SEXUAL SLANDER AND ITS SOCIAL CONTEXT IN ENGLAND c. 1660-1700, WITH SPECIAL REFERENCE TO CHESHIRE AND SUSSEX

Thesis submitted for the degree of
Doctor of Philosophy,
Michaelmas Term
1999

Dinah Winch
The Queen's College
Oxford University

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Short Abstract

A number of historians have studied the meanings of reputation in early modern English society through the medium of defamation cases in the church courts. More recent work has tended to focus on the gendering of participation in ecclesiastical litigation and the differences in the ways that men and women constructed and maintained their good names. This thesis takes a broader approach, and places defamation cases firmly in their legal and social context. The main focus of this thesis is a sample of defamation cases from the Chester consistory court in the later seventeenth century; this is supplemented by material from the church courts of Sussex and various secular tribunals in both Cheshire and Sussex. A discussion of the law forms an important part of this thesis for it shaped both the patterns of participation in litigation and the content of insults that were alleged.

A central objective of this thesis is to discuss the complexity of the gendering of reputation in this period and to show that reputation was not as rigidly polarised around gender as has previously been thought. It explores the ways in which reputation was constructed for both men and women and relates this to both the sorts of social relationships which tended to produce litigation, and the mechanisms of social control which operated within communities.

It is argued that defamation litigation reveals much more about attitudes to gender relations, reputation and social order than has been realised hitherto, and that reputation was experienced not as an abstract value, but in relation to the social situations of individual women and men.

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Long Abstract

The importance of a good name or reputation was a concept that had great purchase in early modern England. Far from being a solely aristocratic concern reputation was one of the most significant principles on which the transactions of everyday life rested at all social levels. Moreover, it was protected by law and those who believed that their good name had been undermined through insulting language could seek recourse in the ecclesiastical or secular courts. A growing body of work based primarily on the records of the church courts in early modern England has established that the majority of litigants in defamation cases were people of the middling sorts and that these records are a revealing source for the understanding of their social and mental world. This study also focuses on a primary sample of defamation cases brought to the church courts, but it also incorporates an important study of the various sorts of actions for words that could be prosecuted in the secular courts. The secular remedies for defamatory language have been seriously neglected by historians, yet an understanding of the relationship between the two jurisdictions is essential for an understanding of both the patterns and the content of litigation in either branch of the legal system in this period.

Existing historical studies of defamation and reputation have tended to focus on the later sixteenth and early seventeenth centuries while the period after the Restoration has been relatively neglected. This is partly because the church courts were declining in importance in this later period, in contrast to their importance before the civil wars. This thesis contributes to a growing body of work on the social and cultural history of the last decades of the seventeenth century which focuses on the post-Restoration period in its own right, rather than simply as the beginning of the 'long eighteenth-century'.

This thesis demonstrates that the church courts continued to perform important social, moral and personal functions in the later seventeenth century.

The counties of Cheshire and Sussex have been chosen as a focus for this thesis in order to broaden the geographical scope of the study of defamation litigation which has tended to focus on the south and south-east. In particular the evidence from these two counties provides an opportunity for comparison with evidence from London which as been the focus of several important studies of defamation and reputation from the sixteenth to the eighteenth centuries.

Existing studies have established that defamation litigation was an activity undertaken primarily by the middling sorts and that both plaintiffs and defendants were more likely to be women than men. The majority of insults complained of by female litigants were of a sexual nature. This statistical pattern has formed the foundation for the view that reputation was profoundly gendered in this period, reflecting a polarised construction of male and female experience in which chastity was considered to be the most important (if not the sole) component of a woman's reputation. Male reputation has suffered from a lack of detailed study, though a number of assumptions have been made about its construction and meanings. In this thesis the nature and significance of male and female reputation are given equal weight, for neither can be understood in isolation. Men participated in defamation litigation in both Chester and Sussex in greater numbers than in the other courts that have been studied, while the inclusion of samples from the secular courts (where men tended to predominate) has enabled a more rounded view of the gendering of both reputation and participation in the legal process.

The first chapter of this thesis sketches the historiographical, geographical and institutional contexts of this thesis. The conceptual frameworks in which slander has previously been discussed are examined; in particular, the concepts of honour and reputation in historical writing are analysed and it is argued that honour is a problematic and misleading term in relation to defamation litigation in England in this period.

Chapter 2 examines in detail the development of the laws relating to defamatory and abusive words in both the secular and ecclesiastical jurisdictions. It represents the

first attempt to analyse the significance of the legal context of defamation litigation to our understanding of what such litigation can actually reveal to the social historian. It is argued that an inattentiveness to this legal context has led to misleading conclusions being drawn from the evidence. In this chapter the sorts of words and allegations that were cognisable in each jurisdiction are outlined; abusive words which were deemed to allege behaviour that could be prosecuted in these courts were generally considered to be defamatory in these jurisdictions. Hence allegations of sexual misbehaviour such as 'whore' or bastard-bearer' were prosecuted in the church courts, while allegations of theft or murder were the province of the secular jurisdiction. The concentration on the church courts has naturally led to a focus on sexual slander and reputation. It is argued in this chapter that the importance of sexual reputation to women has been overestimated (and underestimated for men) partly as a result of a failure to engage with the legal structures which determined the issues around which reputation could be discussed in court of law. The various forms of actions relating to libel, and breaches of the peace in the secular courts are also outlined in this chapter.

Chapter 3 sets out the social profile of litigants and witnesses involved in defamation cases from Cheshire and Sussex. Patterns relating to the social status, occupation and age of participants in litigation in both regions are outlined as is the geographical distribution of cases in the larger Cheshire sample from the church courts. This chapter also shows that the gender ratio in church courts of Cheshire and Sussex was much more balanced than in other regions, a finding which is particularly significant for the arguments that are developed in the course of the thesis.

Chapter 4 contains the analysis of the insults and allegations that formed the basis of defamation cases fought by women and is followed by a discussion of the slanders alleged by men in Chapter 5. The patterns of insult are outlined and the meanings and significance of words and insults discussed. The preponderance of female plaintiffs in the church courts, complaining primarily of sexual slanders has been attributed to the 'double standard' whereby female sexual immorality is perceived to be more serious than the equivalent male offence. The high proportion of sexual

insults complained of by women are analysed in their legal context and it is argued that to some extent vague allegations of whoredom predominate because they were clearly legally cognisable. It is argued that this does not reflect the notion that women's sexual reputation was so fragile that even a vague aspersion of sexual incontinence was potentially disastrous. Instead, it is shown that a significant number of cases were fought over specific allegations of sexual misbehaviour, often with named men, or with specific allegations of having illegitimate children. The chapter goes on to discuss the significance of the non-sexual slanders complained of by women and the insights into non-sexual reputation that can be found in witness's statements and in the documents of the case that are less strictly governed by the form of the legal action. Articles of exception which enable any aspect of a witness's credit to be scrutinised are particularly valuable in this regard. It is argued that while sexual reputation was important to many women and the loss of reputation could have devastating consequences, it was not the sole component of a woman's credit or her sense of self-worth. Reputation was in fact based on a woman's behaviour in all aspects of her life.

Chapter 5 examines the nature of slanders complained of by men in a similar manner. The orthodoxy that sexual reputation was of negligible importance to men is questioned in the light of the significant numbers of men complaining of sexual slanders in the church courts and occasionally in the secular courts. Men complained of a range of sexual slanders ranging from general insults to specific allegations of sexual incontinence, adultery and the fathering of bastard children. It has become a commonplace that there was no male equivalent to an allegation of whoredom, yet a detailed analysis of slanders alleged by men reveals that in fact the words 'rogue', 'rascal' and 'knave' could have sexual meaning and were used specifically by defamers to target the sexual behaviour of men. Moreover these meanings were clearly understood and considered serious enough by many to warrant litigation. While non-sexual slanders were complained of more frequently by men than women, the analysis in Chaptes 4 and 5 suggests that the importance of the double standard should not be exaggerated and that male and female reputation ought not to be considered discrete and incommensurable.

In Chapter 6 the broader social context of defamation litigation is discussed in detail and litigation is examined from the angle of the personal functions that it

performed for individual litigants. Reputation is constructed in social as well as personal contexts and derives meaning from social interactions. A typology of cases is outlined in this chapter which essentially distinguishes between two sorts of case; one which was the product of a face to face encounter between plaintiff and defendant and the other in which the plaintiff hears of the slur on their character through a third party. These types of cases are loosely related to different sorts of social situation and enable us to look at the patterns of sociability and tension which produced defamation litigation. The motivations behind legal actions are examined and it is argued that concern for reputation was not always the motivating factor behind a decision to litigate. The sample of material from the secular jurisdiction is particularly important in this chapter as it reveals that litigants (and sometimes witnesses) in one jurisdiction were sometimes involved in conflicts in another. This suggests that defamation litigation was often a tool in the development or resolution of interpersonal disputes. The significance of sexual slander in these cases may be that it was the utterance of a sexual insult which enabled the plaintiff to use this particular tool, rather than actual sensitivity to a slur on sexual reputation. Rather than simply reflecting the importance of reputation, defamation litigation places reputation firmly in its social context. Defamation cases were often related more closely to ideas about social responsibility and neighbourliness than primarily the product of a pervasive sensitivity to slights on sexual reputation.

The final chapter examines the ways in which concepts of reputation and morality functioned within the structures of social control in early modern England. Defamation litigation and ideas about reputation are discussed in relation to pervading ideas about social order, community and morality, and in the context of various forms of formal and informal regulation. Reputation was important to the operation of the legal system and to the more informal methods of social regulation that were effected in this society. The importance of gossip as a tool of social regulation is also discussed in this chapter and related to the ways in which personal authority was developed within communities. The chapter goes on to discuss the ways in which ideas about reputation, sexual morality and community values affected the actual sexual behaviour and interaction of women and men. This chapter draws on other sorts of evidence that can contribute to our understanding of attitudes to sexual behaviour, from contemporary conduct literature to

demographic evidence. The chapter ends with a case study which illustrates the contention that the sexual behaviour of individuals was often condemned only in the light of other perceived threats to the social order, though the rhetoric of conventional sexual morality was often the vehicle through which these concerns were expressed.

Overall this thesis shows that defamation litigation was complex and multi-layered and can only be understood in the context of the law and the social systems which produced it. This thesis aims to contribute to our understanding of attitudes to sexual morality and gender relations and the ways in which they were related to concerns about social order.

Acknowledgements

I am extremely grateful to Martin Ingram, my supervisor, for his intellectual generosity and enthusiasm, and for the meticulous care with which he has guided my work.

I am grateful to the British Academy which gave me an award for one year and the fellows of The Queen's College who awarded me several travel grants. I would also like to thank Tessa Shaw and Alan Cox who offered part time employment. My doctoral work would not have been possible without the financial support of my mother and my father. I am grateful for the assistance of the staff of the Bodleian Library, Hastings Museum, the Chester City Record Office, the East and West Sussex Record Offices and especially the staff of The Queen's College Library, and the Cheshire County and Diocesan Record Office.

I would like to thank my family and friends and, more recently, colleagues at the Victoria and Albert Museum. Particular thanks must go to Julian and Valerie Tayler, Alison Cowe, David Turner and Mark Birchall.

Contents

List of Tables
List of Figures
Abbreviations and Conventions

1.	Introduction	1
2.	Slander and the Law	33
3.	Litigants and Witnesses: The Social Framework of Litigation	66
4.	Women and Slander	98
5.	Men and Slander	135
6.	The Background to Litigation	171
7.	Slander and Social Control	205
8.	Conclusion	237

Appendix I: Sample 247
Appendix II: Records 257
Bibliography 260

List of Tables

1. Occupation of male witnesses in the dioceses of Chester and Chichester, 1660-1700 69
2. Occupation of the husbands of female witnesses in the dioceses of Chester and Chichester, 1660-1700 70
3. Ages of witnesses in defamation cases in the dioceses of Chester and Chichester 92
4. Gender of plaintiffs and defendants in Chester consistory court and the courts of the diocese of Chichester, 1660- 1700 95
5. Marital status of women in the church courts of the diocese of Chichester, 1660-1700 96
6. Marital status of women in the Chester consistory court, 1660-1700 96
7. Slanders alleged by female plaintiffs in the church courts of the dioceses of Chester and Chichester, 1660-1700 102
8. Slanders alleged by male plaintiffs in the dioceses of Chester and Chichester, 1660-1700 136
9. Slanders alleged by male plaintiffs in the Chester mayor's courts and The court of Great Sessions 1650-1700 138
10. Gender of plaintiffs in 'face to face' and 'gossip' cases 189
11. Gender of litigants and witnesses in defamation cases in the diocese of Chester 190
12. Gender of litigants and witnesses in defamation cases in the Diocese of Chichester 190
13. Length of residence of Sussex witnesses in their stated parish 221
14. Defamation cases from the courts of the diocese of Chichester, 1661-1700 248
15. Actions for words at the court of Great Sessions at Chester, 1650-1700 249
16. Actions on the case for words at the Chester Mayor's Courts, 1650-1700 250
17. Cases involving abusive words in the Chester Mayor's Courts 251
18. Offences involving words at Cheshire quarter sessions, 1650-59 252
19. Prosecutions for abusive words in the Chester city sessions, 1650-1700 253
20. Sussex quarter sessions, 1652-62 255
21. Sussex quarter sessions, 1665-95 256

List of Figures

1. The incidence of ecclesiastical defamation cases in Cheshire parishes 88
2. Slanders alleged female plaintiffs in the church courts of the diocese of Chester, 1660-1700 101
3. Slanders alleged by male plaintiffs in the church courts of the diocese of Chester, 1660-1700 137

Abbreviations and Conventions

CRO	Cheshire Record Office, Chester
CCRO	Chester City Record Office
ESRO	East Sussex Record Office, Lewes
HM	Hastings Museum
OED	The Oxford English Dictionary
PRO	Public Record Office, Chancery Lane
ser.	series
T.H.S.L.C	*Transactions of the Historical Society of Lancashire and Cheshire*
Trans. Roy. Hist. Soc.	*Transactions of the Royal Historical Society*
VCH Cheshire	*The Victoria History of Cheshire*
VCH Sussex	*The Victoria History of Sussex*
WSRO	West Sussex Record Office, Chichester

1: Introduction

In 1663 the moralist, Richard Allestree, wrote "tis commonly known, that a man's good name is a thing he holds most precious, oftentimes dearer than his life'. In 1678 the legal writer, John Godolphin, stated that 'a man's good name' was 'equilibrious with his life'.[1] These sentiments were echoed in proverbs such as 'a good name is better than riches'.[2] As far as women were concerned, Allestree made it clear that loss of reputation would make a woman 'abhorred and despised'.[3] Though many in early modern England would have thought that these earnest writers were somewhat overstating the case, there can be no doubt that the concept of a good name was one which had great purchase. Moreover, it was protected by law, for those who felt that their good name had been injured by defamatory words could seek recourse in the ecclesiastical or secular courts.[4] A growing body of work based on the records of defamation cases brought to the courts over the course of the seventeenth century has shown that, far from being a solely aristocratic concern, reputation was one of the most important principles on which the transactions of daily life at all social levels rested.[5]

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[1] Richard Allestree, *The Whole Duty of Man* (1663), 258; John Godolphin, *Repertorium Canonicum: or, an Abridgement of the Ecclesiastical Laws of this Realm* (1678), 516. See also John March, *Actions for Slander, and Arbitrements*, (3rd edn., 1674), 3; J.A. Sharpe, *Defamation and Sexual Slander in Early Modern England: The Church Courts at York* Borthwick Papers 58 (York, 1980), 3, who quotes Elizabeth Baxter, a contemporary witness, expressing similar sentiments when she said of the victim of slander that 'they might as well take her life as her good name from her.'

[2] Quoted by Richard Allestree, *The Government of the Tongue* (1675), 42, 43; John Ray, *A Collection of English Proverbs* (Cambridge, 1670), 124; Proverbs 22:1.

[3] Allestree, *Whole Duty of Man* , 227.

[4] Women's rights to litigate were restricted at common law; see ch. 2, 36-8.

[5] It has been argued in the past that reputation was of little concern to those below the level of the nobility; see C.L. Barber, *The Idea of Honor in English Drama* (1957), 105. For the recent view see Laura Gowing, 'Gender and the Language of Insult in Early Modern England', *History Workshop Journal*, 35 (1993); eadem, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 1996); T. Meldrum, 'Defamation at the Church Courts: Women and Community Control in London 1700-1745' (London School of Economics and Political Science M. Sc. thesis, 1990); idem, 'A Woman's Court in London: Defamation at the Bishop of London's Court, 1700-1745', *The London Journal*, 19 (1994), 1-17; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge, 1987). See also Craig Muldrew, 'Interpreting the Market: The Ethics of Credit and Community Relations in Early Modern England', *Social History*, 18 (1993), 163-83 and idem 'The

Those of the middling ranks of society were the most likely to litigate over the protection of reputation, and defamation cases provide an opportunity to examine what they understood by a 'good name'. The ways in which the members of any society construct reputation give us insight into their mental and social world for 'a good name' is generally defined according to shared principles and ideals. Furthermore, using the records of legal prosecutions for defamatory words to examine reputation has opened up intriguing possibilities for our understanding of how the law operated and was used by men and women in early modern England. In common with other studies of slander, this thesis is based primarily on the records of the ecclesiastical courts and I have examined a primary sample of cases from the consistory court at Chester between 1660 and 1700. This material is supplemented by smaller samples from the church courts of Sussex and from a range of secular courts in these two regions.[6]

In this introductory chapter I will outline the various historiographical approaches to the study of defamation cases in early modern England. I will examine some of the conceptual frameworks in which slander cases have been discussed and the terminology that has been employed. In the second part of this chapter I will set out the geographical and institutional setting of my research and briefly discuss aspects of the wider historiography that pertain to this particular study.

Historiography

There have been, broadly speaking, two approaches to the study of defamation litigation, both concentrating on the records of the church courts. The first has been concerned with the place of defamation litigation within the structures of ecclesiastical law and the policing of sexual morality in general. The tarnished reputation of these courts was rehabilitated first by the pioneering work of E.R.C. Brinkworth and Ronald Marchant and subsequently by Ralph Houlbrooke, James Sharpe and Martin Ingram.[7]

Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England', *Historical Journal*, 39 (1996), 915-42; this author has broadened our understanding of the mechanics of reputation using primarily the records of litigation over debt.

[6] See Appendix I.

[7] E.R.C. Brinkworth, 'The Study and Use of Archdeacons' Court Records, Illustrated from the Oxford Records, 1566-1759', *Trans. Roy. Hist. Soc.*, 4th ser., 25 (1943), 93-119; R. A. Marchant, *The Church*

Sharpe in particular brought the records of ecclesiastical defamation cases to the attention of social historians and the questions raised in his pamphlet, *Defamation and Sexual Slander in Early Modern England,* set the agenda for subsequent historical studies. Both Sharpe and Ingram found that the majority of slanders brought to the ecclesiastical courts were of a sexual nature, and that the majority of plaintiffs were women. They both argued that slander therefore needed to be understood in the context of prevailing attitudes towards ecclesiastical control of morality and sexual behaviour. Ingram's work showed that the courts operated within a broad consensus of interests which comprised not only the pastoral efforts of the authorities to reform and discipline, but also the active participation of parishioners.[8] Ordinary men held office at the lower institutional levels of the courts as churchwardens; men and women were apparently keen to litigate in disputes concerning such matters as pew allocation in church, the prosecution of moral offences, breaches of marriage contract and defamation suits. Actions for defamatory words appear to exemplify the mutuality of this relationship; the desire of the courts to maintain standards of Christian fraternal charity within the parish converged with a need for a forum for the settlement of interpersonal disputes arising from the quarrels, tension and rumour that characterise human relationships. Both Sharpe and Ingram recognised that defamation cases shed light on wider social relations and the uses of the law. The fact that defamatory words could be sued in the secular courts as well as the ecclesiastical courts was also recognised but actions in these courts were not examined in any detail.

The second approach, exemplified by the work of Laura Gowing, has been concerned primarily with what defamation litigation can reveal about gender relations,

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Under the Law: Justice, Administration and Discipline in the Diocese of York, 1560-1640 (Cambridge, 1969); Ralph Houlbrooke, *Church Courts and the People During the English Reformation, 1520-1570* (Oxford, 1979); Ingram, *Church Courts*; Sharpe, *Defamation*; John Addy, *Sin and Society in the Seventeenth Century* (London and New York, 1989) based on the diocese of Chester, can be loosely included within this tradition. Cf. Christopher Hill, *Society and Puritanism in Pre-Revolutionary England* (Harmondsworth, 1964), chs 8-10; idem, *The World Turned Upside Down: Radical Ideas During the English Revolution* (Harmondsworth, 1975), 31, 98-9, 158-9, 308, 312-13; Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (1977), 399.

[8] Ingram, *Church Courts*, 29-30.

attitudes to sexual morality and the gendering of reputation.[9] It has been shown that the majority of plaintiffs bringing defamation cases were women suing over words of a sexual nature. It has become axiomatic that sexual reputation was central to the female persona and that a good sexual reputation was essentially equated with chastity for women. It has been suggested that the pattern of litigation and the nature of slanders complained of proves that sexual reputation was of little consequence for men, as men rarely litigated over sexual slander in the church courts.[10] Moreover, Gowing has gone a step further; she has argued that defamation cases reveal that male and female reputation were utterly incommensurable for women's reputations were almost wholly centred on their sexual chastity (which Gowing defines not only in terms of their sexual behaviour, but also modest speech) while men's reputations were dependent on a number of criteria in a range of personal and public contexts.[11] While Gowing argues her case in stronger terms than other historians it is striking that her assumptions that defamation cases were fought over honour, and that honour was profoundly and *rigidly* gendered, have quickly become axiomatic in the historiography of early modern England.[12]

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[9] Gowing, *Domestic Dangers*; Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988); Meldrum, 'Women's Court'; Faramerz Dabhoiwala, 'Police and Prostitution in London, c. 1660-c. 1760' (Oxford Univ. D. Phil thesis, 1996). Elizabeth Foyster's *Manhood in Early Modern England: Honour, Sex and Marriage* (1999) is the only published work on defamation litigation which concentrates on male reputation.

[10] Sharpe, *Defamation*, 28; Ingram, *Church Courts*, 302. Over 50 per cent of plaintiffs in defamation litigation in these studies were female. Meldrum found that in the first half of the eighteenth century 95 per cent of plaintiffs in the London consistory court suing over defamation were female: Meldrum, 'Women's Court', 5-6; Meldrum's findings were supported by Dabhoiwala, 'Police and Prostitution', 80. This pattern was also found in the medieval period: see L. R. Poos, 'Sex, Lies, and the Church Courts of Pre-Reformation England', *Journal of Interdisciplinary History*, 25 (1995), 585-607, esp., 595-9. Foyster, *Manhood*, 77-8, found that women dominated defamation litigation in a similar manner to the works already cited.

[11] This interpretation of chastity is derived not only from Gowing's archival evidence but the prescriptive literature of the period. David Turner, 'Rakes, Libertines and Sexual Honour in Restoration England, 1660-1700' (University of Durham MA thesis, 1994), 2, finds that this definition of chastity was appropriated by some Restoration dramatists. This has become such a truism that some historians have exaggerated both the pattern of insult and its significance. Amussen, 'The Gendering of Popular Culture in Early Modern England', in Tim Harris (ed.), *Popular Culture in England c. 1500-1859* (1996), 52, recently stated that 'when women complained of defamation, the insults objected to were always sexual', an assertion that is inaccurate. Robert Shoemaker, 'Reforming Male Manners: Public Insult and the Decline of Violence in London, 1660-1740', in Tim Hitchcock & Michele Cohen (eds), *English Masculinities, 1660-1800* (London and New York, 1999), 139, 142-3.

[12] Laura Gowing, 'Women, Sex and Honour: The London Church Courts, 1572-1640', (University of London Ph.D. thesis, 1993), 7, 68, 74. Cf. Garthine Walker, 'Expanding the Boundaries of Female

It is clear that while these approaches have been extremely fruitful a more integrated approach is now needed if we are to advance our understanding of defamation litigation and the construction of reputation in early modern society. Defamation cases in the church courts do, indeed, need to be understood in the context of the church's policing of morality; however, the individuals involved in litigation were often pursuing a variety of different personal agendas, of which the protection of reputation was only one. Though historians have been right to highlight that reputation was gendered and that women's disproportionate participation in defamation litigation (in the church courts) was significant, gender is not the only factor that determined the patterns of defamation litigation. In this thesis I will therefore bring to the fore two aspects of defamation litigation. The first of these is the legal context which made litigation possible; this includes both the substantive law and the realities of pleading practice. The second is the social context in which defamation litigation was considered necessary or useful by those who participated in it. The fact that plaintiffs claimed they had been harmed by abusive or slanderous words (as defined by the courts) rather than by deeds, and that these words had damaged their good name, is at the heart of defamation litigation. Analysing both the legal and social contexts of the cases that form the basis of this study will enrich the examination of the significance of the words of slander that forms the core of this thesis and enable us to understand the ways in which both slander and reputation were gendered.

The law

Gowing is one of the few historians to have undertaken a large scale study of defamation litigation (in conjunction with records of marital litigation); most other work includes a sample of defamation material as one of several sources that shed light on such subjects as the study of the family within society (Amussen) or attitudes to prostitution (Dabhoiwala). Elizabeth Foyster has concentrated on the study of male reputation but has used a range of other literary sources and marital litigation as well as

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Honour in Early Modern England', *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996), 235-245, esp. 235.
Hitchcock and Cohen (eds), 'Introduction', *English Masculinities*, 15.

defamation records. These works have all suffered from an inattentiveness to the law as the legal dimension of defamation cases has become subsumed in favour of other agendas.[13] This thesis is the first in which the legal context of the sources has been highlighted. In chapter 2 I will trace the development of the law of slander in England in both the ecclesiastical and temporal courts from the middle ages and the implications of the legal developments for the possibilities of litigation in the later seventeenth century.

The examination of the law of defamation and the variety of legal practice is a prerequisite for any study that uses defamation litigation since the legal definition of defamation prescribes the limits of the legal records as a historical source. Defamatory words could be prosecuted in both the church and secular courts and they defined harm to reputation in terms of offences that fell within their respective jurisdictions. The ecclesiastical courts had cognizance of matters of religion and morality and exercised discipline over parishioners, ostensibly for their 'soul's health'; hence they could prosecute miscreants for sexual offences such as adultery and also provided a forum for matrimonial litigation. Abusive words which were deemed to allege behaviour that could lead to prosecution in these courts, such as 'whore' or 'bastard-bearer', therefore fell within their jurisdiction. Non-sexual slanders which alleged secular crimes or misdemeanours, such as theft or murder, were, theoretically, the preserve of the secular courts.[14]

Hence, though the law was designed to protect reputation, it necessarily defined 'a good name' in narrow terms. These legal strictures mean that defamation records give only a partial picture of the issues around which reputation was constructed, for accusations which did not fit either legal rubric do not usually feature in the records of

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[13] This criticism is also pertinent to work on slander in colonial North America: see P. Moogk, '"Thieving Buggers" and "Stupid Sluts": Insults and Popular Culture in New France', *William and Mary Quarterly*, 3rd ser., 36 (1979); Mary Beth Norton, 'Gender and Defamation in Seventeenth Century Maryland', *William and Mary Quarterly*, 3rd ser., 44 (1987), 3-39; Roger Thompson, '"Holy Watchfulness" and Communal Conformism: The Functions of Defamation in Early New England', *New England Quarterly*, 56 (1983), 504-22. The exception is Clara Ann Bowler, 'Carted Whores and White Shrouded Apologies; Slander in the County Courts of Seventeenth Century Virginia', *The Virginia Magazine of History and Biography*, 85 (1977), 411-26.

[14] Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts* (1685), 17; March, *Slander*, 8.

defamation cases. Most writers on defamation records have not fully acknowledged this point; they have claimed that defamation cases can shed light on attitudes to morality and the values held by litigants and the witnesses who testified on their behalf. In reality the records of defamation cases can only reveal as much about the values of litigants as the law would allow; the significance of what is revealed must therefore be understood in the context of what is not. I will argue that, as a result of failing to engage with the legal context of defamation, historians have privileged sexual reputation to a misleading degree, especially with regard to women's reputation. Put simply, this is because the majority of litigants were women, and sexual insults fitted neatly into the jurisdiction of the church courts. In this thesis the construction of both male and female reputation will be given equal weight. This is possible for two reasons. First, in my ecclesiastical samples from Cheshire and Sussex the proportion of male plaintiffs was almost equal to that of women plaintiffs. Second, I have also included a sample of cases from the secular courts where men tended to predominate. The significance of this second group of cases will become clear in the course of this study.

The social context of defamation litigation

Words of insult and slander are social as well as linguistic constructions. Their power to harm derives from the social significance of the words themselves, the credibility of the person who utters them and that of the people who witness them. Their power is also bolstered by intimate knowledge that the defamer may have about the victim and by the fact that an insult or accusation, however specious, may be ascribed meaning or truth by those who witness it or hear of it. These aspects of defamation litigation are often obscured, for a defamation case has (by definition) been taken out of its social context and placed in a legal one. Many of the factors that underpinned the case are in fact subsumed in the principles that governed the form of the action in court; the words and their actionability at law were privileged over the tangible effects of slander in some cases for if the words were actionable they were assumed to be harmful.

There are a number of ways in which we can attempt to reconstruct the social significance of defamatory words and the actions fought over them. In chapter 3 the social profile of litigants and witnesses will be outlined. We can establish the gender, age, occupation, economic and marital status of most of the participants in ecclesiastical cases and many of those who were involved in litigation in the secular courts. The geographical distribution of cases across the two counties can also be established as most participants recorded where they lived.

In chapters 4 and 5 I will outline the slanderous words that these men and women complained of in the courts of Cheshire and Sussex. Despite the fact that the range of words of insult that formed the basis of cases was necessarily limited by the legal parameters of the jurisdiction, defamation cases do shed light on the prevailing modes of insult within this social world. There were a number of different sorts of abuse. A person's social standing could be brought into question; for example the implication that a woman was a beggar, or an insult which impugned a man's skill in his craft - for in all such cases in this study, the victim was a man. Some insults, such as allegations of theft or adultery, could bring a person into legal question; in other words they could imply that the victim had broken the spiritual or temporal laws of the land. Finally, and most commonly, words of insult or abuse could cause a man or woman simply to feel that their personal character or integrity had been impugned.

In chapter 6 I will argue that concern for good name was not the only motivating factor in initiating legal proceedings in either jurisdiction, but may have been the ostensible one that enabled a conflict to be acted out in a court of law. Martin Ingram raised the possibility that defamation cases were symptomatic not only of the importance of reputation in early modern society but also of the nature of interpersonal relations in small communities. He argued that the tension and conflict that sometimes spilled into the courts was 'part of the very warp and weft of contemporary society'.[15] Other historians have touched on this line of argument but have not pursued it with any conviction, largely due to their concentration on the importance of sexual reputation to

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[15] Ingram, *Church Courts*, 313-6.

early modern women. Tim Meldrum, for example, states that defamation cases need to be understood in the context of the household and neighbourhood, but focuses on the marital status of female litigants and the function of sexual slander in the construction of their reputation. Meldrum argues that the church courts became a forum for the playing out of women's concerns about reputation but the wider social issues raised by this argument receive only secondary attention.[16] Susan Amussen failed to see the possibilities in the records of defamation litigation for her study of the family and social order, using this material only as evidence of the centrality of sexual behaviour to the construction of female reputation, contextualised in patriarchal terms.[17] Laura Gowing's position is in many ways the most ambiguous for she actually argues that defamation cases were used as weapons in interpersonal disputes rather than tools for controlling female sexual behaviour. She suggests that property conflict and tensions derived from competition for resources often lay at the bottom of defamation suits; indeed, she goes so far as to say that defamation cases were rarely 'about' sexual morality at all, but that the real meanings of defamation cases reflect the enmities, alliances and rivalries common to all communities. Yet Gowing did not pursue this insight in any detail but proceeded to concentrate on the rhetoric of whoredom and the importance of sexual reputation to women.[18] This approach has led to a narrow definition of reputation; in focusing exclusively on the words of defamation we not only underestimate what defamation cases tell us about life in early modern communities but fail to understand how credit may have affected every aspect of life and may have been contingent on a variety of different contexts and criteria.

In chapter 6 I will examine the complex web of motivations that inspired women and men to take their grievances to court. Some of these are made explicit in the documents of the case; some cases were clearly the result of words spoken in the heat of the moment during an argument over an unpaid debt, for example. Defamation

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[16] Meldrum, 'Women's Court', 2.

[17] Amussen, *Ordered Society*, 99, 101-4, 118-19, 122, 144-5, 150-1, 177, 187.

[18] Gowing, 'Language, Power and the Law: Women's Slander Litigation in Early Modern England', in Jenny Kermode and Garthine Walker (eds), *Women, Crime and the Courts in Early Modern England* (1994), 28-30.

cases could also be related to a dispute recorded in another legal jurisdiction. I have been able to trace the participants in some church court cases in the records of secular courts and this shows that it is important to see ecclesiastical defamation cases in the context of judicial procedures as a whole, rather than in isolation. We know that early modern men and women were remarkably conversant with the laws and procedures of a range of ecclesiastical and secular tribunals and it should come as no surprise that some individuals crop up in the records of different courts. Not only does this sometimes shed light on the causes of individual cases but it gives us a much richer picture of the nature of interpersonal relations and the use of the law within the communities that are being studied.

In Chapter 7 I will return to the relationship between defamation cases, the construction of reputation and the control of sexual behaviour in early modern England. The study of opprobrious words is recognised to be one of the most fruitful (and colourful) ways of ascertaining how societies construct the moral and social order within which the reputations of individuals are evaluated.[19] Words of abuse and insult reveal points of moral and social sensitivity and vulnerability, often focusing on taboo and stigmatised subjects such as sexuality. These sensitivities operated on personal levels within the context of social constructs of appropriate behaviour. Though insult and slander are ostensibly socially destructive they can also serve a cohesive and regulatory purpose as a means by which women and men define socially acceptable behaviour through the condemnation of behaviour which transgresses defined (albeit often mutable) boundaries. I will examine the importance of gossip in particular and the ways in which abstract moralities and fear of gossip moulded actual behaviour. Furthermore, using the lens of prosecutions for defamatory words to look at these issues can shed light on the ways in which the law fitted into mechanisms for social control. Defamation cases themselves performed another function within communities in

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[19] Gowing, 'Women, Sex and Honour', 68; Edmund Leach, 'Anthropological Aspects of Language: Animal Categories and Verbal Abuse', in Pierre Maranda (ed.), *Mythology: Selected Readings* (Harmondsworth, 1972), 39-68; Peter Burke, 'Insult and Blasphemy in Early Modern Italy', in idem, *The Historical Anthropology of Early Modern Italy: Essays in Perception and Communication* (Cambridge, 1987), 95-101; David Parkin, 'The Creativity of Abuse', *Man*, new ser., 15 (1980), 45-64.

defining concepts of reputation; those who overstepped the slippery boundary that distinguished abuse from slander were themselves considered antisocial and could be punished by their victim through prosecution in a slander suit.

The study of abuse is therefore not just interesting in semantic terms but can reveal much about social organisation and attitudes. The mutuality of the relationship between courts and community suggested by Ingram was more complex and less conducive to social harmony than theory might imply. In common with other forms of litigation, defamation suits could be used as a form of aggression and as a focus for a dispute, rather than as a means of resolving it. Some were clearly malicious, others were a symptom of wider social tensions that were not directly concerned with slander and reputation. The assumption that plaintiffs were primarily concerned with reputation has tended to obscure this very important aspect of defamation litigation.

Honour or reputation?

Many historians have assumed that defamation cases shed light on early modern society's construction of 'honour' without clearly explaining how attitudes to honour are actually revealed in the records of litigation. There is also a growing literature on the importance of honour to the middling ranks of early modern society.[20] This tendency is not universal; while 'honour' is the conceptual framework for Gowing's analysis of defamation litigation, and is prominent in the work of Sharpe, Dabhoiwala, Foyster and Fletcher, it barely figures in the work of Ingram, Meldrum or Amussen, who prefer to use the term reputation.[21] However, there is an almost universal reluctance to define terminology and this needs to be addressed in some detail.

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[20] See the papers collected in *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996).

[21] Honour is also central to Anthony Fletcher's study of gender in early modern England in *Gender, Sex and Subordination in England 1500-1800* (1996), and Foyster's *Manhood in Early Modern England*. See also Lyndal Roper's work on early modern Germany, in *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989); eadem, 'Will and Honor: Sex, Words and Power in Augsburg Criminal Trials', *Radical History Review* 43 (1989), 45–7; eadem, *Oedipus and the Devil: Witchcraft, Sexuality and Religion in Early Modern Europe* (London and New York, 1994). Ingram has made a valuable contribution to this debate in 'Law, Litigants and the Construction of 'Honour': Slander Suits in Early Modern England', unpublished paper.

The words 'honour' and 'reputation' are the terms most commonly used by historians, often in tandem, apparently implying divergent but usually unspecified meanings. They are also used interchangeably, implying synonymity. As will become clear the intangible nature of these concepts means that a degree of interchangeability can be justified simply on the grounds of style. However, this practice has obscured the specific connotations that are bound up with the concept of 'honour' and the particular resonances of words like 'credit' and 'name' that were in fact more commonly used by contemporaries in early modern England.[22] The most problematic of these terms is 'honour', which is a nebulous and intangible concept with a large range of modern and historical meanings. Its efficacy as a shorthand for a range of complex and related concepts that were current in the period is severely limited.

In this thesis I have rarely used the word honour reflecting the fact that it is only used rarely in legal treatises, reports and the records of defamation litigation. In other contemporary works, such as diaries and prescriptive literature, it is used infrequently. Witnesses in defamation cases spoke of 'credit', 'name', 'fame', 'esteem' and 'repute', while a very similar range of terminology was employed by the writers of conduct literature who produced images of the ideal woman and man for their readers to aspire to. William Gouge, for example, uses the word 'honour' frequently in terms of honouring god, or the Christian duty to honour one's wife, but not in terms of personal honour; instead, he speaks of the duty of husbands to maintain their wives' 'credit and reputation' against unjust slanders.[23] Honour is an inappropriate and often misleading concept in the context of defamation litigation.

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[22] It is striking that honour is rarely defined by historians suggesting that it is a term that we all understand. e. g. Richard Grassby, *The Business Community of Seventeenth-Century England* (Cambridge, 1995), 118. Foyster defines honour, though her justification for using this word is not entirely convincing, especially as she uses defamation records in which, as she acknowledges, the term is rarely used, see Foyster 'The Concept of Male Honour in Seventeenth Century England' (Durham Univ. Ph.D thesis, 1996), 7; Faramerz Dabhoiwala, 'The Construction of Honour, Reputation and Status in Late Seventeenth- and Early Eighteenth-Century England', *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996), 201-213, here 203-4. Even more problematic is the failure to define 'honour' and 'reputation' in relation to each other, idem, 'Prostitution and Police', 88.

[23] William Gouge, *Of Domesticall Duties* (1627), 233. See below on 'vertical honour'. Cf. *The Gentlewoman's Companion* (1675), 97, in which the author urges gentlewomen to 'have a special regard to your honour, which is of an higher esteem than to be undervalued'. This was first published under the name of Hannah Woolley in 1673; it has since been shown to be a compilation of a number of works, including some by Woolley. See Elaine Hobby, *Virtue of Necessity. English Women's Writing 1649-88*

The main problem with the concept of honour (as opposed to reputation) in the historiography of early modern England is that it has tended to be discussed with reference to anthropological theory that relates to other cultures, especially those surrounding the Mediterranean. This interdisciplinary approach has been fruitful in some regard but could often have benefited from a more careful understanding of the anthropological works concerned and their applicability to early modern England. For example, the anthropologists most frequently cited in this context have worked in a range of societies that are literally and metaphorically remote from early modern England.[24] It has been argued that these so-called 'honour and shame societies' share certain moral principles and normative ideals that are related to particular forms of social, economic and, in particular, sexual interaction.[25] However, some historians of early modern England have employed this conceptual framework somewhat uncritically and ahistorically. In particular, they have largely ignored developments within the field of anthropology that have led to a re-evaluation of the classic 'honour and shame' model.[26] Some of these discussions are pertinent to the early modern context. First, most early anthropological studies were conducted in small self-contained rural

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(1988), 166-74. Ingram, *Church Courts*, 165, has described 'credit' and 'honesty' as 'lower class equivalents of gentry notions of honour'; Hitchcock and Cohen (eds), *English Masculinities*, 13-15.

[24] The classic works on the Mediterranean are, J. G. Peristiany, (ed.), *Honour and Shame: The Values of Mediterranean Society* (London, 1965); F. G. Bailey, *Gifts and Poison: the Politics of Reputation*, (Oxford, 1971); J. K. Campbell, *Honour, Family and Patronage* (Oxford, 1964); Juliet Du Boulay, *Portrait of a Greek Mountain Village* (Oxford, 1974); Julian Pitt-Rivers, *The Fate of Shechem, or the Politics of Sex* (Cambridge 1977).

[25] For a discussion of the principal characteristics of honour as conceived in this way see the entry in David L. Sills,*The International Encyclopedia of the Social Sciences,* (New York, 1968).

[26] For example, see Lawrence Stone, *The Road to Divorce: England 1530-1987* (Oxford, 1990), 237; Foyster, *Manhood*, 33. n.34. Amy Louise Erickson, *Women and Property in Early Modern England* (1993), 95. Gowing clearly draws on the Mediterranean construction of honour without directly discussing the literature in any detail, while Sharpe, *Defamation,* 18-19, points out differences between the so-called Mediterranean concept of honour and its English counterpart but does not question the usefulness of such a comparison. The works cited in note 24 have been critically examined by a number of anthropologists, notably Michael Herzfeld, 'Honour and Shame: A Comparative Analysis of Moral Systems', *Man,* new ser., 15 (1980); David Gilmore (ed.), H*onour and Shame and the Unity of the Mediterranean* (Washington D.C., 1987); Frank Henderson Stewart, *Honor* (Chicago and London, 1994); Peristiany and Pitt-Rivers have updated their earlier work in J. G. Peristiany and Julian Pitt–Rivers (eds), *Honour and Grace in Anthropology* (Cambridge, 1992). Gilmore, in particular, discusses whether the Mediterranean can be seen as a cultural entity and indeed whether a Mediterranean view of honour is a useful concept. These approaches privilege the differences between Mediterranean cultures over their similarities.

communities, often chosen specifically for their isolation from wider society.[27] While their 'traditional' agricultural complexion might bear some comparison with early modern society the isolation and homogeneity of these communities and the low levels of social and geographical mobility do not. Implicit in the work of Du Boulay and Campbell, in particular, is the fact that the honour systems of these communities are specific to the social, economic and cultural conditions that pertain to them, despite overarching similarities.[28] Secondly there is the semantic problem of terminology and the relationship between language and the operation of moral systems. Campbell and Du Boulay stressed the problems of literal and conceptual translation of Greek words and ideals that had no accurate equivalents in English. More recently Michael Herzfeld has argued that the English word 'honour' is so loose and loaded a term that it is virtually redundant as a tool for cross-cultural analysis. Such difficulties are only magnified by extrapolating to the early modern English world.[29] With these caveats in mind I will discuss the broad issues relating to the use of terms such as 'honour' and 'reputation' in the early modern period and suggest how they can be used more appropriately in the latter context in subsequent chapters.

What is the difference between honour and reputation? The meanings are identical up to a point; dictionary definitions from the seventeenth century to the twentieth concur that both concern good name, esteem, credit, honesty and trustworthiness.[30] Honour is perhaps best understood as the interaction between an individual's sense of self–worth (or conscience), based on a personal construction of morality, and the value placed on certain sorts of behaviour by the wider community. Reputation, on the other hand, is more narrowly defined simply as the worth of an individual in the eyes of others. In the familiar words of Julian Pitt–Rivers, 'Honour, ...

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[27] Du Boulay, *Portrait of a Greek Mountain Village*, 4-7.

[28] Campbell, *Honour*, 269, 273.

[29] Herzfeld, 'Honour and Shame'; Campbell, *Honour*, 268; Du Boulay, *Portrait of a Greek Mountain Village*, 104, 107; Stanley Brandes, 'Reflections on Honour and Shame' in Gilmore (ed.), *Honour and Shame*, 123-5.

[30] E[dward] P[hilips], *The New World of English Words: or, A General Dictionary* (1658); N. H., *The Ladies Dictionary* (1694); John Kersey, *A New English Dictionary* (1702); Nathaniel Bailey, *An Universal Etymological Dictionary* (1721). For a useful discussion of the distinction between honour and reputation see Cynthia Herrup, '"To Pluck Bright Honour from the Pale-faced Moon": Gender and Honour in the Castlehaven Story', *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996), 137-59, esp. 138-40.

provides a nexus between the ideals of a society and their reproduction in the individual through his aspiration to personify them ... the sentiment of honour inspires conduct which is honourable, the conduct receives recognition and establishes reputation'.[31] Reputation is therefore only a facet of honour, albeit an intrinsic one. In any event, these abstract definitions only acquire significance and meaning when they are ascribed to the behaviour of individuals in their social context. How that behaviour is judged, in terms of honour and reputation, depends largely on two factors, the gender and social status of the individuals concerned. As Faramerz Dabhoiwala has argued these two factors were not discrete and must be considered together when looking at honour in English society as a whole.[32]

The importance of honour to the gentry and aristocracy has generally been taken for granted by historians.[33] Anthony Fletcher has gone so far as to claim that the 'language of honour' was a defining feature of the gentry as a social class and that 'honour took on further and deeper connotations of behaviour and style of life among the gentry' than among those of lower social rank.[34] Though the importance of honour to the gentry and aristocracy does not really concern us here, it is important to understand how assumptions about honour within these social strata have impinged on the study of honour and reputation in wider English society in this period. There was certainly an honour code within the upper levels of society but honour also attached to members of these classes in their relations with the lower levels of society. These two sorts of honour have been usefully categorised by Stewart as vertical and horizontal

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[31] Pitt-Rivers, *Fate of Shechem*, 2. Cf. Stewart, *Honor*, esp., 13, 21-2, who argues that honour should be seen as a *right* to respect, rather than a sentiment. Stewart's analysis is extremely interesting, though ultimately unconvincing, but is only of tangential relevance to this study which is concerned primarily with reputation rather than honour.

[32] Dabhoiwala, 'Prostitution and Police', 81.

[33] Stone, *Road to Divorce*, 234-41; Felicity Heal and Clive Holmes, *The Gentry in England and Wales: 1500-1700* (1994), 4-9, 17-18; Mervyn James, *English Politics and the Concept of Honour, 1485-1642*, *Past and Present* Supplement, no. 3 (1978); Donna Andrew, 'The Code of Honour and its Critics: The Opposition to Duelling in England, 1700-1850', *Social History*, 5 (1980), 409-34. Turner, 'Rakes, Libertines and Sexual Honour '; Herrup, '"To Pluck Bright Honour"'; Heal, 'Reputation and Honour'; Nigel Llewellyn, 'Honour in Life, Death and in the Memory: Funeral Monuments in Early Modern England', *Trans. Roy. Hist. Soc.* , 6 (1996), 179-200.

[34] Anthony Fletcher, 'Honour, Reputation and Local Office holding in Elizabethan and Stuart England', in A. Fletcher and J. Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), 92-115, here, 94; idem, *Gender, Sex and Subordination*, 105, ch. 7; Heal and Holmes, *Gentry*, 17 and *passim*; Barber, *Idea of Honour*, 30, 105.

honour.[35] A crucial element of honour for the gentry was the reputation and prestige that went with public office holding, which at the higher levels, was the preserve of their social rank.[36] Such vertical honour was explicit in titles such as 'the honourable' and forms of address such as 'your honour'. The protection of the honour and status of the aristocracy was enshrined in law, for magnates were protected from abuse by the statute known as *scandalum magnatum;* this action covered words which were not actionable if spoken of an ordinary person.[37] The gentry and aristocracy also derived honour from lineage, wealth and land holding; their public status carried with it responsibilities of patronage and hospitality not only among their social peers, but those of lower social rank.[38] Because of these tangible manifestations of honour, the concept was once thought to have had little to do with the self–perception and ideals of people of middling and lower social ranks. Furthermore, the word 'honour' tended to be used by contemporaries with reference to the gentry. However, it is a truism of both historical and anthropological work on the subject that honour is conferred and, indeed, best understood by those of approximately equal social rank who share certain definable moral values.[39] In other words, horizontal honour can operate within many social levels. It has been argued, in particular by Laura Gowing, that a 'system' of honour operated at lower social levels.[40] Such a system comprised similar abstract values as that of the gentry but definitions and manifestations of honourable behaviour and good reputation were not necessarily replicated across social barriers.

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[35] Stewart, *Honor,* 54-63.

[36] Richard Cust, 'Honour, Rhetoric and Political Culture: The Earl of Huntingdon and his Enemies', in Susan Dwyer Amussen and Mark D. Kishlansky (eds), *Political Culture and Cultural Politics in early Modern England. Essays Presented to David Underdown* (Manchester and New York, 1995), 84-111; idem, 'Honour and Politics in Early Stuart England: the Case of Beaumont v. Hastings', *Past and Present,* no. 149 (1995), 57-94; James, *English Politics.*

[37] 3 Edw. I, c. 34 (Westminster I, 1275) was the initial statute, followed by 2 Rich. II, c.5 (1378), 12 Rich. II, c. 11 (1388), 2 Philip and Mary c. 3 (1554), 1 Eliz., c. 6 (1559). See John C. Lassiter, 'Defamation of Peers: The Rise and Decline of the Action for Scandalum Magnatum, 1497-1773', *American Journal of Legal History* , 22 (1978), 216-36, and ch. 2 below.

[38] Felicity Heal, *Hospitality in Early Modern England* (Oxford, 1990).

[39] Fletcher, 'Honour, Reputation and Local Officeholding', 93, 110; Campbell, *Honour*, 267.

[40] Gowing, 'Women, Sex and Honour', 7, 68, 74; eadem, 'Language, Power and the Law', 37-8; Anna Clark, 'Whores and Gossips: Sexual Reputation in London 1770–1825' in ' Arina Angerman *et al.* (eds), *Current Issues in Women's History* (1989), 232; Sharpe, *Defamation,* esp. 1-3.

The use of the word 'honour' as a shorthand term implies a homogeneity which did not exist and obscures the distinction between horizontal and vertical honour; the word is loaded with connotations derived from our assumptions about honour among the gentry and aristocracy and within so-called Mediterranean societies. Some of these connotations are particularly misleading and unhelpful in the context of defamation litigation for those who participated in it tended to be drawn from the ranks of the middling sorts.

The first concerns a particularly problematic aspect of honour, namely the relationship between the individual and the collective. According to the traditional Mediterranean model men and women have different responsibilities for the protection of their own honour and that of the collective – the family, or kinship group, the village or town and ultimately, the nation. A feature of these communities is the centrality and primacy of the family above all else and the construction of honour is derived from the individual's responsibility to the family. The sexual purity and therefore chastity of women is necessary to preserve the purity of lineage on which the patrilineal system depends and the survival of the family. It is the responsibility of men to protect that lineage by the protection and confinement of women within that family. According to Pitt–Rivers, male honour 'derives in large measure from the way they discharge their responsibility'.[41] In early modern England this aspect of honour was reflected in the aristocratic practice of duelling not only over matters of individual male honour, but slights on the honour of a man's wife or ancestry.[42] According to the Mediterranean model, men also participate in the collective honour of public institutions from which women are excluded. The relationship between the individual and the collective honour generally, and the honour of the family specifically, is a defining characteristic of many systems of honour and was replicated to a certain extent among the English aristocracy. However, Gowing and Fletcher argue that women of the ranks below the aristocracy

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[41] Pitt–Rivers, *Fate of Shechem*, esp. 78. Pitt-Rivers concentrates to a misleading degree on the importance of female chastity, and contingent male responsibilities, at the heart of the relationship between individual and collective honour. This obscures the importance of issues such as gift-giving, hospitality and charitable responsibility to family honour.

[42] Andrew, 'Code of Honour'; Stone, *Road to Divorce*, 234-41. For duelling in Europe see Ute Frevert, *Men of Honour: a Social History of the Duel* (1995).

were deemed to be responsible not only for their own sexual honour but the honour of their family and household.[43] This notion rests on the prescriptions of the writers of conduct literature who focused their attention on the household as a microcosm of society. I will argue that the responsibility for family honour was less of a feature of early modern England, particularly among the lower ranks, than conduct literature suggests and that the relationship between prescription and reality was less tangible than Gowing or Fletcher imply.[44] Without the familial framework on which to peg definitions of virtue or morality early modern constructions of male and female honour are bound to be different from those of Mediterranean societies.

A second problem is that, according to the Mediterranean model, the honour of women is equated with sexual chastity, or even virginity. Women's honour is inherently fragile because it is so narrowly focused on one aspect of her experience, and therefore the loss of honour is often regarded as irretrievable. The fragility of female honour is compounded by the nature of male honour and the associated culture of *machismo* in which men compete for the sexual favours of women and the ultimate conquest, and therefore the prime manifestation of masculinity is the seduction of another man's wife, daughter or sister.[45] Hence the honour of one man is the dishonour of another. But, the honour of men is based on more than sexual prowess and is therefore potentially less vulnerable. It derives from the family name and lineage, can be conferred by civic office holding, or achieved through the ownership of property, the exercise of patronage, and acts of physical might or daring. To achieve honour a man may need not only strength of character but also physical strength, in order to assert his status against those that might attempt to threaten it.[46] These aspects of honour are all to be found in early modern England but in a more diluted form than has sometimes been thought. Keith Thomas employed a narrowly specific definition of female honour

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[43] Gowing, *Domestic Dangers*; eadem, 'Gender and the Language of Insult', 69-70; Fletcher, *Gender, Sex and Subordination*, 120; Olwen Hufton, *The Prospect Before Her: A History of Women in Western Europe, Volume One 1500-1800* (1995), 37.

[44] This point is also made by Ingram, *Church Courts*, 310.

[45] This aspect of male honour is a particularly popular theme of Restoration drama, see Turner, 'Rakes, Libertines and Sexual Honour', 7-21;

[46] Sills, *International Encyclopedia of the Social Sciences*, 504–5.

when he argued that, under the sexual 'double standard', 'a woman who has lost her honour has lost all'.[47] It has been argued subsequently that the sexual honour of women was central to their public persona and reputation and the preponderance of women bringing defamation suits does appear to show that women were more concerned than men about sexual reputation.[48] Correspondingly it has been argued that a man's reputation was less likely to be harmed by his own sexual misdeeds than by the loss of control over his wife's chastity. Hence the cuckold, a ubiquitous figure in popular literature has been seen to be the closest male equivalent to the whore. However, I shall argue that the reality was rather more complex than this.

First, I shall present evidence that shows that men and women litigated over defamatory language in more equal numbers, at least in some parts of the country, than has usually been supposed. I will show that sexual reputation was considered important to both genders and that *both* men and women negotiated their reputations, to a certain extent, through legal proceedings. Secondly, my research reveals that non-sexual reputation (as revealed by causes over non-sexual slanders) was more important to women than has been thought.

The third major problem with the so-called Mediterranean model of honour concerns litigation over the matter of honour itself. According to this construction of honour litigation over such matters as slander or assault can increase the dishonour of the plaintiff. In the case of men it negates the importance of individual responsibility for the avenging of dishonour, while if a woman goes to court she implies that the men in her family are unable to carry out their responsibilities and deal with the dispute on her behalf. The public nature of litigation and the act of recounting shameful words or deeds only exacerbates her predicament. This appears to correspond with prescriptions about women's duty to maintain standards of modest speech. Some historians' reluctance to examine critically how such prescription differed from reality may be, in

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[47] Keith Thomas, 'The Double Standard', *Journal of the History of Ideas*, 20 (1959), 195; more recently, see Foyster, *Manhood*, 147. For an interesting anthropological perspective on the 'double standard ' see Pitt-Rivers, *Fate of Shechem*, 74-5; Sharpe, *Defamation*, 18-19, argues that a major difference between Mediterranean and early modern English society was that English women had more social freedom.

[48] Ingram, *Church Courts*, 302; Amussen, *Ordered Society*, 102-4; Fletcher, *Gender, Sex and Subordination*, 102-3; Foyster, 'Concept of Male Honour', 189.

part, derived from an acceptance of the Mediterranean orthodoxies which have informed many works on honour in early modern England. Gowing, for example, has argued that 'perfectly chaste and honourable women, should not, *technically*, have discussed their sexual reputation in court'.[49] The willingness of ordinary people to sue in the courts over defamatory remarks suggests, on the contrary, that the law courts were a recognised forum for the settlement of interpersonal disputes, and that social relations and personal values were to a great extent mediated through those courts. Stone has argued that the late seventeenth century saw a fundamental shift in the concept of honour that resulted in increased litigation rather than interpersonal violence to settle disputes over questions of honour. This shift may have occurred at the higher levels of society but within the lower social ranks it was a well established phenomenon.[50] This is perhaps the clearest sign that the early modern English variant of honour was very different to the classic Mediterranean model and should not be measured against it.[51]

The concept of honour is clearly problematic if it is not used with precision. Its use is limited in the context of defamation litigation because these records do not usually tell us very much about the issues of self-perception that are at the heart of honour, as opposed to reputation. We rarely gain an insight into the feelings of litigants and the emotional effects of slander. As we have seen, honour is an intangible amalgam of public name and prestige and also personal conscience; hence, paradoxically, one can lose honour without forfeiting a good reputation. For example, a woman involved in an illicit sexual relationship might feel herself to be dishonoured, but, if the liaison is kept secret, there will be no adverse effect on her reputation or indeed, the public perception of her honour.[52] Alternatively, she might not be

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[49] Gowing, 'Language, Power and the Law', 40. My italics. Foyster, *Manhood*, 62.

[50] Stone, *Road To Divorce*, 234–41, acknowledges this point, but fails to see its significance. Sir Francis Pemberton, writing in 1677, identified the shift from violence to litigation among peers who increasingly used actions under the statute of *scandalum magnatum* rather than carve 'out his own remedy by his sword', to reply to slights on reputation, quoted by Lassiter, 'Defamation of Peers', 218. Lassiter, ibid., 219-20, argues that the increase in actions under *scandalum magnatum* was partly the result of attempts by the aristocracy to assert their status in the face of a perceived narrowing of the gap between themselves and the gentry and enforce respect from their social inferiors.

[51] Ingram, *Church Courts*, 313, 318.

[52] Du Boulay, *Portrait*, 109.

particularly concerned about her honour, only her reputation. Such situations were the stuff of Restoration comedy which so frequently satirised the contradictions of honour and reputation among the aristocracy. In *The Country Wife* Horner comments 'Women of honour ... are only chary of their reputations, not their persons; and 'tis scandal they would avoid, not men'.[53] However, such situations in the real world are necessarily obscure in the historical record for it is only when they become public, through a defamation suit, for example, that they are visible to the eye of the historian. I would argue that defamation cases may give insights into honour, but they were fought to protect *reputation* and indeed they tell us a great deal about reputation as it was mediated through the form of legal actions. In addition to this it will be argued that many other social factors come in to play in defamation litigation. This study will therefore investigate what we can learn about early modern society through defamation litigation, and in particular what actions over sexual slander can tell us about the construction of gender roles within that society.

Period of study

This study covers the years 1660-1700, a period which has received scant attention from historians who have used defamation records. The study of defamation litigation has been concentrated in the late sixteenth and early seventeenth centuries; both Ingram and Gowing, for example, studied this period.[54] Amussen sampled records from throughout the seventeenth century but her analysis did not examine changes across the period in any great detail; Meldrum examined litigation in the London church courts in the early eighteenth century.[55] Though Sharpe included a sample of defamation

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[53] William Wycherley, *The Country Wife,* ed. David Cook and John Swannell (1975), I.i, 17.

[54] Other writers have also tended to focus on the earlier period; Peter Rushton, 'Women, Witchcraft and Slander in Early Modern England: Cases from the Durham Church Courts, 1560-1615', *Northern History*, 18 (1982), 116-32; Poos, 'Sex, Lies and the Church Courts'. Related works on the church courts have also been focused on this period, e.g. G.R. Quaife, *Wanton Wenches and Wayward Wives. Peasants and Illicit Sex in Early Seventeenth Century England* (1979).

[55] Foyster examined defamation cases from the Durham consistory court in the early seventeenth century and included a sample from 1662-65 in 'Concept of Male Honour'; Anna Clark looked at defamation in later eighteenth century London in 'Whores and Gossips'. Dabhoiwala, 'Prostitution and Police'. David Hewitt's, 'Some Cases from the Defamation Jurisdiction of the Archdeaconry of Richmond', *Journal of Legal History* 19/3 (1998), 251-69, covers the period 1570-1833 and is necessarily a superficial survey; nevertheless it raises interesting questions about jurisdictional variation and periodization.

material from the 1690s, as well as the earlier seventeenth century, his study was limited and the late seventeenth century has not been the focus of any detailed study of defamation records. This is consistent with an historiographical orthodoxy about the demise of the church courts after the Restoration which is only recently being challenged. The church courts were beginning to decline in this period, and consequently historians have been more attracted by the wealth of records generated during the zenith of the courts in the late sixteenth and early seventeenth century; but they still retained considerable social importance after the Restoration. The general history of this era has also suffered from a problem of periodization within the social history of early modern England. The year 1660 has become a stubborn barrier dividing the Tudor and early Stuart periods from the very different world of the eighteenth century; and as a result the last two decades of the century have often been tacked onto the beginning of the so-called 'long eighteenth century'. This periodization is dictated by political developments, though the political division of the century has also often been used as a useful break for social history with few social historians viewing the century as a whole. As Michael Finlayson has pointed out this is strikingly at odds with the fact that contemporaries perceived the Restoration as a period of continuity with and re-establishment of the world before the civil war.[56] The growing number of historians who are studying the Restoration period in its own right are teasing out continuities with the earlier era and developing the basis for a more integrated approach to the history of the whole seventeenth century, the significance of the civil wars within it and the dynamics of the transition to the next century.[57] A number of themes to the debate have emerged which are pertinent to this study and to which it will contribute.

Firstly, the last four decades of the century were a crucial period of readjustment in the institutional history of the Church of England and its courts. Though much

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[56] Michael G. Finlayson, *Historians, Puritanism, and the English Revolution: The Religious Factor in English Politics before and after the Interregnum* (Toronto, 1983), 9-10, 119; Jonathan Scott, 'Radicalism and Restoration: the Shape of the Stuart Experience' (review article), *Historical Journal*, 31 (1988), 453-67; Dabhoiwala, 'Prostitution and Police', 3-6, and the references cited there.

[57] Dabhoiwala, 'Prostitution and Police'; Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660-1725* (Cambridge, 1991); Peter Earle, *The Making of the English Middle Class: Business, Society and Family Life in London 1660-1730* (1989).

criticised by contemporaries, and subsequent historians, the church courts (with the exception of the High Commission) were revived essentially unreformed after the Ecclesiastical Causes Act of 1661.[58] However, they never fully recovered from the hiatus of the civil war and Interregnum and failed to revive their previous power and influence. This was an inevitable result of the damaged authority of the church in general, still smarting from the upheavals of the civil war and irrevocably undermined by nonconformity. The Church of England had been re-established along such narrow lines that many moderate reformers had felt themselves to be pushed into a position of nonconformity, exacerbating the Church's problems in restoring its authority. Though visitations were resumed throughout the country, resulting in presentments for Sabbath breaking, recusancy, nonconformity and sexual offences, concerted action against miscreants was sporadic. In some areas the concentration on compelling church attendance and maintaining standards of conformity among the clergy meant that prosecutions for other offences were neglected. Patterns of prosecution were highly regionalised and were often dependent on the character and priorities of individual bishops and clergy.

The church's coercive machinery and claims to moral leadership were dependent on religious uniformity and were therefore seriously undermined by the Declaration of Indulgence of 1687, the Toleration Act of 1689 and a series of general pardons between 1672-1694. The church's ultimate sanction of excommunication was rendered increasingly irrelevant to the laity in general in the face of nonconformity and declining authority of the church's moral teaching. As a result it became increasingly difficult to galvanise participation in the presentment of sexual offences just as it proved impossible to maintain religious conformity in the last decades of the century.[59] As a

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[58] John Spurr, *The Restoration Church of England, 1646-1689* (New Haven and London, 1991), 209. The process and timescale of re-establishment of the church and its courts varied regionally. See Anne Whiteman, 'The Re-establishment of the Church of England, 1660-1663', *Trans. Roy. Hist. Soc.*, 5th ser., v (1955), 111-131; Stone, *Road to Divorce*, 41-3.

[59] John Walsh and Stephen Taylor, 'Introduction: The Church and Anglicanism in the "Long" Eighteenth Century', in John Walsh, Colin Haydon and Stephen Taylor (eds), *The Church of England c. 1689-c. 1833: From Toleration to Tractarianism* (Cambridge, 1993), 1-64, here 5-6. Spurr, *Restoration Church*, 209-19. For the pattern of ecclesiastical prosecutions in London in this period see Dabhoiwala, 'Prostitution and Police', 94-5; Tina Beth Isaacs, 'The Anglican Hierarchy and the Reformation of Manners 1688-1738', *Journal of Ecclesiastical History*, 33 (1982), 395.

consequence, the policing of sexual morality was increasingly undertaken through the machinery of quarter sessions, though it was necessarily limited to prosecutions for offences such as fathering and bearing bastards, keeping bawdy houses and prostitution.[60] The Societies for Reformation of Manners, exasperated by the failure and apparent disinclination of the church courts to uphold moral standards, deliberately turned to the secular courts to police immorality in the 1690s.[61] Though the societies were predominantly an urban phenomenon, based in London and a few other major towns (there is no evidence of their activities in Chester or Chichester) their aims reflected, among other things, a more general dissatisfaction among the zealous with the church courts and in particular the inadequacies of ecclesiastical penalties (penance and excommunication).

However, it is a key argument of this thesis that, despite the undeniable relative weakness of the post-1660 church courts, they were by no means powerless or irrelevant. Despite the encroachment of the secular courts on much of their business they retained jurisdiction over probate (except for wills covering only the disposal of land) ensuring that they remained a presence in most people's lives. Furthermore, there is evidence that in some areas the prosecution of sexual offences continued with relative vigour well into the eighteenth century and this clearly deserves more historical attention.[62] John Walsh and Stephen Taylor have argued that there was 'continued respect for the policing authority of the Church and its role as a focus for community

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[60] Shoemaker, *Prosecution and Punishment*, 30, 55-60.

[61] There is an increasingly large literature on this subject. More recent works include Robert B. Shoemaker, 'Reforming the City: The Reformation of Manners Campaign in London, 1690-1738', in Lee Davison *et al.* (eds), *Stilling the Grumbling Hive: the Response to Social and Economic Problems in England, 1689-1750* (Stroud, 1992), 99-120; Shoemaker, *Prosecution and Punishment*, esp. ch. 9; Dabhoiwala, 'Prostitution and Police', ch. 3; Martin Ingram, 'Reformation of Manners in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds), *The Experience of Authority in Early Modern England* (1996), 95-123.

