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## Sexual and Family Violence in Europe

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Any study of sexual and family violence in early modern Europe must first acknowledge and confront the problems of language and meaning. Modern terminology can obscure rather than illuminate past understandings of violence. Widely used current terms like ‘domestic violence’, ‘rape’ and ‘infanticide’ are not easily transferrable across time. Definitions of domestic violence in Europe today prioritise heterosexual couples and usually refer to violence by men against female partners in the home, although they can include violence perpetrated by women against male partners. But this concept of domestic violence simply did not exist within early modern Europe’s legal frameworks. Rape and infanticide, on the other hand, were certainly crimes according to early modern European legal codes, but how contemporaries understood them is markedly different from how they are understood today. And even today, while sexual violence has specific legal definitions, these definitions vary according to jurisdiction. Under modern German law, for example, the term ‘rape’ covers both male and female victims and does not necessarily assume sexual penetration, whereas, under Swiss law, it is defined specifically as forced sexual penetration of a woman.<sup>1</sup>

How, then, do we investigate and analyse forms of violence in the past that were by their very nature often hidden or lacked witnesses? Analysis of criminal laws, court cases and trial outcomes is vital to any investigation of the boundaries of historical sexual and family violence. Criminal prosecutions and convictions can also be quantified and very usefully compared over time and between different territories. Historians have done this most productively with murder – a crime that leaves a corpse and as such is hard to hide. But justice in the past, as still today, was always inflected by class and by gender. Barriers to litigation based on such factors need therefore to be

1 Francisca Loetz, *A New Approach to the History of Violence: ‘Sexual Assault’ and ‘Sexual Abuse’ in Europe, 1500–1850*, trans. Rosemary Selle (Leiden: Brill, 2015), p. 30.

taken into account when employing legal records to trace early modern meanings of family and sexual violence.

Many historians have fruitfully used other types of documentary evidence to fill in the gaps in the legal record. These might include personal narratives and anecdotal accounts contained in letters or pamphlets. This material, showing how families and communities negotiated and managed violent behaviour, is extremely valuable, even though it cannot be quantified and thus remains impressionistic. Such material can be employed, however, to investigate instances in which, according to modern understandings, sexual or family violence occurred, although it was not considered criminal at the time. Through such an investigation the boundaries of popular early modern understandings of violence can be delineated, throwing into sharp relief the differences between past and present perceptions.

### Family and Household Violence

Whereas today 'domestic violence' usually means violence between intimate partners, if we were to investigate early modern family violence using this definition, we would miss crucial aspects of the topic. Family violence in Europe between 1500 and 1800 must be understood within the contemporary household structure, which was composed of a male head of the family, his wife and their children, but might also include a host of other dependants, ranging from elderly relatives to a variety of servants and employees of different types. When interpersonal violence occurred in such households, it was understood in terms of what Philippa Maddern has called a 'moral hierarchy of violence'. By this she means that those in charge of the household had the moral authority to employ violence in disciplining people occupying positions beneath them.<sup>2</sup> Subordinates, in turn, were expected to accept this discipline with resignation and patience, even if they might on occasion consider it unwarranted or excessive. The meanings of violence were thus a function of the position a person occupied within the social hierarchy of the household. Single women and men living outside household structures who employed violence tended to have their actions scrutinised especially closely, and they were less likely to be viewed as justified.

Early modern married men had prescribed responsibilities, one of the most significant being to maintain order within their households. Both Protestant

2 Philippa Maddern, *Violence and Social Order: East Anglia, 1422–42* (Oxford: Clarendon Press, 1992), pp. 98–110.

and Catholic authors discussed models of the ideal godly household and how men were to exercise authority over their dependants. A husband was expected to govern his household wisely and without recourse to uncontrolled force.<sup>3</sup> Conversely it was, as a seventeenth-century Swedish moralist wrote, a husband's 'greatest humiliation and shame, if he allowed himself to be subdued, ruled and criticised by a woman'.<sup>4</sup> In other words, a man who failed to maintain control over his wife, or other household members, was likely to find his standing within the community undermined.<sup>5</sup> Responsibility for discipline devolved down the household hierarchy, so that the wife of the male head also had power over subordinates, especially children, servants and apprentices. Again, discipline was exercised through varying degrees of physical force, and this was considered acceptable so long as it was not motivated by anger or caused serious physical injury.<sup>6</sup> Household violence was thus highly regulated, although distinguishing between acceptable and excessive force was sometimes not a simple or easy matter.

When men used excessive violence – defined as such if death or serious injury resulted – they could damage their social status as they were likely to be seen as creating disorder within their own households. In 1579, for example, an Anglo-Irish aristocrat, Christopher St Lawrence, Lord Howth, was prosecuted and fined a huge sum of money for physically assaulting his wife and daughter. The court found these assaults to be reprehensible, not because Howth had struck them, but because the motivation behind the punishment was to injure rather than to correct. The extent of their injuries was taken as evidence of motivation. Howth beat his wife so badly on the back that 'her skin [was] so taken away that for many days she could not abide any clothes to touch her'; he also inflicted sixty lashes on his daughter, so that she afterwards contracted a fever and died.<sup>7</sup> While the injuries described and the penalty imposed clearly indicate that Howth had breached the legal limits society placed upon acceptable household violence, the political context of this court case is important. He was only tried because of his political

3 Julius R. Ruff, *Violence in Early Modern Europe, 1500–1800* (Cambridge: Cambridge University Press, 2001), pp. 132–3.

4 Christopher Fischer, *Haustafel* (1613) cited in Jonas Liliequist, 'Changing Discourses of Marital Violence in Sweden from the Age of Reformation to the Late Nineteenth Century', *Gender & History* 23.1 (2011), 3.

