

## Where Patriarchy, Gender, and Verdicts Collide:

Servant Theft Against their Masters in England during the Late Seventeenth and Early Eighteenth Centuries

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Servants in early modern England played a crucial role in the maintenance of order in households and society. With the concepts of patriarchy and godly communities embedded in the notion of social order by the Church, State, and community itself, servants could pose a threat by undermining the authority of their masters and mistresses through disobedience and criminal activities. Although various studies have demonstrated that servant and master relationships in early modern England could be familial or opportunistic—such as Paul Seaver’s study of the Alford-Yeamans case of 1620, Keith Wrightson’s examination of the early modern household, and Elizabeth Ewan’s study of female domestic servants in the sixteenth century—this study focuses on the cases that showcase the darker side of these relationships.<sup>1</sup> When master and servant relationships were ridden with tensions and conflict, they threatened household and community harmony. Relationship strains resulted from the strict rules and regulations of behaviour to which servants were subjected, with these stresses triggering criminal activity for both parties in some cases. R.C. Richardson, Garthine Walker, Naomi Tadmor, and

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<sup>1</sup>Paul Seaver, “A Social Contract?: Master Against Servant in the Court of Requests,” *History Today* 39, no. 9 (September, 1989): 55; Keith Wrightson, *English Society 1580-1680* (Hutchinson: London, 1982), 112-114, 117; Elizabeth Ewan, “Mistresses of Themselves?: Female Domestic Servants and By-Employments in Sixteenth-Century Scottish Towns,” in *Domestic Service and the Formation of European Identity*, eds. A. Fauve-Chamoux (Bern: Peter Lang, 2004), 412.

Philippa Maddern outline religious and customary societal pressures of the period, pressures that contributed to destructive servant and master relationships.<sup>2</sup> Abusive behaviour from masters, rigorous servant contract stipulations, and an oppressive system could motivate servants to steal from their masters. Richardson and Walker reference specific instances of crime for servants and masters, with Walker arguing that female servants often received harsher punishment for their crimes than male servants.<sup>3</sup> Male and female servants stole from their masters during the late seventeenth and early eighteenth centuries as a means to exert control in a strict system of service, stealing items they readily came into contact with in their positions, with female servants generally receiving harsher punishment for their actions under a patriarchal system. By observing the customs and structure of early modern English society—the legislation, guidelines, and expectations for masters and servants—and the conditions of service, one can perceive the tensions and circumstances that could influence servant theft.

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<sup>2</sup> R.C. Richardson, *Household Servants in Early Modern England* (Manchester University Press, 2010), 39, 97, 101, 111, 116, 129-32; Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 10-11, 33-4; Naomi Tadmor, *The Social Universe of the English Bible: Scripture, Society, and Culture in Early Modern England* (Cambridge: Cambridge University Press, 2010), 82, 85-6, 90-1, 107, 116; Philippa Maddern, "'In Myn Own House: The Troubled Connections between Servant Marriages, Late-Medieval English Household Communities and Early Modern Historiography,'" in *Women, Identities, and Communities in Early Modern Europe*, eds. Stephanie Tarbin and Susan Bromhall (Hampshire: Ashgate Publishing Limited, 2008), 45, 53-5.

<sup>3</sup> Richardson, *Household Servants*, 150, 165, 198-201; Walker, *Crime, Gender, and Social Order*, 167-69, 178-180 and "Keeping it in the Family: Crime and The Early Modern Household," in *The Family in Early Modern England*, eds. Helen Berry and Elizabeth Foyster (Cambridge: Cambridge University Press, 2007), 70, 76-7.

Examining fifteen Old Bailey court cases of servant theft during this period illustrates that female servants were delivered harsher punishments than male servants for the same level of criminality. The regulatory and patriarchal society of early modern England demonstrates, for instance, why Charles Clark received branding while Mary Nash received the death penalty for the same theft charge, even though the items Clark stole were valued at more than three times those Nash stole.<sup>4</sup>

With service being fundamental to households and society, it was naturally governed by concepts of patriarchy and religion that dominated societal belief and custom. The household was viewed as a microcosm of the commonwealth, with the role of the male head of household being likened to that of a king who held absolute authority over his realm. The household was a part of a political hierarchy that extended to local communities, civic governments, and kingdoms.<sup>5</sup> The household consisted of all members who lived together as a family unit, including husband, wife, children, servants, apprentices, and extended guests. The household also impacted the larger economy; its influence was determined by the honesty, fairness, and reliability of its members through their financial dealings.<sup>6</sup> The male householder was responsible for maintaining appropriate behaviour within his household, performing his role in contributing to the maintenance of societal order. The male head of household ensured that deference was displayed according to the rank of the household

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<sup>4</sup> *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 7.2, 10 March 2015), December 1714, trial of Charles Clark (t17141209-53); April 1715, trial of Mary Nash (t17150427-2).

