’s experiences at the criminal courts.

**Achieving Unity**

In a sermon from the late seventeenth century the Reverend Matthew Mead (d.1699) discussed the unity of husband and wife and explained that “What they say of Castor and Pollux, is true of Man and Wife: If they are divided, it is ominous.”\textsuperscript{32} Similarly, in a volume of sermons published in 1736, Bartholomew Parsons argued that “The joyning together of Man and Wife is of God, their sundering and separating is of the Divell.”\textsuperscript{33} This preoccupation with the dangers of separation demonstrates the importance contemporaries placed on the unity they felt was necessary for a good marriage, and correspondingly a well-ordered society. However, it was one thing to preach unity, but another thing entirely to ensure it was carried out in practice. In order

\textsuperscript{33} Bartholomew Parsons, “Boaz and Ruth, A sermon preached at the marriage of Mr. Peregrine Thistlethwaite, the younger, Esq; and Mrs. Dorothy Thistlethwaite his wife,” in *Conjugal Duty: Part II* (London, 1736), 269. See also: A.L., *A question deeply concerning married persons and such as intend to marry* (London, 1653) Wing/1723:02; Edward Ward, *The whole pleasures of matrimony* (London, 1714); Humphreys, *Marriage an honourable estate*.
to meet this need, ministers and authors of prescriptive literature regularly described the ideal behaviour of husbands and wives.

The simplest way to ensure marital unity was to limit divisions between husband and wife. Contemporaries applied this principle in various contexts and spoke out against separate finances, houses, religion, and above all separate wills. By ensuring physical, financial, and religious togetherness, these same people hoped to limit the potential for husbands and wives to see themselves as anything but part of a larger household. This carried many consequences for married women, and became particularly problematic in cases of abuse and bad marriages. However, it is important to note that the majority of women in early modern England did not experience abusive marriages and although married women were never free from the threat of coverture, the principles of marital unity were not always harmful.

As previously stated, coverture primarily affected married women’s property rights. In an attempt to lessen the severity of these restrictions, women and their families used equity courts, which were “willing to regard married women as separate persons for property matters, and to support legal innovations designed to protect their property interests.”[^34] Chief amongst these innovations were marriage settlements and trusts, which lawyers created prior to a marriage, and held property in trust separately for a married woman.[^35] By separating property, these measures lessened coverture’s effects to a certain degree; however, in doing so, they also created a division between husband and wife in the household economy and their joint purpose.

[^34]: Tim Stretton, “Married Women and the Law in England since the Eighteenth Century,” *L’Homme Zeitschrift fur Feministische Geschichtswissenschaft* 14 (2003), 127. Stretton also argues that it is “misleading to represent equity as women’s legal saviour, just as it is misleading to represent the common law as their legal downfall.” The majority (if not all) measures designed to limit coverture’s effects on property “applied only to married women, and most were available only to women who had the resources, the access to legal advice and the foresight to establish uses or trusts, or to negotiate marriage settlements or jointures.” Tim Stretton, *Women Waging Law in Elizabethan England* (CUP, 2003), 28.

Ministers and behavioural tract authors often argued against this division, and emphasized the need for financial unity within marriage. In 1623, Whately explained that “the state of man and wife should not stand in such terms of difference, that hee have one chest and one stocke by himselfe, she another by her selfe: but they must get in common, and save in common, and use in common, and both doe what either hath, and either doth.” Instead, Whately urged married couples to “practise a community in their estates . . . They must have one house, and one purse; they are but one, and their estate must bee but one also.”

In A question deeply concerning married persons and such as intend to marry (1653), the anonymous author A.L. asked “Whether any Woman (Widow or Maid) intending to Marry, may before her Marriage reserve any of her Goods in her own power, to be disposed by her after she shall be Married without her Husbands direction or consent?” The short answer was no, but A.L. went through numerous objections to support his argument. He concluded that it was “a shame to a man of wisedom, that his wife should manifest her self to be so foolish, that she should fear to commit the power and government of her goods to him, whom she boldly took as the fittest of all others to have the power of her body: and the rule of the desires of her soul.” A.L. believed a wife’s refusal to give her property to her husband unconditionally was a sign of rebelliousness. God set the husband as the head of his wife, and she was to model herself on the obedient Sarah and submit herself to her husband’s control. A.L. sought to limit the damage a wife’s separate property posed to this situation.

Clearly, separate settlements did not enjoy universal approval. As Margaret Hunt argues, many people felt they could lead to abuse; if a husband wanted money he could often beat and

37 Ibid, 81-2.
39 A.L., Question deeply concerning married persons, 5.
threaten his wife to give him control over it.\textsuperscript{40} The early-eighteenth-century moralists Joseph Addison and Richard Steele held that “Separate Purses, between Man and Wife, are . . . as unnatural as separate Beds.” This was because, as Hunt explains, “Nothing encouraged a man’s love for his wife more than the spectacle of his wife’s total dependence on his generosity.”\textsuperscript{41} Hunt’s bleak portrait of marital unity may be a result of the abuse cases she examines, but it draws attention to the problems inherent in upholding the principle of marital unity. Regardless of these problems, numerous authors throughout the seventeenth and eighteenth century continued to emphasise the importance of unity which set out the framework for people’s understandings of marriage.

Unity, however, required more than a common purse and household; it also required a common will between husband and wife. Marriage required sacrifice, and it was important for a couple to place the good of the marital union above their own personal wants and needs. As the Homily explained:

That wicked vice of stubborn will and self-love is more meet to break and dissoever the love of heart than to preserve concord. Wherefore married persons must apply their minds in most earnest wise to concord, and must crave continually of God the help of his holy spirit so to rule their hearts and to knit their minds together that they be not dissoever by any division or discord.\textsuperscript{42}

Commentators saw selfishness as a principal cause of strife between husband and wife, and emphasised the need for husband and wife to maintain a common will.

In \textit{The honourable state of matrimony made comfortable} (1685), the anonymous B.D. held that “Self-love is a case of Wrath and Discord between Husband and Wife, whereby the one party so inordinately loves it self, that it hath no true conjugal love for the other, that he or she

\textsuperscript{41} Ibid, 26.
\textsuperscript{42} “Homily on Marriage,” 15.
never thinks of the injuries which he or she offers to the other.” In *The dignity and duty of a married state* (1708), John Cockburn extended this argument by saying that:

The Man or Woman that marries, must resolve to deny themselves, to put off at least something of their own Humour, and to put on a ready Complaisance with others; otherwise they can never be happy; they must resolve by all means to seek to please and to gratify, tho’ with some restraint on their personal Inclinations and Constitutions.

Marriage was about sacrificing one’s will to the greater good and the household. Commentators such as Cockburn and B.D. attempted to demonstrate that a husband and wife could only maintain marital harmony if they did not allow their own individual wills to challenge the unity of purpose central to marriage of the period.

Authors of marital tracts debated how to achieve a common will, but the most widespread solution was for a wife to subsume her will to her husband’s. Authors stressed the importance of obedience in order to achieve this. One could argue that obedience was more important in these tracts than the idea of unity of person, although the two ideas were not completely separate; a wife’s duty of obedience was a corollary of coverture and the need for a common will or purpose between husband and wife.

Marriage may have involved husband and wife working together for the common good, but this was not an equal partnership, and most commentators did not regard it as such. Instead, marriage was a hierarchy, in which a wife was subordinate to her husband, to whom she owed obedience. As Amanda Vickery argues, “Obedience remained the indisispensable virtue in a good wife. . . . Genteel wives took it absolutely for granted that their husbands enjoyed formal supremacy in marriage. After all, even the haughtiest bride vowed before God to love, honour

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44 Cockburn, *Dignity and duty of a married state*, 14.
and obey." In order to help women understand this vow, the Homily stated that “God hath commanded that ye should acknowledge the authority of the husband and refer to him the honour of obedience.” In stressing the need for wifely obedience, commentators upheld the marital hierarchy and attempted to ensure the presence of one will within marriage.

Commentators often compared a wife’s obedience to Sarah calling Abraham her lord in Genesis 3:16. As the broadsheet *Marriage-musicke, or nuptial duties* (1670) explained: “Sarah, play Sarah’s part, give reverence / To this thy Lord; who hath preheminence.” Sarah was a good example, since, as Hardy explained in 1653, Sarah acknowledged Abraham as her Lord “not out of a feigned flattery, but a just humility . . . and this is the first step of that reverence here commanded and commended to all the daughters of Sarah, that they cordially assent to the Husbands primacy and authority over them.” In demonstrating the need for a wife’s obedience, commentators limited the potential of duelling wills, which they hoped would contribute to marital unity.

Commentators throughout the period feared that women would be unable to give up their liberty upon marriage and would react badly to the yoke of obedience. This started in youth, when parents allowed their daughters too much freedom. In 1714, an anonymous “Lady” argued that there was nothing more mischievous to daughters than “teaching them Disobedience, and rendering them Mutinous against their Parents, by buzzing into their Ears, the wild Notions of unbounded Liberty and Freedom, which Lectures they should not soon be trusted withal.” A disobedient child often became a disobedient and quarrelsome wife. In a 1714 dialogue between

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46 “Homily on Marriage,” 18.
a husband and wife, Edward Ward asked “How should Man his sov’reign Pow’r maintain, / If those who should obey, dispute his Reign.”

In order to avoid this problem, commentators urged husbands to temper their rule and love their wives as themselves. Advice such as this sought to accommodate women’s natural love of liberty with the duty of obedience. At the same time, marital tract authors instructed wives to see obedience as a corollary of their love for their husband. In 1688, George Savile instructed his daughter to pray “for a Wise Husband, one that by knowing how to be a Master, for that very reason will not let you feel the weight of it; one whose Authority is so soften’d by his Kindness, that it giveth you ease without abridging your Liberty.” These ideas were not meant to question a husband’s authority, but rather to help make such authority acceptable, or bearable, to those women whom commentators believed had grown accustomed to liberty.

These limits to obedience also reflected a wife’s place within the domestic hierarchy. As mistress of the household, wives stood above servants and children, but below husbands. Although a wife was her husband’s subordinate, she was also his deputy, which was reflected in her household responsibilities. As William Secker explained in 1660:

The Woman was made for the mans comfort, but the man was not made for the Womans command. Those shoulders aspire too high, that content not themselves with a room below their head. Its between a man and his Wife in the house, as it is between the Sun and Moon in the heavens, when the greater light goes down, the lesser light gets up; when the one ends in setting, the other begins in shining. The Wife may be a Soveraign in her Husbands absence, but she must be subject in her Husbands presence.

50 Edward Ward, Matrimony unmask’d: or, the comforts and discomfts of marriage display’d (London, 1714), 2.
51 Cockburn, Dignity and duty, 18.
53 John Cotton, A Meet Help (Boston, 1699) Wing/2847:01, 23; Hardy, Love and Fear, 20.
54 The division of household responsibilities was gender-based. See for example: The woman to the plow and the men to the hen-roost, or, A fine way to cure a cot-quean (London, 1675) Wing/1321:12.
55 Secker, Wedding-ring, 17.
Although marriage was hierarchical, one could characterize it as an equitable hierarchy, and authors of these tracts often reminded husbands that woman was created from man’s rib for a reason.

Authors increasingly emphasised, or at least discussed, a wife’s will and the need for her obedience over the course of the period. Perhaps they began to see that marriage could be a union of wilful individuals, and sought to combat this danger more explicitly by emphasising obedience above all other concerns. This is particularly evident in John Sprint’s *The Bride-womans counsellor* (1699). Sprint characterized a bad marriage as one of constant discord, and he blamed the prevalence of such marriages on the “obstinancy and stubbornness of disobedient wives.” Sprint used a section from I Corinthians 7.34 – “shee that is married careth for the things of the world, how she may please her husband” – to argue that a wife must submit to all her husband’s commands and desires in order to ensure a happy marriage. Sprint explained that “whilst the good Wife that is careful to oblige her Husband, makes both him and her self happy; the imperious, clamourous and turbulent Wife, that at every word spits Passion and Poison, is a Torment and vexation to her self; and a pernicious Plague to her Husband.”

This passage highlights the presence of two selves, which reflects an understanding that marriage – albeit in an unhealthy state – involved an alliance of two wilful individuals, a problem which Sprint sought to combat.

Sprint was not alone in an increased emphasis on wifely obedience. In *A Looking Glasse for Married Folkes* (1736), Robert Snawsal drew upon St. Paul’s Epistle and argued that the wife’s true worth was in her subjection to her husband. Snawsal argued that “the only way to compasse peace, is, that wives be buxom and obedient to their husbands and to use them kindly

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with gentle behaviour.” In order to demonstrate the folly of wifely disobedience, Snawsal used a dialogue between four women, in which Abigail and Eulalia attempted to show Xantip the error of her ways in limiting her obedience according to the advice of the “mannish” Margery. In one exchange, Eulalia told Xantip: “Thou doest not remember that he hath power over thee, and that thou shouldst let thy desire be subject to thy husbands.” While Snawsal was concerned with obedience within this statement, his subjection of a wife’s “desire” attempted to ensure the presence of one will within marriage. Obedience was as much about maintaining marital unity as it was ensuring the marital hierarchy.

Sprint and Snawsal’s views did not go unchallenged. In 1700, Mary Lee Chudleigh published The Female Advocate, in which she responded to Sprint’s argument that a wife could be free if she would only submit totally to her husband. Chudleigh argued this was “as much to say, If she be a perfect Slave, she may have her Liberty. I shall never be persuaded that such Gentlemen who desire the subjection of their Wives, and are willing to confine them to the treatment of Servants, have any great opinion of their Persons or their Liberty.” Chudleigh saw

58 Ibid, 185.
59 Ibid, 169, 179, 185-7, 189-90. Xantip refers to perceptions of Socrates’ wife. A new canting dictionary defined “Xantippe” as “a Scold; the name of Socrates’s scolding Wife: who never could move his Patience, tho’ by premeditated and repeated Injuries. Whence it is used for any Shrew, or scolding, brawling Woman.” A New Canting Dictionary (London, 1725).
61 Mary Lee Chudleigh, The Female Advocate (London, 1700), 17. The slavery Chudleigh referred to was not the chattel slavery that one associates with the term today. Instead, Chudleigh was referring to slavery as a lack of freedom rather than property in persons. Quentin Skinner’s study of liberty demonstrates that liberty and freedom were connected to the ability to be “‘your own man’, rather than someone else’s creature, and hence to be in possession of true manhood requires that you should be able to act sui iuris, to make up your own mind independently of the will and desires of anyone else.” In this sense, a married woman’s lack of will was akin to slavery, but political slavery rather than chattel slavery. Ideas of freedom also depended on one’s status. As Teresa Michaels explains, freedom in this period was not “absolute but rather [varied] according to status: for slaves, as for servants and wives, ‘liberty rightly understood . . . is protection,’ not equality with the rights of their masters.” By the late-eighteenth century, Mary Wollstonecraft “found women’s inability to earn money, married women’s legal incapacity to hold property in their own names and mothers’ inability to have custody of their children sure marks of their slavery.” The overall point to take from these statements is that ideas of slavery related to more than chattel slavery, and freedom was measured in degrees, especially when it came to married women. Quentin Skinner, “Rethinking Political Liberty,” Historical Workshop Journal 6:1 (2006), 163; Teresa Michaels, “‘That Sole and Despotic Dominion’: Slaves, Wives and Game in Blackstone’s Commentaries,” Eighteenth-Century Studies 27:2
no liberty in a wife’s absolute obedience, and held that a husband’s demand of the same was nothing but tyranny and absolute monarchy within the household.

It is interesting to note that Chudleigh’s scathing critique was not directed at the marital hierarchy, but rather at Sprint’s emphasis on absolute obedience. At the same time that Chudleigh compared Sprint’s strictures to slavery, she argued:

It’s true a Woman that abridges her Husband of his reasonable Authority, and has Impudence enough to put on the Breeches, does certainly pervert the end of her Creation; and such, without any Defence, I leave to the Mercy of this Gentleman, and the Discipline their Husbands think fit to exercise upon them.  

In this sense, Chudleigh was not questioning the system of marital relations, but was rather arguing against unquestioning obedience. It seems as though she subscribed to the idea of marital unity, but approached it in a different manner than did commentators such as Sprint and Snawsal who emphasized obedience above all other concerns.

Marital unity was an important principle, and various ministers and authors of marital tracts sought to uphold this value in various ways. By emphasising a wife’s obedience, commentators sought to ensure a common will between husband and wife, just as other tracts stressed the need for a common purse between husband and wife. However, there were limits to marital unity. Despite his emphasis on unity within *The dignity and duty of a married state* (1697), John Cockburn still recognized the potential for division within a marriage in certain circumstances. As he argued, husband and wife “must not divide and quarrel, however they may reason, except in cases where true Honour, Conscience, Religion, and the Cause of God do interpose.”

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62 Chudleigh, *Female Advocate*, 22.

Much like separate finances and wills, separate religions threatened marital unity. In an age of religious difference, questions and problems arose over who a wife owed her obedience to: God or her husband. One’s path to God was an individual decision, and contemporaries held that a wife’s loyalty to God was more important than her loyalty to her husband. As Patricia Crawford explains, theologians originally “stressed the equality of all believers before God. Individuals were responsible for their own salvation.” As a result, “most divines agreed that a wife should place obedience to God and the true church above her duty to her husband.”

In order to avoid the problems this belief could cause, ministers and authors of marital tracts emphasised the importance of spiritual compatibility. The women whose faith contrasted with their husbands’ faith were a minority, but they still had the potential to disrupt the unity contemporaries felt was necessary for a good marriage. In light of this belief, it is not surprising that commentators argued for a common religious faith between husband and wife.

While the religious differences that emerged following the Reformation posed a problem to marital union, the proliferation of sects during the Civil War and Interregnum created particular challenges to the ideal of marital unity and female subordination. Unlike the established church, women had a public voice as prophets and preachers in many sects of the civil war era. The encouragement of this public voice, Rachel Trubowitz argues, “inadvertently helped women to abandon their traditional duties as wives and mothers and to define themselves

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64 Patricia Crawford, *Women and Religion in England 1500-1720* (London and New York: Routledge, 1993), 52. As Bernard Capp argues, “commentators were always conscious of the potential conflicts posed by the wife’s higher duty to the law of God, and not only in the context of religion. Some asked if there were other circumstances in which a wife might also legitimately refuse to obey a husband’s command. And some recognised that her domestic duties might in themselves generate conflicting obligations.” Bernard Capp, “Gender Conscience and Casuistry: Women and Conflicting Obligations in Early Modern England,” in *Contexts of Conscience in Early Modern Europe, 1500-1700*, ed. Harold E. Braun and Edward Vallance (New York: Palgrave Macmillan, 2004), 122.


66 Amongst the Quakers, for example, “Preaching . . . was a less formal activity than in many other churches, because individuals spoke when inspired by the Lord – women and children as well as men.” Crawford, *Women and Religion*, 163.
instead as independent thinkers and preachers by demanding obedience to their church over
obedience to their husband." One can see this in the examples of the Leveller Katherine
Chidley (fl. 1616-1653) and the prophetess Elizabeth Poole (bap. 1622?, d. in or after 1688), as
well as the roles women played in the Leveller and Digger movements. In order to combat the
problem of female independence, religious groups such as the Quakers enclosed female
preachers in private spaces and created women’s congregations, which helped establish the
gender order within Quakerism.

Sectarian groups argued that a wife must follow her duty to God over that of her husband,
but they also held that if there were no conflicting duties, a godly wife was to remain obedient
and submissive to her husband. They therefore argued for intermarriage within the elect to limit
the problems religious divisions posed to marital unity. In 1657, the Congregationalist minister
Reyner explained that husband and wife should “worship God together as Companions in his
service; and fellow travellers walking hand in hand together to the kingdom of glory.” In A
_testimony and wholesome advice concerning marriage_ (1680), the Quaker Alexander Seaton
spoke against marriage between conflicting faiths drawing upon both the Old and New
Testament. Seaton held that “all the Passages of the _Jews_ revolting from God” were, for the most
part, because of “their matching Marriage with other People, as in _Nehemiah_ and _Ezra_.”

Similarly, Seaton argued that Paul told “the Church, be not unequally yoked, a Believer with an

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69 Reyner, _Considerations concerning marriage_, 28.
Unbeliever, he accounts it as Light and Darkness, as Christ and Belial, as the Temple of God and Idols.”

Nor were Reyner and Seaton the only two ministers to hold that marriages which yoked a believer with an unbeliever were doomed to failure. In 1732, Moses West held that “Unity of Faith and Religious Practices” were “Essential to the Marriage which God makes.” He continued his treatise and explained that those Christians who were “disposed to marry, are Religiously obliged to take Care, that they be not unequally yoaked, by joining themselves in Marriage with any, that are under different Persuasions and Practices, with Respect to Faith and Religious Worship, as may tend to hinder their persevering in it.” In 1740, George Whitefield argued that “the Devil cannot lay a greater snare for young Christians, than to tempt them unequally to yoke themselves with Unbelievers, as are all who are not born again of God.”

Religion provided a common ground for married couples; differing beliefs and practices not only created divisions between the couple, they also threatened one’s commitment to what various ministers saw as the true church.

In their printed works, ministers and authors of marital tracts all shared a belief in the importance of unity to marriage. This belief was not limited to any one social group, political or religious affiliation, or even one gender, which suggests that unity was the predominant characteristic of marriage. What differed, however, was how commentators chose to uphold marital unity. They emphasised the importance of common purses, households, purposes, religion, and even wills. This emphasis changed throughout the period and between authors, but the underlying message of unity remained.

70 Alexander Seaton, A testimony and wholesome advice concerning marriage (London, 1680), 3.
71 Moses West, A treatise concerning marriage, wherein the unlawfullness of mixt-marriages is laid open from the Scriptures of Truth (London, 1732), 19-20.
72 George Whitefield, The marriage of Cana: A sermon preached at Black-Heath (Edinburgh, 1740), 6. See also: Charles Leslie, A sermon preach’d at Chester, against marriages in different communions (London, 1702), i.
Coverture was not the only thing which dictated marital relations, nor did it solely concern the unity of person within marriage. Nevertheless, coverture and the biblical emphasis on one flesh helped create and maintain the unity of person, or at least purpose, which was central to ideas about marriage in the seventeenth and eighteenth centuries. Despite representing ideals rather than reality, these tracts set the framework for people’s understandings of marriage and the roles husbands and wives were expected to play within the same.

This framework was one which saw the household as a common unit comprised of husband and wife. One could characterize this as unity of person, but it may be better to regard it as a unity of purpose in which husband and wife worked together for a larger goal. In this sense, marriage was less about subsuming the wife than it was the creation of a household which affected husband and wife. Commentators attempted to demonstrate how to maintain a unity of purpose. While their focus and the emphasis they placed on certain elements changed depending on their own personal background and when they were writing, the overall message of unity remained. It was this message which set the framework within which various people including judges, JPs, juries, victims, witnesses, and perpetrators of crime, spectators of criminal trials, and married women themselves saw marriage and married women’s role within society. These ideas also affected married women’s legal positions, and it is to them that we now turn.
CHAPTER 2: LEGAL FRAMEWORKS

Some time between 1290 and 1300, the anonymous author of the legal treatise *Fleta* wrote, “to reduce to writing the laws and rules of the realm without exception is, indeed, altogether impossible in our day, both because of the ignorance of writers and of the multitudinous confusion of the laws.”¹ One of the key features of the English common law was that it was based on custom rather than statute, which meant that it was difficult to codify. This was not, however, a system based solely on memory, and there were a number of legal treatises, Year Books, and Law Reports which discussed the law and its precedents. The law as written in these works formed an important framework within which people organized their world. In the case of married women, these sources set out the definitions of coverture and the defence of marital coercion, which combined with the marital frameworks examined in the previous chapter to shape – although not dictate – married women’s experiences with the criminal justice system.

An examination of legal treatises, legal notebooks, commonplace books, and JP handbooks reveals that coverture was a flexible doctrine and it was subject to multiple interpretations. Legal authorities, ranging from treatise authors to judges to JPs, interpreted it in various ways while maintaining its principal characteristics and general purpose. Its adaptability meant that it managed to survive and flourish in various times and places while still maintaining the underlying principle of marital unity and harmony. Coverture may have been based on the biblical ideal of one flesh, but it was ultimately a legal doctrine. Therefore, one needs to examine

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understandings of it within the law. This chapter explores how legal authors described the
defence of marital coercion. The second part of this analysis focuses on the personal and
professional writings of judges and Justices of the Peace (JPs) to determine how they read and
understood the legal texts. While it is difficult to determine the influence these men had on
specific cases, they nevertheless played an important role in the criminal justice system. They are
examined here because they were the only group to leave records discussing the legal treatises,
which helps illustrate how people understood the law as it related to married women.

The English legal system was comprised of a series of separate courts, including the
central courts at Westminster – the Court of King’s Bench, the Common Bench or Court of
Common Pleas, and the Exchequer at Pleas. In addition to these three courts, judges and JPs
carried out the local administration of the common law at the assizes and quarter sessions. These
systems did not operate in isolation from one another. Married women came into contact with the
law in all of these venues, although this study focuses largely on the assizes. Based on the
medieval itinerant justices and eyres, the assize system played a large role in centralizing English
justice. Judges travelled from London twice a year – once in the case of Cumberland,
Westmorland, Northumberland, and Durham – on circuit to the various parts of England to
dispense royal justice and deliver the gaols of their prisoners. Two judges went to each circuit,
and their arrival signified an important social event for each community. Judges’ administration

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3 In a 1750 letter while on circuit, Thomas Burnet wrote to William Lee: “Thus far all goes well, I am however
tempted to venture this evening to the assembly, which is not held in the greatest Room, where I caught my cold last
year, but in a smaller room, where there are fires. I hope no harm will ensue, but I durst not offend so formidable a
body as the Beautyes of York, who all declared they would not forgive my not appearing at their assembly.”
Beinecke OSB MSS 52, Letter from Thomas Burnett to William Lee, York 30 March 1750.
of criminal justice also connected the common law as practiced in Westminster to its operation in
the localities.\(^4\)

Criminal trials were public spectacles, and almost every married woman within this study
faced this process.\(^5\) Assizes opened with a sermon after which the judges read the grand jury
charge, which conveyed the Crown’s policies to local officials and those present, and then
divided into Crown and \textit{nisi prius} sides.\(^6\) After the grand jury determined what indictments were
true or \textit{ignoramus}, the accused felons were brought before the bar in the order they appeared in
the indictments, their indictments were read in English, and each prisoner quickly entered a plea.
This process continued until there were enough prisoners for a petty jury who then heard the
cases and determined the accused felons’ fates. Criminal counsel was banned for much of this
period and lawyers did not play a large role in criminal trials until the nineteenth century, so
trials often devolved into an altercation between the prisoner, the prosecutor, and their
witnesses.\(^7\) Judges often interjected their opinions during the trial, but did not sum up the
evidence, and juries quickly decided their verdicts. Judgment was deferred until the end of the
proceedings when all the prisoners were either sentenced or discharged. While we do not have
trial transcripts, each trial could not have lasted longer than thirty minutes.\(^8\)

\(^4\) As J.S. Cockburn explains: “On the circuit, the delegated power of the judges was at its most real. Regular visits to
the countryside by the most prominent elite in officialdom created a profound impression, to which every
contemporary record of the judges’ passage testifies. The conscious pomp and solemnity of their proceedings, their
obvious mastery of the law and its practitioners, the knowledge that they were familiar with but at the same time
above the county and its politics, all heightened the prestige which was the substance of their local authority. Indeed,
the judges’ impartial concern for the familiar details of rural existence . . . and, above all, their usually dispassionate
handling of members of the county’s social and governing oligarchy recommended them as more substantial
representatives of central authority than the Privy Council, remote at Whitehall in the studied secrecy of its
\(^7\) For a history of the rise of criminal counsel see: Allyson N. May, \textit{The Bar and the Old Bailey, 1750-1850} (Chapel
\(^8\) Cockburn, \textit{History of Assizes}, 117-124; J.H. Baker, \textit{An Introduction to English Legal History}, Fourth Edition
(London: Butterworth Lexis Nexis, 2002), 59. For a judge’s account of how the itinerant justices were to proceed
see: BL Stowe 1011, 92v-94.
The criminal justice system was not limited to any one class of people, and the criminal courts brought together a variety of people. In order for the system to function properly, the various participants needed a working knowledge of the law, and there is no reason to assume that the people involved did not understand the general legal framework of the early modern period. In a system based on custom, people learned the law in various ways. It is difficult to determine the informal means that people used to learn the law, but it is possible to establish the legal frameworks of coverture in the criminal law by examining the printed legal texts. Although legal authorities such as judges, barristers, and JPs were the dominant audience for these tracts, other lay people could have read them, including jurors who ultimately decided the fate of married women accused of felonies between 1640 and 1760. Since people gained their knowledge from these works, an analysis of them can reveal the legal frameworks within which people understood coverture and the defense of marital coercion, which affected their treatment of married women in the criminal courts.

Legal Treatises

Judges and barristers – the most prominent members of the legal community – learned the law through their studies at the Inns of Court.9 According to J.H. Baker, the Inns of Court were England’s third university until the Civil War.10 Here, a student would spend around seven years attending courts, performing in more advanced moots, attending “readings” (a lecture or series of lectures on a selected statute), and kept commons with his fellows.11 The key

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component of this education was individualized learning. Students were responsible for attending courts on their own to see how the law functioned, and most importantly, they undertook the harsh study of reading the essential works on their own, and discussed the information with other students. The Civil War and Interregnum witnessed the end of moots and readings although the Inns remained centres of legal education. By 1700, however, training for the bar was largely a matter of self-instruction in which students relied on the readily available supply of printed books. These printed texts were so central to legal education that, as David Lemmings explains, “it was possible to declare, ‘The Means of this Study are books’, and the essence of legal education in Georgian England was private reading in chambers.” An analysis of the core legal texts which students used to learn the law reveals the legal frameworks of coverture and the defence of marital coercion. These worked with the marital frameworks examined in the previous chapter to shape the experiences and perceptions of married women in the early modern criminal justice system.

Coverture was not unique to the early modern period. It has Norman roots and one can find references to it in legal writings from the twelfth century onwards, largely in relation to property. In regards to the criminal law, the great medieval treatise, Bracton, On the Laws and Customs of England which was written between 1238 and 1268, explained that since husband and wife:


12 Prest, Rise of the Barristers, 114.
13 The Inns of Court remained important throughout the eighteenth century because membership in an inn distinguished barristers from other lawyers, which gave them “a crucial monopoly of audience before the royal judges who presided at the common law courts.” Lemmings, Professors of Law, 24; Lemmings, Gentlemen and Barristers, 75, 78, 98, 101-2, 108-9.
14 Lemmings, Professors of Law, 136.
each alone may be bad and the other good, both together and conjoined may be bad as well as good. The wife must therefore not be discharged in ever case [of felony], because of counsel, aid and consent. Since they are partners in crime they will be partners in punishment. And though she ought to obey her husband she need not be obedient to him in heinous deeds. 16

However, by 1765, Blackstone’s Commentaries explained that “in some felonies and other inferior crimes, committed by her, through constraint of her husband, the law excuses her: but this extends not to treason or murder.” 17

Despite modern historians’ emphasis on Blackstone in their discussions of coverture, he was not the only legal authority during this period. 18 Nor should we rely on his definition of coverture as the situation whereby “the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband” to explain earlier discussions of married women’s place within marriage and society. 19 Yet, Blackstone is important because he demonstrates that the understandings of coverture’s effect on the criminal law were not static. In order to examine what changed in the legal literature between Bracton and Blackstone we need to examine the treatises that discuss marital coercion and married women’s place in the pleas of the crown.

Coverture remained the official doctrine of these treatises, but understandings of it changed subtly over time. When it came to the criminal law, the authors of legal treatises

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16 Bracton on the Laws and Customs of England, ed. George E. Woodbine, transl., with revisions and notes Samuel E. Thorne, Volume II (Selden Society, 1968), 428. This work is generally known as Bracton. It was “the most ambitious legal work of the middle ages, apparently conceived on a grand scale as an overall survey and discussion of the whole of the common law as it was being applied in the king’s courts in England, with supporting citations of actual decided cases, and the reproduction of writ and enrolment formulas currently in use.” This book survives in about fifty different manuscripts written between the end of the thirteenth century and the first half of the fourteenth century. It was an incredibly influential book and remained an important legal treatise throughout the early modern period. Paul Brand, “Bratton, Henry of (d. 1268),” ODNB, OUP, Sept 2004; online edn., Jan 2008 [http://www.oxforddnb.com/view/article/3163, accessed 20 July 2010].


19 Blackstone, Commentaries I, 430; Stretton, “Coverture and Unity of Person,” 111-2, 125, 127.
discussed the defence of marital coercion, but took pains to limit its applications because they feared its abuse. Throughout the period, legal authors tightened the restrictions on the defence’s application and increasingly specified when it could and could not be applied. These increased limitations on coverture’s defences sprang from a desire to grant married women criminal agency and responsibility, but not the full political agency of a contractual citizen.

There were a limited number of legal works that dealt directly with coverture and married women’s relation to the law in the early modern period. The first was *The Lawes Resolution of Womens Rights* (1632); these were followed by *A Treatise of Feme Coverts: Or, The Lady’s Law* (1732); and *The Hardships of the English Laws in Relation to Wives* (1735), which was the only text authored by a woman that criticizes women’s legal position; and *Baron and Feme: A Treatise of Law and Equity, Concerning Husbands and Wives* (3rd edn., 1738). These were by no means the only treatises which discussed coverture, but their focus on women and the law was unique.

The authors of these treatises focused largely on coverture’s property restrictions rather than its role in the criminal law. The anonymous author of *The Lawes Resolutions*, for example, explained that husband and wife “bee by intent and wise action of Law, one person, yet in nature and in some other cases by the Law of God and man, they remain divers, for as Adam’s punishment was severall from Eve’s, so in criminnall and other special causes our Law argues them severall persons.” This was the only reference to a husband and wife’s potential

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20 As Lynne Greenberg explains, these texts formed the basis for understanding the laws that women were subject to and detail the major changes within these laws. “Introductory Note” in *The Early Modern Englishwoman: A Facsimile Library of Essential Works, Series III, Volume I: Legal Treatises I*, ed. Lynne A. Greenberg (Aldershot: Ashgate, 2003), ix.

21 For a discussion of these works and their influence see: Greenberg, “Introductory Note,” xxxii-li.

22 T.E. *Lawes Resolutions of Womens Rights* (London, 1632), 4. The publication of this book was “a significant moment in the history of the Englishwoman. While the legal literature of the period provides some overview of the laws affecting women, *The Lawes Resolutions* is the first known text specifically devoted to recording methodically English women’s legal rights, liabilities, immunities, advantages and interests as established by statutes and
separateness in the criminal law in this treatise, and the other works largely followed the same trend. Take for example, *A Treatise of Feme Coverts* which discussed how a husband or wife’s felonies affected their respective spouse’s property rights rather than the effect marital status had on a woman’s criminal liability.\(^{23}\)

The only author of the legal tracts relating to women who mentioned the defence of coercion was Sarah Chapone in *The Hardships of the English Laws in Relation to Wives.*\(^{24}\) Here, Chapone took umbrage to the defence which she saw as a temptation to commit crime. As she argued:

> this Exemption of a Wife from Punishment, upon Consideration that she obeys her Husband, never was designed as a Privilege to Wives, and that it never can be such in its own Nature, but is a Snare and Temptation to them, to comply with the Command of an Husband, be the Instance ever so sinful, and to stand more in awe of a temporary Resentment from him, than of the eternal Resentment of Omnipotence itself.\(^{25}\)

Chapone demonstrated that the defence of marital coercion was connected to a wife’s duty of obedience; it was more an effort to secure male dominion over the household than any attempt to recognize a wife’s agency. This is an important distinction to make and represents one of the key components of coverture and a wife’s subordinate status within the household. However, it does little to explain how barristers learned the defence of marital coercion. Judges and barristers were familiar with all of these works discussing women and the law, but because these works do not

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\(^{23}\) *A Treatise of Feme Coverts: Or, the Lady’s Law* (London, 1732), 53-75.

\(^{24}\) *The Hardships of the English Laws* was originally published anonymously in 1735. However, we can now confidently attribute it to Sarah Chapone, a writer, proto-feminist, and educator. Chapone was the daughter of a clergyman and married Reverend John Chapone “with whom she had five children. . . . Sarah Chapone ran a school in Stanton and assisted George Ballard in his research on women writers.” *The Hardships of the English Laws* is different from the other legal works in that it presented a woman’s response to the laws of coverture rather than providing an overview of these same laws. Greenberg, “Introductory Note,” xli, xlii.

discuss the defence of marital coercion, we need to examine other legal treatises in order to determine how judges and barristers learned about this defence.

Unless they became judges, barristers remained preoccupied with other areas of the common law since the bulk of a barrister’s business was in the law’s civil rather than its criminal capacity. As a result, written treatises dedicated to the criminal law were relatively rare, although there were four important works concerning the criminal law. Although it was written last, Sir William Hawkins’ assertion that “All persons whatsoever are liable to be punish’d as Criminal Offenders, unless they can excuse themselves, either, 1. In respect of their want of Reason: Or, 2. In respect of their Subjection to the Power of others” was common to all the treatises. This commonality suggests that early modern people were aware that criminal liability depended on a number of factors.

Hawkins’s persons “not liable to be punished” included wives, and the criminal treatises all discussed when a wife was liable for her criminal actions. Authors of the four major criminal treatises all asserted that wives could be criminally culpable, and they were especially careful to separate larceny from further offences. The differences between these works lay less in what they were saying, than the specificity with which the authors discussed the exceptions to marital coercion. Earlier authors assumed that a husband’s mere command excused a wife’s criminal liability, while later authors began to specify that a husband’s presence was required in order for coercion to apply. In this sense, these authors attempted to increase married women’s criminal agency and responsibility by limiting the theoretical application of the defence of marital coercion. Despite these changes, the overwhelming impression from these tracts is one of

continuity. This suggests that these authors attempted to undermine the defence of marital coercion while still maintaining a wife’s subordinate legal position.

In his 1560 textbook on the criminal law, *Les plees del coron*, Sir William Staunford explained that if a wife did anything with her husband’s coercion it was not a felony, and if husband and wife committed a felony, it was to be taken as the husband’s action rather than the wife’s. Staunford was, however, careful to explain that a married woman could be principal or accessory if she committed a felony without the presence or knowledge of her husband. Sir Edward Coke echoed this nearly 100 years later in his *Third Institute* (1644), which remained one of the main texts for the criminal law well into the eighteenth century. Once again under the title of larceny, Coke explained that “A Feme covert committeth not Larceny if it be done by the coercion of her husband: But a Feme covert may commit Larceny, if she doth it without the coercion of her husband.”

The important note for both Coke and Staunford was coercion, and their explanations of a married woman’s lack of criminal liability carried an implicit assumption of a wife’s obedience. In doing so, they both asserted that much like her legal identity, a wife’s will was subsumed under her husband’s. There were, however, limits to this lack of will and liability; Staunford and Coke both saw a wife as criminally responsible when she acted without a husband’s coercion. This suggests that a wife who followed the patriarchal strictures could “benefit” from coverture and the corresponding demands of obedience, but those who did not faced the full force of the law, even in theory.

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30 Ibid.

Over the course of the period, authors of criminal treatises increasingly began to explain the defence of marital coercion in more specific terms and moved away from the assumed obedience characteristic of earlier texts. One can see this in both Hawkins’s *Pleas of the Crown* (1716-21) and Sir Matthew Hale’s *Historia Placitorum Coronae* (1736). The overall theory of coverture and coercion remained the same, but Hale and Hawkins became more specific about exceptions to the defence, and emphasised the need for a husband’s presence rather than simply assuming a wife’s obedience. Instead of discussing *femæ covert* and larceny solely under the heading of larceny, both authors devoted a section of their texts to people who could or could not be guilty of criminal offences.

In *Historia Placitorum Coronae*, Hale explained that “in many cases the command, or authority of the husband, either express or implied, doth not privilege the wife from capital punishment for capital offences; yet in some cases the indulgence of the law doth privilege her from capital punishment for such offences, as are in themselves of a capital nature.” These few situations included a wife committing larceny under her husband’s coercion, but Hale stressed the need for a husband’s presence in order for coercion to apply as a viable defence. Hale’s move away from assumed obedience is also present in his explanation as to why if a husband and wife committed a crime together, with the standard exceptions, the jury was to convict the husband but acquit the wife. Rather than emphasising obedience, Hale held that this difference was

32 Although Hale died in 1676, his work was not published until 1736. While he was certainly writing in the seventeenth-century mindset, and manuscripts of his work circulated before its publication, it did not gain the prominence it now enjoys and widespread influence until after its publication.
33 Hawkins’ *Pleas of the Crown* “was the first substantial exposition of English criminal law to be printed since Coke’s *Third Institute* “and it represented a distinct advance in terms of analysis and detail.” Hale’s *Historia placitorum coronae* was published posthumously in 1736 and was the standard English criminal law textbook for over a century, although it never entirely supplanted Hawkins since it was an earlier publication. J.H. Baker, “Hawkins, William (1681/2-1750),” *ODNB*, OUP, Sept 2004; online edn, Jan 2008 http://www.oxforddnb.com/view/article/12687, accessed 23 July 2010]; Alan Cromartie, “Hale, Sir Mathew (1609-1676),” *ODNB*, online edn., OUP, Sept 2004 [http://www.oxforddnb.com/view/article/11905, accessed 23 July 2010].
34 Hale, *Historia*, 44.
because a husband could plead benefit of clergy whereas his wife could not, a merciful action on the jury’s part.\textsuperscript{35}

One can also see this trend for increased specification in Hawkins’ explanation that a married woman could not be guilty of theft if her husband had coerced her to steal, but she could be “punishable as much as if she were Sole” if she committed theft “of her own Voluntary Act, or by the bare command of her Husband.”\textsuperscript{36} Hawkins still emphasised obedience and argued that the defence of marital coercion was due to the favour she enjoyed “in respect of that Power and Authority which her Husband has over her.”\textsuperscript{37} However, Hawkins’s increasing specification of the exemptions to the defence corresponds to larger trends within the eighteenth-century criminal law to tighten restrictions. Hawkins’s explanation that the “bare command of her Husband” was no longer sufficient to excuse a married woman from criminal liability suggests that obedience had its limits, which resulted in increased chances for a married woman’s criminal liability.

\textbf{Justices of the Peace and their Handbooks}

Judges were not the only group of legal officials. JPs also occupied an important place in early modern legal culture. These men were unpaid officials, drawn from the higher levels of county society, who maintained and enforced the law in the localities.\textsuperscript{38} To be a JP was an

\textsuperscript{35} Hale, \textit{Historia}, 44-46.
\textsuperscript{37} Ibid, 1.
\textsuperscript{38} As the judge and politician Sir Thomas Powys (1649-1719) explained in his commonplace book, JPs “by the General words of their [commissions] have jurisdiction to punish offences against any Stat[ute] where the publick peace &c is concerned otherwise it seems not unless the Jurisd[iction] is particularly given by the Stat[ute]...” HLS MS 4177, 196. According to Mark Kishlansky, “Justices of the peace became the mainstay of English local justice in the sixteenth century, and their importance grew steadily thereafter. They enforced over 300 statutes which regulated people, places and things. They heard all criminal cases, binding serious matters over to the sessions of assizes and handling petty crime themselves. Their largest responsibilities were administrative and regulatory law, where they oversaw everything from houses of correction to highway repairs. . . . The entire bench met together four times a year at quarter sessions, each lasting two or three days, during which they dispatched hundreds of cases with enviable efficacy. Between sessions, the justices heard complaints, and the warrant of any two of them was sufficient either to dismiss or to bind over.” Mark Kishlansky, \textit{A Monarchy Transformed: Britain, 1603-1714} (London: Penguin, 1996), 53.
honour, and one that most men took seriously.\textsuperscript{39} JPs formed the backbone of the early modern state and were the face people most often associated with the central government.\textsuperscript{40} They were responsible for the majority of local governance, and in the case of the criminal law took the depositions, bound people on recognizances, administered summary justice, and presided over the Quarter Sessions, where they heard misdemeanours and other non-felonious offences; some of them also sat on grand juries. They had a large influence on the criminal justice system and the lives of the married women this study examines. Therefore it is important to analyse how their legal texts represented coverture and the defence of marital coercion. JPs’ legal education varied. A number of them spent a few years at the Inns of Court training as barristers, and more than one JP became a judge later on in life.\textsuperscript{41} However, this was not the rule and there was no educational requirement to becoming a JP. Since these men required some knowledge of the law in order to properly enforce it, they turned to handbooks designed to help JPs understand their duties and responsibilities.

The preface to \textit{The Justice’s Case Law} (1731) explained that it would be useful to JPs “not only as a Direction to them how to proceed in the most extraordinary Case that shall occur for their Determination, by its single Perusal,” but also to provide them with references to other legal works, which “may be readily turned to and found, for the clearing up any Doubt or

\textsuperscript{39} G.C.F. Forster, \textit{The East Riding Justices of the Peace in the Seventeenth Century} (York: East Yorkshire Local History Society, 1973), 21; Kishlansky, \textit{Monarchy Transformed}, 54-55. For the oath of a JP see Folger MS VA 395, 51. Despite a JP being an unpaid official, there were penalties for failing to enforce the law within one’s counties or failure to uphold the statutes. In the case of the poor law for example, JPs who did not ensure that the poor law was administered properly faced a 20s fine for every default. HLS MS 4098, 14.


Difficulty which may possibly arise in a long Course of Proceedings.” The handbooks generally followed the abridgement model or contained forms for warrants and other legal documents that JPs had to be familiar with. The most important of these works included Sir Anthony Fitzherbert’s *L’office et auctoritee de justices de peace* (1517), William Lambarde’s *Eirenarcha* (1610), and Michael Dalton’s *The Countrey Justice* (1618) although they were not the only handbooks available.

JPs dealt with different aspects of the law than barristers, focusing largely on day-to-day problems. The authors of JP handbooks reflected this in their explanation of the practical consequences of coverture. They were largely concerned with when a husband was responsible for his wife in fiscal and criminal matters, and their discussions of these problems help set the legal framework within which various people viewed married women’s criminal behaviour. In their explanations the handbook authors reflected the unified household ideology of coverture. These explanations of a husband’s responsibility for his wife remained largely consistent throughout the period, without the tightening of restrictions present in the criminal treatises.

