

Female Crime and the Courts in Revolutionary Lancaster County

By G. S. Rowe

Historians have largely neglected the feminist experience throughout our history. This neglect has stemmed from insensitivity on the part of the male-dominated historical profession as well as from a dearth of sources normally used by historians which touch intimately on the lives and aspirations of American women. Fortunately, new approaches and a growing susceptibility to traditional materials permit today's historian to offer new details and perspectives on the feminine past. A study of crime and criminal justice in ten Pennsylvania counties founded before the Revolution, and in the city of Philadelphia between 1763 and 1790, for instance, sheds light on 18th century Pennsylvania women, including those living in Lancaster County.

Eighteenth century courts functioned as schools as well as legal institutions. There, through legal ritual and court drama, 18th century Americans learned the rules of society, what was expected of them, and how to act before their superiors and inferiors. During the Revolution they learned as well about republican ideals, institutions and behavior. Women no less than men participated in court and responded to its pagentry, routine and lessons. The women of Lancaster County were no exceptions in this respect. The critical task facing today's historians is to discover just what lessons they learned and how these lessons changed over time.¹

Despite very real historical and legal restraints against their acting as judges, jurors, and other legal personnel, women played vital roles in Lancaster's legal system. To protect themselves and their families in sexual and domestic matters they often initiated criminal proceedings. They appeared before criminal courts or before justices of the peace to protect their own economic interests, too, as when Jane Wisely asked the court in August, 1789, to require James Lytle to pay her £6 he owed her. Because they were frequently victims of criminal behavior it was not unusual also for courts to require women to serve as witnesses or to provide crucial depositional materials. Mary Beck who was assaulted by her husband, Jacob, in November, 1789, not only instigated legal proceedings against him but provided authorities with important evidence of his criminal conduct. When court actions created undue hardships for women or seemed to them patently unfair, they often took the lead in seeking their reversal. At times women joined husbands and neighbors in petitioning the court for better roads, more convenient courts, exemptions from taxes, or financial support. Naturally enough, women also swelled crowds observing the courts and the punishments they meted out.²

Not surprisingly, Lancaster women also appeared in court as criminals or suspected criminals. Altogether, between 1763 and 1790, 95 women were accused of criminal behavior, 6.2 percent of all criminal accusations in the county in those years. Lancaster County's percentage of women accused of crimes was the lowest of any county of the ten studied for Pennsylvania in these years, including counties like Westmoreland, Bedford, and Northumberland, with shorter histories and smaller female populations. Twenty-four percent of Lancaster women brought to court as the accused had surnames of German extraction; 14.6 percent carried surnames clearly Irish or Scotch-Irish. Five (5.3) percent were black women. A substantial number of the female accused (44.0 percent) were charged with crimes in conjunction with males. Nine (9.3) percent, like Mary Baker who was accused of misdemeanor theft in November, 1780, and Cathy Schott, charged with assault in August, 1780, were accused in conjunction with husbands. Still, the majority of women coming before the county's courts were unmarried women, probably servant maids.

Twelve women between 1763 and 1790 were formally accused of violence or threatening violence against neighbors. They represented 3.4 percent of Lancaster's crimes against persons in that period and 0.9 percent of its total crime in those years. Lancaster's courts of Quarter Sessions were successful in adjudicating complaints against women in assault actions. Of the 12 accusations, 3 were quashed by grand juries or entered *nolle prosequi* once an indictment was returned. Seven defendants pleaded guilty or simply did not contest charges and accepted the verdict of the

court. No cases went before a jury. Two actions (16.7 percent of the original accusations) apparently were not resolved. In all probability the accused simply fled.

As time went on there were fewer accusations and prosecutions against women for assault. Not even the Revolutionary years with their rise in political and personal tensions prompted greater numbers of accusations and actions against women for personal violence. Indeed, the lowest number of complaints against women for assault and battery in Lancaster County occurred between 1783 and 1790. Only in Northumberland and Philadelphia Counties and in the city of Philadelphia did assault prosecutions against females increase during the Revolution and after.

Thirty-three women were charged with crimes against property in Lancaster County between 1763 and 1790. These accusations which included charges of arson, trespass, forcible entry as well as theft, represented 8.8 percent of all the county's accusations of property offenses and 2.7 percent of its total crime in the three decades under examination. Not a single case of robbery or burglary was attributed to women in that period if records are to be trusted, though several females were charged with being accessories to those crimes. Either Lancaster women did not participate in these dangerous and severely-punished crimes, they were not caught when they did so, or when they were, prosecuting attorneys and juries preferred to try them on the lesser charge of larceny or misdemeanor theft.