<sup>5</sup> Maddern, "In Myn Own House," 45.

<sup>6</sup> Walker, *Crime, Gender, and Social Order*, 10.

members, with him receiving ultimate deference.<sup>7</sup> The head of household also exercised his discretion to dictate the proper use of household resources.<sup>8</sup> The worth of the male householder rested on his household responsibilities, including his ability to provide for his household and to maintain his credit, ultimately the credit of the household.<sup>9</sup> Due to the interconnectedness of the household, the reputation of the individual was influenced by the reputation of the household, and vice versa. The household was a political, economic, and social unit where good governance from the male householder was crucial.

From a religious standpoint, service was exemplified through the use of Holy Scripture to demonstrate the appropriate relationship between master and servant needed to maintain a godly household and community. In a popular seventeenth-century treatise outlining the relationship of master and servant, clergyman William Gouge writes, "God hath given expresse commandement unto masters to governe their seruants: and unto seruants to be subject to their masters."<sup>10</sup> To disobey one's master was to disobey God. The Ten Commandments were commonly used to provide divine sanction for service, and examples, such as Abraham's faithful servant, were found throughout biblical texts to provide models of the ideal servant.<sup>11</sup> Guidance was provided for servants and masters through catechisms, sermons, tracts, and religious and political treatises that were grounded in biblical references and theology. These works emphasized the reciprocity pertaining to one's position; the obedience

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<sup>7</sup> Ibid., 11.

<sup>8</sup> Ibid.

<sup>9</sup> Alexandra Shepard, "Manhood, Credit, and Patriarchy in Early Modern England c. 1580-1640," *Past and Present* 167 (May, 2000): 84-86, <http://www.jstor.org/> (accessed January 30, 2015).

<sup>10</sup> Tadmor, *The Social Universe of the English Bible*, 82.

<sup>11</sup> Ibid., 82.

to one's parents, followed by masters, mistresses, and other superiors; and the necessary obedience to the Crown.<sup>12</sup> Biblical images of servants can also be found in contemporary literary works, providing further examples of desirable behaviour. Tadmor suggests that there was a significant shift in the way that early modern English men and women read their Bible and related it to their society and culture. She demonstrates that the words for male and female slaves in the Hebrew Bible were translated to reflect contemporary service ideals in early modern biblical texts. By showcasing the switch from servile status to contractual labour, this allowed for contemporary biblical information about service to guide the early modern public about deference, faithful work, office, and loyalty.<sup>13</sup> The willing submission of servants to their masters was emphasized in works written for servants, including a prayer written by Lancelot Andrewes, a bishop and scholar. Andrewes' prayer stresses the importance of servants thanking God for their "lowly state," requesting "humble and obedient heart[s]" from God to make them happy with their condition, and obeying the higher orders in "fear and true respect."<sup>14</sup>

The guidance provided to servants, masters, and mistresses was crucial due to the large number of individuals involved in service in early modern England. The overarching purpose of such prescriptions was to assist in the maintenance of household order and consequently societal order. About 40 percent of households included servants, with 60 to 75 percent of live-in servants falling between the ages of 15 to 24; most of this group were not married.<sup>15</sup> The largest

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<sup>12</sup> *Ibid.*, 85-86.

<sup>13</sup> *Ibid.*, 90.

<sup>14</sup> *Ibid.*, 109-10.