Part of coverture’s “trade-off” was a husband’s duty to support his wife in a manner fitting to her social station. The poor law reflected this in its requirement that a married woman

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42 The Justice’s Case Law (London, 1731), iii.
44 A husband’s duty to maintain his wife was central to the marriage agreement. As the marriage tract *The Government of a Wife* (1697) explained, “very often the Negligence of the Husband, makes a Woman behave her self saucily towards him, and impudently among others. I know not with what face a Man can check his Wife, if he never opens his Purse to provide for her.” Don Francisco Manuel, *The Government of a Wife: or Wholsom and Pleasant Advice for Married Men: In a Letter to a Friend*, transl. Captain John Stevens (London, 1697), 236.
who was living alone was to turn to her husband for support rather than relying on the parish.\(^{45}\)

In *Eirenarcha* (1599), Lambarde stated that “The Wife and Children (under seaven yeares of age) being vagrant, must goe and be placed with the Husband.” Similarly, in his 1714 *Modern Justice*, Giles Jacob explained that vagrant wives were “to be sent to and settled with the Husband, tho’ he be but an Inmate or Servant.”\(^{46}\) A husband’s responsibility to maintain his wife corresponded with the household model of society, where husband and wife were united in a mutual effort of survival.

The fiscal consequences of coverture created complications when it came to recognizances, which were legal agreements that required individuals to meet certain conditions, including keeping the peace or appearing at a specific place, and they had to pledge a set amount of money to ensure their conditions were carried out. Since a married woman had no money of her own, she would not lose anything if she forfeited a recognizance. In order to combat this lack of security, handbook authors were careful to explain that although a recognizance could bind a married woman, she needed sureties for a recognizance to be effective.\(^{47}\)

JPs could also bind husbands and wives together in a recognizance, but the handbook authors were careful to specify that these recognizances only bound the husband, and he was ultimately responsible for fulfilling its conditions. In *The Countrey Justice*, Dalton explained that


\(^{47}\) This also applied to infants under fourteen years old. According to Jennine Hurl-Eamon “A recognizance was generated when an alleged victim came before a JP with a complaint. If the JP believed the charge to be sufficiently plausible, he could have a recognizance drawn up. To do so, he would issue a summons for the accused to be brought before him, along with two sureties, each being required to pledge one half of the sum of the accused (usually £20 to the defendant’s £40), to guarantee his or her appearance at the next quarter sessions and (most often) his or her peaceful behaviour in the interim. In form, the recognizance was a small slip of paper bearing the JP’s signature, naming the sureties, announcing that the defendant must appear at the next sessions to answer the supposed victim (or a proxy), and offering a description of the alleged offense, to a maximum of a few lines.” Jennine Hurl-Eamon, “Domestic Violence Prosecuted: Women Binding over Their Husbands for Assault at Westminster Quarter Sessions, 1685-1720,” *Journal of Family History* 26:4 (2001), 436.
if a husband and wife had been bound to keep the peace, but only the husband appeared at the Quarter Sessions, “the recognisance is not forfeit; for if there shall be cause to continue this suretie of the peace against the husband and wife still, the husband shall be bound, and not the wife, and therefore the wives appearance seemeth not greatly materiall.”

Joseph Shaw echoed this principle in the eighteenth century, and explained that if “the Feme be bound with her Husband, ’tis void as to her.”

According to the JP handbooks, conditions in the recognizances applied to husband and wife, but the financial penalty was reserved for the husband. This was not only a reflection of a married woman’s lack of property, but also her lack of independent legal identity and a husband’s responsibility for the control of his wife and other subordinates.

Handbook authors were careful to specify when married women could act outside the confines of the household and coverture. One can see this in discussions of fines for recusants – Catholics who did not attend the state church – and to a limited extent, in criminal matters. As previously discussed, confessional identity was an individual matter, and the handbook authors emphasized that a husband was not responsible for his wife’s failure to conform to the state religion. As the anonymous author of The Complete Justice explained, a “Husband is not chargeable with the forfeiture of the wife upon the statute of 3.Jac.4 for not receiving the Sacrament.”

Similarly in 1683, Joseph Keble claimed that “None [was] to be charged with Penalty for Wives offence in not receiving the Sacrament during Marriage.”

Problems arose, however, when it came to a married woman paying the fine for recusancy, especially since coverture ensured she did not have personal property. Handbook

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51 Keble, Assistance to JPs, 193.
authors explained that married women convicted of recusancy were to be imprisoned until they conformed, which reflected the individual nature of confessional identity. However, if her husband paid a fine ranging from £10 to £20 a month, or one-third of his lands, she could be released from prison.\textsuperscript{52} Handbook authors were careful to emphasise that a husband was not required to pay this fine.

When it came to the criminal law, authors of JP handbooks often used a wife’s obedience to indicate some mitigating factors. These factors sprang from the unique legal position coverture created for married women. One can see this in discussions of married women as accessories – a person who assisted another in committing a crime even though he or she was not present at its occurrence. In 1661, Walter Yonge explained that a married woman could not be an “Accessary to her Husband; though she do both receive, and comfort him, and knows of the felony, and al also cover the fault that he hath done.”\textsuperscript{53} Dalton explained that this was because a wife “ought to relieve him [her husband], and not to discover his counsell.”\textsuperscript{54} A wife owed a particular degree of obedience to her husband, which was different than all other forms of obedience, which meant that authorities could not hold her accountable for her actions in that one specific case. By aiding her husband after a felony, a wife conformed to social standards of behaviour and obedience, and legal writers were not willing to transgress these strictures.

Handbook authors also discussed the defence of marital coercion, especially as it related to larceny. In \textit{Eirenarcha}, Lambarde explained that “if the husband and wife, doe commit a Larceny together, it shalbe imputed to the husband onely. Neither is shee chargeable if the


\textsuperscript{53} Walter Yonge, \textit{A vade mecum, or, table, containing the substances of such statutes; wherein any one or more justices of the peace are inabled to act}, (London, 1661), 108.

\textsuperscript{54} Dalton, \textit{Countrey Justice}, 252.
husband compell her to commit the Larceny alone.”55 In perhaps the best known JP handbook, 
The Countrey Justice (1618), Dalton explained that “If the husband and wife together doe steale 
goods, this shal be taken to be onely the act of the husband, and not to be felonie in the wife.”56 
Unlike the previously examined criminal treatises, the handbook authors’ descriptions of the 
defence of marital coercion remained consistent throughout the period, with no sense of 
tightened restrictions like those found in the criminal treatises. Thomas Pearce’s 1756 
explanation that “If a feme covert commits felony in company with her husband, it shall be 
presumed to be done by his command and coercion, and she shall be excused” sounds 
remarkably similar to Lambarde and Dalton’s descriptions of the defence in 1599 and 1618.57 
The key component to this assertion was the husband’s compulsion and the corresponding wifely 
duty of obedience, both of which were central to the household structure that coverture created. 

This idea of obedience was limited, and the handbook authors were careful to indicate 
that juries could hold married women accountable for a number of actions. As William Sheppard 
explained in 1650, “Women covert, Infants, and all such like other persons who may commit an 
offence against a law, (if they be not excepted in the Law) may bee indicted for that offence as 
well as others.”58 Murder, for example, contained no exemption for married women. The 
anonymous author of the Complete Justice explained in 1637, “to do murder by her husbands 
compulsion is felonie in both.”59 It was in situations such as these that Pearce’s description of 
crimes as “joint and several [separate]” is particularly fitting.60

55 Lambarde, Eirenarcha, 277. 
56 Dalton, Countrey Justice, 236. 
Complete Justice, 263, 282; Yonge, Vade Mecum, 85-86; Bond, Complete Guide, 139; Nelson, Office and Authority, 
240, 321; Jacob, Modern Justice, 158; Shaw, Practical Justice of the Peace, Volume I, 431, 450-451, 455; Justice’s 
Case Law, 120. 
58 Sheppard, Whole Office, 112. See also: Yonge, Vade Mecum, A4v; Bond, Complete Guide, 7. 
59 Complete Justice, 263. 
60 Pearce, Compleat Justice, 45.
Handbook authors also indicated that the defence of marital coercion did not extend to women who committed criminal offences without their husbands. Even in theory these women were responsible for their actions. Historians such as Peter King and Robert Shoemaker who argue that the defence of marital coercion excused married women from all criminal responsibility point to legal authors’ explanation of a husband and wife committing a crime together; however, they often forget to include the second half of the explanation. In his second sentence on the subject, Dalton argued, “But a woman covert, alone by her selfe (the husband not knowing thereof) may commit Larcenie, and may be either principall or accessarie.”61 Other handbook authors echoed this principle, including Pearce who explained in 1756: “it is otherwise where the wife steals goods alone without the knowledge of the husband, when it is felony in her.”62 This “but” is crucial to fully understanding the defence of marital coercion and married women’s criminal liability. The sloppy assumption that coverture and the defence of marital coercion excused married women as married women in the same way that it affected property rights is wrong. Even in theory, coverture’s application in criminal cases was much more limited and contextual than the historiography indicates.

JPs had a wide variety of responsibilities, and many of these required them to cope with the complicated legal position of married women. The previously examined handbooks helped them negotiate the requirements of the law while still accounting for the fact that coverture could not fully erase a married woman’s legal identity. Handbook authors treated married women differently depending on the context. They were more apt to treat married women as part of a common household, subsumed under their husbands’ identities when the issue concerned either

61 Dalton, Countrey Justice, 237.
62 Pearce, Complete Justice, 467. See also: Complete Justice, 282; Yonge, Vade Mecum, 85-86; Bond, Complete Guide, 139; Shaw, Practical Justice of the Peace, Volume I, 450-45; The Justice’s Case Law, 120.
the household or a wife’s obedience. In this sense one can see the JP handbooks as attempting to uphold the household model of society.

**Understanding the Law**

In his Preface to Rolle’s *Abridgement* (1668), Sir Matthew Hale wrote that “The Common-Laws of England are not the product of the wisdom of some one man, or Society of men in any one Age; but of Wisdom, Counsell, Experience and Observation of many Ages of wise and observing men.” Hale’s emphasis on the men of many ages draws attention to the role that legal authorities played in shaping and upholding the law. It is easy to discuss the law as an entity unto itself, but one must be careful to note that different people interpreted and applied the law in different contexts, and it was not a uniform force that meant the same thing in 1640 as it did in 1760. Moreover, the law as a force was only as effective as the people who enforced it. It is therefore important to examine how people understood legal texts, which reveals larger understandings of the legal frameworks which structured married women’s criminal experiences.

It is difficult to fully determine how people interpreted the legal texts although abridgements, judges’ and JPs’ commonplace books provide particular insight into what their authors perceived as the important points from the legal treatises. Their legal notes indicate how they reconciled the law as written with the law as practised. Abridgements, commonplace books, and legal notes are all useful sources, but they are not without their problems. The analysis of them is largely speculative. Moreover, this is a narrow source base; a limited number of commonplace books survive, and this study shrinks the source base further by focusing on the commonplace books of judges and JPs. While these men were certainly influential, they were not necessarily representative of all members of their society. However, an analysis of what these

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men wrote about the law can still reveal how people understood the law as written, which played an important role in determining the legal frameworks which shaped people’s perceptions of married women within the early modern criminal justice system.

As previously stated, early modern legal education consisted largely of the individualized study of legal texts. This was a difficult process, and students relied on guidelines laid out in Hale’s preface to Rolle’s *Abridgement* (1688) and Giles Jacob’s *The Student’s Companion* (1734) in order to tackle the mass of legal literature. A fundamental part of this education was the compilation of a commonplace book, in which students synthesized the information from their studies into an alphabetical notebook similar to those found in abridgements. Many abridgements, in fact, started as commonplace books although they were polished for publication, which is why they are included in this discussion. The commonplace book enabled the student “at one view to see the substance of whatsoever he hath read concerning any one Subject, without turning to every Book” which allowed him to quickly consult the necessary authorities concerning a subject when he needed to do so, whether during his legal studies or in his future practice.

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64 Hale recommended that the student spend two years reading Littleton, Perkins, St. Germain’s *Doctor and Student*, Sir Anthony Fitzherbert’s *Natura Brevium*, and Coke’s *Commentaries and Reports*, which would prepare him for attendance at the courts of Westminster before he started tackling the Year Books and Law Reports. Jacob expanded on this course of study, recommending the student read in the following order: *Terms of the Law, Doctor and Student*, his own *The Student’s Companion*, Littleton’s *Tenures*, Coke upon Littleton, and the Year-Books and Reports. Jacob then instructed students to read the Abridgements, with particular attention to Nelson’s Abridgement. Hale, “Preface,” viii; Jacob Giles, *The Student’s Companion: or, the reasons of the laws of England* (London, 1725), iv-v. See also: Lemmings, *Professors of Law*, 136-7.

65 Abridgements were similar to a commonplace book in that they synthesized legal texts under alphabetical titles for future reference, but they were “a more systematic and comprehensive product of the same method, perhaps in some cases intended for circulation.” Early authors of abridgements worked through the year-books and inserted a précis under each appropriate title of the major propositions of the law and practice.” This “relieved the less industrious from having to make their own, and made it unnecessary for law students to read all the year-books through.” Abridgements continued to be compiled and printed throughout the period, with various authors adding new findings from the Reports and cases. Modern scholars have characterized the abridgements as parasitic, and somewhat responsible for holding back the development of treatises, but abridgements formed an important element of legal knowledge and literature. Baker, *Legal History*, 184-185; A.W.B. Simpson, *Legal Theory and Legal History: Essays on the Common Law* (London and Ronceverte: The Hambledon Press, 1987), 274-282.

Judges’ and JPs’ discussions of coverture and the defence of marital coercion within the abridgements and their commonplace books followed similar patterns to those found in the legal treatises: an emphasis on the property law, and a tightened application of the defence of marital coercion. This congruity is not surprising considering these were summaries of other authors’ works rather than original ideas; they were meant as guides to, rather than an analysis, of the common law. Nevertheless, an examination of these works is important since what judges and JPs wrote about coverture and the defence of marital coercion in their commonplace books indicates what they believed were the important lessons to take from the legal treatises, Law Reports, and Year Books. This practice further demonstrates the contours of the legal framework within which married women experienced the criminal justice system.

Authors of commonplace books discussed married women under the topic “baron and feme” and their discussion was largely concerned with coverture’s relation to property rights. Sir Thomas Parker (c.1695-1784), for example, devoted two pages of his commonplace book to baron and feme. Within these two pages, Parker explained how coverture affected married women and property but did not mention the defence of marital coercion. In his commonplace book, Sir Thomas Powys (1649-1719) discussed married women in the context of the poor law rather than felonies, and focused on how to maintain the poor and keep parish rates low. This is

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67 HLS MS 4091, 51-52. Thomas Parker was a nephew of Thomas Parker, first earl of Macclesfield. He was admitted to the Inner Temple in 1718 and called to the bar in 1724. He became a serjeant at the last general call of serjeants in June 1736, immediately attaining the rank of king’s serjeant and only two years later was appointed baron of the exchequer. He was transferred to common pleas in 1740 and returned to the exchequer as chief baron in 1742 along with a knighthood. Parker benefited immensely from the patronage of Lord Hardwicke, which gave him an unusually prominent position for a chief baron. He was an industrious judge, who remained chief baron for thirty years, retiring on the grounds of old age in 1772, and enjoying an annual pension of £2400 until his death in December 1784. Baker, “Parker, Sir Thomas (c.1695-1784).

68 HLS MS 4177, 247-291. Sir Thomas Powys was born in 1649 to a strong legal family. He entered Lincoln’s Inn in 1666 and was called to the bar in 1673. Although he served under James II, being appointed solicitor-general in 1686 and attorney-general in 1687, he was created serjeant-at-law in 1702, where he was queen’s serjeant between 1702 and 1713. He became a justice of the Queen’s Bench in June 1713, which he held briefly until he was removed in October 1714 on the advice of Lord Chancellor Cowper. This was largely due to his zealous role in
not surprising since most authors of the commonplaces were more concerned with property matters than with coverture’s place in the criminal law.

Discussions of felonies, however, were not totally absent from these works. In his seventeenth-century commonplace book Henry Powle (bap.1630, d.1692) explained that:

A woman was arraigned for stealing bread to ye value of 2d, who said she did it by comand of her husband; & the Justices for pitie would not take her confession, but tooke ye inquest who found she did it by the coertion of her husband, aft her will & so she was discharged . . . & thene it was sayd, that command of the husband without any other coertions shall make no felony.69

This, along with his explanation that “The Husband shall never be charged for ye Act, or default of his wife, but when he is made party to ye Act & Judgmet given ag[ains]t him & his wife,” correspond to previous discussions of how authors of legal tracts presented coverture.70

The first edition of Giles Jacob’s The Student’s Companion (1725) was the first of the eight abridgements examined in this study which mentioned an exemption of married women in cases of felony. Jacob explained that “If a Married Woman commit Felony in Company with her Husband, she shall be Excused; but if the Wife alone steal Goods, &c without the Knowledge of the Husband, it is Felony in her.” This was because the law presumed that if a woman committed a felony with her husband, it was done “by his Command and Coercion, so as to Excuse her.”71

In A New Abridgement of the Law (1736), Matthew Bacon echoed this sentiment, explaining that:

A Feme Covert is so much favoured in Respect of that Power and Authority which her Husband has over her, that she shall not suffer any Punishment in committing a bare Theft in Company with or by Coercion of her Husband. But if she commit a Theft of her own voluntary Act, or by the bare Command of her Husband, or be Guilty of Treason, Murder or Robbery, in Company with, or by Coercion of her Husband, she is punishable

69 Beinecke MS 75, 8v.
70 Beinecke MS 75, 326.
71 Giles, Student’s Companion (1725), 59-60; (1734) 80-81.
as much as if she were Sole... A Feme Covert generally shall answer as much as if she were Sole, for any Offence not Capital against the Common Law or Statute; and if it be of such a Nature, that it may be committed by her alone, without the Concurrence of the Husband, she may be punished for it without the Husband, by Way of Indictment, which being a Proceeding grounded merely on the Breach of the Law, the Husband shall not be included in it for any Offence to which he is no way privy.  

Bacon’s discussion of the defence of marital coercion was more specific than Jacob’s which reflects the tightened the restrictions on the applicability of the defence of marital coercion within the later criminal treatises.

JPs also composed commonplace books, in which they attempted to outline the legal frameworks of coverture which informed their treatment of married women. These descriptions largely followed that found in the JP handbooks. An anonymous author of a seventeenth-century commonplace explained that “If the wife do steale goods by the commandmt of the husband, or together with the husband, no felony in the wife but to commit murder by his commdt is felony & murder. But for to steale by herselffe is felony & the husband consenting makes him a felon.” Similarly in his 1671 commonplace book, William Coryston discussed how baron and feme could be both one person and two separate persons. He explained how a verdict which was passed against a feme sole before she took a husband was to remain against her rather than her husband. Yet at the same time, Coryston also wrote that if a baron and feme were arrested for the wife’s debt, it was up to the husband to “putt in bayle for both & ye wife shall not be deteyned till ye husband put in bayle for himselfe.”

The commonplace books’ and abridgements’ repetition of what was written in the legal treatises and JP handbooks demonstrates the influence the legal treatises and handbooks had on both legal authorities and in the establishment of legal frameworks. Contemporaries’ perceptions

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73 Folger MS Add. 731, 32.
74 Beinecke Osborn MS fb. 110, 29-30.
of married women in the early modern criminal justice system were shaped by these legal frameworks and the marital frameworks examined in the previous chapter. Coverture was a legal doctrine based on the biblical injunction of husband and wife as one flesh. In explaining the consequences of these beliefs, legal commentators and authorities demonstrated how coverture was ultimately a flexible doctrine that depended on individual circumstances. However, the defining characteristic of household unity remained.

In 1696, Lord Chancellor Somers asserted that legal authorities “must judge of Property according to the Rules which the Law has fixed, and can make no new Ones, nor invent new Remedies, however Compassionate the Case may appear, or however Popular it may seem to attempt it.”75 The legal tracts, JP handbooks, abridgments and commonplace books set out many of these rules, but common law was based largely on practice, and examining trials and legal decisions allows us to see how barristers, judges, and JPs applied and understood coverture within the frameworks set out in the legal tracts. Unfortunately there are no extant records for all the trials, and none at all for criminal matters, but a number of barristers’ judges’ and JPs’ notebooks survive, which contain the notes they took during trials they attended or over which they presided. These notes not only provided them with future references, particularly important in a legal system based on precedent and discretion, but they also demonstrate how legal authorities and juries interpreted coverture.

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75BL Add MS 36116, 22. Baron Somers was a whig politician and lawyer who was Lord Chancellor under William III from 1697 until his dismissal in 1700. Despite being out of office, he remained active in the political battle, even after Anne’s accession, which did nothing to further his cause. Somers was a significant figure of the period, with whig historians heaping him with praise, made all the more convincing since modern historians “have concurred in assessments of his abilities.” Stuart Handley, “Somers, John, Baron Somers (1651-1716),” ODNB, OUP, 2004; online edn., May 2008 [http://www.oxforddnb.com/view/article/26002, accessed 16 Aug 2010].
Not surprisingly, these legal notes were largely concerned with property cases, although they were not limited solely to these. Throughout all the cases, however, the principle of marital unity remained a large concern. This demonstrates the importance contemporaries placed on ideals of a unified household. Take for example the 1694 case of Mr. William Waltham v. Robert Sparks (Banco Regis Michaelmas 1694) in Sir Richard Heath’s (bap. 1637, d.1702) notebook. This case concerned who was responsible for the maintenance of Joseph Golden’s wife and son. Joseph was able to maintain himself, but unable to support his wife Joan and son John, and an order was made to relieve Joan and John without Joseph. In his explanation of the case, Heath noted that:

Littleton saith ye husband & wife are one person in land – if a conveyance be made to husband & wife there are noe moyeties betwixt ym & all reall estate betwixt ym cannot be divided soe canot you divide their maintenance but ye maintenance of ye husband will draw after it ye maintenance of ye wife & children. . . . by ye statute for ye poore I suppose a poore man is to be maintained & relieved by ye parish now suppose ye poore man take a wife & had children by ye Law ye parish shall maintaine ye wife & children as well as ye poor man. And it is not soe only of a parochiall maintenance, but of a personall maintenance.

The parish was responsible for maintaining the husband and his family as a household rather than as individuals. In Easter 1695, the court ruled that Joan and John were part of Joseph’s family and the parish was therefore responsible for their maintenance as well as Joseph’s.

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76 For some interesting discussions of coverture and its relation to property rights in these notebooks see: Tomlinson v. Deighton in notes of Sir Thomas Parker (1667-1732) HLS MS 1011, 122-152; Sir Richard Heath’s (bap. 1637, d.1702) legal notes in the 1698 case of Christopher and William Baron, administrators of George Baron v. Gervase Berkley, Folger MS Vb 253, 72-76.
77 Sir Richard Heath (bap.1637, d.1702), was a judge who was baptized in Surrey in October 1637. He entered the Inner Temple in 1652 and was called to the bar in 1659. He was appointed to the bench of Inner Temple in 1677, became a serjeant-at-law in 1684, and baron of exchequer along with a knighthood in 1686. Heath seemed to support James II’s policies, being in favour of the king’s dispensing power and was among the judges who found the seven bishops guilty of factious libel. His patent was revoked in November 1688 and he was excepted from the 1690 Act of Indemnity due to his support of the dispensing power. He then retired to his manor of Hatchlands in East Clandon, Surrey where he died in 1702. Stuart Handley, “Heath, Sir Richard (bap. 1637, d.1702),” ODNB, OUP, 2004; online edn, Jan 2008 [http://www.oxforddnb.com/view/article/12841, accessed 12 Sept 2010].
78 Folger MS Vb 253, 42v-43.
79 Ibid, 42v.
80 Ibid, 43v.
One can also see the idea of the unified household in a notebook containing \textit{nisi prius} cases from 1732-1765.\textsuperscript{81} In 1732, Chief Justice Eyre heard Margetson & wife v. Pearce at the Guildhall, an action for words which Pearce spoke against Margetson’s wife. Margetson argued that Pearce intended to “hurt ye good name of ye wife & to bring her into an ill opinion of her neighbours . . . [and] by reason of speaking ye words \textit{her neighbours} did absent from her Company & refused to have any dealings with her.” Since Margetson and his wife kept a public house, the words had the additional effect of damaging the wife’s reputation so much that “several persons refused to goe to the house.”\textsuperscript{82} As a result, Eyre awarded Margetson £30 in damages.\textsuperscript{83} This case did not concern coverture per se, but it demonstrates that husband and wife had a common interest, and actions which harmed one could harm both. As previously discussed, it was this common interest of a unified household which ultimately underlay coverture and its corresponding system of gender relations.

In a 1734 case, Chief Justice Pratt emphasised the unified nature of a household when he held that a wife had a say in a household’s economy and her actions could bind the entire household. Drawing on an earlier case, Pratt “allowed the wife’s declarations that she agreed to pay 4s a week for nursing a child, was good evidence to charge the husband, this being a matter usually transacted by the Women.”\textsuperscript{84} These cases illustrate how marital unity could work for the benefit of the entire household. Judges, in presiding over these cases, and barristers, in representing both sides, were all too aware of the principles of unity necessary for a good marriage and a corresponding harmonious household. Even when property was not at stake,

\textsuperscript{81} When travelling on assizes, the two judges assigned to each circuit divided themselves to the two sides, the criminal trials and the \textit{nisi prius} sides. \textit{Nisi prius} trials concerned matters which would have been tried at Westminster, but in an effort to limit the costs of such trials, were heard before in the counties in which they happened. For an explanation of the evolution of \textit{nisi prius} see Baker, \textit{Introduction to English Legal History}, 20-22.
\textsuperscript{82} HLS MS 6023, 72-73.
\textsuperscript{83} Ibid, 73. See also: Perkins v. Cooper (1695) Folger MS Vb 253, 45v.
\textsuperscript{84} HLS MS 6023, 180-181.
coverture’s unified household remained an important consideration which informed legal authorities’ ideas and treatment of married men and women.

There are four extant works which deal with coverture and the criminal law: the notebooks of Sir Thomas Denison (1699-1765), the notebooks of Sir William Chapple (1676/7-1745), William Lambarde’s *Ephemeris of the certifiable causes of the commision of the peace from June 1580 (22 Eliz) till September 1588 (30 Eliz)*, and the eighteenth-century notebook of Henry Norris, a justice of Middlesex. Lambarde and Norris’s notebooks concern their work as JPs, whereas Denison and Chapple’s notebooks contain notes they took while riding the circuit and presiding at the Old Bailey. Despite these differences, all four contain similar ideas about married women, which demonstrate the extent to which JPs, judges, and barristers were part of a larger legal community despite personal, political, geographic, and socioeconomic differences.

Neither Lambarde, nor Norris, nor Dennison, nor Chapple readily mentioned the defence of marital coercion, although coverture and its consequences were still present in their notebooks. Their discussions of married women were similar to much of what was found in the legal treatises, and contained a great deal of emphasis on the idea of a unified household.

Lambarde’s *Ephemeris* was a memorandum book in which he wrote notes concerning his work as a JP. While it predates the period under consideration, many of the entries within *Ephemeris* reflect what Lambarde later wrote in his influential JP handbook *Eirenarcha*. His

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85 As Ruth Paley notes, justice’s notebooks are more ephemeral than other legal records such as petty sessions books, which means that there are very few extant notebooks, and many of them are fragmentary. Ruth Paley, “Introduction,” in *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book*, ed. Ruth Paley (London: London Record Society, 1991), xvi.


87 William Lambarde (1536-1601) was an antiquary and lawyer, who after his call to the bar in 1567 devoted twenty years of his life to county administration, his estates, and scholarship. He was appointed a JP in 1579 and his *Ephemeris* was a memorandum book on the first eight years of this service. As J.D. Alsop explains, Lambarde’s “desire to study the historical development of every office he held led to the highly praised *Eirenarcha, or, The
April 1586 entry about a recognizance which bound Henry Jacfo a fisherman “£20 for himselfe, and Joane his wife . . . to kepe the peace against Rich Wyseden of Gilligha butcher and to appeare &c” corresponds with the assertion in *Eirenarcha* that married women had to find sureties in recognizances. Lambarde’s discussion of women largely concerned the consequences of bastardy, but he recorded five entries concerning married women and crime. Two of these concerned recognizances, but in the remaining three Lambarde discussed married women and crime. The defence of marital coercion, however, was not present in any of these entries, suggesting that Lambarde either felt it was not noteworthy or he did not apply it in these situations.

In February 1583, Lambarde explained how he and Sir Christopher Alleyn had “examined sundrye persons at Semock concerning the suspition of wilful poysoning of Willm Brightrede by Thom Heyward and Parnel his nowe wife, then wife of the said Willm.” There must have been enough evidence in this case because Lambarde wrote that he along with Allen and Sir Thomas Lemard “committed the said Heyward and Parnel to ye gaole” on the same day. Lambarde recorded sending two other married women to gaol in his *Ephemeris*, including Elizabeth the wife of Robert Cole as an accessory to Thomas Croudal in June 1587 and Mary the wife of Thomas Alphrey for “misprision of Treason, and procuring the burglarie of Thom Smythe.” These entries were brief, and provided little information besides the crime and Lambarde’s committal of the women to gaol. However, they demonstrate that Lambarde had little difficulty assigning criminal responsibility to married women. Moreover, his failure to mention the defence

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*Offices of the Justices of Peace* (1582). Reprinted twelve times before 1620, this treatise long remained the standard authority.” Also, “Lambarde, William.”

88 Folger MS X.d. 249, 10. Married women could also request to bind people over to good behaviour, and Lambarde notes that in April 1585 he bound Richard Browne of Stroode tipplar and Mildred his wife to the peace at the suit of Alice the wife of Thomas Mun of Stroode tipplar. Folger MS X.d. 249, 8.

89 Ibid, 5.

90 Ibid, 5.

91 Ibid, 10v, 11.
of marital coercion suggests that he did not see it as noteworthy, which suggests that historians have applied the defence in more situations than did the legal authorities of the period.

Henry Norris was a Middlesex justice, and his notebook contains less discussion of married women’s crime than it does marital relations and the poor law. The only criminal cases present within Norris’ notebook were assaults, in which married women were both victims and perpetrators. John Ditto’s 1738 complaint against “Abraham LeSoeur & his Wife Mary LeSoeur for assaulting & beating him last Thursday in their house in Brick Lane” demonstrates that people had little difficulty holding husband and wife accountable for their actions. Norris presumably shared this belief since he granted a warrant against the LeSoeurs.92 Norris did not mention the defence of marital coercion in his notebook. This is not surprising since the defence was not supposed to excuse assault, but Norris did not indicate that he saw these women as any less liable than their single or male counterparts.

Since barristers and judges largely concerned themselves with non-criminal cases, Denison and Chapple’s notebooks, which cover the period from 1737 to 1746, are notable in their discussion of criminal trials.93 Between the two of them, Denison and Chapple dealt with forty-eight married women accused of felonies, seven of whom were accused with their husbands. Within the seven cases involving a husband and wife accused together, all the wives

93 Sir William Chapple (1676/7-1745) was a staunch Whig who sat in parliament from 1723-1737. He was trained at the Middle Temple and was called to the bar in 1709. Although he practiced at the bar for some time, his chances for promotion to the judicial bench did not occur until after he had proven himself in parliament. He was knighted in 1729, and in 1737 he became a puisne Justice of the King’s Bench, where he remained until his death in 1745. Sir Thomas Denison (1699-1765) had difficulty gaining a foothold in the law, entering the Inner Temple in 1719, transferring to Gray’s Inn in 1721 and Lincoln’s Inn in 1727, and being called to the bar in 1733. Nevertheless he proved himself worthy and by 1740 was the leader of the King’s Bench bar. He became a Justice of the King’s Bench in 1742 and was knighted in 1745 at the occasion of the Judge’s loyal address. Denison resigned his post in February 1765 due to ill health and died in September of the same year. A.A. Hanham, “Chapple, Sir William (1676/7-1745),” *ODNB*, OUP, Sept 2004; online edn, Jan 2008 [http://www.oxforddnb.com/view/article/5134, accessed 8 July 2010]; J.H. Baker, “Denison, Sir Thomas (1699-1765),” *ODNB*, OUP, Sept 2004; online edn, Jan 2008 [http://www.oxforddnb.com/view/article/64032, accessed 27 July 2010].
were acquitted, while two husbands received guilty verdicts, three received partial verdicts, one was acquitted, and the other fled before the trial.\textsuperscript{94} Partial verdicts refer to cases where a jury lessened the offence or undervalued the goods stolen. This practice transformed the crimes from felonies into misdemeanours, which meant that they were not subject to the death penalty. The cases in Denison and Chapple’s notebooks correspond with the rule espoused in legal treatises that when a husband and wife commit a felony together, juries were to assign the blame to the husband rather than the wife. However, neither Denison nor Chapple specifically mentioned the defence of marital coercion, which suggests that juries may have assumed its applicability in these cases but neither judge felt it worthwhile to record, or perhaps the results of these cases depended less on ideas of coercion than the particularities of the specific case. Regardless of the reasons, it is interesting to note that neither felt the defence of marital coercion important enough to merit mention in their notebooks.

In his notebook from 1743/4 Denison summarized the case of John Paddock and Mary his wife who were charged with stealing three live turkeys from John Fletcher at the Worcester assizes. Fletcher claimed that he found the turkeys at Mr. Canbden’s in Birmingham, whose “servant told him he had bought 3 Turkeys of a woman.” John and Mary both denied that they had confessed freely and the jury found John guilty to 10d and acquitted Mary. Unfortunately this case did not indicate why the jury reached its verdict.\textsuperscript{95} In the same notebook, Denison discussed the trial of John Moor and Mary his wife for burglary at the Somerset assizes. The prosecutor John Mortimer attributed the burglary to both John and Mary, but Henry Spencer

\textsuperscript{94} HLS MS 6002, Number 19: Bedford March 1741 John Mason and Ann his wife; Number 22: Coventry 21\textsuperscript{st} August, 1742 John Citron & Ann his wife; HLS MS 6000, Number 34: Devon: Elizabeth wife of William Huckstable, James Coleman and Elizabeth his wife; Number 36: Somersetshire, William Blackmoore & Susanna his wife; Number 39: Worcester, John Paddock & Mary his wife; Number 41: Somersetshire, John Moor & Mary ux.

\textsuperscript{95} HLS MS 6000 Number 39, Worcester, John Paddock and Mary his wife. See also: HLS MS 6000 Number 34, Devon, James Coleman and Elizabeth his wife; HLS MS 6000 Number 36, Somersetshire, William Blackmoore & Susanna his wife; HLS MS 6002, Number 19, Bedford March 1741, John Mason and Ann his wife.
testified that a man he believed to be the prisoner John Moor “offer’d [him] a blue enameled ring & a mourning ring to sale . . . a gold ring & a brass ring for gold.” It appeared that John was the only one who attempted to pawn the rings, which likely explains why the jury convicted him and acquitted Mary.\textsuperscript{96}

The only example of a husband’s presence having any specified implications for his wife’s culpability was the case of Elizabeth the wife of William Huckstable for stealing two sheep from Nicholas Gores at the Devon assizes that Denison recorded in his undated thirty-fourth notebook. Denison noted that the jury acquitted Elizabeth because she was “Indicted with her husband who is fled.”\textsuperscript{97} Denison did not clarify whether the jury acquitted Elizabeth because of the defence of marital coercion or because of the problems in the indictment, but it is interesting to note that he explained why the jury acquitted Elizabeth.

The majority of married women in Denison and Chapple’s notebooks were accused without their husbands. Neither justice mentioned the defence of marital coercion in these entries, nor did there seem to be a sense of limited liability for the accused wives. Of the forty-one cases of married women accused without their husbands in these notebooks, juries acquitted twenty (48.8 percent), convicted eleven (26.8 percent), and delivered partial verdicts in eight (19.5 percent). The remaining two cases did not record the verdicts. It is clear that the defence of marital coercion was not a factor in these cases.

In his notes from the March 1741 Suffolk assizes, Chapple explained how Mary the wife of George Stubbing had been accused of murdering her nine-month old male infant by throwing it into the Lark River. The jury acquitted Mary, perhaps because of her diminished mental capacity. One can see this in Chapple’s note concerning John Brightland’s testimony, wherein he

\textsuperscript{96} HLS MS 6000 Number 39, Somersetshire, John Moor and Mary ux. See also: HLS MS 6002, Number 22, Coventry, 21\textsuperscript{st} August 1742, John Citron and Ann his wife.

\textsuperscript{97} HLS MS 6000, Number 34, Elizabeth the wife of William Huckstable.
explained that Stubbing “looks like a weak woman & has been out of her head at times a great many yeares.” At the Old Bailey in July 1745, John Woodroffe accused Jane the wife of Thomas Scott of stealing ten pieces of foreign gold from him. Woodroffe, a sailor, testified that he missed his money after Jane and Elizabeth Butcher came on shore. The jury convicted Jane because she had paid a butcher, distiller, and pawnbroker the coins.

These cases ultimately reveal the multiplicity of married women’s experiences with the criminal law. Judges were acutely aware that married women could be criminals, and had little difficulty holding them liable for their criminal behaviour. Denison and Chapple did not decide these women’s fates – that was the jury’s responsibility – but they still played a role in the criminal justice system. Their notebooks demonstrate what they saw as important within the trials over which they presided. The trials of husband and wives accused together followed the pattern laid out in the legal treatises. Yet, by not mentioning the defence of marital coercion, Chapple and Denison’s notebooks suggest that it may not have been the only reason for acquittal; criminal culpability depended on more than a woman’s marital status. This ultimately suggests that while legal treatises formed the basis of authorities’ understandings of married women and the law, practice demonstrated the limits to coverture, which was why legal authorities saw it as an adaptable doctrine, and looked for and utilised exceptions to the rules of coverture both in their professional and personal lives.

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The common law’s basis in precedent means that it is not codified. In order to learn the law, men and women turned to legal treatises such as Coke’s *Institutes* and JP handbooks such as

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99 HLS MS 6000, Number 39, Old Bailey July 1745, Jane Scott wife of Thomas.
Dalton’s *The Countrey Justice*. These works, which formed a central component of legal education, set out the legal guidelines and general outline of the system. The legal guidelines combined with the marital unity outlined in the previous chapter created the framework of coverture within which early modern men and women understood married women accused of crime.

There were only a small number of legal works which dealt with the criminal law. Within these works, authors explained that a married woman’s duty of obedience to her husband excused some of her criminal actions. Over the course of the period, however, authors increasingly tightened the restrictions on the defence, and began to emphasize the need for a husband’s presence in order for the defence to apply rather than simply assuming obedience. While JP handbooks contained similar characterizations of married women’s limited liability, authors’ discussions of coverture and the defence of marital coercion remained largely consistent. Above all, both criminal treatises and JP handbooks saw the defence of marital coercion as limited, and did not assume that all married women could escape criminal liability. Married women were not entirely free from coverture, even in the criminal law. However, it was an adaptable doctrine that meant different things and could be applied differently depending on the context.

For the most part, legal authorities followed the principles set out in the treatises and handbooks in their personal writings. Judges’ discussions of coverture and the defence of marital coercion within their commonplace books did not differ from that found in the criminal treatises. This suggests that the printed texts ultimately set the legal framework within which married women experienced the criminal law. This framework assumed a married woman’s limited liability in certain circumstances, although this did not translate into a married woman’s
complete immunity before the criminal law. The defence of marital coercion depended on assumptions of obedience and a husband’s presence. Both of these factors were part of larger understandings of the unified household. As will be demonstrated, it was ideas about the household rather than simply the defence of marital coercion which ultimately underlay the perceptions, treatment, and experiences of married women in the early modern criminal justice system.

In a criminal system without a professional police force that was reliant on individual prosecution, the law needed popular participation in order to function. Judges and JPs may have formed an important legal community, but they were not the only people responsible for assigning criminal responsibility. Ordinary people as both prosecutors and members of a jury ultimately determined the fate of married women in the criminal courts. These people worked within the frameworks established in both the marital and legal tracts examined in this section. It is to these people, how they understood the law, what they saw as criminal behaviour, and how they assigned criminal responsibility that we now turn.

PART II: EXPERIENCES
CHAPTER 3: MARRIED WOMEN IN THE NORTHERN ASSIZE DEPOSITIONS

On 8th March 1732, Mary the wife of Henry Wood of Aberforth went into Elianor Ashbrooke’s shop in York where she attempted to pay for some cloth with three coins. Ashbrooke did not trust the coins and took one of them to Mr Buckle, a goldsmith, who claimed that it was not “good” coin. Ashbrooke then returned to Mary and took her before a JP, where Mary was charged “for falsly & deceitfully uttering & paying three pieces of money traiterously made of copper, pewter, brass & other mixt mettals.” Upon her examination, Mary claimed that her husband had come home with some coins although she did not know how he came by them, “but he being a severe man to her she was forced in terror of him to utter those pieces.” Since this information came from the pre-trial depositions, which do not contain verdicts, the results of the case are not clear. However, a reading of the deposition indicates that Mary committed the felony under the coercion of her husband, and therefore fit into William Hawkins’ category of those people who were not liable for their criminal actions because they were subject to the power of others.

Mary Wood was not the only woman present within the criminal records, nor was her case the norm. Consider for example the 1728 case of James and Elizabeth Grave. Mary Todd charged James and his wife Elizabeth with stealing £2-10s in money, three aprons, two handkerchiefs, and two caps from her house. Upon their examination before William Ellis, a JP for the West Riding of Yorkshire, James and Elizabeth confessed that “they stole [15s] of the money they [were] charged withall and the rest of the goods which were found in their possession.” This case contains no reference to James’ coercion of Elizabeth or even an

1 TNA PRO ASSI 45/19/2/45,47.
2 TNA PRO ASSI 45/19/2/46.
4 TNA PRO ASSI 45/18/5/32. See also: “Examination of Henry Carlmatt and Ann his wife, 4th November 1737,” TNA PRO ASSI 45/21/1/15.
indication of Elizabeth’s lessened criminal liability, and the joint accusation and confession of a husband and wife directly contradicts the accepted legal doctrine of the period.

Using these cases as a starting point, this chapter attempts to determine how ordinary people saw married women in relation to criminal behaviour and law. According to Peter King, the most important decision makers in the criminal justice system were the victims of crime. These men and women, not the state, determined who would be brought to justice. For this reason, proseuctor here refers to victims of crime rather than the Crown. The proper functioning of the criminal law depended primarily on a victim’s decision to prosecute, and an analysis of these choices reveals a great deal about people’s ideas of crime, offenders, and society. This decision started when a victim of crime brought an offender before a magistrate and laid information against him or her. Even after this process, it remained at the victim’s discretion to bring the trial forward, and a number of cases never made it past the information stage. State prosecutions were rare and the prevalence of private prosecution elevates our capacity to offer a social analysis, rather than a narrow legal analysis of the cases. The participatory nature of the early modern criminal justice means that it is important to examine how the victims and witnesses of crime perceived the married women they accused of crimes.

The pre-trial depositions provide an excellent source for determining what victims and witnesses thought about the married women they suspected of crimes. According to Malcolm Gaskill, depositions and pre-trial proceedings “have more to say about popular values than many

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other areas of life because they involved the community as much as the suspect.”

As James Sharpe explains, a deposition was essentially a magistrate’s verbatim recording of the evidence brought before him. Because of this, depositions are one of the few sources which provide qualitative evidence about crime, revealing insights into how people viewed crime during the early stages of prosecution. In other words, depositions are the most discursive source we have on many topics. However, it is important to note that these are pre-trial depositions and while they contain a great deal of information about individual cases, they do not contain the verdicts. As such, they reveal ordinary people’s ideas about married women and crime rather than the outcome of the case.

The analysis focuses on the pre-trial depositions relating to theft-related offences, coining, and murder, which were the most prevalent types of crimes in the depositions. An examination of the accusations against married women for these offences demonstrates not only that married women were present in the criminal law, but also that victims and witnesses of crime viewed them as criminal actors in their own right. In certain cases a husband’s presence covered his wife’s criminal activity, but this had less to do with the idea of coercion and more with underlying assumptions about married women and the household. Despite an emphasis on the defence of marital coercion in the historiography, depositions which contain reference to a husband’s authority or any hint that a married woman acted under anyone’s authority but her own are rare, suggesting that the defence of marital coercion did not play a large role in people’s perceptions of married women. Instead, ideas about a married woman’s subordinate status and the idea of a unified household, both of which were central to coverture, seem to have informed people’s ideas of married women and remained an important subtext throughout the depositions.

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8 Gaskill, Mentalities, 24.
All of this suggests that coverture was an implicit part of daily life in that it informed people’s understandings of married women even if the defence of marital coercion was not.

The defence of marital coercion was capable of minimizing individual liability in the interest of either subordination or paternalism; it was not necessarily a reflection of the law’s lenient treatment of women. People recognized female agency in the criminal justice system long before they recognized it in the realm of active citizenship. This was largely because coverture’s application was discretionary and its strength was in its adaptability, exceptions, and technicalities. Its threats and benefits remained central to understandings and experiences of married women, but they did not always feel its full force in their daily lives. Nevertheless, as the theft, coining, and murder depositions reveal, its implications were still part of daily life. This discretionary character of the doctrine ensured that married women could be individuals before the criminal law while still remaining under the cover of their husbands in other areas of life.

The main source for this chapter is the northern assize circuit depositions. The northern circuit – which consisted of Yorkshire, Cumberland, Northumberland, and Westmorland – is the only assize circuit which has an almost complete run of extant depositions between 1640 and 1760. There are some notable gaps in the record, largely between 1700 and 1725, with only eight years present in the depositions, but for the most part, this is a strong source base. The Oxford circuit has depositions from 1719 onwards and the Palatinate of Lancaster has a number of depositions from 1663 onwards, but these are not comparable to the northern records.

Despite their utility, the depositions are not perfect sources. One of the main problems is the difficulty of determining whose voice is actually present within the record. Depositions were recordings of ordinary people’s voices, but only JPs could take depositions. As such, issues of faithfulness and selectivity are always present since depositions are in effect people’s voices
filtered through the pens of legal officials. However, one should not entirely dismiss JPs’ professionalism. As Gaskill argues, “Not only was a JP hearing evidence more likely to have behaved indifferently than manipulatively, but depositions were simply a means of putting evidence before a court and were rarely didactic.”

There is no reason to assume that JPs did not record the information they heard, although one should be aware of the possibility of JPs leaving out or changing the contents of the depositions either intentionally or otherwise.

In addition to the problem of voice, the lack of verdicts makes it easy to play armchair detective. Questions of who to believe in conflicting testimonies are prevalent throughout the depositions and difficult to determine. However, the present investigation is not a search for the “truth” or an attempt to solve a particular crime, but rather an analysis of popular perceptions of crimes and their perpetrators. Determining what actually happened in each case is less important than discovering what people thought had happened, what they reported, and how. This study does not attempt to judge the cases, but rather to analyse what people thought about the married women accused of crimes. Depositions, despite their faults, represent the best source available in any effort to determine what ordinary people thought of married women and their criminal liability.