5 Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999), p. 198.

6 S. D. Amussen, "'Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History* 6.2 (1994), 71.

7 Jon G. Crawford, *A Star Chamber Court in Ireland: The Court of Castle Chamber, 1571–1641* (Dublin: Four Courts Press, 2005), pp. 39–40.

activities; it is unlikely that otherwise the injuries done to his dependants would ever have come to light.<sup>8</sup>

When violence by men against their wives or other household members did attract the notice of European courts, either through circuitous routes as in the Howth case or directly through prosecutions for murder or serious assault, penalties varied considerably. Murder was most likely to lead to a prosecution and result in a conviction, which could attract the death penalty. However, even with murder, ambiguities abounded. The limited nature of contemporary medical knowledge meant that internal injuries, such as those presumably suffered by Howth's daughter, could be difficult to detect. If death was not immediate, its causes might be impossible to establish for certain in court. In Holland, for example, there were at least three cases during the seventeenth century in which judges explained that they could not be sure whether the deaths of women were attributable to the injuries their husbands had caused or to infections.<sup>9</sup>

What motivated both the man and his victim was crucial, for motivation influenced whether a legal penalty could be sought or secured. If discipline was the accepted motive, then it was more likely that a man would be deemed not guilty, even if a death had occurred. An eighteenth-century Swedish law specified that if a child died while being disciplined, then it was a case of death by misadventure, not of murder.<sup>10</sup> Yet, if witnesses testified that a householder's violence was the result of anger or drunkenness and that a wife or other dependant had offered no provocation, then the case was more likely to be judged as murder. On the other hand, if a wife or dependant was reputed to be drunken, quarrelsome or violent, or if a wife was suspected of adultery, then the violence employed by a male householder was far more likely to be considered justified.

Prosecutions for violence resulting in non-lethal injuries were less common in all jurisdictions than prosecutions for lethal violence. Protestant moralists preached the duty of women to suffer and be obedient to God's natural gender order, no matter how unbearable their marriages were made by violent husbands.<sup>11</sup> Nevertheless, women did on occasion seek relief and redress by airing their marital grievances in court. In response, courts sometimes tried to

8 Valerie McGowan-Doyle, *The Book of Howth: Elizabethan Conquest and the Old English* (Cork: Cork University Press, 2011), pp. 28–33.

9 M. Van der Heijden, 'Women as Victims of Sexual and Domestic Violence in Seventeenth-Century Holland: Criminal Cases of Rape, Incest and Maltreatment in Rotterdam and Delft', *Journal of Social History* 33.3 (2000), 633.

10 Ruff, *Violence in Early Modern Europe*, p. 134. 11 Rublack, *Crimes of Women*, p. 199.

force men to maintain domestic order and refrain from violence. In 1517 a German court instructed Hans Stadmann to return to his wife, to 'cohabit with her, supply her with food and drink . . . and not push or beat her, but honour her'.<sup>12</sup> Early modern French legal systems included a mechanism whereby violent or otherwise troublesome family members could be imprisoned.<sup>13</sup> German local courts could order a year-long separation of husband and wife in hopes that a reconciliation could be achieved during this period.<sup>14</sup>

Ecclesiastical courts, rather than civil ones, were often the arbiters of matters involving sexual misconduct and marital breakdown. The remedies offered in church courts might include the following: monetary bonds imposed on husbands to keep the peace by not assaulting their wives and dependants; public shaming rituals with erring husbands paraded through village streets; public apologies made by husbands in church; or explicit promises extracted from husbands before courts to stop their violence. As a last resort, a form of separation could be ordered by the courts, intended to protect wives while, at the same time, husbands remained financially responsible for them. In local courts, many judges tried to promote harmony within households and communities by publicly ordering husbands to stop beating their wives, but wives were also instructed to refrain from quarrelling with their husbands. When women took their husbands to court in early modern France seeking a separation, they usually argued that the violence employed against them was extreme and beyond normal bounds, whereas husbands responded by claiming that any physical discipline used was appropriate and acceptable. In 1656, for example, Rouen husband Jacques Lyon said in court that he and Marguerite Barry argued 'as spouses do' and, while he admitted slapping her, he claimed that this did not amount to the brutal battery she had alleged. Wives, such as Catherine Puy, also of Rouen, usually countered by emphasising their virtuous characters, as well as their forbearance in the face of aggressive and unreasonable men.<sup>15</sup>

Other avenues open to women who suffered at the hands of excessively violent husbands might entail enlisting the support of family, friends or neighbours. These groups were often called upon – or even sometimes took it upon themselves – to care for and protect women who were being assaulted on a regular basis by their husbands. In 1790 Adelaide Lefebvre, a Rouen textile worker, was bleeding and distressed when she was helped by