[62] Ingram, *Church Courts*, 165. Research in Lancashire has shown that prosecution of sexual offences was in fact stepped up in the early eighteenth century; Walsh and Taylor, 'Introduction: The Church and Anglicanism', in Walsh *et al.* (eds), *Church of England*, 1-64, here esp. 5-6; Mary Kinnear, 'The Correction Court in the Diocese of Carlisle, 1704-1756', *Church History*, 59/2 (1992), 191-206, found that presentments for sexual immorality accounted for the highest proportion of presentments in Carlisle in the first half of the eighteenth century. Sharpe, *Defamation*, 9, discovered that the incidence of defamation litigation actually increased between 1665 and 1705 in the Diocese of York, declining with the rapid overall decline in business after 1720. For the later eighteenth century see Clark, 'Whores and Gossips', 231-48.

values'.[63] A lay impulse to use the church courts for the settling of interpersonal disputes and controlling morality was significant after the Restoration; it certainly remained strong enough to ensure that instance litigation continued to be initiated throughout the period to the turn of the century. It is clear that the patterns of ecclesiastical discipline varied regionally but only when more research has been conducted across the country can firmer conclusions about the effectiveness and significance of ecclesiastical discipline as a whole be established.

A second point to emphasise is that the late seventeenth century was formative in the development of the laws of defamation and libel. The royal courts appear to have responded to the decline of the church courts by more actively defining their jurisdiction over defamatory words and written libel.[64] Slander in our period must therefore be understood in the context of changing patterns of ecclesiastical and secular justice; these developments are discussed in detail in chapter 2.

Finally, the second half of the seventeenth century was arguably a period of changing perceptions of notions of respectability, gender roles and attitudes to sexual behaviour.[65] The civil war had created a number of female heroines among the gentry, thrown many more ordinary women into new positions of responsibility within their families and led to some re-evaluation of women's rights and capabilities within the religious and political arena. Many of these changes were isolated and temporary and the long term effects on women's position (particularly women from the lower social ranks) in English society warrant much more careful research.[66] Other developments

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[63] Walsh and Taylor, 'Introduction: The Church and Anglicanism', 6.

[64] These developments are discussed in ch. 2, 48-9.

[65] Fletcher, *Gender, Sex and Subordination*, chs 16 & 18. Stone, *Family, Sex and Marriage*, esp. 217-53, 392. Stone argues that these changes were part of profound and fundamental cultural shifts which included, most importantly the evolution of the affective nuclear family and rise of individualism. Amussen, *Ordered Society*, 103-4, argues that by the end of the seventeenth century the roles of women and men had become more separate; Dabhoiwala, 'Prostitution and Police', esp. 17-18, 89-92.

[66] Keith Thomas 'Women and the Civil War Sects', *Past and Present*, no. 13 (April 1958), 42-62; P. Higgins, 'The Reactions of Women', in B. Manning (ed.) *Politics, Religion and the English Civil War* (1973) 179-222; Christopher Durston, *The Family in the English Revolution* (Oxford, 1989); Antonia Fraser, *The Weaker Vessel: Woman's Lot in Seventeenth-Century England* (1984), 181-274; More recently, see Patricia Crawford, 'The Challenges to Patriarchalism: How did the Revolution affect Women?' in John Morrill (ed.), *Revolution and Restoration. England in the 1650s* (1992), 112-28; Fletcher, *Gender, Sex and Subordination;* Hufton, *Prospect Before Her*, 147-8, 489.

in English society such as increased urbanisation, the growth of literacy and access to education and a changing understanding of the biology of sexual difference probably had a more enduring effect on the lives of ordinary women. It has been suggested that increased social differentiation in the later seventeenth century led to the desire of the emerging middling sort to acquire a veneer of respectability in order to isolate themselves from the mass of the population. There was also undoubtedly a desire to distance themselves from the licentiousness of the Restoration aristocracy. These developments may have led to the strengthening of the 'double standard';[67] they certainly meant that reputation, and sexual reputation in particular, remained potent signifiers of both social rank and gender.

The geographical setting: Cheshire and Sussex

This study is based on the records of the secular and ecclesiastical courts of Cheshire with supplementary material from the county of Sussex. With the exception of Sharpe's study of sexual slander in the diocese of York and Foyster's sample from the Durham consistory court, studies of defamation have been based on the records of courts in southern England - Wiltshire (Ingram), East Anglia (Amussen) and London (Meldrum, Gowing and Dabhoiwala).[68] Two of the more recent major works, by Gowing and Dabhoiwala, have used material from the metropolis and, though both writers concede that their findings may only be applicable to London, there is a danger that orthodoxies about the early modern world in general and gender relations in particular are being constructed from material which is specific to a particular metropolitan context and cannot be applied to the country as a whole. Research into the courts of other regions in England is therefore immensely valuable. I have chosen a

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[67] Clark, 'Whores and Gossips', esp. 232 ; Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *Historical Journal*, 36/2 (1993), 401-6. David Garrioch, 'Verbal Insults in Eighteenth-Century Paris', in Peter Burke and Roy Porter (eds), *The Social History of Language* (Cambridge, 1987), 104-119, 112, suggests that this was the case in eighteenth century Paris; Dabhoiwala, 'Prostitution and Police', 83, 84; Anna Bryson 'Concepts of Civility in England c. 1560-1685', (University of Oxford D. Phil thesis, 1984), ch. 7; cf. Anne Laurence, *Women in England 1500-1760* (1994), 69.

[68] Addy includes defamation cases in his study of immorality in the diocese of Chester, *Sin and Society*, ch. 8; also Hewitt, 'Cases from the Defamation Jurisdiction of the Archdeaconry of Richmond'.

non-metropolitan southern county, Sussex, to study alongside the north-western county of Cheshire.

Both counties were regarded by contemporaries (and some subsequent historians) as physically remote, inhospitable and consequently culturally backward and lawless regions.[69] Sussex is a topographically contained county which may partly account for this view; it is certainly true that travel and communication were notoriously slow in Sussex (particularly in winter), contributing to a sense of isolation from the metropolis, despite geographical proximity.[70] Cheshire is of course further north and was therefore considered to be isolated from London, but is not noticeably contained by natural boundaries. Both counties had good navigable rivers and at the heart of Cheshire's economic life was the old Roman city and port of Chester. The port had slipped into terminal decline well before our period, and its status as an international port was being usurped by Liverpool, but Chester still had economic and symbolic importance in the region. It remained strategically and economically important for inland trade and traffic with Ireland. [71] It is clear that neither county was by any means as isolated as has been assumed by some historians.

Cheshire's palatine status (established after the Norman conquest) contributed to a degree of independence and sense of the importance of native custom which was jealously guarded by the Cheshire elite but was not as absolute in real terms as they liked to think.[72] The administrative structure of the county did have a number of unique features and Cheshire was governed by one of the most stable and self-contained elites in the country who prided themselves on their independence from national

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[69] Steve Hindle, 'Aspects of the Relationship of the State and Local Society in Early Modern England: With Special Reference to Cheshire, c. 1590-1630 (University of Cambridge, Ph. D. thesis, 1993), esp. 84, 92, has argued that there is no evidence to support the view that Cheshire was any less law abiding than anywhere else at this time. John Morrill, *Cheshire 1630-1660: County Government and Society During the English Revolution* (Oxford, 1974), 5; cf. Garthine Walker, 'Crime, Gender and Social Order in Early Modern Cheshire' (University of Liverpool, Ph. D. thesis, 1995), 27-8, 30; Helen M. Jewell, *The North-South Divide: The Origins of Northern Consciousness in England* (Manchester and New York, 1994), 43, 119-20, 176; Stone, *Family, Sex and Marriage*, 105, on the north-west in general.

[70] Fletcher, *County Community*, 7; Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, 1987), 11-41.

[71] Morrill, *Cheshire*, 7; Daniel Defoe, *A Tour Through the Whole Island of Great Britain* , ed. Pat Rogers (Harmondsworth, 1971), 68; Alldridge, 'House and Household in Restoration Chester' in *Urban History Yearbook* (1983), 39-52.

[72] Beck, *Tudor Cheshire*, 3.

government.[73] The Palatinate was a distinct administrative unit that did not come under the jurisdiction of the royal courts and the city of Chester was designated a county in its own right in 1507.[74] However, Cheshire returned MPs to Westminster from 1543 which was a major step in the political integration of the county with the rest of the country, initiated by Henry VIII.[75] The practical significance of palatine status in our period was that independent courts had developed with criminal and civil jurisdiction which paralleled that of the royal courts. The most distinctive of these institutions was the court of Exchequer (the equivalent of Chancery) which mostly heard disputes involving debt. The court of Great Sessions roughly combined the functions of the royal courts at Westminster (thereby hearing defamation cases) and the assizes in other counties - indeed, it was often referred to as 'the assizes' by contemporaries.[76] The court sat at Chester castle and exercised both criminal and civil jurisdiction, though the vast majority of its business in this period was criminal.[77] The justices of the court of Great Sessions in the seventeenth century were increasingly men from outside the county who had been trained in the London courts and maintained connections with the royal courts - the court's reputation for isolation from the wider legal profession has

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[73] Morrill, *Cheshire*, 327. The Cheshire gentry was renowned for its ancient lineage and notable for a high level of endogamy. Defoe, *Tour Through the Whole Island*, 73; Daniel King, William Smith and William Webb *The Vale Royall of England. or, the County Palatine of Chester Illustrated* (1656) 'To the Reader'; Morrill, *Cheshire*, 2-4 ; Heal and Holmes, *Gentry*, Table 2.1, 61; C.B. Phillips and J.H. Smith, *Lancashire and Cheshire from AD 1540* (London and New York, 1994), 21-25. As Herrup has noted, *Common Peace*, 22, 35, Sussex was governed by a similarly strong landed gentry.

[74] F. W. Maitland, *History of English Law*, i 109; Geoffrey Barraclough argues that the political shrewdness of the early Earls contributed more to Cheshire's uniqueness than its geographical and cultural character. He also stresses that the administrative history of the county conforms rather better to the national pattern than was previously thought. Geoffrey Barraclough 'The Earldom and County Palatine of Chester', *T. H. S. L. C.*, 103 (1951), 7-28, here esp., 7-8, 11, 28. Hindle, 'Aspects of the Relationship of the State and Local Society', 77-8; Morrill, *Cheshire*, 1; Joan Beck, *Tudor Cheshire* (Chester, 1969), 2-6.

[75] Morrill, *Cheshire*, 1; Beck, *Tudor Cheshire*, 2-6; T. Thornton, 'The Integration of Cheshire into the Tudor Nation State in the Early Sixteenth Century', *Northern History*, 29 (1993), 40-63; Barraclough, 'Earldom', 27; Phillips and Smith, *Lancashire and Cheshire*, 32.

[76] The chief officer of the court, the Chamberlain, also had the authority to transfer actions between the lesser local courts including the power to issue prohibitions in ecclesiastical tithe suits. For the early history see R. Stewart-Brown, 'The Exchequer of Chester', *English History Review*, 57 (1942), 289-97; Morrill, *Cheshire*, 2; Barraclough, 'Earldom', 27; *VCH Cheshire*, 38-40. There are a few ecclesiastical defamation cases where suits at 'assizes' are referred to, including, CRO EDC5 1665/32 John Withers c. Eliza Radley, Deposition of Sam Bennet; 1664/22 John and Anne Eaton c. Matthew Mosse, Deposition of Randle Ward; 1670/65 John Ormerod c. William Towneley.

[77] Walker, 'Crime, Gender and Social Order', 21.

therefore been somewhat overstated.[78] This court heard actions on the case for words and a sample is included in this study.[79]

Justices of the Peace, appointed by the crown, were introduced to the county in 1536, bringing Cheshire into line with the judicial structures of the rest of the country. By the seventeenth century quarter sessions were held in Cheshire's main market towns - Chester for the Epiphany sessions, Knutsford for Easter, Nantwich for Trinity, while the Michaelmas Sessions alternated between Middlewich and Northwich. Though the quarter sessions were not unusual in any judicial respect the city of Chester, which had county status, had held its own quarter sessions since 1506. The justices that presided over the court comprised the mayor and aldermen who had been mayors of the city. This study includes prosecutions for abusive words brought in these courts. The Mayor also presided over a separate court known as the Portmote which shared the city's civil business with the Pentice Court; the court was presided over by the sheriff and was held weekly in the Common Hall, attached to St. Peter's Church at the heart of Chester.[80] Daniel King wrote in 1656 that 'a man could stand therein, and see into the markets, or Four principle streets of the city'.[81] The origins and exact jurisdiction of these courts are somewhat obscure and the survival of records has been patchy. Due to the overlap of officers with the city sessions (the Mayor was the city's chief magistrate), the documents have been filed together, making it difficult to distinguish the business of the individual courts. The fragmentary nature of some of the records from these courts makes it impossible to ascertain the volume of litigation over abusive words; they are nonetheless of interest and this study includes a sample of civil cases involving defamatory words in the Chester mayor's courts between 1650 and 1700 and a sample of prosecutions for abusive words in the same period.[82]

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[78] Morrill, *Cheshire*, 2, 231.

[79] See ch. 2 and Appendix I.

[80] King *et al.*, *Vale-Royall*, 39; Phillips and Smith, *Lancashire and Cheshire*, 32-5; CCRO MF/77/2 (1655) f. 21, John Sproston c. John and Mary Mawdesley. This information was given in Sproston's plea. The Pentice (which meant penthouse) was referred to colloquially as the 'sheriff's court'. Robert Holland, *A Glossary of Words used in the County of Chester*, English Dialect Society, 16 (1886), 256.

[81] King *et al.*, *Vale-Royall*, 39.

[82] See Appendix I.

Sussex, unlike Cheshire, was integrated into the administrative and judicial framework of the rest of the country and therefore a detailed account of these structures would be superfluous here, though some points will be sketched out. Sussex was a particularly broad county (nearly 80 miles from east to west) and had been divided into six parallel administrative segments, known as rapes, soon after the Norman Conquest. At some point the county was also split into two divisions, the Eastern comprising the rapes of Hastings, Pevensey and Lewes and the Western, Bramber, Arundel and Chichester. These rapes were then subdivided into hundreds and between 1 and 15 parishes.[83] The county was dominated by two administrative and economic centres, the diocesan seat and main western town of Chichester and the county town of Lewes in the east. Consequently Sussex was unusual in its pattern of quarter sessions.[84] Until 1686 the Michaelmas, Epiphany and Easter sessions were held first in one division and then adjourned to be held in the other. The Midsummer session was a joint session, usually held at Lewes. Technically, therefore, Sussex had four sessions like other counties, but in practice there were seven; this situation was underlined by the fact that theoretically Sussex justices had jurisdiction over the whole county but in practice their work was confined to either the Eastern or Western Division. After 1686 the midsummer sessions were held separately in the Eastern and Western Divisions. The whole county was served by assizes held at Horsham or East Grinstead twice a year. These towns were selected because of the reluctance of justices from London to venture deeper into the county. Chichester, Rye, Winchelsea, Hastings, Pevensey and Seaford had their own JPs; the Chichester JPs, in particular, jealously guarded their independence, though they were gradually losing business to county quarter sessions in this period. The records from the Chichester sessions are extremely fragmentary and apparently mostly dealt with cases of theft and debt. By 1660 much of the administrative business of the

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[83] The two divisions became the separate counties of East and West Sussex in 1889.

[84] Fletcher, *County Community*, 134-42. For a detailed description of the development of Quarter Sessions see David J. Butler, *Quarter Sessions and the Justices of the Peace in West Sussex* (Chichester, 1972); *A Descriptive Report on the Quarter Sessions, Other Official, and Ecclesiastical Records in the Custody of the County Councils of East and West Sussex* (1954), 2.

quarter sessions in Sussex had been taken over by petty sessions, leaving JPs to concentrate on judicial business.[85]

Ecclesiastical government was notoriously weak in the north-west of England and this was exacerbated by the fact that the Chester diocese was particularly large (5000 sq. miles), encompassing not only the county of Cheshire but also Lancashire, parts of Cumberland and Westmorland, Yorkshire, and some Flintshire parishes to the south.[86] The diocese was divided into two archdeaconries, Richmond and Chester and comprised 84 parishes and 128 chapelries.[87] In contrast to most southern dioceses, Cheshire parishes were large. Christopher Haigh has estimated that in 1603 the average English parish had 243 communicants while in Cheshire the mean was 696.[88] On average there were seven townships per parish, a figure which was over four times greater than for parishes in the midlands and southern England.[89] Diocesan administration was restored quickly after the Restoration and the consistory court at Chester cathedral was re-established in 1661, reclaiming its jurisdiction marginally earlier than the courts in the province of Canterbury.[90] However, diocesan control remained weak in our period.[91] In the early years after the Restoration the diocese suffered from a high turnover of bishops - four in as many years - though some stability was achieved after 1664.[92] Many parishes, and the majority of parochial chapels, had no resident minister but were served by assistant curates and lay readers. The writers of *The Vale-Royall of England* commented in 1656 that Cestrians were 'somewhat addicted to superstition, which cometh through want of preaching. For the Harvest is plenty, but the Reapers are few'.[93]

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[85] Fletcher, *County Community*, ch. 8. Unfortunately, most studies of the structure and nature of Sussex government tend to concentrate on the pre-Restoration period.

[86] This study is confined to cases from the county of Cheshire only.

[87] R. C. Richardson, *Puritanism in North-West England: A Regional Study of the Diocese of Chester to 1642* (Manchester, 1972), 1-4.

[88] C. Haigh, *Reformation and Resistance in Tudor Lancashire* (Cambridge, 1975), 231.

[89] Hindle, 'Aspects of the Relationship of the State and Local Society', 89.

[90] I. M. Green *The Re-establishment of the Church of England 1660-1663* (Oxford, 1978).

[91] Morrill, *Cheshire*, 17-26.

[92] *VCH Cheshire* iii, 37-8.

[93] King *et al.*, *Vale-Royall*, 19.

The finances of the diocese were put under immense strain by the cost of refurbishing and equipping parish churches at the Restoration. Though this was a problem everywhere it was particularly acute in Cheshire. Levels of both nonconformity and recusancy were high, particularly under the tolerant regime of Bishop Pearson after 1672, and a number of the larger parishes established Independent chapelries.[94]

Sussex contained a mixture of large and small parishes but administrative control was made difficult by the fact that the county is unusually wide. Ecclesiastical jurisdiction was exercised through the courts of the Diocese of Chichester, the Dean of Chichester's Peculiar and the Archdeaconry of Lewes. The ecclesiastical hierarchy in Sussex was also staunchly conservative; John Lake was one of 7 bishops who petitioned against James II's Declaration of Indulgence in 1687. The church courts were keen to enforce religious conformity in the early years of the Restoration and in the 1660s and 1670s religious observance offences, such as Sabbath breaking and non-attendance, accounted for 45 per cent of total disciplinary business. This began to tail off in the 1680s (only 31 per cent by 1682) and declined dramatically in Sussex, as elsewhere, after the Toleration Act.[95]

It is only possible to sketch out the institutional nature of these two areas for the purposes of this thesis; both regions had their peculiarities and unique characteristics. The questions raised and discussed in this thesis suggest that future research ought to take closer account of particular local characteristics (social, economic and institutional) in the analysis of the social context of defamation litigation.

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[94] Morrill, *Cheshire*, 265-6; *VCH Cheshire* iii, 42-3, 88-100; Addy, *Sin and Society*, 27; P.J. Challiner, 'Restoration and Exclusion in the County of Cheshire', *Bulletin of the John Rylands University Library of Manchester*, 64/2 (1982), 362.

[95] Spurr, *Restoration Church*, 211-13.

2: The Legal Context: Theory and Practice

The stock view of the law of defamation in the seventeenth century is that words touching on spiritual matters (such as the sins of adultery or fornication) were cognisable in the church courts, while imputations of temporal crimes (such as theft or homicide) were heard in the secular courts. Together with the fact that the majority of slander litigants in the church courts were women, while men predominated in actions in the secular courts, this appears to be congruent with the accepted model of reputation that places chastity at the heart of female credit while male credit is dependent on a wider range of criteria.[1] However, this pattern, apparently along gendered lines, reflected a legal division of jurisdictions that did not represent a real dichotomy of experience for men and women: the two jurisdictions were not two halves that can be placed neatly together to form a full picture of reputation for men and women. This model is underpinned by a simplistic view of gender relations, combined with a superficial understanding of the machinery available to deal with defamatory language. Before we can examine how defamation cases shed light on gender relations we therefore need to construct a clear outline of the law relating to defamatory and abusive language.

In this chapter I will discuss the weaknesses of the existing historiography with regard to the law and outline not only the complexities of the substantive law, but the multifarious ways in which it was translated into practice in the courts. The chapter is based primarily on legal histories, contemporary legal treatises and printed law reports from the courts of King's Bench and Common Pleas. The latter are a problematic source because they were personal reports of individual lawyers and vary in their quality and accuracy.

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* I am grateful to J.M. Kaye for his helpful comments on a draft of this chapter.

[1] Gowing, 'Gender and the Language of Insult', 1–3; eadem, *Domestic Dangers, 60-3*; Sharpe, *Defamation*, 7, 28; Meldrum, 'Woman's Court', 5-6; Ingram, *Church Courts*, 298, 302-3.

Assessing them from an historical perspective is difficult because of the dearth of legal literature on law reporting in this period. However, they do give a useful indication of the sorts of slanders that were complained of in the secular courts. They also give insights into points of law that were considered by contemporary lawyers to be ambiguous and the arguments that were utilised in court by opposing parties.[2]

Legal issues in the historiography

Most existing work has focused exclusively on the ecclesiastical jurisdiction. While Martin Ingram and James Sharpe have noted the importance and significance of the common law jurisdiction over defamatory words, their work nevertheless concentrated on the ecclesiastical courts.[3] There has been a tendency among other historians to see the ecclesiastical jurisdiction in isolation.[4] This is partly because the records of the church courts contain more qualitative information about reputation and record the words and circumstances leading to litigation more consistently than the records of the secular courts. This, coupled with the fact that the Latin plea rolls of King's Bench and Common Pleas are bulky and difficult to use and that many local court records are fragmentary, makes the ecclesiastical records a more attractive proposition. Yet defamation law and legal practice in the church courts were related to developments in the secular jurisdiction, and concentration on only one jurisdiction can give a biased view of the constituents of reputation. The secular courts offered remedies for words that were not cognisable in the church courts, thereby giving insight into aspects of reputation that are not revealed in the records of the church courts. Moreover, they actively restricted the ecclesiastical jurisdiction. As J. H. Baker, among others, has shown, legal historians have often mistaken shifts in jurisdiction

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[2] J. H. Baker, *An Introduction to English Legal History*, 2nd edn (1979), ch. 11. There is no published writing on law reporting in the period covered by this thesis that I am aware of. On law reporting in the early modern period in general see, J. H. Baker, 'The Dark Age of English Legal History, 1500-1700', in Dafydd Jenkins (ed.), *Legal History Studies 1972* (Cardiff, 1975), 1-27; W. H. Bryson, 'Law Reports in England from 1603 to 1660', in Chantal Stebbings (ed.), *Law Reporting in Britain: Proceedings of the Eleventh British Legal History Conference* (1995), 113-122; David J. Seipp, 'The Structure of English Common Law in the Seventeenth Century', in Stebbings (ed.), *Law Reporting* , 61-83.

[3] Ingram, *Church Courts*, 295-9; Sharpe, *Defamation*, 4-5.

[4] This is particularly true of Gowing, *Domestic Dangers*, and Amussen, *Ordered Society*.

between courts for changes in the law and this criticism is particularly pertinent for the historiography of remedies for slander.[5]

The nature of the relationship between the church and secular courts has been studied in the greatest depth by the legal historian, Richard Helmholz.[6] However, his studies do not extend to the post–civil war period in any detail. The most important factor in this period was the closure of the church courts in the early 1640s and their subsequent restoration after 1660.[7] The effect of this has yet to be understood fully by historians and has received surprisingly little attention. It was once a commonplace that the restoration church courts were so weak that they were of little historical interest in their own right though this view has been modified significantly in recent years. Helmholz has indicated that the inevitable displacement of the church courts by their secular counterparts was delayed until after the end of the seventeenth century, though the relationship was an uneasy one throughout the century. It is also clear that this process was very regionalised.[8] Any analysis of changing cultural and moral attitudes derived from defamation records in this period must therefore be grounded in an understanding of changing patterns of secular and ecclesiastical justice.

It is a central argument of this thesis that the remedies for defamatory words in both jurisdictions need to be understood in terms of a wider context of the control of community tension and dispute through informal and formal sanctions. While this has been acknowledged by most writers on the subject, it merits closer attention than it has received hitherto. Laura Gowing has argued that litigants in defamation cases were not actually concerned with reputation and the policing of morality; she argues instead that the rhetoric of whoredom was manipulated through litigation as a weapon in interpersonal disputes.[9] Yet this argument receives inadequate analysis compared to the extensive discussion of sexual morality and reputation in her work. In order to pursue this line of inquiry the range of legal

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[5] *The Reports of Sir John Spelman*, ed. J. H. Baker, Selden Society 94 (1977), II, 51; S.F.C.Milsom, *Historical Foundations of the Common Law* (1969), 51-61.
[6] *Select Cases on Defamation to 1660*, ed. R. H. Helmholz, Selden Society, 101 (1985); idem, *Roman Canon Law in Reformation England* (Cambridge, 1990), ch. 2.
[7] On the process and chronology of the restoration of the church courts see Green, *Re–establishment of the Church of England*; Whiteman, 'Re-establishment of the Church of England'.
[8] Helmholz, *Roman Canon Law*, 51. Whiteman, 'Re-establishment of the Church of England', 119.
[9] Gowing, 'Gender and the Language of Insult', 18; eadem, 'Women, Sex and Honour', 93–7.

options available to those who had been defamed, or were involved in a dispute in the secular jurisdiction, needs to be examined, along with prosecutions for other types of breach of the peace, such as barratry and assault. A detailed study of these disputes would not only contribute directly to our understanding of reputation but, more broadly, to our understanding of the values that bound communities together. The points at which such values are contested are revealed to us in a range of forms of litigation and prosecution.[10] It has not been possible to undertake a detailed examination of the range of related prosecutions that have a bearing on this complex subject but a limited study of secular litigation concerning abusive words forms an important part of this thesis.[11]

The most obvious feature of recent historiography is the concentration on the gendering of reputation revealed in the patterns of litigation that were outlined at the beginning of this chapter. Legal records are an intrinsically problematic source for the study of questions of gender because men and women were not equal in the eyes of the law. Despite the fact that the different legal status of women (at common law) was recognised in the publication of a legal treatise for women in 1632, subsequent legal historians have often failed to address the impact of the law on women as a specific group.[12] This is not only true of the classic works such as Holdsworth but, more recently, of Richard Helmholz's studies of defamation law.[13] On the other hand, writers on women in this period have tended to transpose women's clear inequality at law into proof of their oppression in all aspects of their life.[14] It is clear that a more balanced approach to women's experience of the law still needs to be incorporated into the wider historiography of the law in this period. Two works that have opened up the debate on gender and the law are Amy Louise Erickson's *Women and Property in Early Modern England* (1993) and *Women, Crime and the Courts* (1994),

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[10] Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth, 1979); John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983).
[11] See Appendix I.
[12] *The Lawes Resolutions of Women's Rights: or the Lawes Provision for Women* (1632). See also, *Baron and Feme: A Treatise of the Common Law Concerning Husbands and Wives* (1700); *A Treatise of Feme Coverts: or, the Lady's Law, Containing all the Laws and Statutes Relating to Women* (1732). All the law reports that I have used devote a significant amount of attention to cases that demonstrated the nature of women's legal status.
[13] W. S. Holdsworth, *A History of English Law,* 16 vols, (1903-1966).
[14] Amussen, 'The Gendering of Popular Culture', 50-1, 53; Fraser, *Weaker Vessel*, 5-6, 12, 231.

edited by Garthine Walker and Jenny Kermode.[15] Not only have these works contributed substantially to our knowledge of the way the law shaped women's lives but they have provided an important corrective to the tendency in some works to assume that women were universally disadvantaged at law, both in theory and practice. As these authors have demonstrated there are no easy correlations to be found between the theory of law, the practice of litigation and the reality of women's lives.

Under common law a woman's identity was subsumed in that of her husband; in the words of William Sheppard, 'after marriage all the will of the wife in judgement of law is subject to the will of the husband'.[16] The practical implication of this was that married women could not own property or litigate in the temporal courts independently of their husbands. As a result, comparatively few women were involved in defamation litigation in those courts; those that were were spinsters or married women suing jointly with their husbands. If a case brought by a joint plaintiff was successful any damages would be awarded to the husband. However, the question of agency in cases sued by joint plaintiffs has not received any detailed attention from historians; it may well be that women instigated many, if not most of these actions, with or without the support of their husbands. In some cases the women may have had control over the financial damages that were awarded. This is an interesting and extremely important area for future research.

The ecclesiastical courts, by contrast, did recognise women's independent legal identity and historians of women have rightly seized on this opportunity to study their subject.[17] However, the concentration on women in the ecclesiastical courts has, paradoxically, led to a myopic view of the function of gender in the construction of reputation. A close reading of ecclesiastical and secular cases can reveal much more about attitudes to male sexual reputation than has been thought, despite the fact that men were in a minority in the church courts, and, theoretically, could not litigate over exclusively sexual slanders in the secular courts.

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[15] See also Carol Wiener, 'Sex-roles and Crime in Late Elizabethan Hertfordshire', *Journal of Social History* 8 (1974-5), 38-60.
[16] William Sheppard, *A Grand Abridgment of the Common and Statute Law of England* (1675), pt. iv, vol. iii, 241.
[17] Gowing, *Domestic Dangers*, 8.

Social historians have tended to accept the information to be found in court records at face value without paying heed to their legal function; as a result, assumptions have been made about what these sources can actually reveal. The most widespread and possibly most misleading of these is the assumption that defamation records directly reflect the concerns and moral values that moulded reputations. Susan Amussen, for example, asserts that 'defamation cases ... reveal the aspects of their own reputations that villagers valued' and that 'the person who brought a defamation case sought to protect a reputation that had, they thought, been damaged by an allegation. The insults and allegations complained of reveal the assumptions and fears of early modern villagers'.[18] To be more precise, they only reveal the concerns that could be expressed through words and actions that could be prosecuted by the courts. These concerns were mediated through the procedures and records of these institutions and the information is therefore restricted by the function of the documents in which it was recorded and the procedures that gave rise to the production of those records.[19]

The ecclesiastical action for defamation

The most common way to prosecute defamation in this period was by means of party and party, or 'instance', litigation in the church courts. Originally defamation had been an exclusively ecclesiastical plea. The law can be traced to 1222 when the Council of Oxford enacted a constitution that is now referred to by its opening words *auctoritate dei patris:*

> we excommunicate all those who, for the sake of hatred, profit, or favour, or for whatever other cause maliciously impute a crime to any person who is not of ill fame among good and substantial persons, by reason of which purgation at least is awarded to him or he is harmed in some other manner.[20]

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[18] Amussen, *Ordered Society,* 99, 101; Gowing, 'Women, Sex and Honour', 30; Helmholz, *Roman Canon Law*, 63. Historians who have used defamation records from the courts of early modern America have tended to share these assumptions and failed to discuss the particular legal context of their subject. Norton, 'Gender and Defamation in Seventeenth Century Maryland'; Roger Thompson, '"Holy Watchfulness" and Communal Conformism'. The one exception to this is Bowler, 'Carted Whores and White Shrouded Apologies', who does discuss some of the legal issues.

[19] The records and procedures of the church courts are described in greater detail in J.S.Purvis, *An Introduction to Ecclesiastical Records* (1953), 64-95. See Appendix II.

[20] *Select Cases*, xiv. For a discussion of how *auctoritate dei patris* fitted into canon law in general see

The essential feature of this constitution for the future development of the law was that it was concerned only with imputations of crime, in other words, actions which could subject the offender to disciplinary or criminal action in the church or secular courts. It did not cover general words of insult or abuse, however damaging they were to an individual's reputation or livelihood. By the early sixteenth century the jurisdiction over temporal crime had been successfully challenged by the common lawyers and it had become established that the church courts had cognizance only over spiritual matters.[21] The plaintiff was required to be of good fame 'among good and substantial persons' (*apud bonos et graves*). The practical importance of this, in terms of pleading, was that if the aspersions had already been cast by others, it was assumed that the reputation of the plaintiff had already been damaged and therefore, in theory, a case would not lie. Witnesses for the defence would therefore often maintain that the plaintiff was a person of dubious fame, or that the defendant was only repeating what he or she had heard and was not the originator of the slander. While the constitution itself was based on the narrowest possible criteria of a good reputation – whether one had committed an illegal act or not – this requirement located it within its social context. In other words, it was assumed that credit was created among people who were themselves of good reputation and whose opinion was therefore important.

The constitution also clearly stated that the words had to be uttered maliciously, though it was soon established that if they came within the constitution (i.e. if they imputed a crime) malice could be presumed.[22] However, if the defendant could prove that the words had been spoken in anger this could be a mitigating factor. A standard method of countering this defence was to claim that the words had been repeated more than once, or that they had been given extra force by the addition of a phrase, such as 'and I will prove it'.[23] This helped to confirm that the defendant had genuinely meant what he or she had said and continued to be good pleading practice in the church courts in the later seventeenth century.[24]

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ibid., xvi-xx.
[21] *Select Cases*; Conset, *Ecclesiastical Courts*, 17.
[22] *Select Cases*, xxxii–xxxiv; idem, *Roman Canon Law*, 59.
[23] *Select Cases*, xxxiii.
[24] Examples include CRO EDC5 5 1680/9; 1682/3;1690/16; 1691/27; 1694/3; 1694/13; 1695/2; 1695/3; 1695/3; 1696/7.

A particularly common defence was to claim provocation, either physical or verbal. Sometimes this provocation took the form of insulting words uttered on both sides in the heat of an argument (often words that would have been actionable, like 'whore') but in a number of cases it was violence or the threat of violence.[25] It is not clear exactly how the defence of provocation affected the final judgement, but it is unlikely that the defamation would have been considered justifiable as a result. It may nonetheless have been considered a mitigating factor that would lessen the penalties incurred. The frequency with which this defence was used in the later seventeenth century does suggest that this was the case. Witnesses for the plaintiff often stated that no 'ill words or provocation' were given by the plaintiff to justify the abuse of the defendant.[26] The constitution did not specifically state that the words or accusation had to be false in order to be defamatory. There has been some uncertainty as to whether truth could be used as a defence though the consensus now is that this was the case.[27]

A suit under *auctoritate dei patris* was one of three procedures available in the church courts for defamation. The second was to bring an action for words of 'defamation or reproach'. *Auctoritate dei patris* had been at odds with the Roman canon law which allowed for a remedy against abusive words as well as imputations of crime.[28] Implicit in this was the principle that words as well as deeds could cause real quantifiable harm. At some point in the later fifteenth century the English church courts moved closer to this position when they extended the scope of their jurisdiction to include words of 'defamation or reproach'. The majority of these expressions were insults of a sexual nature that fell short of alleging a specific crime such as adultery with a named person, for example 'slut', 'quean' and 'jade';[29] 'whore' on the other hand was regarded as unequivocally defamatory, even without a specific allegation of adultery. Non–sexual insults, such as 'liar' and 'cheat',

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[25] Examples include CRO EDC5 1680/9;1683/37; 1685/4; 1696/9.
[26] Examples include CRO EDC5 1681/18; 1690/9; 1695/2.
[27] Ingram, *Church Courts*, 295; Marchant, *Church Under the Law*, 71-2; Helmholz originally argued in 'Canonical Defamation in Medieval England', *American Journal of Legal History*, 15 (1971), 255-68, here, 256-61, that truth was not a defence, but revised his position in *Select Cases*, xxx-xxxii.
[28] Helmholz, *Roman Canon Law*, 6.
[29] Conset, *Ecclesiastical Courts*, 17; Richard Burn, *Ecclesiastical Law* (1763) i, 478. These words were synonymous with 'whore' in common parlance and just as abusive. By our period the courts almost certainly regarded them as being defamatory though lawyers sometimes classed them as merely reproachful.

were also actionable under this rubric. Henry Conset, writing in 1685, gave several examples of cognisable expressions: 'Thou art no more to be trusted than a dog; ... thou art an arrant knave'.[30] The salient point about words of reproach is that they could be words of ambiguous meaning that did not fit neatly into either temporal or spiritual jurisdiction. The words 'rogue', 'rascal', and 'knave' were among the most common of these; I will argue in a subsequent chapter that they had a variety of meanings that can only be gleaned from a closer reading of the contexts in which they were used, as revealed in depositions.

Without this development the records of ecclesiastical court defamation cases would have provided the social historian with an extremely limited and legalistic picture of insult and the constituents of reputation in early modern England. We can assume that most people's reputations were created or damaged within a framework of criteria that had little to do with whether one had committed a criminal act; the acceptance of the idea of words of reproach allowed for defamation cases to be brought for more general insults that may offer insights into a world of social relations in which reputation was gauged by wider criteria of morality, honesty and good neighbourliness. How far this was the case will be discussed in subsequent chapters.

By the later seventeenth century actions for words of reproach probably outnumbered actions brought under *auctoritate dei patris*. However, the distinction is hazy, partly because, by the seventeenth century, the church courts were hearing cases under *auctoritate dei patris* that did not impute specific criminal activity. There were, in theory, procedural differences between the two types of case. Causes for defamation or reproach had to be brought within a year of the original slander; there was no time limit on cases under *auctoritate dei patris*. By the seventeenth century the act books usually refer to *causa diffamationis sive convicii* as Conset explains:

> And observe, that this word [*convitii* , or Reproach] is wont to be writ in every citation, together with the word [*Defamationis*, or Defamation] the reason is because if the Plaintiff doth not prove that the Defendant uttered the words, which of their own nature were Defamatory, yet if he proves that the words were reproachful, he shall obtain the victory ... the reason is because these words were uttered out of a malicious and angry mind and against all fraternal charity.[31]

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[30] Conset, *Ecclesiastical Courts*, 17.

[31] Conset, *Ecclesiastical Courts*, 335; See also, Thomas Oughton, *Forms of Ecclesiastical Law*, 2nd edn (1844), 47; Burn, *Ecclesiastical Law*, i, 482. Burn based most of his entry on defamation on cases

An important point of difference that had implications for pleading was that, when suing for reproachful words, malice had to be proven. Conset refers to evidence of previous 'brawlings and chidings' as proof that 'words were uttered out of a malicious mind' in such a case.[32] Witnesses were therefore often asked to testify to the previous relationship of the litigants. If there was a history of bad feeling or any hint of a private feud then this would strengthen the case that the words had been spoken maliciously. This legal requirement means that defamation records often give interesting information about the social networks and interpersonal tensions that formed the background of the case. Though it must be recognised that the strategic motivation behind this evidence means that it may have been manufactured, or at least exaggerated, to suit the needs of the case.

There was also a third remedy for defamatory words in the church courts which was not an instance action; the procedure known as voluntary compurgation.[33] Under canon law a person who had suffered loss of reputation as a result of allegations of spiritual crime could volunteer to clear his or her name. The defamed person was required to swear to his or her innocence and good character and produce at least two oath helpers to state that they believed the defamed person to be innocent of the allegation. This procedure could help to reaffirm the defamed person's credit in the eyes of the community; if it was unsuccessful, or if compurgators could not be found, the credit of the defamed person was invariably damaged further and he or she was liable to penance. Successful compurgators could bring a further suit under *auctoritate dei patris* in order to subject the defamer to ecclesiastical punishment.

The church courts, unlike the secular courts, were unable to offer cash damages to the victims of defamation. A statute of 1286, had established that they could only impose either the penalty of doing penance (either public or private), or the ultimate sanction of excommunication on the offender.[34] Minor excommunication barred the offender from the church and sacraments and was the penalty for routine offences such as failing to respond to

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from the seventeenth century and makes no mention of actions under *auctoritate dei patris*.

[32] Conset, *Ecclesiastical Courts*, 335; Oughton, *Ecclesiastical Law*, 48.

[33] Helmholz, *Roman Canon Law*, 24–5. Compulsory compurgation was abolished under 13 Car. II c. 12. See Poos, 'Sex, Lies and the Church Courts', 588-9; Ingram, *Church Courts*, 306-7; Sharpe, *Defamation*, 25-6; Amussen, *Ordered Society*, 98-101.

[34] 13 Edw. I. (*circumspecte agatis*).

a citation to appear in court. Major excommunication was the penalty for offences which the church perceived to be more serious, such as brawling in church or clandestine marriage. In addition to the penalties for minor excommunication the offender was barred from burial in consecrated ground and was expected to be shunned by communicants.[35] Theoretically, major excommunication was the penalty for defamation though it was usually commuted to penance.

Public penance involved an open apology, usually in the parish church, and was designed for moral reformation and health of the soul of the guilty person.[36] The wording of the following example is fairly typical:

> Whereas I William Halliwell forgetting my duty to walke in Love and Charity towards my neighbour have uttered spoaken and published severall scandalous diffamatory and reproachfull words of and against Peter Leigh of the said Citty Glover unseemly and unfitt to bee here inserted and for speaking thereof stand lawfully convicted. I doe hereby recant revoake and recall the said words as altogether false scandalous and untrue and doe declare ... Peter Leigh to bee an honest man and of good repute and free from such aspersion and for declaring of the words ... I am unfeignedly sorry and I hereby confesse and acknowledge that I have much wronged and iniured him ... And therefore desire God and him and all good people to forgive me and I promise by God's grace never to offend him or any other hereafter ...[37]

Before the civil war the penitent often wore a white sheet or carried a white wand; this was more unusual after the Restoration and in the above example it was explicitly ordered that Halliwell be in 'his usuall apparell bare headed'.[38] The unusual feature of this particular penance was that Halliwell was ordered to perform it 'upon the highe Crosse in the Bridge Street by the Pentice in Chester' rather than in his parish church.

The following example is of the less severe form of private penance; it was ordered to be performed by Elizabeth Pickering at the local vicarage, in the presence of the vicar, churchwardens, 'and such of the neighbourhood and parish as ... the plaintiff shall think fit to bring with him ...'

> Whereas I (Good People) forgetting my Duty to God and my neighbour, have wickedly and malitiously slandered John Pickering ... that he is an arrand knave, ... I do hereby declare I know no such thing by him, and therefore I am heartily sorry

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[35] Addy, *Sin and Society*, 203.
[36] Conset, *Ecclesiastical Courts*, 338. In the case of George Preston, who was prosecuted for suspicion of adultery with Jane Jones, the penance was ordered to be performed 'within the choir ... (at morning prayers)', CRO EDC5 1691/28 Laurence Fogge c. George Preston.
[37] CRO EDC5 1663/63 Peter Leigh c. William Halliwell.
[38] See also CRO EDC5 1691/28 Laurence Fogge c. George Preston.

> for the same and earnestly desire the said Mr Pickering to forgive me promising him by Gods grace never to offend in the like for the future.[39]

Such private penances could also be performed in a private house (usually the plaintiff's home) in front of the churchwardens and the injured party.

The ritual of penance may have had a number of different meanings, both for the individuals involved and their communities.[40] Private penances may have been used as an aid to reconciliation between the parties as much as a form of punishment. The irony of some penances was that they often involved the repetition of the offending words to the people present, many of whom may not have heard the original slander. The effects of this may have been counteracted by the fact that public penance must have been a genuinely humiliating experience for many offenders; it could be argued that it reaffirmed the church's didactic role in the community and ritualised community censure that might otherwise have taken the form of unofficial popular punishment or retribution.[41] However, there are examples of penances that were not performed (for which the sanction was excommunication) and instances of penitents mocking the procedure.[42] How pervasive the communitarian ethos invoked in this procedure really was remains a moot point. The fact that plaintiffs continued to sue defamation causes in the church courts into the eighteenth century might suggest that public penance remained an appropriate and meaningful punishment and Sharpe suggests that it may have been preferred to claiming damages.[43] However, it might also simply reflect the fact that, in the absence of damages, plaintiffs were determined to see a suit to its conclusion in order to recover costs. Increasingly in the later seventeenth century public penance was commuted to private penance or to cash fines suggesting that the public ritual aspect of penance was declining in significance.[44]

The secular action for defamation

In the secular courts defamatory words could be prosecuted in the form of an action on the

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[39] CRO EDC5 1692/37 John Pickering c. Elizabeth Pickering.
[40] Gowing, *Domestic Dangers*, 36-7.
[41] Forms of popular censure and punishment are discussed in Martin Ingram, 'Ridings, Rough Music and Mocking Rhymes', in B. Reay (ed.), *Popular Culture in Seventeenth Century England* (1985), 166–97.
[42] Gowing, 'Women, Sex and Honour', 23–4; Meldrum, 'Women's Court', 3.
[43] Whiteman, 'Re–establishment of the Church of England', 118; Sharpe, *Defamation*, 15.
[44] Spurr, *Restoration Church*, 213-4.

case, which had emerged from the law of trespass at the beginning of the sixteenth century.[45] Helmholz has argued convincingly that this action, as applied to defamation, was modelled on the ecclesiastical constitution, and was designed to deal with imputations of secular crime that were, as a result of the successful challenges of the common lawyers, no longer cognisable in the church courts. However, the common law of defamation was more complex than simply a secular mirror image of the ecclesiastical action, and, by the seventeenth century, comprised several categories of slanderous imputation. They amounted to a potentially extensive remedy for slanderous words, set out by John March in 1647:

> ... all scandalous words which touch or concern a man in his life, liberty, or member, or any corporall punishment; or which scandall a man in his office or place of Trust, or in his Calling or function by which he gaines his living; or which tend to the slandering of his Title, or his advancement, or preferment, or any other particular damage; or lastly which charge a man to have any infectious disease; by Reason of which he ought to be separated by the Law from the Society of men; all such words are actionable.[46]

In all cases the person slandered had to be specifically identified and the defamer was required to have imputed a specific offence when felony was at issue.[47] The first of these categories concerned imputations of crimes which could cause the victim to be imprisoned or subject to corporal punishment, such as theft, murder, heresy or witchcraft; words that alleged a trespass were not actionable.[48] As we shall see, allegations of theft accounted for the largest proportion (70 per cent) of defamation cases at the Court of Great Sessions in

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[45] The early development of the action on the case is the subject of some disagreement among legal historians; A. K. Kiralfy, *The Action on the Case* (1951), esp. 117; *Spelman's Reports*, ii, 236; T. H. F. Plucknett, *A Concise History of the Common Law* (1956), 372. One of the reasons for the differences in interpretation of the development of action on the case is that, until recently, legal historians have been reluctant to examine the plea rolls, preferring to rely on printed law reports which are necessarily selective. Kiralfy was an early exception to this; see J. H. Baker, 'Kiralfy's *Action on the Case*', *Journal of Legal History*, 16/3 (1995), 231-33. Helmholz's interpretation of the secular remedy for defamatory words in *Select Cases* is based on an extensive analysis of plea rolls.

[46] March, *Slander*, 8; Sheppard, *Grand Abridgement*, 26-41. Gowing, 'Women, Sex and Honour', 68-9, interpreted 'member' to mean 'penis'; it is clear from March's discussion, *Slander*, 40, that this was not the case.

[47] There was some flexibility in interpreting these requirements, as will become clear below. To say 'your son ... stole a horse' was not, strictly speaking actionable because the son was not actually named and therefore identified beyond doubt. However, a case cited by Style in which such an allegation was deemed actionable was typical of the common sense approach usually taken, William Style, *Narrationes Modernae, or Modern Reports* (1658), 46; cf. John March, *Reports, or New Cases*, 2nd edn (1675), 62.

[48] March, *Slander*, 25-7.

Chester between 1650 and 1700.[49] Imputations of theft were required to specify what had been stolen, while for an allegation of murder to be actionable the person murdered had to be named; to call someone a thief or a murderer in the heat of the moment was not, strictly speaking an offence recognised by these courts. Though alleging that a person had committed a capital crime was actionable, to say that a man 'deserved to be hanged' was not, theoretically, because such an allegation was not specific enough. Similarly, the use of adjectives such as 'traitorly' or 'thievish' suggested only an inclination to commit a criminal act and were therefore defined as reproachful rather than defamatory.[50] The only exception to this was to call someone, for example, 'a perjured man' which was taken to presume that the offence had in fact been committed.[51] As we shall see in chapters 4 and 5 this was not the only exception to these rather stringent rules; the epithet 'thief', for example, was routinely accepted as slanderous in the secular courts even when the amount stolen was not specified.

Many words that were not actionable when spoken of an ordinary person were considered defamatory if spoken of a person of a certain status or profession, such as an official or a lawyer. For example to call a lawyer 'illiterate' was considered defamatory, as was calling a constable 'a concealer of felons'.[52] A related category included words which 'scandall a man ... in his calling or function by which he gaines his living'.[53] Potentially this category could include any insult spoken of a person who earned his living by legal trade. Later seventeenth-century law reports show that this was a tricky area of the law that was open to various restrictions.[54] It seems clear that it was necessary to show that the insult was specifically related to the man's trade and such insults were often subject to the most pedantic of interpretations. For example, a watchmaker complained of the following words: 'He is a bungler and knows not how to make a good piece of work'. However, he did not

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[49] Allegations of theft accounted for four out of the nine prosecutions on the case in the Chester Mayor's court in the same period.
[50] *The Reports of Sir Cresswell Levinz*, 3 vols (3rd edn., Dublin, 1793-7), i, 90. Booth c. Leach, 1663; March, *Slander*, 17-18, 30. Cf. Style, *Modern Reports*, 49-50, 75.
[51] March, *Slander*, 31.
[52] March, *Slander*, 50; Thomas Leach, *Modern Reports*, i (5th edn., 1793), case 83 (1670). Slanderous words spoken of a judge or nobleman were a separate offence, see 48-9 below.
[53] March, *Slander*, 57- 65.
[54] Leach, *Modern Reports*, iii, case 102. Chapman c. Lamphire.

win the case because specific reference had not been made to his trade in making watches.[55] The case might have been decided differently if the plaintiff had pleaded under the fourth category and claimed special damage to his trade as a result of the words spoken.

The concept of damage had been a crucial element in actions on the case since its inception.[56] Baker argues that the recognition by the royal courts that words could cause actual harm, and hence that it was appropriate to award damages, helped to justify their intervention in defamation cases that had traditionally come under ecclesiastical cognizance, where the standard penalty was penance.[57] The issue in question is exactly what function measurable loss played in an action on the case for words. Holdsworth claims that the damage, and not the insult, was the gist of the action in the royal courts and that this shaped the nature of defamation actions; he claims that, as a direct result of this, truth could be a defence and that the publication of the words to third party was essential.[58] Plausible though it may seem, Helmholz argues that plea roll evidence does not support this proposition. He argues that in actions on the case for words, especially in the later sixteenth century, special damage was rarely the sole reason for bringing a case. More commonly defamation cases were based on an imputation of a crime that was actionable in itself and damage was supplementary.[59] March, however, states that words of 'passion and choller' which did not impute a specific crime were only actionable if damage could be shown.[60]

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[55] Leach, *Modern Reports*, i, case 51 (1669); ibid., v, case 202 (1698); Charles Viner, *Modern Reports, or, Select Cases Adjudged in the Courts of King's Bench, Chancery, Common Pleas and Exchequer*, 2nd edn (1700), 19.
[56] March, *Slander*, 70-7.
[57] Baker, *English Legal History* , 239; See also W. S. Holdsworth, 'Defamation in the Sixteenth and Seventeenth Centuries', *Law Quarterly Review*, 40 (July 1924), 304. He claims that the popularity of damages resulted in the secular courts encroaching extensively on the jurisdiction of the church courts. The increasing numbers of ecclesiastical cases in the later sixteenth century and continued large volume of litigation in the seventeenth undermines this argument.
[58] Holdsworth, 'Defamation', 304; Holdsworth, *History of English Law*, v, 206, 346; Sharpe, *Defamation*, 4; March, *Slander*, 73.
[59] March, *Slander*, 72-3, 97; idem, *Reports*, 59-60; *Select Cases*, xxxi. Kiralfy, *Action on the Case*, 118, states, rather equivocally, that damage was only 'typical' of action on the case.
[60] March, *Slander*, 74. Libels could also take the form of a picture as well as writing, Sheppard, *Actions Upon the Case*, 115-17.

Libel

Printed or written words (libels) were actionable without special damage.[61] Though they are not part of the focus of this study the development of the law of libel is important because it was closely tied up with the law on spoken defamation.[62] Action on the case for words had always included a remedy for written as well as spoken words and the distinction was not elucidated until after 1660. However, written words had always been treated somewhat differently from spoken words and the two offences had different judicial origins. The law of libel can be traced firstly to the statute *scandalum magnatum* which was born out of the recognition that scandalous words spoken of a 'magnate', or person of eminence, could threaten the security of the state.[63] The court of Star Chamber developed its own jurisdiction over scandalous libels in response to the political climate of the Tudor reigns. In 1606 it was established that written libel could be prosecuted by indictment as a breach of the peace, as well as in Star Chamber.[64] At the Restoration the court of King's Bench took over much of the jurisdiction of Star Chamber including its libel laws, in addition to actions on the case. It was this situation that led to the development of the principle that written words should be treated differently within the remedy of actions on the case because they were judged to be more damaging than spoken words. It was argued that written slanderous words could be assumed to be the result of more deliberation, and therefore malice, than words uttered in the heat of an argument. The result of this was that they were actionable without showing special damage, and that the action could be extended to words that would have been too vague to be common law slander if they had merely been spoken.[65] Though this principle was established as early as 1668 legal historians have

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[61] The origins and development of the law of libel are discussed more full in Plucknett, *Common Law*, 483-502; Baker, *English Legal History*, 373-4; J. H. Baker and S. F. C. Milsom (eds), *Sources of Legal History: Private Law to 1750* (1986), 647-55; Holdsworth, *History of English Law*, v. (1924), 205-12; Kiralfy, *Action on the Case*, 119; C. H. S. Fifoot, *History and Sources of the Common Law. Tort and Contract* (1949), 132.

[62] Libels of a political nature have received some recent attention. See Pauline Croft, 'Libels, Popular Literacy and Public Opinion in Early Modern England', *Historical Research*, 68/167 (1995), 266-285; Adam Fox, 'Ballads, Libels and Popular Ridicule in Jacobean England', *Past and Present*, no. 145 (1994), 47-83; Gowing, 'Women, Status and the Popular Culture of Dishonour', *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996), 225-33.

[63] St. Westminster I, c. 34. Magnates included prelates, peers, judges and some officers of the royal household. Lassiter, 'Defamation of Peers', 216-36; Roger B. Manning, 'The Origin of the Doctrine of Sedition' *Albion*, 12 (1980), 99-121, here, 111, 112; Sheppard, *Actions Upon the Case*, 16-19, 117; Plucknett, *Common Law*, 488.

[64] Plucknett, *Common Law*, 489.

[65] Plucknett, *Common Law*, 497-8; Sir Bartholomew Shower, *Reports of Cases Adjudged in the Court*

identified a widespread reluctance to accept it until the eighteenth century.[66] The emphasis on breach of the peace rather than damage to personal reputation in the development of the law of libel meant that the truth of the allegation was no defence; indeed, it was argued that a truthful libel was more likely to cause a breach of the peace than a false one.[67]

Problematic areas of law and pleading practice

Having sketched out a general outline of the theoretical scope of the two jurisdictions, I will now turn to some of the more problematic issues of law and pleading practice. Most of these arise at the boundaries between the ecclesiastical and secular jurisdictions. The most striking anomaly of the church's jurisdiction in practice was that it could encompass a number of secular imputations, particularly imputations of theft. This can best be explained with reference to the historical conflict over the limits of the two jurisdictions.[68] *Auctoritate dei patris* had originally covered allegations of temporal as well as spiritual crime. The royal courts had attempted to restrict them to spiritual crimes using the dual instruments of writs of prohibition and actions under the statute of *praemunire*.[69] However, it is clear that they had only been partially effective for a number of reasons. First, they had only been applied selectively over time; secondly, these decisions emanating from the royal courts were not regarded as precedents by the church courts and therefore problematic areas of the law could be repeatedly tested.[70] The result was that some church courts were still hearing imputations of theft, treachery, homicide, perjury and fraud in the seventeenth century. The law reports from the later seventeenth century can be opaque and confusing on this issue, but they show that there was real uncertainty about the scope of jurisdiction. For example, 'thou art a thief' ought not to have been actionable in the secular courts because it did not specify what

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of Kings Bench, 2 2nd edn (London, 1794), 313; Leach, *Modern Reports*, iii, case 94.

[66] Fifoot, *Common Law*, 132; Plucknett, *Common Law*, 497.

[67] Despite the fact that scandalous words were seen as a threat to the peace, truth was a defence under *scandalum magnatum*.

[68] Milsom, *Historical Foundations*, 381, claimed that 'the two jurisdictions seem in fact to have ignored each other more or less amicably'; see also, *Spelman's Reports*, 64–70; Plucknett, *Common Law*, 197, describes a process of steady encroachment of the ecclesiastical jurisdiction by the common law, but does not suggest that the relationship was particularly acrimonious; Marchant, *Church Under the Law*, 9. By contrast, Helmholz, *Select Cases*, lxvii, claims that the royal courts had engaged in what amounted 'almost to a campaign against the church courts'; idem, *Roman Canon Law*, 51.

[69] 16 Ric. II c. 5. See Baker, *Spelman's Reports*, 64–70; Helmholz, *Roman Canon Law*, 26.

[70] Helmholz, *Roman Canon Law*, ch. 2, esp., 181–88.

had been stolen, but it was arguably actionable in the church courts under the rubric of words of reproach. The common lawyers, having realised that the church courts were once again hearing temporal crimes under this action, may have relaxed their requirement of specificity in response.[71]

Non–sexual slanders accounted for 41 per cent of cases in the Chester and Chichester church courts after 1660. The fact that the church courts continued to hear temporal crimes (particularly reproachful words) may represent an attempt to reassert their authority after the Restoration in the face of secular encroachment.[72] Nevertheless, this interpretation is problematic because, from the later sixteenth century, the royal judges attempted to restrict the allegations that were actionable even in the secular courts through the application of what is known as the *mitior sensu* rule.[73] This meant that words had to be interpreted 'in the best sense', making it very difficult to bring a successful case unless the words spoken were completely unambiguous and referred to a specific crime or other matter cognisable at common law. There are clear examples of the application of the *mitior sensu* rule in the later law reports, but corresponding examples of flexibility with the result that, in practice, a number of reproachful and abusive words were being allowed in the secular courts.[74]

A related problem which further complicates this question is that of mixed slanders, such as 'thief and whore'. The strict application of the law required that these were cognisable only in the secular courts. Though a number of such cases were still being heard in the church courts in the early seventeenth century there were very few in the Chester and Chichester consistory courts after the Restoration – only 3.5 per cent of the total – which suggests that the common lawyers had successfully restricted the church courts in this area at least.

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[71] Chester mayor's court also heard actions on the case for words; in 3 out of 4 actions for imputations of theft it was specified what had been stolen and from whom; CCRO MF/80. See also Sir Thomas Raymond, *Reports* (3rd edn, 1793), 33.
[72] Helmholz, *Roman Canon Law*, 28, 43-6.
[73] Milsom, *Historical Foundations*, 386; Holdsworth, 'Defamation', pt. ii, 404–6; Baker, *English Legal History*, 368; March, *Slander*, 4–7, 23; Baker and Milsom (eds), *Sources of English Legal History*, 637-644; cf, *Select Cases*, xcii–xcv.
[74] For example, Levinz, *Reports*, i, 205: Lymbe c. Hockly (1667).

The question of allegations of secular crime in the church courts demonstrates the complexities and uncertainties of defamation law in this period. Most importantly for the purposes of this thesis it gives us an opportunity to compare aspects of male and female non–sexual reputation within the same jurisdiction; this question will be pursued in subsequent chapters.

As we have seen, sexual slander was the traditional province of the church courts. However, there were four questions which touched on sexual morality that came under secular jurisdiction. These were, in particular circumstances, allegations of whoredom, the bearing or fathering of an illegitimate child, allegations of venereal disease and running a bawdy house. Single or widowed women could take an imputation of whoredom to the secular courts if they could show that it had caused damage.[75] Such women were defined as *femes soles* (as opposed to *femes coverts*) and did have legal rights at common law. Despite this, the anonymous author of *The Lawes Resolutions of Womens Rights* elucidated the legal perception of women as utterly dependent on men declaring that, 'all of them are understood either married or to be married and their desires are subject to their husband'.[76]

Thus, the main provision for women, as far as defamatory words were concerned was the protection of their marriage prospects:

> For a woman not married cannot by intendment have so great advancement as by her marriage, whereby she is sure of maintenance for her life, or during her marriage, and dower, and other benefits which the temporal laws give by reason of her marriage; and therefore by this slander she is greatly prejudiced in that which is to be her temporal advancement, for which it is the reason to give her remedy by way of action at common law.[77]

In an example from King's Bench in 1669 a young woman pleaded special damage when her defamer alleged that 'she was with child by Simons; whereby she was in her parents displeasure, and in danger of being put out of their hous[e]'.[78] Such an outcome would have caused the young woman real hardship, though her claim may have been unconvincing as she referred only to being 'in danger' of being thrown out. The court rejected the plea

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[75] Godolphin, *Repertorium Canonicum*, 517–19.
[76] *Lawes Resolutions*, 4.
[77] Godolphin, *Repertorium Canonicum*, 517; March, *Slander*, 70-1, 74; Burn, *Ecclesiastical Law*, i., 478-9; William Vaughn, *The Spirit of Detraction, Coniured and Convicted in Seven Circles* (1611), 346. On men's right to claim for loss of marriage see Charles Viner, *A Grand Abridgement of Law and Equity*, 23 vols, i, 393.
[78] Levinz, *Reports* i, 53, 261. (1669) Barnes c. Brudel; *Baron and Feme*, 283.

because the allegation had caused no damage to a potential marriage. However, there are cases of single women bringing successful cases for loss of marriage, but it is unclear how specific the evidence had to be. In one case a young woman claimed that 'several that courted her in marriage did forbear' as a result of being called 'Ben Harden's common whore'. Similar cases were cited by the defence because they had been judged too unspecific and therefore inactionable. However, one of the justices stated that, 'it cannot enter into my reason but that these words carry damage in them; they import a great scandal; and suppose upon the report of such words no suitor ever comes to her, is not this grounds for an action? [79]

Women's rights at common law raise interesting questions about their ability to claim damage for anything other than loss of marriage.[80] In 1652 a widow, Cicely Pedley, alleged at the Court of Great Sessions in Chester that she had been called a 'whore'. In her plea she claimed £100 damages for loss of trade and also suggested that the words had been uttered with the intention 'to prevent her marriage with a person of good quality', though she did not actually claim damage to a specific potential marriage.[81] Unfortunately the case did not proceed to sentence so we do not know how it was decided. It is interesting to note that this case was brought in 1652 when the church courts were in abeyance. Had the slander occurred after the Restoration, Pedley may well have taken her case there.

Sexual imputations spoken against a wife also seem to have been actionable under the rubric of special damage if the words could be construed to have damaged her husband's trade. A justice in King's Bench in 1687 decided that when an innkeeper's wife was called a 'whore' it was actionable because it had led to loss of custom. He likened it to a hypothetical example, 'if an innkeeper's wife be called a "cheat", and the house lose the trade, the husband has an injury by the words spoken of his wife.'[82] Though it was nominally the husband's livelihood that had been damaged in such a case, it may reveal a

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[79] Shower, *Reports* ii, case 436, Tuckey c. Flower, 1686; March, *Slander*, 70-1; Burn, *Ecclesiastical Law* i, 479; Levinz, *Reports* I, 53 (1663); Style, *Modern Reports*, 118. If judges were prepared to interpret words as broadly as this it seems surprising that so few women sued for damage to marriage prospects.

[80] *Baron and Feme*, 281-2.

[81] PRO Ches. 29/442 (1652) Cicely Pedley c. Benedict and Elizabeth Brookes. This was the only case brought by a single female plaintiff in the sample from the Chester Court of Great Sessions.

[82] Leach, *Reports* iii, case 80; March, *Slander*, 74.

tacit recognition of the contribution of women to the domestic economy. Such cases also undermine Helmholz's assertion that in secular defamation cases damage was usually supplementary, for sexual imputations were not of themselves actionable in that jurisdiction.[83]

Bearing or fathering a bastard child was among the most common slanders brought to the consistory court in Chester (approximately 11%). However, bearing a bastard that would be chargeable to the parish was a common law statutory offence, and theoretically, the secular courts could therefore hear cases involving such slanders.[84] In practice this rarely seems to have happened in the later seventeenth century, mainly because people litigating in these courts were of middling social standing (and therefore unlikely to need parish relief), though there are examples in the law reports.[85]

Allegations of contagious diseases were actionable in the secular courts without alleging special damage; in practice only three conditions were actionable, the plague, leprosy and syphilis (or 'French pox' as it was generally known). These diseases carried a social stigma (which will be discussed in Chapters 4 and 5) and it is not surprising that they formed an actionable category of words, even if the history of this action is somewhat obscure.[86] However, their frequency should not be exaggerated; the incidence of these cases was over emphasised in the law reports because they served to illustrate two important points of law. First, allegations of pox were 'an economical set piece to illustrate the possibility of choosing the milder construction'.[87] This will be discussed in greater detail below, but, as far as allegations of the pox are concerned it refers to the distinction between allegations of smallpox, which were not actionable, and allegations of the French pox, which were. Secondly, the principle of *innuendo* could not be used to extend the meaning of the imputation. This is a good example of how natural modes of speech and insult did not always correspond with the requirements of a defamation case. Colloquially, 'pox' tended to refer to French pox, rather than small pox, particularly when used in insult. Though it

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[83] See 47.
[84] 7 Jac. 1. c. 4.
[85] Burn, *Ecclesiastical Law* i, 483.
[86] Baker and Milsom, *Sources of English Legal History*, 643.
[87] *Select Cases*, xcvi–xcvii.

would have been commonly understood that 'a pocky rascal' was a man with the French pox, this insult would not theoretically have been actionable. However, March cited a case where the expression 'a man is laid of the pox' was deemed actionable because 'that is the phrase of the French pox'.[88]

Helmholz shows that in the sixteenth century pleaders were experimenting with potentially legally viable ways to make allegations of 'pox' actionable. The first was to claim that the words suggested a corrupt and criminal life, thereby amounting to a criminal imputation; the second was to claim that the words had cut the plaintiff off from society as a criminal would be; and the third was to claim that the words had caused actual financial loss thereby amounting to a claim for special damage.[89] The most plausible type of loss would have been a claim for loss of marriage prospects. Cases from the later seventeenth century show that the process of increasing flexibility on allegations of the pox continued. In a case from King's Bench the plaintiff claimed that the defendant had said 'He has got the pox from a yellow–haired wench in Moorfields'. It was explained that 'wench in common speech is taken for a whore and therefore it shall be intended the French–pox'.[90] This could have been a classic opportunity for the application of the rule that the French pox had to be specified.