Theft-Related Offences

The most common crime in this period was theft, which covered a broad range of offences from grand and petty larceny to shoplifting, housebreaking, pickpocketing, burglary,

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10 Gaskill, Mentalities, 26.
12 As Cynthia Herrup explains, “Criminal depositions were often recorded as spoken and the questioning seems to have been fairly open-ended. The rambling characteristic of such documents provides an insight into the realities of daily life unmatched by more coherent records, and the depositions often reveal details about subjects such as investigations or local rumour that had no place in formal records.” Herrup, “New Shoes and Mutton Pies,” 812.
robbery, and highway robbery. In this study, theft is used as a catch-all phrase, although it could apply to multiple offences. Grand larceny, theft of any item worth more than one shilling was the most prevalent of these offences within English assizes, including the northern circuit. All theft-related offences, with the exception of petty larceny, were defined as felonies and carried the punishment of death by hanging. However, as previously discussed, prosecutors and legal authorities used various discretionary measures to ensure that the execution rate was not comparable to the prosecution rate. In addition to their prevalence in the criminal records, theft-related offences were theoretically excusable under the defence of marital coercion. It is here that one should be able to find the defence of marital coercion at work.

Despite an assumption that married women had no legal identity or a limited criminal presence, it is not difficult to discover married women within the theft depositions. A random sample of fifty-five northern deposition files between 1640 and 1760 reveals 183 depositions which contain information about married women involved in theft-related offences. Seventeen of these cases mention wives but indicate that they were not directly involved in the case. These seventeen cases included a wife providing some sort of information about her husband’s criminal action when it seemed she had not committed any offence herself, or passing mention of a wife

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13 As Sharpe explains. “petty crime was more common, more typical, and in many ways more entitled to be described as ‘real’ crime than was the serious offence [such as treason and murder].” Sharpe, Crime in Early Modern England, 6-7. For an overview of the various property offences see: Beattie, Crime and the Courts, 140-90 and Clive Emsley, Tim Hitchcock and Robert Shoemaker, “Crimes Tried at the Old Bailey,” The Old Bailey Proceedings Online (www.oldbaileyonline.org, 17 June 2008).
15 Once a case came before the courts, juries had a number of possible methods to lessen the severity of the law. They could, for example, deliberately undervalue the goods stolen to ensure that larceny was classified as petty, or they could deliver partial verdicts to lessen the offence. By doing so, juries ensured that offenders were punished but escaped the death penalty because they could plead benefit of clergy.
16 This sample is random in the truest sense. This study used at least three sets of depositions per decade, and ensured that these were not all grouped together. When it came to tracing change over time, the numbers were averaged out per decade to provide a single number.
within the deposition.\textsuperscript{17} This leaves a source base of 166 married women directly or indirectly accused of theft-related offences within the northern depositions between 1640 and 1760.\textsuperscript{18} Of these, sixty-seven (40 percent) contain husbands and wives accused together.

Since a husband’s presence was necessary for marital coercion to apply, these cases are examined separately from cases of wives accused without their husbands. Specific references to the defence of marital coercion are extremely rare in the northern theft depositions, but a husband’s presence seems to have excused or covered his wife’s criminal liability in thirty-four (just over half) of the sixty-seven cases where a husband and wife were accused together. These types of cases were most common in the earlier part of the period although they did not disappear entirely. It is not possible to determine why the deponents believed that a husband’s presence covered his wife’s liability, but their failure to specifically reference (or even mention) the defence of marital coercion suggests that it was likely because of household structures which often subsumed a wife’s independent identity rather than any idea of marital coercion.\textsuperscript{19}

In 1662, Margaret Lowther of Nether Heskett in Cumberland deposed that George Sutton and his wife had lodged at her house the night of May 22\textsuperscript{nd}. The following morning Margaret went “abroad about her occasions” and “pinned the doore of her dwelling & putt a stoone on the backe of it” leaving “a whole fliske of bacon hanging in the chimney. Returning, Margaret “found the doore halfe open and the [said] bacon stollen.” Making inquiry for the

\textsuperscript{17} See for example: Robert Brigham’s wife in George Cowlam’s information (1647) TNA PRO ASSI 45/2/1/28; John Eles’ wife in Mary Jenkinson’s information (1665) TNA PRO ASSI 45/7/2/34; Thomas Judson’s wife in Margaret Bunker and Hannah Cundal’s informations (1734) TNA PRO ASSI 45/19/4/10E-10F; John Wood’s wife in James Hyndson’s Examination (1755) TNA PRO ASSI 45/25/4/179.

\textsuperscript{18} Contrast this with the case of eighteenth-century London, which saw 1,080 cases of married women accused of theft-related offences prosecuted at the Old Bailey. The reason for this discrepancy is probably due to the rural nature of the Northern Circuit as opposed to the metropolitan London. This is not surprising as London witnessed more crimes than other parts of England during this period. Marisha Caswell, \textit{Criminal Wives in the Old Bailey: Crime and Coverture in Eighteenth-Century London}, (MA Thesis, St Mary’s University 2006), 46.

\textsuperscript{19} When taken as a whole, 20 percent of the cases conform to ideas of coverture where a wife had no criminal liability. This does not fit within the general historiography, which suggests further that the defence of marital coercion was not applied universally.

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bacon, Margaret found it in George Sutton’s possession.\textsuperscript{20} Although Margaret mentioned the presence of both George and his wife, she attributed the felony to George alone. This deposition contained no mention of coercion or any mitigating factors, but Margaret still did not hold George’s wife responsible for her involvement.

The August 1690 case of Ralph and Ann Hardy demonstrates that the Suttons were not an exceptions. In her deposition, Alice Plant of Laverton, Yorkshire explained that when she returned from milking her cows in the morning she met Ralph Hardy and Ann his wife coming out of her house. Alice “asked them what they had to doe there, but they gave no answer,” which made Alice a little suspicious. She searched her house and found that her daughter Margaret’s purse containing £5 had been taken out of a chest. In a separate deposition, Margaret Plant explained that she had also seen Ralph Hardy and his wife coming out of the house. She further deposed that the following morning Ralph Hardy “showed her a new halfe crown which was like hers, shee having some new halfe crowns amongst her money.”\textsuperscript{21} Alice’s accusation of Ralph suggests that, much like the previous case of George Sutton and his wife, Ralph’s presence seems to have covered his wife’s involvement in the crime. Despite this situation, none of the deponents mentioned coercion.

It is not clear why the deponents in these cases did not attribute responsibility to either Anne Hardy or George Sutton’s wife. Perhaps it was because Margaret Lowther and Alice Plant were both married and aware of the intricacies of coverture and a husband’s authority. This may be true, but consider that the unmarried Margaret Plant had a similar conclusion in her deposition. A comparison with the other thirty-four cases where a husband’s criminal identity

\textsuperscript{20} TNA PRO ASS 45/6/2/102.  
\textsuperscript{21} TNA PRO ASSI 45/15/4/49.
covered his wife’s reveals that the gender or marital status of the accuser had little influence on perceptions of the married woman in question.

The circumstances of a specific case largely determined whether or not people believed that a married woman was criminally liable. In the previous cases, it appears that the deponents found the stolen goods with George Sutton and Ralph Hardy respectively rather than their wives. This fact suggests that the deponents may not have believed that there was enough evidence against them to attribute liability, or perhaps that the women had not committed the crime. Despite an emphasis on the circumstances, coverture was not entirely absent from these depositions. In the majority of cases, coverture was manifested through the idea of a household which seems to inform individual deponent’s understandings of the married women in question even though it was rarely, if ever, spelled out explicitly. The two previous cases conform to this model, but it comes across most clearly in the case of animal theft.

Animal theft was a predominantly, although not exclusively, male crime. Within the depositions concerning animal theft, people seem to have subsumed married women’s alleged involvement into a household model which saw their criminal liability covered or limited. In 1746, John Duck accused William Barker of stealing one of his ewes. Upon searching Barker’s home they found “some sheep fat and several pieces of mutton salted down in a pot putt into a box and another box set upon it” within a cupboard. When asked about the meat, Barker explained that he had received the sheep from two sailors and shortly after the men left his house “his wife salted the meat and set it open in ye house in a Tab.”

According to Barker’s examination, his wife had treated the stolen goods, but the informants Thomas Fowler, Robert Agar, and John Duck did not indicate a sense of Barker’s wife’s guilt. While Fowler discussed the meat they found, he did not refer to Barker’s wife at all.
The only deponent to mention her was John Duck, who explained how he had asked Barker’s wife how she and Barker had come by the goods. To which she responded, “the graceless man brought this thing in about six a clock on Sunday morning.” However, Duck did not seem to hold her liable as he then discussed how “whilst they were searching William Barker went away out of the house and absconded.” Barker’s wife was present in the depositions through her role in preparing the stolen goods, but this did not seem to translate into criminal liability.

In a similar case from 1753, Charles Peace voluntarily confessed how he had stolen two sheep from William Ingham. Peace explained that he had taken the two sheep from Ingham’s close in Osset

and after tying them together by the necks with a rope drove them home to his dwelling house at Dewsbury . . . and put them into a chamber & kept them alive there till the next day and that then he and Paul Widdup the younger of Dewsbury . . . clothier his Father in Law killed the said two sheep in the said chamber and let them hang there till the next day and then cutting them down the said Paul Widdup took along with him a forequarter, a leg, the head, the heart, and the fat of one of the said sheep and the rest was salted by [his] wife and kept in a tub in his house, and . . . he pulled the wool from the skins and put it with the other wool which he hath since made into blankets

Peace discussed his wife’s preparation of the stolen meat, but he did not see this as criminal behaviour. He probably did not want to implicate his wife, but his accomplice Paul Widdup did not mention Peace’s wife in his confession either. Instead, Widdup explained how he and Peace had brought the sheep to Peace’s house “where the said Peace killed it and that either the next day or the night following he [Widdup] . . . took home to his own house part of the mutton belonging to the said sheep.”

In both these cases of animal theft, William Barker and Charles Peace’s wives were conforming to their wifely roles and assisting their husbands in preparing food. While the food may not have been legally obtained, nobody seemed to hold the women responsible for their

22 TNA PRO ASSI 45/23/2/16B–16E.
23 TNA PRO ASSI 45/25/1/107.
involvement in the felony. These cases suggest that crime could be a familial enterprise and that wives were often involved in these actions even if they were not the primary participants. But involvement did not necessarily translate into criminal responsibility. Perhaps the various deponents saw these actions as excusable since these women were acting in a “wifely” manner. Instead of asserting themselves, these women were merely assisting their husbands. Both the domestic nature of the involvement and the conformity of these women to their normative roles seem to have ensured that these women benefited from an assumption of coercion or, more probably, a situation where the deponents seem to have allowed a husband’s presence to cover his wife’s criminal liability.

The household and its proper structure seem to have provided the context within which these wives were discussed. It is this situation which demonstrates how far coverture formed a subtext of people’s thoughts about women. Yet the household was present in different ways throughout the depositions. William Barker and Charles Peace’s wives were involved in their husbands’ criminal actions, but not all married women approved of their husbands’ crimes. They may have been aware of the felony, but they were certainly not willing participants. However, a husband’s crimes did not happen in isolation and affected his wife and family’s wellbeing, something of which some women were well aware.

In 1678, James and Mary Whitley of Barksland Yorkshire accused the brothers Joshua and Edward Tasker of stealing a horse and a mare from them. Joshua’s wife Isabell sent Jonas Tasker, a labourer of Bradford to the Whitleys to “offer them satisfaction” for the stolen horse and mare so that the Whitleys would “forbeare and desist from searching & making any further inquiry for the sd horse.” According to Jonas Tasker, when the Whitleys refused Isabell’s overtures, she became “sore troubled & did not know . . . what might become of her sd childrene
& of ye sd Joshua Tasker & Edward Tasker his brother, if in case they could not come home again but might be prosecuted for the sd horse & mare."^{24}

Isabell does not seem to be part of her husband’s alleged criminal actions. Her offer to make “satisfaction” was probably due to her concern about what a prosecution of her husband’s offences would mean for the wellbeing of the family, and her actions in this case speak largely to this situation. Yet Isabell was present in the depositions only as a corollary to her husband, largely because of the fact that a wife was not able to testify against her husband, nor could she be an accessory if she harboured her husband.\textsuperscript{25} Isabell’s actions were acceptable because she focused on the good of her household. This case demonstrates that a husband and a wife could have separate interests and that crime had multiple victims.

These three examples seem to conform to Garthine Walker’s category of the criminal household. Walker explains that the gendered division of labour, including women preparing and acquiring food, drink, and clothing meant that they often had legitimate “cover” for acquiring, exchanging, and selling these items, many of which could be stolen. Household organization and the division of labour can help to explain why men predominate in certain types of crime such as

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\begin{itemize}
  \item TNA PRO ASSI 45/12/2/91-2. See also: TNA PRO ASSI 45/4/1/17; TNA PRO ASSI 45/19/2/22-3; TNA PRO ASSI 45/21/4/61. The lack of unity between a husband and wife can also be seen in the conflicting information in the depositions of John Wilkes and his wife Philladelphia in 1642. TNA PRO ASSI 45/1/4/3-4.
  \item JP handbooks were explicit in asserting that a wife could not be evidence against her husband unless she was the grieved party, or in certain exceptions such as treason. William Nelson, \textit{The office and authority of a justice of peace} (London, 1704), 104; Jacob Giles, \textit{The Modern Justice} (London, 1716), 153; Joseph Shaw, \textit{The practical justice of the peace} (London, 1728), I.399; \textit{The Justice’s Case Law} (London, 1731), 106-7. In regards to the inability of a wife to be an accessory for harbouring her husband, Dalton, in the \textit{Countrey Justice}, explained: “If a feme covert shall relieve or receive, and keepe companie with her husband, knowing him to be a felon, she is no accessory thereby for a woman covert cannot be accessorie in felony to her husband, for she ought to relieve him, and not to discover his counsell: But if she receiveth &c another felon, she is an accessorie.” Michael Dalton, \textit{The Country Justice} (London, 1618), 252. See also: Walter Yonge, \textit{A vade mecum, or, table, containing the substances of such statutes; wherein any one or more justices of the peace are inabled to act} (London, 1661), 108; Shaw, \textit{Practical JP}, I.134; \textit{Justice’s Case Law}, 7.
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animal theft, and they can also explain how goods were acquired, exchanged, or disposed of in cases of property crime.  

The household was an important element of seventeenth- and eighteenth-century society and it manifested itself in the criminal realm through the idea of familial or household crime. In the previously examined cases of animal theft, familial crime refers to crime committed in support of normal family functions and the family members were implicated as they carried out their standard duties. In these cases, a wife’s criminal identity was covered. This may have been due to an assumption of coercion or because she was conforming to her normative roles, but either reason speaks to an underlying idea about proper marital structures and the household. Coverture and coercion were not spelled out in the northern theft depositions, but they certainly informed people’s ideas of married women in the cases where their criminal behaviour may have been ignored or covered.

The previous cases saw a husband’s criminal identity covering or subsuming his wife’s in some manner. However, the discretionary nature of the criminal justice system ensured that this pattern was not the general rule. In the remaining thirty-three of the sixty-seven cases in which a married couple was accused of theft-related offences together, a husband’s actions did not excuse or cover his wife’s criminal behaviour. Instead there was an element of joint interest where deponents, including both victims and witnesses, held husband and wife accountable, suggesting an idea of co-defendant responsibility rather than co-defendant immunity. This was the criminal household in the truest sense, which saw the joint interest of a unified household manifested in criminal behaviour. It is important to note that this was not a case of erasing a wife’s criminal identity, but rather placing it firmly within the unified household.

In 1663, Thomas Fletcher, a shoemaker of Newcastle explained how somebody had broken into his shop and stolen seven pairs of boots and four pairs of shoes. Searching for his stolen goods, Fletcher “found two & twenty paires of shoes & three paire of bootes in the house of one James Coltheard of this towne shipwright & one pair of the said shoos on the said Coltheard’s feet.” In a deposition taken at the same time, Edward Watson told a similar story. On the night of November 28th, “he had his shopp broken & stolen out of it five paire of shoos & an odd one & makeing inquiry after them, found three pair of his shoos & an odd one in the house of one James Coltheards of this towne shipwright.”

Fletcher and Watson were only two such victims of a series of thefts in Newcastle between October and December of 1663. The other victims, including Edward Stanys, Andrew Robinson, Charles Clarke, Bartram Browne, and George Simpson told a similar story: somebody had broken into their shops and they had found the stolen goods in James Colthead’s house. Reading these depositions seems to indicate that James was responsible for the crimes, but both he and his wife Dorothy were examined about the goods, which suggests that the victims held both James and Dorothy responsible for the crime.

This sense of dual responsibility may have been because Dorothy took a more active role in the case than the previously examined examples. When James was questioned about the shoes Fletcher found on his feet, he answered “his wife bought them, but of whom he knowes not.” In fact, James said he was not sure where any of the stolen goods found in his house came from. Dorothy, on the other hand, explained that William Hobson, a servant to Thomas Lowrey “came with a great sort of shoos & boots to her house, & desired leave of her to lay them in her house & said he had found them.” She also claimed that Hobson had brought a number of other goods to

27 TNA PRO ASSI 45/6/3/28.
her house, with the exception of a pair of curtains and a carpet which she had bought from Jane Clerk.\(^{28}\)

While the deponents who claimed that they found their stolen goods in James Coltheard’s house did not mention Dorothy at all, the examinations suggest that she was probably involved. Moreover, there appears to have been enough evidence against both James and Dorothy because there are ten recognizances from December 1663 which bound a number of people to prosecute and give evidence against “James Coltherd and Dorothy his wife.”\(^{29}\) The victims did not include Dorothy as a party to the crime in their depositions, but the recognizances suggest that they believed that both husband and wife were dually responsible. The defence of marital coercion and assumptions of a wife’s limited liability were not the general rule; instead, people often saw husband and wife as a criminal unit or household.

In January 1675, Daniel Micklethwaite deposed that somebody had stolen thirty-five yards of cloth from his tenters. In his deposition, he explained that “at Wardsley bridge hee caused the said partyes (to witt) Johne Baiths [or Baites] and Anne his wife to bee apprehended, whome hee found possessed of the said peece of Carsy and two peeces of Carsy more . . . whereupon he caused the said Cloth to be secured and the partyes to bee convayed before a Justice of the peace.” Unlike the case of the Coltheards which contained no mention of a wife until the examinations, Micklethwaite believed both Anne and John were responsible for the theft, probably because he found the goods in their possession.

In his examination, John confessed to having stolen the cloth but said “that his wife was present when hee tooke ye sd Carsy of ye Tenters.” In contrast, Anne claimed “That shee was not present when hee tooke the said peece of Carsy of the Tenters nor doth shee know where hee

\(^{28}\) TNA PRO ASSI 45/6/3/26-27.
\(^{29}\) TNA PRO ASSI 45/7/1/46-55.
had the other two pieces of Carsy except hee bought them of one George that hee mett uppon the high way.” Following these three depositions, Micklethwaite was bound in a recognizance for £40 to give evidence and “preferr an Indictm[en]t of the sd fellony at the next General Gaol Delivery.”30 The depositions and the recognizance suggest that both the Justice of the Peace and Micklethwaite saw John and Anne as criminally responsible for their actions – a criminal household rather than the husband assuming all liability.

In the previously examined cases of Anne Hardy and the wife of George Sutton, the wife’s criminal liability was subsumed under her husband’s largely because of the specific circumstances of the case: the stolen goods were found with their husbands, even though they were present when the goods were stolen. In contrast, both Anne Baites and her husband were found with stolen goods, which could possibly explain why the prosecutor saw her as equally responsible for her criminal actions.

Henry Foster’s 1746 deposition contains a similar willingness to assign responsibility to the whole household rather than a specific member. Foster deposed that somebody had broken into his shop “and betwixt four and five douzen showes taken away and a pair of double chanelet bouts.” Foster explained that he had found five pairs of the stolen shoes “in the custidy of Thomas Stuert and his wife and femelly.”31 Unlike the previous two cases there is no corresponding recognizance, but Foster’s deposition indicates that he held the whole Stuert household responsible.

The previous three cases demonstrate that assumptions of marital coercion and the corresponding belief that a married woman’s criminal liability could be subsumed under her husband’s were not always present within the northern theft depositions. The reasons why are

30 TNA PRO ASSI 45/11/2/7-8A. See also: TNA PRO ASSI 45/5/3/56-9; TNA PRO ASSI 45/14/2/21; TNA PRO ASSI 45/18/1/52; TNA PRO ASSI 45/21/1/16.
31 TNA PRO ASSI 45/23/2/101P.
largely speculative, but people tended to hold a specific married woman criminally responsible when it was evident she had been involved in the alleged theft, or when her normative household role could not provide a cover for her behaviour. Such cases reveal that deponents held both husband and wife accountable for their actions. Yet, it is important to note that this dual responsibility still reflects the idea of a unified household, which illustrates how coverture formed an important subtext to daily life. This situation becomes even more apparent when one considers that in cases where married couples were accused of theft-related-offences together, people rarely believed that wives could be individually liable. Joint responsibility allowed people to recognize a married woman’s criminal behaviour, but it still kept her placed firmly within the household structure.

Consider, for example, the case of William and Catherine Coulson for theft from a dwelling house in 1753. In her deposition, Ann Baker explained how she found a coat, waistcoat, and two gowns “taken away by some person or persons unknown.” Her father, William Baker deposed that he had left the goods in a room he let to William Coulson and his wife. Baker suspected that these goods had “been so stole by the said William Coulson or Catherine his wife who did then and have ever since lodged in the said room.” In his examination, William Coulson confessed that he took the clothing in question, “which he carryed to the house of Edward Pool situate in Jubbergate in the City of York . . . and pawned the same to [Pool’s] wife for a small sum of money which he intended very soon to have paid off and to have returned the said cloaths to the place from whence he took them.”32 The depositions seem to indicate that both William and Catherine were involved in the crime even though the JP only examined William. What is significant, however, is Baker’s use of the phrase “William Coulson or Catherine his wife.” The

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32 TNA PRO ASSI 45/25/2/31-2.
word “or” indicates that Baker believed either party was responsible, and had no problem separating their actions; Baker recognized that Catherine could have committed the offence.

This willingness to separate husband and wife, at least to a certain degree, and to emphasise dual responsibility comes across in the 1760 case of Richard and Elizabeth Pearson for sheep stealing. Taking care of his master’s sheep, the shepherd Francis Mackley explained how he observed “that a sheep had been newly kill’d, by the fresh blood spilled upon the ground, which was covered with snow, which had falln that morning.” It did not appear that another animal had killed the sheep and Mackley was able to follow a set of footsteps from the sheep’s remains to Richard Pearson’s house. The Constables Robert Cross and Thomas Wharram got a warrant to search Pearson’s house and deposed that they smelled some burning wool coming from the house and found some green mutton buried in the ashes of the fire. Upon finding this mutton, they took Richard into custody and returned to the house “to make further search, & then found happ’d up in an apron, seven pieces of dried mutton, two shoulders, two legs, & three more pieces which were hidden between the straw & the bed & Elizabeth Pearson confesses that she took it down from hanging in the chimney, as soon as her husband was taken & carried away into custody.” 33 This case seems to conform to the idea of a criminal household in which a wife’s criminal involvement was excused by her household duties as exemplified by the earlier animal theft cases; however, the examinations of both Richard and Elizabeth Pearson suggests that Cross and Wharram along with the JP Edward Anderson believed they were involved separately.

Even these two cases could not separate husband and wife entirely. Within the depositions, victims and witnesses of crime asserted that a married woman could be accountable for her actions, but when she committed offences with her husband, she was often covered by his

33 TNA PRO ASSI 45/26/4/41-4. See also TNA PRO ASSI 45/15/2/89-90v.
presence, or faced responsibility with her husband rather than on her own. In this sense one could consider the implicit assumptions about coverture present in the depositions as upholding the ideal of marital unity rather than erasing a wife’s legal identity. These viewpoints conform to the unified household ideal outlined in the first chapter. They do not suggest that the defence of marital coercion played a large role in ordinary people’s perceptions of married women’s alleged criminal behaviour.

Although the subtext of a unified household informed the vast majority of the northern theft depositions, a married woman’s criminal liability still depended on the specific circumstances of a case. A husband’s presence could cover a wife’s actions in certain cases, and many people were willing to attribute crimes solely to the husband. In addition, the gendered division of labour could often legitimately excuse a wife’s involvement in a familial crime. However, deponents also held that a married woman could be accountable for her alleged theft, and this was most common in conjunction with her husband. These cases reveal that the system was ultimately discretionary and ordinary people looked at multiple factors in determining how to assign criminal liability to a married woman.

One of the key factors people looked to when assigning liability to a married woman in the northern theft depositions was the presence or absence of her husband. This is not surprising considering that even in theory, a married woman who committed a theft-related-offence without her husband was supposed to be responsible for her actions. For this reason, we need to consider the ninety-nine married women who were accused of theft-related offences on their own.

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34 Dalton, Countrey Justice, 236-237. This work was originally published in 1618 but it was reprinted six times before 1742. See chapter two for more information concerning Dalton’s influence.
The general assumption within the historiography is that the concept of co-defendant immunity meant that married women were not liable for their criminal actions. However, the previous discussion demonstrates that although ideas of the household informed people’s perceptions of married women accused of theft-related offences, this did not translate into universal immunity. The only sense of limited liability in the depositions discussing married women accused without their husbands comes across in the twelve of the ninety-nine theft-related offences which contain an indirect accusation. An indirect accusation refers to accusations that a married woman encouraged a crime or was peripherally involved in some manner, but was not an actual actor.

One such example is found in the 1646 examination of Robert Ramsden for horse theft. In an attempt to explain his actions, Ramsden “confessed that Mary Mathewman the wife of Godfrey Mathewman gave him two shillings to steale the said horse and to carry him to her sonne . . . John Mathewman who was in the Scottish army.” Richard Stringer’s 1661 accusation of William Drury for theft also contains an indirect accusation, or at least some sense of a wife’s peripheral involvement. Stringer explained that he and William Smith found some “chaffe & barley scattered about the footesteps” of Drury’s laith end. They also found a sack of barley with Drury “who had noe corne growing of his owne this last yeare” which caused Stringer to charge him with stealing the said barley. In his examination, Drury confessed that “hee had such a quantity of thrasht barley undrest then found with him, but saith that his wife did gleane it the last barley Harvest.” Drury here was not attributing the crime to his wife, but rather explaining how he and his wife had honestly come by the barley.

35 TNA PRO ASSI 45/1/5/53A. See also: TNA PRO ASSI 45/7/1/36-8; TNA PRO ASSI 45/15/4/38.
36 TNA PRO ASSI 45/6/1/52.
37 Gleaning was an important right and commonly a woman’s job. After the harvest, field officers opened fields to gleaners, who took what they could from the fields. This was not theft, but rather a form of common rights. For a
Neither of these cases contain more than passing mention to a married woman, which suggests that perhaps it was believed that the peripheral involvement of these married women did not necessarily translate into criminal responsibility. While this may have had something to do with coverture, it is more likely that the failure to examine these specific women further was due to a lack of evidence or some other belief that they were not involved. Therefore, one cannot argue that these cases are representative of a married woman’s lack of criminal liability.

Theft-related offences involving a married woman accused without her husband were more likely to consist of a person’s direct accusation of a married woman, and this was the case in 88 percent of the depositions where a married woman was accused of theft without her husband. In 1662, for example, John Batley explained that he had left home one afternoon and upon returning he “found that somebody had gone into his house at ye broaken walls, and whereas they left the doore of the house tyed with a stringe, they found it open at their returne and further missed certain eateinge stuff.” Although Batley found the food in Edward Bramwell’s house, he suspected Edward’s wife Mary and caused her to be apprehended. Batley did not explain why he suspected Mary, but he held that “Mary confessed to [him] before ye Constable that ye bread found in ye said Bramwell house was taken out of [his] house by hir [sic] the said Mary Bramwell.”38

Similarly, there was no sense of limited liability in the 1736 direct accusation of Elizabeth, the wife of Thomas Curley. Ann Wilkinson deposed that she saw Elizabeth “carrying several pewter dishes.” Suspecting that these were stolen, Wilkinson went to Elizabeth “and took the eight pewter dishes . . . from the said Elizabeth Curley, who said that they were Mr. Salkelds and thereupon [Wilkinson] got a Constable and carried her the said Elizabeth Curley before

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38 TNA PRO ASSI 45/6/2/11.

Robert Sorsbie Esquire.” In his information, Henry Salkeld, explained how eight pewter dishes had been stolen out of his shop “And that he found the same dishes in the custody of Ann Wilkinson who told [him] she took them from one Elizabeth Curley whom she suspected to have stoln them.”\(^{39}\) Neither Batley, nor Salkeld, nor Wilkinson alluded to marital coercion, coverture, or any sense of limited liability in their accusations; instead, they held Bramwell and Curley fully accountable for their alleged criminal behaviour.

This assumption of a married woman’s full liability comes across even more clearly when one considers that the characterizations of married women accused of theft-related-offences without their husbands were no different than characterizations of single and widowed women. In 1670, for example Alexander Moore explained how someone had broken into his house and stolen a number of goods, including curtains and some of his daughter Katherine’s clothing. Moore deposed that he had “Lionell Charleton of Howlerhirst, Thomas Charleton, and Ann Dodd [spinster] of ye same in great suspecon for breaking of ye house and stealing of ye cloaths which they are ye rather induced to beleeve for that” his daughter Katherine challenged “a petty coate which Ann Dodd wore which was made of the curtains above specyfied.” To support this charge, Elizabeth Milburne claimed that Dodd had brought the clothes in question to her house when she desired lodging. Much like the previous two examples of direct accusations against married women alone, the depositions concerning Dodd specify that the deponents all felt she was guilty.\(^{40}\)

One can see further evidence of such direct accusations in the 1749 case of Mary Hesle. Charles Cottrell explained how he had a number of goods including food and clothing stolen from his house “by some person or persons unknown but he suspects the said house was broke

\(^{39}\) TNA PRO ASSI 45/21/1/33-34, 37.  
\(^{40}\) TNA PRO ASSI 45/9/3/110.
and the said goods so stolen by one Mary Hesle a washer woman who lodges at Joseph Garwoods and washed at this informant’s house.” Elizabeth Wood confirmed that Cottrell had been in possession of the goods in question and explained that upon searching for them she “found the abovesaid things in the house of Mary Hesle which she confesses she stole.” Hesle was examined twice concerning the alleged felony; she denied the offence the first time. On the second examination she confessed that “she did take the said goods but did not break the house but went in at the window which was open.” This was probably a strategy on Hesle’s part to lessen the charges but it demonstrates that everyone from the victim of the theft, Cottrell, to the various witnesses, to Hesle herself saw Hesle as fully liable for her actions.

These are only two examples of the various depositions concerning single and widowed women accused of theft-related-offences, but the general pattern of direct accusations, with the deponents asserting the accused woman’s guilt is prevalent throughout them all. What is striking is that there is little difference in the characterizations of the single women Mary Hesle and Ann Dodd and their married counterparts Mary Bramwell and Elizabeth Curley. The only difference seems to be the inclusion of “wife of” when classifying the married women; neither coercion nor assumptions of limited liability were present in the accusations of married women without their husbands. In light of Dalton’s stricture this is not surprising, although the historiography suggests otherwise.

Husbands were relatively absent from the northern depositions concerning married women accused of theft-related-offences on their own. Deponents tended to mention husbands peripherally in these cases rather than in any direct manner. In 1651, Jennett Yeats explained how Elizabeth Benson came to her house “and pretending . . . to be sicke went from one roome to another for the space of three houres and after she was gone from her house [Yeats] found

41 TNA PRO ASSI 45/24/1/49B-F.
certaine of her household goods to be wanting.” The only mention of Benson’s husband in this set of depositions is in classifying Benson as the “wife of William Benson” in the title of her examination.42 In his 1689 accusation of Anne Fowler for pickpocketing, Robert Cookson explained how he had called at John Fowler’s house, and Fowler’s wife Anne stood next to him while he was bridling his horse. Cookson then “felt hir hand in his left pockett and thereupon he putt her from him with his hand asking what she had to doe there whereupon his horse slipping his bridle he putt his hand in his pocket and found his bag and money gone.”43 Cookson mentioned Fowler’s husband in reference to the house and in classifying Anne, but apparently did not believe William Benson had played a role in the crime. The treatment of husbands as peripheral probably reflects the deponents’ beliefs that the wife alone was responsible for the alleged crime. Coverture may have formed an important subtext to the depositions, but this did not mean that people attributed responsibility to a husband when they did not believe he had committed the crime.

This discussion has largely concerned how people perceived married women’s criminal behaviour, but the question remains of how the accused women responded to the charges laid against them. Surprisingly, most married women did not rely on the defence of marital coercion and claim that their husbands had ordered them to commit crimes. The only example of specified coercion in the theft depositions was of a husband alleging his wife forced him to commit a crime. In 1751, Thomas Sharp was accused of breaking into John Barras’ house and stealing £18 of gold. In his examination, Sharp:

confessed that he stole the said purse and money and gave the same to his wife, but that he did it very unwillingly being forced to it by his sd wife and who broke open the window in the said house and swore she would stabb him if he would not get into the said

42 TNA PRO ASSI 45/4/1/12.
43 TNA PRO ASSI 45/15/3/29. See also: Isable Gross (1737) TNA PRO ASSI 45/21/1/52; Jane Watson (1747) TNA PRO ASSI 45/23/3/104B; Elizabeth Price (1750) TNA PRO ASSI 45/24/2/93B-C.
house and fetch out the money, which upon her said threats he did by breaking open a
box in the said house whereout he had often seen the said John Barras take money to pay
workmen’s wages.  

This case is remarkable for a number of reasons, largely because it conforms to the model set out
by the defence of marital coercion but reverses the expected roles.

Only two women out of the 166 cases examined in this chapter even alluded to their
husbands’ authority. In February 1641, Edward Skurfield testified that someone had taken some
linen apparel and household goods from his trunk. Skurfield found the goods in Robert Foster’s
house and questioned Robert’s wife Barbary, who claimed that her husband and his brother
Joseph had brought her the linen and “willed her to make them shirts of it.”  

In 1681, when searching for his stolen mare and foal, George Wiley found them in Edward Burley’s yard.
Wiley questioned Burley’s wife who said “that she would neather medle nor make until hir
husband came home.”

Instead of relying on the defence of coercion, most married women accused of theft-
related offences simply denied any wrongdoing. In the 136 northern depositions which contain a
married women responding to accusations of theft, 74 percent followed this pattern, which
suggests that coercion was not necessarily a viable defence.  

In 1682 for example, Margery Davison explained that her house had been broken open on the 21st July and she suspected that
Margaret the wife of Peter Kempley had done so and stolen £5-10s and a gold ring from the
premises. Davison got a warrant to apprehend Margaret, during which time Davison alleged that
Margaret offered her £5-1-6 and two “single pennies . . . hoping to have bin unprosecuted.”

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44 TNA PRO ASSI 45/24/3/65.
45 TNA PRO ASSI 45/1/3/11-2.
46 TNA PRO ASSI 45/13/11/17.
47 Although the depositions are arranged alphabetically by the accused, sometimes there is little information besides
an accusation. This is why the number of cases in the discussion of married women’s defences is less than the
overall number of married women accused of theft-related offences.
Davison however refused this offer and took Margaret before Sir Thomas Pennyman and Edward Trotter JPs for the North Riding. Upon her examination Margaret claimed that “she is not att all guilty of what is layd to her charge by the said Margery Davison.”

Similarly in 1750 Martha Collier explained how her house had been broken into on the night of June 3rd and “several goods & chattels . . . particularly a silver cup with a spread eagle engraved thereon . . . feloniously stole out of her said house by some person or persons unknown.” In a related deposition Joseph Buckle, a goldsmith of York, explained how Elizabeth the wife of George Price had brought some silver plate to his shop to sell including the silver cup. Buckle suspected the cup was stolen, stopped the sale, and took Elizabeth before Mathew Lister the Mayor of York. Elizabeth was “charged with burglariously breaking open the dwelling house of Martha Collier widow . . . and stealing thereout several goods & chattels & particularly a silver cup.” In response to these charges, Elizabeth claimed “that she did not break the said house open or steal any goods or chattels but saith that she found the said cup.”

Denying an offence was often the best way to counteract a charge. With the notable exception of infanticide – the murder of newborn illegitimate children – the assumption of innocence was present throughout all aspects of the criminal law; the accused were encouraged to plead not guilty when they came before a jury. Considering this, it is remarkable that of the 136 married women who responded to theft-related accusations in the depositions, 26 percent actually confessed to the charges. One was Ann the wife of Matthew Fowler who in her 1750 examination said that “she took out of the dwelling house of William Moor of Hovingham . . . a dark brown camlet gown, a blue stuff quilted pettycoat, & a pair of pump shoes, which said shoes she sold to Richard Garbut of Helmsley, blacksmith, & that she supposes the said goods

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48 TNA PRO ASSI 45/13/2/61.
49 TNA PRO ASSI 45/24/2/93B-93C.
may be the property of Elizabeth Hornby servant to the said William Moor.”

It is not clear why Ann confessed, but it is important to note that she did not appeal to her marital status as an excuse anywhere in her examination.

Similarly in 1670 William Haton explained how he had seen two strange women leave his Mistress Anne Dawson’s house and immediately after “his said Dame finding two petticoats wanting,” Haton and two of his fellow servants pursued the women and saw them put one of the petticoats in a bush. Haton’s fellow servant Mary Mease claimed that she and Haton apprehended the two women, one of whom was Elizabeth the wife of Andrew Hodghon. Upon her examination Elizabeth said that she had entered Dawson’s dwelling house with Jane Wheats, and Elizabeth “then and there without the consent or privity of the owner took and carried away two petticoats and being pursued the said Jane Wheats took one of the petticoats from the said Elizabeth and left it in a bush and the other was taken from the said Elizabeth by one that pursued her.”

This is not to say that married women were unaware of the realities of coverture and its consequences, but perhaps they did not rely on the defence of marital coercion because they knew it was not effective and they had a better chance of escaping punishment by relying on alternate defences. The examinations of married women accused of theft-related-offences hardly fit into the generally held conception of the defence of marital coercion in which a husband’s authority excused his wife’s criminal liability.

A wife’s failure to appeal to coercion may have been in part because she did not want to implicate her husband in her wrongdoing. If a wife said that her husband forced her to commit an offence, she created the possibility of him being prosecuted for the offence. This may explain

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50 TNA PRO ASS 45/24/2/36.
51 TNA PRO ASSI 45/9/3/37-40.
why in 1651, Alice Hepworth responded to questions about some stolen silk, with the explanation that she had traded corn with Peter Hardy for pieces of silk “without the consent or privity of her husband.” Or why in 1647, Susan Mercer deposed that she had received some stolen cloth from Abraham Hall when her husband was not at home. Both Alice and Susan ensured that their husbands would not suffer for their criminal actions. These cases ultimately demonstrate that the defence of marital coercion did not play a large role in ordinary people’s perceptions of married women’s alleged criminality.

Despite expectations that perceptions of married women would change over the course of 120 years, the information in the depositions concerning theft-related offences remains remarkably consistent throughout the entire period. The only real change is the number of married women accused of some sort of involvement in theft-related offences (see figure 3.1). Although the depositions have a remarkably consistent run, there are a number of gaps, especially in the years 1700-1725. As previously discussed, there are only eight years of depositions extant for these years. This means that the source base can largely explain the drop in accusations in 1720 and the spike in 1730 present within figure 3.1. Averaging out the number of accusations per decade reveals that the accusations for this period underwent a steady decline throughout the period, with a slight increase in the 1730s and a drastic spike in the 1750s.

This pattern is somewhat similar to the ones found by James Sharpe and John Beattie. Sharpe argued that England experienced a crime problem from the beginning of Elizabeth’s reign and that this reached its crisis point some time between 1590 and 1630, after which levels of reported crime remained largely stable. In his examination of Surrey and Sussex indictments between 1660 and 1800 Beattie found that the property crime rate steadily declined from the

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52 TNA PRO ASSI 45/4/1/87.
53 TNA PRO ASSI 45/2/1/109.
Restoration until about 1770 with a few notable jumps in years of dearth. The crime rate spiked in the 1750s, particularly during the crime wave of 1749-53 following the end of the War of Austrian Succession, which is undoubtedly why the number of accusations against married women increased in the 1750s.

Since accusations of married women for theft-related-offences followed the general pattern of crime, it is probable that changes in the number of accusations were due to perceptions of crime, not ideas about married women. This does not mean that these same women were not subject to elements of coverture and the household within their accusations, but rather demonstrates that people considered married women’s alleged thefts serious enough in certain cases to warrant the beginnings of prosecution. Perceptions of married women in the northern theft depositions were connected to ideas about crime as well as the household. These women were both wives and alleged criminals, which meant that both the marital framework and larger ideas about crime and the law shaped people’s perceptions of them and their own experiences within the criminal justice system.

Quantifying depositions, however, can only go so far, and their qualitative nature is what makes them so useful to this study. The numbers of cases that conform to expectations of coverture, where a wife’s criminal liability was covered by that of her husband are present

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55 Beattie argues that “crimes against property in the eighteenth century arose primarily from problems of employment, wages and prices; that they increased when men found themselves squeezed by rising prices or lower wages or lack of work and declined when they were squeezed no longer.” J.M. Beattie, “The Pattern of Crime in England, 1660-1800” Past and Present 62 (1974), 85, 95.

throughout the entire 120 years considered, although they are more prevalent during the 1640s and 1660s than any other decade. However, people’s perceptions of married women accused of theft-related offences in the northern depositions remain remarkably consistent throughout the period. This suggests that despite larger societal changes, understandings of married women’s place within early modern England remained stable throughout the period.

**Coining**

The second-most common offence in the northern depositions was coining. Coining offences included counterfeiting or removing precious metals from the edge of coins. As a form of treason, coining was not subject to the defence of marital coercion and married women were supposed to be liable for their actions. Yet, ideas about coverture were present more so in the depositions concerning coining than they were in theft-related offences. Much like theft cases, the household formed an important subtext in the vast majority of the depositions. Unlike the theft depositions, coining depositions seemed to follow a definite pattern both in the distribution of the accusations and in people’s perceptions of the married women accused of committing the crimes.

While the pattern of depositions for theft-related offences (figure 3.1) shows a gradual decrease and then an increase near the end of the period, the pattern for coining is markedly different, with an increase from 1670-80, and then a spike in the 1690s followed by a drastic drop for the rest of the period (see figure 3.2). It is tempting to attribute this change to new ideas about society and married women, but the reason for the changes in the depositions lay in changing ideas about the crime itself rather than the criminal.
Coining was not a new crime in the seventeenth century; counterfeiters and clippers were a consistent problem for as long as the monetized economy had existed. James I, Charles I, Charles II, and William III all introduced various measures to counteract the threat coining posed to the treasury. However, these were not always successful, since, as Malcolm Gaskill explains, official ideas which held that coining was a serious offence, did not correspond to the general populace’s belief that coining was not a crime. This was largely because “clipping did not affect the value of a coin as long as it continued to be accepted in transactions. In other words, a clipped shilling which a baker still recognized as a shilling would continue to buy a shilling’s worth of bread.”

This situation changed in the 1680s and 1690s as the coinage came to be placed under a great deal of pressure. During this time, England was dealing with dearth, economic strife, costly wars (especially the Nine Years War), a severe shortage of silver bullion, a scarcity of coin, and the existing coin was so worn and diminished that its face value was considerably higher than its silver content. By the 1690s, when England was undergoing a financial revolution, clipping and counterfeiting were serious threats to both England’s commercial base and its attempts at becoming a global power. As Carl Wennerlind explains:

Counterfeiting challenged the general confidence in the exchangeability of money and consequently damaged the capacity of money to mediate exchange relations. Since the social fabric was increasingly constituted as a set of exchange relations, an assault on money was therefore considered an attack on the entire social form.

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57 As Malcolm Gaskill explains, “the coinage in early modern England was threatened by neither time nor accident, but rather the desire of men and women to multiply an otherwise finite, and often inadequate, amount of income. As a result, the need to protect the coinage and to keep bullion circulating within the shores of the nation was a serious and perennial problem for the authorities.” Gaskill, Crime and Mentalities, 123.
58 Ibid, 125-8, 131-2, 152.
60 Carl Wennerlind, “The Death Penalty as Monetary Policy: The Practice and Punishment of Monetary Crime, 1690-1830,” History of Political Economy 36:1 (2004), 131. As Gaskill argues, by the later seventeenth century coining ‘came to threaten not just the authority of the state but the economic fabric upon which that authority was founded.’” Gaskill, Crime and Mentalities, 160. Nicholas Tosney explains that “Under normal conditions, some coining could be absorbed as long as those conducting transactions were willing to accept diminished coins. But by
In response to these challenges, new laws against counterfeiting emerged along with the increased application of the existing laws and a greater reliance on the death penalty. The state swiftly passed new capital statutes, chose Isaac Newton as the primary prosecutor of counterfeiters, and refused to commute the majority of death sentences. This corresponded with increasing efforts of prosecution and rewards for informants, which culminated in the extraordinary decision to undertake a complete recoinage in 1696-8. It is against this backdrop that one needs to examine the changing numbers of accusations against married women for coining within the depositions.

People’s perceptions of married women accused of coining in the depositions also changed. From the 1640s until the end of the 1670s the majority of accusations characterized married women’s involvement as secondary or peripheral; from the 1680s onwards, people believed that married women could be fully liable for their actions in coining cases. This change was likely due to the new ideas about the criminality of coining, but it demonstrates that perceptions of married women were subject to a number of factors and were not limited solely to their marital status. Despite this, ideas about the household and coverture still played an implicit role and informed people’s perceptions of married women in coining depositions.

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the late 1690s, it was plausible that the acute shortage of full-weight money was starting to affect large numbers of people and, crucially, after 4 May 1696, the government stipulated that coins would be valued by their silver content and not their face value when used for paying tax.” Tosney, “Women and ‘False Coining,’” 109.


62 As John Styles explains in his study of eighteenth-century coiners, “There was no system of regular, general recoinages to uphold the quality of the currency. Recoinages in England were extraordinary government decisions, reluctantly taken. Eighteenth-century administrations were discouraged from embarking on such exercises by the disastrous experience of 1696-8. That recoinage had been forced on government by catastrophic public abuse of the silver currency. It entailed commercial dislocation, huge expense, fraud, popular hostility and public acrimony, yet it entirely failed to provide a secure silver coinage.” John Styles, “‘Our traitorous money makers’: the Yorkshire coiners and the law, 1760-83,” in An Ungovernable People: The English and their law in the seventeenth and eighteenth centuries, ed. John Brewer and John Styles (New Brunswick: Rutgers UP, 1980), 175-6.
In December 1647, when following his master’s calf into John Elsworth’s field, Roger Hardcastle of Bishop Thornton the “calfe hapned to tread upon something that [jingled], which he perceaving went to see what it was and there he found a paire of weigh scales, three fyles, four weights, two other instruments of iron and a piece of mercurye or some thinge that was poyson.” Hardcastle showed these goods to his fellow servants, who then showed the instruments to Frances the wife of John Elsworth. Frances “challenge[d] the said instruments to be hir husbands and hirs and took them from [Hardcastle].” Frances had every right to lay claim to the goods, but what makes this case interesting is that John Elsworth was a prisoner in gaol upon suspicion of clipping and counterfeiting, and the goods Frances challenged were tools used for coining.\(^{63}\) While this suggests that at the very least Frances was aware of her husband’s activities, it is important to note that Hardcastle’s deposition was evidence against John, and while he alluded to Frances’ involvement, he never specified this. This seems to suggest that nobody held Frances criminally liable in any manner even though the depositions concerning this case seem to indicate an entire coining network.