<sup>15</sup> Richardson, *Household Servants*, 63.

concentration of England's servants in the seventeenth century was in London, composing 25 percent of the nation's total, followed by Bristol and Stafford with 13 percent, York with 10 percent, and Leicester and Lichfield with 8 percent.<sup>16</sup> By the eighteenth century, 81 percent of London-based household servants were female, roughly equating to 40 percent of the female population.<sup>17</sup> It was common for households to have one or two servants with at least one being able to perform all domestic tasks. Therefore, as Richardson points out, being a servant or employing a servant were two of the central experiences that defined early modern English society, with even poor households having a servant to help them with the chores.<sup>18</sup> Even if one did not employ servants, they were encountered through daily activities at the marketplace, on the street, or visiting other homes. Accurately fulfilling one's role as a servant or master affected societal order due to service being a structurally significant component in early modern English society; therefore, service influenced many aspects and members of this society. Proper behaviour of masters and servants was also dictated by laws concerning servants and by household manuals, further indicating service's societal importance. Such legislation and guides often reflected current economic and societal issues. For instance, inflation, harvest failures, enclosure riots, and the destabilizing effects of war in the 1590s influenced household manuals into the eighteenth century.<sup>19</sup> The basis of master and servant law into the eighteenth century is found in the Ordinance of Labourers of 1349, Statute of Labourers of 1350, and the Statutes of 1361 and 1388. These regulations compelled the idle to service, fixed legal wage

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<sup>16</sup> *Ibid.*, 64-65.

<sup>17</sup> *Ibid.*, 66.

<sup>18</sup> *Ibid.*, 63-64.

<sup>19</sup> *Ibid.*, 124.

rates, prohibited individuals from enticing away another's servants, curbed the movement of servants and workers, made annual hiring the norm, bound servants to their employer for the duration of their contract, and held servants to their social position for the rest of their lives.<sup>20</sup> The Elizabethan Statute of Artificers of 1562 recodified acts and statutes dealing with labourers, including servants, by laying out the terms of compulsory service, penalties for leaving work, official wage rates, mandatory testimonials, minimum hours of work, and set meal times.<sup>21</sup> Masters were expected to be responsible for the sick or injured servant during this period.<sup>22</sup> William Blackstone, a jurist and writer in the eighteenth century, outlined that once a contract of employment was created between a master and servant it could not be broken, with a fine of 40 shillings instated if the master was liable and the imprisonment of the servant for a year if he/she was liable.<sup>23</sup>

Guides, such as Hannah Woolley's *The Gentlewoman's Companion, or, A Guide to the Female Sex*, which was published in 1673 and reflected Woolley's experiences as a governess, outlined expected household behaviour. She argued that servants should be treated fairly and encouraged, have an adequate workload and diet, and have access to household religion and church service.<sup>24</sup> Woolley also outlined the expected behaviour of specific servant roles. For instance, nursery maids were expected to be pleasant and appropriately entertaining for the

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<sup>20</sup> Douglas Hay, "England, 1562-1875: The Law and Its Uses," in *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955*, eds. Douglas Hay and Paul Craven (Chapel Hill: The University of North Carolina Press, 2004), 62.

<sup>21</sup> *Ibid.*, 64.

<sup>22</sup> *Ibid.*, 66.

<sup>23</sup> Richardson, *Household Servants*, 195.

<sup>24</sup> *Ibid.*, 44.

children's age, to mend their linens, love each child equally, read appropriately with them, and to set a good example.<sup>25</sup> Long service was seen as a respectable way to increase one's worth and provide for a secure old age.<sup>26</sup> Writings began to address servants directly in the seventeenth-century, including those of conduct writer Robert Cleaver, who stated that servants are to love their masters as "a dutiful child [does] his father," exhibit deference to their masters, be ready and willing to obey all of their masters' commands, fear displeasing their masters, be faithful to their masters, and be happy in their service.<sup>27</sup> Servants were expected to be on their best behaviour towards their masters, showcasing honestly, loyalty, cleanliness, piety, discretion, and most of all, obedience.

As much of the prescriptive literature of the period suggests, masters and servants were expected to demonstrate a level of reciprocity in their relationship. But did legislated and prescribed behaviour represent the norm for servants and masters in the late seventeenth and early eighteenth centuries? Efforts were made by many masters to follow the guidelines, but fulfilling the conditions of service with an environment of little privacy and strict administration was challenging for numerous servants. Wages varied depending on the place, occupational function, household size, and age of the servant. Younger servants were often paid less, and wages were commonly paid bi-annually or annually with bonuses sometimes rewarded for good service.<sup>28</sup> Servants were supplied with accommodations, food, and material or clothing by their masters, but the quality of each depended on the size and wealth of the household as

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<sup>25</sup> *Ibid.*, 45.