12 Cited *ibid.*, p. 201. 13 Ruff, *Violence in Early Modern Europe*, p. 134.

14 Rublack, *Crimes of Women*, p. 227.

15 Julie Hardwick, 'Early Modern Perspectives on the Long History of Domestic Violence: The Case of Seventeenth-Century France', *Journal of Modern History* 78.1 (2006), 10.

a neighbour to escape from her violent husband and seek refuge with her brother.<sup>16</sup> Over a quarter of women who attempted to obtain relief through Paris courts in 1775 had previously sought help from relatives, friends or neighbours.<sup>17</sup> When John Edwards of Dorchester beat his wife in front of neighbours in 1633, one of them pushed him out of the house, while others locked the doors to prevent him returning to continue assaulting his wife.<sup>18</sup>

But in artisan and farming communities economic survival depended upon married couples and their dependants working together cooperatively, so keeping households intact was an imperative.<sup>19</sup> One way of enforcing communal expectations of acceptable martial behaviour was through public shaming rituals, known in different countries as 'rough music' or 'charivari' or 'youth abbeys'. These usually involved groups of young unmarried men publicly humiliating husbands or wives whose behaviour was considered to have gone beyond communal norms.<sup>20</sup> Such rituals were often aimed at husbands who were believed to be dominated or cuckolded by their wives, but they could also target men known to assault their wives without justification.<sup>21</sup> In 1566 a Lyon street parade contained floats ridiculing local men who either beat their wives excessively or were beaten by their wives.<sup>22</sup> How successful these communal sanctions were in curbing marital violence is hard to say. But what they do demonstrate is that violence by husbands against wives was recognised as not just a problem within particular households, but one that could also threaten the well-being of the broader community. And there were actions that communities could take in order to try and protect the vulnerable women and children in their midst.

Apprentices and servants mistreated in the households of their masters were often in a more difficult position than were wives, for throughout Europe there were severe penalties for breaking employment or apprenticeship contracts. Some avenues for redress did exist, however, even though

16 Roderick Phillips, 'Women, Neighbourhood and Family in the Late Eighteenth Century', *French Historical Studies* 18.1 (1993), 1.

17 Jeffrey Merrick, 'Domestic Violence in Paris 1775', *Journal of Family History* 37.4 (2012), 419.

18 Amussen, "'Being Stirred'", p. 79.

19 Arlette Farge, *Fragile Lives: Violence, Power and Solidarity in Eighteenth-Century Paris*, trans. Carol Shelton (Cambridge: Polity Press, 1993), p. 43.

20 Natalie Zemon Davis, 'The Reasons of Misrule: Youth Groups and Charivaris in Sixteenth-Century France', *Past & Present* 50 (1971), 41–75.

21 Robert Muchembled, *A History of Violence from the End of the Middle Ages to the Present*, trans. Jean Birrell (Cambridge: Polity Press, 2012), pp. 94–5; Russell P. Dobash and R. Emerson Dobash, 'Community Response to Violence against Wives: Charivari, Abstract Justice and Patriarchy', *Social Problems* 28.5 (1981), 563–81.

22 Davis, 'Reasons of Misrule', p. 45.

proving that a master or mistress had used excessive or unjustified violence was far from easy. Apprentices in eighteenth-century Paris who were mistreated by their employers often relied upon their own families to protect them. In 1761, for example, an 11-year-old apprentice to a master enameller returned home to his mother, ill, exhausted and severely bruised from the beatings inflicted upon him by his master's wife. The child's mother responded by launching a court action to annul his apprenticeship on the grounds of ill-treatment.<sup>23</sup>

Dependent children had even fewer opportunities to seek legal protection against violent parents. Prosecutions of adults for physically injuring children, even when the child died, were rare. But there is evidence of informal attempts through public shaming to curb violence against children. In Essex in 1623 a long poem was printed and circulated in taverns and other public gathering places accusing a father of beating his daughter excessively. Clearly this was an attempt by someone in the local community, who judged the father to be abusive, to call him to account by means of publicising his actions.<sup>24</sup> Popular German literature of the sixteenth century was fascinated by stories of children murdered by one of their parents, suggesting anxiety over the boundaries of discipline in relation to children.<sup>25</sup>

The key principle that physical correction of dependants should be motivated by the need to maintain discipline, and not be the result of anger, applied to all households, even religious ones. The complex case mounted in 1531 against Elicia Butler, abbess of Kilculliheen in Ireland, revolved around the question of motivation. The nuns testified that they had been regularly struck by their abbess: violence that they claimed was due to her 'quarrelsomeness' and not to a 'desire to correct'. Moreover, as additional evidence that this violence was unjustified, the nuns alleged that blood had flowed from the wounds to their bodies caused by their superior. Genuine discipline was not supposed to entail bloodshed.<sup>26</sup>

The moral hierarchy of authority not only shaped the meanings attached to the violence employed by men and women against their dependants; it also configured the meanings of any violence directed against the men at the

23 Farge, *Fragile Lives*, p. 119.

24 S. D. Amussen, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies* 34.1 (1995), 16.

25 Joy Wittenburg, *Crime and Culture in Early Modern Germany* (Charlottesville: University of Virginia Press, 2012), pp. 119–22.