The question of imputations of the pox was certainly a contentious one in the law reports but there were very few cases where an allegation of the French pox was the libellate issue in the church courts. It is certainly tempting to conclude that fear of prohibition had contracted the number of cases being heard in the church courts. The fact that suggestions of venereal disease occur in many cases centring primarily on allegations of whoredom, fornication and bastard bearing lends support to this conclusion.

To call a woman a 'bawd' (a pimp or procurer) was not in itself actionable at the common law, though it was in the church courts. However, keeping a bawdy house was a common law offence and therefore if it could be shown that the allegation amounted to an imputation of this, then it could be actionable.[91] For example, a young woman claimed that

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[88] March, *Slander*, 21; Shower, *Reports* ii, case 321; Burn, *Ecclesiastical Law*, i, 477.
[89] *Select Cases*, xcvi-xcvii.
[90] Levinz, *Reports* i, 205.
[91] *Baron and Feme*, 283. See also Burn, *Ecclesiastical Law* i, 479; March, *Slander*, 121-2. The words

she had been called 'a pimp and a bawd, and fetch young gentlewomen to young gentlemen'.[92] Special damage was laid that her husband had refused to cohabit with her, but the court ruled that the words would have been actionable without damage.

Another problematic category was imputations of witchcraft. Causing death by witchcraft was a felony and therefore such a slanderous accusation would have been cognisable at common law. However, allegations of bewitching without causing death were also preserve of the ecclesiastical courts. The limits of the two jurisdictions have proved to be an area of confusion both for contemporary practitioners and modern historians. Sharpe has argued that the church courts could, theoretically, hear cases *only* of lesser witchcraft but that in practice this distinction was not made by the York church courts who did hear cases of causing death by bewitching. William Sheppard, writing in 1662, makes it clear that the secular remedy included destroying or injuring 'any person, cattle or goods'.[93] This means that charges of lesser witchcraft were, theoretically, encompassed by both jurisdictions. What is clear is that simply to call someone a witch had on occasion been allowed previously but, according to Sheppard, by our period 'the main current of the Judges opinions and judgements are ... that this action will not lye for saying one is a Witch; without the addition of some other words, importing that hee hath bewitched some person, or his goods'.[94] As in all areas of defamation legal practice there was still clearly some flexibility; though March claims that to say that a man 'deserved to be hanged' was not actionable, a successful case fought in Kings bench in 1668 involved the words 'You are a witch ... and if you cross me too much I will hang you for it'. It was argued that 'witch' on its own was not actionable without a specific reference to bewitching someone or something. However, the plaintiff won the case because, 'when it is further said, and I will hang you for it, that shews what witch he intended viz. such a one as had by her witchcraft committed felony'.[95] In another case from King's Bench in 1647 the plaintiff claimed that the defendant had said 'Thou art a witch, and hast bewitched my cow', a seemingly

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bawd tended to refer to women in this period while pimp referred to men and women.

[92] March, *Slander*, 42-3; Leach, *Reports*, case 77; Viner, *Modern Reports*, 31.

[93] Sharpe, *Defamation*, 12.

[94] William Sheppard, *Actions Upon the Case for Slander* (1662), 40-2; Style, *Modern Reports*, 47.

[95] Levinz, *Reports* i, 255. Swagter and wife c. Davies. *Baron and Feme*, 280–1; March, *Slander*, 17-18.

straightforward case; however, the defendant thought it worth moving for an arrest of judgement, suggesting that this continued to be an ambiguous area of the law.[96]

The law reports also highlight the problem of regional language and dialect words in defamation law and contain several examples which show that the local meanings of words were sometimes taken into account. A prosecution was brought in 1670 for the slander 'thou art a healer of felons'. March records that 'because the court was informed and took knowledge that in some counties it was taken for a smotherer of felons' the expression was deemed actionable. This decision was based on a previous decision that 'it was agreed, that words may be slanderous in one county and not in another'. The rule was that if a local word had an actionable equivalent then it should be considered legally slanderous.[97] It is difficult to determine whether this decision was universally applied. Though the law reports record several examples, I have not found any in the secular records of Cheshire and Sussex. As with cases involving allegations of the pox, the incidence of cases involving regional words may appear to be exaggerated in legal texts because they raised interesting points of law.

A similar attitude appears to have been taken by the church courts, though the number of cases in Cheshire is small and there were no cases in Sussex. In 1686 Mary Touchett sued Margaret Goulden in the Chester consistory for calling her a 'base bastardly tilling'. In the libel to this case the clerk wrote:

> That according to the comon and true meaning and acceptation of the words ... spoken by the said Margaret Goulden shee did ... report that the said Mary Touchett widow was and is a whore and unfaithfull to her conjugal obligation ... and particularly the word Tilling is of so scandalous sense and interpretation that it do's not only import that the mother of such person as is called Tilling is or was a whore but the grandmother also'.[98]

In 1679 Margaret Brassey sued Katherine Eaton for saying,

> that Mrs Brasseye was gone ... into Wales to spin blew wool, which words of saying is commonly accepted and understood and meant by any woman that is gone

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[96] Style, *Modern Reports*, 59.

[97] March, *Slander*, 13-14. March also discusses the actionability of Welsh words, ibid., 115; March, *Reports*, 2; Poos, 'Sex, Lies and the Church Courts', 591, found that ethnic insult was fairly common, especially against the Scots and the Welsh. Insults against the Welsh in Cheshire were probably more common than surviving records suggest as there was considerable tension between the Welsh and Cestrians.

[98] CRO EDC5 1686/7 Mary Touchett c. Margaret Goulden; The word was alleged in another case, 1662/46 Frances Eaton c. John Burston.

> from home or out of her owne country or neighbourhood into another place especially into Wales, that she's with childe, and is gone thither to be deliver'd[99]

In both cases it was stressed that the dialect words had commonly understood meanings which were actionable. In a third case, fought in 1672, Jane Vernon said to John Wybunbury 'Thou ... starved and clemd my mother Vernon to death and ... hast undone mee and my husband, a curse of Christ light upon thee and thy family'. To 'clem' was a Cheshire expression meaning to starve with hunger; the implication of killing and undoing someone was not theoretically an actionable slander in the church courts, though the accusation of cursing was.[100] In a final, intriguing case, Edward Blagge allegedly said that Anne Knutsford, a midwife, had delivered a child 'in pieces as black as a trash', which was an old shoe.[101] Given that early modern English society was highly regionalised the small number of these cases is puzzling. Local dialects were widely spoken and it seems unlikely that the language and modes of abuse of ordinary men and women were as consistent throughout the country as defamation records imply. The most plausible explanation for the absence of such words and expressions in these records is that they were deemed to be words of uncertain meaning and therefore less viable slanders. Defamation records are clearly a rarefied source for actual language and modes of abuse 'on the street'.

Maintaining the public peace

So far I have examined the civil side of the law concerning defamatory words. However, the courts were concerned not only with the protection of the reputation of individuals but with maintaining the public peace; this was described by Dalton as 'the Amity, Confidence, and Quiet that is between men'.[102] The public peace could be breached by private feuds and gossipings, particularly if they spiralled into active scandal mongering, public abuse or brawls.[103] The maintenance of fraternal charity and neighbourliness was a principle that

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[99] CRO EDC5 1679/6 Margaret Brassey c. Katherine Eaton.
[100] CRO EDC5 1672/40 John Wybunbury c. Ralph and Jane Vernon. According to Holland's *Glossary of Words*, 'to starve' meant to perish from the cold rather than hunger in Cheshire. 'Clem' is still used in the north-west to mean hungry. One of the many anomalies of the practice of ecclesiastical litigation was that accusations of killing, such as this one, were sometimes allowed.
[101] CRO EDC5 1663/16.
[102] Michael Dalton, *The Countrey Justice; Containing the Practice of the Justices of the Peace as well in as out of their Sessions* (Enlarged by T. M., 1666), 10.
[103] Some prosecutions for abusive words and disturbing the peace arose out of riots and political

underpinned both the secular and, more particularly, the ecclesiastical law: the concept of words of reproach in the church courts reflected a perception of the law not only as a force for the punishment of crimes (and therefore imputations of crimes) but the maintenance of community harmony which could be undermined by allegations of immorality and malicious scandal mongering. The wide range of definitions of 'breach of the peace' reflected the same impulse within the secular jurisdiction.[104] The protection of the peace therefore rested on the dual foundations of the restraining influence of generally accepted standards of neighbourly conduct bolstered by the authority and instruments of law.

The maintenance of social order depended on its policing by men who were themselves, theoretically, beyond reproach: indeed the personality of local officials and the relationships that they developed with members of their communities were essential to the social order. All local officials, from churchwardens to the justices of the peace were required to be men of good fame and credit and the law specifically protected them from malicious prosecution for defamation in the course of their duty.[105] Furthermore defamatory or reproachful words spoken of a man of authority or directed at him in the course of his duty were punishable by recognizance, indictment or summary conviction and the imposition of fines.[106]

Such cases accounted for between a half and a quarter of prosecutions for words in the Cheshire quarter sessions and Chester city courts in our period.[107] The following example is fairly typical: Thomas Ryder was presented in 1653 for saying 'a pox of god light on Justice Mainwaring I care not for him'.[108] The most common scenario was an argument ensuing from attempts to distrain goods from fine defaulters and words such as

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disturbances: Nicholas Rogers, 'Popular Protest in Early Hanoverian London' *Past and Present* no. 79 (1978), 70-100; Buchanan Sharp, 'Popular Political Opinion in England 1660-1685', *History of European Ideas,* 10/1 (1989), 13-29.

[104] Shoemaker, *Prosecution and Punishment*, 55, 65, found that offences against the peace, such as assault, riot, defamation and common disturbance of the peace, accounted for over half of all recognizances and indictments at Middlesex Quarter sessions between 1660-1725.

[105] Canon 115 (1604); 1 Edw. 3 st. 2 c.11.

[106] *A Manuall or Analecta Formerly called The Compleat Justice* , 7th edn (1661), 22.

[107] There were only two indictments for words spoken against a constable in the Sussex quarter sessions between 1652 and 1662.

[108] CRO QJB/2/6 (15 July 1653); QJF 81/1, f. 5.

'rogue', 'rascal' and 'knave' were among the most common in this context; explicitly sexual abuse does not appear in any of these cases.[109]

As noted earlier, the statute of *scandalum magnatum,* a precursor of the secular remedy for defamation, was based on the principle that the abuse of men in positions of authority was a threat to the peace and security of the nation as a whole. On the same principle seditious and treasonable words were an indictable offence. The civil wars saw an upsurge in popular participation in political discourse which continued throughout the Interregnum and Restoration and was reflected nationally in a greater incidence of prosecutions for seditious words.[110] Though these prosecutions are only incidental to this study they reflect a widespread concern for the control of inflammatory language that was shared by the courts in the two regions that form the basis of this study. Approximately a fifth of cases involving words at Chester mayor's court and just under half at the city sessions involved seditious words. There was something of a glut (14 cases) of prosecutions in the city sessions in 1685 and, of the 7 cases where we have documentation about what was said, 5 were expressing support for the Duke of Monmouth's rebellion of that year.[111] Seditious words were sometimes sexual in tone and drew on popular imagery of the time that equated the evils of tyranny and popery with sexual debauchery and lewdness. In August 1660 Mary Dod was bound over at the Chester Portmote court for saying that 'the King was a Bastard and the Queen a Whore of Babilon'. A deposition from the same session recorded that Mrs Jellicoe had said that all the court were 'whores, knaves and theeves and the Devills instruments'.[112]

The secular and ecclesiastical remedies for defamatory words impose a somewhat artificial distinction between verbal and physical abuse. The justices of the peace, on the other hand, were more acutely aware of the fact that 'slanders and false imputations are to be suppressed' in the interests of the common peace 'because many times words turn to blows'.[113] In fact, in some local courts in the later medieval period words had actually been

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[109] Examples include CRO QJF/81/1 f. 225.
[110] Sharp, 'Popular Political Opinion', 13-29.
[111] CCRO QSF/83/3 ff. 157, 158, 177. This concurs with the national pattern of prosecutions for seditious words which increased in the years 1679-85. See Sharp, 'Popular Political Opinion', 19-26.
[112] CCRO MF/80 ff. 50-1, 82v.
[113] Baker and Milsom (eds), *English Legal History*, 641; Joseph Keble, *An Assistance to Justices of*

treated as a kind of verbal assault. In these cases the words themselves were often not even recorded because their assaulting nature was considered more important than the specifics of what was actually said. The reverse is true of defamation cases where the legal strictures of pleading made the specificity of the words imputed the basis of the cause. As a result the plea rolls and libels mostly record carefully framed, stilted statements that surely bear little relation to the original angry outbursts. We should be aware that the description of events in any given case is biased by the type of case that was eventually brought.

Violence, or the threat of violence, lurked in the background of many ecclesiastical and secular defamation cases which tended to arise out of arguments that led to the exchange of insults, and occasionally a physical fight. Threatening gestures and physical violence were recounted in the depositions of witnesses, particularly when the defendant was claiming provocation as a defence. In 1667 Margaret Richardson sued John Napper for defamatory words in the consistory court at Chichester for calling her a 'stinking whore'; however, it is clear in the depositions that she believed that he had also threatened her physically; it was claimed that he 'in a furious manner did beat off her hat with his horse his [i.e horse's] nose and was like to ride over her'.[114] Fights are usually a potent combination of insult, abuse and physical assault; in this period they could lead to a variety of different legal actions in either jurisdiction. The participants could be indicted or bound over to keep the peace at quarter sessions or assizes. One could bring a personal action against the other for assault, or the words could assume the greatest significance in a defamation case in either church or secular courts.[115] The distinction between assault and the lesser offence of 'scandalous and provoking words', however, was not always clear cut. The author of the *Compleat Justice* said that 'assault cannot be made without the offer of some hurtful blow, or at least of some fearful speech', though 'fearful speech' on its own was not, in practice, considered to be assault.[116] However, threatening and provoking words were taken

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the Peace for the Easier Performance of their Duty (1682), 671; Dalton, *Countrey Justice*, 193.
[114] WSRO EpI/11/17 f. 41v. Margaret Richardson c. John Napper.
[115] T. C. Curtis, ' Quarter Sessions Appearances and their Background: a Seventeenth Century Regional Study', in J.S. Cockburn (ed.), *Crime and the Courts in England* (London, 1979), 135-7; Shoemaker, *Prosecution and Punishment*, 7, 129; J. M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford, 1986), 38-40.
[116] *Compleat Justice*, 22.

seriously, both as a factor that exacerbated the magnitude of an assault and as a threat to the peace in themselves.[117] In the following case the words that accompanied the assault were recorded:

> At this Session also cometh John Faincombe of Fairleigh in the County of Sussex yeoman and Complaineth that Mark Phillip of this Towne Seaman came to him where he was with his Waggon in Hasting[s] at the Gutsmouth there, and threatned him saying to him, you Roague Ile knocke you downe and held up his Staff ready to strike at him And after that went forthwith to his servant William Bishop then with him, and said to him Ile teare youre flesh as much as you tare my Coate and throw you into the sea and thereupon layed violent hands upon the said Bishop and tore his coate And that he supposeth his said doing was in revenge of his the said Phillips being latelie taken by the Justices warrant in the forraine, and thereuppon brought ... here to Towne in the time of the last process heere for his Majesties service at sea.

Mark Phillips was subsequently bound over to be of good behaviour.[118]

Defamatory words were indictable when it was believed that they might lead directly to a breach of the peace.[119] In 1655 John Cripps was indicted at Sussex quarter sessions for saying 'Thou art a knave, a base knave, a begarly rogue, and an hypocritical rogue, if I come out of my house I will kill thee and I'le spend the best bloud in my body'.[120] Other insults could only be prosecuted by recognizance, though the practical differentiation was not always as clear as the theoretical.[121] Complainants sometimes argued that they were in fear of bodily harm from the offender, even if they had not yet been assaulted by them. For example, Margaret Palfreyman complained that Mary Jackson had called her 'a whore and an arrand whore' but also added that she 'constantly cometh into and upon the backside belonging' to Margaret Palfreyman and that as a result she was afraid that she might cause her 'bodily harm'.[122]

We only have a record of what was actually said in the few cases where there are surviving examinations; in the majority of these the abuse is not explicitly sexual, though I will argue in a subsequent chapter that three of the most common insulting words spoken of

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[117] Examples include CRO QJF/93/1 f. 110; QJF/93/3 f. 48; QJF/113/1 f. 79.
[118] HM C/A (a) 2, f. 139v.
[119] Shoemaker, *Prosecution and Punishment*, 29-30.
[120] ESRO QR/E107 (April 1655), f. 30.
[121] The exception to this rule was the sending of a defamatory letter or printed scandalous words, both of which were considered breaches of the peace in themselves. However the five perpetrators of written libels who came before the Cheshire quarter sessions were only bound over for good behaviour, rather than indicted. CRO QJF/93/2 f. 95, ff. 72, 73, 79, ff. 85, 86; QJF/123/2 f. 94.
[122] CRO QJF 87/1 f.40, 21 March 1658

men, 'rogue', 'rascal' and 'knave', could have sexual connotations. This is not surprising as sexual insult was the preserve of ecclesiastical jurisdiction and those who used insults of a sexual nature were perhaps more likely to be prosecuted in the church courts for defamation than for breach of the peace. Nevertheless, there are a few cases of sexual insults leading to prosecutions in the Cheshire and Sussex secular courts, even after the restoration of the church courts, and the language is reminiscent of ecclesiastical examples. In 1695 Mary Hammond was bound over for saying that Mary Adshead 'would lay her arse under 4 or 5 men of one night'.[123] In another intriguing example Elizabeth Grantham complained that Sybil Brundrett had called her 'salt ravelling bitch, barren bitch ... and barren doe' but proceeded by saying that 'she would not call her whore or tell whose whore [she] was but would keepe her the said Sybil Brundrett within the compass of the law that it should not take hold of her for what she said against [Elizabeth Grantham]'. This attempt at skirting around the law was unsuccessful because Brundrett had not only habitually abused Grantham, but had also thrown cow dung in her well and encouraged John Duncalfe to drown some of Grantham's kittens.[124] Such a catalogue of persistent abuse was a feature of prosecutions in the secular courts, compared to the church courts where a single outburst could land the defamer in court.[125]

Sometimes a case for assault was brought in conjunction with a case for defamatory words and we can safely assume that they relate to the same incident. Out of seventeen defamation cases recorded in the Sussex Quarter Sessions indictment book for 1652–1662, four were brought in conjunction with assault.[126] One involved litigants from two families who filed a number of suits between them for assault and attempted murder as well as defamatory words.[127] These cases clearly reflect a family feud that was fought out (at least partly) in the courts over the course of about a year. Defamation cases therefore need to be understood in the context of a range of tensions within the community and the variety of legal actions that were available to deal with them.

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[123] CRO QJF/123/1 ff. 53, 54.
[124] CRO QJF/118/2 ff. 53, 54.
[125] Curtis, 'Quarter Sessions Appearances', 136-7.
[126] ESRO QI/ EW2 ff. 11v., 23, 25v.
[127] ESRO QI/EW 2 f. 15; QR/107 ff. 5, 6, 8, 9, 10, 11, 34, 35, 37, 48.

Many common lawyers were conscious of the need to strike a balance between recognising the importance of remedies for slanderous language in judicial procedures for keeping the peace, and the danger that the law might be manipulated by troublemakers. March warned against allowing men to 'flee to law out of malice, and make the courts maintainers of every small and vain brabble'.[128] There were therefore legal safeguards against this: barratry, for example, was an indictable offence, a common barrator being defined by William Sheppard as

> a Common wrangler ... a common mover, exciter, and maintainer of suits or Quarrels in courts ... in disturbance of the peace, in taking and detaining in Possession houses, lands, or goods, by false invention, sowing of Calumniations, Rumours and Discords, whereby disquiet ariseth among neighbours[129]

It has been well established that men were more likely to be prosecuted for barratry and women for the related offence of scolding; it has been argued that this was primarily because men were more likely to be involved in the manipulation of the legal system (bringing unjust suits, for example) that was the main distinguishing feature of barratry.[130] As Ingram has pointed out, however, it is important to recognise that both men and women indulged in the 'fishing in troubled waters' that characterised both these offences: They were not, therefore, as clearly and simplistically gendered legal categories as has sometimes been implied.[131] Barratry was prosecuted intermittently at quarter sessions in Cheshire and Sussex and there was one example of a woman being presented as a common scold at Chester city sessions in 1671.[132] It was in the nature of these offences that only persistent offenders were prosecuted. Habitual troublemakers could also simply be bound over to be of good behaviour on the grounds that they were people 'that be not of good fame' if a

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[128] March, *Slander*, 3.
[129] Sheppard, *Grand Abridgement*, 300; Dalton, *Countrey Justice*, 39.
[130] M.J.Ingram, '"Scolding Women Cucked or Washed": a Crisis in Gender Relations in Early Modern England?', in Kermode and Walker (eds), *Women, Crime and the Courts*, 48-80.
[131] J. A. Sharpe, *Crime in Early Modern England, 1500-1750* (1984), 88; D. Underdown, *Revel, Riot and Rebellion: Popular Politics and Culture in England, 1603-1660* (Oxford, 1985), 16; idem, 'The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England', in Fletcher and Stevenson (eds), *Order and Disorder*, 116-36. For a more recent interpretation see Ingram, '"Scolding Women"', esp., 51-2.
[132] There were 9 men and 2 women prosecuted for common barratry at Cheshire quarter sessions between 1650 and 1700. 7 men were indicted for common barratry at Sussex quarter sessions in the same period; ESRO QI/EW 2 ff. 8,16v., 22, QI/EW 5 ff. 33v., 34, 53. CCRO QSF 79/5 25th March 1671. 2 women were presented for scolding at quarter sessions in 1659, but none after 1660.

justice had 'just cause to suspect [them] to be dangerous, quarrelsome, or scandalous'.[133] Though designed to prevent crime Shoemaker argues that this was a form of prosecution in itself; in Cheshire and Sussex throughout the period there were examples of men and women being bound over for being 'a person of ill behaviour, a raiser of false reports and scandalls'[134] or 'living unquietly and unpeaceably among their neighbours' in both regions.[135] Drunkenness (which was often a characteristic of offences against the peace), cursing and swearing could also be punished by summary conviction, resulting in a fine.[136] As we shall see drunkenness was not only considered a moral threat to the community but often led to breaches of the peace, and defamatory words that were prosecuted in the church courts.

As the volume of ecclesiastical court business declined in the seventeenth century and the church's role as a regulator of morals was redefined, so too was the role of the secular authorities in the realm of the control of abusive language. Meldrum and Shoemaker have both discovered that the quarter sessions in Middlesex and Westminster were actively pursuing defamation business in the early eighteenth century as the numbers of ecclesiastical defamation cases fell.[137] The evidence presented here from the secular courts is limited but shows clearly that the secular courts in Cheshire and Sussex were a forum for defamation business in this period.

As I have shown there was a range of criminal and civil procedures in both the temporal and spiritual courts which dealt with abusive and defamatory language. The legal context in which this evidence is relayed to the historian determines both the nature and the quantity of information that is revealed; this needs to be borne in mind in the ensuing discussion of the nature and importance of reputation in early modern England. The law was complicated and littered with areas of uncertainty which allowed for conflicting judgements

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[133] 34 Edw. 3 c. 1; quoted by Shoemaker, *Prosecution and Punishment*, 26.
[134] CRO QJF 93/1, f. 26.
[135] CRO QJF 95/2, f. 104; QJF/93/1, f. 111; QJF/95/2, f. 106; QJB/3/2; QJF/113/1, f. 55; QJF/123/2, f. 85. Shoemaker, *Prosecution and Punishment*, 29-30.
[136] Shoemaker, *Prosecution and Punishment*, 61, 82. Drunkenness was theoretically also a spiritual crime and therefore a slander alleging drunkenness could be heard in the church courts. By our period though it was an ambiguous area of jurisdiction, Godolphin, *Repertorium Canonicum*, 521.
[137] Meldrum, 'Women's Court', n. 28; Shoemaker, 'Reforming Male Manners', 139.

to be set down from court to court and jurisdiction to jurisdiction. Future research needs to be conducted in new regions and new courts across the early modern period before hard and fast conclusions can be drawn about the practice of litigation over defamatory words, especially in the local courts.

3: Litigants and Witnesses: the Social Framework of Litigation

The records of ecclesiastical defamation cases contain many fragments of information that enable us to reconstruct some of the social contexts in which the legal actions occurred. In this chapter I will outline what we can learn about the people who were involved in that litigation and discuss some of the factors which determined their participation. The records of cases include both 'official' factual information and narrative details about the participants. This information enables us to establish the 'sort' of people who came before the courts, which is a necessary first step to unpicking the social fabric of the cases in the following chapters. The records of secular cases are, unfortunately, not as detailed and sometimes contain little information other than the names of the individuals concerned. However, as much information as possible from these cases has been built into the analysis in this chapter.[1]

The libel in an ecclesiastical case recorded details about the two litigants in addition to recording the words that were allegedly spoken by the defendant against the plaintiff. This information invariably included the name of the plaintiff and defendant, their parish or township of residence and, in the case of women, their marital status. Sometimes the occupation of male litigants is given, or the husband's occupation in the case of female litigants, though this is not always the case. These details enable us to identify who was involved in litigation and discern patterns of participation in the legal process within the communities under examination.

The survival of libels is unfortunately patchy in both dioceses, and any analysis of the social context of defamation litigation is heavily dependent on the information to be found in the depositions of witnesses.[2] Most depositions begin with the names of the

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[1] See Appendix II.

[2] David Cressy, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (Cambridge, 1980), used similar details from church court depositions (and wills and marriage licence

litigants and then provide relatively full details about the age, occupation, place of residence of the witnesses and, in the case of women, their marital status. In addition to these documents, interrogatories were sometimes used by the litigants to establish facts about themselves or their witnesses. The tables and statistics that follow mostly refer to the sample of witnesses rather than litigants because we have more information about them. From this information we can build up a framework with which to analyse how factors such as age, gender or occupation affected patterns of social interaction, sociability, and the dynamics of reputation and credit. The depositions serve two purposes; crucially, they provide 'proxy data' about the litigants, when there is an absence of direct information. It will be shown that litigants and witnesses were usually of congruent status and therefore witnesses can often be used as proxies for litigants; there are exceptions to this, especially in the case of masters and servants, but these examples are usually clearly indicated. Other studies have shown that the combination of data about witnesses and more qualitative information from depositions is a reliable guide to the litigants as well as the people who gave depositions.[3] Second, witnesses are historical characters in their own right whose testimonies flesh out our picture of the social world in which defamation litigation functioned. Though we depend on their testimonies as the main body of evidence, witnesses have been relegated to a rather incidental place in previous studies of defamation. Yet, if we are to understand defamation cases fully we need to know as much about the witnesses as possible.

The general consensus among historians who have used court records is that the official details that are recorded in libels and depositions are reliable, even if the credibility of the narrative material is open to question.[4] One test is the consistency of

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records) to reconstruct the social structure of literacy and illiteracy in early modern society. See Earle's detailed analysis of information about litigants and witnesses from court depositions in 'The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries', *Economic History Review*, 2nd ser., 42/3 (1989), 328-53. Details varied from court to court and over time; for example, Poos, 'Sex, Lies, and the Church Courts', 585-607, found little indication of the social status of participants in church court cases.

[3] See below, 81-3.

[4] Meldrum, 'Women's Court', 6; J. S. Cockburn, 'Early Modern Assize Records as Historical Evidence', *Journal of the Society of Archivists*, 5 (1975), 223-26, has warned that legal records are riddled with inaccuracies, but his argument is only directly applicable to assize records. cf. J.A. Sharpe, *Crime in Seventeenth-century England: a County Study* (Cambridge and Paris, 1983), 9-12.

the information, which can be gauged if a particular witness or litigant is involved in more than one case. When this occurred in either of the samples the information was always consistent, with the exception of occasional discrepancies in the listing of occupation and status and details about age; in the case of age the discrepancy was never more than about a year and therefore can be regarded as insignificant as people often had only a vague sense of time and age.[5] People lived in relatively tight-knit communities and would probably have been known to local court officials which may have acted as a safeguard against misinformation. In addition articles of exception were partly designed to protect against inaccurate records. These recorded secondary examinations of witnesses about their depositions. They generally focused on the reputation of witnesses and were designed to discredit the testimony of the opposing party's witnesses; this additional information has been incorporated into the following analysis.

The social status of litigants and witnesses

In the majority of cases the occupation of male litigants and witnesses is recorded in the official documents of the court; in the case of married female litigants and witnesses the occupation or status of their husband in usually listed and single women are generally described as spinsters with no occupation, though many of them would have been involved in wage earning activity.

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[5] See 91, n. 93.

Table 1. Occupation of male witnesses in the dioceses of Chester and Chichester, 1660-1700

	Chester		Chichester	
	N	%	N	%
Gentleman	10	5	6	8
Yeoman	32	16	15	20
Clergy/clerk	3	1.5	4	5.33
Alderman	2	1	0	0
Merchant	1	0.5	1	1.33
Husbandman	69	35	24	32
Craftsman/tradesman	76	39	24	32
Labourer	1	0.5	0	0
Other	3*	1.5	1	1.33
Total**	**197**	**100**	**75**	**99.99**

* 2 barber-surgeons & 1 pharmacist.

** This total represents all witnesses who were listed as having an occupation. This table does not include litigants.

Table 2. Occupation of the husbands of female witnesses in the dioceses of Chester and Chichester, 1660-1700

	Chester		Chichester	
	N	%	N	%
Gentleman	5	7	0	0
Yeoman	2	2.5	1	14.5
Husbandman	14	19	2	28.5
Craftsman	46	62	4	57
Clergy	1	1.5	0	0
Innkeeper	3	4	0	0
Labourer	3	4	0	0
Total*	**74**	**100**	**7**	**100**

* 21 (68 per cent) women from Chichester were not listed as having any occupation. This was the case for 46 per cent of female witnesses in Chester.

Tables 1 and 2 show that the two largest groups of witnesses were those listed as 'craftsmen and tradesmen' and 'husbandmen' (and their wives). The proportions for the two counties were broadly similar; they roughly concur with the social profile suggested in studies of defamation cases in other areas outside the metropolis, though other studies have not presented detailed evidence of the social structure of participation in litigation.[6] There were significantly more yeomen testifying in defamation cases than wives of yeomen in Cheshire though the proportion of gentlemen was roughly similar to that of the wives of gentlemen. In the Chichester sample no gentlemen's wives testified in defamation suits. We know the status of male litigants for certain in only 31 cases; of these, 20 (64.5 per cent) were tradesmen, 3 were yeomen and 5 were gentlemen. There were only 2 husbandmen but, as the vast majority of litigants are obviously not represented in this sample I would argue that it does not conflict with the evidence set out in Tables 1 and 2. It seems likely that men of higher status (or with an identifiable trade) were more likely to have their status recorded in the libel or mentioned in the depositions than men of lesser status.

The social profile of litigants suing for defamatory words in the secular courts was not significantly different, though the information recorded tended to be less comprehensive and consistent than in the ecclesiastical courts. In the Cheshire quarter sessions forty-four men were indicted or bound over for scandalous or provoking words between 1650 and 1700; of these nearly 50 percent were tradesmen or craftsmen of some sort, 30 per cent husbandmen and 6 per cent yeomen. The figures for women are of no statistical value because only twenty women were prosecuted in this court for this sort of offence, and of those only eight had an occupation recorded either for themselves or a husband. Only in the Chester court of Great Sessions was the social makeup of participation slightly different from the pattern outlined above; there a

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[6] Martin Ingram, 'Communities and Courts: Law and Disorder in Early Seventeenth-Century Wiltshire', in J. S. Cockburn (ed.), *Crime in England, 1550-1800* (1977), 116; Ingram, *Church Courts*, 304; Sharpe, *Defamation*, 17-18. In London Gowing found that only 6 per cent of witnesses (and no litigants) were of gentry status and the vast majority were merchants, tradesmen and shopkeepers. The very different occupational profile of the metropolis makes comparison difficult. Gowing, 'Women, Sex and Honour', 14, 26. See Cressy, *Literacy*, 113, on the social structure of ecclesiastical litigation in general and the social structure of the country as a whole.

higher percentage of litigants were of gentry and yeoman status and there were very few from the lower ranks of the 'middling sort'. Of litigants whose status can be determined, thirteen (43 per cent) were of yeoman rank and seven (23 per cent) were recorded as gentlemen.[7] The remainder were husbandmen (two), a tanner, a woollen draper (who was sued in two cases) and a collier. Two widows and one spinster were not ascribed any occupation, though one of the widows, Cicely Pedley, sued Benedict and Elizabeth Brookes for one hundred pounds claiming loss of trade as well as a marriage suitor.[8] We can fill in the details of the litigants in one other case from ecclesiastical records. Joseph Croxton was a shoemaker from Nantwich (a centre of the leather trade) who brought a prosecution jointly with his wife against Thomas and Anne Knutsford (also from Nantwich) in 1664. Anne Knutsford was a midwife though there is no information about the occupation or status of her husband.[9]

The simplicity of the vertical structure that is depicted in Tables 1 and 2 derives from the tripartite shorthand (gentlemen, yeomen and husbandmen) which was widely used by contemporaries especially in formal documents such as court records.[10] This shorthand obscures many layers of social distinction and was only one of several contemporary views of the social structure at the time. The categories used reflected pronounced differentials in wealth, status and culture, but not static social groups; in other words the boundaries between categories were mutable. Yet, despite necessary qualifications, it is still possible, and indeed useful, for the historian to talk of the 'average' gentleman, yeoman or husbandman.

The ranks of the gentry were limited by the requirement of entitlement to bear arms though it is well known that there were plenty of men who called themselves

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[7] The total number of litigants whose status was recorded in this sample was only 31. Of these, 2 were husbandmen and 5 tradesmen; 2 widows and 1 spinster were not ascribed any occupation.

[8] PRO Ches. 29/442 Cicely Pedley c. Benedict and Elizabeth Brookes.

[9] PRO Ches. 29 462/13. The information about the litigants comes from CRO EDC5 1664/6 Anne Knutsford c. Barbara Croxton.

[10] Keith Wrightson, '"Sorts of People" in Tudor and Stuart England' in Jonathan Barry and Christopher Brooks (eds), *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800* (1994), 28-51; Keith Wrightson, 'The Social Order of Early Modern England: Three Approaches', in Lloyd Bonfield, Richard M. Smith, and Keith Wrightson (eds), *The World We Have Gained: Histories of Population and Social Structure: Essays Presented to Peter Laslett on his Seventieth Birthday* (Oxford, 1986), 177-202.

gentlemen without entitlement. Legally, yeomen were defined as men who held land in freehold to the value of 40s a year and were therefore entitled to vote in county elections.[11] Beyond these established distinctions the actual wealth and status of individual gentlemen and yeomen varied across the country; many yeomen in the south, were worth more than a gentleman in the north, for example. Status was dependent on more than wealth and the dividing line between the upper yeomanry and lower gentry was, as a result, permeable.

The lesser gentry generally farmed up to 1000 acres. Wrightson has estimated that gentlemen were usually worth at least £200 a year.[12] William Burganey, a gentleman from Cheshire, had an estate valued at over £306 when he died.[13] Agricultural status below the level of the gentry was based not only on the size but the manner of land holding and varied across the country; wealth was dependent on a number of variables including land usage, inheritance practices and manorial custom.[14] Yeomen generally farmed on average about 50 acres. Erickson has estimated that in the seventeenth century the average wealth of a yeoman was £104 and Spufford has estimated that the figure for the early seventeenth century was £180.[15] When Richard Halliwell, a yeoman from Cheshire, died he left an estate worth £175 which concurs with these figures.[16]

The category 'husbandman' was not a legal one, though it was routinely used in official documentation such as court records. It is estimated that the average wealth of a husbandman was £30 a year, but such a figure belies vast differences in the size and

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[11] Mildred Campbell, *The English Yeoman Under Elizabeth and the Early Stuarts* (New Haven, 1942), 23.

[12] Keith Wrightson, *English Society,1580-1680* (1982), 25.

[13] CRO Will of William Burganey, 3 March 1689. Burganey was sued for defaming Mary, Elizabeth and Frances Battridge and Hannah Edge in 1675, EDC5 1675/25; his wife sued George Guest in 1678, EDC5 1678/6; both William and Mary were witnesses in Jane Price and Richard Halliwell c. Thomas Halliwell, EDC5 1682/22 and 1683/34; Burganey's son, William jnr. was sued for defamation by Margaret Hatton in 1700, EDC5 1700/4.

[14] Joan Thirsk, *Agrarian History of England*, 5.1 (Cambridge, 1984), chs 5&9.

[15] Erickson, *Women and Property*, 41; Margaret Spufford, *Contrasting Communities: English Villagers in the Sixteenth and Seventeenth Centuries* (Cambridge, 1974), 39; Wrightson, *English Society*, 25.

[16] CRO Will of Richard Halliwell, 17 January 1683. Richard Halliwell sued Thomas Halliwell for defamation; CRO EDC5 1682/22 and 1683/34.

value of landholdings of husbandmen across the country.[17] Erickson has estimated that in pastoral areas (such as much of Cheshire) the average holding of a husbandman might be as small as three or four acres, yet in arable areas (such as the Sussex coast) it could be as much as fifty acres.[18]

The information given in defamation records enables us to establish these broad patterns, but when a witness in a defamation case was listed as a husbandman we have no way of ascertaining (with any precision) from these records where that individual slotted into the local or national spectrum. We are also told little about the type of husbandry that these men and their wives were involved in. Cheshire and Sussex were both agriculturally stable, though not wealthy counties, which could sustain their populations adequately, except in times of serious dearth.[19] Cheshire was essentially a pastoral region farming primarily cattle for beef and dairy products, and a few sheep. A particularly noticeable gap in the records is the scarcity of references to dairying in Cheshire; this must be concealed in the agricultural categories for it was an important industry, employing a large proportion of the county's workforce. Cheshire cheese was renowned for its exceptional quality and was one of the county's main exports.[20] There was also small scale arable farming that was mostly on a subsistence scale, but also included flax and hemp for textile manufacture. These is no reference to the salt industry whatever, despite its great importance in Cheshire in this period.[21] Sussex was more agriculturally diverse than Cheshire; the southern downs were primarily arable but

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[17] Wrightson, *English Society*, 24, 32; Herrup, *Common Peace*, Appendix 2; Erickson, *Women and Property*, 41; Spufford, *Contrasting Communities*, 39. Andrew Sharpe stresses the fact that the categories of status were neither static, nor expected to be by contemporaries, in 'Edward Waterhouse's View of Social Change in Seventeenth-century England', *Past and Present*, no. 62 (1974), 36.

[18] Erickson, *Women and Property*, 39- 40; Wrightson, *English Society*, 32; cf. Herrup, *Common Peace*, Appendix 2, and the references there. Phillips and Smith, *Lancashire and Cheshire*, 25-30, 78-81.

[19] Thirsk, *Agrarian History of England*, 4 (Cambridge, 1967), 80-4; vol 5.1, chs 5 and 9; For a useful survey of the economic, agricultural and political characteristics of Cheshire see Phillips and Smith, *Lancashire and Cheshire*, 5-131;

[20] Defoe, *Tour Through the Whole Island*, 394-5; Thirsk, *Agrarian History of England*, 5.1, 153-4. There are a few references to dairying, for example, 173 below, but these are just as likely to be domestic dairying on a scale that woud have occurred in any county in the country.

[21] Salt, essential as a preservative in dairy production, had been extracted from brine in Cheshire for centuries; the discovery of rock salt in 1670 brought increased prosperity to Northwich and Nantwich, (Cheshire's second town) and salt production was one of the county's main industries. Walker, 'Crime, Gender and Social Order', 34; Morrill, *Cheshire*, 7; Phillips and Smith, *Lancashire and Cheshire*, 32; Thirsk, *Agrarian History of England*, 5.1, 153; Hall, *Nantwich*, 252-67; King *et al*, *Vale-Royall*, 19.

the northern weald supported a more mixed economy of small scale husbandry and manufacturing.[22]

The social framework is complicated by the inclusion of the categories based on occupations and trades of urban dwellers. The economic interdependence of town and country was reflected in linked social and occupational structures which were a factor in hierarchies of status. The terminology of status was particularly ambiguous in this regard for there was no clear distinction drawn between signifiers of status and labels of occupations.[23] It is difficult to fit the category of 'craftsmen and tradesmen' into hierarchies of social status for this category encompassed the poorest journeyman craftsmen at one end of the spectrum and substantial retailers and master craftsmen at the other. In addition to this many craftsmen owned a small amount of land for subsistence purposes; many may also have sold small amounts of the produce of their land and there are occasional indications of this in the records. There are occasional discrepancies in the recorded status of individuals which may be explained by clerical error, but may also reflect the complex construction of status at the time. Adam Voake, for example was identified as a cordwainer on a recognizance filed in Sussex in 1665; in another entry he was listed as a shoemaker and when he was indicted for assault the following year he was described as a gentleman.[24] In another example Daniel Margerum was listed once as a merchant and on another occasion as a gentleman.[25] The most obvious problem for this study is how the structure of urban and rural society

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[22] Herrup, *Common Peace*, 13-19. In Sussex the northern weald was more pastoral than the coastal region. In Cheshire arable farming was generally restricted to the Wirral in the north-west; grain consumption in the rest of the county was dependent on imports, though this was partly because cattle rearing was generally more lucrative than grain production, rather than a result of the infertility of the land.

[23] Muldrew, 'Rural Credit', 156-7. On the difficulties presented by urban yeomen see Jeremy Boulton, *Neighbourhood and Society: A London Suburb in the Seventeenth Century* (Cambridge, 1987), 245, n. 64; see also Nigel Goose, 'Household Size and Structure in Early Stuart Cambridge, *Social History*, 5 (1980), 347-85; The literature on this question is extensive. In addition to the references in n. 10 see, Peter Laslett, *The World We Have Lost Further Explored* (1983), 66-8; ibid, 'Estates, Degrees and Sorts: Changing Perceptions of Society in Tudor and Stuart England' in P. J. Corfield (ed.), *Language, History and Class* (1991);Campbell, *English Yeoman*, ch. 2; G. S. Holmes, 'Gregory King and the Social Structure of Pre-industrial England', *Trans. Roy. Hist. Soc.*, 5th ser., 27 (1977), 41-68; Charles Phythian-Adams, *Desolation of a City. Coventry and the Urban Crisis of the Late Middle Ages* (Cambridge, 1979), 71-3; Earle, *Making of the English Middle Class*; 30-52. Wrightson, '"Sorts of People" in Tudor and Stuart England', 28-51.

[24] ESRO QI/EW2 f. 42, no. 11, f. 70v.

[25] ESRO Ep III/5/3.

intersected. A merchant might well have been considered to be a man of gentry status (and might have had links with the rural gentry) but could be defined in occupational terms as a merchant. Concepts of status were contingent on a range of criteria, including different aspects of reputation, and these would have been judged differently depending on their social context; an urban craftsman might well have had a very different standard of living and position in his community compared to a rural man practising the same trade.[26] Again the content of hierarchies of status were highly regionalised. Though historians have described the social and industrial profile of Sussex and Cheshire it is difficult to incorporate the information found in defamation cases into these structures with any meaningful accuracy; it may be recorded in a deposition that a particular witness was a glover and though we may know that glovers were well respected and skilled craftsmen in Chester or Nantwich, it is difficult to know whether the glover in question was typical.[27]

Tables 1 and 2 show that over thirty per cent of witnesses (or husbands of female witnesses) in both regions were identified as 'craftsmen or tradesmen'; male witnesses in this category in the Chester consistory court came from over fifty trades. Cheshire had been long associated with the leather trade and 20 per cent of men in specified trades in this sample were curriers, tanners and other sorts of leather workers. This compares with Morrill's estimate that approximately a quarter of Chester's labour force was involved in the leather trade in the seventeenth century.[28] Hides and tallow (for tanning) were imported from Ireland through the port of Chester and, outside the city, leather manufacture was concentrated in Nantwich (notable for its glovemakers), Congleton and Macclesfield. The cloth trades (upholsterers, mercers, linendrapers, tailors etc.) were also well represented (about 27 per cent).[29] In contrast to many other

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[26] Wrightson, *English Society*, 27-8; Boulton, *Neighbourhood and Society*, 245.

[27] On trade and industry in general in Cheshire see Phillips and Smith, *Lancashire and Cheshire*, 41-54, 88-105.

[28] Morrill, *Cheshire*, 7. Hides were imported from Ireland and the industry was centred in Chester, Nantwich, Congleton and Macclesfield. The majority of leather workers in this sample (twelve out of twenty) came from Chester and Nantwich.

[29] The manufacture of woollen cloth was well established by this period despite the absence of sheep rearing on any large scale. Flax and hemp were also grown. Thirsk, *Agrarian History of England*, 5, 139, 154-5.

English counties, including Sussex, sheep rearing was limited in Cheshire, yet wool manufacture was well established. The textile industry, like the leather industry, was dependent on raw materials (in this case wool) imported through Chester, but the county also produced its own flax and hemp for textile manufacture. Many men and women involved in the cloth trades in rural areas would also have been farmers and may be listed in this sample as husbandmen or the wives of husbandmen. The Sussex sample is smaller and less complete in terms of occupational listings, but a similar range of trades was represented.

Women were legally defined in terms of their relationship with men, whether they were a daughter or wife.[30] This means that more about the material standing of men can sometimes be gleaned from the information provided about women in legal records. It was occasionally said of a woman in the Sussex cases that her father or husband was a man of 'good estate', though quite what this meant in material terms is rarely specified.[31] Certainly some litigants and witnesses were substantial men and women. Thomas Cole, a witness in a case brought by Mary Bachelor against John Terrey said 'that he hath known Richard Bachelor for severall years and sayth that he is reputed a very honest man and of very good estate being worth as this deponent beleiveth two or three thousand pounds'.[32] Mary's father's fortune was at issue because she was implying that the scandal was affecting her planned marriage. Similar specificity occurred in a case from Cheshire: Richard Watt, a plaintiff was described by one witness of having an estate worth 24 pounds, which seems to have been mentioned because the alleged words related to the sexual reputation and marriage prospects of his daughter.[33] Ellen Gill was described as a woman 'having a good portion' during a case in which she was defending her ability to make a marriage match.[34] It was rare on the

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[30] Ch.2, 36-7.

[31] WSRO Ep 1/11/17 f. 20 Barbara Russell c. Adam Voake, Deposition of William Wicher.

[32] WSRO Ep 1/11/21 f. 26v. Mary Bachelor c. John Terrey, Depositions of Thomas Cole and George Brookfield.

[33] CRO EDC5 1673/20 Richard Watt c. George Cottingham and Thomas Gouldson, Deposition of Richard Bushell.

[34] CRO EDC5 1671/25 Ellen Gill c. Martha Woodier. Deposition of Jonathan Wilcoxon. Richard Gough, *The History of Myddle*, ed. David Hey (Harmondsworth, 1981), refers to women with a 'good portion' relatively frequently, though he never quantifies what he means in material terms. On the

whole for wealth to be quantified in monetary terms but there are other hints in the documents about status. Some litigants and witnesses were referred to as Mr or Mrs which at this time were titles that indicated not only marital but material status.[35] William Selby was described as a householder of good credit, though it is striking that such a comment is rare in these documents.[36] John Poole, who was accused of defamation by Selby, was a justice of the peace and alderman of the city of Chester.[37] At the other end of the scale there are examples of relatively poor witnesses. John Bottom, an ostler, who testified in a case brought by his mistress in 1664, was described in the articles of exception as a 'poor indigent person'.[38] In another example Anne Butler, a witness in a case fought in 1691, testified that she was in service and that her father's rent was paid by the parish on account of his age and inability to work. There was some suggestion that she may have been bribed by the plaintiff, Mrs Backler, a scenario which must have been a danger in cases involving witnesses and litigants of different status.[39] The mother of an apprentice who sued Sara Gibbons in 1681 declared that she would be prepared to borrow money from her friends to enable her son to pursue his case as he earned only one shilling and eight pence (presumably per week).[40] Gibbons, on the other hand, appears to have been relatively well off, for not only did she have a maid, but her husband employed at least two apprentices. The slanders exchanged between two women in a case fought in 1671 may suggest that they were both of relatively humble status; Margaret Bibby accused Ellen Turner of stealing

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average size of portions and their economic and cultural significance see Erickson, *Women and Property*, 95-6.

[35] Erickson, *Women and Property*, 99. At this time married women below the level of the gentry were usually referred to as Goody or Goodwife. WSRO Ep I/11/17; Ep II/5/19 ff. 25-6; Ep I/11/19 f. 44; CRO EDC5 1677/23. Richard Houghton c. Alice Starkey. John Neile, a witness, referred to Alice and her husband as Mr and Mrs Starkey. He also called her 'the Lady of Darley' and said that the argument had happened outside Darley Hall.

[36] CRO EDC5 1670/11. William Selby c. John Poole, Deposition of Francis Jackson; Elizabeth Selby c. John Poole.

[37] CRO 1672/21 John Barker c. Thomas Greene. William Wilson, a witness was also listed as an Alderman.

[38] WSRO Ep III/5/3 ff. 43-6.

[39] WSRO Ep II/5/19 ff. 25-6.

[40] CRO 1681/21 Richard Totty, Thomas Jackson, James and John Weatherbury c. Sara Gibbons. Deposition of Thomas Wright (the plaintiffs' employer). Totty was paid 4s 6d, James Weatherbury, 1s and John Weatherbury, 6d. An apprentice certainly would not have been able to afford the costs of litigation on his own. Jackson also maintained that he was fighting the cause on behalf of his master who had been quarrelling with Gibbons and he may well have helped to finance the case.

from a man's pockets and Turner retorted that Bibby was a 'beggarly slutt and all thy cloaths are not worth five shillings'.[41]

On the whole defamation litigation was clearly an activity primarily pursued by the middling, and occasionally upper ranks of society. Thirsk has estimated that by 1700 up to half the male population of Cheshire were labourers yet none, as far as we can tell, brought defamation cases and hardly any were called as witnesses.[42] The main reasons for this were undoubtedly the prohibitive cost of court proceedings and the fact that the testimony of low status witnesses carried little weight.[43]

It is much more difficult to ascertain the occupation of women than men for it was more likely for the occupation of a male witness to be listed than a female; as far as the courts were concerned women's status in society was defined in marital rather than economic terms and their marital status was recorded in the records (with occasional exceptions) rather than their occupation. Yet as Amy Louise Erickson, among others, has shown, despite the fact that, as a general rule, women could not own property, they were unquestionably of 'economic significance'. The value that was placed on women's work was ambiguous and complex then, as it is now.[44] It would have been assumed by the courts that a married woman was a housewife, a term imbued with greater economic significance and value than it is today.[45] The nature of the early modern household and its role in the economy meant that most housewives had a broad range of skills and responsibilities. Prior has typified the sexual division of labour in

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[41] CRO EDC5 1671/9. Ellen Turner c. Margaret Bibby; Margaret Bibby c. Ellen Turner. The alternative reading of this example is, of course, that this was simply an insult rather than an aspersion on Bibby's material standing.

[42] Thirsk, *Agrarian History*, 5.1, 149; Walker, 'Crime, Gender and Social Order', 38; Hall, *Nantwich*, 207. The ranks of the poor were undoubtedly increasing at the close of the century. Other reasons for the underrepresentation of men and women from lower social levels will be discussed in subsequent chapters.

[43] See below, 83-5.

[44] Erickson, *Women and Property;* Walker and Kermode (eds), *Women, Crime and the Courts*, 4; Diane Willen, 'Women in the Public Sphere in Early Modern England: The Case of the Urban Working Poor', *Sixteenth Century Journal*, 19 (1988), 559-75; cf. Laslett, *World We Have Lost Further Explored*, 73.

[45] Walker, 'Expanding the Boundaries of Female Honour', 238-45. In some towns borough custom had allowed a woman to own property for the purpose of trade, as long as her husband consented. This had fallen into disuse by our period, but illustrates the complexities of the legal position of women: see Mary Prior 'Women and the Urban Economy: Oxford 1500-1800', in Mary Prior (ed.), *Women in English Society 1500-1800* (London and New York, 1985), 103. The division of labour needs much more research.

early modern society as one in which men's work was usually in clearly defined 'occupations', while women had a duty to do 'whatever else [that] had to be done to keep the home fires burning'.[46] Women's work was therefore crucial to the domestic (and the national) economy but, by its nature, difficult to quantify. In addition to their domestic duties many married women would have worked in the same occupation as their husbands, selling goods in a shop or working in a workshop; women were not apprenticed in the same way as men but would have learned the requisite skills on the job. Part of a woman's domestic duties was growing and producing foodstuffs which were sometimes sold as well as consumed within the household. Cheshire women were also likely to be involved in the production of cheese for sale.[47]

Peter Earle found that female litigants and witnesses in London often earned income independently of their husbands.[48] While this may have been more of a feature of the economic life of the metropolis, it serves to remind us that, without evidence, we cannot assume that women always worked exclusively within the home.[49] In the cases examined by Earle women were actually asked how they maintained themselves, whereas in Chester and Chichester this question was neither asked directly or even alluded to in interrogatories. Over 300 women were involved in litigation in the Chester consistory as either litigants or witnesses yet we can only establish the occupation (other than being a housewife) of twenty four with any certainty; sixteen of these were servants, five owned their own shop (or were working in their husband's), two were alehouse keepers and one was a midwife.[50] 'Shop' was a term of ambiguous

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[46] Prior, 'Urban Economy', 95.

[47] Alice Clark, *Working Life of Women in the Seventeenth Century*, ed. Amy Louise Erickson (1992), argued that the early modern period was a 'golden age' for women, because they worked alongside their husbands in the family business. Though a pioneering work, subsequent research has disproved Clark's thesis. See Erickson's introduction to the new edition (1992); Olwen Hufton, 'Women in History: Early Modern Europe', *Past and Present*, no. 101 (1983), 26; J. Bennet, 'History that Stands Still: Women's Work in the European Past', *Feminist Studies*, 14 (1988), 269-83.

[48] Earle, 'Female Labour Market'; see also Earle, *English Middle Class*, ch. 6; Keith Wrightson, 'The Politics of the Parish in Early Modern England', in Griffiths *et al.* (eds), *Experience of Authority*, 13-5.

[49] Erickson, *Women and Property*, 9-11, discusses the absence of prohibitions on women in public places such as markets in popular literature.

[50] Only cases with depositions were used for this sample as it is only from depositions that we can find information about women's work because their occupation was not listed in libels or at the head of their depositions. CRO EDC5 1661/31; 1663/54; 1664/6 all involved Anne Knutsford, a midwife; 1666/5 Bridget Carrington c. John Baxter; 1671/25 Ellen Gill c. Elizabeth Woodier; 1672/22 Mary Roberts c. Francis Swettenham; 1681/18 Elizabeth Swift c. Hannah Griffith; 1681/21 Sara Gibbons c. Richard

usage in this period that covered anything from a workshop to a retail outlet; the records give very little insight into the type of shop that was being referred to. Examples in these samples include a linen draper's shop, a tobacco shop, an ironmonger's and a blacksmith's shop, the last presumably being a workshop from which the smith also sold his work.[51] There are a handful of other examples of women's work being revealed in the depositions, though whether the work contributed directly to their income is not clear; in 1662, for example, Elizabeth Petersen said she was 'at her worke turning a roper's wheele which made a noise [so that] she could not tell what words passed betwixt' the litigants having an argument in the street.[52] This may be an example of a woman involved in domestic work rather than wage earning activity. Wilmot Hyet and Elizabeth Davies had an argument in the market in Northgate Street in Chester in 1695, where Hyet was selling gooseberries, during which Hyet struck Davies with her quart.[53] Women's agricultural work tended to be seasonal, but they certainly participated in busy periods, such as harvest. There are only two references to such work in the cases examined; in a case from Sussex in 1689 several female witnesses had been picking hops together while Jane Woodfin overheard an argument 'in the time of wheat harvest ... [when she] was going to the feilde to reap'. In 1675 Richard Orange deposed that two other witnesses, Hannah Millington and Eleanor Fellows had been 'amongst a company of reapers in the field in Dunham'(Cheshire) harvesting corn.[54]

All existing studies indicate that witnesses and litigants tended to be men and women of roughly equivalent status, and the data under discussion broadly fits this

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Totty, James Weatherbury, John Weatherbury; 1682/22 Jane Price c. Elizabeth Halliwell; 1683/34 Jane Price c. Elizabeth Halliwell; 1683/27 Elizabeth Massie c. Thomas Potter; 1686/8 ; 1686/10; 1691/31; 1692/23; 1693/7; 1695/2; 1698/12. A further five women were the wives of alehousekeepers or possibly had their own establishment. Earle, 'Female Labour Market', 338, 341, found that in London the commonest shared occupation was running some sort of victualling house. Other examples of shops include QSF 83/1 f. 43 1685; QSF 85/1 Easter 1657.

[51] Dorothy Davis, *A History of Shopping* (1966); Earle, *Middle Class*, 26-7, 45-7.

[52] CRO EDC5 1663/41, Deposition of Elizabeth Petersen.

[53] CRO EDC 5 1695/5 Elizabeth Davies c. Wilmot Hyet. Incidents also happened on the way to or from market; e.g. QJF 83/1 Easter 1655 f. 43;

[54] WSRO Ep II/5/18 f. 86v; CRO EDC5 1672/21. EDC5 1675/15.

conclusion.[55] This is particularly true when the case arose out of a social occasion in which litigants and witnesses were talking or drinking together. In 1666 Bridget Carrington, wife of a tailor, brought an action against John Baxter; the witnesses included an ironmonger, a mercer, a female shopkeeper and the wives of a baker and a linendraper.[56] In 1682 Thomas Bailey sued Edward Moreton for calling him a 'rogue and a knave' while they were talking in Edward Curbishall's ironmonger's shop. The other two witnesses to the altercation were a tailor and a tobacco cutter.[57] There were however a significant number of cases in which litigants and witnesses were of quite different status and occupation. This tended to occur in cases where the witnesses had become drawn into the case for a specific reason. For example, in 1665 John Massey sued Peter and Katherine Taylor for spreading a rumour that he was the father of Catherine Beswick's bastard child. The Taylors were Catherine's employers who socialised with and seemed well acquainted with two of the witnesses, a yeoman and a tailor. Edward More, a husbandman, was a man whom Catherine appears to have confided in. The local vicar, Thomas Joynson (and his wife Rebecca) also testified in the case because Catherine had gone to him to have the child baptised and he had questioned her about the father of the child.[58]

The most obvious exception to the general rule that witnesses and litigants tended to be of congruent status is those cases that involved servants and their employers. This was so in sixteen cases from the Cheshire sample and seven cases from Sussex.[59] Female servants were usually listed as spinsters with no precise indication of

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[55] Ingram, *Church Courts*, 304; Sharpe, *Defamation*, 17; Gowing, *Domestic Dangers*, 61.

[56] CRO EDC 1666/5 Bridget Carrington c. John Baxter. Other examples include EDC5 1661/ 4 Thomas and Anne Sare c. Richard and Anne Sare; 1663/81; 1664/6; 1678/6 Mary Burganey c. George Guest; 1690/9 Daniel Thomason c. John Lloyd; 1693/4; 1693/7 John and Mary Smallwood, John and Mary Girton c. Mary Hewitt; 1694/ 3 Judith Blinston c. Martha Moreton.

[57] CRO EDC5 1682/3 Thomas Bailey c. Edward Moreton.

[58] CRO EDC5 1665/31 John Massey c. Peter and Katherine Taylor.

[59] CRO EDC5 1661/31; 1664/63; 1671/25; 1671/35; 1672/12 Elizabeth Ward c. Mary Parrie; 1675/4 Thomas Ellison c. Ralph Wheelock; 1681/18; 1681/21 (Sara Gibbon's husbands servant Robert Loverin); 1685/4; 1677/15; 1682/21 John Mottershead c. Jane Mottershead; 1695/2 Margaret Crockett c. Anne Rogers; 1697/12 Alice Gough c. Anne Oulton; 1698/12; Two cases involved witnesses who were mistresses of one of the litigants 1686/8 Jane Roberts c. Margaret Goulden; 1686/10 Anne Wood c. Robert Lowndes. For Sussex see WSRO Ep I/II/18 f. 15v. Tupper c. Mosse; Ep I/ II/19 f. 31v. Saunders c. Ellis; Ep I/11/21 f. 27v; Ep I/11/22 f. 32; Ep II/5/18 f. 37; Ep II/5/19 f. 21; Ep III/5/3 f. 44. For a discussion of master and servant relations see Ilana Kraus Ben-Amos, 'Service and the Coming of Age of Young Men in Seventeenth Century England', *Continuity and Change*, 3 (1988), 41-64.

occupation, hence the figures in Tables 1 and 2 underrepresent the true proportion of servants; sixteen women involved in litigation in Cheshire can be identified as servants from the depositions. Male servants, particularly apprentices, were sometimes listed as performing their master's trade and therefore it is not possible to tell how many servants are concealed in the figures for craftsmen and husbandmen. However the status of servants and their relationship to other participants in the case is often made explicit, not only in the depositions but also in the interrogatories (that is, secondary examinations of witnesses that sought to establish relationships between litigants and witnesses in order to identify potential bias). A particularly common scenario was that servants or employees of the plaintiff (and sometimes the defendant) were present at the altercation and subsequently testified on their master or mistress's behalf. For example, in 1675 two men were working with their employer, Thomas Ellison, loading earth in the street when Randle Wheelock approached them and picked a quarrel with Ellison.[60] In 1672 Alice Thompson and Richard Coxon were working in their mistress Elizabeth Ward's house when they overheard Mary Parrie defame Ward.[61] Furthermore, service at this time was as much a function of youth as social class and servants often came from families of similar social status to those that they worked for. The established view that litigants and witnesses tended to be of roughly equal social status does therefore need to be qualified; this was so in certain types of cases, but defamation cases also reveal that in specific examples people from a relatively wide range of social levels could become drawn into the quarrel and the subsequent litigation.

The cost of litigation

Litigation was undoubtedly expensive for most of the people who brought suits to the consistory courts and represented a significant investment for them.[62] In 1597 Archbishop Whitgift had attempted to standardise fees charged throughout the country

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[60] CRO EDC5 1675/4. Depositions of Joseph Latham and Thomas Lindop.

[61] CRO EDC5 1672/12. Depositions of Alice Thompson and Richard Coxon.

[62] Ingram, *Church Courts*, 54-8; Foyster, *Manhood*, 158-64; Meldrum, 'Women's Court', 3-5; Gowing, *Domestic Dangers*, 40, 135, 159, 179, 265.

and Marchant and Ingram have found that this was largely achieved by the early seventeenth century.[63] Litigants were charged for each individual stage of the case, such as the issuing of citations, presentation of the libel and examination of the witnesses, so a case which proceeded to sentence could become very expensive. The losing party was also usually compelled to pay their opponent's costs. If the judge thought that the losing party was still partly culpable in the case then they would have to share some of the costs. Ingram has argued that the cumulative nature of court costs may have encouraged the parties to reach a compromise in the early stages. It will be argued that litigation was usually a last resort and that strenuous efforts were often made to reach informal reconciliations; for many ordinary women and men cost must have been a powerful incentive to avoid litigation.[64]

The cost of litigation seems to have stayed relatively constant in real terms throughout the seventeenth century, until the passing of the Stamp Act in 1694.[65] Gowing and Ingram concur that ecclesiastical cases cost between about £2 and £14 in the early seventeenth century, depending on the complexity and length of the case. Meldrum has found that the cost of an average defamation suit in London in 1700 was about £10 which was approximately equivalent to four and a half months average male wages and nine months average female wages.[66] In Chester the costs of cases which were continued to sentence varied from about £3 to nearly £6. The schedules of costs do not survive for the most long drawn out and complicated cases but we can estimate that they would have cost nearer the £14 figure suggested by Ingram and Gowing. On the other hand, cases which did not proceed to sentence could cost as little as £1-2. When Anne Millington confessed to her slander against Giles and Mary Green in 1663 before either party had called witnesses she was charged with only £1 4s 1d.[67] These costs need to put in the context of the income of men and women and the cost of

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[63] Ingram, *Church Courts*, 55; Marchant, *Church Under the Law*, 141-6.

[64] See ch. 7. Meldrum, 'Women's Court', 3-4, found that less than 20 per cent of cases in the London consistory court in the late seventeenth century were fought to sentencing.

[65] Foyster, *Manhood*, 158.

[66] Meldrum, 'Women's Court', 3.

[67] CRO EDC5 1663/116 Giles and Mary Green c. Anne Millington.

subsistence at the time. Wrightson estimates that the basic annual cost of subsistence in the seventeenth century was £11-14.[68] The income of labourers (estimated at about £13-15) would barely have covered this figure and the cost of subsistence would also have left little spare for the more humble husbandman.[69] Though there were significant regional variations that need to be taken into account when considering the relationship between average incomes and expenditure it is clear that the costs of litigation represented a substantial investment for even the most comfortable husbandmen and craftsmen. The Stamp Act increased the cost of individual documents (citations, libels and depositions) by 6d a copy, which substantially increased the cost of each stage of a case. As ecclesiastical cases depended entirely on a series of written documents these increases in costs must have had a negative impact on the willingness of women and men to use the church courts. However, the effect of the Stamp Act on ecclesiastical litigation alone should not be overestimated, for actions in other jurisdictions were also subject to increased charges as a result of the legislation. That said, the cost of proceedings at sessions courts were cheaper, for Shoemaker estimates that the average cost of a recognizance in the early eighteenth century was 4s 4d.[70]

Literacy

Another signifier of status and the nature of gender difference in this period that is revealed in a statistical analysis of witnesses' depositions was literacy. Witnesses were required to sign or mark their deposition after it had been recited to the court clerk and these marks can be counted to reveal the broad social structure of literacy levels among

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[68] Wrightson, *English Society*, 32-4.

[69] Erickson, *Women and Property*, 41; Gregory King estimated that the average annual income of a labourer was £15, a figure which fits in with more modern estimates, see Wrightson, *English Society*, 34. The most problematic estimate is that of labourers who were dependent on daily wages so that annual income was dependent on the number of days worked; the rate was highly seasonal and prone to fluctuation with the economic climate. It was the instability of their economic position as much as their annual income which would have made it impossible for men and women of this class to invest in litigation. The same would have been true for poorer husbandmen and craftsmen and their wives who often supplemented their income with wage labour on a daily or seasonal basis.