<sup>26</sup> *Ibid.*, 75, 78.

<sup>27</sup> *Ibid.*, 129.

<sup>28</sup> *Ibid.*, 80, 86, 96.



well as the generosity of the master. Common servants often lacked basic comforts compared to the luxuries servants sometimes experienced in elite households, and meals varied from eating with the employer, having leftovers, or consuming cheap alternative meals.<sup>29</sup> Masters began distancing servants from their living quarters, making social distinctions clearer. No longer sleeping in halls, kitchens, passageways, closets, cellars, barns, or near the employer's bedroom where they were in calling distance, servants near the end of the seventeenth century lived in separate areas of the household; additionally, basements containing kitchens, servants' rooms, a segregated staircase, and a bell system for summoning were being developed by the eighteenth century in London.<sup>30</sup> Though these separate quarters increased the privacy of masters, the conditions for servants did not improve. Servants often shared rooms and beds; employers had access to where the servants slept, which encouraged prying, control, and sexual exploitation. Servants aspired to own their own lockable box to keep their personal belongings safe, which were otherwise carried in pockets and pouches.<sup>31</sup> Servants worked long and usually undefined hours with few holidays. Since their time was their masters', servants were advised not to squander time, and too much sleep was deemed unnecessary.<sup>32</sup> Along with food, clothing, accommodation, and wages, masters fulfilled their duty by providing guidance and taking their servants to church,

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<sup>29</sup> *Ibid.*, 101, 103.

<sup>30</sup> *Ibid.*, 97, 99-100.

<sup>31</sup> *Ibid.*, 98.

<sup>32</sup> *Ibid.*, 111.

exhibiting their role as the pastors of their household by bringing their flock to the congregation.<sup>33</sup> The living conditions of servants as well as the behavioural directives from their superiors resulted in tensions between masters and servants. The high standard of servant behaviour expected by masters could be difficult to maintain, especially in situations in which servants were treated poorly. The regimented and restrictive nature of service could also be challenging since servants had to agree, at least outwardly, with the beliefs of their masters during the duration of their contract. Faithful servants, as Maddern explains, were to “submerge their own identities and interests—sexual and otherwise—in the concerns of the household head,” and any “unsanctioned action on the part of the servants... could jeopardize the appearance of household rule.”<sup>34</sup> Amussen identifies that masters and parents had ultimate moral and physical authority in the household; therefore, the distinction between servants and children was minimal.<sup>35</sup> Cruel masters starved servants, sexually abused them, or inflicted punishment beyond the reasonable means within the law, making conditions unbearable. Disputes over wage payments being given on time, sparingly throughout the year, or not at all affected the financial standing of the servant. Servants lacked privacy in their designated chambers and in their obligation to be at their masters’ and mistresses’ beck and call. Servant

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<sup>33</sup> Alexandra Shepard, “Brokering Fatherhood: Illegitimacy and Paternal Rights and Responsibilities in Early Modern England,” in *Remaking Remaking English Society: Social Relations and Social Change in Early Modern England*, eds. Steve Hindle, Alexandra Shepard, and John Walter (Woodbridge: The Boydell Press, 2013), 46.

<sup>34</sup> Maddern, “In My Own House,” 53-54.

<sup>35</sup> S.D. Amussen, “Gender, Family, and the Social Order, 1560-1725,” in *Order & Disorder in Early Modern England*, eds. Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press, 1985), 200.

relationships could pose a problem to the hierarchy of the household and terms of service. A married male or female servant could add costly dependents to the household, the interests of the servant toward their spouse could compete with their interests in the household, and having two wives or husbands in one household was seen as unnatural since it altered the hierarchal structure of the family.<sup>36</sup> Popular opinion did not favour servant marriages, especially since some servants and employers viewed marriages as an exit from service, resulting in tensions over permission to marry and contract terms.<sup>37</sup> Religious attendance for those servants who were not devout, as Richardson points out, must have been seen as a further imposition of masterly control over their lives, and the subjection to the hierarchal seating in churches further emphasized their lowly status.<sup>38</sup>

Superiors increasingly tended to view servants as problematic and vice ridden, further influencing their perceived character. The networks that developed while servants performed tasks outside of the household, as well as religion, education, and gossip were seen as empowering for servants, and therefore threatening to superiors.<sup>39</sup> The leisure activities servants were involved with also alarmed masters, such as gambling and the frequenting of alehouses, which resulted in drunkenness and servants that were harder to govern. The "servant problem" of the eighteenth-century stemmed from masters expressing concern about servants not completing their full term as well as believing servants were idle, unreliable, drunk, disrespectful, and sinful while performing what masters considered an easy vocation.<sup>40</sup>

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<sup>36</sup> Maddern, "In Myn Own House," 54-55.