Similarly in a 1651 deposition, Thomas Walker explained that while he was searching for some stolen goods at John Dixon’s house in 1644, he found the stolen goods and some coining moulds and a pan for melting in a cupboard. At the same time, both he and Thomas Bower “perceiving that the wife of the said Jonas Dixon had taken something out of a chest they gott hold of her handes and found that shee had there in a pewter beaker lapt in greene say about eight or nine ounces of clippings coyned silver which clippings & mouldes they brought to James Bamforth Bailiffe of Hallifax.” Both Walker and Bower alluded to their belief that Dixon’s wife was involved in the coining, but the JP only examined Jonas Dixon; there is no

\(^{63}\) TNA PRO ASSI 45/2/1/279.
other mention of his wife’s liability or even her name in the case.\textsuperscript{64} Just as with the Elsworths, the case against the Dixons seems to be more so against the husband. Mention of the wife in either case seems to be in building evidence against the husband rather than in directly accusing her of criminal behaviour or liability.

Perhaps the limited liability of wives in these depositions had to do with the nature of coining, which ensured that it was primarily a household offence. Coining may not have been part of a person’s prescribed household duties, but it took place in the privacy of one’s home, and husbands and wives often worked together as a team. In fact, as Gaskill explains, coining may have been treason in the courts but in daily life it was “a mundane cottage industry” where even those married women who were not directly implicated in its practice “were usually aware of it and sought to protect [their husbands] – and indeed their households – from the law.”\textsuperscript{65} The number of married women involved in coining with their husbands was significantly higher than it was in theft-related offences. While 40 percent of married women involved in theft-related offences did so with their husbands, 66 percent of married women involved in coining did so in a household setting with their husbands.

Even though coining was not subject to the defence of marital coercion, a husband’s presence seems to have covered his wife’s criminal liability until the end of the 1670s. Perhaps this willingness to let a husband’s presence cover his wife’s had to do with a wife’s subjection to her husband’s authority within the household as well as where the offence occurred. In this sense, one could argue that the discussions of married women in coining offences between 1640 and 1680, which contain allusions to involvement rather than direct accusations, assumed a wife’s obedience to her husband’s commands, which came with a corresponding lack of criminal

\textsuperscript{64} TNA PRO ASSI 45/4/1/53-5. See also: TNA PRO ASSI 45/6/3/76-7

\textsuperscript{65} Gaskill, \textit{Crime and Mentalities}, 139. See also: Tosney, “Women and ‘False Coining,’” 112.
liability. The corollary of coercion was a wife’s duty to obey her husband and by allowing a husband’s criminal identity to subsume his wife’s the deponents demonstrated the extent to which obedience was assumed and how far principles of coverture pervaded daily life.

The wives whom people held liable for coining in the northern depositions before 1680 were those who were accused without their husbands. This further demonstrates contemporary assumptions of a married woman’s lack of legal identity within the household. In his 1648 information, Isaac Rawden explained that he saw Jasper Drake clipping coins in John Drake’s house at Keighley. At the same time, Rawden claimed that “Anne ye wife of John Drake was then in the sayde house and sawe the sayde Jasper clipping as aforesaid.” Rawden was careful to note that it was Jasper Drake, not Anne’s husband John who was present which suggests that Rawden saw her as fully liable for her actions. Rawden’s deposition did not contain any sense that Anne’s behaviour was excused by her husband’s involvement. Since Anne’s husband John was not present, Rawden held her accountable for her actions.

Similarly, in 1663, Martin Harrison explained his knowledge of a coining network in the West Riding. One member of this network was Mary Millner, the “reputed wife of Joseph Millner.” Harrison characterized Mary “as a venter and putter of badd money and counterfeite of the kinges coyne of England, and hath vented above [£200] and paid for the space of ten or eleaven yeares.” Harrison further deposed that Mary frequently met her confederates in a house in Skipton, but nowhere in his deposition did Harrison allude to Joseph Millner’s involvement. Unlike the previous cases of wives accused of coining with their husbands, the marital status of married women such as Anne Drake and Mary Millner seems to be more a way to describe them

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66 TNA PRO ASS 45/2/2/30-1.
67 TNA PRO ASS 45/6/3/170.
than as a way excuse them from any criminal liability. Isaac Rawden and Martin Harrison’s depositions contain no indication that they believed these women were anything but guilty.

This situation changed in the 1680s as people increasingly began to directly accuse married women in the northern coining depositions, regardless of their husbands’ presence. In a 1681 deposition concerning the coining activities of Lidia Champion, her husband Richard, and her father James Thompson, Ellen Whittles explained that she had seen these three people together, “frequently shutt upp together in the shopp in privett, and that James Thompson did threaten to stab [her] in case she offerd to come neare them as to observe what they did in that place.” Whittles heard that “James Thompson and the other two weare suspected for coyning” and two separate incidents confirmed these suspicions. She claimed that James Thompson once gave her a shilling to buy butter from Charles Warbleton “who tooke the same but finding that it was bad brought it back to the said Thompson who changed the same.” The second occurred in 1679, when she saw Lidia at a wedding where Lidia “threw downe a shilling for the shott a new one which was objected against and then changed by the said Lidia Champion.” Whittles claimed that she had seen “this new money in the hand of Richard Champion and in the hand and possession of Lidia aforesd in his and frequently in hers.”

Neither Thomas Garvis, nor John Webster, nor Throath Warbleton, nor Thomas Ludlam, nor Edmund Cutt mentioned Lidia Champion in their depositions, but somebody must have felt that she was responsible as both Lidia and Richard Champion were examined about their involvement in coining (Thompson was not examined because he had fled).

Lidia Champion’s experience was not an exception; from the 1680s onwards people often specified that married women were as liable as their husbands. In 1688 for example, George

68 TNA PRO ASSI 45/13/1/125.
69 TNA PRO ASS 45/13/1/125v-125Av.
Raper of Darbyshire explained how he saw John and George White counterfeiting upon the highway and that he believed Henry Lowell and Mary his wife were “confederates with the said John and George White in their said treasonable practises and that all the said persons are suspected of the same as likewise of clipping and diminishing his Ma[jes]ties coine.”

This dual liability also comes across in the 1685 examinations of John Staneley and his wife Anne. The constable had found £5 of clipped money on John when he apprehended him, but John could not provide a ready explanation as to where he got the clipped coins. Anne was later “examined touching the clipping and rubbing of moneys.” She claimed that “she did never clipp nor help to rubb and dresse any money that was new clipt and being asked if she was in Tho Atkinson’s house in September last with her husband she sayes she cannot remember that she was there with him at that time.” In these cases, deponents specified a wife’s involvement and saw it as equal to her husband’s.

As authorities attempted to cope with the prevalence of coining, they began to focus on criminal coining networks, and these dominated the depositions in the 1690s. These networks consisted of various people including those who supplied or transported the bullion and clippings and those who counterfeited the coins. Individual informers who wanted to avoid prosecution or gain their freedom provided information against all members, which often included married women both with and without their husbands. In an eleven folio deposition from August 1689, Elizabeth the wife of Joseph Lee of York provided information against a number of people with whom she had exchanged bullion, including nine married women. Of these, three were accused without their husbands, but Elizabeth did not differentiate between their actions and those of the women who were accused with their husbands. Elizabeth explained how she had sold twenty

70 TNA PRO ASSI 45/15/2/103.
71 TNA PRO ASSI 45/14/2/169, 174.
72 Gaskill, Crime and Mentalities, 179.
ounces of clippings to Christopher Whitehill a goldsmith of York for 4s6d per ounce and then sold six or seven ounces of clippings to Whitehill’s wife for the same rate. Elizabeth also discussed her dealings with Ellinor the wife of John Wormald, from whom she had received several sums of money amounting to £40, for which Elizabeth paid 22s6d in clipped money per pound sterling. Elizabeth Lee did not differentiate between what she saw as either woman’s guilt, despite the presence or absence of their respective husbands.

Perhaps Elizabeth Lee represented married women as actors in their own right who were fully liable for their actions because she was a married woman herself. However, in much the same way as the gender and marital status of the accusers in the depositions for theft-related-offences did not matter, people’s differing perceptions of married women in coining cases did not depend on their gender or marital status. One can see this when considering Arthur Fairis’s 1691 depositions against people involved in a West Riding coining network. Fairis discussed his dealings with three married women, two of whom acted without their husbands. These included Jane the wife of Joseph Tweedell, with whom Fairis had exchanged clippings of money at her house numerous times for 4s6d per ounce, amounting to a total of twenty ounces. In another deposition Fairis explained how he had bought about twelve ounces of clippings from Ann Ramsden for the same rate.

Fairis drew little distinction between the behaviour and liability of Jane Tweedell and Ann Ramsden who were accused without their husbands, and that of the wife of James Braithwait. Fairis exchanged unclipped money for clipped money with both James and his wife, and held them both fully accountable for their actions. Arthur Fairis and Elizabeth Lee

73 TNA PRO ASS 45/15/4/60B-C6.
74 TNA PRO ASSI 45/16/1/1v.
75 TNA PRO ASSI 45/16/1/12.
76 TNA PRO ASSI 45/16/1/5A.
followed the general trend that emerged in the 1680s of holding married women fully liable for their coining activities. Instead of placing married women in the household, and allowing a husband’s criminal identity to cover his wife’s, informants throughout the 1680s and 1690s began to see married women as individual criminal actors, even in the presence of their husbands.

What is particularly surprising about the northern coining depositions is how much more prevalent ideas of coverture are than in the theft-related cases. This is apparent in both the tendency to let a husband’s presence cover his wife’s liability prior to 1680, and in the number of references to a husband’s authority throughout the period. Unlike theft-related offences, coining cases included very few responses to charges. Only sixteen of the ninety-nine married women accused responded to the charges, and the majority of these were denials of the offence. In 1685 for example, the bailiff of Halifax Richard Jepson explained how he had gone to James Oates’ house where he found Joseph Robinson, his wife, and Isabell the wife of Joseph Ambler in a chamber, “selling or exchanging money.” Upon searching the parties, Jepson found 40 shillings of various coins wrapped in paper “in the pocket & possession of the said Isabell Ambler all which sd moneys was very much clipp’d & diminished.” In her examination Isabell did not deny that she had the money, but claimed that she had found it “in a lane called Rands Lane in Northowrome.”77

In another case from 1689, Isabell Lyster explained how she had seen Elizabeth the wife of Ashton Jones with her master Symond Scott on numerous occasions. At one point she saw Elizabeth

open a purse or bag and take out of the same a quantity of clippings of silver, clipp’d of the lawfull coyne of this realme of ye bulke or bignes of a turke egg which sd clippings shee delivered unto the sd Symond Scott who putt them into the sd skales and afterwards

77 TNA PRO ASSI 45/14/2/5.
tooke them out of the skales and put them into a littell whitish pott which sd pot he brought along with him into the shop and set it upon a hot fyer and melted the sd clippings downe into a square piece of bullion and some thinge thicker than a tankeard after which shee saw her Master goe to his money box and tooke there out about the sume of [20s] and gave it to the sd Elizabeth Jones and she put it into her bage and soe went out of the house.

Elizabeth attempted to explain her presence at Scott’s shop but denied any other connection with him. She claimed that she “had noe other business with the sd Symond Scott but onely to buy of him two silver tumblers and two payre of silver clasps and three payre of shirt buttons of silver for all which shee saieth shee paid him [30s].” Both of these cases conform to the pattern found in theft-related-offences where married women believed that denial was the most effective defence in their examinations.

What is interesting about the coining depositions is that four of the fifty cases contain a wife directly referencing her husband’s authority in her defence. This number is small, but it is striking when one compares it to the even smaller number of wives who alluded to their husbands’ authority in theft-related-offences where coercion was supposed to be a viable defence. Four out of fifty seems like a much more significant number when it is compared to two out of 166.

In his January 1665 information against John Browne, Robert Bridges explained that Browne’s wife Anne told him Browne “would have had her to have helpt him [clip coins] but she said she could not by reason her armes were too weake.” In 1685, Beatrix Rhodes deposed that she had seen Phebe Firth put some clippings behind a case in Henry Barret’s house. Phebe claimed that Daniel Holdsworth had urged her to carry the clippings, which she refused to do until Holdsworth “perswaded her husband to threaten her to it.” In a separate case from 1697,
Thomas Cocksholl deposed that he heard Thomas Shakleton tell his wife to take King Edward and Queen Elizabeth shillings in his absence, since they would be easily melted down for counterfeit coins.  

Deponents in the post-1680 northern coining depositions seem to refer to a husband’s authority in order to excuse a wife’s involvement, which is what one would expect to find in relation to coverture and marital coercion. But coining was a form of treason and the defence of marital coercion was not applicable, even in theory. Perhaps the appeals to a husband’s authority came in cases where people wanted to excuse a married woman’s involvement and played upon conceptions of household authority. However, they were the minority of cases, and more often than not, a married woman could not escape prosecution or execution on the technicality of marital coercion.

Perceptions of married women in coining cases probably reflected changing ideas about coining as a crime. This was evident in both people’s representations of married women accused of coining and the pattern of accusations. As previously discussed, authorities were concerned with coining throughout the seventeenth century, and undertook a variety of schemes in order to combat the problem, which they saw as increasing in the 1680s and 1690s. Ultimately, the “catastrophic public abuse of the silver currency” resulted in the recoinage of silver in 1696-8, a massive undertaking that “entailed commercial dislocation, huge expense, fraud, popular hostility and political acrimony.” When one considers the context of the crime, the social

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81 TNA PRO ASSI 45/17/2/61-2.
82 As Malcolm Gaskill explains, by the later seventeenth century, coining “came to threaten not just the authority of the state but the economic fabric upon which that authority was founded, and a new strategy was required. Since it was becoming harder not only to catch coiners, but also to prove a case against them at law, the focus of official attention shifted away from religious ideology imposed from above and voluntary prosecution from below, which together still constituted the mainstay of law enforcement against most crimes, and instead steps were taken to apply practical measures of organization and intervention to induce and coerce the population into a state of obedience.” Gaskill, Crime and Mentalities, 160.
83 Styles, “‘Our traitorous money makers,’”176.
changes of the period provide less of an explanation for the changing perceptions of married women in the coining depositions after 1680.

**Murder**

An examination of the depositions concerning murder reveal that marital status had a limited effect on how people perceived married women accused of murder. Instead, the northern murder depositions fit into one of two general categories: either a married woman’s peripheral involvement was subsumed into a household conception of crime, as in the 1678 case of Mary Cudworth, or a married woman was directly accused and held to full account as in the 1682 case of Jane Stabler. Both of these cases reveal that the circumstances of the crime often dictated how people perceived the accused wives, but it is important to note that the household ideal was never far from the surface of depositions concerning married women who were accused of murder.

In April 1678, Jonathan Cudworth’s body was found in a stone pit in Yorkshire. The testimonies before the coroner Thomas Garnett seem to indicate that his son-in-law Bartholomew Marriott had killed Cudworth with an axe. Marriott and Cudworth’s already bad relationship had become even more strained when Cudworth had a son with his current wife, ostensibly cutting Marriott and his wife out of an inheritance. As another of Cudworth’s daughters Easter Robinson explained, she had been told that “Bartho[lomew] Mariott had diverse times formerly threatened to kill Jonathan Cudworth her father . . . [and] he cared not one pyne if the child were hanged meane[ing] that child that Jonathan Cudworth had by his last wife, which is a male child & now about one yeare of age.”

While the deponents focused largely on their belief that Marriott was guilty, Cudworth’s wife Mary testified that her stepdaughter and Bartholomew’s wife Mary had called at her father’s house the morning of his death and called him out to aid her husband. That was the last time Mary Cudworth saw her husband until he was “found dead & cruelly murdered . . . & thrown
into a stone pitt in the said closse called pittlands.” In her deposition, Mary Mariott stated that her husband Bartholomew had “bid her to rise in the morneing betimes & tell her father to rise & goe & putt out sheep of the pitt lands,” although she did not know what his intentions were.\(^{84}\) While Mary Mariott was not the principal actor in her father’s murder, it appears that she was involved to a certain degree. However, her husband’s liability seems to have covered her actions since the accusations only hint at her involvement.

Just four years later, in contrast, a child’s body was found drowned in Hull in April 1682. The child’s father Robert Stabler deposed that he had left home to work as a day labourer, leaving his wife Jane and “child very well in bedd in ye morninge & that before he returned from his worke that day his said wife was run away with his said childe.” It was not clear what Jane did with Thomas, but Robert stated that a child was found drowned in the river, which he knew to be Thomas “by ye clothes it had on when it was found drowned & other marks.” Jane’s actions upon her return to Hull raised further suspicion against her. When she received “information that hir child was found drowned she run away againe . . . & hired her self as a servant at Cottingham.” Robert eventually found Jane and questioned her concerning their son, and she originally “told him she had left it with a nurse at Yorke but when he told hir that it was found drowned in Hull River neer Sutton shee told him that as shee went with it to Yorke it dyed by the way in Sutton Field & that shee left it lying on ye ground.”\(^{85}\) Unlike Mary Marriott, whose criminal behaviour was limited to a certain degree, the direct accusations against Jane Stabler indicated a sense of her full criminal liability.

Murder, in its loosest definition, consisted of a number of different categories of killing, each of which had varying degrees of severity. The most common offence was wilful murder,

\(^{84}\) TNA PRO ASSI 45/12/2/143B-145.  
\(^{85}\) TNA PRO ASSI 45/13/2/91A-91Av.
which Sir Edward Coke defined as “when a man of sound memory and of the age of discretion, unlawfully killeth . . . any reasonable creature . . . with malice fore-thought, either expressed by the party or implied by law.”

The presence of malice aforethought distinguished murder from manslaughter, which was killing with provocation. Murder was not subject to the benefit of clergy, but manslaughter was, which provided someone convicted of manslaughter a chance to escape the gallows. In the opposite direction of severity, petty treason referred to the murder of a person to whom one owed obedience, including a wife murdering her husband, a servant murdering his or her master or mistress, or a religious person murdering a superior officer. The punishment for wilful murder was hanging regardless of the murderer’s sex, but the punishment for women convicted of petty treason was burning, which was the same punishment for women convicted of high treason. This analogous punishment was intended to demonstrate the severity of the act itself. Infanticide, the final category of killing, was largely confined to unmarried women. The 1624 statute held that a woman who “concealed the death of her bastard child was presumed to have murdered it unless she could prove by at least one witness that the child had been born dead.”

Married women could have bastards, but the statute was largely concerned with unmarried women. The defence of marital coercion was not applicable to any of these offences, and legal authorities were careful to specify that married women were fully accountable for their actions in murder cases.

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87 Sir Matthew Hale defined manslaughter as “killing another person upon a sudden falling out or provocation, or unjustifiable act.” Sir Matthew Hale, *Pleas of the Crown* (London, 1678), 36. Since someone convicted of manslaughter could plead benefit of clergy, he or she would not face the death penalty and the penalty for manslaughter was often branding or eventually transportation.
88 *Statutes at Large, Volume I*, 255.
It is not clear why murder was exempt from the defence of marital coercion, but as Janelle Greenberg explains, these actions were so reprehensible that a married woman “had to assume sole responsibility for her behaviour, even [if] it took place within the presence of her husband.”92 Perhaps it was because murder’s violent nature meant that married women were asserting their authority and superiority rather than conforming to their traditional roles.93 Or maybe authorities believed that violent wives were outside the control of their husbands and therefore could not claim the defence of coercion by the nature of their behaviour. One other possible reason is that murder was such a serious offence that authorities did not believe any defence could excuse such behaviour. Despite the theoretical exclusion of murder from excusable offences for married women, people within the northern depositions still held that in certain cases a husband’s presence could still cover his wife’s criminal identity. The emphasis on a married woman’s limited involvement in these depositions suggests that people believed her actions were part of her larger household identity.

One can see this in the 1646 Coroner’s Inquisition concerning William Field’s death. William’s widow Grace Field testified that Thomas Thompson, his wife Margery, and John Fisher had come into her late husband William Field’s house to drink some ale, whereupon Thomas and William had started quarrelling. During this fight, Grace saw Thomas stab William with an iron fork under his left arm, which proved to be a fatal wound. Grace further testified that it “was reported that Thompson’s wife [Margery] should say to her husband about fowre dayes before this quarrell, strike Willm Feild but kill him not.”94 Both Thomas Mason and

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93 As Garthine Walker explains, in the early modern period “To wield violence was to assert authority and superiority.” Garthine Walker, *Crime, Gender and the Social Order in Early Modern England* (CUP, 2003), 40.
94 TNA PRO ASSI 45/1/5/67. See also: TNA PRO ASSI 45/2/1/94; TNA PRO ASSI 45/18/1/7; TNA PRO ASSI 45/24/2/116-28.
Thomas Thompson gave information at the same inquest, but neither one of them mentioned Margery, yet it appears that Grace felt Margery’s provocation constituted involvement. This suggests that Margery’s involvement was somewhat covered by, or at least subsumed into her husband’s actions.

While Margery’s involvement seems to have hinged on her words, married women were often physically involved in similar cases. In another case from 1646, Thomas Binks the younger explained how his father Thomas Binks senior had been at Edward Wilson’s house drinking with John Kirby. While there Robert Wilson threw a “drink in his face: and when they had payed the shotte and were comeing away the said Robert Wilson stroke at his father and maid his nose bleed.” This was not the end of their quarrel; three hours later Thomas Binks the elder and Robert’s father Edward Wilson started arguing in the street. At this point Robert struck at Binks the elder’s ankles and “dasht his head upon the stones.” Binks the younger attempted to rescue his father, but Edward Wilson “fell upon him with a cudgell and broke his head in three places and ye old mans wife and young mans wife back fell upon this examinant and threw him downe and turned him sore.” During this brawl, Robert Wilson took a hammer from Binks the elder’s pocket and struck Binks the elder in the eye “whereof he languished till about a week before Christmass and then dyed.”

Neither of the two women was examined concerning Thomas Binks’ death, but his son certainly felt that they were involved. In this case it appears that the unnamed wives were acting in support of their husbands, which seems to have resulted in a lack of liability.

The northern murder depositions which concern a wife’s alleged peripheral involvement all involved a husband and wife accused together. This situation supports the idea of a criminal household, where a wife’s actions supporting her husband’s activities were part of something.

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95 TNA PRO ASSI 45/1/5/74. See also: TNA PRO ASSI 45/2/1/125-6.
larger than her own criminal identity. Perhaps in these cases, the idea of a married woman’s lack of criminal liability was assumed, and her activities were “covered” by those of her husband’s. While this could very well be true, most of the peripheral accusations consisted of married women who had apparently not committed the murder. Married women seem to have been involved in brawls by yelling from the sidelines, or dealing with bystanders rather than the deceased. It is probable that the deponents in the murder accusations saw these women’s activities as peripheral because they really were. While elements of the household are present in that the cases involve a husband and wife working together, the main lesson revealed in these depositions is that perceptions of married women in murder cases depended more on individual circumstances than on marital status.

Of the twenty-five northern depositions relating to married women and murder, twelve involved husband and wife together, but the majority of these cases were the nine previously examined cases of peripheral involvement. The three remaining cases of a husband and wife accused together involve direct accusations, with the deponents alleging that the wife actually committed the murder. In 1647, for example, George Hutchinson explained how his son Samuel, his daughter Jane and her husband Raphe Phuron came to his house one afternoon and murdered his wife Katherine Samuel. While Samuel had kicked her in the chest, Jane stabbed Katherine in the head with an iron chisel. George deposed that “Raphe Pharon was ther & then present att the fact doing & was guiltie to the same after hir wounds given hir by Samuell his sonne & Jane his daughter she was suffocated & strangled & so dyed.” At no point in his deposition did George indicate that any one party was less guilty of the offence.

Similarly in 1734, when John Walker and John Fox went to arrest Richard Smales, they found the door to Smales’ chamber locked. Upon opening the door, they were met with gunfire

96 TNA PRO ASSI 45/2/1/146. See also: TNA PRO ASSI 45/15/4/138-43.
and Fox was killed. Walker remembered hearing Smales’ wife Ellis call out loud that “they should all be murdered if they further attempted to take the said Richard Smales.” And William Lockwood likewise deposed that he heard Ellis say that if they did not go from the door, she would give them “as much as she had given John Fox for that she had shot Fox.” It remained unclear who had actually fired the shot that killed Fox, but both Richard and Ellis Smales felt it prudent to flee. The deponents within this case may not have been sure whether Richard or Ellis killed Fox, but they had little difficulty attributing it to Ellis despite her husband’s presence. Jane Phuron and Ellis Smales were supporting their husbands, which suggest some sense of household, but their actions did not entitle them to the cover of their husband’s legal identity. This further demonstrates that a married woman’s criminal liability in murder cases depended more on her actions than on her marital status.

The northern murder depositions also reveal the most obvious separation of husband and wife. In 1751, Richard Brown beat his daughter Mary so severely that she died of her wounds. His neighbours certainly felt that Richard was responsible for his daughter’s death, and they all mentioned the presence of his wife Margaret during the beating. Hannah Christoll, for example, explained how she lived in a room near the Browns. One afternoon she “heard the said Richard Brown threatening and as she apprehended beating his daughter Mary Brown, whom she knew had ben [sic] and was then very ill in a dropsie and therefore [she] went into the said Brown’s house to interpose and hinder him from beating his said daughter.” Christoll claimed she and Brown’s wife Margaret “prevented his giving [Mary] any more strokes by holding him till the said Mary Brown got down stairs.” Christoll further deposed that later in the evening Mary fell down the stairs and at the instigation of his neighbours, Brown came down to get her while “his

97 TNA PRO ASSI 45/19/4/51-5.
wife Margaret Brown held a light at the top of the stairs.”98 The other depositions state that Margaret was present, but agreed that she was not directly involved.

At the inquisition, Margaret stated that her husband had come home “somewhat intoxicated with liquor and taking some offence at the behaviour of his said daughter made an attempt to beat her with a small cord, but [Margaret] prevented it and the said Mary Brown quitted the room and went down stairs to the next landing below.” Mary remained downstairs for some time, refusing to come up, but at some point she fell down the stairs. Margaret held “that such accident happen’d by the said Mary Brown’s attempting to go down stairs lest her father might come down and beat her.” What is interesting about this deposition is not what Margaret said about the case, but that she was bound in a recognizance for £40 to give evidence against her husband Richard Brown at the next Assizes.99 This recognizance is interesting because it bound a wife on her own and required her to give evidence against her own husband, both of which actions legal authorities expressly forbade.100 Both the JPs who took the depositions and recognizances and the witnesses to Mary Brown’s death seem to have regarded Richard and Margaret as separate in this case, suggesting limits to conceptions of household liability in the northern murder depositions.

While the idea of a unified household was less present in murder depositions than it was in coining and theft-related depositions, it was not entirely absent. Elements of the ideal household come across most clearly in cases of petty treason which represented what could

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98 TNA PRO ASSI 45/24/3/5E-5G.
99 TNA PRO ASSI 45/24/3/5H.
100 Similarly, in 1682, Robert Stabler was bound for £50 on the condition that he personally appeared at the next Yorkshire General Gaol Delivery and “prosecute & give in his evidence against Jane his wife upon an Inditement to be preferred against her touching the murdering of her childe.” TNA PRO ASSI 45/13/2/91Av. According to Nelson in his Office and Authority, a wife could not give evidence against her husband unless she was the grieved party, Nelson, Office and Authority, 217; Jacob, Modern Justice, 153; Shaw, Practical JP, I, 399, I, 405; Justice’s Case Law, 106-7. See also: Dalton, Countrey Justice, 133; Complete Justice, 252; Sheppard, Whole Office, 51; Jacob, Modern Justice, 153, 295; Bond, Complete Guide, 154; Nelson, Office and Authority, 82, 139; Shaw, Practical JP, I,455; The Justice’s Case Law, 108, 253.
happen when separate interests were allowed to flourish within what was supposed to be a unified household. Contemporaries saw petty treason as particularly dangerous because, as Frances Dolan explains, “the murderous wife calls into question the legal conception of wife as subsumed by her husband and largely incapable of legal or moral agency.”101 Feminine violence on its own was problematic because it upset the gender order, and a woman who was violent towards her husband was the most dangerous sort of woman who “subverted household, social, and moral order.”102 When a subordinate such as a wife murdered her superior husband, she took power for herself and completely reversed the gender order. Perhaps this is why the three accusations of petty treason contain the most direct condemnation of these women’s behaviour. Unlike the accusations of other crimes, which differed depending on the circumstances, all of the accusations for petty treason are alike in their characterization of the accused wives.

In 1661, William Dunne was poisoned and died. At the coroner’s inquisition, his neighbours testified that there had been a great deal of disagreement between William and his wife Ellen. John Forge explained how William had sought his advice, complaining that “he must be forced to leave his wife, she used him so cruelly yt he durst not live with her for feare she should destroy him in ye night.” Forge claimed that William wanted to sell some of his lands and move to London, but he dissuaded him of this plan and instead advised him to sell his personal estate. Forge believed that William told all of this to his wife “which was ye occacon of his suddane death.” Anne Watson furthered this characterization of Ellen as a bad wife when she explained that William “could not get the meate nor drink & yt his wife drewe firens in his bed covers & yt ye last summer he brought a horse to her & desyred her to hyde it, for he durst not keepe it at home for fear his wife should by night cutt his throa te or do him some ill turne with

102 Walker, Crime, Gender and the Social Order, 49, 83.
itt.” Jane Smith deposed that she had never heard anything bad about William, but Ellen was “always a woman of an evill reporte” who consistently threatened her husband. Throughout all the depositions concerning William Dunne’s death it becomes clear that his neighbours held that Ellen was a bad woman who was solely responsible for his death. 103

Similarly in 1664, when recounting Cuthbert Robinson’s death six years previously, Margaret Armstrong explained that it was widely reported that Cuthbert’s wife Mary had given him poisoned meat, which many believed was the cause of his death. 104 After Cuthbert’s death, Mary Robinson had married Henry Bell, but her servant Elizabeth Lowes testified that not only was Mary violent towards Henry, but it was widely suspected that Henry and Mary lived “incontinently together and that the said Mary did beare a Bastard Child to him.” 105 By drawing attention to Mary and Ellen’s unconformity to the traditional wifely roles, these witnesses demonstrated that Mary and Ellen had destroyed the unity of their households well before they had torn the household apart by murdering their husbands. Their condemnation of Mary and Ellen reflects the severity of the crime and the danger they believed these women posed to the social and gender orders.

Petty traitors were not the only married women who were accused without their husbands. In these cases there was no element of peripheral involvement and deponents had little difficulty holding these wives fully liable for their criminal actions. In 1656, for example, Alice the wife of Henry Taylor was called to account for the treatment of her servants on two separate occasions. In January John Scott and Ellen Burtch alleged that Alice had beaten her maid Mary.

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103 TNA PRO ASSI 45/6/1/53-53Av.
104 TNA PRO ASSI 45/7/1/169.
105 TNA PRO ASSI 45/7/1/170. The only exception to the rule that petty treason cases focused on the wife’s bad behaviour was that of Sarah Clerk in 1689. Instead of discussing how Sarah was a bad wife, the depositions are concerned with her hiring of assassins to murder her husband Awrelius. This focus is likely because the evidence against Sarah was stronger than it was against her counterparts Ellen and Mary, and also because Sarah confessed to the murder within her own deposition. TNA PRO ASSI 45/15/3/16-21.
Scott so severely that she had broken Mary’s back. Both Scott and Burtch encountered Mary while she was sick and asked her what had happened. Scott deposed that Mary told him “her dame [Alice] Taylor and Will Longbottome her fellow servant . . . had fallen uppon her and did beat her . . . and [Alice] Taylor her dame strocke att her with a hedge stacke upon her backe.” Mary languished from these wounds and died one week later.\(^\text{106}\) In November of the same year, Elisabeth Smith and Anne Pearson explained how Elizabeth Pearson had left Henry Taylor’s service because Alice “had given her two blowes upon the back and one punch or kick upon the side about the short ribbs, which blowes and kick the sayd Elizabeth [Pearson] told [Elisabeth Smith and Anne Pearson] that she thought they would be her death.” Pearson was correct in this assertion as she died of her wounds shortly thereafter.\(^\text{107}\) These depositions all contain similar characterizations of Alice Taylor as fully responsible for the deaths of both of her servants.

In another case from 1750, Mary the wife of John Atkinson was accused of slitting her three year old son Jack’s throat. Hannah Moore deposed how she had been lying in bed when she heard Jack’s sister Sarah call out for her. Hannah asked her what was wrong, to which Sarah answered:

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\text{pray come in and see Jacky . . . upon which [Hannah] immediately got up and went into . . John Atkinson’s house and there found the said infant lying dead with a great effusion of blood upon the bed but being much frightened went out again and soon after went again and saw the said child with its throat cut.}
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Hannah’s daughter Mary Moore provided similar information, adding that when she asked if Jacky’s nose was bleeding, “Sarah Atkinson immediately answered that her mother Mary Atkinson had cut the said John Atkinson her brother’s throat and had thrown the knife among the
Just as in the previous case against Alice Taylor, the deponents who testified against Mary Atkinson saw her as fully culpable for her actions.

In all of these murder depositions, deponents had little difficulty attributing liability to married women. These direct accusations could be due to the lack of “cover” married women had in non-household offences, but it could also be because they had actually committed the offence, or at least people believed that they had. Similarly to theft-related offences, there were no real changes in perceptions of married women accused of murder. This is likely because people believed the crime of murder was reprehensible throughout the period, and neither coverture nor the defence of marital coercion were supposed to excuse married women accused of murder. However, these same women were never completely free from coverture’s consequences. This was manifested in the deponents’ implicit assumptions about the household, and how these informed their perceptions of the accused. One can see this in the examples where a wife’s criminal liability was subsumed into her household duties of aiding her husband, and particularly in the horror reflected over petty treason, where the accused wives were treated particularly harshly. While the household nature of some crimes could subsume certain married women’s criminal liability, this was limited, and conceptions of the household were just as likely to punish women as they were to free them from criminal liability.

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Officially, the defence of marital coercion held that if a married woman committed a crime in the presence of her husband, she was presumed to be acting under his coercion and was therefore not liable for her actions. This defence was limited, and did not include serious offences such as coining and murder. Historians have used this concept of co-defendant immunity to argue that married women were not held accountable for their criminal actions.

108 TNA PRO ASSI 45/24/2/4-7. See also: TNA PRO ASSI 45/6/2/50-4; TNA PRO ASSI 45/21/4/24.
However, the previous discussion has demonstrated that determining a married woman’s criminal liability depended on a number of factors, and was not limited to her marital status. Leaving aside the limited amount of offences the defence of marital coercion could excuse, people within depositions had little difficulty assigning criminal liability to married women in a significant number of cases. It is important to note, however, that coercion may not have been the rule in the depositions, but coverture was not entirely absent.

People’s implicit assumptions about coverture and the household informed their perceptions of the accused married women and coverture manifested itself in different ways depending on the crime. Certain offences such as animal theft and coining were largely confined to the household, either in their occurrence or in the preparation of the stolen or counterfeit goods. Because of this married women’s criminal liability was limited or at least subsumed into their household duties and identities in the northern depositions. This limited liability had less to do with coercion than it did with ideas about household roles. Cases which conform to this model were more prevalent in the earlier part of the period between 1640 and 1760.

While household structure could provide a cover for married women’s criminal identities, it could also exacerbate guilt as in the case of petty treason. Here, a married woman usurpation of authority from her husband meant that his murder was a form of treason rather than simply murder. The defence of marital coercion may not have been a factor in these cases, but the accused wives were still subject to the principles inherent in coverture.

The household and implicit assumptions about it were central to people’s perceptions of married women in the northern depositions. This comes across in cases of a criminal household which saw dual responsibility for husband and wife as well as in cases where a married woman was solely liable for her actions when accused with her husband. People did not explicitly refer
to coverture or coercion in their depositions, which makes these conclusions largely speculative, but coverture formed an important subtext to people’s understandings of married women more generally. Despite this, people were willing to see married women as criminals, probably because obscure legal doctrines had little impact when a deponent was confronted with a stolen chicken. What the wide variety of deponents and their depositions ultimately reveal is that coverture was an implicit part of daily life and although it was rarely, if ever, mentioned, it ensured that married women were still subsumed into a larger unified household, which the doctrine was designed to enforce.
Figure 3.1: Accusations against married women for theft-related offences in the northern depositions

Source: TNA PRO ASSI 45

Figure 3.2: Accusations against married women for coining in the northern depositions

Source: TNA PRO ASSI 45
CHAPTER 4: ASSIGNING CRIMINAL RESPONSIBILITY IN THE NORTHERN CIRCUIT

The previous chapter examined the 1749 case of Mary Atkinson, who was accused of slitting her three-year-old son Jack’s throat. In their depositions, Joseph Steads, Hannah Moore, and Mary Moore all held Mary fully responsible for her actions. The sense of Mary’s guilt comes across even more so in her examination, where she did not deny the offence but rather explained that she slit Jack’s throat for “fear of the said child wanting bread.” When confronted with the bloody razor, Mary confessed that she had used it to kill Jack.\(^1\) This was a horrific crime, and reading the depositions leads to an assumption that Mary would have been punished for her actions; however, in March 1750 a jury acquitted her.\(^2\) How could the jury have reached such a verdict when all evidence pointed to Mary having murdered her son?

As previously discussed, the chief characteristic of the early modern criminal justice system was its discretionary nature. Victims of crime often chose not to prosecute an offence, and even if a case came to trial, a jury could acquit the accused or convict him or her of a lesser offence. An accusation, in other words, did not equal guilt. While the depositions examined in the previous chapter demonstrate what individual victims of crime thought of the married women they believed had committed the offence, there were still other elements of the criminal law between a deposition against an accused felon and his or her execution. Using the northern circuit gaol delivery books, this chapter examines how the court, and particularly the jury, assigned criminal responsibility to married women accused of theft-related offences, coining, and murder in the northern assize circuit. Juries often held married women liable for their actions. Even while doing so, however, juries had to contend with married women’s unique legal status and the corresponding complications of coverture. Coverture was an adaptable doctrine

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1 TNA PRO ASSI 45/24/2/4-7.
2 TNA PRO ASSI 41/4/195, TNA PRO ASSI 41/3/6/103.
and various people used it in different ways at different times, but the end result of a unified household and a wife’s subordinate status remained important elements of married women’s lives and criminal experiences throughout the period.

Verdicts for many cases were recorded in gaol delivery books – the official calendar of the prisoners accused of criminal offences. They contain a note both about the pleas and decision of the case. The gaol books are useful for this study in that they allow us to determine what happened to the married women discussed in the previous chapter and to trace ideas of criminal responsibility past the accusation. It is important to note that the northern gaol delivery books contain gaps between 1640-1656 and 1676-1716. Even with these gaps, the gaol delivery books contain records of 160 married women accused of theft, coining, or murder (see table 4.1).

<table>
<thead>
<tr>
<th></th>
<th>Theft</th>
<th>Coining</th>
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<th>Total</th>
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<td>0</td>
<td>3</td>
<td>33</td>
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<td>8</td>
<td>15</td>
<td>127</td>
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<td>Widow</td>
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<td>0</td>
<td>6</td>
<td>22</td>
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<td>234</td>
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<tr>
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<td>403</td>
<td>8</td>
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Source: TNA PRO ASSI 41, TNA PRO ASSI 42

However, the gaol delivery books do not contain any information about the cases besides the name of the accused and his or her verdict. In order to gain a better understanding of the specific circumstances of each case, this study cross-listed the gaol books with the depositions examined in the previous chapter. This provided a sample of eighty-three married women who had matching depositions and gaol delivery entries. This sample was then analysed to determine possible reasons behind why a jury chose to convict or acquit an accused married women. While these reasons are largely speculative, covverture seems to have played both an explicit and

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implicit role in the northern assize circuit, although it was often only a backdrop to the larger reasons behind a jury’s decision concerning a particular offender’s fate.

**Patterns of Responsibility**

The 160 married women accused of theft, murder, and coining in the northern gaol delivery books indicate that married women were present in the early modern criminal justice system. Before analysing the reasons behind a jury’s decision in these cases, it is necessary to determine larger patterns of married women’s criminality. As previously stated, the northern assize gaol delivery books contain gaps between 1640-1656 and 1676-1717. In order to account for these missing years, this study used the Kent indictments from 1640-1688 and the Old Bailey records from 1674-1760, which revealed a total of 1747 cases in which a married woman was accused of a theft-related offence, coining, or murder. The overall statistics (see table 4.2) demonstrate that juries did not uniformly acquit married women. Juries acquitted or discharged 1026 (58.73 percent) of the married women accused of theft, coining, or murder between 1640 and 1760. The acquittal rates for the various crimes differed, with the highest for murder at 68.97 percent. These numbers ultimately reveal that the defence of marital coercion, or at least assumptions about coverture, created a situation in which married women’s acquittal rate was high (as compared to the acquittal rates of other groups of offenders), but their criminal liability was not entirely erased. Juries convicted 379 married women of theft, murder, and coining, which certainly argues against a universal assumption of married women’s lack of criminal liability.

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The numbers in table 4.2 do not account for the changes over the entire period. An analysis of the verdicts and crime rate separated into decades demonstrates that although these women were wives and subject to elements of coverture, they were also accused criminals and their experiences were often connected to overall ideas about crime and external factors not necessarily related to marital status.

The crime rate did not remain stable during this period and as figure 4.1 shows, the number of married women accused of crimes increased gradually over the seventeenth century with a sharp increase in the 1680s and 1690s, followed by a sharp drop in the 1700s. Then the numbers began to rise again throughout the eighteenth century followed by a large increase in the 1740s and an even larger increase in the 1750s. Part of the reason for the large jump in numbers in the late-seventeenth century may be the nature of the sources. The Old Bailey records start in 1674 and their addition to this sample certainly had a large impact. However, this does not explain the large drop in indictments during the 1700s and the drastic spike in the 1750s.

For the most part, the number of accusations against married women followed the general pattern of crime. For example, the increase in indictments during the 1710s was due in part to the perceived crime wave following the Peace of Utrecht and the end of the War of Spanish Succession in 1713. The spike in the 1750s was probably due to the perceived crime wave following the end of the War of Austrian Succession in 1748.\(^5\) Massive demobilization at the end

of each of these wars released a large number of men into civilian society, and without social support networks, these men often turned to a life of crime. While this was undoubtedly true, people’s perceptions of the numbers of crimes committed was just as important a factor in the decision to bring someone to trial as was the actual number of crimes. As Douglas Hay explains, prosecutors – the victims of crime – were often more punitive during years of high crime rates, which means that the increased indictment levels are indicative less of crime rates than prosecutorial behaviour. The belief in increasing crime rates also placed pressure on judges to hang more offenders, and certainly played a role in jurors’ decisions. Married women may have been unique criminals, but the pattern of their indictments follows that of crime more generally, suggesting that their legal, or at least criminal, identities were connected to more than coverture.

One can also see these external pressures in the distribution of partial verdicts in figure 4.1. The ability to plead benefit of clergy was central to the discretionary nature of the criminal law, and until 1691, only men could plead benefit of clergy except for theft of goods valued fewer than 10s. Women could plead benefit of the belly, which respited punishment during pregnancy, but this was not analogous to benefit of clergy since there was no guarantee a woman would not be executed after giving birth. In 1691, women were granted the right to plead benefit

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7 Ibid, 156.
8 In her study of Tudor pardons Krista Kesselring explains, “The greatest disparity between benefit of clergy and benefit of belly, however, was that the first offered freedom from execution whereas the latter only deferred it. A woman who successfully pleaded benefit of the belly still needed a pardon to escape death.” She further found that during the Tudor period, of the 224 women in the Home Circuit who were reprieved for pregnancy, only 105 (47 percent) obtained pardons, which leaves the remaining 119 unaccounted for. Kesselring further argues that it was “of course, possible, that other women reprieved for pregnancy were just quietly released, but this seems unlikely and no such evidence has yet been found. Thus, of the women convicted, only 21 percent escaped death, a percentage that compares unfavourably with the 57 percent of male convicts who used clergy and pardons to evade the gallows. . . . Juries demonstrated less willingness to prosecute or convict female offenders, but for those women they did find guilty, a royal pardon represented the only hope of mitigation. Although many of the women who pleaded pregnancy eventually received pardons, the decision remained at the discretion of the Crown and its agents. Benefit of clergy and benefit of the belly cannot be treated as analogous practices.” Krista Kesselring, *Mercy and Authority in the Tudor State* (CUP, 2003), 212-4. For example, Sarah the wife of Sheldon Fulk was condemned for
of clergy for theft over ten shillings, and the increase in partial verdicts in the 1690s and afterwards likely reflect this new ability. Similarly, the passage of the 1718 Transportation Act (4 Geo I c.11) resulted in an increased use in partial verdicts. Parliament passed this Act – which made it easier to transport all offenders – in response to the crime wave which followed the end of the War of Spanish Succession. By creating a viable alternative to the gallows, these statutes ensured that partial verdicts increased consistently from the 1720s onwards, which explains why partial verdicts against married women followed this pattern.

Despite these changes there were some elements of continuity, most notably in the acquittal rates of married women accused of theft-related offences with their husbands. The previous chapter revealed that the treatment and perception of married women in the pre-trial stages depended less on a woman’s marital status than it did on the presence or absence of her husband, and this trend continued in the verdicts (see figures 4.2, 4.3, and 4.4). Figures 4.2 and 4.3 demonstrate that despite the changing crime patterns, the acquittal rates for married women coining at the Old Bailey in 1692 and respited for pregnancy; however, the September 1693 Ordinary’s Account indicates that Sarah was executed. Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), October 1692, trial of Sarah the wife of Sheldon Fulk (t16921012-50); Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), Ordinary of Newgate’s Account, 20 September 1693 (OA16930920). See also Deborah Churchill who was executed in December 1708 for aiding Richard Hunt, William Lewis, and John Boy in their murder of Martin Were. In the Ordinary’s Account, Churchill explains how she had been tried and condemned the previous February but her sentence was respited “by virtue of a Reprieve given her upon account of her being thought to be with Child. But now she own’d she was not, but was willing to use any means to save her Life, or at least put off her Death for a time.” Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), Ordinary of Newgate’s Account, 17 December 1708 (OA17081217).

9 As John Beattie notes, the 1691 statute seems, on the surface, a move to grant women the same rights as men, but it had a different purpose. Since prosecutors and juries were well aware that a woman who pleaded the belly could still be executed they were less willing to prosecute and convict them than men. The extension of the benefit of clergy to these women was less a move to equality and a way to save women from the gallows as it was an attempt to “encourage prosecutions and convictions as a way of increasing deterrence.” J.M. Beattie, Policing and Punishment in London, 1660-1750: Urban Crime and the Limits of Terror (OUP, 2001), 318.