[70] Quoted in Meldrum, 'Women's Court', 5.

the witnesses in defamation cases.[71] Barry has shown that the significance of literacy depended on the social context in which it was used, and therefore cannot be ascribed simple meanings, but it can be regarded as a broad indicator of social status.[72] The majority of witnesses only marked their statements and were therefore probably wholly illiterate or could only read a little, but not write. In the Cheshire and Sussex church courts 45 per cent of male witnesses signed their name, compared with only 12 per cent of female witnesses; it is not surprising that this proportion is marginally higher than Cressy's estimate of overall male literacy at about 30 per cent given that people from the poorest sectors of society did not bring defamation suits.[73] The figure from my sample is also consistent with the estimated male literacy rate in Chester in 1642 of 48 percent.[74] It should be noted that the literacy of female witnesses is significantly lower than that in Peter Earle's London sample where up to 82 per cent of women deponents signed their depositions.[75] The evidence therefore fits the established pattern that the highest levels of literacy were among the more wealthy and tended to be higher in urban areas than rural areas.

Using signatures on legal documents as an indicator of literacy is not entirely reliable and the problems have been extensively discussed elsewhere.[76] Many signatures are barely legible, for example, suggesting that the deponents were not literate enough to write much more than their name; however, the fact that deponents marked rather than signed a deposition does not necessarily mean that they were incapable of it. Despite these caveats, ability to sign does give some indication of

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[71] There are, unfortunately many examples of depositions that were not signed or marked, possibly because they were copies of originals which have been lost.

[72] Jonathan Barry, 'Literacy and Literature in Popular Culture: Reading and Writing in Historical Perspective', in Harris (ed.), *Popular Culture in England*, 69-94.

[73] Cressy, *Literacy* , 72, 147-9.

[74] This figure is derived from the 1642 urban Protestation Return. Nigel Goose, 'English Pre-industrial Urban Economies', in Jonathan Barry (ed.), *The Tudor and Stuart Town. A Reader in English Urban History, 1530-1688*, 230.

[75] It should be noted that Earle, 'Female Labour Market', 334-6, suggests that many of these deponents could do no more than write their name.

[76] Tessa Watt, *Cheap Print and Popular Piety* (Cambridge, 1991), 6-8, gives a useful survey of the historiography on literacy; Cressy, *Literacy*, 8; Earle, 'Female Labour Market', 336; Margaret Spufford, 'First Steps in Literacy: The Reading and Writing Experiences of the Humblest Seventeenth Century Autobiographers', *Social History* 4 (1979), 407-35; Keith Thomas, 'The Meaning of Literacy in Early Modern England' in Gerd Baumann (ed.), *The Written Word. Literacy in Transition* (Oxford, 1986), 97-131.

general levels of literacy and the fact that such a small fraction of women's depositions were signed is surely significant.[77] An examination from a case in the Cheshire quarter sessions in 1695 highlights the nature of the levels of literacy among many ordinary people.[78] Nathan Blease and Ralph Darlington were discussing a scandalous verse and a witness deposed that he

> pulled it out of his Pocket [and] gave it to the said Nathan Blease who cold not read it but here and there a word, and the said Nathan Blease gave it to the foresaid Ralph Darlington who read it ... Nathan Blease [said] to Ralph Darlington ... he cold read any ordenary writing, (but not this)...[79]

In another case from the same court John Furnivall deposed that 'he wrote a foule draft of the letter now shewed him ... but did procure one William Smallwood to get it fair written over which he did saveing a few lines'.[80] Men such as these had some basic literacy skills but were not fully literate.

Topographical patterns

We can see that more litigants in cases brought to the Chester consistory court were from the city of Chester than any single parish or other settlement - over 35 per cent. Chester was a city of probably 8-9000 inhabitants in our period.[81] Figure 1 shows that the incidence of defamation cases from across the county beyond Chester was relatively evenly spread, though a significant proportion of parishes produced no defamation litigants in out period. After Chester, the largest number of cases (5.5 per cent) came

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[77] In 1693 Margaret Skerret went to a local mercer, Thomas Richardson, to write out a confession for her saying that she had committed adultery with the clerk of Barthomley parish who had been presented for the offence. EDC5 1693/17 deposition of Thomas Richardson. For a discussion of the relationship between women's literacy and economic status see Earle, 'Female Labour Market', 334-6. Spufford, *Contrasting Communities*, 200, argues that literacy and prosperity were closely related but that, in addition to this, women were 'noticeably illiterate as a group'.

[78] There are so few examinations in the secular court sample that I have not calculated literacy levels from them.

[79] CRO County Sessions files QJF 128/2, f. 94, Examination of Joseph Witton.

[80] CRO County Sessions Files QJF 95/2 13 , f. 85 29 June 1670. Examination of John Furnivall.

[81] Alldridge, 'House and Household in Restoration Chester', 50; A.M. Johnson, 'Politics in Chester During the Civil Wars and the Interregnum 1640-62, in P. Clark and P. Slack (eds), *Crisis and Order in English Towns 1500-1700: Essays in Urban History* (1972), 210 n. 48, estimates the population in the Interregnum at 5000; Penelope Corfield, estimates that by 1700 it was 9000 in 'Urban Development in England and Wales in the Sixteenth and Seventeenth Centuries, in Jonathan Barry, *The Tudor and Stuart Town: a Reader in English Urban History, 1530-1688*, 51, 54.

from the small parish of Nantwich. This is significant for Nantwich was Cheshire's second largest town, though its population was less than half that of Chester in our period, at nearly 3000 inhabitants.[82] It was an important centre of the leather industry (famous particularly for its glovemakers)and the salt industry.[83] The next highest incidence of cases tend to correspond with the larger parishes, such as Macclesfield, Prestbury, Astbury and Bowdon.

So, were urban men and women more likely to litigate over slander? It is tempting to conclude this on the basis of the evidence presented here and in other studies. However, many other studies have focused on urban areas (especially London) and more research using material from rural areas throughout the seventeenth century is needed to answer the question.[84] It is likely that, for practical reasons, urban dwellers were more likely to litigate, but this does not mean that they were more sensitive to slander or more protective of their reputations. The inhabitants of Chester were in closest geographical proximity to the consistory court which was held in Chester cathedral, and were therefore familiar with its functions as well as more conveniently located. However, a sizeable number of cases came from parishes on Cheshire's furthest eastern and southern borders and from the Wirral, which was a relatively isolated branch of the county.

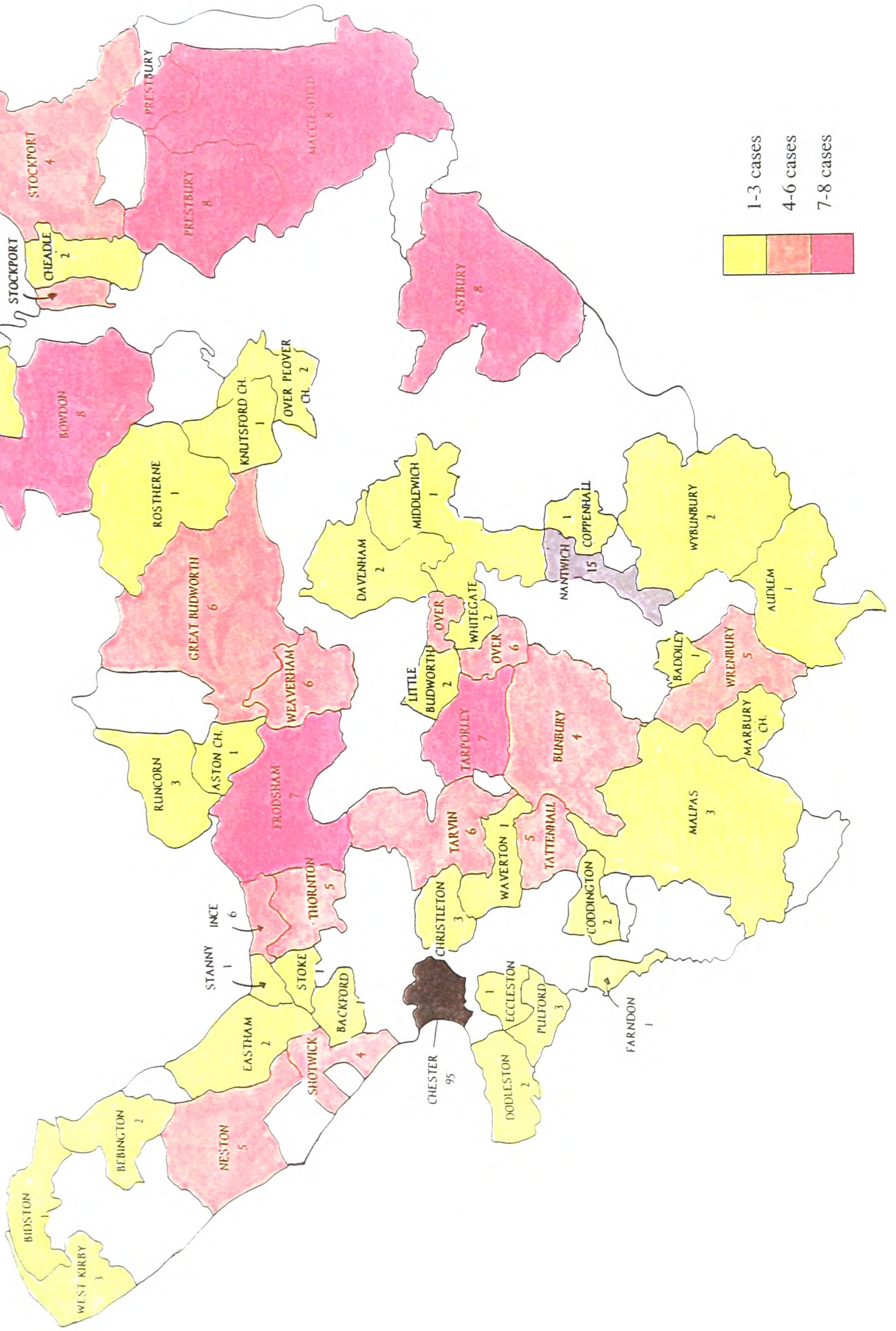
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[82] Hodson, *The Towns*, 93, estimates the population of Nantwich at 2 900 in 1664,

[83] See 74, n. 21.

[84] Amussen, *Ordered Society*, 102, has argued that litigants in the consistory court at Norwich were increasingly from that city (or Yarmouth) after the Restoration.

Figure 1. The Incidence of ecclesiastical defamation cases in Cheshire parishes.



Within this pattern there is evidence that defamation cases tended to involve limited circles of sociability. In 53 per cent of cases brought to the Chester consistory court (excluding those from the city of Chester) the litigants and witnesses concerned lived in the same parish; though this figure represents a majority it was not a large one and nearly half of cases involved litigants and witnesses who were not from the same parish.[85] Martin Ingram found that a much higher proportion of participants in cases in Wiltshire (80 per cent) came from the same parish.[86] This comparison is particularly striking when we consider that Cheshire parishes were extremely large, indicating that defamation cases may not have been the product of 'cheek by jowl' communities, as has often been suggested.

In the Cheshire sample only 16 per cent of cases involved people from more than two parishes and when the odd witness came from a different parish we can usually identify why this occurred; for example that he or she was in that parish in order to visit a trader or a relative. In other examples a witness from another parish gave testimony that the gossip about the plaintiff had spread as far as their parish.[87] If the altercation occurred at a large public event, such as a market, then witnesses were sometimes drawn from a number of parishes. For example, in 1680 Robert Saunders of Singleton and Henry Ewen of Graffham quarrelled over the sale of a hog at Petworth Fair. This fair lasted nine days and was one of the most important in Sussex, drawing people from all over the county, so it is not surprising that the witnesses came from the parishes of Singleton and Midhurst which were several miles from Petworth.[88] It was very unusual for a case to involve people from another county for this occurred in only

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[85] In Cheshire the majority of those cases where the township was also listed involved participants from the same township.
[86] Ingram, *Church Courts*, 303.
[87] WSRO Ep III/5/3 f. 41.
[88] WSRO Ep I/II/19 ff. 21v-22v.

ten cases in Cheshire and two in Sussex .[89] This was partly because a court's authority extended only as far as its jurisdictional boundaries making it difficult to compel the attendance of someone from another jurisdiction.

Of the thirty eight cases from the courts of the city of Chester, twenty two give details about where participants lived within the city.[90] Of these, only four involved a majority of litigants and witnesses from the same street.[91] In most cases the participants were drawn from several streets and parishes within, and without the city walls. These patterns suggest that slander litigation, if not slander itself, was a product of social relations between those who were familiar with each other; strangers were rarely involved at all. Yet it also suggests that these networks of at least interaction, if not sociability were wide and that the tensions that gave rise to defamation suits were not narrowly focused on the street where one lived.[92]

Age

As regards age, the majority of witnesses in both dioceses were in their twenties and thirties. The vague nature of contemporary perceptions of time and age is clearly shown by the fact that ages tended to be given primarily in denominations of five, particularly as the deponents got older.[93] Though by our standards these figures are therefore imprecise, they give a general pattern of an age structure that roughly corresponds to that of the adult population as a whole, except that people in their

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[89] WSRO Ep I/II/17 ff. 46v-48; Ep III / 5 / 3 ff. 48- 9; CRO EDC5 1662/ unnumbered Warrington, Lancashire; 1683/34 Lavester, Denbighshire; 1683/34 Burton, Denbighshire; 1678/6 Allington, Denbighshire; 1697/12 Ryton, Bangor; 1697 unnumbered Ribchester, Lancashire.

[90] Only cases in which witnesses deposed are included in this figure. Unfortunately equivalent details were rarely recorded in Sussex depositions. The structure of Chester parishes in a slightly earlier period is discussed in Nick Alldridge, 'Loyalty and Identity in Chester Parishes 1540-1640', in S. J. Wright (ed.), *Parish, Church and People: Local Studies in Lay Religion, 1350-1750* (1988), 85-124.

[91] CRO EDC5 1671/9 Turner c. Bibby. Both witnesses from Shoemakers Row; 1675/27 Snead c. Rivell. All witnesses from either Bridge Street or Forrest Street. 1677/13. Three cases involving Wright/Standish. All witnesses from Greyfriars Lane except one from Nicholas Street which was partly in the same parish. 1677/15 Street c. Woodward. Most witnesses were from Bridge Street.

[92] Boulton, *Neighbourhood and Society*, ch. 8, especially 207-16, 228-29; Garrioch, 'Verbal Insults', 116-7.

[93] Keith Thomas, 'Age and Authority in Early Modern England', *Proceedings of the British Academy*, 62 (1976), 205-48. Thomas found that the second most likely cluster was the number six because people operated in a binary as well as a decimal numerical system; I have not found this to be the case. See also Thomas, 'Numeracy in Early Modern England', *Trans. Roy. Hist. Soc.*, 5th ser., 37 (1987), 127.

twenties and thirties were over-represented in litigation.[94] It is unfortunately impossible to discern from the entries in court records exactly what social significance a deponent's given age carried and whether this had any bearing on the self perception of a witness's credit, but the possibility that it may have done needs to be borne in mind.

The age range of deponents in Cheshire and Sussex was somewhat broader than that in London at the end of the century. Peter Earle found that over 21 per cent of witnesses in the church courts in London in the late seventeenth and early eighteenth centuries were under twenty five, which is comparable to the proportions set out in Table 3.[95] However, in both Cheshire and Chichester a significant proportion were aged over 55. This contrast may be the result of a higher life expectancy outside the metropolis and certainly reflects the high proportions of young people in London. It may also reflect cultural differences, such as greater authority attached to age or more interaction between people of different ages in communities with more balanced demographics than the metropolis

Table 3. Ages of witnesses in defamation cases in the dioceses of Chester and Chichester (%)

Age Range	Chester	Chichester
0 - 19	5	8
20 -29	25	36
30 - 39	33	24
40 - 49	15	18
50 - 59	15	8
60 - 69	6	5
70 Plus	1	1
Total	**100**	**100**

[94] For the estimate age structure of England at this time see E. A. Wrigley and R. S. Schofield, *The Population History of England. A Reconstruction 1541-1871* (1981), 215-19.
[95] Earle, 'Female Labour Market', 331, Table 1.

It is rare for the age of litigants to be given in the libel, though it can sometimes be worked out from the depositions. As will be seen, the majority of women were married (or widowed) and from this it can be inferred that the majority of men may also have been, though this is rarely explicit in the documents.[96] The majority of litigants were therefore presumably at least in their middle twenties as the average marriage age at this time was about 24-25 for women or 26-28 for men, and the majority of witnesses in these samples were in their late twenties or thirties.[97] Other incidental information given in depositions strengthens these assumptions; in Sussex cases in particular witnesses sometimes testified to the length of time that a litigant had been married and in both samples witnesses explained how long they had known the litigants.[98] A number of litigants had adolescent or grown up children, but very few, as far as I can estimate, were older than about fifty. The implications of this as far as ascertaining the intersection of reputation and the propensity to litigate to defend reputation, particularly in the case of women, will be discussed in Chapter 6.

Gender

The picture that emerges from a detailed examination of the litigants and witnesses involved in defamation in litigation in Cheshire and Sussex roughly fits the patterns established by other writers, with one significant exception - the relative participation of men and women. The only discrepancy in the evidence from existing work is the extent to which women *dominated* defamation litigation in the church courts. Gowing found

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[96] In Sussex out of forty cases involving female litigants only five involved spinsters; these five were fought by only two women, Sarah Stedman (WSRO Ep I/11/21 ff. 23-24) and Mary Bachelor (Ep I/11/21 ff. 26-28v).

[97] The age at which most men and women married at this time varied regionally and according to social status and occupation and the reality was much more complex than simple mean averages suggest. However, national averages are sufficient for the purpose of roughly establishing the ages of litigants in this study. Earle, 'Female Labour Market', 344-6; R. B. Outhwaite, 'Age at Marriage in England from the Late Seventeenth to the Nineteenth Century', *Trans. Roy. Hist. Soc.*, 5th. ser., 23 (1973), 55-70; Ralph A. Houlbrooke, *The English Family 1450-1700* (London and New York, 1984), 13, 27, 63-8; Wrightson, *English Society*, 68-70, 124-5. The usefulness of mean marriage ages is criticised in B. Hill, 'The Marriage Age of Women and the Demographers', *History Workshop Journal*, 28 (1989), 129-47.

[98] WSRO Ep I/11/17 f. 20 Barbara Russell c. Adam Voake.

that 75 per cent of plaintiffs in the London Consistory Court were women in the early seventeenth century.[99] Meldrum found that, by the early eighteenth century, the figure was about 95 per cent and that the majority of cases were fought between two women.[100] While both writers point out that London was rather unusual in this respect, research in post-Restoration Yorkshire and Norfolk has confirmed a high level of participation of women outside the metropolis.[101] Many historians have subsequently assumed that defamation litigation in the church courts in the country as a whole was increasingly the preserve of women in the later seventeenth century.[102] As Table 4 shows the gender ratio was much more balanced in these two regions. Not only were there more male plaintiffs than elsewhere, but male defendants outnumbered female defendants in both regions. Only 50 per cent of plaintiffs in Chichester were women. In Chester men and women brought defamation cases in equal numbers (46.5 per cent each) and 7 per cent of cases were brought by joint plaintiffs. The largest single group of cases in Sussex were those fought by a female plaintiff and a male defendant. This is highly significant for Gowing and Meldrum in particular have argued that the majority of defamation cases were fought between two women; this was clearly not the case in Chester and Chichester and the implications of this for our understanding of the gendering of defamation litigation will be discussed in the course of this thesis.

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[99] Gowing, 'Gender and the Language of Insult', 1-2. In three quarters of the cases that called witnesses the plaintiff was a woman. Nearly half involved a female plaintiff and defendant; eadem 'Women, Sex and Honour', 9, 10, 13, 26.

[100] Meldrum, 'Women's Court', 5-7. Later in the century women accounted for 100 per cent of plaintiffs, see, Clark, 'Whores and Gossips'.

[101] Amussen, *Ordered Society*, 101-2; Sharpe, *Defamation*, 10; Gowing acknowledges that the dominance of women in her sample was to some extent an urban phenomenon. She compares her London material with a sample from the diocese of Chichester and suggests that differences in gender ratios may reflect the characters of different courts. Gowing, 'Women, Sex and Honour', 11-14, 268; eadem 'Language, Power and the Law', 28; Many claims have been made for the uniqueness of London in this period; Cressy for example has argued that women were 'less restrained' than elsewhere. Such notions can only be tested against further research outside the metropolis. In early seventeenth century Wiltshire women accounted for 61 per cent of plaintiffs, in Ely, 61 per cent and Durham 66 per cent: Ingram, *Church Courts*, 301-2; Foyster, *Manhood*, 77-8.

[102] Amussen, *Ordered Society*, 101-2; Cust, 'Honour and Politics'.

Table 4. Gender of plaintiffs and defendants in Chester consistory court and the courts of the diocese of Chichester, 1660- 1700 (%)

	Chester	Chichester
Female Plaintiffs	46.5	56
Male Plaintiffs	46.5	40
Joint Plaintiffs	7	4
Total	**100**	**100**
Female Defendants	40	34.3
Male Defendants	53.5	64.2
Joint Defendants	6.5	1.5
Total	**100**	**100**
Sample (N)	**303***	**70****

* This figure includes all the defamation cases for which records survive in the diocese of Chester for this period. Of this figure a sample of 165 cases (55 per cent) have been analysed in detail.

** This figure includes all cases for which records survive in the diocese of Chichester and all of them have been analysed for this study.

Marital status

The majority of female litigants and witnesses in ecclesiastical defamation cases in Cheshire and Sussex were married, as we would expect on the basis of previous research.[103] The low proportion of single women litigating over slanderous words in all the areas that have been studied appears to go against the logic of reputation as historians have understood it thus far. Single women in search of marriage partners might be thought to be more sensitive to slights on their reputation. However, the evidence from defamation cases does not necessarily mean that married women were more concerned about reputation than single women - and the proportion of spinsters is significantly high given the mundane reality that single women would have been less

[103] Ingram, *Church Courts*, 302, found that approximately 70 per cent of female plaintiffs were married. Meldrum, 'Women's Court', 6, estimated that the figure for London in a slightly later period (1700-1710) was only marginally lower; Gowing, *Domestic Dangers*, 61; Sharpe, *Defamation*, 27.

able to afford the costs of litigation. The reasons why married women were more likely to go to court than single or widowed women will be addressed further in subsequent chapters.

Table 5. Marital status of women in the church courts of the diocese of Chichester, 1660-1700 (N)

	Wife	Widow	Spinster
Plaintiff	17*	3	6
Defendant	11	3	0
Witness	9	6	13
Total	**37**	**12**	**19**
% of total (68)	**54.5**	**17.5**	**28**

* This figure includes one married woman who brought a case in conjunction with her husband as joint plaintiff.

Table 6. Marital status of women in the Chester consistory court, 1660-1700 (N)

	Wife	Widow	Spinster
Plaintiff	76*	11	25***
Defendant	58**	11	7
Witness	85	22	53
Total	**219**	**44**	**85**
% of total (348)	**63**	**12.5**	**24.5**

Note This table includes the 348 women whose marital status can be established. The marital status of approximately 8 per cent of women cannot be established because the libel is not available and/or this information was omitted in the depositions.

* This figure includes 13 women who brought cases in conjunction with their husbands as joint plaintiffs, 2 married women who sued jointly, one married woman who sued in conjunction with her 4 sisters (who were spinsters) and one married woman who sued jointly with her daughter, a spinster.

** This figure includes 4 women who were sued in conjunction with their husbands as joint defendants.

*** This figure includes 4 spinsters who sued jointly with their married sister , one spinster who sued jointly with her mother and one spinster who sued jointly with a man who was not her husband.

The fact that men and women participated in defamation litigation in the church courts in almost equal numbers raises the possibility that the early modern world was less polarised along gender lines that other writers, most notably Gowing, have suggested. Many of the assumptions about gender and reputation that pervade the current historiography (and the contingent constructs of relations between the sexes) are derived from studies in which female plaintiffs dominated defamation litigation. Records from the dioceses of Chester and Chichester enable us to look at the gendering of reputation from a fresh angle through the fact that both men and women were litigating over both sexual and non-sexual slanders. This material, coupled with evidence from the secular courts, enables a more direct and meaningful comparison between male and female strategies in the construction of reputation than evidence from one court which was dominated by women. The wealth of material about the social situations which formed the background of defamation litigation also provides intriguing insights into patterns of social interaction among men and women which shed light on interpersonal relations between the sexes.

4: Women and Slander

All previous studies have indicated that women accounted for the majority of plaintiffs (and usually defendants) suing over defamation in the church courts, and that they complained overwhelmingly of sexual slanders, from vague aspersions of whoredom to specific allegations of sexual misconduct such as adultery and bearing bastard children. Men, by contrast, accounting for a much smaller proportion of litigants in the church courts, complained of a range of sexual and non-sexual slanders and also tested their reputations in the secular courts where they complained of non-sexual slanders, such as theft and perjury.[1] In this chapter I will concentrate on the slanders brought to court by women and look separately at the words spoken against men in the following chapter.

The preponderance of female plaintiffs in the church courts has been attributed to the 'double standard' whereby female sexual immorality - above all adultery - was perceived to be more serious than the corresponding male offence. It has also been argued that sexual reputation was more important to women than men because their lives tended to be based more narrowly in the private sphere of the home while men's were rooted in a wider social context.[2] Whether the notion of public and private spheres is applicable to the seventeenth century is open to question. More generally the question of the double standard has been the subject of some debate among historians; Martin Ingram, referring to the early seventeenth century suggests that 'the notion of the double standard must not be pressed too far: it was in this period a matter of degree

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[1] See ch. 3, 93-4.

[2] Thomas, 'Double Standard', 195-216. Stone, *Family, Sex and Marriage*, 315-17; Gowing has challenged writers on gender relations in this period to scrutinise Thomas's construction of the double standard which she rightly argues has been used merely as a useful shorthand device in discussing gender. Amussen, *Ordered Society*, 102; Ingram, *Church Courts*, 302; see Vickery, 'Golden Age', on the historiography of the concept of 'separate spheres'. The most recent contribution to the debate on the double standard is Bernard Capp, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *Past and Present* no. 162 (1999), 69-100.

rather than an absolute dichotomy between the ways in which male and female reputations were regarded'.[3] Laura Gowing has approached the double standard in a radically different way, arguing that male and female reputation were wholly incommensurable. She asserts that they were constructed in terms of fundamentally different criteria and contexts and that this is illustrated not only in the language of defamation, but also in the formation and breakdown of marriage. Rather than seeing women as being treated simply more severely than men for sexual offences, Gowing presents two divergent and incompatible views of male and female sexuality and two different systems of thought that placed female sexuality at the heart of female reputation, while male reputation was constructed in a variety of different contexts. Essentially, she is arguing that men were so rarely made culpable for their sexual conduct, and never defined by it, that the scale of culpability at the heart of the double standard is virtually meaningless. As a result, women were more likely to be slandered sexually, and sexual slander was more damaging for women because it was the only context in which their reputation and identity as women could be established. Hence, she claims that 'the content and composition of insults present an honour that is inherently and absolutely gendered'.[4]

These arguments, whether in the extreme form urged by Gowing, or the more moderate form favoured by other historians, have been underpinned by a statistical pattern which is not replicated in the samples of cases that I have studied. In Cheshire and Sussex the gender breakdown of participation was in fact much more even than in other areas that have been studied.[5] Furthermore, I shall argue in the following chapter that men were not only suing defamation cases in larger numbers but they were more likely to complain of sexual slanders than in other areas. The foundation of this thesis is, therefore, significantly different to that of other historians and, as a result, raises questions about their analysis of the gendering of reputation in early modern England.

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[3] Ingram, *Church Courts*, 302; Ian Archer, *The Pursuit of Stability: Social Relations in Elizabethan London* (Cambridge, 1991), 251; Wrightson, *English Society*, 99.
[4] Gowing, 'Women, Sex and Honour', 30; eadem, *Domestic Dangers*, 3-5, *passim*; Erickson, *Women and Property*, 53; Foyster, *Manhood*, 147.
[5] Ch. 3, 93-4.

Slanders complained of by female plaintiffs

Table 7 and Figure 2 show that the vast majority of slanders alleged by women in both dioceses were sexual, as we would expect. However, a number of things do need to be taken into account when analysing data such as this. The pattern outlined in Table 7 is restricted by the legal parameters of defamation law;[6] it is therefore biased towards insults that were cognisable and does not necessarily reflect the real pattern of insults that would have been current on the streets. The meanings and usages of insults were prone to changes in fashion, yet this is not reflected in the words that were alleged in defamation cases as defamation law was clearly slow to respond to colloquial change.[7] One of the reasons why allegations of whoredom predominate is simply that 'whore' was a very clear cut example of a word that was cognisable in the ecclesiastical courts.[8] Tabulating words of slander masks the complexity and creativity of the language used. Language can be manipulated and nuanced by the tone of voice, physical expressions and gestures of the defamer and often derives its significance and meaning from the social context in which it is uttered. Given that many of the arguments that led to litigation were clearly heated it is notable that the physical aspects of quarrels were rarely elucidated in any detail in these cases. Yet again the reason for this must lie in the legal context of defamation litigation; words were the legal focus of a suit, not physical assault. Furthermore, violent attacks could be prosecuted in the secular courts as assaults and correspondingly in the records of these cases the abuse that may have accompanied the assault was rarely recorded. These are important points to remember when we attempt to incorporate patterns of insult into models of the moral and sexual value systems of the period. Despite these caveats tabulating slanders does give an indication of the incidence of allegations that led to defamation cases and the issues that

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[6] See ch. 2.

[7] Sexual punning must have been a part of the daily currency of abuse but is totally absent from legal records presumably because of legal requirements. See Geoffrey Hughes, *Swearing: A Social History of Foul Language, Oaths and Profanity in English* (Oxford, 1991), 106-8.

[8] Gowing, *Domestic Dangers*, 62. The word 'whore' was the most common slander alleged not only in English studies but in courts in America and France; see Norton, 'Gender and Defamation in Seventeenth -Century Maryland', 3-39; Moogk, '"Thieving Buggers" and 'Stupid Sluts"', 524-47; Garrioch, 'Verbal Insults'.

were the focal criteria by which reputation was judged. Insult identifies behaviour which is stigmatised and we can begin to define ideals of conduct by identifying their antitheses.

Figure 2 shows that in the diocese of Chester nearly a quarter of cases were of mixed or non-sexual slanders, such as allegations of theft or drunkenness. As we have seen in chapter 2 slanders that alleged both a temporal and a spiritual offence (such as 'whore and thief') or a solely temporal offence ought to have been heard in a secular court but were occasionally allowed in ecclesiastical courts as reproachful words. It is possible that the predominance of exclusively sexual slanders in the Chichester sample was the result of a stricter application of the letter of the law in that jurisdiction.

Figure 2. Slanders alleged by female plaintiffs in the church courts of the diocese of Chester, 1660-1700.

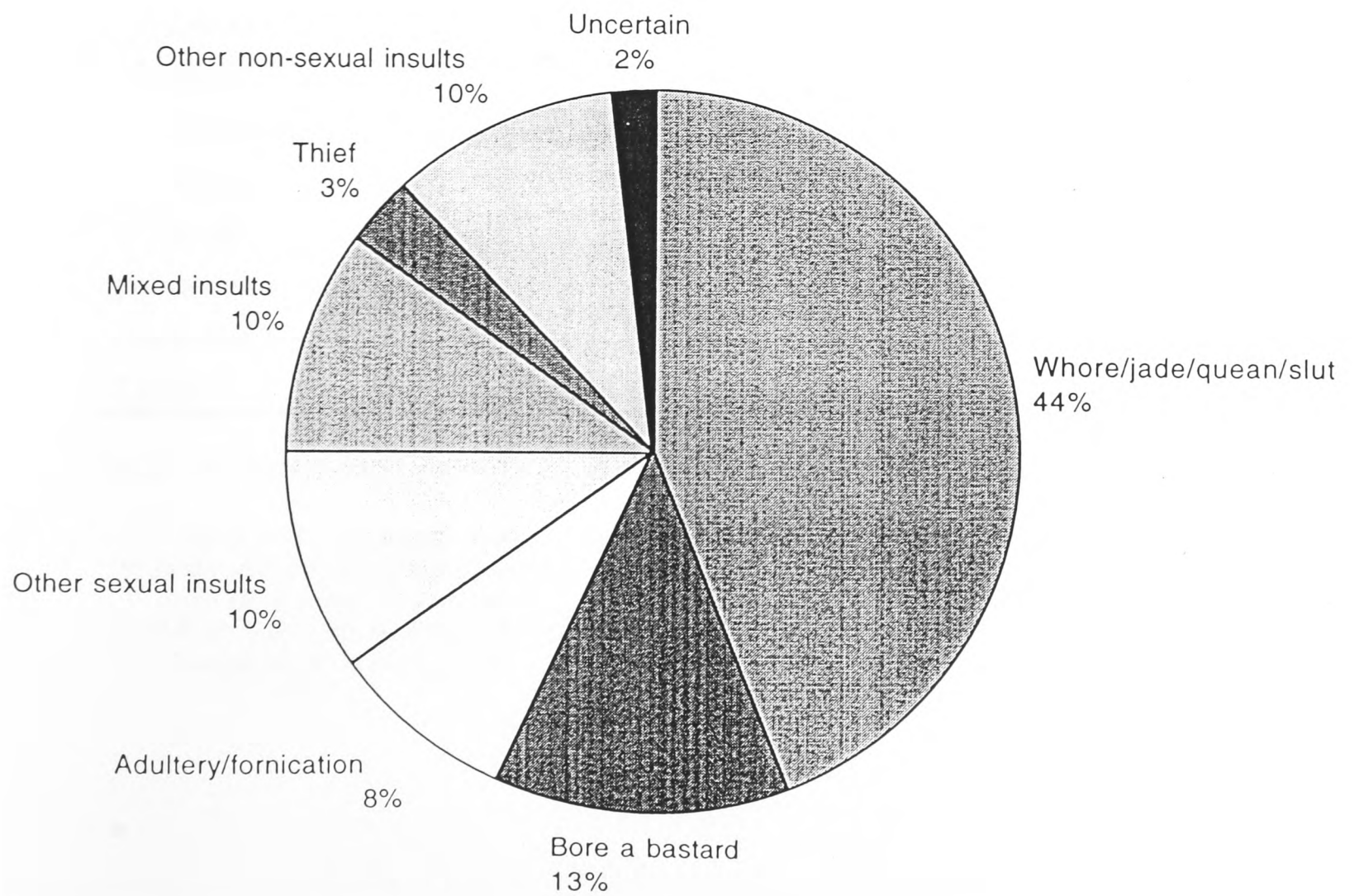


Table 7. Slanders alleged by female plaintiffs in the church courts of the dioceses of Chester and Chichester, 1660-1700 (N).

Alleged slander	Chester	Chichester
Sexual insults		
Whore/jade/quean/slut	54	13
My husband's whore	2	0
I have lain with thee	3	4
Tilling*	2	0
Bore bastard	16	2
Bawd	2	2
Pimp**	1	0
Adultery/fornication	10	2
Have venereal disease	1	0
Other sexual acts	1	0
Mixed insults		
Whore and thief	3	0
Drunk, whore, witch	1	0
Drunken whore	9	0
Non-sexual insults		
Drunk	1	0
Thief	4	0
Forsworn	2	0
Witch	4	0
Scold	1	0
Other non-sexual insults	4	0
Uncertain ***	3	1
Total	**124**	**24**

Note This table includes cases sued by joint plaintiffs if the wife was specifically slandered.

* 'Tilling' was a Cheshire expression meaning 'the mother and grandmother of whores'.
** In the seventeenth century a pimp was a procurer for unlawful sex as it is now, however it was used to refer to both men and women. It could also mean a woman who stood in for a prostitute.
*** In cases with no surviving libels it is not always possible to identify the actual slander which formed the basis of the case.

Sexual insults

The stock way of insulting a woman in this period (and indeed any period) was to question her chastity, or to call her a whore. Over the medieval and early modern periods there had occurred a process of expansion in the insults of a sexual nature that were available to deploy against women. Developments in this semantic field by our period show how women were so often defined consciously and unconsciously in sexual terms.[9] A number of these insults had fairly innocuous origins, but by the early modern period were synonyms for 'whore'. A particularly common term was 'jade' which had originally meant an ill bred or worn out horse (a usage that was still current) but by our period also meant a whore - an ill bred and 'over ridden' woman. 'Riding' was still a euphemism for sex in this period.[10] Other common words that implied unchastity were quean, slut, harlot and strumpet. All of these words were of ancient and obscure origin. The word slut implied not only sexual immorality but also low social class. It could mean 'a woman of dirty slovenly habits' or, in this period, simply a kitchen maid.[11] A harlot had originally been a male vagabond and this usage was still current as an insult directed against men, but the word had also become a synonym of whore by the end of the fifteenth century.[12] Strumpet seems to have been used simply as a synonym for whore. Quean had originally been a disparaging word for a woman but by the sixteenth century invariably carried strong sexual connotations and appears to have been a particularly insulting sexual epithet.[13] Often these insults were combined in a stream of tautological abuse such as 'whore, a drunken queane, a Baggage and a

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[9] Poos, 'Sex, Lies and the Church Courts', 586-7, 593; For useful analysis of the whore as the 'paradigmatic woman' see Deborah Cameron, *Feminism and Linguistic Theory*, 2nd edn (Basingstoke, 1992), 107-110; Germaine Greer, *The Female Eunuch* (1971), 263-72).

[10] Addy, *Sin and Society*, 139.

[11] The *OED* quotes Pepys using 'slut' to mean playful and also lists the meaning of a female dog.

[12] Edward Phillips, in *The New World of English Words* (1658), claimed that the word 'harlot' was derived from the name of the bastard, William the Conqueror's mother, Arlotta (or Arletta), and as a result 'all whores came to be called harlots'. This etymology was popular in the seventeenth century but in fact the first recorded usage of the word was in the thirteenth century when it meant a young, male vagabond or beggar. The modern meaning of an immoral woman dates back to the fifteenth century. See *OED* and Poos, "Sex, Lies and the Church Courts', 591-2. He found that most usages of this insult were directed at women in the fifteenth century. See also Hughes, *Swearing*, 97, 222. See CRO EDC5 1679/6 Margaret Brassey c. Katherine Eaton. On the meanings of harlot with reference to men see ch. 5, 155.

[13] *OED*. It is interesting to note that this usage continued until the early twentieth century when 'quean' began to refer to male homosexuals, James MacDonald, *A Dictionary of Obscenity, Taboo and Euphemism* (1988).

Jade'.[14] While the range of epithets was large all contained a sexual element and all could be used as synonyms of 'whore'.

The whore was thought to be instantly recognisable for her sexual morality was expressed in outward signs such as lewd and extravagant dress, makeup and in particular loud and vulgar speech.[15] The whore's moral weakness resulted in an inability to control not only her animal lusts but her tongue. Whores might also be marked by split noses and by the pock marks left from venereal disease.[16] Makeup and lavish clothes were particularly offensive because they indicated not only extravagance but a desire to conceal the moral ugliness of whoredom and the marks of the pox.[17] The split nose was not simply a device used to identify whores in popular literature, as shown in an example from the Chester City Sessions. In 1668 Alice Clark was assaulted by Ursula Morgan. According to Clark's husband 'Mrs. Morgan suddenly and without any provocation, with a knife or some very sharp instrument cutt her this deponent's wife's nose ... saying she would give her a whore's mark'.[18] The whore's demeanour and character meant that she was frequently called 'brazen faced', 'bold' and 'impudent'.

The image of the whore was also tied up with images of dirt; not only was she morally defiled, and marked by venereal disease, but physically dirty and unkempt,

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[14] CRO EDC5 1677/13 Margaret Wright c. Catherine Standish. A 'baggage' was 'a worthless good-for nothing woman; a woman of disreputable or immoral life, a strumpet' (OED). According to Hughes, *Swearing*, a baggage could also be a man until the end of the sixteenth century. John Kersey, *New English Dictionary* (1702), defines it specifically as a 'soldier's punk' and a 'punk' was a whore.

[15] Richard Allestree, *The Ladies Calling in Two Parts* (2nd Impression, 1673), 16-17, 24, 56-7, on dress and cosmetics; *The Diary of John Evelyn*, ed. E.S. de Beer (Oxford, 1955), iii, 97; Woolley, *Gentlewoman's Companion*, 79.

[16] Noses represented the female genitalia and as a result were a mark of whoredom. See *OED* and Gowing, *Domestic Dangers*, 80, 84, 103, 109. See Foyster, 'Concept of Male Reputation', 109, for examples of ballads.

[17] See also Dabhoiwala, 'Construction of Honour', 207, 209-210, in which he points out that whores were more difficult to identify than prescription implied.

[18] CCRO QSF 79/2 f. 75 April 1668. The following year Ursula Morgan sued Alice Clark for defamation in the church courts for calling her a 'bitch whore and swore by the Lord that if she had her there she would cutt her a[s] small flesh to pott', CRO EDC5 1669/55. There is no mention of the previous action at city sessions in the depositions. However, it may have been mentioned in articles of exception that have not survived. See also Addy, *Sin and Society*, 119, who records a case from Cheshire in 1711 in which Thomas Pearson said to Christopher Ellery (a constable) that he and his wife 'kepst a bawdy house ... likewise their daughter Anne ... is a whore, a common whore and they would cut her nose off her face and give ... [her] the whore's mark'. For a European perspective, see Valentin Groebner, 'Losing Face, Saving Face: Noses, Honour and Spite in the Late Medieval Town', *History Workshop Journal*, 40 (1995), 1-15.

despite attempts to dress in a manner which was above her station. In 1666 Henry Streater accused Margaret Richardson of being a 'stinking whore'.[19] In 1663 Robert Heyward called Elizabeth Young a whore and a salt bitch

> and I have formerly told thee that hee [Edward Downes] had kissed the[e] but nowe I tell thee that thou arte his hoare and his sorded hoare and call thy witnesses about the[e] and I will prove it and goe and wash the stanes out of thy coate ...[20]

In another example from the Cheshire quarter sessions Sybil Brundrett called Elizabeth Grantham a 'salt ravelling bitch, barren bitch ... and barren doe'. Sybil threw cow's dung in Elizabeth's well, which could be seen simply as a destructive act, but also as a symbolic act against the polluting influence of a whore.[21] The insult 'salt bitch' was a particularly loaded one. The bitch was an image which drew on the animal instinct of lasciviousness, for a salt bitch was a dog in heat; salt also meant bitter and vexatious and a salt person (either male or female) was a lecherous or salacious person.[22] Anne Powden was prosecuted at Cheshire quarter sessions in 1657 for accusing Anne Cottrell of stealing, but Cottrell also testified that Powden had called her a 'salt whore'.[23]

Allegations of venereal disease were rarely the basis of a defamation suit in either the church or secular courts. This may seem surprising when the pox was such an integral aspect of the image of the whore.[24] However, incidental information implies that imputations of the pox were a familiar weapon in the armoury of the defamer (of both men and women). Anne Knutsford sued Anne Blagge for alleging that she abused her position of midwife by spreading stories about their neighbours. Anne Blagge claimed that Anne Knutsford had called her a 'pocky arst whore' yet she did not sue Knutsford for the words.[25] In another case from 1696 , Anne Spencer, not only called

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[19] WSRO Ep I/11/17 f. 41v. Margaret Richardson c. Henry Streater. See also CRO EDC5 1664/63 Ellen Brundrett c. Sara Turton.
[20] CRO EDC5 1663/64 Elizabeth Young c. Robert Heyward.
[21] CRO QJF/118/2 ff. 53, 54. This case is also discussed in ch.2 , 62.
[22] *OED*. Other examples where a woman complained of being called a 'bitch' CRO 1663/39 Alice Broome c. Humphrey Swindellor; 1694/13 Elizabeth Hobson c. William Whitaker.
[23] CRO QSF 85/1. Not only was this a mixed slander but the allegation of theft specified what had been stolen so it was clearly cognisable as a secular slander.
[24] See ch.2, 53-5.
[25] CRO EDC5 1664/68 Anne Knutsford c. Anne Blagge.

Joseph Stout a 'pocky rogue', but said that he 'kept two pocky whores' in his house. She defended herself by claiming that he had provoked her, calling her a 'pocky bitch'.[26]

The illicit nature of whoredom meant that sexual liaisons often took place in insalubrious settings. They also often occurred outdoors, not least because privacy was hard to obtain in seventeenth century houses. John Moss and Mary Humphrey were spotted together 'in a hollow elme tree in the parish of Bury' in Sussex.[27] In 1675 Ralph Colcane described how he and Margaret Savage had lain together in a hen hurdle and a bakehouse.[28] In 1681 Anna Parry was allegedly caught in the street 'behind John Baxter's and William Mercer's and her bare bellye and thighes were seen and her back was to the wall'.[29] In 1697 Rebecca Davies, a spinster from Chester, sued Mary Jones for saying that she had been 'naught ... in the feilds with one Mr Lewis ... I saw thy ... cloaths up and hee upon thee...'[30] To be caught in an unusual place for no obvious reason often fuelled suspicion; George Preston was prosecuted in 1691 for the suspicion of adultery with Jane Jones as a result of being discovered on numerous occasions 'at an unseasonable time and in a suspitious place'.[31] In some of these cases the identification of the setting was clearly a deliberate component of the humiliation of the plaintiff . In 1664 Katherine Parkes told Elizabeth Widdens, 'thou whore, goe thy way and lye or play the whore with a sowguilder [gelder] in the Forrest againe'.[32] In 1662 Humphrey Broome said that Alice Broome had been 'nought at the Pedlars oaks in the forrest as thou hast been before'.[33]

The word slut alluded specifically to the dirty side of whoredom, implied low social class as well as base morals, and seems to have been used quite consciously with

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[26] CRO EDC5 1696/9 Joseph Stout c. Anne Spenner. See ch. 2 on the legal implications.
[27] WSRO Ep I/11/18 f. 15 John Moss c. Thomas Tupper.
[28] CRO EDC5 1675/15 Margaret Savage c. Ralph Colcane.
[29] CRO EDC5 1681/20 Anna Parry c. Jonathan Price.
[30] CRO EDC5 1697/13 Rebecca Davies c. Mary Jones. One of the features of the sex that is described in defamation cases is that the participants are usually partially or fully clothed, see also EDC5 1663/20 Isabel Ashcroft c. Richard Thorneley.
[31] CRO EDC5 1691/28 Laurence Fogge c. George Preston.
[32] CRO EDC5 1664/30 Elizabeth Widdens c. Katherine Parkes. ESRO QR/E94 Elizabeth Hook claimed that she became pregnant when she had sex with William Shoveler in his stable. Thomas Passe allegedly said that Mary Waring was 'Richard Waggs whore and had been nought with him at a sackside', EDC5 1661/22 John & Mary Waring c. William and Thomas Passe.
[33] CRO EDC5 1662/39 Alice Broome c. Humphrey Swindellor.

these meanings. In 1678 Mary Burganey told George Guest that when he died his wife and children would be 'turned over to the parish'. Guest was a man of yeoman status and this allegation seems to have struck a sensitive chord for he actively spread a story around Pulford that Mary was a 'base slutt'. The insult was designed not only to cast aspersions on Mary's sexual reputation, but to remind her (and her neighbours) that she was a woman of humble origins who had married a man of higher status, her master. He 'spoke reproachfully of her concerning her poverty when she came first to Pulford and that she was ... [Mr Burganey's] servant'.[34] In another example Margaret Bibby sued Eleanor Turner for calling her a 'Beggarly slutt' and 'that when she first came to Chester all her cloathes on her back were not worth five shilings'.[35]

In the late seventeenth century the word whore began to mean a woman who was paid for sex, though the vaguer implication of simple unchastity was still dominant in our period. Dabhoiwala has argued that this semantic change reflected a profound shift in cultural attitudes to sexual immorality and the nature of unchastity, particularly for women. Both the church and the law defined women in terms simply of unchastity or chastity and allowed for no subcategories of whoredom in this period. Dabhoiwala traces how the emergence of the whore as a 'professional', public woman was concurrent with a new conceptualisation of adultery and fornication as private matters from the turn of the seventeenth century. Though this argument is largely convincing it must be remembered that the concept of the 'common woman' was already a well established one. Though the law and the church may not have differentiated between different types of whoredom, people made distinctions that were reflected in the language of insult; the phrases 'common whore' and 'arrand whore' were particularly insulting because they implied not simply acts of unchastity but habitual prostitution or at least promiscuity.[36]

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[34] CRO EDC5 1678/6 Mary Burganey c. George Guest.
[35] CRO EDC5 1671/9 Margaret Bibby c. Eleanor Turner.
[36] Dabhoiwala, 'Prostitution and Police'; Gowing, 'Women, Sex and Honour', 33. Examples include, CRO EDC5 1680/21 Elizabeth Massey c. Elizabeth Foarnall;

There are examples of women being accused of receiving money and gifts for their sexual favours in our defamation suits. Margaret Goulden said to Jane Roberts, a spinster of Chester that

> Thou ... art ... a whore, Mr. Richard Minshull's whore, That hee did give thee ... a shilling to lye with thee ... and that Thou ... was with child by one Lewis Lout when thou ... came to bee servant to Mrs. Touchett and thou ... art ... Lewis Lout's whore.[37]

In 1665 Geoffrey Dawtry from Sussex claimed that Catherine Garland 'was a whore and that he himself had layne with her five or six several times and had given her five shillings to lye with her', while in 1679 Joan Ellis alleged that Sarah Saunders had 'played the whore for a hundred pounds'.[38] In the same court in 1675 Elizabeth Collins claimed that Sarah Tilley (a married woman) had been paid twenty shillings to lie with Mr Hoskins.[39]

To the modern mind these cases simply imply the kind of financial transaction that would expect between a prostitute and her client. Undoubtedly there were women who acted as prostitutes in this period, though we are more likely to encounter them in the records of quarter sessions than those of ecclesiastical defamation suits. In 1685, for example, a woman called Elizabeth Drury was ordered to be whipped at Chester City Sessions for being 'a woman of dissolute life and having followed the souldiers from the camp to the cittie'.[40] A 'camp follower' was in fact a euphemism for a whore, derived from the women who followed soldiers and catered for their sexual needs.[41] Katherine Parkes confessed that she had said to Elizabeth Widdens in 1664, 'I never did sell strong waters to the Parliament Army and follow them from towne to towne'. Parkes denied that she had actually called Widdens a whore or a quean as laid out in the libel, but the implication was clear.[42] Prostitutes were unlikely to bring defamation

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[37] CRO EDC5 1686/8 Jane Roberts c. Margaret Goulden.
[38] WSRO Ep I/11/17 f. 21 Catherine Garland c. Geoffrey Dawtry; ;Ep I/11/19 f. 31v. Sarah Saunders c. Joan Ellis. See also Ep I/11/22 f. 32 William Ward c. Katherine Hoskins. In another example the plaintiff, Elizabeth Gray was alleged to have provoked Richard Harrison to call her a whore by saying that he 'owed five shillings to Green's wife ... for the pockes'. It is possible that Gray meant that Green's wife had offered Harrison a cure for his condition, CRO EDC5 1663/81 Elizabeth Gray c. Richard Harrison.
[39] WSRO Ep I/11/17 f. 83 Sarah Tilley c. Elizabeth Collins
[40] CCRO QSF/83 f. 30v.
[41] There were a number of other epithets for prostitutes who serviced soldiers, including a 'trull' which was a 'camp-whore', Kersey, *Dictionary*. See n. 14 above.
[42] CRO EDC5 1664/30 Elizabeth Widdens c. Katherine Parkes.

cases; their 'occupation' would have been well known and they would not have had the requisite reputation to claim that their credit had been damaged. In communities where people tended to know the business of their neighbours they would also be unlikely to find witnesses who would testify to their previous good credit.

The exchange of gifts was also produced as evidence of illicit sexual liaisons.[43] Ralph Colcane alleged that he had had a sexual affair with Margaret Savage (who subsequently sued him for slander in 1675) and said that he had given her a pair of silver clasps and a pair of gloves.[44] Tokens such as these may have been given or received in good faith between courting couples, as tokens of love or betrothal, and later produced as evidence of whoredom once the relationship had soured. But Savage was in fact married and in this case the gifts were more likely to have had an illicit meaning. When Sarah Tilley bought cheese with the money that Mr. Hoskins had given her she tried to cover it up to her inquisitive husband, Joseph, 'who asked her how she came by the money ... she told her husband that a kinsman of hers sent it'.[45]

I would suggest that accusations that included women receiving money from their sexual partners need not imply actual prostitution but fit in with the cultural construction of an unchaste woman at this time and the wider effects of whoredom. Sexual sin was linked to other kinds of immorality and it was thought that one misdemeanour was likely to lead to a host of others. One of the clearest characteristics of the whore was that she was deceitful, cunning and profligate and seduced men into frittering away both their energy and resources. Whores were feared by respectable married women precisely because of the damage that they could wreak on the home and the institution of marriage. They were viewed as competition not only for the affections of men but the economic security that marriage could bring and were often held more culpable for its disruption than the adulterous husband.[46] Frances Eaton, the wife of an alehouse keeper, called Anne Taylor an 'impudent whore' and a 'pimpe' and

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[43] The giving of gifts, or tokens of love was part of the ritual of courtship; Diana O'Hara, 'The Language of Tokens and the Making of Marriage', *Rural History*, 3/1 (1992), 1-40.
[44] CRO EDC5 1675/15 Margaret Savage c. Ralph Colcane.
[45] Ep I/11/17 f. 83-8v. Sarah Tilley c. Elizabeth Collins.
[46] Gowing, *Domestic Dangers*, 90-2.

complained that 'my husband must give her her morning draught and I must be strucke for such a bild [bold] impudent huswife'.[47] This was more graphically illustrated in a case fought in Chester in 1671 in which Ellen Gill sued Elizabeth Woodier for calling her a 'huswife'. Elizabeth accused Ellen, on several occasions, of having an affair with her husband and said angrily 'thou huswife he has laid with thee all night'. Not only did this cause Elizabeth great emotional torment, as testified by her servant, but she also claimed that Ellen was a drain on her household resources. She called Ellen 'a drunken beast' and said 'thou hast more of his company than I have and he spends all my means on thee'. One of her outbursts against Ellen was precipitated when Elizabeth had been looking for her husband to go to market with her; when she could not find him she suspected him of being with Ellen.[48] It was feared that whores would not only tempt men from their responsibilities in the household but waste their family's money on the accessories of whoredom such as clothes, presents and alcohol. When women were so heavily dependent on their husbands for economic survival this was a serious issue, and one which often set women against each other.

The insult 'huswife' (or 'housewife') reflects these fears about the consequences of whoredom; 'huswife', or its diminutive, 'hussy', which had originally meant simply a woman who managed a household, also came to be used as a term of abuse, invariably with sexual overtones.[49] It should be noted, incidentally, that Gill (who brought the case discussed above) was a spinster, not a married woman which reflects the profound change in usage of the word.[50] In another case from 1664 Sara Turton protested to Ellen Brundrett, who had just called her a 'huswife', 'you might as well call me a whore, a huswife is as ill as a whore'.[51] Erickson rightly

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47 CRO EDC5 1663/41 Anne Taylor c. Frances Eaton. Gowing, *Domestic Dangers*, 102-3.
48 CRO EDC5 1671/25 Ellen Gill c. Elizabeth Woodier.
49 The *OED* defines 'huswife' simply as 'a light, worthless, or pert woman', though it is clear from its usage in defamation cases that it was a synonym for 'whore'.
50 CRO EDC5 1671/25 Ellen Gill c. Elizabeth Woodier.
51 CRO EDC5 1664/63 Ellen Brundrett c. Sara Turton. See 1669/ 28 Mary Mainwaring c. Jane Thompson; Jane Thompson c. Mary Mainwaring, for examples of 'drunk huswife'. See also the deposition of Joseph Moores, 1681/18 Elizabeth Swift c. Hannah Griffin. In the libel 'huswife' was not recorded, only an allegation of theft. This may suggest that the word was not considered to be clearly cognisable, though it was widely recognised to be a synonym for 'whore' which should have made it more viable at ecclesiastical law than an allegation of theft; 1681/21 Richard Totty, John and James Weatherbury c. Sara Gibbons.

argues that the sexual dimension of the term 'housewife' derives from the early modern construction of a good woman in which sexual and non-sexual profligacy were linked. She points out that 'modesty implied good housewifery and inversely, a spendthrift housewife might be assumed to be wanton'.[52] Walker has argued that housewifery, meaning household skills, was central to women's self-perception and their wider reputation. However, she failed to understand its sexual dimension and the link between the sexual and non-sexual applications of the concept which combined to make 'huswife' such a potent insult.[53]

Drunkenness was a feature of whoredom that was mentioned relatively frequently in these cases for the two vices were closely linked in the popular imagination. Allestree devoted a significant section in *The Ladies Calling* to the horrors of female drunkenness and made the link between intemperance and whoredom explicit when he stated 'tis scarce imaginable a woman that loses her sobriety should keep her honesty'.[54] Accusations of drunkenness were actionable in both temporal and spiritual jurisdictions and such an accusation was, occasionally, the sole slander on which a case was based.[55] In 1677 Catherine Standish and George Wright had a quarrel in the middle of Greyfriars Lane in Chester where they both lived. Standish said to Wright, 'What am I like that drunken whore thy wife ... that was lead home drunke?' Wright responded by calling Standish 'a whore, a drunken queane, a baggage and a jade'.[56] In another case Elizabeth Foarnall hinted at the disruption that drunkenness could cause. She said to Elizabeth Massey, 'thou ... art ... an arrand whore a drunken whore and thou drinkest sixteen bottles of ale at once, thou art drunk everyday and thy neighbours cannot be quiet for this'.[57] John Poole condemned Elizabeth Selby for being 'drunk at Mrs Booths buriall and led home by thy neighbours', calling her an 'idle drunken

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[52] Erickson, *Women and Property*, 53-4.
[53] Walker, 'Expanding the Boundaries of Female Honour', 238-9; Gough, *Myddle*, 133, 227.
[54] Allestree, *Ladies Calling*, i, 14.
[55] Sharpe, *Defamation* , 12.
[56] CRO EDC5 1677/13 Margaret Wright c. Catherine Standish/ Catherine Standish c. George Wright. A 'baggage' was 'a worthless good-for nothing woman; a woman of disreputable or immoral life, a strumpet. ' (*OED*) Up until about the end of the sixteenth century a baggage could also be a man, though the *OED* does not give the word a sexual connotation in the case of men. See also 1666/5 Bridget Carrington c. John Baxter.
[57] CRO EDC5 1680/21 Elizabeth Massey c. Elizabeth Foarnall.

Queane'.[58] Allegations of drunkenness were also linked to social status as drunkenness was perceived to be a vice typical of the lower orders. In 1667 Isabel Annyon, a widowed innkeeper from Chester, sued Robert Moulson for a stream of slanderous abuse which included almost every aspect of the stereotype of the whore; he allegedly called her a 'brazen-faced slutt, a stinking, nasty, durky huswife, a bold impudent Queane, a drunken slutt, a beggars bratt'.[59]

To an extent a woman's reputation was dependent not only on her conduct but on that of her husband, her children and her wider family. It is a truism that lineage was the foundation of the gentry's system of honour but had little resonance lower down the social scale. Certainly this is true as regards formal genealogies and the like. However, a number of cases suggest that there was a concept of moral lineage among those who brought defamation suits.[60] In 1690 Thomas Scott told Sarah Steadman's mother that she was an 'old bawd' and that her daughter [Sarah] was a 'young whore' and 'that she meaning the widow was an old bawd for maintaining of her'.[61] Bawds, or ageing whores, were thought not only to breed young whores, but to protect and nurture their servants to be whores also; this was a fairly common image in popular literature as well as in the language of insult. It is not surprising that parents would be thought to inculcate their offspring with their own moral values. However, there are no examples in this sample of a woman being slandered with reference to any aspect of her mother's behaviour other than her sexual reputation. In 1663 Frances Eaton called Anne Taylor an 'impudent whore' and said that she would 'be a pimpe like ... her mother'. In the previous year the same Frances Eaton had sued John Burston alleging that 'he did call her a whore tilling and did say that hee had heard that her mother had kept a bawdy house'. As noted earlier, the word 'tilling' was a Cheshire dialect expression which meant the daughter and granddaughter of whores; in 1686 Mary Touchett sued Margaret Goulden for calling her a 'base bastardly tilling'.[62] The

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[58] CRO EDC5 1670/11 Elizabeth Selby c. John Poole.
[59] CRO EDC5 1667/47 Isabel Annyon c. Robert Moulson.
[60] Gowing, *Domestic Dangers*, 75.
[61] WSRO Ep I/11/21 f. 23v. Sarah Steadman c. Thomas Scott.
[62] CRO EDC5 1662/46 Frances Eaton c. John Burston; 1663/41 Anne Taylor c. Frances Eaton; 1686/7 Mary Touchett c. Margaret Goulden.

concept of sexual lineage must have had wide currency for a specific word to have been coined. Richard Gough comments frequently on children being similar to their parents in his *History of Myddle* and, in particular, on the sexual immorality of mothers being replicated in further generations; he described one woman as a 'light housewife' and her daughters as 'impudent whores'.[63]

These cases are also suggestive of the concept of the life cycle of sexual immorality. There was a sense that an unchaste woman was always going to tend towards immorality, hence the importance for younger women of nipping rumours about their sexual behaviour in the bud. The ageing whore however had a specific place in the popular imagination, as the bawd. In 1664 Elizabeth Topsall said of Margaret Dixon, 'hange her she hath bin a whoore in her youth and now she is turned bawd in her old age'.[64] In the interrogatories to this case one of the witnesses defined a bawd as 'a woman that is a whore herself and procures others to commit adultery and fornication'. Widows who ran victualling houses were particularly vulnerable to suspicion that they were bawds. Yet the word bawd was not simply a word of abuse which signified an old whore, for keeping a bawdy house was also an 'occupation' for older women and an offence at law.[65] An allegation of keeping a bawdy house was therefore a slander cognisable in the temporal courts, though simply to call a woman a bawd was, according to one legal authority, 'a term of reproach used in scolding and does not imply any act whereof the temporal courts take notice'.[66] The resonance of the concept of the bawd underpinned the somewhat ambiguous and vulnerable position of widows with regard to their reputations and standing in their neighbourhood. All the allegations of bawdry were directed at older women, though not all were widows. Barbara Russell was called an 'old whore, old bawd, old bawdy arst jade' by Adam Voake in 1665 and he called her husband 'old cuckoldly knave'. Though the age of plaintiffs is not usually recorded, the depositions often give clues to their age. One of

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63 Gough, *Myddle*, 227, 180, 206, 207.
64 WSRO Ep III/5/3 f. 43, Margaret Dixon c. Elizabeth Topsall. Gowing, *Domestic Dangers*, 59.
65 Widow Hughes was presented 'for keeping a Noughty House' at Chester City Sessions in 1696, CCRO QSF misc. papers, unfoliated.
66 Leach, *Modern Reports*, case 77. CCRO QSF misc. 21 May 1696. Gowing, *Domestic Dangers*, 96-7.

the witnesses in the Russell case deposed that she had been married at least twenty years, another that he thought she had been married for thirty years, suggesting that she must have been at least in her forties.[67]

Laura Gowing eloquently describes how the power of the word 'whore' drew not only on these complex and graphic images but the comprehensible practical effects that whoredom had on the family and the community. Erickson has argued that 'all female characteristics ultimately reflected sexual reputation';[68] while there is an important kernel of truth in this statement it suggests a construction of female immorality that is too simplistic. The interesting aspect of these words which is often overlooked is that the conception of whoredom was about much more than sexual behaviour and the sexual dimension of the insult was not necessarily the most significant (to the defamer, or their victim), even if it was the most important in the eyes of the law. Whoredom destroyed the little commonwealth of the family; it resulted in the birth of illegitimate children and threatened to dislocate the crucial system of patrilineage. To call a woman a whore was therefore not just a random insult, but was loaded with a range of connotations that undermined the whole basis of a woman's reputation.

The standard interpretation of these cases is that they reflect the fragility of women's reputations; that even a vague aspersion of sexual immorality was enough to undermine a woman's credit because her reputation was so wholly dependent on her sexual reputation.[69] There is undoubtedly some truth to the notion that women were vulnerable to vague slanders, but evidence from Chester and Chichester suggests that the point has been pressed too far. In the first place, we have seen that the implications of the insult were far from vague. Second, most accusations of whoredom were in fact quite specific allegations of sexual misbehaviour rather than random insults. The majority of vague allegations in this sample come from cases which were not well documented and do not include depositions. Often the words in the libel were kept

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67 WSRO Ep I/11/17 f. 20, Barbara Russell c. Adam Voake.
68 Erickson, *Women and Property*, 53.
69 Thomas, 'Double Standard', 195.

fairly simple - according to the law the words 'thou art a whore' were actionable without any elaboration. However, in many cases the depositions suggest that the defamer rarely confined herself to such a simple insult and it is quite likely that in many other cases only the relevant parts of the argument were actually documented.

In fact, most allegations included an allegation of bastardy, or named the man with whom the plaintiff had allegedly had sex. Allegations of bastardy are counted separately in Table 7, but of the cases in which the plaintiff was slandered as a whore, over half named the man concerned or supplied some detail about where their liaison had taken place. These are not cases of vague abuse but accusations of acts of unchastity.[70] This evidence undermines the pervasive notion that women's reputations were so fragile that they could be destroyed even by a hint of unchastity, while men's reputations could only be harmed by specific allegations. As the evidence presented in this, and the following chapter, will show male and female reputations need to be discussed on a more equal footing.

Allegations of theft and dishonesty

Women's lives were not, in reality, utterly centred on the sexual self and located only within the confines of the household.[71] Indeed the concept of the household as a confined and restricting space (at least among the sub-gentry classes) is informed by modern constructions of domestic space and is somewhat ahistorical. In the early 1660's the sailor, Edward Barlow, thought it worthy of comment that Spanish men 'keep their wives in such subjection, many not allowing their wives to have the least recreation abroad'.[72] Women worked in their family shops and workshops which were often the same premises as their homes, blurring the distinctions between private and public space; they grew and sold agricultural produce and their daily business took them into the world beyond their front doors. Their honesty may have often been

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[70] See also ch. 7, 224-9.

[71] Cf. Capp, 'Separate Domains?'; Amussen, *Ordered Society*, 102-3, argues that the insults directed at women were of limited range because of women's limited, domestic experience. Laslett, *World We Have Lost Further Explored* , 73.