<sup>37</sup> *Ibid.*, 51-52.

<sup>38</sup> Richardson, *Household Servants*, 112-13

<sup>39</sup> *Ibid.*, 112, 116, 158.

<sup>40</sup> *Ibid.*, 175.

As stated by an anonymous author in 1607, it is “a hard matter to find servants without faults as dropsy patients without thirst... Though their faults be innumerable their chiefest ornaments are the three priorities of a dog, to wit the gullet... barking... [and] biting,” insinuating that servants were gluttons, gossips, and ungrateful for their master’s kind treatment.<sup>41</sup> Although servants were blamed for breaking contract or threatening to leave the household, masters also broke contracts if they were not satisfied with the service.

By observing the tensions that developed in early modern service, one can assume that there were a variety of reasons why servants committed theft from their masters during the late seventeenth and early eighteenth centuries. Servants did have the capability to take their masters to court for various contract infractions, such as for unpaid wages, but the higher reputation of masters could influence verdicts to be in their favour. Theft offered servants a way to command control of their circumstances, providing their own justice for what they viewed as wrongdoings committed by their masters. Besides issues with wages, servants could steal to right the instances of physical, verbal, and psychological abuse from masters, which could include poor meals, violence, a heavy workload, and defamatory comments. Servants may also have been motivated to increase their financial standing to leave service faster, to take part in the growing culture of consumerism, or, for female unmarried servants, to create a dowry. Stealing could provide a means for servants to help support their families. For unsatisfied servants who were afraid to face the liability for leaving their contracts, theft perhaps offered compensation until the end of their contract. There is the possibility that some servants stole to defy the oppressive social order under which they lived, which matched the

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<sup>41</sup> Ibid.

negative reputation that employers associated with servants. Whatever the motive, servant theft from their masters was a common crime in the late seventeenth and early eighteenth centuries.

Servant theft, as all crime in the period, affected the order of the entire community, with the consequences of servant theft not only impacting the servant-master relationship but also the household economy, the enforcement of patriarchy, and the structure of society. Crime also threatened the peace of the kingdom, requiring the symbolic judicial avengement of the monarch in all criminal cases.<sup>42</sup> Various forms of theft, including petty and grand larceny, housebreaking, burglary, pickpocketing, and robbery, constituted around 75 percent of felonies in early modern England, with servant theft from their masters comprising part of this total.<sup>43</sup> Walker argues that although males were the majority of theft defendants, females were involved in thefts that were equally as daring and initiative-based as male thefts, and items stolen by women had similar value to those stolen by men.<sup>44</sup> This counters the perspective that women were timid thieves who stole items of little value. For the most part, men and women stole items they came into contact with during their everyday tasks. The items stolen, as Walker demonstrates, were determined by household organization and the gendered division of labour, with these divisions limiting what men and women were able to sell without attracting suspicion.<sup>45</sup> Since women were customarily involved with household tasks and men were involved in more tasks outside of the home, the items stolen by both reflects

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<sup>42</sup> Walker, "Keeping it in the Family," 68-69.

<sup>43</sup> Walker, *Crime, Gender, and Social Order*, 159.

<sup>44</sup> *Ibid.*, 159, 208.

<sup>45</sup> Walker, "Keeping it in the Family," 76.

these facts. Horse and livestock theft was predominately male, clothes and linens were stolen by men and women, and cloth, yarn, and household utensil theft was predominately female.<sup>46</sup> Clothing theft had a particular cultural and monetary significance, attacking the status, gender, honour, and individuality of the victim, rendering it a significant offence.<sup>47</sup> The secondhand market for goods was popular and identified by Royal Proclamations as the “ground and nursery of burglaries, robberies, felonies, and frauds.”<sup>48</sup>