26 Dianne Hall, *Women and the Church in Medieval Ireland, c. 1140–1540* (Dublin: Four Courts Press, 2003), pp. 191–200.

apex of the hierarchy. This was most evident when women attacked their husbands, but also when servants or children used violence against either a master/father or a mistress/mother. Such actions attracted extremely severe legal and social penalties. The ambiguities surrounding the use of violence by masters did not exist when violence was turned against them. Under English common law, for instance, a violent act by a woman against her husband or by a servant against a master was defined as petty treason. The logic behind the treason analogy was that such cases were in essence comparable to when subjects attacked a king, because the man was 'king' in his own household.<sup>27</sup> This meant that if a wife killed her husband, she was liable to be punished as if for high treason: that is by being burnt at the stake, rather than hanged as was usual in murder cases. This penalty continued to be used up until the 1790s.<sup>28</sup> In Germany, the penalty inflicted upon a woman who murdered her husband was decapitation.<sup>29</sup> While such prosecutions and convictions were not particularly common, a great deal of popular literature reinforced the legal code and revealed a general fascination with the concept of the rebellious wife. Ballads, ephemera and pamphlets offering lurid details of the crimes allegedly committed by wives against their husbands circulated widely in seventeenth- and eighteenth-century England and France.<sup>30</sup>

Harsh penalties also applied to servants, apprentices and children who attacked, injured or killed a master or a father. By such actions they were in effect attempting to overthrow the God-given social order, which made justification virtually impossible. In Frankfurt in 1585, a woman who had been convicted of killing her former employer was executed. Her arms were first pinched with hot tongs in front of the house where the crime had occurred; then she was placed in an open grave and covered with wooden branches before a wooden pole was driven through her heart.<sup>31</sup> In England, servants who killed masters or mistresses were viewed by the courts in the same way as wives who killed their husbands, for their crimes too were punished as if they amounted to treason.<sup>32</sup>

27 Frances Dolan, *Marriage and Violence: The Early Modern Legacy* (Philadelphia: University of Pennsylvania Press, 2008), p. 82.

28 *Ibid.*, p. 83. 29 Rublack, *Crimes of Women*, p. 226.

30 Frances Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550–1700* (Ithaca, NY: Cornell University Press, 1994), pp. 20–58; Muchembled, *History of Violence*, pp. 154–5.

31 Maria R. Boes, *Crime and Punishment in Early Modern Germany: Courts and Adjudicatory Practices in Frankfurt Am Main, 1562–1696* (Farnham: Ashgate, 2013), p. 139.

32 Dolan, *Marriage and Violence*, p. 82.

## Sexual Violence

The dynamics of the early modern household are also vital when it comes to considering histories of sexual violence and infanticide. These two types of violence overwhelmingly affected women, both as victims and as perpetrators. As with family violence, in analysing sexual violence we must bear in mind the problems entailed in employing modern definitions and the need to be sensitive to the often very different contemporary understandings. Studies of past sexual violence have been forced, of necessity, to interrogate archival absences and silences more perhaps than studies of other types of historical violence.<sup>33</sup> Under most European law codes rape was a serious crime; in some jurisdictions it was a capital offence punishable by death. Yet prosecutions were uncommon and convictions rates were low. Most historians, drawing on modern analogies, assume that rape was far more frequent than court records would appear to indicate. So they have focused on the silences evident in the archive and how such silences should be explained and interpreted.

Broadly speaking, there were basic semantic and legal similarities between different regions of Europe when it came to understandings of rape. Rape was generally defined as forceful penile penetration of the vagina, in the absence of a woman's consent, by a man who was not the woman's lawful husband. But, beyond these broad outlines, there were significant regional and national variations in attitudes to sexual violence and in the legal and social remedies available to female victims – and victims were always female as male rape was not recognised.<sup>34</sup> The social class, age, marital status and reputation of the victim were highly important in determining the legal significance of the crime and in shaping communal understandings. The rape of an unmarried, wealthy, under-age virgin or of a pious religious woman was usually considered particularly heinous and was most likely to result in a successful prosecution. The rape of a married woman by her husband was not recognised as a crime at all, but the rape of a respectable married woman by a stranger was certainly unlawful. Class and reputation were key determining variables, for allegations of rape made by unmarried non-elite, working women were less likely to be believed.

33 Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender & History* 10.1 (1998), 1.

34 Garthine Walker, 'Sexual Violence and Rape in Europe, 1500–1750', in K. Fisher and S. Toulalan (eds.), *The Routledge History of Sex and the Body, 1500 to the Present* (London and New York: Routledge, 2013), p. 431.