[72] Captain A.G. Course, *A Seventeenth-Century Mariner* (1965), 30. Barlow was the son of a husbandman from Prestwick near Manchester.

defined in sexual terms but it was well understood that it impinged on the non-sexual aspects of their life. Allegations of cheating, criminal activity and general dishonesty must have had implications for their reputations and yet they rarely complained of such slanders in court, partly because they were not strictly cognisable in the ecclesiastical courts. There were only a handful of cases in the Chester consistory court involving allegations of theft and none in Sussex. It is interesting that all three cases in the Chester sample stated what was stolen and from whom, details which were required for such cases to be heard in the temporal courts. Margaret Bibby alleged that Eleanor Turner was 'a theif and did pick Thomas Dutton's pocket which was his undoing'; Elizabeth Snead claimed that Anne Rivell had stolen seven pounds from Mr. Higgs, while Hannah Griffith accused Elizabeth Swift of stealing her dog.[73] Allegations of theft could be heard in the common law courts and three women brought cases (in conjunction with their husbands) to the Chester court of Great Sessions between 1650 and 1700. It is clear that in two cases the defamer had impugned the reputation of the wife alone. Ralph and Mary Carter called Mary Mainwaring a 'false theefe' and Anne Hatton was accused of stealing sheep. In the third case Josiah Croxton was slandered as 'a false knave' and his wife Barbara 'a false theefe'.[74]

Drunkenness

Though we have seen that allegations of drunkenness against women were usually couched in sexual terms, there were two cases in which drunkenness was the crux of the slander. In 1665 John Baxter recounted how he had been assaulted by Bridget Carrington in the centre of Chester;

> by giving him a great blow over his face, unawares to his amazement, without any words or provocation at all on the part ... of the said John Baxter said to the said Bridgett good woman what meane you to strike mee thus, and shee the sayd Bridgett indeavouring once or twice to strike him agayne he sayd unto her without any passion at all, are you drunke or mad to do thus by mee?[75]

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[73] CRO EDC5 1671/9 Eleanor Turner c. Margaret Bibby; 1674/40 Anne Rivell c. Elizabeth Snead; 1681/18 Elizabeth Swift c. Hannah Griffith.
[74] PRO Ches. 29 440 f. 17 George and Mary Mainwaring c. Ralph and Mary Carter; 462 f. 13 Josiah and Barbara Croxton c. Thomas and Anne Knutsford; 470 f. 24.

The Interrogatory clearly shows why Baxter mentioned that he had asked Carrington this question 'without any passion at all'; the witnesses were asked if the words were spoken 'with an intent to scandalise the sayd Bridgett, as pretending she was drunken or whether they were spoaken by way of interrogation.' There is no suggestion in this case that Carrington's sexual reputation was in question. Though the libellate issue was Carrington's drunkenness an allegation of madness was surely as important to Carrington's reputation. Carrington may well have felt a suit was justified because this altercation occurred in the middle of Eastgate Street, one of the main streets in Chester and 'some company' had gathered to watch the spectacle.

Scolding and witchcraft

There was one allegation of scolding in this sample in a case from Chester in 1668. Margaret Lownde allegedly said to Alice Bridge that she was 'a Billingsgate scold' and continued, 'hang thee, Thou oyster carrier, ... Thou wilt be hanged for thy husband and thy husband for thee'. Unfortunately we do not know what this final part of the slander was referring to. Interestingly Alice Bridge also sued Margaret and her husband for saying that she was a witch. Scolding was often related to witchcraft in the popular mind for scolds were traditionally thought to be able to outwit the devil.[76] This case is also intriguing for the use of the expression 'Billingsgate scold', a term of abuse that had originated in London's Billingsgate fish market, revealing that this expression was current as far north as Chester.[77] The phrase 'oyster carrier' was similar to the concept of a fishwife, noted for her loud and vulgar tongue. There was an important class dimension of the popular concept of a scold. While whores could be found at all social levels, and wealthy women were susceptible to their characteristic

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[75] CRO EDC5 1666/5 Bridget Carrington c. John Baxter.
[76] CRO EDC5 1668/5 Alice Bridge c. John and Margaret Lowndes/ Alice Bridge c. Margaret Lowndes; Ingram, 'Scolding Women', 48.
[77] In 1744 Alexander Hamilton of Maryland referred to scandal and detraction as a 'monster' which 'first took its origins' in Billingsgate, David A. Flaherty, *Privacy in Colonial New England* (Charlottesville, 1967), 104.

vices, such as vanity, scolds were invariably women of low social status. In *The Ladies Calling* Allestree was brief in his discussion of scolding saying 'I presume I need not declame farther against this fault, which I suppose cannot be frequent among that rank of woman to whom this tract is intended ... a scold being a creature to be lookt for only in stalls and markets'.[78]

There were two other cases involving allegations of witchcraft in the Chester sample. In 1667 Margaret Moores brought a case to the Chester consistory court jointly with her husband against Anne Hickson. The libel records that the alleged words were 'Thou ... art ... a black mouthed witch', but there are no other extant documents to elaborate on this information.[79] In 1662 Mary Briscoe sued Anne Wright in the same court for saying that she was a witch and had bewitched her child 'to death'. One of the witnesses deposed that if Anne 'did speake any such words ... they were spoken in a passion and out of motherly affection haveing soe miserably lost two of her children'. Anne's plea was not successful and she performed a public penance for defaming Mary Briscoe.[80]

Cases brought by single women

We have looked at the language which prompted women to go to court; we now need to look more closely at the motivations behind the defamed person's decision to take a slanderer to court. First we will look at the slanders complained of by single women who accounted for only 17 per cent of female plaintiffs in Cheshire and 23 per cent in Sussex.

We cannot assume that single women cared less for their good name than married women simply because they were less likely to bring defamation suits. The reality was possibly quite the opposite. In an age when a woman's economic security was more likely to be guaranteed through marriage than by staying single, making a

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[78] Allestree, *Ladies Calling*, i, 45.
[79] CRO EDC5 1667/43 William and Margaret Moores c. Anne Hickson.
[80] CRO EDC5 1662/63 Mary Briscoe c. Anne Wright. This was a rare example of insight into both the state of mind of a defamer and parental affection, suggesting that the loss of a child could cause much grief. Cf. Stone, *Family, Sex and Marriage*, esp. 80-8.

good marriage was of the utmost importance for women.[81] One of the most obvious barriers to making a good match was a bad reputation. In 1611 William Vaughn condemned those 'who with their runnagate rumours and reports doe hinder Gentlewomen from their promotions in honest marriage'.[82] While Vaughn was referring to women of the upper levels of society the reputation of a prospective partner was also undoubtedly a consideration for women and men throughout the social hierarchy. It is therefore one of the ironies of defamation litigation is that, in reality, the vast majority of female plaintiffs were married.[83] One reason for this might simply be that in many cases marriage brought with it the economic stability that enabled men and women to invest in litigation.

The link between marriage and economic security underpinned the common law over defamatory words with regard to single women. Under common law a single woman could bring an action on the case and claim material damage if she could show that a slander (even if it alleged an ecclesiastical offence) had affected her marriage prospects. In theory this left single women who had been slandered with a choice of jurisdictions, though the evidence suggests that few spinsters chose to pursue the secular route for redress, even in the 1650s.[84] Though the church courts could not award monetary damages the protection of marriage prospects was specifically mentioned as the motivation for bringing a suit in four out of twenty one cases brought by Cheshire spinsters. In 1697 Rebecca Davies, sued Mary Jones for saying that she had 'been naught in the fields with one Mr. Lewis'. Anne Brown (a witness) chided Jones saying that 'it was dangerous to say such things of a young woman', by which she might have been referring to either the damage that slanders could do to a young woman's marriage chances, or the danger of being cited for defamation.[85] In another case from 1663, it was explicitly stated that the plaintiff, Elizabeth Young, 'was at that

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[81] It should be noted that an estimated 20 per cent of the female population never married, Erickson, *Women and Property*, 83.
[82] Vaughn, *Spirit of Detraction*, 346.
[83] Women's marital status was usually recorded in libels and depositions and was never recorded for men. However, incidental detail from depositions suggests that most male litigants were also married.
[84] See ch. 2, 51-2.
[85] CRO EDC5 1697/13 Rebecca Davies c. Mary Jones.

time [of the defamation] in election of marriage; but the scandalous words aforesaid occasioned the breach of that intended match'.[86] In 1690 a young spinster of about 20 years old brought three causes in the Chichester consistory court simultaneously, suing John Terrey, John Manser and John Baker for defamation. It was alleged that Baker and Terrey had claimed to have had sex with her and that Manser had publicly supported their claims. Nearly all the witnesses emphasised that Mary was a woman of 'good credit and repute' and that her father was 'a very sufficient man'. Though she was not described as a woman with a good portion the implication was clear; Walter Piper asked Terrey 'why he would abuse ... Mary ... by defaming her as he was said to have done telling him it might spoile the maids fortune or hinder her marriage'. It emerged that another witness, John Scutt, was hoping to marry Mary.[87] We have already seen that Ellen Gill, a spinster from Chester, sued Elizabeth Woodier in 1671 for alleging that she had been having an affair with Woodier's husband. Jonathan Wilcoxon, Ellen's suitor, was called as a witness on her behalf and deposed that Elizabeth had known that he and Ellen 'were upon a conclusion of marriage'. He said that Elizabeth 'told this deponent one time in Cuddington that she thought ... Ellen would not be a fitt wife for him for she was too familiar with her [Elizabeth's] ... husband'. One of the witnesses added that 'the repute of the said Ellen is much impair'd in that neighbourhood ... [and it] is a great hindrance to her fortune, she being a young woman and having a good portion'.[88] Erickson has argued that a woman's portion was not only insurance for her economic well-being but also 'a token of her character and thus of her sexual honour'.[89] While the notion that sexual honour and material well-being were related must have had some purchase it is misleading to over emphasise the importance of sexual reputation relative to the other qualities that were desirable in a wife.

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[86] CRO EDC5 1663/64 Elizabeth Young c. Thomas Heywood. See also ESRO QR/E103 (1654), ff. 21-2; QR/E104, f. 41. Elizabeth Jenner claimed that John Hills had harmed her courtship with Thomas Grover when he called her a 'whore' and said that she would bear a bastard 'in nine weeks'.
[87] WSRO Ep I/11/21 ff. 26-8.
[88] CRO EDC5 1671/25 Ellen Gill c. Elizabeth Woodier.
[89] Erickson, *Women and Property*, 95, 96.

Though Elizabeth Woodier's intentions in the previous case are clear there is only one case in which the defamer specifically admitted to trying to prevent her victim from getting married. In 1696 Alice Gough sued Anne Oulton, the sister of her suitor Francis for defamation.[90] According to the libel the following words were spoken;

> you the said Anne Olton speaking to Francis Olton your brother in lawe, What? you are going to Elsmere to see that fair Bagle, meaning the plaintiff in this cause, for Joseph Langford said of her the said Alice Gough, What? I hear thy mother ... hath offered her a ginney [guinea] to refuse my company. If she hath, I will give thee another to doe it, For it is not long since thou wast crying to me and said thou thought or feardst thou wast with childe by mee.

The libel also stated that Anne Oulton had repeated the words to her brother in law, Francis, 'with a designe to break the match intended betwixt the said Alice Gough and him the said Francis Olton'. Anne Oulton defended herself by alleging

> That if the defendant Anne Oulton did att any time say the words articulate or the like, shee the said Anne Oulton did not speake them with any designe of intent to defame the said plaintiff nor otherwise than that she wou'd not have her Brother in law marry a woman of whom such things were spoken, which shee hopes shee might lawfully do without transgression.

Francis also testified in this case and made a similar distinction between the legitimate concern and intervention of family or friends in marriage negotiations and malicious or defamatory aspersions on the character of a potential partner. One of the characteristics of this difference was that his sister in law had not directed her remarks to him alone, but to others, thereby affecting Alice's public reputation:

> The said Anne Oulton did severall times before several persons in a Reviling or jeering manner speake the words in the Articles exhibited against her in this case, not out of a friendly or sincere designe to dissuade the deponent to his advantage, but out of unkindness and malice to the said plaintiff and with designe to lessen and defame her good name and Reputation, as this deponent doth verily beleeve.

Joseph Langford was the key witness in this case because it was claimed that he was the originator of the words allegedly spoken by Anne Oulton. Not only did Alice not sue him, but he deposed that he had in fact once courted Alice himself and that she was 'reputed a civil and chaste virgin'. Langford's version of events is somewhat different from that which eventually reached Alice Gough via Anne Oulton; he claimed that Richard Brookfield had heard Alice's mother offering her a guinea and that

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[90] CRO EDC5 1697/12 Alice Gough c. Anne Oulton.

> the next time he [Joseph] saw her conveniently for such discourse, askt her ..., I hear your mother has given ye a guinea to keep out of my company but shee denyed that shee receaved it on that account but as a Guinea which she had lent her mother. But this deponent doth utterly deny that hee did charge or upbraid her with the rest of the discourse in this interrogatory, or said that he would give her another Guinea if shee would leave his company. And doth answer that hee never treated her with any such language ... concerning her comeing and crying to him, that shee was with child, nor had any reason from her behaviour to do so ...

We may have reason to be sceptical of Langford's interpretation of events as his reputation was also in question in this case, not only because he might have been the originator of the rumours about Alice, but because his position as a previous suitor made him vulnerable. Anne Oulton undoubtedly had an axe to grind herself . The depositions make it clear that, despite the fact that nearly all the witnesses testified that they believed Alice to have a good reputation and that they believed her to have been wronged by Anne, the allegation was serious enough in the circumstances to merit investigation and litigation. Francis deposed 'that this respondent hath heard that this respondents uncle Philip and his brother Robert have of late talk'd in company, put odd questions, as what if shee bee with child'. He also said that there was not 'any contract or obligation matrimoniale betwixt that plaintiff and this deponent though this respondent believes they might have proceeded to a contract if the said Report had not hapened'.

Of the twenty one cases sued by spinsters in the Chester consistory court only three included a non-sexual slander; In 1667 Elizabeth Bolton said 'to severall persons within the parish [of Tarporley] ... that ... Elizabeth Whittingham had taken or stolne three pence of or from a shop or stall in Namptwiche and that ... [she] was beaten and pulled too and fro in the streete'.[91] In the second case, brought in 1674, Elizabeth Snead alleged that Anne Rivell was a thief, but also suggested that she was guilty of sexual immorality, without actually calling her a whore. She said that Anne was 'nought', which was usually a euphemism for whoredom, and that Mr. Diggs and Margaret Healdes's male cousin 'would tell her what she was', the implication presumably being that either they had slept with her, or they had some knowledge of

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[91] CRO EDC5 1667/36 Elizabeth Whittingham c. Elizabeth Bolton.

her misbehaviour.[92] The third example was the case sued by Ellen Gill against Elizabeth Woodier which was discussed above. In this case it was implied that Gill's marriage to Jonathan Wilcoxon was threatened because Woodier had alleged that she was a 'huswife'. However, Woodier also sought her revenge against Gill by warning Wilcoxon of the wider ramifications of marrying a woman of dubious sexual morals. He deposed that 'Elizabeth told this deponent that ... Ellen was a drunken idle huswife and was not a fitt wife for him for she would be drunken and spend his estate ...'[93] This case shows that insults often targeted the non-sexual dimension of women's reputation as well as the sexual. The corollary of this is that women also gained credit through non-sexual behaviour as well as chastity. This is clearly the case for married women, but it is more difficult to establish whether it was so for single women.

The fact that single women complained of predominantly sexual slanders fits in with an aspect of the conception of spinsterhood at the time which was synonymous with chastity and virginity, at least to the writers of moralist literature. In *The Ladies Calling,* Allestree declared that 'the principle and most distinct scenes, in which a woman can be suppos'd regularly to be an actor are these three, Virginity, Marriage and Widowhood'. He concentrated on the sexual dimension of spinsterhood and suggested that virginity was 'one of the nearest approaches to the angelical state'.[94] However, ordinary people, who had to develop their morality to fit in with the practicalities of everyday life, were probably less concerned with such a rarefied view of spinsterhood.

Much has been made by historians of the prescriptions on women's modesty, chastity and seclusion in the home. In reality these qualities were in some ways relatively superfluous to men and women of sub-gentry rank. The good wife was not only a woman of equal social class, age and reputation as prescribed by conduct writers but also an economic asset. Thrift was an important female virtue and wives were expected to be competent managers of the home and to contribute to the domestic economy not only through housewifery but often by participating in their husband's

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92 CRO EDC5 1674/40 Anne Rivell c. Elizabeth Snead.
93 CRO EDC5 1671/25 Ellen Gill c. Elizabeth Woodier.
94 Allestree, *Ladies Calling,* ii, 2.

business. A sensible man therefore was interested in a potential wife's skills and non-sexual reputation as well as her sexual credit. However, the link between sexual profligacy and financial profligacy would have had a real purchase because it translated into the tangible fear that whoredom could sap the resources of a household and break up the unit of the family.

Spinsters tended to complain only of allegations of being a whore rather than specific allegations of having had bastard children. However, a striking characteristic of cases brought by single women is that nearly all concerned a relatively specific allegation of fornication with a named man rather than vague aspersions of whoredom.[95] There were two exceptions to this pattern; the first was a case fought in 1693 in the Chester consistory between Elizabeth Williamson and William Nichols. Elizabeth claimed that William had said to her that she was a 'whore and defend'st a Cart or Cookstool better than anything else' and that she was 'worse than any other whore'.[96] Only the libel exists for this case and it is possible that if there were depositions they would have told us whether Elizabeth had actually been carted and whether William had some tangible reason for calling her a whore. In the second example Elizabeth Gray called Anne Reeves a 'whore, a base whore, a brazen faced whore' and was sued in 1663 as a result.[97] This example is reminiscent of so many other cases alleging whoredom and it may represent simply the pervasive use of sexual language to insult a woman. These cases suggest that defamers were drawing attention to the fact that the sexual reputation of young women who had begun courting was precarious and that there was some uncertainty about how to respond to young men and women who were becoming sexually mature. There is little that we can draw from defamation cases with any certainty because of the paucity of cases that were fought by single women. It seems likely that single women were only willing to invest in the

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[95] CRO EDC5 1663/64 Elizabeth Young c. Richard Heyward; 1663/110 Anne Reeves c. Elizabeth Gray; 1670/3 Mary Hatton; 1671/25 Ellen Gill c. Elizabeth Woodier; 1672/22 Mary Roberts c. Francis Swettenham; 1674/40 Anne Rivell c. Elizabeth Snead; 1675 Mary Battridge *et al* c. William Burganey; 1683/22 Jane Price c. Thomas Halliwell; 1683/34 Jane Price c. Elizabeth Halliwell; 1686/8 Jane Roberts c. Margaret Goulden; 1695/5 Elizabeth Davies c. Wilmot Hyet; 1697/12 Alice Gough c. Anne Oulton.

[96] CRO EDC5 1693/5 Elizabeth Williamson c. William Nichols.

[97] CRO EDC5 1663/110 Anne Reeves c. Elizabeth Gray.

expensive process of litigation in cases where the allegation made against them was specific. Given the pervasiveness of allegations of whoredom in the language of insult at this time we can be sure that many more single women were the butt of insult than actually came before the courts. Again this draws our attention to the fact that defamation litigation represents only a slice of human experience and it is generally the experience of married women (and men) that is revealed in this particular form of litigation.

It is perhaps surprising that the vast majority of allegations of bastardy in both samples were complained of by married women, with the exception of three cases in Cheshire and a case brought in 1693 to the archdeacon's court in Lewes. In one of these examples Thomas Bower claimed that he had heard Edward Walker say to Nicholas Fryer 'I hope Cousin Fryer you will not have ... Margaret Arnold for she will not dye by her first child, having had a Bastard by Thomas Blackman'. The second deponent, Thomas Page said that the conversation had arisen among a group of men drinking a few days before Valentines day, so the possibility of an actual marriage suit between Fryer and Arnold may not have been very real.[98] Sixteen women complained of slanders alleging bastard bearing in Cheshire in this period and five in Sussex. Some cases which involved vague allegations of bearing bastard children do not appear to amount to more than allegations that the plaintiff was an unchaste woman and have therefore been counted with cases involving the slander of being a whore; Mary Pownall, for example, sued Elizabeth Wetten in 1661 for saying that she was 'a whore and a bearing bastard whore, and thy or her bastards stand at thy or her elbowe'.[99] In another example Margery Steward said simply that Margaret Faulkner was 'a whore and ... her children are bastards'.[100] It was, after all, quite likely that an unchaste woman would have bastard children in an age when women had limited and unsatisfactory methods of contraception and such an insult was an accepted corollary of

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[98] WSRO Ep II/5/19 ff. 56-65v. Margaret Arnold c. Edward Walker; CRO EDC5 1686/8 Jane Roberts c. Margaret Goulden; 1691/31 Elizabeth Braine c. Margaret Maddox; 1692/24 Elizabeth Braine c. John Pratchett.

[99] CRO EDC5 1661/29 Mary Pownall c. Elizabeth Wetten.

[100] CRO EDC5 1665/33 Margaret Faulkner c. Margery Steward. See also EDC5 1664/25 Sutton c. Williams.

being a whore. The examples which have been classed as allegations of bearing a bastard were rather more specific and often name the alleged father of the child. Henry Streater accused Margaret Richardson of being a 'whore, stinking whore and told her that shee had a bastard by John Dutton the Butterman'.[101] William Woodland claimed the authority to know that Elizabeth Plowman had had a bastard child when he said that he was its father.[102] Other examples are more suggestive about the nature of married women's reputation for they concern allegations that the plaintiff had conceived or borne her child before marriage, with the implication that the children were, morally, or legally, illegitimate. In 1661 William Cutler was sued jointly by William and Anne Jackson who alleged that he had said 'that the said Anne was a whore and had a bastard child by a collier lad in Lancashire before she came to Cheshire and had or hath taken ... money to father it upon her husband'.[103]

Cases sued by joint plaintiffs were relatively rare and it is likely that the aspersion that William Jackson had been duped into accepting another man's child as his own motivated this couple to sue their defamer jointly. Women were often forced into fathering their child on the wrong man for one of a number of reasons. Servants made pregnant by a master or his son were sometimes paid off to claim it was in fact the child of a man of their own social standing. Other women were pressured by the father of the child to lay it on someone else. Elizabeth Hook deposed that William Shoveler was the father of her bastard child and told the Sussex JPs that he had 'charged her divers tymes that upon her life she should not lay that unto him, but to Rick Relfe, who was a Batcheler'.[104] Shoveler was, presumably, married. Though pregnant single women were undoubtedly vulnerable they did have some support from the courts, who pursued the fathers of bastard children to pay their maintenance. A woman such as Elizabeth Hook may have been taking a risk, but her position was not

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[101] WSRO Ep I/11/17 f. 41v. Margaret Richardson c. Henry Streater. Other examples which include the naming of the father, include, WSRO Ep II/5/18 Elizabeth Raston c. Margaret Fuller; Ep II/5/19 Margaret Arnold c. Edward Walker; CRO EDC5 1679/6 Margaret Brassey c. Katherine Eaton.
[102] WSRO Ep I/11/20 Elizabeth Plowman c. William Woodland.
[103] CRO EDC5 1661/24 William and Anne Jackson c. William Cutler. See also 1662/41 fought between the same litigants.
[104] ESRO QR/E 94 f. 63.

as helpless as might have been assumed. Many women caught in a hopeless relationship must have pinned their hope on a man who was more likely to marry them and 'make an honest woman' of them. How many of these men knew that they were taking responsibility for a child that was not actually theirs is impossible to know. Even if the husband was not the father of the child, as long as this was concealed within the family unit, a woman could keep her respectability intact.

Wives who had had illicit relationships or bastard children before marriage might have felt their reputation (and consequently their marriage) to be somewhat fragile and hence an allegation of pre-marital fornication or bastard bearing was considered important enough to warrant litigation. Even a husband who knew of his wife's past and had been prepared to accommodate it within the marriage, might not accept the situation once it had been divulged in public. In a few cases the consequence of defamation could be the temporary or permanent disruption of the marriage. In 1661 John and Mary Waring sued Thomas Passe for calling Mary a whore. One witness claimed that Mary's reputation had been 'almost extinguished so that ... John Waring put her away from him' as a result , leaving her and 'her children reduced to great extremities'.[105] In another example Elizabeth Humphreys claimed that 'her husband refused her bed for some time' because Thomas Cherwood had called her a whore.[106] Examples as explicit as this were rare which raises questions about the genuine effects of defamation on the reputation and the quality of life of women who were defamed. In particular it raises questions about the effects on a woman's relationship with her husband for the majority of women who brought defamation cases were married and, as far as we can tell, remained with their husbands; they presumably went to court with at least the tacit consent and support of their husbands.[107]

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105 CRO EDC5 1661/22 John and Mary Waring c. Thomas Passe. It is interesting that despite the alleged effects of the defamation the Warings brought this case jointly, perhaps suggesting that they had resolved their differences.
106 CRO EDC5 1662 unfiled. Elizabeth Humphreys c. Thomas Cherwood.
107 Cf. Foyster, *Manhood*, 148-64, who has argued that married women were in fact doing the bidding of their husbands who felt that their reputation for patriarchal power was undermined by a slight on their wive s'reputation.

Wives and mothers

One of the features of a patriarchal world is that women compete with each other and attempt to undermine each other's place in that society.[108] The points of comparison that were raised by women highlight the sites of this competition for reputation. Slanders were sometimes framed in terms of the comparison of virtue and character. When Anne Pears derided Eleanor Taylor for being a bawd and the mother of a whore she added 'and for her part she scorned to be likened to a bawd's daughter'.[109] Such a comment was a challenge to Taylor to prove herself and her daughter honest women. In 1661 Anne Orme said to Anne Oldham that 'she would prove herself an honest woman, but she (meaning the said Anne Oldham) would prove herself a whore'.[110] In another case from Cheshire in 1683, Amy Warburton compared herself to Mrs Wright's grandmother, Mary Bostock: 'but for her part she never fuct ... or lent her cunt out for a strike or two strike of wheat as her Grandmother (meaning the plaintiff Mary Bostock) did or had done'.[111] Mrs Wright herself did not sue Warburton but told her grandmother what she had said and it was Bostock who brought the case. Some of these cases suggest that sexual reputation was not the only issue that was contested. In 1664 Sara Turton highlighted her own virtue in comparison to that of Ellen Brundrett when she said that not only did 'noe man ever tooke me by my thinge but my husband in all my life', but 'nor was I ever drunke'.[112] Mary Williams explained why Elizabeth Sutton was a whore by explicitly comparing herself to Elizabeth:

> I never runne away with Hugh Lane from my husband in my life, and I never overun my husband and my child as thou hast done and it would be fitter for thee to bee with thy husband and thy children than hee in one place and thee in another'.[113]

This is an unusual example of a woman describing the responsibilities of a wife. Amussen makes much of the fact that women did not slander each other as disobedient

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[108] Clark, 'Whores and Gossips', 232.
[109] CRO EDC5 1663/51 Eleanor Taylor c. Anne Pears.
[110] CRO EDC5 1661/31 Anne Orme c. Anne Oldham
[111] CRO EDC5 1683/37 Mary Bostock c. Amy Warburton. A strike was a bushel. This case may also support the contention that reputation was passed on down the generations, though it is not explicit that Mrs Wright was being accused of having the same morals as her grandmother.
[112] CRO EDC5 1664/63 Ellen Brundrett c. Sara Turton. The libellate slander was 'a drunken whore'.
[113] CRO EDC5 1664/25 Elizabeth Sutton c. Mary Williams.

wives, inferring from this that it was not an issue by which women defined themselves. She argues that, while sexual fidelity was important to their self-perception, obedience was not.[114] This is a clear example of how the neglect of the legal strictures of defamation litigation can provide a misleading account of the criteria that contributed to the construction of a good name. Being a disobedient wife was not an ecclesiastical sin or a secular crime in itself and therefore would not form the basis of a defamation case. However, as the above case shows it could become entangled in an allegation of whoredom and this case suggests that the idea of a proper wife was important to women as well as to men; the fact that there are so few references to the power relationship is very interesting, but should not be overloaded with significance given the nature of the evidence. It may have less to do with women's subservience to their husbands than their understanding of their responsibilities to their husbands, children and households. It is a misrepresentation of women's lives to see such issues purely in the context of subservience to male values.

Another aspect of the female persona which rarely crops up in defamation litigation was their role as mothers. The responsibilities of women in the raising of their children was elucidated in countless prescriptive works but it is much more difficult to find evidence that early modern women thought of their children in terms of pleasure, though I am sure they did. When Mary Briscoe sued Anne Wright in 1662 for calling her a witch and bewitching her child the articles of exception suggest that there were mitigating circumstances surrounding Anne's accusation. She claimed that she was still distraught after the loss of two of her children.[115] The plea of Robert and Ellen Newton in a case fought against Ellen Walker in the Chester court of Great Sessions set out at great length the ways in which Newton had fulfilled her responsibilities as a mother. She

> hath carryed and behaved herself of good name, fame especially as a naturall and carefull loveinge and kind mother towards all her children useinge and endeavouring with her chiefest care and diligence by all meanes possible she could for the preservation of their health and welfare.

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114 Amussen, *Ordered Society*, 117-20; eadem, 'Gendering of Popular Culture', 52.
115 CRO EDC5 1662/63 Mary Briscoe c. Anne Wright.

The plea went on to state that Walker had accused her of murdering her child because she was 'envyeing the happy estate and condition of the said Ellen Newton'.[116] Unfortunately there are no other real insights into the mental world of mothers in these cases. We have seen that there were a few cases of women being slandered as 'barren', though for legal reasons barrenness was not the crux of the slander.[117] Richard Napier's case notes reveal that women's role as bearers of children was central to their concept of their femininity and he claims that two of his patients complained of being slandered as barren women.[118]

Non-sexual behaviour

The discussion so far has been based on the insults that formed the basis of a defamation case as set out in the libels and depositions in the case. Depositions also sometimes reveal other aspects of reputation and other forms of insult that were exchanged in an argument. There are also other documents that can shed some light on the wider criteria of reputation, namely the articles of exception and the interrogatories. In the interrogatories witnesses were usually asked to address themselves directly to the question of the previous reputation of the plaintiff or defendant. Either litigant in a case could also have articles of exception drawn up in which they identified reasons why their opponent or opponent's witnesses ought to be discredited. Witnesses were called to respond to these articles in much the same way as they answered the articles of the libel. These documents have received surprisingly little attention from historians, yet they are of particular value when the libel and depositions can give such a restricted snapshot of the matters at issue surrounding reputation. Articles of exception were not restricted by the same criteria as the libel which formed the basis of the case; the libel concentrated on the words which either imputed a crime or were considered reproachful under ecclesiastical law. In the articles of exception any aspect of a witness's reputation could be mentioned and these documents can be revealing about a range of

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116 PRO Ches. 29/452 f. 10.
117 Gowing, *Domestic Dangers*, 76 on fertility as a female virtue.
118 Michael MacDonald, *Mystical Bedlam; Madness: Anxiety and Healing in Seventeenth Century England* (Cambridge, 1981), 83.

issues on which reputation depended. Unfortunately there was no equivalent procedure in the secular courts. Elizabeth Hickocke, a witness in a case from Cheshire in 1663 was described as a 'common brawler, a reviler of her neighbours, a false theefe, ... a forsworne woman', while no mention was made of her sexual reputation despite the fact that the slander at issue concerned sexual reputation.[119] These were not vague allegations for another witness detailed what she was believed to have stolen and from whom. Some exceptions were vague; in 1662 Mary Briscoe was described simply as 'a woman of very ill repute and creditt amongst her neighbours and others that know her'.[120] When Ellen Brundrett sued Sara Turton witnesses were asked in the interrogatories whether Brundrett was drunk at the time of the argument and whether she was 'one much given to drink' generally. They were also asked if she had 'offered to stabb a man with a knife and is shee not accompted a contentious woman'.[121] The importance of being a good neighbour and being a 'civil woman' or woman of 'good carriage', in general terms is reiterated again and again in the interrogatories and exceptions, suggesting that sexual reputation was just one facet of a woman's character and reputation on a day to day basis.

Being a slanderer and a quarreller was not in itself a libellate offence, with the exception of allegations of scolding, but a plaintiff's chances were weakened if she was reputed to be troublesome and therefore had a tarnished reputation in the first place. Witnesses were therefore frequently asked to comment on the previous reputation of a plaintiff, particularly with regard to their relations with their neighbours generally. In the case brought by Elizabeth Gray against Richard Harrison for calling her a whore the witnesses were asked if she was known to be a woman of 'uncivill carriage' in order to bolster Harrison's claim that he had been provoked into slandering her by her refusal to allow him to distrain goods which he had the authority to collect.[122] One witness responded to this question that she was indeed 'a woman much to be blamed for her tongue'. Witnesses in another case from 1664 were asked whether the plaintiff Anne

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[119] CRO EDC5 1663/41 Anne Taylor c. Frances Eaton.
[120] CRO EDC5 1662/63 Mary Briscoe c. Anne Wright.
[121] CRO EDC5 1664/63 Ellen Brundrett c. Sara Turton.
[122] CRO EDC5 1663/81 Elizabeth Gray c. Richard Harrison.

Knutsford was a 'woman turbulent by her tongue amongst her neighbours doth she usually abuse and scandalise the modest and virtuos matrons in the towne of Nantwich?' Knutsford's discretion was particularly significant because she was a midwife and therefore had access to more intimate information about women in Nantwich than most.[123] Allegations of being a scold were cognisable in the church courts and there was one case brought to the Chester consistory court concerning such an allegation. Ingram has argued that the term 'scold' was 'in destructive impact second only to "whore"'; this is not reflected in the incidence of litigation, either in Ingram's research or my own, though it is certainly true that women were often described as behaving in a 'scolding' or 'railing' manner in depositions of defamation cases.[124] However, this is also true of male slanderers, suggesting that the term (at least the adjective) was not as gendered as we might have thought. The low numbers of slanders of scolding brought to court is intriguing.

Women who were generally contentious, prone to slandering and threatening others could be prosecuted in the secular courts either for disturbing the peace in general terms or specifically as a 'common scold'. Scolds could also be prosecuted in the church courts.[125] The neighbours of Jane Wood presented a petition to the JPs at Sussex quarter sessions claiming that she, was 'such a wicked, vile woman that several of them [neighbours] are not able to live one whole day in peace and quiett because of her abuseing some with her hands but most she comes neere with her tongue'.[126] It was added at the bottom of the petition that 'many more women would willingly have subscribed their names but dare not for feare the said Jane Wood will harm them'. In 1657 Elizabeth Shotter of Linchurst in Sussex was bound over to keep the peace 'for a sower of sedition amongst her neighbours by means whereof she hath made great

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[123] CRO EDC5 1664/68 Anne Knutsford c. Anne Blagge.
[124] Martin Ingram, '"Scolding Women Cucked or washed": A Crisis in Gender Relations in Early Modern England?', in Kermode and Walker (eds), *Women, Crime and the Courts*, 48-80, here, 48.
[125] Ingram, 'Scolding Women', 51. It is known that the brank, a bridle of wood, leather or iron used to punish scolds were in use in early seventeenth century Chester, though I have found no evidence of their use after the civil wars. See Fletcher, *Reform in the Provinces*, 76 for an example of a woman being 'bridled' in Liverpool in 1678. There were no cases brought over an allegation of scolding in Sharpe's York sample from the 1690s.
[126] ESRO QR/EW 186 f. 66.

discontents and differences among them in particular for rayling scandall against Mary Luffe'.[127] It is known that prosecutions for scolding peaked in the early seventeenth century and fell off rapidly after the Restoration though the reasons for this are still a matter of some debate.[128]

The risks of litigation

Was there any risk for women who brought defamation suits? The image of early modern women as aspiring to be 'chaste, silent and obedient' is somewhat at odds with the fact that such large numbers of women actively used the courts to pursue and discuss sexual reputation. There is evidence from other forms of litigation of the ambiguous position that women in court were in with regard to their modesty. Bridgett Russell alleged that Anthony Butcher attempted to rape her in 1651. In her information she said that he had come upon her while she was folding clothes in her master's house 'and then and there endeavoured to pull up her cloathes and shamefully laid open his nakedness, soe as she cannot in modesty express'. Describing sexual acts in detail may well have been embarrassing; there were few words to describe sex that were neutral and a woman would have had to choose her words very carefully, especially in a rape case where her virtue and chastity had to be unimpeachable. However, women appear to have felt little shame in recounting obscene altercations in the context of proving their own good reputation in a defamation case. Sara Stockton was sued by Ralph Thicknes for alleging that he had tried to debauch her and offered her money for sex. Her deposition was quite straightforward; 'he ... did endeavour ... to debauch me ... by way of fucking or carnall copulation'. Despite this claim, which shows no sign of false modesty, her reputation was uppermost in her mind for she pointed out to Ralph that if she should become pregnant 'it would be a discredit both for you and mee'.[129] It is also clear that silence was not considered 'the best ornament of a woman' who had been slandered.[130] In fact women seem to have felt it imperative to gain public redress

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[127] ESRO QI/EW2 f. 30.
[128] Ingram, 'Scolding Women', 52; Underdown, 'Taming of the Scold', 116-36.
[129] CRO EDC5 1696/11 Ralph Thicknes c. Sara Stockton.
[130] Ray, *English Proverbs*, 24.

for slights on their reputation. The keenness with which women continued to use the church courts which offered the remedy of public penance rather than monetary damages reveals the importance of a public act of redefinition of reputation.

Defamation litigation shows that sexual reputation was central to the credit of women among their social peers and suggests that it was an intrinsic part of their self-perception. However, we also have evidence that reputation was dependent on their behaviour and standing in all aspects of their daily lives and that allegations of non-sexual slanders were genuinely damaging to their credit. More importantly defamation litigation reveals that women took responsibility for their own reputation. Implicit in the patriarchal ideal is the need to protect as well as control women. Some studies of crime have suggested that women often expected male protection against physical abuse, though this was by no means always the case. However, when it came to verbal abuse many women fought their own battles.[131]

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131 Beattie, 'Criminality of Women in Eighteenth Century England', *Journal of Social History*, 8 (1974-5), 87. Weiner, 'Sex-roles and Crime', 49.

5: Men and Slander

It has been well established that men were less likely than women to bring complaints of sexual slander to the church courts.[1] However, in both Chester and Chichester men not only accounted for a significant proportion of both litigants, but they were suing over sexual slanders. As we can see from Table 8 and Figure 3 men complained of a wider range of slanders and fewer sexual slanders than women.[2] However, the proportion of sexual slanders is strikingly high, particularly in the diocese of Chichester where nearly 65 per cent of cases concerned a slight on a man's sexual reputation. Moreover, in Chester in particular, many of the sexual slanders concerned specific accusations of unchastity, such as fathering bastard children. The evidence presented here therefore enables us to question the orthodoxy that sexual reputation was of negligible importance to men, and that men could more readily indulge in illicit sexual behaviour without fear of recrimination.

Men had a range of legal options available in their search for redress over defamatory words. In addition to the church courts they could sue a defamer in the common law courts, an option which was not open to married women unless they sued jointly with their husbands. Table 9 shows the slanders alleged by men, who accounted for nearly 68 per cent of plaintiffs, at the Chester court of Great Sessions between 1650 and 1700 and prosecutions for words at quarter and city sessions.[3]

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[1] Ingram, *Church Courts*, 302. Sharpe, *Defamation*, 10, 16, found that though men brought fewer defamation cases than women the sexual slanders that were complained of were similar; Gowing, *Domestic Dangers*, 33-8; Amussen, *Ordered Society*, 100; Meldrum, 'Women's Court', 11.

[2] Cf. Table 7, 102.

[3] The remainder of cases included seven by joint plaintiffs, and one by a spinster; PRO Ches. 29 440/17; 452/10; 452/10v; 452/33; 455/29; 462/13; 463/13, 470/24, 442/19. Only one case, 463/13, included a slander spoken solely against the husband.

Table 8. Slanders alleged by male plaintiffs in the church courts of Chester and Chichester, 1660-1700 (N).

Alleged Slander	Chester	Chichester
Sexual insults		
Is a bastard	4	1
Fathered a bastard	5	2
Attempted to lie with me	1	1
Cuckold*	4	0
Fornication/adultery	10	4
Venereal disease	2	0
Keeps a whore	0	1
Rogue/whoremaster	9	0
Pre-nuptial fornication	1	0
Mixed insults		
Fathered bastard/thief	1	0
Thief and whoremaster	2	0
Non-sexual insults		
Rogue/cheating rogue/liar	22	1
Cheat/fraud	6	0
Drunk	3	1
Thief	11	0
Forsworn/perjured	3	1
Bankrupt/in debt	2	0
Traitor/coward	4	0
Murder	2	0
Uncertain	3	2
Total	**95**	**14**

Note This table includes cases sued by joint plaintiffs if the husband was specifically slandered

* Cuckoldry was not strictly a sexual slander as such an allegation was about the control of a wife's sexual behaviour. However, it carried the implication that the cuckold was not satisfying his wife sexually and is clearly a slander that is related to the realm of sexual behaviour; it is therefore included as a sexual insult.

Figure 3. Slanders alleged by male plaintiffs in the church courts of the diocese of Chester, 1660-1700.

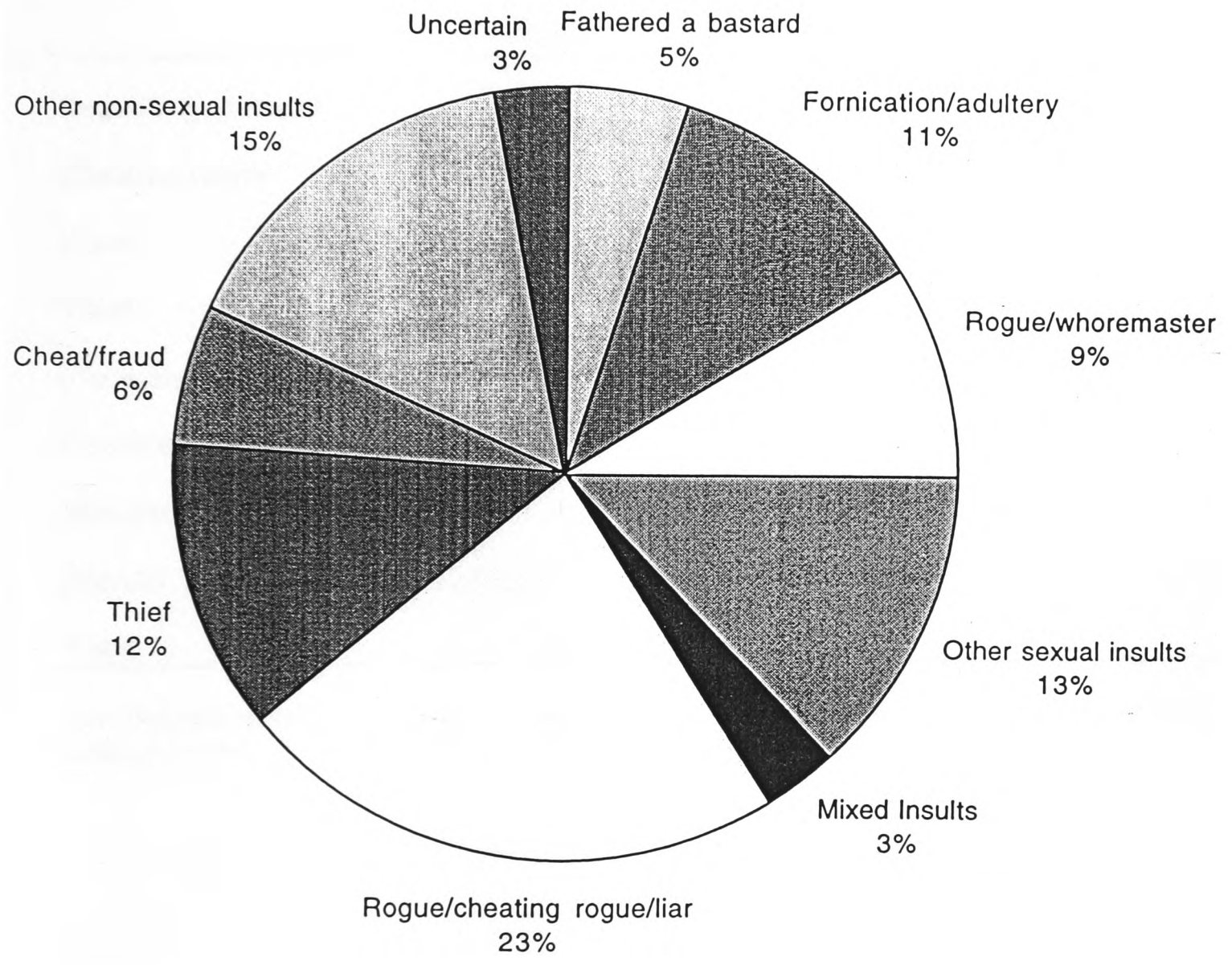


Table 9. Slanders alleged by male plaintiffs in the Chester mayor's courts and the court of Great Sessions 1650-1700 (N)

	Mayor's Courts	Great Sessions
Knave/rogue/rascal	5	0
Cheating knave	1	0
Cheat	1	0
Thief	2	14
Cheat and Thief	1	0
Forsworn/perjured	2	5
Murderer	1	0
Bigamy	0	1
Total	**13**	**20**

Note This table includes personal actions only and does not include words spoken against officials or seditious words.

Non-sexual slander

Twenty men brought actions on the case for words to the Court of Great sessions in the sample years between 1650 and 1672. Of these cases, fourteen (70 per cent) concerned allegations of theft.[4] Strictly speaking the church courts did not have cognisance over such slanders though in Chester a significant number of cases were brought.[5] This may

[4] PRO Ches. 29 442/20 Brian Orton c. John Stockton; 457/14 Robert Venables c. Randolph Poole; 178/11v. Thomas Bosson c. William Nicholas.

[5] See ch. 2. Other research supports my finding that the church courts were relatively flexible in this regard, though allegations of theft did not account for a large proportion of slanders complained of by men in any other studies; this suggests that the Chester consistory court was more flexible than others. Firm conclusions cannot be drawn until more studies are conducted which examine male reputation in more detail; Sharpe, *Defamation*, 10; Foyster, 'Concept of Male Honour', 57.

be because they were considered admissable alongside allegations of cheating, fraud and general dishonesty as words of reproach, for only three cases specified what had been stolen.

Allegations of perjury were more common in the secular courts than the ecclesiastical courts and were reasonably straightforward in their background and their implications for male reputation. A man's word was essential for his credit in business, and hence for his livelihood, as well as a sign of his general good character and trustworthiness. All of these cases related to specific acts of perjury in other legal proceedings.[6] Given the importance of giving honest testimony and the readiness with which men and women went to court in this period it is perhaps surprising that the number of suits brought over allegations of perjury was not higher.

We would expect masculine virtues such as strength and bravery to be important to the male persona but this aspect of male reputation rarely features in slander cases. One case, from Chester in 1670, involved an allegation of cowardice; John Lascelles was called a 'Base cowardly fellowe' by Thomas Beckett during a fight. A witness, Ralph Cheadler, deposed that he, Lascelles, Beckett and another man had been at Lascelles' house drinking, 'and the said Lassells stroking [striking] the said Beckett over the head with some bread or cake and cheese, the said Beckett speaking to the said Lassells told him it was a cowards tricke, whereupon the said Lassells replyed that he spoke like the sonne of a whore'. Beckett also sued Lascelles for this remark.[7] Slanders such as this were unusual in the church courts because they were merely words of reproach and therefore of dubious cognisance. Moreover, most men must have thought that an allegation of cowardice was better disproved outside the courtroom.

The most common words of abuse complained of by men were allegations of being a 'rogue', 'rascal' or 'knave'. In the *Oxford English Dictionary* a 'rascal' is defined

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[6] See ch. 6 on cases that were linked to litigation in other courts.

[7] CRO EDC5 1670/68 Thomas Beckett c. John Lascelles; John Lascelles c. Thomas Beckett.

as a 'low, unprincipled, dishonest rogue'.[8] In the libel to a case fought in 1663 it was explained that

> the word knave being spoken against any person ... doth signifye ... as much as if the party against whom such word is spoken were dishonest, faithlesse, unjust to those that intrust him, and for a word of disgrace and against good manners ... is ... understood and taken.[9]

John Kersey stated that 'knave' was 'a saxon word properly denoting a servant but now commonly taken for a paltry, dishonest fellow, cheat or shark'.[10] These were the most common associations in cases where the plaintiff complained of being called a 'rogue', 'rascal' or 'knave'. The following example is typical: in 1672 Thomas Greene from Chester was sued by John Barker for calling him 'a rogue, a raskall, a beggar, a pittyfull beggarly knave and thou ... hath taken Spenner's tenement over his head'.[11] Barker's material standing was brought into question with the implications of poverty and vagrancy in the insults as well as a specific allegation of dishonesty in a property transaction. Since the mid-sixteenth century the word 'rogue' in particular had acquired specific connotations of vagrancy and vagabondage in addition to the general implications of dishonesty which it shared with 'rascal' and 'knave'.[12] Allegations listed in Table 8 under theft or fraud often included the words 'rogue', 'rascal' or 'knave' as illustrated by another example: In 1692 Elizabeth Pickering of Weaverham in Cheshire was sued by John Pickering for saying to him '[you are] an arrand Knave, a Theife and hath or hast stolne out of my house a Book of accompts and severall other things ...'[13]

The majority of cases involving these words were about issues of criminality and honesty in financial and civic dealings, all areas where we would expect a man's reputation to be gained or lost. Not surprisingly these cases were mostly fought

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[8] See also Frankie Rubinstein, *A Dictionary of Shakespeare's Sexual Puns and Their Significance* (1989), who says that rascal meant a castrated man in the sixteenth century. There is no evidence in the defamation cases that the word 'rascal' was being used in this way, but it should not be discounted and if it is so would certainly have added to the potency of the insult.

[9] CRO EDC5 1663/43 Robert Meacocke c. Nathan Jolly.

[10] Kersey, *Dictionary*.

[11] CRO EDC5 1672/41 John Barker c. Thomas Greene.

[12] *OED*; Dalton, *Countrey Justice*, 149.

[13] CRO EDC5 1692/37 John Pickering c. Elizabeth Pickering.

between two men. For example, a dispute over a debt of fifty pounds led to a defamation case fought by William Selby against John Poole in 1670. Poole claimed that Selby had called him 'a knave, a lying knave and a lying rascall and said that he had belyed a great many gentlemen in the citty'. Selby's honesty as a tradesman was the explicit matter at issue and the libel stated that

> the aforesaid William Selby both before and since the uttering and publication of the scandalous and diffamatory words ... was and is a householder and inhabitant within the citty of Chester, a tradesman and for a man of uprightness and fidelity and good reputation, in and through the neighbourhood ... is comonly accompted.[14]

In another case, fought in 1669, William Thropp claimed that Richard Burd had called him a knave and said 'thou hast cheated mee of my moneys'.[15] It will be argued in the following chapter that financial dealings, debts and disputes over the value or quality of goods were often the root cause behind the animosity that could boil up into the exchange of insults or attempts to spread slanderous rumours.

Sexual insult

Table 8 shows that men did complain of a range of sexually related slanders including allegations of adultery and the fathering of bastard children. This should not surprise us as sexual behaviour was an intrinsic part of early modern gendered identity for both men and women.[16] However, contemporary attitudes to male sexuality were riddled with inconsistencies. Many moralists urged a single standard with regards to sex and stressed that fornication and adultery were as sinful for men as women with equally

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[14] CRO EDC5 1670/11 and 1671/10 William Selby c. John Poole. The slanders that led to this case were spoken in the Pentice in Chester where the two men were disputing the alleged debt. In court Poole also accused Selby's wife, Elizabeth, of being a 'drunken queane'. She brought a separate defamation case against Poole in the Chester consistory which is also filed in 1670/11. For a similar example see also 1692/37 John Pickering c. Elizabeth Pickering

[15] CRO EDC5 1669/38.

[16] Cf. Amussen, '"The Part of a Christian man": The Cultural Politics of Manhood in Early Modern England', in Amussen and Kishlansky (eds), *Political Culture and Cultural Politics*, 213-33. Sexual behaviour was an intrinsic part of masculinity as represented on the Restoration stage and in popular political discourse; for an earlier period see Alastair Bellany, '"Rayling Rhymes and Vaunting Verse": Libellous Politics in Early Stuart England, 1603-1628', in K. Sharpe and P. Lake (eds), *Culture and Politics in Early Stuart England* (Stanford, 1993), 285-310. Sexual debauchery was central to the concept of 'rakish ' masculinity which thrived at the court of Charles II; see Anna Bryson, *From Courtesy to Civility: Changing Codes of Conduct in Early Modern England* (Oxford, 1998), ch.7.

destructive consequences for family and society. Despite this, evidence from the courts, among other sources of evidence, suggest that women were far more likely than men to be penalised for illicit sexual behaviour.[17] The very fact that these prescriptions co-existed uneasily with a web of apparently contradictory attitudes to gender, power and sex suggests that the arena of sexual behaviour was one in which male reputation was likely to be constructed and contested.[18]

Table 8 shows that men complained of allegations of both fornication and fathering bastard children. The harsh reality of illegitimacy was that it was the women who gave birth to the bastards and who would bear the brunt of their upkeep and resultant community censure if the identity of the father was not well known. However, men could not rely on women to protect their identity; even women who were initially reluctant often succumbed to the questioning from midwives and attendant women during labour. This almost ritualised naming of fathers reflects the great community interest in controlling illegitimacy. Members of the community who paid their parish rates were often keen to discover who was the father of the child and to compel him to pay maintenance to the mother, or to marry her. Men as well as women were also prosecuted for fathering bastard children and they were also sometimes the victims of slander. The power of community censure in all its forms must have been a significant deterrent to men as well as women.

Five cases in Cheshire and two in Sussex involved allegations of fathering bastards.[19] In 1666 John Napper

> was passing by the house of Margaret Richardson ... in Rudgwick [Sussex] ... [and] called to and said Goodnight Mother Bell and shee going out of her house towards him answeared Goodnight cozen Burr And the said John Napper replyed and called her old whore and ... told her she had had a bastard And she asking him by whom shee had had a bastard hee ... answeared by John Dutton the butterman.

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[17] Gowing, *Domestic Dangers*, esp. ch. 6.

[18] Foyster, 'Concept of Male Honour', 110-11.

[19] CRO EDC5 1664/28 Richard Jones c. Adriana Leigh; 1665/31 John Massey c. Peter and Katherine Taylor; 1684/32 Samuel Pemberton c. John Cumberbach.

This was the second occasion on which Napper had accused Richardson of having had Dutton's child. There is no record of Napper saying the words directly to Dutton yet both Dutton and Richardson thought the slander serious enough to sue over.[20] The origin of the second case from Sussex was a dispute over Thomas Scarlett's right to collect tithes in Worthing in 1686. Despite the fact that this was a non-sexual matter John Williams slandered Scarlett's sexual honesty when he said that he

> was forced to come thither (viz. to the said parish of Worthing) for succour for his bastards ... meaninge ... thereby that the aforesaid Thomas Scarlett had committed the crime of Adultery, fornication or Incontinency with some person ... by means whereof he was become the Father of Bastard children ...[21]

In a case fought by Richard Jones from Cheshire in 1664 it is not made unequivocally clear in the depositions that the plaintiff was actually the father of the illegitimate child, though the libel states that Adriana Leigh alleged that he had had a bastard. One of the witnesses claimed that she had actually said that Richard Jones was 'a Rogue and a Knave and bid him goe home to his crook'd backe wife, and his mother that kept a bastard'. What is clear is that Leigh was holding Jones culpable for the presence of an illegitimate child in his home while casting an incidental slight on his wife.[22] Jones was a married man with two children and such an allegation implied that either he (or presumably) his wife had had another sexual relationship.

A case fought in 1665 in Cheshire reveals several of the dilemmas surrounding illegitimacy for both men and women in this period. John Massey sued Peter and Katherine Taylor for saying that he had 'begott a bastard ... on the body of Catherine Booth alias Bewicke'. Massey claimed that Peter Taylor had tried to persuade Catherine Beswick to father her child on him because Taylor's son had in fact made her pregnant. As this was unsuccessful he allegedly persuaded her to marry Thomas

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[20] WSRO Ep I/11/17 ff. 41v.-48. Margaret Richardson c. John Napper/ John Dutton c. John Napper.
[21] WSRO Ep II/5/18 f. 39 Thomas Scarlett c. John Williams
[22] CRO EDC5 1664/28 Richard Jones c. Adriana Leigh.

Beswick (described as 'a silly fellow') in order to 'cover ...[his] sonnes shame', while his son continued to have a relationship with Catherine. Massey claimed that this made Peter Taylor 'a common procurer'. The vicar of Prestbury and his wife Rebecca were both called as witnesses and deposed that Katherine Taylor had been present when Catherine Beswicke had taken her child to be baptised. She allegedly said that 'they say it is ... fathered upon my sonn William ... but John Massey ... had lain with her ... and that his wife had told her soe'.[23] Massey's position was made somewhat precarious by the fact that it was his wife who, according to the Taylors, had told them that she had found her husband in bed with Catherine Beswick. A couple of months after Massey began his case against the Taylors he also instigated legal proceedings against both Catherine Beswick and William Taylor for adultery.[24]

In another case, in 1660, Dr. Harrison prosecuted Richard Thropp, a stationer, in the Chester Mayor's court for a number of scandalous allegations. Along with accusing Harrison of owning a book 'against the late King', he also said that Harrison 'had in Virginia fifteen Bastards'.[25] This rather extravagant claim was the climax of Thropp's attempt to undermine Dr. Harrison's reputation and suggests that sexual and non-sexual morality were linked for men as well as women.

Although men obviously did not have to worry about becoming pregnant when they indulged in illicit sexual liaisons, they were as susceptible to venereal disease as women, and just as likely to be slandered as 'pocky' or 'burnt'. In 1663 Peter Leigh sued William Halliwell for saying that he 'had a burnt pricke and he saw it'.[26] Though Halliwell did penance as a result of this slander he was cited again by Leigh the following year for accusing him of being a knave and making illegal brass farthings. More details about Leigh's bout of venereal disease emerged in this second case and

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[23] Katherine Taylor repeated this claim in William Crishley's alehouse in Prestbury where she was drinking with the parish clerk, Roger Holland.

[24] CRO EDC5 1665/31 John Massey c. Peter and Catherine Taylor; John Massey c. William Taylor; John Massey c. Catherine Beswick.

[25] CCRO MF/81.

[26] CRO EDC5 1663/63 Peter Leigh c. William Halliwell; 1664/24 Peter Leigh c. William Halliwell. See also 1682/21 John Mottershead c. Jane Mottershead; 1696/9 Joseph Stout c. Anne Spencer.

show how great the stigma was. It was claimed that while Leigh was an apprentice in Dublin he lived with Halliwell who was a journeyman in the same household;

> [one] morning ... Peter Leigh threw the [bed]clothes of[f] him, and shewed ... William Halliwell his yard or pricke And further desired him to goe to a Chirurgeon ... but that Chirurgeon would not come nere him, neither would medle with him.

Another surgeon, Mr. Bell, did eventually cure Peter Leigh but the men's mistress, Mrs Harvey 'would oftentimes in the day time ... call ... Peter Leigh a pocky knave or pocky rogue and would not be quiet with him till she had gott him out of the house'. Mr. Harvey claimed that as a result he had to pay someone else to allow Leigh to lodge in his house until he was well again.[27] In 1663 Richard Harrison sued Elizabeth Gray for calling him a thief and saying that he owed money 'to Green's wife of Backfore for the pockes'.[28] This could have meant that he had caught it from her (with the implication that she was a whore), or that he had gone to Green's wife for a cure for the pox. Venereal disease manifested itself in outward signs which represented a blemished character. Pointing them out through insult identified and publicised acts of immorality that might otherwise have gone undetected.[29]

If, as we are led to believe, sexual reputation was of negligible importance in the social world of men we would not expect to find them accusing each other of sexual offences such as fathering bastards or committing acts of fornication or adultery. However, in Sussex at least, all of these cases, with the exception of one were fought between two men.[30] Thomas Tupper told a group of men and women at Richard Stone's house that he had seen John Moss 'lye with Mary Humphrey in a hollow elm tree within the parish of Bury'. Richard Stone deposed that he had 'called to Francis Moss brother of [John Moss] ... and said when will your brother John Moss swive Mary Humprey in the hollow elme tree againe?' Christopher Tupper had also teased Moss

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[27] CRO EDC5 1664/24 Peter Leigh c. William Halliwell.

[28] CRO EDC5 1663/81 Richard Harrison c. Elizabeth Gray.

[29] Richard Davenport-Hines, *Sex, Death and Punishment: Attitudes to Sex and Sexuality in Britain Since the Renaissance* (1990), 29-33. See also 1664/22 John and Anne Eaton c. Matthew Mosse.

[30] WSRO Ep I/11/18 ff. 15-20v. John Moss c. Thomas Tupper; f. 21 John Browne c. Mary Lalle; Ep III/5/3 ff. 49-51 Luke Farrall c. Henry Blackman; Ep II/5/18 f. 40 Henry Paine c. Jesse Attree.

about the rumour, and John Moss clearly felt that being the butt of such ribald talk and interest was indeed a slight on his reputation. Mary Humphrey, however, did not bring an action, though the reasons for this could be manifold.[31] Luke Farrall sued Henry Blackman for saying that he believed that he 'was naught with his sister, Mary Blackman'. One of the witnesses said that Blackman had told him that he was afraid that 'he could make his sister an odious whore'. Farrall was allegedly spending many nights up late with Mary and Blackman said he 'had seene such uncivill behavyour betweene them that he was ashamed to see it'. Blackman's motivation in this case is somewhat ambiguous. The evidence of two witnesses suggests that Blackman was simply protecting his sister's reputation and perhaps pre-empting other people from slandering her as a whore. The third witness, Edward Cooper, claimed that Mary was pregnant and that her brother had several times urged her to name Farrall as the father of the child rather than an apprentice, George Harris (who was probably the real father), because Farrall 'was a man who lived in very good fashion and that shee might live very well with him'. Mary, or Farrall, might have refused, making it all the more important for Blackman to minimise the damage to Mary's reputation by slandering Farrall. However unclear the background to this case there must have been an accepted construct of male sexual immorality and reputation that underpinned Farrall's decision to litigate, though the fear of disciplinary proceedings may also have played a part. When Thomas Pulford told Randolph Meredith that he knew Meredith had been 'taken in bed ... with Margerie Owens the wife of William Owens', and that Margerie Owens was his whore, it was Meredith, not Owens, that sued Pulford.[32]

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[31] WSRO Ep I/11/18 f. 15. See also Ep II/5/18 f. 40 Henry Paine c. Jesse Attree for another example of the use of the word 'swive' which meant to have sex. The word was generally less vulgar than 'fuck' but less euphemistic than the expression 'to lie with' which occurs most frequently in defamation cases. There were no examples of this word being used in Cheshire. See 'A Ramble in St. James's Park', *The Poems of John Wilmot, Earl of Rochester*, ed. Keith Walker (Oxford, 1984), 64-8.

[32] CRO EDC5 1661/25 Randolph Meredith c. Thomas Pulford.

Another example gives an interesting insight into the nature of male responsibility for the honour of the household. Robert Ridge was slandered by John Foster who happened to be present when Ridge served a citation on Henry and Elizabeth Hulton. Foster alleged 'that Hulton and his wife had told him that the said Ridge had been naught with Margaret Burgess in his the said Foster's house three times'. We are not told exactly who Burgess is but she probably worked for or had been lodging with Foster. Not only was Foster condemning Ridge for sexual immorality but he seems to have been outraged that such things had gone on under his roof, for he declared that 'he had a house worth threescore pounds and he would spend it every groat but he would be revenged of the said Ridge for slandering his house'.[33] The irony for Foster was that he ended up on the receiving end of a citation for slander. Ridge's liaison with Margaret Burgess seems to have been the subject of talk among the acquaintances of the Hultons, against whom he brought a separate case. Elizabeth Hulton told two other witnesses, Jane Scruton and Elizabeth Britt, that she had actually seen Ridge and Burgess together. John Johnson, another witness, was taken to the stairs in Foster's house by Elizabeth so that she could show him exactly how she had observed Ridge and Burgess.[34]

In another example from Cheshire in 1690 we are told that Daniel Thomason was sitting in Richard Simcoe's alehouse with his wife, her mother and sister and two other men, when one of the party, John Lloyd, declared 'in a very passionate and extravagant manner ... Thou ... hast fuckt the mother and the two daughters ... adding to this that if ... Dan Thomason's horse could speak hee wou'd confirm what he the said John Lloyd said of them'. The cause of this allegation is not clear for Mary Simcoe deposed that they had all been sitting together 'civilly and as relations'. Yet again it was the man, Thomason, whose sexual honesty was being called into question and who

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[33] For another example of a man referring to the reputation of 'his house' see Gowing, *Domestic Dangers*, 192.

[34] CRO EDC5 1666/13 Robert Ridge c. John Foster; Robert Ridge c. Henry and Elizabeth Hulton.

subsequently brought the suit in order to protect his own reputation and that of the women in his family.[35]

In 1686 Henry Paine sued Jesse Attree for calling him 'an old rogue' and alleging that he had 'suived Mother Blackman comeing down the hill'. One of the witnesses, John Cooke admitted to being 'in drinke when Jesse Attree told him and some others this tale and said that he thought the words had been spoken 'in jest and merryment only', though the other witness, George Cosden deposed that the intention was malicious.[36] Either way, this case shows that men's sexual reputation was the subject of talk between men and was important to their reputation. The fact that such talk could lead to litigation suggests that even among men an allegation of sexual incontinency could be considered serious enough to warrant litigation.

The above examples were all quite specific accusations of male sexual immorality. It has become generally accepted that vague and unspecific abuse was much less likely to harm the reputation of men than that of women and that this is manifested in the notion that there was no language with which to casually call a man's sexual reputation into question that had the equivalent power of the word 'whore' and its synonyms.[37] The obvious equivalent to the whore was the whoremonger, an insult which was commonly complained of by male plaintiffs in defamation cases.[38] The word had a variety of meanings including both committing fornication or adultery and implications of bawdry.[39]

Martin Ingram has suggested that, according to the logic of the double standard, the cuckold, rather than the whoremonger was the nearest equivalent to the whore.[40] In accordance with the double standard an accusation of cuckoldry did not stigmatise a man's sexual immorality, but that of his wife. The power of the insult was dependent

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35 CRO EDC5 1690/9 Daniel Thomason c. John Lloyd.
36 WSRO Ep II/ 5/18 f. 40 Henry Paine c. Jesse Attree.
37 Ingram, *Church Courts*, 302.
38 Gough, *Myddle*, 124, said that 'to marry children together, is the way to make whoremongers and whores'.
39 Cf. Gowing, *Domestic Dangers*, 114, claims that the word whoremaster was 'not by definition about men's own sexual behaviour'.
40 Ingram, *Church Courts*, 303.

on the conventional understanding of the husband's place at the head of the household. Cuckolds were not only being made culpable for their wives' sexual misconduct, but ridiculed for their failure to control their wives and satisfy them sexually. The concept of cuckoldry drew on contemporary fears that the locus of power within the household was unstable; not only could wives disrupt this delicate balance of power through adultery but it could be threatened by male impotence.[41] This cultural construction of familial relations that placed men at the head of the household provided no context for a female equivalent of the cuckold or a *precise* male equivalent of the whore.[42]

There were interesting similarities in the nature of the concepts of the whore and the cuckold. The cuckold was an emblem in popular culture as the antithesis of a real man in much the same way as the whore was the inverse of the ideal woman; he was recognised by his horns as the whore was marked by a pocked face and a split nose and the bawd by her broken windows. The cuckold also had an age dimension which makes it comparable to the figure of the bawd; it was feared that men would be cuckolded in old age with the onset of impotence as their wives turned to younger lovers. A significant difference between these two images was that the cuckold was essentially a figure of ridicule, while even in humorous genres such as ballads and mocking rhymes, the whore was never a figure of fun in quite the same way. However, this humorous dimension did not diminish the power of allegations of cuckoldry to damage reputation.[43] Cruel wit can be as searing as an angry accusation; it may even be more effective against people who aspire to the dignity that comes with authority. Given the ubiquity of cuckolds in so many forms of popular culture, and the practice of exhibiting horns above the doorways of suspected cuckolds, it seems surprising that there were so few allegations of cuckoldry in these defamation cases.[44] There were none in the

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[41] Ingram, 'Ridings, Rough Music and Mocking Rhymes', 166-97, esp. 176.