These patterns of theft are exhibited in male and female servant theft cases during the late seventeenth and early eighteenth centuries tried at the Old Bailey. Since male servants had access to their master’s horses, and the sale of horses was a male dominated occupation, it is natural that horses would be an item of choice for male servants to steal. The animal theft case of Thomas Saltmarsh on June 4, 1685 indicates that Saltmarsh was found guilty and sentenced to death for stealing the black and brown mare of his master, Robert Davidge, which Saltmarsh sold for 53s in Smithfield.<sup>49</sup> There are also cases where servants stole horses from other men while embarking on business for their master, such as the case of James Brown. On September 10, 1718 James Brown was found guilty and sentenced to death for stealing “a brown gelding value 10l. the property of Thomas Hayward the 1<sup>st</sup> of August last,” while he embarked on business for his master, Mr. Webb.<sup>50</sup> There is testimony that Brown tried to sell the horse in London, and Brown claimed he found the horse in a lane, but his testimony did not convince the jury otherwise. For female servants

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<sup>46</sup> Walker, *Crime, Gender, and Social Order*, 162.

<sup>47</sup> *Ibid.*, 163.

<sup>48</sup> *Ibid.*, 166.

<sup>49</sup> *Old Bailey Proceedings*, June 1685, trial of Thomas Saltmarsh (t1685o6o4-1).

<sup>50</sup> *Ibid.*, September 1718, trial of James Brown (t1718o910-7).

learning domestic skills, they logically stole items they commonly came into contact with during their tasks as well as ones they usually bought, exchanged, or pawned under the instruction of their masters or mistresses. For instance, Margaret Swanson on September 9, 1691 was tried for grand larceny for stealing a silver spoon valued at 10s and a silver fork valued at 20s from her master Edward Draynor.<sup>51</sup> Swanson was caught trying to pawn the utensils, and she confessed to stealing the spoon from her master. The jury found her guilty to the value of 10d, and she received whipping for her crime. Sarah Carter, alias Eden, was found guilty on December 10, 1684 for grand larceny and was sentenced to death for stealing a silver tankard valued at 51. 15s, linen, lace, and other goods of considerable value from her master Matthias Bligis after about three days of service.<sup>52</sup> Carter stole the goods and left the premises while her master was busy. She confessed to the crime and to selling some of the goods when she was apprehended shortly after the incident, but denied her confession during the trial.

By examining fifteen cases of male and female servant theft committed against their masters from The Old Bailey, one can see similarities in the items stolen and differences in the verdicts for both sexes. Male and female servants targeted clothing, jewelry, money, blankets, and silver goods in twelve cases. In addition to other items they stole, Francis Clanshey and Richard Ennis stole perukes and Charles Clark stole a pair of pistols, while Ezra Batte stole eight pounds of ballandine silk valued at eight pounds and two ounces of hardass.<sup>53</sup> Out of all the cases, eight offenders received the punishment

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<sup>51</sup> *Ibid.*, September 1691, trial of Margaret Swanson (t16910909-14).

<sup>52</sup> *Ibid.*, December 1684, trial of Sarah Carter alias Eden (t16841210-5).

<sup>53</sup> *Ibid.*, January 1684, trial of Francis Clanshey (t16840116-25); December 1722, trial of Richard Ennis (t17221205-33); December 1714, trial of Charles Clark (t17141209-53); May 1699, trial of Ezra Batte (t16990524-25).

appropriate by law to the crime they committed based on the theft charge and monetary value of the goods, while seven offenders received lesser punishments. Five of the offenders who received lesser punishments were male and two were female. These offenders were appropriately punished: Francis Clanshey received whipping for theft under one shilling; Thomas Saltmarsh and James Brown received the death penalty for animal theft; Margaret Paul, Sarah Carter, and Martha Du Boardas received the death penalty for grand larceny; Mary Nash received the death penalty for theft from a specified place with the value of eight guineas; and Mary Ward received branding for theft from a specified place for stealing clothing.<sup>54</sup> In early modern England, petty larceny cases involved thefts valued under one shilling and resulted in lesser punishments since these cases were considered the least serious form of theft, while grand larceny cases involved thefts valued at one shilling or more and were punishable by death.<sup>55</sup> Juries, at their discretion, devalued stolen items to less than one shilling in order to lessen grand larceny offences to petty larceny; therefore, the offender no longer faced the punishment of death and received a lesser form of punishment.<sup>56</sup> In the above cases with appropriate punishment, verdicts were delivered based on the accurate monetary value of the items stolen, but in the lesser punishment cases stolen

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<sup>54</sup> *Old Bailey Proceedings*, January 1684, trial of Francis Clanshey (t16840116-25); June 1685, trial of Thomas Saltmarsh (t16850604-1); September 1718, trial of James Brown (t17180910-7); January 1684, trial of Margaret Paul (t16840116-7); December 1684, trial of Sarah Carter alias Eden (t16841210-5); April 1681, trial of Martha Du Boardas (t16810413-7); April 1715, trial of Mary Nash (t17150427-2); and April 1715, trial of Mary Ward (t17150427-20).