Lancaster County's legal machinery was even more efficient in disposing of cases against female for theft than it was in adjudicating assault cases. Twenty-three accusations against females for theft came before the county's Quarter Sessions. Two failed to lead to indictment. Six of the accused pleaded guilty or threw themselves upon the mercy of the court. Fourteen went to juries where only two were exonerated. A single defendant escaped the court's grasp once an indictment was won. It is possible that even this case was resolved but that records substantiating it are missing. Thefts attributed to women increased between 1777 and 1783; 47.8 percent of all such accusations against women appear in those years. Prosecutions for theft by women dropped off rather dramatically after 1783, however; only 17.3 percent of the total accusations against women for theft occurred in those years.

Punishment for women in theft cases was determined by statute, as were punishments for each succeeding violation. A typical sentence called for the restitution of the stolen goods or their value, corporal punishment, and a small fine, plus court costs. In 1772 Elizabeth Conner, convicted of theft, received 10 lashes and a fine of 8 shillings, plus court costs. Ann Winter, convicted of a similar crime in the following year, suffered 10

lashes, a fine of 1 pound 19 shillings, and was required to pay 15 shillings to the man charged with whipping her. The Revolution brought with it more severe sentences as the law was revised. Bridget Heller, guilty of larceny in August, 1786, was punished by 45 lashes, court costs, and 1 month confinement.³

Twenty-four Lancaster women were called before the Quarter Sessions suspected of offenses against morality and the public order. These women, charged with such infractions as riot, operating tippling houses or disorderly houses, fornication, bastardy and harboring criminals, constituted only 4.9 percent of such cases and 1.9 percent of the county's total accusations between 1763 and 1790. None of the other nine counties or the city of Philadelphia had a smaller percentage of women involved in moral offenses or violations against the public order. Nor did a single other county have such a small proportion of their total crimes represented by this category.

*W*hy so few women were called before Lancaster's Quarter Sessions on moral and public order transgressions is not clear from the record. The make-up and size of its law enforcement mechanisms offer no clue and neither seemingly does the composition of its general population. Yet only Berks and Northumberland had fewer women accused in this category of crimes and both counties had smaller populations than did Lancaster. Only 16 cases of women accused of fornication and bastardy appear in Lancaster records, and fornication—a felony—was required by law to be dealt with in Quarter Sessions. Either women in Lancaster committed fewer sexual transgressions than did women in neighboring counties (which seems unlikely), or Lancaster's law enforcement personnel chose to ignore such activities by women (also seemingly unlikely), or more often than not justices chose not to prosecute for fornication but instead to handle the matter out of sessions as a bastardy offense. This last assumes, however, that justices acted only when an illegitimate child was involved. Whatever the case, fewer prosecutions for fornication against women appear in Lancaster records as time went on. Only 3 prosecutions appear between 1783 and 1790.

A real possibility exists that Lancaster County earlier than surrounding counties concluded it would hold men responsible for sexual offenses, particularly when illegitimate children were involved.⁴ Before the Revolution, however, both men and women appear in records charged with fornication. It is after the Revolution that county courts began ignoring females in fornication cases. Margaret Hoover and Catherine Painter appear in the May, 1788, term as mothers of illegitimate offspring but neither was prosecuted for either fornication or bastardy. Instead, their lovers, Abraham Shweigart and David Longenecher were prosecuted.

Bastardy prosecutions, where the father was forced to provide maintenance for the child, made more sense to those who argued that the court's role was to guarantee that county resources were not drained supporting local illegitimate children. This argument also appealed to those who believed it no longer made sense to use the law to compel a certain moral code. Still, if fornication increasingly was dismissed as an improper concern of the court, women like Mary Willis who pleaded guilty to adultery in February, 1785, and was fined £50, could expect to attract the ire of community and court. Evidence from other Pennsylvania counties suggest that the people of Pennsylvania were much more interested in the economics of sexual infractions by the Revolution than they were in the moral implications.

When prosecutions against women for fornication and bastardy are studied in isolation, it is even more apparent that the county approached sexual offenses by women rather cavalierly. Seventy-five percent of the accusations were not adjudicated by the court in fornication cases involving women. One case was dismissed on a technicality. Two women pleaded guilty. The only case to reach a jury was acquitted. The rest escaped the clutches of the court. A few of the disappearances may be explained by missing or partial dockets; a few more by the temporary closing of the courts in the Revolution. It is obvious, nonetheless, that not only did the county not aggressively pursue women guilty of sexual violations when it was a private matter and no child was involved, but in the few cases it did act upon, it acted ineffectively for the most part.⁵