[42] Gowing, *Domestic Dangers*, 63, 94-5.

[43] Dabhoiwala, 'Prostitution and Police', 83; Foyster, 'Concept of Male Honour', 77-80, 151-4.

[44] Ingram, 'Ridings, Rough Music and Mocking Rhymes'; Fox, 'Ballads, Libels and Popular Ridicule'; Gowing, *Domestic Dangers*, 102. Foyster, 'Concept of Male Honour', 142-50. The practice of 'ridings' usually targeted women who beat their husbands but it was often implied or assumed that such men were also cuckolds. The almost quasi-judicial nature of ridings may reflect the fact that whoredom was an

Sussex ecclesiastical sample and only four in the Chester sample.[45] Incidental information in an office case at the Chester consistory court in 1675 shows that the practice of putting horns over a suspected cuckold's door did still happen in this region. One witness testified that 'tupp's horns were hang'd upon ... John Cockersall's doar in derision as he being thought to bee a cuckold'.[46] In 1668 John Knight sued Margaret Bunnell in the Chester consistory court for calling him a thief and a whoremaster. She claimed that she had been provoked by Knight calling her a whore and her husband a cuckold yet neither of them responded by suing Knight.[47] The fact that it was essentially an accusation of the whoredom of a man's wife might have meant that it was considered to be a legally ambiguous slander for a male plaintiff. In 1680 Sarah Saunders claimed that Joan Ellis was a whore and her husband a cuckold, but it was Joan Ellis who brought the case.[48] It is possible that men preferred to counter such an accusation by getting their wives to sue the case rather than risking more humiliation by bringing a case themselves; moreover, some wives may have insisted on defending their own reputation. Men may also have been reticent in drawing attention to such an accusation if it was framed in humorous terms. Taking offence at a joke might give the impression of over sensitivity which was a feminine characteristic. A straightforward serious public accusation on the other hand could perhaps be taken to the formal environment of a court without compromising a man's reputation or revealing any discomfort with his masculinity.

Laura Gowing argues that 'the image of whoredom elaborated in the words of insult proves the crux of a whole system of gendered honour'.[49] She therefore places

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ecclesiastical offence while cuckoldry was not- hence cuckolds suffered the practice of exhibiting horns which did not carry these quasi-judicial implications.

[45] CRO EDC5 1664/22 John Eaton c. Matthew Mosse; 1664/26 John Blackburn c. Thomas Hough; 1665/48 Roger Drakeford c. Richard Drakeford; 1670/67 John Cowper c. John Maysdale. Sharpe found only three cases in his sample from the 1590s and none in the 1690s, *Defamation*, 10; In Gowing's London sample on the other hand, accusations of cuckoldry were the single largest category of sexual insult directed at men, *Domestic Dangers*, 64.

[46] CRO EDC5 16475/28 James Whitelegg and Roger Livesey c. John Cooke.

[47] CRO EDC5 1668/23 John Knight c. Margaret Bunnell.

[48] WSRO Ep I/11/19 f. 34 Joan Ellis c. Sarah Saunders.

[49] Gowing, 'Women, Sex and Honour', 68; eadem, *Domestic Dangers*, 59-60.

women and perceptions of women's sexuality at the heart of constructions of honour and reputation for both men and women. This is because she argues that the idiom of abuse that was current at the time 'targeted women's sexuality' and there was no male equivalent to the whore; in fact it is a truism of all writing on the subject that there was no word or image to describe the sexual transgressions of men that was so readily comprehensible either in specific meanings or wider implications. I would like to argue that this argument contains an important kernel of truth but has been pressed too far and is ultimately too simplistic. The treatment of the words 'rogue', 'rascal' and 'knave' is a good example of the unsubtle way that the analysis of male honour has sometimes been undertaken; usually regarded as words with no sexual connotations they are often classed together in a way that implies no significant variety in their possible meanings.[50] Gowing has argued that the word 'knave' was not in itself descriptive of men's behaviour though she concedes that it 'could be deployed to insult men for their part in sexual misconduct'.[51]

The words 'rogue', 'rascal' and 'knave' were in fact part of a language of insult that was being used to describe the sexual immorality of men. In 1672 Francis Swettenham brought a case against the mistress of a young woman, Mary Roberts, with whom he had had a relationship. One witness recalled the conversation that had taken place between the defendant, Margaret Kinsey and another witness, Mary Harrison:

> The said Margaret said to the said Mary Harrison that she believed that Francis Swettenham ... had a great affection for her servant mayd Mary Roberts ... but the said Mary Harrison answering and saying that he was naught she beleved he went to her more for lust than love, shee the said Margaret Kinsey replyed, if so (though she hoped to the contrary) he was a rogue and a rascall ...[52]

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[50] Foyster, for example, does not see the sexual connotations in these words, despite arguing that sexual reputation was central to male honour , in 'Concept of Male Honour'. The one exception to this has been Amussen who suggested in *Ordered Society*, that the word 'rogue' could have been a possible alternative to the concept of the 'whore'. However, she did not trace the etymology of the word or substantiate this idea in any detail. See also Gowing, *Domestic Dangers*, 59, 63. Despite claiming that 'rogue' and 'rascal' were non-sexual words of abuse Gowing includes many examples of cases where these words were clearly being used with sexual connotations, e. g. *Domestic Dangers*, 91. See also Robert St. George, '"Heated" Speech and Literacy', in David D. Hall and David Grayson Allen (eds), *Seventeenth-Century New England* (Boston, 1985), 297, who cites an example in which it was said 'he was a thiefe for that he had stolen the best flower in her garden, and a rogue because he had brought her body to shame'.

[51] Gowing, *Domestic Dangers*, 114.

[52] CRO EDC5 1672/22 Francis Swettenham c. Margaret Kinsey.

Clearly the relationship between Mary Roberts and Swettenham had become bitter for Roberts was suing him for calling her his whore at the same time. The witnesses in the first case are sympathetic to Mary, condemning Swettenham for at least attempting to use Roberts for his sexual pleasure and describing him as a 'rogue and a rascal' for his behaviour. In this case we cannot argue that the word rogue had precise sexual meaning; it is Swettenham's deceit as much as his sexual lust which was being condemned, but the context suggests that the word was used to condemn sexual misbehaviour. In another case Richard Jones was called a 'rogue and a raskall' by Adriana Leigh who alleged that not only was he the father of a bastard child but that he had tried to conceal the fact by giving the baby to his mother.[53]

In other cases the word 'rogue' was more clearly being used in specifically sexual contexts; in one example Thomas Falks was called 'a pimping rogue, a pimping knave, a coffeeman and a hangman'.[54] In another, Jane Mottershead called her brother in law a 'straddling, pocky, burnt, mangy rogue'.[55] In these examples the words rogue and knave were imbued with sexual connotations by the addition of more specifically sexual words like pimping, pocky and burnt. Incidentally pimp could refer to a man or a woman and was in fact more commonly used to refer to women. Men were also sometimes called 'whoremasterly rogues'. In 1667 Thomas Needham sued William Bennett for saying that he was 'a knave a Rogue, a whoremaster knave, a whoremaster rogue and maintaines whores'.[56] In 1665 Barbara Russell accused Adam Voake of calling her a whore:

> He called her old whore, old bawd, old bawdy arst jade and called her husband old cuckoldly knave and sayd that she kept three Rogues company and that none but roagues did keep her company.

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[53] CRO EDC5 1664/28 Richard Jones c. Adriana Leigh.

[54] CRO EDC5 1683/25 Hugh Hough c. Thomas Falks.

[55] CRO EDC5 1682/21 John Mottershead c. Jane Mottershead. See also 1664/24 Peter Leigh c. William Halliwell. Leigh's mistress, Mrs Harvey, allegedly called him 'pocky knave or pocky rogue' when she discovered that he had venereal disease.

[56] CRO EDC5 1667/15 Thomas Needham c. William Bennett. Other examples include 1668/23 John Knight c. Margaret Bunnell.

The focus of this case is clearly the sexual immorality of Barbara Russell, but her character is reflected by the nature of the male company that she was keeping. Clearly the 'rogues' she was keeping company with could have been men of dishonest character in all kinds of ways, but the context suggests that their sexual morality was doubtful.[57]

In 1677 John Todman complained that Elizabeth Allen had been spreading the rumour that he had committed adultery with a married woman. The libel in this case has unfortunately not survived, but the depositions indicate that the libellate words were 'rogue' and 'whore'. The witnesses were asked what they thought these words meant and one witness replied, 'that by the words Whore and Rogue hee this deponent verily beleeveth that the sayd John Todman and Mary Jey had the carnall knowledge of each others body'.[58] There is also evidence to support this interpretation of the language of male sexual insult from earlier in the century and from other courts. The following Star Chamber case relates to Burton on Trent in 1618. It is an example of rough music directed at William and Margaret Criple whose door was broken down in the middle of the night by their neighbours. A witness stated that 'they came to fynde a knave and a whore in bedd together - saying they were not married but knave and whore'. William and Margaret were dragged from their bed, with the crowd shouting 'a whore and a knave'.[59]

People also appeared to have used words such as 'rogue' or 'knave' as a male equivalent to 'whore' in their slanging matches. When Jane Poole was called a 'whore' by her brother in law, John she responded by calling him a 'rogue and a rascall'. In a case from Chester Mayor's Court John Barker said to William Slater's wife, 'she that

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[57] WSRO Ep I/11/17 f. 20 Barbara Russell c. Adam Voake. For a similar example involving the insult 'knave' see Gowing, *Domestic Dangers*, 71.

[58] WSRO Ep I/11/18 f. 18v. John Todman c. Elizabeth Allen. See also Ep II/5/18 f. 40 Henry Paine c. Jesse Attree.

[59] J. Kent 'The English Village Constable, 1580-1642: The Nature and Dilemmas of the Office', *Journal of British Studies* 20/2 (1981), 38-9; See also Fox, 'Ballads, Libels and Popular Ridicule', for another example in which as man was called a 'knave' and the woman whose bastard he was alleged to have fathered, a 'drabbe'. Underdown, *Revel, Riot and Rebellion*, 74. For examples from America see, Thompson, '"Holy Watchfulness"', 508, 514; St. George, '"Heated" speech', 297.

calls me a rogue is a whore'.[60] In 1664 Robert Booth sued Elizabeth Gray for calling him a 'whoremaster rogue'. She claimed that she had been provoked by his calling her a 'jade, quean, whore and bidding her goe lye with a man at John Cowes house'.[61] In 1665 Edward Hollinshead was bound over to keep the peace by Christopher Proctor at Cheshire quarter sessions for calling him a 'stinking knave', and his wife 'an old hoare'.[62] All the above examples, taken in isolation, could have a variety of different interpretations. However taken together they are suggestive of a use of language to particular ends. The connections appear less tenuous if we consider the multiplicity of meanings and resonances that were conjured up by the image of the whore and compare them to the cultural stereotype of the rogue.

As I have shown in the previous chapter, the whore was not only an unchaste woman. The word had a range of meanings including connotations of low material status, dishonesty and a propensity to criminality. If we consider what the rogue as a vagrant represented to early modern society the connection between the rogue as a poor, unprincipled wretch and the rogue as a man of loose sexual morals becomes clearer. Vagrants were a threat to the social order not only because they were masterless men but because their lifestyle undermined the patriarchal family which was considered to be the linchpin of the whole social order. The Stuart *Book of Orders* of 1631 described vagrants as people who 'live like savages, neither marry, nor bury, nor christen, which licentious liberty makes so many delight to be rogues and wanderers'. In *The Poors Advocate* of 1654 Richard Younge said that vagrants 'have no particular wives, neither do they range themselves into families, but consort together as beasts'.[63] In reality many vagrants were not as dissolute as they were portrayed by contemporaries. Beier estimates that approximately a third of the vagrant population consisted of couples with

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[60] CCRO MF/98 15 May 1680. For similar examples see CRO EDC5 1664/28 Richard Jones c. Adriana Leigh; Adriana Leigh c. Richard Jones; 1695/1 and 1696/7 Anne Spencer c. Joseph Stout; Joseph Stout c. Anne Spencer.

[61] CRO EDC5 1664/61 Robert Booth c. Elizabeth Gray. For a similar example see 1668/23 John Knight c. Margaret Bunnell. Bunnell claimed that she had been provoked into calling Knight a 'whoremaster rogue' when he accused her of being a whore and her husband a cuckold.

[62] CRO QJF 93/1 f. 110. This offence was exacerbated by Hollinshead assaulting Proctor's wife.

[63] Cited by A. L. Beier, *Masterless Men: The Vagrancy Problem in England 1560-1640* (1985), 51.

children.[64] But what matters in this context is the image. Just as connotations of profligacy, poverty and even vagrancy were accepted facets of the whore, so to the early modern mind sexual immorality would have been a comprehensible facet of the rogue.[65]

The evidence suggests that the words rogue, rascal and knave could not only be interpreted to have sexual meanings but that these meanings were proverbial in the seventeenth century. Joseph Swetnam commented that 'I cannot let men go blameless, although women go shameless; ... if there were not so many Knaves, there would not be so many whores'.[66] A literary example from the eighteenth century indicates that this continued to be the case into the next century; in a passage from Defoe's *Roxana* published in 1724 the words rogue and whore were used as counterparts. Roxana has begun to have sexual relations with her landlord who has saved her from penury after the desertion of her first husband:

> And thus in Gratitude for the Favours I receiv'd from a Man, was ... all Regard to virtue and Honour, given up at once, and we were to call one another Man and Wife, who, in the Sence of the Laws, both of God and our Country, were no more than two adulterers, in short, a Whore and a Rogue; ...[67]

One of the characteristics of modes of insult deployed against women was that the word 'whore' was often used loosely in non-sexual contexts to condemn all sorts of dishonesty. Gowing maintains that, in contrast, men accused of misconduct remained individuals rather than stereotypes. For example, a man who stole was called a thief and a man who committed adultery was condemned specifically for that offence. While there is an inherent truth in this argument the rigidity of the model that it presents obscures the complexities of male reputation. It also masks the ability of individuals to

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[64] Beier, *Masterless Men*, 51-2.

[65] In eighteenth century France the insult 'coureuse' meant a female rogue or a prostitute, see Garrioch 'Verbal Insults', 111.

[66] Joseph Swetnam, *TheAraignment of Lewd, Idle, Froward and UnconstantWomen*, (1615), 14.

[67] Daniel Defoe, *Roxana: The Fortunate Mistress*, ed. David Blewett (Harmondsworth, 1982), 78. See also Richard Thompson, *Unfit for Modest Ears: a Study of Pornographic, Obscene and Bawdy Works Written or Published in England in the Second Half of the Seventeenth Century* (1979), 80. Donna Andrew, 'Adultery a-la-Mode': Privilege, the Law and Attitudes to Adultery 1770-1809', *History*, 82 (1997), 5-21.

manipulate both language and cultural stereotypes in their social and sexual relationships and their use of insult and abuse. For the reasons already discussed, defamation cases tend to reveal a rather artificial construction of modes of insult that does not reflect the multiplicity of words and images that were current on the streets. The sexual usages of the words rogue and rascal suggest that a loose stereotype of male immorality may have emerged in the language of insult directed at men that had some similarities with the vaguer usages of the word whore. This argument is strengthened by the fact that sexual insult was employed against men accused of non-sexual misdemeanours; for example, in a case fought in 1681 Ralph Bolton claimed that he had been called a 'rogue and an old cankard harlot' by Elizabeth Smith. Yet the root of the argument seems to have been an allegation of theft not sexual impropriety. Elizabeth went on to say 'and I ... have never stolne so many cottons of yarne as thou'. Elizabeth may have had reason to call Ralph a 'harlot' but the interesting aspect of the case nevertheless is the linkage of sexual and on-sexual behaviour. It is also interesting to note the unusual usage of the word 'harlot' with reference to a man, for by the seventeenth century the word had become increasingly female specific.[68]

Other specific connections between sexual and non-sexual conduct are to be found in a case between Francis Standish and George Wright. Wright was suing Standish for saying

> Thou art a rogue, a cheating rogue. Thou hast gott thy liveing with cheating, thou hunts or frequents all the whorehouses in the towne and thou hast knavishly dispos'd of a young man with the purpose to have him sold for Barbadoes.[69]

Not only did the rogue signify a cheat in this case but a man of dissolute and immoral life generally. In another example Margaret Bunnell accused John Knight of being a 'false thief and a whoremaster Rogue and whoremaster Raskall'.[70] In April 1659 it was

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[68] CRO EDC5 1681/26 Ralph Bolton c. Elizabeth Smith. For the etymology of the word 'harlot' see ch. 4, n. 12. Addy, *Sin and Society*, 115, records another example of the use of this insult to refer to a man from Lancashire in the seventeenth century. Nicholas Moore called William Thompson 'a false lyer, a lying knave, a false noughtie harlot and notorious knave and lyer'. This example is also interesting for the combination of sexual and non-sexual insults.

[69] CRO EDC5 1677/13 George Wright c. Francis Standish.

[70] CRO EDC5 1668/23 John Knight c. Margaret Bunnell.

recorded at the Chester court of Great Sessions that John Pownall had accused Humphrey Burtinshaw of being a thief and that he 'hath robbed all his tenants to maintain a whore'. The alleged whore was herself named, though there is no record of her suing Pownall in either jurisdiction.[71] Katherine Hinde was sued by John Johnson at Chester Mayor's court for saying that he was 'a false theefe and hee ... hath stollen both money and plat[e] and hee ... is a whoremaster rogue and hath been naught with Prenton's wife'.[72]

As we have seen men were sensitive to sexual slurs; their sexual reputation was discussed and transgressions could lead to public insult and loss of reputation. However, there was one striking difference between the ways in which men and women discussed their sexual liaisons which has been emphasised by a number of historians. Men sometimes bragged about their sexual conquests, apparently without fear of recrimination.[73] This emerges in the evidence in two ways. Firstly there are examples of men being sued by women for saying essentially 'she is my whore'. In 1675 Ralph Battridge told William Burganey that one of his three daughters was a whore; 'the said Battridge asked him whose whore she was, was shee his. He answered, yes, I just now came from fucking her'.[74] Mary Roberts sued Francis Swettenham for saying that she 'was and is a whore and his the said Francis Swettenham's whore and not only his but severall other person's whore and that he could never goe to bed but shee followed him'.[75] Francis's brazen claim backfired somewhat for he was slandered himself as a 'rogue' as a result of his relationship with Mary Roberts.

In 1675 Margaret Savage sued Ralph Colcane, her servant for saying that she was 'a whore and I lay with her ... in a Bakehouse and gave her a pair of gloves'. The

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[71] PRO Ches. 29 455/30 Humphrey Burtinshaw c. John Pownall.

[72] CCRO MF 80 n. d.

[73] Meldrum, 'Women's Court', 10; Foyster, 'Concept of Male Honour', 69. We should perhaps not make too much of this point as the number of cases was relatively small and fear of prosecution may have been quite real in some areas. See ch. 7.

[74] CRO EDC5 1675/25 Ranulph Battridge c. William Burganey. See also WSRO Ep I/11/21 f. 23v. Sarah Steadman c. Thomas Scott. EpI/11/21 f. 26 Mary Baker c. John Terrey.

[75] CRO EDC5 1672/22 Mary Roberts c. Francis Swettenham.

deposition of Thomas Halewood gives considerably more detail about this liaison which according to his testimony went on for some time:

> the said Calkin and this deponent were one night in bed together, and the said Calkin took occasion to speak of the articulate Margaret Savage and told this deponent that one time he and she were together in the shippen and that he pul'd out his pricke and show'd it to her and presently they went togeather into the [hen] hurdle and lay togeather and got her eldest son and that at another time he gave her a paire of gloves and lay with her againe and that at another time he lay with her and gave her a paire of clasps and that at another time he lay with her in the kilne [in the bakehouse] but he charg'd this deponent to say nothing of it for if it were knowne he said he shou'd be hang'd.

Halewood, however, went on to depose that

> one time in corne harvest last in Dunham townshipp before this deponent and several others that were reaping there namely his two precontests and Hannah Millington ... he there in a vary scandalous and boasting manner declared and reported that he had layne with the said Margaret Savage at several times and in several places and had given her several gifts and nameing the things predeposed in soe much that the company cry'd shame of him[76]

William Woodland was sued by Elizabeth Plowman for alleging that he was the father of her bastard child. This was a particularly odd allegation considering that he could have found himself responsible for the maintenance of the child.[77] In 1665 Geoffrey Dawtry claimed that Catherine Garland was a whore 'and hee would prove her a whore and that he himself had layne with her 5 or 6 several times and had given her five shillings'.[78] When John and Anne Eaton prosecuted Matthew Mosse for saying that they were a whore and a cuckold in 1664 Mosse brought a witness to testify to the gossip about the Eaton's marriage. This witness, Richard Basson, not only testified that there was gossip about Anne's affair with William Newton, but deposed that he had made John Eaton a cuckold himself, in other words that he had slept with her.[79] The interesting thing about these cases is that sleeping with women gave men the authority to know and to prove that they were whores. Though it is quite possible that the man

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[76] CRO EDC5 1675/15 Margaret Savage c. Ralph Colcane.
[77] WSRO Ep I/11/20 f. 32v. Elizabeth Plowman c. William Woodland.
[78] WSRO Ep I/11/17 f. 21 Catherine Garland c. Geoffrey Dawtry.
[79] CRO EDC5 1664/22 John and Anne Eaton c. Matthew Mosse.

would compromise his reputation in these instances it is clear that the threat to the woman's reputation was perceived to be much greater and the risk was apparently worth taking. Another example, however suggests that men did not always get away with boasting about illicit liaisons. In 1681 it was alleged that Margaret Roby and Robert Halliwell had committed fornication, an offence which was compounded by and discovered due to Halliwell's 'boasting to severall persons of the crime to the evill example of others'. In this case he did not get off scot free, but had to do penance and pay costs.[80] Foyster has suggested that men who bragged about their liaisons tended to be unmarried men who were proving their virility.[81] This highlights the many contradictions inherent in the construction of masculinity and male reputation.

We have seen that sexual immorality was thought to be inherited by women from their mothers and grandmothers. Men were also slandered in a somewhat similar way by being called bastards. Though the insult 'bastard' has largely lost its sexual dimension now, in this period, when illegitimacy was still stigmatised, it was used precisely as a term of abuse against men.[82] Hugh Hickson sued Ellen Massye for calling him a bastard in 1670, though she did not make any explicit mention of either of his parents.[83] The apprentice, Roger Lowe, recorded in his diary that his sweetheart was willing to break off their match when she heard rumours that he was an illegitimate son.[84] In other cases the damage was more obviously from the fact that the defamer was not only insulting the man but the sexual immorality of his parents. In 1670 Thomas Beckett sued John Lascelles in the Chester consistory court for saying that he was 'the sonne of a whore'.[85] Henry Paine sued Anne Backler for saying that he was 'a bastard and Pickering's bastard'. Unfortunately we do not know for sure whether

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[80] CRO EDC5 1681/13. See Addy, *Sin and Society*, 188-9.

[81] Foyster, 'Concept of Male Honour', 70-1.

[82] Amussen, *Ordered Society*, 111. The word 'whoreson' had also been a term of abuse used earlier in the century though I have found no examples for the later seventeenth century; Addy, *Sin and Society*, 115.

[83] CRO EDC5 1670/58 Hugh Hickson c. Ellen Massey.

[84] *The Diary of Roger Lowe of Ashton-in-Makerfield, Lancashire, 1663-1674* , ed. W.L.Sachse (1938), 105.

[85] CRO EDC5 1670/68 Thomas Beckett c. John Lascelles/ John Lascelles c. Thomas Beckett; see also EDC5 1692/31 Richard Jackson c. Oliver Brooke.

Pickering was Paine's father or mother, but Samuel Stephenson deposed that he had heard Anne 'reflect very much upon the credit and good repute' of both Paine's mother and grandmother. She also said 'gett you home to your wife whom you soe often made a whore of before you were marryed'. This suggests not only that the immorality of a man's mother could stigmatise him but that it could actually be passed on.[86] In 1696 Anne Spencer and Joseph Stout, both from Great Saughall in Cheshire, had an angry altercation during which Joseph called her 'a pocky bitch'. Anne responded by calling him 'a pocky rogue' and saying 'I am no more a bitch than thy mother was'.[87] In one case the defamer mentioned the bastard son's father rather than his mother; Elizabeth Barber called George Smallwood 'a bastard and Randle Hall's bastard'.[88] The previous year Smallwood had had Elizabeth bound over in the Cheshire quarter sessions for making the same allegation and also saying that his sister, Elizabeth Smallwood was one of Randle Hall's bastards.[89] There were no cases in which a woman was accused of inheriting anything other than dubious sexual morals from her mother. However, there was one case where a man's mother's credit was called into question and there was no suggestion that her misdemeanours were sexual; in 1680 Henry Ewen was sued by Robert Saunders in the Chichester consistory court for calling him a rogue. Saunders allegedly replied 'that his [Saunders'] word and credit would be taken before his [Ewen's] or his mothers either'.[90] There were also cases of men suffering slights on their good name as a result of the bad credit of their fathers. In 1664 Gamaliel Briscoe sued Mary Moore and Elizabeth Ridley for saying that he was 'a hangman like his father'. As we have already seen Peter Barlow sued a Thomas Dalton for saying that his father was a 'Bumbailey rogue' and a thief with the implication that Barlow's own credit was in question as a result. There was one example of a man insulting another with reference to his children; in 1664 during the course of an argument between John Eaton

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[86] WSRO Ep II/5/19 ff. 28-29v. Henry Paine c. Anne Backler. Foyster, 'Concept of Male Honour' stresses that all social groups believed that honour could be inherited.
[87] CRO EDC5 1695/1 and 1696/9 Anne Spencer c. Joseph Stout/ Joseph Stout c. Anne Spencer.
[88] CRO EDC5 1665/23 George Smallwood c. Elizabeth Barber.
[89] CRO QJF 93 ff. 55, 57.
[90] WSRO Ep I/11/19 f. 21v. Robert Saunders c. Henry Ewen.

and Matthew Mosse (both from Astbury in Cheshire) Eaton called Mosse 'a clowne and said that all the generation of him were clownes and lyers'.[91]

The consequences of defamation

How serious was loss of reputation for a man and what were the tangible consequences of defamation? When Henry Ewen called Robert Saunders a 'rogue' Saunders protested that he 'had rather that you would have beaten mee then to have used or given me such reproachful and scandalous language'.[92] The reason for this strength of feeling may have been that 'scandalous language' had the power to do more than affront a man. Economic survival in this period was dependent on financial credit which could only function effectively on trust. The consequences for a man's livelihood of losing his good name are clearly explained in the following example. The precise background of the dispute between Richard Small (the plaintiff) and John Palden is unclear but we can get a sense of it from the deposition of the plaintiff's brother. John Palden

> asked him where his brother Richard was to whom the respondent answeard that he was gone to Chester then the said Palden replyed that he the said Richard had been long in setting mischeefe, and ... thereafter said that the said Richard had forsworne himselfe in Stockport court house like a forsworne knave and raskall ... and the said Palden further told this deponent that he had clapt him (meaning the said Richard) downe money and bid him take it for swearing ... but by God he would plague him and undoe him.

Small continued by describing the effect that the case had had on his brother's trade as a carpenter:

> upon occasions either concerning his trade or buying of cattle he had credit and could have borrowed considerable sumes of money of his neighbours and friends thereabouts, ... but since the speaking of the words aforesaid this deponent had heard one of those his neighbours that had formerly lent him money, say, that except he could and should right himself in this business he would never trust him for a groat.[93]

Similarly an accusation of being 'broke' (bankrupt) or being a cheat could have devastating effects on a man's ability to ply his trade. John Fissenden brought a case to

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[91] CRO EDC5 1664/22 John and Anne Eaton c. Matthew Mosse.
[92] WSRO Ep I/11/19 f. 21v. Robert Saunders c. Henry Ewen.
[93] CRO EDC5 1661/42 Richard Small c. John Palden.

Hastings Borough court in 1655 against a man whose name is not recorded in the surviving manuscripts for saying that he was 'a cheating and sharkeing K[nave]: And hee ... oweth more money then hee is worth and if his debte were paid hees not worth a groate'. Fissenden claimed that,

> those persons with whome heretofore hee hath had much Commerce and tradeing by waye of bargayneing contracting for buying and selling of wynes beere and other necessaries belonging to the Calling of an Innkeeper have altogether by the occasion refused to deale with him and doe deny and distrust to sell and deliver unto him any wynes beere or other necessaries belonging to his calling of an Innkeeper uppon his Creditt ability and good repute as formerly they had done [94]

A man's reputation coloured his experience and his success at all levels of his life. His business probity was essential to the success of his trade and his ability to get financial credit from his neighbours and associates. As the majority of litigants in defamation cases were men of reasonable material standing this aspect of male reputation does come through quite strongly in litigation, even though the church courts theoretically had no cognisance over aspersions on these non-sexual aspects of male experience. When Nathan Jolly accused Robert Meacocke of being a knave Meacocke claimed that his 'credit and esteem' were 'impaired'. Though the tangible consequences of this were not elucidated the importance of Meacocke's credit to his business were explained in the libel:

> [Meacocke] was servant to a Baron or Peere of the Realm and by him in his affayres very much intrusted and employed both in receipts and disbursements and other weighty managements and is alsoe a tradesman and freeman of the Citty of Chester ...[95]

The strength of a man's word was important not only in these aspects of his life but to his standing in his community in general. Allegations of perjury undermined not only his honesty in the courtroom but beyond it.[96] In 1653 George Wilson, a gentleman from Cheshire, sued John Dutton in the court of Great Sessions for alleging that he was

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[94] HM C/E c. no. 7.

[95] CRO EDC5 1663/43 Robert Meacocke c. Nathan Jolly.

[96] A quarter of cases at the Chester Court of Great Sessions concerned allegations of perjury; see Table 9, 138.

perjured. In his plea Wilson stated that he 'hath been imployed as a Clearke to the late Comittee of accompts for this Common wealth ... and hath according to the trust reposed in him faithfully discharged the said place'; Wilson went on to plead that he

> is not onely blemished in his good name ... but hath alsoe lost divers summes of money which he might have gott of other persons who would have imployed him in the managing of their estates if the said false malitious and scandalous words ... had not been spoken ... other persons of his acquaintance and his neighbours who formerley had imployed him ... now refuse to deale with him as fomerley and doe refuse to come in company with him or have any medling with him ...

Wilson claimed damages of Dutton of one hundred pounds as a result.[97] The overall number of cases brought over allegations of perjury in the church courts is small, probably because the secular courts were considered a more appropriate forum.

Most men of the middling sort who owned property would have found themselves involved in litigation or court proceedings at least once in their lives; they had to have legal documents drawn up for the purposes of business or probate. They also might be required to witness or stand as sureties for their neighbours and were required to be of good credit. The articles of exception in both defamation cases and a range of other sorts of litigation shed light on what aspects of reputation were important in these contexts. The following examples show that sexual reputation was an important measure of male honesty. Thomas Wettenhall was called as a witness in a tithe suit in Chester 1662. One of the litigants, a Mr. Anderton, claimed that he was not only a personal enemy, and therefore not a neutral witness, but a 'man of loose and lewd life, hath had a bastard and one that for ale will say or sweare anything'. Another four witnesses, Simon Stebbings, James and Mary Beech and Robert Stenton were discredited on the grounds of their dubious chastity for Anderton claimed that they 'are commonly accompted ... to live in fornication or incontinency and scandalously together'. The sexual reputation of the first three witnesses was the only issue which was raised against them, though Robert Stenton was further alleged to have made a false presentment against a neighbour at Nantwich court. These exceptions touch on

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[97] PRO Ches. 29/445 f. 20, George Wilson c. John Dutton.

several aspects of the standing of men within their communities and before the law; the trustworthiness of a man's word, his sobriety, and his personal and sexual relationships. If anything, sexual behaviour was privileged in these exceptions, in a case which had nothing whatsoever to do with sexual morality.[98]

Elizabeth Foyster has argued that the process of litigation itself may have had detrimental consequences for male reputation. She argues that it may have undermined their masculinity by exposing their shame further and that this helps to explain why so few men brought defamation cases in the church courts.[99] There may be some truth to this as regards sexual reputation – I have suggested that this explains the relatively small numbers of cases over allegations of cuckoldry – but there is little evidence to support this argument in general. In the dioceses of Chester and Chichester in the later seventeenth century men brought defamation cases (often concerning sexual slanders) in almost equal numbers to women and, furthermore, men brought actions for abusive language in the secular courts. The consequences of loss of reputation must have been more important than the dangers represented by the act of litigation.

Domestic responsibilities and wife-beating

The family and household were perceived to lie at the heart of the social order of early modern English society. Contemporary advice books impressed upon men the gravity of their responsibilities as heads of households.[100] They appear to reassure men that their natural superiority over women (intellectually, morally and physically) would enable them to carry out their reponsibilities. but that their capacity for reason dictated that they must discharge their responsibilities with care and moderation. Most seventeenth century moralists incorporated the importance of respect and affection for their wives into their view of the power of fathers which seems in other respects almost tyrannical to the modern reader.[101] As heads of households men therefore had

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[98] CRO EDC5 1662/98.

[99] Foyster, 'Concept of Male Honour', 190-1.

[100] Gouge, *Domesticall Duties*, 16; Allestree, *Whole Duty of Man*, 314-16.

[101] See ch. 7, 208-10

significant responsibilities that must have had a bearing on their perception among their peers. This aspect of male reputation is difficult to tease out of the records of defamation cases because being a bad father or a bad husband was not a crime at law but a man's reputation must have depended to some extent on how he discharged these responsibilities. March implied that this was the case in his published legal reports when he cited a common law case which suggested that men who treated their wives badly could find their marriage prospects harmed if they were to remarry;

> Such a man as kept his wife basely, and starved her; these words of themselves will bear no action: but if the party of whom the words were spoken were in election to be married to any other, and by so speaking of these words is hindred; there with such Averment they will bear an action.[102]

One aspect of male responsibility within the home which did come within the jurisdiction of the courts, and occasionally occurs in the records of defamation cases, was domestic violence. Anthony Fletcher has argued that 'there was no dishonour for men in the use of moderate violence' against their wives, children or servants.[103] Though it was widely accepted that men had the right to punish and correct their wives there is evidence to suggest that violence that was considered excessive or undeserved could affect a man's reputation and that some men and women denied the absolute right of men to beat or 'correct their wives'. Foyster has argued that men were perceived to be more reasonable creatures than women and that they were expected to control their wives moderately; lashing out with violence was thought to be emotional behaviour and was therefore, inappropriate and consequently detrimental to their reputation.[104] However, despite the urgings of moralists in this vein, the balance of power in gender relations meant that many men clearly did abuse their wives physically and were, in most cases, neither chastised by their neighbours nor prosecuted by the courts.

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[102] March, *Reports*, 2.
[103] Fletcher, *Gender, Sex and Subordination*, 193.
[104] Foyster, 'Concept of Male Honour', 94-7, 213-23; eadem 'Male Honour, Social Control and Wife Beating in Late Stuart England', *Trans Roy. Hist. Soc.*, 6th ser., 6 (1996), esp. 215, 219.

There is a problem with terminology when we are discussing this issue. Gowing has shown that men and women used very different language when discussing the question of domestic violence which reflected different conceptions of acceptable levels of violence.[105] When Frances Eaton said that she had only 'been beaten once by her husband and Anne Taylor was the cause of it' we cannot be sure of how she was defining a beating. She also protested that she 'must be struck for such a bild huswife' as Taylor (whom she alleged was having an affair with her husband) which does suggest that she was not referring to a prolonged and particularly violent attack. Though it was Taylor, rather than her husband, that Frances was actually condemning, this case implies that she did not expect violence to be a normal part of her relationship with her husband.[106]

Women could and did sue for separation from their husbands on the grounds of cruelty, though relatively few women could afford to break up a marriage and these cases must represent only a small fraction of violent marriages.[107] I have not analysed separation cases in any detail but have looked at a few examples from the Chester consistory court. Thomas Basford had been in service with Margaret and John Savage and was called to testify when Margaret prosecuted her husband for cruelty at Chester consistory court in 1675. He stated, in very conventional terms, that she was 'a very loving and observant wife to him, and of honest and modest behaviour'. He proceeded to describe the nature of John's cruelty:

> one Sunday morning ... she asked her said husband for money to pay for her dinner ... at which ... in anger he threw a skellett and the tongs at her ... And this deponent saith that whilest he lived there, he remembers he hath sometimes seen him very harsh and cruell to his said wife without any cause or provocation given him ...

The salient point here is not so much that Basford considered John's treatment of his wife to be cruel (he was called to testify as much) but that Margaret's behaviour did not

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105 Gowing, *Domestic Dangers*, 206-29.

106 CRO EDC5 1663/41 Anne Taylor c. Frances Eaton.

107 Stone, *Road to Divorce*; Foyster, 'Concept of Male Honour', 113-15; Gowing, *Domestic Dangers*, 180-231.

merit it. Had she given provocation to her husband, many would have considered him within his rights to be violent towards her though throwing heavy objects at her would have been considered by most people to constitute excessive violence. Another witness, John Cottingham testified that 'it is much talk'd of in the towne that he hath been very cruell to her by beating of her and threatening her soe'.[108]

There are occasional examples of action being taken against men who were violent towards their wives. In a defamation case fought between Thomas Hough and John Blackbourne in Cheshire in 1664 it was revealed that Blackbourne had been bound over for violence towards his wife as a result of Hough's allegation that he was a cuckold.[109] In 1669 John Kelly was presented at the Chester City sessions for being a common disturber of the peace and threatening to kill his wife.[110]

Married women were in a very vulnerable position with regards to domestic violence for a number of reasons. Their subservience to their husbands at common law meant that they were dependent on their husbands financially. When Elizabeth Trevis sued her husband Robert for separation on the grounds of cruelty in 1662 the interrogatory implied that she lived 'only upon her hand labors and charity of others', despite the fact that her husband was a relatively well off baker and owned three houses.[111] It was also generally accepted that disputes between husbands and wives were private matters that most people would be reluctant to intervene in. That said, we have already seen that once the couple's behaviour impinged on their neighbours or friends it was sometimes judged to be a matter for wider concern. The case of John and Margaret Henshall illustrates not only the vulnerability of women in this regard but also shows that community support was sometimes forthcoming. In 1664 the couple were estranged but, as a result of the intervention of the courts and the 'mediation of friends', they 'lived together as man and wife'. This accommodation was short lived for in 1666 Margaret sued him in the consistory court again. She maintained that he had

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[108] CRO EDC5 1675/15 Margaret Savage c. John Savage.
[109] CRO EDC5 1664/26 Thomas Blackbourne c. John Hough.
[110] CCRO QSF 79/3.
[111] CRO EDC5 1662/25 Elizabeth Trevis c. Robert Trevis.

> caused his owne meate to bee provided in an other than his owne house, and denyed her any part thereof and ... charged the butcher not to let her have any meate ... hath forbidden the shoomaker to lett her have any shooes for hee would not pay for them, ... gives forth in speeches that hee will not pay for any clothes ... [and] hath denyed her to buy towe or spin the towe which was bought by which money borrowed of her friends that she might thereby make cloth.

He also broke her spinning wheel to ensure that she could not get any independent income from spinning. Margaret had been given some poultry 'for her releife in this her distress' which John stole from her and removed all the fuel from the house so that she could not cook. Not only did friends and neighbours try to support her financially against her husband's wishes but Margaret claimed that without their intervention her husband would have killed her.[112] This case undermines the argument that men were invariably allowed to get away with abusing their wives.

The very fact that neighbours were willing to give such women refuge and support (both moral and financial) shows that domestic violence often became a public matter in which neighbours were willing to become involved .[113] The fact that law did not often actively condemn violent men does not mean that their reputation within their communities was not lessened when their behaviour became the subject of neighbourhood gossip. Margaret Savage went to neighbours for help and support more than once according to the witnesses in this case. Sarah Parry sued William King in the Chester mayor's court for calling her 'a whore and a quaine for her taking his wife's part'.[114] Fletcher has argued that domestic violence persisted because it was accepted among men and carried no stigma in male circles. This was the case up to a point,

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[112] CRO EDC5 1667/40 Margaret Henshall c. John Henshall.

[113] Fletcher, *Gender, Sex and Subordination*, 194. Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender and History*, 4/1 (1992), 20-23; Susan Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6 (1994), 70-89.

[114] CCRO MF 93/3.

though in the above examples it was often men who were testifying to another man's cruelty to his wife.[115] The few examples discussed above may show that once a case of serious physical abuse was brought into the open, and especially before the courts, it was difficult to dismiss the wife's case. However, many other cases must have been kept behind closed doors. The wider community may have been willing to believe a woman's allegations if her husband was a man with a vulnerable reputation already; men who were highly thought of in the first place were likely to be able to dispel rumours or allegations of physical cruelty, or be able to persuade others that their actions remained within the bounds of 'reasonable correction' of their wives.

Two main points emerge from this analysis of the slanders complained of by men; First, despite the fact that male reputation was undoubtedly constructed in a wider variety of social and sexual contexts than women's, sexual slander could be genuinely damaging. Men did slander each other sexually while women undermined the sexual double standard by attempting to make men culpable for their sexual misconduct. Women were highlighting male misdemeanours that had been committed not only against themselves but against other women. Secondly, while men accused of specific sexual misconduct (adultery, fornication and the fathering of bastard children) may have been individuals rather than types, in many instances, the 'rogue' was in fact a loosely defined stereotype whose dishonesty was not only material but moral and sexual. Connotations of poverty, physical filth, the dislocation of patrilineage and even vagrancy are accepted facets of the whore; the rogue was a similar figure and even a vague allegation of being a rogue could have serious effects on a man's reputation because its connotations touched on every aspect of male respectability. Cases from Chester, in particular, suggest that not only was sexual reputation an aspect of male

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[115] Fletcher, *Gender, Sex and Subordination*, 196.

reputation but that it was an essential component of male reputation among men of the middling sort. While the rogue was essentially a non-sexual stereotype and the whore a sexual one there were times when language and imagery were manipulated and deployed with similar meanings as women and men tried to find appropriate language with which to defame men. We therefore should not view sexual slander in terms of two discrete and absolutely gendered constructions of male and female honesty and reputation.

6: The Background to Litigation

A typology of cases

Most defamation cases follow one of a number of patterns, enabling us to outline a typology with which we can demarcate some of the social contexts of litigation. Litigation tended to be either the result of slanderous words that were spoken directly to the plaintiff, or a result of a process in which the words were repeated to the plaintiff indirectly, through at least one intermediary. Ingram distinguished between cases involving a 'more or less spontaneous outburst', face to face in which the defendant insulted the plaintiff directly, and cases that arose out of the spreading of 'slanderous tales and rumours' about the plaintiff.[1] The significance of this is that reputations were dependent not only on the actions and character of individuals but on the way in which they were perceived and talked about by their wider community. Gossip therefore played a part in most defamation cases but was central to 'indirect cases'. It is therefore essential to examine the social networks which provided the framework within which reputations were constructed and evaluated. In the remainder of this chapter I will turn to the possible motivations that underpinned litigation. Historians have tended to look at the results of slander in their search for the impetus behind litigation; in fact, as I shall argue, the motivation for litigation often lay in the background to the court action, rather than the effects of slander. Defamation cases provide information about the stresses and strains of neighbourhood life and reveal that defamation litigation was sometimes a strategy to resolve conflicts that may have had little to do with reputation.

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[1] Ingram, *Church Courts*, 304-6.

In order to match these cases to the typology outlined above we need to understand the background to the cases. However, there are a number of problems in establishing exactly what is at issue in individual examples. Some depositions are very slight and just recount who said what to whom, seemingly hanging in a social vacuum. The more detailed cases are less numerous and, even in those, the evidence often proves to be fragmentary upon closer examination. We cannot always discover what people were doing, even if we are told where they were when a particular incident happened. In 1665 Ralph Smallwood, a husbandman from Cheshire, deposed that

> on Christmas day in the night he and the defendant Elizabeth Barber were togeather upon Withington Heath and the said defendant was railing against Margaret Smallwood ...[2]

Such incomplete information, bulging with possibilities, is ultimately too vague to contribute anything tangible to a wider discussion of networks of social interaction or reputation. It is usually only in the best documented cases that we can pick up any substantial clues, though even some of the thinly documented cases yield revealing insights. On the whole it was as the case progressed that the 'real' reasons for litigation began to emerge, for the libel states the words alleged, but not usually the reason why they were damaging enough to warrant litigation.

For the purposes of this chapter I have selected the cases that included testimony from witnesses. This information enables us to establish whether the case resulted from a direct confrontation between litigants or the spreading of rumours which reached the plaintiff indirectly. There are 120 cases from the diocese of Chester in which at least one witness was called. Occasionally we can tell from the libel whether a case resulted from an altercation between plaintiff and defendant or as the result of the defendant's accusation being spoken first to a third party. This section is therefore based on a total sample of 146 cases. Of these, 84 were the result of a face to face encounter and the

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[2] CRO EDC5 1665/23 George Smallwood c. Elizabeth Barber, deposition of Ralph Smallwood.

remaining 62 were not.[3] Of the 47 cases in Chichester 27 were the result of a face to face encounter. In both these dioceses these cases accounted for approximately 57 per cent defamation litigation.

Face to face cases

Just over half of the cases brought to the Chester consistory court were brought as a result of the plaintiff being slandered to his or her face by the defendant. Ingram typifies these cases as being grounded in background of 'quarrelling and mutual anger';[4] In some cases there may have been previous animosity between the litigants; others resulted from an isolated incident. In some cases the cause of the tension between the litigants is made quite explicit; some cases arose from arguments over debt, for example. The various common causes of quarrels will be described later in this chapter.

In some of these cases the outburst was angry and tinged with threats or even violence; in 1694 a group of men and women were in William Hobson's home in Congleton, Cheshire, when William Whittaker abused Hobson's wife, Elizabeth:

> [Whittaker] ... in a threat[en]ing and vehement posture and manner and speaking in a very violent way to her, ... said God damn thee thou whore, and kiss my arse thou whore, thou damned bitch ... and the same words ... he then uttered and repeated to her severall times in a very passionate and unseemly manner.[5]

The second witness in the case, Ellen Swain, explained that the cause of this outburst was money that Whittaker owed to William Hobson. His behaviour was so threatening that Swain 'feard he would abuse her by blows also'.

Some cases amount to an accusation deliberately staged in a public place; in 1664, John Fletcher testified in a case brought by Peter Leigh against William Halliwell. He deposed that one day,

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[3] In twenty per cent of cases there is not enough information to fit the case into a category.

[4] Ingram, *Church Courts*, 306.

[5] CRO EDC5 1694/13 Elizabeth Hobson c. William Whittaker.

> Peter Leigh [was] goeing downe the Bridgestreet in Chester and Mr Welshman walking downe the same way a litle before him ... William Halliwell openly and in a very scandalous and rayling manner in this deponents hearing looking after and ... speaking to one of these two ... [said] the rogue and the knave that made false tokens and throwed libells in the street I'le have his ears nailed to the pillory.[6]

Leigh and Halliwell had apparently had an acrimonious relationship for several years, dating back to a time when they had been in service in Ireland together in the mid-1650s.[7]

In other cases the slanderous words appear to have been spoken when an argument flared up but there is no suggestion that there was any background to the quarrel. In 1695, when Samuel Bundy was buying gooseberries from Wilmot Hyet 'in the fruit market ... there happened a difference betwixt the defendant [Hyet] and plaintiff [Elizabeth Davies] ... upon which ... Wilmot called [her] .... a whore '[8] Neither of the witnesses testified that there was any previous animosity between the litigants; if there had been it is likely that someone would have been called to explain it.

Indirect or 'gossip' cases

Just under half of the cases brought to the Chester consistory court were the result of slanderous words being spoken behind the plaintiff's back and then relayed to the plaintiff at a later date. Ingram distinguishes between those cases that were brought to quell the tittle-tattle that is a feature of small communities, and cases that arose out of a more concerted and malicious attempt to employ gossip to actually denigrate a reputation. This distinction is underplayed, yet it needs to be highlighted, for it reveals the importance of understanding the social location of defamation litigation if we are going to attempt to establish the genuine motivations of litigants.

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[6] CRO EDC5 1664/24 Peter Leigh c. William Halliwell.

[7] See also CRO EDC5 1663/63 Peter Leigh c. William Halliwell.

[8] CRO EDC5 1695/5 Elizabeth Davies c. Wilmot Hyet. See also WSRO Ep I/11/19 f. 21v. Henry Ewen c. Robert Saunders, deposition of Robert Dearling, who had overheard the litigants arguing at Petworth Fair.

In the following case, fought in the Chester consistory in 1698, Alice Hickson was sued for saying that Mary Meredith was a whore and a thief. The testimony of Meredith's servant, Elizabeth Livesey, suggests that this was a deliberate attempt to damage her reputation;

> [Livesay] haveing occasion to go to the publick well in the town of Wervin [Cheshire] to fetch water, she found Alice Hickson there washing or scouring her milking pale, and ... asked her, what ailed you to call her this deponents Dame ... a whore and a theef. (For this deponent had heard that shee had calld her soe) and shee replyed that she ... had called her both ...

The second witness, Anne Hignett testified that

> Alice in a sleight deridery manner answer'd it is an easy thing to prove her a whore, she has had a bastard child, and said further that she could prove her both a whore and a theef.[9]

Cases where the defendant stood by her words when challenged and compounded them by saying she could 'prove it', seem to be more than tittle tattling and represent a stronger challenge to the reputation of the plaintiff.

The nature of the cases of both face to face and gossip types will be elucidated further when we look more closely at the situations in which both types of cases occurred.

Gossip

Anthony Fletcher argued that the rural world of the early seventeenth century was 'oppressively public' and that 'gossip was endemic yet it easily poisoned relations at a time when men and women were extremely sensitive about their sexual reputation and the church courts were over loaded with cases of defamation'.[10] This view is a familiar one, yet historians have been reticent about analysing gossip within early modern communities, despite commenting on its pervasive presence. It has been assumed that

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[9] CRO EDC5 1698/12 Mary Meredith c. Alice Hickson.

[10] Fletcher, *Reform in the Provinces*, 70, is unusual in suggesting here that sexual reputation was of equal importance to men and women.

gossip was rife and pernicious, often that it was a form of social control and, usually that it was the preserve of women.[11] The word 'gossip' itself usually implies trivial talk. Anthropologists and sociologists have tended to take gossip more seriously, partly because, in the case of anthropology, they have often been studying pre- or semi-literate societies at first hand where linguistic communications rather than written texts are their source material. Indeed, the anthropologist John Beard Haviland has claimed that the key to understanding a culture was the understanding of its gossip.[12] Despite constant reiteration that oral culture was of great significance in early modern England historians writing from the perspective of a written culture have at times failed to take oral communication seriously in all its forms.

'Gossip' is assumed to be both superficial and yet malicious and therefore harmful. The word needs to be rescued from its contemporary usages, with their inherent contradictions, and defined. Sally Engle Merry defines gossip as

> informal, private communication between an individual and a small selected audience concerning the conduct of absent persons or events. Gossip thrives when the facts are uncertain, neither publicly known nor easily discovered. Gossip generally contains some element of evaluation or interpretation of the event or person, but it may be implicit or unstated.[13]

Max Gluckman defined gossip as 'idle talk ... which is largely [about] the evaluation of morals and skills'.[14] The evaluative nature of so much gossip has meant that many social scientists, anthropologists, and historians have argued that gossip is a form of informal social control. This aspect of gossip will be discussed in the following chapter. Here I

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[11] Underdown, *Revel, Riot and Rebellion,* 100; Ingram, *Church Courts,* 305, states that 'a feature of early modern English society was endemic gossip about sexual reputation'; Archer, *Pursuit of Stability*, 77-80; Steve Hindle, 'The Shaming of Margaret Knowsley: Gossip, Gender and the Experience of Authority in Early Modern England', *Continuity and Change* 9 (1994), 391-419. Bernard Capp's 'Separate Domains?', 117-45, is a useful contribution to the importance of gossip in early modern communities. However, Capp, like other historians assumes that gossip was inherently gendered and was a particularly female form of communication.

[12] John Beard Haviland, *Gossip, Reputation and Knowledge in Finacantan* (Chicago and London, 1977), 147-8.

[13] Sally Engle Merry, 'Rethinking Gossip and Scandal' in Donald Black (ed.), *Toward a General Theory of Social Control,* I (Orlando and London, 1984), 275-6. Bailey, *Gifts and Poison,* 228.

[14] Max Gluckman, 'Gossip and Scandal', *Current Anthropology,* 4 (1963), 307-16.

will concentrate on gossip simply as talk about other people and the sharing of information among people who knew each other.

The courts recognised the significance of gossip and, in a sense, legitimated it by accepting hearsay as evidence, particularly in defamation cases. Witnesses testified in their depositions not only to what they had seen of the incident set out in the libel, but what they had heard said about it. In the interrogatories the witnesses were asked if they knew or *had heard* news of the previous reputation of the defendant or plaintiff and how that reputation had been affected by the words spoken. Furthermore, through the articles of exception the credibility of the witnesses was scrutinised by drawing on the gossip about them. Informative gossip was essential to a defamation case because the wounded pride of an individual only acquired significance if people were talking about it. If the plaintiff's reputation was already damaged before the speaking of the words then the defendant should not, technically be held responsible. In 1664 John Blackburn sued Thomas Hough for calling him a cuckold while they were having a drink. In the interrogatories the witnesses were asked if they had 'heard it spoken in the parish ... that the said Blackburn had ... declared ... himself that he thought hee was a cuckold'. A man could not blame other people if he himself had weakened his own reputation by uttering such remarks. Informative gossip therefore played its part in cases of both types, even those that we have classified as 'face to face'.

The selection of witnesses

The typology outlined above is based on the interaction of litigants, but tells us very little about the witnesses whose testimony is our main source. Laura Gowing has argued that 'the criteria on which [witnesses] were selected reveals the demarcations of credit by which stories were evaluated'.[15] In other words, that litigants would call on the most

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[15] Gowing, 'Women, Sex and Honour', 78-81. Earle, 'Female Labour Market', 330 and n.12., has argued that there was no obvious bias in the selection of witnesses in defamation suits compared to, for example, divorce litigation where a disproportionate number of witnesses were servants of the litigants.

credible witnesses and that by looking at possible patterns of witnesses we can discover who they thought to be credible. While this is undoubtedly true, it is only part of the story. Quite simply a litigant might have to resort to calling whoever happened to be at the scene and the criteria for selecting witnesses are often specific to each case. Furthermore, it is usually quite impossible to establish why a particular person was chosen to testify as opposed to another person who also witnessed the scene - if we are told how many witnesses there were to an incident in the first place. Despite these caveats I will suggest that some persuasive conclusions can be drawn from the cases in the course of this chapter.

Our typology of cases can be roughly matched to a pattern of locations and the relationships between witnesses and litigants. Face to face quarrels tended to occur outdoors in public places such as the marketplace or the open street. This was the case in approximately 50 per cent of face to face cases in Cheshire and, more conclusively, in nearly 90 per cent of cases in the Sussex sample. Some of these cases can appear to be almost 'accidental', the result of a quarrel in which loose words were uttered in the heat of the moment. In these situations a witness might be a random passer by who knew little about the litigants.[16] The account that Jane Woodfin gave of an argument that she chanced upon one morning does not suggest that she knew the litigants particularly well:

> one morning about 6 o'clocke ... in the time of wheat harvest ... this deponent was going to the feilde to reape and about the windmill hill without the Northgate she saw the party producent Mr. Barker goe over the larke way with a shorte bill in his hand towards the defendant Thomas Greene, and by their loud and earnest talking this deponent perceived that some words of anger had passed betwixt them, but what they were she knoweth not ... [she did not] stay at all to hearken the passages betwixt them but went by upon her occasions[17]

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[16] Passers by are often noted, but not called as witnesses, suggesting that litigants called on the most reliable, or the most willing, people that they could to give testimony. e. g. WSRO Ep I/ II / 17 f. 46v. John Dalton c. John Napper.

[17] CRO EDC5 1672/21 John Barker c. Thomas Greene.

We have already seen that Samuel Bundy happened to be buying fruit from Wilmot Hyet in Chester when he witnessed her quarrel with Elizabeth Davies and the second witness in the case was a woman (Jane Ratcliffe) who was also in the market.[18] Other similar examples of people witnessing an argument while apparently going about their daily business are common, though many, unlike Jane Woodfin, clearly stayed to watch the spectacle which they subsequently recounted in detail. Margaret Bolton said in 1666 that she had been walking through the Rows in Chester when she saw

> some company gathered together about the plaintiff and defendant ... [and] heard the defendant John Baxter ... say behold she's drunke at which time a great many people were there about them but this deponent doth not remember the names ...

A second witness, Jane Halwood had observed the proceedings from her shop in the Row.[19] Although we need to be slightly wary of 'random' witnesses such as Jane Woodfin in the above example because their claims to be neutral may in fact conceal an interest in the case that was subsequently obscured, it would appear that this was not necessarily the case.

On the whole, however, it is clear that witnesses and litigants in face to face cases knew each other reasonably well, either because they were neighbours, worked together, or had friends and relatives in common. All the witnesses in a case fought by Elizabeth Sutton against Mary Williams in 1664 said that they had seen the litigants arguing on several occasions at the High Cross in the centre of Chester, suggesting that all the participants may have lived or worked in this area.[20] In a case fought between Catherine Standish and George Wright in 1677 all the witnesses (and the two litigants) were neighbours from Greyfriars Lane in Chester; they had become embroiled in an argument in the street started between Standish and a man who did not testify in the

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[18] CRO EDC5 1695/5 Elizabeth Davies c. Wilmot Hyet.
[19] CRO EDC5 1666/5 Bridget Carrington c. John Baxter.
[20] CRO EDC5 1664/25 Elizabeth Sutton c. Mary Williams.

subsequent defamation case.[21] There were another twenty-one examples from Cheshire of quarrels which occurred 'in the open street' and led to defamatory insults being bandied between litigants.[22] These were the most obviously public examples; other cases happened indoors, but in equally public circumstances. In 1683, for example, Elizabeth Halliwell accused Jane Price of having had a bastard while they were at Mrs Burganey's churching in the company of the 'neighbouring women'.[23]

The second type of case involved the plaintiff hearing indirectly of the words spoken by the defendant. These cases tended to include more witnesses than face to face cases. Nearly 60 per cent of face to face cases had only two witnesses, while only a third of gossip cases called only two witnesses. The cases with the most witnesses (between nine and twenty four) were all gossip cases, with the exception of one. In these cases the allegations and rumours about the reputation of the plaintiff were spread along a network of contacts of varying intimacy, often (though not always) to so many people that they were deemed to have become public knowledge, or 'common fame'. The definition of private and public knowledge was the crux of the issue, but the boundaries would certainly have been drawn in different places by different people. Richard Wright, a witness in a case fought in 1682, gave an intriguing insight into the distinction between private and public talk:

> heretofore it hath been sometimes talked on and discoursed by neighbours amongst themselves, but not publickely untill of late, and since the differences

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[21] CRO EDC5 1677/13 Catherine Standish c. George Wright, depositions of Anna Davies and Margaret Knight. Three other related suits are in this file; George Wright c. Catherine Standish, George Wright c. Francis Standish, Margaret Wright c. Catherine Standish.

[22] CRO EDC5 1661/31 Anne Orme c. Anne Oldham; 1663/41 Anne Taylor c. Frances Eaton; 1663/81 Elizabeth Gray c. Richard Harrison; 1664/24 Peter Leigh c. William Halliwell; 1664/25 Elizabeth Sutton c. Mary Williams; 1666/5; 1665/23; 1668/5 (two cases); 1668/23 John Knight c. Margaret Bunnell; 1669/28 Mary Mainwaring c. Jane Thompson; 1670/62 Alice Gardner c. Ellen Richardson; 1672/12 Elizabeth Ward c. Mary Parrie; 1675/4 Thomas Ellison c. Ralph Wheelock; 1675/27 Elizabeth Snead c. Anne Rivell/ Francis Snead c. Margaret Crank; 1676/24 Samuel Ravenscroft c. Thomas Heawood; 1677/23 (two cases); 1691/24; 1695/5 Elizabeth Davies c. Wilmot Hyet/ Anne Bannister c. Elizabeth Caldecott; 1696/9 Anne Spencer c. Joseph Stout.

[23] CRO EDC5 1683/34 Jane Price c. Elizabeth Halliwell.

> happened between the plaintiff and defendants, that the said defendants have been suspected to have layne together and been too familiar ...[24]

In cases involving such gossip the witnesses were not just observers of the quarrel but participants in the dissemination of information that led to the case, and were therefore caught in a web of culpability along with the defendant.[25] Cases that were based on rumour rather than a direct confrontation between defendant and plaintiff may have been more difficult to bring in the first place because a plaintiff had to have a defendant and therefore had to try and root out the originator of the scandal. In 1694 Hester Barrow was the object of a rumour that she had been seen with Edward Percival 'the Mault man of Daresbury ... in a very unseemly and indecent posture together'. Her father, Joseph Garner, had met John Hickson 'who he was informed was the author of [the] scandalous report rais'd' against her and she subsequently sued Hickson for slander.[26]

In other cases the process of identifying the culpable party is elucidated more clearly. Anne Bannister, 'having had some notice of some scandalous and diffamatory words spoken against her by the defendant Elizabeth Caldcott' (that she had a bastard son), decided to write to Caldcott (her sister in law) to ask her who the 'author' of the rumour was. Daniel Benbow delivered the letter and discussed its contents with Caldcott who admitted that she had passed the news on to Anne's mother but would not admit her source. Caldcott however incriminated herself further by telling her brother-in-law and two other women, Mary and Martha Falkener, that Anne Bannister 'had a boy big enough to drive the plough'.[27] In 1665 Thomas Deane sued William Powdrell in the Chester consistory for spreading the rumour that he had 'layne with his servant woman', Anne Leicester. The story was already being widely circulated when Deane heard of it,

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[24] CRO EDC5 1682/22 Jane Price and Richard Halliwell c. Thomas Halliwell, discussed in ch. 7, 227-33.
[25] This is also sometimes the case with face to face cases where witnesses who had heard about the incident were called, along with those who had actually observed it.
[26] CRO EDC5 1694/3 Hester Barrow c. John Hickson.
[27] CRO EDC5 1695/5 Anne Bannister c. Elizabeth Caldcott.

but witness after witness testified that Powdrell was their informant.[28] In another example, from 1686, Anne Wood alleged that Robert Lowndes had claimed to have had sex with her and as a result had found that 'some man had had dealings with her' already; this, according to his logic, made her a whore. The deposition of Elizabeth Clowes reveals that Margaret Blagge had called her a 'brasen fac'd cutt [cunt]', yet Anne did not bring a case against her, possibly because Lowndes was identified as the originator of the scandal and was therefore the more culpable.[29] It is occasionally clear that defendants tried to defend their actions by calling witnesses to show that they had only repeated what was already 'common fame' and therefore could not, strictly speaking, be made culpable for any possible damage to the plaintiff's reputation.

It is not usually possible to establish how intimate the connections between litigants and witnesses were. Social networks were constructed along lines of material and emotional interdependence. People relied on neighbours not only for companionship but for material and often financial support. People working in the same trade or occupation depended on each other for loans of equipment or raw materials and for credit. As we have seen in Chapter 3, litigants and witnesses in cases often came from the same or related trades and occupations. References to loans of objects or money are fairly frequent, even in cases where tension as the result of an unreciprocated favour does not seem to be the original cause of the conflict. These exchanges of help and goods often provided the opportunity for the exchange of information as well. In 1694 Katherine Hoskins went to borrow some lard from John Sheppard of Selsey. She told Sheppard that William Ward, her master, had not only offered her money to sleep with him but had also propositioned two other women. Their conversation was subsequently recounted by Sheppard's two eavesdropping servants, who were called as witnesses when William Ward accused Hoskins of slander, having been informed of her

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[28] CRO EDC5 1665/1 Thomas Deane c. William Powdrell.
[29] CRO EDC5 1686/10 Anne Wood c. Robert Lowndes.

allegations.[30] George Cosden of Street in Sussex recalled that 'he going to the house of Jesse Attree in Street to fetch some yarne which he had woven for his wife there mett with John Cooke', who was also there 'about some business'. In the subsequent conversation Attree made defamatory remarks about Henry Paine, who later heard about them and sued Attree for slander.[31] In cases where such apparently innocuous errands led to defamatory words being spoken, we should be alert to the possibility that the defendant may have made the visit with the intent of stirring up trouble, even if this is masked in the subsequent account.

The location of cases

It is striking that in approximately 80 per cent of the cases that have been identified as of the 'indirect' type, in both samples, the conversations that were recounted in the depositions had taken place indoors, typically in a home shop or alehouse. Privacy is not necessarily defined by physical space, for people can share the most intimate and private conversations in the most public of places, but it is linked to certain types of space. Those conversations that had happened in a home were the most obviously private. In 1674, for example, Margaret Crank said that she had gone to Elizabeth Snead's house in Chester, 'upon a visitt to a freind of hers that was there, and the said Elizabeth of her own accord ... began to speake of ... Ann Rivell'. When Anne Rivell heard that Elizabeth had said that she was a thief she prosecuted her for slander.[32] In another example from Cheshire in 1681 Alice Golborne said that she

> and her precontest and Samuel Cade and Elizabeth Wilkinson were sate together by ... Jonathan Price's fireside, and the said Jonathan said he would tell them newes...

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[30] WSRO Ep I/11/22 f. 32 William Ward c. Katherine Hoskins.

[31] WSRO Ep II/ 5 / 18 f. 40 Henry Paine c. Jesse Attree. Other examples are Ep I/11/21 f. 26 Mary Bachelor c. John Terrey; Ep III/5/3 f. 44 Dixon c. Topsall. Dixon sent Bottom, a subsequent witness in the case, to borrow a horse from Topsall. ESRO QSF 79/5 f. 295 July 1672.