<sup>55</sup> Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Crime and Justice—Crimes Tried at the Old Bailey," *Old Bailey Proceedings Online* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 7.0, 19 May 2015).

<sup>56</sup> *Ibid.*



items were devalued by the jury to lessen the charge, and consequently the punishment, of the offenders. Examining the lesser punishment cases, the majority of which involve male servants, reveals that some of the punishments they received according to the interpretation of the law were considerably lower than female servants who received the appropriate punishment according to the letter of the law. Charles Clark was tried on December 9, 1714 with theft from a specified place for stealing a pair of pistols and 30 guineas from his master after being entrusted with the key to where these items were kept, and he was found guilty and punished with branding.<sup>57</sup> A theft from a specified place case could be prosecuted as a capital offence if it was prosecuted under a different heading, but this theft offence is typical of eighteenth century legislators who desired to create new and specific offences.<sup>58</sup> Clark could have been charged with grand larceny and received the death penalty for his crime. In comparison to Mary Nash who received the death penalty for the same theft charge for stealing only eight guineas, Clark's punishment was considerably lighter.

Nicholas Lewis was tried for theft from a specified place on February 23, 1715 for stealing a quilt and two blankets from his master John Cardinal, but his case was downgraded to theft under one shilling, and he was found guilty to the value of 10d and received a whipping.<sup>59</sup> He confessed to his crime and admitted he sold the goods, which could have contributed to his offence being lowered, but the value of the goods was low and corresponded with the lower charge. This case

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<sup>57</sup> *Old Bailey Proceedings*, December 1714, trial of Charles Clark (t17141209-53).

<sup>58</sup> Emsley, Hitchcock, and Shoemaker, "Crime and Justice," *Old Bailey Proceedings*.

<sup>59</sup> *Old Bailey Proceedings*, February 1715, trial of Nicholas Lewis (t7150223-10).

demonstrates the ability to adjust the offence, theft from a specified place, to an offence that better suits the crime. Charles Clark's offence could have been increased to grand larceny, but this did not occur. On December 5, 1722, Richard Ennis was tried for theft from a specified place for stealing a peruke valued at 18s as well as two camblet coats, a waist-coat, and a pair of breeches valued at 20s from his master, but his charge was lessened to theft under one shilling, and he was found guilty to the value of 10d and was punished with transportation.<sup>60</sup> Even though Richard denied stealing the goods and was found wearing the wig, which he stated was given to him by a man on the street, he still received a lower punishment than the monetary value of his crime, which could have been tried as grand larceny.

William Lyddall's case was also lowered even though the crime constituted the higher offence. On January 15, 1700 Lyddall was tried for burglary for breaking into the house of Cavendish Weeden, Esq. on December 15, 1699 at six or seven at night, stealing two cloth mantua gowns, a cloth petticoat with gold lace, a silk petticoat, a cloth petticoat with silver fringes, a velvet scarf, and other goods of considerable value from his master; however, since the evidence was not sufficient to prove burglary, he was found guilty of felony and received branding on the cheek as his punishment.<sup>61</sup> Lyddall served his master for six years and was rewarded with an apprenticeship and money, but after occupational failures Lyddall returned to his master who offered him his position back and gave him money and clothing. He confessed to robbing his master, but the disregard Lyddall showed toward the paternalism and generosity of his master makes the downgrading of his offence surprising; however, it can be

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<sup>60</sup> Ibid., December 1722, trial of Richard Ennis (t17221205-33).

<sup>61</sup> Ibid., January 1700, trial of William Lyddall (t17000115-20).

assumed that Lyddall was in a state of financial insecurity which could have influenced the verdict.