10 Ibid, 362-364. The Transportation Act, along with 6 Geo I c.23 “not only created transportation to the American colonies as a punishment the courts could impose on clergied offenders, but also backed the system with sufficient resources to make it work.” It did so by “guaranteeing that the merchant who obtained the contract to take offenders to America would be well rewarded in return for taking all the convicts sentenced by the courts.” Beattie, Policing and Punishment, 427-428, 431; J.A. Sharpe, Crime in Early Modern England, 1550-1750, Second Edition (Essex: Addison Wesley Longman Ltd., 199), 93-95. For a profile of the convicts transported see: A. Roger Ekirch, “Bound for America: A Profile of British Convicts Transported to the Colonies, 1718-1775,” William and Mary Quarterly 42:2 (1985), 184-200.
accused of theft-related offences with their husbands remained remarkably stable between 1640 and 1760. However, a qualitative analysis of the depositions and Old Bailey trials reveals that the application of coverture and coercion altered in subtle ways. This conforms to the general argument that coverture was an adaptable doctrine that could be used in different ways to achieve the same goal.

As figure 4.4 reveals, the largest quantitative changes occurred in cases where married women were accused without their husbands. For the most part, these changes occurred along with the crime rate, which suggests that the treatment of these women had less to do with ideas about the women themselves than they did with overall perceptions of crime. Yet it is still important to note that while these women were criminals, or at least accused criminals, they were still wives. Accusations, convictions, and acquittals may have changed along with other trends, but the numbers need a qualitative analysis in order to fully account for trends and changes. Such an analysis reveals that coverture and the household remained an important element in married women’s experiences with the criminal justice system. Although their meaning and application changed throughout the period, the end result was the same and married women retained the unique legal status of *femes covert* even in the criminal courts.

Individual victims of crime made the decision about whether or not to charge a suspected criminal. Once they made the decision to prosecute, these men and women placed the fate of the accused in the hands of the jury. Juries could use a number of discretionary measures to reflect their opinion of the case, including acquittals and partial verdicts. This chapter uses statistics from the northern gaol delivery books, the Kent indictments, and the OBP to demonstrate that despite being subject to the limited liability inherent in the defence of marital coercion, juries recognized that married women could be responsible for their criminal actions. The 379 women
who were convicted of theft, coining, or murder certainly argue against assumptions of juries’ application of the defence of marital coercion.

This study cross-lists the northern gaol delivery books with the northern depositions in an attempt to determine why a jury reached its verdict. This provides a source base of eighty-three married women accused of theft, coining, or murder in the northern circuit between 1640 and 1760. Since the reasons for a jury’s decision came largely from the previously examined depositions, it is not surprising that the allegations mirrored the previous chapter’s findings. Deponents did not mention the defence of marital coercion, but this did not mean that coverture did not play a role. Within the depositions coverture manifested itself in the sense that a wife’s criminal identity could be subsumed into her husband’s, or in the corresponding assumption of a criminal household in which victims believed that husband and wife were both responsible. While these characterizations of married women’s criminality do not speak directly to the defence of marital coercion, they suggest that coverture played an important and implicit role in people’s perceptions of married women and criminality between 1640 and 1760. Even in cases which did not conform to one of these two models, the ideas which underlay the household were never far from the surface and implicit assumptions about coverture underlay many of the jurors’ decisions.

**Theft-Related Offences**

Of the eighty-three married women in the sample, sixty-two were accused of theft. Of these, eleven involved husband and wife together. According to the legal treatises, juries could only apply the defence of marital coercion in these eleven cases. Juries acquitted nine of the eleven married women accused with their husbands and delivered partial verdicts in the remaining two cases. This is a striking acquittal rate of 81.81 percent. While the deponents did
not specify coercion in these cases, the husband’s criminal identity seems to have covered his wife’s, following the principles set out in the defence itself. In contrast, juries acquitted or discharged 54.8 percent of the married women accused without their husbands. These numbers speak to the prevalence of a married woman’s lack of criminal liability in certain theft-related-offences, especially when she was accused with her husband. The presence or absence of a husband played a large role in a jury’s determination of guilt, but coverture was not entirely absent from any of these sixty-two theft cases.

In December 1664, for example, George Hudson charged William Wright and his wife Mary with breaking into his chamber and stealing £7 and a pair of gloves from a chest. He suspected the Wrights because the gloves were “found upon the said Willm Wright by Willm Birtwisle Constable of Skipton, haveing apprehended him & the said Mary for other Felonyes who alsoe found with the said Mary [40 shillings] in monyes nombred in a purse.” It is not possible to determine if both of the Wrights or just one was involved, but Mary was charged with “assisting her husband in commiting the aforesaid Burglary.” For her part, Mary denied any knowledge of the crime. The use of the word “assisted” here indicates that Mary’s criminal behaviour was peripheral, if not covered entirely. The jury seemed to think so since in March 1665 they acquitted her and sentenced William to death. This differing verdict, which conformed to the principle inherent in the defence of marital coercion, resulted in the jury erasing Mary’s criminal identity.

Juries followed the defence of marital coercion in two other cases. However, it was more common for juries to deliver the same verdict for husband and wife accused together, or to lessen the husband’s punishment so that he was not transported or executed. This idea of joint

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11 TNA PRO ASSI 45/7/1/17-17v.
12 TNA PRO ASSI 42/1/155v. See also: Samuel and Mary Robinson (1740) TNA PRO ASSI 45/21/4/61; TNA PRO ASSI 41/4/52, 41/3/3/98.
responsibility or joint immunity speaks to the early modern understanding of a unified household. The low conviction rate for married women accused with their husbands may have been due to an implicit assumption of coverture, but the low conviction rate for the husbands in the same circumstances demonstrates that these ideas affected the entire household rather than simply the wife. These conviction rates seem to concern ideas about the household rather than anything to do with coverture or the defence of marital coercion. This tendency to regard husband and wife as one criminal entity may have had something to do with the potential damage transporting or executing one party would have had on the household unit. Many of the jurors would have also been on the Parish committees, who were responsible for providing for the poor of their Parish. They would have been acutely aware of the effect that transportation or execution of a spouse and/or parent could have on the familial dependants.\(^\text{13}\)

In six of the eleven relevant cases, juries delivered the same verdict to the husband and wife. While it is not clear why they reached this verdict, the depositions reveal that for the most part, these cases involved joint effort on the part of the married couple. Such was the situation with John Hare and his wife Margaret of Leeds who were both acquitted of robbery in July 1755.\(^\text{14}\) John Jowett deposed in July 1752 that he had been tricked into visiting the Hares’ house one night and that John had taken his horse. As a result, Jowett explained that he “was forced to stay all night at the sd Hare’s house . . . during which time ye sd Jn Hare & Margarett his wife endeavoured to impose strong & intoxicating liquor upon [him].” Jowett woke the next morning and “found himself to be in an house of ill fame” and was so ashamed of this that he stayed

\(^{13}\) Beattie, *Policing and Punishment*, 438. Despite this reality both Beattie and King have suggested that it was only married women who were less likely to be convicted when it was obvious that they had a family to support which would then be placed on parish relief. This ignores the other half of the equation since transporting or executing a husband could place the wife on parish relief; something of which juries were all too aware. Peter King, “Female offenders, work and life-cycle change in late eighteenth-century England,” *Continuity and Change* 11:1 (1996), 70; Beattie, *Policing*, 444.

\(^{14}\) TNA PRO ASSI 41/4/263, 42/7/68.
another night. It appears that the Hares had planned to get Jowett drunk so that they could pick his pocket, but this failed. Jowett then deposed that when leaving the Hares’ house, John and Margaret seized him, “threw him down to the ground & forceably took from his sd pockett book out of which the sd Hare’s wife took all of his sd money excepting one Guinea.” Jowett’s deposition indicates that he believed both John and Margaret were involved in the robbery, which suggests a sense of a criminal household. The jury’s acquittal of the Hares indicates that while they did not agree with Jowett’s belief in the Hares’ guilt, they shared his sense that the Hares were part of a common household and needed to be treated as one unit.

Juries’ tendency to treat a married couple as a household unit also resulted in juries delivering verdicts which ensured that husband and wife received the same punishment. In 1661 for example, the jury convicted Margaret Thomson of a lesser offence and sentenced her to be burnt in the hand. The jury convicted her husband John, but he was allowed to plead clergy and was also burnt in the hand. As a woman Margaret was not able to plead benefit of clergy, but the jury’s verdicts ensured that Margaret and John faced the same punishment for their actions. Taking these cases into consideration it becomes apparent that juries were more likely to treat husbands and wives accused together as a household unit than they were to treat them as two separate criminal individuals. In doing so, juries reflected their belief in marital unity which was central to coverture.

Assumptions about coverture were present in the northern theft cases, but juries and prosecutors often worked around coverture’s restrictions when they believed a married woman was guilty. This is evident in the ten cases where a wife was indicted on her own, whose corresponding deposition indicated her husband’s involvement. The high acquittal rate of

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15 TNA PRO ASSI 45/25/1/51.
16 Women were not allowed to plead clergy until 1691. TNA PRO ASSI 42/1/74.
husbands and wives accused together indicates the defence of marital coercion’s viability, and accusations against a wife without her husband saw a greater chance of conviction. In cases where the prosecutor separated a wife from her husband, he or she probably believed that these respective wives were solely responsible. In charging them alone, the prosecutors avoided the possibility of a husband answering for his wife’s crimes or the jury acquitting the wife based on assumptions of coverture. Here, the prosecutors demonstrated that circumstances, not coverture, were the most important element of determining a married woman’s criminal liability.

This is apparent in the 1665 case of Anne Snawden who was convicted for housebreaking.\textsuperscript{17} Anne’s husband John was mentioned in the deposition, although his involvement seems peripheral. Elizabeth and Humfrey Blackston accused Anne of breaking into their house and stealing some cloth. In her deposition Elizabeth explained that she had gone to search Anne’s house along with the constables of Willimonstwick. During this search Anne went to an upper loft of the house. Elizabeth felt Anne was taking too long in the loft and ordered her to come downstairs. It was at this point that a shirt sleeve fell from Anne’s clothing, which Elizabeth identified as part of the stolen goods. When Elizabeth went to search the rest of the house, Anne dropped the remaining goods down a trap hole and threatened Elizabeth and the constables, who thought it prudent to leave.

Elizabeth seemed to suggest that Anne was solely responsible for the theft. However, one of the constables, John Armstrong, deposed that when he returned to the Snawdens’ house with a warrant “Snawdon & his wife made fast the doore & would not suffer him . . . nor any other to enter the house againe for about a quarter of an houres space.”\textsuperscript{18} This suggests that John knew his wife had stolen the linen and was certainly complicit in attempting to avoid responsibility for the

\textsuperscript{17} TNA PRO ASSI 42/2/2.
\textsuperscript{18} TNA PRO ASSI 45/7/2/137-9. See also: Mary Speight TNA PRO ASSI 45/25/4/145-148A, TNA PRO ASSI 41/4/271, TNA PRO ASSI 42/7/93.
crime; however, it was only Anne who stood trial. This may have been an attempt on Elizabeth’s part to ensure Anne’s conviction by evading the possibility of the jury applying the defence of marital coercion.

It was not clear why a prosecutor might have chosen to try a wife alone. Take for example the 1727 case of James and Elizabeth Graves from the previous chapter. Mary Todd accused the Graves of stealing £2-10s, three aprons, two handkerchiefs, and two caps from her house. Upon their examination, both James and Elizabeth confessed “that they stole [15s] of the money they [were] charged withall and the rest of the goods which were found in their possession.” This case came to trial at the March 1728 Yorkshire assizes, where the jury convicted Elizabeth of a lesser offence and sentenced her to be burnt in the hand, but James was not tried at all.

Unfortunately, the Graves’ deposition contains little indication as to why Elizabeth was the only one to stand trial after a joint confession. The records of the 1746 case of Isabell the wife of Robert Clark for animal theft contain similar problems. The deposition seemed to indicate that Robert was the responsible party since the JP examined him concerning some mutton found in his possession. In response to these accusations, Robert explained that he had sent his wife to Newcastle “to buy his apprentice a coat, she brought home . . . a hind quarter of Mutton and that mutton found in his kettle . . . was part of the mutton bought by his wife at Newcastle.” Robert’s examination indicates that Isabell was responsible for the theft, which explains why Isabell – not Robert – stood trial. This case draws attention to the important role that the circumstances of the crime – not simply coverture – played in criminal liability.

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19 TNA PRO ASSI 45/18/5/32.
20 TNA PRO ASSI 41/2/69.
21 TNA PRO ASSI 45/23/2/36B.
22 TNA PRO ASSI 41/3 Book 6/16. See also: Anne Clark TNA PRO ASSI 45/21/1/16, TNA PRO ASSI 42/5/15.
Furthermore, the indictment of the wife alone may have been an attempt on the part of the victims to avoid the possibility of juries applying the defence of marital coercion or assuming a wife’s limited liability. This appears to have been a successful strategy because, of these ten women, juries acquitted or discharged three, while the remainder received some form of punishment ranging from being burnt in the hand to transportation to a death sentence, in the last instance the woman was later reprieved. The high acquittal rate for husbands and wives accused together speaks to the viability of the defence, or at least something which seemed to lessen the convictions in these cases and by charging these ten wives alone, the prosecutors reflected not only assumptions about coverture, but who they believed was responsible for the crime.

The separation of husband and wife in these ten cases draws attention to the effect that the presence or absence of a husband had on the treatment of married women in the criminal courts. Of the sixty-two married women within the relevant sample, forty were accused without their husbands in the northern depositions and gaol delivery books. Juries convicted 16.6 percent of these women and acquitted 54.8 percent while the rest received partial verdicts. These differing conviction rates demonstrate that a husband’s presence seems to have affected his wife’s treatment in the criminal courts. It is important to note, however, that while the married women accused without their husbands may have faced the courts as if the defence of marital coercion did not exist, at least in theory, household ideals and normative behaviour underlay their treatment; coverture remained an important subtext to their criminal experiences.

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23 Anne Snawden, TNA PRO ASSI 42/2/2, 45/7/2/137-9; Mary Speight TNA PRO ASSI 41/4/271, ASSI 42/7/93, 45/25/4/145-8; Elizabeth Graves TNA PRO ASSI 41/2/69, 45/18/5/32; Rachael Seaton TNA PRO ASSI 41/2/103, 107, 45/19/2/22; Anne Clark TNA PRO ASSI 42/5/15, 41/3/3/14, 41/3/4/72, 45/21/1/16; Isabell Clark TNA PRO ASSI 42/5/101, 41/3/6/16; 45/23/2/36B; Mary Stuart TNA PRO ASSI 42/5/101, 41/3/6/16; 45/24/2/93B-C; Jane Dyson TNA PRO ASSI 31/3/272, 42/7/96, 45/25/4/49.
These assumptions related largely to behavioural models and the concept of the ideal woman, both of which informed juries’ perceptions of the married women who stood trial for theft in the northern circuit. As previously discussed, obedience was the corollary of the defence of marital coercion, which reflected one of a wife’s primary duties. Contemporaries felt obedience was critical because, as Anthony Fletcher explains, “women were credited with an inner weakness that could all too easily lead them through the assertion of their sexual and emotional power to defy the patriarchal order and break its boundaries.”

Women, both married and unmarried, were also subject to a number of other behavioural restrictions. The ideal woman was passive, modest, obedient, chaste, sober, and did not question authority of any sort. Despite their limited implementation in practice, these ideals still existed and carried force, especially in the decisions of judges and juries who used the law to uphold this particular gender order.

The four women convicted of theft-related-offences in the northern gaol delivery books seem to have taken on some sort of dominant role within the crimes themselves, either by initiating the crime or being the driving force behind its occurrence. Such was the case with Ann Harrison who was condemned for grand larceny in 1664 although she was eventually pardoned.

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24 As Wetenhall Wilkes explained in 1740, “the duties of a wife to her husband in every degree and state of life, can be no less than fidelity, and obedience to all his lawful desires and prudent counsels.” In 1722, William Fleetwood explained that it was part of the curse of Eve that a woman had to obey her husband no matter how “unreasonable and extravagant . . . his Desire shall . . . appear.” Wetenhall Wilkes, “A Letter of Genteel and Moral Advice to a Young Lady, (8th edition 1766),” in Women in the Eighteenth Century: Constructions of Femininity, ed. Vivien Jones (London and NY: Routledge, 1990), 35; William Fleetwood, The relative duties of parents and children, husbands and wives, masters and servants, Third Edition (London, 1722), 138.


and transported in July 1665. Richard Barber of Rotherham deposed that he had overtaken George Charleton “carrying a bundell under his arme.” Barber, “knowing yt one Robert Goodyere had some goods stolen out of his stall he questioned . . . Charleton, who not giving a good account of what he carried [Barber] had him before ye Constable of Warnsworth.” Upon his examination, Charlton explained how a quarter of a mile outside of Doncaster he had overtaken a woman, Anne Harrison, “and shee haveing a bundle that troubled her to carrie, she desired [him] that he would carrie it for her.” When he opened the bundle, Barber discovered the stolen goods. In her examination, Anne explained how Charlton was an acquaintance of her husband’s and that while going to Doncaster she had asked him to carry a bundle for her. She had placed some cloth which she found on the road within the bundle, and it was this cloth that Goodyere challenged as being his property.

The depositions seem to indicate that Charlton was merely Anne’s unwitting accomplice. By taking on the leadership role within the felony, Anne demonstrated that she was fully culpable for her actions and was not under the cover of her husband in any manner. Even within the deposition, the only mention of a husband is Anne’s passing mention that she had seen Charlton at her husband’s house and that her husband had bought stockings from him at one point. However, the jury’s assumptions about behaviour played a large role, and Anne’s actions seem to have removed her from the cover of the household.

Taking a dominant role could also take the form of being caught in the act as it did with Mary Foster who was convicted of pickpocketing in March 1732. She was subsequently sentenced to death and reprieved, and in July 1733 she received a conditional pardon and was

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28 TNA PRO ASSI 41/2/148, ASSI 42/1/155v, 164.
29 TNA PRO ASSI 45/7/1/36-8.
30 TNA PRO ASSI 45/7/1/38. Anne explained that “she never knew nor was acquainted with ye sd Charleton otherwise then yt she saw him once at her husband’s house att Westchester, & yt her husband footed a pair of stockins for him.”
transported for fourteen years. Alice Cooper deposed that while she was in York selling butter “she felt some bodys hand in her pocket on her right side and [she] endeavoured to catch hold of the said hand with her . . . right hand but missd it, but catched hold of the woman who owned ye hand.” In response to this rather damning testimony, Mary Anderson alias Mary the wife of Richard Wilson denied “that she picked the same [Cooper’s pocket] or that her hand was in therein but [confessed] she was standing at the pavement cross besides the said Alice Cowper [or Cooper] when she said her pocket was picked.”\(^{32}\) Much like Anne Harrison, Anderson seems to have taken the lead in this case. Despite her assertion otherwise, it seems that she was guilty of picking Cooper’s pocket. These cases demonstrate, that much like the findings from the previous chapter, coverture may have played a role in jurors’ decisions, but the specific circumstances of a crime were often more important than an accused woman’s marital status when determining her fate. The analysis of married women’s crime needs to be taken beyond a rehashing of coverture in order to fully account for all of these experiences.

Juries were more likely to deliver partial verdicts in cases where a married woman was involved but did not take a clear lead. The previous chapter analysed the case of Elizabeth the wife of Thomas Curley. In April 1736, Henry Salkeld had eight pewter dishes stolen from his shop and he found them in Ann Wilkinson’s custody. Wilkinson told Salkeld that she had taken them from Elizabeth Curley “whom she suspected to have stoln them.” Upon examination, Curley did not deny that she had the dishes but she explained that she did not know how she had gotten them.\(^ {33}\) It appears that Curley was involved in shoplifting from Salkeld’s shop, but it is unclear how this played out exactly and the jury reflected this in its 1737 verdict: guilty of

\(^{31}\) TNA PRO ASSI 41/3 Lent 1731 1, 3, ASSI 41/2/95, 107.
\(^{32}\) TNA PRO ASSI 45/19/2/42-4.
\(^{33}\) TNA PRO ASSI 45/21/1/33-7.
larceny within the benefit of the statute, which meant Elizabeth was able to plead clergy and was burnt in the hand.\textsuperscript{34}

Similarly in 1751, James Proctor accused Mary the wife of John Wilkinson of breaking into his house and stealing several items. The jury found her guilty of felony but acquitted her of the burglary and she was sentenced to seven years transportation.\textsuperscript{35} John Walker, the Constable of Huddersfield, explained how he had found some plate in Mary’s possession, which Proctor had identified as his goods. Mary did not deny that she had the goods, but explained that another soldier’s wife had “ask’d [her] to carry a parcel of plate to the Black Bull in Huddersfield and deliver them to the Landlady there, and for the carriage she the said soldier’s wife wo’d give [Mary] three Guineas.”\textsuperscript{36} Like Curley, Wilkinson was involved in the crime in some manner, but it was not clear how direct this involvement was, and the jury reflected this in its verdict.

In much the same way as in trials of married women accused with their husbands, the circumstances of a particular case played a large role in the jury’s determination of guilt. In 1728 for example, Elizabeth Mercer accused Mary Horsfield of breaking into her house and stealing 20 guineas from a box and 2s6d from her pocket. However, the depositions reveal that there was some doubt as to who had committed the crime, which probably explains why the jury acquitted Horsfield.\textsuperscript{37}

A confession in the deposition also seems to have lessened the severity of the offence, at least in a jury’s eyes. The previous chapter found that 26 percent of the married women who responded to accusations of theft-related offences in their depositions actually confessed even

\textsuperscript{34} TNA PRO ASSI 42/5/15, 41/3/3/16-7, 41/3/4/69-70.  
\textsuperscript{35} TNA PRO ASSI 41/4/215, ASSI 41/3/6/135.  
\textsuperscript{36} TNA PRO ASSI 45/24/3/81-4.  
\textsuperscript{37} TNA PRO ASSI 41/2/69, 45/18/5/19-21. See also: Elizabeth the wife of Thomas Holden for receiving (1665) TNA PRO ASSI 45/7/2/61-61A: 1131, 1132 (Access Database); Mary the wife of William Brown for shoplifting (1734) TNA PRO ASSI 45/19/4/3B-C, 42/4/62.
though defendants were encouraged to plead not guilty at their trial. This situation becomes less surprising when one considers that confessing before the trial seems to have had some form of mitigation. Perhaps because it suggested that these women saw the error of their ways and were not questioning the court’s authority.

Of the fifteen married women who received partial verdicts, eight actually confessed in their depositions. One such case was that of Anne the wife of Matthew Fowler who in March 1750 was found guilty of larceny within the benefit of the statute and sentenced to seven years transportation. In the relevant depositions, Elizabeth Hornby explained how Fowler had spent the night with her at her master William Moor’s house. Waking the next morning, Hornby missed a gown, a petticoat, and a pair of shoes. Fowler was apprehended and the goods were found on her person. Upon examination, Fowler confessed that “she took out of the dwelling house of Wm Moor . . . a dark brown camlet gown, a blue stuff quilted pettycoat, & a pair of pump shoes, which said shoes she sold to Richard Garbut . . . & yt she supposes the said goods may be the property of Eliz Hornby servant to . . . Wm Moor.”

In an examination from December of the same year, Mary the wife of Thomas Smith said that she had spent the previous night in a lodging room at Matthew Ridley’s house at Heaton. When she went into the room “she saw a silver watch hanging at the bed foot which watch she then & there took & feloniously carried away” and then sold to Isaac Cookson, a goldsmith in

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38 One can see this in the 1688 trial of Mary Aubry for petty treason at the Old Bailey. Aubry, a French midwife, was charged with strangling her husband with a piece of packing thread, and at her trial she pleaded guilty. However, the judge explained to her, through her interpreter, that “having confessed she was guilty, she must suffer for it; but that the Court was so favourable that if she were minded to put her self upon the Country, and take her Tryal, she might have it.” Aubry stood by her plea and in the end she was burned at the stake for her crime. Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), February 1688, trial of Mary Aubry (t16880222-24).
40 TNA PRO ASSI 45/24/2/36-7.
Newcastle. In August of 1751, a jury found Smith guilty and she was sentenced to be burned in the hand. The jury must have felt that Fowler and Smith’s confessions indicated some form of guilt, but the confessions also seem to have lessened the severity of Fowler and Smith’s wrongdoing. This is even more evident when one considers that four married women who confessed in their depositions were acquitted or discharged while those married women who were convicted did not confess to their supposed offences.

Concepts of an ideal woman and proper feminine behaviour formed an important subtext to a jury’s decisions in married women’s trials for theft-related offences. Juries were more likely to convict those women accused of theft-related-offences who showed initiative in their actions than they were to convict those who appeared passive. The reality of married women’s lives meant that they often had to transgress ideal gender roles and take a dominant role, but when these realities came into conflict with the law, juries relied on their understandings of married women’s “proper” place within the household to inform their verdicts.

**Serious Offences: Coining and Murder**

Theft was the predominant offence in the northern circuit, but this study is also concerned with the crimes of coining and murder. Cross-listing the northern depositions with the gaol delivery books reveals a source base of twenty-one married women accused of coining and murder. These cases were not supposed to be subject to the defence of marital coercion as one can see in the example of Mary the wife of Henry Wood. In 1732, a jury at York convicted her of coining. This is surprising because Wood was the woman examined at the beginning of the

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41 TNA PRO ASSI 45/24/3/68G.
42 TNA PRO ASSI 42/5/136.
44 TNA PRO ASSI 41/3 Lent 1731-2; TNA PRO ASSI 41/2/95.
previous chapter who claimed that her husband had given her the false coins and “he being a severe man to her she was forced in terror of him to utter those pieces.” Wood’s complete reference to the conditions of the defence of marital coercion probably failed because coining was not subject to this defence. Yet the fact that she mentioned coercion in her deposition speaks, at the very least, to an implicit assumption of how it was supposed to work.

The northern gaol books contain only six cases of coining. Of these six women, the jury convicted two: the aforementioned Mary Wood in 1732 and Anne the wife of John Browne in 1665. The jury likely found Wood guilty because she had been caught in the act; but her husband’s authority seems to have lessened the severity of the offence to a certain degree because instead of the prescribed punishment of death by burning, the judge sentenced her to remain in gaol for one month and until she found sureties.

Browne was sentenced to be burnt in the hand, which indicates that although the jury found her guilty they, or perhaps the judge, were unwilling to see her punished to the full extent of the law. Perhaps this was because there was some doubt about how involved Browne actually was in the coining. Robert Bridges deposed that he had heard his mother Anne Browne discuss how her husband John clipped coins with Richard Bridges. Robert attributed the coining largely to John Browne and he did not seem to want to fully implicate his mother because he explained how she told Richard “that her husband would have had her to have helpt him but she said she could not by reason her armes were too weake.” In these cases both women alluded to their husbands’ authority. Although these allusions seem to have lessened the severity of the crime, they did not erase all liability. This suggests that throughout the period juries were willing

45 TNA PRO ASSI 45/19/2/46.
46 TNA PRO ASSI 41/3 Lent 1731-3; ASSI 41/2/95.
47 TNA PRO ASSI 42/1/196.
48 TNA PRO ASSI 45/7/2/20.
to support the idea of a married woman’s duty to obey her husband, but not erase her will to decide entirely.

Where it was possible to cross-list a northern coining deposition with a gaol delivery book, the cases where a married woman was discharged or a grand jury delivered a bill of ignoramus were concentrated in the earlier period and contain some element of doubt as to the accused woman’s guilt. In 1664 for example, Mary Milner was discharged after the grand jury found two counts of coining against her ignoramus.49 The only evidence against her in the deposition was found in Martin Harrison’s information against a number of coiners. Harrison explained how Milner was a “venter and putter of badd money and counterfeite of the kinges coyne of England, and hath vented above [£200] and paid for the space of ten or eleaven yeares last by past.”50 While Harrison did not have any doubt that Milner was guilty of coining this was not enough evidence to bring Milner to trial.

It is interesting to note that it was only in cases where a husband’s authority was alluded to in the depositions that a jury convicted a married woman accused of coining. Unlike the cases of Mary Wood and Anne Browne, the 1756 case of Amy Heeley contains no mention of her husband’s authority. Rather, the Constables of Leeds charged Amy and her husband James upon suspicion of making and uttering counterfeit money. Amy had been found attempting to exchange a bad coin for a good one and the Constables searched the Heeley’s house where they found several tools and pieces of metal which they believed were “tools and materials for the coining and making up of coined money.” In response to these charges both James and Amy explained how they had received the coins in question from various men, and this seems to have

49 TNA PRO ASSI 42/1/134-134v.
50 TNA PRO ASSI 45/6/3/170.
been enough to acquit them of all wrongdoing.\textsuperscript{51} Elements of the household nature of coining come across in this case and nowhere is it suggested that James’ criminal identity covered his wife’s; rather, the jury seems to have treated the Heeleys as a criminal unit.

The other serious offence was murder. Of the eighteen married women accused of murder in the source base, juries convicted four. What is particularly striking about this low conviction rate is that three of the four convictions were for petty treason. The household hierarchy made petty treason a severe offence and deponents and juries alike reflected this belief in their perceptions and treatment of married women accused of killing their husbands. However it is difficult to determine why certain women were convicted of petty treason while others were acquitted because it was only possible to cross-list one deposition concerning petty treason with the entries in the gaol delivery book.

In 1661, Ellen Dunne was discharged by proclamation after being accused of killing her husband William.\textsuperscript{52} Reading the depositions concerning Dunne leads to the conclusion that the jury would have convicted Dunne since a number of people explained how the Dunnes had an unhappy marriage, for which Ellen was largely responsible. According to Jane Smith, William was terrified of his wife, having threatened him that “if he should once lift his hand at her she would be revenged by day or by night on him.” Thomas Wright explained how “he had heard Willim Dunne severall times complayne his wife was so untoward yt he was not able to live with her.” Nothing in these depositions leads to any doubt about Anne’s guilt, which is why it was so surprising that the jury discharged Anne.\textsuperscript{53} The prevalence of petty treason in the murder convictions demonstrates the severity of the offence in the eyes of the jurors. It also illustrates the idea of proper household structure which formed an important subtext for thoughts about

\textsuperscript{51} TNA PRO ASSI 45/25/4/78-80.
\textsuperscript{52} TNA PRO ASSI 42/1/76.
\textsuperscript{53} TNA PRO ASSI 45/6/1/53-53Av.
married women in the criminal justice system. A woman’s subordinate status within marriage was an important corollary of coverture and petty treason deliberately upset this system.

Husbands, however, were not the only murder victims. As in the previously examined theft and coining cases, juries seemed to rely on specific circumstances when determining their verdicts in murder trials. When it came to accusations of murder, where the victim was not the husband, juries seemed to acquit in cases which contained some doubt as to whether the wounds actually caused the deceased’s death. In 1662 for example, Elizabeth Atkinson was accused of beating her husband’s daughter Margaret Atkinson which caused her death. In her examination Elizabeth explained how she had sent Margaret to get some water, but when Margaret was taking longer than she should, Elizabeth went to investigate at which Margaret became very cross. As punishment, Elizabeth gave Margaret a couple of strokes. However, as Elizabeth indicated in her deposition, Margaret was a sickly and troublesome child. She explained how Margaret had been in bed where “she moarned & desired her Uncle Luke Thompson to fetch her some water to drinke but he thinkening it to be one of her usuall tricks refused.” In this case it was both Margaret’s character and doubt over whether Elizabeth’s actions had actually caused her death which seems to have resulted in the jury acquitting Elizabeth.54

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One of this study’s central arguments is that coverture and the corresponding defence of marital coercion shaped, but did not dictate, the perceptions, treatment, and experiences of married women in the early modern criminal justice system. This finding is apparent in juries’ treatment of married women in the northern assize circuit. Cross-listing the gaol delivery books with the depositions examined in the previous chapter provides a source base of eighty-three married women accused of theft, coining, or murder. This source base enables us to determine

54 TNA PRO ASSI 45/6/2/3-5.
the outcome of prosecutors’ accusations and factors which may have influenced juries’
decisions.

This analysis reveals that ideas about the household and women’s place within it formed
an important subtext to juries’ treatment of married women. One can see this most readily in the
tendency of juries to treat husbands and wives accused together as a criminal unit, which
reflected the unified household inherent in coverture. While the household ideal was an
important element in the treatment of married women, circumstances also played an important
role in jurors’ decisions. Coverture, household ideals, and the defence of marital coercion could
only go so far. Prosecutors, witnesses, and jurors all demonstrated their willingness to hold
married women accountable for their criminal actions. By focusing on the specifics of individual
cases, this study moves beyond a universal assumption of coverture and demonstrates the variety
of married women’s experiences with the criminal justice system.

These cases draw attention to the problems inherent in the sources. The northern circuit is
the only assize circuit for which there are extant depositions between 1640 and 1760. These are
an incredible resource and the ability to cross-list these depositions with results in the gaol
delivery books helps to reveal some information about the reasoning that may have gone into a
jury’s ultimate decision about a person’s criminal fate. Without records of the trials however, this
exercise remains largely speculative since there is no way to determine what factors truly
underlay the jury’s decision in each case. Fortunately there is another set of records which allows
us to view criminal trials a little more closely: the Old Bailey Sessions Papers.

Table 4.2: Married Women in the Criminal Courts, 1640-1760

<table>
<thead>
<tr>
<th></th>
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<th>Acquittal</th>
<th>Partial</th>
<th>Discharged</th>
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<th>Total</th>
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</thead>
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<td>800</td>
<td>297</td>
<td>50</td>
<td>24</td>
<td>1486</td>
</tr>
<tr>
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<td>37</td>
<td>74</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>116</td>
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<td>27</td>
<td>93</td>
<td>16</td>
<td>7</td>
<td>2</td>
<td>145</td>
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<td>967</td>
<td>313</td>
<td>59</td>
<td>29</td>
<td>1747</td>
</tr>
</tbody>
</table>

Figure 4.1: Verdicts over Time

For the purposes of this chart, a guilty verdict is a guilty verdict, while an acquittal includes those women whom a jury found not guilty or who were discharged or the grand jury delivered a verdict of ignoramus. Partial verdict refers to conviction of a lesser offence.

55 For the purposes of this chart, a guilty verdict is a guilty verdict, while an acquittal includes those women whom a jury found not guilty or who were discharged or the grand jury delivered a verdict of ignoramus. Partial verdict refers to conviction of a lesser offence.
Figure 4.2: Pattern of Verdicts for Married Women

Figure 4.3: Percentage of Verdicts for Wives accused with Husbands in Theft-Related Offences
Figure 4.4: Percentage of Verdicts for Wives accused without Husbands in Theft-Related offences
CHAPTER 5: CRIMINAL RESPONSIBILITY IN LONDON

In 1719, Katharine Rowder charged Hannah the wife of Francis White with stealing £115 from her. At the trial, it appeared that Francis was Rowder’s servant and he had “robbe’d her of the Money.” While Frances robbed Rowder, Hannah waited in a nearby alehouse, and Rowder alleged that Hannah “had part of the Money.” This case is remarkable, not because of Hannah’s actions, but because the source notes that “the Evidence not affecting [Hannah], the Jury Acquitted her.”\(^1\) Hannah was tried at the Old Bailey – London’s central criminal court – and its proceedings were published in a condensed form shortly after the court sat in one of its eight annual sessions. As the previous chapter demonstrated, it is often difficult to determine why a jury reached its verdict. However, many of the trials within the Old Bailey Sessions Papers (hereafter OBP) – including the aforementioned trial of Hannah White – offer some sort of explanation about a jury’s decision.\(^2\) As a result, the OBP offer a unique insight into how coverture and the defence of marital coercion manifested themselves in the early modern criminal justice system.\(^3\)

The Old Bailey sat eight times a year and dealt with the largest number of crimes out of all of England’s criminal courts. The OBP were a recorded and compressed version of these trials. According to Michael Harris, the OBP were a semi-official consolidation of various long-standing publications including legal items such as case reports and state trials published under

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\(^1\) Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 April 2011), September 1719, trial of Hannah White (t17190903-39).

\(^2\) The Old Bailey records are often referred to as the OBSP. However, I am following the lead of the creators of the Old Bailey Online by using the term Old Bailey Proceedings. This helps to differentiate between the Proceedings available online and the manuscript sessions papers. See in particular: Robert B. Shoemaker, “The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London,” Journal of British Studies 47:3 (2008), 559.

\(^3\) As John Langbein argues, “To write legal history from the OBSP is, . . . a perilous undertaking, which we would gladly avoid if superior sources availed us. However . . . the OBSP are probably the best accounts we shall ever have of what transpired in ordinary English criminal courts before the late eighteenth century.” John Langbein. “The Criminal Trial before the Lawyers,” The University of Chicago Law Review 45:2 (1978), 271.
the Chief Justice’s *imprimatur* and the ephemeral works which attempted to satisfy the public’s demand for information about the most notorious criminals.4

The commercial nature of the OBP raises a number of issues, notably in regards to their accuracy and what the publishers chose to include. In order to keep the OBP affordable and accessible to as many people as possible, publishers often excluded testimony, details, and the occasional case.5 As Robert Shoemaker explains, the length of the OBP meant that it was not possible to publish all of the courtroom testimony, and “by their choice of what was included and what was left out, as well as by occasional distortions in what was reported, the *Proceedings* presented a partial account of crime and criminal justice to their readers.”6 While many contemporaries read the OBP as accurate and authoritative, a significant number of people did not perceive them as infallible and often complained about errors and omissions.7 In light of this, scholars should not accept what is in the OBP as entirely accurate. Shoemaker raises a number of important issues, but the OBP’s reputation depended on their reliability and accuracy.8 These are

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5 For example, the two lines about Ann the wife of John Rodd who was indicted for larceny in December 1725 contains what she stole, who she stole from, and the outcome of the case. There is no way to determine why the jury reached its verdict. This was not the rule, and other cases offer an explanation as to why the jury reached its verdict such as the October 1718 case of Charles and Sarah Johns for larceny from John Jones. The OBP explains that the jury acquitted the prisoners because it appeared “to be rather a Quarrel than a Robbery.” *Old Bailey Proceedings* (hereafter *OBP*), December 1725, Ann the wife of John Rodd (t17251208-41); *OBP*, October 1718, Ann Charles Johns and Sarah his wife (t17251208-41).


7 Ibid, 575, 579.

not perfect sources, but they still offer particular insight into the early modern criminal justice system.

There were important differences between the north and London. Northern England was a largely rural society with a small population whereas London had the largest population in England and was growing constantly. London’s crime rate was also significantly higher than that in the north. It was also a city largely made up of migrants, which meant that ideas of community differed between the north and London. A juror’s knowledge of the accused was not the same in London as it was in the north. However, London was not devoid of communities, and the large geographic span of the northern circuit meant that the jury may not have known the accused there either. The differences between these two areas were also present in the types of crimes committed. London, for example, had more thefts from dwelling houses than did the north, whereas the north had significantly more animal thefts than London. Despite these important differences, deponents and jurors shared ideas about married women in both locations which suggest that these were ultimately English ideas.

An analysis of the OBP between 1674 and 1760 reveals a total of 1371 married women accused of theft, coining, or murder. While the OBP do not contain a full record of the criminal trials at the Old Bailey, they offer more insight into these events than any other source; it is in the OBP that one can see if and when the defence of marital coercion applied. Just as with the previous chapter, ideas about coverture and the household shaped, but did not dictate the treatment of married women. The household formed an important subtext, but the juries’

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application of coverture and the defence of marital coercion ultimately depended on the specific circumstances of each case; marital status was only one element of many in a jury’s decision about an accused married woman’s guilt or innocence.

The defence of marital coercion was mentioned in a number of cases tried at the Old Bailey, although this was not the general rule. However, just like the depositions from the northern circuit, implicit assumptions about coverture were present in married women’s criminal experiences. In theft and coining cases at the Old Bailey, coverture largely manifested itself in one of two models, which, for the most part, characterized how juries assigned criminal responsibility to women. In the first model – the coercion model – a husband’s identity covered his wife’s, often with an assumption of authority. The second model – the household model – contained the principle of co-defendant responsibility in which juries treated husband and wife as one criminal household. Both models sprang from the same underlying principle, but they were different in that the first saw a married woman’s criminal identity erased while the second recognized that she could be responsible, even if she was part of a household. Over the course of the period the coercion model declined and was replaced with the dual-responsibility or household model. It is important to note, however, that despite these changes, these models were two sides of one coin which considered married women as a subordinate part of the household structure.

A minority of the married women accused of crimes at the Old Bailey did not conform to these two models. However, the experiences of these women were still informed by implicit

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11 The decision to use this terminology reflects the character of the models. In the case of the coercion model, the term coercion was chosen because this model refers to those cases which conform to the defence of marital coercion, or at least the results of that defence. In the case of the household model, the term household was chosen because these cases reflected some sense of a unified household where husband and wife were united in their criminal behaviour. Despite the problems with this terminology, I believe that “coercion” and “household” provide the best description of these models.
assumptions about the household. This comes across most clearly in the differing perceptions of “suitable” murder victims, although ideas about the household were never far from the perceptions of married women accused of theft and coining. All of this suggests that married women were never free from ideas about and the consequences of coverture, even when they emerged from their husbands’ cover in the criminal courts.

Coercion and Male Authority in Theft-Related Offences

The guilty verdicts for married women accused of theft-related offences with their husbands remained remarkably stable throughout the period, while the guilty verdicts for all other married women at the Old Bailey fluctuated along with the overall crime pattern (see figures 4.3 and 4.4). This suggests that for the most part, the treatment of married women accused of theft-related offences conformed to larger ideas about crime. However, something else was at play when a jury chose to convict a married woman accused with her husband. In these cases it had less to do with ideas about crime than it did ideas about married women in general.

The defence of marital coercion was present in fifty-six of the 294 theft trials at the Old Bailey involving a married woman accused with her husband. These were by no means the majority, and the number demonstrates the fact that the defence of marital coercion was not the rule. It is in these cases that one can fully see the coercion model which limited a wife’s criminal liability. However, juries considered a number of factors when deciding the fate of an accused, and this continued throughout the period, with a married woman’s actions (or lack thereof) often playing a large role in determining her verdict. It would therefore be misleading to argue that coverture and the defence of marital coercion were entirely absent from the Old Bailey trials. For
the most part, however, coverture played a role as an implicit assumption behind jurors’ perceptions of married women in the criminal justice system.

In 1680, William Bale accused Edward Conway and his wife Mary of robbing his house. The Conways were both vagrants, and had lodged in a shed outside Bale’s house. One evening the Conways entered Bale’s house through a hole in the wall and sent the only inhabitant, “a little girl,” Anne Davis, out for bread. After this, “they went up stairs, and took away several Hoods, Scarfs, Dressings, and the like, a Coat, Breeches and Doublet, with some Moneys and many other things.” They were apprehended shortly thereafter and committed to Newgate. At trial, the proof was “very plain against them” which resulted in Edward’s conviction, but Mary “being his wife, could not be found so, and therefore was acquitted.”

The Conways’ case conformed to the defence of marital coercion and seemed to assume that Mary was obeying her husband’s commands.

The assumption of a wife’s obedience comes across more clearly in a 1678 case of animal theft against an unnamed man and woman. These two people had been on a crime spree of sorts, with “several Indictments against them respectively.” The OBP explained that:

the Husband being found guilty of stealing a brown Mare in Kent, and upon another Indictment for stealing four flitches of Bacon and a Fowling-piece which were taken with them; but the woman alledgeing her self his Wife, and consequently what she did, was done by his coercion, could not be found guilty, though she were taken upon the Mare.

A husband’s authority and his wife’s duty of obedience were ultimately at the root of the defence. Juries seemed to be unwilling to condemn married women for conforming to their prescribed roles, and a married women’s limited liability seems to be a corollary to her husband’s authority.

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12 OBP, September 1680, Edward Conway and Mary his wife (t16800910-8).
13 OBP, April 1678, trial of unnamed persons (t16780411-8).
These types of cases were not limited to the seventeenth century. In 1721, Thomas Stevenson accused John Overy and his wife Mary Pettow (alias Overy) of stealing some sheets, a blanket, and a pillowcase. The jury convicted John but acquitted Mary because she was “acting with the Consent and in the Presence of her Husband.”\(^\text{14}\) In 1733, Thomas Kemp accused Thomas and Elizabeth Banks of breaking into his house and stealing a number of household goods. At the trial Rebecca Ford, who lived across from Kemp’s house explained how she had been outside her house with a candle at 8:00 when she saw Elizabeth at Kemp’s door “and she being a Person of no Credit, I was willing to observe what she was about. By and by Thomas Banks (her Husband) came out of the House with a Bundle, and threw it out at the Door, and then taking it up he went away with it.” The evidence seemed to indicate that Thomas and Elizabeth were both involved. However, the jury convicted Thomas and sentenced him to death but acquitted Elizabeth since she “was his Wife, and acted under his Direction.”\(^\text{15}\)

As previously discussed, ideas about the marital hierarchy emphasised a wife’s duty of obedience. The defence of marital coercion recognized this duty in its inherent assumption of wifely obedience. Juries seem to have acquitted the married women in the previous four cases because they were obeying their husbands. In this sense, a jury’s willingness to let a husband’s criminal identity cover his wife’s was less about her lack of an independent legal identity than it was her subordinate place within the household hierarchy.

Legal authorities often differentiated between wives accused with and without their husbands; they generally limited the defence of marital coercion to women accused with their husbands. For the most part, juries at the Old Bailey followed this restriction, although the OBP contains twenty-eight cases where a jury used the defence of marital coercion to acquit a married

\(^{14}\) OBP, December 1721, John Overy and Mary Pettow, alias Overy (t17211206-70).