[32] CRO EDC5 1674/40 Ann Rivell c. Elizabeth Snead.

Price told them that Anne Parry had been 'kist in the open street' by a young man, and as a result he was sued for slander by Parry.[33]

Even in more potentially public places, such as a shop, the atmosphere of a private exchange of information between friends and acquaintances is often conveyed. Shops provided the location for the gossiping that led to four cases in Cheshire.[34] In one example the plaintiff, Thomas Potter had gone to Mary Prenton's shop to buy tobacco. Prenton deposed that

> as soon as he had filld his pipe [he] went out, making a very short stay there, but before he went away this deponent and her daughter in law and contest complained to him that the plaintiff Elizabeth Massie had called her ... daughter [Hannah Prenton] a whore, so with the said Potter answeared to the said Ann the next time that he calls thee a whore, bid her goe to Jack a Cobbes ...[35]

In another example, Hannah Lee deposed that the defendant, Mary Hewitt, had visited her in her home in Macclesfield and told her that she had heard that 'some neighbours in Chester Gate had kiss'd each others wives'. A second witness, Mary Pownall, described the occasion on which Lee passed this information on to several others while they were in George Bancroft's shop:

> this deponent was present in George Bancroft's shop in Macclesfield with Hannah his wife when Hannah wife of Walter Lee came in thither and made some mention of a story of a kissing bout as shee called it which was up in the town, And whilst she was discoursing about it, the defendant Mary Hewitt came into the shop and upon some discourse betwixt her and ... Hannah Lee, the said defendant, did there say and give out that one of the two husbands articulatebeing gone from home and returning sooner than he was expected, foundthe other husband kissing his wife, and when the wife perceived the husbandwas so come shee lockt or put up him who had kiss'd her in a chest or presse [etc.].[36]

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[33] CRO EDC5 1681/20 Anne Parry c. Jonathan Price. Other similar examples are 1677/14 Susanna Cowley and Eliza Davis c. Margaret Davis; 1686/10 Anne Wood c. Robert Lowndes.

[34] CRO EDC5 1682/3 Thomas Bailey c. Edward Moreton; 1683/27 Elizabeth Massie c. Thomas Potter; 1692/23 Elizabeth Brayne c. Margaret Maddock; 1693/7 John and Mary Smallwood & John and Mary Girton c. Mary Hewitt.

[35] CRO EDC5 1683/27 Elizabeth Massie c. Thomas Potter.

[36] CRO EDC5 1693/7 John and Mary Smallwood & John and Margaret Girton c. Mary Hewitt

These cases show that there were many opportunities for the exchange of gossip as people went about their daily business.

Other cases (of both types) were the result of defamatory words uttered in more obviously social settings. In Cheshire nineteen cases in the church courts (and five at quarter sessions) and two in Sussex arose out of some sort of drinking session, either in a licensed victualling house or a private individual's home.[37] There were many more in which alcohol played its part. This is hardly surprising; drinking houses were popular and ubiquitous, and alcohol loosens tongues, blunts tact and often leads to blows, both verbal and physical. It is usually impossible to pinpoint exactly what sort of establishment we are dealing with, and some of them were probably of dubious legality; only four alehouses or taverns were mentioned by name in the Cheshire sample.[38] The importance of alehouses went far beyond their social function for they offered cheap basic meals and foodstuffs such as bread. This service was vital to men and women working away from home, the poor who could not afford fuel, and travellers. Alehouse keepers were also a source of financial credit in a local economy that depended on credit, and sometimes served as pawnbrokers.[39] Unfortunately we get no insights into

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[37] CRO EDC5 1661/39, William and Charlotte Coventry c. Catherine Urmston; Catherine Urmston c. William Coventry; 1661/45 Thomas and Anne Sare c. Richard and Anne Sare; 1663/121 John Skellerne c. Richard Bird; 1664/26 John Blackburn c. Thomas Hough; 1665/31 John Massey c. Peter Taylor; 1665/32 John Withers c. Eliza Radley; 1665/56 Thomas Deane c. William Powdrell; 1667/15 Thomas Needham c. William Bennett; 1670/68 John Lascelles c. Thomas Beckett/ Thomas Beckett c. John Lascelles; 1677/13 George Wright c. Francis Standish; 1678/6 Mary Burganey c. George Guest; 1679/6 Margaret Brassey c. Katherine Eaton; 1681/21 Thomas Jackson *et al.* c. Sara Gibbons; 1687/14 Hannah Hignett c. Edward Cook; 1690/9 Daniel Thomason c. John Lloyd; 1692/24 Elizabeth Braine c. John Pratchett; 1694/24, 1695/3 Judith Blinston c. Martha Moreton. In another example the case appears to have been resolved informally at a meeting at the Red Bull in Chester, EDC5 1675/25 Mary, Sara, Elizabeth and Frances Batteridge c. William Burganey. CRO QJF 85/1; QJF 87/1; QJF 93/1; QJF 113/1 f. 54; QJF 128/1, f. 88. CCRO MF/81 pt. 1 ff. 29-29v. at the Crown in Foregate Street and the Star. WSRO Ep I/11/19 ff. 44-45 Josiah Playdell c. Stephen Jenner, at the Chequer, the Cross and the Crown; Ep III/5/3 ff. 43-45 Margaret Dixon c. Elizabeth Topsall.

[38] CRO EDC5 1661/45 Thomas and Anne Sare c. Richard and Anne Sare; 1663/121 John Skellerne c. Richard Bird; 1665/56 Thomas Deane c. William Powdrell; 1692/24 Elizabeth Braine c. John Pratchett.

[39] Peter Clark, *The English Alehouse: A Social History 1200-1830* (Harlow, 1983), 132-40; idem 'The Alehouse and the Alternative Society', in D. H. Pennington and Keith Thomas (eds), *Puritans and Revolutionaries: Essays in Seventeenth-century History Presented to Christopher Hill* (Oxford, 1988), 47-72; Keith Wrightson, 'Alehouses, Order, and Reformation in Rural England, 1590-1660', in Eileen and Stephen Yeo (eds), *Popular Culture and Class Conflict 1590-1914: Explorations in the History of Labour and Leisure* (Brighton, 1981), 1-27.

these economic functions of alehouses and this fact raises an important question about the background to defamation litigation; it is possible that litigation tended to arise from the social arena rather than the workplace and therefore that it tended to be the result of a particular form of social interaction and tension.

These cases lend themselves to a closer analysis of patterns of sociability. Peter Clark has characterised the alehouse as an 'alternative society'; he has argued that it was 'neutral territory' for young men where they could mix with men of all ages and ranks, less hampered by the hierarchies of the world outside.[40] The evidence from defamation cases supports this view up to a point. Firstly, half the cases involved groups of men only and the largest group, comprising two litigants and seven witnesses, included individuals aged between 24 and 56. In the cases involving smaller numbers, however, the men tended to be of similar age and status; for example, one group included three husbandmen, and another, three yeomen, aged in their early fifties.[41] Alehouses were clearly places where men met to exchange gossip with each other. In 1692 William Brereton deposed that he had been at the Cross Keys in Bridge Street in Chester with two other men

> betwixt whom there was some discourse touching the words ... said to be given out against ...[the plaintiff] Elizabeth Brayne. And when they were ready to depart from the said house ... John Pratchett came also hither which occasioned further discourse on the said matter. And ... John ... described the person who had acquainted him with it ... and confessed that he had acquainted his wife with it. [42]

In another case two witnesses, William Smith and Randle Newton, were asked in the interrogatories if they had discussed the plaintiff (Hannah Hignett's) miscarriage in an alehouse.[43]

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[40] Clark, *English Alehouse*, 148. Clark has also argued that the moral as well as social restrictions of society at large had less currency in this alternative society, though this view has been usefully criticised by Tessa Watt, *Cheap Print and Popular Piety*, particularly with regard to religion.

[41] CRO EDC5 1661/39 William and Charlotte Coventry c. Catherine Urmston; 1678/6 Mary Burganey c. George Guest.

[42] CRO EDC5 1692/24 Elizabeth Brayne c. John Pratchett.

[43] CRO EDC5 1687/14 Hannah Hignett c. Edward Cook.

Clark also suggests that the alehouse 'was an alternative to, rather than an extension of established family life' for men.[44] This juxtaposition of the alehouse and the home as a site of gender conflict is a familiar one; the author of *The Gentlewoman's Companion* urged women readers to make their homes pleasant so that husbands would not seek the alehouse.[45] We have an example of the kind of tension that it could lead to in a case brought by Ursula Malpas against Alice Littler in 1670. A witness named Richard Hayworth deposed that

> Alice Littler came to ... Ursula Malpas this deponent's mother's house in Weaverham and took occasion to fall out with ... Ursula because her [Alice's] husband was drinking there...and she several times called ... Ursula whore ... [46]

Even if alehouses were an alternative to family life for men this does not mean that they were a totally male dominated environment. Many establishments were run by women, women were employed to work in them and did also drink in them, in female only, as well as mixed groups.[47] Clark is uncomfortable with the question of women and alehouses, claiming that 'female visits to the alehouse were regulated by social convention'; this meant that only women accompanied by their husbands or attending community celebrations such as a christening, could remain respectable in an alehouse.[48] However, having said that women in alehouses were either married or promiscuous, Clark goes on to claim that courtship 'commonly' took place there.[49] The evidence from the defamation cases that arose from drinking sessions shows that approximately half of them involved a group that included both men and women. All of these women were

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[44] Clark, *English Alehouse,* 132, 148. See also Roper, *Holy Household*, 182. Stone, *Family, Sex and Marriage*, 81.

[45] Woolley, *Gentlewoman's Companion*, 106.

[46] CRO EDC5, 1670/66 Alice Littler c. Ursula Malpas.

[47] For example, 1679/6 Margaret Brassey c. Catherine Eaton; 1665/32. Mary Hatton of Great Budworth in Cheshire was prosecuted for tippling in Jane Ingham's alehouse in Grappenhall CRO EDC5 1670/60. See also *Diary of Roger Lowe*, 45; Capp, 'Separate Domains?', 128.

[48] Clark, *English Alehouse*, 131.

[49] Clark's refusal to engage properly with the question of women and alehouses is revealed in his rather cursory treatment of the question, and highlighted by a gratuitously lewd quotation, *English Alehouse*, 149; Erickson, *Women and Property*, 95, found that courtship did commonly take place in alehouses and that women frequented alehouses more often than Clark acknowledges; see also, *Diary of Roger Lowe*, 33-4, 75, 91.

married, with the exception of three; one was a single woman drinking with friends and two were widows who owned the establishment. Not all of the women were with their husbands at the time. In one example Thomas Jackson (one of the plaintiffs in a suit against Sara Gibbons in 1681) described how he and Sara had 'dranke to one another and shooke hands in token of friendship' in his uncle's alehouse in Castle Lane, Chester. Gibbons was a married woman, but had gone to visit Jackson with a man other than her husband. This example also shows that the ritual of drinking together as a sign of friendship was performed among men and women.[50] A similar example comes from a case in 1670 in which Hugh Hickson and Ellen Massey were in an alehouse together and 'he drunke to her, and she againe to him ... and ... they shaked hands at parting'.[51] Sometimes the only woman who was mentioned was the wife of the alehousekeeper. It was rare for a single woman to be drinking with a group of men, though in the following account there is no hint of self-consciousness. Thomas Brown was drinking in Richard Hunt's alehouse in Westhoathly with Thomas Warder, Thomas Hansam, Frances Ginn and a few others who were not named. The witnesses were all young - the men were in their early twenties and Ginn was described as a spinster. Frances said that they were 'sitting in the kitchen of the dwelling house ... being the common room for entertainment of company where she this deponent and the said Thomas Brown were sitting down'.[52]

The examples outlined above suggest that defamation cases arose out of a range of social experiences and situations reflecting many aspects of the texture of ordinary men and women's lives. I have shown that defamation cases were almost as likely to be sued by men as women in both dioceses, but was the nature of the case different depending on the gender of the plaintiff? Mary Beth Norton has argued that women in early modern New England were less likely to be involved in face to face arguments and more likely

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[50] CRO EDC5 1681/21 Thomas Jackson *et al.* c. Sara Gibbons.
[51] CRO EDC5 1670/58 Hugh Hickson c. Ellen Massey.
[52] WSRO Ep II/5/18. ff. 79-79v.

to bring a case on the basis of hearsay than men.[53] If we look at our sample of 146 cases that can be identified as face to face or gossip cases, we can see that this pattern is not discernible here.[54] The figures in Table 10 simply reflect the proportion of male and female plaintiffs in this sample as a whole in which 61 per cent of plaintiffs were women; women are slightly underrepresented in the sample of 'face to face' cases, but not significantly so. It therefore seems very clear that, not only were men and women equally likely to litigate over slanderous words, but that there was no particularly gendered pattern to the background leading up to those disputes or to the nature of the dispute that led to litigation. We can also look at the gender of groups of witnesses. As we have seen the witnesses were often selected because they were part of the social group in which the defamatory words were spoken and therefore the gender of groups of witnesses might reflect the gendering of social interaction.

Table 10 Gender of plaintiffs in 'face to face' and 'gossip' cases (%).

	Face to Face	Gossip
Male Plaintiffs	39	33
Female Plaintiffs	54	60
Joint Plaintiffs	7	7
	100	100

Note Joint plaintiffs include couples only; joint plaintiffs who were the same sex are included in either male plaintiffs or female plaintiffs.

[53] Norton, 'Gender and Defamation in Seventeenth Century Maryland', 31.

[54] This sample only includes cases from Cheshire.

Table 11. Gender of litigants and witnesses in defamation cases in the diocese of Chester (N)

	Male only Witnesses	Female only Witnesses	Male & Female	Number of cases
Female v. Female	6	18	17	41
Female v. Male	17	6	7	30
Male v. Male	13	0	12	26
Male v. Female	7	2	5	13
Joint Litigants	3	1	6	10
Total	**46**	**27**	**47**	**120**

Note The sample for this table includes only cases involving one or more witnesses hence the comparatively low numbers involved. The group of 'joint litigants' includes joint plaintiffs and defendants and one case involving both a joint plaintiff and a joint defendant.

Table 12. Gender of litigants and witnesses in defamation cases in the Diocese of Chichester (N)

	Male only Witnesses	Female only Witnesses	Male & Female	Number of cases
Female v. Female	2	3	3	8
Female v. Male	10	3	3	16
Male v. Male	9	0	2	11
Male v. Female	1	1	2	4
Total	22	7	10	39

Tables 11 and 12 show the gender of witnesses in all cases with one or more witnesses. The majority of cases in Cheshire involved witnesses of both genders, though only marginally more than cases with male only witnesses. This might strengthen the contention that gender was not particularly significant in affecting patterns of sociability. There were however a large number of cases which called male witnesses only and in

Chichester these accounted for the largest number of cases. This may be explained by Laura Gowing's contention that the words of men were taken more seriously than those of women, and therefore it would be in a litigant's interest to have at least one male witness. Yet many litigants called witnesses who happened to be on the scene at the time of the speaking of the words (this was particularly true of words spoken in the street) and there is no evidence to suggest that men were considered more reliable in these situations than women. These patterns suggest that, broadly speaking, the lives of women and men were fairly well socially integrated. However, within this broad pattern there were occasions in which men and women tended to work and also socialise with their own sex. The fact that there were no all female groups of witnesses in cases involving two male litigants may well suggest that there were differences in the nature of male and female sociability, as we would expect. The pattern displayed in these two tables gives only an indication of the gendering of social relations and should not be used to construct hard and fast rules.

The background to litigation

A number of identifiable issues were the cause of the conflicts which led to litigation. The first step in any reconstruction of the context of a case is to recognise that the nature of the defamatory insult was not necessarily related to the original cause of the argument. In focusing on the sexual nature of most of the insults that came before the courts historians have tended to underestimate the fact that the cause of the original argument may have had little or nothing to do with the sexual behaviour or reputation of the plaintiff (indeed we cannot necessarily assume that the litigants would know anything about each other's sexual history).

A significant number of face to face cases, for example, arose out of a dispute over financial affairs such as unpaid loans.[55] Alice Heath sued Edward Johnson (both from Frodsham in Cheshire) in 1666 for calling her a whore during the course of an argument over an unpaid debt:

> The party producent or her husband stood indebted to the said Johnson's mother in ten pounds by bond; ... when the plaintiff was demanded the money shee (being then and there neare the time of childbirth) desired forbearance of the interest to buy necessaries for such time and purpose butt afterwards when demande againe was made of the interest, she the said Alice affirmed that the interest was paid, whereupon the said defendant said if shee or any other could make it good that the interest was paid shee was a whore or to that effect, ...[56]

In a similar example, also from Cheshire, Prudence Hollinshead sued Ellen Walton in 1677 for calling her a 'strumpet whore' when she demanded half a crown that she claimed was owed to her.[57] Both these cases incidentally serve to remind us that women were not excluded from the management of finances. In the following case Edward Hulton's described an argument between John Skellerne and Richard Bird at Hulton's child's christening:

> Mr. Bird and the party producent were at high words together concerning some difference that had been lately between them about his the said Skellerne's wages as he was parish clerk, ... Mr. Bird did give the said Skellerne some hasty and passionate words ... he called him either a drunken or whoremaster rogue[58]

In another case from 1695 a disputed piece of land appears to have behind an argument between two women from Cheshire; the story was told by one of the witnesses, Sarah Mottershead:

> this deponent being desir'd by the plaintiff Mary Bannyon to go over to the Ware near Whatcroft Hall to gather crabbs which were of a tree in a little spott of a meadow which the defendants husband had taken from the plaintiffs husband, the defendant and her husband came and told this deponent and

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[55] CRO EDC5 1663/121; 1666/12; 1663/81; 1671/35; 1677/18; 1678/20; 1694/13 Elizabeth Hobson c. William Whittaker. This was also the case in some indirect cases; see 1665/1 Thomas Deane c. William Powdrell and 1665/56 Thomas Deane c. William Powdrell.

[56] CRO EDC5 5 1666/12 Alice Heath c. Edward Johnson.

[57] CRO EDC5 1677/18 Prudence Hollinshead c. Ellen Walton.

[58] CRO EDC5 1663/121. John Skellerne c. Richard Bird. Incidentally, this is another example of a case where the nature of the insult was apparently unrelated to the issue in the argument.

> Thomas Park the plaintiff's brother who was gon[e] before the deponent to gather the said Crabbs, that they should not have them upon which the said plaintiff came down, went over the Ware to the defendant and her husband and ther[e] happened some discourse and difference among them ... and the said defendant in a very angry manner speaking to the plaintiff said Thou art a Whore ...[59]

The animosity deepened after this encounter for Higginson also sued Bannion for calling her 'whore and arrand whore .... Gandy's whore and Newall's whore' later in the year.[60] In 1662 Anne Wright, from Nantwich, alleged that Mary Briscoe was a witch. The articles of exception reveal that the two women had been fighting about a house, a quarrel which was not explained, but apparently degenerated because Wright had recently lost two children, which she blamed on Briscoe.[61] Actions in the secular courts are suggestive in this context. In a case taken to the Cheshire quarter sessions, Elizabeth Murray called Ann Williams, among other things, 'a base Queane', yet the original cause of tension between the two women was apparently the repeated trespass of Murray's husband's cattle on the land of Williams.[62] Anne Powden was prosecuted at Cheshire quarter sessions in 1657 for accusing Anne Cottrell of stealing and being a 'salt whore'.[63] In 1665 John and Anne Harpur had William Madder bound over for calling Anne 'a base quean and swore begod she lyed'.[64] When words were being treated as a breach of the peace, as they tended to be by sessions courts, there were no restrictions on the words that could be complained of.[65] These cases show how pervasive sexual insult was, but suggest that the sexual meanings of words were often unrelated to the offences that plaintiffs were actually being accused of.

Another site of conflict involved officials in the course of their duty. Though the abuse of an official could be prosecuted in both jurisdictions there were a number of

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[59] CRO EDC5 1694/7 Mary Bannion c. Margaret Higginson.
[60] CRO EDC5 1695/9 Margaret Higginson c. Mary Bannion.
[61] CRO EDC5 1662/63. The only extant documents are Wright's penance and the articles of exception.
[62] CRO QJF 93/4 1665. Examination of Ann Williams.
[63] CRO QSF 85/1.
[64] CRO QJF 93/4 f.76.
[65] As we have seen, most of the cases from the secular courts were prosecuted as breaches of the peace, though there were also some actions on the case for words. See ch. 2, 57-64.

occasions when an official sued his abuser for slander in the ecclesiastical courts. In 1677 Richard Houghton accused Alice Starkey of defamation,

> Richard Houghton [was] upon occasion of business at Mr. Starkey's at Darley, and afterwards this deponent perceiv'd that it was to distraine there upon some order from the Quarter Sessions ... and Mrs Starkey came towards him, and they fell to words, and amongst the rest the said Mrs Starkey ... said I hope we shall have an honest officer to come amongst us and noe theif, the said Richard did bid this deponent to beare witness ...

Richard Houghton called Alice Starkey a whore and found himself accused of defamation by Alice Starkey as a result of the same confrontation.[66] When Richard Harrison, the Sheriff of Chester, attempted to take a flagon that belonged to Elizabeth Gray in lieu of unpaid assessments, an argument ensued in which many 'foule words' were exchanged; Harrison found himself cited by Gray in the Chester consistory court in 1663 for calling her 'a base whore and bid her begone'.[67] There is one similar example from the diocese of Chichester. In 1683 William Hitchcock sued Joan Pricklowe for saying to William Hull that she thought that Hitchcock was 'a cheating rogue that went about the countrey cheating of them'. Hull said that he believed that Hitchcock had arrested Pricklowe on some previous occasion (though he did not explain what position he held or why he had arrested Pricklowe) which had 'occasioned her ... to speak the said diffamatory words'.[68]

The above examples are mostly from the Cheshire courts and there are few equivalent examples from the Sussex courts; this may highlight a difference in the interests of the two dioceses for it seems unlikely that litigants in Sussex were not involved in similar simmering arguments. Instead litigants and witnesses may not have been required to explain the cause of the quarrel which had led to litigation. The one

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[66] CRO EDC5 1677/23 Richard Houghton c. Alice Starkey. See also Alice Starkey c. Richard Houghton in the same file.
[67] CRO EDC5 1663/81. Elizabeth Gray c. Richard Harrison. Gray appears to have been something of a troublemaker. See the articles of exception in EDC5 1663/51 Eleanor Taylor c. Anne Pears, a case in which she was called as witness. See also EDC5 1663/110 Anne Reeves c. Elizabeth Gray.
[68] WSRO Ep I/11/19 f. 48 William Hitchcock c. Joan Pricklowe.

exception to this is cases in which the litigants were involved in other litigation, which I have traced by looking at the records of several courts in both jurisdictions; here there are a number of examples from both dioceses.

Defamation cases sued in the church courts were often part of an ongoing dispute between litigants or people related in some way to litigants, often fought out in different legal tribunals. Firstly a number of cases in the church courts were linked to each other in a variety of ways; only about 50 per cent of cases brought to the Chester consistory were isolated cases that were not linked to any other litigation in that court. Sometimes the defendant issued a libel against the plaintiff after the plaintiff initiated proceedings, which was known as a reconvention.[69] In other cases the defendant sued the plaintiff within a year, or occasionally longer, of the initial case. Sometimes witnesses to the original case sued one of the litigants as a result of animosity originating in the original suit. In 1675, for example, Margaret Crank testified in a suit between Elizabeth Snead and Ann Rivell on behalf of Rivell. On her way home she claimed that she was 'wronged' by Francis Snead and she retorted by calling him a 'rogue'. He subsequently sued her for defamation.[70]

The second group of cases are those which were linked in some way to litigation in other jurisdictions. Broadly speaking there are two possible interpretations of these cases. One is that an ecclesiastical suit was brought in revenge for some previous legal action; the second is that an ecclesiastical suit was less an act of revenge than a genuine attempt to find an alternative strategy to conclude a dispute. The very fact that people were prepared to take their disputes to a range of courts reveals a high level of understanding of the legal procedures of different tribunals. In the first instance it was up to the court to establish whether a case was being brought out of malice because legally a malicious prosecution ought not to be upheld. Ellen Parker, a witness in a suit

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[69] See Appendix II.

[70] CRO EDC5 1675/27. Francis Snead c. Margaret Crank; Elizabeth Snead c. Ann Rivell. Other examples are WSRO Ep I/11/17 ff. 41v.-48, Margaret Richardson c. John Napper, John Dalton c. John Napper.

between George Aldcroft and George Smith, was specifically asked in the articles of exception whether she deemed this to be the motivation behind Aldcroft's action. She replied

> that this suit is promoted against the defendant George Smith by the plaintiff George Aldcroft meerly out of malice and out of designe to be revenged of ... George Smith and not otherwise there having been some differences and suites betwixt them of late and particularly one wherein ... George Aldcroft sued the defendant in the Exchequer court at Chester for some words spoken to him about the fathering of a bastard child wherein the said defendant was dismissed and George Aldcroft condemned in costs[71]

The procedure of the church courts provided the tools with which to evaluate the causes behind a dispute more obviously than the secular courts; the depositions, interrogatories and exceptions of ecclesiastical causes were much fuller than secular court records in this regard. However, studying the two jurisdictions in tandem does allow links and motivations behind suits to be traced.

In 1662 Anne Knutsford, a midwife, brought a defamation case in the Chester consistory against Barbara Croxton, who she claimed had slandered her reputation saying

> that Anne Knutsford when [Croxton] ... was in labour and in extremity of paine on the stoole and that you had occasion to ease [her] ... Anne Knutsford bidd [Croxton] ... shitt ... in her hands for Mrs Bromhall (one who the said Anne Knutsford is midwife unto) did shitt or doe her business in her hands meaning the said Anne Knutsfords hands of most of her children when they were brought into the world ...[72]

Knutsford might not have brought this case, with its legally dubious slanders, if her reputation had not already been under threat. However, the following year, 1663, her licence as a midwife was suspended after the complaints of men and women from Nantwich (including Croxton who signed a certificate presented to the court) about her conduct in general and her professional behaviour in particular. In this petition she was accused of being a woman 'of very uncivil language' and 'biliously disposed'. The

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[71] CRO EDC5 1675/5 George Aldcroft c. George Smith. Another example is EDC5 1665/32 John Withers c. Eliza Radley.

[72] CRO EDC5 1662/59 Anne Knutsford c. Barbara Croxton.

petition also stated that 'you have immodestly by words not befittinge a midwife or modest and civill woman, revealed the secrets of women who have been in travell'. These 'secrets' may have included the words that Croxton had accused Knutsford of saying in the defamation case the year before; it is quite likely that Knutsford had brought that case to stave off the criticism that clearly continued unabated into the following year.[73] Animosity also continued between Knutsford and Croxton for in 1664 Croxton and her husband, Josiah, brought a suit in the Court of Great Sessions, alleging that she had called Josiah 'a knave and his wife a false theif'.[74] Despite these events Knutsford was apparently reinstated as a midwife; in 1670 and 1680 she testified in her capacity as a midwife in two bastardy cases at Cheshire quarter sessions, suggesting that her reputation had not been irrevocably destroyed in the 1660s.[75]

In another example, a dispute between John and Jane Poole can be traced in three Cheshire courts. Jane had John bound over for good behaviour in the city sessions for calling her a 'whore and giving her many other vile and abusive words' and beating her servants.[76] However, John forfeited his recognizance,

> whereupon Jane sued him in the Citty of Chester, and thereupon the said John did faithfully promise, that if shee ... would let fall the said suite and discharge her from and let this suite now depending in the Consistory fall, all which ... Jane trusting to his word did faithfully performe on her parte, and ... John as basely and unworthily and did and doth neglect and refuse to do on his part, ... saying when ... Jane had released him from his said recognizance. That if shee would pay the charges he had borne at in the suite That then he would be as good as his word[77]

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[73] CRO EDC5 1663/16 Richard Walthall c. Anne Knutsford. The documents are unfortunately fragmentary and fragile. There is no extant sentence for 1662/59 so we do not know what the outcome of this case was, if, indeed it did proceed to sentence.

[74] PRO Ches. 29/462 f. 13 July 1664. Josiah and Barbara Croxton c. Thomas and Anne Knutsford. Due to the legal restraints on married women's rights at common law this case was fought by a joint plaintiff and defendant, though it appears that the quarrel was largely between the two women, despite the fact that Knutsford had also apparently slandered Croxton's husband Josiah.

[75] CRO QSF 95/2 1670 f. 91; QJF 108/2 1680 no. 35.

[76] CRO QSF/83/1 f. 50 11 May 1685. Jane was listed as a widow. Unfortunately neither court recorded what the relationship between John and Jane was, though the fact that they had the same surname suggests that they may have been related.

[77] CRO EDC5 1685/4 Jane Poole c. John Poole.

In 1664 John and Anne Eaton brought a defamation case against Matthew Mosse, alleging that he had called Eaton a 'cuckold and cuckoldly knave' and had also 'scandalised' his daughters, though what this amounted to is not clarified in the depositions. The evidence appears to suggest that Anne was widely thought to have cuckolded her husband and Mosse defended himself by saying that

> John Eaton hath confessed severall times ... that he hath seene his wife ... entertaine severall men or at least one to keepe her company att undue and unfitt times ... and that hee hath taken severall men or att least one in the chamber with her, and caused them ... to runne away without their or his cloathes ...

Mosse also claimed that Eaton had been called a cuckold before yet had not 'called the partyes to question for speaking such words', arguing that the real motive behind Eaton's cause was not the protection of his already damaged reputation but revenge against Mosse's brother, John, with whom he was engaged in a legal dispute. Randle Wardle confirmed this interpretation, testifying that

> there is a suite now depending before the judges of Assize at Chester betwixt ... John Eaton and Matthew Mosse's brother which this deponent believes makes him presente this suit more earnestly against the defendant.[78]

In March 1686 William Squire sued Joseph Proud, the vicar of Steyning, for defamation; Proud was clearly an unpopular and fractious character for in 1677 his parishioners had written to the bishop complaining that he was a drunkard and a liar. Squire however had a more personal grievance, for in August 1685 Proud had been indicted for an assault on him.[79] In 1672 Thomas Greene allegedly accused John Barker of being a 'rogue' because he had 'taken Spenner's tenement over his head'. One of the witnesses claimed to have overheard them arguing in a field, but another deposition suggests that their argument had originated in a suit in the Pentice court at Chester;

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[78] CRO EDC5 1664/22 John and Anne Eaton c. Matthew Mosse. The libel for this case has not survived. Francis Morris deposed that his grandfather, Richard Basson had made Eaton a cuckold and that when he bragged to Eaton about it Eaton had failed to take him to court for defamation.

[79] WSRO Ep I/11/20 f. 25 Elizabeth Plowman c. William Woodland; Ep I/15 misc. papers (1677); ESRO QI/EW6 f. 83.

> [Nathaniel Burnen] was present one day in the Pentice Court ... where ... John Barker made some complaints to the Maior of the Citty and some of the aldermen there assembled against ...Thomas Greene and as ... Greene alsoe made some against him, and severall words there passed betwixt them and amongst the rest ... Greene in a very passionate manner told ... Barker that he had taken Spenner's tenement over his head ...

Another witness, William Wilson, who was an alderman of the city, said that he had bound both of them over at quarter sessions some time before the ecclesiastical cause.[80] The interrogatory (the only surviving document) in a case brought by Robert Bellis against John Frodsham implies that Bellis had prosecuted Frodsham at quarter sessions previously.[81] In the mid 1650s there was a spate of prosecutions initiated by various members of two families, the Duns and the Turners, in the East Sussex quarter sessions. Four presentments for assault were found *ignoramus* by the court (that is, rejected by the Grand Jury and therefore not prosecuted further) but were followed by two cases for words. William Dun, a pettychapman, his wife Elizabeth and his son, William, were unsuccessfully accused of breaking and entering the home of one Seth Turner. Elizabeth Dun was also accused of an assault on Turner's son (also called Seth) and his wife, Anne; three Duns were accused of assaulting Seth Turner senior.[82] However, William Dun was successful in getting Seth Turner junior bound over for calling him a rogue and accusing him of breaking into his home. Turner responded by having William Dun senior bound over for calling him 'a rogue and the son of a witch' and a 'robber'.[83] The use of prosecutions for slanderous words clearly represent an alternative strategy in an ongoing quarrel between the two families; however the defamatory words themselves can also be seen as quasi-judicial accusations born out of the frustration of unsuccessful attempts to prosecute for offences.

In 1692 Elizabeth Edmundson was arrested by Edward Warburton and Griffith Edwards in connection with a suit brought against her by Ralph Blagge, presumably in

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[80] CRO EDC5 1672/21 John Barker c. Thomas Greene.
[81] CRO EDC5 1691/25 Robert Bellis c. John Frodsham.
[82] ESRO QR/E107, April 1655 nos. 5, 6, 7, 8, 9, 10, 11.
[83] ESRO QI/EW2 f. 15, 26 April 1655.

one of the secular tribunals in Cheshire; 'and upon the execution of the warrant she tooke occasion to make ... complaints and acclamations and also to give out and express dreadful imprecations and curses against the said Ralph', accusing him of cheating his tenants. Her outburst landed her with a citation for slander in the Chester consistory.[84] There were some very similar cases in the secular courts: William Madder of Frodsham allegedly called Anne Harper a 'base queane' in court during a suit between Madder and Anne's husband, John, over debt .[85]

Cases involving the allegations of being forsworn or perjured presumably originated in a previous legal action, though not necessarily between the litigants in the defamation case.[86] In an example from 1673 two women, Alice Gee and Mary Basnett, were involved in a case fought between two men at Frodsham court. It is not clear whether Mary testified in the case, though she obviously had some interest in it which was not revealed in the subsequent ecclesiastical case.

> Roger Barton and ... Mary Basnet were coming from Frodsham Court or that way and they two standing in John Wayne's stable door this deponent heard ... Mary Basnet say well if Alice Gee have taken such an oath she's forsworne, but what oath or what she meant this deponent knoweth not[87]

Alice heard about what Mary had said and sued her for defamation in the Chester consistory court.

Defamation litigation could also be the beginning of further disputes in the courts. In December 1665 Barbara Russell sued Adam Voake for calling her an 'old whore, old bawd, old bawdy arst jade' and alleging that 'non but roagues did keep her company'. The month after depositions were recorded in this case Voake was fined twenty shillings for assaulting Russell. His wife and two children were indicted for taking part in the same assault and for stealing from Russell.[88]

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[84] CRO EDC5 1692/7 Ralph Blagge c. Elizabeth Edmundson.
[85] CRO QJF 93/4 16 October 1665. Examination of Robert Cooke.
[86] CRO EDC5 1675/4 Thomas Ellison c. Ralph Wheelock; 1661/42 Richard Small c. John Palden.
[87] CRO EDC5 1673/17 Alice Gee c. Mary Basnett.
[88] WSRO Ep I/11/17 ff. 20-20v. Barbara Russell c. Adam Voake.; ESRO QI/EW2 ff. 70v-71v.

Kinship

It appears that the obligations and tensions of neighbourhood were a more significant factor in defamation litigation than ties of kinship.[89] This is not surprising for a number of reasons. The importance and nature of kinship is still an area of controversy among historians though there is a general consensus that kinship ties were relatively shallow and loose (especially below the level of the gentry): Wrightson has gone so far as to say that 'kinship ties were frequently negotiable if not effectively optional'.[90] Only four cases in the Chester sample were fought by litigants who were definitely related to each other, though another six involved litigants with the same surname.[91] In 1672 Elizabeth Heath apparently accused Richard Heath of trying to get 'a powder' from his brother Thomas (an apothecary) in order to kill her. One possibility is that Elizabeth (who was listed as a widow) had been Thomas's wife, though we only have the libel for this case which does not explain their relationship. Catherine Urmston said to her brother, William Coventry, that he was 'a very idle fellow and thy wife ... is a whore'; though the reasons for this outburst are obscure the potential conflicts between a woman and her

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[89] Gowing, 'Women, Sex and Honour', 15-16. Ingram, *Church Courts*, 309-10.

[90] Wrightson, 'Politics of the Parish', 17. The historiography is reviewed in David Cressy, 'Kinship and Kin Interaction in Early Modern England', *Past and Present*, no. 113 (1986), 38-69. Among the main proponents of the idea that kinship was relatively unimportant have been Alan Macfarlane, 'The Myth of the Peasantry: Family and Economy in a Northern Parish', in Richard M. Smith (ed.), *Land, Kinship and Life-cycle* (1984) and Wrightson and Levine, *Poverty and Piety*, 44-57. In the postscript to this edition Wrightson reviews subsequent research and, while admitting that the stress on weak kinship links in Terling may have been 'overplayed', argues that the evidence that kinship ties extended only to near relatives still stands. See also Boulton, *Neighbourhood and Society*, 247-50.

[91] CRO EDC5 1661/39 William and Charlotte Coventry c. Catherine Urmston; Catherine Urmston c. William Coventry; 1672/27 Richard Heath c. Elizabeth Heath; 1685/4 John Poole c. Jane Poole. Jane described John as her brother-in-law; EDC5 1661/45 Thomas and Anne Sare c. Richard and Anne Sare; EDC5 1680/9 Letitia Dean c. Ralph Dean; EDC5 1682/21 John Mottershead c. Jane Mottershead; EDC5 1690/23 Thomas Battridge c. Oliver Battridge; EDC5 1677/14 Susanna Cowley and Elizabeth Davis c. Margaret Davis. The evidence in this case is not entirely clear but it seems that Margaret and Elizabeth Davis's were daughters or possibly daughters in law of Susanna Cowley. It is also possible that two litigants, Daniel Thomason and John Lloyd (EDC5 1690/9)were related to either each other or to the witnesses in the case. Mary Simcoe testified that all the participants in the case had been in her husband's alehouse in Tattenhall 'together civilly and as relations' when Lloyd accused Thomason of having sex with Anne Tilston and her two daughters. John Cappur, another witness testified that Tilston was his mother-in-law, though no other relationships were explained in any of the other depositions; 1692/37 John Pickering c. Elizabeth Pickering. The only document in this file is Elizabeth's penance which does not mention whether they were related. 1695/5 Anne Bannister c. Elizabeth Caldcott. Caldcott was Bannister's sister-in-law.

sister in law can easily be imagined. William and Charlotte Coventry sued Catherine for defamation and Catherine responded by suing her brother for calling her a whore on the same occasion.[92] In 1695 Anne Bannister brought a cases against her husband's sister after the latter had alleged that Anne had had a bastard. Daniel Benbow, Bannister's cousin, was called in to help calm the waters between the two women and subsequently deposed in court that 'it seeming a particular trouble to her [Bannister] that her husbands sister should so unkindly and unjustly indeavour to injure her reputation'.[93] Only one case in the Sussex sample involved litigating kin; in 1690 Mary Bachelor sued her cousin John Terrey for slander.[94] But one particularly interesting case was fought between two women who were not (as yet) kin: Alice Gough sued Anne Oulton for defaming her by alleging that she had had an illicit relationship with a man called Joseph Langford, who himself testified to that effect. Oulton's intention was clearly to prevent her brother-in-law Francis from marrying Alice. Five members of the Oulton family were called as witnesses in the case, including Francis who testified on behalf of Alice.[95]

The relatively small number of cases suggests that, on the whole, family squabbles were settled internally without recourse to the courts. However, family members could also be called as witnesses and were quite frequently embroiled in the quarrels of their relations. Ten cases from Cheshire involved witnesses who stated that they were related to the litigants in some way;[96] of these six plus another three from Sussex involved witnesses that were brothers or sisters of one of the litigants.[97] In a case

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[92] CRO EDC5 1661/39 William and Charlotte Coventry c. Catherine Urmston; Catherine Urmston c. William Coventry.
[93] CRO EDC5 1695/5 Anne Bannister c. Elizabeth Caldcott.
[94] WSRO Ep I/11/21 f. 26-27v. Mary Bachelor c. John Terrey.
[95] CRO EDC5 1696/7 & 1697/12 Alice Gough c. Anne Oulton. Francis and Alice did eventually marry, despite Anne's best efforts.
[96] In an additional case, fought between William and Charlotte Coventry and William's sister Catherine Urmston (CRO EDC5 1661/39), one of the witnesses was called John Urmston, though his relationship to Catherine was not explained.
[97] CRO EDC5 1661/39; 1661/42 Richard Small c. John Palden; 1662/41 William and Anne Jackson c. William Cutler; 1665/23 George Smallwood c. Elizabeth Barber/ Elizabeth and Margery Smallwood c.

fought between Alice Littler and Ursula Malpas, two of the witnesses, Richard and William Haworth, were Malpas's sons and in two cases from Sussex children gave testimony on behalf of a parent.[98] One case from Chester involved a witness who was the father of the plaintiff.[99] In a case fought between Anne Bannister and her sister-in-law Elizabeth Caldcott, their cousin, Daniel Benbow testified.[100] In another example, from Sussex, a cousin of the plaintiff testified. In the case fought between Mary Bachelor and John Terrey one of the witnesses, Mary Terrey, was Bachelor's aunt and Terrey's mother-in-law.[101] The interrogatories and exceptions show that this recourse to kin might have been something of a risky strategy as family members would be expected to be biased in favour of their relatives. A similar problem of allegations of bias might arise if litigants enlisted the help of servants as witnesses, but this was not unusual; five Sussex cases and fifteen Cheshire cases included testimony from servants of at least one of the litigants.[102] Two cases from Cheshire included witnesses who were mistresses of one of the litigants.[103] Given the domestic situations in which many quarrels occurred it is not surprising that servants and relatives would have been called as witnesses as they

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Elizabeth Barber; 1671/25 Ellen Gill c. Elizabeth Woodier; 1676/13 Elizabeth Davies and Susannah Cowley c. Margaret Davies; 1677/18 Prudence Hollinshead c. Ellen Walton; 1681/21 Thomas Jackson *et al.* c. Sara Gibbons; 1686/10 Anne Wood c. Robert Lowndes;1694/7 Mary Bannion c. Margaret Higginson; 1695/5 Anne Bannister c. Elizabeth Caldcott. WSRO Ep I/11/18 ff. 19v.-20 John Moss c. Thomas Tupper; Ep II/5/19 f. 21 Mary Smith c. Mary Marchant; Ep II/5/19 ff. 28-30 Henry Paine c. Anne Backler.

[98] CRO EDC5 1670/66 Alice Littler c. Ursula Malpas. Other examples of children testifying on behalf of a parent are 1664/63 Ellen Brundrett c. Sara Turton. WSRO Ep II/5/18 f. 86v.-88 Margaret Fuller c. Elizabeth Raston ; Ep III/5/3 ff. 43-5 and Ep III/6 article of exception in case Margaret Dixon c. Elizabeth Topsall. See also Ep I/11/17 John Dalton c. John Napper and Ep I/15/3/41 misc. papers no. 111. One of the witnesses in this case was Samuel Richardson, son of Margaret Richardson, who was engaged in litigation with John Napper (Ep I/11/17 f. 41v).

[99] CRO EDC5 1694/3 Hester Barrow c. John Hickson.

[100] CRO EDC5 1695/5 Anne Bannister c. Elizabeth Caldcott.

[101] WSRO Ep I/11/21 ff. 26-27v, Mary Bachelor c. John Terrey.

[102] CRO EDC5 1661/31 Anne Oldham c. Anne Orme; 1664/63 Ellen Brundrett c. Sara Turton; 1671/25; 1671/35; 1672/12;1675/4;1677/15 Hester Street c. Martha Woodward; 1681/18; 1681/21 (Sara Gibbon's husband's servant, Robert Loverin); 1682/21 John Mottershead c. Jane Mottershead; 1695/2 Mary Crockett c. Anne Rogers. Crockett had once worked for Rogers and two of the witnesses were Rogers' employees; 1697/12 Alice Gough c. Anne Oulton; 1698/12 Mary Meredith c. Alice Hickson. WSRO Ep I/11/21 f. 27v; Ep I/11/22 f. 32; Ep II/5/18 f. 15v. Tupper c. Mosse, f. 37; Ep II/5/19 ff. 21, 31v. Saunders c. Ellis.

[103] CRO EDC5 1686/8 Jane Roberts c. Margaret Goulden; 1686/10 Anne Wood c. Robert Lowndes.

would often have been the only other people present to directly witness the speaking of the words by the defendant.

The cases that have been examined in this chapter suggest that defamation cases arose as a result of certain sorts of social relationships; in particular, perceived failures of social responsibility to neighbours were often at the heart of defamation actions. Reputation was not necessarily the only motivating factor in bringing a defamation case, though it was still often genuinely at issue. Many women and men must have been at the receiving end of insult and abuse that could technically have resulted in litigation, yet only a fraction of these altercations ended in litigation. Often the cases that did lead to litigation were the result of a number of tensions or disputes that had led up to the case. Defamation litigation was one strand in a web of strategies for the settlement of interpersonal disputes. This is because reputation was not an abstract value but one that was tightly interwoven into the fabric of social relations; reputation, insult and litigation all had a part to play in the definition of moral and communal values by which men and women lived. However, as I have shown in this chapter, defamation litigation also served personal purposes for individual plaintiffs and cases were clearly motivated by personal grievances and agendas. In the following chapter I will look more closely at how reputation and defamation litigation functioned within the structures of community order and regulation.

7: Slander and Social Control

Reputation is by definition constructed socially; though good name is based on a foundation of innate personal characteristics, the credit that is attached to those characteristics derives from the way that an individual lives up to socially prescribed ideals. The social and personal implications of these ideals mean that they may regulate behaviour to some extent; this chapter will be concerned particularly with the place of defamation litigation and the idea of 'reputation' within the structures of social regulation of later seventeenth century England. These may be thought of in terms of 'social control', which the legal writer Donald Black has defined as 'any process by which people respond to deviant behaviour'.[1] Defamation cases reveal several responses to deviant behaviour. Most evident is the use of the formal sanction of litigation against a defamer, for the law was designed to protect individuals from unwarranted slanderous abuse. The church courts defined slander in terms of their jurisdiction over deviant behaviour, especially in the area of sexual relations. On the other hand the use of insult itself against people who had overstepped the boundaries of convention or morality can also be seen as an informal form of social regulation, along with the gossip that underpinned so many defamation cases. At the heart of these definitions of acceptable behaviour were ideas about gender and social hierarchy, while the importance of a 'good name' featured in both official and unofficial mechanisms of social control.

Defamation cases suggest that reputation was judged and measured among those of the middling sorts according to generally agreed principles, but that these principles were subject to variation and a degree of negotiation, particularly according to one's

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[1] Black (ed.), *Toward a General Theory of Social Control* vol. 1, 1. For a survey of different anthropological approaches to social order see Jeremy Boissevan, *Friends of Friends: Networks, Manipulators and Coalitions* (Oxford, 1974).

gender and one's place in the social system. Reputation was often judged according to how one behaved within the community and discharged responsibilities that were contingent on gender, office or social standing. These included issues such as good neighbourliness, the execution of local office, honest trading and even the performance of family duties.[2] We can be sure that other, less 'moral' aspects of character were also admired and aspired to, from physical strength or verbal cunning, political power or social influence, to quick wittedness or the ability to hold one's ale, but these do not figure at all in the records of defamation litigation as constituents in the rhetoric of reputation.[3] However, concern for moral and social order, in the broadest sense, does emerge from defamation records. We need to broaden the context in which reputation is analysed beyond the boundaries of legal jurisdictions to the wider world of a more general concern for moral and social order which was not solely the preserve of the governing elites.

Social order

It has become a commonplace that the maintenance of social order was an obsession of the early modern period; legal records, political treatises, sermons and conduct books (among the most obvious sources) reveal a society that was constantly defining and reiterating prescriptions for order and morality. This does not necessarily mean that society was highly ordered (though it was rigidly hierarchical) for the volume of work on the subject testifies at least to the tension between prescription and reality. Society was characterised by layers of overlapping hierarchies and the existence of networks of obligations and responsibilities that attached to authority. Order was, of course, underpinned by social structure, but Wrightson's idea of 'two concepts of order' is rightly being modified on the grounds that it implies too much homogeneity within the

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[2] Very few historians have looked at reputation in its broadest terms. Two exceptions are Walker, 'Expanding the Boundaries of Female Honour', and Muldrew, 'Interpreting the Market'. On the importance of social status to reputation see Dabhoiwala, 'Prostitution and Police'; idem, 'Construction of Honour, Reputation and Status', 201-13.

[3] Muldrew, for example has used diaries and account books in addition to court records to look at dispute settlement and credit relations, sources that shed considerable light on reputation, even though Muldrew does not directly address reputation in any detail: 'Culture of Reconciliation', 915-42.

two broadly defined social groups that it refers to, the governors and the governed. The records of all sorts of litigation show that concern for social order and justice were often felt as keenly by those of meagre status as by those above them in the social hierarchy and by women as much as men.[4] Moreover they suggest that concepts of order, and approaches to achieving it, were sometimes generated throughout society, even if the rhetoric of social order tended to emanate from the most powerful. On this basis, Walker has rightly argued social order should not be discussed simply in terms of whether ordinary people absorbed or rejected the prevailing concepts of social order that the elite aspired to impose on them either through law or through moral teachings.[5] It is generally agreed that the mechanics of social order in this society depended on a degree of consensus across social groups and were subject to external factors (particularly economic circumstances) which were often beyond the control of ruling elites.[6] Ascribing too much homogeneity to popular concepts of social order also denies the reality that the ideals and agency of individuals are heavily dependent on experience. Experience was in turn dependent not only on one's status and place within the social structure but on the more random experiences such as the chance encounters with antisocial or criminal behaviour which occur in any lifetime. Moral values in particular tend to be moulded by experience; abstract moralities are often modified when one is presented with a practical moral dilemma. For example, an individual may condemn single mothers in general, but behave compassionately when an unmarried daughter becomes pregnant; moreover, the experience may not change the parent's moral belief, but this does not mean that the daughter is not supported. The behaviour of individuals is all too easily slotted into moral frameworks constructed by historians and we must be careful of inferring moral views directly from behaviour.

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[4] Keith Wrightson, 'Two Concepts of Order: Justices, Constable and Jurymen in Seventeenth Century England', in John Brewer and John Styles (eds), *An Ungovernable People. The English and their Law in the Seventeenth and Eighteenth Centuries* (1980), 21-46; cf. Gough, *Myddle*, 97; Meldrum, 'Women's Court', 1.

[5] Walker, 'Crime, Gender and Social Order'.

[6] Steve Hindle, 'The Keeping of the Public Peace', in Griffiths *et al.* (eds), *Experience of Authority*, 216-7; Ingram, *Church Courts*, 125; cf. Stone *Family, Sex and Marriage*, 109-11; idem, *Road to Divorce*, 12-13

The law and community

Social order was policed by the formal sanctions of the law, and the institutions and personnel that administered it. It was maintained not only through the threat and exercise of coercion and prosecution but the avoidance of disruption;[7] this depended on the legitimacy of the law and those charged with upholding it. Social control was facilitated by a degree of consensus across social groups which was manifested most clearly in the active participation of men and women in the mechanics of the legal system. This included male householders taking offices such as constables and churchwardens and, more significantly, the participation of both men and women in identifying and reporting miscreants.[8] The system of issuing recognizances at quarter sessions was based on the principle of handing the offender over to the community while the penalties of the church courts (penance and excommunication) were clearly grounded in notions of community.[9] Social order could be maintained by the active participation of ordinary men and women in the 'policing' of community standards through informal, extra-curial methods of social control exercised by those who had personal authority (moral or otherwise) within their communities.[10] These ideals was crucial to a system which was, at the lower levels, unprofessionalised, part-time and dependent on personal relations and reputations built up over time.[11]

Being in a position of authority gave men the opportunity to develop a good reputation in the eyes of their social peers, but the abuse or bad management of that authority could also tarnish their reputation; indeed the general lack of esteem in which bailiffs were held may have meant that for some the holding of this office in itself

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[7] Wrightson, *English Society*, 24-5, 30; James Sharpe, 'The People and the Law', in Reay, *Popular Culture*, 246. Hindle, 'Keeping of the Public Peace', 213-48. Herrup, *Common Peace*, 42, 54.

[8] Ingram, 'Reformation of Manners in Early Modern England', in Griffiths, *et al*, (eds) *Experience of Authority*, 47-50; idem, *Church Courts*, 29-30 and references cited there. James Sharpe, for example, has shown that women played a crucial role in the prosecution of witches; see his 'Women, Witchcraft and the Legal Process', in Walker and Kermode (eds), *Women, Crime and the Courts*, 106-24; cf. Herrup, *Common Peace*, 59-60, 65, 68.

[9] There is an extensive sociological, anthropological and historical literature on the subject of community. Among the most useful works are Colin Bell and Howard Newby (eds), *The Sociology of Community: A Selection of Readings* (1974); Alan Macfarlane, *Reconstructing Historical Communities* (1977). See also Archer, *Pursuit of Stability;* Wrightson, 'Politics of the Parish', 10-46.

[10] Informal rituals could be considered a potential threat to order by the authorities and the balance between control and disruption was in reality a delicate one.

[11] Amussen, *Ordered Society*, 96.

resulted in diminished reputation. We have already seen that one cause of conflict that occasionally led to defamation litigation was dissatisfaction and anger at officials such as bailiffs or sheriffs who were perceived to have overstepped their authority, or to be enforcing judicial decisions which were perceived to be unjust.[12] Though the institutional structures of order were male dominated, women participated in the discourses surrounding the legitimacy of authority and policing.[13] For example, in 1677 Alice Starkey implied that she would accept the authority of an 'honest officer', but that a dishonest one was no better than a thief when she said to Richard Houghton 'I hope we shall have an honest officer come amongst us and noe thief'. Houghton was 'upon occasion of business at Mr. Starkey's ... to distraine there upon some goods from the Quarter Sessions'.[14] Cases such as these might reflect an attempt by the powerless (especially in the case of poor women) to exact revenge on, or at least voice their resentment of, those in positions of authority through the undermining of their reputation, which was considered important to the legitimacy of their authority.[15] It is also possible that people who were having goods legitimately seized would have reacted with hostility and tried to deflect attention away from their misdemeanour by impugning the integrity of the plaintiff. There was a popular ideal of authority and justice that both men and women could appeal to in such as situation.

Reputation was central to the operation of the legal system in other ways, and the self-perpetuating nature of reputation was, to some extent bolstered by legal process. People who stood as sureties when miscreants were bound over (in quarter sessions and other local courts) or who took part in the process of compurgation (in the church courts) were expected to be of good reputation themselves; their participation in these aspects of the legal system may well in normal circumstances have further

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[12] See ch. 6, 193-4.

[13] While women could not hold office, they may have acquired different attitudes to social order through the experience of being married to a constable or other official. This would be an interesting area for future research.

[14] CRO EDC5 1677/23 Richard Houghton c. Alice Starkey. See also WSRO Ep 1/II/19, f. 48 William Hitchcock c. Joan Pricklowe. WH arrested JP - she declared that he was a 'cheating rogue and went about the countrey cheating of them'. Though these cases involved women, Ingram, '"Scolding Women Cucked or Washed"', 52, has found that men were more likely to come before the courts for abusing figures of authority than women.

[15] See ch. 2, 58-9.

strengthened their standing as men of good name and credit. Churchwardens could make presentments on the basis of a 'common fame' that an immoral act had been committed; more generally, within the criminal as well as the civil law the outcome of a prosecution was often dependent on the reputation of the defendant, while Beattie has argued that reputation was crucial to the outcome of pardons as well as verdicts. Michael Dalton thought previous reputation and behaviour to be crucial information for a justice in weighing up the guilt or otherwise of a suspected criminal; indeed he advised the arrest of those with a bad reputation when a crime was committed. Furthermore, one of the principles behind the selection of juries was that they could bring with them knowledge of the characters of juries and witnesses.[16]

Formal kinds of social regulation which operated through the systems of courts in both secular and ecclesiastical jurisdictions dovetailed to some extent with less formal channels of control. Justices of the Peace, for example, performed an important function as mediators in interpersonal quarrels; not only did the magistracy consider it wise to discourage trivial litigation but people involved in disputes themselves were often eager to avoid expensive court actions if at all possible, so that arbitration and mediation were beneficial to rulers and ruled.[17] Extra-curial forms of social control effected by ordinary men and women within their communities were buttressed by the ultimate sanctions of the law but also had authority in their own right, derived from popular ideals of neighbourhood.

The family and social order

We are familiar with a stock image of the organisation of society that consisted of a divinely ordained structure of patriarchal relations headed by God and the king, and underpinned by the institution of the family.[18] While some aspects of this structure had been questioned and undermined during the civil wars, the family remained at the

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16 Beattie, *Crime and the Courts*, 439-43; Dabhoiwala, 'Prostitution and Police', 111; Thomas, *Religion and the Decline of Magic*, 630.

17 Shoemaker, *Prosecution and Punishment;* Shoemaker has argued, 'Reforming Male Manners', 142, that this form of mediation was increasingly used as an alternative to public violence by men in the later seventeenth century. Muldrew, 'Culture of Reconciliation', 930-7.

18 For example, see Richard Allestree, *The Gentlemans Calling* (1660), 1-6 and passim.

metaphorical heart of this conception of the social structure; it was also, in practice, the most important unit of socialisation with moral, economic and spiritual significance. Many historians have concentrated on the prescriptions of subordination and chastity for women in contemporary discourse on the regulation of the family.[19] The submission of wives was considered necessary because women were seen as inherently weaker than men, both physically and morally, while men naturally had both physical strength and the mental capacity for reason. This 'gift' of reason brought with it not only power but responsibility. Earlier in the period, Gouge was forceful in his exhortations to men to use their power wisely for wives had 'no legal remedy' against unjust or brutal husbands.[20] In a similar vein Allestree urged husbands not to 'tyranize' their wives, though he stressed that women had an ultimate duty of absolute obedience to their husbands, whatever the circumstances.[21] These writings reflect the reality that many husbands were authoritarian and even brutal; however, they also testify to the fact that love and respect within marriage mitigated the extremes of patriarchal power and the duty of obedience was not always accepted by women or required by men.[22] In practice we cannot be sure of the extent to which male power was exercised or how marital prescription regulated the daily behaviour of women and men. Morever, it is difficult to tell how far domestic organisation lived up to the ideal of the patriarchal family. For example, demographic evidence suggests that the basic unit of the family was often rather different to the ideal household headed by a man and his wife for Laslett has estimated that 12.9 per cent of households were headed by widows in the seventeenth century. [23]

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[19] Fletcher, *Gender, Sex and Subordination*, ch. 6; Suzanne Hull, *Chaste, Silent and Obedient: English Books for Women, 1475-1640* (San Marino, 1982); Gowing, *Domestic Dangers*, 185-6. Paul Griffiths, *Youth and Authority: Formative Experiences in England 1560-1640* (Oxford, 1996), 29; Amussen, *Ordered Society*, 42, though she argues that in reality, women valued their fidelity to their husbands over their submission to them.

[20] Gouge, *Domesticall Duties*, 223, 204-5, 214.

[21] Allestree, *Whole Duty of Man*, 315, 311-14; see also *Ladies Calling*, ii, 23, 40-1; Richard Baxter, *A Christain Directory: or a summ of practical theologie, and cases of conscience* (1673), 531-4.

[22] Wrightson, English Society, 90-4.

[23] Cited by Prior, 'Women and the Urban Economy', 105; Felicity Heal, 'Reputation and Honour in Court and Country: Lady Elizabeth Russell and Sir Thomas Hoby', *Trans. Roy. Hist. Soc.*, 6th ser., 6 (1996), 169-70. Amussen, *Ordered Society*, 100-101. Naomi Tadmor, 'The Concept of the Household-Family in Eighteenth-Century England', *Past and Present*, no. 151 (1996), 111-40.

Despite these caveats, marriage was imbued with practical and symbolic importance: the Christian duties of procreation (with the long term responsibility to bring up good Christian children), avoidance of fornication and the provision of 'mutual society, help and comfort' for the couple had secular as well as religious resonance.[24] It followed that if the family lay at the heart of society then any behaviour that undermined it had social as well as personal and spiritual consequences. Most important was the imperative to restrict sexual relationships within marriage. This was regulated by the teachings and courts of the church but also depended on the internalisation of the principle of chastity, especially for women. It is clear that many moralists were keen to stress the responsibility of men as well as women for chastity within marriage. Allestree condemned the double standard on adultery when he commented that 'though the world do seem to look on the breach of this duty, with less abhorrence in the husband, yet sure before that Just Judge [God], the offence will appear no less on the mans side than the womans'.[25] It is easy to be dismissive of such a warning when both Allestree and his readers were well aware of the potentially more immediate consequences for unchaste women on earth; not only were they judged by family, neighbours and courts, but they bore the illegitimate children that often resulted from illicit sexual activity. The fear of pregnancy, loss of reputation and real fear that their hubands might beat them or turn them out ensured that many women internalised the notions of respectability, reputation and honesty that come across so clearly in the records of defamation litigation. However, the writings of moralists reflect that fact that ideas about gender and sexual chastity were not monolithic, but open to negotiation.[26] As I have shown through the records of defamation litigation, men could be condemned for sexual misbehaviour, both by the courts and within their communities, and their reputations were judged according to sexual as well as non-sexual criteria.

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[24] Prayer Book of 1549, quoted in Stone, *Family, Sex and Marriage*, 101.

[25] Allestree, *Whole Duty of Man*, 315; cf. Jeremy Taylor, *"Holy Living' and 'Holy Dying"*, ed. P.G. Stanwood (Oxford, 1989), i, 77-8.

[26] For the best recent discussion of seventeenth century conduct literature see Alexandra Shephard, 'Meanings of Manhood in Early Modern England, With Special Reference to Cambridge, c. 1560-1640', (Cambridge University Ph.D thesis, 1997), ch. 6.

Communities

Beyond the family most people's experience of authority was mediated through the political and social structures of their community. These communities were not static but in a constant state of flux as a result of natural life cycles of their inhabitants and the effects of migration. They were also characterised by less tangible social processes of inclusion and exclusion.

At one level there was the religious community of the parish, defined geographically and also spiritually as those who took communion together. In 1696 Anne Spenner petitioned the Bishop to dismiss a case pending against her husband saying that he wished to be left in peace and to be able to 'participate of the holy communion amongst his neighbours'.[27] Those who were 'out of charity' with their neighbours were theoretically barred from taking the sacrament though the strictness with which this was enforced varied from parish to parish. Whatever an individual's personal faith this was an important symbol of their inclusion or exclusion in the community. However, it became an increasingly problematic index of community identity in the final decades of the seventeenth century, particularly in areas with weak ecclesiastical government, such as Cheshire. The increase in nonconformity meant that parallel 'communions' co-existed alongside the Anglican church and the inability of the church to compel conformity also provided opportunities for people to abstain from rituals of Anglicanism without actually being active members of another church. In addition, theological arguments about the prerequisite of good relations among neighbours for salvation made this an increasingly complex issue.[28]

The parish church was the focus for many rituals which had significance beyond their religious function such as christening, marriage and burial and the festivals of the religious calendar which continued to play an important part in community life.[29] The church had a physical as well as spiritual function for the parish; for example, mocking

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[27] CRO EDC5 1696/9 Anne Spenner c. Joseph Stout.

[28] Ingram, 'Reformation to Toleration', in Harris, *Popular Culture*, 120-1; Thomas, *Religion and the Decline of Magic*, 631; Hindle, 'Keeping of the Public Peace', 213.

[29] David Cressy, *Birth, Marriage and Death: Ritual, Religion and the Life-Cycle in Tudor and Stuart England* (Oxford, 1997).

rhymes and libels were often pinned to the door of the church, indicating that it was seen as a 'moral centre' of the community and also, presumably a way to gain maximum publicity.[30] The importance of the parish as a secular as well as an ecclesiastical entity was reinforced by the fact that it was also the basic administrative unit of early modern society.

The church provided a very tangible reminder of the social structure of the parish; parishioners were seated according to their social rank.[31] Though this was a superficial and simplistic reflection of the reality of overlapping hierarchies it was one which must have had strong resonance with parishioners; it rendered the structure of the community as a tangible, physical reality. Pew disputes continued to be an aspect of ecclesiastical court business after the Restoration and the fierceness with which pews were sometimes contested testifies to a very real jockeying for position within the community.[32]

Within the parish was the smaller and less easily defined collection of households which constituted a neighbourhood. It is possible that in counties with large and unwieldy parishes, such as Cheshire, the concept of neighbourhood had particular purchase. Its power lay in the fact that it was not only defined spatially in terms of who one lived near to, but culturally in terms of shared experiences, resources and values.[33] A neighbour was not necessarily defined in terms of where one lived - though witnesses often refer to someone as a 'near neighbour' it is not always clear whether this means that they lived close or whether they were referring to closer bonds of friendship. It is likely that emotional links were as important to the concept of neighbourhood as spatial or material ones and a 'near neighbour' might have been someone who was considered a close friend.[34]

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[30] Ingram, 'Reformation to Toleration', in Harris, *Popular Culture*, 112-13.

[31] Better quality communion wine was sometimes served to the most wealthy and important, see Wrightson, 'Politics of the Parish', 19.

[32] See the case study below. Ingram, 'Reformation to Toleration', 113; Alldridge, 'Loyalty and Identity in Chester', 94-7. According to surviving records, disputes over pew ownership accounted for between approximately 5 and 10 per cent of the business of the Chester consistory court between 1661 and 1700.

[33] Wrightson, 'Politics of the Parish', 18-22; idem, *English Society*, 51; Campbell, *Yeoman*, 383.

[34] Wrightson and Levine, *Poverty and Piety*, 99-101.

The ideal of community values included a range of responsibilities that were partly contingent on social rank. These included the Christian duties of hospitality, which was important across the social spectrum, and charity which was primarily the responsibility of the better off. Richard Gough commented disapprovingly that a parishioner called Richard Wycherley was not 'commended either for his charity to the poore, his hospitality to his neighbours, or his plentiful housekeeping for his servants'.[35] In 1670 Ellen Richardson was sued by Alice Gardner for defamation after she had accused her of having a bastard child. Ellen described how the argument had begun when she had been in the street and had seen someone

> taking an occasion to throwe a poore man downe in the streets and ... Alice laughing at the same ... shee ... spoke to the said Alice Gardner in these words ... Fye on you, Fye on you ... you ... need not laugh att the poore man for you and I had more need to give him something than laugh att him: upon the said wordes, the said Alice replyed if you bee soe free of your charity you had beste begin first ...[36]

Though these ideals were undoubtedly changing by the end of the seventeenth century they still had purchase, particularly in less urbanised areas, and must have played a part in judgements concerning reputation even though they were unlikely to be revealed in defamation litigation except incidentally.