Different legal systems handled rape differently. Since it was a sexual crime, as well as a physical assault, it could come under the jurisdiction of church courts or of local or higher civil courts. Under early modern English, Florentine and French law, the maximum penalty for rape was death by hanging.<sup>35</sup> Scholars of rape within English common law jurisdictions have argued that the severity of the penalty resulted in judges and juries being reluctant to convict men, and it was this reluctance that contributed to the low prosecution and even lower conviction rates.<sup>36</sup> In fifteenth-century Venice, conversely, the penalties varied considerably, ranging from relatively short prison terms for the rape of an adult woman to more drastic punishments usually reserved for child rapists.<sup>37</sup> German courts during the seventeenth century punished rapists with banishment, fines or the pillory. Punishments also differed within the Dutch Republic: Rotterdam opted for whipping, branding or banishment, whereas Amsterdam executed rapists by hanging or beheading, while their accomplices were whipped.<sup>38</sup>

Whichever court system dealt with an allegation of rape, there was broad, although not universal, agreement that in order to prove rape a woman had to demonstrate that sexual intercourse had occurred as a result of violence and that it was not in the least consensual. As Garthine Walker has argued with regards to England, if courts decided that a case had more to do with sex than violence, then it could not be classed as rape.<sup>39</sup> Because in most instances there were no witnesses to sexual assaults, proof of lack of consent and the use of violence rested largely upon the woman's behaviour immediately after the alleged attack and the physical marks left upon her body. Early modern courts took it for granted that a healthy adult woman could fight off a man, if she really wanted to; therefore, she needed to provide evidence that, despite her best efforts, she had been physically overpowered, perhaps because her attacker was armed. Proof of this might include witnesses who had heard her screams or who had encountered her in a distressed and disordered state immediately after the attack. In most jurisdictions proof of lack of consent also required evidence of physical injury, like cuts or bruises. Other physical

35 Ruff, *Violence in Early Modern Europe*, p. 146.

36 Garthine Walker, 'Rape, Acquittal and Culpability in Popular Crime Reports in England, c. 1670–c. 1750', *Past & Present* 220 (2013), 115.

37 Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford: Oxford University Press, 1985), pp. 92–3.

38 Heijden, 'Women as Victims', p. 626; P. Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression, from a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press 1984), p. 121.

39 Walker, 'Rereading Rape', p. 8.

signs, like torn clothes or dishevelled hair, could also be taken as indicators of a lack of consent. On the other hand, though, silence during the alleged assault or a delay in reporting it straight away or the absence of physical signs could be construed as evidence of consent.

In Württemberg in 1646 it was decreed that, due to the fact that some women were alleging rape well after the event in order to explain illicit pregnancies, a rape had to be reported within a month of its occurring or otherwise the allegation would be disregarded.<sup>40</sup> In fact, in early modern Europe, if a woman discovered she was pregnant as a result of rape, her accusation of rape was not likely to be credited. Medical and legal opinion of the time were in agreement that conception could only result if a woman consented to sexual intercourse.<sup>41</sup> Therefore, if a pregnancy occurred, a woman had little chance of having a man convicted of rape. Women whose pregnancies became known were then often liable to prosecution themselves for crimes such as fornication or adultery. In Tübingen in 1590, for example, lawyers decided that because a young pregnant girl, Margaretha Müller, had not cried out nor told her mother that her father was having sex with her, she must have 'indulged in it'. Accordingly, she was convicted of incest and adultery and executed by drowning.<sup>42</sup>

Focusing narrowly on the relatively few rape cases that reached the courts, and the fewer still that succeeded, may well obscure other ways in which early modern rape victims could seek justice. Whereas rape required a high burden of proof, prosecutions for assault or civil actions for compensation were easier to prove. If either action succeeded, then a woman was likely to be vindicated in the eyes of her community and able to resume her place without serious damage to her reputation.<sup>43</sup> The outcome of a rape prosecution in many parts of Europe was often not a conviction, because a marriage would be arranged instead: a marriage with either the rapist or another man given a dowry by the rapist. Such an outcome might appear abhorrent to modern sensibilities, but the intention was to acknowledge the hurt done to the victim's body and reputation, while at the same time guaranteeing her a continuing and productive role as a wife within the community.

An additional complicating factor with regard to rape is the question of the semantic and legal meanings attached to the word 'abduction'. The Latin term *raptus*, which gives us the modern word 'rape', literally means 'carried away', so it could apply also to abduction. In early modern France, for

40 Rublack, *Crimes of Women*, p. 184. 41 Loetz, *New Approach*, p. 26.

42 Rublack, *Crimes of Women*, p. 240. 43 Walker, 'Sexual Violence and Rape', p. 435.

instance, the crime of *rapt* involved abduction and clandestine marriage, not necessarily a violent sexual assault.<sup>44</sup> When, however, the woman taken was a young heiress, then abduction intended to coerce marriage was generally assumed to entail rape. By raping his captive, the abductor made it very difficult for the woman and her family to reject him as a husband, for it was unlikely that in such circumstances another more suitable husband would be found. But the French experience shows that abduction could generate considerable violence, destabilising elite families. An heiress named Claude de Sallenove was first abducted but rescued in 1643; six years later her brother was killed in a duel fought with a second abductor; while, a year after this, her uncle was killed while trying to thwart a third abduction attempt.<sup>45</sup>

Towards the end of the early modern period, however, there is considerable evidence that some at least of these supposed abductions were in fact being manufactured by young couples as a ploy to force reluctant families to accept their children's preferred marriage partners. Also, during the course of the eighteenth century in Naples and other parts of Italy, convictions for rape became even more difficult to obtain because the authorities feared that women were using accusations of rape to force wealthy men into marriage.<sup>46</sup>

Sexual assaults on girls under the age of consent were more likely to lead to convictions. In Venice in 1461 the rape and near fatal assault of a 9-year-old resulted in the perpetrator being blinded, banished and forced to pay a substantial sum towards the victim's dowry.<sup>47</sup> Even though the rape of a child usually attracted severe penalties, the status of the girl and her family, her age and how she behaved were still crucial matters for the courts in determining whether a rape had occurred or not. However, rapes committed on children of noble or elite families by men from a lower social class were always seen by the courts as worse crimes than similar assaults on working-class or peasant children. In fact, in most instances the latter rarely came to the attention of the authorities as allegations made by such children were seldom believed.