\(^{15}\) OBP, January 1733, Thomas Banks and Elizabeth Banks (t17330112-23).
women accused alone. In 1694, Thomas Sherwood accused Jane the wife of John Oney of stealing a sheet worth 5s and six pounds of feathers worth 6s from him. Sherwood explained how Oney had lodged at his house with two men and then went away with the goods. However, one of the men Oney spent the night with was her husband and “what she did was in Obedience to his Command.” Therefore the jury acquitted Oney.16 Similarly, a jury acquitted Elizabeth Husbands in 1715 of stealing a silver buckle and £3 from Thomas Row’s house because her husband was with her at the time.17

These were exceptions and it should be noted that the women accused of theft-related-offences at the Old Bailey did not indicate the defence of marital coercion; a judge or jury applied it. Some married women attempted to appeal to the defence, or referenced their husband’s involvement. In her 1715 trial, Anne Spavin claimed that her husband had actually taken the goods “and forc’d her to help him.”18 Spavin’s defence was successful since the jury acquitted her, but married women did not overwhelmingly follow this method. This was likely because there was no way to guarantee that a jury would accept its applicability. Consider for example the 1681 trial of Mary Harris for stealing a silver tankard. At her trial, Harris held “That she had a Husband, and that he was in her Company when she stole it.” Harris was unable to prove the marriage and the jury found her guilty.19 In 1724, James Ashley accused Jane Spencer of stealing a pair of flaxen sheets worth 20s from him. In her defence Spencer pleaded that her husband had given them to her and “she was oblig’d to pawn them, lest he should knock her on

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16 OBP, April 1694, Jane Oney (t16940418-14). See also: OBP, January 1732, Mary Day (t17320114-44); OBP, January 1746, Joseph Mayson and Sarah Bullock (t17460117-30).
17 OBP, June 1715, Elizabeth Husbands (t17150602-49). See also: OBP, December 1734, Elizabeth Prior (t17341204-6); OBP, September 1736, Elizabeth Chesterman (t17360908-56).
18 OBP, September 1715, Ann Spavin (t17150907-46). See also: OBP, December 1750, Ann Dunkerton (t17501205-59).
19 OBP, December 1681, Mary Harris (t16811207-12). See also: OBP, January 1676, trial of unnamed woman, (t16760114-6); OBP, December 1690, Mary Noon and Elizabeth Trant (t16901210-10); OBP, September 1712, Elizabeth Crowder (t17120910-45).
the Head.” This defence seems to have lessened the severity of the offence since the jury convicted Spencer of stealing goods worth 10d and sentenced her to transportation.20

In each of these cases, the accused women seem to have at the very least alluded to their husband’s authority or involvement. These allusions seem to conform to Valerie Edwards’ argument that married women used the defence of marital coercion in much the same way as men pleaded benefit of clergy.21 However, as these previous examples have demonstrated, married women did not “habitually and automatically” plead the defence of marital coercion, and it in no way performed a function similar to the benefit of clergy. Coercion and its corresponding defence was something that was done to women, not something they did themselves. The defence of marital coercion was less about providing married women with favourable treatment and more a recognition of a husband’s authority which was central to the exercise of coverture.

Juries’ application of the defence of marital coercion in theft cases at the Old Bailey changed between 1674 and 1760 for women accused both with and without their husbands. It was only in cases where a husband was convicted and his wife acquitted that the authors of the OBP specifically referenced coverture or the defence of marital coercion. For the most part, the only explicit reference to coverture’s presence is in the referral to the woman as “wife of.” This suggests that the OBP only needed to reference coverture when it directly affected a married woman’s criminal liability. When it came to married women accused with their husbands, only sixty-eight of the 294 cases (23.13 percent) specifically mentioned or alluded to coverture or coercion. Specific reference to coverture in the text of the OBP dropped in the 1700s but it came

20 OBP, February 1724, Jane Spencer (t17240226-16). See also: OBP, April 1704, Margaret Ellis (t17040426-6); OBP, February 1745, Elizabeth Tibbet (t17450227-1).
21 As Edwards explains: “women were probably as aware of the possibilities of the defence of marital coercion as men were of their much wider right of benefit of clergy. They perhaps pleaded it habitually and automatically as a last straw, whether entitled or not, just as illiterates pleaded benefit of clergy in the hope of being able to recite the ‘neck verse’ with sufficient accuracy to convince the court.” Valerie C. Edwards, “The Case of the Married Spinster: An Alternative Explanation,” American Journal of Legal History 21:3 (1977), 264.
back in the 1710s and remained until the 1740s when it started to decline. It is not clear why references to coverture declined in the 1740s, but there was a definite move to evade its effects in the criminal law.

Perhaps this was because many people were less willing to acquit women of theft-related-offences because of their marital status. One can see this in the 1743 case of Henry Bulley and his wife Ann Peacock (otherwise Bulley) for housebreaking. Joseph Taylor accused Bulley and Peacock of breaking into his house and stealing a number of silver goods valued at £80. Taylor had hired a lawyer to help him prosecute, which may be due to the large value of the stolen goods. The counsel attempted to avoid the strictures of coverture by proving that Bulley and Peacock were not really married, as is evident from the following exchange:

Q. to Ann Bulley. Are you married to Henry Bulley?
Ann Bulley [otherwise Peacock]. I cannot say I am not married to him?
Henry Bulley. She is my Wife.

The OBP contained a note following this line of questioning explaining that “Council for the Prosecutor offered to prove that he had another Wife; the Court would not enter into that, as they acknowledged they were married.” Unfortunately for Taylor, the jury convicted Henry and acquitted Ann “as being present with her Husband, and supposed to act under his Direction.”

By attempting to separate Ann Bulley from her husband, Taylor and his lawyer hoped to evade the consequences of coverture. They were not the only prosecutors to make this attempt. In 1732 Nicholas Harding Esq., a resident of Middle Temple, succeeded in separating Catherine Sanders from her husband Richard, which probably helped ensure Catherine’s conviction. At trial, Harding explained how he had hired Catherine as a charwoman at his chambers in the Middle Temple, and started to notice a number of items missing. After suspecting Catherine and

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23 OBP, February 1743, Henry Bulley and Ann Peacock, otherwise Bulley (t17430223-20).
questioning her a second time she “fell on her Knees, and said for God Sake don’t ruin me!” Harding further deposed that after asking Sanders where the goods were, she told him that “they were at pawn, and that her Husband had tempted her to carry them, and if I would forgive her, she would confess more Things than I knew of.” Other witnesses including Mr. Nelthorp and Mr. Burker specified that Sanders claimed she had acted under her husband’s authority. Despite these references to coercion, the jury convicted Catherine. Harding’s prosecution of Catherine separately from her husband helped ensure that the jury could not apply the defence of marital coercion.

In 1744, a jury convicted Elizabeth Tims of receiving stolen goods. At trial, Stephen Roome testified that he had followed Edward Boraston, Tims’ son, after he suspected him of stealing goods worth £5 from John Stanton. Roome explained how he had found the goods in Tims’ house. In her defence, Tims claimed that she had lain in her room with her husband but knew nothing of the goods which her son had brought there. The jury thought it odd that although Roome found the goods in Elizabeth Tims and her husband’s lodgings, Roome only charged Elizabeth. They asked him why he did not “take the husband up as well as the woman?” To which Roome responded: “Because the man bears a very good character, and the woman a very bad one.”

These prosecutors’ attempts to separate a wife from her husband suggest that the defence of marital coercion was a factor in married women’s trials. The number of such attempts increased in the 1730s, which seems to indicate that there was a definite move amongst prosecutors and jurors to avoid coverture’s consequences. By the middle of the 1740s, the

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24 OBP, October 1732, Catherine Sanders (t17321011-22).
25 Richard was tried separately the same day and acquitted. OBP, October 1732, Richard Sanders (t17321011-38). See also: OBP, September 1736, Sarah Andrews, Alice King, Sarah Hutchinson, Isabel Walters, Elizabeth Gutheridge and Susan Anthill (t17360908-4).
26 OBP, September 1744, Edward Boraston and Elizabeth Tims (t17440912-57).
references to coverture and coercion in the Old Bailey records essentially stopped. Despite the
dramatic increase in the number of indictments in the 1750s, the OBP only specified coverture in
the 1751 case of Elizabeth Powel and alluded to it in relation to three cases where a husband and
wife were accused together. This sudden change suggests that ideas about married women, or
at least their criminal liability, were changing in the 1750s.

Juries’ application of the defence in cases of married women accused of theft without
their husbands followed a similar pattern of becoming less viable as the period progressed. This
was apparent in the 1747 case of Jane Perindine, who was accused of stealing a pair of brass
candlesticks worth 3s from James Tempest’s shop in Silver Street. Tempest explained how
Perindine and her husband had come into the shop and attempted to confuse him and his staff by
looking at a number of goods, and Perindine left with the candlesticks. Questioning Tempest,
Perendine’s lawyer – whose presence makes the case unique – asserted that both husband and
wife were present which seems to hint that he was attempting a defence of marital coercion.
However, the OBP did not specify coercion and the jury acquitted Perindine because it appeared
that she had mistakenly taken the goods and Tempest was a little too quick to prosecute. This
avoidance of the defence of marital coercion in Perindine’s trial suggests that the defence of
marital coercion was no longer effective by the late 1740s, something of which Perendine’s
lawyer would have been aware. This is a similar pattern to that found in cases where husband
and wife were accused together although it seems to have lasted longer in cases where a wife
was accused without her husband than if she was accused with her husband.

27 It was specified in the 1751 case of Elizabeth Powel for receiving and alluded to in the cases of Mary Waters for
theft from a specified place (1751), Sarah Page for theft from a specified place (1757), and Mary Harris for
receiving (1759). OBP, September 1751, Elizabeth Powel (t17510911-7); OBP, February 1751, Mary Waters
(t17510227-49); OBP, December 1757, Sarah Page (t17571207-7); OBP, February 1759, Mary Harris (t17590228-13).
28 OBP, February 1747, Jane Perindine (t17470225-23).
The general pattern of the defence of marital coercion in theft-related offences suggests that ideas about married women and their criminal liability were changing in the 1740s and 1750s. During the 1750s technological changes and economic growth associated with industrialization gained momentum and enlightenment values gained greater currency, which transformed English society. James Sharpe, for example, ends his study of early modern crime in 1750 because of the growing momentum of changes which resulted in the Industrial Revolution. While there was a great deal of continuity between the two periods, Sharpe argues that after 1750, one can trace the rise of new socioeconomic factors, increased criticism of the existing criminal justice system, and the beginnings of a decisive break with the pre-industrial past.  

The social changes of the 1750s also affected women. As Susan Staves discovered, judges were increasingly willing to recognize the existence of two persons in marriage by the mid-eighteenth century. The almost complete absence of references to coverture after 1750 in the Old Bailey suggests that these changes applied to the criminal law as well. It is not clear why these changes occurred in married women’s lives at this time. Perhaps it was because the move away from seeing the household as the fundamental unit of society enabled people to see married women beyond their household roles. It may also have been because people no longer saw a wife’s duty of obedience as a way to excuse criminal liability. Another reason for this change could lie in the crime wave of 1749-53.

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The previous discussion has focused on the defence of marital coercion in theft cases at the Old Bailey, but it is also important to note that the defence did not dictate juries’ treatment of married women. The twenty-seven cases which stand in direct contrast to the defence of marital coercion demonstrate the importance of looking beyond marital status in the criminal justice system. Of the 294 cases where a husband and wife were accused together, juries convicted seventeen wives while simultaneously acquitting their husbands, and delivered partial verdicts to ten wives while acquitting their husbands. Overall, 9.18 percent of the married women accused of theft-related offences with their husbands experienced a situation directly in contrast to the defence of marital coercion. This number is small, but an examination of these cases reveals that juries were most likely to convict the wife and acquit the husband in cases where it appeared that the wife was solely responsible for the crime.

Twelve of the seventeen relevant cases indicate that the wife, rather than the husband, was responsible. In 1697 for example, Jonathan Wright accused Thomas Walker, his wife Mary Walker, and Barbara Boyce of burgling his house and taking a watch and a number of other goods. At the trial, the “Fact was plain against Walker’s Wife” but not Thomas or Boyce, so the jury acquitted them and convicted Mary. The judge consequently sentenced her to death.\(^{31}\) The OBP entry contains little information about this case besides this brief explanation, but it demonstrates that juries were not willing to have a husband suffer for his wife’s actions if they concluded she was the solely responsible party. This is similar to the northern cases where the gaol delivery books contain no mention of the husband even though he was present in the deposition, which enabled prosecutors to evade the defence of marital coercion.

One can also see this in the 1723 case of Joseph and Mary Chandler for shoplifting £40 worth of goods from Robert Ker’s shop. At trial, Ker’s wife deposed that Mary Chandler and

\(^{31}\) *OBP*, May 1697, Thomas Walker, Mary Walker, and Barbara Boyce (t16970519-50).
Ann Hitch came into her husband’s shop to sell some lace and shortly after they arrived John Fitzgerald came in and asked for some silver buttons. This appeared to be some sort of distraction technique because while Ker was talking with Fitzgerald, Chandler and Hitch quickly left the shop and Ker found that the show glass was missing from the shop window. Hitch explained how she and Chandler had “carried off the Glass to an Ale-House, broke the Glass and Frame, took out the Goods, and threw the Frame down the House of Office; sold part of the Snuff Boxes for [£8], and shar’d the Money amongst them.” Chandler did not deny this account, “but there being no proof against Joseph Chandler” the jury acquitted him and convicted his wife Mary and Ann Hitch.32

A wife’s reputation often seemed to play a role in a jury’s decision not to apply the defence of marital coercion at the Old Bailey. In 1686, a jury convicted Sarah Walker of grand larceny but acquitted her husband Samuel. The author of the OBP explained that although the napkins stolen from Richard Tomlinson were found in Samuel’s trunk, the jury believed Sarah was a “notorious thief.”33 Similarly in 1720, Elizabeth Cole accused Thomas and Ann Tompion of picking her pocket and stealing a silk purse with eleven guineas. Thomas was present when Cole’s pocket was picked, but the evidence seemed to point to Ann being the sole guilty party. Ann’s case was certainly not helped by her reputation as the “most ingenious Pick-Pocket in London” and the jury convicted her while acquitting Thomas.34

One can also see this emphasis on reputation and action as the deciding factors in cases where a jury delivered a partial verdict for the wife and acquitted the husband. In 1699, John Toleson accused Phillip and Mary Sison of a burglary in which they stole 400 gallons of beer

32 OBP, April 1723, Joseph Chandler and Mary his wife (t17230424-22).
33 OBP, January 1686, Samuel Walker, Sarah Walker, Mary Collier, and Anne Manners (t16860114-18).
34 OBP, October 1720, Thomas Tompion and Ann Tompion (t17201012-5). See also: OBP, December 1757, John and Sarah Page (t17571207-7).
and a number of other goods. Toleson explained how he had “lost at several times divers [sic] considerable Quantities of Drink and Bottles, and searching the [Sisons’] House he found a Tub full of Drink in his Seller.” Phillip claimed he knew nothing of this tub and the jury chose to believe him, since they knew Mary was an old offender. However, they did show some mercy when they valued the goods at 10d, which meant that Mary was whipped rather than hanged.  

In a similar case from 1736, Rachael Wheelwright accused John Turner and his wife Frances Williams of stealing some dishes and household goods from a lodging she had let to them. Finding the goods gone on the 24th March, Wheelwright warned the couple and asked them to tell her what they had done with them. After considerable discussion, Williams confessed that she had pawned the goods at Colonel Davy’s. All of the witnesses seemed to believe that Williams was solely responsible, including Alice Turner, who testified that John had been a “very honest Fellow, ’till he was seduced by this vile Slut [Williams].” Considering all this evidence, the jury acquitted John and found Williams guilty to 10d, and she was sentenced to seven years transportation. Much like the cases in the north where a jury convicted a wife, these women who were convicted at the Old Bailey while their husbands were acquitted seem to have taken some sort of dominant or leading role within their specific crimes. Furthermore the characteristics of these cases remained remarkably similar throughout the period depending largely on the sorts of women who committed the offence and their actions rather than their marital status.

A jury’s application of the defence of marital coercion was discretionary, not universal. It is as misleading to argue that the defence of marital coercion did not apply as it is to argue that it was the norm in early modern England. The previous cases demonstrate that juries were willing to acquit married women while simultaneously convicting their husbands based on the defence,

35 OBP, May 1699, Philip Sison and Mary Sison (t16990524-32).
which ultimately emphasised a husband’s authority over his wife. Over the course of the period a husband’s authority became less of a factor in the theft trials and the defence of marital coercion almost disappeared entirely from the Old Bailey. However, as the previous discussion has demonstrated, married women’s experiences as accused criminals depended on more than just the defence of marital coercion. Rather, juries tended to treat them as criminals, while still recognizing the possibilities and difficulties their unique legal status created for this treatment.

Married women were not free from coverture’s consequences, and these tended to manifest themselves in the two models which seemed to characterize married women’s experiences with the criminal justice system. It is important to note that these two models shaped, but did not dictate, these experiences. The first with its emphasis on a husband’s control (coercion model) tended to minimize a married woman’s guilt while the second’s implicit assumptions of coverture and the idea of a criminal household (household model) saw married women as equally responsible to their husbands. Over the course of the period, these two models bumped up against each other, but by the mid-eighteenth century, the household model seems to have largely overtaken the earlier coercion model. It is important to note, that while these two models seem different in how they assign criminal liability, they both sprang from the principles inherent in coverture, suggesting that while ideas about married women seem to have changed somewhat in the 1750s, married women were still subject to coverture and all that it entailed.

**The Household Model in Theft-Related-Offences**

The defence of marital coercion seemed to hinge on the idea of a husband’s authority over his wife and her corresponding lack of will, but coverture was also about upholding the household ideal, which was often implicit in married women’s trials for theft-related-offences at the Old Bailey. In his 1620 tract, *Marriage duties briefly couched together*, Thomas Gataker
explained that man and wife “are one flesh, conjoined not severed.” And although man and woman were two separate entities “by nuptial conjunction being joyned to him as his wife, shee becommeth not onley part of his flesh as taken from him, but one flesh conjoyned with him. For as bodie and head, or flesh and soule make one man, so man and wife make one flesh.”36 As chapter one demonstrated, ideas about unity of person and the principle of one flesh changed between 1640 and 1760, but the overarching message of unity and cooperation remained the same. Marriage was meant to be a partnership, albeit an unequal one, in which husband and wife worked together as a common household rather than as two separate entities or competing individuals; coverture helped ensure this situation. The household model of married women’s criminality builds upon this principle of a unified household.

Between 1674 and 1760, Old Bailey juries in our source base acquitted 81.63 percent of the married women accused of theft-related offences with their husbands and 48.48 percent of married women accused without their husbands. At the same time, they also acquitted 47.28 percent of the husbands who were accused with their wives, which is higher than the overall male acquittal rate of 31.13 percent.37 This was largely due to the household ideal. In 130 cases (44.2 percent) where husband and wife were accused together, juries gave the same verdict to husband and wife. This willingness to treat husband and wife as equally liable in theft cases demonstrates jurors’ acceptance of the criminal household, which saw husband and wife as one criminal entity.

In 1687, Thomas Coxon charged John Holland and his wife Ann with breaking into his house and taking £3 along with several silver items. At trial, it appeared that the Hollands had been drinking with Coxon in an alehouse until Ann “pretending she would go and look after her

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37 OBP. This number was reached using the Old Bailey’s search engine, specifying the gender of the offender as male, and limiting the offences to theft, murder, and coining.
Child, left the Company and returned not till an hour after, and was in that time seen to go up Coxon’s Stairs, and return with some things in her Lap.” Coxon believed that the Hollands were guilty, but the jury acquitted John and Ann because Coxon was unable to find the goods, nor was there “any possitive [sic] Proof against the Prisoner.”  

The records for the September 1735 sessions contain two separate trials where a husband and wife were accused and acquitted together. William and Sarah Hicks were indicted for and acquitted of stealing two bedsteads, some blankets, a mattress, and some beer. The jury also acquitted William and Margaret March of stealing a hamper and forty-six fowls. Neither case contains any information about why the jury reached its verdict, but the results draw attention to juries’ tendency to view married couples accused together as a household, where both could be guilty or innocent. This treatment reflected the unified nature of the household, which coverture was meant to uphold.

This household ideal is also apparent in theft cases at the Old Bailey where juries convicted husband and wife together such as Richard Burgess and his wife Margaret Lumley (alias Burgess) in 1742. John Simonds accused Margaret of stealing a significant number of goods including various silver items, jewellery, and clothing from his house, and Richard of receiving the stolen goods. John explained how returning home one evening his daughter Catherine Simonds informed him that the house had been robbed. The following day he went and advertised for his stolen goods at the Goldsmith’s Hall, and both Lumley and Burgess were taken upon suspicion of having stolen the goods. A number of people questioned the prisoners, and Lumley confessed she had the stolen goods although Burgess denied any knowledge of the

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38 OBP, April 1687, John Holland and Ann Holland (t16870406-35).  
39 OBP, September 1735, William Hicks and Susan Hicks (t17350911-80).  
40 OBP, September 1735, William March and Margaret March (t17350911-81).
matter. However, Burgess eventually delivered the key to their room to his wife and upon opening the room, the stolen goods were discovered.

Lumley attempted to take the blame for the theft, but it appeared that she and Burgess were working together. The jury convicted them both and the judge sentenced Burgess to transportation and Lumley to death although it was “earnestly desired that [she] might be recommended to his Majesty as an Object of Mercy.” This appears to be successful since the associated records of the Old Bailey indicate that she was reprieved in January 1743 and presumably transported with her husband.\(^{41}\) In cases such as this where the husband and wife worked together as a household, the jury was willing to see them as two elements of one guilty entity and treated the whole rather than the individual parts.

Much like the juries, the husband and wife accused of theft at the Old Bailey often saw themselves as a criminal unit. In 1729, a jury acquitted Elizabeth Kemp of burglary since she was “acting under the Direction and Power of her Husband” while convicting her husband Joseph and sentencing him to death. “Upon the bringing in this Verdict, Elizabeth Kemp very pressingly insisted upon being brought in Guilty, affirming, that she was equally concern’d in the Robbery with him, and desir’d to be Hang’d with him; but the Court did not think meet to gratifie her.”\(^{42}\) In this sense, the Kemps regarded themselves as two parts of one criminal household.

Elizabeth probably also knew that Joseph’s execution would change her household structure and dramatically affect her wellbeing. Many people were aware of this situation and perhaps they felt that it was enough to only convict one person in order to punish the household. In 1728 for example, James Sherwood (alias Hobs), Elizabeth Hobs his wife, George Weedon,

\(^{41}\) *OBP*, January 1742, Margaret Lumley alias Burgess and Richard Burgess (t17420115-11).
\(^{42}\) *OBP*, July 1729, Joseph Kemp and Elizabeth Kemp alias Parsons alias Hughs (t17290709-51).
Henry Hews, Joshua Payn, Peter Wright, and Elizabeth Pope were indicted on three counts of housebreaking. In each case, the prosecutors and their fellow witnesses had little difficulty attributing the crime to Sherwood and George Wheedon. As to the other prisoners, the OBP explains that “none of the Facts being proved upon Joshua Payn, Peter Wright, or Elizabeth Pope, and Elizabeth Hobs having a Husband convicted for the Fact they four were acquitted.”

In this sense, Elizabeth Hobs’ acquittal had less to do with the idea of coercion than it did with holding somebody accountable; the jury did not feel the need to hold both husband and wife liable since any sentence against the husband would have undoubtedly affected the wife.

Similarly in 1737, John Lovelock and Mary his wife were indicted for receiving stolen goods from John Cook. At trial, Thomas Vezey, a Constable of Wapping, explained how he had apprehended Cook, who then directed him to the Lovelocks’ house, where he often carried goods. Vezey found the goods in the Lovelocks’ house and questioned both husband and wife. This suggests that Vezey saw both John and Mary as potentially responsible, but the jury only held John liable for his actions and acquitted Mary. While this case seems to conform to the earlier coercion model, it draws attention to the household nature of certain crimes. It is entirely possible that both John and Mary received the stolen goods, but the jury felt the need to convict only one, perhaps knowing that transporting John for fourteen years would affect Mary’s

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43 *OBP*, January 1728, James Sherwood, Elizabeth Hobs, George Weedon, Henry Hews, Joshua Payn, Peter Wright, and Elizabeth Pope (t17280117-41).
44 One can also see how people were aware that the punishment of a wife would affect the husband in the 1744 case of Henry Creed and Margaret Goodman. Creed was accused of stealing stockings and mittens to the value of 6s from Francis Cooper and Goodman was accused of receiving them. The jury found both of them guilty and Goodman was sentenced to fourteen years transportation. It was at this point that Goodman’s husband John, well aware of the separation that this would entail, “fell on his knees, and begged very heartily that the Court would be pleased to order her corporal punishment; but this being an offence against a statute, which makes it Transportation for fourteen years absolutely, the Court could not grant it.” *OBP*, April 1744, Henry Creed and Margaret Goodman (t17440404-15).
45 *OBP*, December 1737, John Cook, John Lovelock and Mary his wife (t17371207-65).
wellbeing. This was because John’s sentence of transportation would have split up the household and forced Mary to survive on her own.

A large part of this concept of the criminal household had to do with punishment and the effects of felony forfeiture. Until forfeiture’s abolishment in 1870, felony carried the dual punishment of death and forfeiture of one’s property, which, as Krista Kesselring argues, helped distinguish felony from other offences.\textsuperscript{46} Because of the nature of coverture and its property restrictions, felony forfeiture had a large effect on the widows of convicted felons, and ensured that they suffered some form of punishment even if it was not at the gallows or on the convict ship.\textsuperscript{47} With the passage of 1 Edw VI c.12 in 1547, widows of felons were entitled to dower rights, but this did not apply to personal property.\textsuperscript{48} While this lessened the impact of felony forfeiture on a felon’s family, it is important to note that upon marriage, women gave up all their personal property, and for the vast majority of women who did not have access to land, the forfeiture of personal property in the form of chattels meant that felony forfeiture was still a devastating blow on the family.\textsuperscript{49}

The household ideal also manifested itself in theft cases where London prosecutors and juries were willing to have a wife answer for the household’s crimes in lieu of her husband. In 1736, for example, Joan Harris accused Ann Collard and Sarah White of stealing silver goods

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\item As Kesselring explains, “In the 1530s and 1540s, some writers had criticized felony forfeiture for unfairly punishing the innocent more so than the guilty; wives, heirs, and creditors all suffered for the sins of another. In response, legal writers came to defend forfeiture as a valuable deterrent precisely because of these effects on the innocent, arguing that a potential offender might forbear out of concern for kin or creditors. Its justification relied on it being a punishment that imposed a hardship.” Kesselring, “Profits of Crime,” 275. This criticism of forfeiture continued during the Civil Wars and Interregnum with a number of the law reforms advocated in the “newly liberated press” denouncing forfeiture including the Levellers, John March, and William Tomlinson. Kesselring, “Felony Forfeiture,” 217.
\item Kesselring, “Felony Forfeiture,” 205, 213.
\item Ibid, 208, 213. For the importance of personal property to ordinary people, especially women, see Amy Louise Erickson, \textit{Women and Property in Early Modern England} (London: Routledge, 1995), 17-20, 64-7.
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worth 30s. Lawrence Newshum explained how Collard and White had brought some silver into his shop and he became suspicious when he saw the crests rubbed out. In her defence, White explained how she had seen Collard’s husband in the market who told her he had some spoons that he wanted valued. He then ordered Collard to go along with White to weigh them, which was when they went to Newshum’s shop. Collard provided a similar defence saying that her husband had brought the spoons home with him and after she was taken into custody he “sold and pawn’d all they had in the World, and has never since been heard of.”

Although Collard’s husband seems to have been involved, Collard faced the jury alone suggesting the prosecutor needed to have someone answer for the crime. The jury acquitted Collard because she was able to prove that her husband had actually committed the offence. Furthermore, she was neither the first nor the last to do so. In 1696, a jury acquitted Susan Rahcell of stealing a coach seat because she alleged that her husband had given it to her. In 1717, the jury seems to have believed Ann Wright’s assertion that her husband had given her the stolen table cloth found in her possession, since they acquitted her.

It should be noted that juries acquitted these women because they believed that the accused had not committed the offence, not because of the defence of marital coercion. What is particularly striking about these cases is that their husbands seem to be involved but they did not stand trial. The idea of the household was present in the prosecutors’ need to bring someone to trial; it did not matter if it was the husband or wife. The attempt to separate husband and wife in theft cases at the Old Bailey may have been a means of avoiding the high acquittal rate present

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50 OBP, January 1736, Ann Collard (t17360115-4). See also: OBP, July 1744, Sarah Probert (t17440728-22); OBP, April 1727, Anne Greenwood (t17270412-42). Further suggesting the idea of holding at least one person accountable is the 1727 trial of Elizabeth Stamper. The jury acquitted Elizabeth because her husband had already been tried and convicted for the same offence. OBP, February 1727, Elizabeth Stamper (t17270222-61).
51 OBP, February 1696, Susan Rahcell (t16960227-61).
52 OBP, September 1717, Ann Wright (t17170911-8).
when husband and wife were accused together; a legal manoeuvre meant to ensure the prosecutor’s success. However, it also reflected the idea of the criminal household, and how far that idea extended into the early modern criminal justice system.

The coercion and household models played a large role in the trials of married women accused of theft-related offences at the Old Bailey, although the circumstances of a particular case were still important factors in juries’ decisions. One can see this most readily in cases where a married woman was accused of a theft-related offence without her husband. Much like victims and witnesses’ assumptions in the depositions which were discussed in the previous two chapters, the largest difference of jurors’ treatment of married women rested on the presence or absence of their husbands rather than their marital status. Despite these differences, there were similarities between a wife accused of theft-related-offences with and without her husband at the Old Bailey, or at least similar themes. Both coverture and the idea of a criminal household were present, but a jury was more likely to convict a married woman accused without her husband than if she was accused with her husband. This was largely because the defence of marital coercion was not supposed to apply in these situations.

Juries weighed a number of factors and more often than not treated married women as they would any other offender. Juries convicted women if it appeared if they had committed the offence, such as Elizabeth Dary in 1719. In response to the charges of theft, Dary alleged that it was a malicious prosecution, “but the Prosecutor being positive, and the Fact plain upon her, the Jury found her Guilty of Felony.” Juries convicted other women because they confessed to the offence, such as Sarah Herbert, who John Robinson accused of stealing a silver tankard worth £7 out of his dwelling house in 1721. Herbert’s confession was read at the trial, where she “took the

53 OBP, July 1719, Elizabeth Dary (t17190708-27).
Fact wholly upon herself . . . but added, she was Drunk, and knew not what she did.” This was not a viable excuse and the jury condemned her.\textsuperscript{54}

Juries also tended to acquit in cases of insufficient evidence. In an explanation of its 1701 acquittal of Hannah Lammas, the jury asserted that the handkerchief found in her possession was not enough proof to convict.\textsuperscript{55} In 1756, Joseph Mastern accused Elizabeth the wife of John Rickins of stealing a silver mug worth 25s. The pawnbroker David Spires explained how a woman had brought the mug to pledge at his shop, but since neither he nor Mastern could positively identify Rickins the jury acquitted her.\textsuperscript{56} It is interesting to note that one of the main reasons husbands and wives accused together were acquitted was because the evidence did not touch them, and the same seems to hold true for married women accused without their husbands.\textsuperscript{57}

The defence of marital coercion may not have played an overwhelming role in these cases, but it is important to note that a husband was still present in the theft cases at the Old Bailey, even when his wife was accused without him. In order to indicate a woman’s status, the OBP more often than not classified the married offenders as “the wife of.” In this sense a married woman was still tied to her husband’s identity even if her criminal actions had removed her coverture. This suggests that even though people in the seventeenth and eighteenth centuries saw these women as criminals, they also continued to see them as wives whose legal identity was directly connected to their husbands’.

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\textsuperscript{55} \textit{OBP}, January 1717, Hannah Lammas (t17170111-19). See also: \textit{OBP}, April 1731, Mary Gore (t17310428-78).

\textsuperscript{56} \textit{OBP}, December 1756, Elizabeth Rickins (t17561208-7).

\textsuperscript{57} This also applied in cases where husbands and wives were accused together. See for example: \textit{OBP}, April 1690, William and Mary Wright (t16900430-13); \textit{OBP}, September 1720, George and Sarah Brancom (t17200907-25).
An analysis of theft-related offences in the OBP between 1674 and 1760 indicates that it would be misleading to suggest that the defence of marital coercion was a legal fiction. The defence existed, but juries’ failure to apply it consistently meant that it was not an effective defence. Instead, coverture seemed to manifest itself through the implicit assumptions about household structure. The fact that juries could hold married women responsible for their actions meant that this was less an example of favourable treatment than it was a reflection of the ideal marital relationship. Throughout the period, the coercion model as represented in the defence of marital coercion was replaced by the household model of crime, which treated husband and wife as one criminal entity. This was less a competition than two sides of the same coin: married women’s legal identities were subsumed. In these cases, ideas about marriage and women were often just as important as ideas about criminality in influencing jurors’ deliberations. The continued prevalence of coverture in the criminal justice system across all the changes of the period, demonstrates that ideas about married women remained remarkably stable. Coverture’s application may have changed, but its essential elements remained the same.

Coining

In 1733, John Brown and Margaret Berry were tried for coining at the Old Bailey. Questions arose at their trial over whether they were married, and two witnesses attempted to prove that they were not in order to ensure a dual conviction. However, the presiding judge explained to the people in the court that if Berry “could prove her Marriage to Brown, it would do her no Service; for in High Treason ’tis no Excuse for a Woman, that she acts under the Direction of her Husband.” Married women could not use the defence of marital coercion in coining cases. Despite this, juries acquitted three of the 104 married women accused of coining at the Old Bailey because of the defence of marital coercion. In 1677, an unnamed woman was

58 OBP, October 1733, John Brown and Margaret Berry (t17331010-24).
accused of clipping. The proof against her was that she had often been seen changing milled money. Her husband fled when she was apprehended. It seemed as though there was sufficient evidence against the woman because the constables had found files, melting pots, and other coining implements in her lodgings. However, the OBP explained that “under such Circumstances, our merciful Laws, in favour of Marriage, are pleas’d to suppose the Wives act to be done by Coertion [sic] of the Husband.” As a result the jury acquitted the unnamed woman. 59

In 1687, a jury convicted Michael Haire of a misdemeanour in uttering false money but acquitted his wife Mary “as being his Wife on whom he had power to lay his Commands.” 60 It should be noted that they were tried on two other counts of coining; the jury convicted Michael of the other misdemeanour and acquitted him of the felony, while they acquitted Mary of both charges. 61 Four years later at a 1691 trial for clipping, a jury convicted Samuel Porter, but explained that “the Law in such a Case being render of the Wife, she was acquitted.” 62 Unlike Michael Haire who was fined and imprisoned for his misdemeanour, Samuel Porter was executed for his offence. 63

These cases seem to be exceptions and the 1691 trial of Samuel and Mary Porter was the last time coverture or coercion was specifically mentioned in coining trials at the Old Bailey. For the most part, jurors’ treatment of married women in the Old Bailey coining cases speaks largely to an idea of a coining household which recognized dual rather than limited liability. In this sense coverture was implicit, something which informed perceptions of the married women accused of coining rather than dictating their treatment. Coining largely took place within the

59 OBP, October 1677, trial of unnamed woman (t16771010-6).
60 OBP, May 1687, Michael Haire and Mary Haire, (t16870512-30).
61 OBP, May 1687, Michael Hair and Mary his wife (t16870512-9); OBP, May 1687, Michael Hair and Mary his wife (t16870512-44).
62 OBP, January 1691, Samuel Porter alias Vane and Mary Porter (t16910115-13).
63 OBP, Ordinary of Newgate’s Account, 26 January 1691(OA16910126).
household, which meant that all members were involved or at the very least aware of its occurrence. The ideal and unified household also informed people’s ideas about the accused married women and their roles within the crime. The household model of crime referred to here is one in which juries treated husband and wife as one criminal entity. This differs from the coercion model in that it did not eliminate a wife’s guilt but rather subsumed it, along with the husband’s into one identity. In this sense, coverture existed in the Old Bailey coining cases despite the restrictions on the defence of marital coercion.

Of the 104 coining cases in the Old Bailey, seventy-five (72.12 percent) involved a husband and wife accused together. Juries delivered the same verdicts for husbands and wives in forty-four (58.67 percent) of these cases. This suggests that juries believed husband and wife were one entity, unless something proved otherwise. These statistics demonstrate the household model fully at work. Coining was exempt from the defence of marital coercion, but even without this, married women were still not free from the ideas of coverture and the unified household.

Cases such as William Walker and his wife Ann in 1693 illustrate these patterns. The OBP explained how someone had searched the Walkers’ house “and in his Chamber was found a parcel of Clippings, a pair of Shears and a File.” The entry contains no information about who used the tools and there was no assumption that any one party was less guilty than the other. In their defence, William and Ann asserted that “they knew nothing how the things came into the Room, and that they never shut their door.” This seemed to be enough for the jury to acquit them. The evidence touched both parties, and the jury reflected this in its verdict.

Similarly in 1690, John Porter, his wife, and Margaret Seymour were indicted for coining. The evidence against them was that Seymour, a lodger in Porter’s house, had borrowed a pair of scales from someone and upon returning them somebody found some clippings hanging

64 OBP, September 1693, William Walker and Ann his wife (t16930906-43).
from their strings. This caused an unnamed party to search Porter’s house where he or she found a pair of shears, files, some clippings, and some other materials. Porter, his wife, and Seymour all denied the offence, and a number of witnesses appeared on their behalf. The jury acquitted both of them.65 One can see the household nature of the offence in the fact that witnesses attributed the goods found within the household to all members of the household rather than simply the husband. Despite not knowing her name, there was no reason to assume that Porter’s wife was any less guilty or innocent than he was.

The household character of coining generally resulted in Old Bailey juries treating all parties accused of coining the same. In 1684, the daughter of Edward Conyers was discovered with some clipped shillings “with which her Mother had sent her to buy Bread and other Commodities, and being seized, she confest that her Father used to Clip money.” Upon searching the Conyers’ house, various people found shears, files, melting pots, clipped money, and clippings. Their daughter’s discussion seems to indicate that both Edward and Jane were involved in coining. The jury likewise felt that both Edward and Jane were liable for their actions since it convicted them both.66

In 1696, Edward Jones and his wife Ann were arraigned on two indictments for counterfeiting and clipping. The evidence against them was that a search of their home in Thames Street revealed some charcoal, a parcel of broken crucibles, and some paper with which they made money. There was no proof against them for clipping, but the items found in their house were enough to convict them both of counterfeiting.67 Much like the previous cases there was no way to determine who actually committed the offence, nor was there anything to indicate

65 OBP, December 1690, trial of John Porter and his wife (t16901210-38).
66 OBP, February 1684, Edward Conyers and Jane his wife (t16840227-24).
67 OBP, October 1696, Edward Jones and Ann his wife (t16961014-27).
that this was not a criminal partnership. As a result the jury treated both Edward and Ann exactly the same, seeing them both as responsible.

Although the previous examples have demonstrated that juries at the Old Bailey were likely to treat husbands and wives accused of coining together as equally guilty or not guilty, there were still a number of examples where husbands and wives accused together received separate verdicts. However, this was not about coercion, but rather depended on the circumstances of the case. In these instances, juries seemed to follow the strictures found in a 1677 trial of an unnamed husband and wife. The wife, an old offender, attempted to lure a gentleman into setting up a “private Mint.” Unfortunately for her, this man was responsible for detecting and inspecting such offences. Upon searching her home the woman was caught in the act of coining while her husband was upstairs. At the trial, the woman cleared her husband of any wrongdoing and the judge asked the man if he was content to part from his wife to which “he, like a kind Husband, replied, I am very willing the Law should have its course: Better one than both.” And in 41.33 percent of the cases where a husband and wife were accused together, the court followed this principle.

The OBP contain seventy-five coining cases where husband and wife were accused together; in sixteen juries convicted the husband and acquitted the wife, in seven juries convicted the wife and acquitted the husband, and in eight juries acquitted the wife but the prosecutor did not try the husband because he had fled or was absent for some other reason. This acquittal rate undoubtedly favoured women, but as the characteristics of the following cases demonstrate, this had little to do with a married woman’s lack of liability or legal will. Instead, the circumstances of each particular case played an important role in juries’ decisions.

68 OBP, December 1677, trial of unnamed man and woman (t16771212-7).
In 1684, the aptly named Daniel D’Coiner and his wife Catherine were accused of clipping numerous coins. Daniel had confessed to clipping guineas and silver pieces which gave cause for his lodgings to be searched. Here, the authorities found various tools relating to clipping and coining. At this point the D’Coiners’ case was remarkably similar to those examined above; however, both Daniel’s confession and “demonstrable proofs” indicated that he was guilty of the offence. The jury acquitted Catherine because there were no witnesses who could prove that “she had a hand in the design, or was assisting her Husband in his unlawful practices.”

Similarly in 1714, John Barker, his wife Elizabeth, and John Neale were indicted for counterfeiting. Mr. Rodam had been in charge of searching for suspected persons and arms and upon the Beadle’s information, he took a Constable to a house where he found some counterfeit money, a lighted fire, some melted metal, flasks, edgers, a press, and numerous other tools used for coining. The Barkers and Neale were all in the house, but John claimed that his wife knew nothing of the tools, “nor did it appear by the Evidence that she was in the Room where they were found.” The jury acquitted Elizabeth but convicted John and Neale.

In the examples of the D’Coiners and the Barkers it appeared that the wife was not involved, and this was the most common reason why Old Bailey juries delivered different verdicts when a husband and wife were accused of coining together. The same can be said for coining trials where a wife was convicted while her husband acquitted. In 1693, William Davis and his wife Anne were tried for clipping. Making a private search, the Constables found Anne in a chandler’s shop with a glove of clippings tied around her waist. This caused them to search her lodgings where they found £5 of broad money in a chest of drawers and some newly clipped coins.

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69 OBP, December 1684, Daniel D’Coiner and Catherine D’Coiner (t16841210-42).
70 OBP, January 1718, Ann Palmer alias Carlton and Barbara the wife of William Dowling (t17180110-32).
money. It was at this point that William came in and demanded to know what was happening. The Constables searched him and found 10s of newly clipped money on his person. However, Anne explained that she had found the clippings on the street and “she excused her Husband as to the matter, for that he knew nothing what she did.” Anne was unable to prove how she acquired the clipped money which resulted in her conviction, but her confession managed to secure an acquittal for her husband.71

In a similar case from 1697, William Gregg and his wife Elizabeth were indicted for counterfeiting. Evidence for the crown deposed that she had seen Elizabeth coin crowns and half-crowns in an alley in Moorfields, and when the Constables searched her house they found a number of tools used for coining. Since the tools were part of the household, the constables arrested both husband and wife. The OBP explained how after finding these goods “The Man denied the Fact, saying, That he never did do, or see any such thing in all his Life. The Woman did Justify her Husband, but could not well deny the Fact her self.” By taking the sole responsibility Elizabeth ensured that the jury acquitted William and convicted her.72

The defence of marital coercion was not supposed to apply in coining cases, and for the most part it did not; however, other elements of coverture and the idealized household informed the perceptions and treatment of married women accused of coining at the Old Bailey between 1674 and 1760. One can see this most clearly in the prevalence of the household model of responsibility, where juries held husband and wife accountable for their actions. In these cases, the jurors reflected the assumption that husband and wife worked together as one unit, albeit for illegal purposes. This means that coverture was not entirely absent from the coining cases, and it worked implicitly in the minds of prosecutors, jurors, and witnesses to place married women

71 OBP, September 1693, William Davis and Anne Davis (t16930906-15).
72 OBP, May 1697, trial of William Gregg and Elizabeth his wife (t16970519-29).
firmly within a unified household. Coercion may not have been the general rule, but coverture was alive and well in the Old Bailey’s coining cases.

**Murder in the Streets of London**

The defence of marital coercion was also not supposed to apply in cases of murder. Juries acquitted fifty-five of the eighty-four married women accused of murder at the Old Bailey, but they did not do so because of the defence of marital coercion. However, in much the same way as in coining and theft-related cases, coverture was not entirely absent from murder trials. Household structures affected the treatment of the accused, especially in relation to petty treason and infanticide where it seems to have played a role in determining the “suitability” of murder victims. These household structures meant that juries overwhelmingly acquitted married women in infanticide cases on the technicality that the child they killed was not a bastard, while simultaneously convicting the majority of married women accused of petty treason.

In 1704, Mary Tudor was accused of murdering her female infant bastard by throwing it into a privy, where it choked and suffocated. In her defence, Tudor “called a Witness to prove that she was Married, and that the Child was no Bastard.” The defence of legitimacy seems to have worked since the jury acquitted her. This case was not unique. In 1693, Alice Sawbridge was accused of drowning her male infant. Some workmen had found the child’s body floating in a clay pit full of water. The OBP explained that the jury acquitted Sawbridge because “there was no proof against her that she murthered the Child, which the Law provides should be made appear; and the Child was no Bastard.”

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73 OBP, March 1704, Mary Tudor (t17040308-30).
74 OBP, July 1693, Alice Sawbridge (t16930713-11). See also: OBP, October 1733, Frances Deacon (t17331010-5); OBP, February 1683, Margaret Benson (t16830223-9); OBP, December 1696, Mary Ingerley (t16961209-83); OBP, July 1717, Ann Hasle (t17170717-18); OBP, December 1719, Ann Armor (t17191204-7).
The legitimacy of the victims unites these cases; Tudor and Sawbridge were both married and their infants were not bastards. Of the twenty-three cases of married women accused of infanticide in the Old Bailey between 1674 and 1760, juries convicted only one woman: Mary Morgan in 1724. Women seemed to be able to kill newborn infants without impunity, provided that the infants in question were not bastards. This had nothing to do with the defence of marital coercion, but was directly connected to the idea of marital status.\(^{75}\)

Part of the reason lies in the specificity of infanticide, a type of murder defined by the 1624 statute (21 Jas I c.27), which was designed to combat the problems of the:

many lewd Women that have been delivered of Bastard Children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their Children, and after, if the Child be found dead, the said Women do allege, That the said Child was born dead; whereas it falleth out sometimes (although hardly it is to be proved) that the said Child or Children were merthered by the said Women, their lewd Mothers, or by their assent or procurement.\(^{76}\)

Under this statute, any unmarried woman who concealed her pregnancy was assumed to have murdered her bastard child if it was found dead. In this unique reversal of the burden of proof, an accused woman had to prove, by at least one witness, that the child was born dead, or that she had not concealed the pregnancy, otherwise the jury was to assume that she had murdered the said child.\(^{77}\)

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\(^{77}\) Allyson N. May, “‘She at first denied it’: Infanticide Trials at the Old Bailey,” in \textit{Women and History: Voices in Early Modern England}, ed. Valerie Frith (Toronto: Coach House Press, 1995), 19; Sara Butler, “A Case of
As Angus McLaren notes, “only some mothers – the unmarried or ‘lewd’ – were subject to the law, the presumption being that the married would not be forced to such extremes. . . . the statute was more a response to a fear of promiscuity than a reaction to a threat to infant life.”

This is perhaps why juries acquitted all but one of the twenty-three married women accused of infanticide in this period. It should be noted that juries rarely convicted unmarried women accused of infanticide, although their numbers are higher than their married counterparts. As Robert Malcolmson notes, the infanticide statute was rigorous in theory, but juries seldom enforced it in practice. Juries often looked for any sort of evidence which would allow them to acquit the accused. By the eighteenth century, this took the form of baby’s clothing, which juries took as an indication that the accused intended to keep her child after its birth, even if she had concealed her pregnancy. The experiences of married women accused of infanticide need to be examined in the context of all women accused of infanticide, and this was a crime with a very low conviction rate.