Capital felonies in Lancaster County such as arson and murder were handled in courts of Oyer and Terminer held in the county four times a year. A half dozen Lancaster women were accused of murder between 1763 and 1790, but only Catherine Fisher who killed her infant female child in 1779 was executed. Mary Dickson, convicted with her husband of murder in 1772, was granted a reprieve and escaped execution. Not a single black woman, free or slave, was executed in Lancaster during these years. Mary Grover, accused with her husband of arson in 1779 was convicted but, like Mary Dickson, had her sentence commuted.⁶

The Revolution brought with it a new category of crime for which women were prosecuted: crimes against the state such as treason, misprision of treason, 'selling for hard money,' 'going to the enemy,' and a variety of other activities deemed 'inimical to the United States.' In Lancaster County, however, only Ann Shirk, convicted by a court of Oyer & Terminer in October, 1782, of assisting a British prisoner in an escape try, was formally punished for what amounted to political acts. Mary Montgomery, Ann Grier, and Rebecca Davits were accused of "rescuing" a suspected Tory in May, 1776, but the Grand Jury refused to indict.

Recidivism among Lancaster's female criminals was not a problem in early Lancaster. Only 3 women were accused of crime more than once. The most notorious repeater in all Pennsylvania was probably Ann Winter but she spent only a part of her criminal career in Lancaster County. She made her first court appearance in the December, 1764, term of the Philadelphia court of Quarter Sessions charged with felonious theft and suffered corporal punishment when a jury found against her. Five years later before the same court, under the name Ann Flood, she was acquitted of a similar charge. In 1770 and again in 1773 she appeared before Lancaster County justices, in the first instance having a count of assault against her dismissed, in the second again being convicted of stealing. She returned to Philadelphia following her 1773 Lancaster conviction and in the next dozen years faced 10 additional charges of theft.⁷

The 95 females charged with crimes in Lancaster between 1763 and 1790 constituted 6.2 percent of all accusations in that county during this period and 5.8 percent of all accusations against women in Pennsylvania in those years. Less than forty (37.3) percent of the accusations against Lancaster women ended up before juries. Of those coming before veniremen (N=10), 35.7 percent were exonerated. When all county cases coming before juries are considered, the acquittal rate was 27.5 percent. the overall rate of cases reaching juries (when one eliminates those accusations dismissed or indictments quashed) was 30.4 percent.

Clearly, in certain of its crime and criminal administration patterns touching women, Lancaster County presents the historian with something of an anomaly. Why its numbers of women coming before courts and the number of women accused of fornication are so low remains to be fully explained. To fully comprehend and interpret why Lancaster, a large, settled and highly populated county with as many law enforcement personnel as counties of equivalent size and numbers, brought so few women before its courts requires a study of the full context in which the crimes occurred and in which criminals were secured and prosecuted. That exciting task will necessitate the expertise and energies of professional and lay historian alike.

Notes

1. The educational functions of courts are discussed in A. G. Roeber, "Authority, Law and Custom: The Rituals of Court Day in Tidewater, Virginia, 1720 to 1750," *William and Mary Quarterly* XXXVII (1980), 29-52; G. S. Rowe, "Alexander Addison: The Disillusionment of a 'Republican Schoolmaster,'" *The Western Pennsylvania Historical Magazine*, LCII (1979), 221-250.

2. All specific references to cases in this paper come from the County Quarter Sessions Dockets housed in the Lancaster County Historical Society. Lancaster materials located in the Historical Society of Pennsylvania and in the State Archives as well as in 18th century newspapers were used in the larger study.

3. For a discussion of punishments in early Lancaster courts, see John W. W. Loose, “. . . Twenty One Lashes on His Bare Back Well Laid On!,” *Journal of the Lancaster County Historical Society*, LXXXV (1981), 2-12.

4. It is possible that women were punished for bastardy by justices of the peace out of sessions, and forced to pay fines and guarantee the upkeep of the child. Sufficient numbers of individual justice’s dockets have not survived to test this theory.

5. A general discussion of the change away from using the law to punish morality is found in David Flaherty, “Law and Enforcement of Moral in Early America,” *Perspectives in American History*, V (1971), esp. 247-248.

6. A good survey of executions and reprieves in early Pennsylvania is provided by Negley K. Teeters, “Public Executions in Pennsylvania: 1682-1834,” *Journal of the Lancaster County Historical Society*, LXIV (1960), 85-164. See esp. 108.

7. Ann Winter’s career in crime can be followed in the dockets of the Phil. County court of Quarter Sessions, the Mayor’s Court of Philadelphia and Oyer and Terminer courts. She was prosecuted under her aliases, Ann Flood and Mary Flood, as well as under her real name.

About the Contributor

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