The remorseful nature of Ezra Batte could explain the lessening of his offence from grand larceny to theft under one shilling. He was tried on May 24, 1699 for the theft, as previously stated, of eight pounds of ballandine silk valued at eight shillings and two ounces of hardass from his master, pleading guilty to the offence.<sup>62</sup> Batte's punishment was whipping instead of the death penalty, which can possibly be attributed to his confession to stealing silk on this occasion as well as in others. The punishments of Margaret Swanson and Mary Harris, the female servants whose punishments for theft were lessened, are similar to the punishments of the male servants who also had their offences lessened. Margaret Swanson, as previously stated, had her offence of grand larceny reduced to theft under one shilling with the punishment of whipping for confessing to stealing a silver spoon from her master, but she was also accused of stealing a silver fork. Although Swanson's case is comparable to the other lessened offences of male servants, Mary Harris' punishment seems harsher for her crime. Mary Harris was tried on July 4, 1722 for theft from a specified place for stealing fourteen pairs of gloves valued at eight shillings and other things from her master's daughter, but her offence was lessened to theft under one shilling, and she was found guilty to the value of 10d and punished with transportation.<sup>63</sup> Mary did state in her defence that her master's daughter gave them to her to pawn, which is a reasonable explanation, but the jury determined otherwise. When compared to the 38 shillings worth of goods stolen by Richard Ennis for his transportation punishment, Harris' punishment seems high.

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<sup>62</sup> Ibid., May 1699, trial of Ezra Batte (t16990524-25).

<sup>63</sup> Ibid., July 1722, trial of Mary Harris (t17220704-19).

Although the types of theft offences vary, the punishments for female servants seem routinely higher than those for male servants. Out of the sample of fifteen cases, four women received the death penalty, one was whipped, one was branded, and one was transported. In comparison, two men received the death penalty, three were whipped, two were branded, and one was transported. But, without the lowered offences for the certain male servants, the total number of males who should have received the death penalty by the letter of the law were six, disregarding Nicholas Lewis since the value of the goods he stole was low. Including the cases of Harris and Swanson in the female death penalty total if their offences had not been reduced, makes the total number of male servants and the total number of female servants who should have received the death penalty by the letter of the law twelve: six males and six females. These cases indicate that the level of criminality for male and female servants was similar during the late seventeenth and early eighteenth centuries, but the punishment of female servants was harsher. Increased punishments for females can be equated to their lower status under a patriarchal system that foremost demanded their obedience to their male superiors, including their masters in the household; female servant theft threatened this system. Walker's work demonstrates similar findings, illustrating that women generally faced disadvantages under a patriarchal system in regards to crime verdicts, resulting in increased punishment.<sup>64</sup> Servant theft in early modern England threatened the Church, State, and community by undermining the authority of masters, and thereby contributed to disorder in society. Examining societal customs and structure illustrates the importance of order in early modern English

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<sup>64</sup> Walker, *Crime, Gender, and Social Order*, 178-180 and "Keeping it in the Family," 70.

society, and the legislations and guidelines enacted during the period demonstrate the efforts of authorities to maintain order as servants or masters displayed disobedience. Navigating various laws and societal expectations proved difficult for numerous servants and masters. The strict rules and behavioural regulations of service exacerbated the difficult living conditions servants endured as well as the tensions that developed between servants and their masters. These tensions triggered criminal activity for both parties in some cases, with abusive behaviour from masters, servant contract stipulations, and an oppressive system being motives for servants to steal from their masters. Female and male servants stole items they frequently came into contact with in their line of work, with females stealing more household items and males stealing more items related to work outside the home. As demonstrated in the analysis of the fifteen court cases tried at the Old Bailey, theft offences were lessened due to the jury devaluing stolen property, with more male servant theft offences being lessened than female ones. The male and female servants demonstrated similar levels of criminality, with six male and six female servants committing grand larceny according to the value of the items they stole. By comparing male and female theft cases, especially those of Charles Clark and Mary Nash, one can observe that juries were often more lenient to male servants than female servants, even if the monetary value of the items stolen was higher for the male offender. Harsher female punishment reflects the societal values of the period, with female servant theft defying the patriarchal framework of early modern English society. Male and female servants stole from their masters during the late seventeenth and early eighteenth centuries as a means to exert control in a strict system of service, stealing items they readily came into contact with in their positions, with female servants

generally receiving harsher punishment for their actions under a patriarchal system.

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