The extremely low conviction rate of married women accused of infanticide is surprising, however, in light of the emphasis people placed on motherhood during this period, especially motherhood within marriage. One would expect that cases involving married women accused of killing their newborn infants would result in a high conviction rate, a reflection of societal

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81 As Will Coster explains, the creation of a family “was also part of the social role and expectations of married couples, with childlessness being generally regarded as a sad plight, although infertility was not grounds for legal separation. Motherhood, in particular, was seen as the defining characteristic of women and gave them a unique value in society.” Will Coster, *Family and Kinship in England, 1450-1800* (London: Pearson Education, 2001), 69. For a discussion of the importance of motherhood see: Patricia Crawford, “The construction and experience of maternity in seventeenth-century England,” in *Women as Mothers in Pre-Industrial England*, ed. Valerie Fildes (London and New York: Routledge, 1990), 3-38.
horror at the thought of a mother killing her child, regardless of its age.\textsuperscript{82} However, the focus on bastard children inherent in the infanticide statute and the perceived lack of motive for a married woman to kill her newborn child all contributed to the reality in which a number of married women escaped the censure of killing newborns. It should be noted that the married women who were accused of killing children other than newborn infants had a high conviction rate, which suggests that it was only in cases of infanticide where marital status could provide a reason for acquittal.\textsuperscript{83} Once the child ceased to be a newborn, juries reflected their horror at the murder of a child.

The lack of violence in infanticide cases also seems to have played a role in juries’ acquittals of married women accused of infanticide at the Old Bailey. Infant mortality, especially in the first thirty-six hours after birth was high and it was difficult to prove that an infant had died an unnatural death unless there were signs of violence on the body. The only married woman convicted of infanticide in this period was Mary Morgan in 1724, whose newborn infant showed obvious signs of violent trauma. Morgan was a servant at the Red Lion Inn at Holloway. People knew Morgan was married and suspected her of being pregnant, although she never admitted to it. Morgan went away from the Red Lion for a few days and came back noticeably lighter. She claimed that while away she had had a miscarriage “but being constrained to tell where the Child was, it was found buried in a Garden, and had two Stabs in the Belly.” One

\textsuperscript{82} For a discussion of societal horror over infanticide see: Malcolmson, “Infanticide in the Eighteenth Century,” 189-190.

\textsuperscript{83} See for example: OBP, January 1682, Elizabeth Crosman (t16820116a-6); OBP, October 1686, Anne Philmore (t16861013-25); OBP, April 1743, Sarah Wilmshurst (t17430413-36); OBP, December 1751, Rachel Beacham (t17511204-21). In her study of seventeenth-century infanticide, Laura Gowing explains that “Seventeenth-century broadsides and dramas depicted ‘unnatural mothers’ and ‘bloody mothers’ with abandon; but these mothers killed, with graphic violence, winsome toddlers and young children, not newborns. Sensationalized murders involved engagement, at some level, between victim and murderer; they depicted a conflict with two clear subjects, even if one was dependent upon the other. But neonatal infanticide involved a quite different understanding of individuality, subjectivity and dependence. It involved a problematic, blurred boundary between mother and dependent infant, and it was understood to be a crime not of violent activity but of passivity or neglect.” Laura Gowing, “Secret Births and Infanticide in Seventeenth-Century England,” Past and Present 156 (1997), 105-6.
witness deposed that one of these stab wounds was “such an one that the Bowels came out.” The stab wounds enabled the jury to determine that Morgan’s child had not died a natural death. For the most part, however, women committed infanticide by smothering children in privies or neglecting them in the hours after birth. These passive methods did not lend themselves to easy discovery of whether the child was born dead or alive.

Marital status also worked against women in cases of petty treason which had one of the highest conviction rates of any offence in the Old Bailey. The fate of married women before the law in these cases of infanticide and petty treason seemed to hinge in large measure on their role in the family. One can see the ideal household model at work here, where broad trends overwhelmed individual circumstances.

Accounts of women convicted of petty treason in the Old Bailey reflected the concern people had with maintaining the marital hierarchy and emphasised the disorderly nature of the accused women. The OBP portrayed petty traitors as wicked and inhuman women who usurped masculine roles. In 1739, a jury convicted Susannah Broom of murdering her husband John. At her trial, her neighbour William Allen testified that Susannah “was an obstinate woman and used to quarrel with [John].” Susannah regularly abused her elderly husband and William explained how he had “saved [John] from her a great many Times.” Susannah did not conform to the model of wifely obedience and regularly usurped her husband’s position of authority within the marriage.

In cases of petty treason the problems of implementing coverture in practice came to the forefront. In a 1735 Gentleman's Magazine, a contributor wrote that “Man claims superiority over the fairer sex: and the woman that will contest that point, lays a foundation for future misery

84 OBP, February 1742, Mary Morgan (t17420226-72).
85 OBP, December 1739, Susannah Broom (t17391205-2).
People in the seventeenth and eighteenth centuries expected, and observed, that the legal fiction of unity of person caused problems in practice, and feared the results of these problems.\(^{87}\)

Husbands did not have unlimited authority and people were concerned about husbands who abused their authority; this fear was increased when it appeared that the abuse led to a wife murdering an abusive husband, especially if the murder was premeditated.\(^{88}\) In 1714, Joyce Hodgkis attempted to justify her actions by claiming that “she had been married to her husband fifteen years, and all that while she had been a very barbarous and cruel husband to her, beating her most unmercifully.”\(^{89}\) While people saw the abuse of authority as problematic, they were even more troubled by a wife's usurpation of authority, especially if that usurpation ended in a husband’s murder.

Of the twenty-two cases of married women accused of petty treason at the Old Bailey between 1674 and 1760, juries acquitted eight (36.36 percent), convicted seven (31.82 percent), and delivered partial verdicts in the remainder.\(^{90}\) Perhaps the high conviction rate of women accused of petty treason reflects the violent nature of the offence. The conviction rate for petty

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87 As Frances Dolan explains, “Because marriage, so conceived, only allowed enough room for one person, one will, one full life, there was no way out of conflict but to submit or subjugate, die or kill. If only one could have a self, and the husband had an historically and legally privileged claim, then the wife could only usurp a self from her husband.” Frances Dolan, “Battered women, Petty Traitors, and the Legacy of Coverture,” *Feminist Studies* 29:2 (2003), 258, 271; Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York: Columbia University Press, 1988).
88 Cases that involved an extremely abusive husband, where it was obvious that the wife had acted in self defence, or at least had murdered her husband in the middle of a fight, without premeditation, could result in manslaughter verdicts. See for example *OBP*, February 1727, Catherine Lewis (t17270222-11); *OBP*, July 1744, Lydia Adler (t17440728-23); *OBP*, June 1752, Sarah Pool (t17521206016): *The bloody register. A select and judicious collection of the most remarkable trials for murder, treason, rape, sodomy, highway robbery, pyracy, house-breaking, perjury, forgery, and other high Crimes and misdemeanours. From the year 1700 to the year 1764 inclusive*. Volume 1 of 4 (London, 1764), 261. Extreme abuse was never used as a successful defence in cases that resulted in acquittals. However, some cases resulted in manslaughter verdicts when it was obvious that a husband was extremely abusive. See for example: *OBP*, February 1727, Catherine Lewis (t17270222-11).
89 These most often took the form of convicting the women of the lesser charge of manslaughter. However, in the 1725 a jury convicted Elizabeth Roberts of murder since she proved she was not married to her victim. *OBP*, June 1725, Elizabeth Roberts (t17250630-6).
treason was slightly higher than that of murder, which stood at 25 percent, and significantly higher than infanticide. Married women did not normally have a reason to hide their pregnancies, and the perceived lack of motive certainly contributed to the low conviction rate of married women in infanticide cases.\textsuperscript{91} This lack of motive was connected to the household structure, which was central to conceptions of all married women accused of murder.\textsuperscript{92} However, one can also attribute the differing conviction rate to the circumstances of the case, specifically the degree of violence present in each case.

People in early modern England believed that feminine violence was unnatural, and juries reflected their horror of it in the conviction of violent female offenders. As Garthine Walker explains, “To wield violence was to assert authority and superiority.”\textsuperscript{93} The violent methods of the women accused and convicted of petty treason further exacerbated their subversion of the marital hierarchy. In addition, the violent nature of petty treason meant that it was easier for juries at the Old Bailey to determine how a death had taken place than it was in infanticide cases.\textsuperscript{94} In 1714, Joyce Hodgkis was accused of killing her husband John. One witness swore that she heard a great deal of noise between Joyce and John, and when she came down to investigate,

\textsuperscript{91} As Dana Rabin explains, “The law assumed that married mothers were not driven to their crimes by the same desperate or deviant motives as unmarried women. Infanticide by married woman was considered so shocking and so unlikely that the only motive assigned to it was insanity.” Dana Rabin, “Bodies of Evidence, States of Mind: Infanticide, Emotion, and Sensibility in Eighteenth-Century England,” in \textit{Infanticide: Historical Perspectives, 1550-2000}, ed. Mark Jackson (London: Ashgate, 2002), 76.
\textsuperscript{92} See for example: \textit{OBP}, January 1691, Anne Stephens (t16910115-15); \textit{OBP}, January 1735, Elizabeth Ambrook (t17350116-11); \textit{OBP}, February 1737, Mary Shrewsbury (t17370216-21); \textit{OBP}, May 1757, Mary Mussen (t17570526-22).
\textsuperscript{94} Despite the emphasis in the sixteenth and seventeenth centuries on the danger of wives murdering husbands through poison, the focus in the late-seventeenth and eighteenth century was on violence. No woman was accused of poisoning her husband at the Old Bailey between 1674 and 1760, although there were two later cases, both of which resulted in acquittals. See: \textit{OBP}, May 1762, Jane Sibson (t17620526-18); \textit{OBP}, April 1776, Mary Owen (t17760417-58).
she saw Joyce “run at [John] with a Knife, and immediately saw Blood run out at his Breeches.” Joyce had clearly stabbed her husband in the groin, and the jury convicted her.95

One can also see the violent nature of petty treason in the 1737 trial of Ann Mudd for killing her husband Thomas. Ann and Thomas had been arguing and Ann had slapped Thomas in the face a number of times. Elizabeth Aggleton deposed how at the time Ann:

had a Knife by her Side, which she laid down on the Cupboard, and then she said she would fight [Thomas]; he would not fight her, so she sat her self down in a Chair, and he went to her, and wanted to kiss her, but she would not let him; he sat down in her Lap, and she push’d him away; then they both fell from the Chair upon the Ground, and she got up, and took some Thing off the Cupboard, and jobb’d it at him as he stood in the middle of the Cellar, he immediately cry’d out, Mother! Mother! I am stabb’d, I am stabb’d, she has done for me!96

This case was similar to Joyce Hodgkis’ in that Ann Mudd’s violent actions meant the jury had little doubt as to the cause of death.

Within murder trials, marital status seems to have provided a potential and extremely effective defence in infanticide cases, but exacerbated the severity of the crime in petty treason trials. In this sense, coverture was present as an important subtext, where the household structure that coverture created informed the experiences of married women depending on the crime and the victim.

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The criminal experiences of married women at the Old Bailey, especially in theft-related offences, seemed to conform to one of two models. The coercion model emphasised the defence of marital coercion and saw a woman’s duty to obedience excusing her criminal actions. In this sense, a husband’s authority covered or erased his wife’s criminal behaviour. In the household model, a jury saw a husband and wife’s criminal behaviour as part of a larger whole, where they

95 OBP, September 1714, Joyce Hodgkis (t17140908-35).
96 OBP, April 1737, Ann Mudd (t17370420-6).
were one criminal entity rather than individual actors. This model also recognized the household nature of a number of offences. These two models were present throughout the period although the household model overtook the coercion model by the end of the period. Despite the differences between these two models, the end result was the same.\textsuperscript{97} This suggests that although an Old Bailey jury’s application of coverture changed according to larger social trends, its overwhelming purpose of marital unity and female subordination, or at least subsumption into the household, remained the same.

Not all cases conformed to these models and the experiences of married women differed according to the crime, the period, and the circumstances of each individual case. However, coverture was present in all of the cases as an implicit subtext that informed married women’s treatment and experiences in the criminal courts. This subtext took many forms including assumptions about ideal behaviour and in determining the suitability of a murder victim, but coverture and its consequences were never far from married women’s experiences.

In this sense, coverture remained a sword that hung over married women’s lives throughout the period.\textsuperscript{98} The sword swung in different ways but it remained a potent force. Even if married women did not feel its effects in their daily lives they were still subject to its consequences. The only married women who were free from coverture were the queens regnant; the other women of early modern England remained \textit{femes covert} along with all that this status entailed.

\textsuperscript{97} As Amanda Vickery argues, “In essence, the rise of the new domestic woman (whether in her seventeenth or nineteenth-century guise), the separation of the spheres, and the construction of the public and private are all different ways of characterizing what is essentially the same phenomenon: the marginalization of middle-class women. Like the insidious rise of capitalism, the collapse of community, the nascent consumer society and the ever-emerging middle class, it can be found in almost any century we care to look.” Vickery, “Golden Age to Separate Spheres,” 412.

\textsuperscript{98} Many thanks to Amy Erickson for this analogy.
CHAPTER 6: EXECUTING MARRIED WOMEN

In 1720, a jury convicted Ann Tompion, “the most ingenious Pick-Pocket in London” of stealing Elizabeth Cole’s purse. Cole accused both Ann and her husband Thomas, but the jury only convicted Ann. Her sentence was respited for pregnancy, and in July 1721 it was lessened to transportation. In August of the same year she chose to undergo the medical experiment of being inoculated for smallpox in order to avoid transportation.¹ Ann’s experience did not end with her sentence, nor should studies of criminality end at the trials. In order to fully understand the treatment of married women in the criminal justice system, this study traces married women from accusation to trial to execution, with the accusation and potential execution acting as two important bookends to the perceptions, treatment, and experiences of married women in the criminal justice system. A woman’s marital status did not matter at her execution, but it was still acknowledged in the popular accounts of these same executions.

The popular literature of crime – biographies of the condemned men and women which were sold at their executions – provides particular insight into the experiences of married women after a jury had convicted them. The term popular is used here to indicate works published for a non-specialist audience rather than a specifically plebeian one.² Using two main sources from the popular criminal literature – petty treason pamphlets and the Ordinary of Newgate’s Accounts (hereafter Accounts) – this chapter examines married women who were executed for their crimes and how various authors perceived and represented them. This literature was a text about crime,

¹ Old Bailey Proceedings Online (www.oldbaileyonline.org version 6.0, 17 April 2011), October 1720, trial of Thomas and Ann Tompion (t17201012-5); TNA PRO SP 44/79/409-410, 434. Ann was one of three women who chose to undergo this experiment, although some offenders chose transportation over inoculation.
² Here I am following Andrea McKenzie’s characterization of the Ordinary’s Accounts as popular literature. As she explains, “I am not implying that the audience for such material was exclusively, or even primarily plebeian; rather, I am using the term to denote a wide, non-specialist readership – or, to borrow the definition provided by David Cohen in his recent study of early American crime literature – ‘an extensive, in some cases massive, audience of readers, not confined to (although generally not excluding) the wealthy, the classically educated, or the professionally trained.’” Andrea McKenzie, Lives of the Most Notorious Criminals: Popular Literature of Crime in England, 1675-1775 (PhD Dissertation, University of Toronto, 1999), 12.
a commentary on society, and a behavioural manual. In this sense, it reflects how people thought of married women, their behaviour, and their place in society. A reading of these works reveals that their authors and readers saw married women as part of a criminal group, whose criminal identity often overshadowed their marital status. Nevertheless, there were certain characteristics unique to the married women within these works, which suggests that ideas about coverture and married women’s unique roles continued to inform perceptions of these women, even when their criminal actions had removed them from their husbands’ cover.

Popular criminal literature consisted of various forms of cheap print including chapbooks, ballads, broadsides, pamphlets, and even later, novels focusing on criminals and their lives. This criminal genre of popular literature was both didactic and entertaining, and the demand for these works continued throughout the period. Part of this demand lay in the relative inexpensiveness of these works. The Accounts were sold for three or six pence, which meant that they were available to a wide audience. This ensured that the gallows’ message was widespread and went beyond those who attended the execution.

Interest in criminal literature was widespread and although its ephemeral nature means that it is difficult to determine readership, this was not limited to any one class of people. As Phillip Rawlings explains, the assumption that the main market for criminal biographies was the labouring class is problematic, and it is more likely that the publishers sought their main market from the same broad social group to which they belonged – the middling classes. This is not to say that the gentry and the lower orders were absent from the readership, but they were probably not its intended audience.

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The popular literature of crime was largely confined to discussions of the executed offenders. The discretionary nature of the early modern criminal justice system meant that the number of executions was often less than the number of convictions. The purpose of punishment helps to explain this discrepancy. As Samuel Smith (1620-1698), the prison chaplain for Newgate (the Ordinary), explained in 1679, “as all penal Laws are designed not for Cruelty, but amendment of Manners, . . . that by due Punishments inflicted on a few, all being terrified, may desist from ill Practices”\(^5\) This sentiment is also apparent in another Ordinary, Stephen Roe’s explanation that:

> Every civilized Nation has enacted penal Laws to [restrain] Crimes, and protect Innocence and honest Industry: Of all the Laws framed for this Purpose, none are more wise and equitable than those enjoined to the Republic of the Israelites. One great Design of all which, is sum’d up in the Motto: To warn Men, against bold and presumptuous Crimes by seasonable and striking Examples of Punishment: And happy were it for the several Classes of People in this our Israel, if all who see or hear of these sad and shameful Examples of Punishment would so fear to offend God, or injure Man, as no more to transgress presumptuously, and go on in a hardened Course of the prevailing Sins of the times, which are the Reproach of human Nature, much more of a Christian Land.\(^6\)

Despite the difference in dates, these two statements demonstrate that punishment was meant to deter potential offenders through the execution of a certain type of offender. The visual nature of public execution made it a powerful symbol with a specific message about what happened to people who disobeyed the law. In order to fully achieve this, it was important to only execute a

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\(^5\) OBP, *Ordinary of Newgate’s Accounts*, 10 October 1679 (OA16791024). Smith was a clergyman who became the Ordinary of Newgate in 1676. He had refused to take the oaths in the 1662 Act of Uniformity, but his position as Ordinary required him to conform to the Church of England. He was the first Ordinary to publish accounts of the condemned persons before their execution, and his successors continued this work after his death in 1698. Christopher Chapman, “Smith, Samuel (1620-1698),” *ODNB*, OUP, 2004; online edn., Jan 2008 [http://www.oxforddnb.com/view/article/68687, accessed 6 May 2011]; McKenzie, *Lives of the Most Notorious Criminals*, 504. The Ordinary was an Anglican clergyman and a city official, a servant to the City of London, elected by the Lord Mayor and Court of Aldermen. His duties included visiting the condemned, preaching, and conducting various services. Andrea McKenzie, *Tyburn’s Martyrs: Execution in England, 1675-1775* (NY and London: Hambledon Continuum, 2007), 126.

\(^6\) OBP, *Ordinary’s Account*, 2 October 1758 (OA17581002).
limited number of felons, and a conviction did not necessarily translate into an appointment with the hangman.

While Ann Tompion and a number of other women escaped execution through the discretionary application of clemency, a number of women did not. In London, for example, ninety-seven married women were condemned for theft, coining, and murder between 1674 and 1760. Of these, thirty-nine (40 percent) were actually executed. A reading of the *Ordinary of Newgate’s Accounts* reveals a further fifty-six offenders whose life story indicates that they were married at the time of the offence but whose OBP entry does not indicate they were married. Of these, five women were reprieved while the remainder were executed. These numbers indicate that a total of 153 married women were convicted of theft, coining, and murder at the Old Bailey and sentenced to death between 1674 and 1760; of these, ninety married women were executed. These numbers only refer to London. Unfortunately, the northern circuit does not have comparable sources and it is difficult to determine how many of the offenders were executed. Fortunately there is a set of sources which discusses the criminal lives of married women outside of London – the petty treason pamphlets.

**The Petty Traitor in Popular Literature**

According to Frances Dolan, stories of women who subverted the social order by murdering their husbands “articulate and shape fears of the dangers lurking within the home, of women’s voracious and ranging sexual appetites and capacities for violence, and of the

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7 This number was reached by cross-listing the condemned with SP 44 from the National Archives and the *Ordinary of Newgate’s Accounts*.

8 The *Accounts* do not indicate that an offender was married until the late 1740s and 1750s. As a result, I read through the biographies and looked for any indication that the condemned were married, specifically searching for any mention of a husband. I then looked for the names of the women condemned in the OBP and cross-listed to avoid any repetition. For the purposes of this chapter, all the women were married unless otherwise indicated.
instability of masculine privilege and power.” Dolan argues that this fear, prevalent in popular literature surrounding petty treason, began in 1550, peaked in 1650, and disappeared by 1700, pointing out that both trials and the popular literature surrounding them virtually disappeared. However, as the previous chapters demonstrated, petty treason did not disappear during the eighteenth century, and it remained a major contemporary concern.

This concern and the sensational nature of petty treason mean that there are a number of pamphlets which discuss its occurrence. Unfortunately there are no works concerning petty treason from the northern circuit; however, there is no reason to assume that their readership was limited to any one geographical area. According to Kirilka Stavreva, popular literature surrounding crime took many forms; it could be “a text to be read, a song to be sung, and an image to be posted on walls . . . an influential medium in a society of steadily increasing but hardly overwhelming literacy.” These works spread throughout England and where a trial took place was not the most important factor. In addition, the themes present within the popular literature were not geographically specific, suggesting a national understanding.

According to historian James Sharpe, “Ever since the popular press had been established in England, much of its output had been devoted to crime, its major concern being the sensational and newsworthy case.” These chapbooks, broadsides, ballads, and other works

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10 Ibid, 17.
12 For a discussion on how this sort of popular literature was distributed see: Michael Harris, “Trials and Criminal Biographies: A Case Study in Distribution,” in The Sale and Distribution of Books from 1700, ed. Robin Myers and Michael Harris (Oxford: Oxford Polytechnic Press, 1982), 1-36.
13 J.A. Sharpe, “‘Last Dying Speeches’: Religion, Ideology and Public Execution in Seventeenth-Century England,” Past and Present 107 (1985), 147. As Lincoln Faller explains, “Before the growth of newspapers in the first two decades of the eighteenth century, however, and even before the regular publication of sessions papers in the 1670s, pamphlets began to appear that, in anywhere from four to sixty pages or more, tracked the career of individual criminals from birth to death.” Lincoln B. Faller, Turned to Account: The forms and functions of criminal biography in late seventeenth- and early eighteenth-century England (CUP, 1987), x.
followed a general formula in which penitent sinners recounted their lives and explained how these had led them to their specific end. Although the individual criminal and his or her circumstances were not entirely absent from these narratives, they did not normally write the words themselves. Instead, as Lincoln Faller explains, popular writers and their audiences:

shaped the facts of actuality into patterns convenient (and useful) to their imaginations. Each was made to conform to a preexisting type, as certain features of their lives were emphasized, played down, or suppressed, and ‘facts’ were often invented. Their individualities, variously compressed and expanded, were ultimately denied: like innumerable others, they were absorbed into either of two myths of crime [saved sinners or rogues].

These myths and the general pattern found within this genre helped to publicize and reinforce official values of obedience and conformity.

While these works are undoubtedly important and draw attention to the prevalence of the criminal genre throughout the period it is important to note that due to their ephemeral nature not all of them survived. Furthermore, these works dealt with only the most serious offenders and sensational crimes. In his study of last dying speeches, Sharpe notes that “the offenders whose last dying speeches are recorded in the pamphlets were a small, in many respects atypical, and probably well-chosen sample of those accused of and convicted for felony.” As the previous chapters have demonstrated, married women’s criminal involvement was limited, and this comes across within the popular literature as well. Married women are not particularly present in the earlier criminal genre, except in relation to petty treason.

Popular accounts of petty treason share some characteristics with other crimes in the criminal genre, notably in their discussion of providence, living a good life, and dying a good death. However, the petty treason pamphlets are notable for their focus on the household and

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14 Ibid, 2.
16 Ibid, 163.
how the subversion of its order resulted in the death of both parties; these were as much a commentary on marriage as they were a retelling of crime. This suggests that although married women could be seen as part of a criminal group, contemporaries still saw them as part of the household, and ideals of the unified household informed the retelling of their lives. When looked at in this light, petty treason pamphlets were part of a larger discussion of women’s proper place within the household and society as a whole.

As previously discussed, people believed petty treason was a heinous offence because it subverted the natural order. Contemporaries equated crimes against the husband with crimes against the king. For this reason it is not surprising that the popular literature surrounding petty treason was preoccupied with the importance of order and full of explanations for the dangers of subversion. In his discussion of Alice Clarke’s murder of her husband in 1635, Henry Goodcole explained that murder appeared more heinous in God’s eyes “when the husband and wife, who in the matrimonial contract, are no more too, but one flesh, shall barbarously and treacherously insidiate one another’s life.” In his 1683 sermon concerning Elizabeth Ridgeway, John Newton expressed similar sentiments. Newton explained to Ridgeway: “you have murder’d a husband set over you as your Soveraign Head? Whereupon the wisdom of our lawgivers hath made such murder no less than treason.”

In his study of eighteenth-century criminal biographies, Philip Rawlings explained how female criminals were “depicted as powerful, and their power derives from their independence of any relationship of subordination to men. . . . independence empowers women, that power results

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in evil, and this justifies the subordination of women.” Petty traitors were the extreme example of an independent woman, and their actions demonstrated the danger of letting a woman’s independence go too far. One can see this belief in the ballad *The Lamentation of Master Pages Wife of Plinmouth* (1680). The parents of Eulalia, the said Page’s wife, had forced her to marry the wealthy Page even though she was in love with George Strangwidge. In the ballad, Eulalia claimed that “Though wealthy Page possest my outward part, / George Strangwidge still was lodged in my heart,” and she murdered Page so that she would be free to marry Strangwidge. Eulalia also claimed that she was “A wife . . . that wilfull went awry” which suggests that it was her independence, or at least will that helped her to commit the crime. In addition to her warning against bad marriages, Page’s wife asserted at the execution: “Take heed you wives, let not your hands rebell.”

This preoccupation with order was central to the petty treason pamphlets, but they were also a commentary on proper households as the 1680 retelling of Margaret Osily’s murder of her husband Walter demonstrates. This pamphlet recounts how Margaret and her husband Walter had been drinking at a neighbour’s house, and upon returning to their own home, “a quarrel arising between them, her husband gave her some blows, the which she to outward appearance seemed not to regard, but converting her resentment to private Revenge, the which she in time found opportunity to effect.” In a particularly brutal murder, Margaret struck Walter with a

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19 Rawlings, *Drunks, Whores and Idle Apprentices*, 22.
21 *The Roxburghe Ballads*, Volume 2, ed. Charles Hindley (London, 1874), 191, 194. Other ballads concerning this murder which are present in the same volume of the *Roxburghe Ballads* include, *The Lamentation of George Strangwidge and The Sorrowful Complaint of Mistress Page*, 196-201.
22 *Great and bloody news from Farthing-Ally in St. Thomas’s Southwark, or, The true and faithful relation of a horrid and barbarous murther committed on the body of Walter Osily by his own Wife* (London, 1680), 1.
hatchet four times while he was sleeping, although this did not kill him. Seeing him still alive, Margaret then took a bow string and strangled him.\textsuperscript{23}

Walter’s murder played a large role in this pamphlet, but the author focused on the elements of the Osilys’ marriage which to contemporaries made it a bad marriage. Walter had formerly been Margaret’s apprentice, and “it was reported that he was very Familiar with her during the Life of her former Husband, and that he lay with her the night after he was Buried.”\textsuperscript{24} People in early modern England held that a successful marriage was one best made between parties of equitable age and social standing. As Margaret’s apprentice, Walter certainly did not belong to the same social station as Margaret. This was a bad marriage in other respects as well. As the anonymous author explained, Walter “having been married to her about a twelvemonth, in the time as ’tis said, he had spent and made away of hers about [£200], of which extravagance of his and the abusing her as it is conjectured were the causes for which she murthered him for which no doubt she gave him cause, being a Woman of a Turbulent Spirit, and living much at Varience with her former Husband.”\textsuperscript{25} This statement reveals that neither Walter nor Margaret was a good spouse, which explains why their marriage failed so spectacularly. However, the author was careful to note that the fault lay largely with Margaret, that “Woman of a Turbulent Spirit” whose actions in this marriage and her prior one had been in complete variance with the ideal female role.

Commentaries on marriage were not limited to wives’ behaviour as \textit{The Distressed Mother: Or, Sorrowful Wife in Tears} (1690) demonstrates. This one page tract, which recounted Katherine Fox’s murder of her husband and two young children, showed what ultimately

\textsuperscript{23} Ibid, 2-3.
\textsuperscript{24} Ibid, 3.
\textsuperscript{25} Ibid, 4.
happened to bad husbands. While the anonymous author had no problem attributing the crime to Katherine, he attempted to show how this was largely due to her husband’s mismanagement and drunkenness. The author explained how Mr. Fox had a plentiful estate but “through riotous Living had consum’d it all in a few Years, insomuch that he was reduced to a very low Ebb of Fortune.” Fox was often drunk and abusive and after one such experience, Katherine returned home where she saw her “two young Babes, grievously oppressed with Hunger, with Tears in their Eyes, taught not to Speak by Age, but Misery, required and desired Sustenance of her.” In despair, Katherine slit their throats and waited sorrowfully to die herself. Her husband later returned home, drunk as usual, and went promptly to bed. Upset that he did not share in her afflictions Katherine slit his throat as well, telling him: “Thou shalt Die, thou negligent Man, since thy ill Government hath been the Ruine of me and my Children.” This was clearly a cautionary tale, as represented in Katherine’s final words at her execution: “That Wives should beware of too much Fury, and Husbands to be more circumspect in their Families.” It is interesting to note that this warning was directed at both husbands and wives, which shows that a good marriage depended on the proper behaviour of both parties.

When a man married, he undertook a new role as head of household, which conferred a higher status on him, but he also assumed a number of responsibilities. Husbands had a duty to their wives, because as William Fleetwood explained in 1722, “there is no Relation in the World, 26  

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26 The Distressed Mother: Or, Sorrowful Wife in Tears (London, 1690), emphasis in original. See also: A Hellish Murder committed by a French Midwife on the body of her Husband, Jan 27 1687/8, (London 1688). For an examination of an earlier account of how petty treason was the result of larger problems in the household and its governance see: Marisha Caswell and Erin Bone Steele, “Killing a Husband: Alice Arden and her Accomplices on the Early Modern Stage,” in Representations of Murderous Women in Literature, Theatre, Film, and Television: Examining the Patriarchal Presuppositions Behind the Treatment of Murderesses in Fiction and Reality, ed. Juli L. Parker (Lewiston: The Edwin Mellen Press, 2010), 325-348, especially 330-333.

either natural or civil, and agreed upon, but there is a reciprocal Duty obliging each Party.”

In this sense, coverture was a trade-off in which, as David Lemmings explains, “Femes covert . . . exchanged their legal independence for the status, care, and protection supposedly provided by marriage.” This protection included a husband’s responsibility to maintain and provide for his wife at a level appropriate to his and her social status. A man who failed in his duties as head of household challenged both the household and the social order. As Susan Amussen explains, people in early modern England believed that abuse of power tore the fabric of social relations, and as a result there was “little tolerance for those notables who failed to perform their duty, or abused their power.” The aforementioned Mr. Fox certainly fit into this category of a man who abused his power and failed to provide for his family, and the anonymous author certainly attributed Fox’s death to his failure as the head of household. Fox was meant to serve as an example to other husbands of the consequences of their inaction.

A failed husband could take many forms including an abusive one, someone who failed to provide for his family, and someone who could not control his wife. Household authority was directly connected to masculinity; by the eighteenth century, those men who could not control

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both themselves and their subordinates were not truly men. Failure to control one’s subordinates had similarly disruptive consequences to failure to obey – they both subverted the proper order of things.

This is evident in the 1684 pamphlet Murther upon Murther, which recounted a series of murders including that of Thomas Eleston by his wife Sarah. The Elestons had lived happily together for about six years but this changed when Sarah “[declined] her former dilligence, and [fell] into acquaintance of Leud Company became a common Drunkard, and a desperate Swearer.” Thomas attempted to save Sarah from herself through a variety of means including keeping her short of money, which caused her to run him into debt, and when this failed he beat her “but all this produced no amendment.” One day Sarah had too much to drink and returned home to find her husband at work. She demanded money from him but he refused and “put her down the stairs” until she calmed down. Unfortunately for Thomas she had not calmed down by the time he went downstairs and she stabbed him in the chest with a pair of shears. Sarah was undoubtedly a bad wife, but the anonymous author also demonstrated that Thomas was a bad husband who failed to properly control his wife.

Petty treason pamphlets were didactic works which contained a moral and religious element emphasising the dangers of sin and the need to live a good life and die a good death. While the popular literature surrounding petty treason focused in large part on the consequences

of overturning the marital hierarchy, one should not separate these works entirely from the
general discussion of the criminal as a whole. These women may have been petty traitors, but
they were also criminals, and their actions were part of a larger narrative on crime and
criminality.

Part of living a good life was avoiding all sorts of sins, because as Newton explained in
his sermon concerning Elizabeth Ridgeway, “the blackest of wickedness draws on another: Such
as disobedience to parents, dissimulation with all men, treachery and cruelty to neighbours and
lovers, bloody and treasonous practices against parents and husbands.” 35 In recounting Catherine
Hayes’ life, the anonymous author of A Narrative of the Barbarous and Unheard of Murder of
John Hayes by Catherine his Wife (1726) explained how at sixteen, Catherine became a servant
to Mr. Hayes, a rich farmer, and tricked his son John into marriage. While the author discussed
Catherine’s role in the murder, he was careful to point to the salacious role of Thomas Billinges,
one of Catherine’s accomplices. There was some doubt as to Billinges’ paternity, but the author
explained how Catherine had given birth to Thomas and then abandoned her bastard son. This
situation became even more disturbing when Billinges explained his sexual relationship with
Catherine. 36 Catherine was not only guilty of murder, but bastardy, child abandonment, and
incest. By emphasising that both Catherine Hayes and Elizabeth Ridgeway were bad women, the
authors of these works demonstrated that they were capable of any sin, even that of murdering
their husbands.

The idea of dying a good death went hand in hand with the emphasis on living a good
life. Contemporaries held “that the state of mind of a dying person at the final moment before

35 Newton, Penitent Recognition, 9.
36 Narrative of the Barbarous and Unheard of Murder of John Hayes by Catherine his wife, Thomas Billings, and
one’s death determined one’s salvation or damnation.”37 Salvation was possible for everyone, even those who had lived a bad life on earth; one could die a good death and reach heaven by taking full responsibility for his or her actions and repenting the same.38 With few exceptions, every petty traitor within the popular literature repented her past sins and the actions that led up to her crime.

The popular literature of crime often emphasised the need for a criminal to repent and die a good death; the petty treason pamphlets are no exception. Take for example A Compleat Narrative of the Tryal of Elizabeth Lillyman (1675) in which the anonymous author recounted his numerous attempts to have Lillyman confess her crimes. These efforts appear to have been successful since Elizabeth “went cheerfully to the Stake where she suffer’d.”39 In recounting the later execution of the French midwife Mary Aubry, the author of An Account of the Manner, Behaviour, and Execution of Mary Aubry (1687/8) drew attention to the excellent manner in which Aubry met her fate. At her execution, Aubry appeared “very penitent, often lifting up her hands and eyes to heaven, seeming to express much sorrow for the crime that had been the occasion of this her shameful end.”40

The spectre of execution loomed large in these works. In retelling the burning of each petty traitor, the authors of these pamphlets provided a powerful image of what happened to those women who transgressed the ultimate marital hierarchy. As the period progressed, the focus in the pamphlets on execution grew. In the Compleat Narrative of the Tryal of Elizabeth

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38 Ibid, 274-275. As Sharpe argues, “The recurrent theme of the pamphlet and chapbook accounts of executions was the expectation that the condemned would be brought to accept the deservedness of their execution, should attain a full awareness of the wickedness of the past life which had brought them to their unhappy fate, and that they should die reconciled to that fate.” Sharpe, “Last Dying Speeches,” 152.
39 A Compleat Narrative of the Tryal of Elizabeth Lillyman, i. 6.
40 Account of the Manner, Behaviour, and Execution of Mary Aubry, 2. For another account of this crime in the popular literature see: A Hellish Murder.
Lillyman (1675), the author alluded to Lillyman’s execution in the final paragraph of a six-page pamphlet.\textsuperscript{41} In contrast, the authors of tracts about Mary Aubry (1688) and Catherine Hayes (1726) spend a great deal of time discussing their respective executions.\textsuperscript{42} The anonymous author of An account of the manner, behaviour and execution of Mary Aubry (1688) recounted Aubry’s execution, explaining: “The Noose of it put over her Neck; the stool being taken away, she hung there for near the space of a quarter of an Hour, in which time, the Bavins and Faggots where Piled about her, and at the Expiration thereof, Fire set to them, which consumed her in about half an hour more to Ashes.”\textsuperscript{43}

Death by burning was unpleasant, to say the least, and it was the customary and “humane” practice for the executioner to strangle the condemned before lighting the fire as was the case with Aubry. However, something went wrong in Hayes’ case and she was literally burned alive. Recounting the horrific events, The Newgate Calendar explained:

The executioner letting go of the rope sooner than usual, in consequence of the flames reaching his hands, the fire burned fiercely round her, and the spectators beheld her pushing away the faggots, while she rent the air with her cries and lamentations. Other faggots were instantly thrown on her; but she survived amidst the flames for a considerable time, and her body was not perfectly reduced to ashes untill three hours later.\textsuperscript{44}

This change in focus to the terrors of execution was probably meant to strike fear into the readers and demonstrate the danger of killing one’s husband.

Petty treason pamphlets were as much a commentary on marriage as they were on crime; as such, the household ideal informed the authors’ representations of the petty traitors and their victims. This ideal manifested itself in discussions of the dangers of women who subverted the

\textsuperscript{41} The Compleat Narrative of the Tryal of Elizabeth Lillyman, (London, 1675), 6..
\textsuperscript{42} For an account of their trials see: Old Bailey Proceedings, February 1688, Mary Aubry (t16880222-24); Old Bailey Proceedings Online (www.oldbaileyonline.org version 6.0, 17 April 2011), April 1726, trial of Catherine Hayes (t17260420-42).
\textsuperscript{43} An Account of the Manner, Behaviour, and Execution of Mary Aubry . . . at Tyburn (London, 1687/8), 2.
\textsuperscript{44} G.T. Crook, ed, The Complete Newgate Calendar, Volume 3, (London, 1926), 132.
natural order and husbands’ failure to uphold their end of the bargain. Reading these works reveals how far the marital ideal pervaded daily life and demonstrates the importance of the household structure to ordinary people’s thoughts and actions. These ideas remained relatively stable in the petty treason pamphlets, which suggest that the general perception of married women within these works was ultimately one of continuity. However, these pamphlets focus on a small number of exceptional crimes and represent only one type of offender: the petty traitor. In order to fully understand the perceptions of the executed wives, one must turn to the Old Bailey and its execution pamphlets.

**Married Women in The Ordinary of Newgate’s Account**

Starting in the 1670s, a new type of criminal biography and legal print culture emerged with the publication of the Old Bailey Sessions Papers (OBP) and its sister publication the *Ordinary of Newgate’s Accounts* (hereafter *Accounts*). The *Accounts* provide an excellent source to determine how contemporaries represented the married women who were executed in London. According to Simon Devereaux, the Ordinary’s *Account* was “the most widely distributed, successful and influential of all English crime publications during the century separating the Restoration from the American Revolution.” The OBP may have provided a great deal of information about the individual trials, but the *Accounts* satisfied a further demand about the lives of individual criminals. The *Accounts* not only recounted the Ordinary’s attempts to minister to the condemned, they also gave a detailed narrative of the condemned’s life, starting with his or her descent into sin and the actions which brought about his or her

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45 As Andrea McKenzie explains, unlike earlier works, the *Accounts* were a mainstream rather than an ephemeral or marginal publication. These were the sister publication to the OBP which were “widely accepted as an accurate record of trial.” McKenzie, *Tyburn’s Martyrs*, 123-4.
46 Devereaux, “From Sessions to Newspapers?” 13. As Michael Harris explains, the Ordinary’s *Account* “became in tandem with the Proceedings a regular and important feature of the sub-literary scene from the late seventeenth century.” Michael Harris, “Trials and Criminal Biographies,” 16.
execution.47 These were incredibly formulaic and served a similar purpose to earlier works in the criminal genre, but what makes them a particularly useful source is their inclusiveness. While the Ordinary devoted a great deal of time to sensational crimes, one can find discussions of unremarkable thieves such as Katherine Fitzpatrick, condemned for pickpocketing in 1726, as well as sensational murderers such as Susannah Broom who was executed in 1739 for petty treason.48

As chaplain to the prison of Newgate, the Ordinary had unique access to the condemned, and used it to his own pecuniary advantage. Perhaps the most profitable perquisite of his position was the right to publish accounts of the prisoners, including stories of their lives and crimes, their behaviour from the sentence to the execution, his attempts to minister to them, and accounts of their last dying speeches and scaffold behaviour. Following almost every hanging day at Tyburn (eight per annum), the Ordinary published The Ordinary of Newgate’s Account of the Behaviour, Confession and Dying Words of the Condemned Criminals . . . Executed at Tyburn. The popularity of these works combined with their inexpensive price meant that print runs ran into the thousands. As a result, the Ordinary published over 400 editions between 1676 and the 1770s, which contain 2,500 criminal biographies.49

The inclusive nature of the Accounts means that they provide more information about married women who were executed in early modern England than any other source. However, much like the OBP, the Accounts were not exempt from problems, especially as they relate to the tension between instruction and entertainment inherent in their commercial nature.50 The

47 Devereaux, “From Sessions to Newspaper?” 13.
48 OBP, Ordinary’s Account, 12 September 1726 (OA17260912); OBP, Ordinary’s Account, 21 December 1739 (OA17391221).
49 Emsley, Hitchcock and Shoemaker, “Ordinary of Newgate’s Accounts.”
Accounts were meant to expand the didactic message of the execution, but publishers still needed to make money. The Ordinary undoubtedly sought to include religious elements and strove to accurately report on the criminals’ lives, but this was, as Philip Rawlings reminds us, “first and foremost a commercial venture” and its content was driven “by an estimation of what would make the Accounts sell.” Here, Ordinaries relied on the entertainment value of a criminal’s life to act as what Andrea McKenzie describes as a “spoonful of sugar” to help the didactic lesson go down. This need to satisfy a public hungry for sensational stories leads to questions about the authenticity of the source, especially considering the models Faller found within his study of criminal biographies. In addition to the commercial nature of this source it is important to remember that these were not the words of the condemned, but rather their lives and words as filtered through the “preconceptions, expectations and preoccupations both of their audience and those who wrote and produced the Account.”

Questions about authenticity and the accuracy of the Ordinary’s retelling were not unique to modern scholars; contemporary critiques focused on the Ordinary’s avarice. As chaplain to the prison, the Ordinary supplemented his salary with the considerable profits he made from the Accounts. For example, Paul Lorrain (d.1719), Ordinary from 1700-1719, received a salary of

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51 Rawlings, Drunks, Whores and Idle Apprentices, 116.
53 Faller, Turned to Account.
54 McKenzie, Most Notorious Criminals, 146.
55 There were a total of nine Ordinaries between 1675 and 1760 and while they were all Anglican clergymen with the same position, it is difficult to make any generalizations about them. As McKenzie explains, “All were, from time to time, criticised for the way in which they carried out (or failed to carry out) the duties of their position. They were vilified as derelict and lax, grasping and corrupt, or ridiculed as naive and absurd, weak and ineffectual – if not actually effeminate. But whether they were in fact honest or dishonest, hypocritical or sincere, lazy or diligent, they were all united in that they must have been – a great deal of the time and at least to some degree – anxious or afraid.” Surrounded by criminals, “The position of chaplain of Newgate was no sinecure.” Ibid, 192-3.
56 As Batty Langley explained in his 1724 description of Newgate and discussion of the Ordinary Thomas Purney: “His Annual Salary is about 60l and altho’ he hath not the Benefit of any Tythes, Easter-Offerings, and other such like Benefits, as are Customary to most Gentlemen of his Cloth: yet once in Six Weeks, he, by giving an Account of the Lives of his Auditors, their Transactions, Dying Speeches, &c augments his Annual Stipend to about One
£60 per year. In establishing the *Accounts* as a semi-official publication Lorrain managed to expand his salary to an estimated £200 per annum, leaving an estate worth £5000 at his death.\(^{57}\) Many people alleged that the Ordinaries focused on publishing sensational aspects of a crime in order to sell more copies rather than their official job of saving the souls of the condemned. This was in some measure likely true, and the reputation for avariciousness is not entirely undeserved; however, there is no reason to dismiss the Ordinaries entirely as many of them took their positions seriously.\(^{58}\)

As previously discussed, ninety of the 153 married women (59 percent) condemned of theft, murder, and coining at the Old Bailey between 1674 and 1760 were executed. This percentage is higher than the general statistics for the Old Bailey. V.A.C. Gattrell found that between 1701 and 1760 there were 939 capital convictions and 379 executions in London, which works out to an execution rate of 40.36 percent.\(^{59}\) The number of married women executed in London during this period was small, but the percentage of those executed was higher than the overall execution rate. This figure demonstrates that the argument that married women were discharged without punishment or that they received milder punishments than their male or single counterparts are wrong.\(^{60}\) Married women were still executed despite their unique legal

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\(^{58}\) For an account which attempts to address this reputation, but not to overturn it, see: McKenzie, “Making Crime Pay,” 235-269. The attacks on the Ordinaries may have been rooted in their reputation for avariciousness, but one should also note that these same attacks were often part of a commercial strategy rather than solely a concern for the condemned. The *Accounts* were the market leader in criminal biographies for seventy-five years following 1684 and in order to deal with this, its competitors had to attack the Ordinary, the authenticity of the *Accounts*, allege a better form of contact with the condemned, publish before the *Accounts*, or produce fake ones. Rawlings, *Drunks, Whores and Idle Apprentices*, 115.

\(^{59}\) These numbers were taken from V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (OUP, 1994), 616.

\(^{60}\) Shoemaker, *Gender in English Society*, 297.
status and the defence of marital coercion. Those married women who were condemned but did not end up at the gallows were either pardoned, reprieved, died in custody, or there is no further record of them after the jury passed its sentence.

For the most part, a reprieve usually resulted in one’s sentence being changed to transportation or some other form of conditional pardon. In 1748 for example, a jury convicted Mary Royan of housebreaking, but she was respited for pregnancy. Royan managed to escape the gallows, but in July 1750 she was pardoned and sentenced to fourteen years transportation. Even women who did not plead the belly could qualify for pardons such as Ann Armstrong in 1748. In May 1748, a jury convicted Armstrong of stealing a tankard from Mr. Coster. In the August 1740 Account, the Ordinary explained how Ann Armstrong “behaved with more apparent Signs of some Sense of her Condition, than any of the rest.” Fortunately for Armstrong she was reprieved and in October 1740 she was pardoned on condition that she would be transported for fourteen years. However, as the previous chapter demonstrated, a reprieve, especially if it was for pregnancy, could be temporary and women were executed despite having received benefit of the belly.