Thus far we have been examining rape in times of peace, but early modern Europe was repeatedly ravaged by war, particularly by brutal religious wars during the late sixteenth and early seventeenth centuries and then by dynastic

44 James Farr, *Authority and Sexuality in Early Modern Burgundy (1550–1730)* (New York and Oxford: Oxford University Press, 1995), p. 94.

45 Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford: Oxford University Press, 2006), p. 242.

46 Tommaso Astarita, *Village Justice: Community, Family and Popular Culture in Early Modern Italy* (Baltimore, MD: Johns Hopkins University Press, 1999), p. 163.

47 Ruggiero, *Boundaries of Eros*, pp. 92–3.

struggles thereafter. Rape by soldiers was almost universally condemned under military conventions and codes, yet it undoubtedly occurred to a very considerable extent, even if it was grossly under-reported.<sup>48</sup> Eyewitnesses to the destruction of towns and cities by armies consistently reported that women were sexually assaulted in the wake of sieges and battles, and also when armies plundered villages or farms. In 1631, for example, during the sacking of the city of Magdeburg, some monks described watching helplessly while a group of Catholic soldiers gang raped a 12-year-old girl until she died of her injuries.<sup>49</sup> Likewise, during the Irish rebellion of 1641, many witnesses reported seeing or hearing about numerous rapes committed on women and girls.<sup>50</sup>

Much of the evidence for rape in war comes not from court records but from descriptions of conflicts contained in pamphlets and contemporary histories. This is hardly surprising given that in war zones the civil justice system usually broke down. We need, though, to be careful in our handling of accusations of rape during war. It is necessary to understand the circumstances in which mass rape was alleged to have occurred and what meanings were attached to this phenomenon. Accounts of rape were often used in propagandist literature in an effort to encourage men to resist a common enemy. During the early seventeenth-century wars between the Spanish Empire and the Dutch Republic an extensive literature was published by Dutch writers emphasising the monstrous and cruel behaviour of marauding Spanish troops. In particular, the Catholic Spaniards were accused of seeking to destroy God-fearing Dutch Protestant families by the systematic rape of their wives and daughters. While there can hardly be any doubt that untold numbers of rapes occurred during these wars, we must be alert to the fact that rape narratives served important political purposes, especially in terms of encouraging in men a sense of shared moral outrage and a patriotic determination to resist an enemy bent upon violating their women.<sup>51</sup>

It was not only in the immediate aftermath of hard-fought battles and sieges that large numbers of women were raped. Early modern European

48 Barbara Donagan, 'Codes of Conduct in the English Civil War', *Past & Present* 118 (1988), 83.

49 Geoffrey Parker, *Global Crisis: War, Climate Change and Catastrophe in the Seventeenth Century* (London: Yale University Press, 2014), pp. 30–1.

50 Dianne Hall and Elizabeth Malcolm, "'The Rebels Turkish Tyranny': Reading Sexual Violence in Ireland during the 1640s", *Gender & History* 22.1 (2010), 55–74.

51 Amanda Pipkin, "'They Were Not Humans, but Devils in Human Bodies': Depictions of Sexual Violence and Spanish Tyranny as a Means of Fostering Identity in the Dutch Republic", *Journal of Early Modern History* 13.4 (2009), 243–4.

armies largely lived off the land and soldiers were normally billeted in civilian homes, with their officers sometimes making little if any effort to control them. This could easily lead to violence between soldiers and male householders and their servants, as well as to the rape of the women of the household. Repeated wars saw soldiers traversing foreign territories singly or in groups, and there were many reports of rapes committed by such itinerants.<sup>52</sup> But sometimes it was alleged that women had actually been seduced by promises of marriage and only when the men had departed did they allege rape. Certainly soldiers like these, not anchored in established households and communities, could readily avoid punishment for illicit sex by simply moving on, leaving behind the women to deal with the inevitably unpleasant consequences, regardless of whether sex was consensual or not.

### Infanticide

Single women who fell pregnant after a violent rape or after being pressured into sexual intercourse were, as we have already seen, considered to have consented. Such women, along with the many others whose partners refused to marry them when they conceived a child, found themselves in an extremely difficult position. They belonged to households and communities that regarded sexual intercourse outside marriage as a sin warranting harsh punishment. The options for a woman in this situation were limited: she could attempt to force her reluctant partner into marriage by reporting him to the civil or church authorities; she could face down community disapproval, but then be condemned to live as a social pariah; or she could conceal the pregnancy, abandon the baby or try to farm it out to someone else. Killing the child was of course another option, and one taken by many desperate women throughout the period. Infanticide, or the murder of a newborn child, was a crime nearly always committed by women and the punishment for it throughout early modern Europe was death, often involving torture, drowning or impaling in order to highlight society's revulsion at such a crime.<sup>53</sup>

Most legal theorists and legislators would have agreed with the German jurist Benedikt Carpzov who wrote in 1652: 'What [is] more horrible than to turn one's pitiless hands on one's own children against affection, natural love

52 Michael Durey, 'Abduction and Rape in Ireland in the Era of the 1798 Rebellion', *Eighteenth-Century Ireland* 21 (2006), 42–6.