The depositions from defamation cases are full of insights into the definition and responsibilities of being a neighbour, albeit usually set out in terms of the concept of a bad rather than a good neighbour. Quietness was among the qualities most highly prized in a neighbour; defamation cases bring this ideal into sharp focus as it is juxtaposed against the bad neighbours who gossip, quarrel and defame. Indeed it was often said that a rumour was 'noised' about the community. Other sources also shed light on the ideals of neighbourhood; the writers of much of the conduct literature of the period idealised neighbourhood life and values and exhorted their readers to avoid

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[35] Gough, *Myddle*, 160; Heal, 'The Idea of Hospitality in Early Modern England', *Past and Present*, no. 102, 66-93, esp. 68 where she argues that by the late seventeenth century 'the ruling classes had chosen to pursue honour and influence' by means other than hospitality which had been so important formerly. Charity and hospitality to neighbouring poor were generally still considered virtuous; Amussen, 'Gendering of Popular Culture', 55.

[36] CRO EDC5 1670/62 Alice Gardner c. Ellen Richardson.

behaviour which threatened it, such as lying, back-biting, defamation, detraction and spreading tales and rumours.[37]

Richard Gough also often praised good men and women in Myddle in terms of whether they were peaceful or quiet, describing one parishioner, Thomas Novely, as 'a crosse, quarrelsome and troublesome man among his neighbours, and therefore not well beloved'.[38] Malicious litigation was widely recognised to be disruptive.[39] Though defamation litigation was a recognised option for people who had been defamed, people who were prone to litigation were liable to develop a reputation for being litigious and troublesome. Peter Bettesworth deposed in a case brought by Robert Saunders against Henry Ewen in 1680 that

> he hath heard that the said Henry Ewen hath beine accounted a troublesome quarrelsome person amongst his neighbours and much given to the law but never knew or ever heard that Robert Saunders ... to be at any given to the law without very much provoked to it or at any time to live contentiously with his neighbours but very neighbourly and quietly.[40]

One of the most important responsibilities of neighbourhood was the keeping of the peace between neighbours. It has been argued, most notably by Lawrence Stone, that the increase in personal litigation from the end of the sixteenth century was the result of the breakdown of 'traditional' communities with their internal mechanisms for conflict resolution. However, the records of litigation of all sorts from the later seventeenth century show that, despite increased levels of some forms of civil litigation, informal methods of dispute settlement were still significant in the maintenance of social order.[41] Though meddlesome people were frowned upon and prurient interest in the affairs of others was not conducive to good neighbourhood relations, there was a

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[37] Allestree, *Government of the Tongue*, 39; Vaughn, *Spirit of Detraction*; Reyner, *Government of the Tongue*.

[38] Gough, *Myddle*, 230.

[39] It is now recognised that malicious litigation was not as common as was once thought, particularly among people of lower social rank who generally wished to exhaust all other channels for the settlement of a dispute before investing in expensive legal proceedings. See Ingram, 'Communities and Courts', 119-21.

[40] WSRO Ep I/11/19, ff. 21v.-22v Robert Saunders c. Henry Ewen.

[41] Lawrence Stone, 'Interpersonal Violence in English Society, 1300-1800', *Past and Present*, 101 (1983), 28-32; J. A. Sharpe's 'The History of Violence in England: Some Observations', *Past and Present*, no. 108 (1985), 206-15, was a reply to Stone's article. For a useful discussion of this debate see Muldrew, 'Culture of Reconciliation', 916-19.

clear role for mediation between neighbours, and it is clear that many citations were issued only after attempts at informal mediation between friends had failed. Sometimes mediation was the result of someone picking up on the gossip that was circulating and taking the initiative to try and sort the dispute out; at other times one of the parties concerned would enlist the help of a friend or neighbour in negotiating with the person who had defamed them or whom they had defamed. For example, in 1663 Robert Heywood was alleged to have said that Elizabeth Young was a whore and had been kissed by Ned Downes. Edward Young described how 'at the house of ... Richard Small in Pott Chappell' there was 'a meeting of some freinds for ending of some difference betwixt the plaintiff and defendant in this cause for words spoke by him ... Heyward against the plaintiff'.[42] In some cases attempts at informal mediation seem to be relatively non-judgmental; in others it is clear that neighbours (and subsequently witnesses) were taking sides.

Ordinary people often tried to effect their own forms of regulation on their neighbours before calling in officers of the law. Gough recalled the story of a man called John Aston who was 'very idle and much given to stealing poultry and small things'. He described how Aston's behaviour was initially apprehended by his peers, for 'hee was many times catched in the fact, and sometimes well cajoled by those who would trouble themselves no further with him. But at last hee grew insufferable ... Hee was at last imprisoned and indicted'.[43]

Extra-curial methods of social control were also effected through more ritualised punitive measures such as ridings and rough music.[44] The evidence shows that women's role in these forms of social regulation was as least equal to that of men. Reputation, gossip and insult also formed a regulatory function in identifying and condemning unacceptable and praiseworthy behaviour.[45] These forms of social regulation depended on an underlying moral consensus and on the reputation and

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42 CRO EDC5 1663/64 Elizabeth Young c. Robert Heywood.

43 Gough, *Myddle*, 145.

44 Ingram, 'Ridings, Rough Music and Mocking Rhymes'; idem 'Ridings, Rough Music and the "Reform of Popular Culture" in early Modern England', *Past and Present*, no. 105 (1984), 79-113.

45 Archer, *Pursuit of Stability*, 77, 79-80. Capp, 'Separate Domains?' 117-45.

authority of those who participated in them. The judgements expressed through forms of informal social control were more forceful within peer groups against whom most individual men and women would have measured their worth and standing.

Gossip and the control of language

Gossip was a crucial currency of both reputation and defamation litigation. We have already considered gossip simply as the exchange of information about people. Most anthropologists, and some historians, have argued that the evaluative nature of gossip meant that it was an instrument of social regulation. The study of gossip is particularly pertinent to a study of defamation because of the historical interpretation of early modern communities. Underdown has characterised this society as a place where 'throughout the kingdom villagers assumed their right to know everything about their neighbours' family, sexual and working lives and to take appropriate action if community norms were violated'.[46] Theories of gossip assume a moral consensus in society for gossip tends to be generated by the strains caused by the failure of individuals to live up to prescribed norms.

It needs to be recognised that gossip was not necessarily as pernicious as is sometimes assumed. Individuals form judgements about other people not only by first hand observation of their behaviour, but by listening to the information and opinions of others which may affirm or alter their first impression. This exchange of information is not necessarily prurient or arbitrary, though gossip has often been regarded as such.[47] In fact in was the lifeblood of social relations, particularly in a society that was only partially literate and partially professionalized. Reputation was essential to maintaining a good living and reputation was dependent on the talk of others. The farmer, Henry Best, provides in his notebook a good example of the importance of the opinions of neighbours when he gave advice on how to employ a servant: After questioning the potential servant about his provenance and experience Best recommended

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[46] Underdown, *Revel, Riot and Rebellion*, 100.

[47] C. J. Wickham, *Gossip and Resistance Among the Medieval Peasnatry* (Birmingham, 1995), 11-13.

> goe to his master, or some neighbour of his that yow are acquainted with, and tell him that yow are aboute to hyre such a servant and soe knowe of them whether hee be true and trustie, if hee bee a gentle and quiett fellowe, whether hee bee addickted to company-keepinge or noe ...[48]

Gossip was also, as I have already argued, central to the workings of defamation litigation, since not only was reputation dependent on what others were saying but ironically the success of a case was dependent on showing that others were talking about the reputation of the plaintiff. On the face of it gossip may appear to be divisive and destructive, but the anthropologist Max Gluckman, among others, has argued that it is a cohesive force that prevents social tension from breaking out into open conflict.[49] The moral judgements articulated through gossip and slander define the standards which are policed through the process of gossip. The gossiper not only reconfirms these standards by censuring the behaviour of others, but enhances his or her reputation at the expense of the target of the gossip in the process. Gluckman argued that this process controlled competing cliques within societies, thereby containing social tension.[50] Gowing has dismissed this interpretation of gossip, arguing that 'slanderous talk, so far from being a regulative process is both a symptom and occasion of dysfunction', and that 'slander does not consolidate social relations: it destroys them'.[51] She argues instead that the courts were increasingly used as a weapon in neighbourhood disputes and that those disputes were expressed through the constructs of sexual imagery. This reading misses the point; most conflicts never reached the courts, but

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[48] *The Farming and Memorandum Books of Henry Best of Elmswell, 1642*, ed. Donald Woodward (Oxford, 1984), 139-40.

[49] Gluckman, 'Gossip and Scandal', 307-16.

[50] The function of gossip as a form of social control has been the subject of a celebrated controversy among anthropologists. Gluckman's view was first disputed by Robert Paine in his article 'What is Gossip About?' An Alternative Hypothesis, *Man* , new ser., 2/2 (1967), 278-85. Paine argued that gossip was primarily ' a genre of informal communication and second a device intended to forward and protect individual interests'. He stressed that it was the individual, not the community, that gossiped and therefore that gossip articulated the values of individuals rather than the community. Though he accepted that gossip played a part in the construction and protection of what Gluckman termed 'we groups', Paine argued that these groups were not as self-contained and homogenous as Gluckman implied; a consequence of this was that gossip enabled the dissemination of information across social boundaries. See also Gluckman's reply, 'Psychological, Sociological and Anthropological Explanations of Witchcraft and Gossip: A Clarification', *Man*, new ser., 3 (1968). Merry provides a useful critique of the debate, arguing that the two views are clearly not incompatible but complementary, in 'Rethinking Gossip and Scandal', 1. See also Bailey, *Gifts and Poison*, 228. Pauline Croft argues that the ritual of libelling also performed a similar function in reinforcing community values, 'Libels, Popular Literacy and Public Opinion', 283.

[51] Gowing, 'Women, Sex and Honour', 93.

were negotiated through the informal mediation of friends and certainly rarely materialised into a defamation suit. Most reputations must therefore have been created or destroyed without recourse to law. People resorted to court action when the informal processes of gossip failed. Once court proceedings had begun, or a dispute had spiralled into open public scandalmongering then further gossip may have exacerbated the tension and fuelled more discord, but until that point gossip could serve a cohesive function.

Given that gossip was rife we need to ask why some talk was considered defamatory, while other talk was ignored and did not lead to a defamation case. Gossip is recognised to be a feature of tightly knit, or 'face-to-face' communities where everyone is supposedly aware of what their neighbours are doing. However gossip finds its most fertile ground where information is only partial. Once gossip is composed of facts that are confirmed by people who claimed some authority to knowledge it becomes more dangerous to the object of the gossip.

In the previous chapter it has been argued that the decision to litigate was often motivated by factors other than the matter ostensibly at issue. It is also clear that some victims of slander and gossip did not have the financial resources to pursue a case and would have had to either put up with what was being said about them or find other ways of counteracting the gossip. However, one factor behind the decision to litigate must have been the authority of the defamer. Plaintiffs had to make a judgement about how likely it was that the rumour or allegation was going to be believed and therefore how real the threat to their reputation was. The authority of the defamer was therefore one factor; the authority of those who testified to what they had heard was another. Those with authority were those who had good credit among those of reputation. Anthropologists have defined the 'honour community' as a sub-society within communities; some historians of the gentry have also picked up on the concept but it is also useful in terms of reputation among the sub-gentry levels of early modern English society.[52] Reputation was defined in ecclesiastical law as having a good name among

[52] Heal, 'Reputation and Honour ', 169, uses it specifically in the context of gentry honour; Llewellyn, 'Honour in Life, Death and in the Memory', 190.

people who were themselves of good reputation (*apud bonos et graves*), and the distinction between those of good name and those of no credit was made frequently when witnesses were explaining how the defamatory words had affected the plaintiff and evaluating the information that they had heard or witnessed. It has been argued that women had particular power in what could be termed 'the honour community' by virtue of the fact that they were brokers of reputation through gossip to a greater extent than men. This argument however rests on two assumptions that have already been undermined in this thesis; namely that women gossiped more than men and that women were more concerned with sexual reputation than men. So how did one build personal authority within the community?

Cases from the church courts of Sussex give an interesting slant on this question, for witnesses there were asked how long they had lived in the parish. As the following table shows, over two thirds of witnesses who provided the relevant information had been resident for over eleven years.

Table 13. Length of residence of Sussex witnesses in their stated parish

	N	%
0-5 months	1	2.2
6 months-1 year	1	2.2
2-5 years	10	22.2
6-10 years	2	4.4
11+ years	17	37.7
Entire life	14	31.1
Total	**45**	**99.8**

Witnesses in both dioceses were also asked how long they had known the plaintiff and defendant and what they had heard of their reputation in that time. Most claimed to have known at least one of the litigants for more than a few years. Older witnesses often claimed to have known at least one of the litigants for as long as they could

remember, or since they were a child. It was relatively unusual for a witness to admit to not knowing the litigants at least in passing.[53]

This evidence is particularly striking for we know that early modern society was highly mobile. The search for employment provided the impetus for people to travel long distances and few people spent their whole lives in one settlement. These levels of mobility must have had a significant impact on the texture of early modern communities and have affected the way reputation was evaluated. It was quite likely that the longer standing members of communities had an automatic authority which the young and more recent migrants had to earn. Not only did age confer authority; the old were important to community identity as repositories of social memory for the idea of custom based on 'living memory' still had great purchase. Adam Fox has shown how the elderly were called to testify in court to the longevity and authority of customary laws and practices based on their memory.[54] Custom must also have been important in extra-curial forms of social control within communities.

A person's identity was also based to some extent on the reputation of their family. It has already been argued that there was a concept of 'moral lineage' and that both men and women were insulted through slanders which cast aspersions on the morality of their parents. However, the mobility characteristic of seventeenth-century communities also focused the need for people to talk in order to evaluate the character of those who had newly moved. It also meant that people often had a wide social circle and that gossip circulated around several neighbourhoods and towns. When Simon Dixon told some friends in an alehouse in Chichester that Nicholas Exton 'loves a girle as well as the best of you for hee keeps a whore in his house', Exton sued him for defamation. Henry Anshill, who had been among those drinking, deposed that the 'girle' in question was a widow called Joan Williams of whom he had 'heard a good

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[53] Examples include CRO EDC5 1662 unnumbered; 1662/41; 1662/59; 1675/15; 1696/9.

[54] Adam Fox, 'Custom, Memory and the Authority of Writing in Early Modern England', in Griffiths *et al.* (eds), *Experience of Authority*, 89-116; see also Alldridge, 'Loyalty and Identity in Chester', 95, 107; Tim Stretton, 'Women, Custom and Equity in the Court of Requests', in Walker and Kermode (eds), *Women, Crime and the Courts*, 170-90.

report ... by her neighbours where she lived before she came to Chichester' and that he believed her to be 'an honest woman' on the basis of her previous reputation.[55]

A number of cases involved allegations of misbehaviour that had occurred in the past and became the subject of rumours years later. In 1661 William and Anne Jackson sued William Assinare for saying 'that the said Anne was a whore and had a bastard child by a collier in Lancashire before she came to Cheshire and had taken money to father it upon her husband'. The following year the couple also sued William Cutler over a similar allegation. Adam Jackson, William's brother deposed that he had been walking to church with his wife when Cutler

> began a discourse about ... Anne Jackson and ... said that she was a whore and an arrand whore, and the child that she was withall before she was marryed she tooke money of a gent to father it upon him that is now her husband and if she had not found him out she had fathers enove for it besides[56]

Unfortunately the depositions do not give any tangible evidence about how this story had travelled from Lancashire to Cheshire or how either Cutler or Assinare knew about it. However, the two cases imply that the story was well known and that Cutler knew Anne Jackson well enough for the allegation that she had plenty of potential fathers for her child to carry some weight.

Control of gender relations and sexual behaviour

At the heart of the debate about defamation litigation is the assumption made by some historians that ecclesiastical defamation litigation, with its concentration on sexual insult, reflected a widespread intolerance of sexual immorality. We might expect that changes in the incidence of litigation also reflected changes in the tolerance of illicit sexual behaviour, or changes in the definitions of sexual immorality. The increase in litigation in the later sixteenth and early seventeenth century has been partly explained by hostility on both moral and economic grounds towards illegitimacy and a growing

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[55] WSRO Ep III/5/3 ff. 40-42v; Walker, 'Expanding the Boundaries of Female Honour', 243.
[56] CRO EDC5 1662/41 William and Anne Jackson c. William Cutler; 1661/24 William and Anne Jackson c. William Assinare.

concern for respectability and reputation. [57] The corollary of this would be that as the incidence of defamation litigation declined concern about levels of sexual immorality and care for reputation also declined. But, while there can be no doubt that insult is related to the construction of moral values on a societal level, it is far more hazardous to trace direct links between the language used by an individual and their moral values. I have shown that there were several factors contributing to the incidence of defamation litigation and that the issues were not as simple as arguments assuming a close link with morality would imply. Moreover, as Gowing has pointed out, we cannot assume that the use of sexual insult by an individual was the direct result of personal distaste for certain sorts of sexual behaviour.[58] Indeed it is arguably quite the reverse - a tendency to talk freely about sex and use graphic sexual language may in fact reflect enjoyment of behaviour that could be construed by others to be immoral. The pleasure that comes from talking about sex derives in part from the knowledge that it will shock. It is certainly true that sexual insult was common currency but, as I have shown, it was often used in an argument or allegation that had nothing to do with sexual behaviour originally. Though this suggests that sexual insult was related to concepts of sexual morality it also suggests that the links were not clear cut. Clearly the issues are highly complex. The relationship between language and actual values is a slippery one that has been the subject of much disagreement among linguists, historians and social scientists and still remains an open question.[59] Forms of insulting language do represent attitudes and values, though whether they reflect or determine them is still controversial.

It is beyond doubt however, that there was a consensus that the regulation of relations between the sexes was desirable, and that there was a powerful rhetoric of

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[57] Gowing, *Domestic Dangers*, 111; Sharpe, *Defamation*, 24-6, Ingram, *Church Courts*, 165-6, 313-16; Foyster, 'Male Honour', 1.

[58] Gowing, *Domestic Dangers*. Despite this useful insight Gowing has argued most strongly among historians that there was a system of honour within which male and female reputation were incommensurable and that sexual honour was at the heart of female reputation.

[59] The literature on this question is extensive; I have found the following useful: Dennis Baron, *Grammar and Gender* (New Haven and London, 1986); Deborah Cameron (ed.), *The Feminist Critique of Language: A Reader* (London and New York, 1990); eadem, *Feminism and Linguistic Theory*. Seminal texts in the debate over determinism in feminist linguistic theory include Dale Spender, *Man Made Language* (1980).

sexual morality and reputation that was ostensibly subscribed to by the middling sorts. The way that these conventions actually affected the behaviour of individuals depended to a large extent on their relationships within their families, and their communities. Friends, neighbours or business acquaintances perceived their reputations in terms of how they discharged both personal and public responsibilities which were often seen to be closely linked. We have seen that parents could be condemned for protecting daughters or sons who bore illegitimate children. I have also suggested that husbands who beat their wives could also find themselves the object of community censure. The following case suggests that domestic abuse may not have been conceived only in terms of compassion for the individual woman, but as a danger to the peace of the community and therefore of legitimate concern to neighbours. In 1664 Thomas Hough called John Blackburn a cuckold and as a result Blackburn threw his wife out of the home. A group of their neighbours were discussing their predicament in an alehouse and two men, Highfield and Strethill, went to see Thomas Hough: they 'moved him to recall his words and to acknowledge the injury done by him to his neighbours whereby the differences between the said Blackburne and his wife might be appeased'.[60] The interesting aspect of this case is that the injury done was framed in terms of the peace of the neighbourhood, not the predicament of Blackburn's wife.[61] This case illustrates how the rhetoric of patriarchy masked some uncomfortable inconsistencies. There can be no doubt that many women were subject to abuse from brutal husbands and that a certain level of abuse would have been considered acceptable in the interests of maintaining order in the family. However, constructions of neighbourhood order did not necessarily allow for unchecked patriarchal power.[62] Moreover a corollary was that male reputation was only partially based on the ability to control women.[63]

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[60] CRO EDC5 1664/26 John Blackburn c. Thomas Hough

[61] For another example of neighbourhood mediation in a domestic dispute see CRO 1675/25 Margaret Savage c. Ralph Colcane. Margaret was helped on several occasions by neighbours who allowed her to stay with them, or who secretly provided her with food and later testified on her behalf to her husband's cruelty.

[62] Cf. Foyster, 'Male Honour, Social Control and Wife Beating', 215-34.

[63] See an interesting case in March, *Reports*, 75-6, also cited in *Baron and Feme*, 283-4. March reported that 'As if a man shall say of another, That he kept his wife basely and starved her ... if the party of whom they were spoken were to be married to another, and by these words hindred; in such as case, with an averment of the particular damage an action will lie'.

Illegitimacy and bridal pregnancy

It is difficult to do more than speculate about real attitudes to sexual morality and the success of both formal and informal methods of social control on the sexual behaviour of individuals. However, two useful indices are the levels of illegitimacy and bridal pregnancy and the incidence of punishment of these offences. How did illicit sexual behaviour really affect a woman's reputation? Martin Ingram has argued that even the known fact of having borne a bastard (let alone a defamatory accusation of such) was unlikely in practice to do more than postpone the marriage of a woman, at least one who was of previously good reputation. This argument is supported by other research into illegitimacy and in particular by the more recent work of demographic historians.

One way to test Ingram's hypothesis is to match the records of illegitimate births against the records of marriages. In early seventeenth-century Terling, for example, Wrightson and Levine found that approximately a third of women who bore bastard children were married soon after the birth, either to the father of the child or to another man.[64] Richard Adair's valuable analysis of parish records throughout early modern England has supported this finding and gives further insights into the complex attitudes to illegitimacy in this period. Adair found that in the 'highlands' (which includes the north west county of Cheshire) 61 per cent of women who bore illegitimate children were married to the father of the child within two years of the birth. In the 'lowlands' (including the southern counties) all women who bore bastard children married the father within two years. These figures only apply to cases of illegitimacy where the name of the father and mother were recorded. Adair suggests that in the lowlands this only happened when the couple were near the point of marriage, thus accounting for the very high figure. [65] The evidence supports the contention that the main cause of illegitimacy in this period was periodic failures in the marriage market brought on by

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[64] Wrightson and Levine, *Poverty and Piety*, 128, 130; Ingram *Church Courts*, 310-11. Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England* (Manchester, 1996), found a similar pattern in his sample of 250 English parishes.

[65] Adair, *Courtship, Illegitimacy and Marriage*, 82-3; the dividing line between highlands and lowlands is drawn roughly from Exeter to Hull. Adair argues that there were two different courtship systems in operation in the two regions, which would also account for the statistical differences.

economic circumstances in the context of a society that had a more relaxed view of pre-marital sex (between betrothed couples) than has sometimes been supposed. It seems clear that it was normal for betrothed couples to begin sexual relations once marriage was imminent and that this was not considered immoral. If the marriage was postponed due to unexpected economic hardship, (or the desertion of one partner) then a bastard birth, or a birth very soon after the marriage was often the result.[66]

In further support of this theory, it has been found that the average age of women at the time of their first bastard birth was roughly similar to the average age of married women at the birth of their first child. An example from Cheshire gives anecdotal support to this contention. Alice Oliver, a witness in a case fought between John Knight and Margaret Bunnell, deposed that she had two illegitimate children 'begotten by a single man who lives in the country which she was never as yet questioned for, and its about 5 yeares since she had the first of them'.[67] Alice was thirty-two at the time of her deposition, making her twenty-seven when she had her first child - slightly older than the average age of the birth of a first child for women at this time.[68] The fact that she had not been prosecuted for having two illegitimate children may have reflected a tolerance for bastard bearing within stable relationships and may suggest that her marriage to the father of both her children had been postponed. The fact that the father of Alice's children lived 'in the country' may also imply that the relationship was over, raising the possibility that allowances could be made for illegitimacy even in cases where the couple did not stay together.

Though we can tell from parish register analysis that women who had bastard children and therefore diminished reputations did get married, such demographic evidence does not fully answer the question of how the reputation of individual bastard bearers was affected. The interrogatories from several cases give some insight into this question. One witness called to depose in a case fought between John Knight and

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66 Adair, *Courtship, Illegitimacy and Marriage*, 10; Wrightson, *English Society*, 84-6. Adair, 111, has suggested that the north west had a higher rate of illegitimacy because it was less stable agriculturally than the south and was not always able to maintain an adequate level of subsistence.

67 CRO EDC5 1668/23 John Knight c. Margaret Bunnell.

68 As the average age of marriage was around 25 for women, the average age of bearing a first legitimate child was around 25-6.

Margaret Bunnell in 1668 was asked how many bastards she had had and whether she had been prosecuted, presumably in an attempt to discredit her testimony in the case.[69] In another case fought in Chester, between Mary Touchett and Margaret Goulden in 1686, the testimony of a witness called Jane Roberts was called into question because she was a woman 'of lewd life' who had had bastard children.[70] The fragment of an article of exception survives in an unspecified case from 1661 in which witnesses were asked if their co-witness, Mary Davis, had borne any bastard children.[71] In the setting of a court and the context of ecclesiastical law, the idea that bearing a bastard child would undermine the credibility of a witness was a legal commonplace. In the wider context of the community, however, allowances were probably made for the individual circumstances in which conception occurred. More significantly, the feelings of close family and potential suitors might not have been irreparably affected. Again, the previous reputation of the woman in question would undoubtedly have had a significant impact on her subsequent reception and not all womens' reputations would have been irrevocably destroyed. However, women who bore bastards may well have had to settle for a husband who was less well off or less respected that she would have hoped. We must not lose sight of the human reality that, for many women and men, marriage was still about love and affection as well as material advancement and that emotion could override moral prescription.[72]

That said, there were potentially serious ramifications for reputation in the event of a bastard birth. Certainly young women who bore bastard children did sometimes threaten the standing of their families who were sometimes made culpable for their misfortune. In 1679 Katherine Eaton 'blamed [Margaret Brassey] for harbouring her daughter who had plaid the Harlott and was great with child'.[73] Women who protected the bearers of illegitimate children also seem to have put themselves in a vulnerable position. One of the ways to conceal a bastard birth was to hand the child over to a

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69 CRO EDC5 1668/23 John Knight c. Margaret Bunnell. Deposition of Alice Oliver.
70 CRO EDC5 1686/8 Mary Touchett c. Margaret Goulden. Exceptions against Jane Roberts.
71 CRO EDC5 1661/30 Exceptions against Mary Davis.
72 *Diary of Roger Lowe*, 20, 24.
73 CRO EDC5 1679/6 Margaret Brassey c. Katherine Eaton.

married woman of child bearing age to pass it off as her own. Thus Adriana Leigh accused Richard Jones of having had an illegitimate child, adding that 'his mother ... did or doth keepe the same'.[74] Though it was Richard who brought the case, rather than his mother, such an allegation must have had a bearing on her reputation and his concern may well have been for her as well as himself. On the whole, however, the evidence suggests that families were generally supportive of daughters who had illegitimate children and did not abandon them or disown them, even though they might suffer some temporary degree of community censure.[75]

The other significant demographic angle on this discussion is that bridal pregnancy rates were relatively high, especially in the north west of England. In Adair's sample from this region nearly 17 per cent of first babies born between 1661 and 1700 were conceived before marriage. The comparable figure for the lowlands was 15.3 per cent.[76] Wrightson has estimated that between 10 and 30 per cent of brides were pregnant, yet bridal pregnancy was rarely recorded or prosecuted compared to illegitimacy, suggesting tolerance from both the authorities and wider society. Given this situation and the fact that relatively few slanders alleged bridal pregnancy it seems that pre-marital fornication did not carry much stigma, as long as the couple did marry before the child was born.[77] Correspondingly slanders alleging pre-nuptial fornication or condemning bridal pregnancy were relatively rare, though there are examples.[78] In 1670 Hugh Hickson sued Ellen Massey for calling him a bastard, 'which words she denyed and only confessed that she had said that he was gotten and borne and all in

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[74] CRO EDC5 1664/28 Richard Jones c. Adriana Leigh.

[75] Ingram, *Church Courts*; Adair, *Courtship, Illegitimacy and Marriage*, 89.

[76] Adair, *Courtship, Illegitimacy and Marriage*, 100, 81. Adair, 100-4, has found that fluctuations in the bridal pregnancy rates were not related to illegitimacy ratios suggesting that we cannot draw simple conclusions from these statistics and that the social causes of demographic facts were invariably complex.

[77] Wrightson, *English Society*, 85-6; Adair, *Courtship, Illegitimacy and Marriage*, 92-3; Ingram, *Church Courts*, 230, 236; Haigh, 78; Marchant, *Church Under the Law*, 137; CRO EDC5 1670/62 Ellen Gardner c. Margaret Richardson.

[78] Adair, *Courtship, Illegitimacy and Marriage*, 92-4; Ingram, *Church Courts*; Wrightson, *English Society*, 86.

halfe a yeare'.[79] This case suggests that the allegation of pre-marital fornication should not have been taken as seriously as an allegation of bastardy.

There can be no doubt that the fear of gossip, insult and loss of reputation must have had a controlling effect on the sexual behaviour of early modern men and women. People certainly gossiped about the sexual behaviour of their neighbours and sexual insult was commonly used to condemn sexual immorality. The fact that sexual immorality could be prosecuted at law gave both gossip and sexual insult particular potency. However it is also clear that these ideals and sanctions were mediated by personal relationships and reputations and were determined by a number of circumstantial factors. The consensus that underpinned church discipline over sexual matters was not necessarily puritanical dislike of sex, but fear of the consequences of unregulated sexual activity. Demographic evidence, combined with the evidence of defamation cases, suggests that it was often not sexual immorality in an abstract sense that caused tension and precipitated censure; a blind eye was often turned to illicit relationships, illegitimate children and deviant sexuality. It was when they threatened to undermine the social order and peace of the neighbourhood, or at least upset the status quo, that sexual miscreants were most likely to be condemned. This contention will be illustrated by the following case study.

In 1682 Jane Price, the housekeeper of a man called Richard Halliwell from Pulford in Cheshire, brought a defamation case against Elizabeth Halliwell and her husband Thomas in the Chester consistory court. Unfortunately we do not know for certain whether Thomas and Richard Halliwell were related. The case centred on allegations that Jane Price had had a bastard child, Ellen Williams, who was allegedly being brought up by Price's sister and that she and Richard Halliwell had been lovers for at least the previous ten years. In two separate cases, one brought against Thomas and the other against Elizabeth, a combined total of twenty five witnesses were called,

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[79] CRO EDC5 1670/58 Hugh Hickson c. Ellen Massey.

providing a wealth of information about years of gossip and suspicion surrounding the relationship between Price and Halliwell.[80] The cases shed light on the process of information exchange, the credit ascribed to information from different sources, and the web of jealousy and judgement that could surround an unconventional sexual relationship.

The catalyst for litigation appears to have been Elizabeth Halliwell's comment that Ellen Williams was Jane Price's bastard child and the repetition of this allegation at the churching of a local woman, Christina Burganey. The libel states

> that you the said Elizabeth Halliwell on or about the 12th day of May and after the speaking and declaring of the aforesaid words, were at a Christening or churching within Pulford, and then before all the company present did againe speak the aforesaid scandalous words of the plaintiff Jane Price, and also owned and confessed that you had spoken them before.

Jane Price was herself present at this gathering and, according to the deposition of Mary Smith of Chester, she

> taxed the said Elizabeth for repeating it that she did not know but within a week, that Nell (meaning Ellen Williams) was her ... Jane Price's bastard, to which Elizabeth answeared and confessed that she had spoke those words, but said that she did not raise them herselfe, for she had an author for them and bid Jane look further into it ...

This was the public confrontation that brought the question of Jane Price's reputation into the open and made it a matter of public debate.

A number of men and women who had been in the service of Richard Halliwell were called to testify to the nature of his relationship with Jane Price. Catherine Roberts testified that she had been Halliwell's maidservant between roughly 1675 and 1678 and that during that time Halliwell had fallen ill:

> Jane Price, being his principall servant and housekeeper, haveing liv'd many yeares with him was very much about him and wak'd very much and often with him, and when she did sit up all night would many times sittup very late ... and did in her cloathes lye down or leane on some part or corner of the bedd.

This rather ambiguous piece of evidence for sexual impropriety was apparently well known in the town and may well have been embroidered over the years as other

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[80] CRO EDC5 1683/34 Jane Price c. Elizabeth Halliwell; 1682/22 Jane Price and Richard Halliwell C. Thomas Halliwell.

evidence for their relationship became common knowledge.[81] Richard Wright, a husbandman from Pulford, deposed that Price and Halliwell

> have been suspected to have layne together and been too familiar one with another, tho[ugh] this deponent never see anything by them, but he remembered that about five or six and twenty yeares agoe one Jane Dutton now Jane Hughes told this deponent that Bessye Harry or some one else ... told her that one morning early she went into Richard Halliwell's house for fire and saw Jane Price in her smocke standing betwixt his legges ...

Some of these stories were clearly very third hand, and this may have been why they had not caused Jane Price too much anxiety in the past. Richard Wright's wife Amy, deposed that she had heard the stories about Halliwell and Price that had circulated while he was ill and the rumour that Ellen Williams was a bastard. However, though she had known Price and Halliwell for over fourteen years she had 'little acquaintance' with them. The depositions show that gossip thrived among people who had only passing acquaintance with the subject of the rumours, but that people were quick to make judgements about the validity of gossip.

Several witnesses who claimed to have actually known Price and Halliwell quite well testified that they had never seen any 'incivility' between them and believed the charges to be malicious. Others claimed to have actually seen them or heard stories from people whom they trusted and this caused them to believe that Price and Halliwell were having a relationship and therefore were likely to have had a bastard child.

As we have seen, when Elizabeth Halliwell was confronted by Jane Price about the rumours she defended herself by claiming that she had 'an author' for them, a familiar defence of defamers. This author appears to have been a man called John Vernon. Thomas Halliwell claimed that 'he was told that John Vernon should say that if Jane Price did not own this (meaning ... Ellen Williams for her bastard) he would make her finde another or hang for't'. The deposition of John Breese, a yeoman from Pulford, strengthens the proposition that Vernon was at the root of the scandal. He testified that

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[81] See also the deposition of Mary Joynson.

> one day last winter John Vernon and this deponent were in discourse together and amongst other things, this deponent told him he heard there was a motion of marriage between Ellen (he thinks her name is Williams who lives with the defendants and is said to be Jane Price's sister's daughter) and Richard Halliwell's son, at which John Vernon fell a laughing and said sure they are too neare of kin, what would you have him to marrye his sister ... that one day about a fortnight agoe Katherine Roberts this deponents servant told him that upon Chad-race day last which was in the beginning of March, she and Nellye at the Baileys (meaning the aforesaid Ellen who is most commonly called by that name) were in company togeather and either going to, or coming from the market, and amongst other talke that was betweene them, the said Ellen told her she must make haste home, for said she all our folkes are gone to the Race, but our father and mother (meaning as she apprehended the two defendants in this cause). He also saith he hath heard severall people some years ago often flirting and jearingly said yonder goes the Baily and his maid, or the Bailey and his maid did this or that, that they the said defendants were or had been too familiar togeather, but not naming any particulars ...

The deposition of Thomas Jones, a blacksmith of Poulton, shows that Vernon did have more privileged access to information than some of the witnesses who were called, for Richard Halliwell was his wife's uncle:

> Richard Davies of Rowester and John Vernon of Poulton marryed two sisters, and Richard Halliwell ... was uncle to them both, and they are now both dead and there husbands are marryed againe, and about 22 years agoe this deponent was Apprenticed to Richard Davies and the said John Vernon's then wife came into this deponents said maisters house, unto his this deponents dame, and this deponent well remembered that she told his said dame that Jane ... was with childe, then his dame asked by who, by my uncle?

One of the most interesting aspects of this case was the distinction that was made between public and private talk and the limits to which gossip could go before the subject of the gossip felt the need to retaliate.

Two witnesses, John Vernon himself, and Eliza Parry made comments that suggest that Price and Halliwell had not handled the rumours about their affair very well. Vernon deposed that

> that one time about or above tenn yeares agoe this deponent was by when the articulate Richard Halliwell told one Katherine Burroughs that she and her husband had in 4 dayes time drunke the brewing of three measures of malt, to which she answear'd, And they say that you kisses your Maid, to which he made no Reply, but went away.

Eliza Parry also recounted a story told to her by Elizabeth Davies;

> that she heard that John Vernons wife (who dyed some yeares agoe) upon a falling out between her and the said Jane told the said Jane to her face that she had had a childe, and that it had a quarter of a yeare, and that Jane Price went away upon it without making any answeare, or saying any thing her selfe

To allow a slight on one's reputation to go unchallenged was often seen to be discrediting in itself and at the very least could fire rumours. However, both Price and Halliwell may have thought that the rumours about their relationship had not gone far enough at this point to merit retaliation.

The deciding factor seems to have been the fear that they were going to be prosecuted for fornication at the instigation of Thomas Halliwell. Once this became a distinct possibility they became the subject of much more open talk. Richard Wright testified that

> heretofore it hath been sometimes talked on and discours'd by neighbours amongst themselves, but not publickely untill of late, and since the differences happend between the plaintiff and defendants, that the said defendants have been suspected to have layne together and been too familiar one with another.

His wife, Amy made a similar distinction between public and private talk saying that 'since these differences happened which were the occasions of these suites, their too much familiarity has been much more both publickly and privately talkd of'.[82]

The most intriguing aspect of this case is why their relationship had remained the subject of 'private talk' for so long. John Vernon suggested that the rumours had been going on for over twenty years. We do not know why they were not prosecuted for fornication long before 1682 or why Price was not prosecuted for having an illegitimate child. One witness also suggests that she had been pregnant once before, had miscarried and buried the child in the garden. One possibility is that people felt that they could turn a blind eye to sexual immorality if the relationship in question did not threaten the peace of the community in any other way. The relationship between Price and Halliwell may have been illicit, but it was stable and relatively discreet. However, a number of aspects of their relationship obviously caused some members of their community concern. The most important factor was the social status of Jane Price.

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[82] See also the deposition of Richard Davies.

Richard Halliwell was a relatively well to do man and Jane Price was initially simply his servant. However, many witnesses, including men and women who had been in service at Halliwell's, commented on the unusual 'liberty' granted to her as a servant. John Hughes testified that she has 'taken upon her the management of most of his [Halliwell's] concerns'. Hughes' wife, Jane, seems to have revealed the crux of the matter when she deposed that Jane Price 'has had a faire life and maintain'd herself hansomly, and had comonly a maid or two under her, some envious people would be apt to censure her and to speak hardly by her especially of late ... ' Not only was it possible that men and women in the town were jealous of Price's status in the Halliwell household, but Richard Davies suggested that Halliwell's family was concerned about their relationship. He maintained that Halliwell

> shewed more favour and gave more libertie to her than ordinary servants used to have, which (as this deponent hath heard) made some friends and relations of his suspect and feare that he would marrye her, and use some means to prevent it, and since the differences lately happen'd betwixt the plaintiff and the defendants which were the occasions of these suites, those things have been much talk'd of, and howe that they had or have heretofore been more familiar togeather that they ought to have been.

The deposition of Margaret Davies suggests that Thomas and Elizabeth Halliwell were related to Richard, though this is not explicitly stated at any point in the course of litigation. Davies had been a servant four years previously to Thomas Halliwell. She recounted how Katherine Ravenscroft

> came unto her said maister's house and amongst other talk and discourse which was then betwixt her, and this deponent's dame, she told them that Jane at the Balyes had miscarried (meaning of a child) and had bury'd it in the garden. Then she further told this deponents dame that Richard Halliwell had made his will and left the said Jane his servant a good legacye to which this deponents dame answar'd noe matter how much it is she shall never sitt above me (meaning in the church) soe long as she has a nose on her face.

This deposition reflects the very real significance of the seating arrangements in church. The final clue to this case is mentioned only once in the deposition of Mary Smith who was at Mrs. Burganey's churching where Jane Price and Elizabeth Halliwell had their initial altercation. She said

> that after the defendant had confessed to the speaking of the words Jane Price asked her what was the reason that either she or anyone else should say to her, she was sure that neither she nor her maister, had given them any cause for it, or any way disoblig'd them: to which the said Elizabeth answeared, yes, her and he had been against her husband in the taking of Burrogh's tenement;with some other such angry expressions, which makes this deponent believe that the aforesaid words were spoken in spite and malice; some of the women in the present said they thought it was spoken out of spite and malice.

Unfortunately this is the only mention of any dispute over a tenement so we can only speculate about its significance but it does suggest a tangible cause for hostility against Halliwell. The reference in the previous quotation to 'the Balyes' implies that Halliwell may have been a bailiff. Elizabeth Halliwell may well have resorted to attacking the sexual impropriety of the relationship in the face of impotence over an economic transaction. Once this relationship was brought into the open gossip would ensure that Price and Halliwell were condemned.

This was clearly a case that was about much more than simply the sexual reputation of Jane Price. Her illicit relationship with her master and the possibility that she had had at least one illegitimate child was not the issue that really led to the defamation case but was the vehicle through which a number of issues which concerned members of the local community and the Halliwell family were articulated. In such a situation they had a well rehearsed and widely comprehensible rhetoric to tap into that had very real, punitive consequences.

8: Conclusion

A good reputation was of unquestionable benefit to early modern men and women and a bad reputation could have real and tangible personal consequences. Those who attacked a person's good name through slanderous language could be prosecuted in the secular or ecclesiastical courts and it is the records of these legal actions that have formed the basis of this thesis. Existing studies of similar materials, primarily from the church courts of a number of southern regions, have established that the reputation of women and men was constructed differently and that this was reflected in a gendered pattern of participation in litigation. I have argued however, that a failure to appreciate the limitations of these sources has led to a partial picture of the gendering of reputation.

In this thesis I have grounded defamation litigation firmly in its legal context and traced the complexities of the law and pleading practice in the secular and ecclesiastical courts. I have argued that the previous concentration on records from the ecclesiastical jurisdiction has led historians to privilege the importance of sexual reputation to women over non-sexual reputation; correspondingly the importance of sexual reputation to men has been undervalued. The neglect (until recently) of male reputation has, ironically, resulted in a one dimensional view of women's reputation and therefore of the importance and meanings of reputation in general. When analysing the importance of reputation to men, actions in the secular courts need to be considered alongside those in the church courts. While a detailed examination of cases in the secular courts was beyond the scope of this study (its main focus was sexual slander) a number of secular cases have been included in this analysis; more importantly, I have shown that an understanding of the delineation of jurisdictions contributes to a more nuanced analysis of the significance of actions over sexual slander in the church courts.

The selection of the northern county of Cheshire and the southern county of Sussex, as the focus of this study has enabled us to look at defamation litigation, and therefore reputation, from new perspectives. The detailed study of a northern region is an important contribution to the historiography because historians have tended to focus their attention on London and the south. There are, naturally, aspects of the material that are similar to the findings of historians in other areas, but there are also significant differences. These differences have opened up new lines of enquiry and interpretation; they can shed new light on the subject because it is the patterns of litigation found elsewhere that have underpinned existing arguments about the construction of reputation, and in particular the understanding of the gendering of reputation.

In themselves the words that formed the basis of litigation in Cheshire and Sussex do not differ particularly from those which have been found in other courts. The more defamation cases that one reads, the more formulaic they appear, and it is striking that much of the texture and variety of slang, abusive, obscene language, and particularly dialect must have been filtered out of these records. This can be explained by the legal strictures which determined the admissibility of words in a lawsuit across the country. If a simple allegation of whoredom was all that was required for a successful action, then this may have been all which was divulged to the court. The failure to appreciate the legal limitations of the sources has led to a misunderstanding of the significance of the words that formed the basis of defamation suits. Allegations of sexual slander are bound to predominate because the jurisdiction of the ecclesiastical courts encompassed sexual immorality, but not all the many other criteria around which reputation was constructed. Hence the pattern of slander does not automatically imply that sexual reputation was the most important constituent of reputation for those who brought actions over sexual slander.

Patterns of participation in defamation suits from the ecclesiastical courts of Cheshire and Sussex were different from other regions that have been studied and this has enabled a significant re-evaluation of the gendering of reputation and the ways that men and women used litigation in their interpersonal disputes. In Cheshire there were

equal numbers of male and female plaintiffs in ecclesiastical litigation and over half the defendants were male. The evidence from Sussex suggests that this was not simply a northern aberration; here only 56 per cent of plaintiffs were female and 64 per cent of defendants were male. This is in striking contrast to other courts in the seventeenth century where female plaintiffs usually accounted for at least two thirds of plaintiffs, and London in particular where, by the early eighteenth century, the overwhelming majority of cases were fought by a female plaintiff and defendant.[1] Definitive explanations for this difference are difficult at this stage. Further research in other regions of the country outside the south-east would help to establish whether we really can assume that the findings of existing research are the norm against which the evidence from Cheshire ought to be judged. However, there are some possible explanations.

It must be remembered that the overall incidence of defamation litigation was lower in the later seventeenth century that in was in the earlier period. This was undeniably the result of the long-term declining importance of the church courts, though the evidence in this thesis and elsewhere demonstrates that this process did not really become far advanced until later in the eighteenth century.[2] It was probably also a function of changing attitudes to privacy and the control of sexual behaviour. Within the overall decline in actions for defamation in the church courts, the numbers of male plaintiffs may not have decreased significantly, with the result that the proportion of male plaintiffs increased. If we consider that more men than women were also suing for defamation in the secular courts, this amounts to a considerable number of men involved in this form of litigation. On the basis of evidence from the Middlesex quarter sessions Shoemaker has argued that litigation over words became an increasingly male activity at the end of the seventeenth century.[3] He links this to changing attitudes to masculinity and language resulting from an intolerance of public violence. In other

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[1] See ch.3, 93-5, and the references cited there.
[2] See ch.1, 24-5, and the references cited there.
[3] Shoemaker, 'Reforming Male Manners', esp., 134. It is not clear whether Shoemaker is arguing that insult and slander were increasing, or that more people were litigating over slander. Cf. Meldrum, 'Women's Court', who argues that in this period the London consistory had become a 'women's court'.

words that men who would once have settled their disputes with violence increasingly turned to verbal battles and litigation, with one often leading to the other. This cultural process may help to explain why, as the overall incidence of defamation litigation declined in our period, the numbers of male plaintiffs stayed proportionately high. Institutional factors in Cheshire in particular may also have contributed to this pattern, though this is difficult to ascertain in the context of this study. It is possible that the historical judicial autonomy of Cheshire may have encouraged differences in the interpretation of the law and in the jurisdictional boundaries between ecclesiastical and secular courts. While the only manifestation of this autonomy that remained by our period was the Chester Court of Great Sessions, a residual culture of independence may have contributed to a higher proportion of words of reproach being allowed in the church courts; this may account not only for the significant proportions of men suing for slander in the courts of Cheshire, but also for the wide range of non-sexual slanders which were brought to the Chester consistory court by both women and men.

Turning to the patterns of insult in the ecclesiastical courts, women did complain of more sexual insults than non-sexual slanders; this is in line with the findings of other studies and what we would expect given the legal jurisdiction of the church courts. However, the range and proportion of non-sexual slanders was greater than that found in other studies. This is significant given that allegations of simple sexual misbehaviour were the most legally unambiguous slanders that could be taken to the church courts. Moreover, analysis of the incidental information recorded in depositions, interrogatories and articles of exception clearly indicates that a range of sexual and non-sexual criteria contributed to the construction and maintenance of women's reputations and formed the basis of actions for defamation.

Men in these courts also complained of a higher proportion of sexual slanders than has been found elsewhere. Furthermore, I have argued that some of the most common generalised words of insult, 'rogue', 'rascal', and 'knave', were words that could have sexual connotations, and were used with specific intent to insult men sexually. As these words were not confined to Cheshire and Sussex, but were also the

basis of litigation in other regions that have been studied, I would argue that it is clear that the importance of sexual reputation to men has been undervalued by historians. While Foyster has recently argued that sexual reputation was important to men, she has defined it in terms of patriarchal control over the women in a man's life.[4] This argument fits into a historiographical construction of patriarchy that has been questioned in this thesis. It is clear, in fact, that sexual reputation was important *in itself* to men, and was considered a criterion of a man's credit in the eyes of others. Along with other forms of credit it was significant as an indicator of honesty, decency and conformity, though the degree to which it mattered would have depended on individual relationships and interactions.

While it is clear that concepts of 'good name' and 'credit' mattered, I have raised questions in this thesis about the real meanings of defamation litigation. Having established the ways in which the law shaped the patterns of evidence I have also examined the motivations behind defamation litigation and questioned what it really conveys about attitudes to gender roles, the construction of reputation and the nature of social control.

There has been a tendency to read off, uncritically, a whole system of popular moral values from the evidence to be found in these records. However, I have argued that the links are not always as direct as they first appear. In the first instance, we cannot assume that the defamer and their victim shared a clear set of values. It is implicit in most discussions of defamatory language that both an act of insult and the words spoken had the same meaning for both the defamer and the defamed person; in other words that it was recognised to be an assault on the character and reputation of the victim, that the harm that particular insults might do was self-evident and that a defamation suit was an appropriate tool for the restitution of a damaged reputation. Defamation records are bound to give this impression because the law required the victim to show that they had been deliberately defamed and that this had undermined their reputation. The reality may have been very different.

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[4] Foyster, *Manhood*, esp. 4-5 and ch. 3.

As we have seen, the background to a case often lay in a dispute about money, or tensions surrounding property that had nothing to do with the sexual behaviour of either litigant. The defamer who accused a woman of being a whore in such a situation was not necessarily making an allegation (and moral judgement) about a woman's sexual propriety. Indeed it is characteristic of arguments that protagonists seek to raise the stakes with harsh insults that take the dispute beyond its original cause. Women were often called whores because it was the insult most readily on the tip of the tongue, and the one guaranteed to upset the defamer's victim. The defamer may not have had any particular interest in the sexual behaviour of their victim, or calculated desire to pass judgement on it. That said, the widespread currency of language which insultingly targeted female sexual immorality does certainly reflect broader attitudes to women's sexuality which were deep seated and widely understood. The insult 'whore' was loaded and powerful because it had a long-standing currency which reflected the position of women within the family and society. As I have argued, its potency was related to the wider significance of acts of unchastity. This meant that, while individual men were condemned through sexual insult, stereotypes of dissolute masculinity, such as the rogue, never had quite the ramifications of the stereotype of the whore. A woman who was slandered as a slut, harlot or whore may have recognised that her identity as an honest woman (in its broad sense) was being challenged, but she did not necessarily feel that her actual sexual behaviour was being held to account.

I have also argued that plaintiffs were not always motivated purely by the desire the restore a damaged reputation when they pursued a defamation action. Many thousands of women and men who were the object of insulting language never resorted to litigation. The reasons why particular incidents landed the defamer in court cannot simply be explained with reference to the importance of reputation. Instead they are likely to be rooted in more tangible aspects of interpersonal relations within communities and the ability of individuals to invest in litigation. The analysis of the business of a range of courts has proved to be valuable in the discussion of the background to litigation in this thesis and the development of this approach (which was

necessarily limited) would benefit future research. It is clear that many actions for slander were part of ongoing disputes between litigants, or people close to them, and sometimes these disputes were conducted in a number of courts. A defamation suit was sometimes just another stage in the development (and sometimes resolution) of a dispute. This is not to say that attacks on reputation in themselves could not be part of a deliberate strategy in these quarrels, for they certainly could be. It does suggest that defamation actions could be the manifestation of individual concerns and strategies rather than a self-contained response to an unwarranted attack on a person's reputation.

Defamation litigation therefore had a broader social context and in this respect was similar to other forms of litigation. Both defamation and the legal response to it served personal purposes in the jockeying for position which is a feature of any community. This is critical to the understanding of the relationship between sexual slander and the control of sexual behaviour. Defamation litigation was played out using the rhetoric of reputation and ideals of masculinity and femininity that formed the basis of the moral codes by which men and women were expected to live. Clearly the language of sexual insult reflects a general intolerance of sexual immorality. The popular definition of sexual immorality was broadly in accordance with Christian principles which condemned adultery, fornication and illegitimacy. However, there is little evidence to suggest that these internalised principles were rigidly adhered to in practice, even by the authorities. Prosecutions for sexual immorality were haphazard in this period, reflecting not just a readjustment of the institutional machinery which dealt with them but also broader cultural shifts in attitudes towards the legitimacy of policing personal morality. Among the general population bridal pregnancy apparently caused little concern and even illegitimacy within stable relationships was probably tolerated within communities. Demographic evidence supports the contention that bearing a bastard, or a rumour to that effect did not necessarily destroy a woman's chance of marriage, or result in a married woman's eviction from her home. Allowances were made for the sexual indiscretions of some people in some circumstances; people of otherwise good reputation or of particular power, influence or popularity could

probably survive the discovery of their sexual transgressions. This meant that they were less likely to be slandered, or rumours about them were less likely to develop the momentum to require a legal response. Reputation was self-perpetuating in this respect and could also serve to control the behaviour of the prurient and fractious who might otherwise indulge in malicious slander and gossip. Moreover, as reputation was multi-faceted, a blemished sexual reputation did not always have catastrophic consequences for every aspect of even a woman's life.

Sexual immorality became problematic when it threatened to disrupt the social order, and then its consequences could indeed be devastating. It is striking that in many cases the plaintiffs were not countering vague aspersions on their sexual honesty but specific allegations of misconduct, such as bearing or fathering bastard children. These incidents derived their significance not only from personal but social contexts. The problems associated with adultery and illegitimacy ramified within communities because broken marriages and illegitimate children disrupted the social structure (which was perceived to depend on the family) and had tangible costs. These real social costs informed ideas about respectability which underpinned the construction of reputation among the middling sorts. These issues are difficult to pin down because they are dependent on the availability of incidental detail which is so often filtered out of the legal record. However, the case of Jane Price and Richard Halliwell, which was examined in the previous chapter, strengthens the reading of sexual slander cases which is only suggested by other less well documented cases. Their illicit sexual relationship was tolerated for many years, even though it was apparently the subject of some rumour, until a combination of jealousy, resentment and specific grievances against them fuelled a process which finally called them to account for their sexual transgressions among their neighbours and Halliwell's family. It is clear that in several other cases the sexual incident had happened years before the defamation case and was apparently resurrected in the context of other tensions and grievances. The existence of a well-developed and instinctively understood rhetoric of sexual morality could be tapped into in such circumstances and it is this process which lies behind so many

defamation cases. Once the sexual morality was the subject of public scrutiny, condemnation could become more widespread and not confined only to the person who had the original grievance. The fear that past sexual immorality could become the focus of gossip and slander must have had a controlling effect on the behaviour of many men and women, just as the fear of immediate detection and gossip, ostracisation or even informal punishment by peers must have done.

Laura Gowing's detailed survey of defamation and marital litigation sought to establish that male and female reputation were utterly incommensurable because female honour was so strongly bound up with sexual reputation, while sexual immorality was of little consequence for the reputations of men. This overturning of the idea of the double standard as a matter of degree has been hugely influential. Foyster has recently argued that 'loss of sexual honour for a woman was equivalent to death' while the idea that sexual reputation was the sole component of women's reputation and worth has become orthodox in the historiography of early modern England.[5] In this thesis I have shown that this does not stand up to scrutiny. The combination of evidence that plaintiffs were motivated by a range of grievances, and that male and female reputation was constructed to some extent around shared criteria (sexual and non-sexual) suggests that ideas about appropriate behaviour were not solely grounded in sexual difference; they did not rest entirely on gendered attitudes to sexual behaviour and morality, important though these were. I have argued that there was a discourse of male sexual immorality that allowed for the possibility of condemning men for their sexual misbehaviour, even if the consequences of loss of reputation were less serious for most men than they were for most women. The importance of reputation in this period therefore ought not to be characterised in terms of discrete gendered conceptions of appropriate behaviour. Moreover, defamation and the legal responses to it were not simply the product of tension between the sexes. They were a function of a range of social tensions that emerged in the context of personal and social relationships and were

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[5] Foyster, *Manhood*, 147.

measured against definitions of reputation that derived in part from those relationships. Despite changing institutional and cultural circumstances the secular and ecclesiastical courts continued to be a meaningful forum for the mediation of these concerns in the later seventeenth century.

APPENDIX I:

Chester consistory court

The main sample is from the consistory court at Chester and consists of defamation cases brought to that court between 1661, when the court was re-established, and 1700. These cases are listed in a handlist prepared by the Chester Diocesan Record Office, which contains some inaccuracies but is a reasonably reliable record of the number of cases of each type taken to that court in the period in question. Using a combination of my own research and the record Office handlist I have calculated that there is documentation for 303 cases that were brought to this court in the period.[1] Some of the records are fragmentary and little information can be gleaned from them. The records take the form of loose papers bound into case bundles. Some bundles contain only a libel; this may indicate that the case did not proceed to the stage where witnesses were called, or that the remaining documentation has been lost. Other bundles contain a mixture of records including libels, depositions, interrogatories, articles of exception, schedules of expenses and penances. The core sample for this study is 219 cases (72 per cent of the total), in which we can be sure of the words that were being sued over; this comprises a combination of cases with libels alone and cases with a combination of records, usually including depositions.

The church courts of the diocese of Chichester

The sample of cases for the Diocese of Chichester comes from the records of the Archdeaconry of Chichester, the Dean of Chichester's Peculiar and the Archdeaconry of Lewes. The main sample includes all the cases that had depositions recorded in the deposition books for these three jurisdictions. In addition to this miscellaneous papers

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[1] There is enough information from this sample to analyse the gender breakdown of participation in defamation cases in this court.

containing fragmentary evidence such as libels, depositions, citations and excommunications have shown that there were additional cases other than those recorded in the deposition books. The core sample of cases that has been used for the analysis in this thesis are those in which we can be sure of the libellate words. There are 38 of these from the Diocese of Chichester.

Table 14. Defamation Cases from the Courts of the Diocese of Chichester, 1661-1700

	Cases in Deposition Books (N)	Cases in Miscellaneous Papers (N)
The Archdeaconry of Chichester	28	24
The Archdeaconry of Lewes	13	0
The Dean of Chichester's Peculiar	5	3
Total (73)	**46**	**27**

Court of Great Sessions at Chester

The Court of Great Sessions heard personal actions on the case for words and the results of a sample from this court are outlined in Table 14. Thirty-five sessions were sampled between 1650 and 1700.

Table 15. Actions for words at the Court of Great Sessions at Chester, 1650-1700

	Cases (N)
1650-1659	17
1660-1669	9
1670-1679	3
1680-1689	0
1690-1699	0
Total	**29**

Chester City Courts

The Chester Portmote Court was presided over by the Mayor and shared the city's civil business with the Pentice Court which was presided over by the city Sherriff. The origins of these courts is somewhat obscure and the overlap of court officers meant that the business of these two courts has been filed as one body of documents, known as the mayor's files (MF) and it is not possible to distinguish between the business of the individual courts. Furthermore, much of the material is fragmentary, many records are obviously missing and individual folios are often not clearly labelled or dated. Therefore we have mixed files containing recognizances, indictments and informations filed by year.

Every fifth year was sampled from 1650 to 1700.The business of the courts has been divided into two groups; prosecutions for words (Table 15) and personal actions

on the case for words. There were thirteen actions on the case for words in the sample years across the period.

Table 16. Actions on the Case for Words at the Chester Mayor's Courts, 1650-1700

	Cases (N)
1650-1661	7
1662-1686	6
1687-1700	0
Total	**13**

Table 17. Cases Involving Abusive Words in the Chester Mayor's Courts

Offence/method of prosecution	Male	Female
Seditious Words		
Recognizance	0	1
Indictment	1	0
Information only	3	3
Total	4	4
Words against an Official		
Jail	1	0
Recognizance	4	1
Information only	9	2
Presentment	2	1
Total	16	4
Words/assault against an individual[2]	7	5
Recognizance	3[3]	1
Grand Total	**32**	**14**

Note Informations are listed where no other documents are available, though this does not necessarily mean that the perpetrators were not actually indicted or bound over.

[2] Only prosecutions for assault (or examinations relating to an assault) in which abusive words were spoken are included in this figure

[3] This includes a recognizance that included a physical assault as well as words.

Cheshire Quarter Sessions

In the majority of cases of provoking or scandalous words in this court there is no record of what was actually said or who the words were directed at. There are examinations in only seven cases and these were spoken of an ordinary individual rather than an official in the course of his duty.

Table 18. Offences involving words at Cheshire Quarter Sessions, 1650-59

Offence	Male
Provoking/scandalous words & gestures	65
Words against an official	14
Seditious words	1
Barratry	7
Scolding	2
Total	**89**

Table 19. Prosecutions for Abusive Words in the Chester City Sessions 1650-1700

Offence and Method of Prosecution	Cases (N)
Presentments for Common Swearing	13
Presentments for Scolding	1
Seditious Words	
Recognizances	7
Indictments	6
Imprisoned	2
Information only	1
Total	16
Words Against an Official	
Presentments	3
Indictments	2
Recognizances	6
Examination only	6
Total	17
Words/ assault/Disturbing peace*	
Recognizances	3
Examination only	3
Indictment	2**
Total	8
Grand Total	**55**

* Prosecutions for assault are only included if they involved words as well.
**In 1669 John Kelly was indicted for threatening to kill his wife and 'disturbing his neighbours', CCRO QSF/79/2, f. 117.

Chester city sessions

The records of the Chester city sessions are incomplete and some whole years are missing. Nine years were selected for study between 1650 and 1700 and the results are set out in Table 19.[4]

Sussex Quarter Sessions

The jurisdiction of the Sussex Quarter Sessions covered the whole county of Sussex with the exception of the liberties of the Cinque Ports and the City of Chichester which had their own sessions. The county was divided into two halves, east and west, consisting of three rapes each: Hastings, Pevensey and Lewes in the east and Bramber, Arundel and Chichester in the west. Twenty four sessions were sampled between 1650 and 1660. After 1660 I have looked at the April and July sessions for every fifth year up to and including 1695. These have been supplemented by examing the relevant recognizance, indictment and order books between 1650 and 1695.

Chichester City Sessions

The records of the Chichester City Sessions are extremely fragmentary. The few relevant surviving documents are examinations relating to five prosecutions for abusive words directed at the mayor of the city in 1651 and 1652. The only other relevant document is a list of six men and two women convicted of swearing oaths between March June 1655.[5]

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[4] 1656, 1658, 1667, 1675, 1680, 1685, 1690, 1695, 1700.
[5] WSRO N/19, f. 11.

Table 20. Sussex Quarter Sessions, 1652-1662

Offence and Method of Prosecution	Cases (N)
Words against an individual	
Indictments	18
Discharged by fine	1
Information only	1
Total	20
Words against an official	3
Barratry (indictments)	3
Seditious words	2
Grand Total	**28**

* This included the prosecution of Elizabeth Shotter for being a 'sower of sedition amongst her neighbours, but in particular for 'rayling scandall against Mary Luffe', ESRO QI/EW2, f. 30.

Table 21. Sussex Quarter Sessions, 1665-1695

Offence and Method of Prosecution	Male	Female
Words against an individual		
Recognizance	2	0
Fined	1	0
Examination only	1	0
Total	4	0
Words against an official		
Indictment	1	0
Examination only	1	1
Total	2	1
Seditious Words		
Indictment	5	0
Recognizance	2	0
Fined	1	0
Total	8	0
Barratry (indictment)	2	0
Libel (indictment)	3	0
Eavesdropping (indictment)	3	0
Grand Total	**22**	**2**

APPENDIX II: Procedures and Records

The Church Courts

Consistory courts were officially presided over by the Bishop, and Archdeaconry courts by the Archdeacon though, in practice, they rarely appeared in person. On a daily basis causes were heard by the Bishop's commissary or Archdeacon's official. The lawyers in these courts were known as Proctors and were men who had studied canon law and had been apprenticed to a public notary for seven years.

The plaintiff requested that the court Registrar issued a citation to appear in court against the defendant. If the defendant failed to appear within the allotted time then he or she was declared contumacious and ultimately excommunicated. If the defendant did submit themselves to the court the plaintiff then had a libel drawn up by their proctor in which they stated the nature of their grievance; these formulaic documents contain the exact words that were alleged to be defamatory, and the time and location at which they were uttered If the defendant then chose to bring a suit against the plaintiff he or she could have a libel drawn up without first issuing a citation and the two cases proceeded simultaneously. This was know as a reconvention.[1] The defendant then responded to the articles of the plaintiff's libel with written personal answers, which generally denied every article. Witnesses were called by both sides to testify in answers to the articles of the libel. These depositions were taken down in private, a point which must be remembered when trying to weigh up the significance of theses cases in the debate about women and the appropriateness of public speech. The Proctors for both sides then presented the depositions of witnesses to the judge.

Libels enable us to quantify the categories of words that were actionable in the courts, but their usefulness for the study of reputation is otherwise limited because they

[1] Conset, *Practice of the Spiritual or Ecclesiastical Courts*, 339. Examples include CRO EDC5 1662/39 Humphry Swindellor c. Alice Broome and Alice Broome c. Humphrey Swindellor.

probably omit utterances irrelevant to the legal action and therefore rarely contain any other qualitative information. The witnesses' depositions are in many ways more interesting documents, though they were structured in the form of answers to the articles in the libel and hence tended to be restricted by the legal principles that governed the form of the action. They contain more narrative detail, and hence give more insight into the personal and social significance of slander. For example, witnesses often gave their judgement of the character of the parties and the social and personal effects of the defamatory words as well as describing the events surrounding the uttering of the defamatory words. Witnesses were also sometimes questioned about specific aspects of the case and the character of the litigants through documents known as the articles of exception. These record attempts by one party to undermine the credibility of the other party's witnesses and any aspect of their credit could be mentioned, not just the allegations that fell within the jurisdiction of the court.

The secular courts

In the court of Great Sessions at Chester the procedure was similar to that of the Royal courts elsewhere in the country. The plaintiff stated their case in their plea. These were usually formulaic documents which stated that the plaintiff was a person of previous good reputation; they recorded the words that had been spoken to challenge their good name, by whom, when and sometimes where they had been spoken. They also recorded the value of cash damages that were being claimed by the plaintiff.

Local courts, such as the quarter sessions and city courts also heard personal actions for defamatory words. They also prosecuted abusive or threatening words of various types (including seditious words, words spoken against officials and words spoken against ordinary individuals) which were treated as breaches of the peace. All these offences were primarily prosecuted using the instruments of recognizances and indictments or summary conviction and fines.[2] Miscreants could be bound over by recognizance to keep the peace (used for offences such as assault or threatening words) or for good behaviour (used against people who were a more general nuisance) until the next session. This procedure could be

[2] These procedures are described in many contemporary handbooks produced for justices of the peace. One of the most authoritative was Dalton's, *Countrey Justice*, esp. chs. 79, 87, 127.

initiated by either officials or by individual complainants. Indictments were more likely to be filed by an individual plaintiff and were formal charges presented to a grand jury. These secular records are less satisfactory documents than those of the church courts for the purposes of the social historian as they tended to be formulaic statements that included only the name of the offender (and sometimes a named complainant) and the offence of which they were accused; detailed descriptions (contained in examinations of complainants or witnesses) of the words spoken and the circumstances surrounding the offence are less plentiful than in the church courts and it is therefore much more difficult to build up a picture of the background to litigation. Even when we do have examinations the fact that the offences were treated as breaches of the peace means that the importance of reputation was not usually the focus of the examination.

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