Coverture and the defence of marital coercion were not entirely absent from the Ordinary’s Accounts but they were present in a different manner than during the trials. Recounting Thomas Lloyd’s life and trial in 1725, the Ordinary Thomas Purney described how Lloyd, along with his wife Katherine and Mary Stephens had broken into Joseph Clements’ house and stolen £30, a gold ring, a piece of coral, a satin gown and petticoat, a pair of sheets,

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61 OBP, December 1748, Mary Royan and Locklen Kelly (t17481207-41).
62 TNA PRO SP 44/85/145-146.
63 OBP, May 1740, Elizabeth West and Anne Armstrong (t17400522-6); OBP, Ordinary’s Account, 6 August 1740 (OA17400806); OBP, October 1740, supplementary material for Ann Armstrong (o17401015-1).
and six yards of Holland cloth. Purney explained that the jury convicted Lloyd and Stephens but acquitted Katherine “as being under the Power and Direction of her Husband.”\(^6^5\) The only other specific reference to the defence of coercion in the *Accounts* is found in the 1752 *Account* of Mary the wife of Thomas Gillfoy for robbery. The Ordinary John Taylor explained how at trial, Mary “seemed to put her Defence upon acting in Company of her Husband, and under his Influence; yet when she saw it went hard against her, she thought to move the Compassion of the Court by saying, she had six fatherless Children.”\(^6^6\)

These two cases were exceptions. For the most part, coercion was not a factor in the *Accounts*; instead, assumptions about coverture informed the retelling of the condemned wives’ lives. There were often implicit assumptions about proper behaviour within marriage and an emphasis on a husband’s absence or his failures in a number of cases. This discussion of husbands may have been a rhetorical device to show why these women did not receive the benefits of coverture, but it also demonstrates that married women continued to be subject to coverture throughout their lives and the period. In this sense, the married women in the *Accounts* were both criminals and wives.

Two of the ninety-three *Accounts* examined alluded to a husband’s authority. In these examples, a married woman indicated her husband had led her into a life of crime, whether intentionally or not. In 1686, Ellenor Rogers was condemned for robbing her mistress. She did not deny the offence but claimed that “her Husband came to her in service for Mony, which was a temptation to commit the Fact to supply him and other bad Company, which she was

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\(^{6^5}\) *OBP, Ordinary’s Account*, 30 April 1725 (OA17250430).

\(^{6^6}\) *OBP, Ordinary’s Account*, 23 March 1752 (OA17520323).
acquainted with." It is not clear whether Rogers alluded to her husband’s authority in an attempt to lessen her punishment and as there is no record of her trial in the OBP it is difficult to determine her husband’s role in the crime. Regardless of these considerations, there was no sense that Rogers’ husband’s actions did anything to limit her liability as the jury held her fully accountable for her actions.

In the other case from 1741, Mary Harris (alias Murphey) and Arthur Murphey were accused of robbing Hester Parker; the jury acquitted Arthur and convicted Mary. From the trial it did not appear that Mary and Arthur were married, but Mary’s entry in the Accounts refers to Arthur as her husband. Explaining her life and crime, Mary explained how:

Arthur being very much addicted to drinking, soon brought Mary into the same Habit, which kept ’em miserably Poor, for they made away with every Thing for drink. Arthur Murphey being a very idle Fellow, not willing to work, and she wanting Money of him, he bid her go steal, which wicked Advice she was too ready to comply with, and according went and stole a Hat, and brought it to him, which he immediately sold, and they spent the Money.

Mary alluded to her husband’s authority, but she in no way attempted to use it as an excuse for her own behaviour. Instead, she claimed she “was too ready to comply with” her husband’s “wicked Advice.” In this sense, Mary’s reference to her husband’s authority was less about the defence of marital coercion than it was a way to explain her actions. Both Mary Harris and Ellenor Rogers explained how their husbands tempted them to crime rather than specifying they were ordered to commit the crimes for which they were condemned.

The Accounts were primarily didactic texts that were as much a commentary on proper marital behaviour as they were on crime. It is important to note that the emphasis on bad behaviour was less a way to excuse certain actions and more a way to show people how not to

67 OBP, Ordinary’s Account, 28 May 1686 (OA16860528). See also: Catherine Connor in OBP, Ordinary’s Account, 31 December 1751 (OA17501231); Catherine Conway in OBP, Ordinary’s Account, 6 July 1750 (OA17500706).
68 OBP, August 1741, Mary Harris alias Murphey and Arthur Murphey (t17410828-21).
69 OBP, Ordinary’s Account, 16 September 1741 (OA17410916).
behave. As in the case of petty treason pamphlets, this behaviour applied to husbands as well, and a husband’s failure often led his wife into a life of crime. Bad husbands took many forms, but their uniting characteristic was their failure to fulfil the duties of a head of household. A failed husband was a weak husband, which stands in stark contrast to the authority presumed by the defence of marital coercion.

Recounting her sorrowful life in 1705, Margaret Green explained how she had married a man who had ruined her. After they had been married for about a year, he left her and went to live with another woman. Although she accepted responsibility for her actions, Green was adamant that her husband “was the first Cause of her ensuing Sins.” She further explained that she had come to her untimely end through the “perfidiousness of her Husband” and the solicitations of a wicked man with whom she lived as husband and wife. Once again, it is not clear why Green emphasised her husband and supposed husband’s roles, but they served as a way to illustrate her life rather than limit any liability. Moreover, the Ordinary was careful to recount Green’s warning at her execution to all women “not to keep Company with idle and wicked Fellows, and maintain them by Thieving, which was the thing that had brought her to this her sad shameful, and untimely End.”70 In this tale, Margaret’s laid her downfall at her husband’s feet. Margaret may have taken the ultimate responsibility but she would never have ended up at the gallows if it were not for her husband.

Margaret Green’s husband’s “perfidiousness” can place him in the category of a failed husband, but the most common case of a bad husband was one who failed to provide for his wife. According to historian Andrea McKenzie, contemporaries searched for reasons a person committed a crime in his or her familial situation. Male property offenders often turned to crime in order to support their families, and female property offenders did so because of negligent or

70 OBP, Ordinary’s Account, 4 May 1705 (OA17050504).
abusive husbands.\textsuperscript{71} In 1746 for example, Mary Knight was condemned for pickpocketing. In her 
Account she explained how she had married a seaman “who prov’d a bad Husband, and was thereby brought to
great Poverty; and so, being disabled from continuing her lawful Employment, and not knowing which way to turn
herself, was driven to follow an ill course of Life to keep herself from Starving.”\textsuperscript{72} Similarly in 1728, Margaret Murphy explained how “her Husband was a very naughty Fellow, and made all away in a most profuse and extravagant Manner, which made her rack her Wit what Course to take, and falling in with ill-dispos’d People, they brought her into Acquaintance with some of Jonathan Wild’s Gangs.”\textsuperscript{73} Note how both these women refer to their husbands’ failings, with specific reference to the poverty this caused for their families.

Margaret Green, Mary Knight, and Margaret Murphy’s Accounts all emphasise circumstances which were out of the respective offender’s control. Their husbands may not have directly ordered them to commit a crime, but these women all held them responsible to some degree for their downfall. And while this may have helped the reader see some sort of justification for these actions, there was no sense that Green, Knight, or Murphy were innocent. Instead of seeing a husband’s authority as limiting a wife’s liability in these cases, the Accounts demonstrated that crime was an individual act and an individual sin. Ordinaries made no attempt to reconcile ideas of coverture or the defence of marital coercion since by this point these were no longer applicable and married women seem to have faced the executioner in much the same way as their single and male counterparts. However, it is important to note that these cases were as much a commentary on a husband’s failings as they were the wife’s criminal behaviour.

\textsuperscript{71} McKenzie, Tyburn’s Martyrs, 81.
\textsuperscript{72} OBP, Ordinary’s Account, 26 January 1716 (OA17160127).
\textsuperscript{73} OBP, Ordinary’s Account, 27 March 1728 (OA17280327).
Commentary on husbands in the *Accounts* did not end with their behaviour. What makes the biographies of married women particularly interesting is that the Ordinary often specified that the husband lived apart from his wife. This was common in cases where a woman was married to a sailor or soldier such as Sarah Vince in 1687. Vince was convicted of stealing some clothing and tablecloths from William Maston and in her *Account* she explained how “her Husband is a Marriner, and hath long absented himself.” Similarly in her 1702 *Account*, Mary Poole discussed how she had been a bad woman but added that her husband went to sea shortly before she committed the crime for which she was condemned. These sorts of stories continued throughout the entire period. In 1745, Margaret Greenaway explained that she had “married some years ago a young fellow, who not liking her disposition and turn of life, left her, went to sea in a man of war, and has not been since heard of by her.”

Sailors’ and soldiers’ wives were not the only ones who had to cope with absent husbands. In her 1717 *Account*, Elizabeth Brown, condemned for pickpocketing, explained the consequences of her absent husband. Elizabeth had formerly been convicted of a number of offences, was burnt in the cheek twice, once in the hand, and sent to the Bridewell for various offences. As a corollary to this life of crime she explained that “her ill Life, and keeping bad Company, oblig’d her Husband (a Silk-weaver, and an honest Man) to leave her.” This *Account* draws attention to Elizabeth’s bad behaviour, but also to the consequences of abandonment, specifically the poverty which led to her life of crime.

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75 *OBP*, January 1687, Sarah Vince and Margaret Stephenson (t16870114-23); *OBP*, Ordinary’s *Account*, 27 January 1687 (OA16870127).
76 *OBP*, Ordinary’s *Account*, 29 May 1702 (OA17020529).
77 *OBP*, Ordinary’s *Account*, 9 July 1745 (OA17450709).
78 *OBP*, Ordinary’s *Account*, 20 May 1717 (OA17170520).
Although the details differed, the following two *Accounts* draw further attention to the consequences of a husband’s abandonment while focusing on his moral failings. In 1734, the Ordinary James Guthrie recounted his experiences with the condemned coiner Mary Haycock. While under sentence, Haycock confessed the crime and said she was sorry for her actions “but complain’d very much of her Husband, that he was a vile naughty Person, wholly negligent of his Duty to God and Man: That he left her for three Years and a half, taking no Care of the Children, which she was oblig’d to keep, without the least Help from him.” Mary Dyman, condemned for highway robbery in 1749, faced a similar situation. In her *Account* Dyman explained how she had married Daniel Dyman in the Fleet two years previously with disastrous results. Daniel had proven to be a bad husband. As the Ordinary John Taylor explained, “her Husband kept Company with another Woman, and very frequent were the Abuses offered to this poor Girl [Dyman], and upon her complaining of it, he thought proper to leave her.\(^7^9\)

Both of these *Accounts* draw attention to a specific husband’s failings, but what ultimately unites them is the fact of abandonment, which had a number of consequences for the abandoned wife and family. One of these consequences was that a wife could be held criminally liable since her husband was not present when she committed the crime. The previous two chapters discussed how one of the largest differences in the treatment and perception of married women in the criminal courts rested on the presence or absence of their husbands. By specifying a husband’s absence, these Ordinaries in the *Accounts* were not only drawing attention to a husband’s failings, but also avoiding discussions of the defence of marital coercion.

Ordinaries also used this rhetorical avoidance technique in their discussion of women who abandoned their husbands. In her 1686 *Account*, the condemned coiner Alice Millikin explained how she had been married to a glover in Herefordshire. Unfortunately he proved a bad

\(^7^9\) *OBP, Ordinary’s Account*, 18 October 1749 (OA17491018).
husband and although Millikin “often prayed to God to change her husbands heart, and to reform his wicked Life” this proved unsuccessful. Millikin left her husband and went to London where she fell into poverty and bad company who taught her the “wicked Art of Clipping.” In another case of coining from 1734, Catherine Bogle acknowledged her crime with the caveat that she thought it “a small Crime, and a great piece of Ingenuity, for which it was hard to subject them to so severe Penalties.” In addition to this disregard of the law, Bogle referenced her “vicious Disposition” and bad character, explaining how she had lived with a number of men and “past alternately for their Wives.” The last of these men “used to lock her up, and to keep her under a pretty close Confinement, but [she] not loving this way of Treatment, made an Escape from him, and came to London last Year.”

Only five of the ninety Accounts examined specify that a wife had left her husband, but these were not limited to coining cases. One can see this in the Account of Elizabeth Adams who was executed for robbery in 1738. Elizabeth explained how she had been born in Wiltshire to a good family, and while young married a barber and periwigmaker, with whom she “liv’d indifferently well, wanting for nothing.” This was not one of the bad marriages previously examined, but Elizabeth was unhappy, although she specified that the fault lay with her rather than her husband. As she explained “she being too gay for a Country Barber, and longing to be at London, notwithstanding they had 2 or 3 Children, and all her Relations, . . . she came to London, where she knew no Body, and turn’d a common Prostitute” in order to subsist. It was as a prostitute that Elizabeth turned to a life of crime, but the fault ultimately lay with her abandonment of her husband and family. The cases in the Accounts which recorded a wife who abandoned her husband were similar to those where a husband left his wife; they all resulted in a

80 OBP, Ordinary’s Account, 2 June 1686 (OA16860602).
81 OBP, Ordinary’s Account, 2 October 1734 (OA17341002).
82 OBP, Ordinary’s Account, 18 January 1738 (OA17380118).
married woman acting on her own. Even if the abandonment was not true, it proved a convenient rhetorical device which enabled the Ordinaries to avoid questions of coverture while assigning criminal responsibility to married women.

Cases of absent husbands in the Accounts draw attention to the findings of the previous chapters that a woman’s marital status was often less important than the presence or absence of her husband. While married women were subject to their husbands’ authority, an absent husband meant that there was nobody to obey and these women often acted as if they were unmarried. By emphasising a husband’s absence, the Ordinaries evaded ideas of coverture and questions about a married woman’s status by emphasising the realities of these women’s independence. In doing so, they avoided direct conflict with the principles of coverture, which enabled them to assign full criminal responsibility to married women while maintaining the legal fiction of coverture in the criminal context.

Much like the petty treason pamphlets, the Accounts indicate that while these women were wives, they were also criminals. People believed that anyone could be a criminal, and the only thing that separated ordinary people from a life of crime was the ability to guard against a sinful course of life. In this sense, despite their differing legal status and the assumptions of coverture which informed their lives, married women were part of a larger group of criminals. The Accounts were a didactic source that focused on offenders’ moral failings and their road to crime regardless of their gender or marital status. In this sense, they created a criminal character to serve as a warning to those men and women whose actions may have also led them on the road to crime.

One can see how easy it was to be led into a life of sin in the May 1686 Account of Mary Cale who was convicted of larceny. Cale explained how she had left her husband in
Gloucestershire and came to London where she went into service. However, this did not last long as “being not guarded with the fear of God, Satans Temptations had power over her, and made her Restless in her Service, and desiring to seek a more easie kind of Life.” This temptation proved Cale’s downfall since she was condemned for stealing from her mistress.84

This slippery slope of sin often hinged on a turning point as is evident from the 1720 Account of Martha Purdue who was condemned for pickpocketing. The Account explained how she had gone into service at the age of fourteen. She continued at the same place for some time until she was obliged to quit because of some “Familiarities which had pass’d between her Master and Her.” This seems to have led to her downfall since the Ordinary explained that “Thus being unfortunately led into a vicious Habit, she was not free from a loose Life.”85 Purdue’s downfall ultimately led her into a life of crime that ended on the gallows.

An emphasis on the sexual nature of women’s sin is not surprising, and one of the key turning points in many women’s lives seems to have been the turn to prostitution. Prostitution was a misdemeanour, not a felony in this period, although the Ordinaries seemed to believe that it was a gateway crime that either led to more serious offences, or at least went hand-in-hand with a criminal lifestyle.86 In 1726 for example, Mary Stanford was condemned for pickpocketing. She explained how she had been born close to London to good parents who taught her how to read and the principles of Christianity. She came to London to go into service, but fell into the wrong crowd “which prov’d her utter Ruin. For she followed the trade of Street-walking, and addicted herself to all manner of Lewdness and Wickedness, Whoring, Drinking,

84 OBP, Ordinary’s Account, 28 May 1686 (OA16860528). See also: Mary Lush in the same account.
85 OBP, Ordinary’s Account, 26 October 1720 (OA17201026). See also: Mary Baker in OBP, Ordinary’s Account, 23 December 1713 (OA17131223).
&c by which means any Knowledge or practice of Religion she had acquir’d in her younger Years was almost wholly obliterat

The sinful path to the hangman was not limited to married women or women in general as the cases of Mary Granger and William Ward demonstrate. In 1720, a jury condemned Mary Granger, a single woman, for privately stealing diamonds worth £18 from a gentleman in a tavern. Recounting her life, Granger explained how her downfall had started with the sins of whoredom and fornication explaining that “it was impossible to be taught by wicked People the Sin of Fornication, without learning, at the same Time, that of Picking Pockets.”

Similarly in the 1719 Account of John Prior for highway robbery, Prior discussed how he had followed husbandry while living in the country until he was about 30 years old; after this he went to London where he enlisted. Prior explained that “soon after this, he giving way to a lewd Life, was by the Evidence against him (one of his Accomplices) soon enticed into the commission of many ill Facts with him.” When it came to the slippery slope of sin, there was little difference between accounts of Granger, Ward, and the previously discussed married women besides the sex and marital status of the offender. In this sense, the Ordinaries, to a certain degree, treated these offenders as part of a collective group of sinners regardless of their sex or marital status.

The discussion of the slippery road to the gallows and the emphasis on sin is nothing new, and many scholars have discovered this pattern. Unlike later eighteenth-century beliefs in a criminal class, the characterization of criminals in the Accounts indicates that anyone could be a criminal. The only thing which separated a criminal from the general population is that he or

87 OBP, Ordinary’s Account, 3 August 1726 (OA17260803). See also: Sarah Cox in OBP, Ordinary’s Account, 5 October 1744 (OA17441005); Margaret Greenaway in OBP, Ordinary’s Account, 29 January 1701 (OA17010129); Lettice Lynn in OBP, Ordinary’s Account, 7 June 1745 (OA17450607).
88 OBP, Ordinary’s Account, 26 October 1720 (OA17201026).
89 OBP, Ordinary’s Account, 13 February 1719 (OA17190213).
90 According to McKenzie, seventeenth-century popular criminal literature centred on the belief that “All men and women were potentially criminals, and only by vigilantly guarding against the blandishments of Satan and their own
she let him or herself over to his or her baser instincts, allowing sin to take over. The biographies within the *Accounts* demonstrated the danger of letting one’s guard down and the need to live a virtuous or respectable life. As McKenzie explains, by the eighteenth century people saw crime as a “species of moral degeneracy, and a product and a symptom of a long course of private vices, which seemed inevitably to lead to the commission of more public offences.”

The emphasis on sin had the further purpose of fixing the fissures created by crime. According to Edward Muir and Guido Ruggiero, crime “represents perceived ruptures or breaks in the ties that bind people together, the little deaths of social life.” Crime pamphlets and the discussion of the condemned’s life, as Lincoln Faller explains, were a way to exorcise “the ‘devilish principle’ in human nature, a means of coming to grips with the ‘principium laesum’” and as such demonstrate how the community could recover from the harm that the offender had done. By showing what sorts of actions were unacceptable and needed to be exorcised, criminal narratives fit a general pattern and identified problems within society that needed to be addressed.

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wicked and corrupt hearts could they hope to escape a sad and shameful death at Tyburn.” This moral paradigm was present in eighteenth-century works but it became less common as ideas about ‘social determinism’, environmental explanations, and ideas of modern individualism and subjectivity gained currency. Simon Devereaux argues that the decline of the OBP as a popular publication near the end of the eighteenth century “reflected and reinforced an increasingly more insistent displacement. In the minds of respectable editors and readers alike, a newly urgent vision of a ‘criminal class’ was coming to the fore, an image that would become central to the Victorian press.” McKenzie, *Tyburn’s Martyrs*, 56-8; Devereaux, “From Sessions to Newspaper,” 19.

91 As the creators of the Old Bailey Online explain, “Even more than other criminal biographies, the *Accounts* had the explicit moral purpose of teaching readers the wages of sins. The accounts of the convict’s lives usually outline their descent down the slippery slope of immorality from minor delinquencies such as idleness and profaning the Sabbath into a life of crime. By rehearsing the sources of criminality the Ordinary demonstrated the dangers and temptations to sin faced by all men and women, including respectable readers of the *Accounts.*” Emsley, Hitchcock and Shoemaker “The Proceedings – Ordinary of Newgate’s Accounts.”


94 Faller, *Turned to Account*, 4.
One of the best ways to reintegrate an offender back into society and to help fix the cracks he or she created was to emphasise the idea of repentance.\textsuperscript{95} It is important to note that regardless of the popular nature and the entertainment value of the *Accounts*, these were written by a religious official with a decidedly religious purpose. These men wanted to save the souls of the condemned, and in order to do so they had to emphasise the importance of repentance for all sins, not just the big ones. As McKenzie explains, “a fulsome confession of sins, both private and public, was widely considered to be both a necessary condition and a proof of true repentance.” And it was a sign of a good minister to fulfill this duty.\textsuperscript{96} In this sense, there was no difference between the soul of a married woman or her single and male counterparts, since the soul did not recognize legal and gender categories. Every man or woman may have been a potential criminal, but he or she also had the potential to be saved, and this religious element pervaded the *Accounts* throughout the period.

Contemporaries believed that repentance was an important part of dying a good death. This belief comes across in Thomas Purney’s April 1720 sermon to the condemned prisoners, in which he explained that:

\begin{quote}
You are Men, who are speedily I fear to be hurried to a Death, that is called the Death of the Wicked; but I would have ye make it The Death of the Righteous: Let me assure Ye, ’Tis in all your Powers to do so: When your Souls shall appear Naked, before the Judgment-Seat, Yea will be found without Excuse; for the Favour of God was offer’d Ye: late tho’ it is, yet is it not too late; but remember, There is no Repentance in the Grave.\textsuperscript{97}
\end{quote}

Purney’s men were criminals and the emphasis Ordinaries placed on repentance suggests that, to a large extent, they saw married women as part of a larger group of sinners rather than a separate

\textsuperscript{95} Emsley, Hitchcock, and Shoemaker explain that: “By forcing the condemned to come to terms with their guilt and accept the court’s judgement passed upon them, the Ordinary attempted to reintegrate them back into the community. By confessing their crimes, and hopefully even providing details of accomplices who had not yet been captured, criminals could repay their debt to society and prepare themselves for salvation. While their lives served as salutary warnings, accounts of their deaths provided reassurance of God’s benevolence.” Emsley, Hitchcock and Shoemaker, “The Proceedings – Ordinary of Newgate’s Accounts.”

\textsuperscript{96} McKenzie, *Tyburn’s Martyrs*, 126.

\textsuperscript{97} *OBP, Ordinary’s Account*, 20 April 1720 (OA17200420).
legal category. Take for example the case of Alice Milikin who was condemned for coining and executed in June 1686.\(^98\) The Ordinary Samuel Smith explained how Milikin begged God’s forgiveness for coining along with being neglectful of his law and breaking the Sabbath. Smith further explained how he was normally sceptical of vows of repentance but was happy with Milikin when “She hoped she had made satisfaction to Gods offended Justice for all her provocations of Him. She confess’d they had been many and great, and desired to Mourn that she could grieve no more for every sin, which she endeavoured to call to mind, and be rightly penitent for.”\(^99\)

Although their methods differed, all of the Ordinaries emphasised the need to make a good death through repentance. In a 1733 Account, James Guthrie recounted his experiences with Elizabeth Wright who had been condemned for coining. Wright denied having committed the crime, but Guthrie “press’d her to a Christian Patience and Resignation to the Will of God.” Although she at first became passionate when Guthrie confronted her with the evidence of her crime she eventually “own’d she had been a great Sinner, and that she suffer’d deservedly. She was Penitent, believ’d in Christ, and heartily forgave all Injuries, as she hop’d for Forgiveness from God.”\(^100\)

Ordinaries used a criminal’s repentance and his or her acceptance of the necessity of punishment as a way to justify the existing system of capital punishment. The repenting sinner provided a much better example to people about the consequences of sin than one who went unwillingly to his or her death. One can see this in the words the highwayman William Ward spoke at his execution in 1733. At the scaffold he told the people assembled that they saw:

\(^{98}\) For a discussion of Alice see: *OBP, Ordinary’s Account* 28 May 1686 (OA16860528).

\(^{99}\) *OBP, Ordinary’s Account*, 2 June 1686 (OA16860602).

\(^{100}\) *OBP, Ordinary’s Account*, 19 December 1733 (OA17331219).
a notorious Sinner, now a miserable Object of Shame, ready to die by the just Sentence of Human Law, and on the brink of another World, where I am to appear before a great Judge, unto whom all Hearts are open, all Offences known, and from whom nothing can be concealed, pity my Condition, pray for my Pardon, and let the sight of my Death work serious Thoughts and unfeigned Repentance in yourselves."

The repentance of the married women in the *Accounts* followed a similar pattern, and illustrated ideas of criminality rather than anything to do with marriage or femininity per se.

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The popular literature of crime reveals that while the women of this study may have been criminals, they were also wives, even when their criminal actions had removed them from their husbands’ cover. The authors of these tracts often regarded them as part of a criminal group, identifying them by their actions rather than their marital status. One can see this in the emphasis these authors placed on the women’s morality, the slippery road to sin, and their confession and redemption. These traits were common to all criminal literature, and reflected a shared narrative of criminality throughout the period. This same literature was also a commentary on marriage and people’s proper roles within this structure. The petty treason pamphlets which focused on the disorderly wife and the *Accounts*’ treatment of husbands’ failures and absences were two elements of this commentary. The popular literature demonstrates that coverture continued to inform contemporary perceptions of married women throughout the entire process of criminal justice, suggesting that it remained an important element of early modern understandings of women, keeping them firmly placed within the household.

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101 OBP, Ordinary’s Account, 25 April 1733 (OA17330425).
102 As Frances Dolan explains, “even at the theoretical level, the wife’s legal agency is understood as suspended, covered, or delegated rather than as erased. When the cover is gone, she can pop up back into view.” There were different ways to remove this cover including a husband’s death, abjuration, desertion, or a woman committing a felony on her own. Dolan, “Battered Women,” 256.
In August 1741, Mary Harris (alias Murphey) and her husband Arthur Murphey of St. George the Martyr were indicted for highway robbery, having stolen a linen frock, cap, and two topknots worth 2s5d from a young child, Hester Parker. In her testimony, Hester claimed that she had seen Mary in Lamb’s Conduit-fields. Mary then started to carry Hester and told her that she would bring her to her mother. After this Hester claimed that Mary:

put the knife pretty near my stomach, and said she would rip me up if I offer’d to cry, and then she set me down again. After she had done she put me by a ditch side and ask’d me if I would have a plumb bunn or a plain bunn, and I told her I would have a plain bunn, and while she was gone to fetch it, a gentleman came and lifted me off the ditch, and two little girls went home with me.

Mary was not alone in this endeavour, and Hester explained that “The Woman pull’d off my frock, and the man took out the pins.”

Upon her return home, Hester’s parents attempted to find the stolen goods and apprehend the offenders. Arthur Parker, Hester’s father, explained how after obtaining a warrant for Mary, he waited at an alehouse in Bloomsbury that she was known to frequent. Arthur held that he “had not sate above an hour in the house before the Prisoner [Mary] Harris came in, and the child [Hester] scream’d out as soon as she saw her. We made her pull off her hat, and the child’s cap and topknot were found upon her.” Hester’s mother Catharine Parker then identified the cap. As she testified: “There was a wash’d topknot on it, and it is common for people to cut the ends of ribbon to prevent fraying, I never do cut them, and this which I took upon the Prisoner [Mary Harris] was not cut and therefore I take to be mine.” Other evidence combined with Hester’s inability to identify the man in question led to the jury acquitting Arthur Murphey, but it convicted Mary and she was sentenced to death.¹

¹ It appeared that Murphey was drunk while the crime occurred. According to Ann Hart’s testimony, “The Prisoner [Arthur] Murphey was lying on a bank at the side of a ditch at the same time [that Mary Harris was with Hester.
Mary’s story did not end with the trial, and the *Ordinary’s Account* contains a retelling of her life and behaviour at execution. According to the Ordinary, Mary had been born in the country, but when her father’s farm fell into decay, she was forced to go into service in London. There, she met Arthur Murphey, a man “much addicted to drink”, with whom she lived as his wife. Arthur’s drinking habit kept them poor and he “being a very idle Fellow, not willing to work, and she wanting Money of him, he bid her go steal, which wicked Advice she was too ready to comply with.” Arthur also benefitted from Mary’s thievery since they used the two shillings they received from selling the stolen goods on drink. Despite his involvement, only Mary suffered for the crime, and she was executed in September 1741.²

Mary Harris’ experiences stand in contrast to those of Mary the wife of John Lovelock. In December 1737 John and Mary Lovelock, were indicted for receiving a feather bed, two blankets, and a quilt from John Cook, “knowing them to be stole.” Robert Dingley testified that he had gone aboard his vessel on the night of the 17th of October and found numerous goods missing. Thomas Vezey, a Constable of Wapping, testified that he was amongst a group who “search’d Lovelock’s House, and found the Goods they are charg’d with receiving. Cook inform’d us that he and one Bull, us’d to go out o’ Nights, to get what they could, and that they always carry’d their Goods to the Prisoner, Lovelock’s House.” While both John and Mary denied any knowledge of the stolen goods, Vezey found the goods concealed within their house. Despite indications that both John and Mary were involved, the jury acquitted Mary and convicted John, and he was sentenced to fourteen years transportation.³

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² *Old Bailey Proceedings Online* (hereafter *OBP*), *Ordinary’s Account*, 16 September 1741 (OA17410916).
³ *OBP*, December 1737, John Lovelock and Mary his wife (t17371207-65).
The 1744 trial of John Fuller and his wife Mary stands as yet another example of the varied treatment of married women in the criminal courts. Isabella Goodier accused John and Mary of stealing a quilt and various pots and pans from the furnished lodging she let to them. Goodier testified that Mary “confessed that she pawned them: [and] she was taken before a Justice, and it appearing there that [John] took them away, the woman (who is his wife) was discharged.” In contrast, George Stringer testified that he knew “nothing against [John], Mary Bates [otherwise Fuller] brought the quilt to me, and I lent her 9s upon it.” These conflicting testimonies seem to indicate that both John and Mary were involved in the crime, but for whatever reason the jury chose to acquit both of them.4

These are just three cases out of almost two thousand examined in this study which involved married women (see figure 4.2).5 While they do not represent the experiences of every married woman, the lives of Mary Fuller, Mary Lovelock, and Mary Harris draw attention to a number of key themes which characterized married women’s criminal experiences. The first is that despite the defence of marital coercion, people often saw married women as criminals and had little difficulty assigning criminal responsibility to them. The lack of an independent legal identity did not translate into a corresponding absence of a criminal identity. The second theme that Fuller, Lovelock, and Harris’s experiences demonstrate is the centrality of the household ideal to contemporary perceptions of married women. The importance of the household draws attention to the third and final theme, which is that despite being criminals, these women were also wives, and their experiences with the criminal justice system were ultimately affected, although not dictated, by their unique legal status.

4 OBP, January 1744, John Fuller and Mary his wife (t17440113-22).
5 These numbers were tabulated from the Old Bailey Sessions Papers, the northern circuit gaol delivery books, and Cockburn’s Kent Indictments.
Coverture had many consequences, the majority of which were related to a married woman’s lack of property rights. However, within the criminal law, a married woman’s lack of an independent legal identity and her corresponding duty of obedience combined in the defence of marital coercion. According to this defence, a married woman who committed a felony – with the exceptions of murder and treason – with her husband, was presumed to be acting under his coercion and was therefore not liable for the offence. One can find perhaps the best description of this defence in Michael Dalton’s highly influential JP handbook *The Countrey Justice* (1618). As Dalton explained:

A *Feme* covert doth steale goods by the compulsion of her husband, this is no felonie in her. But if by the compulsion of her husband, she committeth murder, this is felonie in them both. If a *feme* covert doth steale goods by the commaundement of her husband (without other constraint) this hath beene holden to be felonie in her. . . . If the husband and the wife together doe steale goods, this shal be taken to be the onely act of the husband, and not to be felonie in the wife. But a woman covert, alone by her selfe (the husband not knowing thereof) may commit Larcenie, and may be either principall or accessarie. 

Numerous authors of JP handbooks referenced Dalton’s explanations. Authors of criminal treatises provided a similar definition, but they increasingly tightened restrictions on the defence’s application, most notably in specifications about when it could and could not be applied. For example, in his *Third Institute* (1644), Sir Edward Coke held explained that “A Feme covert committeth not Larceny if it be done by the coercion of her husband: But a Feme covert may commit Larceny, if she doth it without the coercion of her husband.” Contrast this with William Hawkins’ assertion in his *Treatise of the pleas of the crown* (1716-21) in which he held that while a jury could not convict a *feme covert* if her husband coerced her to steal, she could be “punishable as much as if she were Sole” if she committed theft “of her own Voluntary

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Act, or by the bare command of her Husband.” The principle behind Coke and Hawkins’s explanations remained the same, but Coke’s definition applied to more women than did Hawkins’s.

When addressing married women’s criminal behaviour, historians often accept the defence of marital coercion at face value either arguing that it was universally applied or, that it helps to explain why so few married women appear in the criminal records. Peter King argues that the concept of co-defendant immunity ensured that more single women were prosecuted than married women. Following a similar vein, Robert Shoemaker argues that “coverture seems to have resulted in [married] women being discharged without punishment or receiving milder punishments than men, rather than their not being prosecuted or punished at all.” The problem with these sorts of arguments is that they miss the discretionary nature of the criminal law, and accept a written defence at face value without fully examining the treatment and experiences of married women within the criminal law.

As the previously discussed examples of Mary Harris, Mary Lovelock, and Mary Fuller demonstrate, married women were present within the criminal justice system, and their experiences within it varied. Using a variety of sources including pre-trial depositions, gaol delivery books, the Old Bailey Sessions Papers, and the Ordinary of Newgate’s Accounts, this study found numerous married women who faced the criminal law, many of whom did not benefit in any way from the defence of marital coercion. A random sample of fifty-five deposition files from the northern assize circuit between 1640 and 1760 found a total of 241

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married women accused of crimes.\textsuperscript{11} Moving beyond the pre-trial stages, an analysis of the northern gaol delivery books, Kent indictments, and OBP revealed a total of 1747 married women who were tried for theft-related offences, coining, and murder. Of these, juries acquitted or discharged 1026, convicted 379, and delivered partial verdicts to 313, while the remaining twenty-nine verdicts were either not specified or fell into the “other” category (see Figure 3.1). These figures certainly argue against the assumption that married women escaped prosecution and conviction on the basis of any sense of limited liability.

In the minds of the ordinary people who were witnesses, prosecutors, and jury members, a married woman’s criminal behaviour was often a more important consideration in determining guilt than was her marital status. Take for example the previously discussed case of Mary Harris who was accused of robbing Hester Parker with her husband Arthur Murphey. The jury convicted Mary because Hester clearly identified her, and because Hester’s parents found the stolen goods on Mary’s person. The jury acquitted Arthur because Hester could not identify him, and a number of witnesses testified that Arthur was drunk and sleeping in a ditch when the crime occurred.\textsuperscript{12} In this sense, Mary’s actions were more important than her marital status.

Coverture and the defence of marital coercion still played a role within the criminal justice system, as the case of Mary Lovelock demonstrates. Despite the constable finding the goods in the Lovelock’s house, the jury attributed the crime solely to John Lovelock and allowed his criminal identity to cover his wife’s.\textsuperscript{13} While the trial did not specify the defence of marital coercion, the jury’s decision reflects its principles, or at least purpose. The high acquittal rate for married women accused of theft-related offences with their husbands (81.63 percent) also speaks

\textsuperscript{11} Of these, 166 were accused of theft-related offences, 50 of coining offences, and 25 of some form of murder. An analysis of the theft-related offences originally revealed 183 cases, but 17 of these involved mention of a married woman rather than an accusation, resulting in a sample of 166.
\textsuperscript{12} OBP, August 1741, Mary Harris alias Murphey and Arthur Murphey (t17410828-21).
\textsuperscript{13} OBP, December 1737, John Lovelock and Mary his wife (t17371207-65).
to the defence’s presence and applicability. It is important to note, however, that a jury’s application of the defence was limited and discretionary, not universal. Within both the pre-trial depositions and the actual criminal trials themselves, the treatment of married women often depended on the presence or absence of their husbands. This is not surprising since even the formal definition of the defence of marital coercion specified that a married woman acting alone was not subject to the defence. This important distinction helps explain not only why married women accused without their husbands outnumbered those accused with their husbands, but also why the acquittal rate of married women alone was much lower at 48.48 percent than the 81.63 percent of wives with their husbands.

Despite these limitations to the defence of marital coercion, larger understandings of the unified household and married women’s ideal roles shaped and informed the treatment and understandings of all married women in the criminal justice system. Prescriptive tracts and marriage sermons outlined ideas about unity and the household which were central to early modern understandings of women and marriage. Coverture was based on the biblical belief that husband and wife were one flesh. One can see this most readily in Genesis 2:23-24 in which, “Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and cleave unto his wife: and they shall be one flesh.” In the Book of Common Prayer’s standard marriage ceremony, ministers explained that God “didest appoint that out of man (created after thine own image and similitude) women should take her beginning, and knitting them together, didest teach that it should never be lawful to put a sunder those whom thou by matrimony hadest
made one.”¹⁴ The difficulty, however, came in conveying this idea to people in a feasible manner.

In attempting to instruct people on this principle, authors of sermons and prescriptive tracts emphasised the unity necessary to a good marriage. This is evident in both the idea of one flesh and the ideal of marital unity as exemplified in a co-operative and harmonious household, which was arguably their most important and defining feature. Here, various authors drew on Genesis 2:18 in which “the Lord God said, It is not good that the man should be alone; I will make him an help meet for him.” One can see this in John Cockburn’s 1708 sermon The dignity and duty of a married state, in which he explained that God made woman for man “to be both a Companion and Assistant, to partake of his Labours, to bear half of his Burden, as well as to share of his Happiness.”¹⁵ Marriage did more than subsume a married woman’s independent legal identity; it also created a household that involved both husband and wife.

The most successful households were those where husband and wife provided each other with mutual help and society while working for a common household goal. In order to achieve this goal, commentators emphasised the importance of unity and attempted to limit potential divisions between husbands and wives. The most common of these divisions were finances, religion, and wills. In this sense, a married woman’s lack of property rights under coverture was not so much a deliberate attempt to limit women’s rights but rather a way to ensure a common household economy.¹⁶ By limiting these divisions, commentators attempted to stop husbands and wives from seeing themselves as anything but part of a larger household. When examined in this

¹⁶ This is not to discount the subjugation women faced under coverture, but to draw attention to some of its less harmful elements and goals.
light, coverture was less a way to subjugate women than a means of ensuring marital unity. Perhaps this was why contemporaries did not seriously challenge its underlying principles. Whatever the reasons, the principle of a unified household informed people’s treatment of married women in many areas, including the criminal justice system.

The ideal unified household often worked as an implicit assumption behind people’s treatment of married women in the criminal justice system. One can see this in ideas of the criminal household in which married women’s duties provided a reasonable cover for their criminal behaviour.\textsuperscript{17} Take for example the case of William Barker’s wife in 1746 examined in chapter three. Here, John Duck accused Barker of stealing one of his ewes, and although Duck discussed Barker’s wife’s role in preparing the stolen goods – she had salted the mutton – he did not translate these actions into any sense of criminal responsibility. Barker’s actions overshadowed his wife’s.\textsuperscript{18}

As the northern coining depositions examined in chapter three demonstrate, this cover was not limited to legal activities or even those which were technically excusable under the defence of marital coercion. Coining was a form of treason, but the need for secrecy ensured that it took place in the privacy of one’s home, where husbands and wives often worked together.\textsuperscript{19} In his 1651 deposition against John Dixon, Thomas Walker explained how he had found some coining moulds and a pan for melting in a cupboard. Walker alluded to Dixon’s wife’s involvement, but there was no sense of her liability – or even mention of her name – within the depositions.

\textsuperscript{18} TNA PRO ASSI 45/23/2/16B-16E.
\textsuperscript{19} Malcolm Gaskill, \textit{Crime and Mentalities in Early Modern England} (CUP, 2000), 139.
The domestic nature of Dixon’s and Barker’s wives’ involvement and the conformity of these two women to normative roles combined into a situation in which they benefited from assumptions of coercion. These cases were not just about a wife’s household duties; they also conform to the coercion model of married women’s criminal experiences in which a husband’s criminal identity covered his wife’s. This model carried an assumption of husbandly authority within the household. The defence of marital coercion was as much about a married woman’s duty of obedience as it was about her complicated legal identity or lack of criminal responsibility. In assuming a wife’s obedience, the defence of marital coercion helped uphold the marital hierarchy. Furthermore, cases such as Mary Lovelock’s, which did not explicitly reference the defence of marital coercion, still carried an implicit assumption of obedience, which demonstrates how far the ideas about the household and marital hierarchy pervaded the treatment of married women.

In contrast to the coercion model, the household model involved co-defendant responsibility in which witnesses, prosecutors, and most importantly juries tended to treat a husband and wife accused together as a single criminal unit. In these cases, the emphasis was on co-defendant responsibility rather than co-defendant immunity. This model comes across in the previously discussed trial of Mary Fuller where the jury delivered the same verdict of not guilty to Mary and her husband John Fuller. Of the 130 cases where a husband and wife were accused of a theft-related offence together in the Old Bailey between 1674 and 1760, juries delivered the same verdict to husband and wife in 44.2 percent of the cases. In these cases, the household ideal was less about proper roles and ideal behaviour than it was about the sense of a household united in its criminal goal. This was similar to the emphasis ministers and authors placed on the necessity of a common household goal within sermons and prescriptive tracts. Over the course of
this period, this model of co-defendant responsibility largely replaced the older coercion model. It is important to note, however, that these two models still shared similar characteristics, most notably in their emphasis on the household as a central feature of married women’s lives and criminal behaviour.

The household ideal was not limited to trials where husband and wife were accused together. Ideas about marital roles, coverture, and ideal gender behaviour informed people’s perceptions and treatment of married women accused without their husbands. This is particularly evident in the differing treatment of married women accused of infanticide and petty treason. Of the twenty-three married women accused of infanticide at the Old Bailey between 1640 and 1760, the jury only convicted one – Mary Morgan in 1724.\(^{20}\) The rest of the women followed the pattern present in Mary Tudor’s 1704 trial, where she was acquitted because “the Child was no Bastard.”\(^{21}\) This sort of treatment stands in stark contrast to the experiences of married women accused of murdering their husbands. The high conviction rate and punishment of death by burning demonstrates how seriously contemporaries took the threat of petty treason. The differing treatment of married women accused of petty treason and infanticide suggests that it was more acceptable for a woman to kill her newborn legitimate infant than it was for her to kill her husband. Instead of a universal condemnation of murder, household structures seemed to determine the “suitability” of the murder victim and consequently the treatment of the accused in petty treason and infanticide trials.

All of these examples demonstrate the difficulties contemporaries faced when confronting the reality of marital and criminal identities. On the one hand, as wives, married women were not legally individuals, but on the other, as criminals, they needed to be punished

\(^{20}\) *OBP*, February 1742, Mary Morgan (t17420226-72).
\(^{21}\) *OBP*, March 1704, Mary Tudor (t17040308-30).
for their actions, which required a legal identity. However, criminal and marital identities were not entirely disparate, and contemporaries developed numerous methods to reconcile married women’s unique legal status with the demands of the criminal justice system. One can see this in how ideas about the household informed people’s treatment and understandings of married women accused of crimes, but it is particularly evident in how the Ordinaries of Newgate attempted to present married women as wives and criminals in their Accounts. Coverture manifested itself in these execution pamphlets in representations of ideal behaviour within marriage and the Ordinaries’ emphasis on a husband’s absence in a number of cases in order to evade assumptions about the defence of marital coercion. What is important to note from both the Accounts and other sources which discuss married women’s criminality, is that a married woman’s lack of an independent legal identity did not translate into a lack of a criminal identity. These women were both criminals and wives, and their unique legal status required special manoeuvring and in some cases special treatment, but not a universal “get out of jail free” card.

The perception, treatment, and experiences of married women in the early modern criminal justice system operated against the backdrop of changing social relations. In 1640, people believed society was composed of a number of miniature commonwealths, in which heads of household held political power, represented their subordinates, and subsumed their identities under his authority. The household was an important social and economic institution, which shaped how people understood their society and their role within it. Over the course of the seventeenth and eighteenth centuries, the economic and social roles of the household changed. The household was still an important institution, but it was no longer the most important. As
Susan Amussen argues, “Locke could argue that the family was not a political institution because it was no longer the only effective and unchallenged institution for maintaining order.”

These changes raised questions for the role of women, especially married women as is apparent in Mary Astell’s famous question “If all Men are born free, how is it that all Women are born Slaves?” Astell’s question drew attention to the challenges contemporaries faced, specifically how to deal with people who were not legally independent individuals when individualism was emerging as an important political and social concept. Marriage remained significant to women’s place within the social structure, and a woman’s loss of an independent legal identity helped to exclude her from new conceptualizations of society. This is not to say that these changes did not affect women, but rather to point out that the emergence of individualism affected women differently than it did men. It was within these changing contexts that this study attempted to both situate married women’s criminal experiences, and use these experiences as a way to illuminate how ordinary people reconciled a married woman’s lack of an independent legal identity with newly emerging ideas about political individualism and citizenship.

Within the criminal justice system, a married woman’s lack of an independent legal identity manifested itself in the defence of marital coercion. Taken at face value, this defence suggests that married women were not responsible for their criminal actions. However, an examination of married women’s criminal experiences between 1640 and 1760 reveals that people recognized married women’s criminal liability despite the defence and larger ideas about coverture. In this sense, people recognized female agency in the criminal justice system long before they recognized it in the realm of active citizenship. They were able to do so because

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22 Amussen, *Ordered Society*, 186.
coverture was an adaptable doctrine with numerous exceptions and technicalities, and married women did not always feel its full force in their daily lives. This did not mean that married women were free from coverture, but rather that coverture was largely a subtext to their lives rather than its defining feature.

Married women felt coverture most readily in relation to the unified household it was meant to create. This ideal created a shared purpose between husband and wife, and informed people’s understandings of both men and women throughout the period. The centrality of the household in people’s perceptions and treatment of married women in the criminal justice system demonstrates this continued prevalence. Above all, the household ideal, which coverture helped to create, shaped the experiences and treatment of married women in the criminal justice system. This suggests that married women were never free from coverture, even when the law recognized them as independent legal entities, as in the case of the criminal law.
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