53 K. J. Kesselring, 'Bodies of Evidence: Sex and Murder (or Gender and Homicide) in Early Modern England, c. 1500–1680', *Gender & History* 27.2 (2015), 245–62.

and the rights of blood.<sup>54</sup> Yet, the weight of the law against infanticide fell most heavily upon single women or women whose husbands were absent. Given the state of medical knowledge, married women living with their husbands in established households who wanted to limit the size of their families had options that single women did not enjoy to nearly the same extent. Deliberate overlaying, suffocation or failing to feed a newborn child could have occurred without anyone suspecting, let alone being able to prove, a crime.<sup>55</sup> But with single women too, it was often impossible to determine for certain whether a neonate had been born alive or dead. In seventeenth-century Nuremberg and Württemberg women could be tortured in an attempt to determine if a baby had lived; and, if it was decided that the baby had been born alive, then execution by beheading was the penalty for infanticide.<sup>56</sup> In recognition of the difficulties involved in determining the cause of death, the authorities increasingly criminalised the concealment of the pregnancy. This was on the basis that a woman who did not publicly acknowledge her pregnancy and make preparations for the child's care, must have intended to kill it. An English act of 1624 made it a crime for a woman to conceal her illegitimate child's death, unless at least one witness was ready to swear it had been a stillbirth.<sup>57</sup> In Württemberg an ordinance of 1658 required anyone suspecting a woman of concealing a pregnancy to report her to the authorities. She was then carefully watched so as to ensure witnesses were present at the birth.<sup>58</sup>

It is possible that itinerant rural working women or single independent women living in large cities had more opportunities to conceal pregnancies and to dispose of infant bodies than single women living in regular households under the prying eyes of mothers, mistresses or neighbours. In 1721, when the drains of Rennes were repaired, the skeletal remains of some eighty infants were discovered, suggesting that urban drains offered an effective means of disposing of unwanted infants.<sup>59</sup> The women who consigned their children's bodies to the drains of Rennes, and of other cities as well, were likely to have been servants or daughters living in households where they had been able to conceal their pregnancies, but were unable to hide a newborn child. Other women, who came to the attention of authorities after the

54 Astarita, *Village Justice*, p. 163.

55 Laura Hynes, 'Routine Infanticide by Married Couples? An Assessment of Baptismal Records from Seventeenth-Century Parma', *Journal of Early Modern History* 15 (2011), 507–30.

56 Rublack, *Crimes of Women*, p. 165.

57 Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (New York: St Martin's Press, 1996), p. 32.

58 Rublack, *Crimes of Women*, p. 182. 59 Ruff, *Violence in Early Modern Europe*, p. 153.

deaths of neonates, had already given birth to illegitimate children or had been suspected of killing previous babies. This suggests that, whereas communities might have tolerated one sexual lapse, they were much less prepared to countenance continuing ones. It is clear from testimony given in court, however, that neighbours, midwives or family members did on occasion help single mothers conceal births and ensure that the newborn did not survive.<sup>60</sup> All this means that the convictions for infanticide or concealment of birth recorded by courts cannot be considered at all an accurate measure of the extent of the crime.

While the harsh penalties against infanticide enacted during the sixteenth and seventeenth centuries continued into the modern era in many places, in others they were eased as courts became more willing to give women the benefit of the doubt. In England, for instance, by the eighteenth century temporary insanity was being increasingly accepted as a plea in infanticide cases. This could still lead to a conviction, but it also held out the possibility of a pardon.<sup>61</sup>

## Conclusion

Early modern European understandings of family and sexual violence were very different from today's, but this is not to say that violence occurring within households or sexual assaults on women went largely unpunished. On the contrary, civil and religious courts, as well as communities, exercised jurisdiction over the behaviour of husbands and wives towards each other and towards children and other dependants. Sexual relations were similarly heavily policed. The mechanisms of control could be legally or religiously based, or they could be informally exercised by communities. All were in agreement, however, that keeping households living and working cooperatively together was the desired object, and this normally entailed upholding the right of the male head of the household to discipline his dependants by forceful means. Arguments did not revolve around whether or not violence should be employed, but rather what levels and types of violence were necessary in order to guarantee household discipline.

Penalties for rape and infanticide in early modern Europe were often severe, but both crimes were singularly difficult to prove. In the case of

<sup>60</sup> Laura Gowing, 'Secret Births and Infanticide in Seventeenth-Century England', *Past & Present* 156 (1997), 87–115.

<sup>61</sup> Dana Rabin, 'Bodies of Evidence, States of Mind: Infanticide, Emotion and Sensibility in Eighteenth-Century England', in Mark Jackson (ed.), *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550–2000* (Farnham: Ashgate, 2002), pp. 73–92.

rape, distrust of women in patriarchal societies led to laws that placed serious obstacles in the way of female victims attempting to substantiate their allegations. With infanticide, in an effort to prevent it, some jurisdictions went as far as criminalising single women who concealed a pregnancy. Again, the fundamental object was to ensure godly households in which sexual relations occurred exclusively between husbands and wives, and thus all children born were legitimate. The household was central to most early modern European societies, and these societies were prepared to go to considerable lengths to ensure that they operated in an orderly fashion, under a male head licensed to employ appropriate violence in regulating the economic, religious and also sexual lives of his subordinates.

### Bibliographic Essay

Scholarly interest in early modern European family and sexual violence has developed in tandem with changing modern attitudes towards women and violence, so that the literature on this type of early modern violence is now substantial. Whereas research in the 1970s and 1980s scoured legal records for relevant cases, studies since the late 1990s have combined legal research with analysis of popular culture, autobiographical writings, letters and various forms of literature. This in-depth archival analysis has, since about 2000, allowed the production of synthetic accounts that situate family and sexual violence within broader cultural frameworks. Wide-ranging studies, such as Robert Muchembled's *A History of Violence from the End of the Middle Ages to the Present*, (Cambridge: Polity Press, 2012), offer stimulating pictures of long-term change in all aspects of violence, including family and sexual violence. The work of Peter Spierenburg has been very influential in this regard, including, for example, his *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity Press, 2008). Julius Ruff's useful *Violence in Early Modern Europe, 1500–1800* (Cambridge: Cambridge University Press, 2001) includes a chapter on interpersonal violence, covering rape, marital violence and infanticide.

Regional and national studies of violence that contain chapters on family and sexual violence have enriched our understanding of the culturally specific meanings of violence in different early modern communities. Extensive research has been carried out on the surviving records of the English regions, with Garthine Walker's work combining legal and literary analysis in publications such as *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003). Local variations in how household violence functioned and was managed are revealed in detailed urban and regional studies, such as Arlette Farge's *Fragile Lives: Violence, Power and Solidarity in Eighteenth-Century Paris* (Cambridge: Polity Press, 1993) and Tommaso Astarita's *Village Justice: Community, Family and Popular Culture in Early Modern Italy* (Baltimore, MD: Johns Hopkins University Press, 1999).

Another rich vein of scholarly research has concentrated on the violence accompanying marital breakdown. For England the scholarship is especially large: Joanne Bailey, for example, has examined marriage failure in *Unquiet Lives: Marriage and Marriage Breakdown*

in England, 1660–1800 (Cambridge: Cambridge University Press, 2003); while Elizabeth Foyster concentrates specifically on violence within marriage in *Marital Violence: An English Family History, 1660–1857* (Cambridge: Cambridge University Press, 2005). The legal and social frameworks in which marital violence occurred in Sweden have been explored by Jonas Liliequist in ‘Changing Discourses of Marital Violence in Sweden from the Age of Reformation to the Late Nineteenth Century’, *Gender & History* 23.2 (2011), 1–25. Studies of particular cities and towns are also instructive. For informal boundaries and meanings of marital violence in southern France, see Susan McDonough, ‘She Said, He Said, and They Said: Claims of Abuse and a Community’s Response in Late Medieval Marseille’, *Journal of Women’s History* 19.4 (2007), 35–58.

Women who killed their husbands provoked acute anxiety throughout early modern Europe. Even though prosecutions were relatively few, a wealth of evidence survives, particularly in popular culture. For Germany, Ulinka Rublack’s research is foundational on this and other aspects of women and criminality: *The Crimes of Women in Early Modern Germany* (Oxford: Clarendon Press, 1999). Frances Dolan makes fruitful use of popular ballads and gallows speeches in her important study of attitudes towards violent women: *Dangerous Familiars: Representations of Domestic Crime in England, 1550–1700* (Ithaca, NY: Cornell University Press, 1994).

How communities problematised and managed sexual violence has been the subject of considerable scholarly attention over the past twenty years. An insightful overview of this research is Garthine Walker, ‘Sexual Violence and Rape in Europe, 1500–1750’, in *The Routledge History of Sex and the Body, 1500 to the Present*, edited by K. Fisher and S. Toulalan (London and New York: Routledge, 2013), pp. 429–43. Regional studies are also crucial in revealing variations in the laws and meanings surrounding sexual violence; see, for example, Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York and Oxford: Oxford University Press, 1985). Sexual violence in war is revealingly explored by Penny Roberts in ‘Peace, Ritual, and Sexual Violence during the Religious Wars’, *Past & Present* 214 (2012), 75–99.

The anxiety early modern European societies felt about the sexuality of single women was expressed in particular through harsh laws against infanticide. Anne Marie Kilday, *A History of Infanticide in Britain, c. 1600 to the Present* (Basingstoke: Macmillan, 2013) investigates this topic for England, Wales and Scotland. In other places, such as Ireland, where there are few surviving records of infanticide, folklore is a potentially valuable research tool, as Anne O’Connor demonstrated in ‘Women in Irish Folklore’, in *Women in Early Modern Ireland*, edited by M. O’Dowd and M. MacCurtain (Edinburgh: Edinburgh University Press, 1991), pp. 304–17. Close analysis of individual cases is another way of exploring the complexities of infanticide. An intriguing study of a well-documented case is William David Myers’s *Death and a Maiden: Infanticide and the Tragical History of Grethe Schmidt* (DeKalb: Northern Illinois University Press, 2011).